

# The Justinian

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## Moot Court Honor Society To Run 2nd Year Competition

By WILLIAM N. FORDES

The Moot Court Honor Society, the subject of controversy since having refused to conduct the first year program, will administer oral arguments for eligible second year students later this month.

Participation in at least two of the four rounds is mandatory for all eligibles who wish to become Honor Society members.

Final round competition, which determines the membership of next year's National Team, will be held February 27, at 4:00 and 5:00 p.m. in the Moot Court Room. Professors Hoffman, Kuklin, and Minda, accompanied by the current members of this year's National Team, are slated to judge the round.

The combined written and oral effort, designed to develop appellate skills, began fall semester when students submitted legal briefs. The issue examined therein was whether the

sixth amendment right to trial by jury extends to litigation of factually complex circumstances.

Early round arguments are judged by third year Honor Society students as well as members of the legal community from outside the school. Rounds are argued by two teams of two members, each of whom addresses a different aspect of the issue. Participants are then eliminated, on an individual basis, until there remain eight advocates from whom will be selected the three National Team members.

The Honor Society, which has conducted competition for both first and second year students in past years, last fall refused to administer the first year program. The Society felt that the volume of work performed by its members warranted academic credit. The faculty refused to award any credit and the Honor Society responded by discontinuing its administration of the first year rounds.

## Law Review Establishes New Admission Policy

The Brooklyn Law Review announces a new Admissions Policy, effective Summer, 1980:

During the first week of July, the Law Review will offer conditional membership to the nine top-ranking first-year day students and the three top-ranking first-year evening students. These offers will be made on the basis of the entire first-year's grades. Offers of unconditional membership will be extended to those conditional members who, during the course of the summer, satisfactorily perform the writing tasks which will be assigned to them.

During the second or third week of July, a Case Comment writing competition will be held. All first year students whose full year's grades place them in the top 25 percent of the class, day and evening, will be eligible to compete. As in the past, candidates in the Case Comment competition will be

assigned a recent case by the Administrative Board, and will have five weeks in which to submit a case comment on that case. The sole criterion for acceptance to the Review on the basis of participation in the Case Comment competition will be timely submission of a publishable case comment.

During the fall semester, an Open Note competition will be held. All second-year day students, and all second and third-year evening students will be eligible to participate in the Open Note competition. The sole criterion for acceptance to the Review on the basis of participation in the Open Note competition will be timely submission of a publishable note.

First year students who are eligible for conditional membership or participation in the Case Comment competition will be notified during the first week of July.

## Prof. Levy Joins BLS as Law Librarian

By STEVEN M. BERLIN

Prof. Charlotte L. Levy, Brooklyn Law School's new Law Librarian, wants to make our library "a reader services library, where users feel comfortable and are eager to pursue their study and research interests."

"The library should be run on a business model," she said. "Our business is to supply information. Information should not only be available but we should sell it to our patrons."

Two of the earliest steps taken by Prof. Levy in pursuit of her goals were to appoint Ms. Mindy Forest as Reference Librarian and to request that a Lexis be installed at BLS.

Prof. Levy left her position with the law book publishing firm of Fred B. Rothman & Co., in Littleton, Colorado, where she was admitted to the Bar, and officially joined BLS as of December 1, 1979. She replaced Dusan Djonovich who left his position as law librarian at BLS to accept a similar position at Benjamin N. Cardozo School of Law.

Originally from the "hills of Kentucky" where she received her B.A. from the University of Kentucky, Prof. Levy said she considers herself "a New Yorker by adoption." In 1969, she received her M.S.L.S. from Columbia University, and then worked as a cataloger for the City College of New York until 1971. She also served as the first Law Librarian and as an Associate Professor of Law at Pace University School of Law from 1975 to 1977.

Prof. Levy said she finds New York alive and stimulating, and likes to read



Prof. Charlotte Levy, Law Librarian

the *New York Times* and to attend the opera and ballet. Her desire to return to New York was one of the many reasons she said she was responsive to an invitation by Dean I. Leo Glasser to interview for the job of law librarian.

Prof. Levy accepted her position at BLS over a similar offer from another law school in New York. She said that at the time she was being interviewed at BLS she "found the faculty to be congenial, interesting and interested in the library."

The BLS library represents a new challenge to Prof. Levy. "There are more patrons, more students, more activity in general than in the law libraries I've worked in in the past."

BLS is also Prof. Levy's first opportunity to direct an ongoing operation. Prof. Levy said she was responsible for

building and developing the library at Pace Law School as well as at Salmon P. Chase College of Law of Northern Kentucky University, where in 1975, while serving as librarian she also received her J.D.

Ms. Forest, our new reference librarian, began working at BLS on January 7, 1980. Originally from Merrick, Long Island, she received her Bachelor's degree in Political Science

*continued on p. 8*

### July, 1979 Bar Examination

State Wide 77%

BLS 86% Total: 309 took Bar

Day 87% 221 out of 254

Eve 82% 45 out of 55 (P 266; 43F 14%)

	Day	Eve
<b>First Quarter</b>	100%	100%
Passed-Failed	68-0	8-0
between	91.50-86.70	90.86-86.95
<b>Second Quarter</b>	98%	100%
Passed-Failed	64-1	13-0
between	86.69-84.54	86.64-84.57
<b>Third Quarter</b>	85%	100%
Passed-Failed	51-9	17-0
between	84.50-81.74	84.40-81.79
<b>Fourth Quarter</b>	61%	44%
Passed-Failed	38-24	7-9
between	81.66-75.79	81.59-76.75



## Conference Surveys Environmental Law

By JOHN J. RASHAK

The Practising Law Institute annually presents "Environmental Law and Practice" at New York City's Biltmore Hotel.

The 1979 program was effectively a survey of the environmental law that the Seventies had produced. (As such, the 1980 program this summer would be an excellent chance for first and second year BLS students to examine the environment law field).

Joel Sachs hosted the 1979 program and authored the book — *Environmental Law and Practice* — that was used as an outline for the two-day conference. Angus Macbeth was the opening speaker. (Macbeth formerly litigated for the best funded public-interest advocacy group in the environmental field — the National Resources Defense Council (NRDC)).

Macbeth called the Clean Air Act (CAA) "less practical" than the Clean Water Act (CWA). He explained that the CWA was based on industry-wide standards that were uniformly enforceable, while the CAA was enforceable only through State Implementation Plans (SIP's), which amounted to 50 diverse interpretations of the CAA.

"The federal government is pushing practical technology," explained Macbeth. As an example, "Best Engineering Judgment" (BEJ) is the criterion used by the Environmental

Protection Agency (EPA) "where (CWA) standards are not yet in place." Macbeth, who is currently chief of the Department of Justice's Land & Natural Resources Division, Pollution Control Section, emphasized, however, that EPA was enforcing a stricter monitoring program to overcome the gaps in standards and regulations.

While EPA will balance economic benefit against environmental harm in most of its regulations, the agency has a mandate to be less cognizant of economics in the toxic chemicals' field. In addition to controlling industrial toxics by setting standards under the CWA, EPA has two other legal tools as backup: RCRA (Resources Conservation and Recovery Act) and TSCA (Toxic Substances Control Act).

In closing, Macbeth outlined the "Environmental Trust Fund." The Fund's monies come from court fees in pollution cases. The Fund allows local governments to suggest needy projects to the regional USEPA, for approval of Fund allotments.

While each conference speaker concentrated on his environmental specialty, certain general truths about today's environmental law became clear. First, the CWA does a better job than the CAA, "because it is more focused" — Angus Macbeth. The argument is that

the CWA's focus is on standards of discharge for industry, while the CAA reduces standards to SIP's—which are more difficult to enforce.

Although there are 11 criteria which a SIP must meet under the CAA, a plan remains harder to enforce than a standard. As an example, to regulate air quality, USEPA requires "air emission offsets" for non-attainment areas. Non-attainment areas are those where the air does not meet the National Ambient Air Quality Standards (NAAQS). While "emission offsets" were implemented to halt the movement of industry from the Northeast to the Sun Belt, they are, in fact, extremely difficult to calculate, much less administer.

Another general truth is that the environmentalists gravitate towards air enforcement, while less idealistic types tend to work in water enforcement. In fact, the "air people are not plugged into the problems of due process" — Tom Harrison, USEPA Air Program, Region V.

Joel Sachs presented the "general truth" that states have varied methods for reaching common goals. In the state of Washington, for example, environmental rights are "fundamental and inalienable rights." In another instance, the California State Environmental Protection Act (SEPA) was extended by the California Supreme Court to private as well as

governmental actions. (This decision was followed by Washington State, while New York State adopted it by statute.)

Nick Robinson presented what may be the environmental battlefield of the 1980's — namely "critical areas." One "critical area" — wetlands — is protected by the CWA, Section 404. Other federal laws protecting "critical areas" are the Land Policy Management Act, the Coastal Zone Management Act, and the Wild and Scenic Rivers Act. While New York State, in particular, needs a "coastal zone management (CZM) plan," and has an ardent advocate in Assemblyman Maurice Hinchey, New York State is still far from a viable CZM plan.

In summing up, Nick Robinson characterized today's environmental law as "a statutory maze, similar to the Internal Revenue Service statutes." Robinson would like to see common law ideas like the "public trust doctrine" (used by seven states) implemented nationwide to protect "critical areas." Another idea — getting credits for non-development (used under the CAA) — could also be used to protect environmentally sensitive areas. The overall admonition gained from the lectures (and final workshop on the Seabrook case) was that environmental laws are akin to "full employment acts." Hence, environmental attorneys must do "pro bono" or public interest work to make environmental law more workable than the IRS statutes.

## Why are so many first year students enrolling in bar review courses?

Until a few years ago no one thought about a bar review course before their senior year. Today, however, close to half of all those taking courses enroll in their first or second year of law school and early enrollments in at least one major bar review course — the Josephson BRC (Marino-Josephson/BRC in New York) — are at an unprecedented rate. There are three apparent reasons for this development none of which have anything to do with preparation for the bar exam itself.

First, more and more law students are looking ahead at the spiraling costs of legal education in general, and bar review courses in particular. Over the last three years tuition costs of bar review courses have risen between 20-30% (\$100-\$150) in most states and the next three years could be worse. Under special early enrollment programs, students (with only a moderate deposit) actually roll back tuition costs to less than 1979 prices.

In New York, for example, this means that a student enrolling early will pay only \$325 as against a likely \$495 tuition in 1981 and \$525 tuition in 1982. In New Jersey and Pennsylvania (where fewer subjects are tested), the early enrollee may receive the course for \$250 (Basic Course) or \$325 (PLS Course) representing at least a \$100 savings from 1981 prices.

Second, in return for the benefit of assured enrollments and anticipated lower marketing costs, the BRC course has developed an extremely attractive package with the Center for Creative Educational Services (CES) called National Alliance to Fight Inflation (NAFI), which provides immediate benefits that substantially exceed the required deposit. The newest program (terminating March 21 in most states) provides a generous assortment of study aids and cash discounts which many first year law students have found to be irresistible.

For a payment of \$50 (which will be fully credited toward bar review tuition), the student receives free first year outlines in four major areas (Contracts, Criminal Law, Criminal Procedure and Torts), a free cassette tape program on "How to Write Law School Exams," two 50% cash coupons on *Sum & Substance of Law* tapes (worth about \$30) and a Preferred Student Discount Card entitling the student to a 10% cash discount on all CES purchases made from a CES or BRC office. Moreover, the student can exchange the four first year outlines for another four outlines in the second year at no extra cost. The value of the outlines and discounts exceeds \$100 and the ability to roll back the bar course tuition probably saves well over \$100.

Third, there has been a conscious effort by BRC and Marino-Josephson/BRC to remove psychological impediments to early enrollment by allowing free transfer to any BRC course in the country in the senior year (for the student who is not sure what state he or she will practice in), and a no penalty withdrawal for students who drop out or fail out of law school.

Another factor which has undoubtedly contributed to the early enrollment momentum is the increasing reputation of the BRC courses and CES materials and tapes. Special impartial studies done by law school administrators have consistently shown that BRC students outperform others at each level of class standing. Much of this success is attributed to BRC's unique Programmed Learning System (PLS) and its emphasis on writing and testing skills. As a result, in 1980, BRC expects to enroll over 14,000 students nationwide. At the same time, the CES *Sum & Substance* series of books and tapes has gained widespread recognition among both law students and teachers as the finest law study aids available.

Whatever the reasons, however, the facts are clear: more and more first year students are thinking ahead and enrolling in BRC courses now.

## Committee Focuses on Minority Enrollment

By TONY CHEH

On December 4, the Student-Faculty Affirmative Action Committee held a Minority Recruitment Program at Brooklyn Law School as part of its continuing effort to increase minority enrollment.

The program was attended by approximately 150 prospective applicants, pre-law advisers, representatives of minority organizations, elected officials, judges, students, faculty, and alumni.

The first part of the function was held in the Moot Court Room. Esmeralda Simmons, a 1978 graduate of BLS, served as moderator. Dean I. Leo Glasser welcomed the audience with anecdotes and facts about BLS, pointing out that this school is the alma mater of more minority judges in New York City than any other law school.

Prof. Joseph Crea followed and, speaking as a member of the Admissions Committee, provided helpful facts and suggestions on the admission process. Prof. Gerard A. Gilbride gave an inside look at the first year experience at BLS from the faculty perspective.

Deborah Ellis, chairperson of the Black American Law Student Association (BALSA) chapter at BLS spoke about the minority student's view. She described law school as requiring a lot of discipline, commitment, and hard work that in the end would prove to be useful and worthwhile.

The final speaker was a well-known alumnus of BLS, a former Congressman and former Deputy Mayor of New York City, Herman Badillo. Mr. Badillo, who graduated at the top of his class at BLS, pointed out that the practice of law was one of the few professions where a person might speak and act as they truly believed. He strongly emphasized the need for minority attorneys who understand and are responsible to their communities within a legal and political process that is becoming less and less responsive to the minority community.

After a brief question and answer period, everyone moved downstairs to the Student Lounge for refreshments and informal discussion. Virtually the entire BLS faculty participated in answering questions. Members of BALSA, Hispanic Law Student Association (HILSA), and Asian American Law Student Association (AALSA) made participants feel at home and provided encouragement, suggestions, and candid discussion of their law school experience.

Blacks, Hispanics, Asian Americans, and Native Americans currently make up about five percent of the total student body at BLS. As a point of comparison with other law school, Columbia and New York University currently have over twice that percentage while Rutgers Newark has over four times that amount.



## International Year of the Child

## Sweden Takes Swipe at Parents Who Spank Kids

Although 1979, the year proclaimed by the United Nations to be the International Year of the Child, has come and gone, issues involving children remain. Therefore, Justinian continues its series dealing with children and the law. The following article, written by a member of the Brooklyn Journal of International Law, is the third in this series. Mr. Rosenberg's views are, of course, his own and do not necessarily reflect the opinions of the Justinian editorial board or its staff.

By SAMUEL ROSENBERG

The legal guardian of a child is to exercise supervision over the child with due regard to the child's age and other circumstances. Neither corporal punishment nor any other degrading treatment is to be meted out to the child.

This is the English translation of the recent amendment to chapter six of the Parenthood and Guardianship Code of Sweden. Because of this amendment, Swedish children will be raised in a revolutionary way; they will not be spanked.

The Swedish legislatures, in an overwhelming majority, have decided that society can no longer tolerate violence as a method of child rearing. Violence teaches violence and is an unsuccessful means of raising a peace-loving child. Sixten Pettersson (Conservative Member of Sweden's Parliament) put it best, "In a free democracy like our own we use words as arguments, not blows. We talk to people, not beat them. If we cannot convince our children with words, we shall never convince them with a beating."

Although violations of the new law will be dealt with as an assault, the purpose of the law is not to punish parents. No penalty will be imposed on a parent inflicting corporal punishment of such a slight nature as to fall outside the legal definition of assault.

The law is used as an educational tool, encouraging parents to explain rather than hit. It is through mass education, not merely legislation, that the revolution in child rearing will take place. Parents must be taught what methods of child rearing are acceptable. They must be taught how to deal with the problems which lead to violence in the family. Such educational programs are already underway in Sweden, with plans to include such programs in the public schools.

The search for comparable laws in the United States has been a fruitless one. In fact, I have been unable to discover if children have any rights in our legal system.

In a 1971 Report to the President, Nora Klapmuts reported that "although adult rights have been specifically delineated in the law and Bill of Rights, children are still considered objects to be protected — indeed almost possessions."

One year later, in an article in the *Crime & Delinquency Journal*, Klapmuts noted that "children do not have any inherent rights. In fact, if one were to look for children's rights, one would find only the rights of children, one would conclude that children have no rights."

The question of whether children should have any rights has rarely arisen. As John Garvey stated in a 1979 article on *Children and the First Amendment*, "We are accustomed to thinking that the physical, mental, and emotional immaturity of children in some way makes them ineligible to possess rights."

It is such long held beliefs that have stifled our children and prevented them from assuming their rightful place as individuals. As recently as 1977, the Supreme Court in the case of *Ingraham v. Wright* held that corporal punishment in public schools need not be preceded by either notice or a hearing.

Ingraham testified that he was hit 20 times with a wooden paddle, and that, as a result, he suffered a hematoma which caused him to miss 11 days of school. Despite this testimony the Court stated that the student has no "liberty interest in avoiding corporal punishment administered within the limits of the common law privilege afforded teachers who reasonably believe their actions to be necessary for the child's discipline and training."

Thus, we teach our children that violence is the proper method to control behavior, and that the person in power is free to inflict such violence at any time and for any reason, as long as he declares that it is for the good of the victim.

The child learns that he has no legal recourse against school or family and that conflict with either form of authority results in humiliation, pain, or even imprisonment.

The ban on corporal punishment has given rise to new rights for Swedish children. The child who has been physically punished or has suffered degrading treatment from a parent, may report such treatment to the police or to any of Sweden's numerous social agencies.

In addition, Sweden has established the position of Ombudsman for the Swedish Save the Children Federation. The ombudsman seeks to protect the rights of children through information, investigation, placement, and recommendation.

Through this office of ombudsman, Sweden has created a nationwide spokesman for children. It was through the efforts of the ombudsman and agencies such as BRIS (Children's Rights in Society) that the harmful effects of violence on a child's life became a public issue.

On January 2, 1979, a new law went into effect which required the withdrawal of war toys from toy stores and warehouses. The culmination of the national attention on violence on the life of children was the new "anti-spanking" law.

The future promises greater rights for the Swedish child in areas such as custody. There are those who believe that the child, and not the parents, should be the main focus of custody disputes. It has been suggested that

since the child is the main subject of the dispute, the child should be a recognized legal party to that dispute.

Ulla Jacobson, in her article entitled *Child-Parent Relationship*, suggests that custody legislation should always consider the child first. She proposes the law read as follows: The child has the right to be in the custody of the person who is best able to provide love, understanding, stimulation, security and continuous care. This person is generally the child's biological parent but need not necessarily be so."

If we accept the idea that it is the child's interests, and the child's relationship with his guardian that are of paramount importance, then a transfer of custody to protect the child should be possible, even where the parents are not separating. This would lead to the legal right for a child to "divorce" his parents.

Just as a couple may not be suited to each other, so a child and parents may not be suited. In her book, *A Child's Rights*, Jacobson suggested the following legislation: Due to profound differences in personality or views between the child and his parents, the court can, at the child's request, remove the parents from custody and — if there is reason — assign custody to a specially appointed custodian.

Although Jacobson's view has not become law, it does represent a position that is growing in popularity. It need not become law (and it probably will not in the near future) to have a beneficial effect in custody proceedings. Swedish courts are becoming cognizant of the fact that it is the child's life and lifestyle that is of importance in custody battles.

## Union Defeated at BLS

By CHRISTINE SHORT

An election to determine whether or not clerical personnel at Brooklyn Law School would be represented by a union was held January 18. The union was defeated.

The election followed a decision by the National Labor Relations Board determining what persons properly be-

longed to the bargaining unit and thus were entitled to vote.

Four employees were disqualified from the unit although upon appeal two were allowed as challenge votes.

The union that attempted to win recognition at BLS was Local 1814 of the International Longshoremen's Association.

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## Dean's Tenure Lasts 2 Days

By MARY JANE HUSEMAN

Frederick R. Brodzinski, appointed Assistant Dean for Administration and Student Affairs on December 3, 1979, resigned from his position effective noon, December 4.

Assistant Dean Henry W. Haverstick III said that Mr. Brodzinski had informed the law school that, due to his wife's illness, it became necessary for him to find a job with more flexible hours and lighter duties. Mr. Brodzinski said that it would not be fair to either party for him to continue in his position, Haverstick stated.

Dean Haverstick said that the search for a replacement had already begun.

When reached for comment, Mr. Brodzinski would say only that his re-

signation was for "personal and family reasons. I am sorry that I could not have joined the staff."

## Trial Team Competes

Representing Brooklyn Law School in the Northeast Regional Round of the National Trial Competition were third year students Maxine Blake, Barry S. Jacobson, P.J. Dwyer, and David E. Waterbury. Faculty advisor was Prof. Stacy Caplow.

The two two-member teams competed on January 26, both winning their first rounds and losing their second. The competition, held in Minneapolis, was sponsored by the Texas Young Lawyers Association and The American College of Trial Lawyers.



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## Letters to the Editor

## To the Editor:

I would like to suggest a few small changes that might make life at Brooklyn Law School a little easier.

Addition of a clock in the lobby would eliminate the necessity of having to go into the library to see what time it is. (No bells ring on the first floor.)

Replacement of water fountains which only supply tepid water with fountains similar to the ones in the basement and on the eighth floor

which provide *cold* water.

Installation of *cold* water fountains in the library's basement and on the second floor. A thirsty researcher now has to travel two flights to reach the nearest cold water — a trip recently timed as taking approximately three minutes.

The walls of the stairs in the library have been in terrible shape all term. Why haven't they been repaired yet?

Tom Raffaele, 1D

## William O. Douglas, 1898-1980

By STEPHEN GANIS

It would be coy to suggest that the late William O. Douglas was a legend in his own time. A legal scholar, his soaring intelligence pierced through his Court opinions, his numerous lectures and his 19 books. A lover of this nation's principles and a believer in the good conscience of its people, he maintained an absolutist position on the First Amendment and used his own unquenchable thirst for personal liberty as a yardstick for measuring the rights of others. A strong-willed man, he was stubborn in his attachment to principle within a government ruled by compromise, and many of his concurring opinions were based on minor—some say petty—differences of interpretation of the law from that of the majority.

Known as the Court's "greatest liberal," Douglas ruled from the vantage point of not what we Americans are, but what we could become. Like most of his idealistic colleagues from the New Deal era, he was insistent on improving America and conforming it to a personal vision. His vision was a society which emphasized individual rights and opposed all government regulation except those attempts to regulate for freedom.

In his autobiography "Go East, Young Man," Douglas wrote this about freedom:

"The nation or the world can be smothered and controlled by a military-industrial complex or by a socialist regime or by some other totalitarian group. But in time the individual will rebel. Man, though presently enmeshed, will seek freedom in Russia and in Czechoslovakia, and just as he did in the Watts area of Los Angeles. The struggle is always between the individual and his sacred right to express himself on the one hand, and on the other, the power structure that seeks conformity, suppression, and obedience. At some desperate moment in history, a great effort is made once more for the renewal of individual dignity. And so it will be from now to eternity."

Douglas' enemies viewed him as un-American, and in 1971, at the behest of President Nixon, hearings were held in Congress to consider his impeachment. It was an unsuccessful attempt to remove Douglas from the bench but the "un-American" label was often used by his opponents.

It was an unfair characterization, for Douglas was truly in love with his country and enamored with its potential. He was passionate about the First Amendment, as exhibited by this concluding passage from his autobiography:

"In the oscillating movement of the planets man is a tiny speck—a microcosm. We seek truth, and in that search, a medley of voices is essential. That is why the First Amendment is our most precious inheritance. It gives equal time to my opponents, as it gives to me.

"I hope it is always that way in this great land, which, in spite of its shortcomings, is still the hope of mankind across the globe."

Douglas viewed the world from a steadfast position: the individual over the corporation, the individual over the government, and the environment over everything. He applied these principles religiously in his Court decisions.

Those who admired this set of preconceived notions will argue that in a broad sense there is room in our system for judges who promote a social vision and retain an unwavering ideology. However, this argument is a double-edged sword, as many of Douglas' admirers are well aware. To live by a Douglas, after all, one must be prepared to die by a Rehnquist.

What finally can be said in praise of Douglas' unprecedented 36 years on the Court which ended in 1975 was that he filled the giant shoes of his predecessor and idol, Louis Brandeis. Douglas once wrote this about Brandeis:

"There is in Brandeis a universal note. We can reach the moon and tap all secrets of the universe and yet not survive if we do not serve the soul of man. We serve the soul of man only when we honor individual achievements and respect individual idiosyncracies. We serve the soul of man only when a man's worth—not his race, creed or ideology—becomes our basic value."

This universal note, it is contended here, was also within Douglas. And, upon the falling of this mighty oak of a man, we share a sense of loss. It derives not from his death, for we can find solace in the fact that he lived and served us well for 36 years. Instead, we are saddened by the sense that no one has yet replaced him, and it is likely that no one ever will.

## Hell No, No One Should Go

President Carter urges Congress to consider reinstitution of military registration and is roundly applauded. Prominent political figures, both Democrat and Republican, bemoan the quality of military recruits. The armed forces indicate that recruiting officers are experiencing difficulty in achieving enlistment quotas. Can the demise of the volunteer military and the return of the draft be far behind?

We certainly hope not, though events and the spirit of the times tell against us. Return to the military draft system can be considered as nothing less than a step backward in the area of civil rights and a gross violation of basic moral concepts.

We cannot argue with the information generally available to the public indicating that the volunteer system, as presently administered, has not been entirely successful. But we can argue that not everything has been done to make military service attractive enough to encourage the quantity and quality of recruits desired.

Moreover, despite the inadequacies of a volunteer military, we object to the draft on both constitutional and moral grounds.

Although the Supreme Court has rejected the application of the 13th amendment to the military draft, we continue to believe that forced military conscription is involuntary servitude on its very face. Those who argue that persons refusing to defend their country will soon have no country to defend should themselves be the first to volunteer.

We are more drawn to the argument that if enough people refused to fight, war would suffer a rapid decline. Admitting that this theory leaves us open to accusations of dewy-eyed idealism, we move to more concrete considerations. What moral right does the state have to *force* individuals to leave their homes, families, jobs, interrupt their educations, to march off to kill other persons and offer themselves up to being killed? Even a peacetime draft causes serious disruptions that do not appear to us to be justified.

Are we to so easily forget the lessons of the sixties and early seventies — the friends in exile in Canada, the friends arrested for anti-draft activities, the friends who never came home?

We will stand aside and let the eager volunteers rush forward but we will not stand behind anyone and *force* him or her into the fray. We will recognize the right to choose; we will not condone coercion.

## Rude Awakening

Several students enrolled in the Evidence Seminar received a rude awakening when they arrived for class at 11:00 on Thursday of the first week of classes. The class, stated the notice on the door, was permanently rescheduled for Friday afternoons.

Many of us merely grumbled and scrambled to rearrange our lives to accommodate the change. A few of us had to drop the course.

Prof. Berger, who teaches the course, indicated that the change was necessary to allow her evidence students to take the course and that the administration was aware of the needed change in December.

We are affronted by the abrupt and tardy announcement of the rescheduling and the lack of consideration for students who, though having no class conflicts, had other important conflicting commitments, principally legal employment.

Although only a few students had to drop the course, one student irrationally inconvenienced is one student too many. The time to remedy this problem has come and gone; we can only urge that such inconsiderateness not be repeated.

## Planning Ahead

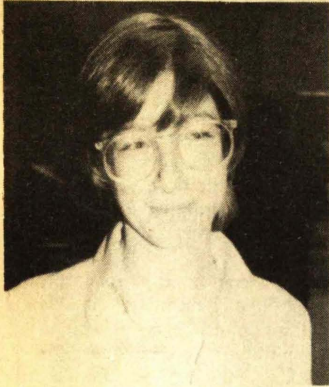
Believe it or not, the 1979-80 academic year is more than half over. Looking ahead to next year, the elective positions of Editor-in-Chief and Managing Editor need to be filled. Also required is some hardy soul to volunteer as advertising manager. Interested parties should contact our office as soon as possible to ensure that the transition from one editorial board to another is a smooth one.



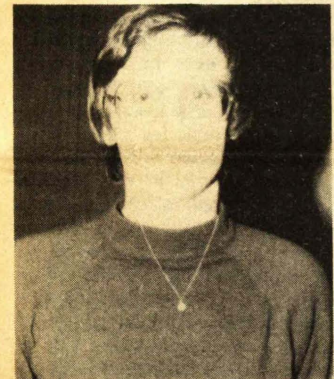
# Inquiring Photographer

By ARTHUR S. FRIEDMAN and  
CHRISTINE SHORT

*Students were asked how they felt about the possible reinstitution of the draft, whether women should also be drafted, and, if so, if they should serve in combat units.*



**Diana Melnick**, first year day, "I'm not thrilled about the draft. If it is reinstituted, women should also be drafted. However, social conditioning would prevent women from serving in combat units."

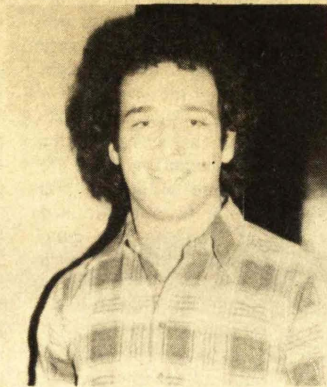


**Deborah Gillaspie**, third year day, "I'm not thrilled about the draft but I have no real objections to it. I think there will be constitutional problems if women are not drafted. As women cadets have proved at West Point, they are just as capable of performing combat duties as men."

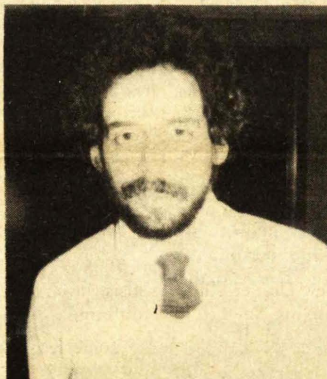


**Marvin Siegfried**, second year day, "I'm against the draft. There's no need for it presently and I consider President Carter's remarks to be saberrattling to get re-elected. If there is a draft, women should of course be drafted and there's no reason they should not serve combat duty."

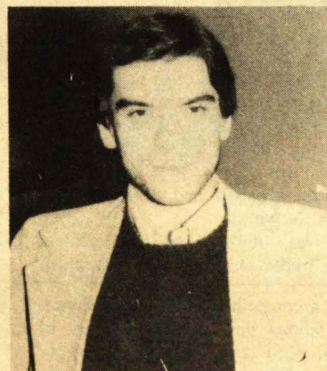
Published by Brooklyn Works, 1980



**Noah D. Cohen**, second year day, "It's a good idea; we couldn't mobilize quickly enough. I wouldn't go unless women are also called. Those women who are physically capable should go into combat."



**Stuart Zalka**, third year evening, "I favor registration as a symbol of military preparedness. Drafting women is the logical conclusion of women's advancement. As to combat, women should serve under exigent circumstances."



**Jonathan Fox**, second year day, "As an Army Reserve Officer, I'm in favor of the draft. The next major conflict will occur too suddenly to mobilize after it starts. Women should definitely be called up; it would improve the chances of the ERA. However, they should not serve combat duty."

## Supreme Court Summary

### Duress Defense Limited

*United States v. Bailey*, 48 U.S.L.W. (Jan. 21, 1980): The state of mind element of the crime of escape is satisfied by proof that an escapee knew his actions would result in leaving confinement without permission. Instructions on duress or necessity as a defense to a charge of escape are available only after testimony of a bona fide effort to surrender or return to custody as soon as duress or necessity has lost its force. The opinion was written by Justice Rehnquist.

In their dissents, Justices Brennan and Blackmun maintained that the escapee should be permitted to present to the jury the possibility that the harm caused by an escape and continued absence was less than the harm that would have been caused by remaining in a threatening situation or returning to custody.

*Brown v. Glines*, 48 U.S.L.W. 4095 (Jan. 21, 1980): Justice Powell wrote that regulations which require armed service members to obtain their commander's approval before circulating petitions on bases and which provide that the commander can deny permission only after determining that distribution will result in a clear danger to loyalty, section 1034, which forbids unwarranted restrictions on a serviceperson's right to communicate with Congress. The majority held that the statute protected only individual communication, not collective petitions.

Justices Brennan and Stevens dissented on statutory grounds. Justice Brennan also found the regulations breached the First Amendment because they impose prior restraints without procedural safeguards and did not precisely further government interest.

Justice Marshall took no part in the consideration of the decision.

*World-Wide Volkswagen Corp. v. Woodson*, 48 U.S.L.W. 4079 (Jan. 21, 1980): In the majority opinion, Justice White held that the mere likelihood that an automobile will find its way into a state or the fact that retail dealers and regional distributors derive financial benefits because a product is capable of use in a state does not subject the dealer or distributor, who released the automobile into the stream of commerce, to the *in personam* jurisdiction of that state's courts in a products liability action.

Justice Brennan's dissent called on the Court to accord more weight to the forum state's interest in the case and insisted that the actual inconvenience to the defendants should be explored.

Justices Marshall and Blackmun dissented on the basis that defendants chose to become part of a global network for marketing and servicing automobiles.

*Rush v. Savchuk*, 48 U.S.L.W. 4088 (Jan. 21, 1980): The Court's opinion by Justice Marshall held that the circumstance that a defendant's insurance company does business in the forum state does not provide a sufficient relationship among the defendant, the

forum, and litigation arising from an accident which occurred outside the forum state, so as to permit the forum state to constitutionally exercise *quasi-in-rem* jurisdiction over the defendant. The Court accepted the Minnesota Supreme Court's characterization of the statute involved in the case as embodying the rule of *Seider v. Roth*. However, the Court insisted that *Seider* actions are not the equivalent of direct actions against the insurer.

Justice Stevens dissented on the grounds that the statute was the functional equivalent of a direct action statute and that the Court was not faced with the "use of a *quasi-in-rem* judgment against any individual defendant personally." Justice Brennan viewed the statute as a direct action against the insurer and also observed that an insurer with offices in many states gave advantages to an insured and therefore it was unreasonable to read the Constitution as preventing the insured from being burdened by his nationwide insurance network.

*Tague v. Louisiana*, 48 U.S.L.W. 3464 (Jan. 21, 1980): Per Curiam. Testimony by an arresting officer does not overcome the presumption against a waiver of Miranda rights when it only includes statements that the officer read defendant his Miranda rights but that the officer did not recall whether he asked if the defendant understood the rights and that the officer couldn't say whether he determined if the defendant was capable of understanding his rights. Chief Justice Burger voted to hear oral argument. Justice Rehnquist dissented.

*Martinez v. California*, 48 U.S.L.W. 4076 (Jan. 15, 1980): A state statute which grants public employees absolute immunity from tort claims for injuries resulting from their decisions to release prisoners does not deprive a parolee's murder victim of her life without due process of law. A murder committed by a parolee five months after his release from prison is not state action.

*Vance v. Terrazas*, 48 U.S.L.W. 4069 (Jan. 15, 1980): In order to establish loss of citizenship the government must prove not only that the citizen voluntarily committed an expatriating act specified in section 349(a) of the Immigration and Nationality Act, but also that the citizen intended to renounce United States citizenship. Section 349(c), which requires proof of an intentional expatriating act by a mere preponderance of the evidence and provides for a rebuttable presumption that any expatriating acts are voluntary, does not violate the Fourteenth Amendment's citizenship clause or the Fifth Amendment's due process clause.

—G.F.

#### OFFER

I will pay 25 cents to anyone who can tell me a lawyer or judge joke that I haven't heard before and that makes me laugh.

Henry Mark Holzer



## Basketball Season Set to Open

By JACK HOLLANDER

It is now time for Brooklyn Law School's version of the National Basketball Association. Richard Milazzo, chairman of the intramural program, will play the role of Larry O'Brien. Mr. Milazzo has rented a gym from February 13 through April 28 on Monday and Wednesday nights. The gym is located in Junior High School 51, which may be found on Fifth Street and Fifth Avenue in Brooklyn. (The RR train stops nearby at Ninth Street and Fourth Avenue). This is the same gym that was used for last year's basketball league.

League games will be played on Monday and Wednesday nights, beginning February 25, between the hours of 7 and 10 pm. Each league game will consist of two 20 minute halves. In order to increase actual playtime time, foul shots will be accumulated and shot during half-time and, if necessary, at the end of the game.

At the present time, Mr. Milazzo is receiving the rosters from the various teams. Each team is required to pay \$5 per man in order to help subsidize the

cost of the rental which came out to more than anticipated. Any fees remaining at the end of the season will go toward purchasing trophies for the championship team. This is, of course, contingent on there being enough money for the trophies themselves.

Each team, along with handing in its roster and team fee, is to inform Mr. Milazzo as to which of the two nights they would prefer to play. Hopefully, the teams will divide equally with the same number requesting either Monday or Wednesday nights. This option is granted so that no one will be tempted to miss a night class due to a basketball game.

The only foreseeable problem will be making certain referees are provided for each and every game. In order to alleviate this anticipated problem, Mr. Milazzo will require each team to select one player to referee on a designated night. The penalty for noncompliance will be the forfeit of a game. Refereeing will have to be done without the incentive of compensation as the SBA prohibits paying students for such tasks.

## L.A.W. News

By LINDA STAGNO

Crowded into New York Law School's lounge were 180 lawyers, judges, elected officials, appointed government officials, high-level civil servants, law professors, and law students. All were women. All had come to share information, experiences, and expertise at the Metropolitan Conference on Women and the Law, held Saturday, February 2, 1980.

Like other law-related conferences this one was comprised of panels, speeches, a luncheon, and a wine and cheese reception. Unlike other law-related conferences, however, the issues which were being discussed were very controversial, very timely ones that directly affect one particular class of people — women.

Highly successful professional women had come to the conference not only to discuss salient legal issues; they also brought with them vast stores of knowledge, expertise and "savvy" about what it means to be a woman in law/politics/government today. The law students attended the conference to listen and to learn. They were not disappointed.

Congresswoman Elizabeth Holtzman (D. NY) opened the conference with an exhilarating and informative speech about women in government. While acknowledging that the numbers of elected women are small (e.g., 17 in the House of Representatives and one in the Senate), Holtzman illuminated the fact that the majority of legislation aimed at improving the economic and legal status of American women had been sponsored by women legislators. Here, she cited, among others, the Equal Pay Act, the Equal Credit Act, Title IX, and the Equal Rights Amendment. Clearly, Holtzman emphasized, more women are needed in government at every level in order to eliminate sexual discrimination and to

insure constitutional protection for all citizens.

The intellectual excitement sparked by Holtzman's speech was carried on throughout the day. Panels touched on a variety of important topics: Women in Government and Politics, Women's Health and Reproductive Rights, Employment Discrimination, Legal Careers, Child Custody, and Women in the Criminal Justice System. An impressive array of speakers who were both articulate and compassionate augmented the events.

In particular, the presentation by the Women in Government and Politics panel, which this writer attended, was superb. Four very distinct career areas were represented: appointed officials, the Hon. Linda Lamel, Deputy Superintendent of Insurance for the State of New York (an alumna of BLS); elected representative, Hon. Olga Mendez, State Senator; civil servant, Hon. Ann Thatcher Anderson; and seasoned politician/appointed official, Hon. Betty Schlein, Assistant to the Governor for Nassau County.

Each panelist explained the scope of her responsibilities, the difficulties and stereotypes which women in government and politics face and the rewards of working in the public sector. All of the panelists stressed the amount of power to influence public policy and social change which their positions afforded them. They, like Congresswoman Holtzman, encouraged the fledgling women attorneys in attendance to enter careers in public life.

For those who were more interested in "traditional" legal careers, several speakers addressed the topics of criminal prosecution, working for the Legal Aid Society, corporate law, and private practice. In addition, Judge Margaret Taylor, a dynamic justice sitting in Family Court of the City of New York,

## Court Jester

By DAVID ARONSON

His name was Treble Damages and he is said to have lived in the Great Northwest about a quarter of a century ago.

He was literally an accident of birth. His father (Punitive Damages) was driving along one day with his wife (Compensatory Damages), the former Compensatory Expenses and got involved in a car accident. Although Mrs. Damages was not pregnant at the time, she gave birth to a bouncing baby boy right there at the scene of the accident.

This miraculous birth was surpassed only by the events of the subsequent trial stemming from the accident. The issue of liability was quickly decided in favor of Mr. and Mrs. Damages, and the only question which remained was how much compensation the Damages family would receive for their injuries.

The jury made a preliminary assessment of \$10,000 compensation, but they couldn't figure out what amount treble damages should be. Since the jury had already determined that treble damages should be awarded in the case, the judge, who was similarly perplexed on the issue, invited the attorneys from both sides to come up with an appropriate amount of treble damages.

The attorneys argued for weeks on this question and no one seemed to know how to solve the problem. Then, on October 22, 1944, while the attorneys were still battling over the question, a tiny but determined voice could be heard repeating these words over and over, "Three times 10,000 is 30,000." A hush fell over a stunned courtroom as the still unnamed five month old child approached the bench for a consultation with the judge.

The child and the judge conferred with one another for approximately ten minutes, after which time the judge proclaimed, "Three times 10,000 is 30,000." Opposing counsel strenuously objected to the child's statement, insisting that the child forgot to preface his remarks with the salutation of "May it please the court" and claiming that this constituted reversible error.

The trial judge denied the objection and ordered opposing counsel to place his hands in his vest pockets for the remainder of his natural life. The order is under appeal although opposing counsel has been unable to remove his hands in order to sign the appeal papers and thus move the appeal forward.

It was, however, at this moment that Treble Damages was given (or

awarded) his name. Treble grew up to become a master at computing what amount treble damages should be in all cases.

Possessing no legal training whatsoever, Treble would hang around outside courtroom windows, wait until the issues of damages was before the court, and immediately shout out what the correct amount of treble damages in the case should be.

His voice had an almost hypnotic effect on judges and juries. Treble owns the distinction of never having had his amounts reversed by an appellate court. However, Treble was once subject to the humiliating experience of additur by a trial judge, "the most discouraging day of my life," Treble was often quoted as saying.

Standing roughly five foot six, Treble is best remembered in his familiar appearance: arms akimbo, a cheese blintz dangling from his mouth and breathing all the sartorial splendor humanly possible into a three piece leather leisure suit.

As a young man Treble moved to New York, where it is alleged that he supported himself for three years by becoming head waiter at a number of self service automatons.

It was also in New York that Treble Damages met his tragic end. His demise occurred as a result of the one mistake he ever made. It seems that one sunny afternoon in the spring of 1966, Treble fell asleep and woke up in the confused state of believing that the trial he was listening to when he fell asleep was still going on.

Unfortunately for Treble, the trial he fell asleep on was a civil trial and the trial he woke up to was a criminal trial. Treble woke just as the judge was sentencing Anthony (Big Tony) Peccadillo to 15 years for coercing the nation of Denmark into taking a second mortgage on his home, and in his confused state he shouted out, "Three times 15 is 45."

The trial judge, establishing a new legal precedent, utilized the concept of treble damages in a criminal trial and sentenced Mr. Peccadillo to 45 years in prison.

Ironically, Treble's greatest accomplishment ultimately resulted in his downfall. Shortly thereafter, he was found hacked to death by six unsharpened number two pencils.

They say that Treble Damages was buried back in his beloved Great Northwest. His tombstone simply bore the following: Here lies Treble Damages — a man in search of liability.

gave a compelling and compassionate talk about the decriminalization of prostitution and the treatment of women in the criminal justice system.

From the vantage point of a law student, the Metropolitan Conference on Women and the Law was clearly a success. For many participants, the conference provided a unique opportunity to "network" with other women attorneys — sharing bits of information,

exchanging ideas, meeting other influential professionals.

These same women served the very important and underrated function of acting as role-models for women law students. Perhaps most significantly, many already concerned feminist law students left the conference with renewed vigor having had a refreshing look at a too-often male-dominated legal profession.



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# Prof. Levy Joins BLS

continued from p. 1

in 1976 from Bryn Mawr College in Pennsylvania.

Ms. Forest was a member of the first graduating class of Cardozo School of Law, where she received her J.D. in 1979. Presently, she is studying for her masters in library science at Pratt Institute.

In her first year of law school Ms. Forest decided that she wanted to pursue a career as a librarian but, she said, she continued in law school because she believed her law degree would be useful to her in the future, especially if she were to work in a law library.

She worked in the Cardozo library throughout law school and gained experience in cataloging as well as in the technical services.

The Reference Librarian, said Prof. Levy, is in charge of determining and implementing all readers' services and policies. Basically, said Ms. Forest, this means she is responsible for everything involved with servicing the people who use the library. This includes being in charge of the circulation desk, fulfilling requests, and being involved in the rethinking of the physical layout of the library.

In line with the objectives of Prof. Levy, Ms. Forest said that she would like to make the library more livable, more useful and generally more accessible. She encourages people to ask questions and said she would welcome suggestions for how to make the layout

of the library more sensible to the user.

Both Prof. Levy and Ms. Forest said they would like to see the library get a little more automated. This would involve changing some of the technical processing systems used in the library. Prof. Levy said she is considering the use of computerized library processing systems.

In furtherance of her idea that the library should be selling information to its patrons, Prof. Levy said, "I would like to make certain that all reference people, including students, become more efficient in answering research questions and in assisting the community of users."

The role of the library staff is more than "merely pointing someone in the direction of a legal periodical or pulling a particular book from the shelf," she said, "but suggesting that people pursue another approach such as looking at the legislative history of a statute rather than reading a particular statute on its face; taking that extra step."

"As librarian and staff we should be involved in the day to day teaching of students," said Prof. Levy. The library can serve a role in teaching concepts and skills to students which will be invaluable to them when they graduate.

Prof. Levy has requested that a Lexis be installed and expects that one will be in place here at the beginning of March. "I believe it is imperative that students leave here with some sort of facility in computer data bases," she

*The Justinian*, Vol. 1980 [1980] Iss. 1, Art. 1 said, "The time is coming when most law firms will look askance at people who do not have a familiarity with Lexis or something similar."

Prof. Levy has also asked to get involved in the development of the basic legal research and writing program. "A full blown course in legal bibliography is not the answer, but should be an introductory part to any program which should be about the use of legal materials in general, as well as be an introduction to the particular collection of a particular institution."

"Any incoming class should be supplied with tours of the library, explanations of our card cataloging system, as well as information about some of our special collections, such as our extensive microfilm collection."

Prof. Levy also said that she would like to have representatives from particular reference services such as Commerce Clearinghouse to demonstrate the use of their service. "These people

are in the best position to explain how their services operate and why their services are alleged to be better than others."

When asked about her special interests Prof. Levy said that having studied International Law at the University of Cambridge in Cambridge, England, she, like her predecessor Prof. Djonovich, is very interested in International Law.

She indicated that she would hate to see the very good collection built by Prof. Djonovich diminish but did say that she will "probably curb my appetite because the material is expensive and some of it may be a bit esoteric."

Prof. Levy said she is also interested in medicine and the law and women and the law, and hopes to be teaching a course on Jurisprudence in the Spring of 1981.

Prof. Levy enjoys working with students and said she finds it stimulating to assist others.

## Evening Students Seek Moot Court Delay

By RICK HOWARD

On January 4 a petition was circulated among the first year evening students requesting that the Moot Court competition be delayed until a future term.

Thaddeus McGuire, first year evening SBA representative, reported that approximately 75 percent of the class has signed the petition which is expected to be submitted to the administration by February 6th.

Mr. McGuire noted that it is primarily the difficult course load carried

by first year evening students which is responsible for the request for delay.

"We all look forward to participating in the very worthwhile experience of moot court. However, we wish to do so when we have the time and opportunity to appreciate it more fully."

He emphasized that, "We do not wish to avoid this requirement, only to take part in it at a time we can devote more time to it."

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