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JESSUP TEAM TAKES TOP HONORS, page 2

March 1986 Volume LV No. 3

THE JUSTINIAN

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FAA: Asleep At The Wheel

by Darren Saunders

The Federal Aviation Administration has declared 1985 the most fatal-strewn year in aviation history and it is under pressure from members of Congress, safety advocates and others to do something about it.

Why has there been such a dramatic increase in both commercial & private aircraft accidents?

The combined effect of President Reagan's budget cuts and President Carter's airline deregulation has meant fewer inspectors and air traffic controllers at a time when they are most needed. Air traffic is at an all-time high, the average plane in use is getting older, new airlines are constantly springing up, and the fierce competition of the industry is prompting airlines to cut corners.

The House Public Works and Transportation Subcommittee on Investigations and Oversight has found that a "diminishing margin of safety" exists in the nation's skies because air traffic controllers are overworked, inexperienced and treated by the FAA just about as badly as in 1981, when President Reagan fired most of them for going on strike. Even supporters acknowledge that the FAA rarely shows initiative and does not take well to advice from the outside.

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Do Homeless Have Right To Freeze? NYCLU Fights City Round-Up Policy

by Robert Roth

Since November, 1985 New York City has been operating a "cold weather emergency" policy whereby when the temperature drops below 32 degrees, the city directs that the homeless go to city shelters. Those refusing to leave the streets are involuntarily removed to a city hospital for psychiatric evaluation.

The Mayor defends this policy as a humanitarian effort to save the homeless from freezing weather conditions. The purpose of the policy, as he states it, is "to insure that no homeless person endangers his or her own life by spending an evening out in the cold when the temperature drops to freezing or below."

From its inception, this policy has generated substantial criticism from the New York Civil Liberties Union (NYCLU). The NYCLU does not advocate the right of the homeless to die on the street, but they do object to the momentary roundup of the homeless, rather than any attempt by the City to address the root cause of homelessness. There is also an objection to the underlying presumption of the policy. According to the NYCLU, the Mayor's policy assumes that those refusing shelter are mentally ill and therefore incapable of making intelligent decisions. Consequently the stereotype of homelessness as synonymous with mental illness is advanced. Individuals may have valid reasons for refusing shelter. Overcrowding and fears for personal safety are often reasons cited by the homeless. Although the "cold weather emergency" plan may give the appearance of a humanitarian act, the NYCLU contends it is in fact a serious imposition on personal liberties.

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N.Y. Post Photo By Joe DeMaria

Homeless face forced removal to shelters during freezing weather conditions: Humanitarian effort or infringement of fundamental rights?



N.Y. Post Photo By Michael Norcia

SBA: Fun And Games Stressed Over Academics

by Judie Steinhardt

Six months into its term, the SBA admits it has had difficulty getting much accomplished to date. Executive board members cite student apathy and the isolation of their new office as major obstacles to implementing new policies. In examining the student government's efforts and accomplishments, today's SBA appears to put more effort into getting such things as a jukebox in the student lounge and an intramural basketball league, than it does in improving the quality of legal education at BLS.

A project that has been sadly neglected by the SBA is that of the student-faculty committees. Traditionally, these committees have held the most hope for implementing changes in law school policy, giving students the chance to be heard by the faculty

and administration on a level outside the classroom. In past years, the SBA has appointed students to these committees for two year terms from a pool of applicants and has coordinated the student voice on them. While there is talk of several committees, it appears that nobody knows what they are, who is on them, or what they are supposed to do. Only two of the committees are known to be active at all: the Faculty Hiring Committee, and the Curriculum Committee; and even the effectiveness of student participation on these committees is debatable.

The Faculty Hiring Committee allows SBA appointed students on the committee to attend interviews of prospective faculty members. The delegates are supposed to submit reports after the interview. In the past the SBA unsuccessfully pushed for a greater

role in this process. These efforts, like that of a 'simulated lecture' prior to the hiring of a faculty member (one of many campaign pledges) seem to have been abandoned. Orren Falk, President of the SBA, says, "I think it's very beneficial that the Administration has allowed student input, although the ultimate decision is still with Administration and faculty." Students on the committee are quick to admit that their participation has little influence on the faculty members, and the final hiring decision. At the SBA meeting on Wednesday, January 29, for example, delegates on the committee complained they were given the prospective faculty member's resume five minutes before they were to be interviewed, while the faculty members on the committee were prepared well in advance.

The Curriculum Committee has met, according to Falk, and is contemplating whether to have a student referendum on the effectiveness of Legal Process as a course. Although Falk, Day Vice President Debbie Sit and First Year Executive Board Member Mary Abbene, perceive the SBA as a link between the faculty and students, the student-faculty committees, traditionally the formal method of providing that link, are barely functioning.

The Accomplishments

This doesn't mean the SBA hasn't accomplished anything during the first semester. There have been a few noted accomplishments in the area of student services, services the SBA has pushed the administration to provide. These include: improved xerox machines in

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NEWS UPDATE

JESSUP TAKES TOP REGIONAL HONORS

National Competition in DC Next

The Moot Court Honor Society extended congratulations to the members of BLS's 1986 Philip C. Jessup International Law Moot Court Team for their victory in the Northeast regional competition on February 16, 1986. The team, led by Ruth Logan and comprised of David Hyman, Dino Mastropietro, David Woll and Andrew Zobler, will now compete in Washington, D.C. for the national title April 9-12. They will then compete for the world title on April 12 if they win the national title.

The internationally recognized and highly regarded competition pitted BLS against teams from NYU, Columbia, New York Law School, CUNY, Western New England, Seton Hall, Rutgers-Camden, Cardozo and Pace. The BLS team defeated Pace, Seton Hall and NYU and lost a close preliminary round to Cardozo. The team, however, outdistanced third-place Pace Law School by thirty-nine points to meet and then defeat Cardozo in the final run-off round.

The Honor Society's president, David Murphy, thanked all those who "helped the team by judging practice rounds, in particular Professors Edelman and O'Keefe, Dean Lyle and team coach Professor Paul Sherman." Murphy also called attention to team captain Ruth Logan "for her leadership throughout" and noted that "the entire team performed excellently. The entire BLS community should share in their victory."

International Society Announces

New Members

The Editorial Board of the Brooklyn Journal of International Law is pleased to announce that the following participants in the Open Note Competition have been invited to join the roster of staff members:

Randi-Jean Hedin
Briandy Melnicke
Angela Rossitto

Congratulations!

New Moot Court Rules

The Moot Court Honor Society is instituting a new system for selecting members of next year's intermural teams and the 1987 National Team, according to the society's president, David M. Murphy.

The "new" system will somewhat resemble the one discarded by Moot Court only three years ago. It entails selecting new members through the use of an oral-argument competition run jointly by the first year writing instructors and the Moot Court Honor Society. The coordinated effort will be under the direction of Professor Marilyn Walters. Participants on the various intermural teams will be selected in this fashion, and students will also be invited to compete again in the Fall for the National Appellate Advocacy Team, based on their performance.

"It is our hope that this will generate greater interest in the society and the Moot Court program as a whole," said Murphy. "We hope that we can thereby improve the quality of the teams that represent Brooklyn Law School in the various intermural competitions."

Human Rights Symposium

The National Law Guild, in conjunction with the minority student clubs, AALSA, BALSA AND HILSA, will be sponsoring a Human Rights Symposium to be held Thursday, April 17 through Saturday, April 19th. It will be held at Brooklyn Law School. The Symposium will review the current status of human rights in the United States, South Africa, the Philippines, Korea, Nicaragua, and Poland. Discussions will focus on current legislation to deny human rights and will also focus on possible solutions to combat human rights problems.

Volunteers are also needed to help plan and coordinate the Symposium. Please leave a note in Cynthia Gamana's mailbox.

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.

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SBA: Only Fun and Games?

Six months into the term, the SBA admits having had trouble getting much accomplished. Executives and other members cite student apathy and isolation as major obstacles.

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Black History Month

In celebration of Black History Month, *The Justinian* presents a survey of Afro-American lawyers of the past.

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Reagan and Aid to Students: Not A Priority

The President's FY 1987 budget reaffirms the Administration's lack of support for students across the country. Reagan's budget for higher education would impose major reductions on student aid programs.

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QUOTES OF THE MONTH: "We are calling on the people of the world to help us. There is no real freedom, much less democracy, in this hapless land."—Juan Ponce Enrile, resigning as Defense Minister in the Philippines.

"Stop this stupidity and surrender. We are in control of the situation."—President Ferdinand E. Marcos.

"The long agony is over. We are finally free, and we can be truly proud of the unprecedented way we achieved our freedom, with courage, with determination and most important, in peace."—President Corazon C. Aquino. The N.Y. Times, 2/86



'54 Grad Tapped For Alums Group

Rose L. Hoffer has been elected president of the Alumni Association of Brooklyn Law School. Dean David G. Trager announced. Mrs. Hoffer, a trial lawyer, is a 1954 graduate of the law school. She also holds degrees from New York University and an international university (Aix en Provence). She is a member of the Board of Directors of the Metropolitan Women's Bar Association, a member of the National

Association of Women Lawyers, the International Association of Women Lawyers, and the American Bar Association. She formerly served as a director of the Board of Directors of the Metropolitan Women's Bar Association. She is a member of the firm of Hoffer and Hoffer and practices with her husband, Philip Hoffer, a 1933 graduate of Brooklyn Law School.

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Another New Food Service

by James C. Locantro

Brooklyn Law School students welcomed a new cafeteria service to their school this semester.

The new service, Blackletters, is run by two partners, Steven Bear and Joan Jusick. Although the partners have various other ventures throughout the city, this is their first attempt at cafeteria style food. The difference between this and other cafeteria services is quite noticeable. Lined up on the counters are fresh baked muffins and brownies that disappear like the sun at the end of the day.

The quality of the food is also noticeable and commented upon by the students here. There are no frozen foods in sight and a large percentage of the food is fresh and baked or cooked on the premises. Fresh vegetarian and chef salads are available along with two types of soup every day. The soda refrigerator, usually the stronghold for coke, pepsi and one or two other types of soda, is filled to the top with seltzers, orange drinks and the like in addition to the old sodas. Another unique aspect of their soda case is that it is usually well stocked and the sodas are almost always cold, something past cafeteria services couldn't seem to accomplish.

According to the partners, the food prices are 30% cheaper than what they charge in their other ventures. Sodas that cost \$.75 in the past now cost \$.65. The prices of sandwiches are also down even though this cafeteria throws in a salad with the sandwich. Muffin prices are also cheaper considering that they are freshly baked.

Although the company has no lease at present, the partners seem enthused about staying on as our cafeteria service. According to Mr. Bear, the administration is "bending over backwards" in order to accommodate them. Professors and administrators alike (whom he was told would not eat in past cafeterias) now come to get fresh coffee and newly baked muffins in the morning and a meal here and there in the afternoon. The students also seem to be happy with the

cafeteria. Of the students talked to, not one had anything bad to say about the cafeteria.

In order to bring back students who fled the cafeteria in the past due to the poor quality of the food, the new cafeteria ran a contest that gave students the chance to name the new cafeteria. The winner, Adam Goldberg, a third year student, was awarded a free meal a day for the rest of the spring semester.

One problem had developed with the cafeteria. In the past, cafeteria suppliers locked up their materials to prevent theft by students of their supplies. While this displayed a lack of trust it seemed to have been well founded. During the first few days of the new service, various utensils and cutting boards disappeared from the cafeteria. Needless to say, everything is now locked up.



TOP ADMINISTRATORS discuss quality of food at BLS. Tastes good so far.

Aside from the embarrassing problem of the isolated thefts, the cafeteria and the student seem to be getting off to a good start. Whether the food service and quality will remain at this level will be shown in time. The students seem to hope so.

Exam Schedule Questioned

by James C. Locantro

Once again Brooklyn Law students put their holiday vacations on hold while they poured over volumes of law materials in preparation for January finals. While most of the students of law schools in the metropolitan area took their finals at the beginning of December, we were just gearing up for what would prove to be a vacation full of contracts, corporations, and the like. But if the President of the Student Bar Association (SBA), Orrin Falk, has her way, this dismal picture of our holidays will soon change.

According to Falk, the student body will soon be receiving questionnaires either in their mailboxes or in the form of a petition. The two essential factors raised will be: 1) does the student wish to take his/her final exams before the holiday schedule and; 2) if so, does the student realize that this will cut down on study time in the fall and the real possibility of school commencing before Labor Day. Once completed, this questionnaire will serve as the basis of a SBA drive to conform our fall schedule with numerous other law schools in the metropolitan area that

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have finals before the holiday break.

Pluses, Minuses

Although a change in schedule would undoubtedly be met with great enthusiasm, Falk and Dean Johnson have cautioned that there is a down side to this proposed change. One troublesome problem is that of freshmen. First year students are thrust into a new and anxiety-ridden life when they begin Brooklyn Law School. The holiday break is usually viewed as a time to reflect not only upon the courses learned during the first semester but also as a period of contemplation of the law school experience. In addition to freshmen students, night students have a similar problem. Most night students work full-time jobs in addition to attending law school. According to Falk, these students need the holiday break in order to "pull their courses together" in order to maximize their GPA. Additionally, Dean Johnson points to the loss of some of the holidays in the fall semester that we normally enjoy.

Aside from student problems, Falk

Bork & Gibbons Join Weinstein For Prince Competition

Judge Robert Bork, will join Judge John J. Gibbons of the Third Circuit and Chief Judge Jack B. Weinstein of the Eastern District of New York in presiding over the final round of arguments at next month's First Annual Jerome Prince Invitational Evidence Competition. The competition will be held at Brooklyn Law School and in the Federal District Court at Cadman Plaza.

Twenty-two teams are expected to participate in the competition, to be held March 14, 15 and 16. The competition's problem involves two issues: whether to create a coconspirator exception to the marital privilege in federal evidence law and whether the coconspirator's exception, as applied by several federal circuits, violates the confrontation clause of the sixth amendment. Both issues are now before the U.S. Supreme Court.

Bork, a court of appeals judge for the D.C. Circuit, has been widely touted by the national press as a strong candidate for appointment to the Supreme Court if a vacancy should occur during the Reagan Administration. Weinstein is a noted expert in the field of evidence, and was the presiding judge in the Agent Orange litigation. Gibbons is a distinguished jurist, appointed to the bench by President Richard M. Nixon in 1969.

Dean Prince, for whom the competition is named, is a distinguished and respected scholar of evidence law and an illustrious member of the Brooklyn Law School community since 1934. He teaches evidence at BLS, and has been Dean Emeritus at the school since 1971. For the eighteen years prior to that he served as Dean of the law

school.

Prince is the author of *Richardson on Evidence*, which has been described as the only book other than the dictionary that sits on the bench at the New York Court of Appeals. He also authored *Cases and Materials on Evidence* (Foundation Press).

"By hosting this competition, Brooklyn Law School will be able to better its reputation through showcasing the school and its students," said David M. Murphy, president of the Moot Court Honor Society. "We feel that the competition will increase the attraction of the Moot Court Honor Society to the students of the law school."

The preliminary round will be held Friday, March 14, at 5:30 p.m. and the second round on Saturday at 10:30 p.m. The quarter-final round (8 teams arguing) takes place at 2:30 p.m. on Saturday and the semi-final round for four teams will be held Saturday at 5:30 p.m. The final round for the two remaining teams, held in the Eastern District Court House, takes place on Sunday at 11:00 a.m. Each round of the competition is open and all students are encouraged to attend.

Following the semi-final round on Saturday evening, the participants and invited guests will be treated to a reception at Manhattan's posh nightspot, The Water Club.

Volunteers will be needed to act as Hosts and Timekeepers for the Competition. Anyone interested in participating should contact Catriona Glazebrook at the Moot Court Office.

Can It Happen?

proposal must go through before implementation. First the SBA must pass it through their general meeting, then at a referendum before the entire student body. If it passes, the SBA would go before the student faculty committee for their input and approval. If at this point the SBA had proposed a schedule for all students to have finals before the break, it could then be handled administratively by Deans Johnson and Trager, possibly before the end of the semester. If the proposal is similar to the Harvard model, it would then have to go before the full faculty and would probably take a year to complete if passed by the faculty.

Falk noted and Dean Johnson stressed that in order for this proposal to pass it must be done with student and faculty input throughout the entire process. If the SBA does not confer and work with the faculty on this proposal it is doomed to failure as were past attempts at schedule change.

Dean Johnson believes that, if done properly, the proposal could pass. He has offered to sit down with a delegation of the council to work out any problems it might encounter. SBA President Falk is not quite so optimistic. While contending that she is all for the proposal and pledges her support of it, she believes that when it goes to the faculty for voting, "I have the gut feeling that it won't fly. The faculty won't approve of it; they'll think more towards their own interests."

points out that professors would probably not be happy to have a schedule change that would cause classes to begin before the Labor Day weekend. Dean Johnson, on the other hand, was more optimistic regarding the professors' reactions. In a phone interview with Dean Johnson, he remarked that "although past proposals for changing the way the fall semester was done were not thought out and had too many holes in them" a well thought out proposal that included the faculty in the discussions of format could possibly pass within a year.

In order to alleviate student problems with a change in fall finals, Falk proposed a Harvard Law School model in which second and third year students take exams before the break while freshmen and possibly night stu-



Will holiday exams ever cease?

dents, take their finals after the break. Although Dean Johnson points out that the second and third year students at Harvard are expected to take courses in between their finals and the Spring term, Harvard has no summer courses so that the time spent by Harvard students is equivalent to our summer semester.

In order for the proposal to pass, Dean Johnson explained the stages the

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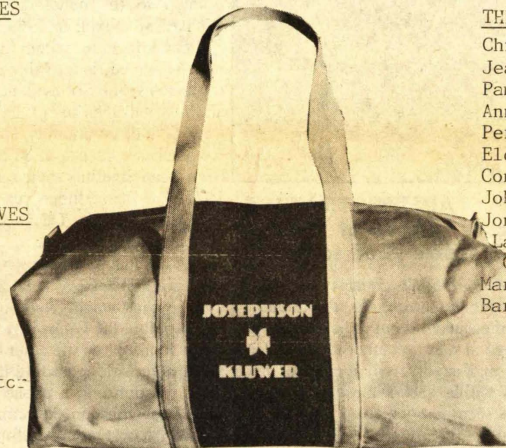
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and through the bar.

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Natalie Jasen
Felice Klass
Ira Levy
Randy Schustal

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Andrea Coles
Michael Gunzberg
Pamela Kulsrud
Cheryl Petretti
Betsy Rosen
*Bill Schofield (coordinator)
Mary Verderane
Marianne Zelig



THIRD YEAR REPRESENTATIVES

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Jean Chung
Pamela Fried
Anne Grenillot
Peri Hoffer
Elena Karabatos
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NIGHT OWLS

BLS Night Program: How Does It Stack Up?

by Maureen Roaldsen

Some of us "night owls" became curious about the evening programs being offered by our "cousins" across the river. We recently checked with Fordham and New York Law to inquire about their nocturnal offerings.

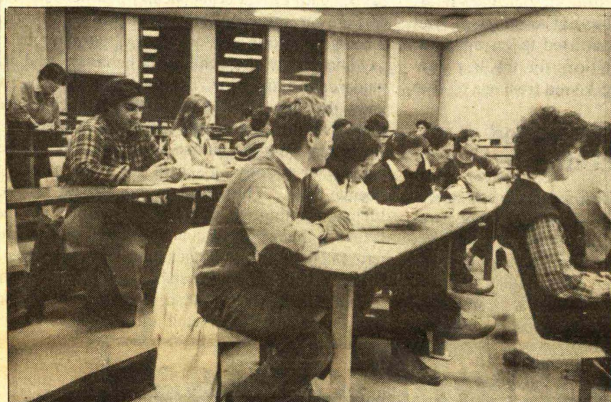
Brooklyn Law is one of the few law schools that offers flexible part-time and evening programs to its students. At Fordham, there is no part-time program available other than the straight evening courses. New York Law, however, has both a part-time day program and an evening division.

Fordham's prescribed courses, in the evening division, are spread out over three academic years and the fourth year is entirely elective. Here is a schedule of their first year offerings:

Brooklyn Law. The first year has 21 credits of required courses and the second year has only 12 such credits.

First Semester	Hours
Contracts I	3
Legal Method	2
Legal Writing I	1.5
Torts	4
Second Semester	Hours
Civil Procedure	4
Contracts II	3
Criminal Law	3
Legal Writing	1.5

An evening division student must be taking at least 6 credits in order to be considered for part-time day



Night Life at BLS

First Semester	Hours
Civil Procedure	3
Contracts	3
Legal Writing	1
Property	2
Torts	2
Legal Process*	1

*Legal Process is given in a concentrated form of 14 hours during the first week of the term. Brooklyn Law's Legal Process course is scheduled weekly until early November and is worth 2 credits.

Second Semester	Hours
Civil Procedure	2
Contracts	3
Legal Writing	1
Property	3
Torts	3

Each semester of Fordham's evening program carries 12 credits. There are provisions for evening students to transfer into the day school after the first year. In order to qualify for this, evening students must take a summer semester of 5 to 7 credits whereby they make up half of a full-time semester and they can go right into the second year. Evening enrollment averages about 150 in the first year and about 40 of these students will elect to transfer to the day after their first year.

The required course sequence at New York Law is similar to that of

courses. New York Law School administration will consider part-time students on an individual basis if special day/evening combination is requested.

At the end of the second semester of the First Year, Brooklyn Law School part-time and evening students are invited to compete with the full-time students, to attain positions on *Law Review*. A self-contained packet of materials is distributed in early June and they have ten days in which to digest it and prepare a case comment. There are usually about 50 available openings.

At New York Law, students are chosen for *Law Review* on the basis of both "scholastic performance and through a writing competition." A certain percentage of both day and evening classes are designated for *Law Review* on the basis of their grades. In addition, there is a writing competition similar to Brooklyn's. Students eligible for *Law Review*, by virtue of their academic standing, do not have to participate in the competition.

A flexible part-time program is very much appreciated by those who have familial obligations and/or full-time jobs. Perhaps, within the next few years or so, more law schools will follow suit in permitting part-time combinations of day and evening sessions to fit into the ever quickening pace of the 1980's living and working patterns.

et al.: The Justinian

BLS Site for ABA Student Conference

Brooklyn Law School will host the Spring Conference of the American Bar Association Law Student Division Second Circuit on March 15, 1986. The Second Circuit is comprised of all the law schools in New York State. The meeting will be presided over by outgoing governor, John Folcarelli of Brooklyn Law School. It is at this meeting that the new Circuit Governor will be elected and that candidates for liaison positions will be interviewed by ABA-LSD National Officers. The law student division is divided into 15 Circuits. The Governors, along with the National Officers run the law student division. All students who are members of the law student division are eligible to run for governor. The meeting is open to all.

RESOLUTIONS

One of the functions of the law student division is to let the senior bar know what issues are of concern to students. This is accomplished through the resolution process. Resolutions are presented to the House of Delegates at the annual meeting. If they are passed there, they are presented to the ABA House of Delegates at the ABA annual meeting by the Law Student Division Delegates to the ABA.

There are three basic types of resolutions that are proposed to the Law Student Division. The first are usually proposed by incumbent officers and are usually of a housekeeping nature. They often involve by-laws changes. The second have to do with accreditation standards for law schools. The majority of resolutions at the 1985

meeting fell into this category. They ranged from law review membership selection to input from students into faculty selection and tenure standards. The third type address issues of national policy and concern.

The influence of the Law Student Division should not be underestimated. Efforts of Law Student Division members were instrumental in getting the ABA to divest from companies doing business in South Africa. The ABA announced recently that it has in fact divested.

The spring conference is a good place to initiate action on potential resolutions to propose to the Law Student Division this summer. Anyone interested in proposing a resolution should get in touch with Diane Conyers to find out more about the process and the format. While the deadline for proposals is not until June, it is a good idea to think about them now and get some input of other circuit members. The better researched and presented a resolution is, the more likely it is to succeed at the annual meeting.

Everyone is invited to the Spring Conference and is urged to attend. It is a good opportunity to meet students from other law schools as well as to meet some of the national officers of the largest student professional organization in the country. In addition to the governor's job being open there are opportunities for other positions on the circuit as Lt. governors and circuit coordinators for programs.

Lunch will be provided at the meeting and there will be some kind of social activity to cap off the day.

lends itself to certain legal areas, such as malpractice, taxation, marital and criminal law practices and would encourage the expanding trend towards specialization in the law.

Opponents of the plan, which includes the City Bar Association, contend that specialization, even if voluntary, would unduly restrict legal practices in favor of the larger law firms. The result of this plan, in the opposition's view, could drive up legal costs and create unnecessary suspicion on any lawyer choosing not to specialize.

The City Bar Association, in opposing the plan, found that the program does not sufficiently redress the problems it addresses. The Nassau and Suffolk County Bar Associations also have the proposal under consideration.

The State Bar Association house of delegates will be voting on the plan in April.

Should Lawyers Specialize?

by Ginna Pettinelli

The State Bar Association has a plan under review that would allow lawyers to be certified as specialists in various fields of law.

Under this plan, the process of certification would include the taking of a proficiency exam, paying a nominal fee for certification and having an interview before a five person advisory board. In addition, attorneys who choose to specialize would be expected to devote the majority of their practice to their specialty.

Advocates of certification assert that specialization would serve the public by discouraging false advertising by lawyers who incorrectly claim special expertise in a field of law. It also is claimed that specialization

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THOSE NEVER ENDING TEEN YEARS

by Peter J. Mollo

This is an article about coming of age, and the prolonged adolescence which attending law school requires. We have been told that by the time a law school education is complete, much of what we have learned in the first year may no longer be accurate since changes in our court system are taking place so rapidly. Changes in the practice of law reflect larger changes within the society as a whole. Since events in the "real" world of work are happening in the fast lane, and the milestones and demands of law school must take place in the slow lane, a certain tension on the part of adults in an adolescent role usually results. Adults who are attending school at the same time inevitably run into conflicts of roles. Study habits, the demands and needs of children, and graduate schools whose basic stand is that the solution to these problems is the student's responsibility, all contribute to this stress. These problems are compounded by what has happened to childhood in the larger society.

THE DEVELOPMENTAL PROCESS

As most of us have learned, there are certain developmental stages which take place across cultures and across time. Most experts agree that the major functions of the family are to nurture and socialize children and to ultimately liberate self-supporting adults. The first stage of development is called the "oral" stage, because the baby's observed behaviors are centered around what goes into her mouth. Anyone who has cared for an infant knows that this has to be watched very closely because an unattended infant is always in danger of swallowing the wrong thing. Positive feeding experiences during this stage are very important to the baby's sense of security and well being. The second stage is called the anal period, for obvious reasons. During this stage babies become aware of their process of elimination of wastes. If a care-giver allows his revulsion at the odors and appearance of the waste matter to be apparent to the baby, the baby may get the message that she is dirty and unworthy of the attention she requires. This anal stage lasts from about ages one to four. The end of this period coincides with the completed task of toilet training.

You can identify a toddler in the genital stage of development by the tell-tale hand down the front of the diaper. If a child is discouraged from this normal touching in a disapproving way, she can grow up with a subtle psychological program that pleasurable sexual feelings are bad. I have spoken to entire seventh grade classes, from the slow to the advanced academic groups. The girls in the classes who admit to be sexually active at 12, report that if they saw their toddler touching herself "in that way," they would slap her hands. This is probably the treatment they received as toddlers. The girls in the brighter classes, who deny sexual activity at age 12, usually report their reaction to the same touching with indifference. "They will outgrow it" is the most frequent reply from the brighter classes. This seems to suggest that if an infant gets the message that sexual feelings are bad, this will have the opposite effect than the care giver intended. When she needs to be bad, she will already know how. This genital stage generally lasts from age three to six. After this period of awakened sexuality, the normal child's sexual feelings become latent once again, as in early infancy. This is called the latency period.

This period has undergone the most dramatic change. It used to last for about 10 years; now it lasts about 2 years, if a child is lucky. This period was when most basic learning was done, from ages six to sixteen. The end of this period is marked by the beginning of adolescence. Adolescence starts with the onset of puberty. Puberty begins with menstruation in girls and subtle sexual characteristics in boys, like voice, hair and genital changes. In 1870, the average age of the onset of menstruation in girls was 17. In 1970 the average age was 12. A normal age for marriage in 1870 was about 17 for girls and about 20 for boys. In ancient times it was even younger. A remnant of earlier coming of age is the age of bar mitzvah for Jewish children and confirmation for Christian children. This is usually around age 13. It symbolizes full moral responsibility. It used to actually mean full adult responsibility.

The life expectancy was much shorter, and the farm based society needed everyone to work. Early entry to the job market was the rule. Therefore, up to about 100 years ago the period of adolescence was very short. As soon as a girl became a woman physically she was encouraged to marry! That was quite different from the advice given by most parents in the 1980's. Many of our great-grandparents married as teenagers. There was a greater need for unskilled manual labor so when times were good, a strong nineteen year old man could earn a decent living, especially if there was a family farm or access to tillable land. This pattern of a long latency, short adolescence, can be seen among the Old Order Amish of Lancaster County, Pennsylvania. They confine the adolescent period to the sixteenth year only. No going out or dating is permitted until then. At age sixteen they are permitted to "jump around." This period is called "rumspringen," which in their dialect means "jumping" or "running" around. For one year parents look the other way while their children experiment. After this period they must become full adult members of the community and are eligible to receive the benefits of that adulthood; sometimes land, money, a job and functional social cooperation. And of course they are then permitted to get married. Among the general population for the last few thousand years, adolescence lasted from one to five years.

The Fun of Extended Adolescence

Since the average American aspires to and needs at least two years of schooling after high school and people tend to marry later, adolescence now lasts from 12 to 24. Society has exchanged a long, care-free latency period, for a long, stressful adolescence. Adolescents feel like adults and have adult appetites and desires at an earlier age, yet must wait longer

and longer to have these desires fulfilled. This makes for quite a bit of stress and confusion. The stress and confusion, if unrelieved, leads to real symptoms such as excesses of sex, drugs and rock and roll, depression, anorexia, bulimia, loss of appetite, loss of sleep, panic, suicidal ideas and the like.

As law students, we know that legal maturity may be from 18 to 21. But you can't really feel like an adult until you don't have to ask your parents for money. It's hard to separate mental from economic autonomy. If you feel like an adult, and can't act like one, you're bound to feel stress and frustration. Law students reach puberty at age 12, and don't graduate law school until age 26. This is a *fourteen year adolescence*! If you have had to work during all this time, you've done double-time for fourteen years. In 1890, a student could enter law school upon graduation from high school. So even upper middle class people with graduate educations could support a family at an earlier age. Therefore, financial independence could be achieved while a couple was in their early twenties.

Early marriages were the rule and weren't the disasters they usually are today. Liberation cannot happen until one is economically independent. Parents are care-givers. They are encouraged by their schools, religious institutions, and communities to pay attention to their children's behavior, and give guidance and direction. The only way many parents know that they don't have to tell their child what to do is by the fact that the child is no longer asking for money. When children are dependent on their parents for money, it's hard for their parents to liberate them. They have to go against all their lifelong training. A well-paying summer job may help with the tuition. But until graduation and long-term full time employment takes place, adolescence drags on, and we're vulnerable to the tensions that go with it. Historical perspective may help it not hurt so much to be an adult adolescent.

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DOROTHY NOBLE

FIRST YEARS REACT TO FALL EXAMS



Exams: What's The Point?

by Darla C. Stuckey

Imagine ten single spaced pages in front of you. You begin to read. You turn the pages but another one always follows. You flip faster and faster until you realize that three hours are up and your Blue Book is empty. A nightmare—we all have them about exams. So much rides on our performance those three hours: future grades, rank jobs, in fact our careers. Each semester four months of study are evaluated on the basis of a single exam. But what purpose do exams really serve? They may help students prepare for the Bar exam; they may provide a vehicle for students to synthesize all they've learned; or they may give professors an idea of how well they teach. Practically speaking, the most obvious product of exam grades is student ranking.

exam on the problem of "piggeries" in Massachusetts, complete with newspaper clippings, and relevant statutes and caselaw. He says the question gave his students an opportunity to think as actual lawyers would and to distinguish relevant materials from those inapplicable.

Professor Minda sees an alternative function for exams, that of insuring mastery of the material before allowing a student to go on. This in effect would eliminate the need for a hierarchy established by class rank since all students would be at the same level of performance. The current job market, however, seems to call for a ranking system.

If ranking at BLS, then, is inescapable, and exams are the necessary means to that end, do they adequately measure the students' analytical abilities?

Make Legal Process

Into Intro To Law School

by Robert Roth

Of the five first year fall semester classes, perhaps no course generates more criticism among students and faculty [alike] than Legal Process. Its detractors question the value of the course, state that it is a difficult subject to test, and further argue that terms introduced and discussed in Legal Process often cause students to prematurely use these terms before they are ever addressed in Torts or Contracts. Comments by professors stating "Oh, so that's what they're teaching in Legal Process these days" only magnifies the dissension in the ranks as to its value. In light of these facts, now may be an appropriate time to reevaluate how Legal Process can be improved.

Currently the Legal Process course is quite effective in demonstrating the evolution of common law, defining concepts such as precedent and res judicata and generally an understanding of the mechanics of a lawsuit. In this sense a true benefit can be derived from the course. Legal Process, however, could be much more effective if it provided a better overview to first year students of the various sources of law that the other first year courses will be dealing with.

For example, in Torts the student is thrust into the G.O.L. and C.P.L.R.; in Contracts the U.C.C. and in Civil Procedure Title 28. No preliminary explanation is given as to how these different sources of law relate, on what authority they are based or how they fit into the general scheme of things. I am not advocating a lengthy discussion of Titles 1-27 or the history of the G.O.L., but some effort should be made at providing a very basic framework for understanding how all the pieces fit.

Since Legal Process meets a full two weeks before the start of regular classes, it would make sense that those classes be used to establish such a foundation. Instead of making Legal Process the whipping boy of the faculty and student body, it would make infinitely more sense to correct its current flaws and use Legal Process to its fullest potential. This could be accomplished by discussing the relationship of the statutes, teaching how to properly brief a case, and then dealing with important concepts like the evolution of common law and synthesis. If such steps are taken, the value of Legal Process will be increased substantially and students will have a much clearer perspective entering their other courses.



STUDENTS GIVE MORE than sweat and tears during exams.

According to Professor William Hellerstein, establishing a hierarchy by ranking does inure to the benefit of BLS students. Even though it creates the competitive, insecure feeling among students, it also allows some of them to get into lucrative Wall Street firms which, for future students, increases the school's national exposure. As a past employer, Professor Hellerstein says he appreciates class rank as a point of departure in the hiring process.

In addition to student ranking, exams also measure analytical ability. These analytical skills are "the tools of the trade," and indeed, professors point to them as the rationale for giving exams. Professor Hellerstein says the exam functions to "test analytic ability, to deal with concepts and to apply those concepts." Professor Gary Minda agrees. His tests are "designed to test ability to put to use skills to resolve legal problems in a 'real world' situation." To that end, he recently gave his Legal Process class a lengthy

The typical fact pattern/issue spotting format may provide the best overall structure, but in order for students to fully develop their "lawyering" skills, tests must meet certain requirements. The exams must be reasonable in length, time allotment, instructor expectations, and the type and amount of class material covered.

Sheer length poses problems to some students when the exam takes too long to read. One student in Minda's Legal Process class said that as a medium fast reader, she felt "under the gun" and not able to read the "piggery" question more than once since it took her 45 minutes to read it the first time. Consequently, she had no time for organization, and was not able to effectively deal with the statutes.

Some students have found time pressure in relation to the instructor's expectations also to be problematic. A student in Professor Berger's Civil Procedure class said that there weren't too many pages, but that "too much

Exams

was expected of us in the time we had. I had to make a judgment call as to whether to put in more or expand on what I already had." As far as class material relates to test material, most students want a thorough test with no surprises. One student taking the Contracts departmental exam said she wasn't able to show what she had learned since the issues were already spotted for her. She was also surprised

to see things on the exam that were "barely touched on" in class.

In light of these students' comments, the analytical ability that is supposed to be measured by some tests is inadequate. And since so much rides on each exam, it is important that the exam be fair. Evaluation of exams is taken rather seriously at BLS: from the student's point of view the design of exams is just as important as is evaluation.

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Federal Judgeships: Is The Senate Doing Its Job?

by Michal Freedman

Before the end of his second term, President Reagan is expected to have appointed more than half the nearly 750 members of the federal judiciary. These men and women have enormous power to rule on decisions affecting everything from constitutional rights to federal government regulations.

Under the Constitution, the Senate shares responsibility for each of these appointments because it has a duty to review every nomination. But the Senate Judiciary Committee, which has been delegated principal responsibility for reviewing judicial nominees, has not fulfilled its constitutional responsibilities. A close look at the Senate's handling of the nomination of Alex Kozinski to the U.S. Court of Appeals for the Ninth Circuit highlights the Senate Judiciary Committee's failure.

Last June the committee took up the nomination of Kozinski to a judgeship second in importance only to a seat on the Supreme Court. The committee was on notice that there were questions about Kozinski's fitness for office: The American Bar Association, which evaluates nominees, had given Kozinski the unusually low, mixed rating of qualified/unqualified.

The major allegations against Kozinski focused on his role as head of the Office of Special Counsel (OSC), which was established in 1979 to protect federal workers who blow the whistle on government abuses. (Historically, whistleblowers are victims of harassment.) Kozinski held the post for 14 controversial months in 1981 and 1982, during which time:

- He was accused of subverting the mandate of OSC, transforming it into an office more interested in helping agency managers than whistleblowers. A 1982 newspaper column, for example, stated that "employees who take whistleblowing disclosures to the special counsel find it almost impossible to get results." In a resignation letter submitted when he quit in 1982, Jesse James Jr., Kozinski's assistant

special counsel for prosecution, wrote: "We no longer provide any protection to federal employees from merit system violations and abuses."

- It was also publicly charged that he treated his staff unfairly and abusively. James' resignation letter stated that Kozinski "appears to receive some type of sadistic pleasure out of forcing employees to resign or causing employees great mental anguish."

How did the committee conduct its review of Kozinski? When it received notice of his nomination on June 5, it did not invite relevant outside groups to provide information, as it had in past years. The Government Accountability Project (GAP), a private whistleblower support organization that ultimately developed the bulk of the information about Kozinski, was invited to testify on July 12, only five days before the Kozinski hearing. Of the 18 committee members, only one was present for GAP's testimony. The hearing, which lasted less than three hours, covered five other judicial nominees in addition to Kozinski.

Following the hearing, former OSC staff members, government whistleblowers and private attorneys familiar with Kozinski's tenure at OSC asked to be able to respond to Kozinski's testimony. None was given the opportunity. Instead, Chairman Strom Thurmond (R-S.C.) agreed only to postpone vote until after Congress' August recess because some senators had unanswered questions.

The committee did not attempt to resolve the questions, however; that responsibility fell to GAP and other private groups. GAP, for example, presented the results of a survey of 10 individuals employed at OSC under Kozinski who were asked to comment on the accuracy of his testimony: They found 15 times the number of inaccurate statements as accurate ones. Similarly, in a letter to Sen. Thurmond, James disputed the accuracy of numerous claims Kozinski had made in his testimony, among them his assertion that his office had developed "a new policy of combating sexual harassment in the workplace."

On September 12, immediately prior to the vote, two senators expressed "unease" with the nomination. Sen. Dennis DeConcini (D-Ariz.) stated his hope that the nominee would "moderate his temperament and the attitude he has exhibited in the past. . . ." Then, although stating that he had so "solid basis for objection," Sen. Paul Simon (D-Ill.) admitted that he could "not say that all of [his] concerns have been satisfied."

Moments later the committee voted without objection to approve the nomination. It issued no report containing its findings or conclusions—the committee merely walked away, leaving the charges unresolved.

Although the Judiciary Committee unanimously approved the Kozinski nomination, the full Senate confirmed him by a vote of only 54-43, the smallest confirmation vote for a federal judge in many years. Sen. Carl Levin (D-Mich.), who does not serve on the Judiciary Committee, had presented the information developed by outside groups and his own investigation to the full Senate.

In the final vote, nearly all the Democrats in the Senate opposed the nomination, as did three Republicans, including Sen. Barry Goldwater (R-Ariz.). Six Democratic members of the Judiciary Committee, all of whom had approved him after rejecting appeals for additional review of his record, could not support his nomination in the face of the review done by Sen. Levin.

The Kozinski confirmation process has embarrassed the Democrats on the Judiciary Committee into at least one highly publicized field investigation of a judicial nominee and an established schedule allowing additional time. However, without significant changes in the resources, outreach and commitment of the Judiciary Committee members, the danger persists that only a few nominees will be subject to rigorous reviews, while dozens of others continue to get the Senate's rubberstamp of approval.

Michal Freedman is associate director of Issue Development at Common Cause.

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BLACK HISTORY MONTH

Throughout history, blacks have overcome tremendous odds to obtain an education. Frederick Douglass spent his life pursuing a dream that one day other blacks would have an equal opportunity for education. "A little learning, indeed, may be a dangerous thing, but the want of learning is calamity to any people," Douglass has said.

Another black achiever, James C. Pennington, said, "There is one sin that slavery committed against me that I can never forgive. It robbed me of my education."

Black History Month acknowledges those blacks who dedicated their lives to overcoming the odds and creating educational equality for all races. These individuals played a key role in providing blacks with educational and professional opportunities today.

Early Afro-American Lawyers

by Linda Trice

In celebration of Black History Month, *The Justinian* presents a survey of Afro-American lawyers of the past.

The Colonial Era

In 1619, a year before the landing of the Mayflower, a group of Africans were kidnapped from their home (most if not all from Angola) and brought to Jamestown, Virginia. Speaking no English, they were nevertheless christened and given English names. The first African arrivals in many American colonies were called indentured servants and given

the same status and rights as European indentured servants. A few years later they were classed servants for life and then slaves.

One of the victims of that landing in Jamestown was renamed Anthony Johnson. After Anthony Johnson served his period of servitude, he became a wealthy landowner and helped other blacks form an all black settlement in the area. He brought suit against a white whom he claimed had tried to possess his property, most likely one of the earliest cases brought by a black person in an American court.

Most blacks in the years before Emancipation brought actions to gain their freedom (if they were held as slaves) or their property which they declared had been wrongly taken from them or denied them from a will. Most of these early contestants were represented by white counsel or represented themselves. Few blacks won their cases. Since slaves were considered property, they were not allowed to bring suit in court and anything the slave owned (including his or her children) was considered property of the slaveowners.

Probably the earliest blacks other than Anthony Johnson to represent someone other than themselves in court are two women—Eleanor Eldridge and Lucy Terry.

Lucy Terry

Lucy Terry was one of those people who holds the dubious distinction of having many "firsts" applied to her name. She was the third American woman to write poetry, probably the first black American poet and surely the first black to come before a state Supreme Court. . . and win!

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BLACK AND RED

Brooklyn Law School's Black Law Students Organization hosted a book party and talk by Professor Gerald Horne on Friday, February 21.

Professor Horne teaches at Sarah Lawrence College and is currently the National Director of the National Conference of Black Lawyers. A noted scholar in law as well as Afro-Americana, South Africa, and Nuclear Disarmament, Prof. Horne's book on W.E.B. DuBois, entitled *Black and Red: W.E.B. DuBois and the Afro-American Response to the Cold War, 1944-1963*, has been heralded as a landmark work.

Dr. DuBois

William Edward Burghardt DuBois (he preferred the Americanized pronunciation of his name rather than the French) wrote *Souls of Black Folk*, published in 1903, wherein he prophesized that "the problem of the twentieth century is the problem of the color line."

Dr. DuBois was born in Great Barrington, Massachusetts on February 23, 1868. He received undergraduate degrees from Fisk University and Harvard University and a Ph.D. from the latter. His dissertation was turned into a landmark work, *The Suppression of the Slave Trade* (1896).

As an author, he was the first black sociologist (*The Philadelphia Negro*, 1903) and created the sociology department at Atlanta University. He was an essayist, poet, novelist and the editor of the NAACP's literary organ, *The Crisis*.

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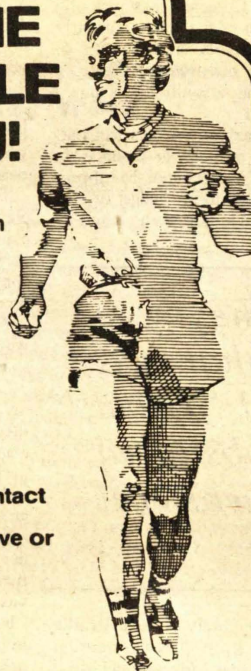
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PERSPECTIVES

Bad Results At Test Time, Parole Time and P.E.N.

by Robert Axford

A few digressions. To begin with, the trivial: that is, those irrelevant academic annoyances known as law school exams. Sometimes, they are referred to as "finals." Presumably because after your final final, you're finished. But, as always, I'm guessing.

Is there anything more irrelevant than a two-to-three-hour, closed book exam? Exams extended to reality would mean that a lawyer would show up to court at a specific time with generalized knowledge expected to represent a specific client with a specific problem without any chance to prepare. (Did you follow that? If not, please go to the end of the line.) We all know the stuff of law is laborious (emphasis on the borious) research followed by deliberate, well-thought out writings. Exams, to the contrary, reinforce antithetical abilities: the talent to shoot from the hip, to expound under artificially induced pressure, to, in the vernacular, bullshit under the gun.

The absurdity of exams is further evidenced by the notion that as a result of this exercise in the unreal a professor can evaluate a student's legal acumen to within a one-hundredth of a percentile. The irony is complete, because students are all too

often rewarded (\$, jobs) on the basis of these mis-conceived examinations.

I realize, at best, law school is a walk on the surreal side. That it is its own universe, with its own momentum, its own causes to measure its own effects. Still, I will not relent. Exams are stupid.

Stupidity of another sort reigned over the recent 48th annual P.E.N. (Poets, Essayists and Novelists) International Congress in New York. Or, more precisely, Norman Mailer's ego reigned, representing the interests of stupidity. Not that I have anything against Norman, normally. (How's that for poetry?) It is just that his ego has taken his brain hostage and nobody is willing to negotiate its release.

Some background. Every year writers from all over the world gather to call the world's attention to the plight of oppressed writers everywhere. (Writers who pass the McCarran-Walter Act acid test I should note.) The theme of this year's congress was "The Imagination of the Writer and the Imagination of the State." Well-intentioned stuff, I assure you. What Norman did was to unilaterally invite Secretary of State George Schultz to be the keynote speaker at the Congress's opening session.

Later Norman admitted that he never expected Schultz to accept his invitation, and that when Norman made the invitation, it was a bit of a lark. But, for many writers politics do indeed matter. For them, Schultz represents rather unsavory politics at that. Thus, once the word got around about Schultz's speech, protest abounded. Petitions, arguments and strategies were circulated. Norman would have to rescind his invitation, many demanded.

But Norman, his cackles raised and sights lowered, would not succumb to these "catatonic leftists." He held his groin, I mean, ground. And when Schultz's speech got inevitably booed, Norman became irate. It was as if someone had insulted his date. (Simile intended.) He said Schultz was not invited to the P.E.N. Congress to be "pussywhipped" (his words).

Yet Schultz's speech in and of itself was not the Congress's downfall. Rather it was the hackneyed East-West diatribes that followed afterwards like so many ripples on a stagnant pond. Instead of creative analysis, the week produced the same old song, which system is better—the US or the USSR. Instead of imagination and vision, what resulted was reruns of the Ted Koppel show starring Saul Bellow and Gunter Grass. Once again, potential became a casualty.

My last digression concerns a man who sits in prison because of presidential politics. Absurd, you say. This is America. However, while surely thousands of individuals are in prison at any given time for no reason other than mistake, one man sits in prison solely because the Republican Party wants to smear Mario Cuomo.

Don't take my word, listen to William Buckley, David C. Leven (Executive Director of the Prisoners Legal Services of New York), William Kunstler and the Governor. They all believe that Gary McGovern should be released. (And how often do Buckley and Kunstler agree?) But McGovern stays in prison even after Cuomo granted him clemency. The Governor's decision was primarily based on McGovern's rehabilitation (and many others contend he is innocent altogether), as demonstrated by his exemplary prison record.

But, somewhere in the deep moral recess of the White House, someone in that Grand Old Party decided the issue of McGovern's clemency could soften a potential strong presidential opponent. There was no concern with the merits of McGovern's clemency; it was simply a question of image: Cuomo is soft on cop killers. The truth of the matter asserted is irrelevant in the face of perception. Thus, the Washington G.O.P. spoke to the New York G.O.P. which, in turn, exerted its influence over the New York State parole board and Gary McGovern's clemency was denied. A victim of presidential politics. Nice system.

Congress Bans Playboy

by Alan Dershowitz

In what has to be the censorship gaffe of all time, Congress recently banned the publication of Playboy magazine in Braille by the Library of Congress. Now, we all know that the most "objectionable" parts of Playboy are its photos of naked women (and occasionally naked men, as in the current issue's coverage of Don Johnson, the star of "Miami Vice").

Indeed, the complaint most often heard about the magazine is that men buy it for the pictures and rarely even bother to read the articles.

I wonder if the congressional censors who voted to halt publication of the Braille issues of Playboy were aware that the "nude" photographs aren't reproduced in the Braille edition. Perhaps they were concerned that three-dimensional "feelouts" might be substituted for the two-dimensional fold-outs, but the state of the art hasn't yet achieved that breakthrough.

The Braille edition of Playboy—1,000 issues of which have been printed every month since 1970—omits all photographs, cartoons and advertisements, featuring primarily the interviews (with public figures such as President Carter) and articles (many of them by distinguished writers).

Predictably, a lawsuit has been filed by various organizations representing the blind. They claim that Playboy was singled out for censorship because of its content. And, of course, they're right: The Ohio congressman who sponsored the censorship law acknowledged, during floor debate, that he didn't think the government should be paying for publication of writings about "wanton idleness" (think of that oxymoron for a moment) or "illicit sex."

Despite the obvious content censorship involved in the Playboy ban, the lawsuit will be a difficult one to win. The Library of Congress must pick and choose among the thousands of magazines currently published and select a relatively small number of Braille editions. To aid in making that choice, a committee of librarians and visually handicapped persons has been appointed.

Today there are 36 magazines on the select list. (Playboy costs \$100,000 a year to produce in Braille—about one-third of 1 percent of the Library of Congress total Braille magazine budget of \$34 million—so the decision obviously wasn't based on economics.)

"Perhaps they were concerned that three-dimensional 'feelouts' might be substituted for two-dimensional fold-outs."

Had Playboy never been included as a Braille publication, it would have been difficult to argue, as a constitutional matter, that failure to include it constitutes governmental censorship. But it has been included for 15 years and is now being excluded precisely because its contents are deemed objectionable by some political officials, who hold the purse strings and can thus overrule the library committee. Imagine the outcry if liberal Democratic congressmen voted to exclude Readers' Digest, The National Review and all other conservative magazines from the Braille list. But the stupidity and unfairness of a congressional enactment doesn't necessarily mean that the courts will overrule it.

Whichever way the courts come out on the legal issue, the congressional ban reflects an extreme form of paternalism toward the blind. Many handicapped Americans necessarily depend on the government to give them access to what the rest of us can freely obtain. They are entitled to be treated as the adults they are, capable of making their own moral judgments about what to read and where to go. Imagine if the government provided wheelchair ramps only when "approved" performers or speakers were appearing in public buildings.

The blind law student who was the subject of the play and movie "Butterflies Are Free" used to complain that when he was growing up, there were no racy books in Braille. The government shouldn't be able to impose its morality—its censorship—on the blind any more than on the sighted.

A blind 33-year-old medical transcriber put it this way in a letter he wrote to the congressman who sponsored the censorship bill:

"What gives you the moral authority to govern my choice of reading material when it is obviously illegal for you to make that decision for my sighted counterparts? . . . Will you and your colleagues decide that we should be deprived of reading Time and Newsweek because they, too, might contain articles about and interviews with controversial figures whose political or social opinions you might not agree with? Will you then decide to cut off funding for the national and local radio reading-service programs we've worked so hard to obtain? . . . I hope reason will prevail and that you will see the light and abandon this proposal before a dangerous precedent is established."

The fair, non-political method used by the Library of Congress to decide which magazines and books should be published in Braille must be allowed to continue without interference from congressional moralists. Elected politicians who pander to their constituents at the expense of a handicapped minority have no proper place in the selection process. I hope that the Congressional Record is printed in Braille so that the blind voters of this country can learn how they are perceived by their elected officials.

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No Affordable Housing? Blame Rent Control

By Philip L. Reizenstein

The regulation of rents and control of private property, achieved in this state by the Rent Control and Rent Stabilization laws, had been, and remains, a direct threat to the individual right of the citizens of New York. That rent control and stabilization is an abject failure, is a forgone conclusion admitted to even by the oppressive legislators that support its existence.

Section YY 51-1.0 of the Rent Stabilization law is a finding of fact and declaration of emergency that was enacted in 1969 (A similar passage using almost the exact same language can be found in the Rent Control Law at section 8602 of the Unconsolidated Laws). The section states that a housing emergency consisting of "an acute shortage of dwellings" exists in New York and that "unless residential rents and evictions continue to be regulated and controlled, disruptive practices and abnormal conditions will produce serious threats to public health, safety, and general welfare. . . ." That was in 1969. The administrative code has since been recodified and will become effective September 1, 1986. The pocket part to YY 51-1.0 contains additional new findings of fact. This latter version states that a housing emergency continues to exist necessitating "the intervention of federal, state, and local government in order to prevent speculative, unwarranted, and abnormal increases in rents. . . ." There was a "housing emergency" in 1969, and rent control and stabilization in 1969. There continues to be a "housing emergency" in 1986, and we still have rent control and stabilization in 1986. Rent control and stabilization have failed miserably, and we will continue to have a "housing emergency" so long as private property is subjugated to the whims of legislators who attempt to justify their actions by wrapping themselves in the emperor's clothes of "the public good." Just as the emperor was in reality naked, so in reality are the rent control and stabilization laws anything but in "the public good."

I was prompted to write this article by the city

elections held last fall. As the campaign heated up, candidates attacked each other by accusing their opponents of being "evil landlords." "John Smith is a landlord, who even served some tenants with an eviction notice!" the announcer would ominously state—as if it were the ultimate evil to evict a tenant, no matter how destructive or months behind in rent a tenant could be. Of course the object of this scandalous slur would then call a press conference to prove his innocence by denying that he was a landlord. "My opponent's ads are full of lies, I own no property!" the candidate would triumphantly thunder—as if this was the "high moral ground" he needed to occupy to win the election. This is what rent control and stabilization have done—they have made us ashamed to own property.

I stated earlier that the rent control and stabilization laws are a direct threat to individual rights, and I further assert that these laws are repugnant to the Constitution and the rights it was created to protect. I am not such a skilled epistemologist as to singularly define the concept of a right, and this article is not attempting to answer the question of "what are rights?" However, it has been stated with much clarity that "the right to life is the source of all rights." How could you exercise a right if your existence depended on the whim of another? The question then arises as how to implement the rights that your existence entitles you to. Again, others have stated, and I accept and assert that without property rights, no other rights are possible. If one has no rights to the fruits of his labor—be it a building built or a song composed, then one is merely producing for the benefits of others and not himself. One who labors to produce so that others can enjoy the profits of his labor is a slave. This is precisely what the rent control and stabilization laws have created. They have created a system whereby the owners of six-family or larger buildings must work to upkeep the building, but surrender the potential profits of the building so as to benefit others. If you wonder why you cannot find affordable housing in

New York, it is because rather than surrender to the irrationality of rent control or stabilization, owners have instead chosen either to convert their buildings to co-ops and condos, or sell them to wealthy realtors who can afford to buy the tenants out, destroy the building, and construct luxury skyscrapers.

That the framers of the Constitution correctly viewed government as the greatest potential threat to property rights—and therefore freedom, is evident. The Declaration of Independence states that "governments are instituted among men, deriving their just powers from the consent of the governed. . . ." This provided the foundation for a government of limited powers enumerated by the constitution. That type of government could have never gotten away with the plundering of private property and rights that our government of today does. However, when Chief Justice Marshall in *McCulloch v. Maryland* stated "Let the end be legitimate. . . and all means appropriate and adapted to that end that are not prohibited, are constitutional," he succeeded in changing the form of American government. Government could now act so long as its acts were not prohibited, whereas before *McCulloch* government could not act, unless authorized to do so.

Because of the rationale and theory enumerated in *McCulloch*, rent control and stabilization can exist. Because of *McCulloch* oppressive legislators need not address the question "by what authority do you impose your control on MY property?" Never mind that as owners of private property we take risks, we pay the taxes, we pay the cost of upkeep, and we pay the mortgage—they tell us how much we can charge as rental for OUR PRIVATE PROPERTY.

Governmental control or governmental ownership of private property is a fact inconsistent with a free society. We must not be blinded by the deceptive cloak of "the public good." The "public good" has become a pathetic and tiresome excuse for every infringement of individual rights. Never has it been more clear than in the area of housing that actions taken for "the public good" are infringements of individual rights, and are indeed responsible for creating the conditions the acts were intended to remedy.

Over-Zealous Supreme Court Does Liberals' Dirty Work

by Edward M. Jordan

A national debate rages over constitutional interpretation and amidst accusations of "politicizing" the Supreme Court, the time is ripe for a discussion of the nature of federalism.

The powers of Congress are set forth quite specifically in Article I §8 of the United States Constitution, with all others delegated to the state governments, pursuant to the 10th Amendment. The arrangement was rightly assumed to best protect the interests of the citizens of this nation, for a state government would be best suited to understand and respond to the needs of its citizens, while the national government was envisioned as providing merely for an orderly and effective means of interstate commerce and relations, the national defense, and the conduct of foreign policy.

The national government was never intended to provide for the needs of all Americans, but merely to act to safeguard a particular political environment best allowing the people of this country to satisfy their needs on their own. The state governments would, in turn, fashion the laws of daily existence best reflecting the needs and beliefs of their constituents

within the guidelines of the 10th Amendment and §1 of the 14th Amendment. Even Chief Justice Marshall, in his drive for the expansion of federal powers through a broad interpretation of the "necessary and proper clause" of Article I §8, candidly admitted that "no political dreamer was ever wild enough to think of breaking down the lines which separate the states, and of compounding the American people into one common mass. Of consequence, when they act, they act in their states." Publius, writing in the *Federalist*, urging ratification of the Constitution, attempted to dispel the fears of many by explaining that the powers of Congress were "few and defined," while the powers of the States were "numerous and indefinite."

The Framers of the Constitution were well aware of the dangers to federalism presented by the evils of "factional politics," and took great pains to provide a political order which would discourage the use of the legislature for the imposition of "special interests" upon the rest of the community. With the rule of law in the hands of a legislature seeking to impose its political agenda upon the remainder of the population, the rule of law loses

the respect upon which the consent of the people is reliant.

Unlimited Power

Today, however, the national government has virtually unlimited powers. The Framers' original intention was for a political order in which the power was vested in the people and in the states, but limited powers delegated to Congress by Article I, §8. Today, however, more than half of all congressional appropriations go towards the execution of powers not specifically enumerated in Article I, §8. Tax money goes instead to enforcing powers and programs created by a generation of liberal Big Spenders anxious to expand the Constitution's interpretation to facilitate the realization of their socialist agenda. Prime examples of the removal of effective limits on federal power are the level of our federal spending and oppressive tax rates.

It is some consolation that the individual Congressmen who have succeeded to some extent in imposing their socialist agenda on the populace over the past generation are held accountable to their constituents on Election Day. This cannot be said, however, for the nine un-elected Justices of the Supreme Court, answerable to nobody, who have implemented radical changes in our way of life at the expense of American self-government. Publius, commenting on the nature of the Court, found it to be the

least dangerous of the three branches of government, as it had "neither force nor will, merely judgement."

More recently, however, the Court has acquired a force and will of its own. It has, in a sense, done most of the dirty work of the liberal agenda in the name of "expanding" constitutional rights. It has struck down democratically enacted legislation. Or it has simply dictated policy in areas of police procedure, aid to private schools, pornography, public-school prayer, and abortion. In *Roe v. Wade*, for example, the Court struck down as unconstitutional the democratically determined abortion laws of all fifty states. The pro-life movement, which until then had generally prevailed through the normal legislative process, is now accused of trying to impose their views upon the nation.

Roe v. Wade is merely one example, albeit the most controversial, of the Supreme Court forcing the states to jump through a Federal hoop. The 10th Amendment flatly guarantees state sovereignty in all areas not delegated to Congress, or prohibited to the States. The Supreme Court, conceived originally as a check on federal expansion, has instead become an instrument of Big Government, thereby weakening the intended federal structure of American politics.

The usual ploy is to say that the Constitution is a "living" document, thereby providing for an "expansion" of our rights and a "broadening" of our protections, while at the same time

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EDITORIAL

OP ED

City Scandal: State Senate Blocks Reforms

The Donald Manes story unravels, layer after layer as a true Watergate-type scandal should. The slow and tortuous process of revealing these scandals is a mixed blessing; it is fortunate that they see the light of day, but the press tends to convict those involved immediately and the public tires of the entire mess long before the truth is adjudicated. We think Mr. Manes has some explaining to do, but we'd like to give him the benefit of the doubt for now, his being a BLS alumnus and all.

What is most troubling to us is that twelve years after Watergate and so many years after the fall from grace of Manhattan's Boss Tweed, New York State and New York City have failed to adopt political reform measures that make the kind of influence peddling now alleged in the City difficult, or even impossible, to pull off. New York was only a symbolic participant in the post-Watergate reform wave that dominated state legislatures in the mid-seventies. The two most effective reform measures adopted during that period were the Freedom of Information and Open Meetings Laws. Two other statutes, the Election Law and the Public Officer's Law, have government ethics sections which are drafted in such a vague, ambiguous and permissive fashion that the old quote from Washington Plunkitt, a Tammany Hall district leader, still rings true: "With the grand opportunities all around for a man with political pull, there's no excuse for stealin' a cent."

Under those lax statutes, individuals with a demonstrable financial interest in pending legislation or administrative decisions need not resort to bribery; they may legally send checks up to \$50,000 to the campaign committees of statewide elected officials, for instance. Officials, such as the powerful state legislative committee chairmen, are allowed to operate private businesses. If they are attorneys, as many are, they may accept fees from "clients" who have a financial stake in legislation pending before their committees. County or Borough political party chiefs are allowed to do business with and receive contracts from the State or City. Sometimes, as in the case of Stanley Friedman of The Bronx, these multimillion dollar contracts are awarded without competitive bidding.

The case for comprehensive political reform in our state governmental ethics statutes is persuasive. Several reforms have been tested in many other states and are proven winners. Here is a partial list:

○ *Campaign Finance Reform*: Limit all individual contributions to \$2,500. The fed-

eral statute limits them to \$1,000 and this may be too low. A partial public financing system, like the ones operating for Presidential and New Jersey gubernatorial races, should be tried here. This would also make way for a constitutionally permissible spending limit.

○ *Conflict of Interests*: No public official or party chairman should be permitted to financially benefit from his or her official status.

○ *Full-Time Officials*: The old concept of citizen-officials is obsolete. We pay our elected officials full-time salaries; why do we consider many of them, like state legislators or city councilmen, part-time? Make them full-time and restrict other sources of income.

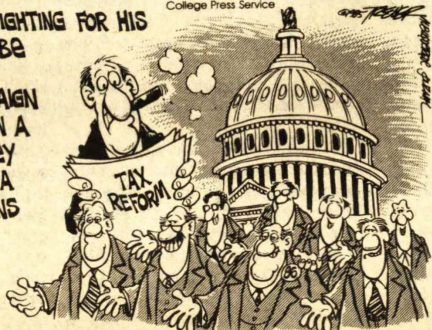
○ *Financial Disclosure*: All top public officials and party chairs should be required to disclose their major holdings, assets, corporate directorships and other significant sources of income. Why was Stanley Friedman's \$23 million City contract a public secret until the Mayor, feeling the heat, cancelled the contract?

○ *State Ethics Commission*: A truly independent, bi-partisan commission should be set up to monitor and enforce the ethics laws. Support for this, and the other reforms, by Dean Trager, Chairman of the State Investigations Commission, would help pass these measures.

○ *Initiative and Referendum*: When the Legislature or Council refuses to touch these political hot potatoes the people should be able to pass reform measures by taking a vote. It's pure democracy, and the way real political reform has been accomplished in many states.

All of these ideas have been, at one time or another, proposed at the State Capitol. Most of them (with the exception of the referendum idea) have been passed by the State Assembly, only to be roadblocked by the institutional scapegoat, the State Senate. The Senate Chamber, dominated by aging, conservative Republicans, is a throwback to an era long past, and has refused to even consider any of these populist reforms. We think it's about time the Legislature and Council brought our ethics laws into the twentieth century. The thunder and lightning of the current scandals ought to jolt them out of their lengthy sleep. The time to clean house is now, otherwise the same house may have a new occupant come November.

A LONE LOBBYIST FIGHTING FOR HIS DEDUCTION... A TRIBE OF CONGRESSMEN WAITING FOR CAMPAIGN CONTRIBUTIONS... IN A LAND WHERE MONEY TALKS, THEY FACE A BILL THAT THREATENS TO CHANGE THE RULES....



**MAD PACS
BEYOND BLUNDERDOME**

THE YEAR IN REAGANISMS

Edited by Paul Slansky

"Frank Sinatra has a recommendation. Instead of tossing the coin, what would have been a lot better—you'd have had me outdoors throwing out the ball. I would have thrown it, a little artwork of maybe a ball going across a map, and out there, one of them catching a ball, as if it's gone all the way across the United States. How about that?" —Six hours after being inaugurated for his second term, waiting to go on television to flip a coin to start Super Bowl XIX (Jan. 20, 1985).

"You might be interested to know that the Scriptures are on our side in this." —Citing Luke 14:31 to support his arms build-up (Feb. 4).

"I don't think I've ever used the Bible to further political ends." —Denying he'd used the Scriptures to defend his military budget (Feb. 21).

"I just had a verbal message delivered to me from Pope John Paul, urging us to continue our efforts in Central America." —Trying to win support for aid to the *contras*, citing encouragement from the Pope. The Vatican later denied that John Paul had offered any advice on the matter (April 16).

"And I felt that since the German people—and very few are alive that remember even the war, and certainly none of them who were adults and participating in any way—and they have a feeling, and a guilt feeling that's been imposed upon them, and I just think it's unnecessary." —Explaining why he had no intention of visiting a concentration camp site during his stay in West Germany (March 21).

"They were victims, just as surely as the victims in the concentration camps." —Justifying his decision to lay a wreath at a cemetery in Bitburg where Nazi SS troopers are buried (April 18).

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"Yes, I know all the bad things that happened in that war. I was in uniform for four years myself." —On the Nazi atrocities. Reagan was in Hollywood making Army training films throughout World War II (April 29).

"One of the many who wrote me about this visit was a young woman who had recently been bat mitzvahed. She urged me to lay the wreath at Bitburg cemetery in honor of the future of Germany, and that is what we have done." —Citing a letter from 13-year-old Beth Flom, who had, in fact, urged him *not* to visit the cemetery. (May 5).

"I violated all the rules. I picked at it and I squeeze it and so forth, and messed myself up a little bit. . . And then my little friend that I had played with began to come back." —Tracing the history of his cancerous nose pimple (Aug. 5).

"Wow! You know, I may turn my head here to Don Regan again. . . For me to try and off the top of my head bring up some other benefits—now, wait a minute." —On being asked by a Mooresville, Ind., businessman how his plan would simplify tax laws (June 19).

"They are the moral equivalent of our Founding Fathers." —Describing the rebel forces in Nicaragua (March 1).

"More than twice as many people are fighting in the field right now against the Nicaraguan communist regime as fought against Somoza." —Trying hard to gain support for aid to the contras (March 18).

"Nearly three times as many men are fighting the communists as the Sandinistas had fighting Somoza." (March 19).

"I'm not a scientist enough to know what they would take to make them that way." —Refusing to speculate on the possibility of defensive SDI weapons being used offensively (Sept. 17).

"I'm not a lawyer, and I don't intend to get into too many legal areas where I might be caught short." —Refusing to speculate on which nation the Achille Lauro hijackers would be tried in (Oct. 11).

"I'm not medical. I'm not a lawyer and I'm not medical, either." —Trying to avoid discussing the

recurrence of skin cancer on his nose (Oct. 11).

"I'm no linguist, but I have been told that in the Russian language there isn't even a word for freedom." —In a BBC interview. The Russian word for freedom is *svoboda* (Oct. 29).



"Imagine if people in our nation could see the Bolshoi Ballet again, while Soviet children could see American plays and hear groups like the Beach Boys. And how about Soviet children watching 'Sesame Street'?" —Proposing cultural exchange (Nov. 14).

"Dog heaven—688 acres—won't have a leash on her." —Responding to reporters who tried to ask him about his tax-reform and farm bills (Nov. 26).

"Boy, after seeing 'Rambo' last night, I know what to do the next time this happens." —Waiting to go on television to announce the release of the "WA hostages." (June 30).

"You've got that whole expanse of ocean—it isn't as if you were looking at the ocean through a little frame, and now somebody put something in the way. And I once said to people that were complaining, I said, 'You know, we've got a lot of freighters, these liberty freighters, up in mothballs. Why don't we bring down some and anchor them between the shore and the oil derrick? And then the people would see a ship, and they wouldn't find anything wrong with that at all.'" —On how to solve the problem of unsightly oil derricks off the Santa Barbara coast (Feb. 13).

"Well, it gives me great pleasure to welcome Prime Minister Lee Kuan Yew and Mrs. Yew to Singapore." —Welcoming Singapore Prime Minister Lee Kuan Yew and his wife, Mrs. Lee, to Washington (Oct. 8).

"They have eliminated the segregation that we had in our own country, the type of thing where hotels and restaurants and places of entertainment and so forth were segregated—that has all been eliminated." —On South Africa (Aug. 24).

"In December, when I looked north from the White House, I would see a huge menorah celebrating the Passover season in Lafayette Park." —On religion and American life. (Feb. 4).

"We would not deploy. . . until we sit down with the other nations of the world, and those that have nuclear arsenals, and see if we cannot come to an agreement on which there will be deployment only if there is elimination of nuclear weapons." —Apparently telling Soviet journalists that Moscow would ultimately decide whether or not the United States deploys a space-weapons system (Oct. 31).

"Nuclear war would be the greatest tragedy, I think, ever experienced by mankind in the history of mankind." —Reagan (March 6).

Paul Slansky is a New York writer specializing in President Reagan.

LETTERS

Tools of the Trade

Dear Editors:

I offer some more observations of life and death at Brooklyn Law School:

Although the new food service is excellent in many ways, I think the concession should have been awarded to one of the Indian restaurants on East Sixth Street in the Village. Vindaloo for breakfast—yum!

The only people who talk in the elevators are those people who are conversing in a foreign language—and they are usually talking about you.

The administration should present an award to the "Brownoser of the Year."

There are a few potatohead students whose hobby it is to hang around the Wailing Wall on the fourth floor and do a statistical analysis of last semester's grades (you tools know who you are).

Meese's Original Intention Draws Reaction

In response to Attorney General Edwin Meese's address to the American Bar Association, I feel I must begin by saying that I am an advocate of judicial restraint. I fear however, that the cause will not gain much ground if it's handled the way Mr. Meese handled it in his address.

Mr. Meese makes the fatal debating error of not countering the specific arguments in favor of judicial activism. His address starts out well enough with his explanation that he recognizes the Supreme Court's role as interpreter of the Constitution with the Hamilton

A useful acronym for third year students is ALAIP: As Long As I Pass.

BLS alumni are real cut-ups; however, they are not good golfers since they slice when they drive (keep your head down, Donny!).

If our creator wanted us to walk up stairs, s/he would not have given us elevators.

One can argue that professors who use the feminine pronoun are sexists.

I propose that this law school be renamed. The connotations that accompany the name Brooklyn Law School are downright ugly.

I thank you for providing me with this opportunity to share my thoughts. Please join me in the next issue when I address the subject of "Lawyers, Guns, and Money."

Sincerely,
Richard L. Garelick

quote, "laws are dead letter without the courts to expound and define their true meaning." Mr. Meese soon falls into the logical trap of contradicting himself by saying, "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. . . ." The Attorney General tries to set up an argument in support of some undefined middle ground by condemning the two extremes.

Mr. Meese continues to quote Hamilton in his address. Repeating

that, "political power is of an encroaching nature," he goes on to say, "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." This argument fails to recognize the "encroaching nature" of cultural change and technological advancement. If the Court is justified in controlling subtle, slow changes in government, why isn't it justified in controlling the same type of change in our nation's customs and perceptions of rights and liberties? If the Court isn't justified in such control, who is? The adaption of our Constitution to the calling of the day is up to the legislature and the courts equally. If Mr. Meese is appealing for less judicial activism he must at the same time call for more legislative action. Without the two, the Constitution truly becomes "dead letter" and useless in a progressive society which finds itself in the middle of the space age.

Meese goes on to criticize the "doctrine of incorporation" that has applied the Bill of Rights to the States. He cites *Barron v. Baltimore* as a primary case where incorporation was denied by the Supreme Court. He says that "nothing can be done to shore up the intellectually shaky foundation upon which the doctrine rests." This completely ignores the "intellectually shaky foundation" that the *Barron* case was itself based on. The case hinged on the legal fiction that the Federal Government and the States were

separate and sovereign entities. The fiction becomes readily transparent when one asks if the Bill of Rights does not apply to the citizens of the individual states to whom does it apply? The "doctrine of incorporation" is a logical necessity.

The Attorney General's request for a "jurisprudence of original intention" is easily criticized by the advocates of a "free reign" for the Supreme Court. The response to those who claim flexible, judicial interpretation is necessary to keep the Constitution living should be: See your legislator. If Congress would exercise its lawmaking power more often on important issues, the system would operate as intended. The Court would simply affirm or deny the Constitutionality of the law in question and would be bound by Constitutional amendments that had been ratified.

Finally, I must comment on some of the statements made by Mr. Meese that I feel were unnecessary. First, his connection between "pornography and its attendant costs," with sexual and child abuse is tenuous at best, since the definition of pornography is itself undetermined and the correlation between the two highly speculative. This type of statement has no place in an address against interpretive governmental agencies. Second, Meese's vow to "fight terrorism here and abroad" in this address was inappropriate since our founding fathers themselves engaged in acts which might be classified as terrorist acts to create this nation.

Lee Knife

PERSPECTIVES: Critical Legal Studies

Radicals In The Law Schools

by Terry Eastland

The following article appeared in the Wall Street Journal on Friday, January 10, 1986.

A dozen years ago, while a student at Oxford University, I listened to a fellow American read a dense paper that was intelligible in one respect only—its obviously left-wing complaint against the whole of contemporary American society. When the student had finished, a professor asked whether there was anything in the paper that Karl Marx might have disagreed with. The student reflected only a brief moment before answering:

"No, there really isn't."

This student was thinking about going to law school, but decided not to. He shared the view of the radicals of his generation—that law school turned out "legal tools" for the "establishment." His interest was in effecting "social change" of a Marxist nature.

I am reminded of him whenever I read or hear about Critical Legal Studies. For had he gone to law school, he might have found one congenial to his politics, where he could be among the armies of CLS.

What is CLS? It is a political movement to be found in many of the nation's top law schools, and is particularly strong at Harvard and Stanford. Harvard Law Professor Duncan Kennedy, a CLS "founding father," has called it a "ragtag band of leftover '60s people and young people with nostalgia for the great events of 15 years ago." About a thousand such people now attend its annual conference.

An introduction to a bibliography of CLS literature published in a recent Yale Law Journal says that the movement is "generally concerned with the relationship of legal scholarship and practice to the struggle to create a more humane, egalitarian and democratic society."

"Struggle" is the critical word. Just as it was then for the Oxford man, so too, today the necessity for CLS members is to complain about and tear down the existing society. For example, CLS writers have argued that collective bargaining legitimates employer domination of workers and that anti-discrimination laws legitimate institutional racism.

Ironic Charges

The CLS struggle is attempted through not only the often-thick prose of articles and books but also the actions of the most committed. Prof. Kennedy has urged law students to "organize disruptive opposition to the whole style and tone of the classroom." And thanks to bloc-voting by Harvard's CLS professors on faculty appointments, the school is now embroiled in bitter conflict; well-respected pro-

example, can be unclear. Gradually, though, for many theorists, the law began to look more empty.

The past several decades have witnessed a continuing effort to develop a substitute for traditional jurisprudence. This has been a project of legal thinkers; it is a major reason that the past few decades have witnessed such an unprecedented outpouring of books on jurisprudence.

CLS represents the most radical of these responses. Claiming to be heirs to the Realists, CLS theorists go beyond them to conclude, in essence, that there is no such thing as a rule of law—that it is an impossibility. As one writer says, "Rules of law do not have constraining force, because the rules mean only what those interpreting them want them to mean."

CLS's antipathy to law indicates the depth of the movement's hostility to the premises of liberal democracy. CLS is, above all, "critical" of the very foundations of the U.S. republic. While CLS writers presumably think no better of the judiciary than the other two branches, all being equally "oppressive," a judge revolutionized by CLS ideas would do as he pleased in order to effect that "more humane, egalitarian and democratic society." CLS writer Mark Tushnet of Georgetown Law School said in a 1981 law journal article that if he were on the Supreme Court, he would promote "socialism."

From the age of Legal Realism to that of Critical Legal Studies, we have thus seen a movement from skepticism to nihilism, from doubts about the rule of law to complete rejection of it, from attempts to fashion a new jurisprudence suitable for a democracy to attacks on democracy itself. Remarkably, only confidence in the ability of judges seems to have increased among intellectuals during this period.

CLS is symptomatic of the crisis in our law that has led to one of the characteristics of modern times, the increasing assumption of power by the most oligarchic part of government. Movements like CLS are bound to be with us as long as legal education tends to encourage the view that the law is empty at its core.

While the works of the Legal Realists gave support to this idea, it is also possible to learn from their labor and conclude not that the law is unknowable, not that judging is impossible, but that it takes a great deal of hard work to be a good judge. In a government that derives its powers from the people, a judge must do his best to determine the will of the people as expressed through their various lawmakers, who include those who wrote the Constitution two centuries ago, as well as those on the city council that passed an ordinance two days ago. This meaning may not always be obvious, and applications of

fessors, such as former U.S. Deputy Solicitor General Paul Bator, have retired or left for other schools, and Harvard has been unable in recent years to woo successfully from other institutions senior academics of outstanding reputation. There is grouching among the alumni.

The presence of CLS proponents on law faculties has provoked controversy among teachers of law generally. Dean Paul D. Carrington of the Duke University School of Law wrote in 1984 that CLS advocates sit in the wrong pew and should "seek a place elsewhere in the academy." Mr. Carrington has since been accused by some CLS folk of threatening academic freedom. He has a "compulsion toward thought control," contended Wythe Holt, a Marxist historian at the University of Alabama, in a letter quoted in the National Law Journal. In light of Prof. Kennedy's urgings for "disruption," such charges of trampling on academic freedom seem rather ironic.

For all the controversy, CLS probably will never attract more than a small minority of the people who are professionally interested in law. CLS writings, highly abstract and virtually unintelligible, simply will not interest most law students. Even so, the movement is worth noting for what it says about legal education as well as the law itself.

Until this century the jurisprudence prevailing since the U.S. founding insisted on a core of principles in the law that were knowable and could be applied in specific cases by judges. In the first decades of this century dissents from this view became more and more frequent. By the 1930s, the idea of the judge as an interpreter of established law had been almost totally rejected. As a result of the work of the Legal Realists and others, a new perspective developed—that the law is not found by judges, but is made by their interpretations of constitutions and statutes.

There was some truth in this—the meaning and application of some parts of the Constitution, for 14 Justinian • March, 1986

The Politics Of Mischaracterization

by Gary Minda
Professor of Law
Brooklyn Law School

In a recent editorial appearing in the January 10, 1986 issue of the Wall Street Journal, Terry Eastland suggested that so-called radicals within the Critical Legal Studies movement were a corrosive force in the law schools in that they believe "that there is no such thing as a rule of law—that it is an impossibility." According to Mr. Eastland, "CLS's antipathy to law indicates the depth of the movement's hostility to the premises of liberal democracy." He concluded that "CLS is above all, critical of the very foundations of the U.S. Republic." As Mr. Eastland acknowledged, this is a charge which other legal academics have raised in their criticism of CLS. Dean Paul D. Carrington of Duke University School of Law, for example, has written in a recent article in the Journal of Legal Education that CLS law teachers who "embrace nihilism and its lessson that who decides is everything, and principle nothing but cosmetic [have] an ethical duty to depart the law school, perhaps to seek a place elsewhere in the academy."

This does not mean that law professors should indoctrinate their students by brainwashing them or otherwise forcing them to accept the professor's values or politics. As Duncan Kennedy of Harvard Law School has recently written in the Nova Law Journal "[t]he teacher's role is to get the truth out as best he or she can do it, and let the chips fall where they may when the students get around to choosing what to believe and what to do." It seems to me that truth and honesty are the best antidote for the dangers of indoctrination. Indoctrination is more likely to be a problem with forms of teaching which fail to critically examine or question the implicit assumptions and values assumed within existing legal doctrine and theory. From our perspective, it is the traditional forms of legal pedagogy and training which are creating nihilistic attitudes to the law and its ideals. The ethical problems created by the lawyers in the Watergate episode were, after all, upon us long before the Critical Legal Studies movement came on the scene.

"The teacher's role is to get the truth out as best he or she can do it, and let the chips fall where they may when the students get around to choosing what to believe and what to do."

Mr. Eastland's editorial, like Dean Carrington's article, seriously mischaracterize and misrepresent the true nature of the intellectual project of the Critical Legal Studies movement. People like Mr. Eastland and Dean Carrington are simply wrong in suggesting that CLS theorists are opposed to the "Rule of Law." On the contrary, CLS theorists believe that there is such a thing as the "Rule of Law." It is the underlying "ideals" and "values" which are produced and reflected within particular legal conceptions of law which they contest. CLS scholars thus seek to expose how particular legal conceptions of the "rules of law" work to establish unjust, hierarchical structures of domination within society.

Indeed, it is the belief in the "ideal of Law" which explains why CLS theorists reject particular legal conceptions of law which are found to conflict with the basic ideals of Democracy and Justice. Certainly, professionalism must allow law teachers to criticize and argue against particular "Rules of Law" that are found to be illogical, incoherent or unjust. A law professor teaching constitutional law, for example, would presumably be justified in exposing students to the injustices of the racist premise of Jim Crow discrimination in public education legalized under the Rule of Law established by the Supreme Court in *Plessey v. Ferguson*. If that is permitted, then shouldn't law professors be allowed to expose how certain conceptions of contracts, property, torts or antitrust serve to legitimate similar inequities or injustices within society?

A commitment to the ideals of law should require more, not less, discussion about how we can learn to actually realize the ideals of a truly democratic society within our legal system. As Gerald Frug of Harvard University Law School has argued in a recent article in the Harvard Law Review, "[w]hat we need to discuss is our different conceptions of what our profession and our nation should become; we need to build ways of talking that allow us—all of us—to argue about our future while still making practical decisions about alternative courses of action." If Mr. Eastland and Dean Carrington are taken to mean that only those who believe in a particular legal conception of law are qualified to be law teachers then alternative voices would be silenced and the ultimate power and authority to define truth would be given to a chosen few.

This then raises, in my opinion, the dangers of the "Politics of Mischaracterization" now practiced by those who attack the Critical Legal Studies movement. In misrepresenting that CLS theorists don't believe in the "Law," Mr. Eastland, and people like him, seek to stifle intellectual inquiry and debate about the legitimacy of particular conceptions of law and legal education. The "Politics of Mischaracterization" should be understood for what it is—a rhetorical strategy utilized to shift the debate within the profession about the substantive content of the law and legal education to a debate about the necessity of protecting law and its institutions from nonbelievers.

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Mr. Eastland, director of public affairs at the Justice Department, writes often on legal affairs. Reprinted by permission of the Wall Street Journal. ©Dow Jones & Co., Inc. 1986. All rights reserved.

Jordan's Federalism continued

achieving a virtual redistribution of wealth in providing these protections. Frederic Bastiat once provided a rule by which one could tell whether governmental power was being abused: the use of public means to do that which would be criminal to do by private means. Stealing from the rich to give to the poor was fashionable only in Sherwood Forest.

Publius' regard for the "violence of the faction" as a "dangerous vice" rings loud and clear today. The original constitutional plan was designed to safeguard against the "passions" and "interests" of the factions. Since F.D.R., however, the Supreme Court has succeeded in perverting the judiciary in order to impose its will on the majority. As many keystones of the liberal agenda could not have been realized through the democratic legislative process, the court has "discovered" a new array of constitutional "values" which it has applied with

fervor.

In his "Notes for the Reactionary of Tomorrow," Joseph Sobran observes that "the court 'discovered' these values in the Constitution at just the same time the organs of liberal propaganda were pushing them, and those Justices who dominated the Court at the peak of its liberalism—William O. Douglas, Hugo Black, William Brennan, Thurgood Marshall—were also, in their personal lives, passionate advocates of liberal causes. They were promoting their own policy preferences when they pretended to be reading the Constitution, and they got away with it. Their bad history and bad logic have been copiously exposed; their bad legacy remains in the body of constitutional law, and we are left to cope with it as we may."

One more time now, with feeling... who is it that is trying to politicize the Supreme Court?

Study: More Minority And Women Judges Appointed Than Elected

The success of women and minorities in achieving judicial office depends in large measure upon the method of selection according to a study released in late December by the Fund for Modern Courts. A higher percentage of women and minorities were chosen through an appointive process, either Executive Appointment (17.9%) or Merit Selection (17.1%), than any elective system, whether Judicial Election (11.7%), Partisan Election (11.1%), Nonpartisan Election (9.4%) or Legislative Election (6.9%).

Titled "The Success of Women and Minorities in Achieving Judicial Office: The Selection Process," the 69-page report, which has been two years in preparation, was produced by the Fund for Modern Courts, a nonpartisan, nonprofit, court reform organization concerned with the quality and administration of justice in New York State.

The study found that as of September 1, 1985, there were 12,093 full-time, law-trained judges of the state courts and 753 federal court judges and that women and minorities constitute 12.6 percent of the judges of the state courts, and 17.4 percent of the federal judiciary.

There are 873 women state court judges (7.2%), including 23 women on state courts of last resort (6.8% of all judges of courts of last resort) and 46 women judges on state intermediate appellate courts (6.5% of intermediate appellate judges); and there are 56 women federal judges (7.4%).

There are 465 black state court judges (3.8%), including 9 black judges on state high courts (2.7%) and 33 black judges (4.7%) on intermediate appellate courts; and

there are 53 black federal judges (7%).

In addition, the survey found 150 state court judges of Hispanic origin (1.2%) and 24 Hispanic federal judges (3.1%). Pacific Islander/Asians comprise 77 judges of the state courts (.6%) and 3 federal court judges (.4%); there are 3 Native American or Native Alaskans on the state courts.

The number of minorities and women on the bench must increase if the courts are to reflect the citizens they serve.

The 50 state survey found that the states vary tremendously in the percentage of women and minority judges—from Hawaii (78.7%) and New Mexico (37.5%) to New Hampshire (2.7%) and South Dakota (2.5%).

The report further found that presidents, governors and mayors varied greatly in the percentage of women and minorities they appointed to the judiciary—from Mayor Edward I. Koch of New York City (37.5%) and former Governor Edmund G. (Jerry) Brown, Jr. of California (36%) to President Lyndon B. Johnson (7.9%) and President Richard M. Nixon (4.4%).

"If the courts of the United States are to reflect the citizens they serve, then qualified women and minority group members must come to the bench in increasing numbers," said Dr. M.L. Henry, Jr., the Fund's Executive Director. "And the evidence of this study is clear—women and minorities have a better chance of attaining judgeships in state courts through an appointive process than through an elective process."

The Missing Link

For second and third year students, yet another semester has passed. For first years, these months have been the test of Job. Plunged into endless depths of contracts, torts and civil procedure, first semester has been the portal to a black, cavernous hole. If, indeed, we are in a deep, dark pit, many first years have wondered, is there light at the end of the tunnel?

In fact, there is no light. For the path to illumination is either indiscernible or the road not taken. Somewhere there is a missing link, for the students are not responding correctly to the teaching; and it is the duty of the administration to discover the source of this hiatus and to amend the situation.

Rumors have it that this is the worst first year class to have been given the opportunity to pay second semester tuition costs in 22 years. And yet everyone has been given this opportunity. In effect, the process which, in most law schools, is a "weeding out" is in BLS more of a hazing out fiasco.

The administration has made it unequivocally clear to all first years that even if they were to write their exams in Swahili, about the theory of relativity or last summer's vacation, so long as they threw in a couple of UCC's and name-dropped Palsgraff, they could be graduated on to Property and Con Law. Ultimately, the only penalty for what is deemed illiteracy has been an anonymous, en masse, 60 second humiliation of hearing last semester's profs declare that you have never really mastered "See Spot Run."

The fault is not that of the faculty, for there are a number of extremely dynamic and motivated professors who are excited about what they teach. Nor is it the fault of the students, for, in response to the professors' zeal, many are receptive toward the subject matter of their classes. Yet the grades come out and the facts remain: Both sides were playing ball, but they wound up on separate fields.

Everyone is quick to utter "tua culpa" and leave it at that. The administration takes a proverbial back seat and the bottom line is that the profs are so disgusted and the students so devastated and demoralized that the all-pervasive feeling is one of hopelessness and apathy. This feeling hangs over the law school like a heavy cumulus, laden with self-defeat and acquiescence.

Where does this leave the BLS students of tomorrow? Three years and 2 or 3 bar exams later, many of those who have made it through the line for caps and gowns are doing what some call practicing and others term calamity. They have memorized the requisite rules and statutes, yet allegedly, they still cannot spell "foreseeability."

Several years ago, NYU gave a course to first year law students in remedial English. A wave of shock and self-righteousness reverberated through the halls of Justice. How degrading, how absurd,—"quo usque tandem abutere patientia nostra?"

Perhaps such drastic measures are uncalled for. Nevertheless, there is, in the very least, a communication problem. BLS students are capable of thinking, writing and speaking in coherent English. Why then do many faculty members perceive otherwise? Why do the exams indicate the contrary? Something must be done in the way of preparing first year students to take final exams and to assimilate classroom material with an understanding of larger concepts and preparation for finals. And it is the burden (and failure) of the administration to facilitate this means to a clearly desirable and necessary end.

Something, then, is definitely rotten in the state of Denmark. For the sake of humanity, as well as curtailing legal malpractice premia, it is evident that it is the duty of the administration to cure this intellectual malady.

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REAGAN TO STUDENTS: DROP DEAD

Triple Whammy For Student Aid Under Reagan

By Charles B. Saunders, Jr.

President Reagan's budget for higher education would impose major reductions on student aid programs with a "triple-whammy":

1. Proposed changes in the Guaranteed Student Loan Program threaten the collapse of the entire program, which accounts for 62 percent of total federal financial assistance. Banks may pull out of the program if the special allowance is reduced and the in-school interest subsidy is eliminated as the budget proposes. The current program, costing \$3 billion, supports over \$9 billion in annual loan volume for over 3 million students.

2. Some 1,186,000 students would be dropped from eligibility for other programs already appropriated for FY 86 and scheduled for allotment this fall. These cuts would triple the losses already suffered by the initial sequestration under the Gramm-Rudman deficit reduction act. They would be accomplished by applying the reduction schedule which the law requires when Pell funding is insufficient, and by rescissions in other programs to eliminate State Student Incentive Grants and Direction Loan capital contributions and to reduce funding for Supplemental Grants and College Work-Study.

3. The third phase of the Administration's triple whammy against student aid programs, its FY 87 proposals, would take effect in Academic Year 1987-88. Further proposed restrictions of Pell Grant eligibility would cut funding by \$800 million below the amount needed to fund a \$2,100 maximum, making it serve 816,000 fewer eligibles than the current program. Supplemental Grants and College Work-Study would be eliminated, and replaced by a new work/grant program which would provide 681,000 fewer awards and require institutions to provide 50 percent matching funds by 1990-91. The Direct Loan program would also be replaced by a new, unsubsidized and substantially higher-interest loan program (instead of 5 percent, T-bill rates plus 3 percent accrued and compounded in school and repaid for the life of the loan on an income contingent basis) which would serve an estimated 411,000 fewer students. With the repeal of SSIG, this would provide some two million fewer awards than the FY 86 appropriation.

The Administration's revised Guaranteed Loan Program would serve an estimated 3,251,000 borrowers (619,000 fewer than currently), who would pay interest at T-bill rates

Students' Futures Not A Top Priority

The President's FY 1987 budget reaffirms the Administration's lack of support for students across the country. The President's State of the Union presented a theme of "Back to the Future" with the solution for improving education as vouchers, prayers, and back to basics. USSA, representing students attending postsecondary institutions across the country, thinks the basic ingredient for ensuring access, choice, and opportunity for millions of current and future students is a commitment to prioritize and fund education programs.

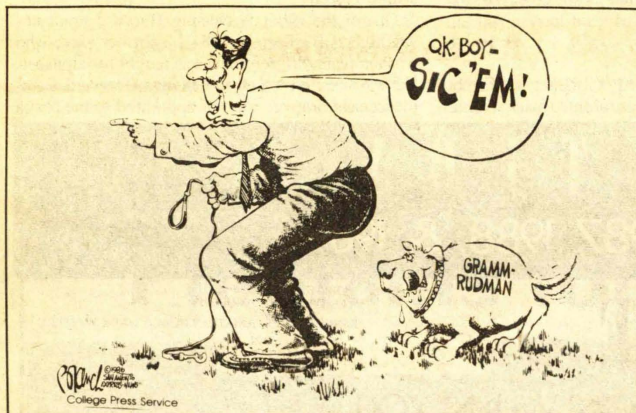
The budget calls for a \$3.2 billion cut from the FY 1986 approved Appropriation's bill—a combination of Gramm-Rudman sequesters, shortfalls, program cuts, new guidelines, and projections. The cuts are justified by the Department of Education as "minimal" since federal funds "only provide 7 percent of the total expenditures for education." It is that 7 percent that has represented the federal commitment to providing the opportunity for millions of students to benefit from a postsecondary education.

USSA asks why the investment in future generations of students is not a priority of this Administration. Under the guise of "balancing the budget," the FY 1987 budget appears very out of balance with massive increases in the defense budget and devastating cuts in the education budget. Students and the funding for domestic programs

have not caused this massive deficit, yet student aid programs are being disproportionately hit through both the Gramm-Rudman-Hollings FY 1986 sequester and the FY 1987 budget proposals.

Beneath the rhetoric of "shared risk" and "new initiatives" are proposals which drastically reduce the opportunities for millions of current and future students. The deficit reduction process is further increasing the debt of every potential Guaranteed Student Loan borrower by a combination of measures that will have a major impact on future decisions of every student. Secretary Bennett is concerned about the teacher shortage yet proposes a budget that will force students to forego certain professions, majors of study, and careers to re-pay their loan commitments.

This budget proposal has the potential to totally disrupt decisions of millions of current and future students—those students filling out student aid applications and admissions applications this month. The confusion, chaos, and real cuts under consideration send a clear message to students across the country that their future is not a top national priority. Cutting 290,000 students out of the Pell Grant program through a 10% cut for academic year 1986-87 and altering the definition for independent students to 23 and over, unless an orphan or ward of the court effective July 1986, is just the tip of the iceberg.



The reduction of Pell awards will be necessary because the Administration is not requesting a supplemental appropriation to make up a \$215 million funding shortfall and the \$154 million sequestered by Gramm-Rudman. This will drop 290,000 middle-income eligibles from the program and reduce awards for another 500,000 recipients with family income between \$12,000 and \$20,000. Rescissions would cut another 304,000 awards by eliminating the State Student Incentive Grant program; 202,000 awards by eliminating capital contributions to the Direct Loan program; 271,000 awards by cutting Supplemental Grants \$155 million; and 119,000 awards by cutting College Work-Study \$90 million from the original appropriation.

Another 2,100 awards to needy students would be lost by proposed rescissions to eliminate all graduate fellowship programs funded for this fall. Special services under the TRIO program, serving over 460,000 students, would be cut in half by another prop-

until the third year of repayment, with in-school interest accrued and compounded; T-bill rates plus 3 percent thereafter (currently borrowers are charged 8 percent, paid by the government while in school). Eligibility for unsubsidized PLUS loans would be expanded, increasing the number of borrowers participating by an estimated 343,000.

The FY 87 proposals also assume the elimination of all graduate fellowships, and the continuation of the TRIO program at half its current level.

In summary, the Administration's student aid proposals would eliminate or reduce awards for over three million students, whose only alternative source of assistance would be loans carrying a significantly higher burden of debt. Loan availability could be drastically curtailed, however, if the proposed GSL changes cause lenders to pull out and collapse the program.

Editor's Note: Since this article was submitted, Gramm-Rudman has been ruled unconstitutional by a Federal District Court.

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BLACK HISTORY MONTH

Afro Lawyers continued

Lucy Terry was a slave in Deerfield, Massachusetts in the early part of the 18th century. Terry was best known in her community for the tales she used to spin for the children. Many of them were based on stories she heard as a child in Africa.

Terry married a free black Abijah Prince who was able to raise enough money to buy his wife's freedom. When the Revolutionary War broke out, the couple, along with other pro-British sympathizers, moved out to the wilds of Vermont and founded the town of Sunderland. A dispute arose when her neighbor encroached upon her land and she took him to court. Dissatisfied with her attorney (who later became a governor of Vermont), she represented herself and won. Justice Chase noted that she was finer than any Vermont lawyer he had ever heard.

Lucy didn't let her oratorical skills dim however. When her son was refused admittance to Williams College because of his race, she argued for several hours before the board, but to no avail. It was little compensation that she was praised by all who heard her for her persuasive argument and delivery.

Her poems can be found in anthologies of early Afro-American literature.

Elleanor Eldridge

Elleanor Eldridge (1785-1845?) was one of seven daughters born to Robin Eldridge, an African kidnapped in his homeland and brought to America as a slave. Robin joined the Continental Army and helped America win her freedom from the British. He was given his freedom for his bravery.

In many parts of New England during the colonial period blacks had a separate legal system and cases between blacks were brought in their own forum. A "Governor" was chosen among the black males who ruled for a set period of time. Depending on the town the Governor and those he ruled were either slave or free or both. If a white were involved in the action, the case would be brought in the white court. It is presumed that if the case involved a slave and the punishment meant that the slave's master

would lose the services of the slave for any substantial period of time, the Governor would not be able to inflict such punishment.

Elleanor's brother, George, was a Governor which no doubt led to her understanding and appreciation of the legal system. In April, 1832, he was thrown in jail, accused of having horsewhipped a man on the highway. Elleanor came to his defense and represented him in court, gaining his acquittal.

Elleanor was a businesswoman and a property owner. At one point her real estate in Providence, R.I. was taken from her and sold. She claimed the sale was illegal and represented herself in court.

She owned whitewashing, papering, painting, soap boiling, weaving, and spinning businesses. She knit and sold stocking, was a hired nurse, and still managed to find time to write and publish an autobiography.

In her memoirs, a white friend noted of Elleanor:

... If Ellen with her limited improvements and under all the disadvantages of colour could achieve so much as she has, what she would have done if those disadvantages had not been in the way...

Afro American Lawyers During and After Emancipation

John Mercer Langston (1829-1891) was born in Virginia to a wealthy white estate owner, Ralph Quarles, and his black wife.

Langston's father provided tutors for all his black children, and had land purchased for them in free areas of the nation.

Langston graduated in 1849 from Oberlin College, one of the first schools of higher education to admit women and blacks. He studied law and was admitted to the Ohio bar in 1849. His most famous client was the sculptor Edmonia Lewis (1845-1890).

Edmonia Lewis

While a student at Oberlin College, which she attended from 1859-1863, this talented black woman

was falsely accused of murdering a few of her white female classmates. Langston successfully defended her.

She moved to Europe where she achieved fame and recognition in her field, becoming the first woman to achieve such distinction.

In 1855 Langston served as clerk in Brownhelm, Ohio, where he practiced law. During the Civil War he recruited black soldiers for the 54th and 55th Massachusetts regiments and the 5th Ohio regiment. He was inspector general of the Freedmen's Bureau, Dean and Vice President of Howard University, a diplomat to Haiti and Santo Domingo (Blacks were not named Ambassadors until 1948, when Edward R. Dudley was appointed Ambassador to Liberia), President of Virginia Institute, and in 1888, elected to Congress from Virginia.

Both the town of Langston, Oklahoma and the college located in it, Langston University (1897), were named after him.

Macon B. Allen

The first black American admitted to the bar was Macon B. Allen (May 3, 1945, in Worcester, Mass.). His first case was *Roberts v City of Boston*. He later became a judge.

Harvard and Black Lawyers

While Oberlin was the first interracial college, Harvard University is also distinguished as an institution that was attended by a significant amount of blacks in the 19th and early 20th century. Although Harvard was founded in 1636, it was not until the 19th century that blacks were admitted. In the 1850s, three blacks were admitted to the Medical School.

Judge Terrell

One of the most fascinating Harvard graduates was Robert B. Terrell (1884), a former slave who was ten years old before he was taught his alphabet. He was the first black to deliver a Harvard Commencement oration. He was appointed to the bench

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BLACK HISTORY MONTH**Lawyers continued**

in Washington DC after a significant legal career. Only five of his opinions were ever reversed, although he spent more than two decades as a municipal judge.

Howard University's law school was at one time named after him.

His wife Mary Church Terrell is noted for her campaigns for the rights of blacks and women.

The Grimkes

Another fascinating lawyer and Harvard man was Archibald Grimke.

The Grimke Sisters were famed white abolitionists and fighters for the rights of women. They were appalled at their family's treatment of slaves. The two women left the South and moved to Pennsylvania where they campaigned for the rights of women and became equally noted for their abolitionist views.

One day two young black men appeared on their doorstep. The father of the young men, Judge Henry Grimke of the South Carolina Supreme Court, was the brother of the Grimke sisters. He had lived in a common law relationship with the boys' mother Nancy Weston, a slave.

At his death, Nancy Weston and her sons were removed from their comfortable home by the Grimke family and forced to work as slaves. After many years of abuse, physical as well as psychological, the boys had run away and had come to the sisters for aid. Their plight was not ignored by these new found aunts.

One boy was sent to Princeton. He became a minister in Washington DC, and married Charlotte Forten of a wealthy black abolitionist family in Philadelphia.

The other nephew, Archibald Grimke, was sent to Harvard (LLB 1874) and later established a practice in Boston.

He was a writer, journalist, diplomat to Santo Domingo, lecturer and early leader of the NAACP.

Conclusion

There were other black lawyers and judges in pre-20th century America who exhibited dedication towards justice for all Americans and an unwavering faith in the law.

Too often one hears blacks linked automatically with terms such as "welfare," "criminal," "remedial programs," and "poverty," while forgetting that blacks are judges and lawyers and law school deans.

We are People and although we have once been enslaved and although our road may be harder to walk and our lives "no crystal stairs," we have persevered under the most trying and extraordinary circumstances, and we continue to do so.

**Black and Red
DuBois continued****DuBois the Activist**

In an age of accommodation, DuBois was called a militant and a radical. Throughout his life he wrote and worked towards the betterment of all people in this nation and in Africa.

He believed in the beauty of the black race, that all people had equal rights, and challenged the racism and segregation of America and the imperialism of European nations in Africa. When he was in his 80's or 90's, a scandalized nation watched, stunned, as this elegant, dapper scholar, in the golden years of his life, was arrested and handcuffed by government agents for his views on equality.

DuBois was a founder of the NAACP and a chief opponent of Garvey and Booker T. Washington. He was a leading exponent of Pan Africanism and spent the last days of his life in Ghana where he died the day before the March on Washington in 1963.

W.E.B. DuBois the Author

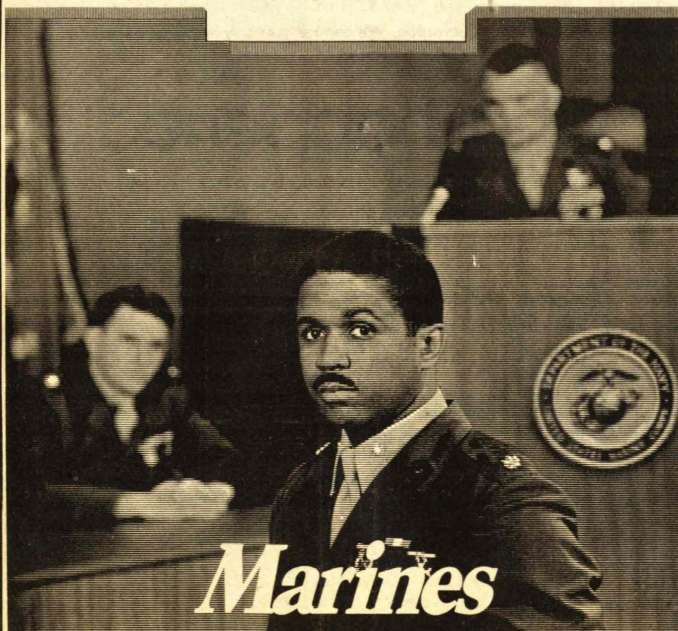
DuBois published his credo on October 6, 1904. It exemplifies his belief that individuals should strive to be the best they can be. Part of his credo follows:

I believe in Liberty for all men; the space to stretch their arms and their souls; the right to breathe and the right to vote, the freedom to choose their friends, enjoy the sunshine and ride on the railroads, uncursed by color; thinking, dreaming, working as they will in a kingdom of God and love.

His literary style can be seen in his essay "Of the Sorrow Songs" found in *Souls of Black Folk*:

... Your country? How came it yours? Before the Pilgrims landed we were here. Here we brought our three gifts and mingled them with yours: a gift of story and song-soft, stirring melody in an ill harmonized and unmelodious land; the gift of sweat and brawn to beat back the wilderness, conquer the soil, lay the foundations of this vast economic empire two hundred years earlier than your weak hands could have done it; the third, a gift of the Spirit. Around us the history of the land has ventured for thrice a hundred years; out of the nation's hearts we have called all that was best to throttle and subdue all that was worse. . . . Actively we have woven ourselves with the very warp and woof of this nation—we and generation after generation have pleaded with a headstrong careless people to despise not Justice, Mercy and Truth. . . . Our song, our toil, our cheer and warning have been given to this nation in blood brotherhood. . . . Would America have been America without her Negro people?

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BAR REVIEW

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Absentee Reps Vote By "Proxy"

The SBA has instituted a new policy by which delegates may vote by proxy if they cannot attend a meeting. The policy, which became an amendment to the SBA Constitution last year, allows a delegate to give his or her vote to another SBA member of his or her graduating class who plans to attend the meeting. The person holding the proxy can vote on an issue; his or her vote counts for however many proxies they have. The proxies also count toward fulfilling the quorum requirement as if the delegate was actually in attendance at the meeting.

SBA President Oren Falk recognizes the advantages and disadvantages associated with such a policy, explaining that attendance was the major problem in past years. Since delegates did not show up at meetings, there would be no quorum, and the group was paralyzed. "With the proxy it helps," says Falk, "There is a problem with one person having four votes, but it works when somebody has a class and has to leave. I think there are definite problems with it, but at least we've taken the step."

Some SBA delegates perceive the disadvantages to outweigh the advantages. According to first year delegate Steve Gold, it encourages absenteeism and allows one person too many votes. He complains, "I think it's irresponsible of these people not to come to the meetings. . . . Giving some of these people six votes is ridiculous."

Third year evening delegate Scott Sommer thinks the policy is important in allowing evening delegates to vote. These students often cannot attend or have to leave meetings early because of classes; he believes proxy voting allows their ideas to be represented at meetings. According to Sommer, "By not having proxy voting you're automatically disenfranchising at the very least, the evening division, which is 25% of the school, who pay their student activity fees like everyone else."

The policy is designed to address the problem of delegate apathy, however it has allowed the SBA to merely sidestep the problem temporarily. The unfairness with allowing any one student more than one vote on any given question that comes up during a meeting must be balanced with the unfairness to students represented by no-show delegates. Still unresolved is the issue of accountability. Is the delegate holding four votes in his hand required to have previously polled the absent delegates on their opinion on the item to be voted on? If not, should this be a requirement?

(from page 1)

the library, expanded library hours to give night students more time to study, and more accessible and better computers.

Due to either a lack of student or faculty cooperation, ideas and projects that are addressed and implemented encounter setbacks that transform them into major enterprises. One such project is the student directory. Falk says that when the SBA thought of the directory, they did not realize the publication would be such a difficult undertaking. The project has been slowed because of the many problems that have developed. First, the group had to distribute and collect acceptance forms from students allowing their names to be in the directory. Then they had to alphabetize the names. The latest potential snag is that the computer company that handles school mailings may not have a program to delete the names of students not wishing to be in the directory, so the SBA may have to type out the list themselves. Falk states, "Everywhere we turn there's another problem."

There are some academic related items being debated by the SBA. They include changing exams so they finish before Christmas; returning Contracts, Torts, and Property to full year and having the Legal Process exam before Thanksgiving. Other student services items on the agenda include getting a jukebox in the cafeteria; forming a day care center to help students with children; getting health insurance for students twenty-nine and older; making a suggestion box for first year students; having a "spouse night" for students' spouses; and endorsing an intramural basketball program.

Juke Box

Of all these projects, the only ones where progress was made at the January 29 meeting were the jukebox and basketball proposals. After heated discussions the SBA decided that a jukebox shall be installed in the student lounge, to be used during restricted hours, on an experimental basis. After one month with the jukebox, the SBA shall vote on whether to keep it or not. The limitations imposed were the result of political compromise; the SBA was greatly divided on this issue and the restrictions were the result of a settlement. Much of the division seemed to be between first year delegates, and the rest of the body. The basketball proposal posed less of a controversy at this meeting, although its funding sparked heated debate at a prior meeting. While the league was already formed, the SBA voted to allocate additional funds set aside for the purpose.

One area where SBA officials feel they have made some progress is in SBA-Administration relations. Falk believes the Administration has been very receptive to the SBA. The group was allotted an extra \$2000 just recently, for example, to fund the intramural basketball league that had come to SBA following the completion of its budget. SBA members have been meeting with Dean Trager Monthly to discuss new projects, and old problems. If there is an opportunity for students to participate in law school decisions, this opportunity must come from the Dean and the faculty. In all

fairness, the SBA has been dealing with an administration reluctant to grant students much of a say.

The most important function of the SBA, the distribution of the \$30,000 student activity funds, is showing signs of progress. At the very least, the group has recognized problems with their system, and has formed a committee to examine them.



SBA PRESIDENT FALK:
"People put in the minimum.
To make the SBA a truly effective organization you need five committed people to be on the executive board and at least half the delegates active."

Budget Woes

Abbene, the first year executive board delegate, said the three major goals of the newly formed Budget Review Committee are to inform first year delegates so they know what they are voting on, to better organize the budget, and to protect organizations that do not get their budgets in on time. Abbene says that in the beginning of the year, first year delegates had to vote on a budget, "but the premise of the budget was not all that clear to us. The best thing to do for next year is try to set some guidelines for the budget. We have formed a budget review committee for that purpose."

Another problem committee members hope to address is that of the lack of student participation in the budget process. Abbene explains, "When we do the budget, how do we know how the students feel about a particular organization? It is not until after the budget is passed when the students rise up and say 'that's not fair.' Knowing how the students feel beforehand would be a consideration in deciding the allocation that each organization would get . . . because it is the students' money that's going out." The delegates on the Budget Review Committee hope to give students more input into deciding where their money is to be spent. What's not clear is why the SBA hasn't made greater efforts to enhance communications with students which was one of their campaign pledges. Proposed group budgets could be posted around school and delegates could announce the issue in their classes.

Although the SBA has identified many of the problems between the SBA and the student body and targeted them for solution, there are other legitimate obstacles working against them. Falk believes the biggest problem encountered by the SBA this year was being moved to the other building which has separated the SBA from the Student population. She thinks the SBA was more productive when it was

in the main building because it was more accessible to students.

A major obstacle the SBA faces is the reluctance of its elected delegates to put in the necessary time. Falk states, "People have many priorities other than the SBA; it's been disappointing. People put in the minimum. To make the SBA a truly effective organization you need five committed people to be on the executive board and at least half the delegates active. People have other legitimate obligations, they're not just sluffing off."

SBA delegates are supposed to put in two hours per week in the SBA office to talk to students, run the book co-op, and allow students to use the computer they have in the office. Falk finds that many delegates, like those in years past, do not put in their office hours. Furthermore, many do not attend the monthly meetings, a problem which is addressed and exacerbated simultaneously by a new "proxy voting" policy. (See article on proxy voting). Abbene attributes the attendance problem to the difficulties in coordinating meetings so both day and night student can benefit. She says, "the conflict in schedules is a big blockade to getting things done."

Who's To Blame

Many of the problems the SBA encounters in implementing its ideas are not due to its own inefficiency, but to the lack of participation of the student body. Day Vice President Sit complains, "We're fighting apathetic students. We need help. The student body lacks a lot of motivation."

Abbene explains, "The requirements of the office could easily take up a forty hour week if we were to take up all the complaints and have them resolved in the time people want them resolved. The representatives constantly have to reach out to the students. It's not exactly clear what the students want from the SBA."

Even students who do contact the SBA, she states, need to put in more effort. "One problem is people come to SBA meetings with a problem and a complaint, but no resolution. If they want things instigated they have to do a little legwork."

The SBA has not always spent as little effort on academic issues. Students in the past have successfully pressed for improvements in curriculum, grading policies, and staff changes in the Placement Office. Last year, for example, SBA President Bernie Graham and others were actively involved in the push to get a grading curve. They succeeded at having the faculty establish a suggested curve, and to implement a policy in which faculty members must explain why they grade erratically, if they do not follow the curve in some reasonable manner.

In examining both the accomplishments and failures of the SBA, students must question the purpose of a law school student government that is relegated to the position of emphasizing recreational activities rather than academic progress. Before the SBA can overcome its difficulties, it must either have an increase in participation by the delegates and the student body, or make reforms itself to deal with the realities of a primarily commuter law school.

Right To Freeze continued

(from p. 1)

Under the state Mental Hygiene Law, an individual can be involuntarily hospitalized if he is mentally ill and presents a "substantial risk of physical harm to himself or other persons." While some of the city's homeless do present a risk to themselves, a presumption in this regard may be an abuse of the scope of the Mental Hygiene Law. Further, in *Donaldson v. O'Connor* (422 U.S. 563) the Supreme Court ruled that "there was no constitutional basis for confining mentally ill persons involuntarily if they were dangerous to no one and could live safely in freedom." The court went further to say that "mere public intolerance or animosity cannot constitutionally justify the deprivation of a person's physical liberty."

According to Norman Siegel, Executive Director of NYCLU, "Our main concern is that the State government should not intervene in peoples' lives, and that people should be respected with, at a minimum, an option to make these choices, and that they should not be forced against their will to do things they don't want to do. The principle is an important principle not only in civil liberties but in individual freedom, and is what America is all about."

Currently the NYCLU has organized "freeze patrols" consisting mainly of law students and lawyers who supervise any involuntary removals and inform the homeless of their specific rights to shelter. Such patrols also insure that the rights of the homeless are not overlooked by the police or city officials. More importantly though, it fosters dialogue between the homeless and the authorities.

Mr. Siegel asserts that the city's position during the cold weather only highlights the inadequacies of its overall policy at all other times of the year. In essence, it says that the city has no policy on the homeless on the street when the temperature is above 32 degrees. He adds "it is manifestly absurd to think that people

who are out there want to remain out there and don't want a home."

The city responds to criticism over its handling of the homeless problem by stating that no other city in America does as much for the homeless as New York. Last year the city sheltered approximately 22,000 people a night, including 7,500 singles and nearly 4,000 families at an annual cost of about \$200 million. It further states that a significant problem it encounters in providing a permanent solution is that federal funding can only be used to provide for temporary shelters, not for permanent low income housing.

Although there are many components to the homeless problem such as economic issues, deinstitutionalization, alcoholism, etc., a significant cause has been the destruction of low income and single room occupancy (SRO) hotels. The number of SRO units in New York has decreased from 127,000 units ten years ago to 14,000 today. This decrease combined with the gentrification of once lower income housing has had a tremendous impact on the displacement and subsequent homelessness of countless New Yorkers. It is the NYCLU's contention that the city has failed to take adequate steps to curb this problem. In the absence of a comprehensive plan by the City of New York to stem this displacement and provide for lower income housing, the NYCLU has proposed the Urban Rights Project. The project is a three prong plan which uses test-case litigation, legislative drafting and lobbying and public education to bring about basic law reform.

The first goal through test-case litigation is to attempt to establish a right, in some cases, not to be displaced. The means by which this end is to be accomplished is through the Federal Fair Housing Act (Title VIII) and the State Environmental Quality Review Act. By using these acts effectively the NYCLU hopes to show that displacement has racial overtones (predominantly blacks, hispanics, and Asians are victims

of gentrification) and is in effect discriminatory and prohibited by the Federal Fair Housing Act (Title VIII). The SEQRA provides for an environmental impact statement (EIS) which must include the effects of any new development on "human and community" resources. In light of the recent Westway decision, it is hoped that the effect of a development on individuals will be given significant consideration and deter any large scale development that would adversely affect established communities and neighborhoods.

The second prong of the Urban Rights Project involves establishment of a Housing Development Trust Fund similar to those in use in San Francisco and Boston. The proposal requires that developers of certain size luxury and commercial properties contribute to a fund earmarked for the construction or rehabilitation of low income housing. The amount contributed would be a certain dollar amount per unit or square foot of construction.

The last part of the proposal seeks to heighten the public awareness of the homeless situation and gather support for a permanent solution. It also plans to organize people to save their communities from uncontrolled gentrification.

Although New York does more than any other city in terms of shelters and monetary outlays for temporary housing, the number of homeless people continues to rise. There are costs associated with urban development and gentrification, namely displacement and loss of lower income housing stock. If steps are not taken to curb the destruction of lower income housing, the shelters may well become the low income housing of the 1980's.

The New York Civil Liberties Union welcomes any students interested in working either on the Urban Rights Proposal or participating in the Freeze Patrol activities. Those interested should contact NYCLU at (212) 382-0557.

FAA continued

(from p. 1)

A recent General Accounting Office survey found a haphazard pattern of aircraft inspections, with the FAA virtually ignoring some of the industry's upstart airlines and others receiving no inspection at all in one year. For example, the Midwest Express DC-9 that crashed just after takeoff on September 6 in Milwaukee, killing all 31 aboard, was an old plane run by a new airline.

Critics say the FAA has long dragged its feet on an array of safety improvements, all of which would have averted recent disasters. These include, developing new radar systems to detect wind shears (the cause of the Delta crash in Dallas last August that claimed 136 lives), requiring cabin materials that will not burn as easily or poisonously (such as the fire that killed 23 Air Canada passengers two years ago in Cincinnati), and making fuel tanks safer (than those that ruptured and fed a fire on takeoff of a British Airways flight this past summer in Manchester, England).

In addition, the agency is guilty of sloppy bookkeeping. It has admitted that near mid-air collisions occurred nearly twice as often in 1983 and 1984 as it had previously reported. Near mid-air collisions occurred 478 times during 1983, not 288 as originally reported, and 592 times in 1984, instead of 297. Most of the increase involved private and corporate aircraft.

Another problem arises when the FAA does adopt new safety regulations. Norman Y. Mineta (D-CA), chairman of the Subcommittee on Aviation of the Committee to Public Works and Transportation, com-

plained that new regulations which were recently adopted "were fought and resisted by many in the airline industry for years as not being worth the cost." He added, "Unfortunately, even though the regulations are now the law of the land, some airlines continue to resist them."

Because the airlines are in a fiercely competitive marketplace, and revenues for many of the major airlines have dropped over the last year, the FAA's enthusiasm for safety improvements is diminished, critics charge. "It is extremely difficult to show a return on a dollar spent for smoke detectors in the lavatories," said John E. O'Brien, director of engineering and air safety at the Airline Pilots Association. Airline executives "are not airline people, but professional managers only concerned about the bottom line."

In response to such criticism, the Transportation Department, which oversees the FAA, announced that a proposal for hiring at least 150 additional aviation inspectors has been approved and sent to the Office of Management and Budget, which must clear the request before it is sent out to Congress. Meanwhile, the House approved a provision in the department's 1986 budget that would allow for an additional \$15 million to hire 200 more airline inspectors and 100 clerical support people for the FAA inspection program.

Regardless of which program Congress finally considers—either the 200 inspectors suggested by the House or the 150 sought by the FAA—some money for a strengthened inspection force is expected to pass, according to Capitol Hill sources.

CLOTHING DRIVE

IALSA, HILSA, BLSA, AALSA, and the NLG are sponsoring a clothing drive for the Easter/Passover Season
Any Old Clothes Will Help

Clothing May Be Dropped Off in Boxes In The Lobby

Tuesday March 18
Wednesday March 19
Thursday March 20

The FAA has 674 inspectors assigned exclusively to commercial airlines, although additional inspectors normally assigned to general aviation activities have been inspecting commuter air carriers. Mineta said he would like to see the inspection force increased to between 1,000 and 1,100 within two years for airlines flying aircraft of 30 or more seats.

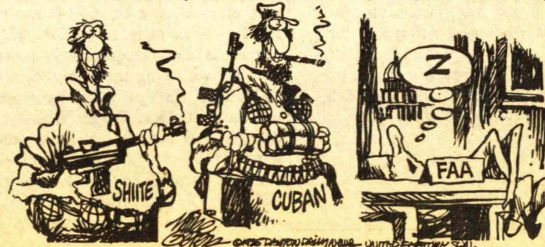
A Transportation Department spokesman said the department has made no decision on whether to seek additional inspectors beyond 1986, but that the current proposal before OMB asks for an additional \$7.5 million next fiscal year for hiring the additional 150

inspectors.

In the meantime, the FAA is rebounding with vigor. This past September it fined American Airlines \$1.5 million for violating Federal regulations on aircraft safety maintenance and inspection. And as recently as January 27, 1986, the FAA issued an emergency order requiring prompt repair of 27 jet engines that had been improperly overhauled by Aerothrust Corporation, a Miami concern.

The affirmative action is promising, but only time will tell if the air travel safety pendulum will begin to swing the other way.

WHICH OF THESE STRIKES MORE TERROR IN THE HEARTS OF AIR PASSENGERS?



Homelessness And NYC Housing Crisis

By Joseph A. Avellani

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The Housing Justice Campaign has developed a five-point plan that would preserve, improve and expand New York City's stock of affordable housing and reduce displacement and neighborhood destabilization.

In New York City an estimated 60,000 are homeless. Many thousands of these are children. Two hundred and fifty thousand elderly and poor are considered to be on the brink of homelessness.

According to the New York Housing Authority, nearly 20,000 families have doubled up with other families in public housing, while 171,000 more families remain on the waiting list. Governor Cuomo's office estimates that 500,000 New Yorkers live in substandard housing. The housing situation has not been this severe since the Depression.

A report released by the Governor states: "Our main conclusion is that homelessness is by its nature a crisis of housing." The two-volume report, prepared by the State Department of Social Services, concludes that: "Homelessness today is overwhelmingly caused by poverty, not pathology."

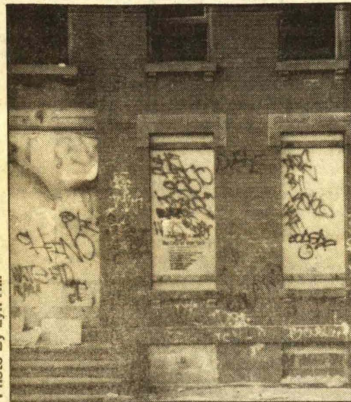


Photo By Lyn Hill

Will city-owned buildings like this one ever be re-stored for low income housing?

While the housing crisis has become an everyday reality for almost all New Yorkers, it is unquestionably harshest for the 76% of City residents who earn less than \$25,000 a year. The poor and working people who are the backbone of the City are now at greatest risk of being displaced. Recent City and State initiatives are significant in their recognition of the housing crisis and their allocation of public resources to begin to deal with the crisis. However these initiatives reverse the priorities mandated by both fairness and need and concentrate their efforts on housing a minority of high income New Yorkers.

The Federal budget cuts are undeniably a factor in the city's housing crisis; yet the city's own development policy has contributed to the problem. For example, the city has granted large tax abatements to developers for converting lower-priced, single-room-occupancy (S.R.O.) units into luxury housing for the affluent.

The mayor's own commission, appointed to study the housing crisis, makes clear that these S.R.O. units have "provided a kind of supported housing for persons without the ability or the desire to live fully independently, but the supply of these semi-supportive, low-cost accommodations has been dramatically reduced in New York in recent years; to wit, over 35,000 S.R.O.'s have been taken off the market since 1979." The commission report said that the city had no plan to permanently house the displaced, and was involved in a crisis-to-crisis "scramble" with no coherent policy. The report also said that the growing shortage of appropriate low-cost housing is a major cause of homelessness.

The Housing Justice Campaign, an alliance of dozens of community and tenant organizations and religious congregations and leaders, has developed



N.Y. Post Photo By Robert Kalfus

a five-point plan that would preserve, improve and expand New York City's stock of affordable housing and reduce displacement and neighborhood destabilization. The Campaign's proposal for housing justice starts from the same premise as the recent proposals by Mayor Koch and Governor Cuomo: that local governments must make major investments in repairing occupied housing and creating new units. However, it goes beyond these multi-billion dollar proposals by ear-marking the majority of new housing units for the majority of New Yorkers.

A Five-Point Plan for Housing Justice

1. Create more permanent low and moderate income housing.

The 76% of New York City's households who earn less than \$25,000 a year have the most urgent housing needs. The City and State should invest 2.5 billion over the next five years to create and preserve long term, affordable housing for this neglected majority, with special attention to the homeless and the near homeless.

2. Preserve more existing housing.

Currently there are 397 housing inspectors for 120,000 apartment buildings containing 1.9 million units. This overwhelming discrepancy has produced an inadequate and ineffective crisis intervention and complaint-driven enforcement system. The City and State must invest more dollars in housing code inspection and enforcement so that New York City can develop a prevention-oriented system with regular roof-to-cellar inspections.

The City and State must also work together for the kinds of Housing Court reforms that will produce timely and effective action against owners who ignore housing maintenance laws or who harass tenants.

3. Protect tenants' right to remain.

Tenants' "right to remain" must be protected and expanded. Rent protection must be extended to unprotected tenants in small buildings and other tenants outside the rent stabilization laws. Protection must also be offered to tenants in City tax-abatement buildings (421a) who face the loss of their rent stabilization status. The current inflated rent increases for major repairs (major capital improvements) must be limited to the minimum amount that will repay the owner for the actual cost of the necessary improvements. The laws permitting tenant displacement and warehousing of vacant apartments during co-op and other conversions must be changed.

4. Adopt an inclusionary development policy.

Wherever new luxury housing or commercial development takes place within the city, a modest contribution to a city-wide Housing Trust Fund should be required. Wherever across-the-board zoning bonuses (FAR), deeper 421a tax abatements, or other types of assistance are offered to private resi-

dential developers, the City should require a public benefit—the inclusion of lower income, affordable apartments in the buildings. Before the City moves to re-zone manufacturing districts to encourage more market-rate housing developments, the economic impact of business displacement must be considered, and business relocation assistance assured. Whenever such re-zoning does take place, it must be undertaken as a Special Inclusionary Zoning District with affordable housing guaranteed and perma-

nently underwritten by a dedicated Tax Increment Financial District, which recaptures the increase in local real estate revenues created by re-zoning and re-development.

5. Link new subsidized middle income to low and moderate income housing needs.

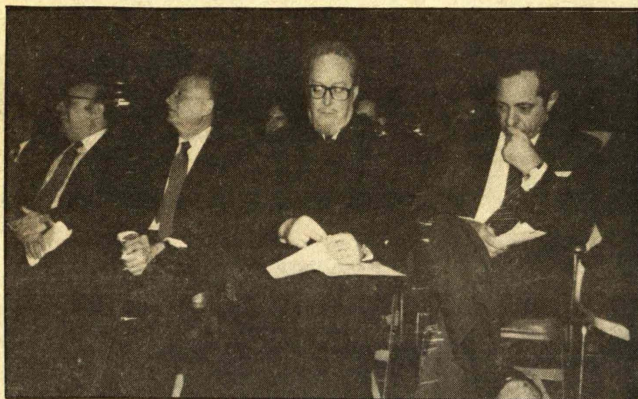
New York's middle class—the 19% of city residents who earn between \$25,000 and \$50,000 a year—need additional housing. Publicly stimulated efforts to expand the supply of this housing can and must be made in such a way as to complement the more urgent need for decent and affordable housing for the majority of New Yorkers who are at low and moderate income levels. To insure this linkage, City and State supported middle income housing projects must contain effective site and neighborhood anti-displacement protection for lower-income residents. Such projects must also set aside at least 20% of their units to provide permanent housing for lower income people. Furthermore, in order to insure that subsidized middle-class housing projects do not siphon off resources more desperately needed for the greater and deeper housing finance needs of low and moderate income New Yorkers, public subsidies of such projects should be limited to the use of tax exempt bond revenues and tax abatements and direct government expenditures.

A response to homelessness requires both a public opinion sensitive to the issues and public policy which effectively restricts the present policy of neglect. In a large and complex city like New York, public opinion does not necessarily dictate policy choices. But public opinion does set an atmosphere and framework within which decisions are made by elected and appointed officials. Of course, not every public official or candidate for public office is directly responsible for the housing crisis, but each one of them does have a responsibility to help solve this critical problem. Each of us must let our public officials and candidates for office know where we stand on this issue. We must let them know that we are paying attention to their position on housing legislation and that, if their records support housing justice, we will be loyal friends; if not, they will not get our votes. In this election year, they will understand.

Joseph A. Avellani, Director of Institutional Research and Long Range Planning at St. Francis College, is a volunteer coordinator at the homeless shelter located at the Cathedral of St. John the Divine.

His concern for the needy stems from a deep religious conviction that all members of the human race are responsible for maintaining the dignity and well-being of their fellows. His special interest in the homeless results, in part, from the experiences of his father and grandfather who lost their home during the Depression.

BLS Prof Korman Sworn In As Federal Judge



Justinian Grace Lee



SCENES. Judge Bork, who will judge the final round of BLS's upcoming Prince Moot Court Evidence Competition, waits to swear in Edward Korman in the Eastern District's Court House last December. In attendance were Dean Trager, Mayor Koch and a seemingly pensive Governor Cuomo. Right, former BLS instructor Korman awaits the moment of truth. Right above, Judge Bork vests Judge Korman with the judicial powers of the United States.

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"We mourn seven heroes: Michael Smith, Dick Scobee, Judith Resnick, Ronald McNair, Ellison Onizuka, Gregory Jarvis and Christa McAuliffe. We mourn their loss as a nation, together . . . They were daring and brave and they had that special grace, that special spirit that says, "Give me a challenge and I'll meet it with joy." They had a hunger to explore the universe and discover its truths . . . The future doesn't belong to the fainthearted. It belongs to the brave. The Challenger crew was pulling us into the future and we'll continue to follow them . . . There will be more shuttle flights and more shuttle crews, and yes, more volunteers, more civilians, more teachers in space. Nothing ends here. Our hopes and journeys continue."

Excerpts from President Reagan's statement commemorating the space shuttle crew. N.Y. Times, Wednesday, January 29, 1986.

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