

The Justinian

Volume 1985
Issue 5 November

Article 1

1985

The Justinian

Follow this and additional works at: <https://brooklynworks.brooklaw.edu/justinian>

Recommended Citation

(1985) "The Justinian," *The Justinian*: Vol. 1985 : Iss. 5 , Article 1.
Available at: <https://brooklynworks.brooklaw.edu/justinian/vol1985/iss5/1>

This Article is brought to you for free and open access by the Special Collections at BrooklynWorks. It has been accepted for inclusion in The Justinian by an authorized editor of BrooklynWorks.

Meese-Brennan Debate page 8

November 1985 Volume LV No. 2.

THE JUSTINIAN

FOUNDED IN 1931 ▼ A FORUM FOR THE BROOKLYN LAW SCHOOL COMMUNITY

Student Group Defends Black-Only Policy

By Donna L. Riccobono

The largest black law student organization in the country is under attack. And surprisingly, the allegation is an ongoing policy of discrimination against nonblacks.

The controversy surrounds a white third-year law student from the University of Mississippi named Susan Kreston. Kreston became a member of an integrated local chapter of the Black Law Students Association (BLSA) last year but was denied the right to compete at a regional round of NBLSA's Frederick Douglass Moot Court competition held last March at the University of Louisville School of Law in Kentucky. The competition, which is entering its 12th year, is one of the largest moot court competitions in the nation. Although the official word from the University of Louisville is that the integrated team was allowed to compete but chose to withdraw from the contest, Kreston and her attorneys maintain that she was barred from participating because she is white. Chapter members at the University of Mississippi have severed ties with the regional and national BLSA groups and plan not to rejoin until the policy is changed.

Some facts of the current controversy are not in dispute. BLSA's national constitution provides that only black law students in U.S. law schools are eligible to become members. Kreston's attorneys maintain that all threats of litigation would be dropped if Kreston were allowed to

participate in the competition this year and if NBLSA's constitution were modified to permit students of all races to join. "I believe racism is wrong," says Kreston, "and it doesn't matter who practices it."

BLSA rejects the notion that in order to be viable, it must include nonblack members; stressing instead the historical uniqueness of blacks in this society and the need for a special support group to address their concerns. According to Johnnie Cordero, national chair of BLSA and third-year law student at BLS, "The benefits that may be derived from integration are best achieved in situations of coalition on issues of mutual concern."

Carolyn Veal, NBLSA's vice president, contends that, "Until we attain everything a white law student can in law school and in law firms across the country, we don't feel we are practicing reverse discrimination."

BLSA leaders further assert that local chapters are supposed to be in line with the black-only national policy. If Kreston was permitted to become a member of her local chapter, it was because the local chairperson exceeded his authority.

The legal issue concerns whether BLSA is a private association or whether it has a sufficient nexus to a public institution to be classified as public under the law. The law of private associations clearly states that a private club has the right to determine its membership based on any criteria it desires to establish. If private associations

continued on page 19



Johnnie Cordero, a BLS Student: He heads up the national group that is for and about black law students.

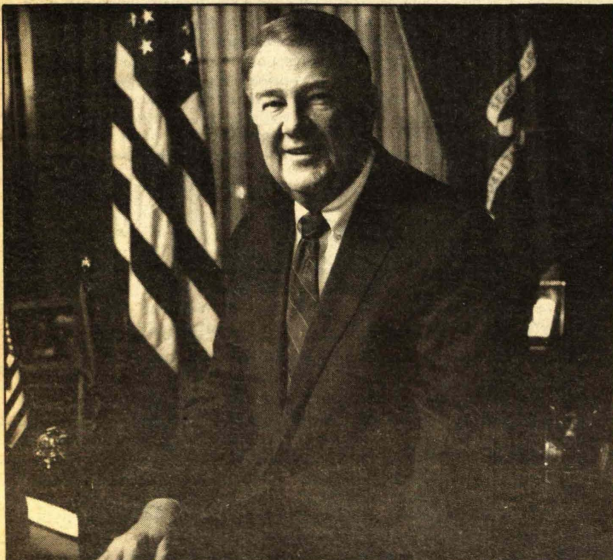
Reagan Administration Declares War on Supreme Court How Far Should Judges Go In Constitutional Interpretation?

By Jim Diamond

The Supreme Court's opinions have been called "bizarre," the Reagan Administration's views of the Constitution are termed "arrogant." Are these the assertions of frustrated con-law students? No, rather, they come from no higher sources than the Attorney General of the United States and the senior Supreme Court justice. The battle cries have been sounded and the Administration has made clear that its next target for great change is the Court and the federal judiciary. This past July Attorney General Edwin Meese III delivered a speech to the American Bar Association in which he called for a "jurisprudence of Original Intention," whereby the views of federal judges would be restrained and the Constitution would be based solely on the intent of its framers. In recent days, almost baiting the Court to respond, Meese has questioned the value of the *Miranda* decision, saying, "Most innocent people are glad to talk to the police," and that the Court's decision applying the Bill of Rights to the states rested on "intellectually shaky" grounds.

Meese's remarks have caused quite a stir among constitutional scholars and, yes, even a bit of noise from the chambers of the Supreme Court itself. On October 12 Justice William J. Brennan Jr., the Court's most senior member, delivered a strong speech at Georgetown University, where he

continued on page 8



US Attorney General Edwin Meese III: He'd like the court to stick to the framer's original intentions and stop pushing things like the Bill of Rights on the states.

THE JUSTINIAN

A FORUM FOR THE BROOKLYN LAW SCHOOL COMMUNITY

NOVEMBER

CONTENTS

FEATURES

FOUNDING INTENT: RELEVANT TO TODAY'S LEGAL ISSUES?

Attorney General Edwin Meese III and Supreme Court Justice William Brennan Jr. square off in a constitutional controversy that may fundamentally change the role of the Supreme Court. Page 1

BLACK STUDENT GROUP CHARGED WITH RACE DISCRIMINATION

BLSA's refusal to allow a white law student to compete in its national moot court contest has generated a media backlash that shouts reverse discrimination and a potential lawsuit that could threaten the status of black organizations throughout the country. Page 1

CITY REFERENDUM NUKED

Struck from the voting ballot this November was a referendum that would have excluded Staten Island's Nuclear Home Port. The reason: The Supremacy clause and National Defense. Is this action consistent with democracy? Page 3

AIDS VICTIMS IN PUBLIC SCHOOLS

There is no medical reason for preventing most children with AIDS from attending school. There is also no legal basis for doing so. According to one analyst, fear and the political pressure it creates seem to be clouding what is an excruciating, but clear, legal issue. Page 11

DEPARTMENTS

NEWS UPDATE	2
NIGHT OWLS	2
EDITORIAL/OP ED	10-11
LETTERS	12-13

QUOTE OF THE MONTH: "However, this court is convinced that a conviction which rests upon racial stereotypes, fears and prejudices violates rights too fundamental to permit deference to stand in the way of the relief sought."—Judge H. Lee Sarokin of Federal District Court in Newark, in overturning the murder convictions of Rubin (Hurricane) Carter and John Artis. New York Times, 11/8/85

PIEPER

EARLY REGISTRATION STUDENT DISCOUNT - \$125

PIEPER BAR REVIEW COURSE

ENROLL NOW to save a seat in the
LIVE course!

ENROLL BY December 1 and save \$125 —

Total cost only \$700!

ENROLL NOW and take the MPRE Review

Course at no additional cost in

March, August or November.

ENROLL NOW! \$100 SAVES YOUR PLACE!

For more information see your Pieper

Representatives or telephone

(516) 747-4311

**PIEPER NEW YORK-MULTISTATE
BAR REVIEW, LTD.**

90 Willis Avenue, Mineola, New York 11501

Night Owls:

The Night Student Stigma

Two years ago it was rumored that Brooklyn Law School was considering eliminating the part-time division. In the spring of 1984, Dean Trager dispelled this rumor by sending letters to the part-time students, reassuring them that he firmly supported part-time legal education and had no intention of phasing out the part-time division. Similarly, last spring George Washington University School of Law decided (at the last minute) not to go through with a plan to close down the school's part-time evening division.

Why would either school consider dropping their part-time J.D. programs to limit enrollment to only those students who can attend full-time? Prestige. The notion persists that a prestigious national law school (which is what every law school wants to be) does not offer a part-time Juris Doctor program. Is this notion based on fact? Well, not exactly. It's based on deductive reasoning. Harvard Law School and the University of Chicago School of Law do not have part-time divisions. They are prestigious law schools. New York University School of Law used to have a part-time evening division which was eliminated some years ago. NYU Law School is now a very prestigious law school. Therefore, if a school does not have a part-time division it is more likely to be seen as being prestigious.

Does this "low prestige" image affect graduates of part-time law school programs? The answer is a definite yes and no. There are some members of the legal profession (and law school faculties) who believe a thorough legal education cannot be pursued part-time. Those who join in this belief may not think part-time law students are adequately trained. Yet, this is not the only source of the stigma that has been associated with part-time legal education. Law, like many other professions, is fairly elitist. Part-time law degree programs were created to encourage returning war veterans to earn a law degree, and still hold jobs and support their families. The majority of students were men from lower-middle and middle class families; some were children of immigrants, not traditionally represented in full-time law school classes. These law graduates in the forties and fifties changed the ethnic image of the legal profession. Part-time legal education made the profession accessible to a different segment of the population and was blamed for lowering the standards.

Today, part-time legal education is gaining more acceptance. Law school

costs are staggering; even part-timers graduate with enormous debts. Some law schools, like BLS, do not have a separate evening division faculty (evening classes at some law schools were typically taught by adjunct lecturers and not professors.) Part-timers have the same opportunity to take classes with notable faculty members.

The part-time division still attracts members of groups under-represented in the legal-profession. Women comprise from 36% to over 50% of current law school enrollment. Many women (and men) with children find that part-time legal education allows them to juggle both school and family responsibilities.

One important factor for the change in attitude toward part-time legal education are the law schools. Law school applications and enrollments have been declining steadily (except in 1985 when applications increased slightly). Many regional law schools cannot fill all their day class spaces. Schools fight for the best candidates. In metropolitan areas such as NYC, Washington DC, Boston and Philadelphia, part-time law school enrollments are thriving. In these cities there is a large pool of highly qualified, employed people (some of whom already have one or more graduate or professional degrees) that want to study law but can only do so part-time. Law schools realize that part-time students provide substantial revenue without drastically increasing the schools' operating costs.

So, bottom line, will a part-time legal education adversely affect your chances for employment? No. If you have excellent grades and whatever else it takes to land a \$54,000 a year Associate position at a prestigious law firm, it won't much matter that you attended part-time. What about the rest of us? If your prospective employer was a part-time law student it may help you. (Only another part-timer knows what it took to graduate, even if you didn't make law review.) Often, part-timers have other attributes that make them attractive employment prospects; they have work experience; they may be older, already have a family and now can dedicate themselves to a legal career. Whether you have earned your law degree in three or four years is rarely the sole basis upon which you will be hired. It is necessary for graduates to use their law school experience to their best advantage. Stigma or no stigma, it takes a lot of organization, determination and a good sense of humor to go to law school part-time and who wouldn't want those qualities in an employee?

"The Neighborhood Pub"



a mature gathering place and neighborhood public house, serving lunch and dinner every day

Brunch served every Sunday noon to 4 pm

Capulet's also serves up one of N.Y.C.'s championship dart teams

and on Saturday nights, we become "The Big Apple Home for Bluegrass Music"

join us anyway.

Open-air cafe
151 Montague Street • 852-3128

The S.B.A. Reports

The S.B.A. recently has been working on two major projects: library related problems and printing a student directory.

The S.B.A. executive board met with Dean Trager, Linda Holmes, and Sara Robbins to discuss solutions for the problems of breakdowns and poor copy quality of the copying machines. Last year students voted to increase the student activity fee by \$5 and earmark these funds for the xerox machines. The administration agreed to match the increase, Dean Trager and Ms. Holmes explained, however, that money alone could not remedy the situation. The problem of broken machines and poor copies is rampant throughout all law schools, and there is no simple solution.

Ms. Holmes has met with the new serviceman and the new supervisor (the old people were fired). All of the machines are being cleaned and completely checked over for repairs. The new serviceman makes more than two service stops per day and library personnel have been directed to check and fix machines for misfeeds or paper replacement.

Machines will jam less frequently if students close the covers to the machines when copying. When machine covers are up, the toner builds up which causes misfeeds.

Ms. Holmes is also looking into renting new machines that are designed for active student use and should jam less frequently. Students should write to the copying company to exchange their old copying cards for new ones. The address is on the machines in the library. Both Dean Trager and Linda Holmes will continue to work out solutions, but once again, students are reminded to close the covers when making copies.

As of Oct. 24, the outcome of the vote on extending weekend library hours had not been determined. Student-library staff is hard to find for weekends which is the main reason weekend hours have not already been lengthened. The library will be open on January 2 and classrooms will be open for studying on January 1.

The problem of ventilation in the new smoking room of the library was discussed with Dean Trager. (For those of you who haven't found it, the old smoking section of the library is now a smoking room on the third floor.) The administration will try to set up classrooms designated as "smoking study rooms" for students to use while studying for exams.

Dean Trager informed the executive board that there has been an alarming increase of razoring out pages from library books. We are sure



SBA Executive Board. L-R, Mary Verderame, secy.; Katherine Duggan, Night V.P.; David Hyman, Treas.; Orren Falk, Pres. (Debbie Sit, Day V.P. not in photo). The SBA meets monthly. Their office is at 1 Boerum Pl. . . . Stop By.

most students abhor this practice, but unfortunately, the incidents of missing pages have become a serious problem.

Dean Trager will follow up on any information received and students with information are greatly encouraged to speak up! The only practical solution is an increased general awareness of the problem and student peer pressure. Dean Trager indicated that he will personally notify the proper authorities regarding admission to the bar of those persons who are caught razoring out pages from books.

The S.B.A. is presently working

to complete the student directory by the end of the semester. Those students who do not wish to have their name, address or phone number printed will be required to notify the S.B.A. The S.B.A. is trying to fund the directory through advertisements so there will be no cost to students.

For those of you who want to have more information about the S.B.A.'s many other ongoing projects, including a trip to the Supreme Court, Cabaret Night, day care center, food drive, and blood drive, come by the S.B.A. office or attend one of our meetings. Our suggestion envelope is up and we'd like to hear from you.

Naval Base For NYC:

Supremacy Clause Nukes Referendum

by Ginna Pettinelli

The Navy has decided to build a \$300 million naval base on Staten Island and this news has some New Yorkers saying "there goes the neighborhood."

Under the Reagan administration, the Navy has sought to expand the size of its fleet from 479 to 600 ships. Part of this plan includes dispersing these new ships in various home ports strategically chosen around the country.

In July of 1983, after a strong Washington lobbying effort by New York officials, New York won the commitment for the naval base planned for the Northeast. These officials argued that the naval base would create jobs for the area and revitalize the port.

Controversy, however, surrounded the proposed home port plan when it became clear that the ships to be based here would be capable of carrying nuclear weapons. Several New York officials who originally supported the plan have since turned against it while concerned anticuclear groups waged an intense grassroots campaign to get the matter on the election ballot this November.

The ongoing citywide debate between those who support the base and those who oppose it has implications of both national and constitutional importance. Should the Navy establish a naval base in the country's largest city with warships capable of launching a nuclear attack? Can the citizens of New York, by passing a referendum, estop the City from approving any plan which would provide funds for the development of a military facility designed to carry or store nuclear weapons?

Supporters of the home port insist that New York has an obligation to accept the naval base. According to Mayor Koch, "New Yorkers enjoy the advantages of living in the United States; we ought to be willing to assume some of the responsibilities of defending the United States."

Claiming that safety is a non-issue, proponents of the naval base maintain that because of certain safety devices on the



nuclear weapons the chance of an accident happening is virtually nonexistent. They cite as evidence the fact that there has been no major nuclear disaster in the Navy's history. The advocates for the base also reject the argument that placing the ships here would make New York a more likely target in case of war. In the view of Mr. Koch and other supporters, given New York's position in the world of finance and communications, it would certainly be a prime target without the new base.

Opponents of the naval base argue that placing nuclear weapons in New York harbor is especially dangerous. Representative Ted Weiss, speaking against the base,

has stated that "the same way New Yorkers would be horrified at putting a land-based missile silo in New York, they ought to be horrified at putting a floating silo in the middle of the most densely populated area in the country."

Groups against the home port have criticized the motivations behind the granting of the base to New York as political and not strategic. They base this claim on the fact that New York was chosen by competitive bidding; it beat out Boston and Rhode Island. The Navy, however, claims that the choice of New York is strategic since the navy needs a port that puts them closer to their North Atlantic allies.

continued on page 15

Profs Remember BLS Night School in the 1940's

"Give me your bleary-eyed, anxiety-ridden weary, huddled masses of insomniacs and I will introduce them to the study of the law."

by Maureen Roaldson

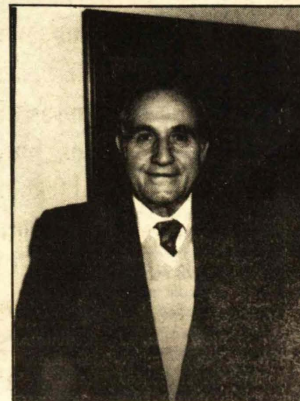
This is not the revised text from the Statue of Liberty base. It is the invitation extended by Brooklyn Law School to those of us who choose to labor for wages by day and struggle for knowledge in the evening. We are the "night owls" of the Law School a.k.a. "part-time students."

It might be of some comfort to evening students, who tackle studies after a day's office work or hours of coping with kids and household chores, to know that others have done it and succeeded rather well in law careers. Professors Joseph Crea and Gerard Gilbride, of the Brooklyn Law School Faculty, are two such examples.

Professor Crea attended Brooklyn Law School between 1944 and 1947. He earned his J.D. by attending evening classes for three years and going to school three summers. He presently teaches Corporations, Commercial Paper and Torts.

Professor Crea's unique law school experience is only part of his interesting educational career. He attended both High School and College in the evenings. He had earned 99 credits at Brooklyn College—in evening studies—over a four year period when he left school to take a government job.

When Professor Crea applied to Brooklyn Law School he specifically requested that he be allowed to attend classes four nights a week and one morning. He had a full-time job that required most of his



Prof. Joseph Crea: He took torts in his fourth year—1947.

daytime hours. Dean Jerome Prince admitted this was an unusual request but decided to take a chance on this enthusiastic, ambitious student. There was a catch. Young Crea would have to start "wherever there was an opening for him." Thus, law school began with third year classes: *continued on page 13*

LITTLE KNOWN TORTS

During our years of researching dusty, dank, dingy law libraries and other known (and even some unknown) niches and crannies in search of potentially bizarre bar exam questions that might be sprung on unsuspecting students, we discovered certain "little known torts" that have yet to appear on any exam. As a special student service, we thought it only fair to bring one of these unknown torts out in the open, just in case.

After a long, arduous journey across the bounding main, wracked with scurvy, beri-beri, hideous storms and sea serpents, the sailing vessel "Mayflower," complete with ship's company, landed safely at Plymouth Rock.

Unfortunately (and not at all in keeping with other historical records) mayhem broke loose in the form of Private Peter Pilgrim.

As Peter Pilgrim was disembarking from the ship, the wet gangway slipped off Plymouth Rock, propelling him over the rock, landing on (and destroying) a festive table, laden with mouth-watering goodies painstakingly prepared by Chief Chuckie Cheez and his tribe.

Chief Chuckie Cheez, after reviving Private Peter Pilgrim (and removing mass quantities of cranberry sauce from his nostrils and a drumstick from his left ear) sued Private Peter Pilgrim for damages for destruction of property.

Private Peter Pilgrim in turn sued Captain C. Way for negligence for allowing him to disembark on the wet gangway.

Captain C. Way in turn sued Far Flung Funships (owners and operators of the "Mayflower") on the grounds that the vessel was equipped with an unsafe gangway.

Far Flung Funships then sued Gangway Gratings Ltd. for product liability since the gangway was "guaranteed" to be "slip proof."

Gangway Gratings Ltd. sued Chief Chuckie Cheez for negligence for improperly using Plymouth Rock as a disembarking place since it was moss encrusted and was therefore a dangerous mooring facility.

After a long and very vocal trial, Judge N. Jury ruled and his verdict is one of the answers listed below.

So, to add a little enjoyment to the story and in "thanksgiving" of the verdict, if you send in an answer by November 29, and it matches the Judge's, we'll send you a coupon worth \$25 off a Josephson/Kluwer Bar Review Course or Josephson/Kluwer Workshop.

Oh, and that's in addition \$ 75. NJ
to the current fall discount of 125. PA
125. NY

Answers (check one)

- ☐ Private Peter Pilgrim was held liable because he was clumsy.
- ☐ Chief Chuckie Cheez was held liable because he knowingly placed the dinner table too close to the "slippery" rock.
- ☐ All parties were held to be partially at fault and ordered to sit down at a dinner table and to "give thanks" that no serious damage was done and to celebrate the momentous occasion at least once a year.

MAIL TO YOUR NEAREST JOSEPHSON/KLUWER OFFICE
LITTLE KNOWN TORTS #1

Name _____
Address _____
City _____
State _____ Zip _____
Law School _____
Please enclose an application for:
☐ Bar Review Course- State _____
☐ Multistate Workshop

Rules: Answer must be postmarked no later than November 29, 1985. The \$25.00 coupons will be mailed to the student upon receipt of correct answer. \$25.00 coupons issued are valid through January 31, 1986. \$25.00 coupons will be honored IN ADDITION TO THE FALL DISCOUNT only if you enroll in the Bar Review Course prior to December 15, 1985 and coupon MUST be attached to the Enrollment Agreement. From December 16, 1985 to January 31, 1986 coupons will be honored at FACE VALUE ONLY. In all cases, the coupon is a discount from the course price and NOT a deduction from required book deposits/down payments. Coupons are non-transferable. No cash redemption.
One coupon per student for use on Bar Review or Multistate Workshop.

LOS ANGELES OFFICE
10101 W. Jefferson Blvd.
Culver City, CA 90232
(213) 558-3100
NORTHERN CALIFORNIA
129 Hyde Street
San Francisco, CA 94102
(415) 775-5202
MICHIGAN OFFICE
Northland Towers West
#501
15555 Northland Drive
Southfield, MI 48075
(313) 559-7606
NEW YORK OFFICE
10 East 21st Street
Suites 1206-7
New York, NY 10010
(212) 505-2060
BOSTON OFFICE
677 Beacon St. #201
Boston, MA 02215
(617) 267-5452
MINNESOTA OFFICE
1821 University Ave. S-137
St. Paul, MN 55104
(612) 644-6070

Clinic Respects Our Elders

by Judith Kahn

"God forgive me," she whispers—the voice is pained and tired—"but an old person without money is pathetic." Her words are those of the aging and impoverished people living in New York City. Many are like this woman: Oppressed, made victims of our society. Oppressed because they are weak or infirmed, victims because they have not the power to resist.

Thousands of old people are barely subsisting in this city. Living in small, one-room apartments, which some have held for 40 years, they are suddenly threatened with being out into the streets, or becoming institutionalized. Or they are denied Social Security benefits—their sole source of income. Often they have no family or friends to whom they can turn for help. Today, Brooklyn Law School's Elderly Law Clinic gives them a place to turn.

The BLS Elderly Law Clinic, which operates the Senior Citizen Law Office, was begun by Brooklyn Law School in 1977 in an effort to provide practical experience to students while helping Manhattan's elderly poor. With four outreach sites located at senior citizen centers in Manhattan, the clinic extends legal services to all the elderly who are in need.

Who qualifies for the services of the Elderly Law Clinic? Anyone who is over 60, a resident of Manhattan, and who has a civil legal problem that is not fee generating. Many of those seeking help are handicapped or institutionalized, physically incapacitated or suffering from mental and emotional problems. Others usually have problems communicating. Commonly,

the clinic's clients are targets of unlawful evictions, cutbacks in their benefits, or of bill collectors, government representatives and landlords who have no patience for the elderly and no interest in their welfare.

In providing legal services to the aging poor, one of the five supervising staff attorneys states, "At the clinic's Senior Citizen Law Office we are just practicing law." Social problems are so inextricably linked with legal problems that, in most cases, there are "no simple legal issues."

court proceedings, and acquire excellent writing skills. Students follow through cases from the initial interview of clients to final resolution of the legal problem. Mark Bierman, an attorney who began working at the clinic as a student intern, encourages students to take advantage of the program. "The clinic gave me the opportunity to participate fully in the practical legal process, to understand and appreciate the real world of elderly, poor people, and the difficulty of growing old in this city and having to deal with the

The Senior Citizen Law Office Helps the Elderly Fight Back

Thus, in an effort to provide legal aid, members of the office have made an attempt to understand the social and psychological problems of their clients. To do so, the clinic has recently joined forces with the Brookdale Center for the Aging. The Brookdale Center will be providing a social work supervisor and social work students from Hunter College give the necessary, extralegal support services. At the various outreach centers, the staff lawyers, and the law and social work student, will meet together with clients to help alleviate the mental, physical and psychological anguish that accompanies the legal hardships.

The clinic provides a great opportunity for hands on experience. Student interns participate in administrative hearings and

system. It helped me appreciate how little help and assistance there are for the poor in New York City.

"In the program," he continues, "student interns are integrated with the law office: These are their cases. Students participate fully in negotiations, proceedings and pleadings. They follow cases from start to finish and, as opposed to many of the larger firms, here they are not given fragments. You get first-hand experience with civil practice and learn how to start thinking like a lawyer. My year here as an intern made me, in essence, an 'Attorney-in-Training.'"

Attorneys at the Senior Citizen Law Office are dedicated to their clients. For this reason, they average an approximate 98% success rate. They realize that the elderly

are prime targets—particularly of the landlords who want to evict them. They often have no family or money with which to protect themselves. Yet, they want to fight back. "Their (the clients') determination and hardships serve to make us more aggressive and creative with our cases," said Berman. It is because justice cries out, that our lawyers have a lot of will to succeed and creative energy. We are confronted with hard cases, but our adversaries know they've got a good fight on their hands."

The program enjoys the reputation as one of the best clinical programs at Brooklyn Law School. This reputation is reflected in the fact that the clinic recently received an 'Elderlaw' grant from the Legal Services Corporation, an agency set up by the federal government. The money was given to the clinic to establish a special unit to serve the frail, homebound and institutionalized elderly in Manhattan.

"The grant will enable us to establish the offices of the frail unit at the school at One Boerum Place and will enable us to hire an additional attorney, who can supervise additional law students, and provide much needed assistance to the staff and students in handling social work-related issues," said Professor Marc Finkelstein, the Director and Managing Attorney of the program. The main office of the program, Finkelstein pointed out, will continue to operate out of its present location at 299 Broadway, so as to be accessible to the clients, courts and administrative agencies, all of which are located in Manhattan.

The clinic requires a two-semester commitment, during which time students receive a total of six credits. Applications are accepted for both semesters as well as the summer session. ■

Criminal Law:

Woman's Home Becomes Prison

by Judie Steinhardt

On September 23, 1985, Judge Jack B. Weinstein of the Federal District Court in Brooklyn, sentenced a woman convicted of insurance fraud to confinement in her home for two years, a novel alternative to a prison term. The defendant, Maureen Murphy, a 35-year old legal secretary, had been convicted of four counts of racketeering and conspiracy in defrauding insurance companies, as well as obstruction of justice in instructing some witnesses to the case to commit perjury.

If given the maximum sentence, Miss Murphy could have received a 50-year prison term and a \$56,000 fine. Given the defendant's background as a hard worker from a good family, however, Judge Weinstein decided this harsh sentence would serve no purpose in rehabilitating Miss Murphy. The exact sentence Judge Weinstein decided on was a 5-year probation, two of those years spent under "house arrest," and a \$5,000 fine, to be paid over the five years. The Federal Probation Parole Office is to provide for psychiatric care for Miss Murphy, and is to work out the details of her confinement at home.

Judge Weinstein has provided some of the general requirements of Miss Murphy's sentence: during the two years, she may only leave her house to go to work, go food-shopping, go to the doctor, or go to church. There will be no guard placed at Miss Murphy's home, but probation of-



Chief Judge of the Eastern District, Jack Weinstein.

ficers will be checking up on her through random phone calls and visits. If the defendant fails to comply with these rules, she will have to serve the rest of her term in prison.

In the sentencing memorandum of the case, *U.S. v. Teitler*, dated September 23, 1985, Judge Weinstein stated that the world outside the prison wall affords more of an opportunity for rehabilitation than does an ordinary prison sentence. He wrote, "Rehabilitation in general takes place more effectively outside prison walls. Federal probation officers in this District have the resources and skill to exercise strict control, supply training and

help with jobs. Cutting the person off from family, friends and jobs during this process is counterproductive."

In the same document, Judge Weinstein recognized the objections of the government to his lenient sentencing in this case. Although the government took no official position on "house arrests" in general, it stated in the sentencing memorandum that a maximum sentence would have been appropriate for Miss Murphy because of the "flagrantly corrupt nature of the enterprise for which this defendant worked for so many years."

Another opponent to the sentence is Miss Murphy's defense attorney, Steven

Kimelman, who plans an appeal of the sentence on the grounds that Judge Weinstein lacked authority to give such a punishment. Although Mr. Kimelman does acknowledge the merits of the idea, he claims it is not fair for his client to be used as an experiment. Kimelman says she should have been granted 5-year probation without "house arrest."

From a public policy point of view, however, the advantages may outweigh the disadvantages. James F.X. Haran, the chief Federal probation officer for the Eastern District of New York, a main proponent of the "house arrest" sentence, believes there are great social and economic advantages to such sentencing that can never be achieved in jail. First, he believes such sentencing will leave the defendant's life intact, unlike a prison term. Second, it cost the government about \$27,000 less per year to sentence a person to his or her home rather than jail, as Mr. Haran stated in the *New York Times* on September 24, 1985.

The "house arrest" of Miss Murphy is indicative of a trend in alternative sentencing that has been initiated throughout New York state. Governor Cuomo has been working on different programs to encourage sentencing that does not include imprisonment. Some of the alternatives being tested are community-service sentencing and employment and counseling services for younger criminals as well as a new approach called "client specific" sentencing.

The idea of substituting confinement to the home for a prison term is still very much in the experimental stage. If it were to be used on a regular basis, it would require legislation, as Judge Weinstein admits. This may be difficult as a "get-tough on crime" approach has renewed favor in Albany, where the legislature is likely to pass a fixed, determinant sentencing statute this year. ■

LIFE IN BROOKLYN, USA

Boating To Work Creative Mass Transit in NYC

By Jonathan Hudis

Anyone who regularly travels by subway from downtown Brooklyn to downtown Manhattan is acutely aware how frustrating it can be to spend so much time to travel so short a distance. Many a Brooklyn Law School student has been known to utter, "if only there were a boat. . . ." Well, there is a boat. The City of New York has instituted a pilot program providing ferry service on the East River between Fulton Ferry Landing, Brooklyn, and Pier 17, Manhattan. This program revived an old tradition, for it had been a means of transportation to and from Manhattan since the early 1800's.

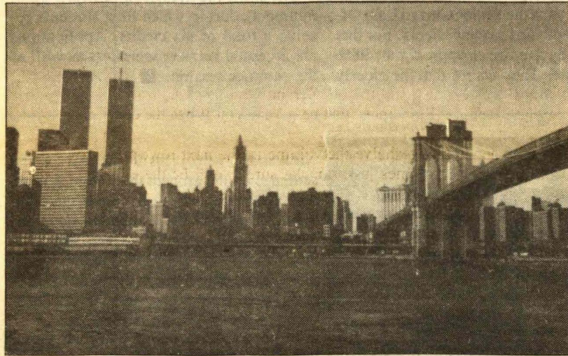
With the advent of New York City's ill-famed subway system, the ferry boat came into disuse. Until recently, it was only used to ship cargo and take passengers on private excursions. The current revival of mass transit ferry service is due in large measure to the efforts of the City's Department of Ports and Terminals. These efforts have been appreciated by Brooklyn commuters who are tired of the overcrowded and often-delayed subways.

will come from other services the ferry company will provide," said Ports and Terminals project manager Eva Hanhardt. "The City is not looking to subsidize this program."

Unfortunately, the recent pilot program was cut short. Apparently, the ferry boat "Andrew Fletcher" ran into a piece of large debris in the East River during Hurricane Gloria. Its owner, the Seaport Line, believed that it could be fixed in a matter of weeks. Complications arose, and service for the remainder of the year has been terminated.

Ports and Terminals saw this catastrophe as a valuable lesson. "If we are going to have a smooth-running ferry system, back-up service is very important." This back-up service is more than important, it is crucial. If commuters are to rely on ferry transportation when it is in full-swing next year, constant, uninterrupted service must be the City's primary consideration when it chooses which concern to run this service.

The City would like to see full commuter and weekend ferry service on



The View From Here: The path the Ferry cuts from Brooklyn to Manhattan.

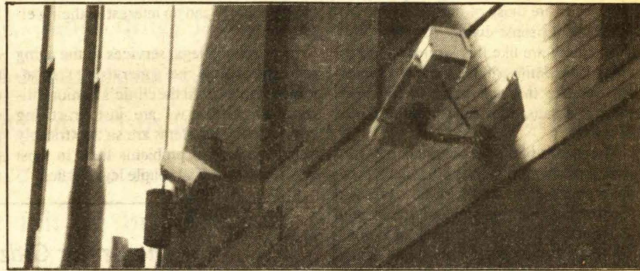
The pilot program, which started this past spring, was operated by a private concern, "The Seaport Line," which ran one ferry every fifteen minutes during rush hour and every half hour on the weekends.

As one might expect, the ferry ride quickly became a popular alternative to the jam-packed, annoying subways. About six thousand commuters took the one dollar ride each week. The operators of the ferry, according to Seaport Line spokesperson Sandy Weiner, maintain that, despite the program's popularity, "without government subsidy or an alternate means of income the service does not seem economically viable." They say that costs of maintenance and fuel did not allow the company to break even. While the company is obviously pushing for a City subsidy, the City appears rather unwilling to take over the funding. "Hopefully, funds to make this program economically profitable

a permanent basis, accompanied by historic restoration and maritime use of the fire boat house at Pier 17. Thus far, they have received seven bids from the private sector offering a wide variety of services. Proposals for passenger service range from commuter and weekend service, to water taxi and chartered evening excursions. Suggestions for use of the fire boat house range from maritime instruction to banquet facilities and public exhibitions. The City has yet to examine these bids. According to Dara Asken of the Ports and Terminals Office of Public Affairs, "after accepting the best of these bids, a more permanent program will be running, hopefully by next spring."

As New Yorkers rediscover our many waterways, ports and harbors, taking a pleasant, uncrowded and breezy trip across the River may soon prove to be a healthy alternative to the subway experience. ■

Avenue J and the 1st Amendment . . .



Camera surveillance on Joralemon Street

. . . Freedom of Religion v. Privacy

by Jim Tenney

Two basic principles square off in Midwood, Brooklyn. Walking down Avenue J at East 15th Street, constitutional issues don't seem pressing. One of Brooklyn's busiest growing commercial strips, Avenue J suffers from the affects of success: traffic congestion, litter, heavy pedestrian traffic, double parking, etc. However, a major conflict is brewing concerning a proposal to have video cameras tape the activities of passers-by.

The Council of Jewish Organizations of Flatbush (COJO) has asked the Federation of Jewish Philanthropies to fund a security program operating from COJO's office on Avenue J. A main component of this program is the installation of two video cameras on Avenue J to be monitored by volunteers in both the day and evening hours. The purpose of the program is to thwart crime through surveillance. Volunteers would report possible criminal activity to 911 for a Police response.

Central to this security plan is the positioning of the cameras. One camera, on East 15th Street and Avenue J will observe the front of a mikva, or ritual bath, established decades ago, used by Orthodox women for religious purposes. The front of this building has been covered repeatedly with graffiti. While usually not of an Anti-Semitic nature, the graffiti has been a source of frustration to the community in general and the congregants in particular. In addition, patrons are often confronted with unsavory types loitering on the front steps. While few violent incidents have occurred, congregants feel extremely uncomfortable and often suffer verbal harassment as they attempt to exit or enter the mikva.

The other camera will be mounted on Yeshiva of Flatbush, a major private high school, which also has an evening prayer ses-

sion, at East 16th Street and Avenue J. There have been several incidents of vandalism at the school, and teenage groups often loiter on the East 16th Street side of the building adjacent to the Midwood branch of the Brooklyn Public Library. This camera will pan these areas as well as the front of the Avenue J subway station.

It is clear that the prime purpose of these cameras is to provide surveillance for these religious institutions. The cameras will also monitor Avenue J on both sides of the Avenue J subway station as a deterrent to street crime, vandalism, loitering, etc.

This plan was presented to the Executive Board of the Midwood Civic Action Council, Inc. MCAC is a volunteer group of concerned citizens that has created a network of block associations, courtwatchers, car patrols and other anti-crime programs for the past eight years.

At presstime, no decision has been reached by Federation in funding this project. COJO feels strongly that this program will improve security at these religious facilities. COJO says they have every right to "keep an eye" on their facilities. Those opposing the video taping of street activities have shown wholehearted approval of Mr. Berger's arguments.

Many important policy questions come to light here. Does the freedom to practice religion outweigh the rights of citizens not to be photographed without permission? Does the fact that a private group is funding this proposal alter the scenario? These thorny issues will have to be resolved before the security project receives funding; Midwood, Brooklyn appears to be on its way toward its very own first amendment balancing test. ■

Your Brooklyn Law School ID
Entitles You to
Your Favorite Drink at 1/2 Price
With Complete Dinner

EATING WELL AT SENSIBLE PRICES

CAFE GALLERIA

174 Montague Street Brooklyn Heights (718) 875-7900



Getting Through the First Year

What If . . . There were no Hypos?

by Bob Roth

Perhaps the biggest nightmare for teachers of first year students and greatest embarrassment for the first year students themselves is that quintessential mind boggler, the improperly posed "What if?" question.

Granted all of us as students have questions on the many issues and principles discussed in our classes, but there always seems to be that individual who, fact patterns to the wind, steers the class into a digression closely resembling the Bernard Meltzer radio show.

"What if he really didn't mean it? What if the defendant was the plaintiff's third cousin twice removed? Could he sue? I read something somewhere in some article about this, What do you think? What if . . .?, What if . . .?" The list goes on.

As soon as these gems are launched from the lips of the speaker, professors instinctively reach for their foreheads, or that additional cigarette, and a collective groan can be heard echoing about the classroom. The old adage that there is no such thing as a stupid question is sorely tested at times like these.

There can be no doubt that there is a definite value to posing hypothetical situations for classroom discussion, but more often than not, the question serves to cloud the point of law that the person is actually trying to have clarified. A much better method for the individual student, as well as for the benefit of the other students, would be asking a direct question as to the rule of law, rather than attempting to illustrate the point in terms of an amorphously stated "What if". Once the issue is identified, the hypotheticals could be easily constructed by the professor for illustration purposes.

The abundance of student generated "What if" scenarios often reminds me of a series of *Saturday Night Live* skits appropriately entitled "What if . . .?", whereby questions such as "What if Napoleon had a B-52?" or "What if Eleanor Roosevelt could fly?" or "What if Spartacus had a Piper Cub?" were entertained. Although the situations of which I write are in no way as outrageous as these, they do have their humorous aspects. The point is that there comes a time when hypotheticals become more destructive than constructive.

As the semester progresses, we will undoubtedly further develop our ability to identify the issues and apply the law. In the meantime we are all entitled to have our questions clarified, but let's just try to keep a lid on the "What ifs". ■

The View From 2 Pierrepont:

BLS "Dorm" Gets Rave Reviews

by Susan Odessky

"Great!" is how Bill Miller, a first year student, describes the first month in his studio apartment at Two Pierrepont Street, the 12-story, 40-unit building purchased by Brooklyn Law School in January for \$2.2 million. Miller was offered the apartment as part of the law school's Merit Scholarship program. Having previously lived in Manhattan, he enjoys the quiet nature of the neighborhood and the building itself. He describes the building as "so solid it's hard to hang a picture on the wall. 'I never hear the noise of other apartments.'"

Jill Ginsberg, a second year student who received the apartment through a lottery program established by BLS, said that she had looked all over Brooklyn Heights for an apartment. During her first year at BLS she lived on the other side of the school and "hated it." Getting a studio apartment at Two Pierrepont Street really saved her a lot of trouble. She feels more secure in the area and appreciates the 5 to 10 minute walk to school. Ms. Ginsberg also pointed out how pleasant it is to live right on the promenade.

According to Roger Brennan, who manages the building for BLS, there are now seven students in the building (two married couples and five singles), two staff members and one faculty member. More apartments are becoming available, but the process is very slow due to the school's non-eviction policy. Miller and Ginsberg both feel very positive about BLS as a landlord. Miller likes the fact that the school stated making improvements (they installed a new boiler) to the building as soon as they bought it. He contrasted BLS with other landlords who might let a building run down in an effort to force older tenants out.

Some of the improvements at Two Pierrepont Street involve scaffolding which blocks the view from many apartments.

However, Ginsburg says such an inconvenience is minimal compared to the benefits of the work being done. Her apartment has new carpeting, a new refrigerator and stove, as well as a renovated bathroom. New appliances have also been put in some of the apartments. As far as getting work done in the apartment, Miller claimed that the building's superintendent is "the best super I've ever dealt with."

In addition to the excellent condition of the apartments, Ms. Ginsberg mentioned that she likes having friends in the building and she appreciates the congenial atmosphere.

Students who would like to live at Two Pierrepont Street may add their names to the waiting list by contacting Dean Trager's office. The occupant or occupants for the next available apartment are chosen at random from the students currently on this list. According to Dean Trager's office, students are eligible for studios, as well as one and two-bedroom apartments. However, the majority of apartments are studios which rent for \$500 a month. The payment of rent is handled through the Bursar's Office.

The housing needs of visiting faculty, other faculty and BLS staff are considered along with the needs of students when filling vacancies in the building. BLS has recently been able to offer one visiting faculty member an apartment in the building. With housing being a persistent problem in the area, the apartment may have been an added incentive for such a faculty member.

Although all tenants who rent apartments through BLS are eligible to remain in the building only as long as they are affiliated with the school, the attraction of living on Pierrepont Street, directly across from New York Harbor, should make Two Pierrepont Street a great incentive for attracting future students and faculty on a nationwide basis to Brooklyn Law School.

How To Ace Legal Writing

by Darla Chadduli Stuckey

Remember your first memorandum assignment? You didn't know where to begin, but you took the library tour hoping to understand. Everything was fine until you got to the decennial digest. It was then that you realized you were lost.

With a slight throb in your stomach, you wander to the far right corner, first floor, and find an index to Am Jur with descriptive words. Finding the right descriptive word is another problem. You grab volume U for "Unauthorized use" and subheading "of a photograph." Why isn't it there? You try E for "Endorsements" and subheading "of a product." No luck either. Perhaps B for "Baseball players." Finally you watch as someone pulls P and turns to "Privacy." You are on your way!

You get the right volume and search for your section. Oh no! The section numbers don't match at all. You run to the librarian who sweetly explains to you that the volume is newer than the index. Use instead the index at the back of the individual volume. Great, one more start. (You've only been here 2 hours so far.)

You survive the rest of the day by hanging around the other 25 classmates and nodding when someone says, "Want a copy?" Three hours later, and 50 trips from the basement to the 2nd floor, you realize that it took you only three hours to learn what others understood in fifteen minutes. Congratulations! You wonder if this is how a first year associate feels.

Now all you have to do is write the memo. First the relevant facts, then the question, short conclusion and discussion. The whole time you keep hearing in the back of your head: "Too wordy," "Don't speculate," "More analysis," "Cite form," and "Unnecessary." You write every sentence hoping it won't bleed to death under the professor's pen. After 8 hours of writing your Blue Book looks 10 years old, but you're finished. And next time it will be much easier because you've now got a list of do's and don't's.

1. Copy everything you can find that seems remotely relevant. (Make sure you save 90 cents.)
2. Never Shepardize—just find the one person who has, and offer to pay their copying expenses. Remember that next year you'll use the computer anyway.
3. If you find a good case, reshelve the volume in the next row, preferably with the same color volumes just to make sure it will be there.
4. Don't forget where you put it!
5. To save time, don't read the cases, just the headnotes.
6. Never reshelve your books (unless #3 applies); your classmates are coming right back.
7. Say a prayer of thanks when you find an applicable statute. You know you don't have to look any farther.
8. If you really want to have some fun, remove all pocket parts. You can sell them to the highest bidder and finance your second year.
9. Stand near the copy room whenever you're stuck, and listen.
10. Remember: Courts can't feel, even though judicial opinions frequently say so.
11. As soon as you type your final draft, keep it in the typewriter so you can replace "clearly" with "it is clear that. . ."
- 11A. Never say "clearly".
12. Make up new facts ONLY if they can help your argument.
13. Take a stand. But if you're not sure, equivocate so you don't look foolish if you're wrong.
14. Sleep with the Blue Book under your pillow the night before you type the memo to get proper cite form into your head. ■



The view From two Pierrepont.

JUSTINIAN GRACE LEE

Interpreting the Constitution: Meese Calls for Restraint

Continued from page 1

took direct shots at Meese's statements. "The genius of the Constitution," he said, "rests not in any static meaning it might have had in the world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs."

Since bloody constitutional battle concerning the role of the courts will persist for the remainder of the Reagan presidency, The Justinian obtained special permission to publish excerpts from the two speeches that started it all. We invite your reactions.

Attorney General Meese's Address to the American Bar Association

... The intended role of the judiciary generally and the Supreme Court in particular was to serve as the "bulwarks of a limited constitution." The judges, the Founders believed, would not fail to regard the Constitution as "fundamental law" and would "regulate their decisions" by it. As the "faithful guardians of the Constitution," the judges were expected to resist any political effort to depart from the literal provisions of the Constitution. The text of the document and the original intention of those who framed it would be the judicial standard in giving effect to the Constitution.

You will recall that Alexander Hamilton, defending the federal courts to be created by the new Constitution, remarked that the want of a judicial power under the Articles of Confederation had been the crowning defect of that first effort at a national constitution. For the consummate lawyer, Hamilton pointed out that

But that is not to suggest that the justices are a body of Platonic guardians. Far from it. The Court is what it was understood to be when the Constitution was framed—a political body. The judicial process is, at its most fundamental level, a political process. While not a partisan political process, it is political in the truest sense of the word. It is a process wherein public deliberations occur over what constitutes the common good under the terms of a written constitution. . . .

As has been generally true in recent years, the 1984 term did not yield a coherent set of decisions. Rather, it seemed to produce what one commentator has called a "jurisprudence of idiosyncrasy." Taken as a whole, the work of the term defies analysis by any strict standard. It is neither simply liberal nor simply conservative; neither simply activist nor simply restrained; neither simply principled nor simply

I pledge to you our commitment to fight terrorism here and abroad. For as long as the innocent are fair prey for the barbarians of this world, civilization is not safe.

We will pursue our agenda within the context of our written Constitution of limited yet energetic powers. Our guide in every case will be the sanctity of the rule of law and the proper limits of governmental power.

It is our belief that only "the sense in which the Constitution was accepted and ratified by the nation," and only the sense in which laws were drafted and passed provide a solid foundation for adjudication. Any other standard suffers the defect of pouring new meaning into old words, thus creating new powers and new rights totally at odds with the logic of our Constitution and its commitment to the rule of law.

The Bill of Rights came about largely as the result of the demands of the critics of the new Constitution, the unfortunately misnamed Anti-Federalists. They feared, as George Mason of Virginia put it, that in time the national authority would "devour" the states. Since each state had a bill of rights, it was only appropriate that so powerful a national government as that created by the Constitution have one as well. Though Hamilton insisted a Bill of Rights was not necessary and even destructive, and Madison (at least at first) thought a Bill of Rights to be but a "parchment barrier" to political power, the Federalists agreed to add a Bill of Rights.

Though the first ten amendments that were ultimately ratified fell far short of what the Anti-Federalists desired, both Federalists and Anti-Federalists agreed that the amendments were a curb on national power.

When this view was questioned before the Supreme Court in *Barron v. Baltimore* (1833), Chief Justice Marshall wholeheartedly agreed. The Constitution said what it meant and meant what it said. Neither political expediency nor judicial desire was sufficient to change the clear import of the language of the Constitution. The Bill of Rights did not apply to the states—and, he said, that was that.

Until 1925, that is.

Since then a good portion of constitutional adjudication has been aimed at extending the scope of the doctrine of incorporation. But the most that can be done is to expand the scope; nothing can be done to shore up the intellectually shaky foundation upon which the doctrine rests. And nowhere else has the principle of federalism been dealt so politically violent and constitutionally suspect a blow as by the theory of incorporation.

In thinking particularly of the use to which the First Amendment has been put in the area of religion, one finds much merit in Justice Rehnquist's recent dissent in *Jaffree*. "It is impossible," Justice Rehnquist argued, "to build sound constitutional doctrine upon a mistaken understanding of constitutional history." His conclusion was bluntly to the point: "If a constitutional theory has no basis in the history of the amendment it seeks to interpret, it is difficult to apply and yields unprincipled results."

The point, of course, is that the Establishment Clause of First Amendment was designed to prohibit Congress from establishing a national church. The belief was that the Constitution should not allow Congress to designate a particular faith or sect as politically above the

rest. But to have argued, as is popular today, that the amendment demands a strict neutrality between religion and irreligion would have struck the founding generation as bizarre. The purpose was to prohibit religious tyranny, not to undermine religion generally.

In considering these areas of adjudication—Federalism, Criminal Law, and Religion—it seems fair to conclude that far too many of the Court's opinions were, on the whole, more policy choices than articulations of constitutional principle. The voting blocs, the arguments, all reveal a greater allegiance to what the Court thinks constitutes sound public policy than a deference to what the Constitution—its text and intention—may demand.

It is also safe to say that until there emerges a coherent jurisprudential stance, the work of the Court will continue in this ad hoc fashion. But that is not to argue for any jurisprudence.

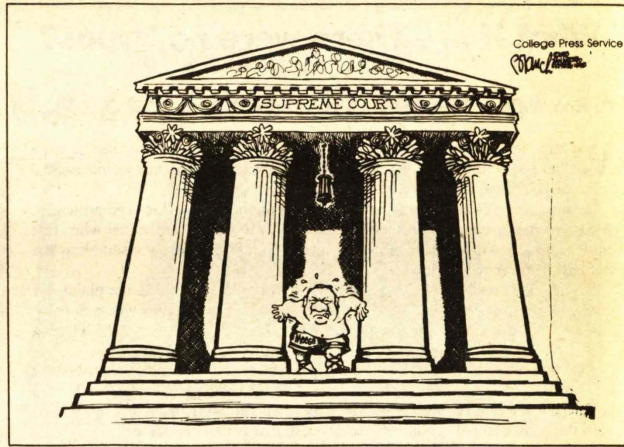
In my opinion a drift back toward the radical egalitarianism and expensive civil libertarianism of the Warren Court would once again be a threat to the notion of limited but energetic government.

What, then, should a constitutional jurisprudence actually be? It should be a Jurisprudence of Original Intention. By seeking to judge policies in light of principles, rather than remold principles in light of policies, the Court could avoid both the charge of incoherence and the charge of being either too conservative or too liberal.

A jurisprudence seriously aimed at the explication of original intention would produce defensible principles of government that would not be tainted by ideological predilection.

This belief in a Jurisprudence of Original Intention also reflects a deeply rooted commitment to the idea of democracy. The Constitution represents the consent of the governed to the structures and powers of the government. The Constitution is the fundamental will of the people; that is why it is the fundamental law. To allow the courts to govern simply by what it views at the time as fair and decent, is a scheme of government no longer popular; the idea of democracy has suffered. The permanence of the Constitution has been weakened. A Constitution that is viewed as only what the judges say it is, is no longer a constitution in the true sense.

Those who framed the Constitution chose their words carefully; they debated at great lengths the most minute points. The language they chose meant something. It is incumbent upon the Court to determine what that meaning was. ■



"laws are a dead letter without courts to expound and define their true meaning."

The Anti-Federalist Brutus took him to task in the New York press for what the critics of the Constitution considered his naivete. That prompted Hamilton to write his classic defense of judicial power in *The Federalist*, No. 78.

An independent judiciary under the Constitution, he said, would prove to be the "citadel of public justice and the public security." Courts were "peculiarly essential in a limited constitution." Without them, there would be no security against "the encroachments and oppressions of the representative body," no protection against "unjust and partial" laws.

Hamilton, like his colleague Madison, knew that all political power is "of an encroaching nature." In order to keep the powers created by the Constitution within the boundaries marked out by the Constitution, an independent—but constitutionally bound—judiciary was essential. The purpose of the Constitution, after all, was the creation of limited but also energetic government, institutions with the power to govern, but also with structures to keep the power in check. As Madison put it, the Constitution enabled the government to control the governed, but also obliged it to control itself.

But even beyond the institutional role, the Court serves the American republic in yet another, more subtle way. The problem of any popular government, of course, is seeing to it that the people obey the laws. There are but two ways: either by physical force or by moral force. In many ways the Court remains the primary moral force in American politics.

By fulfilling its proper function, the Supreme Court contributes both to institutional checks and balances and to the moral undergirding of the entire constitutional edifice. For the Supreme Court is the only national institution that daily grapples with the most fundamental political questions—and defends them with written expositions. Nothing less would serve to perpetuate the sanctity of the rule of law so effectively.

partisan. The Court this term continued to roam at large in a versatile constitutional forest.

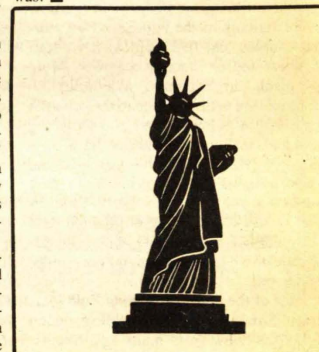
Most probably, this term will be best remembered for the decisions concerning the Establishment Clause of the First Amendment.

In trying to make sense of the religion cases—from whichever side—it is important to remember how this body of tangled caselaw came about. Most Americans forget that it was not until 1925, in *Gitlow v. New York*, that any provision of the Bill of Rights was applied to the states. Nor was it until 1947 that the Establishment Clause was made applicable to the states through the 14th Amendment. This is striking because the Bill of Rights, as debated, created and ratified was designed to apply only to the national government.

A Jurisprudence of Original Intention would take seriously the admonition of Justice Story's friend and colleague, John Marshall, in *Marbury*, that the Constitution is a limitation on judicial power as well as executive and legislative. That is what Chief Justice Marshall meant in *McCulloch* when he cautioned judges never to forget it is a constitution they are expounding.

It has been and will continue to be the policy of this administration to press for a Jurisprudence of Original Intention. In the cases we file and those we join as amicus, we will endeavor to resurrect the original meaning of constitutional provisions and statutes as the only reliable guide for judgment.

Within this context, let me reaffirm our commitment to pursuing the policies most necessary to public justice. We will continue our vigorous enforcement of civil rights laws; we will not rest till unlawful discrimination ceases. We will continue our all out war on drugs—both supply and demand; both national and international in scope. We intend to bolster public safety by a persistent war on crime. We will endeavor to stem the growing tide of pornography and its attendant costs, sexual and child abuse. We will be battling the heretofore largely ignored legal cancer of white collar crime; and its cousin, defense procurement fraud. And finally, as we still reel as a people,



Justice Brennan Responds:

Original Intentions Do Not Solve Modern Problems

Justice Brennan's October Address at Georgetown University

... It will perhaps not surprise you that the text I have chosen for exploration is the amended Constitution of the United States, which, of course, entrenches the Bill of Rights and the Civil War amendments, and draws sustenance from the bedrock principles of another great text, the Magna Carta. So fashioned, the Constitution embodies the aspiration to social justice, brotherhood, and human dignity that brought this nation into being. The Declaration of Independence, the Constitution and the Bill of Rights solemnly committed the United States to be a country where the dignity and rights of all persons were equal before all authority. In all candor we must concede that part of this egalitarianism in America has been more pretension than realized fact. But we are an aspiring people, a people with faith in progress. Our amended Constitution is the lodestar for our aspirations. Like every text worth reading, it is not crystalline. The phrasing is broad and the limitations of its provisions are not clearly marked. Its majestic generalities and ennobling pronouncements are both luminous and obscure. This ambiguity of course calls forth interpretation, the interaction of reader and text. The encounter with the Constitutional text has been, in many senses, my life's work.

... When Justices interpret the Constitution they speak for their community, not for themselves alone. The act of interpretation must be undertaken with full consciousness that it is, in a very real sense, the community's interpretation that is sought. Justices are not platonic guardians appointed to wield authority according to their personal moral predilections. Precisely because coercive force must attend any judicial decision to countermand the will of a contemporary majority, the Justices must render constitutional interpretations that are received as legitimate. The source of legitimacy is, of course, a wellspring of controversy in legal and political circles. At the core of the debate is what the late Yale Law School professor Alexander Bickel labeled "the counter-majoritarian difficulty." Our commitment to self-government in a representative democracy must be reconciled with vesting in electorally unaccountable Justices the power to invalidate the expressed desires of representative bodies on the ground of inconsistency with higher law. Because judicial power resides in the authority to give meaning to the Constitution, the debate is really a debate about how to read the text, about constraints on what is legitimate interpretation.

There are those who find legitimacy in fidelity to what they call "the intentions of the Framers." In its most doctrinaire incarnation, this view demands that Justices discern exactly what the Framers thought about the question under consideration and simply follow that intention in resolving the case before them. It is a view that feigns self-effacing deference to the specific judgments of those who forged our original social compact. But in truth it is little more than arrogance cloaked as humility. It is arrogant to pretend that from our vantage we can gauge accurately the intent of the Framers on application of principle to specific, contemporary questions. All too often, sources of potential enlightenment such as records of the ratifi-

cation debates provide sparse or ambiguous evidence of the original intention. Typically, all that can be gleaned is that the Framers themselves did not agree about the application or meaning of particular constitutional provisions, and hid their differences in cloaks of generality. Indeed, it is far from clear whose intention is relevant—that of the drafters, the congressional disputants, or the ratifiers in the states?—or even whether the idea of an original intention is a coherent way of thinking about a jointly drafted document drawing its authority from general assent of the states. And apart from the problematic nature of the sources, our distance of two centuries cannot but work as a prism refracting all we perceive. One cannot help but speculate that the chorus of lamentations calling for interpretation faithful to "original intention"—and proposing nullification of interpretations that fail this quick litmus test—must inevitably come from persons who have no familiarity with the historical record.

Perhaps most importantly, while proponents of this facile historicism justify it as a depoliticization of the judiciary, the political underpinnings of such a choice should not escape notice. A position that upholds constitutional claims only if they were within the specific contemplation of the Framers in effect establishes a presumption of resolving textual ambiguities against the claim of constitutional right. It is far from clear what justifies such a presumption against claims of right. Nothing intrinsic in the nature of interpretation—if there is such a thing as the "nature" of interpretation—commands such a passive approach to ambiguity. This is a choice no less political than any other; it expresses antipathy to claims of the minority to rights against the majority. Those who would restrict claims of right to the values of 1789 specifically articulated in the Constitution turn a blind eye to social progress and eschew adaptation of overarching principles to changes of social circumstance.

Unabashed enshrinement of majority will would permit the imposition of a social caste system or wholesale confiscation of property so long as a majority of the authorized legislative body, fairly elected, approved. Our Constitution could not abide such a situation. It is the very purpose of a Constitution—and particularly of the Bill of Rights—to declare certain values transcendent, beyond the reach of temporary political majorities. The majoritarian process cannot be expected to rectify claims of minority right that arise as a response to the outcomes of that very majoritarian process.

To remain faithful to the content of the Constitution, therefore, an approach to interpreting the text must account for the existence of these substantive value choices, and must accept the ambiguity inherent in the effort to apply them to modern circumstances. The Framers discerned fundamental principles through struggles against particular malefactions of the Crown; the struggle shapes the particular contours of the articulated principles. But our acceptance of the fundamental principles has not and should not bind us to those precise, at times anachronistic, contours. Successive generations of Americans have continued to respect these fundamental choices and adopt them as their own guide to evaluating quite different

historical practices. Each generation has the choice to overrule or add to the fundamental principles enunciated by the Framers; the Constitution can be amended or it can be ignored. Yet with respect to its fundamental principles, the text has suffered neither fate. Thus, if I may borrow the words of an esteemed predecessor, Justice Robert Jackson, the burden of judicial interpretation is to translate "the majestic generalities of the Bill of Rights, conceived as part of the pattern of liberal government in the eighteenth century, into concrete restraints on officials dealing with the problems of the twentieth century." (Barnette, 319 U.S. at 639).

We current Justices read the Constitution in the only way that we can: as Twentieth Century Americans. We look to the history of the time of framing and to the intervening history of interpretation. But the ultimate question must be, what do the words of the text mean in our time. For the genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs. What the constitutional fundamentals meant to the wisdom of other times cannot be their measure to the vision of our time. Similarly, what those fundamentals mean for us, our descendants will learn, cannot be the measure to the vision of their time.

Until the end of the nineteenth century, freedom and dignity in our country found meaningful protection in the institution of real property. In a society still largely agricultural, a piece of land provided men not just with sustenance but with the

ment act with integrity and consistency in its dealings with these citizens. To put this another way, the possibilities for collision between government activity and individual rights will increase as the power and authority of government itself expands, and this growth, in turn, heightens the need for constant vigilance at the collision points. If our free society is to endure, those who govern must recognize human dignity and accept the enforcement of constitutional limitations on their power conceived by the Framers to be necessary to preserve that dignity and the air of freedom which is our proudest heritage. Such recognition will not come from a technical understanding of the organs of government, or the new forms of wealth they administer. It requires something different, something deeper—a personal confrontation with the well-springs of our society. Solutions of constitutional questions from that perspective have become the great challenge of the modern era. All the talk in the last half-decade about shrinking the government does not alter this reality or the challenge it imposes. The modern activist state is a concomitant of the complexity of modern society; it is inevitably with us. We must meet the challenge rather than wish it were not before us.

The challenge is essentially, of course, one to the capacity of our constitutional structure to foster and protect the freedom, the dignity, and the rights of all persons within our borders, which it is the great design of the Constitution to secure. During the time of my public service this challenge has largely taken shape within the confine of the interpretive question whether the specific guarantees of the Bill



means of economic independence, a necessary precondition of political independence and expression. Not surprisingly, property relationships formed the heart of litigation and of legal practice, and lawyers and judges tended to think stable property relationships the highest aim of the law.

But the days when common law property relationships dominated litigation and legal practice are past. To a growing extent economic existence now depends on less certain relationships with government—licenses, employment, contracts, subsidies, unemployment benefits, tax exemptions, welfare and the like. Government participation in the economic existence of individuals is pervasive and deep. Administrative matters and other dealings with government are at the epicenter of the exploding law. We turn to government and to the law for controls which would never have been expected or tolerated before this century, when a man's answer to economic oppression or difficulty was to move two hundred miles west. Now hundreds of thousands of Americans live entire lives without any real prospect of the dignity and autonomy that ownership of real property could confer. Protection of the human dignity of such citizens requires a much modified view of the proper relationship of individual and state.

In general, problems of the relationship of the citizen with government have multiplied and thus have engendered some of the most important constitutional issues of the day. As government acts ever more deeply upon those areas of our lives once marked "private," there is an even greater need to see that individual rights are not curtailed or cheapened in the interest of what may temporarily appear to be the "public good." And as government continues in its role of provider for so many of our disadvantaged citizens, there is an even greater need to ensure that govern-

ment act with integrity and consistency in its dealings with these citizens. To put this another way, the possibilities for collision between government activity and individual rights will increase as the power and authority of government itself expands, and this growth, in turn, heightens the need for constant vigilance at the collision points. If our free society is to endure, those who govern must recognize human dignity and accept the enforcement of constitutional limitations on their power conceived by the Framers to be necessary to preserve that dignity and the air of freedom which is our proudest heritage. Such recognition will not come from a technical understanding of the organs of government, or the new forms of wealth they administer. It requires something different, something deeper—a personal confrontation with the well-springs of our society. Solutions of constitutional questions from that perspective have become the great challenge of the modern era. All the talk in the last half-decade about shrinking the government does not alter this reality or the challenge it imposes. The modern activist state is a concomitant of the complexity of modern society; it is inevitably with us. We must meet the challenge rather than wish it were not before us.

It was in particular the fourteenth Amendment's guarantee that no person be deprived of life, liberty or property without process of law that led us to apply many of the specific guarantees of the Bill of Rights to the States.

If we are to be as a shining city upon a hill, it will be because of our ceaseless pursuit of the constitutional ideal of human dignity. For the political and legal ideals that form the foundation of much that is best in American institutions—ideals jealously preserved and guarded throughout our history—still form the vital force in creative political thought and activity within the nation today. As we adapt our institutions to the ever-changing conditions of national and international life, those ideals of human dignity—liberty and justice for all individuals—will continue to inspire and guide us because they are entrenched in our Constitution. The Constitution with its Bill of Rights thus has a bright future, as well as a glorious past, for its spirit is inherent in the aspirations of our people. ■

EDITORIALS

Discrimination By Any Other Name . . .

The National Black Law Students Association, a national organization chaired by a student at Brooklyn Law School, has suddenly found itself the focus of media attention. Under normal circumstances, progressive public interest groups such as the NBLSA thrive on this type of notoriety. In this case, however, it is in a position no organization would envy. NBLSA must defend itself against a charge of race discrimination.

The controversy arose when Susan Kreston, a white law student at the University of Mississippi, was barred last year from participating in the regional round of NBLSA's Frederick Douglass Moot Court Competition, one of the largest of such competitions in the nation. Kreston responded by filing a complaint with the Department of Education. Her position is that the group's policy amounts to blatant race discrimination, and NBLSA chairman Johnnie Cordero disagrees. Rather, he says that the group's desire to maintain its identity as a black organization carries no implication of racism. In addition, he contends, the benefits to be derived from integration are best achieved in other spheres.

The history of race discrimination in this country is a shameful one. Prejudice against blacks and others continues to this day. The answer to discrimination, however, is not more discrimination. While NBLSA's position is understandable, it is not defensible. Even if we accept Cordero's argument that NBLSA is not a racist organization because its all-black policy reflects its desire to maintain a special support group to address the historically unique concerns of American blacks, NBLSA is still a law school organization excluding people on

the basis of skin color. Constitutional issues aside, this is precisely the type of reasoning that can be used by those who wish to preserve the "complexion" of any community.

The fact that a traditionally oppressed minority group is conducting the discrimination is no excuse. Discrimination is wrong because of the devastating effect it has on the dignity and spirit of its victim. Susan Kreston has as much right to be protected from race discrimination as anyone else. To us, it is surprising that a group such as NBLSA—whose members should well understand the evils of racism—would exclude someone from participation in an activity merely because that person's skin was the wrong color. What was the purpose?

NBLSA, in defending its actions, maintains that it is an exclusively private organization beyond the reach of the federal government's power to regulate. Even if this is true—and the issue is still a matter of dispute—NBLSA is not completely private. The group has local chapters affiliated with law schools throughout the country, including one at Brooklyn Law School.

Further, like virtually every other student group at BLS, BLSA receives funding from the Student Bar Association. The SBA, in turn, gets its funding from the required student activity fee. We believe the SBA has a responsibility to investigate the policies of the local BLSA chapter and its ties to the national organization. If it finds that the local chapter has adopted the policy of the national organization, then the SBA should take the same action it would take against any other group practicing racial discrimination.

Robert Axford

The Games We Play

A few words on sports and drugs, two of my favorite topics. Specifically, baseball and cocaine. Much has already been written and said on this connection, of course. I'd like to comment on the comments.

"Baseball on Trial" some sanctimonious social commentators have labelled the recent trials in Pittsburgh where a few professional athletes bore witness against a couple of drug traffickers. Many deride these athletes' behaviour and ethics, calling them irresponsible felons. Sports guru Dick "I Hate Druggies" Young has been railing uncontrollably about drug users for quite a while now at the same time he mildly admonishes Billy "I Never Met A Drink I Didn't Like" Martin to imbibe in different bars than his players. *New York Times* sportswriter Dave Anderson recently wrote: "For all the millions of dollars involved for adults in player contracts and TV income, baseball is still a kids' game. As such, it owes the kids, as well as everyone else, an apology for what has occurred on the witness stand in the Pittsburgh drug trials."

Anderson's attitude is typical; but his premise is bogus. Baseball, at least professionally, is not a "kids' game." If it was, why are all this year's World Series games scheduled at night, games that will often end at around midnight EST. If it's a kids' game, why all the beer and car rental commercials? And how is it that George Steinbrenner's opinion is constantly aired while the average Little Leaguer has trouble getting a press conference together? Not to mention, though I certainly will, how many kids can afford a \$15 box seat? Baseball, for better or more likely for worse, is big business.

But whether or not it is a kids game is really beside the point. It is the behavior of those admitted cocaine users that has so many opinion leaders in a dither. Cocaine

The BLS of Tomorrow vs. the BLS of Today

"Spend a Buck On Us"

The law school is presented in the new *Brooklyn Law School News* as a school that is sowing the seeds for future greatness. While we applaud any greater communication from the school, even if clearly meant for alumni eyes, it reminded us how very low a priority today's students are to the administration. No greater example of this existed than that of the photocopy machines in the library.

While we hate to dwell on so seemingly trivial an issue, the poor quality and unavailability of our photocopiers demonstrate the school's lopsided sense of priorities. The copy machines in the library were a longstanding BLS joke. The machines never worked properly and were a constant source of anger and frustration. So many students were upset that the SBA actually met with the Dean about it. The Dean has responded by promptly notifying the photocopy supplier that its performance must improve. New machines were finally installed. We hope they will work better than the old jokes.

One of the solutions which surfaced and may still be under consideration is for students to be charged an extra five dollars—of which the Dean will match the figure and acquire some machines that work. This suggestion cannot be viewed as anything short of an insult to students. The school has \$5 million to buy buildings, has the money to renovate the faculty and Deans' space on the ninth floor to palatial standards, but will ask students to reach deeper into their pockets to fix the copy machine problem. Absurd. Who paid for

the cute personal Canon copiers outside the three deans offices? Who paid for all those sophisticated computerized work stations on the 8th and 9th floors?

For our tuition money we deserve a first rate law library—with working copy machines. The school should treat its students as it treats its faculty and deans. It should ensure that there are top quality copy machines in the library. And it should be done without asking us to spend another cent. Take it from the eight grand we already gave you—or better yet, take it from the building fund.

• • •
While we're talking about student services and buildings, has anybody seen the SBA office? It seems to have disappeared to another building. Last year the notion seemed to be that all of the student groups would be moving across the street. Well, for good reason the three student publications and Moot Court remained in the main building and SBA was the only group to move. This has served to isolate an organization that had enough problems getting the attention of students while they were in the same building. The SBA is not like the Bursar's office. They depend on daily contact with the student body and therefore deserve some permanent space in the building. A good place to start would be the old Journal office that is currently used as the library smoking lounge. Why not move the lounge to a room that is somehow connected to the library? As a use of resources, it would all make a lot more sense. But that might set a bad precedent.

THE JUSTINIAN

A FORUM FOR THE BROOKLYN LAW SCHOOL COMMUNITY

Executive Editors

Donna L. Riccobono

Richard P. Schroeder

Senior News Editor

James D. Diamond

Business Manager

Grace E. Lee

Design Editor

Matt Flamm

Associate News Editors

Judith Kahn, James Locantro

Virginia Pettinelli, Judie Steinhart

Copy Editor

Darren Saunders

Copywright Editor

Peter Mollo

Associate Production Editors

Nina Keller, Robert Roth

Photography Editor

Grace E. Lee

Photographers

Martin Meany, Gareth Young

Staff Writers

Robert Axford, Jamie Delio, Rick Geller, Jeff Gusman, Sandy Harwitt, Michele Hauser, Jonathan Hudis, Edward Jordan, Estajo Koslow, Michael Leshner, Andrea Lowenthal, Kevin Mahoney, Judith Norrish, Susan Odessky, Philip Reizenstein, Maureen Roaldsen, Peter Schaffer, Darla Stuckey, James Tenney, Rick Walder

Contributors

Diane Conyers, Catherine Duggan, Orren Falk, John Folcarelli, Susan Landis

©1985 The Justinian • Brooklyn Law School
250 Joralemon Street • Room 305
Brooklyn, N.Y. 11201 • (718) 780-7986

use in baseball has become major news. How this is escapes me. Of course, some athletes take drugs. Some also drink, cheat on their wives and tell tasteless jokes. Its sin takes a holiday, surely. But is it news?

Today's professional athletes are entertainers; their job is to help us mired in the mundane to forget how utterly uneventful our lives are. The well-paid athlete's life is more akin to a rock star's (groupies included) than a little Leaguer. Substance abuse (and it's debateable whether any of the witnesses were abusers) is part of the terrain, not unlike sportscars. If the drug controls the individual, then it is sad in the personal sense, but no more. Certainly, it is no better or worse than alcoholism, which has been a tradition in the summer game. (Mickey Mantle, for example, reputedly hit more than one home run while inebriated.) Is it something children should emulate? Probably not. But all those who contend that all professional athletes should be role models are either naive or have not met many professional athletes. If you don't believe me, just ask Sandra Day O'Connor her opinion of professional football players.

Nobody is promoting or even condoning drug use here. The athletes involved were caught and given the unenviable choice between being a witness or a defendant. If these men committed a moral transgression, to my mind it was the act of squealing—for their own personal gain; i.e., avoiding a jail term—on those with whom they knowingly and freely associated. Yet, this view is apparently a minority position.

As is usually the case, condemning these men in public is not sufficient. A scarlet letter may have worked in Hester Prynne's day, but this is the 80s. Mandatory urinalysis tests are being touted as the best way to "clean up" the game. Put it under the same legal theory as the so-called sobriety checkpoints that are currently the rage; that is, arrest everyone and let the less guilty go. Of course, baseball is only the beginning. The parade of horrors is anyone's guess.



Such is life in the land of the qualified free, home of individual limitations, where the inherent right to the pursuit of happiness has been superceded by the inherited obligation to follow the rules. Where once we had Henry Thoreau now we have George Will. Where once we had undisciplined individualism, now we have regimentation.

The Rules of the Game long ago usurped the meaning of the Game, and I'm not talking baseball. Our societal paranoias have terminally colored our perceptions. Cocaine in baseball has been raised to a level of national concern (unlike the plight of the homeless and hungry), because of its alleged threat to our moral fibre. But our moral fibre has long been threadbare.

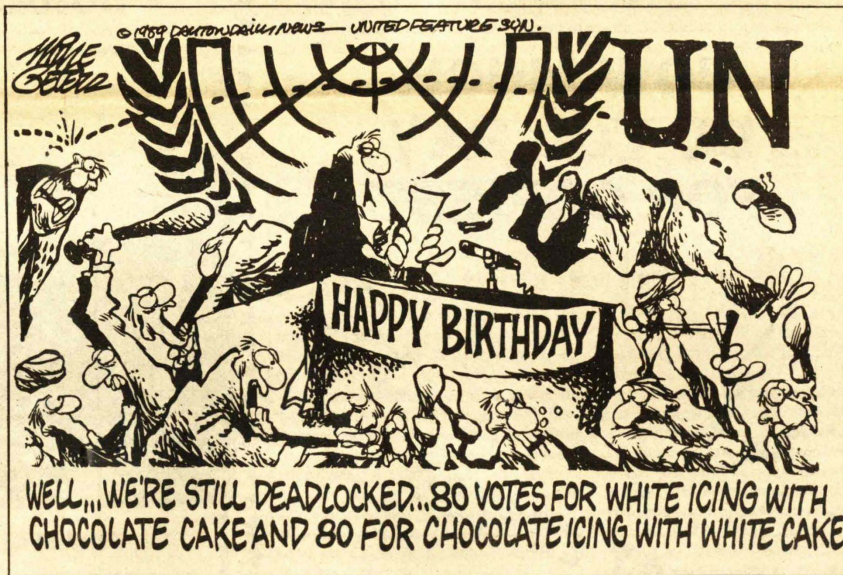
We constantly fret over the 25,000 people lost each year in alcohol-related auto accidents, while we remain utterly unconcerned with the hundreds of thousands of deaths each year that are work related. (Presumably, it's alright to die, so long as you do it at work.) We worry incessantly about polluting our minds with pornography, at the same time we ignore our fateful poisoning of the environment. We wage mercenary wars in Central America for corporate profit, but we righteously await apologies from athletes for their personal indiscretions. If only we held politicians as accountable as we do entertainers. No wonder they start off each game with the rhetorical query: "Oh, say can you see?" ■

Philip L. Reizenstein

The U.N. Turns 40

As the United Nations celebrates its 40th anniversary, diplomats and dignitaries from around the world are praising the achievements of the past 40 years and confidently looking forward to the next forty years. However, many critics of the U.N. have questioned whether the U.N. is a viable forum for the resolution of disputes among nations. These critics point to the inability of the U.N. to prevent the many conflicts and wars that routinely occur among the non-superpower nations, as well as the U.N.'s failure to prevent the war in Vietnam or the Soviet Union's brutal invasion and oppression of Afghanistan. Because of the U.N.'s perceived helplessness, many people view it as an impotent bureaucratic breeding ground, whose chief purpose is to serve as a forum for attacks on the United States and Israel by Soviet dominated governments. While these criticisms are an understandable venting of pent up frustrations, they miss the point. The U.N. stands as one of the two chief representatives of international law, the other being the World Court. Therefore, the problems of the U.N. stem from the international law that is supposed to apply. The proper field of inquiry is thus whether international law is a viable system for the resolution of disputes among nations. The answer to that question, I assert, is no.

Black's Law Dictionary defines "Law" as "That which must be obeyed and followed by citizens subject to sanctions or legal consequences. . . . Therefore, for a body of law to be viable it must proscribe the acts of its subjects and have the ability to enforce penalties on those who violate it. International law has none of these attributes. What Hans Morgenthau wrote over 40 years ago continues to be true today: nations act in their own self interest regardless of existing international law. The clearest example of this was the United States' blockade of Cuba during the Cuban Missile Crisis. Cuba was blockaded because the decision-makers of the United States had determined that a blockade was the optimal solution to the desired goal of removing Soviet missiles from Cuba. It was only after the choice was made that the term "quarantine" was used so as to make the action acceptable under international law. The United States'



action in resolving the missile crisis typifies how most nations have chosen to deal with international law—as an afterthought to be considered after the nation has decided to act. Did international law prevent the Soviet invasion of Czechoslovakia in August of 1968, or the United States' bombing of Cambodia, or the invasions of Israel by Egypt in 1967 and 1973? The answer of course is no; there are no instances of a nation not acting in its perceived best interest merely because international law prohibits such action. International law has become a mere inconvenience to be dealt with after the fact. And to assert that international law has binding proscriptive force is to ignore the last one hundred years of history.

Just as international law lacks proscriptive force, it also lacks the ability to punish the offenders. Article 2 of the U.N. Charter guarantees the sovereign equality of all member nations. While this guarantee is an important one, it has the practical effect of insulating offending nations from anything more than condemnation and limited sanctions. Thus observe that by seeking to enforce a body of law bereft of the ability to proscribe actions or punish its subjects, the U.N. is condemned to remain a helpless bureaucratic institution.

Recognizing the problems of the U.N., the question arises as to whether it would be beneficial to expand the powers of the U.N. to better help it deal with the problems it faces. The answer, I assert, lies not in expanding the power of the U.N., but in changing its role in the world. To expand the power of the U.N. to the extent necessary to insure its effectiveness would be to empower the U.N. with the ability to prevent a nation from acting in its perceived best interest. Such a situation creates an irrational legal system, for it is the height of irrationality to require a nation not to act in its perceived best interest.

Rather than increasing the power of the U.N., therefore, we should be concerned with changing its role. The U.N., be it in its current form or in a new modified one, must continue to exist, if for no other reason than that its basic existence stands for the proposition that the nations of earth recognize the need for all to live in peace with each other. However, if the U.N. is to do more than exist, if the U.N. is to begin to fulfill some of the promise that it held when it was born in San Francisco, then it must be recognized that as it currently exists, the U.N. is a failure. To succeed in the future, its charter must be amended and its role must be changed. ■

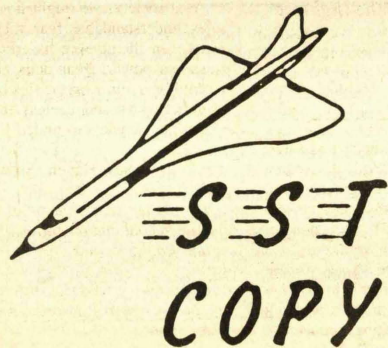
LETTERS

Grand Opening!

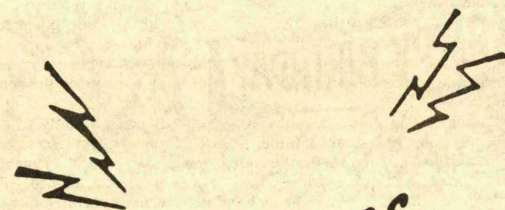
COMPLETE PRINTING SERVICE



138 COURT STREET
BROOKLYN, N.Y. 11201
(718) 797-1209



HOW MUCH DO YOU PAY FOR COPIES?



XEROX COPIES

8 1/2 x 11" **5¢**
each

NO MINIMUM

AIDS: Not Funny

Dear Editor,

The cartoons regarding AIDS in your October, 1985 issue (*Justinian*, Vol. LV, No. 1, p. 7) were offensive in so many ways—yet, to list the offensive characteristics of the illustrations would further trivialize and obscure the important and difficult issues raised by AIDS crisis. The *Justinian*, as "a forum for the Brooklyn Law School Community," should be a means of exchange of information regarding AIDS, not a vehicle for perpetuating stereotypes.

As members of the Brooklyn Law School Community and as members of the Lesbian and Gay Community, we suggest that the *Justinian* make an effort to live up to its reputation (See *Student Lawyer*, Vol. 14, No. 1 (Sept. 1985) at 43 [Brooklyn Law School takes top honors in the 1984-85 Newspaper Competition sponsored by the ABA Law Student Division.]) and serve as a source of informed and thoughtful articles regarding AIDS and AIDS-related issues. Accordingly, we enclose articles from other sources that have thoughtfully dealt with issues raised by the AIDS crisis. We encourage you to seek permission to reprint them in the *Justinian*.

Sincerely,
Brooklyn Law School
Lesbian and Gay Law
Student Association

This letter originally appeared in the New York Times in response to an editorial in that newspaper.

To the Editor:

Your Sept. 3 editorial "The New Plague, in Perspective" accurately states that there is no medical reason for preventing most children with AIDS from attending school. It is important to realize that there is also no legal basis for doing so. Nevertheless, across the country, AIDS children are being kept out of school. Fear and the political pressure it creates seem to be clouding what is an excruciating, but clear, legal issue.

Both Congress, in statutes like the Education for All Handicapped Children Act, and the Supreme Court, in decisions like *Brown v. Board of Education* have recognized education as a basic entitlement and a fundamental right. That, of course, is not the only right involved. "Upon the principle of self-defense, of paramount necessity," the Supreme Court wrote in a seminal 1904 health case, "a community has the right to protect itself against an epidemic of disease which

Photocopy: Madness



Attempting to fix a recurring problem.

Dear Dean Trager:

As a first year evening student, I spent last Sunday, October 20, in the library from the hours of 9:00 a.m. to 4:30 p.m. working on my first research assignment. For the assignment it was necessary to make photocopies of the cases pertaining to the problem. This past Sunday, the copiers were in extremely poor condition.

The machines on all three floors alternately misfed, ran out of toner, ate copy cards, and produced copies that were barely readable (either too dark or too light). At any given time during the day, there were no more than two or three machines operating at once.

I hope that this situation can be remedied in the future. Perhaps hiring students to service the copiers, i.e. clear misfed paper, add toner, etc., would be a

solution.

In contrast to the copier problem, I found the library staff to be extremely helpful. This is important to a first year student who is very unfamiliar with the library's resources. However, the staff cannot service the copiers or shelve books.

I understand that the library works on a cooperative system. If more students realize this and "cooperate" in putting needed books away for others to use, the time spent in searching tables for missing volumes could better be used to work on the assignment.

A combination of adequate copiers and cooperative students would certainly make beginning attempts at research more rewarding and more enjoyable for all first year students.

Sincerely yours,
Susan H. Odessky

Continued from previous page

threatens the safety of its members." [Jacobson v. Massachusetts, 197 U.S. 11 at 27]

Individual rights are not sacrosanct in the face of this kind of danger. To protect the many, the state may infringe upon the rights of the few, but the law also protects the sick from the fears of the majority. The key concept is necessity: The law allows almost any deprivation of individual liberty or property if a health threat is real, but will not tolerate even the slightest if the threat is not.

As the law governing the state's power to protect the public health has developed, emergency health actions must pass a two-prong test when they implicate fundamental individual rights. First, it must be shown that the state has a compelling interest in taking action. This requires a medical evaluation of the health threat which finds that the perceived danger is real and that it is the kind of threat against which effective emergency steps can be taken. This evaluation depends not only on a disease's severity but also upon its etiology and prevalence.

If the danger is not real, or if emergency steps will not make a meaningful difference, no action is justified. If it is justified, the second prong of the test requires both that it have a reasonable medical relation to the goal of alleviating the danger and that it does not compromise individual

rights more than is absolutely necessary.

In the overwhelming medical consensus that AIDS does not constitute a danger in the classroom means that a ban on school attendance for AIDS children does not pass the first prong of this test.

Scientific evaluations are rarely stated in absolute terms; there is always the one-in-a-million chance, what New York Mayor Koch recently referred to as the "theoretical concern that one cannot absolutely rule out the

cedent. Just six years ago, the Federal courts prevented the New York City school board from limiting the school attendance of some 50 retarded children infected with hepatitis B. [New York State Association for Retarded Children, Inc. v. Carey, 612 F.2d 644 (2d Cir: 1979)] (Hepatitis B is a serious viral disease which, like AIDS, is transmitted by exchange of body fluids).

Since the medical evidence indicated that the disease was not spread by casual contact, the children posed

more time than many of these children have.

Last week, for example, a Federal judge in Indianapolis refused to order the admission of Ryan White to school until he has exhausted four levels of state administrative hearings [White v. Western ScholCorp. No. IP 85-1192-C, slip op. (S.D. Ind. Aug. 23, 1985)] Eventually, somewhere along the line, he will be vindicated, but meanwhile he reins deprived of what is not only a basic right but also a last, brief chance to lead a normal life. In many other cases, the afflicted children may be too poor and unprotected to fight city hall.

This is a tragic situation, and behind the legal issue is the moral one. As a society, we ought not stand by as understandable fear metastasizes into an illegitimate assertion of the state's power. Fear does not justify doubly victimizing the sick by placing unnecessary and useless restrictions on their already wounded lives.

Scott Burris
New Haven, Sept. 3, 1985

The writer is a student at the Yale Law School and an editor of the Law and Policy Review.

Copyright © 1985 by the New York Times Company. Reprinted with permission.

"The law allows almost any deprivation of individual liberty if the health threat is real, but will not tolerate even the slightest if the threat is not."

transmission of the AIDS virus." But that is not enough to justify a total ban on school attendance. The only legitimate question remaining is whether individual children behave in a way—biting, for example—that constitutes an exceptional threat. That, of course, must be decided on a case-by-case basis.

One need not search far for a pre-

little or no threat to their classmates; the problem of individual children whose behavior posed a greater threat could be addressed by steps far less drastic than blanket exclusion or segregation of all the children.

Unfortunately, the clarity of the law may not be of much help to AIDS victims. While there may be no doubt of the outcome, reaching it could take

Brooklyn-Progress Copy Center

PRINTING BY ALL PROCESSES

High Quality Xeroxing
at Reasonable Prices

193 Joralemon Street

Just 1 block from Brooklyn Law School

Telephone: TRIANGLE 5-0696

SPECIAL DISCOUNTS TO LAW STUDENTS

Profs Remember

Continued from page 3

tracts and Partnership. This continued until graduation. Professor Crea was not able to take Torts until his final year!

During the post World War II era, financial aid was limited to two categories: Veterans State Scholarship and Federal GI Bill of Rights. According to the provisions of the State Scholarship, your tuition was paid but you had to buy your own books. The Federal assistance covered both tuition and books.

Another interesting "historical note" is that you only needed two years of College and a Law School Qualifying Certificate from the State Education Department for acceptance to Brooklyn Law School. (Stanley Kaplan would have starved in those days!) All courses were part of a structured curriculum and the assortment of elective courses we now have was not then available.

Were there any observations about the female student population in the "early days (and nights)?" Professor Crea noted that in all sessions women "were assigned to seats in the second row." During the early days of the Women's Lib Movement they were able to sit anywhere in the classroom. Professor Crea, however, found a slight drawback to the "dawning of this new era." Liberation from seating practices came simultaneously with the advent of the "mini-skirt."

Professor Gilbride attended Fordham Law School from 1944-48. He attended evening classes for three years and his last year consisted of morning classes. Fordham's Law School campus was then located at 302 Broadway and was experiencing the same "growing pains" facing most of the country's educational institutions because of returning U.S. servicemen from overseas. At present he teaches Contracts and Legal Profession, both required

courses, and has about 25 years of administrative experience here at Brooklyn Law.

Professor Gilbride recalls that he attended his first Law School class and thought the registrar had erred. He found himself in a February Class that was in the middle of guess what—Contracts! After class he went to check it out and was told that he would be able to take the first part of Contracts during the summer.

Professor Gilbride graduated in June, took the Bar in early July and was appointed in November of the same year, an interesting footnote on the demand for attorneys at that time.

In contrasting evening school then and now, Professor Gilbride finds that there is much more formal orientation now and definitely more faculty accessibility. In addition, with the availability of elective courses, evening students have more curriculum flexibility than their predecessors.

Both Professors Crea and Gilbride noted the special relationships that develop among evening students. Maturity and acceptance of responsibility result in a mutual support system that can see students through their most difficult academic and personal experiences. ■

Gay Rights

During the 1985-86 school year, the Brooklyn Law School Lesbian and Gay Law Student Association will be sponsoring an informal study group on the topic of Lesbian/Gay Rights and the Law. We will be examining the constitutional and statutory rights of lesbians and gay men in the areas of domestic relations, employment discrimination, immigration and naturalization, housing, public accommodations, rights of association and in the area of criminal justice.

All individuals are encouraged to participate. For further information contact Jim Williams at (212) 260-3303.



Jock's Trap

by Scoop Jackson

Our bodies may be likened to machines; special machines consisting of both physical and mental elements. In order to prevent atrophy, these elements need regular use, i.e. exercise. At BLS we are afforded an opportunity to exercise our mind. To expand its ability and capacity through continuous use. However, we are afforded little to no opportunity to exercise our bodies. After all, why should this opportunity be available to us here? We are in law school not grade school—there is no gym period here.

While this may or may not be the attitude of the current administration, we may infer (we're in law school—why not?) from the smattering of recreational and athletic activities which are available, that the administration is compelled by some force to provide us with an opportunity to exercise our bodies.

Currently, there is an intramural football league which is halfway through what so far has been a very successful season. An intramural basketball league will be registering teams in late January, and the world renown Lawyer's Basketball League will be conducting tryouts in early December. The lesser known Lawyer's Volleyball League will also get under way about the same time. Additionally, a good faith effort made last year to organize an intramural softball league during the Spring semester quickly folded for lack of participation. Further, an exercise class was conducted for a short time in the third floor student lounge, but also waned due to lack of participation.

available to students as well as faculty. The school might also look to subsidize membership in a local health club, or perhaps even rent space in a local gym for student and faculty recreation. The idea of squeezing in a little exercise between a Holzer lecture and a grand lunch in the cafeteria certainly has its therapeutic merits. While the cost of going through with any of these suggestions may be high, the benefits derived would be better off as a whole.

Trivia questions:

1) Name the batter to make the last out in Don Larsen's perfect game in the 1956 World Series?

2) Name the player that Lou Gehrig replaced as the first baseman for the New York Yankees and why he replaced him?

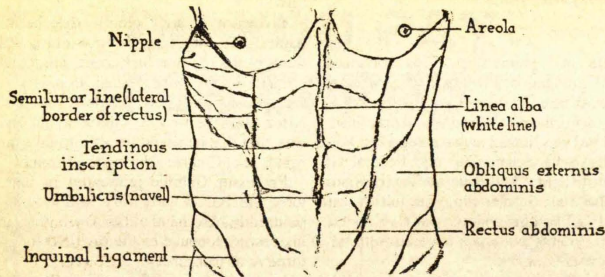
3) Name four rookies of the year in the major sports in 1976 whose initials were A.D.?

Baseball talk: The Mets trade Ron Darling and Howard Johnson to the Boston Red Sox for premier third baseman Wade Boggs, and then the Mets trade Ray Knight to the Tortfeasors for high priced rookie Mark Wasserman and the fans wonder who got the best deal. Then the Mets will pick up Tom Terrific Seaver and will finally win the N.L. Pennant.

Hockey Predictions for 1986:

Adams Division—Sabres will win going away, but look for Quebec Nordiques with the Statsney brothers and the toughest player in the NHL, Dale Hunter, to challenge for the title.

Patrick Division—All 3 New York/New



It is this lack of participation that is responsible for the inadequacy of recreational and physical activities available to us. That is, lack of participation by both students and the administration. The same people are running and participating in all of the intramural sporting events available. The number of participants is approximately 130 students, or less than 10% of the student body—this includes many participating alumni. There are presently no women participating in the football league. Additionally, the administration allocates only \$2000.00 per year toward the development and sustenance of these activities (\$1,500 went to the rental of the gym for intramural basketball; \$200 went to both the Lawyer's Basketball and Volleyball League, and \$50 went to the football league. This does not include an additional fifty to one hundred dollars paid by each team entry, amounting to nearly two thousand dollars). This means that the administration is only allocating \$2 out of the eight thousand tuition paid by each student.

While we are not looking for an N.Y.U. type gymnasium, we can at least ask for an extra room in the newly bought bank building that could be converted to a semi-adequate exercise room which would be

Jersey teams are hating it. The Islanders are too old, the Devils are too young and the Rangers are well, just too nothing. Look for the Capitals and the Broad Street Bullies to dominate again.

Norris Division—the weakest division in hockey, so who cares. Do note that the Detroit Red Wings with some Iron Curtain refugees, some good young draft choices and college stars to be the team of the future.

Smythe Division—a la the Gretsky Division, what more needs to be said, the man is the greatest hockey player ever, and no one has ever dominated a sport like Gretsky can. Hell he is only 25 years old. Add names like Kurri, Coffey, Krushelnyski, Messier, Fuhr, etc. and they will be unbeatable and wind up with a Stanley Cup Hat Trick. The Winnipeg Jets with ex-Ranger G-M John Fergusson are a good young team, and if it were not for Mr. Gretsky, the name of Dale Hawerchuk would be heard throughout the NHL more often, he is a good young talent.

SuperBowl Predictions—The Monsters of the Midway, the Chicago Bears, will continue to dominate the NFC and will beat the surprising New York Jets 21-17 in the Super Bowl.

BAR/BRI OR PIEPER? SOMETHING TO THINK ABOUT

At the New York Law schools with the lowest pass rates, the majority of the students take the Pieper Bar Review Course.

At the New York Law Schools with the highest pass rates, the vast majority of the students take the Bar/Bri Bar Review course.

**COINCIDENCE?
Think Again.**

**BAR/BRI
New York's largest &
most successful
bar review course.**

The Sound Solution.®

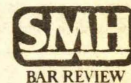


New York Audio Review Program

Authoritative lectures at your fingertips. Now you can take a complete bar review course that meets the need for portability and convenience without sacrificing quality. Multistate and New York preparation complete with practice question review and analysis. No need to fight traffic or rearrange your busy schedule. Our expert faculty will teach you as often as you want, wherever and whenever you want.

July 1986 preparation will consist of lectures from the live NY course given in Boston during May and June of 1986.

Knowledge you can take with you. 1-800-343-9188



Sparer Fellowships to be Offered For Summer Work in Public Interest Law

by Judith A. Norrish

Summer stipends for public interest law will be offered for the first time at Brooklyn Law School, for summer '86. The program, established in memory of Edward V. Sparer, BLS '59, is oriented to students who, for economic reasons, could not otherwise pursue summer work in public interest law.

"We cannot build a new society of caring human beings, if we do not act to help our fellow humans now, however small the ways. We are what we do." These are the words of Edward V. Sparer, a founder of Mobilization for Youth and the Columbia Center on Social Welfare Policy and Law. A social policy visionary, litigator, teacher, and passionate, energetic human being, he pioneered the development of public interest law and left a legacy for Brooklyn Law School: the establishment of legal rights for the poor, and a critical re-examination of our health care system. Edward Sparer was a lecturer at Yale Law School and the Columbia University School of Social Work, and a professor at the University of Pennsylvania Law School. He inspired and encouraged colleagues, students and advocates of social reform. In 1984, the Dean's Prize for Public Service was awarded to Edward Sparer posthumously, and in a recent issue of the University of Pennsylvania Law Review, several articles written by colleagues discussed the impact of Edward Sparer's work in the law, and his personal influence upon them as a compassionate human being.

The Edward V. Sparer Fellowship Committee, chaired by Professor Elizabeth Schneider, will consider ap-

plications from students to be Sparer Public Interest Law fellows. Letters requesting support and funding have been sent to public interest law organizations, friends and colleagues of Edward Sparer, and alumni of BLS. These letters have elicited a warm response from the legal community.

Interest in having Sparer interns has been expressed by such diverse groups as the Women's Legal Defense Fund, and the Center for Law and Social Policy, in Washington, D.C. and legal service and public interest groups in Ohio, Texas, Pennsylvania, Massachusetts, and New Jersey. In New York, internships may include work at Mobilization for Youth Legal Services, NYC Commission on Human Rights, and the Legal Aid Society of the Bronx.

Assisting Professor Schneider in the coordination of the program will be Professor Susan Herman of BLS, Professor Sylvia Law of New York University Law School, and Edward Sparer's son, Michael, who is an attorney with the Corporation Counsel, as well as other BLS alumni and colleagues of Edward Sparer.

Any student interested in applying for a fellowship for summer, 1986, should submit a letter to Professor Schneider by January 15, describing background, work experience and professional interests which would qualify him/her for this work. Economic need of the applicant will be a significant factor in the selection process.

More information on Sparer fellowships and the procedure for formal application will be available in the Placement Office and from Professor Schneider later this fall.

Referendum Nuked

Continued from page 3

Another criticism aimed at the officials supporting the home port concerns the over-estimation of the economic gains that the base would bring. Initially, supporters of the base asserted that over 4000 jobs would be created with more than \$500 million a year added to the area's economy. The Navy, however, estimates that no more than 900 permanent civilian jobs will be created with a yearly expenditure of about \$10.5 million.

In a zealous grassroots effort, Mobilization for Survival, an antinuclear coalition, collected over 100,000 signatures on a petition to get the issue on this year's ballot. That number represented well over twice the amount of signatures needed to place the matter directly on the ballot. Though the signatures were certified by the City Clerk, their validity was challenged in a lawsuit brought by City Councilman Frank Fossella and five Staten Island businessmen. A referee was appointed by State Supreme Court Justice Charles Kuffner Jr. to review the signatures. After checking over 60,000 signatures and invalidating only 3000, the referee informed Kuffner that the petition would probably stand up to any further scrutiny. On Thursday, October 17, Judge Kuffner ordered the line by line challenge stopped.

Councilman Fossella and the other plaintiffs have also challenged the constitu-

tionality of the proposed referendum. Under state law, a referendum cannot merely ascertain public opinion but must propose a change in law. The referendum as now drafted would prohibit the Board of Estimate from renting or selling city land, or using city monies to "facilitate the development of any military facility, any component of which is designed to carry or store nuclear weapons." Opponents to the referendum claim that it is overly broad and too restrictive on the Navy.

If the people in a democracy can't tell the government they don't want nuclear weapons, who can?

Fossella and others say the proposed amendment to the City Charter violates the Supremacy Clause (Article VI) of the Constitution. The federal government is charged with the responsibility of providing for a national defense and military planning. According to the referendum's opponents, by prohibiting the City from selling or leasing its land to the Navy, the amendment would interfere with this important federal power.

Underlying their position is the sentiment that New York City should not presume to forbid the federal government from putting a defense facility where it sees fit.

Invitation to Membership in the New York State Bar Association

For those of you not yet acquainted with the New York State Bar Association, I write to invite you to join this important organization.

Membership benefits include a subscription to the New York State Bar Journal, invitations to special continuing legal education seminars at reduced fees, car rental discount, and a medical insurance plan. Applications for membership will be available soon and will be placed in the book holders outside of the cafeteria on the basement level and on the third floor book racks. On behalf of the New York State Bar Association, I welcome you all to join, and I will be pleased to answer any questions you may have. During the spring semester, I have asked Mayor Edward I. Koch to be a Distinguished Speaker on behalf of the New York State Bar Association and he has agreed to talk. The Mayor will be speaking in the evening. I will be giving further details concerning the time and topic of his talk. A reception will be held at that time. In addition, a writing competition will be sponsored by the New York Bar Association, details of which will be posted on bulletin boards. I will be attending a meeting of the Association on Friday, November 15th and will put a short article in the Justinian or post further details of the writing competition and any other relevant news.

I urge you all to become members of the New York State Bar Association. Please contact me if you have any questions. My home number is 212-228-8966 and I am in school five nights a week.

Susan Landis,
New York State Bar Association
Representative, Class of '88

Supporters of the referendum argued that any challenge to the constitutionality of the proposed referendum was premature. Though an amendment was on the ballot, it had yet to have been passed and indeed may never have become law at all. The proper time to pass upon the issue of constitutionality, according to counsel for respondent, Mobilization for Survival, is subsequent to passage of an amendment which becomes law.

In the opinion of its drafters, all the referendum does is amend the enumerated powers of the Board of Estimates in one limited respect. Since the imposition of rules and regulations as to disposal of City lands and tax monies is at the heart of any municipal government, they believe this referendum does not further intrude into federal boundaries. Even if the referendum passed, the Navy could condemn the land and take it by eminent domain.

The Supreme Court of Richmond County decided to strike the referendum as constitutionally preempted by the federal government. The Appellate Division, 2nd department, affirmed this decision. The court held that the federal government's power to raise and maintain an army and navy was "broad and sweeping" and that the proposed referendum would unreasonably interfere with this power. Counsel for respondent believed these decisions were premature and without precedent. The case is now on appeal before the NY Court of Appeals.

Still, a question posed by a member of the antinuclear groups remains: "If, in a democracy, the people of the United States do not have the right to tell the federal government that they don't want nuclear weapons in their city, then who does?"

Getting Involved in the Law Student Division: The Competitive Edge

The ABA Law Student Division offers law students a number of opportunities to get involved in activities which will provide a competitive edge when vying for a position after graduation. For only \$10.00 the Law Student Division provides you with two important and widely read publications, the ABA Journal and the Student Lawyer, which keeps you apprised of all that's going on in the profession and with law students across the country. Ten dollars for that alone is worth it, considering for instance, that it is much less than you will ever pay for most law school texts.

Beyond these publications, the Law Student Division means programs. Active involvement gives you a real competitive edge; something to put on your resume and talk about in an interview. There are now three competitions, the National Appellate Advocacy Competition, the Client Counseling Competition, and the New Negotiations Competition, which allow you to compete with students throughout the country.

There are other new programs which involve you in specific areas of the law. The Administrative Law Judge Program brings an Administrative Law Judge on campus to either hold an actual hearing or speak with students. The *Guardian Ad Litem* Program encourages students to act as advocates for children who require their own advocate. The volunteer Speakers Program encourages students to go out and address high school students and civic organizations about law school and the legal profession. The Voluntary Income Tax Assistance (VITA) Program gives you first hand experience in preparing income tax returns while helping less fortunate members in the community.

Another ongoing activity is the Resolutions process. Every August law students from around the country gather to consider resolutions written by law students on topics ranging from Nicaragua to Acid Rain to due process in selecting law review members. This is the greatest opportunity that you as a student have to propose ideas which may eventually become the policy of the American Bar Association.

These are just the highlights of what the Division offers you. Your ABA/LSD representative on campus, Diane Conyers, needs a lot of help. Your participation will be rewarding and give you the competitive edge you will need upon graduation from law school. Don't hesitate—join and get involved today!

—By John W. Folcarelli

Interested in advertising in The Justinian?

Leave a note in Room 305 or call 780-7986

Attention

IT'S NOT TOO LATE TO SWITCH TO PIEPER WITHOUT LOSS OF DEPOSIT.

So, you've made a mistake. If you were lured into another bar review course by a slick sales pitch in your first or second year, and now want to **SWITCH TO PIEPER**, then your deposit with that other bar review course will not be lost.

Simply register for **PIEPER** and send proof of your payment to the other bar review course (copy of your check) and you will receive a dollar for dollar credit for up to \$150 toward your tuition in the **PIEPER BAR REVIEW**.

For more information see your Pieper
Representatives or telephone

(516) 747-4311

**PIEPER NEW YORK-MULTISTATE
BAR REVIEW, LTD.**

90 Willis Avenue, Mineola, New York 11501

PIEPER RUNS THE EXTRA MILE FOR YOU!

Pieper gives something in
addition to what is due,
expected, or customary
in a Bar Review Course.

This extraordinary effort
makes the difference.

For more information contact
your Pieper Representative or
telephone:

(516) 747-4311

**PIEPER NEW YORK-MULTISTATE
BAR REVIEW, LTD.**

90 Willis Avenue, Mineola, New York 11501

THE BAR COURSE THAT CARES



PAX BOOK EXCHANGE

Pre-Exam SALE 10% Off

Emanuel's · Legal Lines
Gilberts · Nutshells
Smith's Reviews ·
Sum & Substances

108 Lawrence Street Hours:
(between Myrtle Mon-Thurs: 9-6
& Willoughby) Fri: 9-4
(718) 875-1491 Sat: 10-3

SALE ENDS DEC. 7th
You Must Present This Ad

If you
want to pass
the New York
bar exam,
you *must*
pass the
MBE!

If you want to
pass the MBE
you *must* take



The Nation's Leading Multistate Expert

WEST COAST OFFICE
829½ Via De La Paz
Pacific Palisades, CA 90272
(213) 459-8481

NEW YORK OFFICE
450 7th Avenue, Suite 3504
New York, NY 10018
(212) 947-2525

EAST COAST OFFICE
211 Bainbridge Street
Philadelphia, PA 19147
(215) 925-4109

NATIONWIDE TOLL FREE NUMBER:
(800) 523-0777

SPECIAL PRICING
ON ALL COMPUTER SYSTEMS
AND ACCESSORIES
TO ALL STUDENTS, ALUMNI,
FACULTY AND STAFF
BY AGREEMENT BETWEEN
EKTRON SYSTEMS INC.
AND BROOKLYN LAW SCHOOL.

EKTRON SYSTEMS INC.
COMPUTERS Plus



194 Joralemon Street
Brooklyn, NY 11201
(718) 625-7222

**A COMPANY
CALLED
M.J.&K.**

THE OFFICIAL BOOKSTORE OF
BROOKLYN LAW SCHOOL
718 / 780-7998

**All Books Are Discounted
Diplomas Laminated
Typeset Resumes Services**

FALL SEMESTER HOURS

Monday	11:00-7:00
Tuesday	10:00-6:00
Wednesday	11:00-7:00
Thursday	10:00-6:00
Friday	10:00-5:00

BAR/ERI
NOVEMBER DISCOUNTS
FOR
NY, NJ, MASS, VT,
CT, NH, ME

CLASS OF 1986 -
SAVE \$150 WITH A
\$75 REGISTRATION FEE

CLASS OF 1987 -
SAVE \$200 WITH A
\$100 REGISTRATION FEE
DISCOUNT ENDS
NOVEMBER 26TH



BAR REVIEW

The Nation's Largest and Most Successful Bar Review.

415 Seventh Avenue, Suite 62, New York, New York 10001
(212) 594-3696 • (516) 542-1030 • (914) 684-0807 • (201) 623-3363
160 Commonwealth Ave., Boston, Mass. 02116 (617) 437-1171

BLSA Defends Black-Only Policy

Continued from page 1

were denied this privilege, Cordero argues, "next we'd be saying that if you had a private party, you'd have to ensure that blacks were invited—and that's sheer nonsense."

Under 42 U.S.C. §1981, however, a public nexus may be unnecessary to bring an association within the reach of the law. Courts have held discrimination impermissible in private employment and many contract situations. The only exception is the private club. BLSA chapters are affiliated in some ways with public institutions, and it remains to be seen whether BLSA will be deemed public.

Julius Chambers, General Counsel of the NAACP, stated that the NAACP has not yet taken an official position on the matter. However, he commented that, "The problem I personally have with the position [BLSA is taking] is that the group is sanctioned by an institution that may be receiving state or federal funds. If one analogizes the situation to positions the NAACP has taken where white groups have excluded blacks from college fraternities and we've argued such as policy violates the 14th Amendment and Title VI, then I would imagine the same notion would apply to BLSA."

Representing Kreston are George C. Cochran, a constitutional law professor at the University of Mississippi, Wilbur Colom of Colom & Colom in Columbus, Mississippi and the Washington, D.C.-based law firm Steptoe & Johnson. Cochran asserts that BLSA is a voluntary association which has a historic basis of discriminating as a private group. According to him, the issue of whether BLSA uses any government funds is secondary because the BLSA chapter uses a public facility that is receiving state and/or federal money.

"We're merely trying to reverse that one constitutional provision that states that only black students may be admitted to the organization," Cochran said. "Our feeling is that a lawsuit can't help anybody, and we've been dodging that option since last spring."

Cordero suggests that the delaying tactic was a means by which BLSA's opponents intended to "vilify us in the press." He stated that counsel at Steptoe & Johnson informed him that their firm had the backing of high officials of the Reagan Administration, which Cordero thought was a reference to Assistant Attorney General William Bradford Reynolds (controversial head of the Justice Department's Civil Rights Division) and Ronald Reagan. Attorneys at Steptoe & Johnson denied the charge.

Timing may become a critical issue in the months ahead since March is the last time Kreston will be eligible to compete. BLSA maintains that it will take two years for a modification of a constitutional provision to become effective, even if they were considering this alternative. In the meantime, Steptoe & Johnson has begun to act. Cynthia Moreland, an attorney for the firm, says that a complaint has been filed with the Department of Education to see if the organization receives any federal funds. If it does, BLSA clearly falls under the rubric of public associations, which are legally prohibited from discriminating among prospective members on the basis of race. Additionally, a letter on file with the IRS requests that it investigate BLSA's tax exempt status. Tax exemptions may be revoked upon a showing of racial discrimination.

Moreland remarked that she understands BLSA's position in attempting to provide a special service and does not want to see the organization disbanded but that she is opposed to discrimination of any kind.

According to Nancie Marzulla, an attorney with the Civil Rights Division of the Justice Department, "We did an initial look into the matter after it was brought to our attention by one of the professors at the University of Mississippi, but it wasn't in our purview." Marzulla commented that reverse discrimination actions were an "insignificant" part of the Department's efforts as evidenced by their enforcement record but nevertheless they received much attention "because of the media hype."

The Department of Education, Office of Civil Rights has determined that they have no jurisdiction in the matter in a reply to the Freedom of Information request.

Cordero stresses that BLSA's policy does not affirmatively reject white students and that the organization is "deeply disturbed that the impression being given is that we're a racist organization. Our wish to remain a black organization says nothing about other people and has no derogatory intent."

Law professor Cochran said, "I certainly don't want BLSA chapters throughout the nation to become inundated with white students." He feels this would not pose

a problem since BLSA could legitimately exercise its power to exclude those not committed to its goals but sees that as quite different from excluding on the basis of racial criteria. Cochran maintains that the benefits of integration would include an increased membership and a stronger commitment to BLSA from white students, which he feels should be a big objective.

The simple solution would be for BLSA to place a nondiscrimination clause in its constitution. Many organizations remain segregated in one fashion or another regardless of their legal foundation. According to Cordero, "Racism has become a science in the 1980s and so we write nondiscrimination clauses into our governing constitutions and bylaws and at the same time we discriminate against others. At BLSA we say that's underhanded, it's deceptive and we're not going to do it."

Cordero insists that there are many whites-only organizations on law school campuses throughout the country, and that "the primary one at BLS is Law Review." At BLS, available statistics reveal that there has not been a black member on Law Review since the 1950s when Helen Johnson Lowe was admitted. Lowe is currently a federal district judge in Manhattan.

Cordero is "deeply disturbed that the impression being given is that BLSA is a racist organization."

"We don't admit people on anything but writing ability," responds Rosanne Pisem, president of Law Review. "Our policy is to grade anonymously, so we have no way of knowing the sex or race of participants. She added that concern over lack of representation by minorities in this year's group prompted several Law Review members to meet with BLSA to ask them to encourage more students to apply.

The implications of a lawsuit regarding BLSA's policy are very serious. Cochran indicates that he is "not a flippant person" and that he is "fully committed to BLSA and its goals." He believes that the organization would not be damaged by allowing students of other races to participate in its activities. Cochran asserts that, "the last thing anyone wants is for precipitous action to be taken which could carry long-term effects for BLSA."

At the present time, BLSA insists all it can do is "wait it out" because "functionally, we're fighting ghosts," a reference to the fact that a lawsuit has still not been filed. Yet Cordero notes that the implications of a lawsuit are real and threatening. If BLSA loses in a court battle, scores of other black organizations may ultimately be affected by the decision. If the case reached the Supreme Court and it was determined that BLSA was constitutionally entitled to the right of private association, Cordero wonders if that would "open the door for others to reinstitute segregation." ■

Reagan Administration Says Society is "Colorblind"

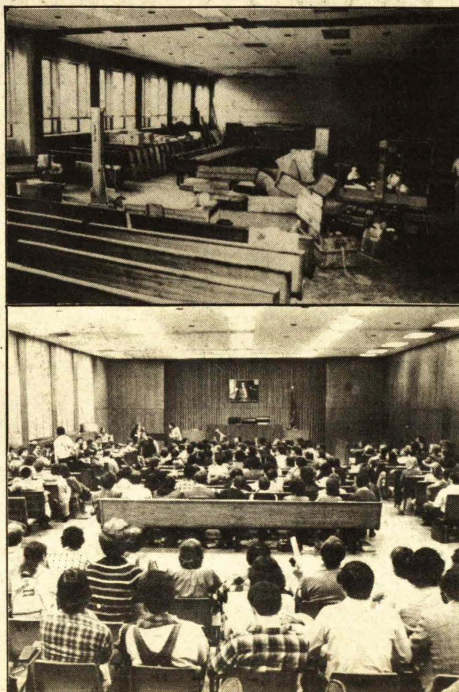
Since the landmark decision *Brown v. Board of Education*, providing for school desegregation, the law has required that public schools and public accommodations must not discriminate on the basis of race. Apparently, no party to the BLSA moot court controversy wishes that standard to be changed. National Chair Johnny Cordero asserts that "if a black organization opened a hotel and said no whites allowed, we would be on the picket lines and writing amicus briefs on the side of the white group."

While the law regarding public institutions is well settled, the legal standards governing semi-private and/or semi-public organizations are still subject to interpretation. An underlying issue concerns the notion of a colorblind society. A truly colorblind system would require that any policy which recognizes racial categories is effectively discriminating against someone.

The Reagan administration adheres to the 'colorblind society' line of reasoning. In *Wygant v. Jackson Board of Education*, Acting Solicitor General Charles Fried submitted an amicus brief to the Supreme Court which contends that the Fourteenth Amendment forbids any governmental body from adopting a racially based scheme of preference that is not designed solely to "make whole the identified victims of racial discrimination." If this plan were adopted, it would then be necessary to prove a racially discriminatory act against an identified victim who is a party to the litigation. Some critics argue that this position significantly dilutes the impact of affirmative action efforts by ignoring a historical pattern of racial injustice and assuming the current existence of a colorblind society.

Race Issues Return to "Ole Miss"

The University of Mississippi is no stranger to racial confrontation. In the early 1960s, James Meredith became the first black student to integrate "Ole Miss," and President Johnson ordered an escort of 30,000 federal troops to ensure that the matter proceeded peacefully. The effort to integrate the university was initiated after the 1954 landmark Supreme Court decision *Brown v. Board of Education*, which struck down the policy of "separate but equal" public schools and mandated school desegregation.



National Moot Court Team Selected

Although the Jerome Prince Moot Court Room once looked like this (above), on Monday, November 4, it looked more like this (below), as BLSA's National Moot Court Team was chosen.

Winners were: Orli Spanier-Best Oralist, Lynn Cushman-Best Brief, Eva Adaszco and Orli Spanier-Best Team. Selected for the National Competition were: Ms. Spanier, Adaszco and Cushman, with Mark Wasserman as First Alternate and Debra Babitch as Second Alternate.

District Court Judges Duberstein, Glasser and Wexler commended all on a job well done. ■

THE JUSTINIAN

A FORUM FOR THE BROOKLYN LAW SCHOOL COMMUNITY

Free At Last

by Alan Dershowitz

Happy 18th birthday, Walter Polovchak! And congratulations on applying for U.S. citizenship.

Now you can spend the rest of your adult years wherever you please. You can exercise your freedoms—of religion, speech, movement and political affiliation—without fear of imprisonment or confinement in a mental hospital.

It was a long, hard battle, and you almost lost. The American Civil Liberties Union went to court in support of your parents' right to make you return to the Soviet Union. If they had prevailed, you might have been spending your 18th birthday behind steel bars and an Iron Curtain. If you had turned 18 in that country, instead of in this country, you wouldn't have been able to choose to emigrate, as you are now free to do.

I know that you must be wondering why the ACLU—our nation's leading defender of civil liberties—opposed your efforts to choose freedom in the United States rather than be forced to return to a life of oppression in the Soviet Union. I wondered also, and I have been an active member of that fine organization for nearly two decades.

In a recent column, I wondered aloud about the ACLU's consistency in defending the rights of young girls to choose to defy their parents by having abortions, while siding with your parents' efforts to make you return to the Soviet Union. As soon as my column appeared in print, the ACLU—which encourages dissent within other organizations far better than it tolerates it within its own ranks—sent out a directive to all board members urging them to plant the ACLU's official answer in local papers that had run my "attack."

Part of that official answer—drafted by the lawyer who tried to prevent you from remaining in this country—was that every court had sided with the ACLU. (Quite a remarkable defense for the ACLU, which rarely defines liberty by referring to how the courts—especially these days—decide cases.)

Several weeks after the ACLU circulated its official answer, your case, Walter, was decided by the U.S. Court of Appeals for the 7th Circuit—the highest court to which it has been submitted. That court's decision constituted a firm rebuke to the ACLU.

The judges ruled that your parents did have a "very strong interest" in your destiny—a view that I'm sure you share. But it also ruled that the lower court had wrongly decided the case in your parents' favor "without apparently giving any but the most perfunctory attention to (your) interests." And then, in words that seemed to be directed just as much to the ACLU, the appellate judges criticized the trial judge for "failing to make any provision for the protection of Walter's rights. The subject of his order was a human being who, though a minor, has a constitutionally protected right of personal liberty that is as important as a parent's right to custody of minor children."

The appellate judges also disagreed with the contention—implicitly advanced by the ACLU—that "the private interest of . . . Walter . . . is by its very nature considerably less than that of his parents", particularly at his present age of 17." Judges need not "blind" themselves, the Court of Appeals reasoned, to "the commonly recognized fact that Soviet citizens who refuse to return

to the Soviet Union and who publicly derogate that country are at risk of seriously adverse governmental action if they return involuntarily to the Soviet Union. In this connection, it would seem patently inequitable to force a 17-year-old against his will to return to a country where he faced threat of persecution."

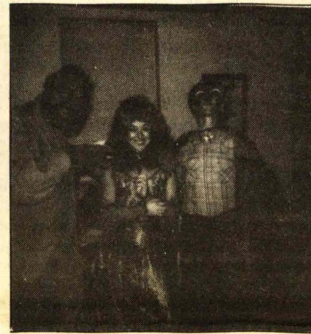
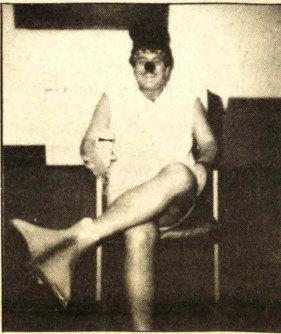
It is a tragedy that the ACLU has to be reminded by a court that a young person's right to choose where to spend the rest of his life is at least "as important" as a parent's right to custody of that child.

Although you probably regard the ACLU as the Grinch that tried to steal your Christmas, I hope you won't be too angry at that organization. Over the past half-century, the ACLU has been a bulwark of liberty for all Americans. It made a tragic mistake in your case by focusing exclusively on your parents' procedural rights, without considering your substantive rights.

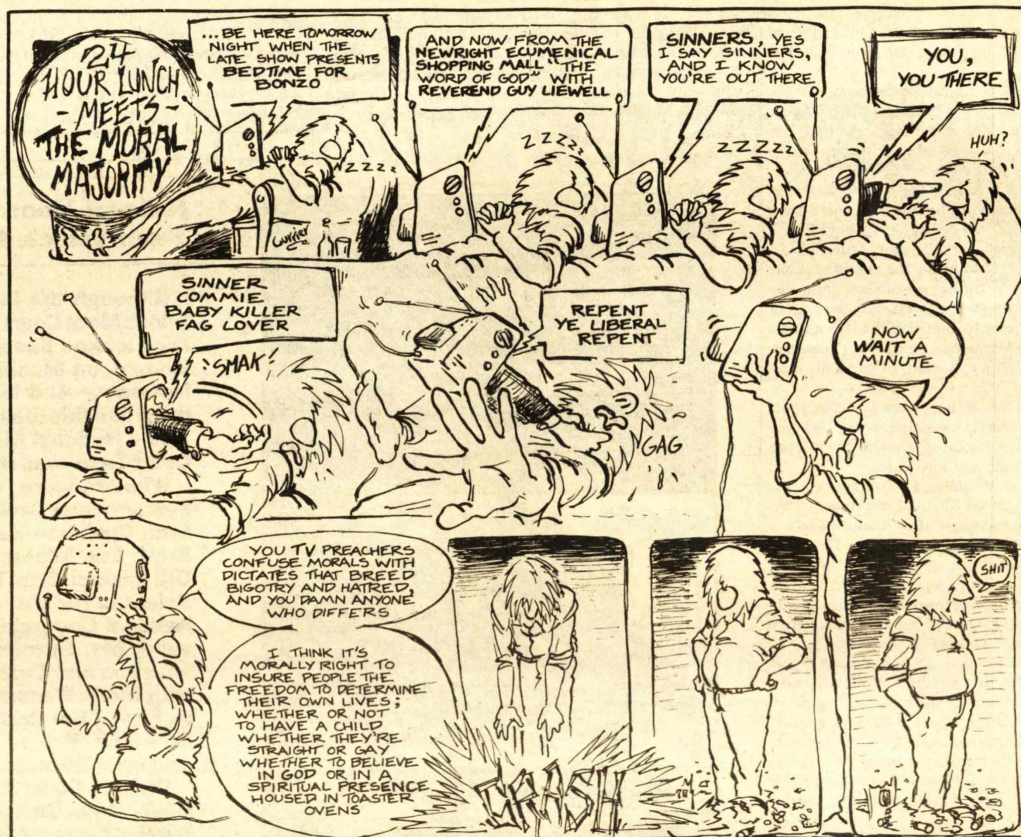
The ACLU is paying a price for its mistake. Conservatives like George Will are having a picnic criticizing the ACLU for failing to "take cognizance of children's rights." Will, of course, is selective in defending children's rights as well: He'd never defend a young girl's right to choose an abortion over her parents' objections. He's on your side because you're against the Soviet Union on this one. Civil liberties, like politics, make strange bedfellows.

Well, enough talk about politics and civil liberties. This is a personal triumph for your determination and will power. You've earned the right to be free, Walter. Now exercise your liberty wisely. And don't forget those you left behind in the Soviet Union: They aren't as fortunate as you. ■

Copyright 1985, United Feature Syndicate, Inc.



Halloween Madness:
Richard Garelick
lays back while
Robin Siskin,
Student Services
Director, is
menaced by
Freddy De Chirico (l)
and Peter Stefan (r).



Thanks to SUNY Buffalo's S.A. for Reprint Permission. Special thanks to the Alternative News Collective for original publication.