The Advocate

The Advocate, Fordham Law School

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The Federal Criminal Code Reform Bill was recently passed by the Senate 54-33 vote and is now being considered by the House. There are several important aspects of this bill but we are especially concerned with the provisions designed to restore the death penalty in certain federal cases.

Farmer v. Georgia, decided last year invalidated most capital punishment statutes because they were applied in an arbitrary manner in a fashion that could differ among various jurisdictions. On the day Farmer was decided, the Supreme Court invalidated death sentences based on seven types of statutes according to L. Harrold Levinson of the Law Center of the University of Florida. These included situations where: 1) the defendant was sentenced to death by a jury which had a choice between death and prison confinement; 2) the death penalty was mandatory unless the jury recommended mercy; 3) the sentence was life unless the jury recommended death; 4) the defendant was sentenced to death following a plea of guilty; 5) the defendant waived jury trial, and was tried and sentenced to death by a judge; 6) the jury could make a binding recommendation of mercy but a recommendation of mercy could be overridden by a judge and 7) the jury could make a binding recommendation of mercy but a recommendation of death could be overridden by a judge.

This bill is an attempt to circumvent Farmer by providing for the death penalty with a minimum of discretion on the part of the judge or jury. It provides the penalty for the causation of death resulting from treason, espionage, hijacking, escape from custody and blowing up of buildings. Also, for murders committed in an especially heinous, cruel or depraved manner and for the killing of the President, Vice President, President-elect, heads of foreign governments, etc.

The statute contains a specification of mitigating circumstances which are to be defined so that the discretion is to be removed by the discretionary power from the judge and jury and ensure the law's constitutionality. For example, there can be no execution if the defendant is under 18 years of age at the time of the crime, if his ability to appreciate wrong and right was "significantly impaired" or if he was under unusual and substantial duress. While there appears to be an element of discretion here also, the determination that mitigating circumstances exist would be in the form of findings of law, which are reviewable, rather than an arbitrary imposition of any sentence.

The scope of this article makes it an inappropriate place to deal with all the aspects of capital punishment in general and this bill in particular. Although most studies on the death penalty trend to refute the argument that the death penalty is a deterrent to crime, perhaps a good representation of the pro-death penalty philosophy is contained in a statement of the President of the Philadelphia Police Wives at a Senate hearing last year.

Capital punishment is not cruel. The convicted man has ample opportunity to make peace with his Maker—the victim had not such opportunity. I cannot quote you statistics relating to the pros and cons of capital punishment being a deterrent. I could only state this fact:—If a man is executed for killing one human being, there is absolutely no chance this same man will ever kill again—that would be a statistic.

The Senate proponents of this bill, notably Bruska (R-Nebr.) and McClellan (D.-Ark.) also claim its deterrent effect. Yet, the Senate voted 81 to 10 to kill an amendment by Sen. Hughes (D-Iowa) which would make all executions public—a vivid "deterrent" to any future Lee Harvey Oswald. Tom Wicker, in a March 16 column in the N.Y. Times stated that this action revealed the deterrent argument as a sham and that Sen. McClellan came closest to the actual rationale when he stated: "We're going pretty overboard toward accomplishing the worst criminals we can find in this country.

After all the studies and attempts at reform of our criminal justice system, the supposed attempts to make it a rational response to the crime, to the criminal and to the society, there are those who fail to see the Senate's action distressing. It appears that the Senate acted out of a sense of vengeance which unfortunately is still an important motivating force behind our criminal laws (see the Advocate, Oct. 9, 1973). It is especially indicative that with Sen. Hughes amendment, the Senate also debated a gun control amendment. Thus while voting to severely punish a past crime it rejected a measure designed to prevent future crimes, yet the advocates of capital punishment never cease to claim concern for the victim.

In an attempt to strengthen our current court program we are creating a Moot Court Board to administer all the school's moot court programs. For its first year in existence, the board will consist of nine students, six of whom will be selected from this year's first year class on the basis of scholarship. I am hopeful that this Board will give the Moot Court program continuity, increased scholarship and enthusiasm.
A Trade School

Is Fordham Law a trade school? Many people actively claim that it is and countless others, while silent, act as though it was. We feel that law school ought to be much more than a trade school. We have tried, to a small extent, to focus on issues that believe an active student body and an active law school should be aware of. A school that teaches the procedures leading to incarceration should be cognizant of the state of affairs in prisons. Likewise, in a place where one might learn of constitutional guarantees against discrimination, a minority population of less than 2% of the student body is almost hypocritical. We hope that the Advocate has had some effect in moving Fordham towards a position of greater social consciousness. In any case, since the entire editorial board of the Advocate is being graduated, it will be up to the succeeding classes to make reality out of what are now barely issues and to decide the question of whether or not law school should be a trade school.

A Dedication

This issue is dedicated to the graduating class of 1974. We have compiled a four page pictorial salute to the Class of 1974. We wish every senior the best of luck and it is our hope that each of us, will, in our own way, apply what we have learned into the making of a more just society.

The Editorial Board of The Advocate

Jim Martorano
Editor-in-Chief

George Brummer
Executive Editor

George Sawaya
News Editor

Ken Uva
Business Manager

The Advocate
The student newspaper of Fordham University
School of Law

Editor-in-Chief
James Martorano

Executive Editor
Tom McDonnell

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News Editor
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Proposal to Increase Minority Enrollment

by Edward Spieran

Several students have worked hard this year to increase minority enrollment. The Black American Student Association organized a law day, the Minority Enrollment Committee also got funds through a taped session that was rebroadcast on local radio stations. The editors also had local radio stations broadcast their announcements, and the University newspaper ran an essay contest. Professor Mike Charde had his students' work favorably reviewed. The student government also recommended that minority be granted to students who met the criteria.

The minority coordinators would each work 15 hours a week during the school year. They should be held strictly to this weekly work requirement. Among their possible duties would be the following:

- speak to minority students at metropolitan area colleges;
- represent Fordham at preprofessional conferences;
- coordinate advertising in college newspapers and on the radio;
- act as public relations officers regarding minority affairs with the press, radio and television;
- solicit alumni contributions for minority fellowships;
- review applications for fellowships.

These are just a few of the possible duties that could be assigned minority coordinators.

In any event it is imperative that Fordham establish a separate minority fund program to increase minority enrollment at the school.

The effects of past societal discrimination run deep. Fordham Law School, however, has the ability to meet this challenge... the only remaining question is whether it will choose to do so.

Yes, Fordham has been interesting to the end. Milton's Paradise Lost, an epic dealing with man's struggles with the war between Heaven and Hell, God and Satan, seems to hold a slightly more significance than any of the outline of the battle between Day and Evening.

Of course, Milton was concerned with who would prevail on earth. This latter battle was only concerned with who would prevail in the grades. But all wounds have been healed, and I am empowered to announce the absolutely final schedule of the Commencement. It is as follows: Saturday, June 1, at 1:00 and 6:00, Commencement Commencement, session 10:00-- taped session. Sunday, June 2, at 12:00-- taped session.

Day and Evening Dialogue in Polls

Attorneys, shall be capable of educational span. But who can forget the "football field" approach to problems related to the breadth of his knowledge on the problems of closed corporations. asked: "Why did you come to Fordham?" One hundred and seventy students had learned that the subject was embossed in their seats; one or two attempted to relieve their responsibility finally the agony ceased when the student reported 'because Columbia and NYU rejected me.' Needless to say, this was an esthetic experience, and one that we are seeking, for the professor rather than the students. One of those few of us were here to learn the law. Yet it was one of those moments which, for some, provide the time for things to come.

Now, it is unquestionably arguable that the rejection elsewhere is the most fruitful way of approaching any experience, and then it is to Fordham's credit that we, as attorneys, shall be capable of arguing any case from any angle. While we hopefully shall have something more than the courage of our convictions when we approach a case, and while we shall be hopefully somewhat less than the above proposition indicates, there comes a time when one must question the process of lawyering tradition and will be unwilling to discover that this is not the time. Instead, it is more appropriate at this place and time to treat fragments, perhaps remnants, of that process. It is one only a bit and pieces approach, but it is indicative of the whole.

It is unfortunate that our generation came to experience the benefits of visual aids only towards the end of our educational span. But who can forget the "football field" approach to problems related to the breadth of his knowledge on the problems of closed corporations. asked: "Why did you come to Fordham?" One hundred and seventy students had learned that the subject was embossed in their seats; one or two attempted to relieve their responsibility finally the agony ceased when the student reported 'because Columbia and NYU rejected me.' Needless to say, this was an esthetic experience, and one that we are seeking, for the professor rather than the students. One of those few of us were here to learn the law. Yet it was one of those moments which, for some, provide the time for things to come.

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A Pictorial Salute to the Class of 1974
Is There Life Beyond Law School

by George Brammer

Incredible but persistent rumors have reached our ears which assert that something other than Primul Chaos exists beyond the doors of the Law School. Of course, the editors of the Advocate are far too astute to put any credence in such nonsense, but in order to give the lie to these baseless tales, they have decided to expose these aporyphpha to the full glare of publicity.

Although there are many and conflicting versions of these fantasies, they may be reduced to a fairly coherent recension. Basically, then, the story goes that there are outside the Law School intelligent beings like unto ourselves in all respects save that they are not students or teachers of Law. The absurdity of this is self-evident, for attend events called concerts, these things may be we have to a fairly coherent recension.

School intelligent beings like save that they are not students of publicity.

or the teachers of Law. The abstraction of these fantasies, they may be of pUblicity.

Beyond the doors of the Law there are outside the Law things other than the Law. Fortunately, we are able to state categorically that this report is utterly and completely false; we asked every professor, and all stated that Law was the only subject that they had certainly never read a book that was not a law book.

What is to be gained by continuing this recital? What could be clearer than that all these rumors are the products of a fevered imagination? How comforting it is that we may rest secure in the knowledge that we need never seek to look beyond the ambit of the legal profession! The Advocate regrets that this report is utterly and completely false; we asked every professor, and all stated that Law was the only subject that they had certainly never read a book that was not a law book.

Having suggested by some that the Advocate does not print just the news. These "critics" would have you believe that we waste a lot of space on filler, that we are redundant, that we do not publish a "tight" newspaper.

The Editorial Staff is, needless to say, very taken back by such baseless charges. There are several reasons for our chagrin: (1) there is absolutely no basis for saying we use print fillers. Often we have rejected newsworthy items because we frankly have too much news already. I just can't see how any article printed could be accused of using these so-called fillers or of not being news that is of the most urgent nature, (2) how many times do we have to tell people that we are not redundant... that we, in fact, never run a repetitious story nor do we have any plans to do so in the future, (3) the notion that we run a sloppy newspaper, that we really don't know what we are doing... is the one that really gets our goat... while it's true that occasionally a major headline will be flawed or that names under an article will not appear with the proper first and last name... still to hold that against the total effect of the paper is at best petty and at worst a sin. We work hard at coming out within two months after every deadline and although the news might be somewhat stale... we are frankly all you have (unless you count that rag appropriately called the Advocate—what fool thought that name up anyway?). Finally then, in closing, we repeat that the only conclusion that can be drawn is that we are, in fact, neither repetitious nor redundant... and even if we were... who are they to criticize?

AHOYSIUS J. WELTSCHMERZ

RESIDENCE: No Fixed Abode

AGE: 33 1/3

OCCUPATION: Mild mannered professor in a great metropolitan law school (No, not Columbia)

HOBBIES: Legal writing, legal reading, nameless vice

LAST BOOK READ: Jonathan Livingston Seagull

LATEST ACCOMPLISHMENT: Actually read an entire article in the Fordham Law Review

QUOTATION: Jurisprudence? Not a Chance! I've been vaccinated.

HIS SCOTCH: Not verra fluent

CORRECTIONS

In the last issue, The Advocate regrets that the 40th Amendment was mistakenly identified as the 44th Amendment and credit for a page two article entitled The Student Faculty Committee was given to John Ingraham when, in fact, B. J. Santangelo was its talented author.

The Advocate Defended

by James Martorano

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THE ADVOCATE presents a new approach to the study of the Law!
A series of illustrated digests designed to give you
a "feel" for legal problems.

BOOK I CONTRACTS

Illustrated by Martorano and Sawaya

THE OFFER: I'll give you $10 if you'll walk across the Brooklyn Bridge!

THE ACCEPTANCE: I accept your strange but lucrative offer.

PERFORMANCE BEGINS

PERFORMANCE CONTINUED

REVOCATION: "I hereby revoke and since you have not yet fully per-
formed, I owe you nothing."

FUTURE TORT: "I disagree with your contractual analysis. We shook on
our agreement and that is good enough for me... Besides when we meet
again I'm going to..."