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Editor's Preface

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EDITORS' PREFACE

As scientific endeavors increasingly become a part of the modern tradition, the question of the law's response to science has often been raised. The response of science to the law, however, raises the further question of whether scientific methods can provide helpful insight into the judicial process. In his lead article for the third issue of Volume 21, Ovid C. Lewis examines whether there can be a scientific explanation of judicial behavior.

Realizing that technique may be more important than substance, Professor Lewis first attempts to select the appropriate method with which to begin the inquiry. He concludes that the "systems approach" is superior to other existing alternatives because it removes a multitude of constraints which have heretofore beset behavioralists in their endeavor. Examining the basic tenets of the systems approach and recognizing that there is an array of systems, the author sets out to identify the characteristics of the system most common to man — the complex adaptive system. Because complex adaptive systems function at varying levels, he chooses to examine in detail the personality system — "the level most significant for analyzing judicial behavior." Adopting Gordon Allport's theory of personality, Professor Lewis identifies a host of imponderables, all of which require answers if man is ever to understand the behavior of other men.

Merely identifying some of the variables central to understanding human behavior, however, is not sufficient to permit the behavioralist to begin his analysis of judicial behavior. If the objective is to obtain a *scientific* explanation of judicial behavior, the systems approach dictates that the behavioralist ask whether his tools of analysis are adequate for scientifically explaining human behavior. Comparing the scientific endeavor to the behavioralist enterprise from the perspective of seven significant parameters, the author illustrates the difficulties which confront the behavioralist "who aspires to commit science on a judge." Although there are a number of techniques which provide the behavioralist with useful insights into judicial behavior, Professor Lewis suggests that such techniques are far from "scientific."

The final segment of the article presents a case study of a behavioralist attempting to explain scientifically the behavior of a

judge deciding a case. Applying the systems approach to illustrate the problems raised in earlier portions of the article, the author concludes that although there is apparent utility in the approach, much remains to be done in developing reliable methods and techniques capable of providing scientific insight into the judicial process.

The second lead article in issue three, written by Leon Gabinet, is entitled, "The Interest Deduction: Several New Installments in a Continuing Saga." Examining recent developments as they relate to the interest provisions of the Internal Revenue Code, Professor Gabinet centers his analysis on Revenue Ruling 68-643 and the newly enacted interest provisions of the Tax Reform Act of 1969.

In Revenue Ruling 68-643, the Commissioner determined that, in order to clearly reflect income, a prepayment of interest should not be deductible currently. Analyzing the existing case law in the area prior to the ruling, the author not only concludes that the ruling is inconsistent with traditional judicial standards applied in interest prepayment cases, but that the rationale under which the ruling was promulgated, as well as extrinsic arguments that have later been raised in its defense, provide little support for the Commissioner's position. Thus, he urges that a return to traditional judicial methods of resolving such questions is preferable.

Examining the interest provisions of the Tax Reform Act of 1969, the author notes the emergence of three new Code sections. The first such provision is seemingly intended to discourage the borrowing of funds to purchase non-income-producing property, since such borrowing gives the taxpayer a current deduction with which to shelter ordinary income. Professor Gabinet concludes, however, that the statute is drafted in such a manner as "to provide a safe harbor for all but the most ambitious of borrowers." Likewise, examining the new debt-equity provisions of the Reform Act as they relate to the interest deduction, he concludes that it is questionable whether they offer a better approach to the resolution of existing problems. Finally, Professor Gabinet discusses the provisions of the Reform Act which place a limitation on the interest deduction in corporate acquisitions. Discerning the existence of a nontax policy objective, he adopts the position that purely tax policy objectives suggest that disallowance of the interest deduction in this context is not justified.