

## Introduction

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## INTRODUCTION

Volume 46 has been selected to inaugurate the St. John's Law Review's *Second Circuit Note*, a composite of the relevant Second Circuit cases for the September 1970 term. Six major topic areas — Administrative, Constitutional, Criminal, Federal Jurisdiction and Practice, Securities, and Taxation Law — constitute the basic format for reportorial presentation. The decision to concentrate on the above areas is attributable to both the genre of cases handed down by the Second Circuit and the discretion of this year's editor. Any shortcomings in this presentation are to be attributed solely to the failings of the editor; similarly, its strengths are to be credited to the dedication and ability of the members of the Review.

Of course, this format is by no means mandatory upon future *Circuit Note* treatment. Indeed, future *Note* presentations may be structured in a completely different manner. Additional topic headings may be included while others may be removed, depending on the nature of cases decided by the Second Circuit Court of Appeals. The cases presented herein are a reflection of the judicial temperament and attitude espoused by the court of appeals. Accordingly, selection of appropriate cases for *Circuit Note* treatment has not altogether been a task of ease and the list of cases reported herein is by no means complete. Nevertheless, they are felt to be the most relevant and comparatively important appellate decisions for the past term.

Of special interest is the fact that the Second Circuit sat en banc for only three decisions during the 1970-1971 term: *Sostre v. McGinnis*, *Scanapico v. Richmond, Fredericksburg & Potomac R.R.*, and *United States v. New York Times Co.* Such a proceeding occurs when all nine judges of a court of appeals are convened to hear and decide a case deemed significant enough to warrant such treatment. No finer description can be found than Judge Kaufman's most astute interpretation of the function served by an en banc trial: "[W]e reserve [this procedure] for extraordinary circumstances, so that we might give plenary review to a complex of urgent social and political conflicts persistently seeking solution in the courts as legal problems . . . ."\*

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\* *Sostre v. McGinnis*, 442 F.2d 178, 181 (2d Cir. 1971). *Sostre* along with *Scanapico v. Richmond, Fredericksburg v. Potomac R.R.* are thoroughly discussed in the body of this *Note*. Only a cursory treatment has been given to the *New York Times* case. This is due to the fact that student note treatment has been given to this most celebrated case in *Note, The Purloined Pentagon Papers and Prior Restraint: The Press Prevailed!* 46 St. JOHN'S L. REV. 81 (1971).