

# The Justinian

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# THE JUSTINIAN

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

## Conservative Shift? Rehnquist-Scalia to Supreme Court

by James C. Locantro

The summer of 1986 could conceivably be regarded by constitutional historians as the beginning of the end for long standing Supreme Court decisions ranging from abortion to the relationship between church and state to affirmative action.

In a move that surprised even Washington insiders, Warren Burger, Chief Justice of the Supreme Court for the past seventeen years, announced his retirement from the country's highest court. President Reagan nominated William Rehnquist to succeed Burger, and nominated Antonin Scalia to replace Rehnquist. Both are expected to be confirmed by the Senate.

Although rumors were rampant in Washington for months about Burger's imminent departure, no one had suspected it would be so soon. Washington insiders believe that, although the official story is that Burger left the court in order to do justice to the 200th anniversary of the constitution, the real reason for his departure was twofold.

### The Real Reasons?

One, Burger believed confirmation of a conservative chief justice would be easier prior to the 1986 elections where there was a possibility of the Democrats winning a majority in the senate. That would make a confirmation hearing all the more difficult for the present administration.

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## Dean Trager Airs Views/Goals:

## BLS "On the Move"

by Jonathan Hudis

"I envision Brooklyn Law as the best regional school," stated Dean Trager during an in-depth interview with the JUSTINIAN this past summer. The interview covered many issues confronting the BLS community, including tuition, admission standards, job opportunities, faculty hiring and the future of the school. Trager expressed that the actions he has taken thus far as Dean, and those he plans to take in the future, are necessary for a school that is "on the move."

### A REGIONAL PRESENCE

"I have no desire to lose sight of the school's goal of serving the Bar of New York. Brooklyn Law School should be thought of as the best regional institution," explained Trager.

Trager commented modestly that "I am just a little piece of a big picture. A picture of a school that is on the move."

Thus far, the Trager administration has been largely defined by the growth of the quality of the faculty and the physical growth of the school from a single building at 250 Joralemon Street to include administrative offices at One Boerum Place and a 12-story residential building on Pierrepont Street, purchased for \$2.2 million.

The purpose of the expansion, among other things, is to enable BLS to successfully compete with Fordham Law School for the New York City area's "number three spot," behind Columbia and NYU.

Trager, however, does not want BLS to be a copy of these schools. "We are not making any type of tender for New York City," said Trager. "If anything, I would like to see Brooklyn Law School with a first-rate J.D. program comparable with that of the University of Minnesota. Brooklyn Law School is not looking to expand its current curriculum into an L.L.M. program, nor are we going to be a landlord for anyone else but our own students. We are not a financial institu-

tion, but an educational institution."

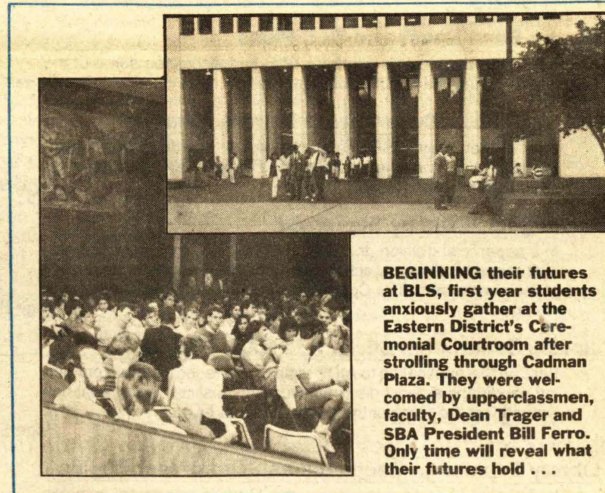
### NUMBER THREE?

A law school rating service recently placed Hofstra Law School, only 15 years old, above BLS for the 1985-86 academic year. The Dean's rather annoyed response was that Hofstra's Dean "managed to catch the ear of the person who ran that service." Trager stated that "It is beneath my dignity to go to a promoter. If one

wants to accumulate ratings of Brooklyn Law School . . . look to the Deans of national law schools, who, I am sure, rate Brooklyn right after Columbia and NYU." Trager added that "Recently, we have lost two faculty members to NYU, a clear sign that the quality of the faculty at BLS is rather high."

The Dean's words are supported by a sampling of those outside activities in which the BLS faculty engage themselves. Professor Hellerstein has recently been appointed to chair the New York City Bar. Professor Karmel has been a major figure in securities law, sitting on several state and national advisory panels and writing for the New York Law Journal. Professor Garrison is Chair of the City Bar's Family Courts Committee. Trager himself has been involved in the investigation of the New York City corruption scandal in his

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**BEGINNING their futures at BLS, first year students anxiously gather at the Eastern District's Ceremonial Courtroom after strolling through Cadman Plaza. They were welcomed by upperclassmen, faculty, Dean Trager and SBA President Bill Ferro. Only time will reveal what their futures hold . . .**

## Roy Cohn Dies After Being Disbarred

"The bar . . . has been entrusted with anxious responsibilities. . . . [T]here must be exacted those qualities of truth-speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility, that have throughout the centuries been compendiously described as 'moral character.' " *Schwartz v. Board of Bar Examiners of New Mexico*, 353 U.S. 232, 247 (1956) (Frankfurter, J. concurring)

by Lee Knife

Roy Cohn, prominent New York attorney and partner of the law firm of Saxe, Bacon & Bolan died at the age of 59 this past August. His death came just over a month after he was found guilty of four charges of professional misconduct and disbarred by the Appellate Division's First Department.

Cohn was pronounced dead at 6:00 A.M. at the National Institute of Health in Bethesda Maryland. The spokesperson for the hospital, Irene Haske, said that "the immediate cause of death was car-

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diopulmonary arrest with secondary causes of dementia and underlying HTLV III infections." The HTLV III virus is believed to be the cause of AIDS, the fatal disease that attacks mainly homosexuals and intravenous drug users.

Rumors that Cohn, a bachelor, was dying of AIDS circulated during the disbarment proceedings. Cohn vehemently denied the allegations and maintained that he was suffering from liver cancer. Hospital spokesperson Haske refused to comment on whether Cohn had cancer.

### A CHECKERED CAREER

Roy Cohn was born in New York on February 20, 1927 to a father who would later become a State Supreme Court Justice. After graduating from Columbia University and Columbia Law School at the age of 20, he was admitted to practice in New York when he turned 21. He immediately began working for the U.S. Attorney's Office in Manhattan.

The young Cohn soon found himself in the spotlight. He was involved in the trial of Julius and Ethel Rosenberg, who were found guilty of conspiring to sell nuclear secrets to the Soviets and then executed. Cohn's participation in the Rosenberg trial drew the attention of people in the Justice Department as well as then Senator Joseph McCarthy. McCarthy was head of the Senate subcommittee investigating the presence of communists and communist sympathiz-

ers in the United States.

### KENNEDY VENDETTA

Cohn was taken on as counsel for the McCarthy subcommittee. The much publicized animosity between Mr. Cohn and another attorney for the subcommittee, Robert F. Kennedy, was fueled by Cohn's

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**SPOTLIGHT ON  
LAW REVIEW  
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# BLS News Update

## SBA Referendum

### Rock and Roll Is Here to Stay Apartheid Investment Disclosure Demanded

The results of last spring's Student Bar Association referendum are in. The highly controversial "jukebox question" has finally been settled.

The SBA had placed a jukebox in the cafeteria on a trial basis. The referendum was to decide whether or not the music should play on.

It was an extremely close vote, but BLS music lovers prevailed 241-222. The jukebox will remain a fixture at BLS.

The results of the other two issues before the students, however, were not nearly as hotly contested.

On the political side, a landslide of students are interested in knowing BLS's South African investments. The vote of

375-97 asks that Dean Trager deliver to SBA President Bill Ferro a complete listing of BLS's current investment portfolio. This way, whatever Apartheid investments BLS holds will be revealed.

Day division students voted overwhelmingly, 257-55, to hold fall exams before the winter holidays. Exams are presently held after Christmas and new year, generally ruining BLS students' holiday. Evening students were not as enthusiastic, voting 55-34 for the holiday switch.

The SBA will be meeting with Dean Trager to discuss the referendum results and the administration's response.

## Student Organization Fair

The office of Student Services is sponsoring a student organization fair on Thursday, September 18. Both Day and Evening students have the opportunity to discover how they may become involved in BLS's many student organizations.

Assistant Dean Robin Siskin reported that day students may attend the fair, held in the third floor student lounge, from 1-2 p.m. Evening students are scheduled from 5-6 p.m. All students are encouraged to attend.

## Moot Court Fall Competition

The Moot Court Honor Society's Chair, Ray Enright, announced some of the Society's upcoming activities for the Fall semester. At the top of the list, said Enright, is the Honor Society's Fall Intramural Competition. The winners of the competition, open to second year day and evening students and third year evening students, will become members of BLS's prestigious National Team.

"The competition will definitely be

challenging and exciting," said Enright. The legal problem presented will "deal with first amendment freedoms," and will be "especially relevant, given that the nation's Constitution will be 200 years old in 1987," concluded Enright.

Enright advised all interested students that there will be an informational meeting concerning the competition in early September. He suggested students look for a notice on the lobby bulletin board.

## Judicial Clerkships

A large number of graduating students and alumni have been selected to serve as judicial clerks. This can only reflect well upon the quality of the graduates BLS produces.

The students selected from the class of 1987 are:

Roseann Pisen: Judge Richard Owen  
Michael Solomon: Judge Edward R. Korman  
Bennette Kramer: Judge Thomas C. Platt  
Cynthia Dachowitz: Judge Leonard B. Sand  
Jan Uzzo: Judge John M. Cannella  
David Wohl: Judge Stanley Brotman, D.C.N.J.  
Ira Reid: Judge Cecilia H. Goetz  
Edward Christenson: Judge Mahoney, 2d Circuit  
Michael Novara: Judge Gustave Diamond, D.C. Pennsylvania  
Geraldine Zidow: Judge Sylvia Rambo, D.C. Pennsylvania  
Paula Milazzo: Justice Gilbert Ramirez, Kings County  
Ian Bjorkman: Judge Stanley Marcus, D.C. Florida  
Tim Duvlin: Offered a position in N.D. Texas

The graduates selected for clerkships in the last few months are:

Stacy Kanter: Judge Dearie  
Fran O'Leary: Justice Freedman  
Lawrence Gottesman: Judge Korman  
Steven Richards: Judge William Clark, Illinois Supreme Court  
Susan Trihus: Texas Intermediate Appellate Court in Houston  
Helene Danzillo: Judge Gregory Carman, International Court of Trade  
David Yucht: Superior Court Chancery, Family Part in Bergen County  
Kathleen Trainor: Magistrate Carol Amon, E.D.N.Y.

## Review and Journal Announce New Members

The Brooklyn Law Review and the Journal of International Law announced the results of their first year writing competition. The students selected for membership are:

### LAW REVIEW

Thomas Abbodante	Carol Bouchner
Richard Brualdi	Greg Faragasso
Guy Francesconi	Anne French
Patricia Gennerich	Ethan Gerber
Steve Gold	Brendan Guastella
Maria Homan	Judith Kahn
Lawrence Kanusher	David Kaufman
Nadine Klansky	Mindy Koenig
Andrea Lowenthal	Carol MacKenzie
Barnaby Millard	Steven Mintz
Judith Olivero	Yvette Olstein
Darren Saunders	Cheryl Spinner

### INTERNATIONAL JOURNAL

Goodwin Benjamin	Nancy Bertolino
Jill Block	Jeffrey Bloom
Rick Brodsky	Olivia Cassin
David Djaha	Nancy Eckhardt
Valerie Fitch	James Frechter
Adriane Gavronsky	Timothy Gibbons
Denise Hinzpeter	Masood Karimipour
Lee Knife	Gregory Koebel
Ann McGarry	Diane Mitchell
Susan Odessky	Jeffrey Schaub
Susan Shagrin	Howard Singer
Carl Stetz	Darla Suckey
David Turndorf	Michael Zuppone

## FACULTY SABBATICALS AND NEW HIRES

The new academic year is upon us and new additions to the faculty abound. Students bid farewell, for the moment, to those faculty on sabbatical.

Hello to new full time professors Aaron Twerski and Jeffrey Stempel.

Welcome to the slew of new adjunct professors: Wendy Brown, Eve Cary, Larry Krantz, Lawrence Marks, Rosalyn Richter, Sol Rosenbluth, Daniel Rudenstine, Joseph Samet, Daniel Subotnick, Mozelle Thompson, Susan Whitehead and Irving Selkin.

On sabbatical this academic year are professors MaryEllen Fullerton and Barry Zaretsky.

October 22: Tenant actions to compel repairs, appoint building managers. Low-income cooperatives.

October 29: Rent non-payment proceedings brought by landlords.

November 5: Hold-over proceedings brought by landlords to obtain possession of the apartment.

November 13 (Thursday): Illegal evictions.

November 19: Housing Court Motion Practice and Orders to Show Cause.

December 3: Public housing and Section 8 housing applicants' and tenants' rights.

December 10: Shelter allowances, emergency grants and homeless families.

## SEPTEMBER

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The Dean outlines his plans for BLS and discusses some of the issues facing the law school community.

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#### NFL v. USFL: 1 Dollar Award Benches League

After heated play, USFL gets iced with a token damage award. Although it seems time for the league to punt, lawyers plan to go into overtime. Stay tuned.

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#### Gay Rights Nixed by Supremes

In a superficial opinion, the Supreme Court permits states to prohibit consensual sexual activities carried on by adults in the privacy of their bedrooms. The Court sidesteps the right-of-privacy implications.

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#### Justice Department Sticks it to AIDS Victims

Fearing the application to AIDS victims of a federal statute protecting handicaps against discrimination, the Justice Department has instead fed the fears of the public, rational or not.

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#### Library Expansion Continues as School Year Begins

With school already underway, the library's basement remains closed. Construction is behind schedule, but students are asked to patiently wait for the planned reorganization to be completed.

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### DEPARTMENTS

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### QUOTE OF THE MONTH FOR SEPTEMBER ISSUE

Sex is sin. Sex is not clean. Sex is not healthy. Sex is not good for you. Only Satan could insinuate that sinning is preferable to making war. Hence, not surprisingly, we are supposed to be disgusted by pictures of humans in sexual embrace and outraged if such spectacles become available to children. Watching Rambo make war, however, is so respectable that the President may announce that he enjoyed it thoroughly, and nobody minds much if the kids, too, lap up the gore.  
—Russell Baker parodying the "Meese Commission" Report on Pornography, New York Times, June 12, 1986.

# USFL Benched

## It's Not Whether You Win or Lose; It's the Damage Verdict That Counts

by Darren Saunders

An eleven-week trial between the National Football League and its rival, the United States Football League, came to an end on July 29, with a rather unusual jury decision.

The suit, brought by 17 past and present USFL clubs against 27 of the 28 NFL teams and NFL commissioner Pete Rozelle, charged the NFL with federal antitrust violations. The trial was followed closely by the press here and across the country, mainly because it would determine the future of the multi-billion-dollar sport, but also because of the many celebrities of the sports, business and broadcast worlds who testified.

The result: after 31 hours of deliberation, the six-person jury found the NFL guilty of monopolization, but awarded the USFL damages of only \$1 out of the \$300 million to \$565 million that the USFL was seeking. Of course, federal law requires all damages stemming from antitrust violations to be tripled, leaving the USFL with a whopping \$3.

### THE FIELD, THE PLAYERS

The arena was the Federal District Court in Manhattan, with Judge Peter K. Leisure presiding. Leisure, who practiced law in New York City until appointed U.S. District Court Judge in 1984, is a large man who displayed a patient attitude with both sides, tending to be very liberal in allowing evidence to be presented to the jury.

The players included, for the USFL, Harvey Myerson, from the team of Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson and Casey. Myerson, 47, is a short and stocky, aggressive interrogator who described himself to the jury as a "street fighter." His narratives were often entertaining, as he would repeat testimony of NFL witnesses with extra emphasis to stress certain points to the jury, and at one point described the NFL's contentions as "Kafkaesque."

On the other side, and also at the other end of the personality spectrum, is 59-year-old Frank Rothman of Skadden, Arps, Slate, Meagher and Flom. Rothman, is tall, relatively quiet, and was more patient than Myerson.

### THE STAKES

The central issue of the suit was the NFL's television contracts with the three major networks. Television is the main source of revenues for football; it would be virtually impossible for a football league to turn a profit, or even sustain itself at all, without television coverage on at least one of the three networks.

The four-year-old USFL, which up until this year had been playing a spring schedule, decided to directly compete with the NFL by switching to a fall schedule. At that time, ABC, which was under contract with the USFL to televise one game per week, dropped the new league stating that it would lose money if it televised both leagues during the same time of the year.

The specific charges of the USFL included: (1) the NFL's contracts with the three networks were intended to exclude and did exclude a competing league in the fall; (2) the NFL exercised monopoly power by exerting pressure on the three networks to prevent the USFL from ob-

taining television contracts; (3) the NFL conspired to put the USFL out of business by coopting USFL owners with offers of NFL franchises, attempting to dissuade ABC from continuing the USFL's contract, and attempting to raise player costs and lure away players with supplemental draft and future contracts; and (4) the NFL dangled promises of NFL franchises to city officials in Oakland and New York to keep them from negotiating with USFL teams.

The NFL's defenses were: (1) denial of all USFL charges; (2) its contracts with the three networks are not exclusive; (3) the USFL's mismanagement created its financial problems and its inability to win television contracts; and (4) the USFL brought suit to force a merger with the NFL. As to damages, an extremely crucial factor in the USFL's case, the NFL contends that the USFL "exaggerated" its estimate and damages should be reduced to zero.

### THE EVIDENCE

One of the most heated items of debate during the trial was a presentation, "NFL vs. USFL," given by a Harvard Business School professor during a meeting of NFL club executives. Professor Michael Porter suggested in his presentation that the NFL attempt to coopt the most powerful and influential USFL owners and "dissuade ABC" from continuing the USFL's contract. In fact, a 1973 memo written by then-NFL general counsel Jay Moyer, recommended renewal of ABC's Monday Night Football because "an open network may well be an open invitation to formation of a new league."

The USFL also had in evidence a memo written in 1983 by NFL Management Council executive director Jack Donlan, entitled "Spending the USFL Dollar." A major weakness of the USFL's case, however, was that it was unable to show illegal conduct as a direct result of the memos or the presentation.

Meanwhile, ABC said that its displeasure with the USFL was caused by the loss of USFL teams in major television markets, including Chicago, Detroit and Philadelphia. And further, a study conducted by CBS in 1984 concluded that cheaper advertising rates for USFL telecasts would dilute NFL advertising revenues.

The study found that, over a three-year period, the network would lose \$50 million in advertising during NFL games if USFL games were televised by CBS or any other network. It therefore became very difficult for Myerson to prove that the NFL was intentionally preventing the USFL from obtaining fall television contracts.

### LAST PLAYS

After 43 days, over a period of 11 weeks, 44 witnesses (33 live and 11 by deposition) and 6,551 pages of testimony, it was time for final summations. On Wednesday, July 23, in a standing-room-only courtroom, Myerson appealed to the five-woman, one-man jury, all of whom stated before the trial that they are not football fans, to help the USFL compete against "the most powerful monopoly in the country." In a three hour speech, Myerson alternated between boisterous declamations of the NFL to quiet pleas to the jury.

The NFL "treat you like the village idiots" when they deny that any of Professor Porter's suggestions were carried out, he exclaimed. This outburst was in response to a comment to the jury by Rothman saying it was not illegal under antitrust laws for the NFL to discuss strategies for competition. "The issue is: were they implemented?"

One of Rothman's most dramatic counterattacks was a statement that the USFL's suit was instigated by Donald Trump, owner of the USFL New Jersey Generals, as a means of forcing a merger of his team into the NFL and obtaining a new football

Commissioner Rozelle ever since the AFL merged with the NFL, displacing Davis from his commissioner post.

### THE FINAL SCORE

The next day it took Judge Leisure three hours to instruct the jury on the law before it could begin deliberations. Five days later, after 31 hours of deliberations, the jury announced that it found the NFL guilty of violating Section 2 of the Sherman Antitrust Act by having and "willfully acquiring a monopoly," making it capable of controlling prices or excluding competition. But the jurors also found that the NFL neither had a monopoly, nor will-



stadium in New York City. "Because greed breeds greed, [Trump] wasn't going to try and buy an NFL franchise at a fair price—he was going to buy a cheap USFL franchise and force his way into the NFL," Rothman said.

Rothman also referred back to Pete Rozelle's testimony about a meeting between Trump and Rozelle at the Pierre Hotel to discuss the possibility of Trump acquiring an NFL team. At that meeting, Trump allegedly told Rozelle, get me a team and I'll "find some stiff" to buy the Generals.

Most of Rothman's summation consisted of attacks on the credibility of key USFL witnesses such as Howard Cosell and former American Football League Commissioner, Al Davis. Davis, the owner of the Los Angeles Raiders, the only NFL franchise not sued by the USFL, has been involved in a personal feud with

fully acquired nor maintained a monopoly of televising football games in the fall. It reached similar verdicts on all other claims, including three common law charges.

The bad news for the USFL was that the damages for the one count that the NFL was found guilty of were set at \$1. Apparently the jury was split, and in order to break the deadlock, the jurors compromised by finding the NFL guilty on one of nine claims, and awarding the USFL only \$1. The USFL contends that the jurors were confused in thinking that Judge Leisure could increase the damages as he sees fit. Lawyers for both sides indicated that they would probably file post-trial motions and appeals are certainly a possibility. We will find out if the saga will continue on September 3, when Judge Leisure will conduct a hearing on all post-trial motions on the controversial verdict.

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### Fall Semester Hours

Monday	11-7
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Wednesday	11-7
Thursday	10-6
Friday	10-3

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# Placement Services: Finding Your Niche

With the fall recruitment season under way, the Placement Office wants to bring to all students' attention the services it offers. "Let us get to know you," said Placement Office Director Grace Glasser, "so we can help you with your career planning strategy."

The staff of the Office of Placement and Career Planning works closely with law firms, the judiciary, corporations, government agencies and legal services organizations.

The Placement Office assists these groups in employing Brooklyn Law School students. The Office's goal is to act as a liaison between students and employers, and to equip students with the skills necessary to secure productive and satisfying employment.

## RESOURCES

The Placement Office is expanding its services. The Office currently maintains a library of directories, periodicals, firm resumes, and other materials describing and identifying potential legal careers and employers. Additionally, part-time, full-time and career jobs are listed daily with the Office. Job openings are posted at the law school and included in the "job books" in the library and the Office at One Boerum.

The Placement Office also offers a series of workshops on resume and cover letter writing, as well as interviewing techniques. First year students are encouraged to attend these skills workshops during the second semester. Upperclass students may participate in the interviewing skills workshop throughout the year.

Video equipment is available at the Placement Office for mock-interview



**HOPING to assist you in your job search, the Placement Office's Glasser (l.) and LeBel (r.) await your visit.**

workshops and for individual sessions.

## FALL RECRUITMENT

This year, reports Glasser, more than seventy firms and organizations will be conducting on-campus interviews. This is a fifty percent increase from last year. "On-campus interviewing represents only a fraction of the job-seeking process," says Glasser. "Taking a clinic, finding a good part-time job, doing volunteer work and having a well-planned job-seeking strategy are some of the best ways of finding the permanent job that is right for you," advised the Placement Director.

Each fall, recruiters from large law firms, government agencies, legal services organizations and private corporations interview students for summer and career positions. Additionally, the Placement Office arranges on-campus interviews for firms and agencies of all sizes throughout the academic year.

The fall recruitment season begins in

early September. Employment offers are usually extended to second and third year students by mid-November.

## JOB PLACEMENTS

Compared with last year, there has been a fifty percent increase in the number of career listings and a sixty to seventy percent increase in the number of part-time listings which have been placed with the Office. This is due largely to a concerted effort to attract employment opportunities from alumni.

There are some "really good, high-paying part-time jobs" available to BLS students, stated Carolyn LeBel, the Assistant Dean for Placement. Furthermore, suggests Glasser, part-time jobs can lead to summer or permanent employment. Employers are also impressed with clinical program experience.

The Placement Office does take job listings with "open" or "negotiable" salaries. "Students" says Glasser, "don't respond to 'open' salaries." The Office

is educating employers rather than turning them away, explaining to them that employers have to offer realistic salaries if they want to be competitive.

Glasser and LeBel caution first year students against working unless it is an economic necessity. "The best job strategy for first-years is to do as well as possible," says Glasser.

## CAREER PLANNING

While personal contacts are good, Glasser cautions students "not to put all their eggs in one basket." While students may have their own network of employment connections, she implored students to make use of the array of resources available at the Placement Office.

"Beginnings are hard," says Glasser. A good start on the job search, she suggests, is to attend a resume writing workshop offered by the Office.

Some of the best summer and permanent jobs are found by students who check the Office's job listings frequently and come in for individualized career counseling. "There are terrific jobs just waiting in the Placement Office; all that is required is for students to come in and investigate the possibilities for themselves," said LeBel.

The Office offers individualized job counseling where skills, needs and goals are assessed. "This should be done thoroughly and thoughtfully," emphasized LeBel, "not at the last minute and under pressure."

Glasser and LeBel also suggest that students frequently check the Placement Office bulletin board in the lobby and at One Boerum Place.

Some career goals, however, such as

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# The Job Scene Revisited

Dean David G. Trager

As I think many of you will recall, last October the *Justinian* gave me the opportunity to report to you about steps the administration was undertaking to strengthen the Placement Office and about the results of a Placement Office Survey of the Class of 1984. Now, as we begin a new academic year, and as many of you gear up for the task of landing choice summer or career positions, I am happy to have this opportunity to give you an updated report.

The most recent survey of 1985 graduates indicates that our efforts to strengthen the reputation of BLS graduates and to enlist alumni support in the area of placement are succeeding. As of last January, 95% of the Class of 1985 was employed.

I am informed by the Placement Director Grace Glasser that the number of good summer, part-time and career positions available through the Placement Office is growing, and that excellent opportunities have been lost by students who are not taking full advantage of Placement Office services.

## The 1985 Survey

In January, after the July bar exam results were announced, the Placement Office conducted a *Non-anonymous* survey of the 378 graduates in the Class of 1985. Some 239 graduates responded to the survey, which is a remarkable response rate for a survey of this or any kind.

Of the 63% of the class (239 graduates) who responded to the survey, 96% (230 graduates) were employed, 4% (9 students) were unemployed and seeking employment, and 1% (2 students) were unemployed and not seeking employment.

## What about the Ones who Didn't Respond?

When I became Dean, and began studying our own and other schools' placement statistics, my initial assumption was that students who failed to respond to job surveys were those who were unemployed or underemployed and too depressed or embarrassed to answer. In fact, I was completely wrong. The National Association of Law Placement, which regularly polls law graduates (and for whom our own survey was conducted), has conducted verification studies which show that non-

respondents are employed at the same rate as respondents. I know that this may seem contrary to what most of us would assume, but my own experience suggests that it is true. Several faculty members and I reviewed the responses and found that we were personally aware of several dozen graduates who were very well placed, but who did not respond to the survey.



## Where they Work/What they Earn

According to the 1985 Survey, about 11% of the class went to work for very large law firms of more than 100 attorneys. 15% went to large law firms of 26 to 100 attorneys, 10% went to small or medium sized firms of 11-25 attorneys, 25% went to small firms of 2 to 10 attorneys and about 2% had gone into practice by themselves.

About 16% of the Class of 1985 are employed as attorneys in the public sector and 4% are serving as judicial clerks. About 10% of the class hold legal positions in corporations and other financial and business concerns, and 4% are working in government or business in non-legal capacities.

As of last January, 17% of the respondents were earning in excess of \$50,000 annually; 23% were earning between \$30,000 and \$50,000, 28% were earning be-

tween \$25,000 and \$30,000; 20% were earning between \$20,000 and \$25,000 and 7% were earning less than \$20,000. I should note, however, that since this was not an anonymous survey, some respondents preferred not to disclose their earnings. Hence, these figures are based on a smaller sampling (166 students) than the basic employment statistics.

## How We Stack Up Nationally

The National Association for Law Placement has not yet compiled statistics for the Class of 1985. In February, however, NALP released the results of its survey of 1984 graduates of 138 ABA-accredited law schools located nationwide. Here is a chart that shows how we compare:

Criteria	Brooklyn	All Schools
Percent employed	96%	93%
Private practice	63%	57%
Firms 100+ attorneys	11%	9%
26-100 attorneys	15%	12%
11-25 attorneys	10%	8%
2-10 attorneys	25%	22%
solo practice	2%	3.7%
Government lawyers	16%	11%
"In-House" Attorneys	4%	11%
Judicial Clerkships	4%	10%
Non-legal positions	4%	9%

These statistics suggest several things to me:

The resources we have invested in the Placement Office and our efforts to make alumni think of their law school first when they hire attorneys, are beginning to yield positive results.

The growing ability of our students to obtain excellent jobs reflects the growing stature of the School and its graduates.

Our efforts to identify excellent positions for qualified students who are not in the top 10% of their class must continue.

The Placement Office is a growing source of jobs for students who make use of it.

In connection with the last observation, I would like to retell a story. Last week, I was stopped in the corridor

continued page 13

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September, 1986 • Justinian 5



## First Years' Lament

# WHO TO BELIEVE

"Welcome to Brooklyn Law School! These will surely be the best three years of your life. You are now a member of the club. Always remember—the major goal of law school education is to teach you to think like a lawyer. Good luck."

*Help! What do I do now—!*

"Get to work! Diligently apply yourself. Work hard and you'll be rewarded."

"Don't you worry about a thing. Find a second or third year with good course outlines. Or just buy commercial study guides for all your courses and you'll be fine. Pax has them all. So buy them, sit back and relax."

*What's a "Packs?!"*

You're hopeless."

*Once I figured out the mystery, I bought the study guides and thought I would be fine. While sitting in the library reading Emanuels for Torts I heard a shriek . . .*

"What are you doing! Don't use commercial study guides. They give you a mere limited view of the law. You have to do all the assigned reading, brief every case and consult the hornbooks. That's the only way to go."

"Hey, kid, don't listen to that nerd; I studied for all my classes using Legal Lines and it was no problem at all."

*Who said anything about illegal lines? .*

"No, no, no! You'll never learn the law they way. Emphasize the law's substance in all your briefs."

*Substance? Procedure? What's the difference?*

"You don't know enough yet. Just brief the cases and worry about the rest later."

*But what's a brief?*

"Learn to brief all your cases and study for your exams with your own briefs."

"Forget about briefing cases. Just buy canned briefs and incorporate them into your outline."

*My what? My . . . outline?*

"Your outline, dummy. It's just like the Emanuels."

*Then why am I buying Emanuels?*

"Hey, what did I tell you. Forget about Emanuels. Outline all your courses on your own. Also, don't outline alone—outline in your study groups."

*My what? Study groups—where did that come from?*

"Study groups don't work, so just forget about them."

"You don't have your study groups yet? Why not?"

*I am surely losing my mind.*

"You need a day off. Go out tonight and have a good time."

"You can't do that—you have to discipline yourself. For the next year, nothing exists outside of this building. That's the only way you'll get good grades and make Law Review."

"Relax. Anyway, getting good grades and making Law Review is mostly luck and having the "right stuff." Go to parties and meet people. Get their outlines."

*When will I find time for a party?*

"You are not acting reasonably! The difficulty of law school's first year is nothing but a myth."

"Law school is hell, all three years of it. Especially the Bar. No matter what anybody tells you."

"Relax. Law school can be one big party."

*And one enormous contraction . . .*

by Robert Roth

Congratulations! You are now officially a first year law student. They say a word to the wise is sufficient, so I thought that the following paragraphs will insure that your first year goes smoothly.

Now that school has officially started, you have probably already made the first mistake that most entering students make. You have bought new books at the conveniently located MJ & K bookstore on the basement level. Taking nothing away from the fine gentlemen downstairs, you will find it much to your advantage to check the bulletin boards for used books from second year students. Barnes & Noble and Pax (on Lawrence Street) offer slightly discounted prices on both new and used books. For those students on a budget, the savings can be significant.

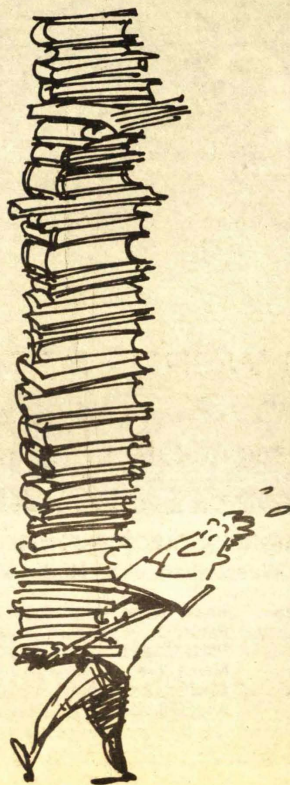
Once textbooks have been tackled, and you feel that you are finally ready to burn the midnight oil, you will undoubtedly be informed (if you haven't already) that there are numerous prepared outlines such as Emanuels or Casenote Briefs to help you cut corners. While these study aids might be helpful, it is in your best interest to periodically do some thinking on your own. It's better not to get into bad habits at least until second year.

After arming yourself to the teeth with casebooks, hornbooks, case notes and prepared outlines you will undoubtedly be eager to lunge into the front line to do battle in your first Legal Process class. At this point, to your utter horror, you will find that the Professor has the audacity to let you leave the room without having settled or answered the discussion which he started.

This feeling of frustration will probably last for some time, but it serves its purpose. It causes you to think, to analyze a situation from different perspectives, and in the final analysis it is what will make you a good lawyer. Although in some law school courses there will be definite "yes", "no" answers, the bulk of your work will involve researching and using cases that roughly parallel your issue. It is in this respect that your ability to reason things out will be of importance.

Aside from these general warnings, it is also essential that you periodically put things in perspective. Your first year will undoubtedly be difficult. You will be in new surroundings with new people and learning a subject that is quite unlike anything you have been exposed to in undergraduate or graduate studies. On the up side, however, the reality of it all is that few of you will fail out. The more likely scenario is that you will find that law school is not what you had anticipated it to be. If it is not for you, there is no shame in leaving. Nobody deserves to be miserable for three years.

With these thoughts in mind you should be able to approach your first semester with some semblance of sanity. You might find it helpful to carry a brown paper bag with you for the first few weeks to fend off any sudden panic-induced hyperventilation attacks. Other than that, if you keep a level head and realize that everyone around you is in the same boat, you'll find that your first year is not as intimidating an experience as people would lead you to believe. See you in second year.



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# The Fourth Year Night Student: The Few, The Bad, The Crazy

by Scott M. Sommer

Yes folks, if you liked three years of law school, you will love a fourth! The joy, the happiness, the excitement of knowing that three-fourths of the people you came into law school with are now gone cannot be matched. Realizing that for nine more months you will be able to not go to the movies, not have dinner with your friends, not take the express train home during rush hour, not see your significant other outside of bed and not put your children to bed at night, but will instead be able to spend countless more hours in the law school library, drink gallons more of vending machine coffee, eat innumerable bags of potato chips and M&Ms and use yet more vacation days for exams, one can only be overcome with pangs. Pangs of what is beyond me.

As I now enter this unique status of fourth year law student, I can only feel mixed emotions. At last I can see the light at the end of the tunnel, although who knows what lurks outside the tunnel except for immense debt. On the other hand, most of my friends and comrades in struggle have left me in this "Kafkaesque" experience (thank you Shelley Duvall in "Annie Hall") for the "real world," wherever that may be.

But, how dare I complain. I get to benefit from yet another unnecessary tuition increase.

Being a fourth year night student is like being part of a revered and special group. Less senior students look up to you as an elder statesperson or freak, depending upon how you read people's faces when they hear that you are still alive after having spent three years in what some professors have referred to as the "monster tombstone." (Go stand out in front of the building and look up—there is more marble here than all the tombstones in Cypress Hills Cemetery combined!)

One additional benefit is that this year's graduating night students have been able to witness Henry Mark Holzer do his macho shtick on not just one but TWO Constitutional Law classes.

In a more serious vein, the experience of night school has been very rewarding. Even though you have to cram a law school education into four hours a night, there are benefits. Attending night school allows you to meet a more diverse group of students. You will find artists, doctors, nurses, single parents, people at "mid-life" starting a second career, police officers and more in your classes.

This diversity in age, life experience, race, ethnicity and national origin will oftentimes add a special flavor to the class discussion. Nothing tops having a medical worker in *Law and Medicine* relate the dry casebook material to the hard real life choices that health care workers have to make every day. How do you really decide when it is time to pull the plug or remove the feeding tube? A case can only set criteria, a health care worker in that class can discuss what really goes on inside the hospital.

The other major advantage to attending night school is that it gives you the opportunity to stay out in the "real world" and stay in touch with society. Life does not begin and end at the law school door. You have other responsibilities, be they work, family or both. They keep you grounded in reality.

These experiences also allow you to grow while still spending a large chunk of time in what can be a very alienating, impersonal and competitive environment. If you are truly fortunate you will be able to obtain law related employment, (and do not rely on the Placement

Office), giving you not only a practical and challenging educational experience, but an experience which future employers will appreciate.

So, incoming night students do not fret. It was only three years ago that I stood where you stand today; feeling incredibly overwhelmed, frightened and seeing no end in sight. Today, I sit slightly worn from the experience and realizing that this too shall pass—and it shall pass with those of us who have struggled into this fourth year coming out on top.

## Henry Strikes Again

### Or Better To Be Feared Than Loved

It appears that Henry Mark Holzer has once again seen fit to fail a significant number of students who suffered through his Constitutional Law class last spring and to give extremely low passing grades to the rest. While I will not launch into a diatribe on Ayn Rand or the objectivist epistemology, I will offer my theory as to why Mr. Holzer did a "who did what to who" to his students of last spring.

Its very simple. In fact, it is as simple as some of the holdings in Mr. Holzer's Constitutional Law class.

The appalling respect acquired by Mr. Holzer the last time he failed many of his students was slipping. The last class Mr. Holzer failed graduated before last year's crop of Constitutional Law students arrived. His reputation had to be renewed. Mr. Holzer needed to fail more students so there could once again be a traumatized group in the school to put fear in the hearts of his future students.

This year's first class, however, should not worry too much. I predict that Henry Mark Holzer will not strike again until the class of 1991 enters—watch out!

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# Supremes Okay States' Sodomy Ban "At Best Facetious"

by Robert Roth

It was with these words, "at best facetious," that the Supreme Court characterized the argument that a Georgia statute banning all acts of private, consensual sodomy violates citizens' constitutional rights of privacy.

The recently decided case of *Hardwick v. Bowers* involved a lawsuit brought by Michael Hardwick, a homosexual. Hardwick challenged the validity of a Georgia criminal statute authorizing imprisonment of an individual for up to 20 years for a single private, consensual act of sodomy.

## THE MAJORITY

The majority opinion gave little notice to the fact that the statute criminalized both hetero- and homosexual conduct. It essentially characterized the issue presented as "whether the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy . . ." Having so phrased the issue, the answer became a resounding "no."

The majority drew from a number of areas to support its argument that homosexuality has not been accepted by society and that homosexuality does not constitute a fundamental, protected right enumerated in the Constitution. Millennia of moral teaching, prohibitions in Roman and Common Law, and biblical condemnation are relied on. The presence of anti-sodomy laws in the original thirteen colonies is also noted, thereby inferring a conscious awareness against homosexual activity at the time the Constitution was framed.

Aside from this historical perspective, the majority attempted to distinguish Hardwick's argument from those cases in which the Court has accorded "fundamental right" status to certain highly personal, intimate activities. Cases in this area have dealt with decisions to raise and educate children, to choose to have an abortion, and to use contraceptives.

## CONCLUSORY STATEMENT

The Court distinguished this line of cases from Hardwick's argument by a conclusory statement indicating that there is no connection between these earlier cases and the respondent's situation. The Court then entered into a brief discussion of those rights qualifying for heightened judicial protection, concluding that homosexual sodomy is neither "implicit in the concept of ordered liberty" nor "deeply rooted in the Nation's history."

After retreating from any thought of extending the "fundamental rights" doctrine, the Court justified the Georgia statute by noting that all laws are based on notions of morality. It is not, stated the Court, its province to invalidate such majoritarian statements.

## CRITICISMS

Having reviewed the majority's arguments, it is appropriate to address these points critically. Of equal or greater importance is the review of those relevant arguments not raised by the majority.

The majority's most glaring error is their characterization of the issue presented. As Justice Blackmun's dissent noted, the case was not at all about a fundamental right to engage in homosexual sodomy; *Hardwick's* real issue was *all* individuals' right to privacy. The majority, by refusing to recognize or address this fact, is guilty of presenting an opinion that is "at best facetious."

The Georgia statute makes no distinction as to the participants in the sexual act. The Court, instead of addressing the broad deprivation of privacy possible via the statute's enforcement, chooses to render an elaborate diatribe on the historical abhorrence of homosexual activity. The privacy issue was ushered out the back-door, while Leviticus, Henry VIII and Blackstone rallied against Michael Hardwick, the perpetrator of "a crime not fit to be named."

## HISTORICAL NONSENSE

The majority's historical argument is flawed in ways other than its inflammatory nature and its belittling of Hardwick's privacy arguments. The invocation of "ancient roots," for example, makes the specious assumption as to the wisdom of the ancients. Slavery and anti-miscegenation laws were also condoned in history, but eventually rejected by the Court and this country. In this respect, prior laws and customs must be viewed critically if we truly desire to maintain a just society. Blind faith inevitably leads to tyranny.

Another problem encountered with the historical approach to Hardwick's claim is that it effectively ignores the human and emotional aspects of the case. Regardless of one's views on homosexuality, the reality is that a segment of this country's population is homosexual. To dismiss their concerns over possible imprisonment for expressing their sexuality in the privacy of their home as "facetious" is exceptionally callous and unjustifiable.



WAIT...I THINK WE'D BETTER HAVE OUR LAWYER PRESENT.

## FEEBLE CONSTITUTIONAL ANALYSIS

Once the "moral millennia" smokescreen is cast aside, the feebleness of the majority's handling of the constitutional issues is clear. Of particular concern is the claim that earlier fundamental rights cases did not "bear any resemblance to the claimed constitutional rights of homosexuals to engage in acts of sodomy that is asserted in the case."

Although the "privacy" cases have been characterized by their connection with the family and related activities, they have a much more basic underlying message. *Griswold* and its progeny recognize the inherent privacy concerns arising when individuals make certain personal decisions. These cases are concerned with the fundamental interests individuals have in governing their lives and in deciding what intimate associations they will or will not have. To limit *Griswold* and its progeny to procreation, childbearing and abortion is to view constitutional law in a disjunctive vacuum, devoid of the continuum in which life is lived and its decisions are made.

The Court digs an even deeper hole for itself when it attempts to justify the state's intrusion into citizens' private activity conducted within the home. It refers to illegal conduct such as possession of drugs, firearms and stolen goods, which, even when conducted within the confines of the home, is not immunized from prosecution. The opinion then refers to other sexual conduct like adultery and incest that remain crimes even when committed within the home. The majority, however, fails to show how Michael Hardwick's actions are in any way related to these acts so as to warrant such comparison.

In effect, the majority's decision seems to be nothing more than a knee-jerk reaction to its revulsion for homosexual behavior. Neither the state of Georgia nor the Court offers any justification for the statute aside from majoritarian morality. Ironically, the Court itself, in *Palmore*, stated that "Private biases may be outside of the reach of the law, but the law cannot directly or indirectly give them effect."

The Court's decision fomenters personal bias. The Court makes the unfortunate mistake of not looking at the individual, but rather differentiating between the homosexual and the heterosexual. It ignores its own finding in *Thornburgh* that "the concept of privacy embodies the moral fact that a person belongs to himself and not others or society as a whole."

The majority states that all law is based on notions of morality. Yet, the Court has already established, in such cases as *Carey*, that the right of individuals to engage in non-reproductive sex, even if others find it immoral or unnatural, falls within the Constitution's right of privacy.

## FUTURE IMPACT

The true impact of the decision has yet to be felt. Of primary interest is what the effect the decision will have on the "fundamental rights" approach to the right of privacy. Does the decision bode a trend towards a strict interpretation view of the Constitution? As Justice White cautioned in his opinion, "the Court is most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution." Perhaps the right of privacy has become the bastard of Constitutional Law.

The most disturbing aspect of the decision, however, is that the Court, through its moral proselytizing, has sacrificed its integrity by inadequately justifying its conclusion. In its obsessive approach to the question of homosexuality, it has compromised the right of privacy to the detriment of all. Logic, one hopes, will ultimately shine through the Court's arguments which, up to now, remain clouded in rhetoric and prejudice.

## Excerpts from a 5-4 Split

"Nor are we inclined to take a more expansive view of our authority to discover new fundamental rights imbedded in the Due Process Clause. The Court is most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution. . . . There should be, therefore, great resistance to expand the substantive reach of [the Due Process and Equal Protection] Clauses, particularly if it requires redefining the category of rights deemed to be fundamental. Otherwise the Judiciary necessarily takes to itself further authority to govern the country without express constitutional authority. The claimed right [of private, consensual sexual activity between adults] pressed on us today falls short of overcoming this resistance."

"[I]f respondent's submission is limited to voluntary sexual conduct between consenting adults, it would be difficult, except by fiat, to limit the claimed right to homosexual conduct while leaving exposed to prosecution adultery, incest, and other sexual crimes even though committed in the home. We are unwilling to start down that road." *Justice White expressing the majority's opinion.*

"To hold that the act of homosexual sodomy is somehow protected as a fundamental right would be to cast aside millennia of moral teaching." *Former Chief Justice Burger concurring in the majority's opinion.*

"The Court claims that its decision . . . merely refuses to recognize a fundamental right to engage in homosexual sodomy; what the Court really has refused to recognize is the fundamental interest all individuals have in controlling the nature of their intimate associations with others."

"I can only hope that . . . the Court will soon reconsider its analysis and conclude that depriving individuals of the right to choose for themselves how to conduct their intimate relationships poses a greater threat to the values most deeply rooted in our Nation's history than tolerance of nonconformity could ever do. Because I think the Court today betrays those values, I dissent." *Justice Blackman dissenting from the majority's opinion.*

# Justice Department Opinion AIDS Victims Immune

## from Handicap Law Protection

by Judie Steinhart

While we were studying for exams last June, the Justice Department was busy formulating an opinion that allows discrimination against AIDS carriers. The Justice Department has interpreted a section of a federal statute to permit AIDS-based discrimination since it involves a communicable disease rather than a handicap.

According to the Justice Department's interpretation of the law, one who actually manifests the symptoms of the disease is protected from discrimination, while someone who carries the disease has his rights subject to the fears of his employer, landlord, school dean, or whatever authority figure with whom he must contend.

The Justice Department explained that Section 504 of the Rehabilitation Act "prohibits discrimination based solely on handicap against any otherwise qualified handicapped person in any program that is conducted by the federal government or that receives federal financial assistance." (Memorandum for Ronald E. Robertson, General Counsel, Department of Health and Human Services, p. 1.) For example, if you are incapacitated in some manner, but you are fully able to perform your job, your employer cannot fire you, under the Act.

### FEAR OF CONTAGION

The AIDS decision holds that while a person who has AIDS cannot be discriminated against for any of the disease's physical manifestations, a person with AIDS or carrying AIDS can be discriminated against if the reason is fear of contagion.

The Justice Department "concluded that section 504 prohibits discrimination based on the disabling effects that AIDS and related conditions may have on their victims. By contrast, we have concluded that an individual's (real or perceived) ability to transmit the disease to others is not a handicap within the meaning of the statute and, therefore, that discrimination on this basis does not fall within section 504." (Id., p. 1).

### NEAT TRICK

Of course, trying to prove that a person was fired because of their handicap, rather than a fear of contagion, will be a neat trick. The Justice Department has accomplished nothing by drawing that distinction; the opinion has, in essence, left AIDS victims and carriers subject to the prejudices and fears of their employers, landlords, etc.

## Rehnquist-Scalia from page 1

The second reason was to quell fears of the liberal members of the court, Brennan and Marshall, that their successors, should they resign, would not be an embarrassment to the Court. On this score the Presidential appointments proved to be anything but an embarrassment to the integrity of the Court.

The President's appointment as Chief Justice was none other than a 15 year veteran of the high court, Justice William Rehnquist. Rehnquist, appointed by President Richard Nixon in 1971, has proved time and time again that he is the most conservative member of the Court. His adamant conservatism was brought up in 1971 and again at the Senate confirmation hearings this past summer. Senators claimed he was too far outside the mainstream of American politics and beliefs.

### Rehnquist

During the first ten years of Rehnquist's tenure on the Court, his conservative values were clearly obvious. His 47 lone dissents seemed to prove the Senators' fears. With the appointment of Sandra Day O'Connor by President Reagan in 1981, the Supreme Court and, more importantly, the American public seemed to be shifting their views to the right. For example, during the past five years, the Court, with Rehnquist seemingly at the helm, has scaled back on Warren court decisions in criminal cases. The majority has sided

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The writers of the opinion explained why an AIDS carrier is not handicapped, and therefore can be discriminated against. "[E]ven if the carrier has an 'impairment,'" wrote the Justice Department, "it does not substantially limit any major life activity. The carrier is fully capable of performing all major life activities . . . caring for [him]self, performing manual tasks, walking, seeing, hearing, speaking, breathing, . . . The carrier may be analogized to a perfectly healthy person carrying a test tube containing the infectious agent. This person may possess the ability to spread the disease to others but there is no basis for arguing that he is handicapped." (Ibid., p. 24.)

Under the Justice Department's reasoning, an AIDS carrier is not handicapped and so his civil rights are left unprotected under the Rehabilitation Act. An AIDS victim who had physical symptoms of the disease, however, would have a much stronger civil rights case by claiming he was handicapped and therefore protected by the Act.

### ASSISTING DISEASE'S SPREAD

The likely result of the decision will be to keep carriers from taking the necessary precautions to avoid spreading the disease, for fear they would be discovered. The Justice Department, whatever its intentions, is probably going to help spread the disease if people are afraid to be tested for it.

The opinion is careful to point out that discrimination does not have to be based on a rational fear of contagion; an irrational fear will suffice. The Justice Department says that a plaintiff AIDS victim and/or carrier cannot sue under the Rehabilitation Act just because his employer or landlord's fear of contagion was unreasonable.

Referring to the plaintiff in a hypothetical case, they explain, "Nor can he challenge the reasonableness of the defendant's judgment about the risk that he will spread the disease; defendants are not prohibited by section 504 from making incorrect, and even irrational decisions so long as their decisions are not based on handicap." (Id., p. 31).

Scientists are saved a lot of work if people can be discriminated against for fear of contagion of a disease they carry or have without having to prove whether the disease is in fact contagious. The prejudices of the people are carefully protected, while a major disease is turned

with police and prosecutors in restricting defendants' rights.

In contrast to Chief Justice Burger, who was perceived by most who knew him to be somewhat aloof, Justice Rehnquist has been known to visit the local pub for beer and burgers at the request of the Supreme Court law clerks. Rehnquist's wit, charm and apparent amiability makes him a popular person with the other Justices. This outgoing nature will serve him well in his attempt to persuade the other Justices to view issues as he does.

One of the main powers that a Supreme Court Chief Justice has is to assign the task of writing an opinion when he is on the majority. This power is important, especially in close cases, since the person who writes the court decision will set the terms of debate. In this regard Rehnquist is likely to depend on the person who was chosen by the President to fill his associates seat on the bench, U.S. Court of Appeals Judge Antonin Scalia.

### Scalia

A 1982 Reagan appointee to the appellate bench, Scalia is not expected to provide any surprises for the administration. During twenty years of academic and judicial pursuits, he has not only adhered to conservative principles, but has helped shape them. Articles written by Scalia during the Carter administration became the philosophical basis for a good portion of the present administration's regulatory reform program.

In more than 20 articles, 84 majority opinions on the federal bench, and numerous concurring and dissenting opinions, Scalia has proved to be both a witty and incisive writer. Graduating at the top of

his class at Harvard Law School and his subsequent 20 years as an academic and jurist have made Scalia's intellectual abilities beyond reproach.

Although Justice Rehnquist's opinion on most issues are widely known even among first year law students, Scalia's views on various issues are not. Most of his opinions on issues ranging from constitutional law to affirmative action must be gleaned from the many scholarly articles he has written.

### Scalia's Views

On affirmative action, Scalia's biting criticism of judges who "eloquently and quite safely" would give job preference to minorities due only to their status as minorities, at the expense of those who took no part in the initial discrimination, was made known in a 1979 Washington University Law Journal article entitled "The Disease as Cure."

## NYC Takes a Stand

There is one saving grace that has emerged from the Justice Department's notorious AIDS decision: The New York City government pledges not to follow it.

Mayor Koch released the following statement this past July: "The City of New York is strongly opposed to the U.S. Justice Department's cruel and restrictive interpretation of federal law with respect to AIDS-related discrimination. I am, therefore, pleased that the Corporation Counsel has discredited the Justice Department's interpretation of the law, and I am confident that the Human Rights Commission will continue to enforce our human rights law to protect people suffering from AIDS or suspected of having AIDS . . . The federal government has dropped the torch of leadership on this vital issue. New York City will not let it fall."

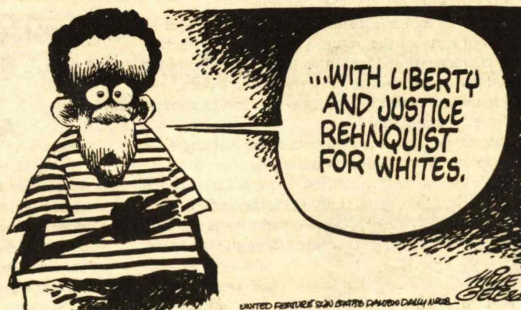
The City's refusal to follow the decision could greatly weaken its effect. About one-third of all AIDS cases in the United States have been reported in New York since 1981, according to an article in *Newsday*, Wednesday, July 16, 1986. The Human Rights Commission's AIDS discrimination unit in New York has received about 200 complaints of AIDS discrimination since November 1983, according to the same article.

The Human Rights Commission in New York has done much to combat AIDS discrimination. It has helped people to get their jobs back, and to receive money damages, insurance coverage, and medical help. Now it is facing a new unexpected enemy: the federal government.

Although the Commission vows to continue its work combatting AIDS discrimination, and claims, the Justice Department's opinion is not binding on them, surely it will be an extra task to relieve people's fears which will be exacerbated by the decision.

into a further excuse for making outcasts out of a group who were just beginning to be accepted, or so some of us thought.

The Justice Department has fed the fears of the public, giving them even more rationalizations for fearing and hating AIDS victims, carriers, and homosexuals in general. The decision is simply a governmental endorsement of prejudice against those who are different.



Scalia's first amendment views were made known in *Ollman v. Evans and Novak*, 750 F.2d 970 (1984). He stated in no uncertain terms that political publicists, with full knowledge of the falsity of recklessness of what they say, should not be able to destroy private reputations at will.

In one death penalty-related case, Scalia dismissed out of hand an appeals court order to the Food and Drug Administration to consider whether lethal injection of death-row inmates met consumer drug safety standards. In a biting dissent Scalia said "The condemned prisoner executed by injection is no more a consumer of the drug than is a prisoner executed by a firing squad a consumer of the bullets."

A Rehnquist-Scalia team may never materialize, but their conservative natures and amiable personalities are likely to nudge the Court further to the right than it has been in decades.

September, 1986 • Justinian 9

## EDITORIALS

# Welcome. Welcome Back.

Trying to explain to first year law students what lies ahead in the weeks and months racing towards them is an impossible task. We cannot and will not create an exhaustive list of do's and don'ts, of purported insights, of potential scenarios.

The first year is an intensely personal experience and all individuals must live it for themselves. Each and every second and third year student knows no amount of explaining can describe the visceral triumphs and tragedies awaiting each and every first year student.

The only advice we can give is work hard, don't sell yourself short, and don't cut corners but don't go too far. Despite the seemingly impossible task ahead, there is plenty of time to do the work and relax and enjoy yourself. Most importantly, you will make good friends that will carry you through the year and that you will carry into your future. Good luck, good skill and enjoy

## Tooting Our Horn

The *Justinian* is among America's premiere law school newspapers. Last year, the *Justinian* was rated the best large school newspaper by the American Bar Association's Law School Division. This year we were distinguished with five awards, including the best feature articles on internal law school affairs and law in the community as well as the best editorial on the broader aspects of the law.

We take our role as BLS's community forum seriously. We have an obligation. We invite your participation, your contributions, your viewpoints. Humor, legal commentary, social criticism, drama, complaints, information, political dialogue, art; they all have a place in your school's monthly newspaper.

We try to keep our door open at all times, figuratively and literally. Stop by. Deadline for our October issue is September 29.

## Drowning in Reagan's Judiciary

The confirmation this summer of Daniel Manion as a life-tenured Seventh Circuit Appeals Court judge confirms that the President is concerned more with ideological purity than with judicial competence. The President characterized the principled opposition to an obviously unqualified candidate as a "little lynching mob."

The President ultimately prevailed through political strong arm tactics. He chose to ignore, of course, the atrocious briefs Manion submitted to the Senate as examples of the high quality work that litigants can expect of him. Let us hope Manion can at least select intelligent law clerks to write his opinions for him.

Also ignored by the President was the letter sent by the deans of forty of the nation's most prominent law schools characterizing Manion as lacking "scholarship, legal acumen, professional achievement, wisdom, fidelity to the law and commitment to our Constitution." Some little lynching mob.

Ideological purity was also at issue in the Rehnquist-Scalia appointments. Unlike Manion, the two are concededly intellectually qualified. Rehnquist, however, seeks to roll back individual rights to the days of *Plessy v. Ferguson*. Scalia has shown antipathy to press freedoms and minority rights secured through affirmative action.

The Rehnquist, Scalia, and Manion selections are not what is most disturbing. It is bad that an unqualified political appointment, tied to the work of the John Birch society, has been elevated to a Circuit Court position. It is disconcerting that Rehnquist, a judicial extremist with questionable veracity given the conflicting confirmation hearing testimony on his role in harassing minority voters, is now the chief judicial officer of the United States. But worse still is the judicial legacy the nation inherits after Reagan retires to his ranch.

Nearly half of the federal judiciary will have been appointed by this President at the time of his retirement. Of his 230-plus judicial appointments made by November 1985, 80% were white males, each with a net worth of over \$400,000. Of Reagan's 159 first term appointments, 36 were millionaires. Some 97% of his appointments were Republicans, the highest percentage of partisan judicial appointments since Woodrow Wilson. Only one of Reagan's 129 first-term district court appointments was black.

The impact of the ideological use of the judicial appointment power is becoming clear. What the Reagan Administration is unable to achieve through legislation may be accomplished through jurisprudence. Make certain that you follow Judge Manion's example as you embark on your legal career; stay in the state courts and out of the federal courts.

this time of your life.

Second years, too, should enjoy the coming year. You are free of the self-imposed anxiety of the first year and the bar exam-imposed anxiety of the last. Take courses that interest you. Build your skills. Take advantage of the excellent clinics open to you; hands-on application is thrilling compared with class lectures and book study. This is your year to grow into the law.

And finally to you know-it-all third years: try to be humble and don't sell your outlines for too much. Impart your accumulated insight and knowledge to the rest of us. You are almost free of the tyranny of law school, but don't get too psyched. The ever more difficult bar exam beckons.

To each and every student, professor, administrator and staff member: Welcome. Welcome back.

## Tuition Tango

Money, so the song goes, makes the world go round.

Cash, bucks, the big green, moolah: it certainly seems to make the Trager Administration do dances in the street. Too bad the administration doesn't ask students to help plan what seems like the inevitable annual fiscal twist. Once again, BLS students have been brutally buffeted with an unexplained and unjustified tuition increase.

Perhaps we're just wallflowers, too spastic to glide along with the financial smoothies on the ninth floor and Boerum Place dance floors. Or maybe the dean who plans the annual student debt dance is concerned that students might want to change the song.

To strain the analogy, tuition is just too damn loud. Yo, turn it down. \$6600 . . . \$7200 . . . \$8000 . . . \$8700+ .—Thank goodness tuition isn't measured in decibels, or else we would have been deaf long ago.

We students received no notice of the tuition increase. Nor were we consulted, let alone included, in the decision-making process. But Dean Trager long ago grew hardened to the criticism that he decides without consulting students. His predictable response would be that he cannot govern by committee.

To add insult to economic injury, rumor has it (we are kept so well informed) that the Administration has enacted a new financial aid policy. We can kiss control of our financial aid checks goodbye. Right into the old BLS bank account. Now students can't even get a week or two of interest on a loan that doesn't even cover tuition. You can forget about using even a quarter of your loan money in the BLS juke box.

Perhaps the Dean is engaged in Pavlovian training. Another year or two and students will be panting at our summer mailboxes, waiting for the terse note informing us that, yes, tuition has once again been increased, and, no, you weren't consulted or informed. Will next year's stop in the tuition twilight zone be \$10,000? After all, they're playing our song.

## Accountable to None

What can be said about professors too smug or lazy to explain to their students how the all-important final grade is arrived at? Rumors abound. This professor doesn't read the essays, that one's wife grades the short answers. Another, simply as a matter of policy, will not review exam booklets with individual students, no matter how sincerely aggrieved.

Students, however, deserve better. They can only learn from their mistakes through critical evaluation by a more experienced legal mind.

We all dislike exams: unfair, arbitrary, unrepresentative of our knowledge and ability. That litany would be enough. Add to it unreasonable and inexplicable refusal of certain professors to take time to individually evaluate students' performance, and exams become virtually unbearable and meaningless. Unexplained grades are illegitimate. There is no excuse for them.

What cruel lessons do these "teachers" teach by their despotic refusal to explain why and how the final exam grade was given? What do law students learn? Some sort of bizarre object lesson in the unfairness of life and the unaccountability of those in control? Law students study cases, which are public explanations of why one party prevails over another. If the decision is wrong, at least a reviewing court corrects and explains the error. Not so with the unwilling instructor.

Islands unto themselves, accountable to none but themselves, they smugly or lazily refuse to evaluate with students the only tangible product, the final grade, of hundreds of hours of class preparation and study. These instructors are rightly held in contempt by students. They barely deserve to be ennobled with the title "teacher."

# Welcome or Consequ

— In this perpetual nightclub, I'll be yours eternally  
Though the hours are long and the work infernal  
Just one shameful act, sometimes two, make believe  
we're making do

Trying to make a living out of your downfall  
Trying to make a living out of anything at all  
Didn't they teach you anything, except how to be  
cruel, in that charm school. . . .

— Elvis Costello "Charm School" 1983

by Robert Axford

Well, here we go again. Another semester arrives. Like so many lemmings, we blindly fall off the precipice of good sense on to the jagged rocks of many ambiguities known as law school. The big lie meets big chill. There ain't no satisfaction and you can't always get what you need. But if you go to law school, prepare for the moral and intellectual equivalent of terrorism.

Meanwhile, back at the fort, first-year students are replete with preconceived notions, untested idealism most with their moral virginity intact. Disillusionment like Jason, stalks them at every corner, behind every judicial opinion. Second-year students return sullied by the absurdity of first year, cynical to a fault, and more or less accepting of their faceless fate. Third-year (fourth-year night) students feel only foreboding. At all, the gig is almost up. Just when you get comfortable with the thing, you're asked to pay up and leave. At that just like life? Reality waits for no fool.

The reality of law school is no different than Coolidge's assertion about our society at large: the business of school is business (meaning profit maximization); not education and certainly not enlightenment (a forged virtue here in the age of techno-think). Law school is an economic relationship, pure and simple: money talks, rhetoric walks. That's why I've never been able to

## THE JUSTINIAN

A FORUM FOR THE BROOKLYN LAW SCHOOL COMMUNITY

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# to Truth uences

of Gil Scott-Heron. Take that, ~~Seton~~ <sup>Justinian</sup> Educational loans are a good-news, bad-news enigma. The good news is that there is no longer a debtor's prison. The bad news is that indentured servitude is still permissible. That is my status. I owe so much money that even Brazil feels sorry for me.

Economic coercion is the truth of the consequences of this joint. Our current administrators believe that prestige comes not from providing superior education but from costing more (why else distribute a list of law schools led by N.Y.U. and Columbia—while leaving out Rutgers—every year as a justification for increasing tuition far beyond the rate of inflation?). It's gentrification goes to law school. I half expect Donald Trump to be named the next dean.

But then, economic coercion is America's favorite pastime. In law school, it's the carrot and the stick. The carrots go to all those who sell their souls to corporate law firms, real estate and banking institutions. For a grand a week, it's prostitution in a three-piece suit. The stick is applied to those students who choose to do work that benefits the poor, the politically helpless, the social outcasts; loan payments that would make a Rockefeller choke are one heck of a disincentive to doing work that pays less than one-third of what a Wall Street firm pays.

All of which brings me to the point of this sermon. (Since I'm not your father and you're not Madonna, at least as far as I know, I feel it's alright to preach.) Somewhere along the line you'll have to choose between doing good work and making good pay. It will likely be the most fateful decision of your life. All choices have

consequences, but some have graver consequences than others.



It is my opinion that making good money for doing bad (read immoral) work is a one-way ticket to emotional and spiritual palookaville. (Note that this is a decidedly minority point of view for those of you more worried about popularity than principles.) There is a very good reason why the main effect law school has on people is to make them cynical and jaded. America generally is a society given to existential rationalizations: e.g., "there's nothing I can do to significantly change the suffering inflicted by society; I can't change the system by myself, so why try; it's all meaningless, so I might as well get what's mine." Law school only exacerbates the malady.

But don't make a living out of your downfall. Consider the alternatives before you plunder into the world of capitalmania where profits beat principles on a daily basis. There is poverty law, discrimination law, Legal Services, political asylum work, Legal Aid, etc. The possibilities are only as limited as one's faith in the belief that morality is important in one's everyday life. Instead of being successful at any cost, try being virtuous. It may not be hip in the '80s, but it has a proud history

prehend the obsequiousness that students display toward professors. Professors are like everyone else: they don't deserve respect unless they earn it and they don't earn it by the mere fact that this institution deems them sufficiently fit to stand up in front of a bunch of us and pretend that they know what the hell they're talking about.

The truth is that the really important lessons are rarely learned in class. You learn more from one trip to landlord-tenant court in Brooklyn than you do from 150 hours of property or civil practice. You learn more from one trip to Rikers Island than you do from 300 hours of criminal

*"Somewhere along the line you'll have to choose between doing good work and making good pay. It will likely be the most fateful decision of your life."*

law. You also gain deeper insights from being on the wrong side of a bill collector than you ever attain from any class in sales. Equity, my ass.

Sometimes I feel like a cash-poor third-world nation with H.E.S.C. as the I.M.F. Calls for austerity measures go unheeded as the proletariat revolts and buys the Best



## CORRESPONDENCE

## "I worry.."

The doctors say I'll be alright soon—they really do. But in the meantime I just keep on worrying (and really, what can one expect with all those years of substance abuse, and law school, and the breakdown, and all?). Yep, I just worry and worry. Like, for instance...

... I worry about anyone in law school who doesn't realize that it's naught but a spiral of triumphs and tragedies, and thinks that the latest tragedy is the be all and end all. Expect frustration, deal with it, and get over it.

... I worry about the person who, thinking that law school should be as inhuman as possible, ensconced us all in the architectural hell hole called 250 Joralemon—a characterless, colorless hovel, not even befitting German worker housing let alone a place where *thinking* is supposed to flourish (See, *From Bauhaus To Our House*). The place stultifies (Cf. main reading room New York Public Library, 42d & 5th).

... I worry that the First Years will not comprehend their dilemma: i.e., the only way to find out about anything at BLS is to ask and ask (and ask) the Second and Third Year students—while keeping in mind that whatever a Second or Third Year says must be taken with an ocean of salt.

... I worry about the students who—even though they were told *in writing* that 7:01 p.m. would be too late—were shocked and went screaming to the 9th floor when belated entries for the Law Review writing competition were not accepted.

... I worry about those administrators on the 9th floor who forced our supposedly independent journals to accept the late entries. One would expect the 9th floor's Published by Brooklyn Works, 1986

at-the-barrel-of-a-gun-leniency will spill over to late tuition payments. (We're all going to get mailgrams telling us not to sweat over tardy tuition—aren't we?)

... I worry about those on the 3rd floor who—with a stinging, niggardly, parasitical adherence to a RULE (a deadline not imposed on them when they participated in the competition)—were more concerned with minutiae than with people or with getting the best writers on our journals. (And if the truth be told, the whole mess never would have happened but for the 3rd floor's myopia.)

... I worry that the 14th edition of the Blue Book (Yes! It's coming!) will be as scintillating and as comprehensible as the 13th edition.

... I worry about those of us who don't know that BLS has one of the most congenial student bodies and one of the most approachable faculties around. It's true.

... I worry about the *American Lawyer* article reporting that Dean Trager has "built" housing. Ah, the smell of fresh mortar!

... I worry that the Pierrepont building will become a *carrot* to woo faculty who can afford to pay more for better, while students get the *stick* and end up wasting valuable time commuting to school from the nether regions of our fair boroughs.

... I worry that if tuition hikes continue (and they certainly show no sign of stopping), BLS is going to price itself out of the reach of the middle class—or is that the idea? (And, no, please don't send me a chart listing tuition at other law schools. I don't care.)

... I worry about the people who sacrifice their humanity for law school, thinking that a mean spirit or bitchiness will get them to the top. It won't. Such a great price to pay for no return. Excellence will triumph—despite temporary tragedies.

Well, the nurse says she has to take my writing utensils away now. Just remember that while *lex gladius iuris est*, the pen is mightier than the sword.

Til next time,  
I am,

As always,  
Your friend,  
PARANOIA

## Return to the Victorian Age

The Reagan Administration and the Supreme Court have finally done it. They've crossed the threshold from conservatism to fascism.

A recent decision by the Supreme Court upholding a states right to prohibit certain kinds of sex based on what the mainstream considers normal and acceptable, and the Reagan Administration's Meese Commission report on pornography have begun an unprecedented attack on sexual freedom.

The Administration and the Supreme Court must be made to realize that morals cannot be dictated... ideas cannot be stifled... sexual freedom cannot be halted. Our Constitution gives people, *all* people, the unalienable rights of life, liberty and the pursuit of happiness. If these pursuits lead a percentage of the populace to soft and, yes, even hard core pornography, then so be it. If it leads them to deviant sexual behavior between consenting adults, then that's their God-given right.

After all, the freedoms of the Constitution are for ALL of us or they are for none of us. The protection's of our laws must protect those we disagree with, for those we agree with have no need of them. No federal statute, no Supreme Court case, no constitutional amendment has the right to intrude upon the sanctity of our reading rooms or the privacy of our bedrooms. Yet during the previous year the Supreme Court and the federal

government have moved to regulate both.

For the sake of those who died defending our precious freedoms, those that would impose their religious and political philosophy upon the will of others must be stopped. The cost of prohibiting various sex acts merely because we disagree with them is a high cost for any society to pay. America is the embodiment of personal freedoms. We cannot afford to allow people of Victorian tastes to dictate the will of a nation.

Sincerely,  
James C. Locantoro



The JUSTINIAN welcomes Letters to the Editors. Generally, all letters received are published and all letters are subject to editing. Typed, double-spaced letters are preferred.

# Cohn Dies

from page 1

appointment as chief counsel to the subcommittee, a position Kennedy desired. The friction caused the two to engage in a shoving match in a hallway during the subcommittee hearings in which they almost came to blows.

Cohn blamed many of his later legal and political difficulties on what he termed a "Bobby Kennedy vendetta."

Cohn was credited, along with his friend G. David Schine, then a private in the U.S. Army, with talking Senator McCarthy into pursuing communists in the United States military. After a highly publicized investigation, the U.S. military formally charged McCarthy and Cohn with improper conduct in attempting to gain preferential treatment for private Schine. The resulting "McCarthy-Army Hearings," as they were known, were to be the end of the "McCarthy era."

McCarthy and Cohn were cleared of the charges. McCarthy was censured by the Senate and he died an alcoholic a few years later.

## RETURN TO NEW YORK

After the disgrace and downfall of the McCarthy investigations, many doubted that the young Roy Cohn would be able to purge himself of the image he had acquired. Despite the consensus, Cohn shrugged off the reputation and headed back to New York to begin his private practice.

Many rich and powerful people were soon attracted by Cohn's vociferous advocacy style and were added to his long list of friends and clients. Cohn's client list included the reputed crime boss Carmine Galante, Studio 54 entrepreneur Steve Rubel, Subway vigilante Bernhard Goetz and the New York Catholic Archdiocese. Cohn counted Frank Sinatra, Andy Warhol, George Steinbrenner and Donald Trump among his friends.

Cohn credited his desirability, both as an attorney and a party guest, with the fact that he was a "stand up guy, who takes care of his friends."

Cohn remained an outspoken conservative throughout his career. He remarked that former President Nixon was "deficient in character as well as judgment" for not destroying the White House tapes when he was subpoenaed and told to produce them. He also said that the election of Ronald Reagan as President of the United States was "a total vindication of what McCarthy stood for."

## RUMORS OF HOMOSEXUALITY

As early as 1953, when Cohn and private Schine toured army bases in Europe in connection with their investigation, suggestions that Cohn, Schine and McCarthy, then all bachelors, were homosexuals, began. Mr. Cohn consistently denied the rumors, pointing to the later marriages and children of both Schine and McCarthy as proof of their heterosexuality.

Although he himself never married, Cohn was often seen on dates with women. Some claimed that his companions were a cover up to combat the appearance of being gay.

Cohn's partner at Saxe, Bacon & Bolan, Thomas A. Bolan, denied any knowledge that Cohn was a homosexual, but he did say that they were reviewing the possibility that Cohn died of AIDS.

## LEGAL PROBLEMS

Cohn's stormy career was marked by legal problems. On at least three occasions prior to his disbarment, he was tried and acquitted on charges of conspiracy, bribery and fraud.

Cohn claimed that he held no personal property because the Internal Revenue Service was after him. Indeed, Cohn was audited for 20 years in a row, and the I.R.S. had liens for \$3.8 million against any assets that Cohn might accumulate.

It was four particular problems that led to Roy Cohn's disbarment. In an unsigned decision, the Appellate Division's First Department upheld the charges leveled against Cohn by the Departmental Disciplinary Committee.

The first charge of misconduct resulted from Cohn having answered falsely, under oath, questions on an application for admission to the bar of the District of Columbia. Cohn answered "no" to a question asking if he knew of any charges or complaints pending against him. The court found that at the time, Cohn was on notice from the disciplinary committee that three complaints were pending against him.

The second charge involved a \$100,000 loan that Cohn had obtained from a client, Ms. Iva Schlesinger. The loan, supposedly for 90 days when it was made in 1967, was not repaid for seventeen years. The \$100,000 was paid in 1984 in settlement of a \$127,584.76 judgment Ms. Schlesinger acquired against his firm. The debt was repaid after disciplinary proceedings against Cohn were begun.

In the suit against Schlesinger, Cohn called the loan a "\$100,000 advance" on legal services that he was to provide for Ms. Schlesinger in the future. The court found this to be in direct conflict with both the annotation on the original check which said "loan" and correspondence between Cohn and Schlesinger in which they both referred to the transaction as a loan.

Charge three involved a codicil to the will of the late Lewis S. Rosenstiel, a multi-millionaire and acquaintance of Cohn. Cohn had Mr. Rosenstiel "sign" the codicil while he was heavily sedated with thorazine and suffering from Alzheimer's disease. A handwriting expert referred to the "signature" as a mass of squiggly lines that in no way resembled any letters of the alphabet.

The codicil was not recognized by a Florida probate court. The New York court ignored the disciplinary committee hearing panel's conclusion that Cohn's attempt to have the codicil probated involved no misrepresentation. The court found Cohn's testimony in the case to be untruthful and misleading and found him guilty of professional misconduct.

The last charge resulted from Cohn's failure to adhere to the guidelines of a court escrow order. The order prohibited Cohn, the escrow agent, from liquidating one of the items in escrow, a boat owned by Cohn's client. Cohn caused the boat to be taken out of the escrow account by replacing it with an equivalent bond which was never honored. The boat eventually sank, and the court was not notified until seven months later.

The court found that these events put Cohn's suitability as an escrow agent in serious question. The supreme court, like the federal court in which the case was heard, found Saxe, Bacon & Bolan liable for contempt in violating an escrow order.

Cohn was disbarred on June 23 as a result of the four charges. His appeal of the decision was denied. He died soon thereafter.

# Placement

from page 4

public interest law or criminal law, require students to volunteer or receive modest stipends. Students interested in pursuing public interest law should inquire about BLS's Sparer fellowship. Those interested in criminal prosecution should look into the D.A.'s summer program or BLS's new prosecutorial clinic.

For those interested in careers within the public sector, a Justice Department representative will be at One Boerum Place on September 19 at 1 p.m. Additionally, the I.R.S. is accepting resumes from the class of 1987 until October 10, and from the class of 1988 until December 1.

The Justianian, Vol. 1986 [1986], Iss. 2, Art. 1

## Appeals Court Redefines Self-Defense

# Goetz Goes to Trial

by Uriel Gribetz

Two years ago, Bernhard Goetz shot his way into America's conscience when four youths allegedly attempted to mug him. His actions sparked a prominent nationwide debate about self defense. This past July, Goetz was ordered by the New York Court of Appeals to stand trial for the attempted murder of the four youths. A trial date is set for September 2.

The crux of the issue in the Court of Appeal's unanimous decision sending Goetz to trial dealt with the use of deadly force in self defense. The Court adopted an objective standard, noting that deadly force may only be used when a "reasonable person" would use such force.

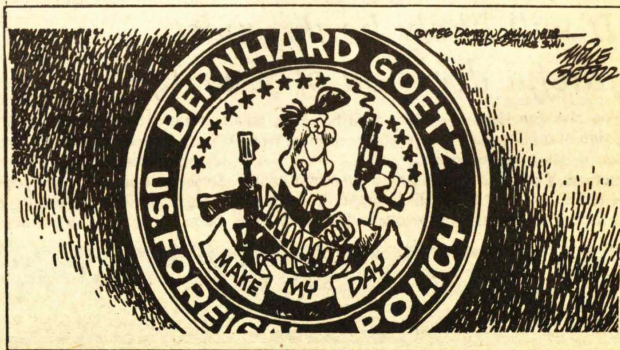
## THE REVERSAL

Chief Judge Wachtler, in writing for the Court, reversed a narrow ruling by the Appellate Division and reinstated all nine counts of a grand jury indictment. The subjective standard applied by the Appellate Division, allowing the use of deadly force in any case where an individual defendant felt threatened, was rejected.

of the subjective standard improperly shifts the focus of attention from the subjective state of mind of this defendant

## LEGISLATIVE INTENT

The Court of Appeals, in reversing the Appellate Division's ruling, looked to the legislative intent behind the penal code concerning the principals of justification. Judge Wachtler's opinion notes that the legislative history is devoid of any indication that the phrase "reasonably believes" is meant to apply to a subjective standard. Thus, the prosecutor's instructions to the grand jury on the defense of justification was correct.



The Appellate Division, in affirming the trial court's dismissal of the Goetz indictment, held that "the critical inquiry under New York's justification (self defense) standard is governed by the subjective standard, namely, whether the defendant reasonably believed the use of physical force or deadly force to be necessary under the circumstances, not the objective test espoused by the District Attorney and the dissent—whether a reasonably prudent man would have had the belief in that situation." The Appellate Division continued "In our view, the use

The prosecution, stated the Court, "sufficiently apprised the grand jury of the existence and requirements of the defense to allow it to intelligently decide that there is sufficient evidence tending to prove justification and necessitating a trial. It will now be for the petit jury to decide whether the prosecutor can prove beyond a reasonable doubt that Goetz's reactions were unreasonable and therefore excessive."

It appears that a strong policy reason behind the Court of Appeals decision concerns the countenancing of vigilantism. The Court felt that "to completely exonerate such an individual, no matter how aberrational or bizarre his thought patterns, would allow citizens to set their own standards for the permissible use of force."

Whether Bernhard Goetz is guilty or not depends upon the determinations made by the jury at his trial. The Court of Appeals decision may provide the necessary impetus for the judiciary to curb incidents like this in the future.



ally, the I.R.S. is accepting resumes from the class of 1987 until October 10, and from the class of 1988 until December 1.

In order to better assist recent graduates in finding a choice career, the Placement Office has also set up a "Job Placement Hotline" and a "Job Net Service" for those alumni who are current in their dues payments.

## THE BOTTOM 90%

The Office is concerned with assisting all BLS students in finding legal employment, says Glasser. The Office wants to reach the entire spectrum of the class.

Glasser reports that 96% of BLS's 1985 graduates were employed 6 months from graduation. This compares favorably with the national average, which is 93%. Additionally, 94% of the class of 1987 students

responding to a BLS survey were employed this past summer, 93% in law-related jobs. Near 90% of the class of 1988 was employed, 86% in law-related jobs.

The Placement Office, proclaims Glasser, is there for all students. Just because "you're not in the top 50% doesn't mean you won't make a better lawyer" than a student who graduates at the top. "Many employers don't care as much about grades as finding a student who is a self-starter." The students who employers are most willing to hire seem to be those who show that they are willing to learn, who will work hard, and are not afraid of new challenges, says Glasser and LeBel.

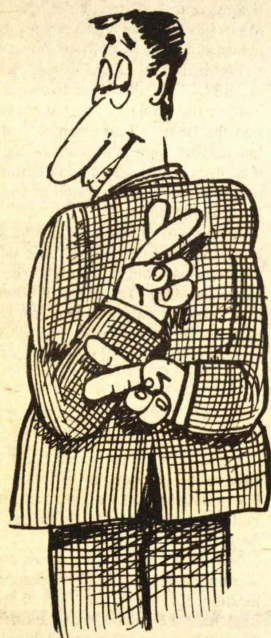
Furthermore, says Glasser, "The Dean cares about every student, even number 322."

## Job Scene

from page 4

by one of our 1984 graduates. He is now an associate in a highly-esteemed, medium-sized firm which has a fine commercial and securities law practice. He was thoroughly disgusted. He told me that a month earlier, he had listed a summer position with the Placement Office. He had not received a single resume. This was not a position open only to students on law review or in the top 10% of their class. Rather, it was an opportunity for a capable student with an interest in commercial and corporate law. Yet, it went unfilled, apparently because students are not using the Placement Office on a regular basis. Placement Director Grace Glasser informs me that in recent months, a number of summer, part-time, part-time-into-summer, and career positions, have suffered the same fate.

I cannot assure you that, at this moment, there is a good job with your name on it at the Placement Office.



What I can assure you is that *timing is everything*. If you are looking for positions at medium-sized or smaller offices which do not conduct on-campus interviews, and which cannot predict their hiring needs until they actually have them, then it is essential that you do several things. First, introduce yourself to Grace Glasser and Carolyn LeBel in the Placement Office so that they know who you are and what kind of job you are seeking. Second, permit them or one of their assistants to review your resume and cover letter to insure that these materials are in the best possible condition. Third, make it a habit to review the job directories regularly.

Finally, be willing to consider a job outside the City. I am not suggesting that you have to move to Denver to find a good job—although we have well-placed graduates there and points West, and North, and South. What I am suggesting is that you consider a position in the suburbs or upstate, from which an increasing number of placement opportunities are coming our way.

by Peter J. Mollo

Ever since Watergate, the American public has been fascinated by the power of a skilled investigation. We nearly witnessed the theft of an election, and instead were treated to a humbled President Nixon resigning in disgrace. Since that time, there have been other gratifying examples of people in power being exposed in their illegal or immoral acts. For example, Commissioner Patrick McGinley of the New York City Department of Investigations, resigned because of media pressures created by the minor act of an air conditioner being installed by an on-duty city police officer.

The hearings being conducted by Dean Trager on city corruption brings BLS closer than ever to the excitement of a real investigation at BLS. The hearings, however, raise nagging questions about investigations in general, which can give pause.

One of the beauties of the American legal system is the presumption of innocence. This presumption is a safeguard against the kind of prosecutorial systems used in the Salem witch trials.

The right to a trial by a jury of your peers, the right to counsel, the right to due process and equal protection all work to insure innocent parties will not suffer damage at the hand of the law through the power of the state.

Countries which abrogate these rights are roundly criticized in the international community and by most national student groups. Countries which are allied with us yet operate in contravention of international law are vilified by our loyal opposition (left liberal student, labor and political groups and media). Countries which abrogate these rights and are not allied with us are roundly criticized by our government (and right conservative student, labor and political groups and media). The favorite whipping boy of the left is the Republic of South Africa and of the right is the Soviet Union.

But regardless of whatever political philosophy one subscribes to, most Americans would agree that those rights are very important and even central to identify as a nation. What's more, if any of us lost any of these rights we would be very annoyed and would probably cry foul and contact an attorney!

Given the reality of the power of the media its influence on public perceptions, the resources of the state to pursue an investigation, the effect such investigations have on the life of the investigatee and his family, it seems that new standards ought to be applied to conform to the new reality.

The public has the right to demand that their elected representatives behave in accordance with the standards of the community. The highest standards, not the lowest. Not standards which, while conforming to the letter of the law, are really applied to sell newspapers and television ad time. It does not matter if the person under investigation is innocent or guilty. If the state behaves in such a way as to destroy the victim's right to the presumption of innocence, we have all given away a very valuable protection.

The lowest standard of the presumption of innocence is that "someone must be guilty if he is being investigated," or "the government wouldn't be investigating him if he didn't do *something*!" But those concepts are ignorant of the McCarthy era. If Senator McCarthy investigated you, your career and even your life would be

destroyed, the average person, as personified by your customers, clients, patients or boss, would think that "after all you must be at least 'pink' if not 'red'." A lot of innocent people had careers and lives ruined by Senator McCarthy's abuses.

It seems to me that the legal profession ought to police itself in the investigation area. Before the post-Watergate era turns into another McCarthy era, certain guidelines ought to be adopted as a code of voluntary professional conduct.

### Proposed Code

The proposed code would read something like this:

In recognition of the fundamental right to the presumption of innocence, the following guidelines are voluntarily adopted by the XYZ Investigative Lawyers Association:

- 1- Prior to arraignment or indictment, the names of the subjects of investigation will remain confidential.
- 2- The subjects of investigations conducted by government agencies will be provided with counsel at the expense of the state, should it be requested.
- 3- The appropriate comment to the press, if the subject of the investigation chooses to notify the press of the investigation, will be "We reserve comment regarding guilt or innocence and on the facts of the case pending the outcome of the investigation."

- 4- The information requested by the government should be strictly limited to the scope of the investigation as defined by the original allegations of wrongdoing, (thus preserving the subject's right to confrontation of witnesses and cross-examination of evidence).
- 5- The time the government has to conduct an investigation should be strictly limited by the evidence supporting the original allegation. This time limit should never exceed existing statutory limits and should be set by mutual agreement by the party's attorneys. Should the party's attorney fail to agree, the adjudication should be made by the court to whom the subject would be brought to trial should the original allegations prove correct.

The author recognizes the limitations of the proposed code and invites comment from colleagues. The code is designed to enable the government to continue to do valuable investigative work, and save the public the disgusting spectacle we witnessed in the Donald Manes case.

The press of the press on Mayor Koch provoked the behavior of an otherwise fairly rational man. One day he kissed Manes, and the next called him a "crook". The public would escape this pandering if the legal profession provided people in Mr. Koch's position with a Code of Conduct for these investigations. While robbing politicians of many "photo opportunities" it would give them a chance to *think* and *even know* before putting their feet in their mouths. It would also benefit those hundreds of public employees who are honest, take stands, and occasionally bring the wrath of their administrative superiors down on them, thereby provoking investigations which can be very damaging and punitive if misapplied.

A Code of Conduct described above will bring us away from the Star Chamber of Oliver Cromwell and closer to the Jeffersonian ideal of free people treating the government the way it should be treated: as a servant, not a master.

<p><b>The Search For Justice</b></p> <p><i>Richard Saul Baker</i></p>		<p>Later...</p>	<p>Later...</p>	<p>The End</p>
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# Trager Speaks

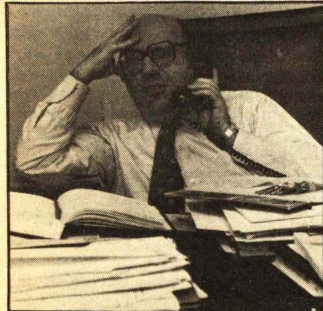
from page 1

role as Chair of the State Investigations Committee.

## TUITION'S HIGH COST

Tuition has been increased over the last four years from \$6600 to over \$8750. This near one-third increase has become a major concern to students throughout the school, especially since financial aid is less easy to obtain.

"Students," maintained Trager, "are getting a bargain for the quality of their education. Brooklyn Law has one of the best clinical programs in the city, next to NYU," said Trager. BLS aggressively recruits faculty who are superior in their fields from other law schools. He cited as examples Professors Cohen (Seton Hall), Pinto (Seton Hall), Twerski (Hofstra) and Wexler (NYU). "Our faculty is of the highest quality . . . These people don't come cheap," declared Trager.



Tuition has been used for nothing but current operations and faculty salaries. "The building and expansion of Brooklyn Law School has come totally from its endowment. Tuition has increased only to meet the present demands of running the school," concluded Trager.

## ADMISSIONS POLICY

Over the last three years, there has been a 25-30% decline in the number of students enrolling in law schools nationwide. This, according to a recent New York Times article, has forced many law schools to resort to lowered admissions standards, aggressive recruiting campaigns, program cuts, or even shutting down altogether.

This enrollment decline has not posed any problem for Brooklyn Law, according to the Dean. He observed that there has been a slight lowering of the standards which were used in 1983, but that BLS's admissions criteria has not suffered as severe a decline as that of many other law schools. "This year [1986-87] promises a fine entering class," said Trager.

BLS, however, does use a number of means to attract high-quality students. Currently, Brooklyn Law offers the Prince, Richardson and Deans' Merit

Scholarships to the top 10% of the applicant pool. For the class of 1986, 15% (50 people) were offered such scholarships. The Dean hopes this figure will increase to more than 20% (75 people). "This trend of rising scholarship advancement," says Trager, "represents the growing strength of the school, not its decline."

## EMPLOYMENT OPPORTUNITIES

How do employers view B.L.S. graduates? "The big firms have had no problem with hiring the top Brooklyn graduates," said Trager.

It is the middle of the Brooklyn Law class at which Dean Trager sets his sights. Trager noted that students at schools like Columbia and NYU have more options than BLS students. The key in this area is to concentrate on and work with BLS alumni in the marketplace. This has "been ignored too long," said Trager.

Dean Trager observes a more critical problem, however. The faculty and the

**ALL IN A DAY'S WORK: New hiring, expansion plans, and BLS's legal community niche. Tuition is up and BLS takes in nearly \$8 million annually from full time students and has an endowment exceeding \$15 million.**

administration are concerned that more and more students are unable to write properly. "It is something of great concern," said the Dean. The hiring of Betsy Fajans as a writing specialist for the first year writing program is a result of the efforts to meet this problem.

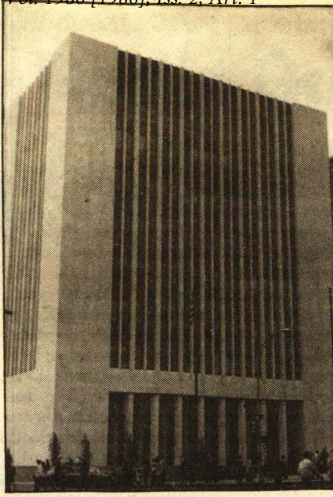
## JOB STATISTICS

While the Dean had no statistics available for first year students' summer employment, he did have promising statistics for second year students and recent graduates. The class of 1987 "seemed to do quite well," reported the Dean, "especially at the top and the middle of its ranks." As of late July, 60% of the class of 1986 had permanent jobs.

"By the time the Bar exam results are announced," concluded Trager, "we expect 95% of the class will be employed." The national average runs about 92-93%.

Many students have been asking just what BLS "does" for them while they are here. The focus is immediately on Assistant Dean Robin Siskin and the Office of Student Services.

Some have criticized the Office for not doing anything but re-numbering lockers and assisting at BLS parties. Dean Trager



**HUB of BLS activities, 250 Joralemon, is now complemented by administrative offices at One Boerum Place and a residential foothold at 2 Pierrepont.**

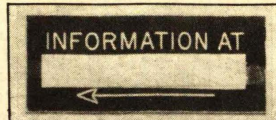
has emphatically denied these criticisms.

Assistant Dean Siskin, proclaimed Trager, "does many things for the students of the school that were not done before she was here. The existence of DOMUS [the Housing Newsletter] was her own idea, and it has shown promising results."

The Dean also cited many other projects having their infancy with the Office of Student Services. A sampling of these projects include the volleyball, football, basketball and baseball leagues which the Office helped to organize. As recent as last year, BLS entered the "Professional's Day Marathon" on Assistant Dean Siskin's impetus.

## NO INFORMATION

A particular complaint among last year's first year students was the lack of adequate mechanisms for new students to be accommodated in law school life. As one student commented, "the ins and outs of this place are kept secret from us; it is not until you ask an upperclassman do you get 'real' answers."



The Dean seems open to any reasonable suggestions. He was quick to point out that there exists a student-faculty relations committee.

The Dean also mentioned parties which faculty members have given at home. The students attend and the school "picks up the tab."

## GRADING POLICY

The late issuance of grades is a significant problem at BLS. "Pay checks may have to be withheld if this continues," exclaimed Trager. "The situation is becoming ridiculous."

Delays in posting grades can cause second-year students great difficulties. Many rely on their mid-year grades to obtain summer employment.

The voluntary grade curve, something the SBA pushed hard for two years ago, has "on the whole . . . been successful," said the Dean. "Large numbers of very low or very high grades are being seen less often, especially among adjunct professors who are ignorant of the institutional norm."

A program of statistical analysis has been implemented to determine which professors are out of step with the suggested curve. Trager noted, however, that "there is only a demand for a justification of the grades given. A professor is not at all required to change a single grade."

## PHYSICAL EXPANSION OF THE SCHOOL

The school's most recent additions have been, thus far, the offices at One Boerum Place, and a high-rise apartment building on Pierrepont Street in Brooklyn Heights.

Mostly administrative offices are presently located at the One Boerum Place location. On the ground floor is the Registrar, the Bursar, and the Office of Student Services. The second floor, at last glance, was under renovation and is currently unused. The third floor houses the Placement and Alumni Offices, three in-house clinical programs (Elderly, Landlord-Tenant, and Federal Litigation), and a small conference room. The fourth floor has a much larger conference room and a few private offices.

The Student Bar Association, which had complained about its move to the Boerum Place location because it lost touch with the student body, has been moved back to the main building. The SBA will be in what was the smokers' study room, located on the third floor.

# Construction Delays; Disruptions? Library Expansion Plan Off the Shelf

based on a memo from Sara Robbins, Law Librarian

This summer, step 2 of the expansion and renovation of the Law Library went into effect. This expansion addressed the "two most serious problems that have faced the Library over the past several years: seating and shelving capacity," explained Sara Robbins, BLS's Law Librarian.

According to Robbins, there will now be adequate "breathing space" to devote greater attention to the development of the Library's collection. Additionally, more

services the library provides.

## LAST YEAR'S CHANGES

As returning students know, Library staff offices were consolidated and moved out of the way last year so that more space could be turned over to student-oriented activities. Among last year's changes was the creation of a computer room containing Westlaw and Lexis terminals, the IBM-PCs and the Info-Trac indexing system. Additionally, a student conference room was created in the basement.

BLS's student body will be pleased, according to Robbins, to discover the new developments that are taking place in the

plan. Additional space has been acquired on the basement level. More shelving has also been installed, allowing the Library's collection to expand, which was difficult to accomplish in the recent past because of the severe lack of space.

## MORE SPACE

The new stacks are similar to the movable system currently maintaining the government document system. The multiple aisles, however, are interspersed and will be manually operated, providing more convenient access.

In addition to the shelving, the expansion is creating more space: a new study area for use of the government document

collection; new tables along the new stack areas; and three large conference rooms.

The conference rooms are equipped with large tables and chairs, as well as facilities to support the temporary learning centers for Westlaw and Lexis in the coming years. One of these conference rooms is expected to be designated as a smoking room.

New carpeting is being installed throughout the Library's basement level. The resulting space, mused Robbins, "will project a more open and conducive area for studying for all members of the BLS community."

Continued on next page

**BUILDING A BIGGER LIBRARY**

Dean Trager has great plans to expand the size of the school's library.

Currently, Trager is negotiating with the city to embark on a joint project which would involve BLS's lease of the alley on Joralemon Street between the school and the municipal building. This is the Dean's "Plan A."

Justinian and the S.B.A. would all have to move to One Boerum Place.

The Dean will only use "Plan B" if no other is feasible. In either case, Dean Trager feels a plan of expansion is necessary for a growing law school.

Pierrepont building to two factors: the enormous expense of running the building, and the presence of those tenants who have rent-stabilized leases.

Dean Trager is currently looking into the purchase of other buildings and land to increase BLS's physical size. Specifically what is to be acquired in the

**SBA RELATIONS**

The largest voice of the students before the Dean is the Student Bar Association. Among other things, the SBA distributes over \$30,000 per year to over 20 student organizations and is the students' advocate before the administration.

The last two SBA administrations have

**EXPANDING minds at expanding facilities. The promised expansion and reorganization will disrupt the beginning of studies.**

reported that their efforts have been stonewalled. Suggestions to the Dean have often been answered as "infeasible," "unworkable," or "impracticable." Student input into the hiring and critique of professors is one such area. Considering the Dean's feelings on the subject, this will continue to be a major problem.

The SBA has successfully convinced the Dean to implement some of its suggestions. The Dean, for example, has negotiated a contract with a new copy machine company. The new machines are due to arrive in the library in late September or early October. The Dean also hopes to have last year's cafeteria service, which was favorably received, return this year.

The juke box, which the SBA purchased last year, will remain in the cafeteria. Commented the Dean, "To put it in the third floor lounge would be impossible, for there is no soundproofing to prevent the disturbance of classes on the floors above."

The plan would involve the expansion of the main building and the basement. The ground floor would become a municipal public exhibition hall. The basement and another two floors would be an extension of the library, used exclusively by the school. The cafeteria would be moved to the fourth floor. The third floor would also become an additional part of the library. The student lounge would move to the first floor, where the library offices presently exist.

The Dean has devised what he terms a minimalist "Plan B" should the preferred plan fail. This would also involve the expansion of the library to the basement and third floors.

With no additional space at 250 Joralemon, Moot Court, Law Review, The Journal of International Law, The

**THE PIERREPONT PURCHASE**

The purchase of the Pierrepont building is seen by Dean Trager as a first step toward providing the BLS community with affordable housing. "Ten years ago this was not a problem," said Trager. "While the renaissance of downtown Brooklyn has expanded the reach of the school, it has at the same time created serious problems for students."

Currently, the studio apartments in the Pierrepont building rent for \$500.00 per month. Space is available only to those students who show that their permanent residence is otherwise out-of-state, or to those who are on scholarship. The other, more high-priced, apartments are rented to visiting professors and certain members of the administration.

Dean Trager attributes the cost and limited availability of housing at the

future is "not for comment, for the school is currently in negotiations."

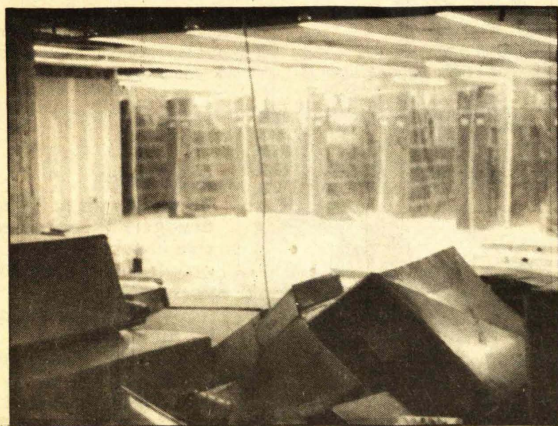
The purchase money is to come from either generous alumni or from BLS's \$15-20 million endowment. A recent FORBES article cited BLS as "one of the better endowed schools on the east-coast."

While Dean Trager believes this was a nice compliment to the school, he also feels the article was misleading. "We have a good endowment, but it isn't limitless; we are not a Harvard or a Yale with hundreds of millions of dollars to spend."

In this light, Trager sees land acquisition as a slight (but necessary) risk for the school. The Dean doesn't see this as a major problem, however, for present incoming funds more than meet the school's day-to-day needs. No tremendous fiscal emergency seems imminent.

**Library**

continued from previous page

**LOGICAL REORGANIZATION**

The library's collection will be reorganized more logically as a result of the expansion. The basement level will be used for classified materials. The first mezzanine will be dedicated exclusively to New York State materials. The second mezzanine will be used for International materials.

The collection rearrangement will allow the second floor reading room to be restructured more logically, with additional copies of the most commonly used materials available.

**DELAYS, DISRUPTIONS?**

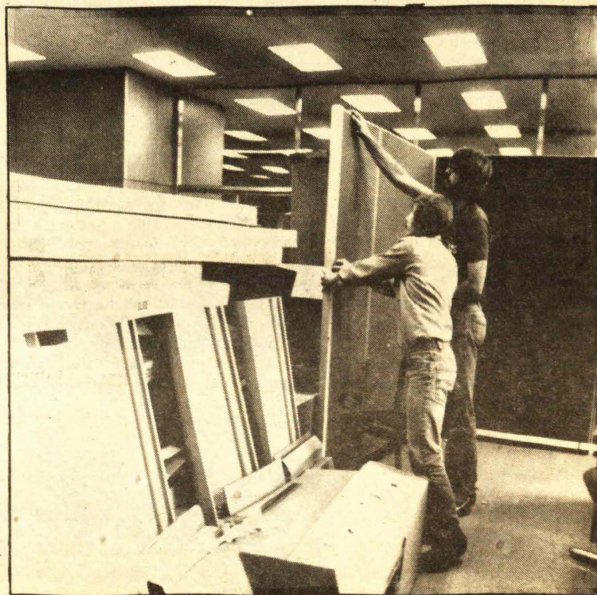
The construction component of the expansion project was expected to be completed by Brooklyn Works, 1986

pleted by the middle to the end of August, but there have been delays. As a construction worker noted one Saturday in early August, "Time is getting short. They'll probably have us working Sundays, too."

After the construction is complete, the Library collection rearrangement will commence. Librarian Robbins stated that "we will do our utmost to disrupt Library activities as little as possible during this period, but we know there will be some problems until it is completed." She asked that the students "bear with us because we do feel that you will find that once completed, our Library will be a more enjoyable place for your research and study efforts."

**BETTER LATE**

**than never, workmen undertake the task of library renovation. When completed, expansion should alleviate problems of too many books on too few shelves and too many students in too little space.**



# Where the Elite Meet

by Matthew Flamm

Law Review membership distinguishes a student. Only a handful, the "elite," of each first year class are selected. Membership "is a great deal of work but it is a great experience," explains Editor-in-Chief Gail Cagney, a third year evening student.

## BUT WHAT IS IT?

The Brooklyn Law Review is a student-directed publication scheduled to be issued four times annually. The Review is written by students, faculty and practicing professionals.

Nearly 250 federal court opinions make reference to the Brooklyn Law Review, including such noted Supreme Court opinions as *Virginia State Board of Pharmacy v. Virginia Consumers Union* (commercial free speech), *Patterson v. New York* (criminal defendants' burden of proof) and *Shaffer v. Heitner* (federal court jurisdiction). Additionally, over 400 state court opinions have cited the Law Review as authority, including New York's ground-breaking *O'Brien v. O'Brien* (marital property includes professional licenses).

An upcoming issue is devoted entirely to the Agent Orange controversy. Agent Orange, a chemical defoliant used in America's war against North Viet Nam, spawned a sprawling litigation centered in the federal courthouse in New York's Eastern District. The special issue's foreword is written by the Eastern District's Chief Judge, Jack Weinstein, who oversaw the litigation.

Three student-authored articles will appear along with faculty-written pieces by Professors Twerski (conflicts of law), Sherman (causation) and Scheindlin (discovery). Adjunct Professor Scheindlin, a former United States Magistrate, oversaw much of the discovery in the Agent Orange litigation.

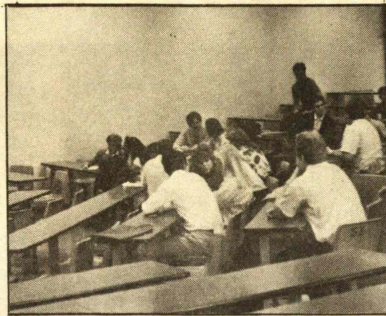
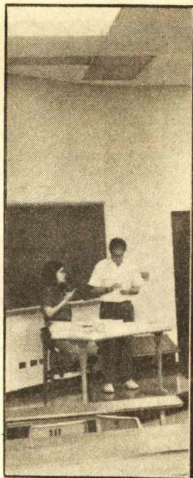
The next issue of the Law Review, due out by the beginning of the 1986-87 academic year, will include a student-authored piece by Betsy Rosen, the Review's Executive Notes Editor, on New York's Medical Malpractice legislation. Also upcoming is an issue reviewing important decisions of the Second Circuit Court of Appeal's 1984-85 term. That issue will be dedicated to the late Judge Friendly.

## BUT HOW DO I JOIN?

At the end of each academic year, the Law Review, in conjunction with the International Journal, holds a writing competition open to all first year students. The Review selects its members from this competition. Editor-in-Chief Cagney encourages "everyone to compete for membership." Roger Slade, the Review's Managing Editor, added that "it is important for your legal career to compete."

This past year, 270 students entered the competition. Each received 220 pages of written material from which they had 5 days to prepare a 10 page judicial opinion about "Insider Trading." One hundred seventy students completed the competition, approximately 50 more than the previous year.

From these 170 writing samples, 21 members were selected. Each paper was read and scored anonymously by a least



**SUMMER MEETINGS**  
are not unusual for Law Review members. Here, editors Cagney and Slade (l.) prepare to address the second year troops (r.).

3 students and the papers with the lowest scores were discounted. Fifty percent of the score was based on legal analysis. The other half was based on technical writing ability: grammar, punctuation, footnoting, citation form.

The authors of 12 papers with "perfect or close to perfect scores" were automatically accepted as members, according to Cagney.

The remaining 9 spots are filled from papers which fell into the middle range of scores. Those members were selected based on writing ability (70%) and class rank by section (30%). Additionally, 4 spots on the Review had been filled early based on first year writing assignments.

## "DEADLINE FIASCO"

The Review had set a 7 p.m. deadline for accepting completed papers for this past competition. Although absolutely no late papers were to be accepted, there was, according to Editor Cagney, a "deadline fiasco."

After a meeting with Dean Trager and Professor Holzer, the Review was "forced to accept [9 late] papers from people who said their papers were ready at 7." Cagney continued that the deadline was not imposed for any "arbitrary and ridiculous reasons," but because "it was fair" to everyone. "Everyone was given fair notice that the deadline was inflexible."

## BUT WHAT'S IN IT FOR ME?

Second year members develop "in-depth research and analysis skills" as well as a "sense of leadership," noted Cagney. Besides research, writing and editing skills, students learn the importance of "being thorough," according to Slade. After all, continued the Managing Editor, thoroughness is "one of the hallmarks of winning lawyers." Concluded Cagney, these "skills ... make us marketable."

A review of the on-campus interview packet sent to second and third year students by the Placement Office reveals that Law Review membership is a virtual prerequisite for consideration for the highest paying jobs at the most prestigious law firms.

## "IT'S NO PICNIC"

Although Law Review membership opens employers' doors, it doesn't guarantee a job. Furthermore, it entails a great deal of work. One second year member commented that "it's no picnic. Don't think that getting on is the hard part."

Second year members work anywhere from 15-35 hours weekly, averaging, according to the Editors, about 20 hours. Second year responsibilities include assisting in production and developing a suitable topic for research.

Developing a topic, researching and writing can be a laborious task. Before reaching Editor Cagney's desk for final review and changes, an article goes through at least six drafts.

Cagney and Slade are setting earlier deadlines and making earlier determinations of whether students' work will be published. There is "no presumption of publication" of student research, added Cagney.

## PRODUCTION WORK

Second year responsibilities also in-

clude "production work." This includes such tasks as source and cite checks, proofreading, making sure quotes are correct and that what an author says a case stands for is what the case stands for. Production work is critical, said Slade, because what is published in the Brooklyn Law Review "must be the truth."

Production work, although necessary, can be dull. One second year member, after a day-long source and cite check, commented that "it's a lot of useless running around." Another, however, stated that "it's actually kind of interesting. It's like an intellectual scavenger hunt."

## PLAYING CATCH UP

It may seem odd, but the August 1986 issue will be the first issue of the 1985-86 academic year. The editors agree that the review is about "two issues behind" and have set catching up on the production schedule as a high priority.

The two editors put in 60 hour weeks all summer hoping to catch up. "We like to think we can do it," said Slade.

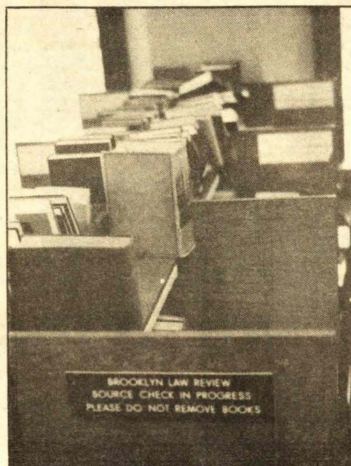
Why has the Review fallen behind? It is "the nature of the beast," said Slade. Production is a meticulous and time consuming task and the delay has been "cumulative," developing over a number of years, according to Cagney.

## DEADLINE PRESSURES

The editors' approach reflects their concern about meeting deadlines. Stricter organization, more closely enforced and earlier deadlines, and earlier determinations of whether a paper will be published are all designed to speed production along. This is the "only way any kind of organization can work," noted Slade.

The premium placed on production is also reflected in the membership selection process. The writing competition was streamlined and resulted in earlier selection of members. "We gained six weeks over last year," said Cagney. Additionally, besides a shorter writing competition, 4 law review members were selected based on their second semester writing assignments.

The Review will be making membership available to more students through its open note competition this fall.

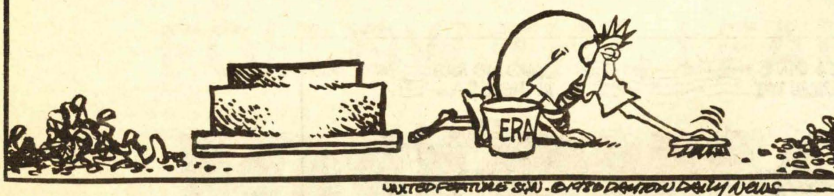


**NICE WORK**  
if you can get it. The drudgery of source and cite checks, proofreading and quote verification is outweighed, for some, by the prospect of \$68,000 per year upon graduation. A study carrel stands stuffed with books awaiting the watchful eyes of the Law Review's second year members.

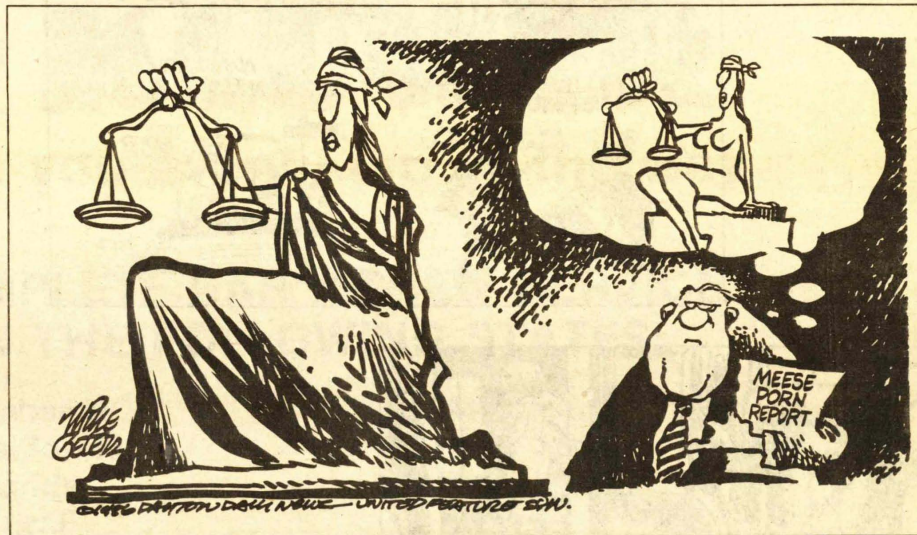
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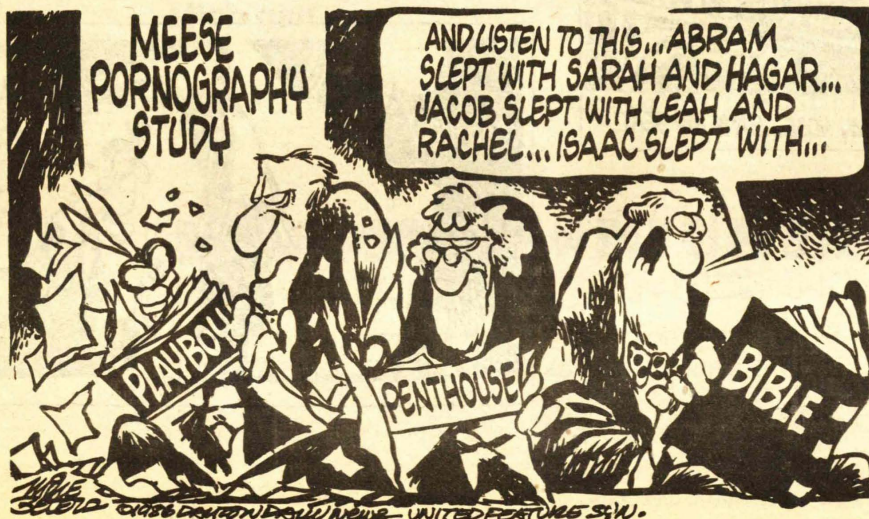
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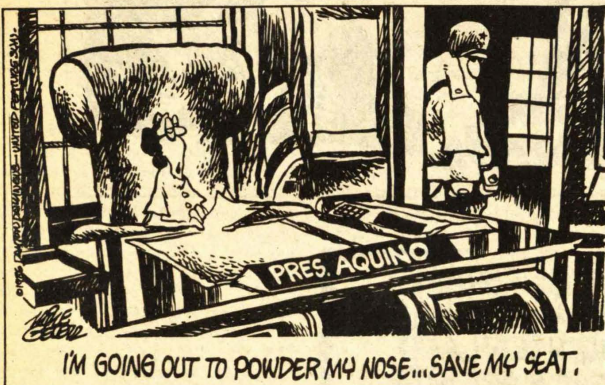
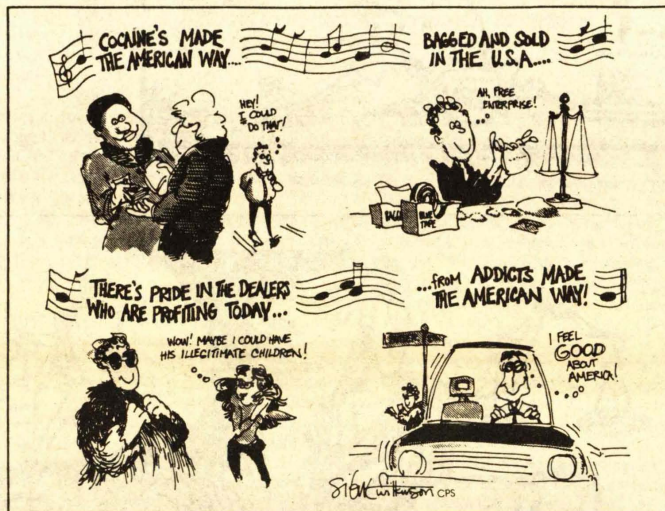
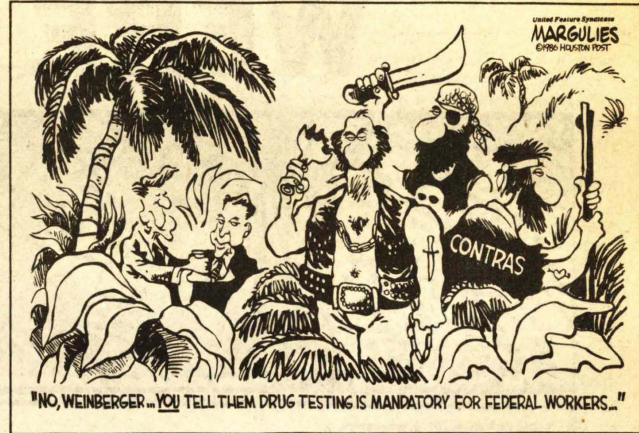
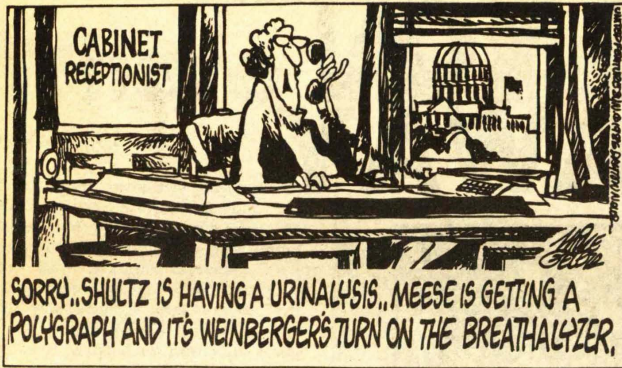
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## R E T U R N

i want out  
where ties and monkey suits have no consequence  
plain is of the day  
the value of sunset is not obscured  
"all silk" is unheard of but by accident  
acoustics hum sweet melissa

wing tips die fast  
shedding pure wool hand made size 36  
yellow ceiling'd porches  
road gravel dark  
quiet morns no fumes, Post, trash  
where rain is welcome  
for leaves thirst

i want back  
where life is slower  
existence tastes better  
isn't it supposed to be  
life measured by inner peace;  
outer "peace" is mere socialization, false.

Plain is my need, my desire  
not brownstones, galactic walls of windows  
"I just got my condo"

the high peaks hold power  
that salaries cannot give  
that fashion cannot give  
that knowledge cannot give  
to live beneath them near them

in their midst being together

i want back  
the firetower  
millbrook road  
ferns, ghost pipes, evergreen

i am here now  
i have my dreams  
occasional returns  
sooner or later  
the trip will be permanent

anon



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