Twenty-Fifth Year of Publication

DICTA

● *Reform In Legal Education*

ALLISON FAVORS CLINIC FOR STUDENT LAWYERS

Professor Junius L. Allison of the Vanderbilt University School of Law is a nationally-recognized authority on clinical legal education. He served for nine years as Executive Director and trial attorney for the Chicago Legal Aid Bureau, and edited the national Legal Aid Briefcase *magazine in 1956-62.*

Before moving to his current post at Vanderbilt, Professor Allison was Executive Director of the National Legal Aid and Defender Association for nine years. His prior lectureships at Chicago and Northwestern University Law Schools were held while working with NLADA and the Chicago Legal Aid Bureau.

This article was prepared for the Council on Legal Education for Professional Responsibility symposium on clinical legal education and is copyrighted by that organization.

By Junius L. Allison

(Part Two of Two Parts)

There is a strong feeling among directors of clinical programs and deans of law schools that the teaching purpose is and must be first, with the service aspect being a desirable but a secondary objective. Medical clinics operated in cooperation with schools of medicine are not expected to provide all the medical services the indigent need. Neither should the heavy responsibility of providing all or a substantial part of the legal aid to the poor fall on law students. To attempt such would jeopardize the whole clinical program and it would give the community an excuse to continue to evade its duty to establish the needed services.

But we will not have to face a dilemma in this misdemeanor necessity if we find some way to be selective and to limit the representation by students.

Justice Brennan did not say that the law students could or should supply all the assistance. He suggested them as a resource "as well as the practicing attorneys."

Difficulty of Prediction

In an attempt to assess the impact *Argersinger* will have on the courts, the legal profession, or the law schools, we must have some estimate of the number of misdemeanor cases where the defendant will be unable to employ counsel. Since there are no complete statistics on the volume, we have to make projections from the few known facts. In the American Bar Foundation Study in 1965,[7] Lee Silverstein estimated that in 1962 there were approximately 5,000,000 cases including traffic offenses. Of these, 25-50% of the defendants were probably indigent (the percentage much less than for felonies). Using the smaller percentage, he says that it is reasonably accurate to use the figure of 1,250,000. Not all of these will require counsel, however. A great number will plead guilty without the advice of a lawyer. Some will waive counsel even though they plead not guilty. My guess is that of the 1,250,000, only 20% or 250,000 will request a lawyer. Next, we have to estimate the number of these defendants who will face the possibility of a jail senetnce. With the typical penalty for a misdemeanor being a fine or confinement or both, it appears safe to say that in at least 50% of these, the defendant *may* be sentenced to jail. This gives an estimated number of 125,000 cases in the nation where counsel may be required. (Silverstein estimated that 70,000 were actually imprisoned in 1962.) A large number of these will be represented by the public defender and will have compensated counsel appointed by the court. This may not leave an unmanageable number if the other resources are fully used, but will be a sufficient volume of clients for legal clinic programs. If these figures are fairly reliable, we can place the ratio at about 125 cases per 200,000 people.

In determining the accuracy of these estimates, many will question more than one factor, such as the 25% indigency figure, and the 20% guess as to those who will require legal counsel. Too, we have to make allowance for the increase of crime from 1962, the date of the information gathered by ABF for the Study. We cannot be sure of course of the increase in crime generally, especially for one segment— misdemeanors. The report of the President's Commission [8] explains why this data is not available, but for our purposes I believe a 30% increase can be used as a workable estimate. In a city of 200,000 this will give us about 162 indigent misdemeanor clients who face the possibility of a prison sentence and who request counsel.

Weighing Resources and Facilities

Turning to another aspect of this problem, let's consider our resources. We frequently talk about the need to establish more clinical facilities over the country, but there is a greater network than we realize. This is an encouraging development even though Justice Powell, in a footnote to his concurring opinion points out that the "problems of meeting state requirements and of assuming the requisite control and supervision are far from insubstantial." In CLEPR's 1970-71 survey, 198 programs of various types are listed where 3,866 students participate. Of course one law school may have two or three different projects and the same students, if they are in more than one program, are counted more than once. Seventy of these projects are specifically in the criminal law field. In addition, some of the 750 students in the General Placement category are no doubt doing some work in the criminal courts.

So, we already have a broad foundation, but we face the question of how much manpower and emphasis in instruction do we want to divert to this new demand. Or, can we provide clinical facilities for a greater number of law students? As I have suggested before, this is a serious problem. Indeed,

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VIRGINIA LAW WEEKLY

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Neighborhood Bully

It was a tough day for Chuck. Not only was he pummelled by snowballs from a marauding band of masked raiders in his Criminal Procedure class but he was quickly routed from the Clark Hall battlefield by a midget fastballer who confided, "It's easy to win when you pick your opponents."

Waldron Overcomes Haseman In Presidential Runoff Race

By W. Lincoln Fang

Newly-elected Law Council President James T. (Jay) Waldron has promised to devote maximum effort in implementing his ambitious six-point campaign platform.

Waldron's platform called for the solicitation of scholarship funds, student representation on the Faculty Hiring and Tenure Committee, an evaluation and revision of the Honor System, institution of clinical law courses, establishment of a housing service for incoming law students, and maintenance of the present out-of-state student ratio at the University.

Added Support

New Council Vice-President Paul B. Haseman, who received 196 votes to Waldron's 265 in Tuesday's special runoff election, said Waldron's proposals will receive his full suport.

Following his election Tuesday, Waldron indicated his displeasure with the preferential balloting system in choosing the top two Council officers, but said he does not know the preferable solution at this point. Speaking of his own election, he said, "I'm really happy it wasn't three out of five."

Haseman's platform included a proposal creating an automatic runoff if no candidate received a majority , or designating the plurality winner as the official winner in the Council's presidential elections.

More Money

Waldron plans to appeal to alumni groups for more scholarship funds, especially for minority groups and women. Commenting on his work in the Admissions Office, he said, "The problem is not so much one of recruitment. It's that women and blacks from out of state don't apply because they know about the money problem."

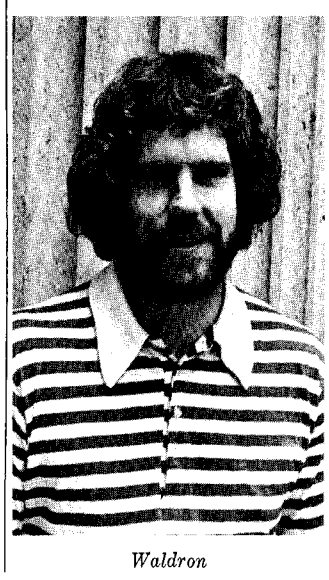
As the Law School's representative to the University Honor Committee, Waldron expressed his concern about the future of the Honor System. "I care about the Honor System, and I seriously intend to work hard to improve the system as far as the scope and single sanction are concerned,"he said.

More Beer

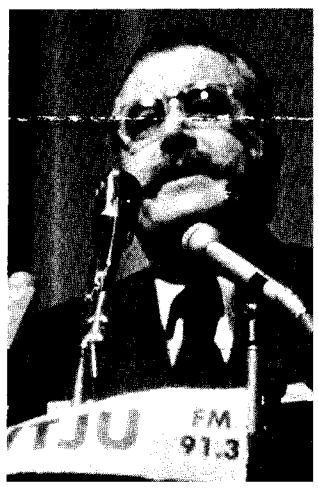
In the tradition of outgoing Council President Linda G. Howard, Waldron added, "I intend to keep giving parties for the Law School."

Waldron and Haseman's terms

(Please see Page 4, Col. 6)



Waldron



Judge Burka

Teach-In Indicates Need Of Society For Penal Reform

By D. Christopher Ohly

"The rate of recidivism is incredible in this country," District of Columbia Superior Court Judge Alfred Burka told a group of local residents at the Charlottesville Community Teach-In on Crime and Corrections last week.

Judge Burka was the keynote speaker at the conference, which was convened to mark the first anniversary of the founding of the Offender Aid and Restoration Project (OAR) of Charlottesville-Albemarle County. "Justice has been delayed a long time in prison reform," he said. "Everyone wants a new jail. Everyone wants a new penitentiary—but in someone else's neighborhood," he said.

Focusing on the role of the judiciary in the criminal justice system, Judge Burka said "being a judge is a terribly frustrating, depressing, eroding position." "Let's face it," he said, "whether you lock someone up for a day or for a lifetime, it's punishment. Our prison systems consist mostly of sodomy, boredom, and brutality. An organization that is called a Department of Corrections today in the United States is a Department of Corrections in name only."

"The training in our jails is mostly meaningless tasks; how many jobs are there for license plate makers in our society?" Judge Burka asked. "In the Dis-

(Please see Page 4, Col. 6)

Admissions Competition Rises As Applicants' Numbers Wane

By Terrance C. Sullivan

According to recent statistics, the meteoric rise of applications to the Virginia Law School may finally be on the wane.

Dean of Admissions Albert R. Turnbull estimated that when all applications have been filed for the year 1973-74, the total will fall between 3,500 and 3,700 as compared to 4,250 a year ago. Of the 3,392 applicants now on file, 630 of them are from residents of Virginia while 2,762 are from out-of-staters. A decline this year would represent the end of a four year period in which applications to the Law School skyrocketed from 1,700 in 1968 to nearly two and a half times that figure in 1972.

Dean Turnbull cautioned that the reduction has occurred among the less qualified hopefuls, and that gaining admission to next year's class will be even more difficult than in years past. He stated that the drop in numbers, if anything, had made the competition more intense for places next year in the Law School as "LSAT scores and college grade point averages are generally higher this year than previously."

Higher Fee

The lower number of legal aspirants is attributable to several factors, among them the Board of Visitors action raising the application fee from $15 to $20. Dean Turnbull explained the drop in terms of "better overall education in the applicant pool about law school, but especially in terms of current admissions standards." He cited the success of the pre-law advising programs in helping undergraduates make more informed decisions about a legal career.

The Law School's reputation is reflected in the fact that applications from all over the country continue to pour in daily, despite the fact that three years ago the Law

(Please see Page 2, Col. 3)

Stein Keynotes

Moore Society Hosts Foreign Trade Talks

Presidential economic advisor Herbert Stein will keynote a two-day conference on U. S. foreign trade policy on March 9 and 10 sponsored by the John Bassett Moore Society of International Law and the American Society of International Law.

Dr. Stein will speak on "The Making of Foreign Economic Policy" at 8 p.m. on March 9 at the Boar's Head Inn.

Other authorities taking part in the conference's panel discussions range from Kenneth W. Dam, assistant director of the U. S. Office of Management and Budget, to the executive vice president of the Independent Petroleum Association of America, to the economic counselor of the Japanese Embassy in Washington.

Mr. Dam will moderate a discussion of the process of formulating U. S. foreign trade policy. Analyzing the positions of both government and business, the panel will discuss conflicts between national and international interests.

Speakers for the panel program will include Ambassador William D. Eberle, U. S. Special Representative for Trade Negotiations; labor economist Stanley H. Rottenberg; Professor Gordon Tullock of Virginia Polytechnic Institute and State University; and Eugene Rossides, former assistant secretary of the Treasury.

National security as a policy objective will be reviewed from the perspective of the oil import program in another panel session. Minor S. Jameson, executive vice president of the petroleum organization, will join William T. Slick Jr., public affairs manager of the Exxon Company, in speaking on the costs and benefits of restraining trade.

Current Strategies

The panel will analyze the reasons behind U. S. adherence to a restricted trade model of foreign policy, assessing the desirability of current strategies and objectives. Professor Joseph C. Bell of Duke University Law School and Felix P. Rossi-Guerrero, minister counselor of the Venezuelan embassy, will also address the oil imports panel.

A similar panel will question the protecting of U. S. industries from foreign competition, using the textile industry and voluntary restraints as a focus. The panel will identify the objectives of U. S. programs and judge their effectiveness.

Sol Stetin, president of the Textile Workers Union of America, and R. Buford Brandis, director of the international trade division of American Textile Manufacturers Institute, will present labor and management viewpoints on a panel including Yutaki Nomura, the economic counselor of the Japanese embassy, and Professor Carl Fulda of the University of Texas Law School.

The Society plans to publish the proceedings of the upcoming symposium later this spring. All panel meetings will be held in Clark Hall.

VIRGINIA LAW WEEKLY

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Homecoming Person . . .

It is hardly a novel idea to suggest electoral reform. As much as we tout democracy, elections never seem to work quite right. Normally, those who do the complaining are the losers. This year is no different at the Law School, because those with the complaints are the members of the student body.

The innovative, yet unworkable preferential ballot system used in the recent presidential election is particularly noteworthy. Few students know anything about the scheme and still fewer understand it. They would be interested to know, for instance, that while the constitution requires a candidate to garner a majority of the votes cast, the system itself all but insures that a majority of votes will not go to any given candidate. It is not difficult to see why there has been no outright winner in the first round of balloting for the past three years.

This situation, of course, has not gone unnoticed. Word has it that some of this year's platoon of candidates had decided before the election last week that if one particular candidate got more votes than everyone else, he would automatically be challenged. That candidate was not even one of the two candidates in the runoff, but as they say, it is the thought that counts.

There were even some issues that might have played an important part in the elections if we had had more time to read and think about the candidates' statements. Accordingly, the candidates might then have been motivated to put out more than letters "for motherhood and against sin."

Since the elections come before Law Alumni Day, perhaps the best idea would be to change the title of the office from Law Council President to Law School Homecoming Person. Then, having dropped all pretext, we could all vote in good conscience for the person who we thought is the prettiest or who wears the neatest clothes.

R. T. H.

Spring Symposium . . .

With demands for protection of the "infant industries" of our nation rising from the steel and textile industries, labor unions, and the United States Congress (the Burke-Hartke bills), the basic tenets of our national trade policy must be reconsidered during this year. Trade negotiations are scheduled to begin this Autumn, creating yet another subject of Presidential-Congressional battle.

Dollar devaluation in recent weeks has brought the issue to a new crescendo, and heightened the necessity for reasoned debate. In the breakwaters of Vietnam, such reasoned discourse is not likely to be forthcoming. Hostility to foreign involvement will be the natural, automatic reaction.

It is refreshing, therefore, to find that some in our midst maintain their sensibilities. The John Bassett Moore Society's upcoming Spring Symposium will consider the formulation of American trade policy. Several panels of trade experts, union and industry leaders, and legislative policy-makers will toll the bell for Round One of this prospective heavyweight bout, in a more serene setting than the wilds of Washington.

Perhaps out of this minor battle of the legislative and political struggle we shall see another "light at the end of the tunnel."

D. C. O.

Tankers Aweigh

The University's new natatorium will be the scene of the Intramural Swimming Meet on March 14, 19 and 21. Students wishing to participate with the Law School swimming team should contact John Reed or Bob Strand prior to the entry deadline of March 9.

Clam Lecture

Professor Neill H. Alford Jr. is expected to deliver his renowned "South Seas Clam" lecture within the coming week. Those desiring to attend are requested to check with Mrs. Haigh concerning additional seating.

"Obviously Pavlovian conditioning–they take a few exams and right away two or three months later they're standing by the bulletin board salivating impatiently for their grades."

Letters To The Editor

"Ridiculous Guidelines"

To the Editor:

The strength of the sentiments expressed in your editorial ("Pompous Arrogance") of February 23 does not make up for the fact that it comes much too late. The appeal of Student Activities Fund allocations to some sixty-odd student organizations apparently has finally placed the Gay Student Union allocation decision in the proper perspective.

I suppose it all depends upon who is getting the ax, but I am not at all impressed with the fact that the LAW WEEKLY was perfectly willing to sit idly by while the G.S.U. allocation was denied by the Board of Visitors. The LAW WEEKLY has also been perfectly willing to ignore the ridiculous guidelines the Board set up in making its decision—until those guidelines were applied to everyone.

I submit that the Board of Visitors G.S.U. allocation denial was wrong in the first place. Because of that, the denial of funds to other organizations under the guidelines would be wrong, too. However, until we all recognize that the guidelines DO apply equally, the current ill-advised appeal of other allocations is at least useful as a reminder that we ought to be concerned with "the other guy" insofar as our civil liberties are concerned. Who knows who the next person will be?

The American Civil Liberties Union will probably take the G.S.U. funds denial decision to court. We will be glad to take up the cause of any other organization similarly situated along the way.

Kevin L. Mannix
Law II
Chairman, Central Virginia Chapter
A.C.L.U.

Admissions . . .

(Continued from Page 1)

School cancelled its West Coast student recruiting program because of the expense involved. Dean Turnbull predicts that many more good applications will be received from excellent undergraduate institutions than in the past.

Handle Paperwork

A tremendous amount of man hours is involved in processing all the applications. The Admissions Office retains a staff of four full-time secretaries as well as three temporary assistants and four work-study students to handle all the paperwork.

A new format was used this year to cut down on costs of administration of the program. A prospective applicant requesting information was sent a booklet containing a brief descriptive brochure about the Law School as well as all needed application materials. This eliminated the necessity of collating the admission materials, as well as the expense of sending catalogues to people merely considering the school. In 1972, 17,000 catalogues were sent out at a cost of $11,000. This year, only persons who paid their applicatiton fee received a catalogue.

Admissions Interviews

Approximately 1,000 half-hour interviews will be granted this year to candidates for the class of 1976. The bulk of the interviews are conducted by Dean Turnbull, his student assistant, and faculty members of the Admissions Committee, Professors Charles H. Whitebread, John C. McCoid, Harvey E. Bines, Charles M. Davison, and Stanley D. Henderson. Other faculty members assist with interviews when the review load reaches its peak, which is usually two weeks after the final deadline for filing.

The Student Admissions Committee, chaired by Susan A. Mahaffey, arranges to follow up the formal interviews by having a student at the Law School, preferably from the applicants' undergraduate institution, meet the visitor to show him around the school and answer any questions. This allows for an input of student interest and enthusiasm in the admissions process, as well as making a favorable impression on the applicant.

Various Reasons

Student reasons for applying to the Law School range from "the excellence of this institution" to "tremendous array of courses offered." Students who visit the school often comment on the cohesion and sense of community of the Law School as well as the diverse and highly qualified student body. One member of the Admissions Committee remarked that the Law School has successfully captured the best of both worlds.

As of Tuesday, 150 students had been accepted for next September's entering class, including 100 out-of-state and fifty Virginia residents. The recent action of the Board of Visitors has frozen the non-resident membership of the first year class at 141 of 310, which is the number of out-of-staters admitted in the Class of 1975.

per·spec·tive

n. 1. Capacity to view things in their true relations, from a particular standpoint.
2. A detached, distant view.

By James W. Pewett

In last week's *Perspective* column, a vituperative "inside story" was presented by a candidate in the recent law school elections. Unfortunately for the readers of the LAW WEEKLY, the article contained factual inaccuracies and a number of the author's personal misconceptions. The "story" of the recent election controversy deserves a better telling:

On Friday, February 16, three days before the balloting in the election, a meeting of the candidates was held; the purpose of the meeting had not been discussed previously. At the meeting, the Vice President of the Law School reviewed the election procedures mandated by the constitution of the Law School and observed that in past years the candidates have voluntarily decided to observe certain additional procedures, including a limitation upon written discussion of campaign issues. It was immediately suggested that each of this year's candidates distribute only two pieces of paper in the Law School.

The proposal quickly was discussed, but there was no consensus upon the question. While six candidates expressed their approval of the limitation upon written material, I contended that written presentations should be used to discuss meaningful campaign issues and to establish better communication with first-year students. In addition, I felt that it was inappropriate suddenly to impose such a limitation three days before the balloting.

(Last week's author indicated that he also considers last-minute limitations to be inappropriate. However, he mistakenly indicated that I sought to alter the status quo on the question of written materials. On the contrary, I argued to preserve the situation as it stood: the constitution of the school contained no limitations upon written campaign statements, and letters had been used in the Law School election held earlier in the year.)

The controversy surrounding written materials continued as the meeting of the candidates broke up. Unfortunately, last week's author saw fit to leave the room before the discussion was terminated. Nevertheless, the remaining individuals noted that the issue had not been adequately discussed, and concluded that the limitation could not be enforced against objecting candidates.

On Sunday, February 18, letters stating my position on several issues were placed in the mailboxes of individual first-year students. As a result of this action, a couple of candidates demanded that the Law School Council take immediate action against the letters. An overwhelming majority of the Council declined to consider these demands; instead, a dispassionate statement of Friday's deliberations was posted over the candidate's data sheets, and the election was held without further incident.

It is regrettable that any controversy marred the recently concluded elections. However, the real tragedy is the hypocritical and farcical nature of Law School campaigning. While some individuals profess a desire to foster open communication and full discussion of issues, they decry noncompliance with proposals which stifle communication and maximize the importance of mere name recognition.

Earth Onion—a women's improvisational theater group, to be presented by the Law Women on Friday, March 9 at 8 p.m. in Cabell Hall.

Law Women Select Officers For Upcoming Academic Year

The Virginia Law Women have held their annual elections for officers and approved a new constitution for the organization.

Newly-elected President Mary Jane McFadden emphasized the need for a planned placement service in which alumni will assist women students in getting jobs. "The Placement Office is grossly inadequate and totally unresponsive to women's needs," she said. "Hopefully, the placement project will work successfully enough to assist the present first-year women."

First-year student Leslie C. Smith, who was elected vice president, said she hoped to "have more emphasis on panels of women lawyers which would include representatives of government, law firms, and public interest firms talking about their experiences."

Open Membership

As far as the organizational aspects of the Law Women were concerned, Miss Smith said she would like to see more staff members involved as well as create a liaison with the Law Wives. Miss Smith noted that, under the new constitution, the group is open to all students, faculty, staff, and their spouses" at the Law School.

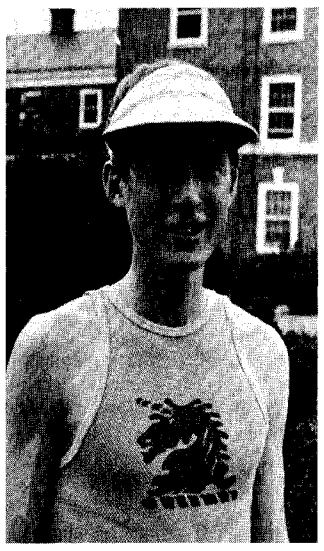
Along with these new projects, the Law Women intend to continue pressuring for a permanent woman on the faculty.

Miss McFadden also announced that Earth Onion, a women's improvisational theater group from Washington, D. C., will perform as guests of the Law Women on Friday, March 9 at 8 p.m. in Cabell Hall.

Only Group

According to Catherine Tackney, first-year representative to the Council of the Virginia Law Women, "We see this as an opportunity to present something to the entire University community as part of our responsibility as the only active women's group on campus."

The nine-woman group plans to present sketches on the special problems of women and their roles in society. Much of the material in the show, called "Woman Potion," is taken from the actress' own life experiences. In an often comic rather than berating style, the feminists demonstrate that the problems each woman faces are not unique but universal.



Max White Places In Hard Footrace At Beltsville, Md.

First-year student Max A. White finished another marathon in less than two hours and thirty minutes last Sunday when he placed second among 237 runners in the twenty-six mile, 385-yard Washington's Birthday Marathon at Beltsville, Maryland.

Although the course is considered by some to be more difficult than the Boston Marathon, White's time of 2:26:17 nevertheless was within forty-six seconds of his career-best showing at the Boston Marathon last April.

The Beltsville course makes three loops through farmlands and rolling hills of the National Agricultural Research Center. The winner was Marshall Adams, of Raleigh, N. C., with a time of 2:24:18. Sponsor of the race was the District of Columbia Road Runners Club.

White has been running for two and one-half years. As for running while pursuing a legal education, he said, "Running is a good break from the study of law. My morning run of seven miles gets me going for the day. I don't feel good without it."

"After a day of classes I need another break before studying at night. I generally run about fourteen miles in the afternoon," he said.

Ghana Experience

Professor Austin N. E. Amissah, dean of the University of Ghana School of Law, is scheduled to speak at 3 p.m. on Tuesday, March 6 in the Student Lounge of the Law School, sponsored by the John Bassett Moore Society of International Law.

Professor Amissah, a Woodrow Wilson Scholar at the Smithsonian Institute in Washington, formerly served as Attorney General of Ghana and as an Associate Justice of the Supreme Court of Ghana. He received his law degree from Oxford University.

The topic of the talk will be "The Role of Law in Developing Nations: The Ghana Experience."

Prisoner Assistance

The Post-Conviction Assistance Project will hold a meeting for first- and second-year students desiring to participate in the project's activities on Wednesday, March 7, at 4 p.m. in West Hall.

Williamsburg Asks Virginia Students To Trial Contests

Prejudiced jury instruction in a first-degree murder case will be the issue in controversy when third-year students Daniel O. Brady and John D. Maddox represent the Law School at the William and Mary Invitational Moot Competition on April 14 in Williamsburg.

Brady and Maddox will represent the defendant-petitioner who is the alleged victim of the jury instruction. They will debate teams from Georgetown, the University of Maryland, and the University of North Carolina. Other schools in the competition include Duke University and William and Mary.

"This competition was entered both for the experience and due to the fact that our quadrangular competition with Yale, Columbia and Pennsylvania remains defunct for the third year in a row," said Robert E. Strand, Moot Court Board member.

Teams in the William and Mary competition will argue before panels of three judges from the federal and state courts. Professor Stephen Saltzburg will judge the briefs submitted by teams opposing the Law School entry.

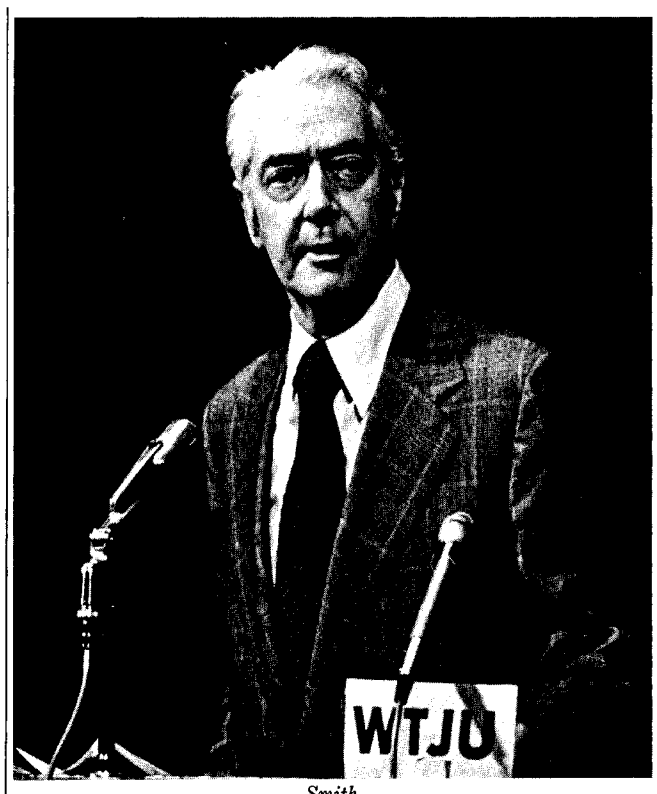
Father Berrigan

Daniel J. Berrigan, Jesuit priest, prize winning poet, and a celebrity among the new left movement will address the University community Wednesday, March 7 at 8:30 p.m. in University Hall. The speech, sponsored by the Student Legal Forum, is open to the University and the public free of charge.

Father Berrigan, recently released from federal prison after incarceration for destroying Selective Service records in Catonsville, Maryland, has been active in the peace movement since the late sixties. In January, 1968, he flew to Hanoi on the first mission to bring back American prisoners of war. He earlier was instrumental in founding "Clergy Concerned about Vietnam."

Third-Year

The Placement Office has requested that third-year students notify the office as soon as they have received jobs, in order that those without jobs can be assisted.



Smith

ABC Newsman Smith Speaks Before Student Legal Forum

By R. Terrence Harders

"Though the long ache of Viet Nam is over, the rest of our problems, such as drug addiction, crime, pollution and decay of the cities, remain with us," said ABS News anchorman Howard K. Smith Monday night in a speech sponsored by the Student Legal Forum.

"One reason why we suffer is our abhorrence of using foresight. This is true of problems both large and small. If we had foreseen, for instance, our present problems with pollution, we could have avoided the crisis we are fighting," said Mr. Smith.

Doubled Output

"We built agriculture into the most efficient industry in the world. Five percent of the people are able to feed the other ninety-five percent and themselves and could double their output if the government would let them. In the process, many rural people became supernumeraries and moved to the cities unable to deal with the problems of the cities. The cities likewise are unable to deal with them," he said.

A possible solution to the lack of foresight, Mr. Smith said, would be "a planning board, similar to the President's Council of Economic Advisors, to farm out studies to the various universities to project where present trends will lead five, ten or fifteen years from now. Then we could turn on the light and be able to see what is ahead."

Outdated Constitution

Another reason for frustration, he said is that problems once discovered take so long to correct. "Our constitution is the wrong one," he argued. "It was good when you wanted to get rid of a George III, but it is no good in the last third of the Twentieth Century when you want action."

"The British parliamentary system is superior to ours. There is no scattering of power. All power is in parliament and in one house of parliament," he said.

"If we had had a parliamentary system of government in the sixties, we would not have had the long period of rancor that developed over the Viet Nam war. We could have exerted public pressure more directly."

Affirmative Reporting

Turning to questions from the near-capacity audience, Mr. Smith said that the media could help solve America's problems "by reporting the news more affirmatively." He suggested that this is especially true in areas such as race relations.

"If you picked ten newspapers at random in the past ten years, you would read about riots around the country. The truth is that we are the only nation that has tackled its race problems with some conscientiousness," he said.

D Notices

When asked about the feasibility of controls on the press as in other countries, such as in Great Britain where the press is issued "D notices" from time to time which forbid publication of certain news items considered vital to the national security, he said that it would not work here because "we have the freest press in the world and we are used to that freedom."

Mr. Smith indicated that he was in favor of some sort of shielding of newsmen's sources, but that he was not in favor of the shield being absolute. "I am not enough of a legal expert to say to what extent they should be shielded. The four newsmen who have been recently jailed were imprisoned unjustly," he said.

Flexible Controls

The newscaster thinks that there should be some sort of legal controls on publishing items such as the Pentagon Papers, but that it should be broad and flexible. "I would handle it on a case by case basis," he said.

Mr. Smith said that "if I had had the Pentagon Papers, I would have published great gobs of them myself." There can, however, be cases where such publication can damage the national interest, he said.

Mr. Smith told of speaking to West German Chancellor Willy Brandt at the time the Pentagon Papers were released, and related that the Chancellor told him that "he would be timid about speaking frankly in his discussions with the President if he knew his words would be printed complete and verbatim."

Giving his reaction to media response to a recent address by Vice President Agnew, Mr. Smith indicated amusement. "Some of my colleagues went into tantrums about Agnew's speech. I did not think it was such a good speech. It did not bother me at all," he said.

Prediction Difficulty

Asked whether he thought that the Nixon Administration would have the ability to address the problems of the nation imaginatively, Mr. Smith noted the difficulty in predicting Mr. Nixon's behavior. "He did not believe in economic controls of any kind when Congress gave him the power to exercise them. Just recently he told me that he is now a Keynesian," he said.

"President Nixon did not like the Democrats' approach to Red China, but now he has all but officially recognized them," he said

Hard Core

Cautioning his audience that he meant no insult, Mr. Smith said that President Nixon was "thrust into the limelight" at a very early age "before he had acquired that hard core of gristle about which all politicians vacillate."

Mr. Smith's parting shots were aimed at Congress. "The key for Congress to regain its power is to reform itself and to regain the respect of the people," he said.

Especially bad, according to the veteran newscaster, is the seniority system. "Elderly gentlemen sit in committee chairmanships acting as gatekeepers, exacting tolls not in money, but in promises to vote against what they do not want and to vote for what they do want," he said.

Law Students Visit District To Hear Appellate Arguments

Over forty law students traveled to Washington last Thursday to hear oral arguments before the United States Supreme Court.

The trip was organized by Professor Stephen Saltzburg for students in his courses in Civil Procedure, Legal Writing, and Constitutional Adjudication. Students arrived at the Supreme Court building by chartered bus at about 9:30 a.m. and were seated in time for the opening of the morning session.

The Court began its day by announcing several decisions, including the Virginia legislative redistricting controversy. The session continued with oral arguments in two cases, *Norwood v. Harrison* and *Palmore v. United States*. *Norwood* involved a challenge to the Mississippi practice of providing state textbooks for students in segregated private schools. The suit alleged state action which fostered racial segregation in violation of the Fourteenth Amendment.

District of Columbia

The *Palmore* case raised the issue of a criminal defendant's right to be tried in an Article III court when charged with the commission of a felony in the District of Columbia in violation of an Act of Congress applicable solely to the District. Judges of the Superior Court of the District of Columbia do not enjoy life tenure as required by Article III. In addition, the petitioner raised a Fourth Amendment search and seizure claim.

The *Palmore* argument provided an interesting contrast in appellate advocacy styles. Professor Frank Flegal of the Georgetown University Law Center represented the argument of petitioner and impressed the audience with a deliberate and fast-paced presentation, characterized by some as "very smooth." Solicitor General Erwin Griswold argued for the Government.

Justice Marshall

In the afternoon, Associate Justice Thurgood Marshall met with the student group for an hour in a conference room adjacent to the main courtroom. Professor Saltzburg served as a clerk to Mr. Justice Marshall during the 1971-72 session of the Court. Justice Marshall was questioned on topics ranging from the general workings of the Court and the relationship of the Chief Justice to the other eight members of the Court, to his criteria for selecting legal clerks and current efforts in judicial reform.

Photo Credits

Harrison Bush
Page 3 (Smith)

Victor V. Ludwig
Page 1 (Teach-In)
Page 3 (White)

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Page 1 (Waldron)
Page 1 (Whitebread)

DICTA . . .

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soon after the *Argersinger* decision came down, Robert Knauss, Dean of the Vanderbilt Law School, a strong supporter of clinical legal education programs, stated that he hoped Justice Brennan was not looking at the law student clinics as a source of cheap labor. I do not take this to mean that he thinks the clinics have no role or responsibility. It is a caution that we should keep in mind in expanding our clinical programs to take advantage of the favorable climate which Justice Brennan is helping to promote.

Teaching Criminal Advocacy

As a convenient administrative vehicle for extending the clinical programs to provide more educational opportunities and to help this need for more services, I suggest that an additional course in Criminal Advocacy be developed in which students may represent the defendants and where some can work with the prosecution. It can be so structured that the maximum educational value be assured and at the same time assist in the manpower shortage. If the law school cannot finance the project initially, it may be possible to get funds from LEAA, which has been done in several jurisdictions. Further, if Title II of the Higher Education Act receives a reasonable appropriation, HEW money will be available. Of course, we do not overlook the possibility of coming back to CLEPR for some assistance.

As a closing observation, I suggest that *Argersinger* may affect other areas—police practices, the court structure, the legal profession's attitude towards its responsibility for the administration of justice, and, of course, our law schools. For instance, if the provision of counsel in misdemeanor case is too costly under an assignment system, a statewide defender plan with a broader scope of service may be necessary. In fact, the National Legal Aid and Defender Association is calling for such a system, whereby the officers will be under the direction of full time public defenders, with all services coordinated by a National Defender Commission.[9] Changes in the administration of the courts will certainly be required to handle the heavier dockets. More volunteer services from the private bar may be required. But most far-reaching of all is the Supreme Court's suggestion that other reforms are needed in laws relating to crimes. (See *Argersinger* footnote No. 9.) Law teachers, legislators and others concerned with law reforms must consider decriminalizing or at least removing the possibility of jail sentences for certain offences such as vagrancy, public drunkness, prostitution, and perhaps the use of narcotics and gambling. All of these, as was pointed out in *The Challenge of Crime in a Free Society*, present policemen, prosecutors, judges and correction officials with problems they are ill-equipped to solve. If *Argersinger* did no more than to force us to reexamine our laws affecting victimless crimes, it will have served a great purpose.

7. *Defense of the Poor in Criminal Cases in American State Courts*, American Bar Foundation, Chicago, p. 10.
8. *The Challenge of Crime in a Free Society*, pp. 3-7, 18-31.
9. NLADA *Briefcase*. Vol XXX No. 6 July 1972, p. 205.

Classmates In Blue

The Police Enter The Nation's Law Schools

By James T. O'Reilly

What are cops doing in our law schools?

Surely they're not there to maintain silence at the library reserve desk, or to keep traffic moving between classes in the corridors. But from Boston to San Diego, growing numbers of law enforcement people are entering traditional day and evening law school programs alongside their conventional corporate-bound classmates. The interaction of the two fields of the law—enforcement and education — is an item rarely studied by either side, but is worthy of attention for its potential benefit to both.

The public is re-examining the police role in society with more publicity, curiosity, and awareness than ever before. The federal and state courts are demanding a higher standard of compliance to swiftly-expanding concepts of personal rights within the criminal justice system. The criminals, of every size, shape, and background, are parroting the same message: "Man, I know my rights!" In the middle of this, underpaid, disillusioned, but generally dedicated to a difficult task, is the law enforcement officer.

The reason for comment on police in law schools should be evident from the hostility with which elements of both academic and police circles view the other. Though law schools produce prosecutors, judges, defense counsel, and legislators, few law students have a grasp of what criminal justice is really like, in practice. The policeman's view is similarly jaundiced, created as it most often is by the adversary cross-examination at trial by defense counsel.

Two Camps

The policeman with an interest and desire for law study finds himself between the two camps of mutual hostility. For example, after ten hours of duty on a July day in 1972, another state officer and I were waiting for local police to process two suspects whom we had brought to the county jail for booking and incarceration. In a brief conversation with the jailer, I mentioned that I was leaving police work to go to law school. The jailer looked at me incredulously, pointed to the suspects, and said, "If you're going to be a criminal lawyer, I'll take you in the back and lock you up with your friends. That's what we think of criminal lawyers around here!"

One of the useful byproducts of a legal education is the transferability of legal training into a number of careers. Law enforcement is one such career. Because of the scheduling conflicts, rotating assignments, and economic situation of many policemen, evening and part-time law programs have been the primary and almost exclusive source of law school training for the police.

Education Establishment

This part-time legal education, however, is generally devalued and disparaged by the legal education "establishment." The recent Association of American Law Schools *Study of Part-Time Legal Education* (AALS, May 1972), directed by Professor Charles D. Kelso, elicited comments from all sectors of the law school community. In the Kelso Report, professors at law schools with "high resource levels" made generally negative comments about the retention of evening programs, believing that "evening students seek to join the profession as their experience tells them that it is, or to advance themselves in an already economically sustaining law-related career," instead of pursuing the traditional practice goals.

As Kelso examines the attitudes of deans and faculty at "high resource" schools toward the evening schools, the gap in quality becomes clear. Where Elihu Root had reported to the American Bar Association in 1924 that "The principle of opportunity for all . . . applies peculiarly to the right of admission to the legal profession" (Kelso, p. 15), the only alternative open in 1973 to the law school—oriented policeman is to select among the bottom of the law school group in terms of quality.

One police official, speaking for one of the most highly-educated departments in the nation, categorized the law school which three of its officers had attended as "unfortunately (having) a recent past reputation for being a degree mill." As an apparent trend away from evening law schools develops, the paradox develops between legal educators who, in theory, favor more enlightened law enforcement, and those same educators in their administrative policy roles, in practice making a legal education inaccessible to a class of potential students who may have a lot to offer in both experience and desire.

Open Options

Three possible options are open. First, law schools generally could make known their interest in having qualified law enforcement personnel apply, along with the deluge of political scientists and undergraduate pre-law students more commonly seen among law school applicants. Secondly, more flexible scheduling could be made available to working students of any profession. Kelso comments (p. 6): "(T)he cost of legal education has continued to rise . . . Employment is endemic in the evening, to be sure, but it now seems a rather permanent epidemic in the day programs."

Thirdly, experiments in mutual understanding can be worked out. McGeorge School of Law of the University of the Pacific permits several police supervisors to take Criminal Law and Criminal Procedure; in return, law students ride along as observers in Sacramento-area police cars, observing the police function. A similar program by Miami's Dade County Bar Association is described in 77 *Case & Comment* 28 (December, 1972).

Professor Charles Whitebread teaches a class of 150 local law enforcement officers each week, during a day spent at the FBI National Academy in Quantico, Virginia. Professor Whitebread observes that, among the police supervisors enrolled in the three-month course, "The policeman with a law degree stands out like a sore thumb in the class." In general, "I have found that the police at the National Academy are tremendously responsive to and interested in educational opportunities," he said.

Police Contribution

What does the policeman bring to the law school? Two views are suggested; first that of McGeorge Law School Assistant Dean Stuart Brody:

"Policemen/students fare about as well in law school as other students of equal educational background and aptitude. I have noticed, however, that in courses such as Criminal Law they sometimes do poorer than other students. I attribute this to a negative transfer-of-training by which their practical experience sometimes interferes with theoretical concepts. The same phenomenon is noticeable among insurance adjustors taking Torts."

An assistant district attorney in suburban New York, one of thirteen police officers in his evening law school class of fifty-seven, recognizes that, as a prosecutor, he can make good use of his police experience:

"However, I am of the opinion that one's experience as a police officer would assist a person in whatever field he might later choose. The sometimes awesome responsibility, split-second decisions which have to be made, and the daily contact with people from all walks of life, all contribute to a type of character building experience, from which an individual able to cope with the above situations, must be rewarded."

The admissions candidate who has been working in a law-related field offers certain advantages which may countervail the effect of the negative transfer-of-training problem. For example, the pressure of the draft in 1968-1970 caused an influx of older, experienced students into law schools, many of whose academic credentials did not compare to those of equivalent college-senior applicants.

Older Candidates

Peter A. Winograd, Director of Law Programs for the Educational Testing Service, described this phenomenon in a recent DICTA column for the LAW WEEKLY:

"During the 1968-70 period, . . . many older candidates with low GPA/high LSAT combinations were offered admission. And many of them performed extraordinarily well. The important factor in such cases appears to have been maturity; the mediocre undergraduate records had been compiled at least a few years earlier, and did not reflect the motivation which had later developed."

This motivation, combined with maturity and experience, may be the reason for the provision in the Rules of the California Bar Examiners, which includes law-related experience as a strong plug factor when law schools consider the admission of applicants with marginal academic backgrounds. At Western State University Law School in Anaheim, where as many as 10 percent of the part-time students have law enforcement careers underway, Mr. K. R. Klofkorn indicated that his law school's "experience has been that the official preference . . . is well-founded, since California law-enforcement agencies encourage their officers to undertake programs of self-development, including attending law school, and go to considerable lengths to arrange employees' work schedules to permit it."

A very real deterrent to attending law school is the difficulty of combining full work schedules with part-time investment of time and money in law study. Over one-third of the Nassau County, New York, Police Department attend college or university programs, with a unique program of assistance from the administration. According to Police Commissioner Louis J. Frank, "police department classroom facilities are made available to the academic community, split session classes are scheduled, counselling services are available to police personnel, and required applications, forms, and data are prepared and processed by an established Police Department College Education Bureau."

New Dimension

The "applications, forms, and data" represent a new dimension in police training — Federal educational assistance through the Law Enforcement Education Program (LEEP). LEEP is administered by the Department of Justice, Law Enforcement Assistance Administration, and began with the 1968 Omnibus Crime Control and Safe Streets Act. To a student enrolled in a degree-granting program at a higher educational institution, grants of up to $300 per semester for part-time study (and loans of up to $1,800 annually for full-time work) are available.

Grants and loans are conditioned upon service to and employment by a public law enforcement agency, with first priority for local police taking college courses. The LEEP Manual broadly declares its policy rationale:

"The role of the practicing law enforcement officer is a rapidly changing one. In addition to the pressure to keep pace in an era of marked social change, the demands placed on those in the criminal justice system require an ever-increasing knowledge of social behavior and management techniques. The criminal justice system encompasses a number of professional fields open to men and women with appropriate education and training."

Unfortunately, the professional education for the field of law study rates ninth of nine LEEP priority levels. LEEP Coordinator Deborah Holt explains the result of this priority: "Because of this position, few officers have been funded to attend law schools. In this fiscal year 1973, no police officers received LEEP funds to attend law school. . . . If more funds were available, police officers would receive funds to study law."

Dean Brody comments:

"(LEEP) began a gala publicity campaign about two years ago, complete with posters, flyers, and brochures, hailing the magnificent program to assist police officers in getting legal training. After many man-hours in filling forms and documents, LEEP informed us that they were underfunded and couldn't assist in law school grants or loans. Our peace officer/students were bitterly disappointed and felt that somehow we were to blame. It was not the first (nor probably the last) time that widely-advertised government program has failed to materialize."

Taxpayers Benefit

What do the taxpayers get in return for investment of local and Federal funds in police higher education? Besides the general desirability of efficient and intelligent administration of justice, the law-trained policeman is a resource to his department and to the community. A Chicago policeman, who graduated at the top of his evening law class at DePaul University Law School, was assisted by a tuition-repayment plan, which he is now paying back by serving in his legal specialty—labor law—with the police Labor Relations Section.

District Attorneys, Federal law enforcement agents such as FBI Special Agents, Police Commissioners, and even former United States Senator from Colorado John Carroll, worked their way through law school as full-time police officers. To retain them as policemen, such incentives as the Boston $1700 per year base pay increase, and the Montgomery County (Md.) 20 percent pay differential, are offered to law graduates.

A final question would put the education problem into perspective; if the law-educated policeman "stands out like a sore thumb" in the classroom, what awaits him after graduation in his Department? Dr. Arthur Niederhoffer, B.A., LL.B., Ph.D., is Professor of Sociology and Anthropology at John Jay College of the City University of New York. As Lieutenant Niederhoffer, New York City Police, he gained an ideal sociologist's "participant-observer" perspective on the intermingling of higher education with the "cop on the beat."

In his 1969 book, *Behind the Shield: The Police in Urban Society*, he examines the impact of higher education on the police world, where conflicts between the police "professionalism" model and the "authoritarian personality" model become reality:

"The more highly educated policeman naturally has a far higher rate of success on promotion tests which call for knowledge and writing ability, rather than for meritorious police service. As they are promoted to the higher ranks the less authoritarian, better educated policemen are drawn away from the lower echelons in the street. *** The doctrine of the professional movement advocates education, a non-punitive orientation, strict legality in every phase of police work, and most important of all, good public relations. These principles create an atmosphere in which only the professionally directed police officer can operate successfully. . . . Different value systems, ranks, and assignments create the two poles: the most authoritarian policemen work at the bottom of the police occupation in the streets; the most professional generally rise to the higher ranks and the preferred administrative assignments."

Even where a highly education-oriented Department is concerned, the lawyer confronts problems in fitting back into his Department's rank structure. Lieutenant C. A. Federline, of the Montgomery County, Maryland, Police Department, compiled statistics showing that four of the fifty-five college graduates in that department had gone on for law degrees. But official promotion policy equates the J.D. with the A.A. degree; "In effect this places the holder of a law degree on an equal footing in competition. . . . Most of us feel this is unfortunate as it may tend to keep an officer in a position for which he is greatly over educated to function in, and ultimately result in losing him to more challenging areas." Where the law graduate will be used, and how likely his Department is to retain him, depends on the differing circumstances of each individual.

Though it will never reach the extent of a miniature law library in every patrol car, the trend of better-educated police is causing a growing number of policemen to enter law schools across the nation. Perhaps, with more funding and more receptivity on the part of law schools, policemen in law schools may soon be viewed as classmates—not as strangers.

Recidivism . . .

(Continued from Page 1)

trict of Columbia they used to train people to be barbers. But when the prisoner came out of jail he couldn't find a job because they didn't issue barber's licenses to convicted felons," he said.

Part of the reason for the failure of our criminal justice systems to reform themselves, Judge Burka suggested, is the lack of involvement of prisoners in its planning processes. "Unfortunately," he said, "the criminal defendant, the one most involved in the criminal justice system, the one who has seen it all, has the least to say about it."

Other speakers at the conference called attention to the problems of the relatively small Charlottesville jail. An OAR volunteer told the group that "before OAR came into existence in this community, the public was virtually prohibited from entering a so-called 'public institution,' namely the jail." "Not only were they not that anxious to go in, but they didn't know what was going on in there," he said.

Another OAR volunteer suggested that outsiders are too quick to criticize the actions of prison inmates. "You have to be cognizant that if you were put in jail, you would be acting in the same way the inmates are acting now," he said. "Many of the things you have done during your lifetime could have put you in that jail, except that you have an education, you have money, you have property," he said.

The problems of rehabilitation were perhaps most poignantly revealed by James J. Smith, who is now serving a twenty-year sentence at the Southside State Farm. "Rehabilitative programs and treatment programs are practically negligible at the farm and throughout the state," he said.

Election . . .

(Continued from Page 1)

of office will officially begin on Tuesday. Miss Howard and outgoing Vice-President Joseph A. Schwartz will serve as Council members until graduation.

Law Council representative nominations are being held through Monday. Four students from each of the present first- and second-year classes will be elected on Wednesday and Thursday.

To be nominated, a student must secure by petition the signatures of twenty-five students eligible to vote in the election for the candidate's particular office. First- and second-year students vote for their respective representatives, but third-year students do not vote.

Petitions should be deposited today in the Council mailbox or submitted to Gloria H. Bouldin, chairman of the Student Elections Committee. Campaign publicity rules will be similar to those for the recent presidential elections.

The election of Council representatives is held under a proportional representation system, which is much like preferential balloting but more complex. An explanation of the two systems is contained in Appendix A to the Law School Constitution, a copy of which is on reserve in the Library.