

# The Justinian

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## The Justinian

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## SBA Election Results

### First Year Day

Section One  
John Kieran Daly  
Avery Eli Okin

### Section Two

Paul Bierman  
John Christie

### Section Three

Ted Cox  
Cliff Kornfield

### Second Year Day

Mark Casso  
Mary Jane Huseman  
Richard Izzo  
Alice Alper Rein  
Ralph Sabatino  
Audrey Shey

### Third Year Day

Jay Cantor  
Steven Hoffman  
Richard Milazzo  
David Pasternak  
Barry Rothman  
Jon Zinke

### First Year Evening

Jay Levinshon  
Thaddeus McGuire

### Second Year Evening

Bill Drewes  
Tony Pocchia

### Third Year Evening

Bob Howe  
Jeff Notarbartolo

### Fourth Year Evening

Barbara Espejo-Gordon  
Jim Winslow

## Future of First Year Program Uncertain As Moot Court Honor Society Vetoes Plan

By STEVEN M. BERLIN  
and SAMUEL REIN

The Moot Court Honor Society has voted down the faculty's Interim Proposal for the 1979-1980 competition because it failed to provide for credit or other compensation for Honor Society members.

The Honor Society, however, passed a resolution which reaffirmed their commitment to run the second year program for this year's Honor Society eligibles. They also expressed their desire to continue to negotiate with the faculty on the issue of credit.

The vote was the result of three meetings of Honor Society members and eligibles held on September 12, 13 and 18, at which the Interim Proposal was introduced and debated. The proposal was the product of several meetings of a student-faculty committee formed last spring when the Honor Society members voted not to run the first year competition.

The committee, chaired by Prof. George Johnson, worked throughout the summer to develop the Interim Proposal. Taking its cue from the faculty, the committee began its negotiations with the assumption that credit was not feasible for this school year.

"We assumed credit was not possible, at the beginning, basically because the faculty had rejected a credit proposal two or three times in the past," said Prof. Johnson.

Student committee member Jack Governale said, "It became evident early on that there was no chance for credit, even in the face of the possibility that that would mean no Honor Society. The interim proposal reflects a good faith effort to accommodate the needs of the students.

Notwithstanding what the committee did or did not do, said Honor Society member Richard Taffit, it was a tactical error to give in on the credit issue. The students should have negotiated and made a stand to prove that they really want credit.

"I don't believe that the whole faculty is against credit," said Honor Society member Paula Schaap. The fact that the faculty turned down credit in the spring and in the previous fall is not a substantial justification for what the committee did.

The committee had all summer to work on credit, but instead the students accepted the assumption that they could not get credit, she said.



Moot Court Honor Society members debate issue of credit.

In the past, the first and second year Moot Court programs were completely run by Honor Society members. Unlike Law Review and Journal of International Law, Honor Society members received no credit.

Working from the basis that credit would not be given, said student committee member Benita Berkowitz, we made requests for several of the other things that we wanted, such as faculty participation, and an official notation on a member's transcript with the possibility of obtaining a faculty recommendation when seeking employment.

The interim proposal was designed to improve the academic value of the program for participation students, said Governale. Ten faculty members would participate with Honor Society members in drafting problems.

Grading of briefs would be done by those faculty members, instead of by student problem leaders in the past.

The administrative tasks of the competition, such as scheduling of rooms and recruitment of judges would be handled by the administration.

However, Honor Society members would still have had to judge rounds and in addition, participate in a new videotape workshop.

Although no credit was provided for in the proposal, Honor Society members were to be given an official notation on their transcripts, indicating their membership and participation, said Governale.

Speaking against the proposal, Ms. Schaap said, "The basic issue

is the issue of credit; of compensation for individual work in terms of recognition from the school."

If Honor Society members were to receive credit, she continued, it would allow them the time to put in extra effort because they could take a lesser courseload.

"This would make the difference between a good program, which we have now, and an excellent oral advocacy program." The interim proposal, said Ms. Schaap, does not acknowledge the Honor Society. It does give an official notation on a transcript, but it says, "you are not as good as Law Review."

Ms. Alex Valicenti, student committee member, warned that the danger with the Interim Proposal was that, if accepted, it could become a permanent answer, thus ruling out the possibility of credit. "It's very convenient for the faculty to let a student group run the program."

Speaking for the program, Ms. Berkowitz said, "A no vote will mean no credit. If the proposal is accepted, negotiations could go on for credit for members only. The faculty will not be open to any negotiations if the proposal is turned down.

"I believe that the administration and the faculty will run the whole program. There is a stronger possibility that there will be no first year program this year, and that first year people would have Moot Court next year.

Voting down the proposal, she continued, would not mean a phasing out of the Honor Society. However, the Society will probably be phased out of the first year competition.

## Djonovich Resigns Post

By DEBORAH L. GILLASPIE

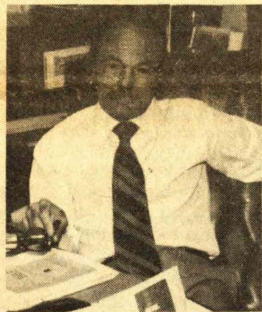
Prof. Dusan Djonovich has resigned from his position as head librarian at Brooklyn Law School to accept a similar post at Benjamin N. Cardozo School of Law.

In an interview with *Justinian* on September 20, Prof. Djonovich explained the reasons for his resignation.

Prof. Djonovich was outspoken about what he perceived to be Dean I. Leo Glasser's "complete disinterest" towards the library, stating that the library is the crux of any law school's image and deserves special attention.

He also stressed his reluctance to leave BLS and said, "I will always be happy to be of service to members of the BLS community."

Charges of labor violations were allegedly lodged against



Former Librarian Dusan Djonovich

Prof. Djonovich and his tenure status was reportedly in doubt.

When asked to comment on the professor's resignation, Dean Glasser declined to comment.

Many students are concerned about the future of the extensive  
*Continued on page 9*

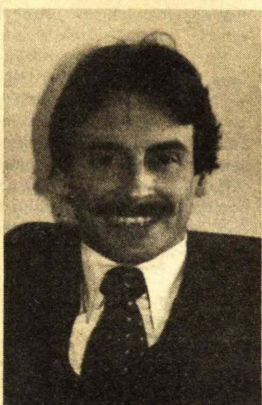
## Haverstick Moves to Admissions

Ms. Esther Horn, Director of Admissions at Brooklyn Law School since 1950, has announced her retirement effective September 20, 1979.

Assistant Dean for Placement and Student Services Henry W. Haverstick III will assume the duties of Assistant Dean for Admissions, effective October 1, 1979.

A search is underway for a person to assume the duties of Dean Haverstick's present office. Until his replacement is found, Dean Haverstick will continue to discharge the duties of his present office.

Neither Ms. Horn nor Dean Haverstick would comment on the change.



Assistant Dean Henry W. Haverstick III



# The Dean's Corner

By DEAN I. LEO GLASSER

Ms. Christine Short, the Editor of *Justinian*, suggested that I write a monthly column for this newspaper on a topic of my choice. I welcomed her suggestion with the caveat that time may not permit a submission by me every month but that I would make every effort to contribute a column as frequently as I can.

I should like to begin by welcoming to the law school the entering classes in both the full and part-time divisions. In extending that welcome, I know that I express the hope of the Board of Trustees, the faculty and the administrative staff that your stay at Brooklyn Law School will be happy, intellectually stimulating and professionally rewarding. We pledge our best efforts to transform that hope into a reality. To all those in the upper classes, we welcome you back and express the hope that you enjoyed a healthy, happy and relaxing summer together with the same hopes and pledge for your future at the law

school as was expressed to the entering classes.

During the past two years, I have had occasion to attend several conferences of deans of American law schools, meetings of the Section of Legal Education and Admission to the Bar of the American Bar Association and of the Association of American Law Schools. At each of these conferences and meetings, I was struck by the similarity of problems that command the attention of administrators and faculties at law schools across the country. I refer to such things as academic calendars, registration processes, scheduling of classes and examinations, missed examinations, examination conflicts, attendance, course offerings, student-faculty relations, among many others.

Living within the confines of one's own law school environment, it is perhaps not unreasonable to assume that procedures and requirements which are perceived as unnecessary, irritating and perhaps even irrational, are

peculiar only to that law school. It is also perhaps not unreasonable

to assume that simply because other law schools do things differently they necessarily do them better. Both assumptions are erroneous. My belief, consistently entertained over an association with this law school for thirty-three years, that we are more solicitous and considerate of our students, that we have a better faculty and program than the vast majority of other law schools in this country has been emphatically confirmed by discussions at those meetings and conferences.

Although it has only been ten years since the law school moved into this building, it became apparent that continued development and growth would require more space. For example, this building was initially designed to house a full-time faculty of 25. Some years ago, four new faculty offices were added, primarily by reducing the size of the faculty library. The 29 faculty offices currently on the eighth floor are now fully occupied. The planned expansion of our faculty was, therefore, inhibited by limitations of space.

To overcome those limitations and with a view toward continued development and growth, a major

renovation of the seventh floor was commenced several months ago and is now nearly complete. That renovation was aimed at making the maximum use of existing space. By moving the location of the Rose and Philip Hoffer Seminar Room to another area of that floor and by expanding the almost never used corridors behind either end of the original Moot Court Room, we have enlarged that room and added seven new offices. During the past twelve months we have added four new members to our faculty and these new offices now make possible further faculty and program development.

The rather extensive alteration of a substantial portion of the basement, which is also now virtually complete, has resulted in expanded library facilities that will accommodate the further growth of our collection for many years and will also make possible the introduction of LEXIS. Individually-lighted carrels and the most modern and technologically ad-

vanced equipment add to the comfort and utility of the new library area.

Within the past nine months, our cafeteria has been significantly improved. For the first time in the history of the law school, evening division students have an opportunity to purchase hot meals prior to scheduled evening division classes. The variety and the quality of the food and services has been perceptibly improved.

These advances and others, which I have not mentioned, such as the acquisition and use of video equipment, an expanded orientation program, receptions for the entering classes, increased availability of our facilities to governmental and community agencies, increased attendance by law school representatives at conferences across the country, were made possible only with the cooperation of all segments of the law school community. Given that continued cooperation, the further growth and development of the law school is assured.

## Prof. Garrison, New to BLS, Teaches Students New to Law

By STEPHEN GANIS

Prof. Marsha Garrison is beginning not only her first year at Brooklyn Law School, but her first year as a teacher of law as well.

"I had not planned upon graduating law school that I would teach," she told *Justinian*. "But it became appealing to me at this point in my career."

Prof. Garrison, who is teaching Torts this semester, confessed that, like her first year students, she too had anxiety about the beginning of school. But, she added, her anxiousness has subsided, and she has found that her students "have been very good."

Ms. Garrison grew up in Layton, Utah and graduated from the University of Utah with a degree in political science. She explained that she opted for law school because "it was a choice that left open a number of options. It didn't confine one to a particular job avenue. Also, in our society in the past 20 years, lawyers have been able to effectuate social change and have had an impact on the lives of others. It was a profession which was interesting as well as useful to others."

Prof. Garrison attended Harvard Law School, an experience which she has mixed feelings about. "The first year was not particularly interesting to me, as the curriculum is set," she related. "The course which served me best was clinical work, especially in the legal services office in Boston, where I handled civil cases."

**A Stint at Legal Aid Society**  
Upon graduation, Ms. Garrison went to work for the Legal Aid Society in New York. She worked for the civil division, and handled cases in the landlord-tenant, employment, and social security fields, among others.



Prof. Marsha Garrison

She left Legal Aid after two years, explaining, "I decided it was time for a change."

Prof. Garrison worked in 1978 for the New York State Executive Advisory Committee on Sentencing. The core recommendation of that panel was to establish a sentencing guideline system for judges aimed at making the sentencing process more uniform and just.

With that experience behind her, Prof. Garrison moved on to a post as associate counsel for then-New York Deputy Mayor Herbert Sturz, who was in charge of criminal justice. There she became involved in setting policy for the numerous city agencies dealing with criminal justice, including the Department of Corrections, Probation, Pre-Trial Services and the Department of Juvenile Justice. She left that post last August.

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EQUAL HOUSING LENDER



## International Year of the Child

et al.: The Justinian

# Children Who Commit Crimes Punished as Adults

*The United Nations has declared 1979 to be the International Year of the Child. Justinian hopes to present a series of articles dealing with children and the judicial system.*

*Our first article, ironically, deals with the issue of children being treated as adults in criminal matters. Mr. Feldman's views are, of course, his own and do not necessarily reflect the opinions of the Justinian editorial board or its staff.*

By **ROBERT J. FELDMAN**

More than one year has passed since the effective date of the statute extending criminal responsibility to 13 to 15 year olds, N.Y. Crim. Proc. Law 108.75 (McKinney).

The statute was enacted in response to the public's outrage over the commission of very serious crimes by young adolescents. The early effects of the statute are just now being felt. However, whether or not relegating juvenile offenders to the criminal courts rather than to the family courts will deter juvenile criminal activity is still unclear.

Simply stated, the entirely innovative and intricate procedure set forth in the statute permits 13, 14, and 15 year olds charged with certain felony offenses to be prosecuted in the adult criminal justice system as "juvenile offenders."

While lowering the age of criminal responsibility for adolescents alleged to have committed specific felonies, the statute provides an "escape valve," whereby some individual cases may be removed to the family court under certain circumstances.

The provisions permitting removal to family court at virtually any point in the adult court process, if properly employed, should assure that only the most hardened and remorseless juvenile offenders will be tried in the criminal courts.

Proponents of the new scheme feel that it is a good idea to expose a serious offender to the "real" system, to let him know that police and wardens can be tough, judges harsh, and jails genuinely punitive. Otherwise, the proponents note, under the aegis of civil libertarianism as manifested in the old statute, adolescents can literally get away with murder, serving a maximum of three years "sentence" at a "training school."

Michael Formoso, former Chief Assistant in the Kings County Family Court, commented that before the enactment of the new statute, the juveniles invariably got away with "a slap on the wrist." He added that it was a common scenario for an adult to give an adolescent fifty dollars to kill somebody because both the adult and the youngster knew that the latter could escape criminal liability with impunity.

salutary effects of the statute, Mr. Formoso admitted that the new statute might engender procedural difficulties because of the provisions authorizing shuffling of defendants from the criminal to the family court and that the statute may precipitate even more clogging of the criminal court calendars.

Mr. Formoso concluded that these are necessary evils, and although many would consider it atavistic to prosecute children as if they were adults, in the long run it is a necessary step in the effective administration of criminal justice.

The Criminal Justice Agency (CJA) recently published a report on the effects of CPL §180.75. The study focused on the 397 juvenile offenders who were arrested in New York City during the three month period between September 1, 1978, the date the legislation became effective, and November 30, 1978.

The report describes the demographic and social characteristics as well as the outcomes of the cases in the family, criminal and supreme courts. The typical juvenile offender arraigned in criminal court and interviewed by CJA was a fifteen year old (65.6%), black (73.3%), male (92.1%). Nine out of ten juveniles reported that they lived with at least one parent and, significantly, five percent reported that they resided at a correctional institution at the time of their arrest. Most (90.4%) indicated that they were attending school full time and were not on probation or parole (90.8%).

Interestingly, Brooklyn judges were more likely to set low bail for juvenile offenders than judges in other boroughs. The study indicated that the proportion of Queens (25%) and Staten Island (31%) cases removed to family court was substantially lower than the citywide average. Almost two-thirds of the cases in these boroughs continued in the adult system. Conversely, many fewer cases in Manhattan, Bronx and Brooklyn were disposed of in the criminal or supreme court.

Thus, it appears that there exists a palpable disparity among the boroughs in the employment of the statute's "escape valve" mechanism.

Some suggest that the statute should be taken one step further, by not allowing any felony case within the present statute to go to family court at all. According to this line of reasoning, the non-adversarial family court system should be reserved for those under 13.

Another possibility would be to send all teenagers to the family court. Then, if the family court judge determines after a hearing that the youngster's behavior cannot be dealt with in family court, he should be sent to the criminal court without a return ticket. There is a glaring problem with this method, however. Civil

libertarians would lament the paucity of due process provided in the irreversible determination remanding the defendant to the adult system.

Traditionally, the rights of the defendant, juvenile or otherwise, have been balanced against the rights of society. In many

neighborhoods, elderly residents have to lock themselves inside during evening hours with bars, locks and burglar alarms, thereby effectively incarcerating themselves in order to protect themselves against bands of roving juveniles.

CPL §180.75 is the product of

legislative intent to incarcerate the assailants rather than the victims.

Many feel that CPL §180.75 is a good idea. By forcing youngsters to face the same consequences of their serious crimes as adults, perhaps the outrageous societal development of serious juvenile crime may be alleviated.

## New Student Mailbox Numbers Assigned

By **CHRISTINE SHORT**

New student mailbox numbers have been recently assigned through the office of Assistant Dean Henry W. Haverstick III. The mailboxes are located on the main floor in the corridor behind the elevators.

Dean Haverstick said he was "very reluctant" to change the original numbers assigned to present second and third year students, fearing possible confusion.

However, the law school's computer consultant indicated that such reassignment was necessary to facilitate the distribution of mass mailings.

Dean Haverstick expressed his disappointment at the "minimal use" by students of the mailboxes since their installation in the fall of 1978. He urges students to develop the habit of checking their mailboxes once a day.

The Registrar and Placement offices currently use the mailboxes to provide students with certain materials. Dean Haverstick hopes that future use will be made by students wishing to contact one another.

A major improvement will be made soon with the attaching of a name label to each box. The mailboxes will be in alphabetical

order within each class. Revised directories are expected to be ready in the near future.

## BALSA Holds Elections

The Brooklyn Law School chapter of the Black American Law Student Association (BALSA) held elections recently for the 1979-80 term.

Deborah Ellis has been elected Director, Shirley Gajewski will serve as Associate Director, and Sandra Graves will fill the position of Secretary.

Best wishes and success  
to the students of  
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compliments of

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# Access to the Courtroom: A

## ABA Ban on Cameras: An Overview

By RICK HOWARD  
and CHRISTINE SHORT

The issue of whether or not to allow cameras in courtrooms has a long and checkered history.

At its February, 1979 meeting the American Bar Association defeated a proposal to revise Canon 3(A)(7) (formerly Canon 35) of the Code of Judicial Conduct to permit the limited use of electronic and photographic media equipment in courtrooms.

This official position of no cameras, no broadcasts, was adopted in 1937 following the 1935 trial of Bruno Richard Hauptmann, accused kidnapper and murderer of Charles Lindbergh, Jr.

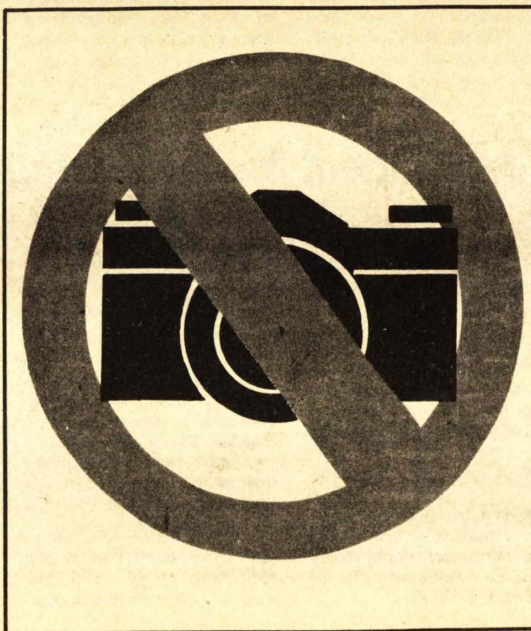
Concern over the use of cameras in the courtroom, however, was expressed as early as 1917. By 1935 several jurisdictions had considered the issue with widely varying results. At one end of the spectrum Chicago courts prohibited all photographic coverage while at the other end some courts welcomed such coverage with only few reservations.

The intensive coverage of the Hauptmann trial polarized public opinion. While excesses were committed by both print journalists and news photographers, it was the latter who bore the brunt of public criticism. Flashing bulbs and unauthorized newsreel footage created a lasting negative impression.

ABA Canon 35 banning cameras in the courtroom was not binding in any jurisdiction. Response to the suggested ban was mixed with several states adopting the canon.

Federal Rule of Criminal Procedure 53, adopted in 1946, prohibited the taking of photographs or radio broadcasting of federal criminal judicial proceedings.

In *Estes v. Texas* (1965) four Supreme Court justices held that



cameras and broadcast equipment in the courtroom inherently violated the right to a fair trial, while a fifth justice agreed that the presence of large numbers of cameras and news personnel in the Texas courtroom deprived Billie Sol Estes of a fair trial. This decision prompted further adoption by the various states of the ABA canon.

Since that time judicial rethinking, improvements in broadcast technology, and public pressure have combined to reverse this trend. As of July 20, 1970 nine states allow television, radio, and photographic coverage (with varying restrictions) on a permanent basis, 12 states permit such coverage on an experimental basis, and 13 states (including New York) are actively considering allowing coverage.

### CANON 3(A)(7) AMERICAN BAR ASSOCIATION CODE OF JUDICIAL CONDUCT

A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

- (a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;
- (b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;
- (c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:
  - (i) the means of recording will not distract participants or impair the dignity of the proceedings;
  - (ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;
  - (iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and
  - (iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

## BLS Alumni Association Debates Coverage Issue

By CHRISTINE SHORT

*The Media & The Courts* was the subject of Brooklyn Law School Alumni Association's fall seminar held Wednesday, September 12.

Several outstanding members of the legal profession discussed their positions regarding the use of cameras and other electronic equipment in courtrooms to record judicial proceedings.

Judge Irwin Brownstein of the Supreme Court of Kings County expressed his concern that abuses such as misrepresentation and partial coverage already committed by the press may be compounded by the use of cameras. However, if the cameras were secluded and non-disruptive, Judge Brownstein indicated that cameras could be allowed.

Judge Henry Bramwell of the United States District Court and a BLS trustee was firmly opposed to cameras in the courtroom. He

believed the media would focus only on the more sensational trials, a process he disapproves of. Judge Bramwell also feared that defendants would manipulate the media for their own purposes, citing Theodore Bundy, whose murder trial was televised in Florida, as an example.

The people are a party to criminal proceedings, declared State Senator Donald Halperin, and as such have a right to know how they are being represented. Senator Halperin therefore supported the use of cameras, provided that there are certain restrictions on use to guarantee a fair representation of the proceedings.

Senator Halperin pointed out that jurors often react differently to the issue of capital punishment than does the general public, adding that perhaps the public should be exposed to the factors that cause this shift in attitude.

In response to the *Gannett* decision, Senator Halperin and others are working on legislation to clarify and restrict the circumstances when the press and public could be barred from court proceedings. The final bill is expected to be prefiled on November 15.

Bernard Kobroff who worked for the New York State Bureau of Prosecution and Defense Services and participated in the *Gannett* case pointed out that a defendant is guaranteed a fair trial. When the public nature of the trial would be unfair to the defendant the courts should limit access. He suggested that transcripts of closed hearings could be made available to the press at a later date when defendants' rights could not be prejudiced.

Admitting that the use of cameras could result in abuses, Allan Shaklan, an attorney for WCBS, strongly advocated the use of cameras "consistent with the orderly administration of justice."

Noting that public confidence in the judicial system needs bolstering, Mr. Shaklan suggested that television allows for the most direct access and "most faithful" rendition of courtroom proceedings. He further pointed out that a fundamental role of the press is to be selective. Mr. Shaklan termed the *Gannett* decision a "crabbed view."

The final speaker was John Hardy Fitzhugh, Editor-in-Chief of *The National Law Journal* and a BLS trustee. He expressed his approval of the use of cameras in view of the technological advances which allow such equipment to be unobtrusive. Mr. Fitzhugh did acknowledge that there was some danger that participants would "play to the camera."

## Justinian Focus

### State Law Summary

States which permit coverage on a permanent basis: Alabama, Colorado, Florida, Georgia, New Hampshire, Tennessee, Texas, Washington, Wisconsin.

States which permit coverage on an experimental basis: Alaska, Arizona, California, Idaho, Louisiana, Minnesota, Montana, New Jersey, North Dakota, Ohio, Oklahoma, West Virginia.

States actively considering allowing coverage: Arkansas, Connecticut, Delaware, Iowa, Massachusetts, Mississippi, Nebraska, Nevada, New Mexico, New York, Rhode Island, Utah, Vermont.

### New York Court of Appeals To Air One Day of Arguments

Television and still cameras will be filming one day of proceedings before the New York Court of Appeals on Tuesday, October 16.

The Court approved the limited experiment in the hope it would aid judges in deciding whether to relax present restrictions against cameras in courtrooms.

Video cameras will transmit oral arguments live to WNET (Channel 13) in New York City and WNHT in Schenectady.

The program will be made available to the Public Broadcasting System for use throughout New York State. It will also be available for use in schools and for other educational purposes.

The cases calendared for October 16 are listed in the September 18, 1979 issue of the *New York Law Journal*.



# Question of 'Fair v. 'Public' Trial

## Supreme Court Justices' Comments Off Bench Spark Confusion

By STEPHEN GANIS

There is much confusion surrounding the Supreme Court's holding in *Gannett v. DePasquale*, (99 S.Ct. 2898), a decision handed down last July 2.

The uncertainty does not derive from the opinion itself; as reported in the July 17 edition of *Justinian*, the Court ruled that "the public and press have no constitutional right to attend pretrial hearings, and therefore judges may exercise wide discretion in excluding them to avoid prejudicial pretrial publicity and protect a defendant's right to a fair trial." Rather, the source of confusion is that in the three months since the decision, four justices have stepped forward in the public arena and related varying accounts of what they perceive the holding of the case to be.

The *Gannett* case involved a 1976 murder of a well-known former town policeman of Rochester, N.Y., an event which was highly publicized in local newspapers owned by the *Gannett* newspaper chain. At a pretrial suppression hearing in the County Court of Seneca, N.Y., the defense attorney motioned that the evidentiary proceedings be closed to the press, arguing that the buildup of news accounts of the trial jeopardized his clients' ability to receive a fair trial. The district attorney did not oppose the motion and Judge DePasquale granted the order as a means to insure the defendants' right to a fair trial. The judge ruled that the interests of the press and public were outweighed by the defendants' right to a fair trial under the facts presented.

On the day following this order, the newspaper publisher brought an action in the state Supreme Court, arguing that the court's action violated First Amendment guarantees and the Sixth Amendment right to a public trial. The case eventually went up to the New York Court of Appeals, and in December, 1977, the state's highest court upheld the closure order. The court held, after applying a balancing test, that a right to a fair trial was paramount to a right to a public trial in this instance.

The court ruled that any legitimate public interest in the pretrial hearings could be satisfied and the defendants' right to a fair trial insured if the news media were given transcripts of the hearing, with inadmissible matters excluded. Full transcripts were to be provided only when the defendants' rights were no longer jeopardized. The court also held that its decision was moot, since transcripts of the pretrial hearing

had been offered to the newspapers once the suspects pleaded guilty to lesser included crimes.

The case was then heard on certiorari by the United States Supreme Court. The Court affirmed, by a 5-4 vote, the state court's ruling, upholding a defendant's right to a fair trial. The majority opinion affirmed the use of a transcript to be given to the press after the pretrial hearing in order to satisfy the right to a public trial.

### Public Discussion Begins

The holding of the case as reported by the press was that the media may be excluded from criminal trials in order to insure a defendant's fair trial. But last August, in a highly unusual move, Chief Justice Warren Burger told a group of newsmen that the press had misinterpreted the Court's holding. The Chief Justice, who had filed one of the three concurring opinions in *Gannett*, told the members of the press that the Court would uphold the closure of news media from a pretrial hearing only—not a trial. Since Burger's concurrence was necessary to maintain a five vote majority, it was reasoned that the holding was limited in scope to pretrial hearings.

Burger's comments were subsequently attacked by Justice Harry Blackmun, the author of the dissenting opinion in *Gannett*. Blackmun told a group of Federal judges that despite what Burger had said, the opinion would allow the closing of full trials.

Justice Lewis Powell joined in the public discussion when he told a panel at the American Bar Association convention last August that it would be "premature" to read broader meanings into the opinion. Powell reiterated that the opinion held that the Sixth Amendment guaranteed a fair trial, so that when a defendant insists that an open pretrial hearing may prejudice his case, and the prosecutor and the judge agrees, then the hearing can be closed. Powell left open the possibility, however, that he would rule differently on a First Amendment claim by the press based on a right to attend trials under the guarantee of free expression.

### Another Viewpoint

Powell's views on a First Amendment claim were questioned by Justice John Paul Stevens only three weeks ago. Stevens told an audience at the University of Arizona College of Law that the Court has never ruled that the First Amendment guaranteed the right of access to judicial proceedings. He claimed that the Court has upheld the right

of the press to disseminate information, but has never upheld any right to acquire information.

These public statements haven't confused everyone, it seems. Bernard Kobroff, the attorney for the respondents in *Gannett*, who, incidentally, is a 1969 graduate of Brooklyn Law School, maintains that the rule of law is not clouded by these public pronouncements.

"The holding of this case is that there is no absolute right to a public trial by the public or by the accused," he told *Justinian* in a telephone interview. "The Supreme Court has upheld the Court of Appeals balancing test."

Kobroff added that the confusion over the holding stems from the press itself. "The press is looking for a flat rule, for a federal rule on such matters," the attorney explained. "But the Supreme Court can't come down

with a rule here. Each state is going to decide its own public policy. Each state must balance the right to a fair trial, the right to a public trial, and considerations such as government administration and decide its own policy on this issue. We have a federal system, and some things are best decided on a state level."

But does the holding reach trials, or is it delegated only to pretrials?

Kobroff believes that the *Gannett* holding applies to both trials and pretrials. "Under the balancing test, you won't see too many criminal trials closed to the public. Notice, though, that juvenile hearings are closed to the public in Family Court and no one is carrying on about that. I could see a criminal trial closed if there was an unruly mob in the courthouse or some other circumstance. It

depends on the case."

Another ruling by the Supreme Court on the fair trial v. free press issue may come this term. The Court is now reviewing a petition for certiorari regarding a decision by the Virginia Supreme Court which upheld the right of judges to bar the press from trials. While some of the uncertainty surrounding *Gannett* may be resolved by a ruling on that case, attorney Kobroff foresees further muddle.

"The First Amendment issue is one for the states to decide, and the Court is asking for a lot of trouble if it attempts to make a federal rule on this."

But perhaps the Court members have learned from *Gannett* that they will invite real trouble only when they resort to the public forum to explain their judicial holdings.

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Saturday, November 10, 1979

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Mr. Roger P. Brosnahan

*Chairman, American Bar Association Commission on Advertising*

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Mr. Burt Neuborne, *Professor, New York University School of Law*

### Afternoon Session

#### Federal Trade Commission Policy and Procedures

##### With Respect to Product Advertising

Mr. Tracy A. Westen, *Deputy Director,*

*Bureau of Consumer Protection, Federal Trade Commission*

#### Federal Communications Commission Impact on Product Advertising

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#### Advertising Directed at Children

Ms. Molly Pauker, *General Counsel, Action for Children's Television*

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Mr. Andrew Schwartzman, *Director, Media Access Project*



# Justinian

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## We Object

In a recent interview with *Justinian*, Dean Glasser said, "But I believe that you can't teach first-rate trial lawyers . . . A doctor can't come out of medical school and perform complex surgery. Similarly, a new lawyer can't try a complex case."

Of course not. But, we respectfully suggest, the dean is missing the point.

None of us realistically expect to march into the courtroom for the first time as lawyers ready to try a case involving multiple parties, volumes of records, intricate points of law, fine questions of admissibility of evidence — no matter how much time we've spent observing trials.

But we would like to know, for example, how to select a jury, how and when to make an objection, what the procedure is for placing an exhibit into evidence.

We want to go into the courtroom the first day knowing the ground rules, not only that we may avoid disgracing our profession and incurring the wrath of Chief Justice Warren Burger, but that we may do the best job for our client.

Presently a course in Trial Advocacy is occasionally offered at BLS. Such a course is a good beginning, but it isn't enough. The course's scope is a limited one and in the past has presented little opportunity for participation in simulated trials or observation of exercises performed by experienced attorneys.

In contrast, New York University Law School lists in its catalog two courses (Trial Technique and Pre-Trial and Discovery Practice) and two seminars (Pre-Trial and Trial Practice and Trial Tactics) all of which are intended to afford students the opportunity to "walk through" the various phases of a trial.

It is our position that basic trial skills can be taught and, in the interests of maintaining the integrity of our profession, should be taught. We urge the faculty and administration to give this issue serious thought.

Dean Glasser also said in his interview, "Those want to try cases . . . have to be accommodated at law school." We couldn't agree more.

## Clean Up for Andy

Andy Upton has this thing about trash. He doesn't like to see it scattered all over, especially in the cafeteria. He even wrote us a letter last year about how much it upset him. And just a few weeks ago he brought up the subject again.

What can we do for Andy Upton? After all, you aren't children. You're responsible enough to clean up after yourselves, and you're sensible enough to know that a litter-filled cafeteria detracts from the experience of eating.

But who are we to lecture to you? After all, maybe it is too much trouble to walk from your table to a waste container. Maybe eating on top of the remains of someone else's lunch is esthetically pleasing. Indeed, if others won't pick up their trash, why should you?

Then again, you could do it as a favor to Andy Upton and all the rest of us who yearn for clean tables in this altogether too messy world.

# Professional Responsibility

By KENNETH R. SHAW

Law students are notoriously apathetic about legal ethics courses. An American Bar Foundation survey found that 42% of all students responding and 54% of those currently enrolled in Professional Responsibility courses believed that other students were "not very" or "not at all" concerned with issues of professional ethics. However, 94% characterized their fellow students as "concerned about making money."

Nevertheless, the ABA is hard at work on a new Code of Professional Responsibility only nine years after the present one was promulgated. This is necessary in the case of the section on Advertising, which became obsolete in the wake of *Bates*. The prohibition of fee splitting is under heavy pressure created by the proliferation of specialists. Corporate counsel have special problems that need consideration.

Brooklyn Law School students who go into practice will be required at their peril to know and live up to the present Code and any new one. There is little likelihood that scrutiny of lawyers' ethics will decrease. Chief Justice Warren Burger's attacks on the litigation bar and the rise of consumerism, combined with the historical distrust of laymen for lawyers, have created a practical need for lawyers to set formal standards for themselves or have them set for them.

When a draft of the new Code was circulated at the ABA convention in Dallas last August, it was sharply attacked for going too far, and for not going far enough. Among other things it would require a lawyer to disclose perjury by his client, even in a criminal case; allow all types of advertising, prohibiting only statements that are "false, fraudulent, or misleading;" and require 40 hours a year of pro bono work or the contribution of 40 hours in fees to a pro bono organization.

Interviews with faculty members about these and other problems produced remarkable diverse answers to some basic questions, and even more diverse rationales for these answers.

## Faculty Views

Prof. Gerard A. Gilbride is the former Chairman of the New York City Bar Association Committee on Ethics and a member of the New York State Bar Association Committee on Ethics. He teaches the Professional Responsibility course at BLS.

Prof. Gilbride notes the continuous development of formalized Codes of legal ethics since the ABA promulgated the original Canons of Ethics in 1908. He feels that the present Code is basically sound though in need of some revision. He stresses that it has been in effect less than ten years, which is not long enough for a coherent body of decisions to develop. Therefore, it is too soon to assess the effectiveness, or lack

of it, of the present Code.

The advertising restrictions of the Code (under which, for instance, an attorney was not allowed to list a specialty, other than Patent Attorney, on a business card) were struck down in the *Bates* case and the cases following it. That section must therefore be reworked.

Currently the hot issue is fee splitting. That is, a client comes to an attorney with a problem that the attorney doesn't feel able to handle—say a complex anti-trust claim or a copyright infringement. He refers the client to a specialist. He, of course, may charge the client for the initial visit, but he is currently forbidden to accept any part of the fee paid to the specialist, or any part of the recovery if the specialist gets a contingent fee.

It is argued that everyone would be benefited by a liberalization of the rule. Attorneys won't be tempted to try cases they are not qualified to handle. Clients will get better, specialized representation. Specialists would be glad to share the fee because they would get work that otherwise would go to the referring attorney.

On the other hand, Canon 9 of the Code states that "A lawyer should avoid giving even the appearance of professional impropriety." Fee splitting has an unsavory reputation. The idea that the referring attorney is getting a fee for no work is disturbing, however much benefit it may produce as a practical matter. Finally, there is the suspicion that the two attorneys will work in collusion to steer clients to expensive specialists. Even without collusion specialists may simply raise their fees to pay the referring attorney without taking a cut in their normal fees.

However, the main problem in legal ethics, according to Professor Gilbride, is not the inadequacy of any particular provision or of the Code in general. It is simply that the Code, as it is, is not adhered to. Work in a court or law office will quickly reveal uncooperativeness and harassment of opponents as a matter of routine. Furthermore, any examination of current cases (consult the Digest section of any advance sheet pamphlet under Attorney and Client) shows that the problems before the courts are not the delicate ones of conflict of interest and the like. Instead, more than half the cases involve simple negligence, e.g., failure to prosecute a case at all, or failure to file and appeal within the allotted time. Another substantial fraction involves outright wrongdoing by the attorney, e.g., conversion of funds held in trust.

The need for stronger enforcement of ethical standards was forcefully expressed in a 1970 report by the ABA Special Committee for Evaluation of Disciplinary Enforcement, headed

by retired Supreme Court Justice Tom Clark. The Clark Committee report was taken particularly seriously in New York where there is now a full-time investigative staff. There is also a move to achieve interstate uniformity. Yearly conferences are held for this purpose, the most recent one having been in Chicago last June.

The rise of consumerism has brought pressure from the outside on the profession to "clean up your act or have it cleaned up for you." Under this prodding from inside and outside, disciplinary committees are being set up, often with non-lawyers on them, to monitor performance and recommend punishment.

Prof. Gilbride feels that the lack of interest in the Professional Responsibility course comes from the teaching style. Until recently the course was taught almost exclusively by lecturing. He has now switched almost entirely to the problem method, which calls for active student participation.

Placement of the course in the final semester also means that students are a bit blasé, since they are about to graduate. Students are thinking more about the bar exam than about any coursework, particularly when a course gives only one hour of credit. Finally placement of the course in the second semester of the third year means that students have gone through practically their entire law school careers without thinking systematically (or at all) about legal ethics. The faculty is giving serious consideration to switching the course to the second semester of the second year, though no decision has been made on this proposal.

Prof. David G. Trager feels strongly that there should be no ethics course at all. Compartmentalizing and separating ethics out from in the body of law is exactly what should not be done, he says. Ethics should be taught from the beginning, as an integral part of every course.

Prof. Gilbride agrees that this approach would be the ideal one. But he notes that there is very little coordination of course content among the faculty. Even he and Prof. Fabian G. Palomino, who teaches the other section of Professional Responsibility, seldom speak to each other about the course. Thus it would be almost impossible to get any coherent or complete presentation of the Code if this job were left to individual faculty members. He also feels that the subject is worth studying separately in its own right.

Prof. Margaret E. Berger acts as a consultant to various bar associations on ethical matters. She is thus in a good position to discuss the strengths and weaknesses of the present Code which she finds to be "ambiguous and inconsistent." Furthermore, it is very difficult to do research in the area. The ABA, the New York

Continued on next page



# Responsibility: What Does It Mean?

*Continued from preceding page*

state Bar Association, the New York County Lawyers and the New York City Bar Association all issue ethical opinions, some formal and some informal. They are indexed only by Canon and not by topic. Since the Canons are so general and there is so much overlap among them, she must plow through tremendous amounts of material to find anything. The only relief is an occasional law review article collecting decisions on a narrow topic. This lack of researchability, she says, puts the practicing lawyer in an impossible position. On the one hand, he is held to the strictures of the Code. On the other, it's often difficult or impossible to find out what the Code requires. A new and more elaborate Code may only make matters worse, since there will be more unknown and unknowable rules.

Prof. Berger would be reluctant to make any changes in the attorney-client relationship, such as proposed in the new draft code. Take for example the case of the attorney whose client tells him a fact that would decide the case against the client. There is little problem in a civil case, given liberal discovery. Under the *Brady* rule the prosecution in a criminal case must turn over exculpatory evidence to the defense. Yet it is not so clear that the criminal defendant's attorney should be under a similar duty. As a matter of public policy, the prosecution is required to prove its own case. This policy has a perceived social value in and of itself, in addition to the social value of punishing the guilty. This policy also underlies the rules against double jeopardy and coerced confessions. Any tinkering with the balance between prosecution and defense could have far-reaching effects, which could not be determined in advance.

This policy would keep its force even if an infallible lie-detecting machine were available, she says. Legal guilt, as opposed to the question "who did it?" often depends on nuances of intent that can only be evaluated by a jury. Finally, the function of a trial is more than getting at "truth." It must also produce a result, and a process, that is acceptable to the community.

Prof. Henry Mark Holzer feels that the problems of student disinterest in the Professional Responsibility course is to only a small degree the fault of the Code, though it is admittedly so broad and vague as to be incapable of being understood or applied with any predictability. Instead, he puts it down to a disinterest in ethics and morality generally. The attitude is "anti"—not immoral but amoral.

There are in turn two causes of this attitude. The first is laziness—the feeling that ethical ideas have been thrashed out in bull sessions by Brooklyn lawyers and

it is therefore unnecessary—and inconvenient, not to mention upsetting—to address them again. Second, one's wants get in the way of ethical strictures.

For Prof. Holzer, few ethical problems pose any particular difficulty. "Rights, properly understood, obviate the need for a Code of Ethics. Misunderstanding of rights is the source of the confusion," he says. Thus, if a client tells you of his intention to murder a prosecution witness, you must inform the police not because "future crimes" are exempted from the attorney-client privilege under DR 4-101(C)(3), but because the client has no right to commit murder and therefore cannot contract with the attorney for services on that subject. Thus far there is no disagreement between Prof. Holzer and anyone else. However, he carries the analysis to its logical conclusion. That is, he believes that a client has no right to break the law, and that a lawyer is therefore required to reveal his client's perjury, or facts unknown to the prosecution that would make the prosecution's case. "A lawsuit is not a game," he declares. It is a search for truth, which all parties are ethically bound to pursue.

Prof. Holzer does admit to ethical uncertainties, however. They come when he defends a client against a criminal charge of breaking a law that violates the client's rights—for example income tax evasion (income taxation being, in his view, a violation of rights) or draft dodging. That is, can an attorney conjure up a false reasonable doubt (the client being admittedly guilty), thus doing harm to the legal system for the greater good? The question is to him unanswerable. He takes such cases and raises every reasonable doubt, but feels very uncomfortable about doing so.

Prof. Jerome M. Leitner speaks from many years of litigation practice. His views carry great weight as an indication of how the real

world operates—of what a litigator can work with, and live with. His position is unequivocal: "the advocate doesn't search for the truth. The trial searches for the truth. Truth outs from the conflict." Therefore an attorney must fight assiduously for the client. Legal guilt and punishment come not from what the defendant did, or what his attorney knows he did. It comes from what the jury finds the defendant did. For an advocate to search for "truth" would pervert the truth-finding process, since truth comes only out of the clash of opposing interests.

He agrees with Professor Berger that use of a perfect lie detector, even if one existed, would be fatal to the system. He disagrees however on the reason. Even if the nuances of intent could be programmed into the machine, he would oppose its use. The jury's function, he says, is of course to weigh intent, but it is also to dispense mercy as necessary, in the teeth of the legal rule.

It is interesting to contrast this position with Prof. Holzer's. For Prof. Holzer the choice is between the trial as a search for the truth and the trial as a game. For Prof. Leitner, getting every advantage for the client is not a game but the only way to produce truth. Both men are successful advocates, but it is instructive to compare their approaches.

Prof. Holzer points with justifiable pride to a case in which through rigorous statutory analysis he convinced an appellate court that under the New York Penal Law criminally negligent homicide is a lesser include offense of second degree manslaughter. It was therefore reversible error for the trial judge to have refused to charge down. That is, Prof. Holzer worked with the statute to find out what it really meant—what the "truth" in fact was.

Conversely, Prof. Leitner brilliantly argued the case that abolished the tort immunity of charitably owned hospitals. That is, he pressed his client's case even though the "truth" (that is, the existing rule of law) was against him.

There are situations, however, in which Prof. Leitner would not take advantage of an opponent. For instance, if an opposing attorney cited in his brief a case that had been overruled, he would call that fact to the attorney's attention immediately rather than wait to sandbag him on oral argument. He admitted that he himself had once cited an overruled case and that the judge had severely castigated his opponent for not calling the fact to his attention before oral argument.

However, he would not hesitate to take advantage of an opponent's blunder in trial technique—failure to ask a vital question of a witness or failure to object to incompetent evidence, for example. He freely

## It Means?

*'For Prof. Holzer the choice is between the trial as a search for the truth and the trial as a game. For Prof. Leitner, getting every advantage for the client is not a game but the only way to produce truth.'*

admits that he can come up with no litmus test of what he would or would not do, but decides each instance on the basis of whether he feels it's right or wrong.

For Prof. Holzer this sort of non-logical test is anathema. He therefore finds himself driven to refusing cases that present such problems. Prof. Leitner responds that this would leave many criminal defendants without representation, which cannot be tolerated.

### Monroe H. Freedman Speaks

Prof. Monroe H. Freedman of Hofstra Law School has been a strong critic of the present Code and is even more disapproving of the new draft Code, which he calls "radical and radically wrong."

The requirement that an attorney reveal his client's perjury and facts favorable to the opposition will require that an attorney give each client a "Miranda warning" at the outset of the relationship. This is particularly harmful in view of today's complex legal system, and, even more importantly, would destroy the atmosphere of absolute trust and confidence that is the essence of the attorney-client relationship.

The present Code declares that an attorney may (i.e., need not) reveal sufficient information to prevent a future crime by the client. Prof. Freedman feels that this simultaneously goes too far and does not go far enough. Revelation should not be allowed, he says, for minor crimes, e.g., violation of blue laws. On the other hand, it should be required for contemplated crimes likely to produce death or serious physical injury, and perhaps for contemplated crimes that corrupt the system of justice, e.g., bribery of a juror, but emphatically *not* perjury by the client.

As to perjury, he would try to dissuade the client by warning him of the probability of being found out and punished and would not help the client by, for example, rehearsing and polishing the false testimony. He would however put the client on the stand knowing

that the client would commit perjury, if the client insisted. And in his summing up he would suggest any possible inferences favorable to the client, even though he knew the client to be guilty.

His justification for this course of action is basically the same as Professor Leitner's—that truth comes from the clash of opposing positions.

He feels that the present Code is in great need of redrafting, but that the proposed draft suffers from the same deficiencies as the present version. He says that the only workable format would be in the style of the ALI Restatements. That is, there should be black-letter rules followed by interpretive comments. Most importantly, there should be citations of illustrative cases, as in the Reporter's Notes to the Restatements, saying which particular kinds of cases fall under which canons. Professor Berger strongly agrees with this suggestion.

### Conclusion

In summary, there is general agreement among those interviewed (except for Professor Gilbride) that the Code of Professional Responsibility is inadequate as it stands. It does not cover many increasingly common situations. It is in important respects out of date on those situations it does cover. Even where it does express current thinking, it is so ambiguous that one the one hand easy to get around and on the other hand likely to subject attorneys to censure or even disbarment on criteria that the attorney cannot know in advance.

There is an increasing pressure to make the Code more elaborate and to enforce it more strictly. Yet there is serious disagreement about the purposes and structure of the system. The interviews suggested nothing so much as the story of the blind men and the elephant. This is probably inevitable given the inherent conflict between the interests of the client, the attorney, and society.

*'Prof. Trager feels . . . ethics should be taught from the beginning, as an integral part of every course.'*



## Public Affairs Seminar: Antidote for Ennui

By JONATHAN FOX

In February of 1979 Pat Johnson, a first year law student, had an idea. Faced with the numbing effects of Torts, Contracts, Civil Procedure, and all the other joys that plague first year students and determined to revive the lost art of intelligent conversation, she suggested that a group of students get together for lunch once a week and discuss the happenings of the "real world."

Once the shock of the suggestion wore off, a few interested people offered their time and ideas, and the Public Affairs Seminar was born.

At first the meetings were lunch-time opportunities for a few friends to meet and exchange opinions on just about anything under the sun. Slowly, however, a group of regulars emerged who soon began to plan the topics and

meeting times on a fairly regular schedule.

In addition to Ms. Johnson, Ralph Sabbatino, Eric Elwin, and Jonathan Fox assisted in the selection of topics and the recruiting of new members. Prof. Gilbride has from the first meeting served as an unofficial moderator, helping to

This year the Public Affairs Seminar is expanding, with the first meeting on Sept. 20 attracting a good number of new faces.

The topics scheduled for the next few weeks include police brutality, the death penalty, the Middle East, and the chartering of the FBI and CIA. Guest speakers may be available for future meetings.

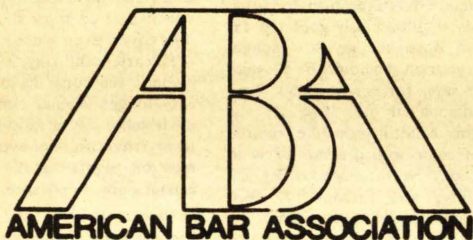
If you're interested in good, informal conversation on something other than the law of conspiracy, come join the Public Affairs Seminar. Future meeting times and places will be posted.

## THE ADVANCE SHEET Brooklyn Law School Calendar of Events

Request forms available in SBA office. Items must be submitted by 1:30 pm on the Tuesday preceeding the week the announced event will occur.

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#2

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Alice Alper Rein '79

SR

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FOR THE 12<sup>TH</sup> TIME IN AS MANY YEARS!

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THAT AFTER 12 YEARS  
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ASKING FOR CREDIT?

WONDER WHY THEY JUST  
DON'T ASK FOR CASH— THEN  
THEY WOULD PROBABLY  
GET CREDIT !!

## Chamber Music Comes To Brooklyn Law School

A chamber music concert will be performed by professional musicians at Brooklyn Law School on November 8. One of the performers will be second year student Barbara Binder.

The concert will be held in the third floor lounge. Admission, though free, will be by ticket only. Tickets will be distributed on a first come, first served basis. Each student will receive two tickets and students are encouraged to bring a spouse, a relative, or

friend. Refreshments will be served.

Funding for the concert has been provided by an anonymous donor who is a "passionate music lover." Although not an alumnus of BLS, the donor, a Brooklyn attorney, feels a "sentimental interest" in the law school and wished to make a "gift to the students."

Further details regarding time and distribution of tickets will be provided in the near future.

## First Year Professor

Continued from page 2

Despite her interest in criminal law for the past year, Prof. Garrison has not forgotten her lessons learned in civil practice. She commented on the recent trends in negligence law practice. "Jury verdicts are definitely going up," she began, "but in analyzing the trend for large verdicts it's hard to tell how much is actual generosity and how much is inflation."

She disagreed with an assessment made by famed negligence lawyer Harry Lipsig, who insists that negligence lawyers are on the side of the angels because they are busy righting various wrongs.

"I don't think that negligence lawyers are on the side of the angels. It's a very lucrative practice, and they do it to make money. The money is what attracts most people to the field, not the desire to be social workers."

### Comments on BLS

Prof. Garrison believes that BLS students have an advantage over students in other law schools in that here there are exams after the first semester of a year-long course. "It gives you more of an opportunity to test what you know," she claimed.

Her advice to first year students was direct. "Just do your work and don't worry about it too

much. It's possible to overdo worrying. If you've done all the work carefully, maybe it's time to take a break and go to the movies."

## Librarian Resigns

Continued from page 1

international law collection at BLS which had been a favorite project of Prof. Djonovich. This special collection has been of great use to the award-winning Jessup Team as well as the nationally-known Brooklyn Journal of International Law.

As of press date, *Justinian* has been unable to discover whether a successor has been chosen, how the selection process will be conducted, and whether students will play a role in the process.

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9. Ham — American Cheese — Salami	2.00
10. Roast Beef	1.85
11. Turkey — Bacon	2.00
12. Tuna Fish	1.75
13. N&J Antipasto Special	
Spiced Ham, Ham, Salami, Cappellico, Provo	
Proscuitini, Turkey, Anchovies	2.50

### Plain Subs

Ham	1.30
Turkey	1.35
Cappellico	1.50
Proscuitini	1.50
Salami	1.40
Pepperoni	1.50
Spiced Ham	1.25
Mortadella	1.25
Bologna	1.25
Extra Cheese	1.10

### Hot Oven Baked Subs

Meat Balls	1.40
Meat Ball Parmigiana	1.65
Meat Ball & Peppers	1.65
Sausage	1.65
Sausage Parmigiana	1.90
Sausage & Peppers	1.90
Veal Cutlet	2.00
Veal Cutlet Parmigiana	2.35
Veal Cutlet & Pepper	2.35
Eggplant Parmigiana	1.85
Extra Cheese	.25
Extra Peppers	.25

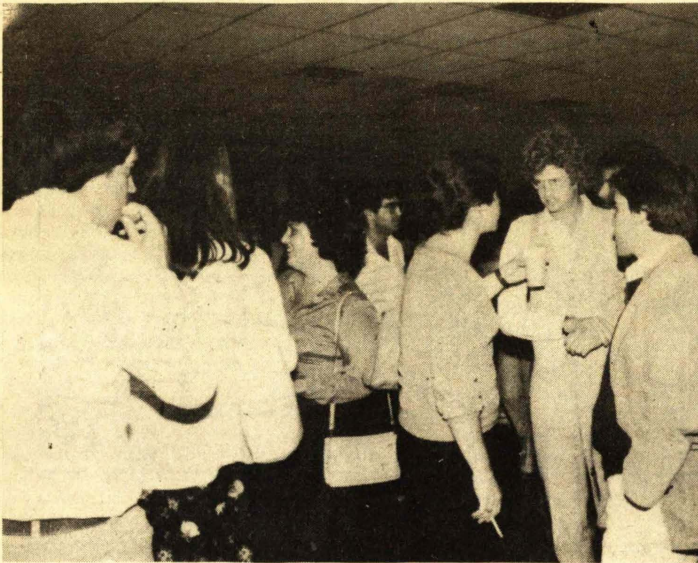
### Pizza

	Small	Large		Small	Large
Cheese	3.40	4.25	Salami	4.15	5.00
Extra Cheese	4.15	5.00	Meat Ball	4.15	5.00
Anchovies—No Cheese	3.40	4.25	Onion	3.65	4.50
Cheese & Anchovies	4.15	5.00	Garlic	3.65	4.50
Mushrooms	4.15	5.00	Half Plain—Half Any Item	3.80	4.65
Sausage	4.15	5.00	Any 2 Items	4.90	5.75
Pepperoni	4.15	5.00	Any 3 Items	5.65	6.50
Green Peppers	4.15	5.00	N&J Special	6.15	7.00

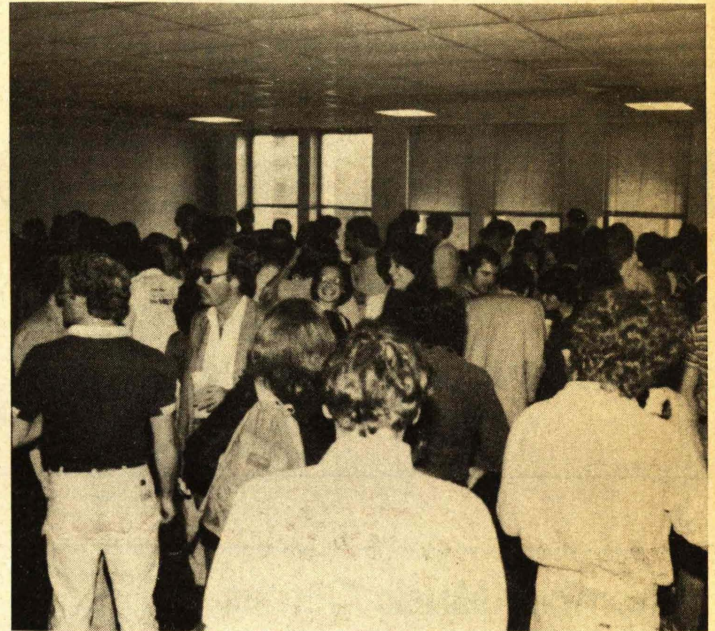
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The BLS Community is Cordially Invited  
to Attend the

## PHI DELTA PHI Dinner Party

**October 17  
7:30 pm**

King Tut's (Atlantic Ave)  
\$10.00

For further information contact  
Joseph Cafiero, James Warwick  
Anthony Annucci  
or Deborah Gillaspie.

*Announcing the First Annual*

## Brooklyn Law School Race Judicata

A 5K (3.1 mile) footrace across the  
Brooklyn Bridge (and back)

**Sunday, Oct. 28, 11 am**

**T-shirts to all entrants**

**ENTRY FEE**

Students \$3 before Oct. 12, \$4 thereafter  
Faculty and alumni and friends — \$5

**Contact SBA for applications**

No post entries — Limit 300 runners

**PRIZES! REFRESHMENTS!**

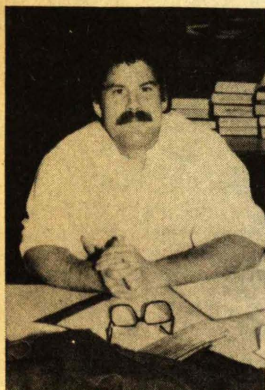


# Inquiring Photographer

et al.: The Justinian

## Court Jester

By ARTHUR S. FRIEDMAN  
and CHRISTINE SHORT  
QUESTION: WHERE DO YOU  
LIKE TO STUDY?



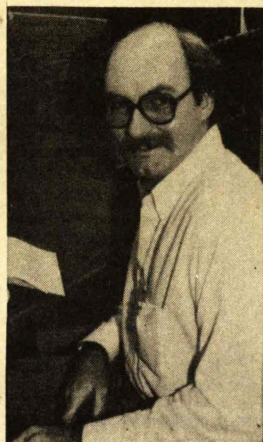
LARRY MENKES, second year day, usually studies on the second floor of the library which he considers "relatively quiet. If I need something, it's right at my fingertips."



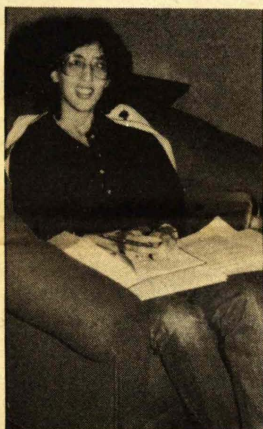
BARBARA ETTLINGER GERBER, first year day, studies in the library's smoking room. She found she "couldn't concentrate" without being able to smoke and doesn't find the first floor room too noisy.



ED KLONSKY and CLIFF KORNFIELD, first year day, often study in the cafeteria because, says Ed, "The opportunity is there. I can kill two birds (eating and studying) with one stone." Cliff notes that "while the law is food for the mind, it doesn't satisfy my stomach. In the cafeteria I can satisfy my mental and physical desires at the same time."



JACK WRIGHT, second year day, studies in the basement level of the library because "the statutes are down here. I like it down here because it's carpeted and therefore quiet."



ANDREA BRANDON, first year day, likes to study in the third floor lounge. "It's quiet but you can also talk here, unlike the library. It's more relaxed and comfortable in the lounge. In fact, I'd like to take one of the stuffed chairs home."



BARBARA BINDER, second year day, spends time studying in an empty classroom. "The library is too noisy, I can eat my lunch here, and it's easier to concentrate without people around."

By DAVID AARONSON

The following is a recent exclusive interview with an unnamed founding father of our nation who has been discovered alive and living in Peru.

This interview was conducted by this reporter during the eight hour intersession break which the school considerably extends to all its students in an effort to allow them to consume all the dope they possibility can within that time space.

Interviewer: I'd like to thank you, sir, for giving me this rare opportunity to speak with such a famous individual.

Founding Father: Don't mention it.

Interviewer: Just a few substantive questions, sir, and please remember that I'm just a journalist doing my job and mean no disrespect.

Founding Father: Relax, kid. You seem tense. Would you like a Valium?

Interviewer: No, thank you. It's just that I'm overwhelmed at the sense of history which is staring me in the face.

Founding Father: I didn't think I looked that old.

Interviewer: Oh no, I didn't mean that you look old. Oh, please excuse me, I'm so sorry!

Founding Father: Stop being obsequious and get on with the questions.

Interviewer: Let's begin with the First Amendment, okay?

Founding Father: Whatever turns you on!

Interviewer: Is the First Amendment phrase "no law shall abridge . . ." to be taken literally?

Founding Father: "No law" means "no law."

Interviewer: Are you saying that an individual can yell "Fire" in a crowded theatre?

Founding Father: It depends.

Interviewer: On what?

Founding Father: On the movie that's playing in the theatre—if Airport 75, 75, 77, 78 or 79 is being shown then it's okay to shout "Fire." In fact, it's not only okay, you may get elected to public office for doing it.

Interviewer: That's a very interesting subtle analysis of a very difficult legal issue.

Founding Father: No sweat, kid! What's next?

Interviewer: Does the doctrine of "separation of Church and State" embody the full philosophical and moral distinctions between the study of ontology and ecclesiasticism, while serving to sustain traditional conceptualizations of societal and individual freedoms?

Founding Father: The doctrine means that the building which houses the government, should not also house the church. Otherwise the people get confused when they enter the building. When you walk into a building you want to know immediately if it's a holy temple or an IRS office.

Interviewer: What a scoop! They won't believe this back home.

Founding Father: Where is home, son?

Interviewer: The lower East Side of Manhattan.

Founding Father: I know it well; I used to date a girl who lived around those parts—used to be a heavy Indian population there.

Interviewer: They've since moved out; the neighborhood began to go downhill after the big sale.

Founding Father: I'm aware of that and don't be such a smart aleck.

Interviewer: Don't you miss the United States?

Founding Father: Not really, Lima is my home now.

Interviewer: You should consider coming to America for a while. You could do very well lecturing on the college circuit or hosting your own talk show.

Founding Father: I don't think so. I'm doing pretty well here in Peru.

Interviewer: Doing what?

Founding Father: I'm into leisure suits. They're really a hot item down here.

Interviewer: They're hot in America, too. I guess the United States does have a lot in common with its South American neighbors.

Founding Father: Got any more questions?

Interviewer: What did you and your fellow founding fathers fear the most in drafting the Constitution?

Founding Father: For a while we were worried that the phrase "the right to bear arms" would put all long-sleeve shirt manufacturers out of business.

Interviewer: If I may, I'd just like to say that you and your friends did a fantastic job in writing the Constitution.

Founding Father: You're acting obsequious again!

Interviewer: Excuse me, but I just had to express my gratitude.

Founding Father: Thank you. We were under a lot of pressure when we wrote it.

Interviewer: How so?

Founding Father: Well, the Magna Carta had already been written and we had to try and measure up to that standard of prose. It wasn't easy; you know what kind of sticklers the English are when it comes to language. Did you ever try to write something with the Magna Carta always lurking in the background?

Interviewer: No, only my editor lurks.

Founding Father: Whew! Now that that's off my chest I feel a lot better.

Interviewer: Would you like to take a break?

Founding Father: No, I'll be alright, I just have to mellow out. Go ahead.

Interviewer: What was the impetus which gave rise to the drafting of the Constitution? What idealistic intentions were envisioned by the construction of such a magnificent document?

Founding Father: We hoped the government would finance the wife-swapping club we wanted to

set up, and we knew that the only way we could get government money was to make the club open to all citizens of the United States. However, we had to omit the fierce debates on this topic from the Federalist Papers.

Interviewer: Come on, I don't believe the concept of equal opportunity came from government sponsorship of a wife-swapping club.

Founding Father: Just a little 18th century humor.

Interviewer: If we can be serious for a moment, how do you view the 14th Amendment?

Founding Father: I am glad you asked that. I'm deeply offended that more amendments have been added to the Constitution. We wrote the Constitution and we don't want to share top billing with anyone else. We did not intend to have anyone else monkeying around with our writing. We're a sensitive bunch of guys. We are artists.

Interviewer: I can understand your feelings, but the nation needed more interpretation of your writing. For instance, we didn't know if the first ten amendments were intended to apply to the States. By the way, do the first ten amendments apply to the States?

Founding Father: Beats me!

Interviewer: While we are on the subject, what the hell does "due process" mean?

Founding Father: Watch your language!

Interviewer: I'm sorry, it's just that those two words have caused an incredible amount of arguments, not to mention attorneys' fees.

Founding Father: I told those guys not to use those words, but they insisted. They had this thing about fancy words. So they caused a lot of trouble, eh?

Interviewer: You wouldn't believe it, if I told you.

Founding Father: I knew this would happen. They always had to have things their way. I hope they're happy now.

Interviewer: One last question, if you don't mind.

Founding Father: Try not to make it a long one.

Interviewer: On a more personal level, if you had another chance, what would you do differently?

Founding Father: I would have masterminded a large drug smuggling ring in the mid 60's.

Interviewer: Thank you.

Founding Father: Ciao!

### JUSTINIAN STAFF MEETING

Monday, Oct. 8  
4 pm  
Room 304



# En Garde! Feldman Makes Fencing Comeback

By JACK HOLLANDER

Richard Feldman is a third-year student at Brooklyn Law School. Outwardly, he presents the same aspirations and apprehensions as any law student, but inwardly he fantasizes about portraying the "romantic image" of a world class fencer.

Richard Feldman is a champion fencer. He has participated in this sport for ten years. His interest began during his early adolescent period as he watched Errol Flynn and Douglas Fairbanks duel for the hand of a fair maiden.

Fortunately, his high school had a fencing team. After watching several team practices, he realized that the sport appealed to him live as much as it did in the movies. Not only was the element of appeal present, but Richard could actually duel for the hand of a cheerleader.

During his sophomore year, which was his first year on the high school team, Richard combined his fast hand-eye coordination and agility to achieve immediate success in fence-offs. He was elected co-captain and captain in the years following and his skill earned him a partial scholarship to Columbia University.

Columbia was a national powerhouse being the Ivy League and Eastern Coast Athletic Conference champions—as well as ranked within the top five in the nation.

The topnotch coaching and training at Columbia proved worthwhile for Richard. In his freshman year he won the under 19 year old New York fencing championship. As a result of this, New York sent him to the Junior Olympics in California where he finished 10th out of approximately 150 contenders.

When Richard reached his junior year, the team strength necessitated that he change his weapon from foil to epee.

When the foil is used the torso is the only target. One must be on the attack to accumulate points and must compress the tip of the sword into the torso. Epee is more difficult than foil, for each fencer may score points simultaneously. Furthermore, the entire body may be attacked including the feet, hands, and the head. The only similarity between the epee and the foil is that both require the tip to be compressed.

This concept may be clarified by noting that when the saber, the third weapon, is used. Points are counted when any part of the sword hits a designated part of the body.

This change in weaponry did not hurt Richard, as he continued to demonstrate that he was among the nation's best fencers. By the end of his junior year, he had finished 10th in the national collegiate championships held in California and won the non-collegiate metropolitan championship in epee and placed among the nation's top 50 in epee and foil in a national tournament sponsored by the Amateur Fencing League

By his senior year Richard thought and Columbia predicted that he would win the nationals but success had spoiled him. Richard partook in a little too much of the "good life." This resulted in his lowest placement while competing in the national and non-collegiate tournaments.

Between graduation from Columbia and entering BLS, Richard took a year to travel and fence around the country and Canada. He returned to his prior form of always finishing within the top 15.

Then his luck changed. Richard entered BLS and was "foiled" by the fact that school provided him

## Justinian SPORTS

with no time to fence. He had to resort to those traditional pastimes of touch football, basketball and softball when he desired athletic competition.

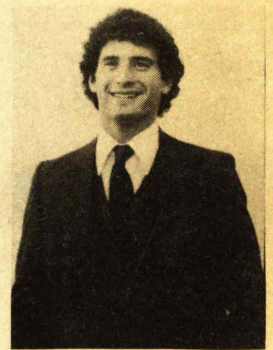
But he always had that competitive itch to fence. So in his second year at BLS Richard began to train and compete again. He re-

tained that romantic inspiration and qualified for the national championship by winning various New York tournaments.

Unfortunately, Richard failed to make the meet after he was struck by an automobile resulting in a fractured leg.

Richard has fully recovered from his fractured leg and has currently resumed his training. He hopes to enter as many local, national, and international tournaments as time will permit.

Who knows? Maybe someday Richard Feldman will be an inspiration to someone, like Errol Flynn was to him.



Champion fencer and third year student Richard Feldman.

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