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## The Adversary (Vol. 4, No. 4, November 1971)

Southern Methodist University School of Law

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THE  ADVERSARY  
SOUTHERN METHODIST UNIVERSITY SCHOOL OF LAW

Vol. 4, No. 4

DALLAS, TEXAS

November, 1971

## Kentucky's John Kennedy

Although initially cautious when approached about an interview with members of *The Adversary* editorial board (from the other side of the street), Professor John Kennedy consented and revealed himself to be an attorney's attorney. The former University of Kentucky Law School Professor consistently came across with his familiar, warm smile and willingness to communicate. His manner was gregarious, his answers careful.

Graduated from Notre Dame Law School in 1959, Professor Kennedy served as a clerk in the U.S. District Court of Minnesota. He then joined the Coast Guard and was stationed in Seattle, Washington. Upon discharge, he went to work for a small, general practice law firm in Seattle.

In 1964, after a stint of teaching at Notre Dame Business School and doing graduate work at Yale Law School, he began teaching at the University of Kentucky Law School. He received his J.S.D. from Yale in the summer of 1970.

Kennedy and his attractive wife, Janet, have two sons, John, age six and Matthew, age two. Aside from family life, Professor Kennedy expressed diversified interests. "When I'm in Kentucky, I like basketball. When I'm in Dallas I like to follow the Cowboys. And when I'm in Seattle, I like to salmon fish." He confessed a penchant for physical sports like basketball, but said that he had to quit when "the students roughed me up too much."

When asked to compare the S.M.U. law students with those of Kentucky, he showed his lawyer-like diplomacy by paraphrasing Professor Charles A. Wright: "Students at S.M.U. are as good as those at Kentucky." One specific criticism of the academic lifestyle at S.M.U.'s School of Law is the failure of students and faculty to engage in regular, informal exchanges on legal and non legal matters. He suggested, "perhaps set aside a Friday afternoon at which time an announced topic will be discussed in a 'Free University' manner. There should be a particular television news comment, or newspaper editorial used as the anchor or point of departure for the discussion."

Reform in the legal/judicial system? Again he calls for reasonableness. "I don't see any kind of radical answer to these things. I don't know that there is any panacea there except to encourage all the mechanisms of self reform that the profession itself has always been engaged in. The problem is to emphasize the need for reform and to accelerate the process."

Professor Kennedy feels that the adversary system needs to be modified in specific areas as it has been in the past. He cited the development of family courts where emphasis is on saving the family or separating it with the least amount of trouble and without a strict adversary proceeding. "I don't think you can start with an ideological idea that you're going to get rid of the adversary method. I think it is a point of reference from which to examine various areas of the law, looking for possibilities of improvement. No-fault insurance would be another example."

Is there a loss of sanctity of the Supreme Court? Definitely yes," according to our professor on the spot. "The realities (concerning the legal profession) which lawyers have (Cont'd. next column)



always known and kept as professional secrets are now being recognized and realized by the public. The public is becoming aware that the Court is composed of individuals who make the difference and decide the cases."

Kennedy continued, "The times are the coming of age for the United States. The country has been youthful and vigorous all along with esteemed ideals; now the nation is getting into middle age."

Reform in law school? There is a need for change and reform in legal education, "things ought to be hurried along a little faster," he noted. However Professor Kennedy urges "reasonableness" in pursuing change. When asked what is the best method of instruction, he gave another well-balanced reply: "I'm a strong believer in all different methods. I think the heart of your education may be the exposure to a diversity of methodologies at use in the same law school." In his Federal Courts, Equitable Remedies, and Civil Procedure classes Professor Kennedy has instituted a problem-solving, case method with hypotheticals and real cases presently pending in courts.

On that note one student  
Cont'd. page 6

# Letter to the Editor

# EDITORIAL...

## A QUESTION OF TIME

Dear Sirs:

Realizing that The Adversary is just that, "an adversary," we are not overly surprised at the editorial comment criticizing the Student Bar Association in its attempt to fill the vacancy in the Vice-President's post. However, we are sorely disappointed at the obvious lack of journalistic responsibility. Sound advocacy indeed involves more than the quality to be negative.

The editors have clearly not expressed a mature attitude toward the decision-making process, in their editorial of the last issue. At the end of the meeting on October 13, which lasted from 9:30 until 11:15 p.m., after which no candidate secured the necessary two-thirds vote, the editorial staff hurried off into the night to pen what has been termed an "editorial." Admittedly, it was an editorial written in the middle of the night--for it seemed to remain there. It indicated, in our opinion, a lack of reflection and thought, which is required of an "editorial." The editors, it appeared, left to immediately vent their anger on paper, without assessing all of the facts. The benefit of waiting until the next morning, when they could have thought more clearly, would perhaps have meant more perspective and less reaction.

In March, 1970, the student body (i.e. "the people") of the law school approved the method of replacing any vacancies which occur in the Student Bar officers' positions. The President is allowed to replace any vacancy in any manner in which he determines, subject to two-third approval of the Student Bar executive council. This is what the Student Bar attempted to do. On Tuesday, October 12, the Student Bar attempted to select a replacement for the Vice-President's position. The meeting was postponed until the next night, October 13, to allow all interested parties, who desired to run for the Vice-President's position, a chance to come before the Bar and express their desire. The following evening, those who were

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News is a passing image. Alvin Toffler in Future Shock offers illustration of how media offers the in-put that becomes the personality of man. "No man's model of reality is a purely personal product. In functioning in a changing society, this individual must turn over his own stock of images at a rate that in some way correlates with the pace of change." News is immediate, it lasts only an instant and then becomes history. How ever long it takes to wash away or re-enforce old images in the perceiver is how long it lasts. The ability to communicate instantaneously has further enhanced the immediacy. Before, events were contained within the borders of one or a group of adjacent societies. Massive upheavals were not even ripples beyond the limits of word-of-mouth. Today, events of seeming unimportance significantly affect our life pattern. This ability of the media even extends to altering perception through re-communicating history. Events that happened years ago may gain significance far beyond the extent to which the incident actually affected the individuals it touched. The media is in fact approaching the goal set for it by McLuhan -- creating a global village in which each event has the potential of altering significantly other events a great distance away, despite the fact that this event only effects directly a minute percentage of the village population. But more amazing than this, is the fact that the villagers have come to expect nothing less.

Somewhere, along this spectrum of communicative ability stands the Adversary. Published bi-weekly, it is truly an anomaly in a world of information exchange. The articles it contains must be completed one week before the paper is printed. The subject matter to which it addresses itself must therefore be restricted, for even Number Four may suffer from a week's delay. The ability of the Adversary to address itself to a pressing concern is comparable to the role of institutionalization for rehabilitation forever resigned to being too little too late. The events that transpire during the week's interlude may alter the image that the article was intended to promote. Because of this time lag, the Adversary has come under criticism as to what purpose it actually serves in the SMU legal-academic community. Is its purpose to challenge and bring forth information in a different perspective to evoke interest? Or is it to be regulated to a glossy SBA handout? Perhaps even its purpose is a newsletter to the community to show that despite outside turmoil, the law school proceeds at the same pace it did 20 years ago? Whatever the purpose as the students conceive it to be, we would like to know and we will attempt within the limits of our budget to reflect these views accurately.

Editor-in-Chief	F. Burns Vick
Editorial Board	Richard Anderson, Carol Barger, Al Ellis, Dudley Murrey
Managing Editor	Jay Carmichael
Staff Members:	Clean Slate! Any student wishing to join the STAFF may do so by contacting the Board. STAFF reporters will be removed for failure to contribute to two consecutive publications of the Adversary.

Published by the students of the Southern Methodist University School of Law, funded by the Student Bar Association, and printed at Williams and Graham Lithographic Service and the School of Law Print Shop.

Letters from readers are encouraged but must not exceed 250 type-written words. The Adversary is published on the first and third Wednesday of each month and copy deadline is the second and fourth Wednesday of each month at noon. Views offered are not necessarily those of the paper.

Advertisements may be placed in the Adversary for \$2.00 per column inch and should be submitted to the managing editor in the form desired for publication.

Cont'd. from page 2-LETTERS

interested, expressed their views to the Bar as to what they planned to do, if elected. None of the persons were able to secure the necessary two-thirds vote, as provided for in the Constitution. The decision to have an all-school election was reconsidered, and it was decided that such an election would be the only fair method of selection, in light of the diverse opinions on the candidates.

What the editors have termed an "obvious power struggle" is hyperbole. What occurred was simply part of the normal decision-making process. Perhaps none of the editors have responsibly participated in that process before--at least their reaction would so indicate.

The editors hint that there was an "exploitation by vested interests," and that the decision to have an election was "fortuitous." This is deliberate exaggeration. Since the winner of the election, received only a plurality of two votes in the total votes cast (114 to 112) would the editors label the outcome as "fortuitous?" We believe and accept, the election results also as part of the normal decision making process. A decision or election should not be deemed to be "fortuitous" just because there are divergent views, or because the outcome of the election is close.

It seems that the editors have placated their own need for copy with emotion. We are wondering, as long as they have gone this far, why they didn't print the editorial on "yellow paper" to fit their emotionalized style.

Sincerely yours,

John Pitts, President  
William D. Elliott  
Treasurer, SBA

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

## NUMBER FOUR

Number Four, under threats of his life, has gone into hiding where he is secretly continuing his memoirs. Look for more when the coast is clearer.

## FORUM: BEHIND THE SCENES

Out of the \$2000 paid in tuition for an academic year by each law student, \$45 goes for the activity fee. Out of this, \$18 is allocated to the Student Caucus. The Student Caucus, for various reasons sees fit to return only \$9 per student for the Law School. The SBA, through the efforts of the Treasurer and President is attempting to see that more of this money is returned to the law school.

Each law student, through the wisdom of the undergraduate-controlled Student Caucus, contributes to the funding of Peruna, Manada Week, (which falls during final exams) and the Homecoming Dance. The S.B.A. feels that our money can be spent in a more profitable manner for the law school. We are being forced to fund projects the benefits from which we will never realize. In reality, one-half of our activity fee (a total of \$5274) is lost. In an attempt to remedy this situation, the SBA is asking that an automatic 90% of this fee be returned to the law school to be spent as it deems best. However, before this can be accomplished, certain obstacles must be recognized and then overcome.

It appears that one of the reasons the Student Caucus makes little effort at equitable distribution of funds for the law school is that over the years a great deal of antagonism has developed between the people "on the hill" and those off. It is the feeling of many undergraduates that the law school looks upon the rest of the campus with a great deal of snobbism. And because of this feeling, the Student Caucus feels no overwhelming compulsion to be generous to the law school.

One of the obvious remedies then is to get more influence on the Student Caucus. Supposedly Harry Najim, law school representative to the University Assembly, is to represent the interest of the law school in this body. However, his effectiveness has been minimal at best. In the past, the SBA has received little feedback from Mr. Najim, making communications between the law school and the Student Caucus extremely poor. Were this communication to be improved, some of the present hostility might well disappear.

The obstacles are understood to be many and more complex than initially recognized, but the SBA, primarily through the efforts of Bill Elliott and John Pitts, is working hard at seeing that the law school student can derive more benefit from his own money.

Name Withheld by Request

## Who Gives a DAMN?

The Adversary has as its stated purpose "dedication to informing the SMU legal community of pertinent activities and events and to providing a forum for ideas and thoughts." In the past the board has solicited articles from the student body with little if any material response. Inevitably the responsibility for writing articles has fallen upon the members of the board. If the Adversary is to be a forum, it is critical that the student body show some interest in contributing articles. Many students have come to board members and offered to write on topics of concern. After numerous subsequent queries board members grow tired of reminding the offeror of his offer and being put off with "I'm too busy right now," or "Did I offer to write?" or "Don't call me, I'll call you." Many students have commented on the Adversary's contents as being dull, uncontroversial, one-sided, ridiculous, etc. but most are content to criticize and not contribute. Any student may join the staff as a reporter by contacting a board member but need not do so to contribute material.

If the Adversary is to be effective as a literary forum it is imperative that the student body "give a damn" and do something to help us improve. We would greatly appreciate comments, criticisms, and above all, contributions from students and faculty alike. Material can be given to a board member or left in the Adversary box in the Admissions Office.

Jay Carmichael

## From the SBA Desk...

Today I would like to mention a few points that have been brought up to me in the past few weeks.

Point Number 1. At least twice each day I am asked the question "Do you think you can work with the new Vice President of the SBA?" I felt that since so many people seemed "concerned" about this that I would answer the question here. Last year during the election the fact that Peter and I would be working together seemed to be a real possibility. Thinking of this, he and I met to determine if our personalities would "clash." It was determined then that we would and could work together if the voting of the students indicated that you wanted us to. Last year the voting did not indicate this. This year it has. I am looking forward to the rest of this year with the idea that the SBA will take on a new role in the Law School. Somewhat of a new "flavor" has been added to the Bar. It will be interesting to see where this will lead us.

Point Number 2. The SBA has been questioned concerning its policy of funding different organizations. This year the only Bar funded activity, that could be considered outside of the Bar's everyday control, is the Adversary. The SBA contributes funds to the Adversary with the understanding that the SBA has no control over the editorial policy of the newspaper. Mike Minogue, however, is the Director of Publications on the Bar. The Adversary reports to him concerning only financial and technical matters. In funding the Adversary, it was not the intent of the SBA to become a funding agency. It is the policy of the SBA not to finance projects that could be considered a duplication of the SBA's functions. Recently, an organization has requested funds from the SBA that would amount to 1/3 of our current budget. This request contained many items that would be considered duplications of the efforts of the SBA. The organization will receive funds from the SBA but not in the amount that that has been requested. The purpose for writing about this is to let the policy of the Bar be known concerning funding. If a function of the Bar is not adequately being performed, let us know and the situation will be corrected.

My next article will be a semester report of the Bar's activities this first semester. There have been many areas in which the Bar has been working that should be brought out to the school.

John Pitts

## SBA COMMITTEE REPORT #1

The need for substantial curriculum change and improvement is inevitable for any progressive institution of legal education. Pursuant to this objective and realizing SMU within this category of institutions the student members of the faculty curriculum committee in conjunction with the SBA curriculum committee have concentrated on two proposals: the participating credit program and election of a maximum number of pass-fail hours for all non-required courses.

The participating credit program is based on course credit earned for participation in downtown law firms, judge internships, legal aid societies, and any other approach legal work-participation situations. This program is structurally flexible to include many practical student involvement activities.

The second proposal is one to be presented to the faculty in the near future. The substance of the proposal is that students will be allowed to elect a maximum of five hours of pass-fail, non-graded credit on all non-required courses not presently awarded pass-fail status.

The basis of the pass-fail credit will be granted each student upon successful completion of the course with a graded exam evidencing numerical passing minimums. In order to maintain course quality the graded exam and mandatory attendance, with a set percentage of "cuts"

Cont'd. page 5

## JUDICIAL COP-OUTS: a freshman's primer

Knowing what the judge is really trying to say can save hours of laborious search for reason out of judicial rhetoric. Spot these basic cop-outs, and the opinion will make as much sense to you as it did to its author. The rule is well settled that or

it has long been the rule: I can't find any recent cases. A brief examination of the decisions in this area reveals: I need some more filler material to avoid unjudgelike brevity. The learned trial judge: The stupid trial judge.

Analytical: Long and hopelessly prolix.

One may not do indirectly what he may do directly: The dumb legislature left a loophole, but I'll plug it.

If the legislature had so intended, it would have so provided: The dumb legislature left a loophole, and I'll make 'em live with it.

Doctrine: A good rule.

Platitude: A bad rule.

If a man makes a contract he should be bound by it: My wife burned the toast.

Merely: It's the only argument I can't get around.

Clearly (or obviously): Unexplainably; mysteriously.

From the standpoint of equity and justice: Forget the rule. This rule is better decided by the legislature: Don't forget the rule.

Spirit of the law: Guilty.

Spirit of the Bill of Rights: Not guilty.

An interesting case: A hopelessly complicated case.

The appellant now asks us to extend this rule/principle/doctrine/tradition: What gall!

In substance if not in form: Let's extend the rule/principle/doctrine/tradition.

Take judicial notice of: To extend an otherwise concise opinion with voluminous data which counsel reprehensively left out of their briefs and arguments.

(Written by Richard M. Evans, Florida State University College of Law. Taken from Feb. 1971 issue Student Lawyer Journal.)

## SBA COMMITTEE REPORT #2

### Irving Brilliant Revisited

There is more than a good chance that Irving will survive and even prosper. And with Irving, SMU Law School will undoubtedly survive and prosper as an institution of integrity and fair-mindedness. This will be so because of the responsiveness and sincerity of its faculty.

At last week's Grievance Committee meeting held to discuss alleged improprieties in funding and recruitment, the response of the faculty was impressive. Attending were Dean Galvin, Associate Dean Pelletier, the members of the Financial Aid Committee, Professors Bogomolny, Larson, and Wingo, and the student's in-house counsel and friend Mrs. Jury. All expressed their concern for those who might have been wronged and evidenced their determination to avoid misrepresentations or misunderstandings in the future.

The following steps will be taken by the Financial Aid Committee:

- (1) Any student whose funding has been cut and who believes the Committee has gone back on its word, is urged to see one of the members of the Committee in order to rectify any wrongdoing.
- (2) The Committee will adopt a definite policy statement designed to prevent confusion or misunderstanding on how funding will be renewed.
- (3) The Committee will sponsor with the SBA as planned earlier a student referendum to decide upon what criteria funding should be based.

If the referendum should determine that all aid (with the exception of the Hatton Sumner Fellowships,) available to second and third year students be based upon need, then the problem of future Irving Brilliants will be eliminated. All that will remain will be to deal with those presently disillusioned students and see that any wrongs be righted.

The member of the Grievance Committee are confident that such steps will remedy what has been an unfortunate situation. No longer will promises be made and broken and no longer will students reasonably misunderstand the representations made to them. Most urgently, those among us who are disenchanted, who feel that they were misled, will have the opportunity to be heard and helped.

Scott Campbell

The election to fill the vacancy in the position of Vice President on the Student Bar Association was held Wednesday, October 20th. The results of the election were as follows:

Peter Lesser	114
Fred Sherman	70
Barry Bloom	40
Stuart Anderson	2

Peter Lesser was declared the winner by the Election Committee. The responsibilities of the Vice President are: Chairman of the Professional Responsibility Committee and Foreign Student Committee. The Professional Responsibility Committee is responsible for the SBA Speakers' Forum.

#### FOR SALE

A space this size may be purchased for two (2) dollars and may be used for ads, notices, etc. See Jay Carmichael, Managing Ed. or place in Adversary box.

#### ANYONE WANT MY BED??

FOR SALE: Lawyers Inn  
Contract (bed & board)  
CONTACT:  
Tom Melton  
Room #302  
368-6798

## Breakfast Honors Alumni Judges

Eighteen SMU Law School graduates, who are currently serving as state and federal judges, were the guests of honor at a breakfast Saturday, October 23, 1971. Breakfast was served in Lawyer's Inn to 91 persons, including faculty, alumni, and student hosts.

Following the breakfast two buses took the alumni to the SMU-Texas Tech. football game. Two students from the first year class and members of the Barristers served as hosts on the buses and assisted in the serving and consumption of bloody-marys and beer.

### one man's meat is another man's poison

Americans are no longer edible! Their body fat contains more DDT than the permissible limit for foodstuffs in Britain

Cont'd. from page 4-REPORT #1 permitted, will be required.

The supporting rationale of the proposal lies in the fact that a law student may now elect up to five hours of credit bearing courses outside of the law school curriculum subject to faculty approval and within the student's degree plan. These hours are credit bearing only, they are not included in any grade average calculation and therefore these hours are in effect pass-fail. Shouldn't this same student who elects outside courses be permitted to remain within the law school curriculum? Why can't he take a course the subject matter of which he has interest and desires exposure but is not necessarily within his concentration of courses and a grade which he does not wish to affect his cumulative average? Shouldn't the curriculum endeavor to be flexible and permit the payer of the legal education to mold a curriculum which best fits his objectives?

In order to gain support of these proposals student opinion manifested is

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# INTERNATIONAL LAW SOCIETY: Vitality and Awareness

The ILS is rapidly becoming one of the most dynamic and diverse student organizations on the law campus. Some students in the past have regarded the Society's role as that of serving the foreign students, but increasing numbers are cognizant of the Society's potential for those interested in examining the extensive applications of legal systems to world politics and controversies.

The Society is just now stepping into the presentation of some of its programs planned for the year after a brief orientation. A wine-tasting party, given Oct. 2 hosted by much warm conversation, relaxed our participants for a more sober contemplation of what those who are interested in the "pursuit" of international law may expect when attempting to establish a reputation in the professional world. The discussion session was held Oct. 12, and was very graciously guided by Prof. Beverly Carl. A more formal event was a reception held for Lord Caradon, British representative to the United Nations, on October 28.

Several excellent films are going to be shown at the Society's meetings in November. On Nov. 2 at 7:00 p.m., two short films, Who Owns the Bottom of the Ocean? (1968) and The International Court of Justice (1966) will be presented and followed by discussion. Visitors are welcome to attend all ILS functions. On Nov. 23 at 7:00 a most creative film about the Spanish Civil War will be offered for students and faculty. The Spanish Earth (1937) is a documentary narrated by Ernest Hemingway with a script by John dos Passos, Archibald MacLeish, and Lillian Hellmann.

Our last (and unofficial) function for the fall semester will be a pre-paranoia (final exams) "blitzkrieg." The Society's steering committee has not met as of yet to decide upon the most efficient methods for getting drunk.

After this relatively mild pre-season warm-up, the Society will continue preparations for the primary activities of the year: the International Moot Court Competition and the Southwestern Regional Symposium of the International Law Societies.

The Society will sponsor one three-man team at the regional competition of the International Moot Court. Any person working toward his J.D. may enter. No graduate students may compete, but your generous help in research and strategy is encouraged. More specific information will be announced in a later issue of the Adversary. Interested persons should contact President Jim Walker at 826-4014.

The Symposium is still in the planning stages. At present the topic most likely to be chosen for study will be the controversies associated with trans-national environmental problems, and the difficulties of establishing harmony among divergent nationalistic interests. We hope the result of the Symposium will be concrete resolutions which may be presented to the coming United Nations Conference on the Human Environment, to be held in Stockholm, Sweden, in 1972. It is possible that a delegation may be sent to that conference to represent the International Law Society. If you are interested or have ideas for the Symposium, contact Howard Rubin at 368-5977.

Tom Melton

Cont'd. from page 1 - KENTUCKY'S KENNEDY quickly asked his opinion of the present teaching methods in law school. With a big smile he maintained a firm stand on first year tactics, "we should keep boot camp for the first year . . . basic reading is essential."

His ideas for revamping the law school curriculum (Professor Kennedy serves on the law school's Curriculum Committee) include expansion of field work courses strengthened with the proper academic credit and professorial supervision. He voiced favorable reaction to having the pass/fail method employed with practice courses e.g. work in the Prosecutor's office, Legal Clinic, or law offices. However,

Cont'd. next column

Kennedy warned, "professors must assume a supervisory role to insure fidelity of duty by practicing attorneys."

The staff interview, held on two separate occasions, lasted for a total of about 5 hours. Students will learn, if they don't already know, that Professor Kennedy is a man of actions as well as words. Try him. He is a great change from boot camp!

Cont'd. from page 5-REPORT #1 invaluable. Today a petition outlining both proposals will be circulated for your approval. I encourage everyone to sign these petitions and offer criticism of the structure of the proposal.

Drew Bagot

## ANCIENT SCRIPTURE?

While in bed the sick man's  
lying,  
While in court your client's  
cause you're trying,  
That's the time to get your fee.  
For when the sick man has  
recovered,  
And the lawsuit's won and  
smothered,  
He will never think of thee.

(Inscribed on the walls  
of the University of  
Bologna in the 13th century)



© The Ben Roth Agency, Inc.  
"Yes, I'll handle your case.  
How deep in debt can you go?"