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# GOOD LUCK ON EXAMS. CONGRATULATIONS TO JANUARY GRADUATES

December 1986 Volume LVI No. 3

## THE JUSTINIAN

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

### Resumé Fraud Runs Risk

by Ethan Gerber

According to some employment experts, at least half of all resumes contain either embellishments or out and out lies. While this problem seems to be far more prevalent among clerical workers than professionals, a few recently disclosed and highly publicised cases have shown that law students are not above brightening up otherwise dreary resumes with a couple of fabricated AmJur's or Magna Cum Laudes.

The growing number of falsified resumes has prompted law schools and firms to take action. According to the ABA Journal, at least 28 second and third year students at the University of Southern California Law Center have been disciplined for misstating their class standings in their resumes and 15 San Francisco firms have implemented a policy calling for students to submit their official transcripts when interviewing. Some experts, such as Lyn Strudler, the President of the National Association for Law Placement, have slighted the situation as being a "more limited problem that the hue and cry would suggest." Others have suggested law schools can curb the problem by giving employers access to student files. In May of 1985, Nancy Kringer, the Director of Placement at the University of Michigan law School told the ABA Journal that the problem of falsified scores was less likely to occur in her school because employers have full access to student files during their on-campus interviews. Ironically, a recent graduate of the University of Michigan Law School became the first lawyer in the nation to be disbarred for lying to his potential employers about his academic achievement.

On September 30th, the Illinois Supreme Court disbarred Thomas R. Potter, a 1982 Michigan graduate, for lying to a legal search firm about his credentials as well as for sending an adulterated transcript to the Chicago law firm Kirkland & Ellis. According to the National Law Journal, Mr. Austin claimed, among other things, that he had graduated second-highest in his class and was summa cum laude. Neither, apparently, was true. Mr. Potter was also charged with falsifying his

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## Divestment Tide Reaches BLS

Faculty at the Forefront of Financial Debate

by Jim Diamond and

Gregg Peterman

Eighteen months after students at Columbia University physically blockaded their administration building in protest over the school's South African investments, the divestment debate has finally begun at Brooklyn Law School. Because of an initiative by the law school faculty, with students following behind, the stage is now set for an unprecedented open discussion of the appropriate uses of the law school's financial assets.

At its October 15 meeting, the faculty voted to begin considering Brooklyn Law School's formal divestment of holdings in companies conducting business in South Africa. Following vigorous debate, the faculty adopted a proposal, introduced by Professor Gary Minda, deploring the system of apartheid and calling for the establishment of an "Ethical Investment Committee" to review BLS's investments and issue guidelines for future investments.

Characterizing apartheid as a "burning issue of our time," Minda said that by investing in companies with facilities in South Africa, BLS indirectly sustains the current political system of racial segregation in South Africa.

There was not unanimous support for the proposal at the October meeting, however. Leading the opposition to Minda's brand of divestment was Professor Henry Holzer. Holzer advocates "ethical divestment."

### Ethical Divestment

Holzer's opposition to the proposal stems from the fact that the leader of the six million Zulus in South Africa, and Helen Suzman, the "leading" opposition member of the South African Parliament, while both opposed to apartheid, do not support economic divestment. According to Holzer, he is "probably the only person in the school to have been" to South Africa. He has spoken personally with Suzman and the Zulu leader. "Who knows better than them" what is good for South Africa, asks Holzer.

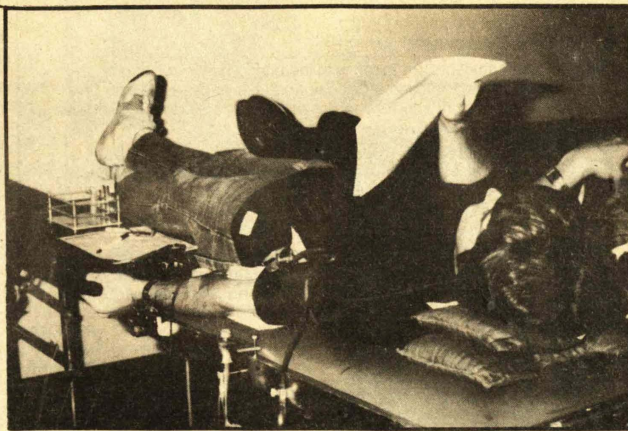
Although Holzer opposes both apartheid and South African divestment, he says that if there is going to be divestment from South Africa, there should also be divestment from the two countries that have long been "practicing genocide . . . far worse than apartheid": the Soviet Union and "Red" China. Holzer called the South African divestment argument a "typical left strategy."

By advancing a position of simultaneous divestment from all repressive

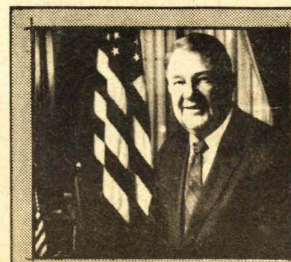
governments, obviously difficult to achieve, the opposition blocks divestment from South Africa. Holzer responds that there are simply different perspectives to deal with when considering the moral position as opposed to taking action.

Minda says he supports so-called "ethical divestment" for the school. He believes, however, that because of the urgency of the South African situation and the national momentum for divestment, now is the time to act

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**DURING EXAMS**, students give more than sweat and tears. Here, one student studies both optically and intravenously. See pages 4 and 5 for coverage of Clinics and International Law Courses. For you first years, Sample Questions and Answers for Torts and Contracts appear on pages 6 and 7.



### MEESE CONTINUES SUPREME COURT ATTACK

The Attorney General argues that legislators and executive branch officials are free to substitute their constitutional judgments for those of the Supreme Court. A special reprint of Edwin Meese III's controversial Tulane University speech. Only in the Justinian.

See page 22



## Financial Aid News

Congress has once again reauthorized the Higher Education Act of 1965. Some of the new provisions affecting the BLS community are:

1. Guaranteed Student Loans (GSL) have been increased from \$5,000 to \$7,500 per academic year;
2. Auxiliary Loans to Assist Students (ALAS) have been increased from \$3,000 to \$4,000;
3. All borrowers will be required to demonstrate need. GAPSAFAS is mandatory;
4. Loan consolidation has been reinstituted;
5. New definition on Independent Student Status.

For details concerning these and other changes in the federal programs, contact the Financial Aid Office.

A reminder to all students who have borrowed from the GSL and ALAS programs. You are required to endorse all bank checks received by BLS. The Office of the Bursar is unable to negotiate the checks without your prior endorsement. Please contact the Financial Aid

Office to discover whether your check has been received.

For the Spring semester, Financial Aid will hold your checks for delivery upon presentation of your school I.D. You will then be able to bring the checks to the Bursar for payment of tuition and reimbursement.

## Public Interest Forum

On October 14th, 1986 at 12:00 noon a Public Interest Forum took place in the 3rd floor lounge. Dean Trager, Professors Bentele, Caplow, Gora, Hellerstein, Kotkin and Schneider spoke about their involvement in Public Interest Law. A videotape of the presentation is available at the Placement Office for viewing at your convenience. Informational packets relating to Public Interest Law are available and may be picked up at the Placement Office, #1 Boerum Place, 3rd floor.

## Library News

The Library's three conference rooms are available for group study. In order to provide access to these rooms to the most students possible, you will have to sign up at the Circulation Desk. Each group will be limited to a single 2-hour block of time on each day, unless no one else signs up for the room.

Past years' exams provided by Faculty members are now available at the Circulation Desk. Please be aware that not all Faculty members provide the Library with copies of their exams; all that have been supplied are available.

We are quite aware of the intensity level that descends upon students during the Reading and Exam periods, and the fear that tells you that you just can't afford to take time off from studying to relax, sleep, or eat. Even so, the Library is *not* an extension of the Cafeteria and **FOOD, DRINK, AND SMOKING ARE PROHIBITED**. If any member of the Library staff finds you eating, drinking, or smoking in the Library, you will be asked to take your means of sustenance outside. If food is found unattended, a note will be put in its place and the food will be taken to the Circulation Desk where it will be held for a brief period; if no one claims it, it will be dumped. *If you fail to comply with any request to remove your food or drink from the Library, you will be escorted OUT OF THE LIBRARY by one of the School's security staff.*

## Fellowship Announced

Brooklyn Law School recently received a \$126,000 grant from the U.S. Department of Education's Graduate and Professional Opportunity Program (G\*POP). The grant will fund fifteen minority student fellowships during the 1986-87 academic year.

B.L.S. ranked number one both in

## Psychiatric Consultation

Students at Brooklyn Law School may arrange an initial psychiatric consultation with Dr. Michael Schneck at no charge. Dr. Schneck is on the faculty of the Department of Psychiatry of the New York University School of Medicine and is Board Certified in psychiatry. In addition, Dr. Schneck has had substantial experience working with law students and attorneys. Students may contact Dr. Schneck directly and the utmost confidentiality will be maintained. When appropriate, referrals will be made, and fees will be charged on a sliding scale basis. Dr. Schneck's office is located in the Faculty Practice Offices at New York University Medical Center, 530 First Avenue (at 32nd Street), New York, NY 10016. His telephone number is (212) 340-7475.

the number of fellowships and in the amount awarded to the fifty-one law schools nationwide which received G\*POP funds. Overall, the school ranked thirteenth of 156 graduate and professional schools receiving awards.

The purpose of the Graduate and Professional Opportunity Fellowship Program is to assist in making available the benefits of post-baccalaureate education to students who are from traditionally underrepresented groups and who demonstrate financial need.

Of the fifteen Brooklyn Law School minority students receiving G\*POP funds this year, nine are upperclass students whose fellowships are being continued and six are new students who are receiving G\*POP Fellowships for the first time. Under the conditions of the program, each fellowship is comprised of a \$3,900 tuition allowance and a \$4,500 living stipend for a twelve-month period.

## DECEMBER

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BLS's investment portfolio is finally going to be scrutinized for South African investments. The sides are forming over how to ethically put the school's millions to work. Page 1

#### Clinical and International Opportunities

Brooklyn Law offers a hearty assortment of Clinical and International courses. A clinical newcomer is the Bankruptcy Clinic. Read all about it. Pages 4,5

#### Questions? Answers!

First year students are faced with the utterly new sensation of law school exams. Professors Gilbride and Leitner provide some guidance and insight into how to answer an essay exam. Pages 6,7

#### Dean's Day

Alum gathered to acquaint themselves with the school and each other at the first annual Dean's Day. Pages 5,12

#### Trial By Investigation

Media exposure of ongoing criminal investigations make it increasingly difficult for the presumption of innocence to survive. Dean Trager, former U.S. Attorney, responds. Page 11

#### Faculty Selection

Just how do those people end up in front of whole class fulls of us students? The labyrinthine path that leads from their resumes to our notebooks is explored. Page 27

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## Library Hours During the Break

The Library's hours during the Winter Recess/Reading Period (December 12-31) are as follows:

Monday-Friday	9:00 a.m.-12:00 midnight
Saturday	9:00 a.m.-9:00 p.m.
Sunday	9:00 a.m.-11:00 p.m.

It will close at 5:00 p.m. on Christmas (December 24) and New Year's (December 31) Eves; and will be closed completely on Christmas (December 25) and New Year's (January 1) Days.

During exams (January 2-15), the Library will be open its regular hours:	
Monday-Friday	8:00 a.m.-12:00 midnight
Saturday	9:00 a.m.-9:00 p.m.
Sunday	9:00 a.m.-11:00 p.m.

During Winter Intercession (January 16-21), the Library's hours are:	
Friday, Monday-Friday	9:00 a.m.-9:00 p.m.
Saturday	9:00 a.m.-5:00 p.m.
Sunday	9:00 a.m.-5:00 p.m.

## ERRATA

A careful catalogue of last issue's errors would likely fill most of this page. In addition to the usual amount of typographic errors appearing, there were also 1) *misplaced paragraphs* (Public Interest Opportunities, p. 14 col. 3); 2) *missing words* (Why Toni Doesn't Live Here Anymore, p. 9, second sentence); 3) *misspelled captions* (New Boys on the Block, p. 3 [Professor Twerski is a Conflicts of Law and Product Liability Maven (not Mavan)]); and 4) *garbled and unintelligible quotations* (Foreign Trained Lawyers, p. 18, middle of col. 1 [Sorry, Dean Trager]). Frankly, it was too much for the editors' hearts and self-respect to bear.

We try. Sometimes we screw up.



# BLS Divestment Debate

from page 1

against apartheid. Now is the chance, says Minda, to have the most significant impact against South Africa.

While the Ethical Investment Committee has not yet been formed, according to BLS Dean David Trager, the Committee will most likely be chaired by Professor Minna Kotkin and have three additional members: two other faculty members and Student Bar Association President William Ferro. Minda wanted to include students on the committee but was opposed by Dean Trager at the meeting, said Minda. Dean Trager, however, agreed to include Ferro on the Committee after the SBA Assembly urged the Dean to do so in a unanimous resolution passed at its October meeting.

## National Divestment Movement

As a political strategy designed to pressure South Africa's government to

that is held is affected, it may be a problem," Trager warns that the Committee will have to do its homework. It must, for example, define what it means for a company to be "doing business" in South Africa. (See *Apartheid Foes Fail*, page 9)

Trager also maintains that "the issue goes further than South Africa." The development of "ethical standards" for investments might require an examination of whether investments should be pulled out from companies doing business in other nations with histories of human rights abuses or those companies known to be violating environmental regulations.

Trager is not advocating pulling BLS investments out of these companies; what seems to concern him is that if guidelines are assembled in a manner prohibiting investments in a wide array

## Professor Henry Holzer

Leading the opposition to Minda's brand of divestment and advocating a broader plan of "ethical divestment."

**If there is going to be divestment from South Africa, there should also be divestment from the two countries that have long been "practicing genocide . . . far worse than apartheid:" the Soviet Union and "Red" China.**

of lucrative stocks, the profitability of BLS's portfolio will be jeopardized. Other institutions, however, have successfully defined their terms and forged a path toward ethical investments while assuring their portfolio's profitability.

## Dean Trager

Responsible for overseeing BLS's millions, concerned with jeopardizing the portfolio's profitability.

**I do not "object" to divestment "unless it hurts the school. If it turns out that a lot of our stock that is held is affected, it may be a problem." Ultimately, the "Board of Trustees will decide this issue."**

## What is "Doing Business"?

BLS has a number of options regarding what type of involvement in South Africa requires divesting from a particular company. One option is divesting from any company having employees in South Africa. Other options include divesting from companies selling to or buying products from the country or divesting from companies having loans or investments in the country. A fourth, arguably weakest, option is divesting from companies failing to follow the "Sullivan Principles."

The easiest option would be to switch to an investment advisor that has an already identified, proven ethical investment strategy. One such money manager is an American Express subsidiary, the Boston Company. They manage the South Africa Free Equity (or SAFE) fund, a \$125 million fund invested under condition that no company have even a single employee in South Africa.

The Boston Company has traced the performance of the Standard & Poor's 500: 377 qualify as South Africa-free and 123 have employees in South Africa. From 1984 to mid-1986, the South Africa-free stocks were up 61% while the index of companies in South Africa was up just 48%.

## Other Options

Were another option selected, information is readily available through joint publications such as the Africa Fund and the United Nations Centre Against Apartheid, which publishes a unified list of American companies having loans or investments in South Africa.

## Professor Gary Minda

Author of the proposal deploring the system of apartheid and establishing an "Ethical Investment Committee" to review BLS's investments.

**Because of the urgency of the South African situation and the national momentum for divestment, now is the time to act against apartheid. By advancing a position of simultaneous divestment from all repressive governments, the opposition blocks divestment from South Africa.**

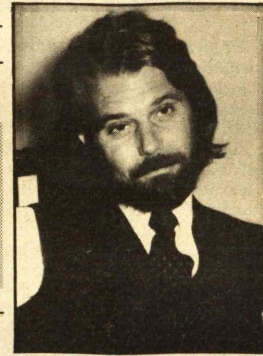
Institutions divesting themselves of South African holdings illustrate that the profitability of investments need not be jeopardized. In Massachusetts, the first state to divest its pension fund, Governor Michael Dukakis said, "Divestment has had no significant impact on our pension earnings." The Governor continued that "timely and careful divestment can result in net increases of pension funds." Michigan State University found that within months of passing divestment resolutions, their portfolio had earned an additional \$1 million.

Even if divestment is not financially harmful, there are still some opponents who assert investments should be made without regard for the politics of the nations companies do business with, and that BLS and other schools should not start engaging in foreign policy.

"Additionally, some argue that divestment may perpetuate apartheid. Professor Minda, however, disagrees with the argument that by pulling out of South

## MORE COVERAGE

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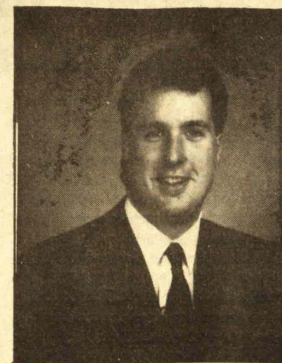
into doing it. He's being pressured now."

The second time students took action on the divestment issue was the May 1986 referendum on the SBA election ballot. That referendum asked students whether the Dean should make public the law school's investment portfolio. It passed overwhelmingly, 375-97.

Dean Trager said he was unaware of any student referendum, adding that "nobody bothered to send me a copy." This revelation says a great deal about the level of student activism at BLS and the Dean's general awareness of student activities.

Ferro, elected on the same ballot as the referendum, admits he did not approach the Dean about the divestment issue until he knew where the faculty stood. "We didn't pressure the Dean because the SBA didn't have a plan of action—we didn't know what to do with a mere portfolio. But now that the faculty has taken affirmative action, we felt it would be appropriate for us to step in as well."

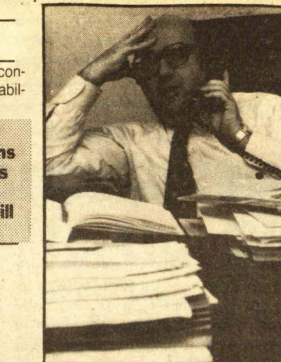
Whether BLS adopts an "ethical investment" policy or simply divests itself of stock in companies in South Africa may be determined by the quality of the Committee's report. Ultimately, however, says the Dean, the "Board of Trustees will decide this issue."



## SBA President William Ferro

Investment Committee member, skeptical about the Dean's position on divestment.

**While BLS is "a little late in coming around toward the divestment debate," students passed a referendum asking the Dean to make public the law school's investment portfolio 375-97. "I don't think he's interested in doing anything that he's philosophically opposed to unless he's pressured into doing it."**



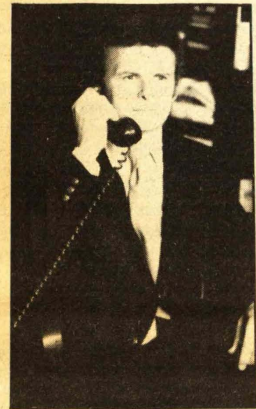
Africa, U.S. corporations will merely shift control to white Afrikaner corporations who might not even follow the Sullivan Principles.

## What Took So Long?

With many larger and more conservative institutions taking strong divestment initiatives over the last three years, SBA President William Ferro noted that BLS is "a little late in coming around toward the divestment debate." He adds, "It is an important issue for the school, so I'm happy we're moving ahead now rather than not moving at all."

According to Dean Trager, he was approached two years ago by a group of students about divestment, but says the students "never followed through" on their initiative. After the students raised the issue, however, Trager did not bring the issue before the law school community for broader debate.

Ferro is skeptical about the Dean's position on divestment. "I don't think he's interested in doing anything that he's philosophically opposed to," declared Ferro, "unless he's pressured



dismantle its racist apartheid system, the move to fully or partially divest from American countries doing business in South Africa has gained tremendous momentum in the last few years. Since 1977, 111 colleges and universities have divested some \$3.6 billion from U.S. companies involved in South Africa.

The list of institutions divesting is an impressive one, and includes Harvard, Yale, Columbia, Dartmouth, UCLA, and both SUNY and CUNY universities. This year, some 15 major American corporations have pulled out of South Africa, including such giants as General Motors, AT&T, IBM, General Electric, PepsiCo and American Express.

Even more impressive is the list of state and local governments which have taken similar action. Over \$18 billion has been divested by 19 states and 70 American cities, including nine of the top ten cities as well as New York City.

## BLS at Financial Risk?

With so many of America's largest universities, states, cities and even church groups pulling out of South Africa, does BLS face any financial risk in divesting? Dean Trager has his concerns.

The law school's investment portfolio is valued at between \$10 and \$20 million, according to Trager. It is managed by two investment advisors: Republic National Bank and the Dreyfus Management Company. While the Board of Trustees must approve of Republic's investments for the school, the school has no say in the decisions of the rather large Dreyfus fund.

Dean Trager does not "object" to divestment "unless it hurts the school. If it turns out that a lot of our stock that is held is affected, it may be a problem." Ultimately, the "Board of Trustees will decide this issue."



# Clinical Opportunities at BLS

By Professor Stacy Caplow

In the past ten years, there have been many changes in the academic program at Brooklyn Law School. Few have been as significant as the growth of clinical legal education. The curriculum today demonstrates the law school's commitment to the continuing development of innovative, rigorous clinical programs which themselves mirror a national movement towards clinical training in legal education.

## The Development of Clinical Legal Education

The expansion of the clinical curriculum reflects an acknowledgement by legal educators everywhere, as well as jurists and practitioners, that the traditional method of teaching law, the study of appellate cases, is not sufficient to fully prepare lawyers for their profession. The casebook fails to expose students to the problem solving skills necessary to develop and analyze facts, to deal with the vast variety of professional responsibility issues that arise in a lawyer's daily life, and to effectively relate to clients while serving their interests and needs. Clinical education manifests the view that the lessons of legal education can be taught equally well, and perhaps even more effectively, by using techniques other than the casebook method. Other examples of similar responses include a demanding legal writing and analysis program and the expansion of simulation courses such as Negotiation, Trial Advocacy, and Appellate Advocacy.

Most law faculties initially were slow to recognize the contribution that this new form of teaching could make, seeing clinical programs as a "60s" rejection of the confines of the classroom, or as "how-to" courses that contained no content or analysis. As a result, clinical programs and the faculty who taught in them often were viewed as step-children in many law schools. In the early days of clinical education, most law schools saw clinical programs as necessary evils; necessary because students were beginning to expect them, and evil because they challenged some entrenched beliefs about the "right" way to teach law.

In 1968, an organization called the Council on Legal Education for Professional Responsibility took up the cause of clinical legal education. CLEPR

funded programs throughout the country in an effort to plant the seeds of permanent change. During its ten year lifetime, the organization's goals certainly were realized, although the early clinical education pioneers could not have anticipated the breadth, depth and sophistication of clinical programs today.

The step-child has grown into a full member of the family. In 1980, the ABA/AALS promulgated guidelines for clinical education addressing such matters as clinical legal studies curriculum, the relationship of clinical studies to the law school, clinical teaching methodology, and methods of evaluation of student work. That same year, an entire issue of the Cleveland State Law Review was devoted to articles by clinicians about clinical education. In 1985, the status of clinical teachers was safeguarded by the adoption of ABA Standard 405(e) which mandates some form of job security for clinical faculty, who until then were often hired on year-to-year contracts with no guarantees of renewal. Most importantly, however, the attack against clinical education for being anti-intellectual, for being no more than skills training, and for lacking analytical content has subsided, if not abated. A recent bibliography of books and articles published by clinicians and/or about topics related to clinical education ran for 35 pages. In October 1986, a four day seminar sponsored by University of California at Los Angeles and the University of Warwick in England, clinical scholars presented a rich variety of papers, both doctrinal and empirical, about such issues as lawyer competency, the adversary process, and the state of clinical education internationally. These papers will be published in an upcoming issue of the UCLA Law Review.

## Clinical Education At BLS

The present and the future of Clinical Education looks bright everywhere, but no more so than at Brooklyn Law School. As recently as September 1976, the law school's only "in-house" clinic was a two semester criminal defense program in which third year students appeared in Brooklyn Criminal Court representing defendants charged with misdemeanors. The only other program in existence at the law school

at that time was the Civil Clinic, administered by Prof. Schultze as an externship.

Since then the BLS clinical curriculum has grown significantly to now offer the Big Apple, Federal Litigation, Criminal Appeals, Prosecutor's, Elderly, Landlord-Tenant, Dispute Resolution, Women's Rights, Civil, Criminal and Judicial Clinics. In 1986, the BLS program attracts students to select to attend this school because the offerings are so varied in both subject matter and structure that there is truly "something for everyone." In addition, simulation courses, which in 1976 consisted of one section each of Trial and Appellate Advocacy, now include as many as four sections of Negotiation, fifteen of Trial Advocacy and four of Appellate Advocacy.

## Extern Programs

Brooklyn Law School can boast of at least four distinct models of clinical education. The first, the longstanding prototype of the "farm-out" or extern program, is represented by the Civil, Criminal, Judicial and Women's Rights Clinics. As many as 75 students per semester enroll in one or another of these programs and work as interns at such organizations as the United States Attorney, the New York State Attorney General, local District Attorneys, various Legal Services or Legal Aid Offices, or for federal and state court judges.

For a long time the externship model was favored by law schools, including Brooklyn, because it is cost-effective (attorneys or judges actually supervise the students rather than full-time faculty members) and requires little commitment of resources by the law school. Students understand such programs to provide opportunities to work in a law office and to acquire some experience in a particular area without the demanding hours and commitment that other clinics require. These carefully screened externships offer students a chance to see how the law works from inside the law office or the judge's chambers.

## The "In-House" Model

Newer clinics at BLS adopt the "in-house" model: a program run entirely by the law school and taught by faculty members whose total or partial teaching load includes the clinic. The focus of such programs is educational rather than vocational as demonstrated by the seminar component stressing the theoretical bases of the lawyering process. This type of clinic is exemplified at BLS by the Federal Litigation, Big Apple, Landlord-Tenant, Criminal Appeals, and Prosecutor's Clinics. Professors Kotkin, Sullivan, Eyster, Schultze, Bentele, Whitehead and Caplow teach these programs, personally supervising the students.

# International Law at BLS

by Randi-Jean G. Hedin

Today, it is no longer sufficient to rely on the law of New York and other American jurisdictions (including, of course, Federal law). As communication and technologies make the world smaller, a lawyer in general practice needs to have some familiarity with international law concepts and issues. For the business and corporate lawyer, this need heightens. A number of federal government departments and agencies seek lawyers with skills in the international field. Brooklyn Law School offers a variety of courses and activities to students interested in learning about international law issues.

## QUE ES INTERNATIONAL LAW?

Despite these programs, confusion remains as to what exactly international law is. International law in the general sense covers the norms governing the relations between nations, the foreign legal systems, and certain aspects of domestic law. When one speaks of "international law," there are two main divisions to consider: public international law and private international law (also known as transnational law).

Public international law generally refers to the laws governing the conduct

of and relations between nations. These laws are produced through various international forums such as the United Nations and often take the form of treaties or conventions to which various countries are signatories. For example, human rights conventions, agreements pertaining to the mining and development of minerals in the seabed, and treaties regarding the exploration of space all fall under the public international law domain.

Customary international law, another type of public international law, has the force of law through practice and acceptance by the community of nations. For example, a 1980 Second Circuit case held that officially sanctioned torture is a violation of international law because over time, many countries have held it to be unlawful. Hence, through custom and usage, this prohibition, initially subscribed to by a few nations, has become a part of international law.

Transactional business law, practiced in corporations and law firms, is generally the law between parties from or in different legal systems and jurisdictions, or involving transactions going beyond a national boundary. It encompasses a broad spectrum of domestic law issues including, *inter alia*, corporate and tax law, trade law,

conflict of laws, domestic relations, and trusts and estates.

## INDISPENSABLE KNOWLEDGE

Every business lawyer today, even in general practice, requires some familiarity with international business law issues. Dean Emeritus Lisle, who teaches the International Business Transactions course, says, "The International Business Transactions course here is designed to provide the student who plans general practice the knowledge and techniques of commercial and financial law within an international context. It should help to prepare the lawyer at every stage of a transaction, to advise and otherwise represent small or moderate size clients, having or initiating transnational commercial activities." Continues Lisle, "At the same time, it seeks to broaden the student's knowledge of domestic law by examining it from the perspective of foreign clients. It also provides the fundamentals required for similar work with large scale enterprises either within law firms representing them or as house counsel."

There are no prerequisites to this course although a knowledge of public international law, previously or subsequently acquired, is helpful in under-

standing the framework of doing business in the international community.

## OPPORTUNITIES AT BLS

In addition to these specialized courses, BLS offers a number of activities in international law. At the first year level, international Moot Court sections may be elected in the Spring writing program. These sections allow students to learn about sources of international law, research and write a memorial (brief), and argue before mock Justices of the International Court of Justice.

Meritorious performance in the first year International Moot Court program may result in placement on the Jessup International Law Moot Court team. As part of the team, members will write, research, and argue an international law problem in their second year. The Jessup International Moot Court Competition is sponsored by the American Society of International Law with more than 100 U.S. and 50 foreign law schools competing.

At the end of the first year, students have the opportunity to qualify for the Brooklyn Journal of International Law in a joint writing competition sponsored by the Journal and the Law Review.

Continued Next Page



While each of these programs has different goals and is organized according to its individual needs, the programs are characterized by certain common features. The student-faculty ratio is extremely low, in many instances as low as six to one. The intense supervision inherent in such a ratio reflects the labor intensive nature of representational clinics. Another common characteristic of each of these programs is that students handle "real" cases for actual clients and learn to make all of the decisions necessary to effectively represent the clients.

Not all clients are individuals; some, as in the case of the Big Apple and Prosecutor's Clinics, are institutional. Nevertheless, decision making, fact investigation and development, case evaluation and preparation, and interaction with clients, witnesses, opposing counsel and the court are the responsibility of the students under the supervision of the faculty member. A final unifying characteristic of the representational clinic is its central pedagogical goal that students can be taught about the law and its processes in a theoretical structured way through a systematic exploration of lawyering roles that emerge during the representation of clients.

#### The "Legal Services" Model

The Elderly Clinic presents a third model: a legal services office devoted to servicing large numbers of clients which allows students to contribute significantly to the work done on those cases. The Elderly Clinic was first funded in 1977 as a project of the New York City Department for the Aging. Since then about twelve students a semester have participated in the program, providing a wide range of services to elderly clients in Manhattan. The clinic is a fully operational law office in which the students can immerse themselves. The staff has increased from two attorneys in 1977 to five today, thanks to considerable additional financial support from the law school as well as a grant from the Hunter-Brookdale Center on Law and the Aging. In 1985, the law school was the recipient of a substantial grant from the Legal Services Corporation to fund a unit for the frail and homebound elderly.

The Alternate Dispute Resolution Clinic, instituted in 1984 and taught by Dr. Maria Volpe, a professor at John Jay College of Justice and a national specialist in this area, combines a variety of methods to teach students about this emerging field, offering yet another model of clinical pedagogy. Students are given intensive training in dispute resolution techniques that enable the students to attend a wide range of dispute resolution sessions, observe the proceedings, and meet with key participants. The students also mediate disputes at various times during

et al.: The Justinian semester. Finally, students perform simulations of a variety of different dispute resolution models and receive feedback from the instructor based on videotapes of their performances. This multilevel model is unique in legal education.

#### Expansion of Clinics

The expansion of the clinical curriculum has required the hiring of four fulltime and seven adjunct faculty members over the past three years. In 1984, Professors Kotkin and Eyster were hired to teach the Federal Litigation and Big Apple Clinics respectively. In 1985, Professor Sullivan came to BLS to teach in the Federal Litigation Clinic and Professor Bentele, originally a writing instructor, became a clinical professor. In addition, seven adjunct faculty members have been appointed: Professors Finkelstein, Bierman, Mason, Strauss and Kuhlman (Elderly), Volpe (Dispute Resolution), and Whitehead (Prosecutor's). These "new" faculty members join Professors Schultze and Caplow to form the "clinical" faculty.

Although simulation courses are not usually thought of as traditional clinical programs, the definition of clinical teaching promulgated by the ABA/AALS includes simulation as a clinical teaching method. B.L.S. can also boast of a fine group of courses that use simulation methodology instead of live clients. This fall, two sections of Negotiation, three of Appellate Advocacy and six of Trial Advocacy are fully enrolled. Many more sections of each of these courses will be taught in the spring. Also, several of the first year seminar sections are incorporating simulation exercises into their curriculum.

The law school's clinical programs continue to grow every year. This spring the Bankruptcy Unit of the Federal Litigation clinic will begin to handle consumer bankruptcy cases referred by the local Bankruptcy Court, interviewing and counseling clients about the decision to file for bankruptcy. If the program is successful, it may expand to include representation of small commercial clients. This will be the first "private" law clinic serving people with business and financial problems. [see sidebar]

By offering students the opportunity to perform the tasks of lawyers including the initial interview, client counseling, negotiation, the preparation of all paperwork, the performance of pretrial discovery proceedings and all court appearances, clinics add a dimension to traditional education that is lacking in the classroom: exposure to the theories underlying the lawyering process. When clinical education began, it was considered a threat, a radical departure from established educational methodology. In these few years since, that view has been transformed everywhere; but no more so than at BLS.

## Bankruptcy Clinic Available

Brooklyn Law School has received a grant from the Legal Services Corporation to develop a new clinical program in bankruptcy law. This represents the law school's first clinical offering in a commercial law area.

The bankruptcy clinic will operate under the auspices of the Federal Litigation Program, with offices at One Boerum Place. Up to six students will be accepted for the Spring semester, and three clinical credits will be awarded. Those wishing to participate should have either completed a course in Debtor/Creditor Law or be currently enrolled in that course.

In the clinic, students will see clients who are considering bankruptcy proceedings. Clients will be referred by the bankruptcy courts and by local legal services offices. A large portion of the caseload will involve counseling clients to determine whether they in fact will benefit from filing for bankruptcy and what kind of proceeding is most advisable: Chapter 7 or Chapter 13.

If the client decides that bankruptcy is advantageous, the students, with faculty supervision, will file the appropriate petition, and represent the debtor in Bankruptcy Court through the final discharge. The clinic will use computerized schedules and programs specifically designed for individual bankruptcies, and a computer will be available solely for student use. Thus, students also will learn about new technology in office management.

In addition to the live client component of the program, students will participate in a weekly seminar. The curriculum for the seminar will focus on the interviewing and counseling skills necessary for advising individuals faced with financial or business decisions. The seminar will also address issues of advanced individual bankruptcy law and may also include use of a computerized instructional program, entitled "The Debtor/Creditor Game."

*Students who wish to learn more about the Bankruptcy Clinic should see Professor Minna Kotkin.*

Membership on the Brooklyn Journal of International Law offers students the opportunity to develop their research and writing skills on domestic and international law issues. In its twelve years of publication, the Brooklyn Journal of International Law has developed an impressive reputation in the legal community.

The International Law Society at Brooklyn Law School, with membership open to all members of the law school community, sponsors lectures on current trends in international law. In addition, for students wishing to gain a broader perspective of international and foreign law issues, monthly luncheon meetings are held of the American Foreign Law Association (the AFLA). The AFLA is comprised of American and foreign lawyers who practice international law in both the government and private sectors. Lectures are given at each meeting on current topics by outstanding and active practitioners. Membership in this organization will give students the opportunity to meet with and discuss career opportunities and issues as they arise.

#### DOMESTIC LAW'S PLACE

Students considering an international law career in government or private practice should develop a solid foundation in domestic law. Several useful core second and third year courses are Administrative law (for trade law which is practiced primarily through government agencies such as the International Trade Administration and the

Corporations, Tax, Conflict of Laws, and Commercial Transactions. The courses distinctly in the international field to be offered this Spring include: International Law, comparative law, Immigration Law, International Trade Law, and International Business Transactions. For a detailed description of these courses, see the B.L.S. Bulletin.

The Placement Office has available materials about summer jobs and career opportunities both in government and private practice. For students considering the exotic, there are mimeograph materials dealing with practice in a foreign country and the requisite credentials. One very useful guide for the interested student is called Career Preparation and Opportunities in International Law which is published by the Section of International Law and Practice, American Bar Association. It is a collection of essays on international law careers in private and corporate practice, non-profit areas, and the government sector.

There are many of opportunities at BLS to learn about international law issues. For students who want more information about the courses or job opportunities, Dean Lisle, Professor Sherman and the other faculty members giving courses in the international area, and the Placement office would be happy to talk with you.

Even if you are thinking domestic, consider international law courses which not only add to your knowledge, they can increase your value in the job market and broaden your horizons. Bon Chance!!

#### Dean's Day

## BLS Alumni Return to the Classroom

By Risa Messing and Jonathan Hudis

Brooklyn Law School hosted its first Dean's Day on November 1, 1986. Dean David Trager instituted the day to start a tradition of bringing BLS alumni together to catch up on one another's activities and to establish future relationships.

Rose Hoffer, president of the Alumni Association and graduate of the class of 1954, opened the festivities with a lighthearted speech, welcoming alumni old and new. "This program," said Hoffer, "promises not only to keep our alumni up-to-date with recent developments in the law, but gives them a chance to socialize with old friends as well."

#### CHOICE OF WORKSHOPS

Alumni had a choice of workshops to attend, all conducted by BLS faculty and all dealing with issues at the forefront of the law. The six seminars offered were: 1. The Divorce Process by Professors Marsha Garrison and Joan Wexler; 2. Evidence—Statistics and Probability by Professors Neil Cohen and Mary Jo Eyster; 3. Gender Bias in the Courts by Professor Elizabeth Schneider; 4. Criminal

Procedure, The Paths Diverge: The Supreme Court, the New York Court of Appeals and the Rights of Criminal Defendants by Professors William Hellerstein, Susan Herman, and Adjunct Professor Robert M. Pitler; 5. The Automatic Stay in Bankruptcy by Professors Michael Gerber and Barry Zaretsky; and 6. Constitutional Law: The Supreme Court and the Constitution by Professors Nancy Fink and Joel Gora.

#### THE DIVORCE PROCESS

The seminar in divorce was divided into two segments. The first segment, presented by Professor Wexler, concerned the custody of children and modifications of custody decrees. The second segment, presented by Professor Garrison, dealt with the economics of divorce.

Professor Wexler described the effect on children of courts' modification of custody decisions. Custody decrees are supposed to be made in the child's best interest. Many times, however, the process of modifying the custody arrangement undermines this interest by changing

continued page 12



# Sample Q's and A's

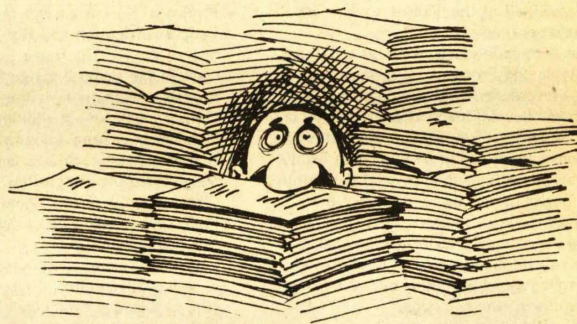
## FIRST YEAR PRIMER

by Darla C. Stuckey

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

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

We at the Justinian decided to give you one more chance to practice. Thanks to Professor Leitner and Professor Gilbride.



## Gilbride on Contracts

### The Question

Mr. Hatling, a hardware and building supply store operator in Bagdad, N.Y. on January 28, 1968, wrote to Mr. Bell, a hardware supply wholesaler in Rome, N.Y. and asked him if he could supply him with one inch copper tubing. On Feb. 1, 1968, Mr. Bell wrote back and said, "We have one inch copper tubing in stock. We offer you one inch copper tubing at 5 cents per foot, delivered at your store, as per your order, during the year 1968, in an amount up to 200,000 feet."

Mr. Hatling wrote back on Feb. 3, 1968 and said, "Your offer received, I accept. I am happy to do business with you."

Mr. Bell telephoned Mr. Hatling on the same date, Feb. 3, 1968, before he received Hatling's letter, so Mr. Hatling read a copy of the letter to him over the phone. Mr. Bell said, "I do not want to do business with you that way. You will have to give me an order for a definite amount of pipe. Mr. Hatling said: "Don't get excited. I am still considering your offer, but would you be able to give me a price of 4 cents per foot if I ordered 200,000 feet." Mr. Bell said, "The price I gave you is the lowest price I can offer."

On Feb. 4, 1968, Mr. Hatling sent a written order form to Mr. Bell for 100,000 feet of one inch copper tubing as per his offer of Feb. 1, 1968, to be delivered in monthly installments of 10,000 feet each, beginning in March, 1968. Mr. Bell received the order but refused to deliver, claiming his letter of Feb. 1 was merely an advertisement. Mr. Hatling sued Mr. Bell claiming a breach of contract.

### Judgement for whom and why?

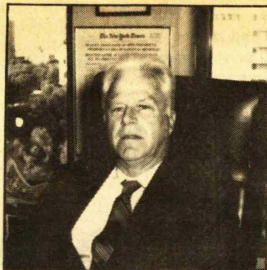
#### Advice

The answer given here, as an illustration of how to answer an Essay question in a law school examination is not intended to be a perfect answer. It is given to you in words used by students in a typical answer, but rearranged in proper form and style. Since time is at a premium in law school examinations the answer is in a modified outline style. Apportion the time available for each essay question before you begin.

Before you start writing you must read the question at least twice to get the facts straight. The second time

Then make an outline of your answer on scrap paper or in the front of the answer booklet. The outline should not be too long or involved but should state each issue in a full sentence, with a brief note of your answer to each issue.

After you have made your outline, check it over and make your decision: Judgment for Plaintiff or Defendant, or Smith or Jones, as the case may be, and write it under your outline.



### The Outline

1st Issue: Was the letter from Mr. Bell of Feb. 1, sufficiently definite and certain to constitute an offer or was it a mere advertising circular?

Yes. It was an offer, UCC—Buyer's option.

2nd Issue: Was the letter from Mr. Hatling of Feb. 3, an acceptance?

No. Illusory promise.

3rd Issue: Was Mr. Hatling's letter of Feb. 3, or his telephone call a counteroffer so as to terminate the offer?

No. Mere inquiry. Re-affirmation of offer by Bell (Livingston v. Evans).

4th Issue: Was there a valid acceptance by Mr. Hatling in his order form of Feb. 4, ordering 100,000 feet of pipe in 10 installments?

Yes. Supplying specifications under buyers option.

Judgment for Plaintiff Hatling

### More Advice

In writing the answer, use the sentence form of the issues in your outline to state the issue in the essay. Do not ignore the analysis you have just performed. Organize your thoughts, write legibly and coherently. Write your an-

continued

## Leitner on Torts

### The Question

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

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

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

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

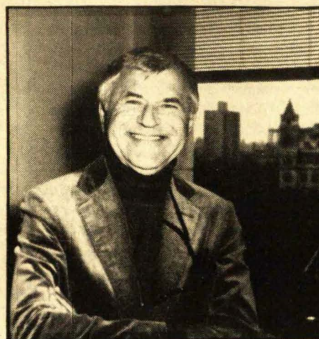
roadway. Y Co.'s employees had used the steamroller during that day.

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

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

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

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



### The Outline

#### 1. H v. B

False imprisonment - invites escape - QF as to reasonableness of escape - privilege to arrest to prevent unlawful conduct on carrier - but not for revenge - QF - damages.

#### 2. H v. Bussco

Employer V/L for employee in scope of employment - if B acting out a private grudge, no V/L.

#### 3. E v. Y Co.

Negligence - unreasonable to obstruct highway - p/i

#### 4. F v. Y Co.

Negligence - no imputed C/N on basis of car owner's presence (Kalechman), but may impute C/N on basis of employment relationship (unless Kalechman abolished the doctrine altogether - p/i and p/d).

#### 5. F v. E

Negligence - no impute C/N in action by passive member of relationship v. active member.

#### 6. F v. Cee County

Negligence - no V/L for tort of ind K'or - unless duty in non-delegable - maintenance of roadways involves non-delegable duty - however, engager or hirer at V/L if negligence is merely collateral - if ct. finds Y Co's negligence collateral only, Cee County not liable to F.

#### 7. Cee County v. Y Co.

If both are sued, cross-claim for indemnity. If only Cee Co. sued, implead for indemnity. Basis for indemnity claim is possible V/I of indemnitee for

continued





## Gilbride

swer in the framework of 1. ISSUE 2. RULE OF LAW 3. APPLICATION TO THESE FACTS, WITH REASONING, but do not prefix each part of your answer with these terms. Write in the style of a judge's decision as follows, but precede each essay with your decision: "Judgment for



### The Answer

#### 1. Judgment for Plaintiff, Hatling.

The primary issue for decision is whether the letter from Mr. Bell of Feb. 1 was sufficiently definite and certain to constitute an offer, or was it a mere advertising circular as he claimed later.

The general rule of law is that the essential terms of the offer must be reasonably definite and certain in order to form a contract when accepted. The opposing rule, which must be considered, is that a mere circular or mere advertisement is an offer.

On facts given in this case, the words used were sufficiently definite and certain to manifest an intention to be bound. The words used are words of offer, even under the common law rules of cases such as the Fairmount Glass case. The essential terms of price, place and time are set forth in the offer. The amount is not definite, because a top limit is set in the amount of 200,000 feet.

Since this is a matter of the sale of goods, the UCC would apply. The UCC has a specific section authorizing this type of offer, where the specifications are left to the buyer's option.

The second issue in this case is that

conduct of indemnitor.

#### 8. Y Co. v. E

In suit by F, Y Co. and E subject to liability as concurrent tortfeasors. If both are sued, Y Co. will cross-claim for contribution. If only Y Co. is sued, it will implead E for contribution. Y Co. and E jointly and severally liable to F. Contribution *inter se* on basis of relative culpability as determined by jury.

#### 9. H v. G

Battery and assault. H privileged to invade G's barn in exercise of privilege of private necessity. Q/F re: necessity. Any force in resistance to exercise of privilege is unlawful force. P/I.

#### Abbreviation Key

QF - Question of Fact

V/L - Vicarious Liability

P/i - Personal Injury

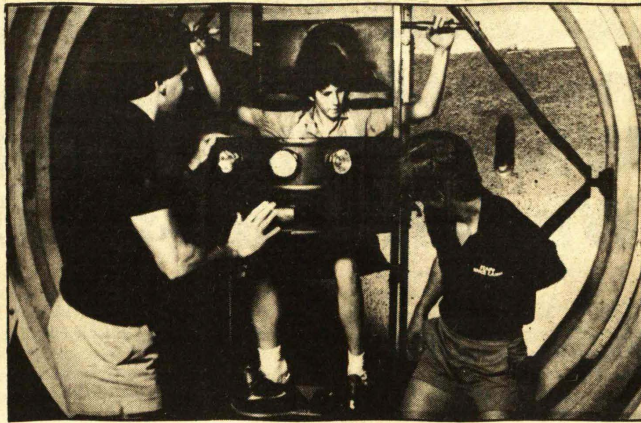
C/N - Contributory/Comparative

Negligence

p/d - Property Damage

Ind K'or - Independent Contractor

et al.: The Justinian



### STRAPPED IN

for finals, a first year student confidently relies on the able advice of upperclass students. Even with the special anti-cheating restraints, the question remains: won't he still be able to grab his ankles?

of Acceptance. Was the letter from Mr. Hatling of Feb. 3, an acceptance?

The rule of law is that an acceptance must be reasonably definite and certain, to conclude a contract on all essential terms.

Mr. Hatling's letter of Feb. 3 was a mere illusory promise. The offer

teroffer. At the worst it was meaningless, and was neither an acceptance nor a rejection.

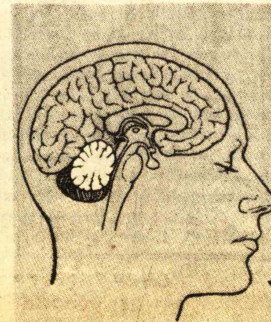
As to the telephone call, Mr. Hatling clearly stated "I am still considering . . ." so this was a mere inquiry. Under the rule established at common law, a mere inquiry is not a counteroffer and a rejection. In any event Mr. Bell's answer over the telephone indicated that he was standing by the terms of his original offer. Even if there had been a counteroffer.

Even if it were to be held that these were additional terms not within the contemplation of the offer then another section of the UCC, Section 2-207, would come into play and permits the acceptance with additional terms to be considered as a valid acceptance of the contract as a whole. The additional terms are considered to be proposals for addition to the contract, not as a counteroffer and rejection. Under the rule of *Livingston v. Evans*, which we covered in our casebook, there was a reaffirmation of the original offer by Mr. Bell.

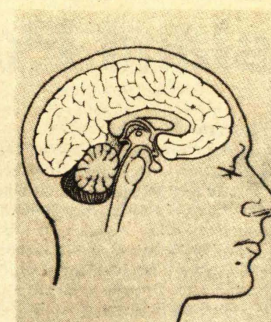
The fourth question is whether there was a valid acceptance by Mr. Hatling in his order form of Feb. 4, ordering 100,000 feet of pipe in ten monthly installments.

The law as now enacted in the UCC Sect. 2-311 is that a contract is valid even though it leaves particulars of performance to be specified by one of the parties. When the specifications are fully supplied as in this case the contract is complete. The specifications are valid if in good faith and within limits set by commercial reasonableness.

In this case, the original offer called for specifications to be supplied by the buyer in his acceptance, which Mr. Hatling has supplied in his order form. The specifications are in good faith and commercially reasonable. The offeror, Bell is a wholesale dealer, the amount is only half of what he set as a top limit. Delivery in ten thousand foot lots each month for the remaining ten months of the year is commercially reasonable since delivery was offered at any time within the remainder of the year. Since Bell is a wholesale supplier and Hatling a retailer this specification for installment delivery seems reasonable.



cerebellum



cerebral cortex

## The JUSTINIAN IS LOOKING FOR A BUSINESS MANAGER

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# The Night Owl Speaks

## When is full-time not full-time?

## When it's part-time!

by Scott M. Sommer

Well, the editor asked me once again to go back to one of my pet peeves about this joint: the second class treatment of part-time students and how the part-time program here at Brooklyn Law School is anything but part-time. If you hold me to a strict definition of the phrase "part-time," technically I would be dead in the water arguing that the part-time program is more full-time than part-time.

Let's be equitable about it. After all, the judicial process can grant a remedy either at law or at equity and, being without a remedy at law, I must turn to the equitable ports of call. First, let's look at the numbers: All of us enter law school needing eighty-five (85) credits to get sprung from the "big house." After the first year, full-time students generally need fifty-four (54) more credits to graduate and part-time students need an additional sixty-four (64) credits in order to leave these halls with a law degree.

What this boils down to in the final numerical analysis is that full-time students only have to take one more course each semester than their part-time colleagues. Please, do not misconstrue this column as a slap against the full-time students and their academic load. This is just an attempt to clarify the heavy load that must be carried by one who pursues his or her degree part-time.

These stringent and in many ways intentionally discriminating rules for part-time study are promulgated not by the law school but by the New York Court of Appeals (see, 22 NYCRR 520.1 *et seq.*). It appears that the Court of Appeals and many law schools (i.e., those that do not even offer a part-time course of study), are trying their best to discourage people from

studying part-time regardless of the fact that they may have family or other economic obligations which may require them to work and therefore not to be able to attend law school full-time and reach nirvana.

So, why am I kvetching? I'm kvetching because many times all I and other part-timers hear from our full-time colleagues and from interviewers is, "Oh, you only go part-time, it must be pretty easy then to handle the load," or "Why did you go part-time? Don't you think that you are not getting as good an educational experience by not devoting all of your energies to your studies?" This puts one on the defensive for having to attend law school part-time.

Not so elitist one. We who attend law school part-time are in law school because we want to be. One would not put oneself through the bump and grind of working full-time and/or caring for a family full-time and then trotting out at night (or even during the day) to attend some classes, read class material, find some way to do a clinic, write for a journal or be involved with moot court or be involved in some other school activity just to simply mark time. If all we wanted to do was mark time we would probably do something enjoyable such as play with our children.

So the next time you are about to belittle a mere part-time student, stop for a moment and think about the load that she or he carries just in school alone and then speak. It may make a difference in what you say.

### ODDS-N-ENDS

I read with great amusement the note Dean Trager hung up for the victims of Henry Holzer's Constitu-

tional Law class last spring. Yes, I will meet with you, however, please realize that I will only do this on the condition that you realize I will do nothing!

If he is not going to do anything about Holzer's periodic childish fits, then why is he meeting with anyone. Dean Trager is, after all, the Dean of the law school and he should do something about someone such as Henry Holzer. A grading policy was enacted at the school two years ago, but for some reason, the Dean chooses not to enforce it against one of his buddies. Dean Trager, many of us would appreciate it if you would address this problem head on and hire Coldwell-Banker to deal with our growing property needs instead of spending your valuable time on them yourself.

And now a sad task which brings tears to my eyes. With this issue of the *Justinian* we bid farewell to one of the mainstays of the paper and the progressive community here at Brooklyn Law School. Yes comrades, "Dr. B" (a/k/a Bob Axford) is finally graduating. Except for a semester spent in the diaspora (Manhattan) working for a tenant law firm, Dr. B has been one of the flirts, I mean pillars, of the BLS community. His incredible wit and perspective on the comings and goings of modern day life has brought much reading pleasure to all of us here at Brooklyn Law School. Who cares if he occasionally ate a Nestle's chocolate bar or frequented Donald Trump's watering holes, Dr. B has a style of his own which will never be replaced here at BLS. Good luck in the future, Bob, and all look forward to your review of Madonna's next single, even if it will only be appearing in the *New York Law Journal*.

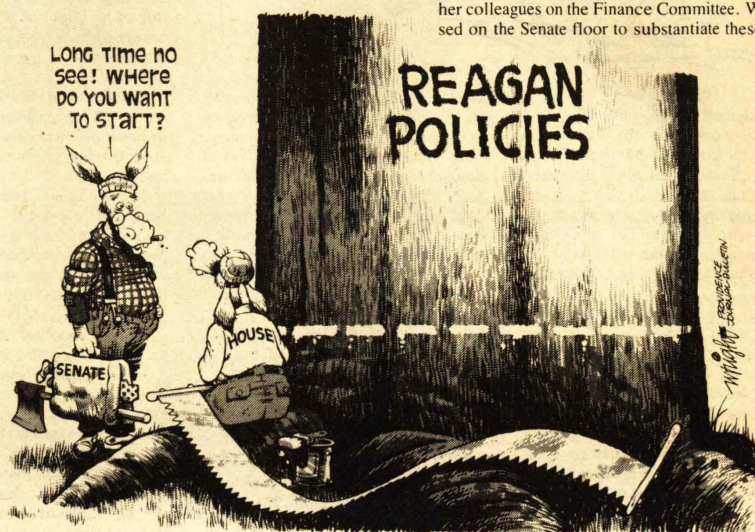
# America's Fantasy Island Politics

by Thomas T. Kelly

Where American politics is, and where it is going, can be learned from looking at the results of the recent 1986 midterm election. Because the results indicate that political parties mean less than ever before to voters, the future does not bode well for the representative democracy through which we govern ourselves, for it is political parties which make free government elective.

The most important result of the election is the Democrats' recapture of the U.S. Senate, which they had lost in 1980. This is a remarkable achievement considering that the Republicans outspent the Democrats by \$179 million to \$35 million. However, because the Democrats did not see corresponding gains in the House (which would have resulted in four or five times the actual net gain of five seats), the election does not represent the repudiation of the GOP they hoped it would be.

Republicans lost control of the Senate in no small way because of arithmetic. Of 34 seats up for election this year, 22 were occupied by Republicans. Of these 22 seats, 16 were held by freshman senators elected in 1980. Most of these senators were originally elected by very close margins—they almost certainly would have lost had their Democratic opponents not been obliged to run with Jimmy Carter. Moreover, most members of the "Class of 1980" were not originally nominated with victory in mind. They were sacrificial lambs sent out to run against incumbent Democrats of renown and experience. Many nominations went to an unusually large number of troglodytes of the GOP's right wing. Accordingly, the backbone of the Republican majority from 1980 to 1986 was composed of some very weak politicians. This year the Democrats needed a net gain of only four seats to win the Senate. Of the 15 members of the class of 1980 up



for reelection, the Republicans were lucky to lose only 6.

Two examples of the class of 1980 illustrate the general weakness of the Republican candidates. Florida's Paula Hawkins won by accident in 1980. In February of 1981, she decided to throw a press luncheon in the Capitol to publicize a legislative proposal. Paid for by the taxpayers, this free lunch for the gentlemen of the press featured *tourneados au bernaise* and fresh, out-of-season asparagus. After dessert, Hawkins launched into her proposals to end food stamp

ripoffery. The reporters hooted her down, and featured it as a ridiculous spectacle on the evening news.

Midway through her term, Hawkins came to be known throughout the Senate as "The Broom" for her thick makeup, periodic dismissals of her entire staff, and her bizarre speaking manner. Once in a debate of a tax bill, she impugned the good faith of her colleagues on the Finance Committee. When pressed on the Senate floor to substantiate these charges,

she stated with a palpable sense of vindication that she "heard it on the subway."

Jeremiah Denton was a P.O.W. in North Vietnam for seven years. He was the first P.O.W. off the first plane from Hanoi in 1973. In 1980, Alabama sent him to the Senate, where he proceeded to revisit the jungles on a regular basis when orating on the floor. In one speech, he branded a colleague's wife a Communist. In 1982, along with Jesse Helms, he introduced a lengthy amendment to a bill which would

Continued Page 30



# South African Divestiture Fiction

## Apartheid Foes Fail

by David Hyman

A vocal segment of the American antiapartheid movement has been calling for divestiture of assets held by American corporations in South Africa. Unfortunately, the movement has not defined "divestiture" with more definite terms than, for example, the clichés "pull out" and "sever ties". This lack of foresight granted IBM and General Motors the opportunity to announce in October that each will be "withdrawing" from South Africa.

There is now an urgent need to narrowly define what sort of divestment is politically acceptable to the antiapartheid movement and legally acceptable to the institutional lenders, such as universities and state and local governments, governed by divestment-oriented laws and rules. The mainstream media, in an effort to ease public demand that multi-national corporations limit their behavior by the dictates of social responsibility, has characterized these moves as antiapartheid.

General Motors and IBM have announced plans to rid themselves of their South African subsidiaries by selling those foreign assets to White South African managers. These plans mean that investments by major institutional lenders in IBM, General Motors and others executing similar corporate restructuring, will swing into compliance with the local laws and rules which the movement has struggled to enforce. For example, according to a city lawyer, the move means business dealings with these corporations will probably comply with the New York City selective purchase law. Similarly, the New York State Comptroller states that the move definitely will bring pension fund investments in IBM and General Motors within the state's

rules. Likewise, the planned corporate structure, according to the University of Minnesota's investments director, will comply with the school's mandate to divest from companies with "operations" in South Africa. New Jersey's investment director states that its investments' status is uncertain under rules requiring the sale of stock in companies with a South African "presence" or "effective control" over a company there.

ously enhancing its investment lure. One can only wonder why it chose to wait so long.

The antiapartheid movement must take the blame for creating this loophole so huge that two corporate giants can gracefully skip through. The planned structure is actually quite simple—it should have been anticipated. Corporate America has in effect announced its plans to create trusts with White South Africans

*General Motors and IBM will continue to reap profits from the labor of South Africa's nonwhites. The antiapartheid movement is to blame for creating a loophole so huge that two corporate giants can gracefully skip through and create trusts with White South Africans as the trustees, American plant and equipment as the trusts' corpus and themselves as the sole income beneficiaries.*

### REAPING PROFITS

Despite the imminent compliance of these and scores of other institutional investors with divestment rules, if General Motors and IBM execute their plans, they will continue to reap profits from the labor of South Africa's nonwhites. The profits will be wearing the camouflage of license, rental and service agreements. The ownership change will alleviate political pressure without altering the cash flow. Corporate America has discovered a painless way to remove the stigma of South African connections while simultane-

as the trustees, American plant and equipment as the trusts' corpus and itself as the sole income beneficiary.

History reveals that such trusts will have a negative impact on the condition of the Blacks in South Africa. When Rohm & Haas and Stanley Tools sold their South African subsidiaries to White South Africans, the owners, free from American public pressure, immediately cut wages and dropped social spending programs—such as contributions to nonwhite schools. It is obvious that this rash of "pull outs" and "withdraw-

Continued Page 29

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### Universities Get Tougher On Apartheid Protesters

#### Discipline, Trips To Court

Over the last few weeks, Desiree Gran, a Johns Hopkins grad student, has been picked up bodily by police, dragged by her feet across grass and concrete, dropped into a paddy wagon, handcuffed and pushed into a cold, metal cell, where she was kept in solitary confinement for nine hours.

Her university then charged her with trespassing, loitering, disorderly conduct and disobeying a police officer.

JHU President Dr. Steven Muller says his administration—which last week dropped the charges against Gran and 12 other students arrested for defying a campus ban on building "shanties" meant to symbolize poverty in South Africa—actually is growing more lenient toward anti-apartheid protesters.

But, if recent events are any indication, students joining a round of nationwide anti-apartheid protests scheduled for hundreds of campuses this past October can expect rougher treatment from authorities.

"It seems that in a number of cases college officials are getting tougher on protesters," observes Richard Knight of the American Committee on Africa (ACA), which helps coordinate campus anti-apartheid efforts nationwide.

Texas, Yale, Illinois, Utah, Missouri, Indiana and Dartmouth, among others, are all striking "get tough" poses toward anti-apartheid students who, up until last spring, could count on demonstrating without much personal risk.

At that point, administrators began sending police to break up protesters and their "shanty" villages for the first time, often on the grounds that flimsy structures—none too sturdy and frequently the target of violent vandalism by movement opponents—posed insurance risks for the schools.

Now, administrators seem less shy about breaking up the protests, often explaining it's necessary to maintain campus order.

The ACA's Josh Nessen says it's because students themselves are tending to use more violent, confrontative tactics in recent years.

The crackdowns, ironically enough, are coming as more schools—about 50 so far this year, the ACA says—are selling shares in companies that do business in segregationist South Africa.

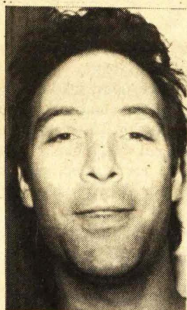
In October, for example, Harvard, Bucknell and Southern Cal voted to sell all or part of their South African holdings.

The same week, Missouri arrested 17 protesters. It was the first time UM had ever brought trespassing charges against protesters, says Maj. Jack Watring of the campus police.

Continued Page 29



## Our Inquiring Photographer Asks "How do you relieve test-taking tension?"



**David Sibek**  
'89

Through visualization — you picture yourself taking the test successfully. Then there's always zen meditation.



**Rayf Berman**  
'89

I beat my brother against the wall with a baseball bat.



**Jamie Larowitz**  
'88

I never relieve test-taking tension, but I develop a facial tic.



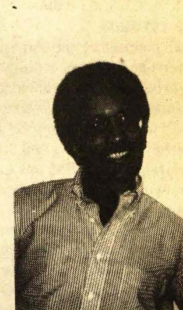
**Catherine Duggan**  
'87

I'm not telling you.



**Barbara Henle**  
'89

You don't want to know.



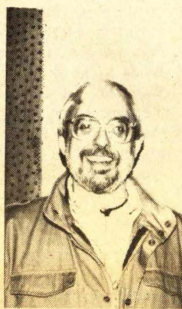
**Goodwin Benjamin**  
'89

I put it all into perspective, it's all relative. It's not going to be a reflection on me as a lawyer.



**Pamela Kulsrud**  
'87

By kicking small animals, such as small dogs and first year Journal staff members.



**Louis Villella**  
'87

I chew gum a lot. I invariably eat a banana. And I bake a lot. If I'm desperate, I clean the oven.



**Howard Brenner**  
the librarian

I punch obscene words into Lexis until Mead Data calls to see what is going on.



**Judy Olivero**  
'88

I blast the Clash or Billy Idol or something really danceable, and I dance like a fiend around the house. But last year, I had chilled Sambuca before Con Law.



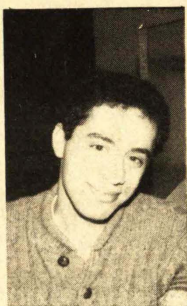
**Craig Lustig**  
'88

St. Elsewhere, Haagen-Dazs and ex-girlfriends.



**Mike Kanzer**  
'87

A lot of sports, eating and going out.



**Shahab Katirachi**  
'87

You mean, assuming that I study in the first place? A good workout.



**Suzy Auletta**  
'90

I lift weights, work out.



**Steve Gold**  
'88

Sex.



**Judith Kahn**  
'88

I just got a baby grand piano; I either play with the keys or I lie naked on the strings and let the hammers do what they will.

**NEXT ISSUE**  
**The Inquiring**  
**Photographer**  
**Gets Serious**

## COUNTRY

*One recent morning, I walked out of my building and was hit with winter's first cool breeze. For a moment, I was transported up to the north woods, where it had been like this for a few weeks already. I was suddenly taking in views of the Kittatinny mountains and the brown valley below. The trees were beginning to shed their fall colors. The deer was thickening her coat, and the stream trickled by. I was completely taken in by this scene until the black cloud of the M-51 bus blew me back into reality.*

Gregg Peterman



# Trager Responds to Mollo's Trial by Investigation

by Peter Mollo

In the *Justinian's* September issue, I wrote that there is generally too much trial by press. It has become impossible to find impartial juries for New York City government corruption trials because of all of the pre-trial and pre-indictment publicity. A Code of Conduct was presented (see sidebar) which was designed to protect both parties from the injustice of having to move to another jurisdiction in order to obtain a fair trial and to protect subjects of the investigation from the extra-legal penalties of losing esteem, business and credit because of an investigation into matters of which he will be absolved.

Both the innocent and guilty are investigated. Usually most municipal investigations do NOT result in an indictment and a conviction. When the investigation process itself penalizes rather than inconveniences the subject, it can easily become an instrument for abusing power. The Joe McCarthy-Roy Cohn team showed us that. People were black-listed because they were called before the House Un-American Activities Committee.

Some of the PVB defendants might have been innocent. But press coverage made a fair trial in NYC impossible, necessitating the move of the trial to Connecticut! Dean Trager is the Chairman of the State Commission of Investigation into city corruption. Since he is our Dean, it was appropriate to elicit his comments on the Code. The following is an excerpted account of that interview.

MOLLO: First, as we agreed, you will comment specifically on each recommendation of the code in the order they are listed.

The first is:

PRIOR TO ARRAIGNMENT OR INDICTMENT THE NAMES OF THE SUBJECTS OF INVESTIGATION WILL REMAIN CONFIDENTIAL. TRAGER: I completely agree with this suggestion. Of course, common sense would dictate that if a defendant or another party chose to claim harassment and the like, the prosecutor should be allowed to defend himself in a limited way. In addition, it is very important to make a distinction between criminal investigations and quasi-legislative investigations. For example, the responsibility of the State Commission which I chair is primarily to make recommendations. We are not a prosecutorial agency. Therefore, when we announce that we are going

to have a look at the procedures of the Taxi and Limousine Commission, it does not mean that we are making any presumption of irregularity or illegality. If any criminal matters emerge it is our role to turn our information and the case over to the proper prosecutorial agency. MOLLO: The second proposal is the idea that:

THE SUBJECTS OF THE INVESTIGATIONS CONDUCTED BY THE GOVERNMENT AGENCIES WILL BE PROVIDED WITH COUNSEL AT THE EXPENSE OF THE STATE, IF REQUESTED. TRAGER: If one is called before a grand jury, counsel will ordinarily be provided if the person does not have funds. This usually only happens when the subject starts to have contact with the (criminal justice) system. Would your recommendation apply to people who can afford counsel?

MOLLO: Yes. Middle class business people who deal with interstate commerce are vulnerable to various kinds of investigations for up to three years on any one matter, as per the Department of Justice's guidelines. This could bankrupt a small corporation with limited assets. It can also take the time of the principles of the corporation. You may be told that you do not have to cooperate, but your lack of cooperation will be noted. Therefore, a respectable company would cooperate, by force of public opinion. There could be a potential for harassment and intimidation. What about these instances?

TRAGER: If it could be shown that the party was totally innocent and the subject of maliciously motivated slander, perhaps these should be reimbursed.

MOLLO: The proposed code suggests that the appropriate comment to the press by investigators should be:

WE RESERVE COMMENT REGARDING GUILT OR INNOCENCE AND ON THE FACTS OF THE CASE PENDING THE OUTCOME OF THE INVESTIGATION.

TRAGER: I agree totally with this idea. I am against trying your cases in the newspaper. It is very unprofessional and unfair. Again, I could see situations arise where the prosecutor is subject to character assassination. Then, the prosecutor should have the right of reply if the defendant or his attorney chooses to attack the prosecutor's character.

In the case of a leak to the press which does not clearly come from the defendant, it is appropriate for the prosecutor to say, "It is erroneous for the public to assume that this person is guilty of anything." I believe that this is a sound principle.

MOLLO: The fourth proposal is basically that:

THE SCOPE OF THE INVESTIGATION SHOULD BE LIMITED BY THE SCOPE OF THE ORIGINAL ALLEGATIONS OF WRONGDOING.

TRAGER: This is clearly not doable. This may make sense if you are gathering evidence of a one-time crime, but in white-collar crime the complainant may only know of a small portion of the entire scheme. He cannot limit the scope of the investigation. His value is that his limited information may lead to the discovery of a larger pattern. One must look beyond the original allegations to see if a pattern even exists.

Insofar as the right of confrontation and cross-examination are concerned, these are preserved if there is an indictment.

MOLLO: The last proposal concerns the time limitation on an investigation:

THE TIME THE GOVERNMENT HAS TO CONDUCT AN INVESTIGATION SHOULD BE STRICTLY LIMITED BY THE EVIDENCE SUPPORTING THE ORIGINAL ALLEGATION.

TRAGER: Normally, a good investigation will be done quickly. This is a nice idea, and if innocence can be established early, the party should be relieved early. But this is not always possible.

In general, it is not good professional conduct for prosecutors to announce anything beyond the indictment at a press conference (emphasis ours; ed.). In theory, it is against Department of Justice Guidelines.

MOLLO: In general, what do you think of the British system of allowing almost no trial publicity?

TRAGER: I think it assumes too much integrity on the part of the system. Moreover, many white collar and political corruption cases are started by the press doing its investigative job.

## The Press's Influence On The Taxi And Limousine Commission Investigation

MOLLO: Would the outcome of your investigation of the Taxi and Limousine Commission have been different had press leaks not taken place?

TRAGER: Yes. I was very chagrined that our investigation became a

hothouse. For reasons I cannot go into here, we were more or less forced to bring our case to the prosecutor a year earlier than we originally planned. Normally, there is an investigation, a hearing, a report and then recommendations. Unfortunately, in our case the entire process was speeded up.

This was not all bad because a multi-level, ongoing fraud was uncovered. Also, in our construction investigation, the uncovering of a \$100,000 no-show job was revealed in the press, although it was not illegal! The public attention can be good to correct institutional structures in the administration of private-city contracts, so these abuses cannot happen again.

MOLLO: Thank you for your candor. Is there anything you would like to add regarding recommendations you may have for the reform of public policy which emerged from your conduct of these investigations?

## Dean Trager's Recommendations

TRAGER: The present method for soliciting funds for political campaigns cheapens the entire process and generates an atmosphere where conflict of interest problems can emerge.

MOLLO: What method would you substitute in place of the present system?

TRAGER: I think that some form of public financing of viable political candidates would be preferable.

Something similar to the financing of the presidential elections but on a local and state level. I also have questions about the election of district attorneys.

The state should strive to achieve justice and the revelation of truth. The politicalization of the job of public prosecutor de-emphasizes the search for truth and results in a quest for convictions. The job progress of an assistant district attorney is too related to his or her ability to obtain convictions, rather than discover innocence, if it exists.

MOLLO: What is your recommendation in the area of criminal procedure?

TRAGER: The concept of transactional immunity should be changed. If someone comes in to testify voluntarily about a criminal occurrence, and another witness presents evidence about his involvement in the occurrence, wholly separate from his testimony, the prosecution is nevertheless barred. I believe this presents an unfair burden to the prosecution of crime.

MOLLO: Thank you very much.

## Proposed Code

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.

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# Dean's Day

From Page 5

the parent who will have custody over the child.

Professor Wexler suggested that courts take a harder look before modifying custody decrees. "Such modification should be done only if by remaining with the child's current custodial parent, the child would be exposed to emotional, physical or mental harm." Modification of custody can weaken the continuity and bonding that a child has established with a parent. It can, as well, lead a child to maladaptive behavior.

Professor Garrison spoke on the economics of divorce and emphasized the grim statistical realities facing divorced women heading families. A recent California survey indicated that when men get divorced, they have 42% more assets available to them than when married. Women, on the other hand, experience a 73% drop in the assets available to them upon divorce.

Judges usually look at several different factors in evaluating how much alimony to award a woman upon divorce. Professor Garrison explained that judges have a great deal of discretion in this area. She is conducting research in the area of alimony awards to women, with attention focused on whether judges agree as to what factors to consider. The research, funded by a grant to BLS, will also examine the Equitable Distribution Law now in effect in New York and try to ascertain whether there has been a decrease in alimony awards since this law was instituted.

## EVIDENCE AND PROBABILISTICS

The evidence seminar, presented by Professors Cohen and Eyster, overviewed the area of probability and statistics as utilized in presenting evidence to the court. According to Professor Cohen, "attorneys can use statistical methods to help bolster their case, as well as spotting and evaluating weaknesses in an opponent's argument dealing with probabilistic methodology."

Professor Eyster demonstrated how attorneys can use statistical visual aids to fool the jury. Charts and graphs with skewed ellipses make the figures presented look more dramatic than they really are.

The seminar also discussed how legalistic statements of proof translate into statistical formulations. For example, the concept of "beyond a reasonable doubt" was theorized to be equivalent to a 95%, or greater, chance of something occurring.

Lastly, there was discussion of two leading cases in the area of probabilistics and evidentiary questions. The first was a California criminal case demonstrating the necessity of laying a foundation before using statistics to present one's case. The second was a Massachusetts civil case showing the pitfalls of letting statistical probability substitute for hard facts—otherwise known in the field as "the blue bus case."

## GENDER BIAS

The seminar on gender bias, conducted on an informal basis by Professor Elizabeth Schneider, focused on a New York Task Force Report published in the New York Law Journal (April 23, 1986). The group in attendance was quite diverse, covering a large spectrum of the legal profession.

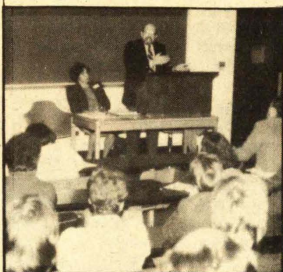
Essentially, Professor Schneider painted a rather dim view of women's present role in the legal profession. "Despite substantial efforts in this area, the attitudes and substantive law haven't changed that greatly," said Schneider. This is especially true in the areas of domestic violence, rape, custody disputes and divorce.

"What is needed is a self-examination of all legal institutions" if the profession as a whole is going to change. "There exists gender bias not only with in-court litigants, but with court employees and legal education as well."

Although the group was small, discussion among its members became quite intense as the hour drew to a close, with many staying behind to inquire further of Professor Schneider as to the recent developments in the area of gender bias and the substantive efforts which have seen recent fruition.

## CRIMINAL PROCEDURE: THE TENSION BETWEEN THE SUPREME COURT AND THE COURT OF APPEALS

The seminar with the greatest attendance was that dealing with the substantive rights of the accused, both at the State and Federal levels. According to Professors Hellerstein, Herman and Pitler, the State Constitution of New York, as interpreted by the State's highest court, affords more substantive protection of individual rights than does federal law.



The clearest message from the Supreme Court has been fashioned thus: absent a clear statement from the state court, the Supreme Court will assume that the state court had interpreted federal law. This being so, the Supreme Court is able to restrict the interpretation given to individual rights in the court below.

The result has been that state courts, in rendering their opinions, have expressly stated that they are interpreting state constitutional law, not federal law. This, hopefully, will give the Supreme Court less of an opportunity to reverse the decision of the state courts below.

## THE AUTOMATIC STAY IN BANKRUPTCY

The seminar on the automatic stay in bankruptcy was attended by alumni with varying degrees of knowledge of the subject—ranging from acute expertise to virtual ignorance. This was the audience to whom Professors Gerber and Zaretsky spoke.

"When bankruptcy is declared, the automatic stay goes into effect."



## Professor Schneider

**Women's present role in the legal profession: "Despite substantial efforts in this area, the attitudes and substantive law haven't changed that greatly."**

"The debtor is allowed relief from the harassment of creditors and other claimants." This allows for an orderly and fair distribution of the debtor's assets among all those claiming an interest. It also allows for "breathing room" for the debtor, that he may begin his "fresh start" on the road to economic recovery.

The salient points of the seminar were the scope of the automatic stay, presented by Professor Zaretsky, and ways which claimants can avoid the provisions of the stay, discussed by Professor Gerber. The professors handed to all those in attendance selected sections of the bankruptcy code and other materials, that everyone could closely examine the relevant provisions of the law which was the topic of discussion.

Also mentioned were third parties who might be involved in the debtor's blanket of protection under the automatic stay. The most noted of these third parties discussed were insurance companies or companies involved as defendants in mass toxic tort and product liability litigation.

## CONSTITUTIONAL LAW: THEORIES AND CHANGING DOCTRINES

This seminar, more lecture than discussion, was conducted by Professors Fink and Gora, who seemed to mesmerize their audience with their dynamic pedagogical styles.

Professor Fink conducted her part of the presentation in a very treatise-like



## Professor Zaretsky

**"When bankruptcy is declared, everything stops."**

Professor Gora continued the lecture by presenting constitutional adjudication as a matter of present doctrine, historical precedent, and ongoing judicial interpretation. "The Constitution," professed Gora, "has been contemporaneously examined quite expansively." Gora continued, however, that the Constitution has been read quite subjectively, according to the prevailing views of the court at any given point in history.

"When the [Supreme] Court disables government from acting, it is subject to attack on separation of powers principles." However, "when the Court curtails individual rights, it is subject to attack on broader libertarian principles. As judges speak based on their personal values, there has resulted incoherent doctrines difficult to reconcile."

## THE DEAN'S CLOSING COMMENTS

A reception in the student lounge was held following the conclusion of the six seminars. Dean Trager took this opportunity to present his thoughts on the operation of New York State's criminal justice system. His comments were based, in large measure, upon his experiences as Chair of the State Commission of Investigation, and knowledge as a former United States Attorney for the Eastern District of New York.

The Dean's speech centered around the lack of centralization in the New York State Criminal Justice System. The State's inability to effectively solve the jail overcrowding problem, for example, helped to set the stage for the release, three years ago, of 600 prisoners, said Trager. The Dean emphasized the need for one person or institution with the power to "oversee problems" and "put all the pieces of the solution together."

continued next page

## Professor Gora

**When the Supreme Court disables government from acting, it is subject to attack on separation of powers principles. When the Court curtails individual rights, it is subject to attack on broader libertarian principles.**



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"Official corruption has existed for too long," exclaimed the Dean. "Prosecutors and defendants are members of the same political party; the process of checks and balances within local government has become too singularly partisan. This problem is not new, but has lasted for decades." The Dean closed his remarks by urging that New York State's Criminal Justice System was obsolete and in urgent need of change.

#### REACTIONS OF THOSE IN ATTENDANCE

The Dean was pleased that about 100 alumni showed up for Dean's Day, especially since this was the first in what is intended to be an annual event.

The response of the alumni was generally mixed. One alum felt the workshops did not deal enough with the "nuts and bolts of practice" and were too "esoteric." Another alum agreed that the workshops tended to be too theoretical. He said, "I felt like I was back in my first year of law school." However, most in attendance were highly pleased with the lectures and many echoed the sentiments of one who said the lectures were "terrific" and "informative."

Judging by the reactions of the Dean, faculty and alumni, Dean's Day seemed to be a success. This will hopefully become an annual event, encouraging graduates to renew their ties with their alma mater.



Dean Trager

**"Official corruption has existed for too long. Prosecutors and defendants are members of the same political party; the process of checks and balances within local government has become too singularly partisan. This problem is not new ..."**

## SBA Budget Passes Quietly

by Matthew Flamm

The Student Bar Association passed its 1986-87 budget in a quiet and orderly meeting this past November 3. What might have been a more contentious budget debate was softened by the last minute addition of \$3,000 to SBA's annual budget by BLS Dean Trager.

One-third of the student organizations addressed in this year's budget chose to absent themselves from the meeting. Eight organizations appealed to the SBA for increases over their proposed allocations, including the International Law Society, the Black Law Student Association, the Entertainment Law Society, the Gay and Lesbian Student Organization and the National Lawyer's Guild.

#### PARTISAN POLITICS?

The SBA refused to provide any funding for two new political organizations, the Young Democrats and the Young Republicans. The Young Democrats, which have no members and have held no meetings, wanted "seed money" to form an organization at BLS. The purpose of the Young Democrats, according to its spokesperson, is to make "law students politically aware and politically active" on substantive issues without reference to partisan politics.

The Young Republicans were also

refused funding. According to Martin Valk, who heads up the organization, the Young Republicans appealed their proposed allocation of \$0 because the "Young Democrats [were] appealing." Had the SBA granted a budget to the group, the money would have gone to support the "goals [the] Republican party feels highly about," said Valk. The group "offers alternatives to liberal organizations."

Other, already established groups were also denied funding by the SBA. Defunded were the Environmental Law Society, the New York State Bar Association, the Senior Party and Cabaret.

#### BALSA CUT

Also cut was the Black Law Student Association (BALSA), reduced by 10% from last year's allocation to \$3,000. The group which "deals with the needs of Black Law Students," according to their spokesperson, had received a proposed SBA allocation of only \$2,500. The BALSA spokesperson appealed to the SBA for increased funding, complaining that the proposed budget, \$800 less than last year, was "simply insufficient" to support the group.

The SBA, while debating whether to allow the allocation to fund BALSA regional and national conferences rather than BLS programs, restored \$500 to the BALSA budget.

## Environmental Quality Bond Act Passes

by Brian Rattner

The Environmental Quality Bond Act (EQBA) was adopted by a wide margin of New York State voters on November 4. The EQBA was more widely recognized as Proposition 1 on the November 4 ballot. Although the EQBA received minimal attention in the local press, the ramifications of its passage are widespread.

Robert Weisbrod, New York City Special Assistant to the Commissioner of the Department of Environmental Conservation (DEC), and Greg Nolan, Assistant New York City Regional Attorney for the DEC, came to Brooklyn Law School on Monday, November 3 to address students and faculty on the subject of the EQBA.

The enactment of the EQBA pro-

vides \$1.2 billion to clean up hazardous waste sites throughout New York State. The bond is an essential part of a \$4 billion initiative that will combine Federal, State, and private funds in a comprehensive 13 year, 500 site cleanup program. An additional \$250 million is set aside by the EQBA for the acquisition of land for public use. This portion of the Act has elicited the opposition of New York City real estate development interests. Developers view the preservation of critical historic structures and the establishment of urban cultural parks as a serious constriction of potential income generating properties. Public hearings will be held in early 1987 prior to the establishment of the rules and regulations for land acquisition.

## Resumé Fraud

From Page 1

academic history when applying for a teaching position at DePaul University.

Potter was charged by the Illinois Attorney Registration and Disciplinary Commission with acts which "tend to defeat the administration of justice [and] bring the courts or legal profession into disrepute" in violation of Illinois Supreme Court Rule 771. *In re Potter* MR 4067.

While few students would contemplate the type of fantasizing that Mr. Potter's resume reflects, we must all be wary of casual embellishments. Published by BrooklynWorks, 1986

The largest amount of reported abuses, according to the ABA Journal are in the innocent field of employment dates. This occurs, for example when you have worked in a firm from December '85 to January '86, and put down on your resume 1985-1986. In case this scenario sounds all too familiar, beware: the 1986 BLS Career Planning Guide warns that students who engage in misrepresentation, distortion, or falsification are subject to suspension from the law school, and disqualification from admission to the Bar.

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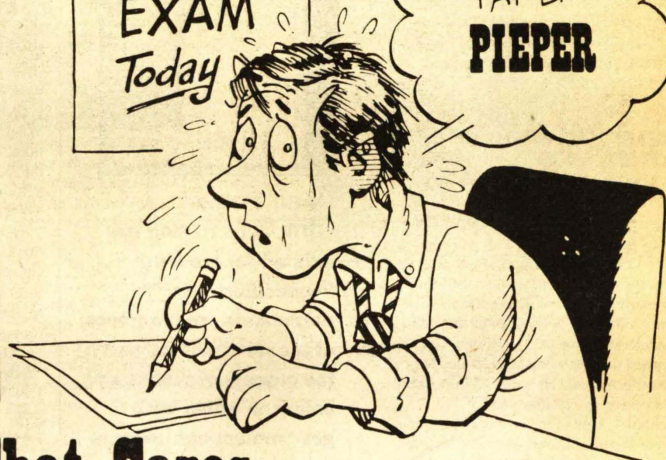
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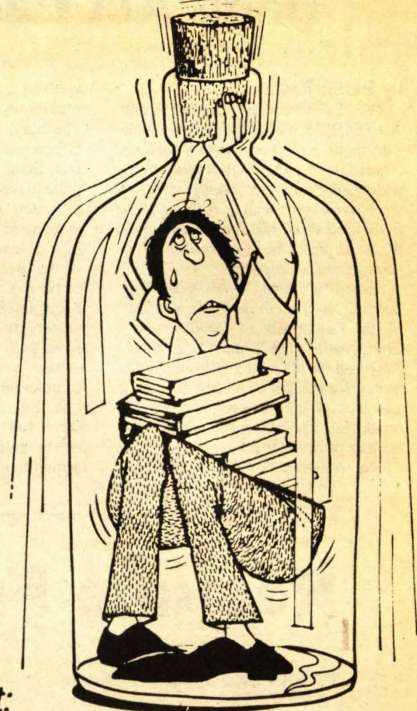
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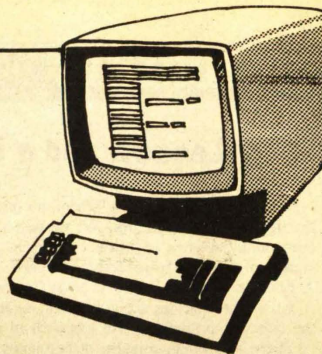
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(leave note in Mail folder)

## Computer Corner



by James C. Locantro

One of the most common problems is the insistence of a long directory to scroll quickly past your eyes, such as in viewing the IBM DOS 3.1 directory. This can be easily corrected by inputting:

“Dir/W” at the “A” prompt

The resulting output is five separate columns that can cover almost any directory on screen short of a hard disk directory.

### New Products Corner

For the student on a budget, and who isn't these days, a large volume of public domain programs is out there. That's free folks. The programs range from business to statistics to games. Most of these programs are just as valuable as those that cost hundreds in the stores. There is one catch, though. The book that catalogues these 12,000 files costs \$17.95. The address is:

Crown Publishers  
225 Park Ave. South  
New York, NY 10003

Ask for Catalogue # ISBN 0-517-56112-3  
(\$17.95). Make checks payable to Crown Publishers.

### Product Review

Those that read this column last time know that I had promised to review Harvard's answer to the Blue Book, Auto-Cite. True to my word I ordered the program only to find that what they sent me was a totally self serving piece of work. I was sent a demo disk that had a number of cite problems on it (picked by the authors of course). There is no interaction allowed by myself and the program. There was no way for me to properly test this program. The good news is that (surprise, surprise) the demo problems they sent me worked perfectly. Personally I would not purchase a program based on their demo disk alone. I recommend that you don't either.

### Tip of the Month

While this part of the column will usually be used to give individual tips on WordPerfect 4.1, this month I want to inform you where you can go to get a comprehensive guide to all the functions of the WordPerfect program. The manual, for those that “still” have it, isn't as comprehensive as it should be. But there is an alternative. Que books puts out a useful book called *Using WordPerfect* by Deborah and Walton Beacham. This book is a comprehensive guide to WordPerfect 4.1. All functions are described in a point by point manner that makes the special benefits of owning WordPerfect so much easier to access. So those who “lost” their WordPerfect manuals or just want a pleasant alternative to the cumbersome WordPerfect binder, the *WordPerfect* book is a steal at \$18.95. This book is available at all serious computer stores and at Barnes & Nobles.

### WordPerfect Update

WordPerfect Corporation has begun shipping of WordPerfect 4.2 (surprisingly right on time). Updates are available to those who have WordPerfect 4.1 for \$35. If you were lucky enough to buy the program after October first, updates are free. In order to obtain this update, mail a \$30 check (no cash) to WordPerfect Corporation along with the first page of the WordPerfect manual (the one with SSI corporation and the current version of Wordperfect on it) and the name of the computer you currently use the program on (IBM, IBM compatible, Mac, etc.) to:

WordPerfect Corporation  
288 West Center  
Orem, Utah 84057

For your money you'll receive 6 new diskettes and update pages for your binder.

### Next Month

Next month I'll review Wordperfect 4.2. As stated last month this new version promises numerous additions that will be a great help to our profession. Again, any questions on hardware or software, I'll be glad to answer them. Send all questions to the Justinian in care of James Locantro: Computer Corner.



### A Lesson and a Memory

When we speak of a law school, we often refer to the quality of the faculty and of the students. We measure a school's standing in the legal community in terms of student placement. Sometimes we enhance the stature of the school by referring to its publications or its Moot Court teams. A discussion of the library is always in order.

All of these factors are jointly and severally accepted as important in the school's evaluation. But a law school is more.

There is something missing in the composite, at least at this law school and to those who see BLS as a family. There is a staff: a staff that moves the paper and the chairs, types and monitors the exams, organizes and reorganizes a myriad of activities each and every day, feeds us, and runs our bookstore.

Peter Genung, who ran our bookstore, died of heart attack on Monday, November 10. Pete was 62 years of age. Pete had something to teach us about friendship and community, and he did so with a smile and a few words. He was always willing to help, to extend himself beyond what was required of him.

A student, for example, was once desperate for the three volume Restatement of Contracts which was on order but had not yet arrived. It was Friday morning and Pete offered to get the books from another branch of MJ&K and bring them home for the student to pick up over the weekend. Although that proved unnecessary, as the shipment arrived that afternoon, Pete's gesture of friendship and genuine concern for that student will survive the Restatement.

We can all honor Pete's memory by remembering that BLS is a community and, no matter how transitory, by taking the time to care about each other. With humility, friendship and love, we mourn the passing of Peter Genung.

### Right on Schedule

Once again the fall semester is running according to plan, and thanks to the final exam schedule, the student body is faced with the prospect of another thwarted holiday season. The results of last semester's SBA referendum indicate that at least in the day division the overwhelming consensus (257-55) is that exams should be held prior to the winter holidays. While the evening division students understandably appreciate the longer study period (55-34), there remains a significant number of students willing to forgo the extra time and get the exams over with.

Given these sentiments, and the fact that other area law schools are somehow able to hold exams prior to the winter break, we believe it incumbent upon the Trager Administration to come up with an alternative final exam schedule for BLS. After this is accomplished a final referendum can be held and the issue resolved once and for all.

### COURSE SELECTION BLUES

The grumbling evident in the halls at BLS these past weeks did not represent an imminent revolutionary upheaval, but rather the student body's collective reaction to the course offerings for next semester. There are a number of interesting courses offered during the day hours. The vast majority of the popular instructors' courses, however, are offered after 4:00 p.m. While, technically, courses held until 6:00 p.m. are considered "day" courses, the practical reality (especially given daylight savings time) is that the many popular electives next semester are only offered at night.

Although the offerings for next semester may represent a conscious effort on the part of the administration to offer evening students a wider selection of courses and better professors (a long overdue move), future scheduling efforts should result in a more balanced distribution. Students are faced with the horror of selecting from among eleven courses offered in the same two hour slot, Wednesday 6-8 p.m.

An option that day students should be thankful for are the many clinical programs available and the daylight hours they consume. In the meantime we should all prepare ourselves for those dark and dreary winter subway rides home.

# Don't Forget

## Next Deadline is February 1

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## CORRESPONDENCE

### Facetious Right of Privacy

When unable to prevail in controversies with the living, liberals have been known to throw down the gauntlet to the ghost of Joe McCarthy. Amid the frustration brought on by the Supreme Court's recent decision in *Bowers v. Hardwick*, upholding a Georgia sodomy law, old Joe is getting company.

Witness the likes of Alan Dershowitz seizing the occasion to exhume—besides McCarthy—the remains of Jim Crow and Adolf Hitler, together with the shadow of a long-forgotten ecclesiastical judiciary, in an effort to prove that the Constitutional prohibition of unfounded search and seizure extends a blank check to sexual deviancy.

In defense of that proposition, Mr. Dershowitz has suggested publicly that the Court's decision allies it with the historical oppressors of the Jews. Other liberals have compared the opinion to segregationism and to Puritan witch-hunting. In the venerable pages of the *Justinian* (November, page 8), it has even been implied that the Court seeks somehow (in collusion with the Meese Commission) to stifle free speech by scaring the general public off sodomy.

Well.

It would be nice to know, amid so many epithets, exactly which Constitutional precept the Court's ruling is supposed to offend. The "right of privacy"? Perhaps. But even this nebulous "right," a specter which has haunted the Court since *Griswold v. Connecticut*, must rest on identifiable Constitutional language. (Justice Douglas' original draft opinion

in *Griswold* based its result on the First Amendment freedom to assemble; in the face of Hugo Black's withering sarcasm, he switched to the search and seizure argument now found in the decision.) Whatever the right of privacy may be, it could scarcely embrace as much immoral or vicious conduct—conduct otherwise governable under the states' police power—as an offender might regard as a personal matter.

*The Court said in Bowers only what it said in Griswold.*

Equal protection? But equal protection arguments are meaningless as between two groups of people who differ only in that one of them breaks the law while the other does not.

So what is all the fuss about? It is true that the Court, in refusing to overturn the mischievous *Griswold* precedent, bound itself to the clumsy historical analysis suggested by the concurring opinion in that case, according to which implicit Constitutional protections extend along lines coextensive with a tradition of "ordered liberty." It is also true that the argument from tradition has rarely looked weaker than it looks in *Hardwick*, it being an unusual exercise at best to adduce Roman law precedents in support of an interpretation of the Bill of Rights.

Still, in rediscovering the limitations of the Fourth Amendment, the Court undertook no crusade against the

liberties of America. It merely reasserted what *Griswold* had stated: that state and federal governments may not engage in immoral conduct.

To have held otherwise would have meant a reassignment of a portion of the police power to the President (not removable by Congress) to dictate to command and cannot ethical standards of the law. This is a poor substitute for a referendum; open

statutes on neo-Lutheranism do not exorcise the Court's putative democratic test.

And if the Court was theoretically empirically accurate of judicial record, American cultural sexuality has never been the freedoms accorded citizenship. The (cautionary parallel chosen; slavery in outlawed by judicial won their point through amendment and federal methods which are which are (presumably the ghosts of Jim Crow) To attempt a similar the intervention of is myopic, if not by this, erstwhile belief

# Confe A Wou

by Robert Axford

Since this is it and I'm outta here, I should make one last futile effort at a worldview. Admittedly, I have been writing this column for a one-half year and, as of yet, enlightenment reigns. I wonder if Pat Robertson feels that of failure.

Of course, as any zen master will attest, lead a horse to water, but you can't make him bath. Similarly, you can rant at the lunacy of law school, but still the insanity increases along with the insanity quotient. There are still too many captives—all so emperors without clothes, making fools of their family names.

However, if you think law school is absurd, wait until you get out in the real world. Ah, yes, the real world: where men are easy to keep a good woman down (just as care is unavailable or unaffordable). I admit this but I escaped the real world publishing, advertising, bartending, and vocational mistakes) to return to the rarefied make believe classroom and, all things considered, I'd do it again.

You see, in the real world, bosses are like Professor Holzer than Dean John making light of those who suffered at the whim; the dude is totally out of control,



# essions Of uld-Be Graduate

his own self-image. I'm simply making a point about power games.) Holzer has a small part of you he can mess with: a firm grip on the short hairs of your checkbook.

I returned to school primarily to gain some autonomy. By and large, I come and go as I like. (My professors this semester will confirm that.) Here, I can readily express my disgust over the business of law school without significant reprisal; I can say all sorts of nasty things about Dean Trager and come out relatively unscathed; I can tilt at the metaphorical windmills that perpetuate this excuse to amass money and still derive some of its few benefits.

Out there, this is not the case. When I rather impetuously questioned the salary structure of one of my erstwhile employers (for the record, Prentice-Hall Inc., where I cut my teeth on the whys and wherefores of corporate machinations) I was quickly deported to the unemployment line. So much for free speech in Corporate America. It proved to be a valuable lesson in the age of Reagan: obsequiousness is in.

But enough about law school and its fallout. The truth is that I could care less whether some schmuck works for Stroke, Stroke & Massage. As Bogey said, the problems of a couple of people don't amount to a hill of beans compared with all the suffering that goes on in the world. (I forget the exact quote, but you get the idea.) In other words, one last diatribe about the way things are before my twenty-five cents runs out and I have to relinquish this pulpy pulpit.

There are three big problems: first, we've been playing nuclear Russian roulette for too long and soon the loaded chamber is going to click in; second, we don't take care of our environment, which, ultimately, will give us the same results as the first except here the suffering will last longer; third, we don't take care of the people of the world like we must (i.e., feed the world). All three problems come from the same malady: the lack of foresight, sometimes called myopia.

The first problem is so thoroughly ingrained in our collective psyches that we accept its existence as our modern burden. Before there was original sin. Now we have the final sin. That it is an unnecessary foolhearty burden seems beside the point. The big lie is that the nuclear arsenal keeps us safer than if it didn't exist; the truth is that the only thing it keeps is Exxon, General Dynamics and the usual suspects fat and sassy.

The environmental dilemma is that its remedy requires us to act not for our own benefit, but for the benefit of future generations. These days this is a political impossibility. (See, e.g., deficits, U.S., world.) It is a demonstrable fact that our planet is dying steadily. Recent reports have scientists predicting that in forty years the United States will largely be desert. The ozone layer is deteriorating. The rain forests are vanishing. As it is, New Jersey glows in the dark. Shouldn't we be taking some action to protect

the environment rather than continually raping it for short-term gain?

Oh, I remember: doing things for the benefit of others—even if those others are our children—is un-American. By god, it's down-right communistic! Everyone knows our freedom is based on one's inalienable right to alienate one's real property in any way one desires: strip mining, toxic waste dumps, atom bomb testing. Afterall, isn't that the justification behind the rule against perpetuities? Know your real property law and your morality will follow.

Feeding the world—the idea, not the song—runs into the same roadblock: it requires people to be unselfish. Not too many politicians get elected nowadays telling the people to sacrifice for the long-term good; however, politicians trip all over each other pandering to the electorates' base instincts on how he or she will cut taxes or otherwise put chump change in the voters' grubby little hands. (See Cuomo, D'Amato, Reagan, Kemp, etc.) Lemmings have leaders like these.

Well, that's it. color me gone. However, I do want to thank the folks at the *Justinian*, Matt Flamm, Gina Pettinelli, Judy Steinhart, et al, for giving me this space free from the heavy hand of the overzealous editor. For all those of you who have actually read these ramblings, let me steal the words of that great American philosopher Lord Buckley: People, they're kind of like flowers; it's been a pleasure walking through your garden.

can citizens. It only should have said in the legislatures have power to forbid consistent with the constituencies and the constitution.

otherwise in *Hardwick*, in effect, a critical element of the federal courts—central appointees (democratic review) entities what they can ly permit. By the liberals themselves titute for elections onents of sodomy

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justify their efforts by warning that a contrary result smacks of "McCarthyism."

Liberals, lay down your shovels. Democracy and morality are not served by exhuming old battles and conjectural demons—even the demon of old Joe.

Michael Lesher

## An Owner Views Landlord-Tenant Court

It was difficult to decide how to respond to Scott Sommer's article "Why Toni Doesn't Live Here Anymore." (Justinian, November 1986, p. 9) It was certainly not difficult to decide to respond. I wanted to write a response, however, that would not give Mr. Sommer the easy excuse of claiming simply that I was unfeeling or a racist. It is very easy and effective to brand someone with whom one disagrees, and upon whom one wishes to impose moral and legal obligations, as immoral and racist.

Mr. Sommer has taken a very one-sided, extremist view implying that landlord/tenant court is a body catering to landlords who enjoy giving their tenants a run-around and kicking them out whenever possible. This is certainly not the case.

I could write a Perspectives article entitled "Thank God Toni Doesn't Live Here Anymore." Explain the horrors of a small landlord in the landlord/tenant court system. Explain the absurdity of many of Mr. Sommer's trite clichés, such as his loaded first line: "Courts don't hesitate to evict people from their homes." I could explain the details of my court encounter with Mr. Muid, a tenant who

simply did not believe in the institution of paying rent. He was one of the tenants to move into the first townhouse that I renovated. The townhouse that I spent every penny that I earned to purchase, and borrowed at 24% interest to gut-renoate. He was very straight forward with me: "I don't have to pay, and it will take you six months to get me out." He was wrong, it took me nine months. Mr. Muid did not have a lawyer. His wife and baby showed up with tears in their eyes and the judge permitted delay after delay, signed show cause order after show cause order. The judge did not care that I was behind in my mortgage and tax payments.

A few disastrous and expensive court experiences have taught me that even an incompetent lawyer can keep a tenant, who simply does not want to pay rent, in his apartment for at least six months. If the lawyer can dream up some excuse, whether factual or not, not to pay rent, the time can extend to over a year. Of course there are tenants who live in blatantly illegal and hazardous conditions. There is no excuse for a landlord to be a slumlord. In those situations there is no doubt that the landlord must be forced to obey the law and be penalized to the full extent of the law.

In Toni's case, Mr. Sommer presented no reason why Toni did not pay her rent. I certainly do not want to make any assumptions, but I find it hard to believe that she did not know that she was being evicted. It was possible that, because of inadequate service, she did not know that she was to be evicted on that specific day, but she certainly knew that she wasn't paying any rent. Did the process server also serve the three day notice and the summons and complaint negligently? If the living conditions in her apartment were such that they represented rent

impairing violations, as defined by the Housing Code of the City of New York, then legal remedies exist which would permit her to live in her apartment and not pay rent until the conditions were remedied. If she did not know of her rights, as an adult citizen, the obligation was hers to find out.

From the facts presented by Mr. Sommer, it appears that Toni's homelessness was not due to a run-around in the courts but to the incompetence of her welfare agent or social worker. There should have been plenty of time for her to be advised of her rights and, if welfare was prepared to pay her rent, to arrange a settlement.

Mr. Sommer's real complaint is that the courts are not enforcing his belief that all people have a right to affordable private housing. The reason that the courts are not enforcing that right is because such a right does not, and cannot, exist in a free society. It is the guarantee of individual rights and property rights that separates our country from the totalitarian and socialist dictatorships of the world. Mr. Sommer's likely response would be, as reflected in the quote that he chose under the title of his article, "What kind of freedom does Toni experience now that she has been kicked out of her home and forced to live with friends and relatives?" My answer is that Toni has the Constitutional right not to be discriminated against because of her race, religion, color, handicap, or sex when looking for housing. She has no right, at the landlord's expense, to live anywhere she wants. The government can take on the obligation of housing and subsidizing its poor, society has no right to force a private individual to take on such obligations.

The government and people of this state have desired to establish welfare

systems to provide for its poor. It is the mismanagement of this social welfare system which is to blame for the plight of many of the homeless and poor. To claim that Toni has the right to inflict herself upon another individual, and that she has a right to return to an apartment after possession was legally returned to the landlord is an affront to liberty and in direct violation of the principals of individual rights and property rights upon which this country is based.

Laurence Guttman

Scott Sommer responds:

Larry is right. I would not call him racist or unfeeling only because he maintains that his sacred property rights are paramount to the rights of all others in what he maintains is a free society.

Larry's "experiences" in Housing Court are far from what the vast majority of landlords face when they are enforcing their property rights over the human rights of people needing a place to live in a time of rising homelessness. Most tenants in Housing Court are *pro se* litigants who are unadvised of their rights and who never see a judge. They are instead usually told what their rights are by the landlord's attorney (does this violate the Code of Professional Responsibility?).

Just to straighten out some facts: Toni was never served with any court papers at all. Therefore, how could she know that there was even the slimmest chance of her being evicted. Larry would like us to believe that you should know that you are being evicted if you are withholding rent because of inhumane living conditions, that if you are not paying rent you waive due process. Why even bother with any forms of due process in a free society when people do not pay their rent for whatever reason to the person with the supreme rights—property rights!

Continued next page

December, 1986 • Justinian 17



Finally, Larry decides to trumpet all of the alleged rights that we all have under our Constitution. People who hold his philosophy, however, would render these rights empty and meaningless in order to protect the sacredness of property. It warms the cockles of my heart to see that Larry has not changed his narrow view since our days at John Dewey High School here in Brooklyn.

It's too sad that Larry has chosen to make his case for property rights in response to the story of a woman and her kids who were wrongfully evicted (the Court finally held so) and on behalf of a landlord who responds to court orders by physically assaulting those who are in pursuit of true freedom in a free society.

## BLS Alum Elderly Advocate

I write in reference to Scott Sommer's article "Tenant's Woes" (8 JUSTINIAN-November, 1986).

I am a graduate of Brooklyn Law School (1985) and am Staff Attorney of BLS Legal Services Corp.—Senior Citizen Law Office (the Elderly Clinic). We see tragedy confronting many of our senior citizen clients every day.

Sometimes it seems as though we are standing in the surf, holding our hands up trying to stop the tidal wave of evictions crashing down. Landlord-Tenant Court, in Manhattan at least, is inundated with up to three hundred daily cases (new and adjourned), not including motions.

*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. Anonymous Letters: The JUSTINIAN will not publish anonymous letters. We will, however, withhold the names of writers submitting their name but wishing to remain anonymous.*

How the tenants can master the intricacies of the process without representation—I do not know. How the judges can handle the case loads referred to them—I do not know. How the tenants' attorneys (legal service or private) can represent so many people—I do not know.

We at the Elderly Clinic spend a substantial part of our days working in housing court. For the year ended June 30, 1986, we closed 434 housing cases (50% of our caseload). Of these, 192 were litigated with 5 attorneys assisted by up to 15 Brooklyn Law School clinical students. We are doing our best and we'll keep doing our best.

The law school, through the Elderly Clinic, provides "hands-on" experience and training not only in housing matters, but also in public benefits cases as well other legal matters. We represent wants to learn, help, and obtain clinical credits at the same time, contact the Elderly Clinic (212) 233-5753.

Oscar S. Straus III

## Holzer's Outraged Students to Dean: "A poor reflection on the professor, the administration, and the law school."

*The following letter was forwarded to Dean David Trager by eighty of Professor Holzer's former students:*

Eighty students of Section One of the Class of 1988 join in this letter to request an investigation by you and the administration into the testing and grading methods of Professor Holzer in his Constitutional Law class (132 D1). In addition, we would like to meet with you in order to discuss the options available to us. We have sent this letter to you anonymously because of concerns expressed by many students that by signing the letter they would be exposed to repercussions. The signature list will be shown to you at the meeting. At our request, the signature list is not to be copied, and it is to be returned to us at the conclusion of the meeting. As Professor Holzer chose not to post the grades and has been unwilling to meet with us as a class to discuss the matter, we request that a list of our grades be posted prior to our meeting with you.

Section One is comprised of outstanding students, including many scholarship students, law review and journal members, and individuals who were successful in the first year moot court competitions. The grades in Professor Holzer's class, however, are clearly uncharacteristic and unprecedentedly low in comparison both to our other first year grades and to grades received by the other first year class sections.

We share your goal of advancing Brooklyn Law School's reputation, both in New York and nationally. However, this incident, and the fact that at least one similar incident involving Professor Holzer has taken place within the past few years, does not further that goal. On the contrary, it is a poor reflection on the professor, the administration, and the law school. In addition, we feel victimized by this unfortunate situation since this was a required course and we had no choice regarding who our professor would be.

We look forward to hearing from you in order to arrange a meeting at your earliest convenience. Notification by means of the lobby showcase should be sufficient. Thank you for your anticipated cooperation.

Sincerely,

Eighty students of Section One of the Class of 1988

### The Dean's Response:

To: Eighty students of Section 1 of the Class of 1988

From: Dean David G. Trager, October 15, 1986

Re: Grades in Professor's Holzer's Constitutional Law Class

I have your letter requesting a meeting concerning Professor Holzer's grades in Constitutional Law. While I am willing to meet with any or all of you, I want you to know at the outset—lest there be any misunderstanding—that the School has a longstanding policy of non-intervention by the Dean or the faculty in grading controversies arising among students and individual faculty members. As a result, neither I nor the members of the faculty will be reviewing or reevaluating Professor Holzer's examination or grades.

With that understanding, I would be more than happy to meet with you.

## Six Writing

### Competitions Announced

The Office of Student Services announced, in its monthly newsletter entitled "Kudos," a number of writing competitions. More information about these and other competitions are available on the third floor of 250 Joralemon. Kudos is available at One Boerum.

Title: Food and Drug Law Institute 1986-87 Law Review Award

Topic: Any regulatory issue involving the U.S. Food & Drug Administration or a related agency at the federal, state or local level, or an international regulatory body.

Prizes: \$5,000, a plaque noting the author's accomplishment and recognition in the Institute's widely-read quarterly.

Title: 1987 Writing Competition sponsored by the Center for Constitutional Studies of the John Adams Sibley Institute for Public Affairs of Mercer University, Macon and Atlanta, Georgia.

Topic: Some aspect of the legal environment affecting religiously-affiliated institutions of higher education.

Prizes: \$750

Deadline: May 1, 1987.

Title: The Philip Morris Magazine Essay Competition

Topic: Essay of 2500 words or less that explores and questions censorship of expression in any sector of American life; that defines and defends the first amendment's application to American business; and that specifically ques-

tions the ramifications of a tobacco advertising ban on the future of free expression in a free market economy.

Prizes: First place: \$15,000; Second place: \$7,500; Third place: \$5,000; Fourth prize: \$2,500; 50 state prizes of \$1,000 each.

Deadline: By January 1, 1987.

Title: Commission on the Bicentennial of the United States Constitution Law School Essay Competition.

Topic: Does the allocation of power between the federal and state governments and among the branches of the federal government contribute to the preservation of the individual liberty and functioning of our government?

Prizes: First place: \$10,000; Second place: \$2,500; Third place: \$1,000.

Deadline: April 15, 1987.

Title: The 17th Annual Roscoe Hogan Environmental Law Essay Contest of the Association of Trial Lawyers of America.

Topic: Acid Rain: National and International Legal Fallout.

Prizes: First place: \$3,000; Second place: \$2,000; Third place: \$1,000.

Deadline: March 16, 1987.

Title: Abraham Markoff Memorial Essay Contest.

Topic: Any contemporary legal problem in tort or workers' compensation law.

Prizes: \$2,000.

Deadline: April 17, 1987.

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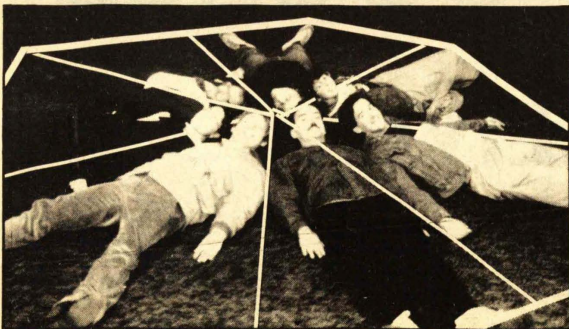
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# A cheesy Review The Pizza Connection

Although man may not live by bread alone, do not try and take away his pizza. Pizza by the slice. Ah yes, those triangular wedges of power starch that are the *sine qua non* of most law students and many New Yorkers.

Perfectly suited to the law student, pizza by the slice is cheap, fast, filling, and packed with those essential complex carbohydrates. Since so much of law students' food budget is spent on these small slices of heaven on earth, the *Justinian* assembled a panel of seven brave souls who, pens and pads in hand, set out one cold night to review the local pizza joints. Their comments follow, *seriatim*:



## NICK AND JOE'S I 86 Court Street

GREASE: "Noticeable not only to me, but also to the people standing on the other side of Court Street: Greasearama"... "Buckets, torrents, gallons, built-in enema"... "Puddles of tasteless oil"... "Famous for the extraordinary look and consistency of their grease"... "More than average"... "Texas Crude"... "No world wide oil shortage—we now know where oil companies have been stock-piling since the late 70's."

CHEESE: "Unremarkable but plentiful"... "Clumpy"... "Good portion of tasteless cheese"... "Gooey, abundant and very good quality"... "No gaps, evenly spread, slightly spicy, chewy"... "Lots."

SAUCE: "Tastes like a bad imitation of Ragu"... "Spicy, but not in a good way"... "Bland; simply not enough; seasoned with powdered garlic"... "Very red, not too cooked"... "Robust sauce; has tomato bits in it"... "Spicy—garlicy"... "A little too sweet for my personal taste."

CRUST: "Gummy, thick"... "Too doughy"... "Mega-air bubbles, doughy, not thin enough"... "Thick, soft, kind of undercooked: obviously a rush job"... "Not crisp; chewy"... "Bordering on pan pizza"... "Gets lost under all that cheese, sauce and grease."

AMBIENCE: "Two floors, both of which were obviously constructed by someone on a two-week drunk. Despire the McDonald's-like tables on the second floor"... "I liked that antique photo of Elvis"... "Buy your slice then leave"... "The ultimate Brooklyn parlor; I mean they've got Elvis, Duke Wayne, the Mets, and of course, the Chairman of the Board—Francis Albert Sinatra"... "Upstairs eating space; nice subdued lighting; spacious; video game in back; music"... "Christmas ornaments say it all"... "Love the old movie posters. Video games for your enjoyment."

OVERALL: "Grossly overrated"... "Ick poo"... "Overrated. Why do people eat here when there are superior places so near by? Bland and chewy and oily. The worst. An unattractive slice."

## ROYAL PIZZERIA 52 Court Street

GREASE: "Quite a bit but within reason"... "Not too overwhelming"... "Not too much"... "Average, not slippery"... "Not much"... "A little runny"

CHEESE: "Plentiful but tasteless"... "This pizza has a 'different' taste, I think it's because of the cheese"... "Not much not enough"... "Good quality and taste"... "Chewy and bland"... "Firm, full-bodied"... "Honestly don't think there was any."

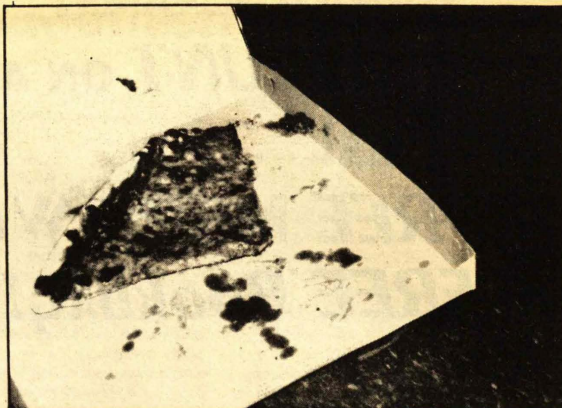
SAUCE: "Not enough to cover up the taste of the

## The Parties

Seven hearty reviewers risk all to bring you the news on seven of BLS's local pizza joints.

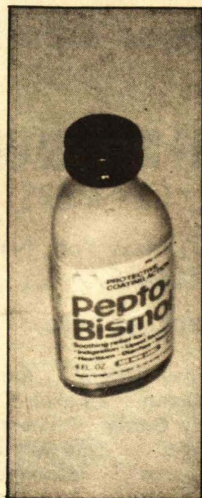
## The Issue

Pizza. By the slice, by the box, it is a staple of our law school existence.



## The Remedy

During exams, some find escape by over-indulging in food. Fortunately for them, this is available.



cheese"... "Tasty"... "A little sweet"... "Not enough"... "Hardly any at all"... "Mild, hint of garlic"... "O.K. Hint of the smell and taste of black olives."

CRUST: "Has the taste and texture of bagel dough"... "Crispy"... "Doughy, but tasty rye flavor"... "Unfortunately, the bottom was burned, lending a bizarre flavor to the whole."

AMBIENCE: "Clean, not very pizza parlor-esque but nice"... "I'd come back if it were raining and I didn't want to walk down to 'My Little'"... "The closest to school, well-lit"... "Fast food right down to the sign; nice people serving, though—very cheerful"... "Spacious; well-lit, 15 big tables, 5 small; hanging plants"... "Nice fake plants"... "Where is the Bogey poster? Pleasant waitress"

OVERALL: "Aesthetically pleasing but disappointing in the long run. The proprietors are very nice"... "Hasn't changed since it was a Kosher falafel place; wood-n-mirror-n-plants"... "A good looking slice. Nice proportion of cheese. Sauce a little sweet. Tasty crust"... "Pretty average"... "It is close to school."

## MY LITTLE PIZZERIA 114 Court Street

GREASE: "Not too bad"... "Pretty minimal"... "Not too much"... "Average; doesn't drip"... "A little too much."

CHEESE: "Not excessive; o.k.; unremarkable"... "Evenly distributed. Yummy, plus"... "Good portion"... "Quality—mozzy; nicely spread"... "No gaps; evenly spread; slightly spicy; chewy"... "Balanced"... "Runny; good flavor; lots of it"

SAUCE: "Very mild (i.e. boring)"... "Not too much. Tasty"... "Tasty. Well seasoned"... "Good sauce, but not an excessive amount: as Goldilocks said, 'Just right.'"... "Thin. Less than the average amount"... "Not distinct"... "Not much, non-descript"

CRUST: "Very thin, Crunchy"... "Thin and crispy"... "Very thin, not much character"... "Crispy, slightly chewy; tasty"... "Thin, chewy, good."

AMBIENCE: "Clean, Well lit"... "Neat appearance but my review sheet has already picked up the grease on the table—mmmmmm"... "Fast food, too well lit; a little sterile/characterless"... "Nice and practical. Happy music"... "Awful music; flies."

OVERALL: "Pretty good"... "Pizza just the way I like it"... "Nice looking pie. Holds together nicely. Well seasoned with good, cheesy aftertaste. Recommended"... "Excellent. The perfect piece."... "Above average"... "I'll be back."

## NICK AND JOE'S II 196 Henry Street

GREASE: "Literally oceans of it"... "Inundated—no knife and fork here, ask for a spoon"... "Major swimming activity"... "Swimming in the stuff"... "Very wet!"... "Worse than the Broadway show"... "Even more than Nick and Joe's I"

CHEESE: "Lots"... "A lot of bland cheese"... "Same as N & J's I, only with neon"... "Plentiful, chewy, very drippy"... "Wet and runny, but evenly distributed"... "Lots"



SAUCE: "Maybe more garlic than N & J's". . . "Not enough". . . "Ragu". . . "Garlicky". . . "see N & J's I"

CRUST: "Doughy and very wet". . . "Bubbly, thin, tasteless—just there". . . "Chewy; bready". . . "Gets lost."

AMBIENCE: "We couldn't all fit in the place. The neon is too too". . . "Any Brooklyn pizza place that advertises (in yellow neon no-less) 'Croissants,' does not deserve its Certificate of Incorporation". . . "Jesus looks over the coffee maker". . . "Small, brightly lit". . . "Yuppieitis!". . . "Color T.V. Cramped, grocery store atmosphere". . . "Slow service, no seats"

OVERALL: "Yuppievill and not worth \$1.25. Two billion varieties of pizza including pineapple, chicken, bacon and broccoli". . . "They serve pineapple pizza, which is grotesque, unless, of course, you are from California". . . "Ick poo". . . "Gave it to us fresh. Nicer look than N & J's I, but darn if it wasn't the same (except price)". . . "I feel kind of sick to my stomach. Too cheesy and greasy". . . "had the most variety."

## QUEEN PIZZERIA

104 Court Street

GREASE: "Rather". . . "The main ingredient". . . "A little oily but delicious". . . "Glistens off the top". . . "None". . . "A little greasy". . . "Lots"

CHEESE: "Sharp". . . "Over powered by grease". . . "A little skimpy". . . "Good but slimy". . . "Less than average; dry, sort of tasteless". . . "Flavorful". . . "None to speak of"

SAUCE: "Flavorful, spicy". . . "Spicy". . . "Well-seasoned". . . "Very tomato-y and basil-y base". . . "Dry, not much of it". . . "None, red dye #2."

CRUST: "Tasty but soggy". . . "Not nearly as crispy as 'My Little'—it drooped sadly upon being lifted off the plate". . . "Thin, tasty". . . "Bland and normal". . . "Crispy; good". . . "Burnt; dry."

AMBIENCE: "Built like a hallway or a shotgun shack. Pretty tacky but unspoiled. Lots of banging around behind the counter". . . "The coat hooks resemble metallic antlers and give the place a sort of 'cabin in the woods' feeling. This is offset, of course, by the red, white and green lanterns hanging over the counter and by the bug zapper over the fridge". . . "Not 'fast-food', not much room mostly takeout". . . "Cramped but has a certain ethnicity about it."

Fly zapper in good view for all". . . "Narrow; three small tables, seats at counter; nice subdued lighting". . . "Primitive". . . "Dark, dank, awful smell."

OVERALL: "I liked it". . . "Not really my choice". . . "My favorite: excellently seasoned. A taste satisfaction. Highly recommended". . . "I liked the taste but perhaps the added spice was making up for other quality deficiencies". . . "Not a wonderful experience."

## RAFFAELE'S

125 Montague

GREASE: "Minimal amount". . . "Not too much". . . "None". . . "Almost none"

CHEESE: "Nice flavor. Not gobbled on but plentiful". . . "Good". . . "Had some character". . . "Good and plentiful". . . "Tasty; evenly spread; not drippy". . . "Firm"

SAUCE: "Mild but tasty". . . "Good—Lance I'm tired!". . . "Mild but not bland". . . "A nice mixture but not too memorable". . . "Average". . . "yes". . . "Not much. The slice was sort of like grilled cheese."

CRUST: "Good. Crisp". . . "Crispy". . . "Thin and crisp". . . "Thick, chewy and crunchy". . . "Firm solid crust."

AMBIENCE: "They've been remodeling for over a year and apparently haven't finished. Gave us the bum's rush". . . "At first I thought the architect of the back room had taken a cue from Michelangelo, inverted the Renaissance ideas, and turned architecture inside out; taking facades and window frames from outside and putting them on the inside. But then I realized the room is really supposed to be an 'outdoor' garden—so forget about it". . . "Warm, stand up kind of place". . . "Couldn't find the way in. The doors may confuse most law students". . . "Large dining room; nice pink light". . . "Too hot. Large back room. Floors need mopping. We were asked to leave."

OVERALL: "I liked it. Tonight's best". . . "Maybe I've just had too much Za for one night but I couldn't even force myself to finish my portion". . . "The whole slice holds together nicely; no slipping and sliding of cheese from crust. Hearty". . . "A good thick slice."

## GODFATHER'S

451 Fulton Street

GREASE: "None". . . "They serve really good Country Time Lemonade". . . "Not oily at all; the saving grace". . . "BLEAH!". . . "Synthetic, quasi-

Mobil". . . "Not much". . . "Only good point was lack of grease."

CHEESE: "Of dubious origin". . . "They serve frosty good Country Time Lemonade". . . "Processed American food product?". . . "BLEAH!". . . "Bordering on soylent green". . . "Gummy". . . "It had some."

SAUCE: "Edible". . . "They serve tart and tasty Country Time Lemonade". . . "I didn't notice". . . "BLEAH!". . . "Yes". . . "Chunky". . . "see cheese."

CRUST: "Abominable". . . "The lemonade was really good". . . "I think it may be shipped pre-formed in boxes from a central location somewhere in Jersey". . . "BLEAH!". . . "Cross between spackling and plaster of paris". . . "Uncooked". . . "Plastic looking."

AMBIENCE: "Neither clean nor pleasant". . . "I had difficulty walking in simply because the name of the place offends an entire ethnic group in just three syllables". . . "Yes, a franchised chain, yes fast food". . . "BLEAH!". . . "Modern Cuckoo's Nest decor; institutional formica". . . "Clean, spacious, musical". . . "Rustic motif not really suited for pizza."

OVERALL: "A must miss. A salt fest". . . "Don't go". . . "Chef Boyardee for \$1.21 per slice". . . "Yech! Argh! Death by pizza! Barf-o-rama. Don't do it. Sue the bastards. Pizza suicide". . . "Not worth the trip. Frozen pizza?"

After several minutes of group digestion and deliberation the final scores were tallied and the final taste preferences were as follows:

Raffaeles	4
My Little Pizzeria	2
Queen	1

## VOX POPULI

Once again proving that critics never agree with the public, please note the following double-blind skew adjusted, collated, zero discount-weighted poll (accomplished one day between my Corps and Criminal Procedure classes):

NICK AND JOE'S I	45
QUEEN	22
MY LITTLE PIZZERIA	12
RAFFAELES	3
NICK AND JOE'S II	2
GODFATHERS	2
ROYAL	1

# BAR/BRI STUDENTS PASS THE BAR

### 1987 Reps

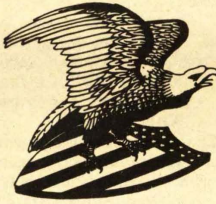
Mark Wasserman  
Bill Schofield  
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Robert Brown  
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Nancy DuBoise  
Raymond Enright  
Philip Goglas  
Kenneth Ives  
Michael Kanzer  
Shahab Katrachi  
David Kornfeld  
Peter Lambros  
Ruth Logan  
Andy Margolin  
Robert Meyers  
Charles Ourslander  
Brad Siegel  
Bruce Weiser  
Paul T. Vink

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Michael Zuppone



# THE LAW OF THE CONSTITUTION A BICENTENNIAL LECTURE



Attorney General Edwin Meese III recently asserted that decisions of the Supreme Court are not "the supreme law of the land." The content of Meese's late October speech at Tulane University's Citizen's Forum on the Bicentennial of the Constitution was widely criticized in the popular press. Is Meese's contention that a distinction between the Constitution and the Court's Constitutional decisions correct? At bottom, are his views fundamentally at odds with the respect accorded the judicial branch and the doctrine of judicial review established in *Marbury v. Madison*?

In order that you may make up your mind free of the media filter of the popular press, the Justinian reprints the bulk of the Attorney General's speech for your consideration.

by Edwin Meese III

Today our great charter [the Constitution] is once again under close scrutiny. Once again it is grist for the editorial mills of our nation's newspapers and news magazines. And while the attention is generally respectful, it is, to be sure, not uncritical. This attitude, I think, befits both the subject and the times. It shows better than anything else the continuing health of our republic and the vigor of our politics.

Since becoming Attorney General, I have had the pleasure to speak about the Constitution on several occasions. I have tried to examine it from many angles. I have discussed its moral foundations. I have also addressed on separate occasions its great structural principles—federalism and separation of powers. Tonight I would like to look at it from yet another perspective and try to develop further some of the views that I have already expressed. Specifically, I would like to consider a distinction that is essential to maintaining our limited form of government. That is the necessary distinction between the Constitution and constitutional law. The two are not synonymous.

What, then, is this distinction?

The Constitution is—to put it simply but, one hopes, not simplistically—the Constitution. It is a document of our most fundamental law. It begins "We the People of the United States, in Order to form a more perfect Union . . ." and ends up, some 6,000 words later, with the 26th Amendment. It creates the institutions of our government, it enumerates the powers those institutions may wield, and it cordons off certain areas into which government may not enter. It prohibits the national authority, for example, from passing ex post facto laws while it prohibits the states from violating the obligations of contracts.

The Constitution is, in brief, the instrument by which the consent of the governed—the fundamental requirement of any legitimate government—is transformed into a government complete with "the powers to act and a structure designed to make it act wisely or responsibly." Among its various "internal contrivances" (as James Madison called them) we find federalism, separation of powers, bicameralism, representation, an extended commercial republic, an energetic executive, and an independent judiciary. Together, these devices form the machinery of our popular form of government and secure the rights of the people. The Constitution, then, is the Constitution, and as such it is, in its own words, "the supreme Law of the Land."

Constitutional law, on the other hand, is that body of law which has resulted from the Supreme Court's adjudications involving disputes over constitutional provisions or doctrines. To put it a bit more simply, constitutional law is what the Supreme Court says about the Constitution in its decisions resolving the cases and controversies that come before it.

And in its limited role of offering judgment, the Court has had a great deal to say. In almost two hundred years, it has produced nearly 500 volumes of Reports of cases. While not all these opinions deal with constitutional questions, of course, a good many do. This stands in marked contrast to the few, slim paragraphs that have been added to the original Constitution as amendments. So, in terms of sheer bulk, constitutional law greatly overwhelms the Constitution. But in substance, it is meant to support and not overwhelm the Constitution whence it is derived.

And this body of law, this judicial handiwork is, in a fundamental way, unique in our scheme. For the Court is the only branch of our government that routinely, day in and day out, is charged with the awesome task of addressing the most basic, the most enduring political questions: What is due process of

law? How does the idea of separation of powers affect the Congress in certain circumstances? And so forth. The answers the Court gives are very important to the stability of law so necessary for good government. But as constitutional historian Charles Warren once noted, what's most important to remember is that "however the Court may interpret the provisions of the Constitution, it is still the Constitution which is the law, not the decisions of the Court."

By this, of course, Charles Warren did not mean that a constitutional decision by the Supreme Court lacks the character of law. Obviously it does have binding quality: It binds the parties in a case and also the executive branch for whatever enforcement is necessary. But such a decision does not establish a "supreme Law of the Land" that is binding on all persons and parts of government, henceforth and forevermore.

This point should seem so obvious as not to need elaboration. Consider its necessity in particular reference to the Court's own work. The Supreme Court would face quite a dilemma if its own constitutional decisions really were "the supreme Law of the Land" binding on all persons and governmental entities, including the Court itself, for then the Court would not be able to change its mind. It could not overrule itself in a constitutional case. Yet we know that the Court has done so on numerous occasions. I do not have to remind a New Orleans audience of the fate of *Plessy v. Ferguson*, the infamous case involving a Louisiana railcar law, which in 1896 established the legal doctrine of "separate but equal." It finally and fortunately was struck down in 1954, in *Brown v. Board of Education*. Just this past term, the Court overruled itself in *Batson v. Kentucky* by reversing a 1965 decision that had made preemptory challenges to persons on the basis of race virtually unreviewable under the Constitution.

These and other examples teach effectively the point that constitutional law and the Constitution are not the same. Even so, although the point may seem obvious, there have been those down through our history—and especially, it seems, in our own time—who have denied the distinction between the Constitution and constitutional law. Such denial usually has gone hand in hand with an affirmation—that constitutional decisions are on a par with the Constitution in the sense that they, too, are "the supreme Law of the Land," from which there is no appeal.

Perhaps the most well-known instance of this denial occurred during the most important crisis in our political history. In 1857, in the *Dred Scott* case, the Supreme Court struck down the Missouri Compromise by declaring that Congress could not prevent the extension of slavery into the territories and that blacks could not be citizens and thus eligible to enjoy the constitutional privileges of citizenship. This was a constitutional decision, for the Court said that the right of whites to possess slaves was a property right affirmed in the Constitution.

This decision sparked the greatest political debate in our history. In the 1858 Senate campaign in Illinois, Stephen Douglas went so far in his defense of *Dred Scott* as to equate the decision with the Constitution. "It is the fundamental principle of the judiciary," he said in his third debate with his opponent, Abraham Lincoln, "that its decisions are final. It is created for that purpose so that when you cannot agree among yourselves on a disputed point you appeal to the judicial tribunal which steps in and decides for you, and that decision is binding on every good citizen." Furthermore, he said, "The Constitution has created that

Court to decide all Constitutional questions in the last resort, and when such decisions have been made, they become the law of the land." It plainly was Douglas's view that constitutional decisions by the Court were authoritative, controlling and final, binding on all persons and parts of government the instant they are made—from then on.

Lincoln, of course, disagreed. And in his response to Douglas we can see the nuances and subtleties, and the correctness, of the position that makes most sense in a constitutional democracy like ours—a position that seeks to maintain the important function of judicial review while at the same time upholding the right of the people to govern themselves through the democratic branches of government.

Lincoln said that insofar as the Court "decided in favor of *Dred Scott*'s master and against *Dred Scott* and his family"—the actual parties in the case—he did not propose to reverse the decision. But Lincoln went on to say: "We nevertheless do oppose [*Dred Scott*] . . . as a political rule which shall be binding on the voter, to vote for nobody who thinks it wrong, which shall be binding on the members of Congress or the President to favor no measure that does not actually concur with the principles of that decision."

I have provided this example, not only because it comes from a well-known episode in our history, but also because it helps us understand the implications of this important distinction. If a constitutional decision is not the same as the Constitution itself, if it is not binding in the same way that the Constitution is, we as citizens may respond to a decision we disagree with. As Lincoln in effect pointed out, we can make our responses through the presidents, the senators, and the representatives we elect at the national level. We can also make them through those we elect at the state and local levels.

Thus, not only can the Supreme Court respond to its previous constitutional decisions and change them, as it did in *Brown* and has done on many other occasions. So can the other branches of government, and, through them, the American people.

As we know, Lincoln himself worked to overturn *Dred Scott* through the executive branch. The Congress joined him in this effort. Fortunately, *Dred Scott*—the case—lived a very short life.

Once we understand the distinction between constitutional law and the Constitution, once we see that constitutional decisions need not be seen as the last words in constitutional construction, once we comprehend that these decisions do not necessarily determine future public policy—once we see all of this, we can grasp a correlative point: that constitutional interpretation is not the business of the Court only, but also, and properly, the business of all branches of government.

The Supreme Court, then, is not the only interpreter of the Constitution. Each of the three coordinate branches of government created and empowered by the Constitution—the executive and legislative no less than the judicial—has a duty to interpret the Constitution in the performance of its official functions. In fact, every official takes an oath precisely to that effect.

For the same reason that the Constitution cannot be reduced to constitutional law, the Constitution cannot simply be reduced to what Congress or the President say it is either. Quite the contrary. The Constitution, the original document of 1787 plus its amendments,

continued next page



is and must be understood to be the standard against which all laws, policies and interpretations must be measured. It is the consent of the governed with which the actions of the governors must be squared.

And this also applies to the power of judicial review. For as Justice Felix Frankfurter once said, "The ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it."

Judicial review of Congressional and executive actions for their constitutionality has played a major role throughout our political history. The exercise of this power produces constitutional law. And in this task even the courts themselves have on occasion been tempted to think that the law of their decisions is on a par with the Constitution.

Some thirty years ago, in the midst of great racial turmoil, our highest Court seemed to succumb to this very temptation. By a flawed reading of our Constitution and *Marbury v. Madison*, and an even more faulty syllogism of legal reasoning, the Court in a 1958 case called *Cooper v. Aaron* appeared to arrive at conclusions about its own power that would have shocked men like John Marshall and Joseph Story.

In this case the Court proclaimed that the constitutional decision it had reached that day was nothing less than "the supreme law of the land." Obviously the decision was binding on the parties in the case; but the implication that everyone would have to accept its judgments uncritically, that it was a decision from which there could be no appeal, was astonishing; the language recalled what Stephen Douglas said about *Dred Scott*. In one fell swoop, the Court seemed to reduce the Constitution to the status of ordinary constitutional law, and to equate the judge with the lawyer. Such logic assumes, as Charles Evans Hughes once quipped, that the Constitution is "what the judges say it is." The logic of *Cooper v. Aaron* was, and is, at war with the Constitution, at war with the basic principles of democratic government, and at war with the very meaning of the rule of law.

Just as *Dred Scott* had its partisans a century ago, so does *Cooper v. Aaron* today. For example, a U.S. Senator criticized a recent nominee of the President's to the bench for his sponsorship while a state legislator of a bill that responded to a Supreme Court decision with which he disagreed. The decision was *Stone v. Graham*, a 1980 case in which the Court held uncon-

stitutional a Kentucky statute that required the posting of the Ten Commandments in the schools of that state. The bill co-sponsored by the judicial nominee—which, by the way, passed his state's Senate by a vote of 39 to 9—would have permitted the posting of the Ten Commandments in the schools of his state. In this, the nominee was acting on the principle Lincoln well understood—that legislators have an independent duty to consider the constitutionality of proposed legislation. Nonetheless, the nominee was faulted for not appreciating that under *Cooper v. Aaron*, Supreme Court decisions are the law of the land—just like the Constitution. He was faulted, in other words, for failing to agree with an idea that would put the Court's constitutional interpretations in the unique position of meaning the same as the Constitution itself.

My message today is that such interpretations are not and must not be placed in such a position. To understand the distinction between the Constitution and constitutional law is to grasp, as John Marshall observed in *Marbury*, "that the framers of the Constitution contemplated that instrument as a rule for the government of courts, as well as of the legislature." This was the reason, in Marshall's view, that a "written constitution is one of the greatest improvements on political institutions."

Likewise, James Madison, expressing his mature view of the subject, wrote that as the three branches of government are coordinate and equally bound to support the Constitution, "each must in the exercise of its functions be guided by the text of the Constitution according to its own interpretation of it." And, as his lifelong friend and collaborator, Jefferson, once said, the written Constitution is "our peculiar security."

But perhaps no one has ever put it better than did Abraham Lincoln, seeking to keep the lamp of freedom burning bright in the dark moral shadows cast by the Court in the *Dred Scott* case. Recognizing that Justice Taney in his opinion in that case had done great violence not only to the text of the Constitution but to the intentions of those who had written, proposed and ratified it, Lincoln argued that,

if the policy of government, upon vital questions affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made, in ordinary litigation between parties, in personal actions, the people

will have ceased to be their own rulers, having, to that extent, practically resigned their government into the hands of that imminent tribunal.

Once again, we must understand that the Constitution is, and must be understood to be, superior to ordinary constitutional law. This distinction must be respected. To confuse the Constitution with judicial pronouncements allows no standard by which to criticize and to seek the overruling of what University of Chicago Law Professor Philip Kurland once called the "derelicts of constitutional law"—cases such as *Dred Scott*, and *Plessy v. Ferguson*. To do otherwise, as Lincoln said, is to submit to government by judiciary. But such a state could never be consistent with the principles of our Constitution. Indeed, it would be utterly inconsistent with the very idea of the rule of law to which we, as a people, have always subscribed.

We are the heirs to a long Western tradition of the rule of law. Some 2,000 years ago, for example, the great statesman of the ancient Roman Republic, Cicero, observed, "We are in bondage to the law in order that we may be free." Today, the rule of law is still the very fundament of our civilization, and the American Constitution remains its crowning glory.

But if law, as Thomas Paine once said, is to remain "King" in America we must insist that every department of our government, every official, and every citizen be bound by the Constitution. That's what it means to be "a nation of laws, not of men." As Jefferson once said:

It is jealousy and not confidence which prescribes limited constitutions to bind down those whom we are obliged to trust with power . . . In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.

Again, thank all of you for the honor of addressing you this evening. In closing, let me urge you again to consider Daniel Webster's words: "Hold on to the Constitution . . . and the Republic for which it stands—what has happened once in 6,000 years may never happen again. Hold on to your Constitution."



## Meese Eschews Judicial Review

by Michael Kinsley

Shortly after the Supreme Court ruled that posting the Ten Commandments in public school classrooms is unconstitutional, an Indiana state legislator named Daniel Manion introduced a law to allow the posting of the Ten Commandments in public school classrooms.

This became an issue in the bitter Senate confirmation fight when President Reagan nominated Manion as a federal appeals judge. Manion's supporters, including Edwin Meese, insisted at the time—way back last summer—that Manion was not defying the Su-

The famous 1803 case of *Marbury vs. Madison*, which first asserted the right of courts to throw out unconstitutional laws, also made no such claim. Justice John Marshall merely argued that the Court's job is to decide cases that come before it, and that in cases where a law conflicts with the Constitution, the Constitution should prevail. The Court did overreach in 1958, as Meese says, when it announced: "*Marbury vs. Madison* . . . declared the basic principle that (Supreme Court rulings are) the supreme law of the land."

In theory, though, there's not much difference between Justice Marshall's narrow view and the later

On the other hand, if Supreme Court interpretations of the Constitution were universally accepted as holy writ, there would be no opportunity for the Supreme Court itself to change its mind, as it did in *Brown*. Sometimes this opportunity can only arise if there's a law or a policy that conflicts with a previously established constitutional doctrine.

But why is Meese renewing this arcane doctrinal debate now? It's characteristic of Meese that he tosses these jurisprudential stink bombs and then sends his spokesman around to emphasize all the things he doesn't mean by them. He doesn't mean Gov. Faubus was right to defy desegregation. He doesn't mean legislatures can routinely pass laws they know to violate the Constitution, as interpreted by the Supreme Court. Fine. But then what does he mean? Why is he opening up this Pandora's Box of disrespect for the Supreme Court if his actual point is so small that it's practically invisible? I think the question answers itself.

The continuing conservative campaign to undermine judicial authority is ironic, and not just because the judiciary may soon be in their hands while the other branches may not. It's ironic also because the American system of judicial review they find so irksome (for the moment) has emerged in precisely the way conservatives say social and governmental institutions ought to. It's not explicitly in the Constitution. It wasn't written in stone in 1803. It has evolved over two centuries and survived because it works.

Judicial review is a conservative principle, above all, because it is the essential mechanism of limited government. Virtually every provision in the Constitution is a restriction on government, not on individual citizens. It is these restrictions that the Supreme Court attempts to interpret and enforce in its rulings—even, for example, the hated 1973 abortion ruling. The Supreme Court makes mistakes, but undercutting it is a bigger one.

Michael Kinsley is editor of *The New Republic*. Copyright 1986, United Feature Syndicate, Inc. (Reprinted from the *New Republic*)

*The Attorney General's suggestions are a recipe for "chaos, delayed justice and endless, wasteful litigation if any official or legislator is free to disregard established constitutional doctrine until the Supreme Court has hit him personally over the head."*

preme Court because his law was subtly different from the one the Court had overturned.

Now that Manion is safely confirmed, however, Meese has upped the ante. Manion was defying the Supreme Court, the attorney general declared in a speech Oct. 21, and in doing so he was joining a glorious tradition that includes Lincoln's defiance of the *Dred Scott* decision (denying citizenship to blacks). A Supreme Court decision, Meese opined, "lacks the character of law." The parties in the particular case must obey it, and the government must force them to if necessary, but the ruling "does not establish a 'supreme law of the land' that is binding on all persons and parts of the government."

Analysis of this amazing pronouncement must consider two separate questions. What on earth is he talking about? And what is he really up to?

On a very technical level, Meese is right. Nothing in the Constitution gives the Supreme Court exclusive or final say in determining the document's meaning.

expansive view of the court's authority. Even Meese concedes that Supreme Court precedents are binding on lower courts. Official acts that conflict with Supreme Court rulings can generally be challenged in court. In the end, one way or another, the Supreme Court's view of the Constitution will carry the day. The practical question is how much trouble the other branches are entitled to make along the way.

The 1958 opinion Meese objects to, signed by all nine justices, was provoked by Arkansas Gov. Orval Faubus's use of National Guard troops to prevent black children from entering Little Rock High School. Faubus's position, like Meese's was that all branches of government are equally free to interpret the Constitution, and he disagreed with *Brown vs. Board of Education*. Obviously it is a recipe for chaos, delayed justice and endless, wasteful litigation if any official or legislator is free to disregard established constitutional doctrine until the Supreme Court has hit him personally over the head.



## Escape to the Brooklyn Museum

### Scholastic Achievement Through Artistic Contemplation

by Judith A. Norrish

A trip to the Brooklyn Museum will be an experience spanning the centuries. There are two important reasons for a law student to go to a museum. The first is to contemplate the development of civilization and the second is to stimulate the right hemisphere of the brain, the side governing creativity and psychic energies. This side is sadly underutilized by law students.

It has been scientifically proven that learning responses and performance improve with harmony of the two hemispheres of the brain, so an hour's amble through the Brooklyn Museum could help law students get ALL A's!! Renovation of the museum's Islamic Art Gallery has been completed, a major exhibition of Post-Impressionist painting is showing, and a landmark exhibition exploring the impact of the machine on American art is presently on display.

The Gallery for Islamic Art, located on the second floor, contains objects ranging in date from the seventh to the nineteenth centuries, and includes examples of architectural elements, ceramics, glass, metalwork, carpets, textiles, lacquers and paintings. There are objects from North Africa, the Middle East, and Central Asia, with the greatest number of objects coming from Iran.

Within a century after the death of

Muhammad in 632, a vast Muslim empire had been established by his immediate successors which stretched westward to Spain and North Africa, and eastward to the near east and Iran. In each newly-conquered territory the work of local artisans reflected the Muslim presence. In many of the pieces on display, Arabic script, considered the most holy religious symbol, is prominent. Glazed ceramics, especially of the ninth and tenth

**American Post-Impressionism** is the period between 1900-1918 when artists were responding to the French influences of Cezanne, van Gogh, Gauguin, Seurat and Matisse. The Advent Of Modernism, as this show is called, presents works by Thomas Hart Benyon, Stuart Davis, Man Ray, Emily Carr, Maurice Prendergast, Charles Burchfield and other artists of the period. Their works include watercolors, landscapes, still lifes and portraits. In conjunction with this exhibit, an all day symposium will be held on Saturday December 6, highlighting the latest scholarship on the development of modernism in North American art. Speakers will include William Agee, critically acclaimed art historian. This exhibit runs through January 19 so see it before exams!

The influence of the machine on modern life has been the theme of

Calder, and musicians such as John Cage. **The Machine Age in America 1918-1941** is the first major museum exhibition to identify the machine as the singular unifying influence during this period. This exhibit includes examples of painting, sculpture, photography, architecture, decorative arts, fashion, industrial design and communications. Artists presented include Joseph Stella, Alexander Calder, Man Ray, Alfred Stieglitz, Paul Strand, Edward Weston, and Frank Lloyd Wright.

This offering documents the dramatic transformation which took place in American culture and the artists' and designers' struggle to acknowledge, understand, accept, and finally control their machine-driven world. During this period artists and designers harnessed new industrial methods and materials to create a revolutionary aesthetic. This exhibit will be in Brooklyn until February 16, when it will move on to shows in Pittsburgh, Los Angeles and Atlanta.

For more information about these shows call (718) 638-5000, ex. 232. A trip to the Brooklyn Museum could clear your mind, please your senses, and maybe improve your grades!!!

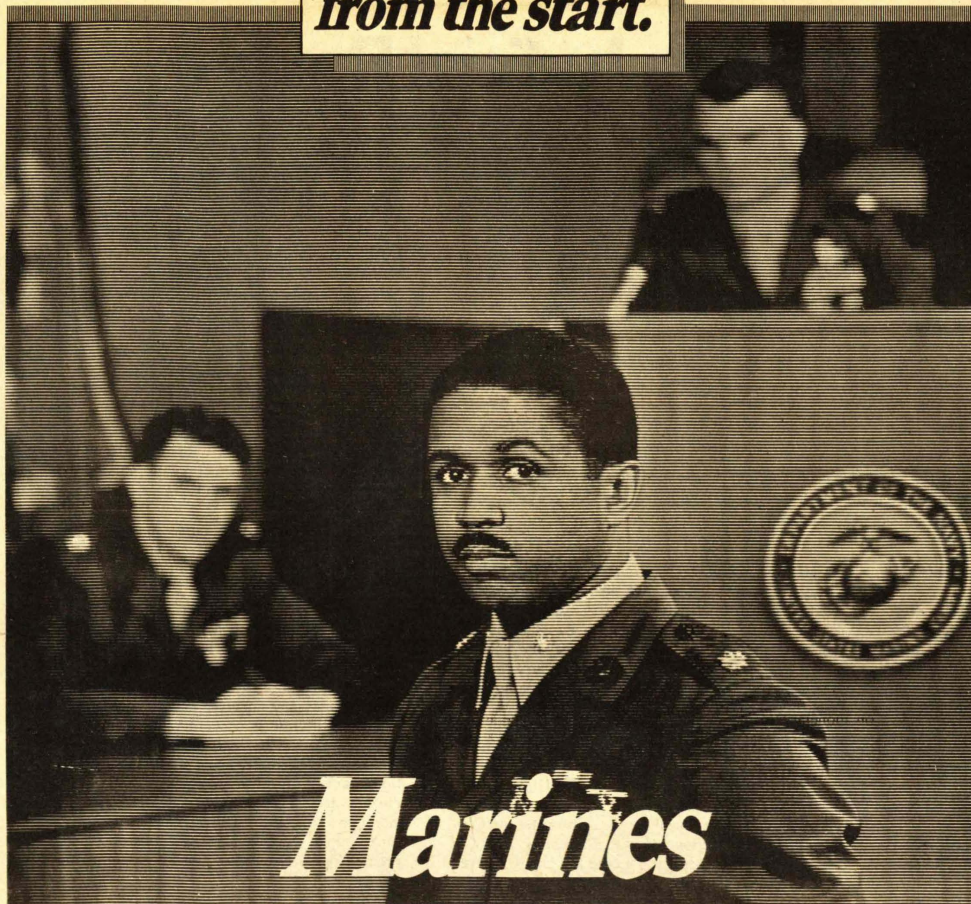
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## Theatre Review

### Nonsense: Habit Forming

by Nina Keller

If you're in the mood for some healthy belly laughs, some toe-tapping tunes, and particularly, if you have a Catholic background, a blast into your past, go down to the Douglas Fairbanks Theatre for a couple of hours of *Nonsense*. This compact, light musical is a cross between *Godspell* and *Grease* with an hour of nun jokes thrown in. But don't let the title fool you: whether you were trained at the Hebrew Arts School or St. Ursuline's School, you *don't* have to be Catholic to enjoy the show.

The cast consists of five characters, all members of the Order of the Little Sisters of Hoboken. In the opening numbers "Welcome" and "Nonsense is Habit-Forming," they delightfully sing to us about "the humour of the nun." We meet the Most Reverend Sister Mary Cardelia (Marilyn Farina) who tells us that this show is a benefit performance. We learn in "A Difficult Transition" the reason for this "fund-raiser": it seems that the cook, Sister Julia, Child of God, had poisoned just about the entire order, save these five nuns, with a batch of vichyssoise. The remaining performing sisters have buried all but two in a respectable ceremony, and Sister Cardelia spent the money earmarked for the last two burials on a Betamax. Thus the audience has been "invited" to help raise the funds for their final resting place.

Among the better interactions with the audience is "The Quiz" in which Sister Mary Amnesia (Susan Gordon-Clark), asks us to answer questions based on a song we have just heard. Audience members who answer questions correctly are awarded prizes such as an Ave Maria adjustable ring and a St. Christopher's medal ("since he's not a saint anymore anyway"). Another great bit with the audience has the sisters perusing the audience for "plain-clothed nuns." (In fact, a

Continued Next Page



## Nunsense

"real" nun sitting in front of me generated a great deal of attention towards my section of the audience.)

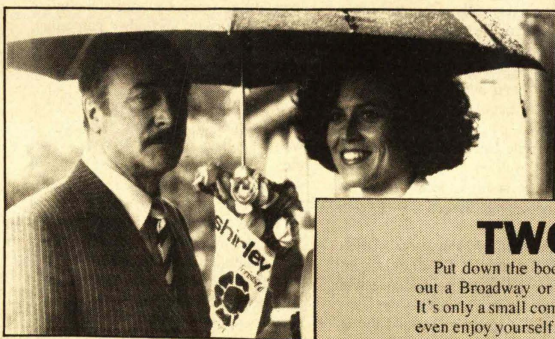
A lot of the action centers around who will perform a particular number and whether Sister Mary Robert Anne (Christine Anderson) will get her big break. She does, but you'll have to go to the show to see the great gag that sends her into the spotlight.

The set is a main activity room in the Mount Saint Helen's School in Hoboken. The school is putting on *Grease* so there are several good sight gags for the sisters to play with. Each of the two acts contains about ten songs, some sung with exceptionally good voices, particularly those of Sister Amnesia. There are dance numbers (yes, nuns *do* dance) and even a little ballet by Sister Mary Leo (Suzi Wilson), who still dreams of becoming the first nun-ballerina. There's a routine called "Baking with the BVM (Blessed Virgin Mother)" where a recipe is given for hors d'oeuvres served at the Last Supper—Host Toasties—which cracked up not only the audience but the performers as well. Or, try making Girl Scouts—get 12 Brownies real hot.

The action is lively, the music swings, and the characters are wry and likeable. At the performance I attended, the role of Sister Mary Hubert, usually played by Edwina Lewis, was played by Nancy Hillner, who did an admirable job in a Supremes take-off, "Holier than Thou." If these performers weren't prancing around and telling dirty jokes, you might even think they were real nuns. But they are good actresses and you should consider *Nunsense* for your next trip to Broadway. (Half-price tickets are \$15 and under because the theatre holds about 200—see sidebar on half-price tickets.)



**ANGELIC LAUGHTER** is yours if you attend **NUNSENSE**, playing at the **Douglas Fairbanks Theater**. Clockwise from top: Marilyn Farina, Edwina Lewis, Suzi Winson, Susan Gordon-Clark, Christine Anderson.



**NO BED OF ROSES.** International intrigue and rocky romance are the order of the day in Twentieth Century Fox's *Half Moon Street*, starring Sigourney Weaver and Michael Caine. Miss it.

## Movies Half Moon Street: Sheer Lunacy

by Robert Roth

The film *Half Moon Street* starring Sigourney Weaver and Michael Caine has the unique qualities of being a suspenseful thriller and romance all wrapped in one. Unfortunately it succeeds at being neither.

Sigourney Weaver as Lauren Savage, a wordly yet naive Harvard Ph.D., working for a Middle East think tank based in London, finds herself low on cash, receiving little recognition for her research, and presumably bored with her predicament. In the mail one day, she receives an anonymous videocassette (which she promptly plays on the handy VCR in her rundown London flat) hailing the benefits of working for one of London's numerous escort services. Adventure. Quick cash. You know the pitch.

After a few days deliberation, Ms. Savage makes the obvious choice any Harvard educated, capable, highly motivated, independent woman would make. She takes a position (no pun intended) at an escort service. Oh! the perils of over-education. Director Bob Swaim however, attempts to convey to the audience that Ms. Savage has not sold out, nor is she simply doing it for the money. This is apparently so since the agency's house rules allow Ms. Savage some degree of veto power over how far the evening goes. Self-respect and rugged individualism preserved, we can now proceed with the rest of

the plot.

Having tested the waters a few times in her moonlighting position but without staying for breakfast, Ms. Savage finally pays a house call at Michael Caine's place. He plays Lord Bulbeck, an English Lord and foreign minister involved in setting up top-secret peace negotiations between the Israelis and the Arabs. Having such a busy schedule and being a widower, he stoically responds to her inquiries as to why he uses an escort service stating he has no time for the "courtship ritual"; and she responds to his identical inquiry that she likes "uncomplicated sex." A great basis for any romance film, don't you think?

After staying for breakfast, (wait till he gets the bill!) he warns her that she should be careful with her newfound lifestyle. She in her naivete thinks he is referring to social diseases. As their meetings become more frequent, so too does the emergence of a subplot of international intrigue in thwarting the impending peace negotiations. The constant battle between our principles detracts from the intrigue aspect, and his prematurely possessive questioning as to where she has been and who she has been with smacks more of schoolboy jealousies than of romance.

As the plot trudges on, we wind up with a couple whose romantic interests are based on monetary exchange and convenience. Throughout the film we are to believe that this miraculously becomes a firm foundation for a love story. While grappling with this implausible scenario, Abdul and company are doing their best to keep the intrigue subplot going. By the movie's end we can only hope that they succeed and put the unhappy couple and us out of our misery.

## TWO-FERS

Put down the books for a couple of hours, pick out a Broadway or Off-Broadway show and GO. It's only a small commitment of time and you might even enjoy yourself. Worse yet, you might become a better lawyer for it.

Price is no excuse: "two-fers" can be picked up in almost any store, at the Student Services or the SBA offices.

If you like to buy tickets at half-price the same day or even the day before performance, there are three locations to do so. Each location offers tickets to many Broadway and Off-Broadway productions. If you're a real trooper, some Broadway theaters sell standing-room tickets for less than \$10 (that's how I got to see Dustin Hoffman in "Death of a Salesman"). Be adventuresome: you can even purchase standing-room at the Metropolitan Opera for \$5 or \$8, and the woman sitting a few feet in front of you will have paid 8 times the price!

The three locations to purchase half-price tickets are listed below (one is right near BLS in front of the NY Supreme Court). There is a \$1.00 surcharge for each ticket and they accept only cash or traveler's checks. Show availability is posted at the booths. You can also check weekend availability in the New York Times on Fridays.

TKTS 47th and Broadway (also known as "Duffy Square")

Opens at noon for matinee tickets; 3 p.m. for evening sales; Day of performance only.

TKTS Court and Montague Streets, Brooklyn (in the Park in front of the Court House).

Monday-Friday: 11 a.m.-5:30 p.m.

Saturday: 11 a.m.-3:30 p.m.

Off-Broadway 11:00 a.m. to 1:00 p.m. only

**TIP:** This TKTS booth also sells Saturday and Sunday matinee tickets one day before the performance.

**N.B.:** the Duffy Square booth at 47th Street has the biggest crowds and the longest lines. Some say the selection of tickets is better, but I've bought at the World Trade Center and Brooklyn locations and the seats are terrific. There were either no lines or short lines that moved quite quickly.

**ALSO CONSIDER:** Bryant Park Music and Dance Booth (behind the New York Public Library) at 42nd Street between 5th and 6th Avenues. Half price music and dance tickets for that day's performance available:

Tuesday, Thursday, Friday: Noon-7:00 p.m.

Wednesday and Saturday: 11:00-7:00 p.m.

Tuesday-Saturday: closed 2 p.m.-3 p.m.

Sunday: noon-6 p.m.

Tickets for Monday concerts available Sunday before performance. Call 382-2323 for up to day ticket availability.

Nina Keller



## Title IX Guttled

## Women's Gains in Doubt

by Susan Skorupa (CPS)

College women nationwide entered their second school year without Title IX, and women's groups—missing their best tool for fighting campus sexual harassment and for getting equal funding—say it's getting harder to force schools to pay attention to them.

In June, 1984, the U.S. Supreme Court effectively gutted Title IX of the Higher Education Amendments of 1972, which said colleges would lose their federal funds if they discriminated on the basis of gender.

Women's groups had used Title IX to force colleges to adopt ways for women to appeal campus sex harassment cases, to hire and grant tenure to female faculty members and to begin funding women's athletics equally to men's sports.

All that's over now, some say.

"In funding women's athletics and in sexual harassment cases, if a school has no policy in place (already), students in most states have no (legal) recourse," contends Bernice Sandler, head of the Project on the Status and Education of Women, which, in turn, is funded by the Association of American Colleges.

"We've lost an enormous amount of ground but, as yet, we don't even know how much we've actually lost," says Ellen Vargyas, an attorney for the National Women's Law Center in Washington, D.C.

The Supreme Court's ruling was so vague, she adds, that the U.S. Dept. of Education, which is supposed to make sure colleges don't discriminate, has pretty much given up trying to enforce Title IX.

Dept. of Education officials, however, deny the charge.

In the 1984 Grove City College case, the court ruled that only the campus program that directly got federal funds had to swear it didn't discriminate against women.

Consequently, if an athletic department or an English department that discriminated against women didn't themselves receive federal funds, they were immune from Title IX's scope.

Indeed, most campus programs have become immune.

The vast majority of federal funds come to campuses in the form of "block grants," which campus administrators can divvy up among various programs.

"Most federal money is not directed toward specific programs," Sandler notes.

And after schools distribute the federal money, it's very hard to trace, Vargyas adds.

Sandler contends women's sports have suffered the most during the post-Grove City era because "little (federal money) goes to athletic programs, and athletic scholarships are not considered financial aid."

As a result, progress in giving women more athletic opportunities—and more athletic scholarships—has slowed to a crawl in many places, she says.

In 1979, for example, Tina Morrison and five other women athletes sued West Texas State University, claiming it violated Title IX by making them ride vans to away games when their

male counterparts flew, paying their coaches less than male coaches, with giving them only one uniform—compared to the men's two—to wear, with jamming four people—compared to the men's two—into a room while on the road.

While Morrison, now a coach at Amarillo, Tx., high school, says the suit scared WTSU officials "and that helped some" in creating better conditions at the campus, a federal court dismissed the case for the second time this summer.

Women coaches, Morrison reports, now get paid better, females get spare uniforms, and the university sometimes lets women's teams fly to away games.

It's far from equality, however. "Nationwide," Vargyas says, "millions of dollars are given to athletic departments and athletes, but women get only a fraction of what the men get."

"At Temple University," she adds, "nearly \$2 million a year is given in athletic scholarships. Enormous benefits are being denied to women there."

But the Dept. of Education's Office of Civil Rights (OCR) claims most schools were in total compliance with Title IX before the Grove City decision.

"Grove City hasn't changed the attitude of most schools," says Gary Curran, the OCR's spokesman. "Most were pretty much in compliance (with the law) before, and continue as such now."

Vargyas charges the OCR isn't trying. "Title IX is not being aggressively enforced. (The Education Dept.) is taking the narrowest view of the ruling, and the ruling was very vague to begin with."

Curran disagrees. His office investigates all complaints, "but it's usually up to the schools to raise the question of jurisdiction. And, of the huge number of complaints we receive, most are related to elementary and secondary school issues rather than higher education."

The OCR also conducts random compliance reviews among colleges.

With all the uncertainty about what the court meant and whether the Education Dept. will act, many campus women are bypassing the federal government altogether and pursuing their discrimination complaints on the state level, Vargyas says.

They're being more successful there, too. While West Texas State women were losing their federal case last summer, Temple women, suing under a state anti-bias law, were making steady progress through the courts.

Twelve states—Alaska, California, Oregon, Washington, Rhode Island, Florida, Illinois, Nebraska, Wisconsin, Maine, Massachusetts and New Jersey—now have their own broad laws prohibiting sex discrimination in education. Nearly 20 others offer narrower protections, reports Phyllis Cheng of the Project on State Title IX.

"The biggest problem on a national level is enforcement. There's so much backlog in the Civil Rights office and the administration is reluctant to do anything."

Progress is quicker on the state level, Cheng says. "With state laws, students did better even before Grove City. States with their own laws generally have a higher percentage of women in those programs most in question such as athletics."

## Organization On The Move

## Legal Association Of Women

by Judith A. Norrish

The Legal Association of Women (LAW) has been actively pursuing its projects this semester. Our goals have been two-fold: to sensitize ourselves to issues of gender bias in the classroom and in the practices of the legal community, and to interact with the law school community through open forums, rap sessions, and speaker presentation.

In our biweekly group meetings we have begun a group study on the New York State Task Force Report on Women In the Courts. Members attended the New York City Bar Association forum on the task force report where BLS Professor Elizabeth Schneider was a key spokesperson. The report called for responses to the serious problem of gender bias from the legislature, from the courts including judges, attorneys and other personnel, from Bar Associations of the state, and from law schools.

## Forums

One feminist attorney observed that it is wonderful that the enrollment of women at BLS stands at 45%; however the percentages and treatment of women of every status are radically different in the real world, particularly in the courts of New York State. Professor Schneider noted the response of the BLS administration to gender bias in its efforts to hire more women faculty members; however, she suggested that massive reforms in textbooks and classroom dynamics are necessary to eliminate gender bias in law school classrooms.

LAW also sponsored Risa Messing, a first-year member, to attend the Conference on Domestic Violence and Women's Rights, held at Columbia University on October 8. She had an opportunity to learn about the problems, solutions, and remedies suggested by judges and legal practitioners working in those areas. Ms. Messing returned with mounds of materials and information to share with group members. There are plans to present guest speakers to address the law school community on these serious issues which should be of concern to all students.

On October 29, LAW presented the Brooklyn Women's Alumnae Net-

work. Sixty students and faculty members met with Carole Gould, Judy Koper, Ruth Cassell and Professor Carol Lefcourt, four BLS graduates who discussed their experiences in law school spanning the years of 1968-1982. (Did you know that in 1968 there were three women or less in a section and the school sponsored LADIES DAY where the women were allowed to participate in class discussions???) The Alumnae Network also emphasized the importance of networking with other students and lawyers to accomplish work goals and to be in touch with job opportunities.

On December 2, LAW will present Nancy Loudon, Esq. who will be speaking about her successes after rough beginnings in law school and with the bar exam. She is past president of the New York City Women's Bar and is presently doing corporate mediation for Bristol-Myers in Manhattan.

## Rap Sessions

LAW members wished that there had been a comfortable forum for sharing problems and information in their first year of law school. In response to the needs of first-year students, Paula Simari, Dene Davis and Maria Trattles are chairing RAP SESSIONS FOR FIRST-YEAR STUDENTS. The first meeting was a discussion on stress which provided an opportunity for first-year students to network with upper-class students and to seek advice, information, and perhaps empathy. The second rap session, held in November, presented approaches to the use of study aids, and various methods for exam preparation. More than forty students attended. Our next Rap Session is scheduled for Thursday, December 11 at 1:00 P.M. All students are most welcome.

Future activities sponsored by LAW include tours of the Kings County Surrogate's Court organized by vice president Sharon Boland, and a joint presentation with BLSA in celebration of Black History Month. Interested students are invited to attend our meetings. To contact LAW, leave a message in our mailbox in the SBA office on the third floor.

## Illiteracy Holding Women Back Worldwide

"Some 500 million women worldwide still cannot read and write," and they outnumber male illiterates by 130 million. So reports A. Indrani for the feature agency Depthnews Asia of Manila [August 22] in a discussion based on the book *Women . . . A World Survey*, by Ruth Leger Sivard, a noted economics and social analyst.

Confirming the tie between illiteracy and poverty, Indrani notes that at least 60 percent of the world's illiterate women live in countries where the average annual income in 1980 was less than \$300. "In many of these countries," he writes, "especially in Africa and South Asia, four out of five women over 25 . . . never had any schooling."

There has been some progress toward literacy over the past two decades, but "women continued to benefit less [than men] from literacy programs, despite the fact that they were the ones who needed to catch up." The literacy gap between the sexes widened most in Africa.

The strongest resistance to literacy programs for women often comes from the women themselves, Indrani observes, so the

first need is to convince them such education is important. "They also need more free time, and must be helped to combat prejudices surrounding women's education," he concludes.

Reprinted from *Worldpress Review* 11/86





# Inside the Faculty Selection Process

by Nina Keller

When law schools are "ranked," a factor which is always considered is the caliber of its faculty. Since BLS is no different, we wondered how faculty members are chosen here. We talked to members of the Faculty Appointments Committee in order to learn more about this process.

Professor Nancy Fink chairs this committee, overseeing the screening of all faculty resumes coming to BLS. Professor Fink pointed to an enormous pile of papers on her desk. "These are all candidates' resumes," she said. "We have to look at all of them and decide out of the hundreds which ones we want to talk to personally. To some extent it becomes arbitrary. When you're going through than many, and you're trying to pick out the ones that look the best, some good ones are bound to slip through the cracks."

least if you don't get a job teaching law," said Professor Jones, "you can still do something in the field. A person specializing in Medieval French Literature doesn't have many choices."

After a candidate is interviewed by the Committee, the list is honed down even further. The candidate is invited to spend an entire day at BLS, meeting with the entire faculty and with a student committee. The candidate who gets to this stage is a serious contender for a faculty position. The faculty meets with the candidate on an informal basis; the Student Committee, consisting of representatives from student organizations, meet with the candidate for about an hour.

The last stage of choosing a faculty member takes place before a meeting of the entire full-time tenure track faculty. Each of the approximately 35 members have one vote. "At this meeting the Dean is present

Sources at Fordham Law School and NYU Law School told us that there is no such student committee on hiring at their schools.

Although Professor Fink has made diligent efforts this semester to solicit student comments, former members of the Student Committee have complained about the value of student input. One former member stated that he had interviewed candidates but "nobody ever followed up." Another former Committee member said that there was apathy on both sides. The student who went to meet the candidates sometimes showed up and sometimes did not. "Students have no right to complain about the quality of the faculty if they're not going to participate in the selection process," said the student. Both students said that a formal evaluation form would be helpful, an idea Professor Fink hopes to implement for this year's Committee members. The former Student Committee members also agreed that the candidates were very impressive.

Sometimes BLS is looking for a teacher with a particular specialty. "This year," said Professor Fink,

"we're definitely looking to hire one or two teachers. If we have a top priority, it's a tax teacher. Beyond that, we're looking for what every other law school in the country is looking for, and that's a minority candidate."

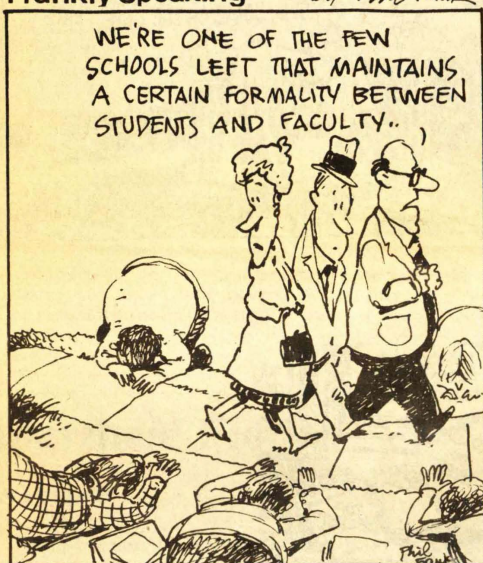
"And we're always looking for superstars. If we have an indication that someone good out there is interested in talking to us, we'll start to solicit them. I would consider Jeff Stempel a superstar, and he went through the screening process."

Besides the Appointments Committee, faculty candidates may be solicited through the "grapevine." Aaron Twerski, considered a "superstar" by Committee members, was "wooed" by Dean Trager. Another star often mentioned is William Hellerstein.

Some members of the Committee will be traveling to Chicago at the end of November to attend the American Association of Law Schools "Job Fair." There, the Committee members can interview prospective candidates from all over the country en masse. "We'll be interviewing every half hour for two days," said Professor Jones. "It sounds really horrible."

## Frankly Speaking

by Phil Fink



In addition to Fink, the committee consists of Professors Neil Cohen, Beryl Jones, Bailey Kuklin, and John Meehan. The committee reads all the resumes, decides who to interview, and invites those candidates to the school for an interview. Professor Jones said that on the average, 10 to 15% of the applicants are invited for a personal interview. "It's hard to choose" she said, "because all these people are very highly qualified and have great credentials."

The Committee members uniformly agree that the qualifications of candidates are extremely high. "The reputation of the law school has increased sufficiently to attract very qualified people," said Professor Fink.

Another factor which contributes to enlarging the candidate pool is the downturn in student admissions. Since student enrollment is not expanding as much, the size of the faculty remains relatively constant. The supply of teachers increases while the demand stays the same. This "glut," however, is not as bad as it is in academics in general. "At

and actively participates," said Professor Fink. "If it is clear that the Dean is not enthusiastic about somebody, that may sway a lot of faculty votes. The Dean carries a lot of weight with the faculty."

"We listen to each other. We check references that have been given to us and we check with contacts that we know. It's hard to get a sense of what someone is like in a classroom, particularly if they've never taught before. They're the kind of judgments you make along the way."

At the full faculty meeting, Student Committee evaluations are taken into consideration. "We listen to what the students have to say. These comments are very important, particularly if the candidate has never taught before. If there is a split in opinion about a candidate, and the students don't like him or her, that means a great deal to us," commented Professor Fink.

The Student Committee serves two purposes: "We get the students' opinion of the candidate, and the students show the candidate how good the students are here."

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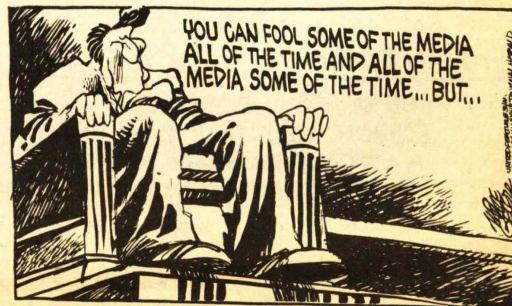
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# Sometimes things can go so wrong



so quickly, that it catches us all off guard. Will all this be forgotten before we return for the Spring semester?



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# Universities Crack Down

from page 9

Dartmouth — which refused to give diplomas to five protestors last spring — is imposing stricter disciplinary rules to try to minimize litigation with students, spokesman Alex Huppe says.

Some think it's no accident colleges are getting tough and divesting at the same time. "Administrators do not want to seem to be buckling in to students," says Alan Chandler of the University of Utah's Students Against Apartheid.

Of the campuses that disciplined anti-apartheid students last week, Johns Hopkins and Illinois are scheduled to reconsider divestiture soon. Missouri already has sold some \$5 million worth of stock in firms with South African operations.

But most schools say they're cracking down to maintain order on campus, not to avoid looking like they're surrendering to protestors' wishes.

Yale filed charges against nine protestors — suspending four of them last week because "we cannot allow the disruption of university activities and buildings," says associate Provost Linda K. Lorimer.

The disciplining was especially controversial because, a day before sentencing the anti-apartheid students, the same Yale committee rescinded the probation of a student who last spring had passed out flyers ridiculing gays.

"On one hand, (Yale) encourages free speech at all costs," complained Sarah Pettit of Yale's Gay-Lesbian Co-op. "On the other hand, the suspensions effectively take voices out of circulation."

But the anti-apartheid students disrupted Yale operations, while the anti-gay student didn't, Lorimer explains. "The students who staged the sit-in would not leave when they were asked, and would not allow people to do their work."

John Hopkins President Muller also says he was trying to maintain order when he forbade students to build a shanty outside a trustees' meeting, and then sent police to arrest them when they tried to build one anyway on Sept. 29.

Upon reconsidering, Muller dropped the charges against the students, and appointed a committee to write campus free speech and protest guidelines.

Now seven University of Texas protestors — four of them UT students have sued UT for violating their rights when they sent police to break up their April, 1986 campus rally, and ultimately arrested 228 people.

The lawsuit seeks "damages and injunctive relief against the University of Texas for violating constitutional rights of individuals demonstrating against apartheid," says attorney Jim Simmons.

Separately, UT's Democracy in Academia group last week pledged to rebuild a shanty torched by arsonists Oct. 3.

While the UT Safety Office conceded the group had permission to rebuild the shanty, assistant Dean of Students Glen Maloney warned that, if arsonists and vandals kept attacking it, he'd ask to dismantle it for safety reasons.  
(CPS)



R. M. M.  
SACRAMENTO, CALIF. College Press Service

"I had no choice. He threatened me with this dangerous weapon."

## Apartheid Fiction

from page 9

als" is merely composed of apolitical, economically motivated decisions distorted by corporate manipulation of timing and media coverage. In short, the anti-apartheid movement—the American public—is being had.

### THE OPTIONS

The American public should retaliate by demanding that this country's universities, financial institutions, corporations and government entities pursue one of three options. First, if legally possible under South African law, Corporate America should transfer its South African corporate holdings to Black South Africans and comprehensively educate the Blacks to run those operations. If South African law is subsequently amended to disallow such ownership, a legal device should require implementation of the net option.

The second option requires Corporate America to withdraw all assets and sources of profit and technology from South Africa. Simultaneously, it must stop reaping profits from South Africa. This is the only action that can remove the stigma of racist exploitation that is now staining this country with nonwhite blood.

Finally, if these two alternatives are not feasible, American institutions should continue conducting business in South Africa, contributing to social progress in its own hypocritical way and accepting criticism from the American public. Regardless of which alternative is chosen, corporate America must communicate to the South African government its reasons for the choice and its disdain for the regime's egregious practices.





# Fantasy Island

from page 8

have been the first comprehensive revision of the federal criminal code in this century. Among other things, the Denton-Helms amendment would have made every sexual practice a federal crime, with the exception of the missionary position between people licensed by states which abjured the use of contraceptives. So much for the Republican conceit of getting Government off the backs of the American people.

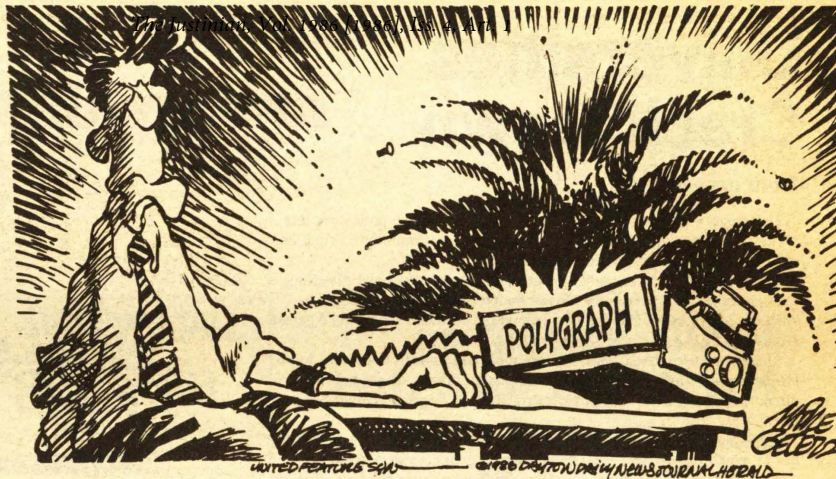
The voters drove a flock of turkeys from the Senate by electing 11 new Democrats. However, this result was not part of a trend—it stands alone. The GOP gained eight Governorships. Democratic gains in the House were very limited. President Reagan's popularity remains as high as ever, with 2 people supporting him for every one critic.

The results of the election stand in strange paradox. Logically, the many who support the President would have heeded his pleas to re-elect his Senators. Logically, the many who repudiated Republican control of the Senate would not have given Reagan such high ratings and would have elected more Democratic congressmen for good measure.

Yet there is logic in these results, considering that most individual voters no longer base their determinations on the partisan affiliation of candidates. The proud boast of many people is "I don't vote for the party—I vote for the individual." Is our representative democracy shortchanged by the antipartisan blinkers voters are now inclined to wear when they deal with political issues and candidates?

The founding fathers hoped that political parties would be unnecessary. But practical experience quickly taught the lesson that in order to make government work—through winning elections, getting legislation out of Congress, and insuring that reliable executive officials implemented policy—political parties were indispensable. Voters came to rely upon political parties to clarify the policy differences between candidates, so they could make informed choices at the ballot box. This system relied upon words to communicate with voters via newspapers and later radio.

Information is disseminated today by television images. Unfortunately, these images are less precise than words in conveying ideas. There has been a concomitant increase in the opportunities for politicians to resort to distortion, deception, and fraud in dealing with voters on the tube. People will vote for and support



candidates whose policies they may disagree with because they like his television appearance, or because they dislike his opponent's appearance.

This system skews the accountability of public officials to the electorate because people don't necessarily get what they vote for. Media hype obscures the presentation of information the people need as the ultimate decision makers in our form of government. Because television has perverted the means of obtaining informed consent from the citizenry, it is no surprise that most Americans don't vote. Politicians are unaccountable and elections are meaningless for them because choices are no longer readily discernable.

Ronald Reagan is the most popular President of this century because he has mastered this system. He appeals to the majority of Americans who oppose his policies because his television persona cues images we all have absorbed from American mythology. This body of visual myth has been sown in all of us through B movies and the effluvia of commercial television—the very industries which provided Ronald Reagan with tutelage and sustenance for the bulk of his adult life.

He governs through a remarkable ability to tell people what they want to hear, and not what they need to know. He makes us comfortable with our prejudices, and does not challenge us to deal with a future which threatens our very way of life. He is called the

"Great Communicator" by his admirers. In fact, he is the great bamboozler who is presiding over the systemic erosion of our standard of living, and the accelerating global deterioration of the natural environment. But overarching all else is his refusal to seriously address the proliferating competition in thermonuclear weaponry. To deal with the means by which humanity can achieve its own extinction, he giddily proposes that we sink trillions of our national wealth into armaments whose technological feasibility has been "proven" only in the *Star Wars* crop of motion pictures.

What can be done to improve our system? The influence of television must be channeled so that it serves the general interest of an informed electorate, and not provide opportunities for chicanery. This could be achieved through the adoption of a parliamentary form of government, where differences between parties are clear, where voter turnout is uniformly high, and where leaders are selected foremost on the basis of their ability to deal with the real world, not because of an ability to produce and star in a political fantasy island. On the eve of our Constitution's bicentennial, it might be appropriate to update the forms devised to govern a coastal, agrarian republic of 3½ million people, so that it meets the needs of a transcontinental, diverse society of 230 million people, with superpower responsibilities as the leader of the free world.

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## This Month's Recipe

by The Culinary Corporation

The chilled weather has arrived and it's the perfect time to warm the spirits with friends. This is a fun and simple recipe. It can be prepared ahead and reheated at the last moment if desired. Other brandies can also be substituted such as peach, apricot, pear, etc. Happy Holidays!

### Mulled Calvados Cider

**Method:** In a large stainless steel or enameled saucepan, combine apple cider and brown sugar. Cut a 6x6 inch square of cheesecloth and put the allspice and nutmeg in the center. Tie well and add to mixture. Stick each orange slice with 3 cloves and insert a cinnamon stick in the center of each slice. Add slices to mixture and cover. Simmer for 15 minutes. Add Calvados and heat mixture for 4 minutes or until heated through. Remove and discard cheesecloth bag and transfer mixture to punch bowl. Serve cider in punch cups and garnish each with orange slice.

Yield: 12 portions.

### Ingredients

8 cups	Apple cider
1/2 cup	Firmly packed dark brown sugar
15 whole	Allspice
1 teaspoon	Freshly ground nutmeg
2 whole	Oranges, sliced into 6 slices each
18 whole	Cloves
12, 1/2 inch pieces	Cinnamon sticks
1 cup	Calvados or other fruit brandy

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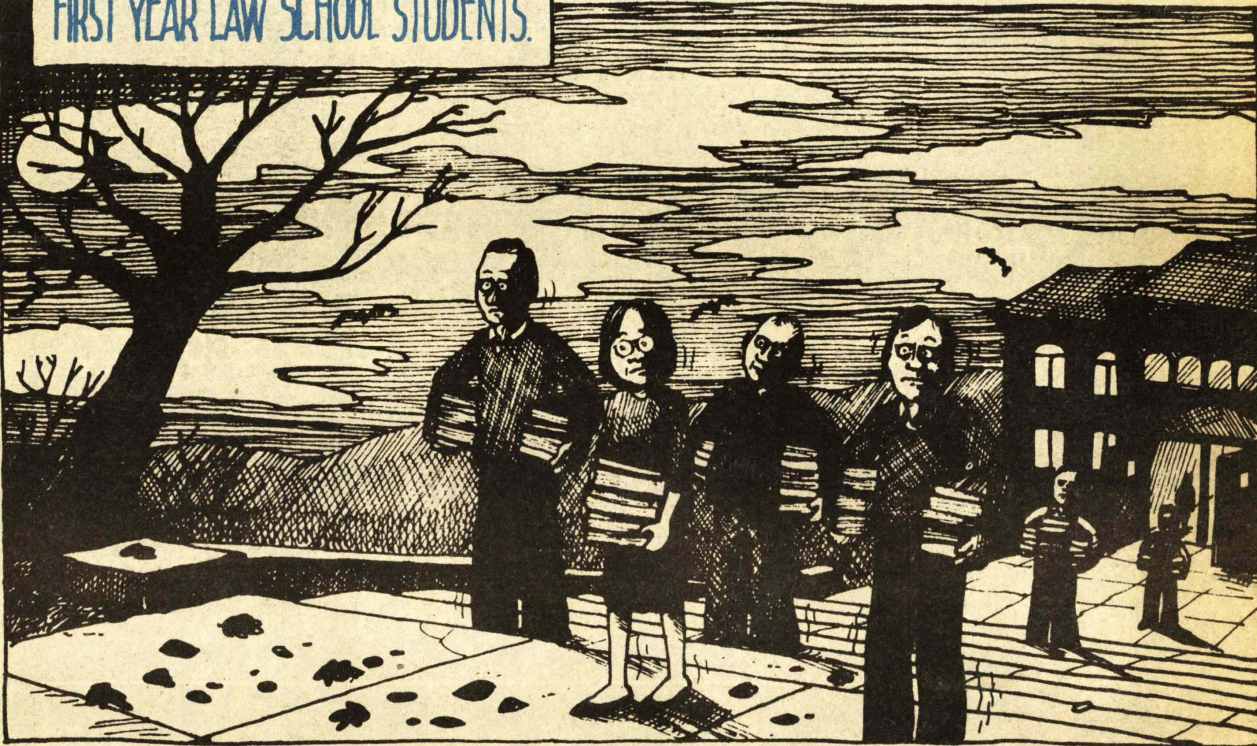
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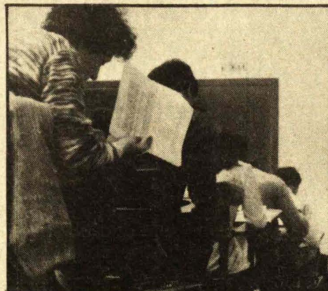
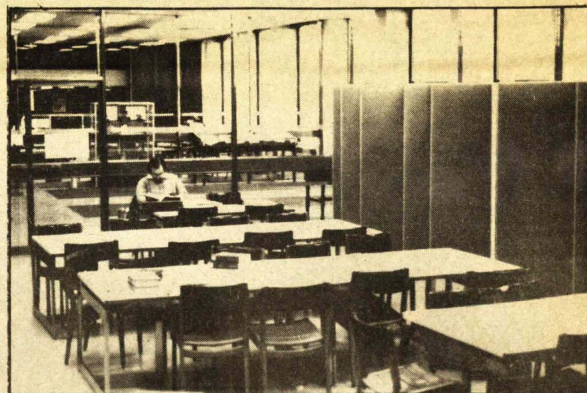


## Moot Court National Team Finals



### SQUARING OFF:

Petitioners Georgia Coffinas and Jim Tenney (above) faced Claudia Werman and Erica Tuckel in the final round of the Moot Court Honor Society's Fall Appellate Advocacy Competition. The advocates argued before Judges William Thompson, Edward Korman and Raymond Dearie. Ms. Werman took top written and oral honors.



**LET  
THE  
FINALS  
BEGIN!!**



Long hours and days of studying await us as we face the "holiday" season. The **JUSTINIAN** wishes everyone well in the upcoming round of exams. Under the circumstances, have a happy and healthy holiday.