

The Justinian

Volume 1985
Issue 6 *December*

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. 6 , Article 1.
Available at: <https://brooklynworks.brooklaw.edu/justinian/vol1985/iss6/1>

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.

S.B.A. Dishes Out \$30,000 Winners and losers, details p. 3

December 1985 Volume LV No. 3

THE JUSTINIAN

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

NY Bar Sticks With the Code

By Nina Keller

After two years of debate and fourteen months of study, the New York State Bar Association has decided to retain the existing Code of Professional Responsibility which has governed lawyer conduct in the State since 1969. On Saturday, Nov. 2, the House of Delegates voted 73-59 to reject a proposal to replace the Code with a set of rules patterned after the Model Rules of Professional Conduct approved by the American Bar Association in 1983.

New York's version of the Rules had been through four drafts and had been recommended by the "Special Committee to Consider Adoption of the ABA Model Rules of Professional Conduct ("SCRABAM"). The committee recommended the Rules in a 9-2 vote. They concluded that the Rules were "better organized and easier for the practitioner to understand and use than the Code" and represented a "significant and constructive step forward by our profession." A strongly worded dissent in the committee report, authored by former Chief Judge Charles D. Breitell and Brooklyn Law School Professor Frank R. Rosiny, apparently convinced a majority in the House of Delegates that a sounder step would be to consider adopting a modified version of the Code rather than replacing them with the untested Rules. "The committee clearly wanted a change in the Code," said Prof. Rosiny who teaches a course in Legal Profession at BLS. "The House is not asking that we stand pat but that we improve professional conduct. We're all hopeful that this will provide for a more orderly process than actually throwing away a whole set of ethics under the Code."

In assessing the reasons for the rejection, State Bar President Justin B. Vigdor, who spoke in favor of the proposal to adopt the Rules before the House of Delegates, said "The majority felt that the body of law built around the Code over the last 15 years should not be abandoned."

Prof. Gerard Gilbride, who also teaches Legal Profession at BLS, thoroughly agreed that the present Code should stay in place. "There's no question that the Code needs amendments to bring it up to date. But the use of the Code has resulted in a body of opinion and cases which guide lawyers. Getting rid of the Code is too high a price to pay."

Continued on page 8

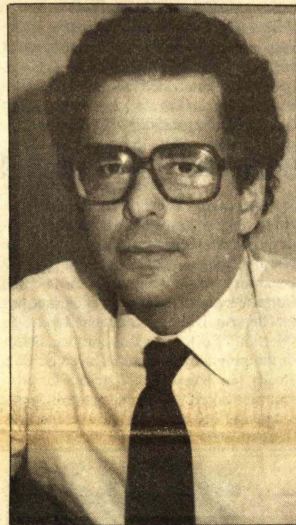
It's Official: Judge Korman

By Matthew Flamm and
Judie Steinhardt

Brooklyn Law School, known in some circles as "The Judges' Law School", has done it again. BLS Professor Edward Korman, class of '66, was recently appointed to serve as a United States District Court judge for the Eastern District. His swearing-in ceremony will be held December 16 at the federal courthouse at Cadman Plaza.

Korman was born in Brooklyn and attended Brooklyn College. While studying at Brooklyn Law, he served as Editor-in-Chief of the Law Review and was a member of the National Moot Court team. His career has encompassed a judicial clerkship, work with prestigious law firms, and experience as a United States Attorney and as an Assistant Solicitor General. The appointment to a judgeship comes after nearly twenty years of legal experience, chiefly as a government prosecutor.

The judicial selection process is politically difficult, especially given the mixed partisanship of New York's Senators, rigorous White House review (See *Reagan's Judiciary* on page 11) and the fact that Korman is not a Republican. Three judicial appointments in every four go to Senator D'Amato, whose party is represented in the White House. When Senator Moynihan's turn came to select his nominee, he picked Korman. Senator D'Amato and the White House approved.



THE EARLY DAYS

Upon his graduation, Korman became a clerk for Judge Keating of New York's Court of Appeals. The experience was one of "unadulterated joy completely unencumbered by stress," according to Korman. While there, he met BLS's future Dean, David Trager, who was also clerking at the Court of Appeals. Their association continues to this day.

It was during this clerkship that "I first

The School:
BLS has the
greatest number of
active Federal and
state judges in New
York City—119 as
of 1984.

The Professor:
BLS Alumnus,
former N.Y. Court of
Appeals clerk, U.S.
Attorney, and now a
Reagan appointee to
the Federal bench.

questioned my liberal instincts" in criminal law matters, said Korman. Unlike law school, criminal cases were no longer "legal abstractions." Korman commented that "when you realize that the advice you give could lead to the release of some convicted rapist or murderer—you're asking 'why?'."

After completing his clerkship in 1968, Korman became an associate at Paul, Weiss, Rifkind, Wharton & Garrison, where he stayed for two years. He then served as an Assistant United States Attorney in New York's Eastern District. In 1972, he was appointed Assistant Solicitor General of the United States. Representing the government's position before the United States Supreme Court was one of Korman's "most gratifying experiences."

PROSECUTOR KORMAN

While at the Solicitor General's Office, Korman argued eight times before the Supreme Court. "I was this little kid from Brooklyn," recounted Korman, "arguing the meaning of the Constitution in front of the Supreme Court." His time with the Solicitor General was a "tremendous professional experience" giving Korman the opportunity to "help shape the law" by selecting those cases the government intended to appeal to the Supreme Court.

For example, Korman participated in a broad effort to expand the government's right to appeal criminal cases and to curtail defendants' ability to overturn their convictions. In *Wainwright v. Sykes*, 433 U.S. 72 (1972), a case Korman argued with then Solicitor General Robert Bork, the defendant's attorney neglected to challenge the admission of his client's confession at trial, which was allegedly made

Continued on page 11



Test-taking time v. Holiday time: Another year, another holiday season derailed by exams.

NEWS UPDATE

BLS To Host Evidence Moot Court Competition

by Judith Kahn

Brooklyn Law School is hosting the first Jerome Prince Evidence Invitational Moot Court Competition on March 14-16, 1986. The competition will attract law students from all over the country and is expected to boost BLS's national reputation.

Currently, BLS is the only law school in the country to offer an Evidence Competition. Invitational Coordinator Catriona Glazebrook has selected evidence in light of the extensive accomplishments of the BLS faculty in this area of law. Dean Emeritus Jerome Prince is the author of *Richardson on Evidence* and has served as Senior Consultant to the Law Revision Commission in preparing a code of evidence for New York State. Professor Margaret Berger, who is co-author of *Weinstein's Evidence*, has also had extensive background and experience in this area.

The BLS students participating in this event are Tim Parlan, Mark Wasserman and Kevin McClean. They have been selected to compete on the basis of their merit, writing samples, background and interests.

The Jerome Prince Invitational Moot Court Competition is open to most ABA accredited law schools throughout the country, and BLS has already received a wide and enthusiastic response. The coordinators of this competition are hopeful that the event will make Brooklyn known as a competitive, national law school.

The invitational coordinator is looking for students to volunteer as hosts for the out-of-state teams. Volunteers will be responsible for guiding visiting moot court teams around New York.

The sponsors of this competition are very excited about the forthcoming event and urge students to participate.

If you are interested in helping out, contact Catriona Glazebrook at the Moot Court office on the third floor.

Graduation: 3rd Circuit To Speak

Avery Fisher Hall will be undergoing renovations during most of the month of June. For that reason, we have had to postpone our graduation exercises at the Hall until Monday, June 23rd.

Full details concerning graduation will be given to all in the Spring of 1986.

Our principal speaker at the June 23rd commencement will be the Hon. A. Leon Higginbotham, Judge of the United States Court of Appeals for the Third Circuit. In addition, Professor Alfred Hill, of the Columbia University Law School, and a graduate of Brooklyn Law School, Class of '41, will receive an honorary degree for his contributions to legal education and legal scholarship.

Need Help? Psychiatric Care Provided

Brooklyn Law School has arranged with Dr. Michael Schneck to provide an initial psychiatric consultation for students at no charge. Dr. Schneck is on the faculty of the Department of Psychiatry of the New York University School of Medicine and is Board Certified in Psychiatry. In addition, Dr. Schneck has had substantial experience working with law students and attorneys.

Students may contact Dr. Schneck, directly and the utmost confidentiality will be maintained. When appropriate, referrals will be made and fees will be charged on a sliding scale basis. Dr. Schneck's office is located in the Faculty Practice Offices at the New York University Medical Center, 530 First Avenue (at 32nd Street) New York, NY 10016. Dr. Schneck also has an office located at 40 Clinton Street in Brooklyn Heights. His telephone number is (212) 340-7475.

Consider Law School Abroad

by Jonathan Hudis

Has the aura of the Brooklyn skyline dampened the creative energies of your legal psyche? Do you daydream during class about visiting new and far away places? If the answer to these questions is yes, then maybe you might consider studying law abroad for the summer. To broaden one's horizons, this is an experience from which any law student could benefit.

Last spring, the *Student Lawyer*, an American Bar Association Publication, indexed 42 law schools around the country which offered summer programs in 17 countries. From Austria to the USSR; from International Business Transactions to Comparative Constitutional Law; the selection of offerings was enticing. Most of the programs offered an average of 6 credits for 3 courses of study. Tuition, room and board varied among the different programs, but the cost on average was approximately \$1600 for 6 weeks.

Requirements to take courses in study abroad programs are minimal. All a student needs is a letter of good standing from the Dean. In addition, the student must already have taken, or intend to take, the desired courses at BLS. Finally, the course of study offered must be accredited by the American Bar Association (ABA) and the Association of American Law Schools (AALS).

The student wishing to take courses abroad may want assurance that he or she is getting quality education for his or her money. According to Dean Johnson, that is not something the student need worry about. "To begin a program, the school wishing to conduct its course abroad may offer it initially only to the school's own students, on an unapproved basis. A review team from ABA/AALS, consisting of professors, deans, and legal experts from all over the nation, will critique a few classes during the term. The team then submits a 50-page report on the course's strengths and weaknesses. If ABA/AALS approves the course of study, the school is permitted to offer it to all students for a second summer on a trial basis. It is again subject to the same process of review. If the course is given final approval, it may be given during consecutive summers, subject to an audit by ABA/AALS every 5 years."

There still may be a question in a student's mind as to whether the program will be one that is worth the expense and a better part of a summer in a foreign classroom. Katie Raab, a BLS student who spent last summer studying in Exeter, England, thought her program was a highly unique and beneficial learning experience. "You get a perspective of the law and exposure to different legal systems that is just not available in a regional law school." Indeed, studying abroad for the summer could greatly enhance a student's education in the area of international law.

Currently, BLS has no overseas program of its own. Students wishing to take courses abroad must cross-register with other law schools. "We could do it, but as yet the idea has not been proposed by any member of the faculty or the administration," said Dean Johnson. "However it is something the school should consider if BLS is to expand in the field of international education." There seems no doubt that BLS should consider a summer legal studies program abroad.

Best Brief Prize Awarded

BEST BRIEF PRIZE AWARDED

Dean Trager and Professor Walter would like to congratulate the following students who, in 1984-85, were nominated by the faculty for the Joan Offner Touval Memorial Scholarship. The scholarship is awarded annually to the student who has submitted the Best Brief in the First Year Moot Court Program. Professors Walter, Bentele, Teitcher and Mishkin chose the four finalists. From this group Dean Trager selected the Best Brief.

Best Brief

Gail Cagney

Semi-Finalists

Ian Bjorkman

George Levandoski

Michael Novara

Honorable Mention

Gail Berritt	Linda Mendelowitz
Andrea Coles	Paul Monte
Judith Cox	Katherine Paynter
Stuart DiMartini	Elaine Plotkin
Colleen Donovan	John Sullivan
Susan Foster	Barbara Vander Noot
Susan Katz	Marvin Weingart
Kathleen Lewis	David Woll

Summer School '86 In Europe

Students who wish to study in Italy, Austria and France next summer may enroll in the 1986 Summer Seminars Abroad program sponsored by The Dickinson School of Law. Credit programs will be conducted in Florence, Italy, Vienna, Austria and Strasbourg, France during the summer of 1986. Students enrolled in law schools accredited by the Association of American Law Schools or the American Bar Association are eligible to apply for admission to these programs.

For additional information call or write Dr. Louis F. Del Duca, Associate Dean for Advanced Legal Education, The Dickinson School of Law, 150 South College Street, Carlisle, Pennsylvania 17013, telephone: (717) 243-5529.

DECEMBER

CONTENTS

FEATURES

Prof Korman: Another BLS Alum Reaches the Bench

BLS Professor Edward Korman was recently appointed to serve as a U.S.D.C. judge for the Eastern District of New York. Korman's career experience includes a judicial clerkship, notable law firms, the titles of U.S. Attorney and Asst. Solicitor General, and most recently, a teaching position at BLS.

Page 1

Model Rules V. The Professional Code

After two years of debate, the N.Y.S. Bar Association has decided to retain the existing Code of Professional Responsibility, rejecting in a close vote a proposal to replace the code with a set of rules patterned after the Model Rules of Professional Conduct approved by the ABA in 1983.

Page 1

SBA Budget Approved By a Wide Margin

The SBA annual budget, which provides funds for interested student organizations and SBA parties, was approved last month by a wide margin. The procedure used to arrive at the allocation of funds was subject to criticism and may be under review.

Page 3

The Philippines: The Threat To Our National Interest

America is confronted with the possible loss of a large military presence outside of the continental U.S., the Clark Air Base and the Subic Bay Naval facilities in the Philippines, home port of the U.S. Seventh Fleet. According to one analyst, a massive Soviet military buildup in this region renders it of indisputable importance to American security interests.

Page 5

DEPARTMENTS

NEWS UPDATE	2
PERSPECTIVES	4-5
EDITORIALS	6
LETTERS	7
FIRST YEAR ROUND-UP	8

QUOTE OF THE MONTH: "I am just one of thousands and millions of victims of the Marcos dictatorship, and I know very well I am not the victim who has suffered the most." Corazon C. Aquino in a speech last week announcing her candidacy wherein she pledged to carry the torch of her late husband, Benigno S. Aquino, the opposition leader who was slain during his return from exile in August 1983.

The New York Times, 12/8/85.

SBA Budget Passed: Hoops and Parties Fouled Out

By James Locantro

The 1985-86 student budget was overwhelmingly approved by a 19-4 margin at the Student Bar Association's October 29th meeting. Funding for academic organizations was markedly improved, but social and sports-oriented associations suffered financial cuts.

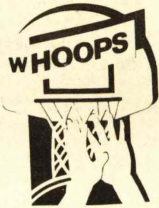
One of the obvious changes in SBA's funding allocation is emphasized by the generous increases academic clubs received. Seven of the nine clubs funded in the 1984-85 fiscal year enjoyed increases this fiscal year ranging from a low of 8% to a high of 300%. In addition, eight new organizations that promise to bring welcomed diversity to BLS's extra-curricular agenda are available to the student body. Among the newcomers are: Evening Moot Court, Entertainment Law Society, Environmental Law Society, Lawyer's Basketball League, NYS Bar Association, Phi Delta Phi, and the Real Estate Law Society.

What . . . No Basketball?

While groups such as the NLG, BLSA, HLSA and the *Justinian* saw significant increases, some of the school's social and sports organizations received little or no funding. Perhaps the biggest loser was the Intramural Basketball League, which received no funding at all because they neglected to submit a budget and failed to attend the subsequent budget meeting where appeals were heard.

The SBA's Treasurer David Hyman, reports that the "league failed to come before the budget committee. . . . We had strict guidelines as to funding and all clubs were notified of the budgetary process weeks in advance. The Basketball league failed to inform us even of their existence."

Bill Ferro, a second year delegate to the SBA and an Intramural Basketball league proponent, differs with Hyman.



"The SBA knew that the . . . league would require funding," countered Ferro, "but failed to take into account the mix up in leadership due to the graduation of senior members . . . in charge of the team last year."

Although each of the approximately 100-150 members of the league pay \$10 out of their pockets to play, the League will still fall short of the \$2500 needed to rent basketball courts for its ten week season. Orren Falk, SBA's President, responds that the SBA is "expecting Dean Trager to give us between \$1000 and \$2000 . . . and the league could possibly

get funded out of that." League funding must be obtained by January 1986 in order to secure courts for the 1986 season.

The SBA Budget:

Increases and cuts; Basketball gets bounced; dissatisfaction with the procedure and call for change. But can SBA make do with what the Administration provides?

The Budget Concluded

As with any budget process, the SBA Budget Committee had to juggle the large demands of student groups, the formation of new groups, and limited funds. Although tuition has increased dramatically, Dean Trager gave SBA the same \$30,000 as last year. Budget Committee member Scott Stuart said, "it was the best budget with what we had to work with."

SBA President Falk, however, was more outspoken. "I would have preferred to see the Intramural Basketball League get their money . . . the budget committee should have given some organizations less money," Falk concludes that had she been able to vote on the budget, "I would have voted not to accept it."

Debra Sit, Day Students' Vice-President, believed the budget was "well

thought out. Each element was considered and each organization received the money they needed." Sit asserted that "each club received a budget that was adequate in relation to the needs of other organizations." The SBA, at a November meeting, has formed a committee to review and propose new budgetary guidelines for the future.

While some students were dissatisfied with the budget, the majority believed that the budget committee acted adequately with the funds that were available.

On a final note, the party fund was decreased from a high of \$4286.00 in 1984-85 to a new low of \$1900.00 this year. Although nominal charges for SBA social events may become necessary as a result, the prime beneficiary is of course the academic clubs, and most delegates were willing to make the trade.



Supreme Court On Ethics Must Lawyers Lie?

By Michael Lesher

The Supreme Court will soon decide whether a lawyer who threatened to expose his client if he perjured himself violated the client's right to a fair trial.

The Court heard argument on Nov. 5 in *Nix v. Whiteside* No. 84-1321, an appeal by the state of Iowa to reinstate the 1977 murder conviction of Emmanuel Charles Whiteside. Last year, the Eighth Circuit Court of Appeals reversed Whiteside's conviction, holding that his lawyer's threats to expose potentially perjurious testimony denied him due process and effective assistance of counsel.

Whiteside, whose defense at trial was self-defense, originally told his lawyer, Gary L. Robinson, that he believed the victim had had a gun at the time of the fatal stabbing, but that he had not actually seen it. After the lawyer's investigation failed to produce evidence of the gun, Whiteside changed his story, insisting that just before he stabbed the victim he had seen something "metallic" in his hand. Robinson testified at the appeal hearing that Whiteside then told him, "If I don't say I saw a gun, I'm dead."

Robinson told his client that if he made such a statement on the witness stand, he (Robinson) would move to withdraw from the case, inform the judge that the testimony was false, and take the stand to testify against him.

At trial, Whiteside testified only that he had believed the victim had a gun. He was convicted of second degree murder and sentenced to 40 years in prison.

The Eighth Circuit, in reversing the conviction (*Whiteside v. Scurr*, 744 F.2d

1323), held that the lawyer's conduct resulted in Constitutionally ineffective assistance of counsel. The court stated that Robinson's threats—particularly his threat to testify against his own client—were "inconsistent with the obligations of confidentiality and zealous advocacy," and created a "conflict of interest" between himself and his client. The court also held that Robinson's aggressive action impermissibly chilled Whiteside's right to testify freely on his own behalf.

Although the appeal ostensibly turns on Constitutional rather than ethical issues, the Supreme Court's decision will bear heavily on the choices of lawyers who believe their clients intend to perjure themselves.

The ABA Model Rules of Professional Conduct 3.3 provide: "A lawyer shall not knowingly . . . offer evidence that the lawyer knows to be false." The official comment states that this rule allows an attorney to withdraw from a case if perjurious testimony has been offered, or—if necessary—to make disclosure to the court. It is not clear, however, when the attorney's actions will result in a denial of his client's rights.

Professor Henry Holzer, who teaches Constitutional law and legal ethics at Brooklyn Law School, told the *Justinian* that the apparent discrepancy between a lawyer's ethical and constitutional duties arises from a "faulty premise." The premise is that there's a right to a co-conspirator lawyer," he said.

"Implicit is the notion that under the rubric of the Sixth Amendment . . . a defendant has the right to lie. That's taken as a given and is not at all challenged, and it should be."



Professor Holzer:

Implicit is the notion that under the Sixth Amendment a defendant has the right to lie. That's taken as a given and is not at all challenged, and it should be.

complete deprivation of counsel." He maintained that it was for the jury, not the accused's advocate, to reach the truth. In response to questioning, Grady said that while a lawyer certainly could not permit his client to kill a witness, permitting him to testify as he wishes—even if the lawyer believes he intends to lie—only places evidence within the adversary process, where other means exist to uncover falsehood.

The Iowa Supreme Court, in an earlier appeal of the same case, commended the lawyer on his ethical conduct. Less than a month before the Eighth Circuit's decision, the Seventh Circuit, in *United States v. Curtis*, 742 F.2d 1070, held that a lawyer's refusal to put his client on the stand—where it was "apparent" that he intended to perjure himself—did not violate his Constitutional rights. That judgment has not been appealed.

The Supreme Court's decision in *Whiteside* is expected by July.

December, 1985 • Justinian 3

Perspectives

By Robert Axford

Money For Nothing

[W]e must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military industrial complex. The potential for the disastrous rise of misplaced power exists and will persist.

—Dwight D. Eisenhower, January 17, 1961 in his Farewell Radio and Television Address to the American People.

The other day, as I sat eating lunch on Jay Street, I took notice of one of those all too familiar sights: a middle-aged woman picking food from a garbage container. I might have dismissed this sad situation as just another personal tragedy, except that the paper I was pursuing had one of those articles on how well the economy was functioning. Like the homeless, reports citing the strength of the economy appear to be a permanent part of the wacky 80s. Too bad you can't eat statistics.

Of course, the economy is not functioning well for the majority of the people. Personal experience tells us that. What is working smoothly, however, is the propaganda network (it's as simple as ABC). That is how King Koch is able to decree cuts in business taxes his number one priority. (I kid you not.) His second priority, presumably, is a fourth term. As for the hungry and the homeless, let them eat garbage.

But, say my right-thinking friends, the government cannot do everything. This is true. Our city government has been terribly busy defeating the referendum on harboring nuclear warships in New York. (Demo-

cracy, who needs it?) The federal government has been kept occupied thinking up new ways to give money to the military contractors. (Star Wars anyone?) And both the city and federal government have been tied up writing top-heavy tax laws, because when E.F. Hutton speaks, at least the peoples' representatives listen. Talk about your privileges and immunities.

Speaking of privileges and immunities, Donald "How Big Is Yours?" Trump recently unveiled his plans for

the world's tallest building on the Yuppie West Side. Freudian analysis aside, Donald is Marx's quintessential capitalist. His self-serving projects are monuments to conspicuous consumption. The building is just what New York needs: more luxury condos in a sterile erection to nowhere. The score: Government 0, Private Sector 0.

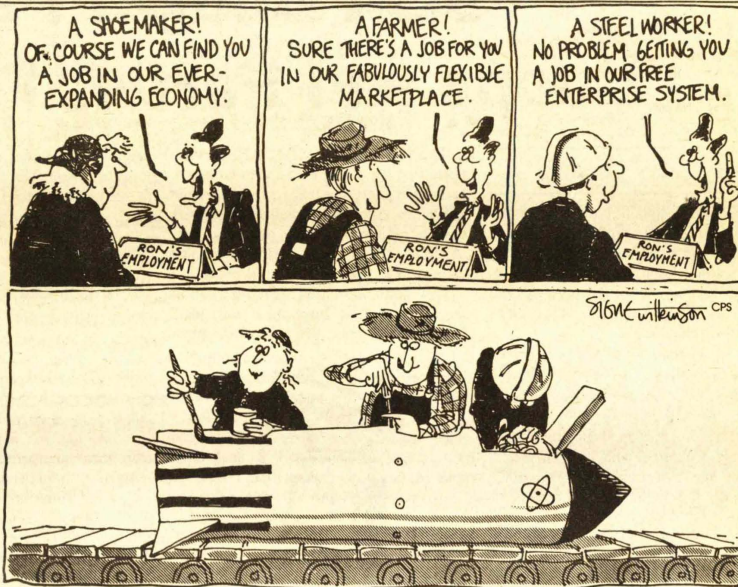
Speaking of parading one's phallic extensions in public, the Geneva Summit this past November proved once again that the U.S. and the U.S.S.R. have more in common than either nation would like to admit. The two imperialist leaders met; they talked; they joked. The joke, as usual, is on us, the black and white pawns in this nuclear chess game. The punch line is that you can still fool most of the people most of the time and jerk the rest off.

It's my view that the two men met primarily to reaffirm that reality. Nothing of substance transpired because nothing was supposed to transpire except a photo opportunity. Smile, Gorbys, the cameras are rolling.

What does the Summit have to do with a middle-aged woman picking lunch out of a garbage can in Brooklyn? Simply, that this collective paranoia called the arms race steadily kills—or at least starves—people in both nations, as well as indirectly starving people everywhere. The obscenely exorbitant price we exact to continue the nuclear madness wastes the limited resources we people of the earth have at our disposal.

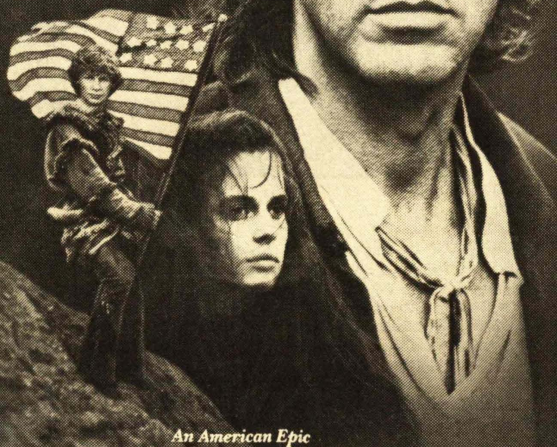
Of course, beating swords into plowshares is hardly a novel idea. Certainly, it is not a "sexy" concept in these hip times. But the truth is its own evidence. Ike (hardly a commie-symp) warned us little folk of the threat posed by an out-of-control military-industrial complex. It isn't even ideological; it's simply a matter of corporate profit maximization. War is still the best investment in town, Trump included.

Star Wars (Ray-gun's most cherished second-term program) is only double-speak with the same destabilizing and immediately harmful results as nuclear weapon production. Think about it: two of the most popular politicians of our day are Koch and Reagan; their *modus operandi* are the same: gorging corporate America while people America starves. It's like we're headed downhill in a broken-down Edsel toward a fateful precipice but we're afraid to jump out for fear that the brakes might work after all. Well, if the Geneva Summit stood for anything, it's that the brakes don't work.



PACINO REVOLUTION

The war that won
a nation its freedom,
a woman her destiny,
a young man
his independence,
and a father
his son's love.



An American Epic

WARNER BROS., GOLDCREST and VIKING present
An IRWIN WINKLER Production A Film by HUGH HUDSON

AL PACINO

REVOLUTION

Starring DONALD SUTHERLAND

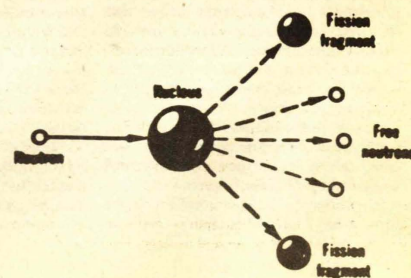
[NASTASSJA KINSKI]

Music by JOHN CORIGLIANO Executive Producer CHRIS BURT Written by ROBERT DILLON

Produced by IRWIN WINKLER Directed by HUGH HUDSON

UNITED BY WARNER BROS. A WARNER BROS. PRESENTATION

COMING FOR CHRISTMAS



A fission reaction.

Foreign Policy

American Interests In The Philippines

By Edward M. Jordan

The United States may soon be facing a situation posing grave consequences to our national interests and security: that of the possible loss of our largest military presence outside of the continental U.S., the Clark Air Base and the Subic Bay Naval facilities in the Philippines, home port to the U.S. Seventh Fleet. The Seventh Fleet is responsible for protecting American interests from the Arctic to Antarctica, across the Pacific and Indian Oceans, a span of 70% of the globe's water surface. The Philippines and Japan form the outermost American line of defense, and it is certainly a line that must be maintained at all costs. It is the massive Soviet military buildup in this region which renders it of indisputable importance to American interests.

Russian penetration into the region in the last few years has been quite substantial. The region now hosts 27% of Soviet ground forces, 31% of Soviet air power, and an ever-expanding naval presence in both Vietnam and the captured Northern Territories of Japan, enabling Soviet forces to flex their muscle across waters which, following the Second World War, were safely considered American domain. Today, as this hostile presence grows, so does the threat to the continuing growth and pro-Western perspective of the emerging ASEAN nations, S. Korea, and possibly Japan, whose economy is currently unburdened by military expenditure other than the token Self Defense Forces.

The United States has had a long-standing commitment to freedom and security for the Philippines. It was the defense of democracy in this nation which brought American troops into their largest single undertaking in the Pacific theater during World War II. This commitment to stability and democratic freedom exists to this day, however there now exists a threat to this order, and it comes in the form of the growing Communist guerrilla movement, the New People's Army. Granted, the people of the Philippines hold many legitimate grievances against the government of Ferdinand Marcos, and the murder of opposition leader Benigno Aquino in mid-1983 only served to exacerbate this discontent. The economic, political, and military sectors may have been led astray at the hand of President Marcos. In confronting the situation at the present time, however, and in assessing our reactions and responsibilities, we must not fail in our obligation to look back to the lessons of the not-too-distant past—and vivid reminders they are.

Parallels may be drawn between the Carter Administration's failed policies, resulting in the "loss" of Iran and Nicaragua in 1979, and the situation at hand in the Philippines. The Carter response to our less-than-democratic allies in their time of need was to withhold economic aid, weapons, ammunition and American moral support in the belief that the removal of these leaders, both with long records of supporting U.S. interests, would somehow act to promote human rights and build democracy. Democratic policy-formulating circles at the time held an ill-founded belief that there existed a moderate alternative to authoritarian rule on the Right and the revolutionary extremists on the Left. In fact, the Carter Administration acted in such a way as to opt for the latter over the former, thus bringing the Ayatollah Khomeini and the Ortega brothers to power.

The lesson to be learned is that the absolute worst time to attempt to impose liberalization and democratization on a government is while it is being confronted by violent extremist internal opposition. This policy not only failed in 1979, but brought into power two regimes with not only less tolerance for personal freedoms and security, but with a policy adamantly hostile to American interests. The underlying danger of it all is the long-recognized fact that once a nation falls to extremist totalitarian rule, it is unlikely that it will ever return to its previous state (now recognized as the lesser of the two evils). Former U.S. Ambassador to the United Nations Jeane Kirkpatrick, in *Dictatorships and Double-Standards*, writes "Although there is no instance of a revolutionary 'socialist' or Communist society being democratized, right-wing autocracies do sometimes evolve into democracies, given time, propitious economic, social, and political circumstances, talented leadership, and a strong and indigenous demand for representative government."

This is the "loss" which is often spoken of: a nation with the potential for change, no matter how remote, lost to the brute force of Communist oppression. This is the situation in the Philippines today.

The hypocrisy of it all seems to be the position taken by Western liberals in regard to the alleged injustices of our lesser-developed allies, as opposed to the ever-present injustices of Soviet allies and within the Soviet Union itself. The Left will dwell upon every shortcoming of those less-than-perfect nations with which we associate, while relatively ignoring their Soviet counterparts. Thus, the Soviet Union is free to ally itself with fascist regimes should geopolitical interests require, with little or no condemnation, while the United States may not defend the democratic minority through alliances with less-than-democratic governments. In *How Democracies Perish*, Jean-Francois Revel comments "To a totalitarian regime, strategic necessity is justification enough for Soviet presence in another country or alliance with or aid to that country . . . A democracy, on the other hand, is not granted the right to defend the barricades of its own security unless the democratic imperative is obeyed . . ."

"Let us learn from our mistakes in Iran and Nicaragua; we must bring order to this troubled nation, and only when order has been restored will it be possible to implement sweeping reforms."

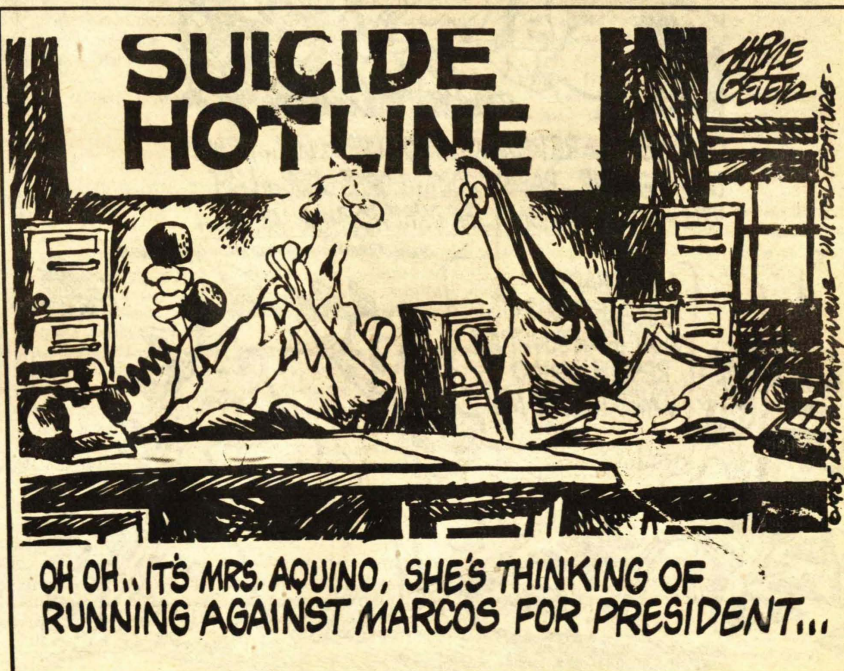
The absence of any media to uncover and report injustices, human rights violations, and oppressive behavior within the Soviet Union and those states with which it is allied allows it to act with total disregard to domestic opinion, leaving it free to exploit such situations in Western-allied nations through the ever-willing Western

media. The result of this unfavorable exposure is most often further oppression within these troubled nations, in turn paving the way for Soviet-backed domestic uprising. Thus, we have a situation in which the West actively participates in aiding Soviet policy by fostering negative "world opinion" (to be read "Opinion of the Free World + Soviet Propaganda"), presenting an often insurmountable handicap to Western objectives.

Recent history will show that America has had a tendency to react too late and too timidly to threats posed to its interests in the Third World. The Reagan Administration, however, has recently begun to pursue a more active role in turning back the tide of Communism in the Philippines. The President's Special Envoy, Senator Paul Laxalt (R-Nev.) recently travelled to Manila, voicing American concern with the growing Communist insurgency, and urging military, economic, and political reform. Soon after, Marcos reversed his earlier position, calling for elections in the near future, elections which will most certainly be closely monitored by American officials and the Western media.

There still remains, however, an American hesitancy to support the Marcos government at all costs in the face of violent domestic opposition, perhaps for fear of being too closely identified with the current government should it eventually be replaced, most likely by violent upheaval. In contemplation of this "worst case scenario," the U.S. has secured a 100-year lease at a cost of \$33 million for 18,000 acres on the Northern Marianas Islands of Tinian and Saipan, not far from the existing U.S. facilities on Guam. A wise precaution, but we must never retreat that far. The United States must not back away from protecting our strategic position in the Philippines. The government must not withdraw support or attempt drastic reforms in the face of this Communist uprising, especially now that the Soviet hand in the matter is becoming more evident.

Let us learn from our mistakes in Iran and Nicaragua; we must bring order to this troubled nation, and only when order has been restored will it be possible to implement sweeping reforms. Now is the time for responsible, constructive support and commitment, not condemnation and withdrawal. We must not adopt a defeatist policy similar to the disastrous approach of the previous Administration, for if we do, the Philippines will indeed be forever "lost."



December, 1985 • Justinian 5

EDITORIALS

The Terrorist, Man Of The Year

Time magazine should make The Terrorist 1985's Man Of The Year. After all, hardly a day went by in 1985 when he wasn't the big star of our nightly news drama. Would this somehow give legitimacy to these international thugs? Not any more than the barrage of tabloid banner headlines, television news-breaker bulletins and news-weekly covers has already accomplished.

Let's be clear about one thing: these terrorist groups and individuals, employing their barbaric atrocities upon the civilized world, are the true culprits in these matters. In their hijackings, executions and bombings they have found a low-cost, high-leverage tool of modern-day warfare, difficult to combat because the uncertain origin of the threat limits the full range of political, diplomatic and military responses.

Since the 1979-1980 Iranian "hostage crisis" profoundly impacted an American presidential election, Americans abroad have become more frequent victims. While evidence has surfaced that some nations like Syria, Iran and Libya encourage and support terrorist acts, the anti-Western events can be pinned, primarily, to a few sources: Islamic fundamentalists, Shiite Moslems and Palestinian splinter groups. America's historic role of backing unpopular Middle East leaders and its unwavering support for Israel makes it a prime target for the limitless violence these

groups use to make their political points.

The Terrorist is a pretty shrewd character. He'll continue to pounce upon innocent victims as long as he is rewarded with the embarrassment of world powers and a brilliant global spotlight for his cause. The only way to stop him is to stop rewarding him and to increase his perceived risks. We think President Reagan deserves credit for the successful interception of the jet that held the Achilles Lauro suspects. Egyptian President Mubarek deserves credit for the political courage it took to storm the jet in Malta, reserving judgment on whether a less costly response was available.

The military option is a last minute option and should be used sparingly. Other long term solutions should be explored. The U.S. and its allies must exert greater diplomatic pressure upon nations that encourage terrorism. They should join together in improved training and preparedness of international counter-terrorist teams and intelligence networks. And lastly, the American media and its foreign counterparts must agree to stop giving The Terrorist the immediate global stage to perform on. We, the media consumers, can do without the fanfare that is the subsistence crop for The Terrorist. Perhaps the major media outlets can be convinced to cut back voluntarily. If they won't, well, they might as well just go ahead and make The Terrorist, Man Of The Year.

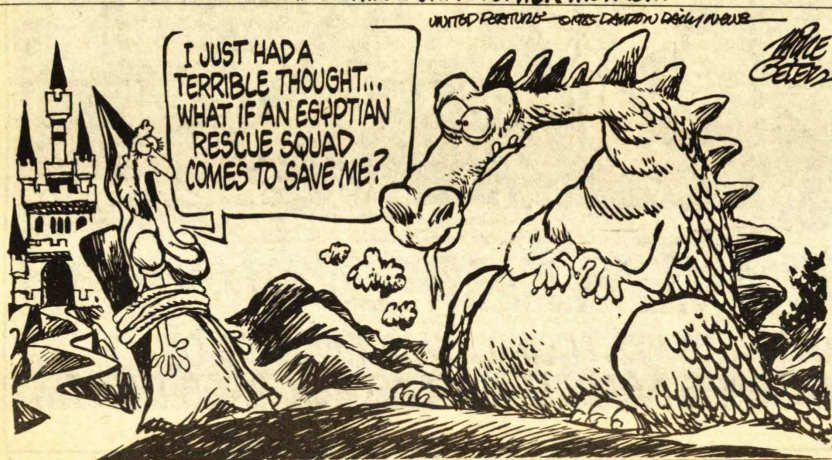
They're Only Tests

Every year around this time there is another popular form of terror, the kind that victimizes first year law students who face the unknown horror of law school exams. From those of us who've taken a few of these, take some advice: DON'T PANIC. You've probably been taking exams all your life, and by the simple fact that you've gotten this far, you're probably in better shape than you think. While most exams will test your knowledge of the substantive areas covered in class, an important key to success will be your ability to construct a well organized, well supported essay. You've been there before. Remember, don't

gauge the amount of time a professor spent on a particular subject as an indication of how important it will be on the exam. If it was covered, or merely assigned it may pop up. If it seems like the amount to study is unsurmountable, don't fret. You've got plenty of time this semester and the key is using it intelligently. Pace yourself, but be thorough. Most importantly, remember that it's only school and they're only tests. It's reassuring every once in a while to keep in mind that life is filled with an infinite number of more important things to worry about.



OK, TOWER... WE'RE REVIEWING OUR CHECK LIST... BRAKES, LANDING GEAR... RABBIT FOOT... HORSE SHOE... LAST WILL AND TESTAMENT... ST. CHRISTOPHER MEDAL...



BLSA Policy St

BLSA Responds

Dear Editor,

For purposes of clarification, the Executive Board of BLS's BLSA chapter would like to mention a few facts that were omitted from your editorial in the November publication.

First, BLS's BLSA chapter does not have an admission policy that specifically excludes white students.

Second, there has never been an incident where a white student was declined admission to BLS's BLSA chapter.

Third, the funds allocated to BLSA from the SBA are used to sponsor programs open not only to the entire student body but to the general public.

In the future it might be useful to ascertain all the facts before drawing unnecessary conclusions.

The BLS BLSA Chapter's
Executive Board

Response to BLSA Exec Bd. Letter

Eds.: According to NBSA President Johnnie Cordero, local BLSA chapters should adhere to the black-only national policy. If the local BLSA Executive Board chooses to admit non-blacks, it is exceeding its power and authority. He added that the BLSA chapter at BLS has no written charter and has never been confronted with the issue of a non-black seeking admission to the organization.

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

Production Director

Matt Flamm

Associate News Editors

Judith Kahn, James Locantro

Virginia Pettinelli, Judie Steinhart

Copy Editor

Darren Saunders

Copyright 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
Harwitz, 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
Waldner

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

irs Reactions

Dear Editor,

In 1965 I went on the Selma to Montgomery march which was led by Dr. Martin Luther King. I walked through the streets of Montgomery Alabama with an integrated group of my friends and was called names, punched and spat upon by angry whites who called us "nigger-lovers". When we entered the railroad station cafeteria because we were all very hungry, they closed it. We walked across the street to a greasy spoon run by an immigrant who didn't really understand what was going on and got served. While there, two Pepsi-Cola truckdrivers came in with opened pocket knives and began hitting men, women and children.

During the train ride back we heard on the radio that Viola Luizzo, Italo-American mother and union activist from Detroit, had been shot and killed.

I lived in the mud at Resurrection City on the Capital Mall and met Jesse Jackson. The Berrigan brothers (fugitive Jesuits) stayed in our apartment. My apartment was shared with Roy Shields, the black coordinator of Southwest Georgia Student Non-Violent Coordinating Committee. I was at Kennedy's funeral, and cried at the time of King's death.

Why did these people give their lives? Why did my friends and I put up with the pain, cold and fear we experienced? Because we all shared the same dream. A dream of an integrated, free and just America. Segregation in the South was a reaction to the excesses of the Union oc-

cupation of the South and the continued victimization of poor whites and blacks by the rich landed gentry. Dr. King explained it to us and we believed him. I still do. I share his dream. The National Black Law Students Association is betraying his dream. Johnny Cordero is right. If the Supreme Court permits NBLSA to get away with this outrage, many other groups will be entitled to re-segregate once again.

I was infuriated when I saw Bull Connor's "police" charge a group of integrated non-violent demonstrators. I was angry when I saw little black girls have to pass through a phalanx of ignorant racists to go to school in Little Rock. I was just as outraged when I heard about a BLSA member who was denied the opportunity to compete in a national competition because she is white.

Dr. King used to say that if we acted badly to our old enemies we would be no better than them. Are the NBLSA policy makers so ignorant of history? Don't they understand the price that has been paid for the laws we have now protecting everybody from discrimination? Don't they understand that they are putting themselves on the same level as the white working class Philadelphians who are trying to push an integrated couple out of their neighborhood?

King was a student of Gandhi. Gandhi used to say that he was a Hindu, a Moslem, a Jew, a Christian and a Buddhist. I once contemplated escaping compulsory military service by enrolling in college in Italy and serving in a NATO army to avoid the horror and moral conflict of Vietnam. While there I realized that I had more in common with my Black, Puerto Rican, Arab and Jewish friends from Brooklyn, where I was born and educated, than with my Italian "blood" cousins. I realized that I am a member of a new and wonderful race of people. I am an American. I am proud of my Italian ancestry. But I am also proud that my family has intermarried with Norwegians, Irish, Poles, Jews, Hispanics and Blacks.

We are all Americans, and as a nation we have rejected discrimination as a legal principle. That is why a win for NBLSA now would be a tragedy for us all, and a travesty against the legacy of King, Kennedy, Liuzzo, Chaney, Goodman and all the other martyrs, white and black, who have given their lives for the dream of an integrated and free United States.

Sincerely,
Peter J. Mollo



Dear Editor,

Sir or miss, I am writing to you in hope that you will be able to place my "ad" in your campus newspaper. I am incarcerated and very lonely and will like to have friends through correspondence.

ATT: Behind The Walls lonely guy college student seeking correspondence and friendship from people with feeling and good hearts that care. Good looking latin or "Puerto Rican", 170 lbs., brown eyes, black hair, good build and Pisces. Sincere and lonely. Serving 6 to 18 years for forgery and sale of cocaine. Your photo will get mine.

Write to: Jose Mercado
Auburn, N.Y. 13024
P.O. Box 618
135 State Street
82A-4105 A-6-39

who must rely on our legal materials, use these resources and stake their reputation on the research that they have done at this Library. I truly don't believe that any student here wishes to be responsible for a fellow attorney's potential malpractice.

By cooperating with the library staff, students can make this library a much more effective place for themselves and other patrons. Reshelving materials in their appropriate places and refraining from destroying materials (razoring our pages, removing pocket parts, etc.) would truly help us provide you with a more effective and efficient place for your studying and research.

Sincerely
Sara Robbins
Acting Law Librarian

Come On Guys Lift Up The Toilet Seat

Dear Editors:

I had originally intended to use this space to discuss the unique attitude some male students have towards human sanitation. However, since the title of this letter is reasonably self-explanatory, I do not believe that it is necessary to immerse myself in a discussion of such an offensive situation. The only thing I wish to say in this regard is that bathroom etiquette is very simple, to sit, lift, contribute, and flush. This is not too much to ask of you.

I would like to use the remainder of this space to make some observations and comments regarding certain issues affecting the BLS community which are not ordinarily addressed in these pages, to wit:

Who has jurisdiction over the bulletin boards in the hallways (I am constantly being reminded that there will be an SBA meeting on Wednesday, May 2)?

If the administration and faculty are so accessible, then why was a wall built on the ninth floor?

Will BLS offer a course in copy machine repair?

I have often wondered if the building's elevators have minds of their own. Poltergeists, perhaps.

What *really* goes on in the boiler room? Come to think of it, *where* is the boiler room?

Wouldn't it be interesting if hard liquor was available at SBA parties?

Who will be the next David Letterman? (Forgive the esoterica.)

Well, that does it for this issue. Please join me in the next issue when I discuss the "Tools of the Trade."

Sincerely,
Richard Garelick
December, 1985 • Justinian 7

Editors:

Your cry for an investigation of BLS BALSA because of the Mississippi allegations regarding national BALSA shows judgment with *scents*!

The 'clear reasoning' of the fourth paragraph of your editorial, especially, is most noteworthy; the intent of your editorial, obvious.

How proud you must be to carry on a fine American tradition! What compliments you must have received because of your *hovel* insight!

After all, "we all look alike, don't we?"

Joyce Garnes
2nd Year Evening Student

The Justinian Letter Policy:

The Justinian invites your letters, comments or reactions to the positions we take in our editorials or to the news we print. We also accept outside feature or news articles and reserve the right to edit or reject all submissions. Submissions should be addressed to the Editors and either dropped off or mailed to our office in room 305.

HLSA: Thanks

An Open Letter:

The Hispanic Law Student Association (HLSA) greatly appreciates the support and help of all the students, faculty, and administration in making our fund raising efforts for the mudslide victims of Puerto Rico a great success. We would especially like to thank Dean Johnson, Robin Siskin, and the invaluable help of Eli Castro.

As of November 21st, we collected \$661.00 from the raffle tickets, box donations and advance tickets to the fundraiser dance. We expect to greatly increase this amount when we tally the receipts from Friday night's dance.

Our heart felt sympathies are with all of the victims of the many recent disasters. Your contributions to the plight of the Puerto Rican people are greatly appreciated in light of the need of so many people throughout the world.

HLSA

Librarian says: That's Not Funny

Dear Editor:

I would like to take this opportunity to address the article, "How to Ace Legal Writing" in the November 1985 issue of the Justinian. While I recognize the humorous intent of the author of this article, I feel I must take exception to several of the "do's and don'ts" which she has listed: misshelving books so as to make them available only to oneself, not reshelving books at all, and removing pocket parts from volumes. These three items, while expressed here in a very light-hearted manner, are in fact serious problems that the Library faces because of student actions. We are constantly finding intentionally misshelved materials that, in fact, result in a "lost" book because its use is denied to anyone else other than the person who has misplaced the book. By not reshelving one's books, other students are again deprived of access to these materials or they must spend time that they really do not have available to them looking for the materials that someone else has not been considerate enough to reshelv in its appropriate place. The last item, removing pocket parts, is in fact intentional destruction of library materials. This, effectively precludes any other users, not just students, from doing the most accurate and appropriate research. I would like students to take into consideration the fact that they are not the only ones who use this Library, but that practicing attorneys,

The Practice Torts Test

By Darla C. Stuckey

With writing assignments out of the way, first year students apprehensively face exams. You must have a thousand questions from "What do I write?" to "Do I have to know case names?" The best advice is "Answer the question", but knowing how is another thing. It takes practice.

In order to give students a trial run, several professors have given practice exam questions. It's up for discussion whether these allay fears or compound them, but nonetheless, the questions do help. They give you a chance to make mistakes now, so you can somehow learn how to really use IRAC over the break.

We at the Justianian decided to give you one more chance to practice. Thanks to Professor Leitner for his question and outline.

On a sub-zero winter night, during a snow storm, H, who was in Aville, bought a bus ticket from Bussco, Inc., for a trip on its Aville to Zeeville line, to take him to Exville, where he resided.

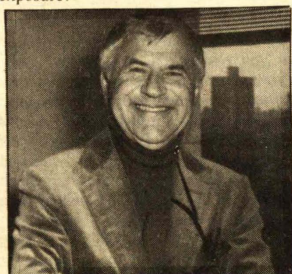
While the bus was on the highway, between Aville and Exville, B, the bus driver, believed he heard H make an insulting reference to B. When the bus arrived at the Exville crossing, where H wanted to alight, B refused to stop the bus, stating that H had maliciously slashed the upholstery of H's seat, and that he, B, was taking H to Zeeville, the next and last stop, to turn him over to the police there.

Somewhere beyond Exville, B stopped the bus for a red light. While the bus was at a standstill, H opened a window and jumped out of the bus. Unaware of this, B drove off. On striking the ground, H suffered a head injury.

As H struck the ground, E, driving an auto at high speed towards Zeeville, swerved into the center, or passing, lane of the three-lane highway, in order to avoid striking H. After travelling just a few feet in the center lane, the auto collided with a steamroller, which had been left in the center lane, unlighted, by the employees of Y Co. Y Co., a road contracting firm, that had been engaged by Cee County to resurface the roadway. Y Co.'s employees had used the steamroller during that day.

The auto was owned by F, E's employer, who was asleep on the rear seat of the car. E and F were on a business trip, making deliveries to F's customers. The auto was damaged in the collision, and both E and F suffered bodily injuries.

H, dazed and in pain, wandered in the storm for several hours. He took shelter in the roadside barn of G, a farmer. G went to the barn, told H he was trespassing, refused H's pleas for shelter, and asked H to leave. On H's refusal, G gently pushed him outside and bolted the door against him. There was no other shelter available for many miles. H survived, but contracted pneumonia as a result of exposure.



Professor Leitner's Cheshire Cat Grin. He makes the test. You try your best.

Discuss in detail, giving reasons for all conclusions, and in the stated order, the rights, if any, of:

1. H v. B
2. dH v. Bussco, Inc.
3. E v. Y Co.
4. F v. Y Co.
5. F v. E
6. F v. Cee County
7. Cee County v. Y Co.
8. Y Co. v. E
9. H v. G

The Answer

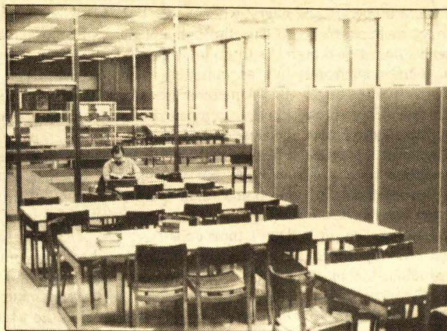
1. H v. B
False imprisonment - invites escape - QF as to reasonableness of escape - privilege to arrest to prevent unlawful conduct on carrier - but not for revenge - QF - damages.
2. H v. Bussco
Employer V/L for employee in scope of employment - if B acting out a private grudge, no V/L.
3. E v. Y Co.
Negligence - unreasonable to obstruct highway - p/i.
4. F v. Y Co.
Negligence - no imputed C/N on basis of car owner's presence (Kalechman), but may impute C/N on basis of employment relationship (unless Kalechman abolishes the doctrine altogether) - p/i and p/d.
F v. E
Negligence - no imputed C/N in action by passive member of relationship v. active member.
6. F v. Cee County
Negligence - no V/L for tort of ind K'or - unless duty is non-delegable - maintenance of roadways involves non-delegable duty - however, engager or hirer at V/L if negligence is merely collateral - if ct. finds Y Co.'s negligence collateral only, Cee County not liable to F.
7. Cee County v. Y Co.
If both are sued, cross-claim for indemnity. If only Cee Co. sued, implead for indemnity. Basis for indemnity claim is possible V/L of indemnitee for conduct of indemnitor.
8. Y Co. v. E
In suit by F, Y Co. and E subject to liability as concurrent tortfeasors. If both are sued, Y Co. will cross-claim for contribution. If only Y Co. is sued, it will implead E for contribution. Y Co. and E jointly and severally liable to F. Contribution *inter se* on basis of relative culpability as determined by jury.
9. H v. G
Battery and assault. H privileged to invade G's barn in exercise of privilege of private necessity. Q/F re: necessity. Any force in resistance to exercise of privilege is unlawful force. P/I.

Abbreviation Key

QF - Question of Fact
V/L - Vicarious Liability
P/I - Personal Injury
C/N - Contributory/Comparative Negligence
p/d - Property Damage
Ind K'or - Independent Contractor



Read, Outline, Memorize . . .



continued from p. 1

Model Rules Scrapped

A supporter of the Rules, Robert McKay, President of the Bar of New York and former dean of New York University School of Law, was disappointed by the proposal's failure. "The final draft that 'SCRABAM' produced was a good one." When asked what might happen next, Mr. McKay stated that he thought there would be work in modifying the existing Code, but that he "hoped that in some years from now the Rules will be reconsidered."

Disagreement over the code and the Rules covered topics including which promoted a higher standard of conduct for lawyers and which presented a better image of the legal profession to the public. For example, a large area of contention centered around Model Rule 1.6 which allows a lawyer's discretion to deal with a client's announced intent to commit a crime. Under the proposed Rule, a lawyer would have the discretion to reveal information he believed necessary to "prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death, substantial bodily harm, or other injury of comparable seriousness." Under the Code's Disciplinary Rule 4-101 (c) (3), however, a lawyer may reveal "the intention of his client to commit a crime and information necessary to prevent the crime," interpreted to mean *any* crime. Proponents of the Model Rules argue that ethics opinions have suggested that this discretion should be exercised only in the most serious cases, where the benefits of crime prevention outweigh the important policies underlying the principles of confidentiality, attorney-client privilege, and the need for a client to feel unrestrained when confiding with a lawyer. In expanding the lawyer's discretion to reveal a client's intention to commit a crime in only the most serious of circumstances, critics of the Rules point to MR 1.6 as typical of the standard of conduct below which is accepted as morally appropriate to the profession.

Another charge leveled at the Rules is that they are a "trap for the uninformed" in that they are ambiguous and confusing. "The Model Rules are vague and give less guidance than the present Code," said Prof. Gilbride. "We have been able to train an entire generation of students who are well grounded in the format of the present Code. I think it would be a mistake to adopt a so-called restatement approach." In addition, supporters of the Code argue that its format of separating Disciplinary Rules (DR's) from Ethical Considerations (EC's) setting forth aspirations goals to guide attorney conduct is needed. As Prof. Rosiny stated, "the conscience of the lawyer needs instruction, and it is the function of the Code to do just that. Although the elimination of the Code's EC's don't have the force of law, they have elevated the practice and have provided constructive guidance to the ethically sensitive lawyer."

Prof. Henry M. Holzer, who teaches Legal Profession at BLS, sees neither the Code nor the Rules as preferable. "The major problem is that the Rules and the Code represent an attempt to compromise between very divergent positions. The reason we haven't come to grips with a set of rules is because we haven't come to grips with the whole system of underlying competing values. If we can come to grips with what we are seeking to accomplish, then we can come to grips with the kind of rules we need in order to resolve those value conflicts." Prof. Holzer stated that the "Code is better than nothing" but had he been asked to vote for either one, he "probably would have abstained because I don't think one is a measurable improvement over the other."

To this date, the ABA maintains that eight states have adopted some version of the Model Rules (New Jersey being one of the latest), that twelve other states, including Pennsylvania, have recommended their versions of the Model Rules to the highest courts for adoption, and that twenty others are expected to refer versions of the Model Rules to their highest courts in the next few months.

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

pimbr
MULTISTATE SPECIALIST

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

PIEPER RUNS THE EXTRA MILE FOR YOU!

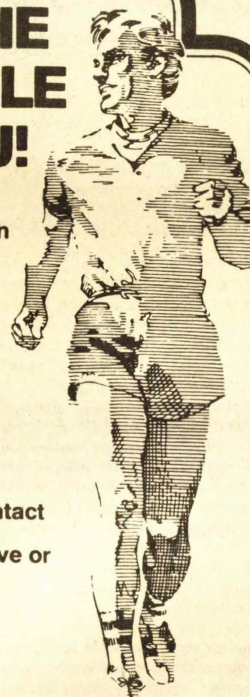
Pieper gives something in
addition to what is due,
expected, or customary
in a Bar Review Course.
This extraordinary effort
makes the difference.

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



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 re-
view 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

The Solid Foundation ...

Josephson/Kluwer's written materials
through Law School and through the Bar.

Blueprint for Success

THESE ARE YOUR BROOKLYN REPRESENTATIVES:

1L

Randy Chiera
Felice Klass

2L

Catherine Davis
Peter Cahill
Andrea Coles
Samuel Frankel
Mike Gunzberg
Pamela Kulsrud
Cheryl Petretti
Betsy Rosen
Bill Schofield
Mary Verderame
Marianne Zelig

3L

Christopher Browne
Jean Chung
Pamela Fried
Anne Gremillot
Peri Hoffer
Elena Karabatos
Consuelo Mallafre
John McDermott
Jonathon Murphy
Laura O'Daly
Carlos Ortiz
Marcel Sager
Barry Silberzweig

The basis for any complete Bar Review Course is the written materials. Compare ours to any others and you'll find:

Pride of Authorship Josephson/Kluwer's faculty of outstanding Law Professors is associated by name with the Law Summaries. Personal accountability and pride of authorship keep our Law Summaries current, accurate and of the highest quality.

Law Summaries Intelligent editing and expert summarizing make the Josephson/Kluwer Law Summaries the most concise and comprehensive bar exam aids available. This selective editing insures that your limited time is not squandered and that testable concepts and principles receive maximum attention.

Capsule Outlines Each substantive Law Summary has a separate, very concise, capsule outline which performs three major functions: a) it provides a structural overview of the area; b) it is a detailed index to the Law Summary; c) it is a review checklist of definitions, rules and concepts.

JIGs (Josephson Issue Graphs) These unique visual study aids assure retention of the most fundamental principles of law.

Past Bar Questions The contextual analysis that is required for effective issue spotting is supplied by a selective series of essay questions and suggested analyses.

Internal Review Our Law Summaries feature internal review problems at the end of each major section to assure comprehension, memory retention and ability to apply the information learned. By dissecting testable issues and principles from all past bar exams, the questions have been carefully developed to assure the student of focusing on vital issues.

NA 1-85F

Josephson/Kluwer
Eastern Regional Office
(212) 505-2080
(800) 253-3456

Josephson/Kluwer
National Headquarters
(213) 558-3100
(800) 421-4577

Korman Gets Benched

Cont. from p. 1

without a proper understanding of a *Miranda* warning. The Supreme Court, Rehnquist writing, established the rule that Habeas Corpus appeals cannot be litigated unless the issues forming the appeals' basis had been timely raised at trial. The defendant's damaging statements, the Court held, must be attacked at trial or not at all unless good cause and prejudice could be shown.

Korman argued another case limiting prisoners' ability to collaterally attack convictions by Habeas petitions. The Supreme Court found in *Davis v. US*, 411 U.S. 233 (1973), that Davis had waived his right to appeal his conviction. Davis alleged that the Grand Jury that indicted him was composed in a racially discriminatory, and hence unconstitutional, manner. Davis sought to overturn his conviction, however, only after some three years had passed.

RETURN TO NEW YORK

In 1974, Korman moved back to the Eastern District's U.S. Attorney's Office, where he served as Chief Assistant to David Trager, then U.S. Attorney. Senator Moynihan recommended Korman to succeed Trager in the position and Korman held what he describes as "a professional, non-political office" for four years.

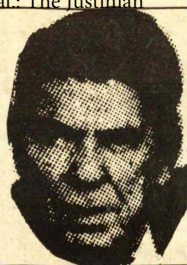
As U.S. Attorney, Korman was involved in, among other things, the ABSCAM trials. He appeared in approximately 15 cases related to the FBI's "sting operation" on politicians.

Furthermore, Korman argued, or was on brief, in some 429 reported judicial opinions; approximately eighty of those cases involved the search and seizure of evidence allegedly in violation of the Constitution's Fourth amendment.

THE EXCLUSIONARY RULE

While Korman believes the exclusionary rule is essential to making the Fourth Amendment meaningful, he agrees with the rule's "good-faith exception." The exclusionary rule is designed to deter law enforcement officials from unreasonable search and seizure of property by excluding such evidence from trial. Where officials make an error relating to seizure of potential evidence, for example by relying in good faith on what later turns out to be a technically deficient search warrant, Korman believes the rule should not apply.

There is no good reason not to admit the evidence, according to Korman, "where the Constitutional violation is not egregious." The exclusionary rule "should be applied where it makes sense," concludes Korman.



Reagan's Judiciary

More political attention is focused on the federal judiciary than at any time since the Roosevelt administration. Critics of the Reagan administration suggest that judicial independence is being co-opted by systematic use of political "litmus tests" in the selection process. Supporters assert the White House is doing no more than past administrations—making use of what means are available to put forward a political agenda.

It is undisputed, however, that the judiciary is an affirmative part of the Reagan political program and that a majority of the active lower federal judiciary will have been appointed during his two administrations. Furthermore, the traditionally if normal judicial selection process has been replaced with a formal institutional structure that maximizes senior White House staff involvement. Some observers contend that whatever independence the judicial selection process retained during the first term has been politically expropriated with the appointment of Edwin Meese III, former White House Chief of Staff, to Attorney General.

While judges themselves generally put past partisan political activity low on the list of useful schooling for service on the bench, the Reagan Administration does not. Six of every ten first-term District Court appointees have a history of party activism. Moreover, nearly 97% of Reagan's appointees were Republican, the highest proportion of selections from a President's own party since Woodrow Wilson.

Reagan's first-term appointees possess generally impressive legal backgrounds, with about 7% receiving the

ABA's "exceptionally well qualified" rating and about half receiving a "qualified" rating. No Reagan appointee has received a "not qualified" rating from the ABA.

Of the 230-plus judicial appointments made as of November 1985, 80% were white males, each with a net worth exceeding \$400,000. Of the 159 appointments made during Reagan's first term, 36 of the new judges were millionaires.

Although statistically fewer women, blacks and hispanics have been appointed to the bench than during the Carter presidency, Reagan appointees generally compare favorably with other past administrations. Reagan surpasses Johnson, Nixon and Ford in the proportion of women and hispanic appointments. Only one of Reagan's 129 first-term District Court appointments, however, was black.

The White House's careful scrutiny, emphasizing systematic review of prospective nominees' political and policy stances, has resulted in a generally consistent ideological or policy mindset among selections. The impact of the current use of the judicial appointment power for political ends is uncertain. The outlines, however, are becoming clear. What the Reagan Administration is unable to achieve through legislation may be accomplished through jurisprudence.

For a more thorough statistical analysis of the first-term appointments, see, Goldman, *Reorganizing the Judiciary: The First Term Appointments*, 68 *Judicature* 313 (April-May 1985). When you need a break from studies, *Judicature* is waiting for you in the BLS library.

MOOT COURT HONOR SOCIETY ANNOUNCES TEAMS

The following people have been selected for BLS's intermural teams. Congratulations to all.

ABA Appellate Advocacy I Raymond Enright Terri Conti	Intellectual Property Law Peri Hoffer Sharon Grabowski	Entertainment/Communications Scott Stuart Jon Hudis Mark Hurwitz (Writing Member)
Administrative Law Randi-Jean Hedin Shahab Katirachi Marilyn Zarrello (Writing Member)	Securities Law I David Neibauer Stanley Chinitz Tax Law Nancy Rothbaum Michael Gunzburg Jamileh-Sofia de Guida	Federal Jurisdiction Robert Axford Gregg Peterman Matthew Flamm
Client Counseling Robert Borden Marydene Davis	ABA Appellate Advocacy II David Kornfeld Robin Kahn	Labor Law Orli Spanier Peter Cahill Nancy Duboise
Criminal Procedure Law Denise Tirino Debra Babitch William Schofield	Antitrust Law Bruce Weiser Barbara Vander Noot Andrew Margolin	Securities Law II Andrew Perel Miles Borden
Evidence Tim Parlin Mark Wasserman Kevin McClean	Constitutional Law Joseph Giamboi Sallfann Scarpulla Elizabeth Burkland	Negotiation Clyde Otis Rosemary Arnold
		Trial Advocacy Andrew Silfen Michael Aquino Jonathan Murphy

**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

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

Theatre Revue

'Not About Heros'

by Judith A. Norrish

Poetry, Love and Passion are not for everyone. The tragedies of war are, for most, topics for discussion, rather than subjects of experience. In "NOT ABOUT HEROS", presented at the Lucille Lortel Theater, two soldier poets of World War I confront the limitations of words in expressing the horror and waste of the trenches. The author, Stephen MacDonald, presents poetry, passion and the horrors of war, and a singular, subtle love.

Two prominent English poets, Siegfried Sassoon (1886-1967), and Wilfred Owen (1893-1918) are presented in this two-character play with admirable portrayal by Edward Hermann and Dylan Baker. When the two soldiers meet in a World War I hospital near Edinburgh, Sassoon is already an established, admired, and published poet. Owen, several years younger, is a brilliant, blossoming poet. In the eighteen months before Owen's death on the battlefield, their friendship and their poetries flourish, and both have left a legacy for the poets of all generations.

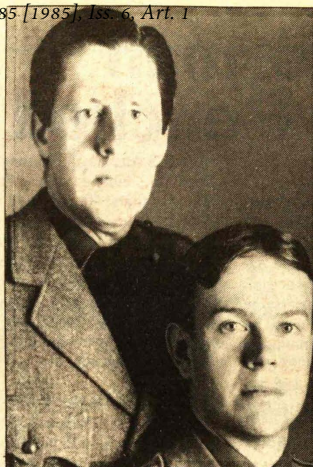
Lovers of the English language will enjoy the rich use of language in this lyric vehicle which utilizes many of the poems and letters of the two men. Such lines as "War inspired poetry with the same prodigality it slaughtered its poets" . . . and "It's not about heroes, but about boys of nineteen being shot and dying in pain before they've had a chance to know why," are sobering testaments to their

experience. (For interested readers, Owen's "Anthem For A Doomed Youth" is noteworthy.)

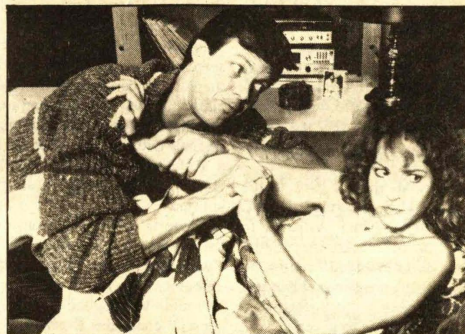
Sassoon, a twice wounded hero, finally turns from his romantic illusions about war and patriotism, throws his war medals into a river, and grapples with his private involvement with the war's senseless slaughter. Owen, still eager to experience the pain and glory, believes that he cannot choose pacifism until he has earned this choice through experience. Sassoon is worldly, upper crust, yet compassionate; Owen is provincial and full of the impetuosity of youth. The juxtaposition of these two figures—meeting in wartime, their souls filled with poetic idealism and the joy of life—weaves between them a magnetic and powerful bond.

The performances of Edward Hermann and Dylan are inspired and thoughtfully executed. The love between them is expressed delicately, never overtly, in a genuine subtlety of dramatic style. Mr. Hermann particularly can fill the theater with poetic moment by a gesture, a breath, a presence.

With competent direction by Dianne Wiest, simple staging, and expressive, rather than affective lighting, "Not About Heroes" is a production which achieves its purpose. It is not for the typical theater-goer. There is no chorus line; there are no catchy tunes. There is rage, warmth, humor, depth and reflection. It touches the thinker, the poet, and the passionate soul hidden in everyone. ■



Edward Hermann
and Dylan Baker in
"Not About
Heroes."



"Seascape with Sharks and Dancer" at the Hudson Guild Theatre. This comedy-drama washed out with the tide, and closed late last month.

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	10:00-3:00

The Justinian Wishes ~~A Festive Holiday~~

Study Period To All

"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 anyday.

Open-air cafe
151 Montague Street • 852-3128