

# The Justinian

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## The Justinian

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# Justinian

Vol. XLV

Thursday, February 14, 1985

No. 1

## Agent Orange Symposium Set For Next Week

Students have been invited to attend an in-depth symposium focusing on the unresolved issues of the Agent Orange litigation, which will be held Wednesday, Feb. 27 at Brooklyn Law School. The program, entitled *Mass Torts After Agent Orange: Unresolved Issues and Implications*, will consist of a short dinner followed by the symposium, which is scheduled to last approximately 2½ hours.

Students interested in attending the symposium portion of the program should contact Professor Joan Koven as soon as possible. Professor Koven, who is the Director of Continuing Legal Education at BLS, and one of the organizers of the program, points out that seating in the Moot Court Room is limited, so students should sign up early to be guaranteed a spot.

The idea for having a program on the Agent Orange issue was that of Associate Dean Margaret Berger, who also played an active role in organizing it. The complicated litigation was settled last May, on the eve of the trial, when attorneys for the plaintiffs in the class action suit reached an agreement with the defendant chemical companies for \$180 million.

Because the suit was settled, many issues remain unresolved. According to Koven, Professor Berger thought that providing a forum at which these issues could be discussed would be a good idea.

The Hon. Jack B. Weinstein, Chief Judge, U.S. District Court (E.D.N.Y.), who presided over the litigation, will moderate the symposium. The panelists will include Marjorie H. Mintzer, a partner with Rivkin, Leff, Sherman & Radler, who represented one of the defendant chemical companies; the Hon. Shira A. Scheindlin, Magistrate, U.S. District Court (E.D.N.Y.), who was assigned by Weinstein to handle discovery and other pretrial issues; Sol Schreiber, a partner with Milberg Weiss Bershad Specthrie & Lerach, who acted as Special Master supervising discovery on the government contract defense; BLS Professor Paul Sherman, an expert on products liability; and Professor Aaron D. Twerski, of Hofstra Law School, who worked with the attorneys for the plaintiffs.

The symposium is scheduled to begin at 6:15 p.m. Topics slated to be discussed are conflicts of law, defendant identification, causation, plaintiff identification, emerging litigation and ethical issues. Comments and questions for the panelists and audience will follow each presentation made during the course of the evening.

Koven encourages students to attend. "It is a wonderful opportunity," she says, "to listen to people who were most intimately involved in the case talk about the unresolved issues and implications of the Agent Orange litigation."

## BLS Purchases Apt. Building for \$2.2M; View of NY Skyline to be Provided to Some

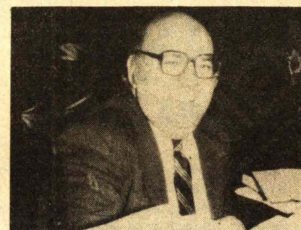
By Donna L. Riccobono

Brooklyn Law School announced last month the purchase of a 12-story apartment building located at Two Pierrepont Street in Brooklyn Heights, overlooking New York Harbor. The 40-unit facility, containing 12 vacant apartments, is intended to provide attractive housing at a reasonable cost for some of the School's faculty members and students. At the time of purchase, administrative officials had not yet formulated precise details concerning the beneficiaries of the program.

The purchase of Two Pierrepont Street, acquired at a cost of \$2.2 million, marks the first time in the School's 84-year history that it will offer any sort of residence facility. The residence hall, which had not been named at press time, is intended to fulfill two objectives. First, the school will reserve one or two apartments as an added enticement for visiting professors from other distinguished law schools around the country. A second priority will be to offer several apartments as a means of attracting first rate faculty to the staff on a permanent basis. Dean Trager remarked that some current faculty members may also move there as apartments become available.

The studio apartments are intended for use by students, again with a dual purpose in mind. According to the Dean Trager, they will be offered to highly qualified students from outside the metropolitan New York area in order to "broaden our national presence." In addition, they will serve as "some sort of scholarship program," supplementing the tuition reductions already available through the merit scholarship program.

To the extent that apartments are not used for these purposes, they may become available to currently enrolled students. Professor Gerber commented that "it will be a while before we formulate precisely how the apartments will be used in conjunction with the other programs described, but rather than leaving the apartments vacant, they may be rented for the use of a semester on a lottery basis." There are 17 studios in the building.



Dean David Trager

Seven are vacant now and two more will open up within the next few years, when the leases of the current tenants expire.

Legislation enacted during the past year has prevented BLS from evicting the residents now occupying the building. When the apartment is the primary resident of the tenant, he or she is entitled under rent stabilization to remain or be renewed. However, a few apartments are being rented under use and oc-



Room with a view. Many of the apartments at Two Pierrepont Street feature impressive window views of the Manhattan skyline.

cupancy leases, which are not protected by the new law, and administrative officials do not intend to renew these agreements when they expire. Moreover, BLS officials suspect that some of the rent stabilized apartments are occupied by people whose names are either not on the lease or whose primary residence is elsewhere.

According to Dean Trager, "The bottom line is that we put a part of the School's resources into the building and it is important to the school's program. While we have no intention of disturbing tenants who are lawfully occupying apartments there, I do not feel that our students should be subsidizing tenants, especially those who are in fact liv-

ing elsewhere."

The building was sold after an unsuccessful effort to convert the property to cooperative ownership. Commenting on the fact that one of the owners is a BLS alumnus, Dean Trager remarked, "I think the owners would've either approached us or the Jehovah's Witnesses, and all things being equal, I'm sure that helped lead him to us."

BLS was represented in the transaction by Stephen M. Raphael of Raphael Marks & Stone. The seller, Mid-Hudson Associates, was represented by Donald Snider of Finley, Kumble, Wagner, Heine, Underberg, Manley & Casey.

## Trager Looks to Expand School, Sets Sights on Livingston St Space

Two Pierrepont Street represents the second major real estate purchase of the last 12 months. Last April, the School acquired the Republic National Bank Building located at One Boerum Place, which increased its available space by approximately 40 percent. Dean Trager declared that these acquisitions are "part of an ongoing program to establish Brooklyn Law School's position as one of the preeminent regional law schools in the United States."

According to the Long Range Planning Committee, comprised of members of the board of trustees, administration and faculty, the additional space created by the purchase of the Bank Building will ultimately be used to house all of the school's auxiliary functions, which include the administration offices and student activities. A new moot court room may eventually be built on the ground floor of One Boerum Place which would open up the seventh floor of the Main Building for alternative use. Negotiations are also underway to enable BLS to rent space at 111 Livingston Street, in order to construct a nicer dining hall contiguous to the Main Building. These changes, in turn, would enable the school to expand its library space significantly.

While the real estate owned by BLS continues to expand, student enrollment is expected to remain the same or even

decline slightly. Meanwhile, there may be an addition of new faculty members to improve the faculty-student ratio. In 1968, this ratio stood at more than 75 to 1 whereas in the last year or so, the faculty-student ratio was less than 25 to 1. Concerning the quality of law students enrolled at BLS, Dean Trager commented, "Considering that most law schools suffered a reduction of about 15 percent in applications last year, our entering class had academic credentials just marginally less than the class before, almost to the point that it was immaterial, and I do not think that many law schools around can say that." Dean Trager also attributed this to the results of the merit scholarship program, which was implemented earlier this year.

According to Dean Trager, "There's a perception that the school is on the move, evidenced by our recent (real estate) purchases plus some other programs we've put into effect, such as the expansion of the placement effort with alumni, the Federal Litigation and Big Apple clinics and the faculty summer stipend scholarship program. Academics and lawyers in other law schools are aware of these changes, and they are being commented about favorably." The Dean added that among the regional law schools, Brooklyn's "only real competitor at this time is Fordham."

—D.L.R.



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*QUOTE OF THE MONTH: If men could have babies, abortion would be a sacrament.*

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## News Update:

### Awards Presented

Justice Florence K. Murray of the Rhode Island Supreme Court received the 1984 Judge of the Year Award, presented by the National Association of Women Judges (NAWJ) at its annual meeting held in Boston, October 12-15. Justice Murray, who was elected to Rhode Island's high court in 1979, was honored by the NAWJ for her extensive involvement in judicial education, her commitment to judicial organizations, and her continuing support of women in the law and in the judiciary.

The NAWJ also commended the work of Chief Justice Robert N. Wilentz of New Jersey for his progressive leadership in seeking to eliminate discrimination in the courts. He appointed a task force charged with investigating gender bias in his state's judicial system and developing education programs to eradicate such bias. The recommendations of the task force have been cited as a model for other state judicial systems.

More than 200 women judges and attorneys attended the meeting, at which NAWJ president Clarice Jobs, judge of the Detroit Recorder's Court, reviewed the association's activities during the past year. She pointed out successes such as the ABA's adoption of standards that discourage judicial membership in discriminatory clubs and the enactment of federal child-support legislation.

### Copyright Prize

Samuel Richard Otte of Hawthorne, New Jersey was awarded the \$500 first prize in the Nathan Burkan Memorial Competition at Brooklyn Law School with an essay entitled "Beyond the Reach of Copyright: Home Taping and the Sony Dilemma." The results were announced on December 11, 1984 by Hal David, President of the American Society of Composers, Authors and Publishers. The Nathan Burkan Memorial Competition is sponsored annually by ASCAP in memory of ASCAP's first General Counsel who died in 1936. The awards, designed to stimulate interest in the field of copyright law, have been traditional at ASCAP since 1938.

Otte will also be considered for the National Burkan Awards, to take place at a later date. The recipient of these national prizes, selected by a panel of distinguished judges from among the local Burkan prize winners, will be awarded prizes ranging from \$500 to \$3,000.

Before his law school studies, Mr. Otte received his Bachelor's degree in Political Science from Rutgers University, Newark College of Arts and Sciences. At Brooklyn Law School, he has been a participant in Moot Court Honor Society Competition.

### Photo Exhibit

Robert Fichter: *Photographs and Other Works, 1962-84*, an exhibition or works in a variety of media, will be on view at The Brooklyn Museum from March 15 through May 13, 1985.

Primarily a photographer, Fichter has never allowed himself to be constricted by the traditional limits on his art. Instead, he has adapted fresh and experimental approach by combining photography, painting, drawing, printmaking and montage.

Throughout this seeming diversity, however, run a number of consistent threads: a deep concern with the ecology of the planet that evolves into strong statements against nuclear war; an ongoing and wry commentary on the history of photography; an outraged political sensibility which never

loses its sense of humor; and a southern gothic viewpoint that allies him to the tradition established in American literature by such writers as William Faulkner and Flannery O'Connor.

The Brooklyn Museum is located at 200 Eastern Parkway, near Grand Army Plaza, and is open daily except Tuesday.

### Course Proposals

The Brooklyn Law School Curriculum Committee is currently reviewing proposals for new course offerings. The student body is invited to take part in this process. All course proposals should include the following:

a. A course description similar to a catalogue entry including topics to be covered, credits to be awarded and the prerequisites.

b. An indication of how many and which other schools offer the same or a substantially similar course. (Law school catalogues are available on reserve in the library.)

c. A justification for the need to add this work to the regular offerings.

All proposals should be submitted to the Curriculum Committee, c/o Sandi Hayes, 9th floor. Any students with questions or in need of assistance may contact Lauren Heifetz, Jonathan Glasser, or Glenn Katz in the SBA office on the 3rd floor.

### Moot Court

The Moot Court Honor Society is pleased to announce that the National Moot Court Team advanced to the quarter-final round of the National Moot Court Competition before losing to Syracuse University School of Law.

Brooklyn Law School was one of eight schools from across the country to advance to the quarter-final round.

Congratulations to Pat Conti, Liz Organ, and David Silva for their accomplishments. Special thanks to Professor Maryellen Fullerton, the team's advisor, and to all faculty and students who supported the team.

### Attention 1985 Graduates

It is the custom of Brooklyn Law School to invite the parents of graduating seniors who are themselves graduates of the Brooklyn Law School to participate in the academic procession on commencement day. The School will obtain the cap and gown for each parent who will be seated on the stage during the exercises.

Notify Dean Trager's assistant, Loretta Selby, of the name and home address of any parent who is interested in joining us that day. This information must be submitted no later than February 22, 1985.

### Women's Conference

Registration books for the Sixteenth National Conference on Women and the Law are available at the information desk on the ninth floor. Persons interested in attending this year's conference are encouraged to register as soon as possible to insure a place in the workshops that they most wish to attend. If Registration books are no longer available on the ninth floor, call (718) 624-6954 for a copy.

On a different note, the Conference Housing Committee is compiling a list of alternative housing for out-of-town Women and the Law Conference participants. If any BLS faculty, staff or students have extra space in their homes or apartments and are willing to put people up during the Conference from March 21-24, please call (718) 624-6954 or leave name, address and phone number in student mailbox number 17.



## SBA Reports

The SBA Computer service is now operational and the SBA is committed to printing out documents which students prepare on the IBM Personal Computers which are available for student use in the library. The SBA office will be open three hours each day from Monday to Friday to provide this and other services. The IBM P.C. in the SBA office is not available for student use. The printing service will be run by SBA delegates who will take student's disks and print them out on a first come, first served basis.

For those students who are interested in learning how to use the IBM P.C. for word processing purposes, the SBA Executive Board is preparing to schedule word processing lessons on weekend afternoons. A schedule of lesson times will be posted shortly. There will be no charge for this service because the Administration has agreed to subsidize it.

In addition to these lessons, two copies of a Wordperfect 4.0 lessons manual, word processing disks and a disk containing an introduction to the IBM P.C., are available at the main desk of the library for students who either wish to teach themselves or would like a more in depth understanding of the word processing program than can be gained in the introductory sessions run by the SBA. These materials have been provided by the SBA.

Students must obtain blank disks in order to do their own work on the IBM P.C.'s which are available. The SBA is attempting to purchase blank disks wholesale so we can sell them to students below the retail price.

Students may bring their disks to the S.B.A. office, room 302 and an SBA Delegate will print your document on a first come, first serve basis.

The SBA will not be responsible for any lost or damaged disks.

The SBA Computer Printing Service utilizes only Wordperfect 4.0. Students who use word processing programs other than Wordperfect 4.0 must leave a copy of their word processing programs and instructions on how to print their documents. All versions must be IBM compatible. Copies of the Wordperfect 4.0 program are available at the Main Desk in the Library.

Printing of documents will be limited to 25 pages maximum. The service will be provided 1:00 to 2:00 p.m. and 5:00 to 7:00 p.m.

### SBA BOOK COOP

The SBA Book Coop was open for students to purchase and sell their used books during the week before the spring semester began as well as after classes actually started. With the considerable help of SBA Delegates Steven Scheinfeld and Karen Wackerman, we managed to sell over \$800 worth of used textbooks, statutes, and study aids.

Unfortunately, many textbooks, particularly those used in the first year courses have been recently revised and, being out of date, are unsaleable. During this coming semester, the SBA will attempt to return these out of date texts to their owners and to computerize our inventory system.

### SENIOR PARTY

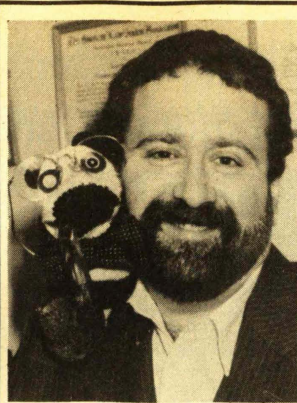
The SBA Executive Board is working with the Alumni Director, Johanna Gurland, to plan the party for graduating seniors. As yet, no details have been worked out, however it has been determined that the party will be held in Manhattan.

### ON CAMPUS LECTURES

The Distinguished Alumni Lecture Series will begin this spring with a presentation by Jay Seltzer. Seltzer is a BLS grad and the president of the New Jersey Generals football team.

The Placement Office has also agreed to work with the SBA in coordinating this lecture series. We hope to bring more alumni to campus and thereby improve the job network between them and the student body.

A forum on real estate development is now being arranged by the SBA together with the Real Estate Law Society and the National Lawyer's Guild.



The Authors: Steve and Luigi

## Luigi on Law

### The Supreme Ministry and the Debate Among Actuaries

By Steven J. Chaikin

Even the sanest of actuaries believes that the President, one Reagan, will have the awesome task of filling perhaps five seats on the Supreme Court. This would be a difficult project for a person of greater girth than One Reagan. Chances are, he will have to look to others to fill these positions. Should he be so blessed, it is imperative, in this writer's view, that he consider for these posts only duly ordained fundamentalist ministers. Only in this way can One Reagan ward off the hoards of left-leaning liberals who would seek to see installed such notables

as John Hinkley, the late John Beresford Tipton, or the real William Rehnquist, recently returned from his triumphal tour of duty in Nicaragua.

It would behoove the president to pay heed to the very positive benefits, culturally and ethnically, or a Supreme Ministry to replace a Supreme Court. For example, who would argue that the best choice to replace Justice Potter Stewart would have been the Reverend Jim Jones. What insight Mr. Justice Jones could have brought to such contemporary issues as euthanasia and products liability.

At first glance, the constitutional impediments to such appointments seem overwhelming. But a closer study of constitutional principle reveals that the Constitution actually instructs Presidents to appoint fundamentalists to the court. To comprehend this doctrine fully, one must first dispose of the annoying notion of separation of church and state. After all, if the framers had wanted such polarization, they would have said so, in so many words, in the Constitution itself.

Instead, they left us with this vicious rumor that has been distorted over generations. Why indeed would these "framers" choose such references anyway? Which church were they talking about? Which state? Where would Utah be without Mormons? And what the deuce is meant by "separation?" Is this physical separation—or were the "framers" delving into the metaphysical?

For that matter, could the entire controversy have arisen out of a simple post-revolutionary dinner recipe instruction, "Separate church and state before beating?"

And while we're on the subject, who exactly were these "framers," anyway?

Were they really these great formulators of constitutional democracy or—more likely—were they the craftsmen who provided elaborate wood and glasswork to enshrine this great document act, written by the "farmers?" To wit: is "framers" a mere typo? If not, did the term "framers" signify some special expertise—or was it merely an affectionate title used only at banquets, i.d. "Ah, the framers have arrived." Doesn't it make more sense to say, "Ah the farmers have arrived." We were, are all, dealing with a decidedly agrarian culture. But, we diverge.

Presuming the farmers were framers and in their wisdom they chose to separate church and state in the establishment clause, we must seek out their true targets. Certainly they had no gripe against the state. They were the state—or at least its paid agents. Was it not instead the corrupting influence of organized religion from which the framers sought to isolate the state?

The answer to all the foregoing questions is obviously yes. What better way, to separate church and state then to confine the church to the judiciary—where it can do the least damage to the almighty state. By so concentrating church power, the damage they do will be limited to the people. People, in turn, are best equipped to deal with damage done by the church. People can simply refuse to believe.

Next issue: Agent Orange, Herbicides and the Class of Herbets.

*My father liked to make people laugh. He did so often. Luigi and I were often entertained by his antics. As with all good comedy, my father's flowed on a river of tears. Today's article is intended to reach my father and to make him laugh, and perhaps cry—just to return the favor. Please forgive my indulgence.*

## Symposium Explores Public Interest Careers

By Jamie V. Delio

Public interest law has traditionally been considered one of the most exciting fields of law. Yet students shy away from it because the financial returns are not worthwhile. As a result, public interest cases are left to wealthy charities or to the Pro Bono dockets of major law firms. Students no longer have to avoid this area of law because of financial concerns. Today the small private practice can pursue a complex public interest case in an economically reasonable manner because an ever increasing number of federal and local statutes will allow recovery of legal fees in public interest cases; even when the defendant is the government. The allowance of attorneys fees is opening up opportunities for law students that did not seem realistic before.

These changes make the Public Interest & Public Service Legal Career Symposium and The Public Interest Coalition (PIC) Volunteer Job Fair at New York University School of Law even more attractive than in years past. The symposium will be on Thursday and Friday February 14 and 15. Registration starts at 9:15 am for interviews, which, like panel discussions and informal table information will run through 5:00 pm on both days. The PIC Volunteer Job Fair will be held on Wednesday and Thursday, February 13 and 14 from 7:30 pm to 9:30 pm. Registration is not necessary.

The symposium program is designed to encourage an exchange of career and job information between attorneys from public interest and government offices and law students from schools in the New York area. There will be panel discussions, personal interviews and information tables by potential employers who have positions available. The PIC Volunteer Job Fair provides public interest organizations with an opportunity to recruit volunteer law students from part time positions in their offices during the school year. The Job Fair will begin with a two

minute presentation by each participating organization, followed by a reception for individual discussion and information exchange. There is no admission fee for law students to either event.

### New Horizons in Public Interest Law to Be Explored

In the February '85 American Bar Association Journal an article by Ralph Nader called "Public Interest Law with Bread on the Table" states that the growth phenomenon of public interest law has just started. With the exception of a few public interest law firms, lawyers have not yet taken advantage of the ever increasing number of statutes providing for attorney's fee awards to prevailing plaintiffs. The Federal government alone has over 100 statutes that provide for such fees. As the legal community becomes aware of the opportunities created by Congress and bring more public interest law suits. The result will be increased funding for these law firms so that they will be able to hire more summer interns and graduates.

The changed focus in public interest law is starting to have a profound effect. This year the symposium at N.Y.U. has over sixty private firms and government agencies looking for future employees. Resumes for interview spots should have been submitted to the Brooklyn Law School (B.L.S.) placement office by February 14th. However, Linda Stephens, Director of the Placement Office, said she hopes to gain additional interviews for interested students who did not submit their resumes, by filling spots of students who schedule interviews but do not show up.

Those interested should contact Ms. Stephens prior to February 14, in order to make arrangements to meet at B.L.S. on the days of the symposium, so that the entire group can go to N.Y.U. together. Students should have extra copies of their resumes and should be dressed appropriately for interviews, if they intend to utilize Ms. Stephens

efforts to get B.L.S. students into empty spots as they come up. Besides an opportunity to get personal interviews, there will be attorneys seated at individual tables so that students will have an opportunity to speak to them informally. Throughout the two days, panel discussions lasting approximately one hour and fifteen minutes each will be held (see list at end of article).

These factors make the symposium of interest to more than those students who are looking for employment in the field. It presents an opportunity for the vast majority of students who have not made definite plans as to what type of law they'd like to practice, to find out about public interest law. The availability of the student to see what career opportunities are available in public interest law can help focus future law field applications.

The A.B.A. Journal article emphasized the fact that law schools do not do enough to educate students as to the availability of opportunities for employment in the public interest field. The symposium is a unique experience for the student to gain vast knowledge of the field without having to struggle to find such information and organizations on their own.

The P.I.C. Volunteer Job Fair offers an opportunity for students to find positions that offer meaningful experience in the public interest field. This can be extremely advantageous to the first year students who hope to practice public interest law and even those students who don't. The ability to gain real law practice experience that is not readily available in other places. Although the symposium offers a limited amount of paying positions to the first year students, the P.I.C. Job Fair offers experience as its main feature. This experience can be extremely valuable when competing for summer paying positions

*Continued on page 10*



They Only Come Out at Night

# Running That Lonely Marathon; The Plight of the Night Student

By Estajo Koslow

Despite differing opinions as to the appropriateness of part-time legal education, there are those of us, who for reasons of finances, obligations, and even preference, attend BLS in the evenings. Unfortunately, for the most part we are invisible, hence the column's title, "They only come out at night."

This column is an attempt to focus on the

specific concerns of the evening division students (and part-time day/night folks too) and perhaps, to suggest ways the administration can better address these concerns. I will also do my best to let the late night student body know what services are currently available, especially those offices that stay open past 5 pm.

For those who do not personally know any evening students, let me provide a brief description. The majority of evening students

hold down full-time jobs during the day. We generally attend class in business attire (We also take exams in business attire!), are seldom tanned, and usually look tired. The depth of our involvement with BLS (aside from attending classes) includes paying tuition, buying books, drinking coffee in the cafeteria (if you get here in time) and taking the elevators. There is a split in the evening student population between those who choose to use their lockers and those who prefer to carry all their books around with them. Evening students welcome any opportunity to complain, and justly so; they may have unsupportive employers who don't care that class begins at 6 pm; trains that rarely arrive on time; some have unsupportive spouses, unsupportive children or small children who often require the attentions of their parent/law-student. In spite of all of these hindrances each night we schlep to 250 Joralemon to learn the law and run.

Very few of us want medals or elaborate praise for choosing to go to school under these conditions. (I personally want elaborate praise...) Parents, friends, spouses, etc. have commended our determination and our fortitude. We night students on the other hand, quite often declare "we must be crazy to be doing this!"

What we do want is more humane scheduling of classes and examinations. (If you expect night students to be here four nights a week til 10 pm, then provide cots!) Most importantly we want to feel some connection to the school, aside from providing revenue. Now that we've been reassured that the part-time division will not be disbanded, what should be (and can be) done to increase the involvement of the evening division? (A twenty-eight hour day is one suggestion.) This is not just addressed to the administration and faculty, but also to the many student organizations that rarely hold meetings after 4 pm.

Evening students are interested in getting involved. If an effort was made to make such participation just slightly convenient, I'm sure the students would respond.

## The Public Interest Job Crunch: Ways to Improve Your Marketability

By Scott M. Sommer

The job market for public interest law is incredibly tight these days due to the "defunding" of the Legal Services Corporation and other progressive organizations; therefore, one must aggressively and carefully lay the groundwork for success if one wishes to practice public interest law after graduation.

There are many different ways to get your foot in the door, probably the best and most effective of which is to have a strongly demonstrated commitment to public interest law and progressive causes. In short, one needs to have a track record upon which to be judged.

Due to the political climate and realities in which progressive legal workers operate today, the law graduate with "good grades" and a healthy selection of public interest related classes will not necessarily have an advantage over other applicants for a public interest legal position. Even the law graduate who may have been active in a progressive legal organization, such as the National Lawyers Guild, the Black Law Student Association, the Human Rights Bar Association, etc., might not have the edge on other applicants for a public interest legal job.

Today, people responsible for hiring within the progressive legal community are looking for applicants who have gone one step beyond the rest in demonstrating their commitment and desire to do public interest work. The best way one can meet this standard is to take one's commitment outside the law school building and into the community.

## Announcements

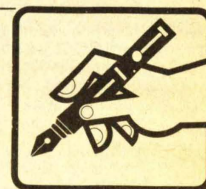
### Moot Court Best Brief

Dean Trager and Professor Walter would like to congratulate the following students who, in 1983-84, were nominated by the faculty for the Joan Offner Touval Memorial Scholarship. The scholarship is awarded annually to the student who has submitted the Best Brief in the First Year Moot Court Program. Professors Walter, Bentele, Meyerson and Mishkin chose the four finalists. From this group Dean Trager selected the Best Brief.

Best Brief: William F. Cuozi. Semi-Finalists: Susan Merrill, Ann Ruben, Sandra Wulken. Honorable mention: Virginia L. Bishop, James De Rosa, Howard A. Gardner, Debra J. Harris, Barbara Keller, Doreen Paul, Rosanne R. Pisem, Diane E. Prebluda, Richard P. Schroeder, Marc Seidenberg, Louise Villella, Jan Uzzo, Emily Wheeler, Joseph A. Zirkman.

### Law Review Additions

The Law Review is pleased to announce that Kevin McLean has been selected as a new member of the review. We are also pleased to announce that Amy Fier has been elected to the position of Articles Editor.



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## Cross Examination

# The Reshaping of the U.S. Supreme Court; The Era of Reagan and Judge Bork

By Harry Steinberg

In the preceding issue of the Justinian, the Brooklyn Law School community was treated to a discourse on the importance of the Constitution's text, and a jeremiad against the liberals who were busy subverting the true text of the Constitution. Bauer, *Text or Pretext*, Justinian, Dec. 10, 1984, at 6, col. 1. While pretending to be serious analysis, complete with impressive footnotes<sup>1</sup> citing many of the right kind of sources, Kevin Bauer's arguments proved to be nothing more than a pretext for the tired and discredited arguments that the conservative, strict-constructionalist view is, no pun intended, "right."

As I read my Brother Bauer's attack, it can be boiled down to but two basic complaints:

1. Liberal commentators are out-of-line in their criticism of conservative opinions and in voicing fears of the tragedies to come if Reagan does indeed get the opportunity to name the next five Supreme Court Justices.

2. Judge Robert H. Bork, of the U.S. Circuit Court of Appeals for the District of Columbia, is the kind of "right thinking" strict constructionist who should indeed be named to the next Supreme Court vacancy. As a paradigm of Judge Bork's "right thinking" Bauer holds up Bork's opinions in *Dronenburg v. Zech*, 741 F. 2d 1388 (D.C. Cir. 1984).

While I generally agree with Bauer that the liberal critics are crying crocodile tears only because it is *their* ox which is being gored, I feel compelled to respond to his essay because the tears being shed by conservatives are equally inappropriate—something Bauer ignores—and worse, in order to find basis for criticizing the liberal commentators, Bauer must do violence to language and logic.

I will address each of the two points in turn.

## I. The Liberal Critics

Bauer writes, "Tom Wicker (of the New York Times) prophesied that the Democrats...could very well thwart Mr. Reagan's flagrantly ideological (*read unconstitutional*) attempt to reshape the Court." The italics are mine and they are very important. Wicker did not use the word "unconstitutional" nor did he use any language which would justify Bauer's use of that word in a paraphrase. Bauer is the only one who reads the word "unconstitutional" into Wicker's commentary. Nor has any liberal commentator suggested that Reagan's naming

of whatever number of justices to the Supreme Court would be unconstitutional, if there were the requisite vacancies.

What many critics have suggested is that the public chortling by various right-wing fanatics about the opportunity to "reshape" the Court is in very poor taste. Bauer ignores this tacky public display—it does not fit his neat little thesis—and chastises the liberals for complaining about it.

Let us look at the facts. There are now five Supreme Court Justices over the age of 75 (including all of the liberals). This is an accident of history, nothing more and nothing less. It is an especially ironic accident of history, that this president who is publicly licking his lips at replacing the Godless liberals with right-thinking conservatives, is himself 74 years old. Thus, if it comes down to a game of who outlives whom, Ronald Reagan may not get to name any justices and the respective cries or chortles of both sides may be for naught.

*What I find disturbing is that Reagan and some of his henchmen...are seeking to have prospective appointees pass an issue-by-issue test based on hypotheticals and conjecture.*

What I find disturbing about this affair is that Reagan and some of his henchmen, including the likes of Jerry Falwell, are hoping to appoint conservatives to the Supreme Court—every president has tried to appoint justices cut from his own political cloth—but rather that the current administration is seeking to have prospective appointees pass an issue-by-issue test based on hypotheticals and conjecture. No president has sought to do this before, and no president *should* do this.

What Reagan is trying to do—and what the liberal critics are complaining about—is to appoint a mirror-image of the Warren Court, which will undo all of the great Warren Court decisions. What the conservatives do not realize is that doing this will undermine the credibility of the Court. The Supreme Court does not belong to anyone—not liberals and not conservatives. The Warren court was appointed by the presidents from Franklin Roosevelt through Lyndon Johnson. That the Warren Court handed down a series of decisions viewed as liberal was an accident of history and a response to the times. Deliberately force feeding carefully chosen conservatives onto the Court will make the Court look like just another policy instrument of the Reagan Administration.

By making the potential appointments a hot political issue, Reagan and his henchmen may be cutting off the limb on which they are perched. The rabid views of the Reaganauts may result in confirmation hearings that drag on past the end of Reagan's term, when appointments could be withdrawn by Reagan's successor. That would be the most delicious irony of all.

But Bauer takes no note of the unseemly conservative over-reaction to the potential Supreme Court vacancies, criticizing only the liberals and, worse, doing it by misconstruing their own words.

My brother Bauer again plays with words for his own purposes when he attacks Professor Ronald Dworkin's criticism of Judge Bork's opinion in *Dronenburg*. Bauer writes: "*Dworkin, on the authority of Justices Stevens and Blackmun, accuses the Burger Court of abandoning principle, equated here with a move to the right.*" Again, the italics are mine and they are critically important. The authority of two sitting Supreme Court Justices sounds pretty potent too—far more potent than the carping of a third-year law student.

Bauer next launches attacks on Chief Justices Hughes who "once said that the Constitution means what the justices say it means," and Justice Douglas who "confessed that the dispositive factor in constitutional adjudication was the individual justice's 'gut reaction.'" In the broadest of terms, both eminent justices are correct. But Bauer gives us no hint of the context in which those statements were made instead tossing those phrases out in an effort to show that any justices with liberal inclinations must be making things up as he goes along.

Instead of these quotes, I ask my brother Bauer the question frequently asked by Chief Justice Warren, who in Bauer's lexicon, must be the devil incarnate: "Is it right? Is it fair?" And while this phrase is not as visceral as Justice Douglas', it certainly expresses the same thought in a less inflammatory manner—a valuable lesson for law students.

My intent here is not to dissect line-by-line Bauer's essay, but rather to show the systematic pattern of distortion and illogic he uses to support his preconceived notions. By taking this approach, Bauer has deprived of credibility whatever good arguments may be buried in his essay.

## II. Bork's Opinion in *Dronenburg*

Perhaps one of the reasons Bauer is so fond of Judge

*Continued on page 9*

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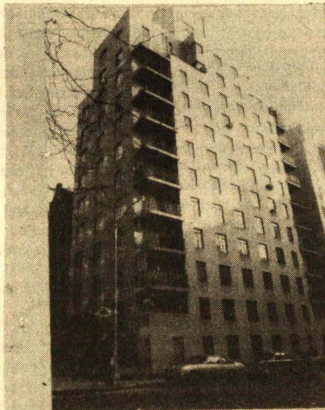


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View from 4th floor apartment (above) at Two Pierrepont Street (right). The real estate purchase is "part of an ongoing program to establish Brooklyn Law School's position as one of the preeminent regional law schools in the United States."



## The Public Has a Stake In Improved Legal Education

Brooklyn Law School owes a duty to the public to eliminate any deficiencies in its method of legal education.

It is the public, through elected representatives, which has granted a monopoly on legal services to the bar, which, in turn, by means of accreditation, grants a monopoly on legal education to a handful of law schools. Absent this grant of monopoly by government, a law school cannot function.

A school receives this share of the monopoly in exchange for providing the people of the state, from richest to poorest, with the greatest number of highly skilled lawyers possible. Deficiencies in legal education, which prevent students from realizing their full potential, are a grave public problem.

Ideally, BLS should be attempting to produce more uniformly excellent students, so that all members of the public have access to master lawyers. The present system of education does not attempt to do this. Instead it produces a bell-shaped curve, which makes it easier for wealthy firms to purchase the most diligent, but which also ensures that the poorer receive less capable representation. Unless the school strives to produce a more uniform result, it is not best serving the public interest.

In order to remedy this serious problem, certain steps are necessary to improve the state of legal education at BLS:

- The course in Legal Method should be integrated into the first year writing course. In a small group setting, teachers will be able to diagnose whether students are acquiring skills in extracting decisional factors, synthesizing opinions and applying them in legal problem solving.

- In the first year, teachers should

compile and distribute their own outlines of black letter law, policy, lines of opinion and analyses. There are two reasons for this, first, students are being taught two skills at once—reading cases and memorizing rules—with the result that neither is done well. Briefing skills could be taught with greater focus in the Legal Method/Writing course. In substantive courses, students could focus on memorization and application of rules and policy.

Secondly, all students use outlines prepared commercially or by former students. Official disapproval only creates an atmosphere of furtiveness, which undermines training in ethical behavior.

- In the first year, smaller and fewer classes should be taught each semester. This would allow the material to be taught more deeply. It would allow for greater teacher preparation including team teaching and outside lecturers speaking on matters relevant to the law being studied.

- Mid-term and other examinations should be given. Exams have two functions: to rank students and to provide professors with a diagnosis of whether students understand concepts. Final exams merely rank students; any feedback comes too late. Diagnostic exams must be coupled with an expanded program of teaching assistants to attend to each student's individual needs.

In conclusion, the primary aim of this new model of education is not the survival-of-the-fittest paradigm of Darwin and his contemporary, Langdell; the aim is to produce a more uniformly excellent mastery of the law. Legal educators owe it to the public to make these improvements.

## Editorial:

### The Odd Couple

Now we know for sure what has long been suspected. You just can't take him anywhere. Who we are talking about, of course, is Washington Redskins fullback John Riggins. While a superstar on the football field, it is unlikely that the man will ever be asked to represent our country at the United Nations. After all, it is obvious that he knows very little about diplomacy. Or etiquette.

What we are talking about, of course, is a statement he reportedly made to Associate Justice Sandra Day O'Connor. Mr. Riggins was seated at the same table as Justice O'Connor during a black-tie affair sponsored by the Washington Press Club, when he uttered the now-famous words. The newspapers reported the events as follows: After speaking loudly to Mrs. O'Connor several times during the course of the dinner, Mr. Riggins finally told her: "Come on Sandy, baby, loosen up. You're too tight." Then after dinner, he left his chair, walked around the table and napped on the floor during a speech by Vice-President George Bush.

There are two things regrettable about this incident. First, Mr. Riggins was escorted from the room before he could say anything else; and second, we were not there to witness the event.

### Torture in the 1980's

There is precedent to back us up on this. Common sense supports a change. And basic human decency would seem to require the matter to be given at least some serious thought. For these reasons, as well as others, we are calling on the school's administration to put an end to the sadistic practice of holding the Fall semester exams after the New Year is rung in.

The facts go something like this: The students arrive on campus sometime around the first week in September. Most of the faculty are here by at least the second week of that month. By October, each student has read scores of cases and sat through seemingly endless hours of classes. In November, the eyesight begins to go. It is time for a new pair of glasses. But there is no time to set up an appointment with the eye doctor, so that gets put off.

In early December, students start to worry about finals, despite the fact that the exams are still a month away and last a full two weeks. (By our calculations, this means that students will spend approximately six weeks worrying.) The last day of classes comes and goes. On the night of the last day, most people drink. And party. They feel a great sense of relief. That relief is an illusion. The real pain has yet to begin.

(Footnote: Most of the students realize this, so even while they are partying, they are not really happy. But the professors are happy. They have no more classes to teach. Many go to places like the Bahamas.)

Now it is time to get down to business. The students begin to outline. Each spends a great deal of money on Emanuels, Gilberts and Burger King. Gallons of coffee are consumed. By Christmas Day, many have acquired a glazed look in their eyes. By New Year's Eve, a holiday few BLS students even bother to celebrate and even fewer enjoy, the general mood is one of depression. The male students, by this time, have given up the habit of shaving. Many look like they live in the subway. People in the streets seem surprised to see such creatures walking around with books in their hands.

Exams come. Exams go. On the last day of exams, everyone goes out and drinks. Everyone is happy. But even this happiness is mere illusion. For deep in their hearts, the students know that the next semester is only a week away. It is an unpleasant thought, to say the least.

The point of all this, is to make a case for having examinations before the holidays. Since there appears to be little reason for the administration to continue its present, misguided course regarding these matters, we ask that it take immediate steps to remedy this sorry situation. Give us a break!

## Justinian

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# The Burn-Out Syndrome, 'What Vacation?' and The Three R's That Spell Relief

By Jim Diamond

I've noticed an interesting disparity during the early days of this semester: The faculty seemed eager to get down to business and immediately plunge ahead into their neatly plotted course outlines, while students seemed quite reluctant to open their books, if they had yet purchased them, and take the inevitable dive into another fascinating area of the law.

On Opening Day, Wednesday, January 23rd, it was amusing to catch the faces of the faces of the students when the professor threw out a question to the class that revealed that he seriously expected us to have pondered and ingested the weighty questions and cases that were outlined in some mysterious assignment sheet. I saw the faces of some who had obviously cultivated expensive tropical tans turn ghostly white in a matter of seconds.

My own theory about this differing level of readiness for the new semester is this: The faculty had a vacation and we did not. They had a month where there were no exams to grade and no classes to teach. They had the opportunity to celebrate Christmas and New Year's, see old friends and spend time with family. Maybe that's why they were eager to get back to business.

If there is any consensus among people as diverse as the BLS student body, there seems to be close to universal acceptance of the following conclusion: THE VACATION IS TOO SHORT. In fact, many people I talked to answered my query with, "What vacation are you speaking of?" The weeks of preparing for and taking final examinations seems to have left large segments of the student population with the classic symptoms of what is universally known as burn-out. This ailment occurs in all high-pressure environments and is well understood by the faculty and administration; for at-

orneys are quite prone to burn-out. Having been to law school, they understand the remedy for this malady is the three R's: Rest, Relaxation and television Re-runs. I believe the burn-out was for more serious than could have possibly been remedied in a mere eight days of so-called vacation.

For an example of the type of "vacation" one student had, take a look at what I, a first year student, did during those eight days:

## DAY ONE: Sleep

Since I had not experienced much of this important element of life during the previous few weeks, and since I spent many hours following the last exam "celebrating," the first day was spent in bed, sleeping.

## DAY TWO: Laundry

Finals time had consumed much usable clothing. This day was spent doing several loads of laundry, followed by replacing the staples normally kept in my now bare refrigerator.

## DAY THREE: Re-establishing Communications With Friends

After failing to return phone messages and turning down social invitations for close to five months, this day was spent on the phone in an attempt to patch up social relationships. I was only reasonably successful.

## DAY FOUR: Re-establishing Communications With Girlfriend

This was the call and meeting that arose from the line, "Call me when those damn tests are over," which preceded the slam-dunk of the telephone receiver.

## DAY FIVE: Consumption Of Cheap Novel

Against advice from friends and upper-class students I read a cheap novel. I could not help but underline and outline key portions of the facts.

## DAY SIX AND SEVEN: Roadtrip

I actually got out of Brooklyn for two days, by visiting friends in Boston. This weekend of fun was capped by attending

a downer of a Super Sunday Superbowl Super Party.

## DAY EIGHT: Bailing Out Water

As all vacations seem to have some consequences, the deep freeze had frozen the water pipes in my apartment and due to their bursting I was honored on Day Eight, the last day of my vacation, by presiding over the emergency bail-out ceremonies.

And, so, on Wednesday the 23rd of January I, and everybody else, returned to school to follow a Monday schedule—once we could figure out what that meant. For many of us it was like we never left the building.

I'm not sure where the solutions lie, because I don't think there is consensus for having tests before the holidays. Perhaps we could just squeeze out a few more days of an intercession? The three-day half-week when we return is meaningless for many students who are still shell-shocked from finals, many of whom do not yet own the books and are clearly not ready to take the plunge. Adding those three days to the vacation would have magically turned a one week vacation to a, yes, just imagine, two weeks of unmitigated vacation. Where would those three days come from? That's a good question, but it's something that most certainly should be discussed for next year, and I don't think it would necessarily require prolonged or complicated negotiations to yield students at BLS a real vacation, and a solution for mid-year burn-out.

I hope this will serve as some explanation to members of the faculty who had been, to date, confused as to why we failed to share their exuberance for the beginning of another semester. And to those students who share my sentiments about the lack of any real vacation, why don't you drop off a note to your S.B.A. representative, or to me at the S.B.A. office. If there is any interest, we will begin the search for those notorious three days.

## Letters

# Get Back in Line

To the Editor:

Why must I return to this desk so soon? Staring at this ominous pile of books. Wondering where my coffee cup is. Wondering when I'll overcome this sense of inertia, or worse, the deep rooted indifference which prevents me from marching back in line, in my place facing the wall, preparing to bang my head against it again and again for another five months.

I'm already numb. I've been through it before. The initial confusion as the semester begins which occasionally yields to a yearning to consume all the knowledge you can when a subject, professor and student body get together in a cohesive group, almost like a living organism that learns and grows. But there's that point later on when all the enthusiasm is gone. The interest fades, it is lost somehow, and all that's left is the race. Running to catch up. Trying to understand. Trying to care about the endless assignments, the interviews to be arranged, the part-time jobs, the list of things to do, the whip constantly at your back, the carrot just beyond your nose.

Is there a reason for all this? Does it have to be this way? Why are these issues abruptly dismissed with a supercilious sniff as merely trite and frivolous daydreams unbecoming the proper mental attire of a law student, the up and coming lawyer to be.

Maybe we're not supposed to catch our breath. Because there's a danger in allowing time for reflection. After all, we are cultivating useful skills whose mastery could offer rich potential. If we would only stop, look and listen to all the cues. To what's being said. And what's being left unsaid. To what direction we're headed, and to what we seem more and more willing to give up in order to achieve our ends.

But I found my coffee cup. And I'll go back and take my place in line. After all, the semester is already underway. And I've got lots of things to do. Now where did I put my list?

Signed,  
Hugo Z. Quackenbush

## AXFORD

By Robert Axford

So it is 1985. Ronnie remains our leader, snoring his way into history. (It's not the idea of a government by committee that bothers me, it's his committee I find so repugnant. Bernhard Hugo Goetz embodies the modern hero: shoot first, drive to New Hampshire second, just make sure they're black. Madonna (if she feels like a virgin, that makes me a trappist monk) represents today's American woman: kind of now, kind of into it for the bucks. The world debt exceeds \$13 trillion; the U.S. debt, \$1.6 trillion. The Soviet bear is still all dressed up with nowhere to go in Afghanistan because the rebels have nothing to lose but their imperialist neighbors. (This despite Reagan's get-tough policy). In Central America, we still back the wrong people for the wrong reasons. As Elvis Costello says, history repeats the old conceits, the glib replies, the same defeats.

Nonetheless, good riddance to 1984. Any year proclaimed "The Year of the Yuppies" was bound to make me feel a bit alienated. I suppose I should come to grips with my gripe with the yuppies. Love thy enemy and all that. After all, the yuppies, like most, are manipulated by the system, weaned on Pavlovian gratification, and destined to suffer the same fate as all of us on Planet Earth.

Yuppies (persons between the ages of 25 and 39 and earning in excess of \$40,000 per year) overwhelmingly voted for Reagan. But so did my father (among other fathers, I understand), and I don't dislike dads as a group. Yuppies have devoured every habitable portion of N.Y.C., effectively barring me from residing in my town. But that is more a result of policy decisions made by Koch, Trump and Chase Manhattan. The yuppies are a lot of things, but they are not in control.

My ill feelings, I've concluded, stem from the yuppie world view: a smugness that says, "Hey, I've got mine—how tough can things be." It is the it's good-to-be-bourgeois attitude.

## YUPPIES, ROME AND THE DEBT

They seem proud to be walking billboards for Reagan's America, so many Mary Lou Rettons holding out the symbolic carrot while the rest of us get the stick. As James Brown, speaking for the President, says, "I don't want to know your thoughts; I want to satisfy your faults."

In general, people would rather not think about the world. Agnew once called dissenters like me "nattering nabobs of negativism." Reagan had similar words for those who challenged his good-times-are-here-again campaign. Carter's main problem, history will show, was his honesty and his inability to stick with the Big Lie. Unlike Ronnie. J.C. saw the self-centeredness of our society and called it a "malaise." Dishonesty being the best policy, Carter was quickly bumped by a man who thinks you can recall nuclear missiles once they've been fired. Packaging is every thing.

Our environment continues to suffer the slow burn, but let's not think about it. The world is forever posed for nuclear war, but let's not think about it. People are starving by the millions, but let's not think about it. Oh, look, there's the President flipping a coin before the Super Bowl—what a hard worker he is; he even works on Sundays.

So I'm the tome crier. Living in Rome as the empires crumbles provides one with a lot of material. But, while history has its own schedule, our future seems self-evident. The slow burn is our fate—both environmentally and economically. Our environment is perhaps beyond repair without a worldwide change in consciousness. Our economy, burdened by a \$1.6 trillion debt, is inching toward the precipice as we do our lemmings imitation. If we intend to pay off the debt, we intend to suffer. And who will suffer? Eventually, depending on how long we keep up this charade, we all will. Initially—now—the poor, single mothers, children, the elderly and the desperate bear the greatest burden.

George Kennan once said that a nation that spends more money on weapons of destruction than on programs to uplift humanity is suffering from a spiritual death. He said that in 1948. One of the causes for the fall of the Roman Empire was

an inability to keep up with the rising costs of a large standing army. Sound familiar?

Christ (an intelligent fellow) believed that much is expected from those who are given much. It has occurred to me that our society exemplifies the obverse of that: much is expected from those who are given nothing. We expect inner-city and rural kids, malnourished and undereducated, to overcome incredible obstacles, to scratch out a quiet living for themselves and their families, while the rich lobby on ABC or CNN for tax cuts to stimulate the economy. If it weren't so pathetic, it would be absurd.

I have a solution for the economic crisis: Cancel all debts. Tomorrow, Ronnie should announce that all debts are cancelled. The government's debt (which is really only yours and mine and our children's) is everybody's debt. The whole world's debt, in fact.

Impossible! You cry. But why? Other than the wealthy no one would lose much and everyone would benefit. Because one man's debt is another man's assets, all assets would similarly be nullified. Reagan would announce that we're starting from scratch and pledge not to spend more than is brought in. Parenthetically, this would allow all those Darwinian capitalist types to prove their pet thesis: that the "cream" rises to the top and all that. If nothing else, it would be a nice sociology experiment.

Meanwhile, we could make feeding the world the first order of business. Then, we house the world. Without intervention monetary vultures (among them, the I.M.F.) demanding austerity programs from debt-ridden governments, perhaps the task would become more manageable. It is worth a try.

Of course, you're skeptical. You think it cannot be done. But, then, you can't pay off a \$1.6 trillion debt either. Someday the debt will have to be cancelled anyway; it's simply a question of when and how it is done. One way we avoid a lot of agony and suffering. The alternative is to make sorrow our destiny. History repeats...



## Pianist Francesch Joins Orchestra Tour

Internationally acclaimed pianist Homero Francesch will be the soloist with the Mozarteum Orchestra of Salzburg, when the renowned orchestra makes its national tour during the month of March. Mr. Francesch will perform the Mozart *Piano Concert in A Major, K. 488*, for the first performance of the tour, which begins in Avery Fisher Hall on Friday, March 8 at 8 PM. Mr. Francesch will alternate the Mozart "A Major" piano concerto with the *Piano Concert in D Minor, K. 466* during the course of the tour, which will include Washington D.C., Los Angeles, Pasadena, Boston, and Toronto. The Mozarteum Orchestra will be conducted by its Music Director, Hans Graf. Tickets are \$16, 11 and 8, and may be purchased by calling the Avery Fisher hall box office at 212-874-2424.

Homero Francesch has performed with the world's greatest orchestras, including the Berlin Philharmonic, the Vienna Symphony, the London Symphony, the Orchestra National de France, the Munich Philharmonic, and the Zurich Tonhalle. He has also participated in such music festivals as Spoleto, the Bach festival in London, and the Berlin, Vienna and Adelaide Festivals.

Born in Montevideo, Uruguay, Homero Francesch began his training with Santiago Baranda Reyes and in 1965 was the recipient of the first prize in the Jeunesses Musicales. It was his televised performance of the Ravel *Piano Concerto in G Major* with the Cologne Radio Symphony Orchestra that brought him great acclaim when the performance was honored with the Prix Italia. Since then, Mr. Francesch has toured throughout the world with concerts in Europe, Australia, Canada and South America. He records exclusively for Deutsche Grammophon.

Last November, Mr. Francesch performed two highly successful concerts at The Metropolitan Museum of Art.

## TV Trivia Test

Who followed Ronald Reagan as "Death Valley Days" host? This is one of the questions in a new trivia game based on America's primary pastime: television viewing. Called *TV Guide's TV Game*, the board game contains more than 6,000 TV trivia questions and answers prepared and authenticated by the editors of *TV Guide* magazine.

"Nothing mirrors our life and times like the electronic eye of television. For more than 30 years, *TV Guide* has been writing the book on television every week," states David Sandler, *TV Guide's* national section editor. "The *TV Game* is both a nostalgic trip through the days of Lucy and Uncle Miltie, and an exciting journey through today's video entertainment...its people, its programs, and the world we all experience."

The questions for *TV Guide's TV Game* are provided in four 689-page books containing 1,500-plus questions and answers in each.

Here are some sample questions from *TV Guide's TV Game*:

1. "Is it bigger than a breadbox?" was a classic question on this show.
  2. He followed Ronald Reagan as host of *Death Valley Days*.
  3. He was the first to bring to life the character of Hawkeye in the 1970 movie *MASH*.
  4. Who was the only other person who knew the real identity of Batman and Robin?
  5. What "diplomat" brought Menachem Begin and Anwar Sadat together for the first time in 1977?
  6. Howdy Doody had a twin brother. What was his name?
  7. What country did the U.S. defeat to win the ice hockey gold medal in the 1980 Winter Olympics?
- (Answers: 1. *What's My Line* 2. Robert Taylor 3. Donald Sutherland 4. Alfred, the butler 5. Walter Cronkite 6. Double Doody 7. Finland)

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# The Reshaping of the Supreme Court

Continued from page 5

Bork's opinion in *Dronenburg*, is that the judge also twists logic and distorts language in an attempt to support his preconceived notions. In the end, Bork's opinion reads like a cross between a stump speech in his campaign for a Supreme Court seat (a non-elective office), and a stern father lecturing a wayward son who just cannot seem to get things right.

The facts, briefly, are that Dronenburg, a 27-year-old Navy petty officer with a top security clearance engaged in homosexual acts with a 19-year-old seaman recruit. For this the Navy dismissed him with an honorable discharge. *Dronenburg*, supra, 741 F. 2d at 1389. Dronenburg sued, claiming that the Navy violated his right to privacy and, because it dealt with homosexual conduct in a manner different than heterosexual conduct, it also violated his equal protection rights.

Judge Bork, in a rambling opinion that is virtually 99 percent dictum, finally concluded that the navy's concern with order, morale, and discipline, justified dismissal of Dronenburg. Whether right or wrong, there is no point in arguing with this decision. And if Bork had gone no further than this conclusion, the decision would have been safely and quietly buried in the bowels of the Federal Reporter 2d. Instead, Bork sailed off on an analysis of virtually every right-to-privacy case, *id.* 1391-97, before concluding that homosexuality was not one of the rights of privacy cognizable under the Constitution. *Id.* at 1397.

But Bork does not stop, or even pause, at this point. He continues, at the top of his lungs, to denounce the Supreme Court for creating a Constitutional right to privacy out of whole cloth. And, he rants on, humble lower courts should certainly not follow the misguided Supreme Court down the sinful path of creating new Constitutional rights. *Id.* at 1395-96 & n.5.

(Parenthetically, one wonders how Judge Bork would feel about two civilians prosecuted for homosexual acts committed in the privacy of their own home. Is it not an article of faith among our conservative brethren that a man's home is his castle?)

(One of the benefits of being neither a knee-jerk liberal nor a rabid conservative is that I can comfortably criticize both sides as I struggle to arrive at some form of Truth.)

That Bork's dictum is misplaced and misguided is not just the opinion of one third-year law student. In denying a petition to rehear *Dronenburg in banc*, the 11-Judge D.C. Circuit split sharply: Four judges (Robinson, C.J., and Wald, Mikva and Edwards, J.J.) dissented, voting to rehear the case not necessarily because they were eager to reverse the panel decision, but because they were eager to wipe Bork's dictum attack on the Supreme Court off the books. "The opinion purports to speak for the court throughout the text, and we cannot indulge exposition of a personal viewpoint," Chief Judge Robinson wrote. (These four judges also note that Bork completely ignored the equal protection questions raised by *Dronenburg* based on the different treatment the Navy accords to homosexual and heterosexual relationships within the

rank.) *Dronenburg v. Zech*, F.2d (DC Cir. 1984) (available on Lexis).

A fifth judge, Ginsburg, J., wrote a concurrence to the denial of the rehearing in which she expressed the hope that the "opinion's extended remarks" (what a lovely phrase for foaming-at-the-mouth dictum) would be seen as "a personal statement that does not carry or purport to carry the approbation of 'the court.'"

A sixth judge, Starr, J., felt compelled to add that it was "not the province of the lower federal courts to chide the Supreme Court," but that Bork's opinion had not gone too far.

Bork's dictum is marred by the same kind of language-twisting that mars Bauer's effort to defend it as a paradigm of judicial restraint. If Bork were truly interested in judicial restraint he would have limited his opinion to its narrow

*The judge... twists logic and distorts language in an attempt to support his preconceived notions.*

holding (the Navy's need to maintain discipline was paramount and so there was no need to reach the question of whether homosexual conduct merits protection under a constitutional right to privacy) and he would have spared us his misreading of the privacy cases. Instead, he launches into an argument that goes something like this: The word "privacy" does not appear in the Constitution, therefore, there can be no right to privacy.

Simple and simplistic.

(Parenthetically, we have here another problem of use of language, this time on the liberal side of the line. Those of us who survived Constitutional Law remember, less than fondly, the "penumbras," "emanations," and "zones of privacy" that the Court found somewhere in the Constitution. How much clearer and more forthright would it have been for the Court to explain: "Privacy is the common thread that runs through the Bill of Rights?" It would have made life easier for law students and much harder for conservatives like Bork who like to snipe that difficult language. *Dronenburg*, supra, 741 F.2d at 1392.)

Bork intentionally misread the privacy cases, as does Bauer. The Supreme Court was no "creating a new constitutional right" when it said there was a right to privacy. Rather, it was discovering a right to privacy that had been there all along, "woven into the fabric" of the Bill of Rights. That this right lay undiscovered was not due to the laziness or stupidity of the Court, but rather because technological and scientific advances, the growth of population, and various other societal changes finally brought the issue to a point where it needed to be dealt with and recognized.

When the Constitution was framed, the only way to invade a citizen's privacy was physically—now it can be done electronically in many ways that one cannot discover. When the

Constitution was framed there was no need for the privacy of consultation between physician and patient about such matters as birth control, as there is now. The Supreme Court was no more "creating a new constitutional right" in the privacy cases than it was in the civil rights, search and seizure, or right-to-counsel cases.

Bauer concludes his jeremiad with the admonition from *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), that "it is a Constitution we are expounding," *id.* at 405, and urges us to analyze the text, not the intent behind the text. Again he carefully chooses to ignore the actual meaning of those words: A constitution is not a statute that can be quickly enacted, amended and repealed. Nor should it be. Instead, it is intended to provide the broad guidelines and statement of ideas and ideals that will help us solve new problems as they arise by looking back to the words and ideals of the framers.

Bauer's refusal to recognize this requires him to misread cases, ally himself with those who put their personal political agendas ahead of clear logical analysis, and misconstrue those who do not agree with him. To do this, he must erect straw men that he can easily knock down. But the only arguments my brother Bauer will ever win, if he persists in this approach, will be against the straw men of their own erection.

## Footnote

I commend Mr. Bauer on his use of footnotes and on the effort he obviously made in reading all of the material cited. However, I feel that footnotes are out of place in a newspaper and find no need to force the reader to play "eyeball ping-pong." In any event, footnotes are best reserved for law review articles where form counts far more than content. Since I take the position that Mr. Bauer is wrong on the facts and on the law, I find no need for extensive reading, or trying to impress the reader with the amount of research I did. The ideas expressed here are largely mine and I find no need to cite authority for obvious and basic statements.

I do cite Kevin Bauer's article, and I will assume, since this article is a short one, that readers can easily find the material I either quote or paraphrase. A basic familiarity with that article is assumed.

o

Kevin Bauer responds: The last resort of the advocate bereft of argument is the ad hominem. In his piece, "Most Assuredly Pretext," Harry Steinberg wields that blunt instrument rather lustily, no doubt hoping to draw attention away from the fact that he fails to engage my position at all. Having urged that Federal Judges should be guided by the text, structure and history of the Constitution, I find it difficult to understand Mr. Steinberg's characterization of my position as strict constructionism. I can only infer that Mr. Steinberg either deliberately misrepresents my argument or fails to understand it. I sincerely hope that Mr. Steinberg is guilty only of the latter. If the case is otherwise, I cannot help but raise what appear to be Mr. Steinberg's favorite questions— "Is it fair? Is it right?"

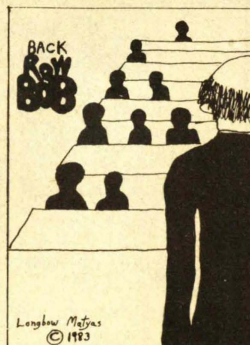
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# First Year Writing Program Reviewed

By Jonathan Hudis

The bell rings and in walks the instructor. As the instructor tells the students what is in store for them, they suddenly realize that this innocent-looking one-credit course in legal writing will be their most time consuming class of the semester.

And so it was for the first year BLS students last term; pouring through stacks of official reports, unofficial reports, ALR volumes, Shepard's, Wests, Law Journals, and numerous other materials. Misplaced volumes, broken copy machines, bent copy-cards, and running out of change are just some of the hazards of library research.

When the fun of library research was over, the next step was to condense all this new found material into a mystical document called a memorandum. "Now what was it the instructor said? Oh yes, write concisely and dispassionately. Above all, don't forget proper Blue Book form!" "What's a Blue Book?" "Is my spelling correct?" "Did I get all the typos?"

Finally, after the fifth re-write, it is done. The student hands the instructor what he believes is his finest work. A week later he gets back a paper that looks like a jigsaw puzzle, with arrows and edit marks everywhere.

With a look of puzzlement on his face, the student sits down a few days later with his writing instructor to find where he went wrong, or where he could have done better. This process is repeated once again, and by the end of the semester, the work and the frustrating nights of writing have paid off. The first-year student now begins to understand the art of legal writing and research. But it isn't over yet. The second semester the student is faced with Part II of the writing program—legal briefs and moot court presentations.

What has just been described is the BLS writing program. Heading the program is Professor Marilyn Walter. Since 1980, her first year at Brooklyn Law School, Professor Walter has seen the BLS Writing Program stand the test of time. With a staff of 12, Walter claims the BLS Writing Program is the best any law school could offer. Said Walter, "There are four major goals to our Legal Writing Program: the improvement of legal writing skills, the development of reasoning and analysis, the learning of the art of legal research, and the student's recognition of the different types of legal writing."

Most critical, according to Walter, is the student's ability to reason to a conclusion.

"Unless one understands the problem and knows what one is going to say, a person can't say it very well."



Marilyn Walter

The writing program has a history of change. Prior to 1980, BLS had a program called "10-on-1." Every faculty member was assigned ten first-year students who the professor taught his or her own individual method of legal writing and research. "The result," claims Dean George Johnson, "was an uneven instruction of an important skill which students needed to master."

Dean Johnson, as head of the Fundamental Skills Committee in 1979, recognized that BLS students were of three types: those who were already good writers, those who were bright enough to quickly master the writing skills not developed in their undergraduate educations, and those who had great difficulty in the area of writing.

"We recognized the need for one-on-one writing instruction by professors who were interested in teaching writing and only writing. No matter what a student's skills were, we felt that everyone should receive the same quality training. Our program is one of the most extensive in existence. Two independent studies conducted by professors, judges, and outside lawyers during the last four years have proven the program's effectiveness."

Worth special mention among the BLS legal writing staff is Professor Betsy Fajans. A Ph.D. in English, Fajans has a dual role in the Legal Writing Program. During the summer she trains the legal writing instructors in course preparation, critical feedback, and research development. During the school year, she helps those students who have special difficulty mastering the skill of legal writing. Fajans is most effective in helping students who have such difficulty.

This year, BLS has added three new instructors to its Legal Writing Program: Susan Randall, Stacey Liebman, and Carey Teitcher. Randall, a graduate of Columbia Law School, said that the Legal Writing Program at BLS is infinitely better than the one she had at Columbia. "We were taught legal writing by Ph.D. and LL.M. candidates who gave neither time nor attention needed to develop students' legal writing skills."

Liebman, a graduate of New York University Law School, found the writing competence of her students better than she expected, yet encouraged them to meet higher standards than those to which they were accustomed. "The present Legal Writing Program at BLS is adequate," said Liebman, "but it should be more than two one-credit courses. In addition, other courses at BLS should demand more writing than they do at present."

Teitcher, a 1981 graduate of BLS, thinks the present program is infinitely better than it was when she was a student. "The program I had when I was a first-year student did not do the job the present Legal Writing Program does. The law should not be a mystery. The present program teaches students to read and write carefully, properly, and accurately. Ten on one didn't do that."

## Public Interest Symposium

Continued from page 3

in the second year and part-time employment during the school year. Law School may provide a student with an academic background, but it is in these volunteer positions that students are able to get involved with Public Interest litigation that only the most experienced attorneys have access to.

The experience is not only valuable to first year students, but to second and third year students who are in a position that makes practical experience more important to their career goals than paying positions.

Linda Stephens emphasized that in many cases students who gain early focus on their career goals obtain the positions they select later on. That is why BLS's placement office is making special efforts not only to provide students with job interview opportunities but also to help students gain career objective focus. The P.I.C. Volunteer Job Fair provides the type of experience for such focus.

If you need more information concerning either event, contact Linda Stephens in the BLS's job placement office or Carolyn Moses at the New York University School of Law Placement office at 212-598-2521.

# Once is enough!

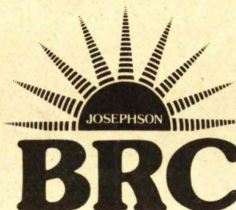
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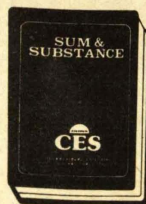
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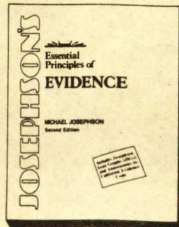
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## ABA Grant Money Available

The American Bar Association Law Student Division has monies available on a matching grant basis for law school projects. This year, Division Vice Chairperson, Robert Bonsignore (Suffolk) has placed an emphasis on programs which offer a benefit to the community as well as to the law students.

Already, many such projects have been funded. A \$2000 matching grant to expand the University of Virginia School of Law Legal Assistance Society had helped to fund a college course for handicapped adults focusing on their legal rights, a Domestic Violence Awareness Week, a Migrant Farmworkers Assistance program which provides free legal aid, as well as several other projects. At Cambell University School of Law the monies will be used to help fund a Hospice and Probate Program which will provide legal services as needed to indigent residents of hospices and their legal families. Other examples of how these funds have been used to provide direct benefit to both law students and the community include VITA programs, Guardian Ad Litem programs, Juvenile reform programs, and community legal education programs.

Any student or group of students attending an A.B.A. accredited law school may apply, however, if the Law Student Division membership at your school does not equal or exceed 35 percent you must apply and meet the requirements for the "special interest group exception."

The minimum grant request for any project is \$100, and the maximum grant request is \$2,000. Each law school is limited to \$2,000 for L.S.S.F. grant money per year.

The Law Student Division reserves the right to fund projects fully or partially. The determination of the amount of funding will be made on the basis of funds available and on need as clearly shown by the project budget as determined by the Vice Chairperson.

Time periods necessarily vary with each project. The maximum time period is one year after the starting date. For reporting purposes all projects must have a termination date.

Each grant application for L.S.S.F. funds must contain a detailed budget. It must indicate the source and amount of all matching funds and the projected use of all L.S.S.F. funds. If any funds are not expended at the conclusion of the project, a percentage of the unused funds equal to the percentage granted by the Law Student Division is to be refunded to the Law Student Division Chicago office within twenty days of the conclusion of the project.

All L.S.S.F. grants are made on a matching basis only. The applicant must certify that matching funds are absolutely pledged.

During the duration of the project, the project director must submit brief bi-monthly reports to the LAW Student Division Chicago office. For example, the first progress reports for a September 1 project must be sent by November 1; the second by January 1. A report must be filed even though nothing may have taken place during the report time period.

The project director must also submit a final report within twenty days of the termination of the project, accompanied by a detailed financial statement with an explanation of the use of all L.S.S.F. funds expended. The final report should evaluate the project and reveal who participated, how many attended or received services, the procedures used, and any comments, criticisms, conclusions, or other pertinent information.

A faculty advisor must be approved by the dean of the law school to work with the project director.

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