



Uncle Mort, Legal Advisor

by Christopher R.
Williams (LFNY '71)



Visiting Professor of Sociology Morton Gaffee of the University of Alaska, who claimed to be an expert of high reputation on behavior of Police Departments at the local level, offered to lead “Wheeled Phalanx” bicyclists to Manhattan Criminal Court for the purpose of observing arraignments.

“Wheeled Phalanx” was the name of an activist group whose members had protested the Republican National Convention in New York City the previous August. Gathering by the hundreds, they’d ridden their bicycles *en masse* through city streets protesting the President’s policies. NYPD had promptly arrested all of them.

Professor Gaffee said, “One day you will have to face the music and you jolly well ought to know what’s in store for you.” Speaking with a slight English accent, he admitted the affectation but indicated it was the inevitable result of a summer program at Oxford University. With his thick horn-rimmed spectacles, thin tie and tweed jacket--visibly threadbare at the elbows—he was the very cliché of an academic.

After passing through the Criminal Court’s metal detectors at One Hundred Centre Street, we convened outside Part AR2 where arraignments were to take place. With a flick of his index finger, Professor Gaffee brought us into a huddle and then led the way into the dingy courtroom. I sat in the area assigned to our group. Looking up at the very Seat of Judgment that rose above us, I observed large brass letters affixed high on the wall that read ‘ N GOD WE RUST’, the “I” and the “T” having very recently fallen off. I say “very recently” because the effect was comical enough that I assume any employee or government official noticing it would be startled into calling for an immediate repair.

“All rise,” said the female court officer who was standing on the other side of the divider or “bar” between the judge and the assembly. A distinguished-looking, black-gowned elderly judge entered the courtroom from a side door and took his seat upon the bench from whence he would be doing his judging. The court officer continued, “The Honorable Franklin Roth Rensselaer presiding. This Court is now in session.” She then crossed the floor with a clip board in her hands, which she placed on a table just inside the divider.

“They will now start arraignments,” Professor Gaffee said. But the court officer merely re-crossed the floor and began looking through files at her desk. “No, I was wrong, it was the putting in play of the list of those to be arraigned today.” The court officer went over to a table below judge and shuffled through some more papers. Professor Gaffee announced, “*Now* they are about to begin arraignments.”

From his perch above us, the judge gave Professor Gaffee a look of mild distaste and returned to his reading. “Sorry, my mistake, they are not ready as yet,” Professor Gaffee told us. The judge motioned for the prosecuting Assistant District Attorney (ADA) on duty to come towards him. They exchanged a few words,

whereupon the judge leaned back in his high-backed leather chair to survey the entire courtroom. Professor Gaffee remarked, “He’s ‘Green for Go’ as they say...”

But the ADA, instead of going to the podium, merely picked up his bundle of files and strolled over to the court officer for what became a lengthy, leisurely chat. “That was was incorrect,” Professor Gaffee said. “Judge and prosecutor were merely engaged in a preliminary conference, which must, of course, be reported to the officer because, without defense counsel being present, it could be considered an improper *ex parte* communication.” By then, the ADA and the court officer were giggling, as if they’d just shared a dirty joke. “No, it must be something quite different,” Professor Gaffee said, observing the court officer doubling over with laughter.

Into the judge’s eyes came a quite palpable gleam of recognition, and he leaned forward with a smile, licking his lips. “He’s a live wire now, so get set for the sparks to fly,” Professor Gaffee said. As he spoke, a buxom brunette approached the bar, trundling behind her what looked like luggage on wheels. She was the court reporter dragging a stenographic machine. Over her ample endowments a tight polyester sweater was stretched to the limit, and her pants were such a tight fit that, when she sat down, I was sure the pressure on her buttocks would soon be giving her a headache. She shoved her way through the bar’s central swinging doors and, as she passed through the divider, the judge gave her a big wink, looming over her like a tiger ready to pounce. Settling into position at his side, she pulled down her sweater to close a gap of flesh at midriff and then took her time installing the tools of her trade.

“I must have been wrong as I don’t believe arraignments may begin for some time,” Professor Gaffee said with an upward flick of the chin. Almost immediately, the court officer called the first case.

A number of defendants went through the process during which Professor Gaffee commented on the various doings, and comings and goings, and how they were beginning and why they were ending and so on and so forth. Several times, the court stenographer called for a halt in the proceedings so she could catch up, pouting and batting her long eyelashes at the judge. At each request, he held up his hand, bowing his head towards her deferentially, and giving her a big smile. Professor Gaffee appeared frustrated by the intermittent stopping and starting. During these moments of silence his running commentary was overhead by the court officer who shouted in his direction, “Quiet!” She kept zeroing in on him until he became unnerved and motioned for our group to get up and leave.

Standing outside the Arraignment Part, he summarized what we’d seen, adding, “I noticed some curious variations in procedure today, particularly by the judge. Rules of court differ from judge to judge so, naturally, some peculiarities are to be expected.” He moved on to the topic of protecting bicyclists’ rights. “There is an environmental benefit to bicycle usage—less vehicular traffic and, therefore, less pollution and congestion—which is sorely needed in the cause of ‘Sustainable Development.’ There’s a concomitant lowering in the number of automotive accidents and in all such risks inherent in our modern methods of transportation. Perhaps, with our help, this city might return once again to a more pastoral setting such as Oxford—lots of bicycles there!”

He stepped backwards and cupped his palms as if to gather all of us in his hands, metaphorically speaking, and added in a tone of repressed enthusiasm, “I shall be discussing these issues with Mayor Bloomberg tonight because, after all, there is no possibility of social reform without political willpower behind it. Yes, I will be attending a \$10,000 a plate political fundraiser through a generous contribution from the University of Alaska, and I plan to look after your interests while I’m there.”

“Oh, I’m going to be at the event tonight also,” I said, and the entire group turned its focus on me. I’d been working as a paralegal after graduating from Yale in June. After having been accepted at Yale Law School, I’d decided to take a year off prior to enrollment by getting some ‘real world’ experience at Pendleton & Pickering on Wall Street. I told the group, “I’m a paralegal at a firm that bought an entire table for the event. But the

lawyers at the firm are all so busy that they're having trouble filling it. So they assigned me to attend. Hey, that's cool with me."

That evening, I was late in arriving at Gracie Mansion but I was able at last to find Professor Gaffee. Surrounded by fellow guests in the opulent front parlor, he was wearing the same threadbare tweed jacket he'd donned for the 'Arraignment Lesson' he'd given Wheeled Phalanx in court that morning. The only thing he'd changed was his necktie, which was even narrower than before. He was standing next to a Revolutionary War flag that was framed behind thick glass and affixed above the mantelpiece. Speaking about it to the crowd of fellow onlookers, he was overly excited, it seemed to me, about something that was really rather pedestrian. But he was ranting and raving, saying, "See the beautiful line in the curvature of the snake's fangs as it hisses above the unfurled banner that reads, "Don't Tread On Me"? The legacy of an entire people—valiant, courageous, fearless—is in those fangs. Behold its strength of Character and the sheer ferocity of Will when set upon unjustly. Oh, why do we bother to read statutes and case law when we have so much more to learn from the posture of such an idyllic creature than from all the law treatises in our libraries?" Looking up like a child lost in awe and wonder, he gazed upwards in a dream-like state at the old flag.

There are people who eat up this sort of thing, I thought, dismissing it as the somewhat standard effusiveness that results in academics who suffer from overloaded teaching schedules. Their problem was a tendency to suffer from 'teacheritis', a disease arising in professors after years of being around people who HAVE to listen to them. This same problem is compounded by a view of themselves—buttressed by a mirroring from their academically indentured listeners (also known as students)—that what-The-Professor-has-to-say is of deep importance. And thus the professor is given an illusion of empowerment despite his own awareness—in his 'heart of hearts'—of really being 'only a teacher' after all is said and done. It's the classic 'arrogant doormat' syndrome. All Professor Gaffee had to do was look around at the symbols of political power surrounding us and he would abdicate his very sense of self before the perceived force of the polity of which Gracie Mansion was the visible incarnation. But, by holding forth before an awed crowd, he could turn into a Phoenix rising, and be reborn in power— simply by playing a part in the place.

I invited him to join Pendleton & Pickering's table and we took our seats. Grace was said by both a Christian minister and an Orthodox rabbi, during which Professor Gaffee bowed his head reverently. Lifting it immediately afterwards, he said to the entire group, "How delightful is the flowing forth of your rainbow of ethnic diversity—something that, regrettably, we don't have in Alaska."

The waiter placed the first course on the table before Professor Gaffee who took one look at it and snapped, "Remove that rubber chicken. I'm a *vegan*." The waiter gave him a quizzical look. Professor Gaffee continued, "That means I'm a vegetarian--I made my food requirements known in advance. You should have checked with the kitchen first." With that, the professor waved him off. Eventually, the waiter returned with a plate filled with carrots and lettuce leaves and fresh fruit on which Professor Gaffee began to munch contentedly. He pulled from his pocket an apple that he peeled with great skill. However, he also ate the peel, holding pieces up to the light, saying, "This is where the vitamins are." He spoke these words in a tone of utmost seriousness, as if relaying information of momentous importance. I wondered why he'd bothered to peel the apple at all. I suspected it was because of his dentures. But, not wishing to open up whatever possibilities lay within that particular topic, I chose to remain silent. Professor Gaffee took the opportunity to promote what seemed to me (and still seems) his radically unsound theory of the Death Penalty.

"There's a movement to restore it in the State of New York, you know," he said.

"I think it's already been restored, Professor Gaffee," I said.

"You may call me Uncle Mort," he replied. "That's what my Alaskan students call me. And you are?"

"My name's Stanton Barr," I said, offering my hand.

“Yes, the young man who’s working as a *paralegal*,” he said with a sniff.

“In New York, the Death Penalty’s just not being enforced right now,” I said. “That’s the idea.”

“It’s not an *idea*,” he countered almost belligerently, “as that word is commonly used, so as to denote an entire concept that is whole within itself. But you make a valid *point* regarding the current status of the use of the Death Penalty as a sanction in our society. However, in my opinion, it is a most reasonable position to take that a community have the right to denounce and punish those convicted of a capital crime.”

“But the form of the punishment is the issue,” I replied. “And not everyone agrees that death is the precise form that such punishment should take.”

“As I was saying,” Professor Gaffee replied, turning to the entire group, our society has a solemn duty to dictate consequences for transgressing its commandments. We have been lenient in carving out some exceptions. For example, although one of the Ten Commandments is “Thou shalt not kill,” our laws do, in fact, carve out exceptions to that rule, such as killing in cases of self-defense and during active combat in wartime. Killing under such circumstances belies our *idea*, that is to say, more accurately, our *concept*--if you will--of killing as being against the law.”

“But killing in self-defense or in combat are not exceptions to unlawful conduct,” I said. “They are examples of lawful conduct.”

“Whatever,” Professor Gaffee replied, looking slightly bored and turning to gaze at the Mayor who had already begun his after-dinner speech.

My face must have reddened at ‘Uncle Mort’s’ dismissive manner towards me, and the way in which he was now giving me the mere rind of his attention. Nevertheless, I listened politely to the Mayor’s comments on the city’s hosting its first Republican National Convention, the complexities of dealing with the mass demonstrations, and the aftermath. The speech over, Professor Gaffee turned round again to our table, saying, “I’m going up to Mayor Bloomberg. There are a number of things I am curious to hear from him about.” He rose from the table and made his way towards the podium by which time the many other attendees had already formed a wall eight to ten deep massing around the Mayor on all sides. I watched Professor Gaffee lurk from side to side seeking an opening for some time in order to get close to the Mayor but, in the event, he found none. Hundreds of others were attempting to do the same. It was soon clear, as the bodyguards led the Mayor upstairs to private quarters, that Professor Gaffee would have no chance for a private conversation with him. I watched him slink towards the door.

On the way out of the mansion, however, I caught up with him. Seeing his dejected expression, I said, “There’s a lovely garden across the way. Maybe you’d enjoy seeing it.”

“Might as well,” he mumbled, “if that’s all there is left to do tonight.”

Descending the front steps and seeing a number of children playing at the mansion gate, he cheered up suddenly, and began waving, as if he were himself a politician seeking votes. Raising both hands, he called out to welcome them. But the children misinterpreted this gesture, perceiving it as indicating they’d done something wrong. The effect was so upsetting that several of them began to cry until their parents rushed over to comfort them.

“Well, it’s good to see parents instilling in their offspring a sense of wariness about strangers,” Professor Gaffee remarked. “In this big city it’s important to teach children how to assume a defensive position.”

The summer evening air was warm and filled with the sweet scent of flowers. Making his way into the garden on the other side of the mansion, Professor Gaffee was obviously overwhelmed by the grandeur of the place. He said, “Hark! Do you hear? The Mayor’s dogs!” With an upward flick of the chin, he indicated a low wall on the far side of the garden from behind which emanated the barking of dogs.

“Are you sure they’re the Mayor’s dogs?” I asked.

“Wouldn’t it be great if they were?” Professor Gaffee replied, his thin lips breaking into a wide smile.

We crossed the garden and peered over the wall. All at once several dogs had by the teeth an old shirt that they were busily ripping to shreds. Whenever one lost its grip to the advantage of the others, it would let out a series of low howls until it had managed once again to close its chops on a corner of the large rag and resume the tripartite tug of war.

Professor Gaffee said, “Ah, ha! The Mayor’s dogs. How fascinating!”

“What makes you think they’re the Mayor’s dogs?” I asked. “They look like mutts to me.”

“I’ve seen them photographed with him, I believe,” Professor Gaffee replied. “In the *New York Post*, I think it was. Along with a report that the Mayor is very liberal with his dogs when it comes to giving them exercise.” At that moment, the largest of the dogs lost its grip on the rag and chose to retaliate by sinking its teeth into the hind leg of the rival nearest him. The victim let out a high-pitched yelp that was simply ear-piercing. “Damn, why did he have to do that?” Professor Gaffee said. “They’re behaving like savages. The guards will have to put a stop to this before there’s blood on the lawn. I’ll call them now to break it up. Let me take this opportunity to wish you a goodnight. Perhaps I shall see you at the NEPAL meeting tomorrow.”

He was referring to the organization that was providing legal services in defense of “Wheeled Phalanx”’s political activity. NEPAL was the acronym of “National Endowment for the People’s Associated Lawyers.” Founded by activists against the War in Iraq, it had established a network of lawyers who were willing to provide volunteer legal services to defendants as well as advice about civil actions against the city. The lawyers networked on these cases not only by phone but also via the Internet because NEPAL had its own website and Internet address for electronic communications. My supervising attorney at Pendleton & Pickering was part of NEPAL, which is how I came to participate in the network.

NEPAL’s meeting took place in a community outreach center known as “Time Flies”, which was located on East Houston Street in the Village. The center’s name seemed strange until you saw the photo in the window of Groucho Marx saying, “Time flies like an arrow; fruit flies like a banana.” That slogan also gave you a sense of the disjointed logic by which many of the attendees--mostly young malcontents--conducted themselves. More than a hundred sat in rapt attention during Professor Gaffee address.

After indicating how his presence at the meeting proved his own “demonstrated ability” to lend himself *pro bono* to the cause, he spoke of the need to make Mayor Bloomberg suffer “payback” for the wrongs he’d inflicted on “Wheeled Phalanx” members. At first, I thought Professor Gaffee was still angry about not being able to talk with the Mayor privately the night before. But he broadened his attack to include members of NYPD who, he said, “had to be sued for malicious prosecution.” Then, through a wave of applause, he said, “And the Mayor said he thinks you should all plead guilty, which is why none of you should do it.”

He agreed to take questions. At once, several hands shot up. With an outward flick of his chin towards someone in the audience, he heard, “Professor Gaffee, what if they offer us an ‘ACD’?”

“Call me ‘Uncle Mort’,” he said, smiling in his usual grandfatherly way while looking down modestly at his shoe tops. “Ah, yes. The ‘ACD’—you don’t know what that stands for, do you? So, let me educate you.” He continued to look down, not noticing all the nodding going on in the room from veteran protesters who’d been racking ACDs most of their adult lives. “ACD—adjournment in contemplation of dismissal—means the case will evaporate as if it never happened. But, an emphatic “No” is the answer to your question, as an ACD will not be helpful to our cause of suing the city for malicious prosecution.”

“Why’s that?”

“First of all, an ACD requires a probationary period during which time you must not be re-arrested. Is it a year? Or is it six months? I will have to look up the exact length of time for you.”

“It’s six months, Uncle Mort,” an aging hippie replied, trying to be helpful during what stuck me as a rather woolly-headed presentation by Professor Gaffee.

“Beyond the details of the amount of time involved, you won’t want to plead to an ACD,” he responded. “Such a plea will not help our cause.”

“An ACD is not a plea,” I ventured. I knew this because Pendleton & Pickering had been putting me to work researching the cases of Wheeled Phalanx arrestees.

“Technically speaking, it isn’t,” Professor Gaffee said, giving me a straightened look. “In this, you are correct. Nevertheless, *accepting* an ACD will impact on our civil suit for malicious prosecution by which all of you stand to obtain millions of dollars in damages.”

The crowd murmured its approval. Buzzing through the heads of these layabouts and chronically unemployed activists was no doubt the thought of improving their financial position without having to work for it. A pin could have been heard to drop in the room. I broke the silence by piping up, “It’s not that simple.”

“How so?” demanded Professor Gaffee, turning on me. I sensed that the entire membership of Wheeled Phalanx not far behind in being equally upset with me.

“It’s a gray area full of technicalities,” I replied.

“What *do you* mean?” he shot back. “The police arrested these cyclists even though they’d done nothing except to express their First Amendment rights to Freedom of Association, Freedom of Speech and Freedom of Political Dissent!!! Then the Office of the District Attorney, for no reason *whatsoever*, compounded police error with prosecutions that can only be described as malicious!!!”

A wave of applause swept through the room.

“Look, everyone may be acquitted or may have their cases dismissed, but prevailing in a civil action for malicious prosecution requires more than a verdict of ‘not guilty.’”

“Now what the Devil does that mean?” Professor Gaffee shouted, peaking at the crest of popular appeal that he’d been riding throughout the meeting.

“Well, let’s say that ‘Wheeled Phalanx’'s massing of bicycles on city streets provided reasonable suspicion of wrongdoing, and that the DA was entitled to find legal sufficiency to support the charges,” I began. “But let’s also say that the cases are weak and that they’re either dismissed or everyone’s found ‘not guilty.’ That’s different from a finding of ‘innocent’, which is what’s required to win a legal action for ‘malicious prosecution.’”

“A jury can only find someone ‘not guilty,’ Professor Gaffee said. “No jury can find someone ‘innocent.’”

“Precisely,” I replied

“So I’ve got you on that one,” he sneered. “What you say is impossible.”

“Except in cases where the police and the prosecutor chose to trump up charges even though they knew those charges to be false,” I explained. “Let’s say a member of ‘Wheeled Phalanx’ wasn’t even in the country at the time of the so-called illegal bicycle ride, but that they charged him knowing he wasn’t. That’s the level of malice on the authorities’ part that would have to be proven, and the level of innocence on a defendant’s part that he’d have to establish to support a civil action for ‘malicious prosecution.’ In addition, there’s the question of damages. Just what were his damages? Even assuming there was damage to him for getting locked up based on reasonable suspicion of having committed a crime, how would he calculate them?”

“You have a point,” Professor Gaffee said, “but you should sit on it!!!” The crowd roared. “Today’s discussion of the legal issues comes from a *paralegal*,” he added, pointing a derisive finger at me. “All I can say is there are lawyers—then there are wannabees.”

“Yeah, man, just keep your mouth shut,” a Wheeled Phalanx cyclist yelled at me, along with a dirty look.

Next day, I was surprised to read the following e-mail that Professor Gaffee had sent to NEPAL’s entire network of members:

Rude, contentious and difficult to the point of insolence, a young *paralegal* named Stanton Barr within the fold appears fixated on a single cause: undermining my position. He has a major problem including, but not limited to, ‘authority figures’, which must be deeply-rooted because of how often and how easily the obsession to destroy me surfaces in him.

Furthermore, he is confused about many things, and his proselytizing about them *inter alia* leads others down the path of confusion. For example, he has no firm definition of what constitutes ‘an idea.’ Irregardless of this “deficiency,” his ignorance is troubling due to the difficulty of his communicating to others any and all particular forms that a given idea may take, causing them to fall into error, as he does incessantly.

And furthermore, his *idée fixe* of making defamatory remarks about me could harm my academic reputation. Such a destructive course is not appropriate to the great movement so assiduously undertaken by NEPAL in support of Wheeled Phalanx. It cannot be condoned or permitted to continue without the gravest of consequences to all and sundry alike.

--Professor Gaffee, University of Alaska (and summer program
diplomate at Oxford University, Oxford, England, UK)

I immediately drafted a response in which I defended my conduct at the “Wheeled Phalanx” meeting we’d attended, as well as whatever statements I’d made while there. After reviewing the e-mail, I sent the message to everyone at NEPAL by clicking the “Reply All” symbol on my computer tool bar.

Within the hour, and to my astonishment, came Professor Gaffee’s stunning answer:

My statement to NEPAL was not meant to be read by Stanton Barr. It is clear to me that, through clever use of Information Technology, he managed to infiltrate my computer system, entering my private domain and thereby violating my right ‘to be secure’ in my ‘papers and effects’ under the Fourth Amendment to the US Constitution.

What “Uncle Mort” didn’t realize was that, when he’d sent his original message to NEPAL’s entire electronic network (of which I was part), he’d inadvertently also SENT THE MESSAGE TO ME!

I might have pointed out what was obvious from a legal viewpoint: even if I were the government--to which the Fourth Amendment applies—my reading of a letter that had been sent to me did not constitute prying into Professor Gaffee’s “papers and effects.” But what was the point in arguing with an idiot like him?

I shuddered to think of encountering another Professor Gaffee type at Yale Law School. But then I realized he could not be suffered there for very long, unlike among the malcontents of “Wheeled Phalanx,” who would always welcome him as “Uncle Mort, legal advisor.”