The Justinian

Volume 1980
Issue 2 *March*

Article 1

1980

The Justinian

Justinian

"To a man possessed of the higher imaginative powers, the objection to legal studies is the amount of detail which they involve. . . . Still, it is a great pursuit."
(Mr. Micawber in *David Copperfield*)

VOL. XL | Friday, March 14, 1980 | No. 7

National Team Selected

The National Moot Court Team for 1980-81 was selected on February 27. From left to right: Carrie Teitcher, Elliot Schaktman, Susan Sternberg, and alternate Sidney Dvorkin.

Where To Go and What To Do at Criminal Court

By RICHARD PETTY

Part One: 120 Schermerhorn Stre
(Criminal Court Building)

One of the advantages of attending Brooklyn Law School is its proximity to many state and federal courts, most within walking distance. In the hope that students may avail themselves of the opportunity to observe the functionings of these sites of future income-producing activity, we will provide suggestions for the most productive use of time.

Many of the court parts at 120 Schermerhorn Street are devoted to calendar-type activity for the myriad of cases awaiting disposition. Such activities include assignment of counsel, bail motions, arraignments, plea bargaining, and setting return dates. Usually anything of interest is done in a bench conference, out of the audience's earshot. The balance of activity consists of waiting, and this is usually best left to those who get paid for it. We assume little student interest in the calendar parts and suggest avoidance.

On January 2, 1980, the Supreme Court parts at 120 Schermerhorn were realigned to provide for two parts (called complexes) to do all the calendar work and twelve parts to do only felony trials. When as case is moved to trial it is sent to one of these twelve parts. These active trial parts are on the second floor (part 19), third floor (parts 21, 23, 25, and 26) fourth floor (part 30) and the tenth floor (parts 20, 22, 28, 32, 36).

Once a felony case is moved to trial, pre-hearings are conducted in the trial parts prior to jury selection. Often these hearings turn out to be the most crucial stage of a particular trial. An indictment may be dismissed or a plea taken depending on whether certain evidence or statements are ruled admissible or not. The case law developed out of these hearings has given rise to the nomenclature for the various procedings, thus "Huntley" hearings (statements), "Wade" hearings (identification), and "Sandoval" hearings (past criminal record).

The student who observes the pre-trial hearings and returns for the trial is in a unique position to see how the outcome of a trial is affected by pre-trial procedures. An interesting exercise is for the student to assume mentally the roles of the various participants as their strategies unfold. The advocates' behavior during hearings, before a judge, can be contrasted with their demeanor in selling their case to a jury. This function of an attorney as performer cannot be taught in school.

Finally, it is suggested that one not anticipate a great amount of courtroom activity on Friday afternoons, the day before a holiday, or lunchtimes. Prime viewing times are from 10 am to 12:30 and from about 2:00 until 4:30 pm.

Hopefully, a positive exposure to courtroom activities will not only prove rewarding when we *must* eventually go to court but will provide a richer understanding of courses and cases now being studied.

Berger, Christ Detail ERA Ratification Drive

By CHRISTINE MALLOY

In New Jersey, if a husband dies and leaves no will, title to all real property in his name alone, including the family residence passes to the children rather than the wife.

In South Carolina, a husband can make a will excluding his wife completely while he can leave one fourth of his estate to his mistress and his illegitimate children. At the same time, the wife can forfeit the right to take under a will if she's guilty of any "misconduct."

In Alabama, a man who intentionally kills his wife cannot be convicted of homicide, only of manslaughter which bears a significantly less severe penalty (one to ten years).

These are only a few examples of the injustices that are embodied in state laws today. These and others were presented to 50 Brooklyn Law School students (men and women) Tuesday, Feb. 26 by June Christ, Chair of the ERA Task Force of NOW — New York State. Prof. Margaret Berger acted as legal expert.

Ms. Christ began the ERA Update by reading the proposed 27th Amendment. It states:

I. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

II. The Congress shall have the power to enforce by appropriate legislation, the provisions of this article.

III. This amendment shall take effect two years after the date of ratification.

It is one of the shortest proposed amendments on record. It simply calls for an end to any form of legal discrimination based purely on a citizen's sex. It has no effect on the previously established Constitutional right to privacy so it will not interfere with family relationships. Nor will the ERA mandate unisex toilet facilities, as some misguided but vocal opponents would have us believe.

The ERA was first introduced in Congress in 1923 and every year since then until it was passed by the House in 1971 and by the Senate in 1972 by overwhelming majorities. However, in order for an amendment to become part of the Constitution, it must be ratified by three fourths of the state legislatures.

As of today, 35 of the necessary 38 states have ratified the ERA. Three more must ratify it by June 30, 1982. The states which have not ratified it are: Alabama, Arizona, Arkansas, Florida, Georgia, Illinois, Louisiana, Mississippi, Missouri, Nevada, North and South Carolina, Oklahoma, Utah, and Virginia. Ms. Christ noted that these are largely the same states which blocked the Civil Rights Movement and in particular the 19th Amendment (granting suffrage to women). Mississippi to this day has not passed the 19th Amendment.

The original deadline, March 30,

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CROWD SCENE . . .Due to the illness of Prof. Robert Habl, Prof. Leon Wein now teaches Property II to combined sections 1 and 2 in the smoking room of the library.

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International Year of the Child

Who's Watching the Kids: The Story of

The following article is the fourth in a series dealing with children and the law. The author's opinions are, of course, her own and do not necessarily reflect the views of Justinian. For various reasons some names have been changed.

By SUSAN M. KARTEN

Bertha Taylor's kids have been waiting for two hours to see their mother. Family Day at Bedford Hills Correctional Facility is rare enough to make the wait worthwhile. It's true that this isn't the only occasion that they can see their mother, but Family Day is special — it only happens four times a year.

The administrators at Bedford, the largest women's facility in New York State, probably wouldn't want it to be any more frequent than that. After all, between seventy to eighty percent of the prisoners are mothers, and Family Day is when most of their children show up. The volume of work this represents probably accounts for the misplacing of the authorization for the Taylor children's visit.

Finally the papers are found, the gates swing open, and the Taylor children follow the familiar route to the open prison courtyard where their mother has spent most of the day watching other women greet their children. Johnnie and Billie Taylor run up to hug their mother. The embrace is brief. After all Bertha wants to see if her children have changed since she saw them last.

Two benches down from the Taylor family sits Arlesha Davis. She remembers the first time she saw her child in prison. It would be tough to forget the day the child was born. Shawanna won't be coming back to her birthplace today. Arlesha hasn't seen her for six months. Like any other prisoner it's hard for Arlesha to endure these forced separations. Enough frustration can lead a woman to take drastic action. The extra time Arlesha is serving is for just such action.

Arlesha was pregnant when she first came to Bedford. In her sixth month she was moved to the prison nursery. Arlesha wasn't all that happy about being in the nursery. She had the strange idea that her child's first glimpse of life should not include peeling paint and roaches. At least New York state law would let her keep her child for a year and a half. There was no way she could predict the treatment her child would get during those eighteen months.

Arlesha was taken to a local hospital to give birth and immediately returned to the prison. But soon after that birth the baby began a series of visits back to the hospital. She was a frail baby; early on she suffered a staph infection. Later she had to be treated for radiator burns. Nobody seemed sure how the burns happened. Arlesha couldn't be with her child all the time.

At night the mothers are locked in their cells while the babies sleep in a corridor of cubicles. A night count is taken of both mother and child. When the child was eighteen months old Arlesha was torn; sad to see the child leave, but happy to see her leave that place. Arlesha had been assured by the New York City Bureau of Child Welfare that Mrs. Martinez would give child a good home.

Arlesha didn't start to get worried until the visits stopped. When Mrs. Martinez stopped bringing Shawanna to Bedford to see her mother, Arlesha began using her spare telephone privileges to get in touch with Mrs. Martinez. The other adults who answered the phone always said Mrs. Martinez was out of the house. The police never called Arlesha back. Child welfare said they would look into it. They never called back either.

Twenty days before Arlesha's release from prison she got a three hour furlough and went to the Martinez house to see for herself. The guy who answered the door offered to sell her "coke or grass." She wasn't buying. She brushed by him to find her baby in soiled diapers on a dirty mattress. There was a gash over her eye. It was easy to see that there might not have been time for any of the four or five adults in the house to care for the baby. Arlesha found out they had ten other children to worry about.

Arlesha wasn't leaving her baby there. She called the prison to try to extend her furlough so she could make arrangements for her child's care. Prison authorities at Fulton Correctional Facility, where she was serving out the final days of her sentence, said the eye gash was just an accident and she would have to come back and leave the child with Martinez. Arlesha decided that if they weren't going to extend her furlough, she would.

Arlesha and her baby were together for twenty months before she was found and arrested again. It was while she was on the run that Arlesha found out her child was anemic and had a heart murmur. When Arlesha was sent back to prison she left her baby with her mother-in-law. In the last six months, Arlesha has only seen her child once. Her mother-in-law is 70 and can't make the trip to Bedford as often as they would like. The child is not used to being without her mother and complains bitterly. But a child's complaints are not always heard by the State of New York. No one from child welfare has checked out the new living arrangements.

It's hard to find out how many women are in situations similar to that of Arlesha. Prison officials are not currently required to maintain statistics on the number of women in prison who have children and where those children are. Neither is the Department of Social Service. But a generalized picture can be drawn.

Most prison mothers are single and the sole guardian of their children. There aren't many options open for a mother placed under arrest. Most of the time she doesn't know how long it will be before she can return to her children, and there isn't a great deal of time available to prepare for the child's care. Foster care is not a popular choice. Most mothers would rather leave the children with relatives than with strangers. Especially if the strangers turn out to be like Margaret Toomer.

Margaret was a practical nurse and a friend of Gayle Barnes. When Gayle was arrested and sent to Bedford she asked the Department of Social Services to place her two children with Toomer. As a nurse, Toomer had the training to care for baby Robyn who had an open spine condition. The other child, John Outlaw III, was a normal four year old and shouldn't have presented any problem. Besides, if the arrangement was too much for her, Toomer could surrender the children to the State at any time. Of course, that would mean giving up the monthly allowance she received for taking care of the children; $150 each plus clothing added up to nearly $400 a month. It seemed like a good situation. Both Gayle Barnes and Margaret Toomer were satisfied and it was very convenient for the Department of Social Services. With Robyn's condition, it would have been tough to place her.

The children entered the Toomer's home in the fall of 1977. The placement physical exam showed the children to be in fine condition. By the spring of 1978 John Outlaw III would be dead and Margaret Toomer would be charged with murder.

In January 1978, John Outlaw III made his first trip to the hospital. His broken arm led a hospital social worker to begin looking into the possibility of abuse. Toomer said he falls a lot. That is the same thing she said on March 1 when he was brought to the hospital for a check-up on his arm. Doctors noticed that John had a limp. X-rays revealed a broken leg that had been healing without treatment for two and a half weeks. Five days later the Nassau County Protective Services Division of the Department of Social Services sent a worker to the Toomer home. The worker took Toomer's word that the child had been abused before entering Toomer's home and did not bother to check the placement physical. That exam showed no signs of abuse.

continued on next page

Costs of legal education soar

The cost of making a lawyer goes up every year. The most visible costs, tuition and textbooks, have gone up between 15-25% over the last three years and in the next three years the rate of inflation could easily add another 30%. At the same time, the "incidental" but necessary expenses for transportation, study aids and bar review courses are rising at the same pace.

While it is encouraging to know that salaries for starting lawyers are also going up (some major firms are reportedly paying top graduates in excess of $30,000 per year), this fact does not make getting through the rest of law school any easier. The Josephson Center for Creative Educational Services (CES) and Bar Review Center of America (BRC) have developed a program to deal with these rising costs. With a group they call NAFI- (National Alliance to Fight Inflation), the combined buying power of first and second year students and the value of a predictable enrollment base have enabled the companies to offer a package of benefits which permits law students to get a substantial discount on necessary study aids and, at the same time, roll back the tuition costs of bar review.

Students who enroll in a 1981 or later BRC review course before March 21, 1980 (the student may transfer in the senior year at no cost to *any* BRC course in the country) and pay a $50 non-refundable deposit will receive over $100 in outlines, tapes and discounts, a continuous 10% discount on publications of CES *and* roll back the course price to 1979 prices.

The written materials include four new unmarked BRC Law Summaries in Contracts, Criminal Law, Criminal Procedure and Torts in the first year and a new set of four outlines in the second year. The CES discounts include two 50% coupons on tape sets (worth up to $30) *and* a 10% Preferred Student Discount Card entitling the early enrollee to cash discounts on CES purchases throughout law school.

Students who only wish to freeze the bar review course price may do so by a $25 non-refundable deposit.

Josephson Bar Review Center of America, Inc.

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Imprisoned Mothers and Their Children

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In April, Protective Services Supervisor Reva Tyree went back to the Toomer home. A neighbor had complained that Toomer was mistreating John Outlaw. Toomer said the child was at school attending a headstart program and repeated her assertion that he falls a lot. Tyree left without checking if John was actually at the school. He wasn't. He had never been enrolled in the program. On May 23, caseworker Joan Lucien responded to another abuse complaint lodged by neighbors. In later courtroom statements Lucien said that she had undressed the child in front of Toomer and saw no signs of abuse. Five days later John Outlaw was dead.

On May 28, Nassau County police officers responding to a call, proceeded to the Toomer home. There they found the battered body of John Outlaw III. He was listed dead on arrival at the Nassau County Medical Center. Doctors found John had thirty small scars that seemed to be nail marks, a self-healing broken leg, numerous cuts and bruises around his body, including three on his face, two black eyes, a lacerated lower lip, a cerebral concussion, and eleven adult bite marks in different stages of healing. When Margaret Toomer was arrested Robyn Barnes was still in the house and seemed to be well cared for.

Less than a year after John Outlaw's death, Margaret Toomer's jury took seven hours to decide the case and convicted Toomer of criminally negligent homicide. The jury felt so strongly about the case that after the trial they took the unusual action of meeting with the press. The jurors said the Department of Social Services had been completely remiss in this case and that if they had done their job, John Outlaw III would be alive today. Margaret Toomer is now serving her sentence at Bedford Hills. Toomer's own children are allowed to participate in Family Day.

Jack Solerwitz is a Nassau County attorney engaged on behalf of the estate of John Outlaw Barnes III. The estate is seeking over 50 million dollars in damages from Margaret Toomer, the Nassau County Department of Social Services, the County of Nassau, and the State of New York. Solerwitz agrees with the Toomer jury and prosecuting district attorney, Edward W. McCarty when they say that the Department of Social Services shares in the guilt for John Outlaw's death.

"I can't separate the two. I can't say that Mrs. Toomer was more to blame than the county. They were both equally guilty. Mrs. Toomer may have been crying out for help subconsciously and the county should have done their job and recognized it. The jury convicted them (Department of Social Services) without them being there," he says.

By including New York State and Nassau County in the suit, Solerwitz recognizes that they are responsible for insuring that the agencies charged with the care of children of prison inmates work effectively towards the best interests of those children. When contacted, the Department of Social Services refused to discuss either the Toomer case or the pending law suit.

All of this illustrates a pressing problem that has already been recognized by several states. Those states are experimenting with progressive programs that will give mothers in prison more control over their children's destiny.

The Pleasanton Federal Correctional Institution in California is working with the Pleasanton Children's Center Program on just such a program. The Center is a special place inside the prison where mothers and children can play and learn together in a supportive, educational environment.

The Center is open each weekend during regular prison visiting hours. Under the supervision of a certified teacher, inmate-mothers and their children participate in a parent-cooperative school program. The program also reaches out to the local community to find homes for prisoners' children. This way inmates can work with prison staff and local welfare officials to secure quality forster care.

A recent visit to the Pleasanton facility demonstrated a strong contrast to the situation that exists at Bedford Hills. In Pleasanton, prison mothers are given the opportunity to maintain and strengthen their family ties. "It's a place where mothers and kids can be together in a warm and stimulating environment," says Louise Rosenkrantz, the Center's director. New York State Department of Correction officials acknowledge the need for such programs here, but up to this point no such programs have been implemented. Meanwhile the problem gets worse as the women's prison population grows.

It's Family Day at Bedford Hills Correctional Facility. Two of the inmate's children are playing together in the familiar surroundings of the courtyard. They share a common situation and a common child's curiosity. They ask each other the usual questions.

Turning to the other, one asks, "What's your mom in for?"

Justinian

Published under the auspices of the Student Bar Association
BROOKLYN LAW SCHOOL
250 Joralemon Street, Brooklyn, NY 11201
Telephone: (212) 625-2200 Ext. 50

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Editorials express the opinion of the Editorial Board

Reshelve it for Chris, Part II

Apparently nobody reads our editorials. Or at least nobody takes them seriously. Or maybe those of you who never reshelve books in the library can't read. Especially the signs in the library that say PLEASE RESHELVE YOUR BOOKS.

We've gone into this before in this very forum. You don't like to be preached at; we, believe it or not, don't like to preach at you. But we continue to get complaints on the issue so we're bringing it up again.

Exercise a little courtesy. Reshelve your books. For those of you who do but notice others who don't, speak up. Don't tell us; tell the inconsiderate jerks who are making life (and research) difficult for all of us.

Editors' Jobs Up for Grabs

Elections for the positions of Editor-in-Chief and Managing Editor of *Justinian* for 1980-81 will be held on Wednesday, April 16 at 1:00 pm in the *Justinian* office (rm. 304).

These positions are open to all students. No experience is required. Anyone may nominate him/herself or another by leaving name and mailbox number at our office. Current staff members and the Editorial Board will be eligible to vote.

The election is being held early so that the new editors may assist in the preparation of the final 1979-80 issue, to be published in May.

If no students come forward, *Justinian* may not be published next year.

Supreme Court Summary

Snepp: Mum's the Word

Snepp v. United States, 48 U.S.L.W. 3527 (Feb. 19, 1980): Per Curiam. Although the only remedy mentioned in the agreement is termination of employment, a constructive trust is impressed on all earnings from publication of either classified or unclassified material which breaches an agreement never to publish any information about the Central Intelligence Agency. Execution of such an agreement is a condition of employment by the agency.

The government may also recover punitive damages without having to prove that defendant intentionally deceived CIA officials into believing he would abide by the agreement.

Justices Stevens, Brennan, and Marshall dissented, arguing that government censorship is limited to excising classified material. Therefore, the dissenters found no illegal profits.

The decision was made by the Court without formally granting a review or hearing arguments. The publication in question was an account of the fall of Saigon. Language in the majority opinion suggests that an employee's duties and access to confidential sources and materials could establish an enforceable fiduciary obligation even without an explicit agreement.

Committee for Public Education and Religious Liberty v. Regan, 48 U.S.L.W. 4168 (Feb. 20, 1980): The First Amendment's Establishment Clause and the Fourteenth Amendment do not prohibit state statutes which authorize funds to reimburse church-sponsored schools, among others, for administering and grading state prepared tests, and for reporting and recordkeeping required by state law.

Justice White wrote the opinion which upheld the New York statute. Justice Blackmun wrote a dissent which was joined by Justices Brennan and Marshall.

Village of Schaumburg v. Citizens for a Better Environment, 48 U.S.L.W. 4162: A municipal ordinance which prohibits door-to-door or street financial solicitations by charitable groups that do not use at least 75 percent of their receipts for non-administrative charitable purposes is unconstitutionally overbroad in violation of the First and Fourteenth Amendments.

Justice White delivered the Court's opinion which stated that regulations of solicitation of financial support must give due regard to the reality "that solicitation is characteristically intertwined with informative and persuasive speech . . . and that without solicitation the flow of such information and advocacy would likely cease." Justice Rehnquist was the only dissenter.

Whirlpool Corp v. Marshall, 48 U.S.L.W. 4189 (Feb. 26, 1980): The Occupational Safety and Health Act authorizes the Secretary of Labor to issue regulations that permit employees, who believe that no less drastic alternative exists, to refuse to perform tasks which they reasonably believe may result in death or serious injury. Therefore §11(c)(1) of the Act prohibits an employer from discharging or discriminating against employees who exercise that right.

Justice Stewart wrote for a unanimous Court.

NLRB v. Yeshiva University, 48 U.S.L.W. 4175 (Feb. 20, 1980): A judicially implied exclusion of managerial employees from the benefits of collective bargaining under the National Labor Relations Act extends to a university's full-time faculty who absolutely control academic matters, course offerings, scheduling, teaching methods, and grading policies; and who effectively decide which students will be admitted, retained, and graduated; and who occasionally determine student body size, tuition, and school location.

Justice Powell wrote the majority opinion which upheld a decision of the Second Circuit. Justice Brennan joined by Justices White, Marshall, and Blackmun dissented because he viewed the NLRB's contrary determination as "neither irrational nor inconsistent with the Act."

Boeing C. v. Van Gemert, 48 U.S.L.W. 4127 (Feb. 19, 1980): Attorneys' fees in class actions may be based on the entire common fund created by the judgment including the unclaimed portion. The losing party's latent, colorable claim to unclaimed funds "may not defeat each class member's obligation to share the expenses of litigation."

Justice Powell wrote the majority opinion which upheld a decision of the Second Circuit. —G.F.

Letters to the Editor

To the Editor:

How about a suggestion and debate column — an outlet for extra-legal or law school related thoughts?

For example: What I learned from an ordeal humorously titled "Legal Research" was how to play the library Xerox for fun and profit — but not a single technique of legal writing. Why wasn't I shown a sample or model research paper? I learned there was a right way to compose answers to legal essay questions after the exams were over. When did legal education become "hide and seek" with basics "playfully" concealed until retrieved by students with little time or energy left to learn? Serious consideration should be given by the curriculum committee to revamping this horror into a legal writing (dash, legal research) workshop much needed and presently unavailable.

What's a student to do when she craves discussion of political, moral or philosphical currents in jurisprudence — an arcane pursuit admittedly, but also not available during class hours. It's hard to admit before an assemblage of SBA students, for example, that you really want to discuss legal esoterica (forseeably, without practical utility!) rather than who should type the "let's evaluate ourselves" forms.

Don't misunderstand; I'm as concerned as the next person about the temperature of the water in our fountains. But a great deal of the law being pitched seems top-heavy with tacit politics and I'd like to know if any of you generate similar thoughts or also want to express your frustrations.

Justinian could perform a valuable service by giving students space who would like *feedback* on issues that affect us all — and for which no forum now exists.

See? I feel better already. Thanks.

Marcie Waterman, 1D

To the Editor:

Piggishness seems to be becoming the "in" thing at Brooklyn Law School. Empty coffee and soda cups and candy wrappers decorate school phone booths, lounge furniture, classrooms, cafeteria tables and library carrels ("No eating in the library" notwithstanding).

Piles of books are left in the library Xerox rooms. Many more books are left scattered throughout the library, left to find their own way back to their proper places on the shelves.

This piggishness is not so much a deliberate effort as it is a carelessness of the needs of others. Many of us "others" are annoyed and angered at such carelessness. It is inappropriate anywhere, it is particularly inappropriate here. Please stop.

Name Withheld

To the Editor:

The recent hiring of additional library personnel, thereby permitting direct access to the basement level of the school library, is greatly appreciated. The basement level of the library is an attractive and comfortable place in which to study, and the now easy access to phones, water fountain, lockers and cafeteria is a great convenience and time saver. Those responsible deserve our thanks.

Name Withheld

Recission Looms as Obstacle to ERA Ratification

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1979, was extended 39 months by Congress last year. The extension was proposed by two women law students via New York Congresswoman Elizabeth Holtzman. Two Supreme Court cases, *Dillon v. Glass,* 256 U.S. 368 (1921) and *Coleman v. Miller,* 307 U.S. 433 (1939) declare Congress' power to make reasonable deadline periods for ratification from which it has been construed that Congress can extend that time for a reasonable period of time, "so long as the social, economic and political conditions which give rise to the amendment still exist."

Last year, 12 states introduced bills to rescind their ratification but later defeated them. Three states passed formal recissions of the ERA: Idaho, Nebraska and Tennessee. The Kentucky legislature's recission was vetoed by the Lieutenant Governor. In South Dakota, the legislature did not formally rescind, but because its ratification was contingent upon passage of the ERA by the original deadline which has now passed, it has arguably been rescinded.

Although the Supreme Court has never ruled on a specific recission question, they have recognized that Article V of the Constitution empowers Congress, not the courts with responsibility for the "mode of ratification" of amendments. In the three historical precedents where individual states attempted to rescind their ratification of an amendment (e.g., New York of the 15th Amendment) Congress has refused to recognize it.

Many of the recission and extension issues are being rasied in a case presently before Judge Marion Callister in Idaho. Judge Callister is a former leader of the Mormon Church, a group which has taken a strong stand against the ERA and has recently excommunicated a member, Sonia Johnson, who founded Mormons for ERA. During the course of the proceedings, Judge Callister has consistently denied pro-ERA legislators the right to submit *amicus curiae* briefs and to be granted intervenor status while he has allowed anti-ERA legislators the latter privilege. The U.S. Justice Department, after moving that Judge Callister remove himself from the case because of these circumstances, has abandoned the issue entirely.

As Ms. Christ pointed out, the effect of this inaction by the Justice Department is to force the pro-ERA people through the slow process of appeal in an election year with the ERA deadline fast approaching.

In the past year, Georgia (President Carter's state) defeated the ERA as did Missouri, where it may come up for a vote again this year. In Virginia, the vote was 19-20 in favor of the amendment, but 21 votes were required for passage. Across the country, opinion polls show that a majority of Americans believe that all citizens are entitled to the same rights under the Constitution yet the historically more conservative state legislators appear to be listening to the well-organized, well-financed, and more emotionally outspoken minority.

NOW Representative June Christ and Prof. Margaret Berger explain the need for the Equal Rights Amendment.

A number of states have an ERA to their own constitutions. Illinois, for example, (ERA opponent Phyllis Schlafly's state) has a state ERA although it has not ratified the federal ERA. New York's proposed state version was defeated in 1975, again by a well-organized minority. New York, however, has passed the federal ERA.

Ms. Christ explained that we need an ERA because women are not a protected group under the Constitution. When drafted, the Bill of Rights was never intended to include women any more than slaves. Both groups were considered to be property. Women had no rights over their children or their own property. In every way, their rights existed only in relation to their men.

In answer to the question of why the 14th Amendment is not enough, Ms. Christ explains that although it addresses the equal protection under the law of "all persons," the courts have not consistently interpreted it to provide equal rights for women. Consider the *Vorscheimer* case. A gifted math and science student was denied admission to a largely publically funded high school with a strong science department, solely because she was the "wrong" sex. In 1977, the Supreme Court refused to review and the lower court did not apparently see the parallel between this case and *Brown v. Board of Education,* 347 U.S. 483 (1954), where the Supreme Court held that "separate but equal" is not equal so far as race is concerned.

The problem gets down to the fact that the Supreme Court has been unwilling to classify gender as a "suspect classification" and therefore, laws which discriminate on the basis of sex are not given the close scrutiny that racially discriminating laws have been given. Prof. Berger reminded us that being a "suspect classification" means that the state has the burden of showing that there is an overwhelming state reason for discriminating on these grounds and that as recently as the 1940's the Court has required only a "rational basis" for discriminating between the sexes.

Since then, the equal protection standard has risen to a somewhat higher "middle tier" of analysis for laws discriminating on the basis of gender. The state must now show at least some valid state purpose is served by the law; however, the burden of proof still remains on the person claiming that the law is unconstitutional. The ERA would make laws which discriminate on the basis of gender subject to the "strict scrutiny" tests; sex would become a "suspect classification."

As it stands now, the Constitution in effect allows the government to discriminate against people on the basis of their sex. It allows men and women to be deprived of equal pay for equal work, of equal old age and insurance benefits, of equal access to training and financial opportunities and of unequal treatment in the areas of contracts and wills, inheritance taxes and control of one's own property.

Many of these sex discriminating laws are actually unconstitutional even without an ERA; however, to be declared so, requires that someone bring a lawsuit. This puts the burden on the people with the least money, time, and knowledge to start lengthy and emotionally draining lawsuits to acquire equal protection under the law. The ERA will change this. The ERA will put the burden on the states to bring their laws up to the Constitutional mandate for equality.

Ms. Christ emphasized that the advantages the ERA will bring to our society will be felt by men as well as women. Recent demographic reports show that today, men are exclusive breadwinners in only 10 percent of American families and that the majority of women work outside the home out of need, not choice. Women, however, are only making 59 percent of the salaries that men comparably make. Under these circumstances, it is to men's advantage to have their wives get paid 100 percent of their worth instead of only 59 percent.

Ms. Christ suggested that *all* people will eventually be affected by the injustice of a sex-discriminating law either directly or through a friend, sister, or mother, unless the ERA is passed by three more states by June 30, 1982.

In addition to the above information, much of which was elicited from the speakers by questions from the audience, much attention was given to the emotionalized media tactics of the opposition. For example, anti-ERA spokesmen attempt to make the ERA one and the same issue as abortion and gay rights, which are two totally distinct and emotionally charged issues.

Both Ms. Christ and Prof. Berger criticized these tactics and emphasized that the fears on which the opposition plays are unfounded. For example, women will not lose the benefit of protective labor laws but these laws will be extended to men. It is only the law which does not protect women so much as it restricts women's chances for advancement that will fall under attack. (See the Citizens' Advisory Council's interpretation of the Senate Judiciary Committee's report on the impact of the ERA).

Nor will women lose their rights in the areas of alimony, child custody or child support, such as those rights are. The fact is that in most cases women don't even ask for alimony and that is awarded in only half of those cases. Furthermore, 62 percent of all husbands default during the first year of court orderd child support, while 42 percent never make any payments at all. Moreover, with or without the ERA, the trend is for courts to award custody primarily according to the best interests of the child, not the sex of the parent.

Similarly, it has always been the right of Congress to register and draft women. The ERA will not change this, it will only assure that women will share equally in the benefits of U.S. citizenship before they are asked to bear even more of its burdens.

Finally, the ERA will not force anyone into a lifestyle she does not want or into a job if she would rather stay at home. It will only grant more fair treatment to women who either choose to work or who can't afford to stay at home.

What can you do to help get the ERA ratified? You can lend your time and money to organizations like NOW who actively support passage of the ERA in the unratified states. You can write the President and the Justice Department letting them know that their failure to remove Judge Callister from the Idaho case was improper, unjust and will hurt them politically. You can urge organizations of which you are a member to pass a resolution supporting the boycott of states which have not yet ratified the amendment and inform NOW of this action. More than 300 national professional associations, unions, etc. and several municipalities have resolved to spend future time and money only in states which have already passed the ERA. A recent report in the *Washington Star Post* estimated that the loss to Atlanta, Georgia alone will run into more than 100 million dollars.

Contact: NOW — NY, ERA Committee, 84 Fifth Avenue, New York, New York 10011, (212) 989-7230.

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Moot Ct Honor Society Members

Congratulations to the following new members of the Moot Court Honor Society: Susan P. Bodner, Marc Bresky, Leslie Brodsky, Steven Brown, Keith Davidson, Gary K. Deane, Wanda Denson, Marialina Dominguez, Marci Douglas, Sidney Dvorkin, Deborah G. Fiss, Jonathan David Fox, Janice Godel, Edward L. Hiller, Jay Indyke, Jan Marcantonio, Karen McFarlane, Dorothy Morrill, David Redmond, Bernice Rosenthal, Elliot Shakiman, Laura R. Shapiro, Nancy Sonenshine, Neil Sonnenfeldt, Stephen E. Speiser, Shelley Stangler, Susan Sternberg, Matthew E. Swaya, Carrie Teitcher, Pat Staub, Maryann King, Ted Oshman, Christine Rossini, Mark Senob.

Amnesty Int'l Discussed

By TED COX

On February 28, a group of Brooklyn Law School students met to discuss the goals and structure of Amnesty International (AI), an international human rights organization.

AI's aims are taken from the Universal Declaration of Human Rights promulgated by the United Nations in 1948, with assistance to and the release of "prisoners of conscience" (POCs) as its main emphasis. POCs are those who are "imprisoned or restricted by reason of their political religious, or other conscientiously held beliefs or by reason of their ethnic origin, sex, color, or language, provided they have not used or advocated violence."

AI will also assist political prisoners (regardless of the exclusion for advocating violence) if they have not had a fair trial, or no trial at all. In addition, AI will make appeals on behalf of any prisoner facing a death penalty or torture.

In order to maintain its legitimacy in the eyes of the world and to retain its effectiveness, AI neutrality must be carefully guarded. AI is a private organization which by statute cannot allow subscriptions from governments or foundations and no one person can donate more than 10 percent of its annual budget.

The adoption group is the basic unit of AI. It is made up of volunteers who meet once a month to discuss POCs assigned to it. Members generally write one letter per month on behalf of their "adopted" prisoners. No group may adopt prisoners from the members' own country.

There are approximately 2,300 groups in 39 countries. There are 200,000 members and supporters of AI in 125 countries. Until recently, there was a group in Moscow which, like all other groups, worked on cases outside of its country. It effectively broke up when its leader, Andrei Tverdokhlebov emigrated to the United States in February of this year. With the release of Ben Chairs, there are no longer any POCs in the United States, although several cases are under investigation.

All investigation of prisoner cases is done at the International Secretariat in London. Groups deal directly with the Secretariat in receiving and working on cases. The Secretariat also sends high level delegations to countries to present the aims of AI and for trial observations. An AI delegation was sent to the United States Congress to press for abolition of the death penalty and to the Governor of Florida to plead for amnesty for Spenkelink, who was recently executed.

If anyone is interested in working with Amnesty International, please contact Ted Cox, mailbox 61.

PETITION DENIED

By RICK HOWARD

A petition submitted earlier this semester by first year evening students requesting the Moot Court competition be delayed until a future term has been turned down.

Assistant Dean Paul Sherman discussed the request with SBA representative Thaddeus McGuire. Dean Sherman indicated that the petition was submitted too late to make a change this year but that issues raised in the petition (principally the heavy first year schedule and the tight time schedule of the competition) would be considered in the future.

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BLS Evening Student Is A Real Knockout

By STEVE SALTZMAN

Naturally I was a little hesitant when my sports editor told me to report to the Felt Forum at Madison Square Garden for my next assignment. "What better way to spend Valentine's Day," I thought, "than to cover the Golden Gloves."

As we took our ringside seats I quickly scanned the audience. Without much deliberation I concluded that we were the only law students in attendance. Most of the fans seemed to be on the "other side" of the law. Nonetheless we were all there for the same reason: to see fast-paced boxing action that only the Golden Gloves can provide.

That night we saw mostly preliminary bouts of the sub-novice level. These are fighters who have little or no competitive ring experience. The entire fight consists of three two-minute rounds and generally the one left standing is the winner.

Sitting as close as we were we got a taste of a sport that few ever have the opportunity to witness. We were sweated on, spit on, and bled on. By the end of the night we were even "punchy" from all the blows we saw. I was sure the next day I would wake up sore all over.

Out of the twenty or so fighters we watched, perhaps two could be considered "promising" by any stretch of the imagination. The rest of them would come out in basketball shoes and cut-off sweat pants and start swinging like they were on any street corner or playground in the city.

That night I was filled with anguish trying to understand the violent and often unrewarding world of boxing from a law student's perspective. The gap seemed too wide to bridge.

Many feel the world of boxing is a microcosm of our society. One of the two most powerful figures in the sport is Bob Arum, a Harvard Law School graduate from the top of his class. The other, Don King, has less than a high school education.

Who could forget the contrast between the superfluous Howard Cosell, an N.Y.U. Law School alumnus and Mohammed Ali, both owing equally to each other's success. Then there is the story of Joseph Sorentino, a tough street hoodlum from Bensonhurst who fought in gangs, in the Golden Gloves, and even professionally, who later went on to deliver the valedictorian speech upon his graduation from Harvard Law School.

Despite these rare instances, the number of even high school graduates is far lower than any other sport. Most of them will wait until the athlete has at least finished high school, while boxing knows no age bounds. A college graduate is truly an uncommon occurrence. Perhaps this is why I was having trouble relating to a sport where even if you win, you wake up the next day a loser.

Then I found out about R.N., a Brooklyn Law School evening student who had boxed professionally. Initially he was reluctant to talk about his past but after assurances I would keep his name out of it he agreed to do this article.

At first I expected a story of how he boxed his way off the streets and earned enough money to go to law school. I could not have been any further from the truth.

R.N., a 34 year old son of an attorney from a "Jewish middle-class ghetto in Queens" began boxing in high school but did not turn professional until after his graduation from University of California at Davis Medical School (of *Bakke* fame) with a degree in veterinary medicine. Not only did he have a career most Americans dream about but also he acquired a great nickname: "Doc."

At 139 lbs. (welter weight division), R.N. is nonetheless quite a menacing figure. A safe estimate would be about three broken noses, and the two-and-a-half hours of training a day clearly shows in his physique. My immediate fears of a right cross to the mid-section or a law book over my head quickly subsided as "Doc" proved to be a quick-witted, likeable guy. Clearly his story is an interesting one.

While he has not had many bouts, 2-1 won-lost record overall, he has sparred thousands of rounds with many of the good fighters around today. In a recent *New York Times* interview "Doc" was called the best fighter to handle Roberto Duran, who many feel is the greatest fighter in the business today. Vito Antuofermo, Alexis Arguello, and Willie Taylor are among his other formidable opponents.

When asked how he felt about the contrast between working out in a boxing gym for an afternoon, then going to law school at night he replied, "You laugh a lot."

In typical fighter fashion, R.N. enlightened me as to what it was like to get knocked out by one punch, an event so many of us have seen but so few of us have experienced. "First of all you never see the punch that gets you," Doc smiled as he recalled his last fight, "and all of a sudden you are lying on the canvas. You don't remember getting hit or falling or who you are or where you are but serially it comes back to you. Then once you realize what is going on you want to get up, but sometimes your legs don't want to and they win."

For most fighters the lure of the fight game is an easy way out of the ghetto. All you need is a body and soul. For R.N. it is something altogether different. As a businessman (he currently practices veterinary medicine in Manhattan) and law student you would think he would barely have enough time for an occasional jog around the block or a game of racquetball. But boxing, to R.N., is a way of life, not because he needs it but because he wants it. I still have to wonder how anyone can concentrate on constitutional law after getting in the ring with the likes of Roberto Duran. Doc assured me that if you are in shape it is not that difficult. Your head may be spinning more when you get out.

In addition to boxing, R.N. has taken up karate and other martial arts. He also studied in England to get his certification in acupuncture.

When asked why he decided to go to law school, Doc replied, "I was bored with veterinary medicine and law seemed interesting." How did he find time for all this? I knew the answer but I had to ask anyway. "Discipline," was all he replied.

Whether Doc finds new challenges or challengers remains to be seen. But one thing is certain, this reporter will not get in the ring with him.

Johannes Elected To BALSA Post

Brooklyn Law School student Alfredo a Johannes has been elected Director of the Black American Law Students Association (BALSA) Metropolitan Coordinating Council (MCC).

BALSA/MCC is composed of 11 schools in the greater New York-New Jersey metropolitan area.

Mr. Johannes was also cited for outstanding services, as was BLS student Shirley Gajewski, at the recent BALSA regional convention held at Boston College.

Anything You Say . . .

By RICHARD PETTY

Once upon a time, long before today's generation of students came to know him as a salesman for hospital insurance, Art Linkletter had a network television show called "Kids Say The Darnedest Things," featuring the bright sayings of children. That such sayings were not limited to children was discovered by the Supreme Court in *Miranda v. Arizona* 384 U.S.436 (1966). Ground rules were laid for determining the admissibility of arrestees' statements but not for their wisdom or appropriateness.

Below is a sampling of actual statements made by defendants (after *Miranda* warnings) that were perhaps intended to be exculpatory or explanatory rather than incriminating. We leave it to you to determine the effect.

The apathy of today's society is summed up by one individual who, after a drug raid, stated, "I don't want to get involved."

By a man who'd been informed he was being arrested for a robbery: "Which one?"

By one of three men arrested on the complaint of a badly bludgeoned citizen: "We should have killed the (omitted)."

After a body search: "Hey, don't take my coke!"

By an accused rapist: "She wasn't resisting that much."

By a man found in a burglarized apartment who had pleaded "frame" to three current cases: "I been framed again."

By a man arrested for sale of drugs to an undercover police officer: "I don't sell to cops, only to junkies."

By a man accused of robbing his ex-wife: "If I want to take her bag I will."

By an alleged burglar: "You got me!"

After an arrest for assault with intent: "We had an argument but that had nothing to do with the shooting."

When one defendant was asked why he had resisted arrest for shoplifting: "Because I was dirty," referring to drug possession.

By a man accused of attempting to rob a Chinese merchant: "That crazy white man shot me!"

The classic statement was delivered by a man found in the basement of a building and arrested for burglary: "I'm no burglar, I'm a bank robber." Sure enough, he was subsequently identified as the much-wanted "Gentleman Bank Robber" and was appropriately charged.