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Justinian

If we begin with certainties, we shall end in doubts; but if we begin with doubts, and are patient in them, we shall end incertainties.

—Francis Bacon

Vol. XLII Monday, March 14, 1983 No. 7

NLG Careers Day

Linking Theory With Practice

By Risa Gerson and Anthony Paonita

The Alternative Law Careers Day at Brookyn Law School, sponsored by the Law Students Organizing Committee (LSOC) of the National Lawyers Guild on Saturday, February 26, 1983, attracted approximately 100 students and legal workers from the New York area. The atmosphere was relaxed and supportive as over 30 lawyers who were successfully engaged in what some term "alternative" law participated. "Alternative" law is sometimes referred to as "public interest" law and Arthur Kinoy, professor of constitutional law at Rutgers-Newark calls it "not an alternative, but THE practice of law."

The program began with a keynote panel featuring Fern Fisher-Brandveen, Betty Levinson and Arthur Kinoy.

Fern Fisher-Brandveen, who runs the National Council of Black Lawyers' (NCBL) Community Organization Legal Assistance Project (COLA) spoke first. A graduate of Howard University and Harvard Law School, she won a special place of distinction there when she refused to accept a job upon graduation. She recalled receiving several phone calls at home from the Harvard placement office trying to place her in high-paying government and private practice work. She refused, desiring only to work at Legal Services. Unable to obtain a position at Legal Services because they simply weren't hiring, she worked as a hearing officer in New York for a few months until she was offered, and accepted, a position at Harlem Legal Services. In 1980 she headed up the COLA Project at Harlem Legal Services. In 1980 she headed up the COLA Project at NCBL, and has been there ever since. The COLA Project is counsel to over 120 community groups in Harlem ranging from day care centers, food coops and senior citizens groups to ballet companies, holistic health organizations and tenants groups.

Betty Levinson, a New York attorney in private practice, spoke of her various career flip-flops before she decided to become a lawyer. She also had to beg for funds for school since, in the early seventies, women weren't supposed to want such things, and her parents kept asking her, "Well, when are you going to get married?" She got her degree from Brooklyn (where because of the mandatory curriculum, she developed an abiding hatred for Art. 9 U.C.C.) and went to work for Legal Aid. She had lots of "war stories" to tell, such as a judge ordering a very pregnant Ms. Levinson out of his courtroom, for fear she might bleed on the floor. Ms. Levinson was one of the founders of the BLS Women's Action Group (WAG), a predecessor of LAW. She recalled actions by WAG in which students stood up in class and shouted down sexist professors.

Arthur Kinoy, erstwhile "loud and boisterous" movement lawyer, next gave an exhortatory speech welcoming us all to the Great Battle to Save the Constitution. (The "loud and boisterous" tag comes from his arrest at HUAC hearings on the anti-war movement. He was ejected for unseemly conduct.) He said that the Reagan Administration was the greatest threat to our democratic processes since the Civil War. In his classes on constituional law, he teaches from the *New York Times*—he waved a copy of that day's edition around and read from the report on Margaret Heckler's (secretary-designate of HHS) testimony before a Senate committee. She vowed to support efforts to wrest jurisdiction from the Supreme Court on such matters as abortion, school desegregation, and school prayer.

Following the keynote there were workshops. Future practitioners of labor law were advised to get good references from summer jobs and clerkships, gain experiences through clinics, learn legal accounting, tax law and workers' compensation and to leave New York if they wanted to find jobs in labor law.

At the "Practicing Housing Law" workshop, five lawyers working in various settings, told of their experiences. Daniel Alterman is a partner in a tenant-oriented firm. He said that housing is a crucial area in New York, especially in the Reagan 80's, where people are routinely thrown out of their homes to make way for gentrifiers. He was "not mentally equipped for a typical law career," having worn a sweater to his first and only straight interview. He stressed the importance of being in the thick of things, and that one should "plunge into the madness of 141 Livingston St" (L&T court). Mitchel Carp, a recent Rutgers graduate talked of his job-seeking efforts, and said that unemployment can be a way of building your character. After ten months, he landed a job at Good Old Lower East Side, an agency which organizes tenant groups, and fosters housing preservation. He likes his job because his duties are varied, i.e., not confined to legal practice, and he doesn't have to slave for 70 or more hours a week like those who go into mainstream practice.

Jane Levine works for what she jokingly called "the other side"—the State Attorney General's office. She's in the affirmative action section, which brings or intervenes in category discrimination suits. Sometimes, results can be had by "jawboning," and after an earlier stint at Legal Aid, she found having prosecutorial power "interesting." Andy Scherer works for Legal Services in the South Bronx, and admitted that jobs there are a lot harder to come by these days. So far, the Reagan Administration has cut funding by 25%, while the need for their services is growing. He gave an overview of the client population, noting that fedreal limits mean that most clients receive public assistance or earn minimum wage, if they're lucky. He recited the by now familiar horror stories of landlord neglect, declining services, and Koch Administration complicity in the situation.

Lunch Break

Some people ate lunch as a panel of three talked about "Problems Inherent in Trying Political Cases." Robert Boyle, of the NLG Grand Jury Project, described the ways the government abuses legal processes to harass activists. He spoke in detail of the plight of five Puerto Rican activists, whom the government was convinced were the leadership of the FALN. They were constantly

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SBA Vetoes Dinner Delegates' Dough

By Michael S. Schreiber

In a surprise move, the Student Bar Association, meeting on Wednesday, March 2, departed from a policy of subsidizing law school students' attendence at extra-curricular functions. By a vote of 6 for and 7 against with two abstentions, the SBA failed to approve the allocation of $150 requested by three student members of the BLS chapter of the New York State Bar Association who wished to attend that body's annual diner. In other business, the SBA passed a resolution calling for increased student representation on the faculty curriculum committee, filled vacancies on a number of student faculty committees, and approved a motion giving the Executive Board power to temporarily fill the recently vacated position of ABA/LSD representative.

A motion, brought before the SBA by three members of the BLS chapter of the NYS Bar Association, that $150 be allocated to cover the expenses at the NYSBA annual dinner, was narrowly defeated by the House of Delegates, in a move that may lead to significant change in the current SBA policy of subsidizing attendance at extracurricular functions. The question of such disbursements has been the subject of debate this year, but the NYSBA proposal may have been the straw that broke the camel's back. The annual dinner for which the money is to be spent is divided into two parts: a day long conference—including the annual house of delegates meeting and a seminar on ethics by Dean Prince—and a formal dinner. The $20 registration fee for the conference had been waived for the three students, the $150 requested would have paid for three seats at the formal dinner.

Debate on the issue was not as heated as some SBA observers may have expected from previous meetings. Nevertheless several delegates raised important policy questions before the motion came to a vote.

The chief concern raised was the lack of established guidelines for distributing such funds. This concern was first voiced by delegate Matthew Kletter, who also suggested such subsidies should be included in the annual budgets of student organizations which are allocated at the beginning of the year.

This latter concern was also raised by Treasurer Bruce Feffer and Delegate Lisa Heide. Feffer and Heide noted that other organizations with upcoming spring conferences had been saving funds all year for the purpose of subsidizing attendance. Feffer also noted that the NYSBA had already spent the funds allocated to it under this year's SBA budget.

Speaking in favor of the motion, several delegates argued that denying the funds would be a shortsighted gesture on the SBA's part. Citing the benefits to the school of such exposure, one person de-

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Student Groups Agree On Curriculum Changes

By Risa Gerson

The curriculum committee hearings, held on February 23, 1983, attracted five speakers, four of whom represented student groups. Marya Yee of Law Review, Ann Galen of the Legal Association of Women, Nina Sturgeon of the National Lawyers Guild, Diane Penneys-Edelman of the Journal of International Law, and Marcie Waterman each spoke for about half an hour. Most of the speakers directed their comments to the structure of the first year curriculum.

All of the speakers who spoke on the first year curriculum stressed the need for reducing the number of credits in the core curriculum of common law courses of contracts, torts and property, and emphasized the importance of teaching constitutional law in the first year (see box).

Marya Yee spoke first and outlined a planned first year curriculum that would decrease the number of credits given to torts, property and contracts, and increase the number of credits in constitutional law, federal jurisdiction and civil procedure. Ms. Yee opened her commments by observing that an increasing proportion of litigation involved disputes between the government and individuals. Therefore, it is important to lay the foundation for understanding this litigation by introducing constitutional law, federal jurisdiction and administrative law at the earliest possible time. She also stressed the need for integrating the legal process course with the legal writing course and suggested that the grade in those courses be determined by the grade on the writing assignments, eliminating the examination in legal process.

The second speaker was Ann Galen, who represented the Legal Association of Women (LAW). Ms. Galen began by criticizing the pedagogical techniques used by first year professors which, she asserted, were intimidating rather than character building. She argued that students should feel welcome to make mistakes; that the goal of the law school should be to cultivate confidence and enthusiasm. She characterized the current atmosphere as encouraging students to "beat the system" rather than flourish in it. She also commented that there would not be a problem covering the common law course material of contacts, property and torts in only four credit hours each if the professors refrained from "telling war stories" and concentrated on teaching the material. Professor Poser, chairman of the curriculum committee, asked Ms. Galen if she thought the intimidation and humiliation suffered by first year students was a problem of certain professors, or whether it was built into the system. Ms. Galen responded that it was built into the system. Harvey Jacobs, a third year student member of the committee, suggested that the "old war stories" were a way for the professors to establish a rapport with their students, and rather than being a waste of time, perhaps built a sense of community between the professor and his students. Ms. Galen responded: "I

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EDITORIALS

Open Hearings?

The curriculum committee's open hearings were less than inviting to large number of students in that they were held in a small room with only enough seats for the membership of the committee and one speaker. Other speakers had to stand and wait their turns to speak until the maintenance staff provided extra chairs. This, along with the fact that prior permission had to be requested to speak, makes the name "open hearings" somewhat of a misnomer. Nonetheless, this is a step in the right direction. After all, we have to learn how to walk before we can run. We urge all members of the BLS community to let this be just the beginning of cooperation between students, faculty and the administration.

As to the mertis of the specific suggestions, we endorse the student speakers' seeming consensus: bring constitutional law back to the first year, cut down the number of credits in some of the common law core courses, and integrate legal process with legal writing. Professor Fullerton's comment, that the students seem to want both more theory and more practical knowledge, is not as contradictory as might seem at first blush. First year students, as well as upperclass students, need a solid grounding in legal history, jurisprudence to develop a perspective on the subjects they're studying. But that doesn't mean that they don't need practical knowledge and skills as well.

The Justinian applauds those students and groups who involved themselves in this first stage of the curriculum planning. We hope that this is only the beginning of student involvement in this issue and that in this area, as well as others, the practice of holding genuine open hearings becomes the rule rather than the exception.

Satan Ex Machina

It's the little things that are annoying, the details of day-to-day existence that aggravate one far beyond their real importance. For instance, as all the students know, life at BLS is made infinitely more wearisome by the deplorable state of two minor but essential elements of academic labor: the photocopiers and the vending machines.

Of the nine or so photocopiers in the library, at least half seem to be broken at any given hour—and the change machines are just as bad. Further, the copies obtained from those machines that *do* work are atrocious: they are nearly unintelligible, and the ink actually rubs off on the hand, forming a gritty and adhesive mess. Add a few hundred tense students trying to copy various materials, and the result is a truly irritating situation which undoubtedly has its effect on the incidence of case-razoring.

Similarly, the vending machines are often either broken or empty. It is usually impossible to get anything to eat besides candy, a restriction that is made the more galling by the presence of a food vendor that has been stocked but twice since the Fall 1980 semester. As for the coffee machine, its product has all the appeal of a cup of iron filings—and probably has a similar effect on the stomach lining.

Thus, such simple aspects of study as copying, snacks, and the *sine qua non* cup of coffee, which normally are satisfied almost without conscious effort, become obstacle courses. The process of studying—tiresome at best—is turned into an acutely frustrating experience. Law school is stressful enough without these fatiguing trivialities. Nervous tension ought not to be goaded into anger by such petty matters—matters which are clearly remediable by the administration, and whose resolution would be a geat relief to all.

Games Profs Play

The student members of the Curriculum Committee have distributed a questionnaire which asks students to comment on the current BLS curriculum and suggest improvements. The opportunity for input is greatly appreciated, but the questionnaire fails to address an area which concerns BLS's basic structure. In addition to the first year curriculum, the questionnaire should solicit comments on the first year experience and how it can be improved. Too many students conclude after their first week at BLS that they are going to have to map out plans for survival and worry about the reasons they chose law school later. First year students are informed at orientation and in the first classes they attend that they are going to be trained to think like lawyers, but this often turns out to be a justificaiton for techniques that alienate the students rather than encourage them to think at all. The result is too often a distancing of students from their aspirations as they struggle to figure out how to "beat the system."

Surely students can be trained to think coherently and speak assertively through skills building courses instead of games, the rules of which they are often at a loss to decipher. Students should feel welcome to make mistakes in front of their peers without fear of humiliation. Thinking like a lawyer will be a natural result of an atmosphere of discussion and debate structured by the guidance of a concerned professor. The goal of the first year curriculum should be to cultivate confidence, thoughtfulness, flexibility and enthusiasm. Students should be encouraged to explore their impressions of the law with a realism that doesn't amount ot a shattering of ideals ending in cynicism or despair.

Jobs for Peace...

Jobs With Peace Week is a five day series of events focusing on the promotion of *economic security through reductions in military spending*. In conjunction with events taking place throughout New York City, daily programs will be held at Brooklyn Law School. Sponsored and organized by BLS student organizations. The events will take place during the week of April 11-April 15.

Several student organizations, and students unaffiliated with any organiztion, have already pledged funds and/or labor. All BLS students are invited-AND NEEDED-to help out. Although the schedule of events has already been established, enthusiastic people are still needed to help staff a literature table, distribute fliers, assist with all last minute details, or simply to contribute ideas.

The following is a list of contact persons and the events they are organizing. All of them need other students to assist them.

Tom Gordon, Introduction & Overview (Keynote Speaker, literature), 499-9144.

Lance Dandridge, Film—U.S. Arms Shipments to Third World Nations, 528-5085.

Carole Gould, Panel Discussion Rap Session, 201-592-1252.

Veronica Perry, Nuclear Weapons, Legal Issues 768-0503.

Bruce Feffer, Friday Night Movie, 934-3743.

Denise Kronstadt, Literature & Petition Table, 620-0601.

Susanna Molina, Press Release, Fliers, Publicity, 852-6159.

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Arthur Greene: Red-Baiting In The Character Committee

By Lisa Heide and Tom Gordon

Arthur Greene was admitted to the New York Bar in 1978. This would not be unusual but for the fact that he had graduated from Brooklyn Law School in 1950, at which point a group of lawyers inexorably altered the course of Greene's life in the name of "democracy." The explanation for this action lies in the McCarthy anti-Communicst hysteria of the 1950's. The historical data regarding this period is legend. The human side, however, is rarely depicted.

Greene passed the bar exam in June of 1950. This was quite an accomplishment as only 1/3 of the applicants passed the bar. He underwent the normal investigation by the character committee. He began to realize something was wrong, however, when he was called before a special subcommittee.

When I was asked to appear before a subcommittee, then I knew I was getting special treatment.

Evidently Greene received this "special" treatment because he had filled out that portion of his application which required a listing of organizational affiliations. His included several radical ones.

It was sort of a catch 22—if you didn't list them and the F.B.I. had a file on you, you would be found not to have disclosed your affiliations. But, if you did list them, well then that was reason for them to question you.

Much of the political activity with which Greene was engaged, took place while he was at Brookyn College studying for a career in teaching. Ironically he opted instead to study law because he felt that the political climate made it impossible for a person with his background to become a teacher.

When I went before the character committee in 1951, it was during a period of mass hysteria . . . one which is difficult to appreciate without experiencing it. There was a sense of personal danger, people who had dissident views were being forced out of their jobs. So that in the context of the loyalty program promulgated by President Truman and the Rosenberg spy hysteria, everyone was looking for a communist under his bed. If not a communist then a pinko or a communist sympathizer. The spectrum grew broader and broader. You didn't have to be a communist, if somebody could slot you into something. This was the context in which I appeared before the committee.

The committee interrogated Greene for 3 days. Every aquaintance, every affiliation was in question. The members of the committee demanded to know why he had not gone to the F.B.I. with his story. They had difficulty in accepting the fact that he couldn't remember certain things. Greene endured this harrowing experience without benefit of counsel. Surprisingly, he was never advised that he was entitled to representation. This flagrant violation of Greene's due process rights facilitated the further usurpation of rights which was done with abandon.

I was not confronted with the testimony that the committee was receiving from sources which were not revealed to me. I was not appraised of the evidence or the material that they had of a negative nature, so I could not respond. At one point a committee member asked me, and this was 1951, whether I had distributed a leaflet in 1941—an interval of 10 years! I rather meekly inquired whether they could tell me the color of the leaflet in question . . . it was perhaps a rather facetious remark. At that point they produced the leaflet, announcing a meeting for high school students on how nine high schoolers could help in winning the war. This was sponsored by an organization called the American Student Union. Now, the period in question was approximately 10 years prior to this discussion. I could not remember the circumstances after that period of time. But this was typical of the material that they had because they had gone to my high school folder, with the cooperation of my high school, Erasmus Hall. They also had in my folder statements from my history teacher stating that I was a dangerous radical.

Apart from these procedural things, what was not pointed out on the record was that I had never been arrested, let alone convicted of anything. What I had done had perhaps been very unpopular—my activities in the various organizations—but was clearly within the ambit of the Constitutional Rights that we all have. And so I had been admittedly a member of those various organizations, but the right of association is one of the most fundamental rights. This was given no weight whatsoever by this group of lawyers. This was a "legal" proceeding which was subverting the process of law!

I presented as part of my application, a certificate of a blood contribution to the Chinese Red Cross. A member had asked me whether I had ever given blood to the American Red Cross, and it happened that I had given over a gallon of blood to the American Red Cross. But in my folder there was evidence of an investigation of this Chinese Red Cross, and there was a statement by a Congressman that this was a legitimate organization and that it was not going to a communist purpose. This is the length to which these people went.

Greene was in limbo for a year and a half. He had taken the June, 1950 bar and learned that he had passed in September, 1950. It was not until December of 1951 that he leanred that the character committee had unanimously denied his applicaiton to the bar. At this juncture Greene sought help.

I got very little encouragment because of the nature of the times. Most of the attorneys told me to forget about it and take up another occupation. I went to the Dean of Brooklyn Law School for his help, and he told me to come back in ten years.

Greene's application was perfunctorily denied. The citation for this proforma decision which had such a profound impact on Greene's career is noted on a tattered piece of paper tucked into his wallet—110 NYS 2d 479. Greene ultimately turned to Osmond Frankel, an ACLU lawyer who was then considered the dean of Constitutional attorneys. But Frankel merely echoed the advice of all the other attorneys Greene had seen—an appeal would be fruitless.

Faced with this reality, Greene went to work as a machinist. Although he was precluded from being an activist attorney, the experience seemed to redouble Greene's political commitment. He became involved in tenant organizing, and in 1964 he earned an M.S.W. as a community organizer. During this time he cofounded and became the president of United Shareholders of Rochdale Village. In this capacity he led a rent strike involving thousands of tenants. Since 1970 he had been employed with the New York City Housing authority.

Although content with the work he was doing, Greene was haunted by the thought of what could have been.

I used to dream about those hearings all the time. Sometimes the result would be different. I couldn't be sure of whether I was dreaming or not, because I knew I had lost the first time, and I couldn't believe my dreams. Maybe it was true maybe it wasn't true. Then I would wake up, and it would take me a while. I would realize it was a dream. These dreams continued, and what finally stopped them was becoming a lawyer. I don't have the dreams of the character committee anymore. They've stopped.

Despite the dreams, Greene did not attempt to reapply for admission until 1977.

For much of this period, I felt that the climate had not changed and that the result would be the same. For all this period, I was very reluctant to go through this terrible experience again. It was a terrible emotional experience and I could not do this, fearful that I would lose again.

Greene was inspired to again seek admission to the bar by several of his friends who convinced him that the climate had indeed changed. Greene retained Jeremiah Guttman, who'd been referred to him by the ACLU. This time Greene vowed not to submit himself to an inquisition into his political affiliation. Called before the character committee again, he saw the changed tone of the procedure.

This time it was a different ballgame. They did not attempt to question me regarding any of my political affiliations past or present. The question that did interest them was the interim. We presented material to show sufficient peripheral connection with the law to give them something to hang their hat on. I had a strong feeling that there was some sentiment in the character committee to dispose of this thing and put it behind them.

Greene credits his ultimate admission to the Bar in 1978 to the Democratic Tradition, the "bedrock Yankee conservatism" that stopped the U.S. at the brink of fascism. He warns, though, that the 1950's should not be viewed simply as an aberration.

One cannot be lulled into a false sense of security because today nobody breaks up a demonstration or inhibits discussion or even that the Supreme Court forced that school district in Nassau to put books back on the shelf so you can read what you want to read. That may be true today, but in 20 to 30 years it may not be true unless there is a real awareness. My experience has shown me that the legal profession itself contributes to this type of repression. They find ways of participating, of collaborating, of

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Guilt by Association:

Supreme Court Fails to Clarify

By Stephen Richards

The question of whether a state may validly exclude a qualified candidate from the practice of law because of past political associations and beliefs remains unresolved by the Supreme Court. Few, if any, guiding principles may safely be extracted from the available body of case law. While individual justices have sometimes used particular cases as convenient platforms for empyrean discussions of First Amendment theory, *see, e.g., Konigsberg v. State Bar Association*, 366 U.S. 37, 61-71 (1960) hereinafter *Konigsberg II*) (Black, J., dissenting), the actual decisions tend to turn on nice procedural distinctions and hair-fine differences in findings of fact. Given the reigning confusion, there is no guarantee that some future applicant to the bar may not one day suffer the same ordeal as Arthur Greene.

While the Court's first two bar cases, *Schware v. Board Examiners of New Mexico*, 353 U.S. 232 (1957) and *Konigsberg v. State Bar of California*, 353 U.S. 252 (1957) held for the plaintiff applicants, they also set the pattern of unprincipled decision-making. Plaintiff Rudoph Schware was refused admission for, among other things, a membership in the Communist Party of the United States of America (CPUSA) which had lapsed ten years before he entered law school. Responding to a series of questions on the bar examination, he admitted membership, use of aliases during his period of activism, and several arrests "on suspicions of criminal syndicalism." The New Mexico Bar Committee derived from this meager data the conclusion that Schware has failed to "satisfy the Board as to the requisite moral character for admission."

In a majority opinion carefully tailored to the facts, Justice Hugo Black managed to extricate plaintiff Schware without a single mention of the First Amendment. General due process arguments sufficed.

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SBA Nixes NYSBA Funds

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clared the SBA was acting "pennywise and pound foolish."

In rebuttal, several delegates contended that the exposure would be gained through attendance at the day's activities regardless of the SBA subsidy and that the request was to cover dinner and not educational expenses. Feffer made the point that it was not entirely clear whether the task of promoting BLS through such subsidies was within the province of the SBA or the administration.

While most delegates appeared unconvinced by this last argument, there was a general concern that the SBA's current non-policy on such subsidies may have become far too liberal in its requirements. The motion failed by only one vote however, which is some reflection of the fact that the SBA has yet to delinate a clear standard as to when subsidizing such extra-curricular activiies is justifiable.

Kletter, addressing himself to the issue that the SBA needs to develop these standards, recognized that in some cases such subsidies are beneficial to the entire student body as well as the individuals receiving them. Upon his motion, the SBA agreed to begin to develp guidelines for handlihg future subsidy requests at the next SBA meeting.

Another important agenda item was the filling of various openings on the Student-Faculty Committees. While this mostly entailed the routine acceptance of nominations made by the SBA Nominating Committee, there was some confusion regarding student representation on the Student-Faculty Curriculum Committee, and the role of alternates in general.

According to Bobby Steinberg, a conversation between himself and Prof. Poser, the chair of the curriculum committee, revealed there are supposed to be two student representatives and one alternate sitting on his committee. Confusion arose when the nominating committee proposed two student representatives and two alternates. To add to the confusion, the two seniors currently serving as alternates claimed the right to succeed the voting representatives at the end of their term in September.

Unable or unwilling to withdraw the nominations before it, the SBA passed a resolution calling on the curriculum committee to increase the number of student representatives to four voting members and two alternates. The motion passed unanimously. The SBA also passed a motion that would have empty positions on the committee filled by students already nominated, in order of their nomination, if the committee refuses to increase the number of student members.

The other difficult question presented to the SBA revolved around the recent vacancy of the post of LSD representative. Noting that without filling the vacancy BLS would be unrepresented at the upcoming LSD House of Delegates meeting, the SBA voted 11-2 with one abstention to empower the executive board to choose a temporary representative, subject to approval by the SBA.

There was some discussion on the issue, as the position of LSC reresentative is ordinarily filled by elections open to the whole student body. Bruce Feffer stated that he hoped the SBA recognized it was usurping the students' right to vote, but he also felt the issue wasn't worth fighting over.

The decision was important because the next LSD meeting is before the next SBA meeting, and the SBA will be unable to ratify the Executive Board's decision. SBA President Bobby Steinberg noted that the SBA's purpose was to make hard decisions when the situation arose. While it may be possible to choose a student to represent BLS as an observer, "if that person has no voting authority the entire student body has forfeited its rights."

In other business, the SBA requested proposals and volunteers to rewrite the SBA student orientation booklet, work on the spring semi-formal and graduation party, and endorsed the upcoming Jobs with Peace Week program scheduled for April 11-15 which is also being sponsored by four other student organizations.

A final note of interest, Bobby Steinberg reported that the Student/Faculty Relations Committee is making progress at developing an academic schedule in which fall exams will end before Christmas, for upper class students and the spring semester in mid-May, to avoid conflicts with Spring Bar Review courses.

ARTHUR GREENE

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cooperating and they violate their sworn oath to uphold the Constitution. This was the function that the character committee assumed.

Greene recognizes that not all attorneys will care to indulge in these reactionary practices. To those entering the profession, he offers advice gleaned from his unique experience.

I would only caution those people who do feel a sense of responsibility that the expectations have to be related to the situation at hand. You cannot wish for something out of this world if the conditions are not there. You may have a good idea but you should scale your expectations to what you can do, to what is possible . . . A romantic, to be successful, must be practical.

Finally, Greene emphasized the importance of tenacity and patience, qualitites which have sustained him through the years.

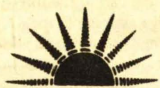
If you ask me whether I learned anything out of this experience, I can truthfully say that I learned to hang in there. I learned how to make adjustments and how to live despite a terrible disappointment . . . It's easy to look back and say you hung in there, but when it happens, when a great disappointment takes place, it's very difficult to take the long view. It taught me, and perhaps others will learn from my experience, that in the face of a terrible disappointment, take a longer view. Things will change after a period of time. Don't feel that it's the end.

L.A.W. To Host 2-Career Forum

The Legal Association of Women cordially invites the Students and faculty of Brooklyn Law School to attend a panel discussion on the subject of dual-career families. The program will be held on March 15th at 4:15 PM in the Third Floor Lounge. Among the panelists will be Professor Bailey Kuklin, Professor Susan Pouncey and Judy Goodman, Esq.

Topics include: The advantages and disadvantages of husbands and wives both working full-time; areas of law which provide flexible schedules; being pregnant during law school and/or while practicing law and career advancement considerations.

Professors Kuklin and Pouncey both teach at Brooklyn Law School. Ms. Goodman attended BLS before graduating from New York University and is currently with the firm Stroock, Stroock and Lavan.



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Guilt by Association...

Continued from page 4

Due process requires that state standards for entry into an occupation bear some rational relation to the applicant's fitness for his chosen profession. The time lapse between Schware's periods of activism and his application was held to negate an inference of moral turpitude. In addition, Black downplayed the significance of Schware's membership in the CPUSA by emphasizing that he had joined and left the Party during the nineteen-thirties, a period of "grave economic crisis" when the Party publicly avowed the reformist policies of the "Popular Front." Black's opinion was thus open to the unfortunate inference that a person who joins a radical organization during a period of prosperity or at a time when the organization openly advocates the forcible overthrow of established institutions may properly be refused admission to the Bar. Black further rejected the bar association's contention that use of aliases and the arrests combined with membership could rationally support a finding of moral turpitude; both sets of facts were consistent with a contrary hypothesis.

If Black's majority opinion was narrow, Justice Frankfurter's concurrence split the factual hairs even finer. Frankfurter, despite clear evidence to the contrary, decided that Schware's membership in the Party was the sole ground for denial. Turning to the issue of membership, Frankfurter characterized Schware's principled decision to join the Young Communist League as "one of those chance occurences that not infrequently determine the action of youth." Schware's record since 1940 proved to the satisfaction of Justice Frankfurter that "these early associations, and the outlook they reflected, had been entirely left behind." Moreover, "history overwhelmingly established that many youths like the petitioner were drawn by the mirage of communism during the depression era, only to have their eyes later opened to reality." What was implicit in Black's opinion becomes explicit in Frankfurter's: a '30s membership in the CPUSA is *sui generis*, to be excused as a folly of youth if openly admitted and explicitly disavowed.

The difficulty in extracting any rational principle from the excessively narrow decision in *Schware* became apparent immediately in *Konigsberg I*. Raphael Konigsberg's case presented a much clearer constitutional issue. Like Schware, Konigsberg was able to produce voluminous evidence attesting to his "good moral character." Unlike Schware, he refused to answer the Bar committee's questions about his past political associations or beliefs. The Committee possessed some evidence that Konigsberg was a member of the CPUSA in 1941. The date is significant: whereas Schware left the party when it abandoned the Popular Front in 1940 upon the signing of the Nazi-Soviet Pact, the California Bar apparently believed that Konigsberg had remained in the Party for some years thereafter. Konigsberg's crucial contention was that questions about past political associations or beliefs violated his First Amendment rights. The issue was squarely posed: If membership in a "subversive" organization could be a proper basis for preventing someone from practicing law, the questions were relevant and proper and Konigsberg's refusal to answer was unwarranted. If, however, Konigsberg had a constitutionally protected right to membership, the questions were irrelevant and Konigsberg had a right to refuse to answer.

The five justice majority opinion, however, again written by Justice Black, neatly sidestepped the issue. Konigsberg, it decided, had not been denied admission to the bar simply for his refusals to answer, but also because he had failed to demonstrate that he was a person of good moral character and that he did not advocate the forcible overthrow of the government of the State of California. Konigsberg, as it happened, had stated that he did not then and had never believed in forcible overthrow. Placing the case in this posture made for a simple and narrow resolution: assuming, without deciding that "bad moral character" might include subversive overthrow, Konigsberg's refusal to answer left the state with two witnesses to Konigsberg's attendance at Communist Party meetings in 1941 against Konigsberg's "overwhelming" contrary evidence of good moral character. On this evidence, the State had failed to adduce sufficient evidence to justify denial.

Justice Harlan's dissent outlined the position that was to command majority support only three years later. The true issue in the case for Harlan was whether an application for the Bar could refuse to answer questions relevant to permissible grounds for denying admission. Since it was permissible for the State to refuse admission to a candidate who failed to prove that he had not engaged in subversive advocacy, Konigsberg's "obstructionism" was also a valid ground for the State's refusal.

Harlan's position commanded a five vote majority when Konigsberg, again denied admission, litigated his case anew. In the new proceeding the bar committee carefully specified that Konigsberg could not practice law in California because his refusals to answer obstructed a full investigation into his qualifications. The issue could not be evaded any longer; and the split between the "balancing" approach to subversive advocacy and First Amendment issues generally associated with Justice Harlan and the absolutist position taken by Justice Black was out in the open. Harlan rested his main holding on the ground that California's procedures satisfied minimum standards of due process; but he went further to hold that, under the First Amendment a state interest in "having lawyers devoted to the law in its broadest sense, including not only its substantive provisions, but also its procedures for orderly change," outweighed a supposedly minimal impact on protected First Amendment rights of free association. Black, apparently freed from the necessity of writing narrow opinions acceptable to the majority, responded with a ringing reaffirmation of the classic absolutist position. Under the "clear and present danger" test, the State's interest in preventing Konigsberg from practicing law was clearly insufficient; beyond this, the use of any test "by which speech is left unprotected under certain circumstances is a standing invitation to abridge" the First amendment.

The accompanying case of *In Re Anastaplo*, 366 U.S. 82 (1960) illustrates two points. First, *Konigsberg II* would apply even in circumstances where a candidate's refusal to answer was clearly motivated by principled opposition to the question rather than a desire to conceal membership in the Communist Party. Second, the inherent logic of *Konigsberg II* compels the conclusion that the First Amendment does not protect an applicant's belief in the revolutionary principles of the Declaration of Independence. There was absolutely no evidence in the record that Anastaplo had ever been a member of the Communist Party or any other revolutionary organization; indeed the evidence suggested the contrary. Anastaplo initially answered a question about his personal opinion of the principles underlying the Constitution of the United States as follows: "Another basic principle (and the most important) is that such government is constituted so as to secure certain inalienable rights, those rights to Life, Liberty, and the Pursuit of Happiness (and elements of these rights are explicitly set forth in such parts of the Constitution as the Bill of Rights). And, of course, whenever the particular government in power becomes destructive of those ends, it is the rights of the people to alter or abolish it and thereupon to establish a new government. This is how I view the Constitution." The entire passage was a paraphrase, verging on direct quotation, of the Declaration of Independence.

When questioned about this passage, Anastaplo stuck to his guns. The Committee then asked Anastaplo to state whether he was a member of the Communist Party, or of any other organization on the Attorney General's List of Subversive Organizations, as well as whether he believed in a "Supreme Deity." For his refusal to answer the first two questions he was denied admission to the bar. Five members of the Court upheld the denial.

While the 1971 trilogy of bar cases, *Baird v. State Bar of Arizona*, 401 U.S. 1 (1971), *In Re Stolar*, 401 U.S. 23 (1971), and *Law Students Civil Rights Research Council v. Wadmond*, 410 U.S. 155 (1971) is usually cited as tacitly overruling *Anastaplo* and *Konigsberg II*, the actual results were far more ambiguous. In *Baird* and *Stolar* Justice Black's plurality opinion shifted the focus from the nature of the candidate to the nature of the questions asked. Sara Baird, refused admittance on the basis of answering "not applicable" to a question about whether she belonged to the Communist Party or any other organization advocating forcible overthrow, won her case. While the plurality opinion included such clarion calls as the statement that "a State may not inquire about a man's views or associations solely for the purpose of withholding a right or benefit because of what he believes" it also emphasized such peculiar details as the fact that Baird had already responded to a previous question asking her to list all organizations with which she had been associated since she reached sixteen years of age. Given the previous question she was being asked to guess whether any organization to which she had ever belonged was engaged in subversive advocacy. The significance of this fact was made clear by Justice Stewart's concurrence. Stewart distinguished between innocent and "knowing" membership in an organization advocating violent overthrow. Membership in an organization advocating subversion could only be the basis of civic disabilities if the member knew of the advocacy and shared the organization's illegal aims. Onthe other hand, a different rule apparently obtains for membership in the Communist party, since "under some circumstance simple inquiry into present or past Communist Party membership . . . is not as such unconstitutional. "Thus *Anastaplo* and *Konigsberg II* are still apparently good law.

While plaintiff Stolar also succeeded on facts similiar to those in *Baird* in *Wadmond* New York's bar questions survived a suit for declaratory judgment of unconstitutionality. New York's question 26 asks the applicant to state whether he or she has ever been a knowing member of an organizaiton advocating violent overthrow. If the answer to the first part of the question is in the affirmative, the applicant is then asked to state whether during the period of membership he or she shared the specific intent to further the organization's illegal aims. Justice Stewart, shifting to convert the *Baird* and *Stolar* minorities into a majority upholding the stature, concluded that the questions were "narrowly tailored" to meet constitutional objections.

An answer to Question 26 is still required of all candidates for the New York bar.

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Curriculum

Continued from page 1

haven't seen much in the way of rapport. All I've seen is students acclimate themselves to professors' personalities."

In addition to recommending that the number of credits be reduced in the first year common law courses and constitutional law be added to the first year curriculum, she recommended adding courses on housing, setting up a solo law practice, and a clinic on constitutional law, similar to that offered at Rutgers' Newark.

Nina Sturgeon, representing the National Lawyers Guild, spoke next and opened by stating that her organization agreed with everything that had been said. She reiterated that constitutional law should be taught in the first year, and that the number of credits in the core curriculum should be reduced. She stresed that torts and property both be cut to four credits each. She also recommended that legal writing and legal process be integrated with legal writing. As to gaps in the curriculum, she mentioned a need for courses in international human rights, law and social change (which has not been offered since Ramsey Clark left the faculty) legal history, jurisprudence, comparative law with respect to non-western countries, and more in-house clinics.

Professor Poser, struck by the similarity of the recommendations, asked if there had been collaboration. Ms. Galen and Ms. Sturgeon commented that they had conferred, but neither had spoken with Ms. Yee or any of the members of the Law Review.

Marcie Waterman, a graduating student in the joint degree program of law and urban planning stressed the need for marketable skills, more clinical courses, and theoretical courses, especially in the area of public interest law. She thought that jurisprudence and legal history should be worked into the first year courses .Commenting on the upper class curriculum, she mentioned seminar courses, group projects, tenant law and a class on solo law practice, as sorely lacking in the curriculum.

Finally, Diane Penneys-Edelman of the Journal of International Law discussed the courses in that area. She commented that Brooklyn's international law curriculum was strong, but cculd be developed further. She mentioned adding a clinic in interna-

Continued on page 7

1st Year Curriculum

LAW REVIEW course	credit	NLG course	credit	LAW course	credit
Torts	4	Torts	4	Torts	4
Property	4	Property	4	Property	4 or 6
Contracts	4	Contracts	6	Contracts	4 or 6
Constitutional law	6	Constitutional	4	Constitutional	4
Legal writing (plus process)	2	Legal writing (plus process)	3	Legal writing (plus process)	3 or 4
Criminal	2 or 3	Criminal	3	Criminal	3
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SMH BAR REVIEW

Continued from page 6

tional law suggesting that students work with the Lawyers Committee for International Human Rights, and the Center for Constitutional Rights. She recommended that when the international law component of the curriculum is expanded, that coursesin international human rights and comparative law in non-western countries be added to the curriculum.

In a later interview with the *Justinian*, Professor Fullerton, a member of the committee, stated that the committee had not been discussing the first year curriculum, but that the student comments were useful and would be considered. She did add, though, that students seemed to be saying that the school should add both more theoretical courses and more practical courses, a seeming contradiciton.

In order to better evaluate student veiws, Deboarah Deitsch-Perez, a student nominee to the committeee, and Richard Poermantz, a third year member of the committee, have devised a questionnaire which they are distributing in all first year classes and in key upper class courses. The questionnaire is available in the Law Review office, the Moot Court Honor Society office, and the SBA office. Students who did not receive one are urged to obtain one and let their views be known.

The Editorial Collective of the JUSTINIAN is seeking students to serve on next year's Editorial Collective. Any interested student should leave his/her name, mailbox number and phone number at the JUSTINIAN Office, Room 304, before March 21, 1983.

NLG CAREERS DAY

Continued from page 1

served subpoenas, and when they refused to cooperate, were cited for contempt and jailed. They were thus "neutralized" while the government never had to prove any substantive charges. Elizabeth Fink, in private practice, told of the present State strategy of using the RICO statues against political people, and in general, criminalizing political activity which falls outside of the mainstream. She emphasized that it is a lawyer's duty to carry out and put forth his or her clients' politics by allowing the clients to provide leadership and strategy on their cases.

The workshop on defending gay and lesbian rights concentrated on the rights of individual private parties in disputes, most notably when one lover supports the other and then leaves her (or him) without any financial support. The comparisons used in these gay divorces and in palimony suits such as *Marvin v. Marvin* were discussed as well as how these problems could be avoided, mostly by writing out living-together contracts before the assets of both parties become hopelessly intermingled. There was also a discussion of the intense homophobia encountered by many law students during their law school years, and ways in which to resist it. George Terzian, an attorney in private practice in New York City who organized th Gay Legal Clinic, offered suggestions and invited students to contact LAMBDA Legal Defense, 10 East 23rd Street, Room 502, if they are interested in volunteering their services to the clinic, or otherwise becoming involved in gay rights legal defense work.

The workshop on defending women's rights juxtaposed lawyers who worked for individual women, and those who defended classes of women with respect to fundamental rights. Suzanne Lynn, of the ACLU Reproductive Freedom Project spoke of her work in the ivory-tower atmosphere of the ACLU, her caseload of three cases, and the project's commitment to creating a body of law where none existed before. The project handles class actions exclusively in the areas of reproductive rights. Almost all of its cases involved the right to an abortion, although it has litigated sterilization and birth control issues as well. She described how she came to the project in 1979 thinking that reproductive freedom would be secured in a few years, the project abandoned, and she would move on to something else. With the recent turn of events, she stated that there is more work now than when she first arrived. She mentioned that a job at the ACLU involved about 65% legal work and 35% public speaking, writing, legislative analysis and lobbying.

On the other side of the spectrum, Laura Jacobson, a graduate of BLS, has a small law practice with another woman and they handle problems of individuals rather than entire classes. Their practice is concentrated in family and tenant law.

Alicia Kaplow, an attorney who has had a private practice in New York for three years, talked about the problems of earning a living on one's own. As a feminist, she has had to deal with the problem of having clients approach her who are unable to pay her fee and request that she take their cases out of sisterliness. "Sisterliness is fine," she said, "but it doesn't pay the rent. When I can't pay my rent, I can't call my landlord and ask him if he'll rent me an apartment for sisterliness. And, when I'm on the checkout line in the local supermarket, I can't walk out without paying. That's called larceny, not sisterliness."

Three attorneys involved in immigration law conducted another workshop. They noted that the public interest immigration bar in New York amounts to a handful of people. Legal Services is now forbidden from representing undocumented aliens and resident aliens often have problems finding decent representation. The problem of large migrations from political and economic oppression is growing, the United States is not immune from it, and indeed creates many of the disturbances. Arthur Helton, of the Lawyers' Committee for International Human Rights said that this decade will be a true test of American obligations to international law. Claudia Slovinsky, an attorney with a private practice, described how she came to be involved in the area. She was working for Legal Services in New Jersey, and was the only person in the office who spoke Spanish. About thirty to forty percent of her time is devoted to public interest work, and she supports herself by handling routine matters for immigrants, such as labor certification. She said that the INS under Reagan is returning to the use of the McCarran Act, which bars immigrants with unorthodox political views (which means anything outside of the liberal-conservative Amercian spectrum) from entering. The need for good immigration lawyers is "exploding." Alan Wernick, another private practitioner and attorney for the Washington Heights Coalition for Immigration Rights sounded a similar note, but added that because of the lack of financial help, an immigration lawyer must be "realistic" and realize that "being a lawyer is a business."

Many of the participants were encouraged by the support given by members of the bar to aspiring public interest lawyers and were pleased to hear constructive advice on the reality of legal practice in the outside world.

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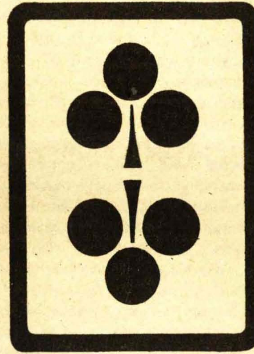

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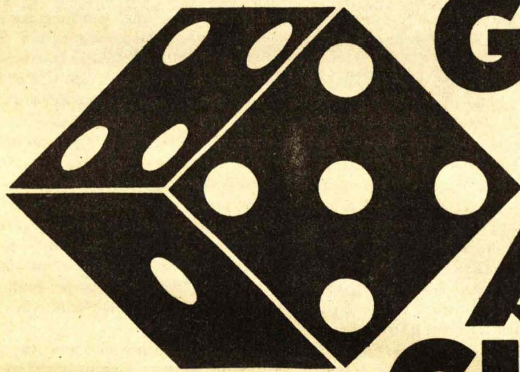

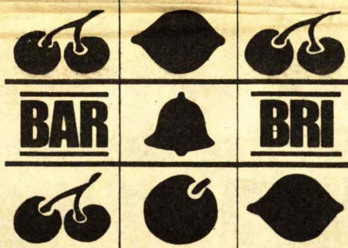

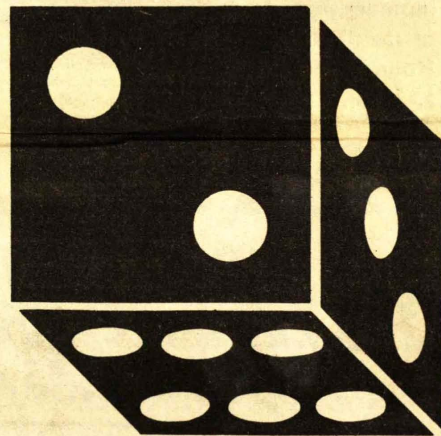

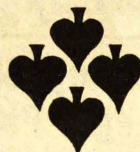

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