

# The Justinian

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## The Justinian

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## Congratulations to the Class of '87

## Good Luck on Exams

April 1987 Volume LVI No. 5

# THE JUSTINIAN

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

## Some Thoughts on Marybeth Whitehead

by Professor Nancy H. Fink

Hard cases make bad law, as the saying goes, and the recent battle in a New Jersey court over the fate of Baby M (known to her natural mother as Sara and to her natural father as Melissa) is probably no exception. The trial of the Baby M case was the stuff that soap operas are made of, filled with heart-wrenching emotion and hand-wringing by experts, all to a chorus of breast beating by media commentators. This was surely not the ideal atmosphere for the kind of thoughtful analysis which this important problem deserves. Superior Court Judge Harvey R. Sorkow, however, as is the cruel fate of trial judges, did not have the luxury of retiring to the ivory tower of the academy or even to the legislative chambers of debate and compromise. He was asked to decide as between the mother, Marybeth Whitehead, and the father by artificial insemination, William Stern, who should shepherd Baby M to maturity. That he did.

On March 31st, Judge Sorkow awarded custody of Baby M to her natural father, William Stern. At the same time, Judge Sorkow terminated all parental rights of the natural mother, Marybeth Whitehead, and proceeded to order the immediate adoption of Baby M by William Stern's wife, Dr. Elizabeth Stern. Since the decision included the termination of all parental rights, Marybeth Whitehead was given no rights ever to visit with or communicate with her child again.

After the decision, the Supreme Court of New Jersey, acting pursuant to a request by the attorney for Marybeth Whitehead, granted what amounts to a stay of the termination order and reinstituted weekly visits between Mrs. Whitehead and Baby M, pending decision of the appeal in the case. As every student of family law knows, in cases of disputed custody, possession is, too frequently, nine tenths of the law. The New Jersey Supreme Court's decision is designed to maintain the status quo during the appeals process and to prevent exacerbating the already substantially uneven opportunity for each parent to maintain a relationship with the child until final disposition of the custody issue.

There has been, as was to be expected, a great deal of commentary on the decision

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## The Prince Competition Where Truth Is Stranger Than Fiction

by Robert J. Roth

Too many of us who have participated in Moot Court competitions, the problems often seem to consist of convoluted fact patterns having little bearing on our lives and in general amount to no more than exercises in oratory and legal research. But for Orville E. Stifel II, winner of the best oralist award at the recently held Prince Evidence Competition, nothing could be further from the truth.

Mr. Stifel's introduction to the concepts of circumstantial evidence and expert testimony took place not in an orderly, structured Moot Court competition, but in an Ohio District Court proceeding. At stake were not merely school pride and a bronze plaque, but the possibility that he would spend the rest of his life behind bars. The sequence of events that were to follow could be characterized as nothing short of a nightmare, one that would haunt him for more than a decade. Ultimately, through persistence and initiative, Stifel managed to bring the nightmare to an end. The circumstances surrounding his conviction and the ensuing fight to clear his name make this a story worth telling.

### Procedural History

On May 1, 1969, Orville E. Stifel II was convicted of willfully and knowingly mailing an infernal machine (a bomb) with intent to kill another in violation of 18 U.S.C. Sect. 1716 and was sentenced to life imprisonment. Throughout the trial, Stifel steadfastly maintained his innocence. In 1970, Stifel appealed his conviction. The Sixth Circuit affirmed. See *United States v. Stifel*, 433 F.2d 431 (6th Cir. 1970). Stifel served his sentence from 1969 until his parole in 1980.

In 1977, while still in prison, Stifel filed a *habeas corpus* petition (28 U.S.C. Sect. 2255) seeking relief based on ineffective assistance of counsel in violation of his Sixth Amendment rights. In December of that same year, he filed a request through the Freedom of Information Act (FOIA) (5 U.S.C. Sect. 552) seeking government papers relating to his case. Although the government resisted these efforts for more than eighteen months, Stifel eventually received some eighteen hundred pages of documents. From these documents Stifel discovered additional grounds on which to base his *habeas corpus* petition. The documents disclosed that the prosecution had failed to produce crucial exculpatory evidence and that inconsistent testimony of an expert witness was knowingly used by the government in its case against Stifel.



**Prince Competition Champs:** Cleveland-Marshall's (l. to r.) Diane Homolak, Melody Stewart and Orville E. Stifel II. The team swept competition taking First Place, Best Brief, and Best Oralist honors.

In connection with the *habeas corpus* proceedings, an evidentiary hearing was held in which both parties presented exhibits and witnesses. These hearings took place during June and July 1984. Upon completion of the hearings, the court concluded that through the prosecution's failure to divulge to the defense exculpatory evidence in its possession, Stifel's constitutional rights had been violated, requiring that his conviction be vacated. See *United States v. Stifel*, 594 F.Supp. 1525 (N.D. Ohio 1984).

### The Prosecution's Case

The most fascinating part of Stifel's case was the evidentiary aspect. A minimum of evidence was presented at the trial, while a substantial amount of evidence was omitted in an attempt to bolster an admittedly weak case against Stifel. That case focused on his apparent motive, access to materials, and ability to construct an incendiary device.

The prosecution's case against Stifel began with the premise that the bomb was addressed to Daniel Ronc, the fiancé of

Stifel's former girlfriend. This fact was never established as the mailing label was destroyed in the explosion. A mere inference arose that the bomb was addressed to the person who opened it. Furthermore, there was inconsistent testimony by the mailman who delivered the package about the addressee. Testimony of the deceased's sister also indicated that her brother, the victim of the bombing, had only been living at her house for about a month when the bombing occurred.

According to the "jilted suitor" theory advanced by the prosecution, Daniel Ronc was the victim of Stifel's jealousy and rage at being spurned by Ronc's fiancée, Cheryl Jones. Stifel and Jones had had a year-long relationship while in college. The relationship ended in November 1966, some eighteen months prior to Ronc's death. To support its theory, the prosecution produced letters written in late 1966 by Stifel to Jones in which he exhibited his hurt and rage over the breakup and vowed to get her back.

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## Placement Update On-Campus Interviews To Begin Earlier This Year

Many law schools, including several in the New York metropolitan area, have begun to hold on-campus interviewing in the month of August.

Some employers fill many of their summer associate and permanent positions with candidates whom they interview during these "early interview weeks."

To give Brooklyn Law School students an equal opportunity to be considered as candidates during the "early interview weeks," the Office of Placement and Career Planning will begin its On-Campus Recruitment Program on August 18th, 1987.

The annual Career Planning Directory and more information about the On-Campus Recruitment Program will be sent to you in June. Resumes and applications for participation will be due in the Placement Office on July 20, 1987.

## Client Counseling Team Takes Top Honors

BLS' ABA Client Counseling Team placed first in the regional competition held at Western University of London, Ontario. Other schools represented at the regional competition were St. John's University, Pace University, Albany Law School, University of Toronto, Western University of Ontario and CUNY Law School.

BLS' team consisted of Paula Kelly, Mary Verderame and coach Prof. Cathy Sullivan. After taking top honors in the regional competition, the team went on to the national competition held in Toronto, where they placed sixth in the overall scoring.

The ABA's Client Counseling Competition is an opportunity for law students to practice, develop and perfect interviewing and counseling skills. It is divided into two parts—the interview and post-interview discussion.

In the interview stage, the team meets and counsels a client, communicating with the client about her reason for the consultation. The team explains the law involved and helps the client identify choices and consider their consequences. After the client is escorted out of the interviewing room, the student attorneys then conduct the post-interview reflection. The team reviews the counseling session and discusses their plan of action. When this post-interview wrap-up is over, the student attorneys end the consultation session. Subsequent to the consultation, the judges critique and score the teams.

## Bar Course Survey Final exam period May 11 to 29

In the never-ending search to discover the qualitative differences in bar review courses, Dean Robin Siskin of the Office of Student Services has attempted to survey BLS graduates who took the July 1986 New York Bar Exam.

Prior to graduating, Dean Siskin asked members of the class of 1986 to fill out a short form requesting their name, bar review course, and any supplemental courses they were taking. Those that did not fill out a form prior to leaving school were sent the form in the mail.

Out of 340 students taking the New York bar exam, Dean Siskin received 234 responses indicating bar courses, leaving 104 students with "unknown" courses. By comparing all 340 names with the pass/fail list published in the *New York Law Journal*, the following results were compiled by the office. Unless indicated, all were first time test takers:

Bar Course	Passed	Failed
Bar/Bri	66 (1 repeater)	20 (2 repeaters: 2X or more)
Josephson/Kluwer Pieper	17 105 (3 repeaters: 2X or more)	9 18
Took no course	1 (1 repeater)	1
Course unknown	50 (20 repeaters: 2X or more)	54 (33 repeaters: 2X or more)

For students wishing more information about bar review courses, consult the March issue of *Student Lawyer* or contact a bar review course representative.



**CLASS OF 2011:** It's a boy! Darla Stuckey class of '88 gave birth on April 10, to a 7 lb. 8 oz. baby boy. Name John Cannon. The "Texas gusher" surfaced in 7 minutes flat. Mother, baby and husband Bill all doing fine.

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Best oralist in Prince Competition, Orville E. Stifel, II's earlier experience with the Federal Rules of Evidence made the outcome of the competition anything but moot. Page 1

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Professor Nancy Fink offers her thoughts on the court's ruling. Page 1

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Panel discussion focuses on the controversy of public health versus individual rights in the government's attempt to stem AIDS spread. Page 3

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HILSA conference addresses problems associated with the new immigration reform bill. Page 3

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Party platforms and candidates' ideas displayed to help make your vote an informed one. Page 16

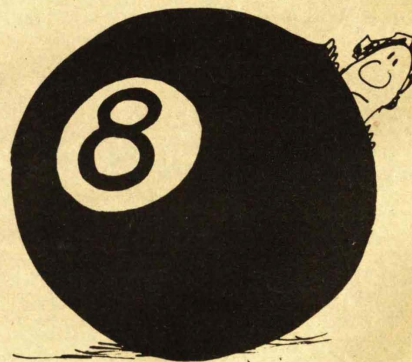
#### Clerkship Preparation Tips

First years take note. Next year's clerkship scramble will be fast upon you. Heed this timely warning. Page 18

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## THEY'RE HERE! Final Exam Period May 11-29



**Good Luck!!!**

## Errata

Our most sincere apologies to Ms. Toni Kousoulas, who was victimized by an honest error appearing on page 4 of the *Justiman's* March issue. She did not make the statement attributed to her in our Inquiring Photographer feature.

The statement at issue, that there are "too many white people" at Brooklyn Law School, should have been attributed to Ms. Lesley Yulkowski, whose photo appeared next to Ms. Kousoulas'.

Again, our most sincere apologies for the mistake.



# Sparer Forum Addresses AIDS Issue

by Robert J. Roth

The first Edward V. Sparer law forum was held at BLS on April 8. The forum discussion, "AIDS: Public Health versus Individual Rights?," centered on the current debate over the potential infringement on individual rights caused by public health efforts to contain the spread of AIDS.

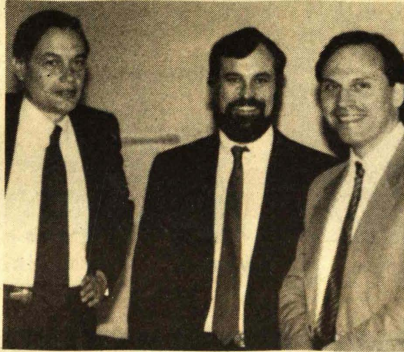
Moderating the forum was Barry Ensminger, General Counsel, Greater New York March of Dimes, and health law activist. Speaking from the public health perspective was former Corporation Counsel F.A.O. Schwarz, Jr. Representing the individual rights concern implicated in the current AIDS crisis was Thomas Stoddard, Director, Lambda Legal Defense Fund.

Ensminger, a former student of the late Professor Sparer, opened the discussion with remarks on the role of the law as a vehicle of social change. He directly focused on Professor Sparer's dedication in applying the law to health care and social welfare concerns and its impact on his own legal philosophy and practice. Having laid this foundation he introduced the first speaker, Thomas Stoddard.

From an individual rights perspective Stoddard viewed three areas as problematic: medical reporting, discrimination, and the "catch all" areas such as quarantine and criminal sanctions. He appraised the current public health atmosphere as unnecessarily adversarial, in essence a "false dichotomy."

Stoddard insisted that both the individual rights con-

cerns and public health goals would be more readily obtainable if the government approached the situation in a more honest fashion. He stressed the need for public trust and confidence in government sponsored programs in order to achieve any level of success. Further he highlighted the preference for voluntary as opposed to coercive measures in fighting the problem. Mandatory programs, he stated, only exacerbate the problem and lead to further distrust of governmental



**Sparer Speakers: (l. to r.) F.A.O. Schwarz Jr., Barry Ensminger, and Thomas Stoddard**

motive.

Stoddard proposed more reliable testing procedures, a heightened level of scrutiny in judging the constitutionality of any mandatory testing program and a rejection of the unnecessary polarity between public health concerns and individual rights proponents. He characterized public health and welfare as a legitimate end, but not to the point where the means by which that end is accomplished is through a disregard for individual rights.

Schwarz' comments from the public health perspective were remarkably compatible to those of Stoddard. Schwarz' thoughts centered primarily on his role in fighting a Queens School Board's efforts to deny admission to students afflicted with the AIDS virus. He noted the hostility with which the judge treated his position at the initial proceedings. He stressed that much of the problem is one of educating individuals and convincing them of the limited risk the disease poses based on the scientific facts. Essentially he viewed education as a manner in which to diffuse current hysteria while at the same time accomplishing public health goals.

In terms of the legality of measures designed to promote the public health interests, Schwarz stated that the focus should not be on what individuals can legally be compelled to do but whether such coercive measures in fact hamper progress. Schwarz also reflected on past Supreme Court decisions which allowed rather drastic measures in the name of the public welfare and noted that they were made prior to the civil rights decisions and therefore warranted a more rigorous analysis. Courts are now required to address right of privacy concerns as well as certain procedural safeguards. With these issues in mind Schwarz was optimistic that in the future public health goals would be reconcilable with individual rights concerns.

## HILSA Sponsors Immigration Forum

by Judy Olivero

On March 25th HILSA sponsored a conference on the Immigration Reform and Control Act of 1986 (Public Law 99-603 [S. 1200]; November 5, 1986) (also known as the Simpson-Rodino Immigration Act). The goal of the conference, according to organizer Joe Canepa, was to inform the BLS community of certain assumptions underlying the act and the potential impact the legalization and employer-sanction provisions will have on undocumented aliens.

Panelist Marla Kamiya, Director of Public Policy at the Center for Immigrants' Rights, Inc. (CIR), discussed the legislative history of the act and outlined what she believes are fallacious assumptions underlying the act's provisions. According to Kamiya, the assumption that undocumented aliens are responsible for the nation's high unemployment rates has been discredited. Studies show that rather than displacing American workers, undocumented workers have actually stimulated growth in several industries, including the restaurant, garment, and construction industries.

Kamiya stated that her experience shows that the assumption that undocumented aliens reap the benefits of

government services without bearing the burden of taxation is not well founded. Kamiya explained that most undocumented aliens that she has encountered have a misconception that all governmental agencies are interrelated. Thus, most undocumented aliens, including those who do work and do pay taxes, are reluctant to seek government services, since they are afraid of drawing the attention of the Immigration and Naturalization Service (INS).

A third assumption, that undocumented aliens are displacing American culture by changing the face and language of the country, merely reflects the racist and prejudicial attitudes of the nation's legislators, said Kamiya.

Kamiya believes that the Reform Act has been mischaracterized in the press as an amnesty act because the main thrust of the act is not to legalize undocumented aliens, but rather to further restrict immigration and to move undocumented aliens out of the country. Kamiya cited the act's provision of funds for INS enforcement in lieu of funds to facilitate the legalization process as the basis for her belief. She also noted that under the proposed second draft of the regulations, the government does not provide any advance funds for agencies to aid in the legalization process.

## ACLU Recommends Education As Best Response to AIDS Crisis

The American Civil Liberties Union announced the publication of a briefing paper on "AIDS and Civil Liberties," which contains medical and legal information about the disease and explains the organization's position on such controversial proposals as compulsory testing.

The ACLU flyer, which is in question and answer form, makes the following points:

- Medically, there is no evidence to suggest that the AIDS virus can be spread through normal workplace contact.

- Legally, firing an employee who has AIDS or the AIDS virus will, in most instances, violate state or federal law, which prohibits discrimination based on disability.

- AIDS is not a "gay disease"; infection can occur between two men or between a man and a woman.

The ACLU supports access to voluntary testing for the AIDS virus, but opposes compulsory testing and the collection by the government of names and other information about people who test positive. Such measures are counterproductive, driving away people who need counseling but who fear discrimination and reprisal.

The ACLU recommends education about sexual and drug use practices that spread the disease; the easy availability of condoms for all sexually active persons, including teenagers; and the distribution, if necessary, of clean, disposable hypodermics to drug addicts. "And we need to pass strong anti-discrimination laws so that people will not have to fear that their efforts to seek counselling or treatment will lead to loss of their jobs or housing or insurance."

Instead, charitable organizations will be reimbursed up to \$16 per application the INS actually accepts. Moreover, Kamiya stated that the tentative application fee, which is \$185 per person or \$450 for a family of four or more, will deter many undocumented aliens from applying for resident status. Kamiya stated that the act's employer-sanction provisions and the expansion of the temporary-workers program further evidence the desire to rid the country of undocumented aliens while maintaining a source of cheap labor for the agricultural sector.

Panelist Felix Cardona, Staff Attorney at CIR, outlined the two-stage legalization process and the sanctions provisions of the act. Cardona stated that effective May 5, 1987, undocumented aliens who have been in the United States continuously and unlawfully since January 1, 1982, have one year to apply for temporary residency, which will expire after eighteen months. Within one year of the expiration of that

eighteen month period, immigrants must apply for permanent residency. Cardona noted that stricter requirements will be applied to aliens who have been arrested by the INS and served with deportation notices before May 5th, or during the application period. Such persons must apply for permanent residency within thirty days of such notice. A failure to make the appropriate application within the statutory period will result in an unappealable loss of legalization rights.

Cardona stated that to be eligible to apply for temporary residency, undocumented aliens must prove beyond a reasonable doubt that they have resided unlawfully in the United States continuously since January 1, 1982. They must also demonstrate that they are unlikely to need public benefits. Cardona noted that the burden of proof is formidable primarily because most undocumented aliens delib-

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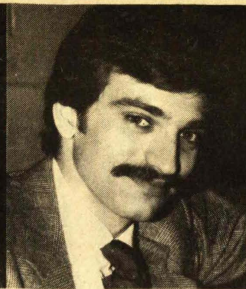
# INQUIRING PHOTOGRAPHER ASKS: NOW THAT YOUR LAW SCHOOL EXPERIENCE IS ALMOST OVER, HOW WOULD YOU DESCRIBE IT?



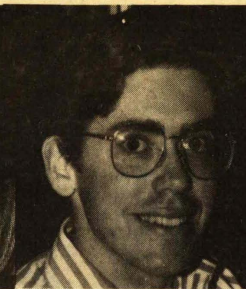
**Mary Verderame:** Well, they say hell is on earth and I think law school has proved that.



**Michelle Vlosky:** All I can say is I should have been a music major.



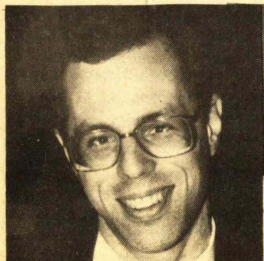
**Robert Meyers:** "No comment."



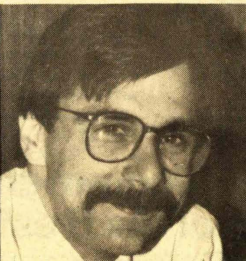
**Tom Kelly:** It's been a lesson in adversity!



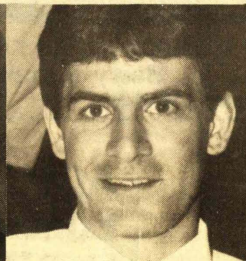
**Grace Lee:** Constant guilt. Constant worrying. Constant longing.



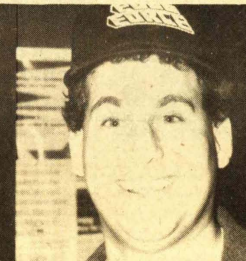
**Ira Reed:** In retrospect everything was beautiful and nothing.



**Ian Bjorkman:** Sort of light blue!



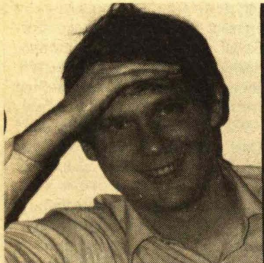
**Scott Miller:** It was one big foggy mess and I can't wait to see what's on the other side.



**Michael Dinowitz:** I should have listened to my mother and gone to medical school.



**Robin Kahn:** I'm really glad I had the chance to participate in Second Circus . . . and become a star!



**Lyle Brooks:** 3 years in a fine institution—excluding Bellevue and Creedmoor, the best 3 years I've spent in any institution.



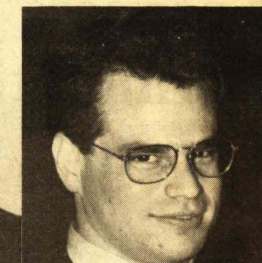
**Elise McKay:** After this experience I now want to teach kindergarten.



**Gina Pettinelli:** I've increased my tolerance for alcohol and stupidity!



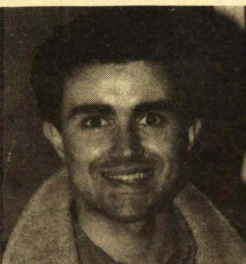
**Debra Babbitch:** Long. Long enough and quite glad it's over.



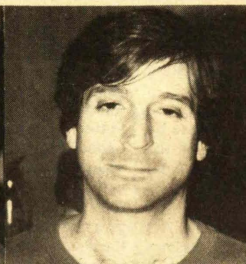
**Andrew Zobler:** Law school is just like the Internal Revenue Code. As soon as you think you got all the rules straight, Professor Holzer comes along and changes them.



**Liz Burkland:** The war is almost over. The body count is almost finished. Barring any unforeseen ambushes I shall assume my blessed position among 300 and some odd bloodied and victorious fellow surviving soldiers and graduate from these hallowed halls. God save Dean Trager! The smell of victory is



**Victor Campos:** An unnatural experience that speeds up the aging process. Trust me, just look at your first year I.D. photos.



**Neil Bernstein:** I think it sharpens your intellect and if you have a liberal arts background and interest, it really is a balancing act for you and . . . I think it defuses into life in such a way that you learn a very new perspective.







# A Third Year Looks Back

by Jonathan Hudis

The other day, a friend's younger sister called to tell me she was in her last year at college and was seriously considering attending Brooklyn Law School next fall. After we discussed her statistics (LSAT score and GPA), she started to question me about whether BLS would be a good choice for her.

Well, that started me thinking. What could I tell this girl that would not paint an overly biased view of our school? My feelings were very mixed. I couldn't decide whether to give her a list of all my experiences, the typical brochure version the administration would publish, or a view of Brooklyn Law through the eyes of the student politic (a mix of what all my friends have told me over the past three years.) After giving the matter much thought, I decided the most candid view would be my own. What I told her went something like this.

## The Faculty

My thoughts in this area are the most divergent. This is probably due to my mixed emotions in dealing with such a range of personalities.

My first year of law school, I was faced with two basic types of professors: The first group consisted of the older faculty at BLS; the second group consisted of the newer members of the faculty, some of whom were hired as recently as the day I entered school.

As to the former group, I looked upon them as virtual gods while I attended their classes. This view, unfortunately, was tarnished rather badly when I discovered in retrospect that what I had gotten out of some of them was little more than rehearsed stories. What substantive law I did

learn was the fruit of my own independent efforts. Not all the professors taught this way, though. Some of them gave me an inspiring view of the law drawn from many years of practical experience and just the right touch of modern insight. These professors were enough to balance those who viewed their jobs as a boring chore, those who taught from outdated notes and antiquated viewpoints. Fortunately, negative professors are becoming a rare commodity at BLS.

With the newer faculty members, I felt like a guinea pig on which they could test their new teaching methods. Sometimes their methods worked well. At other times, they were dismal failures. The administration believes that new recruits should be given a chance to work out their own teaching methods. Where these methods failed, gaps appeared in my legal education. The frustrated professor only knew he or she had to try better next time. But we students entered our advanced courses (or worse, the job market) with a deficiency of basic knowledge we were assumed to have. Being a guinea pig is not always fair.

Second and third year at BLS were much better. I was not forced to take courses with professors who had unappealing personality quirks or who had slipped through the cracks of the BLS screening process. I was on notice as to who were the best professors. These people I consider geniuses in their respective fields as well as in the classroom. It was a pleasure to participate in their classes and to learn from them. They actually made learning the law fun (difficult as that may be to believe).

Overall, I would have to say that the faculty at BLS are a very open and friendly bunch. I never had problems getting in to see them, asking them questions in the

halls, or talking with them over the telephone. I believe I even made a few friends in the ranks of the faculty along the way.

## The Students

This was the hardest part of school to describe to my friend's sister. I have had so many different experiences with my fellow students at BLS it would be impossible to summarize them all adequately. Nevertheless, I gave it my best shot.

First year, things in the classroom were very tense. Many of us weren't ready to engage in mature classroom discussion without hauling off at each other with inane insults. Many people bared their insecurities by saying some pretty awful things to each other or, worse, hid them by never saying anything to anyone unless pushed to the wall via the Socratic method. I also believe that seeing the same people in class every day for two long semesters had a negative impact. The class was divided into three sections bursting with internal problems due to overexposure. Fortunately, the administration has taken steps to remedy this situation in subsequent classes.

On the positive side, I established a few close friendships that I expect will last long into the future. Of these, the ones I particularly treasure arose out of my first-year study group. Those guys are the greatest. I will never forget the times we shared getting through those long study periods.

Second and third year, I was exposed to the night students, often older students. These people are very much taken for granted at BLS. Not only did they add a great deal to classroom discussion, they helped me and many other younger students take a broader view of the law and mature as people in the process. How re-

warding it was to be treated as an equal by people with years of practical as well as academic experience in an astounding range of fields. How foolish we are to ignore those who should be cherished as the greatest resource in our student body. I admire them not only for their academic contribution but also for their ability to hold down an outside job while attending law school.

By third year, many of those who were immature pests first year (myself included) had developed into thoughtful and articulate legal scholars. Classroom discussions became more coherent, directed, and enjoyable. But for some, law school unfortunately was nothing more than a souring experience. I have seen very nice people become overtly cynical. I get the feeling law school has instilled in many of us a new sense of mistrust of the world around us. The art of lawyering, to some, seems to be defined by the trite adage "Do unto others *before* they do unto you." This is sad commentary on those who will be shaping our legal society well into the next century.

## The Elitist Organizations

Then there are those students who, for one reason or another, spend most of their time at BLS on the third floor. I am speaking, of course, of members of the Law Review, International Journal, Moot Court, and, yes, the staff of the *Justinian*. Since many of these people are close personal friends, I fear to tread these waters, that I might sink. But sink or swim, I shall press onward.

I found Law Review people to be a friendly bunch, not the cutthroats the rest

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## barbri

BAR REVIEW

SUMMER 1987

TOWN HALL (MANHATTAN)

LIVE MORNING & EVENING

SCHEDULE

Stanley D. Chess  
Director  
Steven R. Rubin  
Associate Director

Office Located at:  
Office Floor 2  
New York Penta Hotel  
415 Seventh Avenue (at 33rd Street) Suite 62  
New York, New York 10001 (212) 594-3696

DATES	LECTURE SUBJECT(S)	LECTURER
Tues., 5/26	How to Pass the N.Y. Bar Exam/Federal Jurisdiction	Chess
Wed., 5/27	Agency & Partnership	Chess
Thurs., 5/28	Evidence I	Rossi
Fri., 5/29	Evidence II	Rossi
Mon., 6/1	Insurance/Personal Property//Directed Testing I	Easley//Chess
Tues., 6/2	Criminal Law	Whitebread
Wed., 6/3	Criminal Procedure	Whitebread
Thurs., 6/4	Constitutional Law I	Jeffries
Fri., 6/5	Constitutional Law II	Jeffries
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Tues., 6/9	Torts II/Injunctive Relief	Conviser
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Thurs., 6/11	Wills II/Taxation	Johanson
Fri., 6/12	Domestic Relations	Wexler
Mon., 6/15	Real Property I	Scott
Tues., 6/16	Real Property II/Mortgages	Scott
Wed., 6/17	New York Practice I	Alexander
Thurs., 6/18	New York Practice II	Alexander
Fri., 6/19	New York Practice III	Alexander
Mon., 6/22	NO CLASS - READING DAY	
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Wed., 7/1	Commercial Paper/Labor Law	Spak
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Fri., 7/3	NO CLASS - VACATION DAY (HAPPY 4TH OF JULY WEEKEND)	
Mon., 7/6	Conflict of Laws//Directed Testing II	Vairo//Chess
Tues., 7/7	Contracts/Sales I	Moye
Wed., 7/8	Contracts/Sales II	Moye
Thurs., 7/9	Contracts/Sales III/Contractual Remedies	Moye

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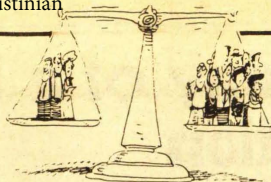
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# The Scalia Surprise

By Al Kamen



Supreme Court Justice Antonin Scalia is "very affable, very gregarious," says conservative legal activist Daniel J. Popeo. "Let's hope he doesn't get too friendly with the wrong crowd."

The reason Popeo and other conservatives are worried is Scalia's voting record so far, which shows him frequently siding with the court's liberal "crowd."

Most observers expected little ideological change when William H. Rehnquist became chief justice last fall and Scalia joined the court. If anything, they predicted the court's conservative wing would become more firmly entrenched with Scalia—aggressive, quick-witted and personable—giving added intellectual firepower and persuasiveness to the right.

The early indication, with not quite one-third of the court's 150 annual decisions handed down, is that those predictions were wrong. The picture emerging, though preliminary, is not a shift to the right but, if anywhere, to the left. Moreover liberal Justice William J. Brennan, not Rehnquist, appears to be in the driver's seat.

Although most of the court's cases and many of its most important rulings have yet to be decided, the latest tabulations show:

- Scalia has voted with Rehnquist 75 percent of the time—less than President Reagan's other appointee, Justice Sandra Day O'Connor. That also is less often than Justice Byron R. White or even centrist Justice Lewis F. Powell Jr., and less frequently than former chief justice Warren E. Burger.

Burger and Rehnquist had voted together more than 90 percent of the time at this point last term. During her first term, O'Connor agreed with Rehnquist 82 percent of the time.

At the same time, Scalia has agreed with Brennan in 62 percent of the cases decided this term, nearly the same percentage of agreement that Brennan has had with moderate Justice John Paul Stevens.

- Observers have been watching closely to see whether Rehnquist, the court's leading dissenter for many years, would moderate his views as chief justice and move to the center in order to control which justice writes the court's opinion. Rehnquist has not budged. In fact, he has dissented in 15 cases so far this term, five times more often than he had last term at this time.

- As a result, Brennan appears to be in a more powerful position than he has been in for years, winning every one of the important cases decided so far. By tradition, the chief justice decides who will write the court's opinion when he is in the majority. When he is not, the senior justice in the majority decides. Because he has been in the majority so often, with Rehnquist in dissent, Brennan has been controlling more assignments.

Any doubts about Scalia's independence and unpredictability were shattered two weeks ago when the new justice wrote an opinion, involving a police search, that stunned and dismayed conservatives. It wasn't simply that Scalia joined liberals and centrists in "handcuffing" police. He wrote the opinion. And he said the Constitution "sometimes insulates the criminality of a few in order to protect the privacy of us all."

Brennan couldn't have said it any better.

Replacing Burger's vote with Scalia's has so far made the court's voting pattern more liberal—in the conventional jargon.

Scalia's vote likely changed the outcome in some cases, including one decision, seen by some as a victory for freedom of speech, striking down a federal law prohibiting non-profit corporations from making direct political campaign contributions.

Another instance found him voting with the liberals to dismiss a case asking whether a city can be held liable for not properly training its police officers. Liberals breathed a sigh of relief that the court did not use that case to decide the issue because the facts weighed heavily against their view.

Scalia also has transformed cases that would have been shaky 5-to-4 liberal wins to 6-to-3 margins, including cases extending the reach of the Voting Rights Act, allowing special job protections for pregnant workers and making retroactive a ruling last year forbidding racial discrimination in jury selections.

The second key so far to the liberals' early success, however, has been Rehnquist. The only real power a chief justice has on the court comes from assigning the justice who will write the court's opinion in a case.

But that power can be wielded only

when the chief is in the majority. If he is not, the most senior justice in the majority, invariably Brennan this term, shapes the opinion by keeping it for himself or delegating it to another justice.

The evidence so far is that Rehnquist has remained steadfast to his legal philosophy. The price has been 15 dissents in the first 47 cases.

Brennan assigned every one of the 15. Those 15 assignments are nearly as many as Brennan ordinarily gets in a full year. Last year at this time he had assigned only four majority opinions.

"At this stage of the term," Fein says, "it is a liberal court. Almost all of the cases of import this term have come down liberal wins."

The list includes a decision, written by Brennan, upholding a temporary racial quota for promotion of Alabama state troopers, the case allowing special job protection for pregnant workers and a ruling that federal law forbids discrimination against persons "handicapped" by contagious diseases, specifically including AIDS.

"About one-third of the cases each term are so easy that there is a consensus," Neuborne says. "One-third involve a major dispute but the liberals don't have a chance," he adds. That category would include the vast majority of criminal cases.

"The remaining third are hotly contested, close, controversial cases," Neuborne continues, such as those involving abortion, civil rights or other major social issues. Those are the ones the liberals, so far, have been winning.

Then Scalia chided dissenters Rehnquist, O'Connor and Powell for not "adhering to the textual and traditional standard of probable cause," a solid reason for police to believe that a crime, warranting a search, has been committed. Scalia said the result was grounded upon "strict construction"—the battle cry of conservatives.

Conservatives, including many in the Justice Department, were astonished. Others were beside themselves. They had been uneasy with some of Scalia's earlier votes siding with Brennan, but there had been explanations for those. This one was too much. This was a bread-and-butter issue for the right.

Conservative activist Patrick McGuigan, a staunch Scalia supporter, says he was "surprised and disappointed." The ruling meant "a bad guy would go free," he says,

something he never expected Scalia would allow. Still, McGuigan remains confident that Scalia's overall record will please conservatives who ardently championed his nomination.

"We can't call this Ronald Reagan's Supreme Court," Popeo, general counsel of the Washington Legal Foundation, lamented after the ruling. "The Supreme Court," he said, "is not about to take some of the stands that need to be taken" to reverse liberal rulings under former chief justices Burger and Earl Warren.

Others on the left and right saw the opinion, Scalia's second this term, as a sign that his brand of conservatism will often lead him to disagree with Rehnquist.

"He's a true conservative," says New York University law Prof. Burt Neuborne, "who believes there are very substantial limits to what the government can do, versus a statist like Rehnquist."

"People who think that Scalia and Rehnquist are the same forget there is a difference between someone who is a cheerleader for the government [Rehnquist] and someone who is very skeptical" about government actions, he says.

Neuborne, formerly legal director of the American Civil Liberties Union, says that Scalia, like many conservatives, sees a "narrowly defined role for courts" and judges, but that once a government action comes inside that role, "he's willing to enforce" constitutional protections of privacy or free speech.

One observer who has worked with Scalia says the new justice "does not have a political agenda. Usually he will come out the way they [conservatives] want, but this is not a prepackaged agenda."

"There is a strain of old-fashioned anti-government conservatism there," he says, but "I would be very surprised if he changes his views [opposing] affirmative action" or on such issues as abortion.

Bruce Fein of the conservative Heritage Foundation also sees Scalia's opinion on police searches as an early "indication that he will depart from Rehnquist and chart his own course." Scalia, Fein says, can be expected to "reach the right result from his legal standpoint even if that result is not a politically conservative one."

Article by Al Kamen. Reprinted with permission of *The Washington Post*.

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# Anatomy of a New Direction

by Ronald John Warfield

In its continuing efforts to make the first year curriculum a more integrated learning experience, the administration has introduced a new course being taught jointly by Professors Berger and Bentele, called "Structure of Procedure." This course, part of a first year experimental program, was offered for the first time in the Fall of 1986. One section of first year students was selected for the course which combines two required courses, civil procedure and legal writing. I thought the best way to proceed on the article would be to interview the two professors together. Acting on a Berger/Bentele suggestion, I also interviewed Dean Trager for what was supposed to be some general background material on the mechanics of creating a course. The results of my interviews were quite enlightening, more than just the how and why of a particular course. There was caring and dedication, sincerity and a sense of purpose, and pride and hope, not only in what these professionals were doing, but in the students and the Law School as well. This article, the last that I will write as a student and as an editor of *Justinian*, is my gift to all of you . . . it's my way of sharing with you my belief that we are part of a process that is intellectual, creative, and meaningful to faculty and students alike.

MB = Prof. Berger  
UB = Prof. Bentele  
DT = Dean Trager  
Q = Question Asked

## PART I. Prof. Margaret Berger and Prof. Ursula Bentele

Q: Let's start at the beginning. How did the course come into being?

MB: The long range planning committee, made up of faculty and administration, was really looking to see where it thought the resources of the school would be used most effectively to try to improve some of the failings we saw in our students, and we thought that the first year made more sense because [first year] students are the most motivated, they haven't tuned out the system, they're eager, they work hard, they usually don't have outside jobs, and that once they decide that school is not for them—that law is not for them—it's too late. So that was the initial decision; that if we were going to put more resources into teaching it should be in the first year.

Q: Having decided to put more resources into teaching, how did you come to the decision to zero in on this particular course, this combination of two courses as I understand it?

UB: Well, this really isn't the only thing that the long range planning committee decided to do. What it decided to do was to have small sections—they are called seminar sessions in the first year—and everybody in the first year, this year, will have a first year course in a seminar section. And the Dean asked the faculty who were interested in teaching such a section to make proposals.

Q: So in other words, all of the first year students will have a seminar class, possibly not this seminar class, in one of their subjects?

MB: That's right. And a seminar class does not necessarily have the characteristics of a combined course. But what it has the characteristics of is a very small section. Aside from the smallness in size, the other characteristics are that it was agreed that there would have to be feedback. There would have to be some periodic way in which students in the class would be informed of how they were doing . . . and the idea would be that the final grade would not be the only grade in the course.

UB: So that the idea is not in the proposals that various faculty members gave to the Dean [that they were] going to teach 37 students rather than 100, one had to have ideas about what additional material one would give the students . . . how one would evaluate them ahead of time . . .

MB: Yes . . . what we put in the guidelines is that [the courses] would all share certain characteristics: small class size, greater informality, feedback furnished the students on a regular basis, writing assignments integrated with the substantive course, and a grade not based exclusively on what the bottom line was in the course. These were the guidelines for all of the first year seminar sections.

Q: Then the Dean asked which Professors wanted to work on what seminar courses and apparently somehow you two decided to do a joint course?

UB: I proposed initially a legal process and legal writing, and then Professor Berger at the same time—we really hadn't talked about it



Professor Berger

MB: I proposed combining civil procedure with legal writing and legal process, and getting someone else in as a team teacher. So, we had two proposals . . .

UB: Tailor made . . . it was a match . . .

MB: And the Dean said "O.K."

Q: So the Dean took the two proposals separately and made a marriage?

UB: that's right [MB agreeing].

Q: Now let's talk about the course. How did it evolve, what were you looking for?

UB: A summer with a lot of work [chuckle]. An article I was supposed to be writing never got written . . .

MB: Because we spent a lot of time preparing this summer, we did a syllabus. I think really we had very much the same objectives in mind. I think both of us thought that we found writing to be a very, very central concern and felt that there had to be a tremendous number of little assignments as well as some larger scale assignments integrated with the course.

Q: Are you saying that concentrating on the writing was a priority objective . . . Do you find that first year students are deficient in their writing ability; that is, their writing ability as it would apply to legal work?

MB: Yes. Both [UB agreeing].

Q: And how do you address that?

UB: By giving them a lot of assignments that we comment on, and sometimes we have them rewrite.

MB: There are different types of assignments [that we give], we are grading a little quiz we gave them the other day. And I think that both of them you said are true. Some people have difficulty writing because they have problems with legal analysis; if you don't understand the problem you can't put it on paper. Some people in addition to that, or some people—that's less common—independently of that, have writing problems. They don't write good sentences, punctuation, grammar. We're addressing ourselves to both.

Q: What about setting priorities in terms of the objectives of the class?

UB: Well, certainly that's one of them. I think there are several others and I don't want to

that are supposedly included in a legal process course which, at least from rumblings from both students and faculty, upper class faculty, people don't seem to get in the first year. That there are very basic things about the legal system, about the way courts decide things, and about—and this is where civil procedure comes in—about the process that you have to go through in order to vindicate your rights or get something that you want, or whatever . . .

MB: And legal reasoning and argument; being able to take a case apart, seeing what the arguments were that both sides made, seeing how the issue was presented to the court . . . holding and dictum and stare decisis and all of those things, but in a much less abstract context, because it is being tied into the actual materials that are being dealt with in civil procedure. We thought that if we put it together with a substantive course so that a . . . student could really see why one is learning these things it might be easier to understand.

Q: In my first year legal process was a course apart, it began prior to the regular term, with a concentration of two or three meetings a week and then it was integrated into the regular schedule. Do you begin with that type of emphasis on legal process? I know that there was some talk about dropping that course . . . and that there were Professors that didn't believe that the course should be taught [agreement] . . . in fact there were some very strong feelings on that . . . do you begin prior to the regular term?

MB: Yes . . .

UB: That first week before labor day . . .

MB: But it was a very integrated . . .

UB: We started on civil procedure things and we started on writing, and legal process . . .

MB: It was all tied in together.

Q: How do you feel the students are responding to this system as opposed to prior systems?

UB: It's very hard to tell. It's certainly very hard for them to tell because they don't know anything else.

MB: I certainly know these students far better than I have ever known students. We're in the fourth week of regular class, I know everybody's name. I know some biographical details about most of them because we've had conferences already . . . that's a very different kind of feeling.

Q: It's really one-on-one?

UB: And we really have a very, a pretty good sense of where people's strengths and weaknesses are already, which one certainly wouldn't have [otherwise].

Q: Have you had an opportunity to discuss the program with any of the other professors that are teaching seminar sections—I would assume there is one in torts and one in contracts [agreement] if they feel that there is a greater benefit to this system?

MB: It's still early on . . . it's been fun to teach, it really has been [UB agrees] . . . a tremendous amount of work, and the returns just aren't in on whether that enormous amount of work that we have put in, in terms of hours that we otherwise would have spent doing something else, would be warranted in terms of the improvement that we hope to see in students, that . . . is too early to see.

UB: But in general I think that the people teaching the sections are feeling positive [MB agrees] in the way it's going.

MB: We certainly are in a position to diagnose a thousand times more effectively, I think, than I've ever been able to do in the past, what a particular student's problem is. Whether being able to diagnose means that we can treat and cure, I don't know yet.

Q: Yes, but your diagnostic ability is not only to enable you to help the student, but for the student to better deal with the work?

UB: That's the hope.

Q: The other thing is, it appears to me that of all the seminar courses, assuming that they are in all of the major subjects in the first year, the most critical would probably be the one you're teaching because you are not only talking about civil procedure, but you are also addressing the basic skills that are necessary in order [for a student] to perceive . . . which is writing and thought process itself . . .

MB: That's right, and we also have oral arguments. Each student will do at least one oral argument. We've had two of those already where you have to get on your feet for ten minutes and argue . . . respond[ing] to questions based again on materials in civil procedure. Last time we made them argue as though it were in the Supreme Court, the case following a case that was in the casebook, and which

[case] was actually in the casebook too, and we made them take it apart and see what the arguments must have been that were actually made.

Q: Has this gone well?

MB: We thought there was tremendous improvement between the first group and the second group . . .

UB: The first group was the first day after Labor Day . . .

MB: Really, there really was a transformation. Now whether there was a transformation because of this course or it was a transformation because of two weeks of law school that would have taken place in any event, again, we don't have a basis to know.

Q: How does your road show work?

UB: When we co-teach you mean.

Q: When you're in the room together? Is it a Huntley-Brinkley system where you throw the mike to the other?

MB: Sort of . . . we thought we would model ourselves more on baseball announcers.

UB: We never interrupt each other . . . somehow.

Q: So there was some thought that went into this . . .

UB and MB [answering simultaneously as with one voice]: Oh yes!!

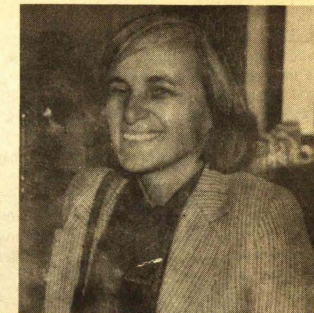
UB: In fact the first class we assigned . . .

MB: We wrote ourselves a script . . .

UB: . . . topics. We wrote it down as to who would lead the discussion on a particular topic. But after that we really decided that we could, informally, by cues, body language [throw the mike back and forth as it were] . . . and it has worked. [But] when we get tired at the end of the day sometimes we're both calling on different people, but that hasn't happened a lot.

Q: I would like to go back to the objectives for a moment. You said there were other objectives besides writing; what do each of you consider important?

UB: Well the fundamentals really, which is what you were starting to talk about, having the students really get a sound grasp of both process and procedure which are the two things that I think they need to know in order to learn anything else in the next two or three years.



Professor Bentele

MB: And argumentation skills, both oral and written . . .

UB: Right . . . and analysis, I mean it really includes . . .

MB: I mean we have really done a lot of little written assignments that are really fact pattern problems in essence, where we are trying to get them to do two things. As a matter of fact we give them two different grades: one is an analysis grade to understand the issues and how this little fact pattern relates to the cases that they have just read; but we also grade the writing . . . it's not just . . .

UB: How well are they getting across what they do understand, which is not always easy to separate . . .

MB: Yes; sometimes it's very difficult.

UB: The other thing we're doing that I think is unusual, probably, is quite a bit of discussion and work on legal ethics. Their first research assignment involves attorney solicitation of clients.

Q: Why is that included?

UB: Again I think partly because they're first year students, and I think that a lot of times if they don't get some sense of professional responsibility their first year, by the time they take professional responsibility to prepare for the bar, there is not the same feel to it . . . I don't think they take it as seriously.

continued p. 19



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BOSTON	Boston University School of Law Room 1420	10:00 A.M. 6:00 P.M.	video
BRIDGEPORT	Univ. of Bridgeport School of Law, Room 14	10:00 A.M.	audio
BROOKLYN	Polytechnic Institute of New York 333 Jay Street - Room 418	10:00 A.M.	audio*
BUFFALO	SUNY at Buffalo School of Law Room 106	9:00 A.M. 6:00 P.M.	video
CAMBRIDGE	Harvard Law School - Pound Bldg., Room 102 (No class 6/11 - instead class will be 6/13)	9:00 A.M.	video
CARDOZO/NYU AREA	Cardozo School of Law - Room 309 (No class 6/3 & 6/4 - double session on 6/7)	10:00 A.M.	video
CHARLOTTESVILLE	Univ. of Virginia School of Law - Room 110	9:00 A.M.	video
CHICAGO	Univ. of Chicago Law School - Seminar Room D	9:00 A.M.	audio
COLUMBIA UNIV.	School of International Affairs - Room 404	10:00 A.M.	video
DURHAM	Duke University School of Law - Room 102	9:00 A.M.	audio
FIRE ISLAND	Taller House, G Street & The Ocean, Seaview (Last house on the left)	9:00 A.M.	audio
HAMPTONS	654 Dune Road, Westhampton	9:30 A.M.	audio
HEMPSTEAD	Hofstra University School of Law - Room 308	10:00 A.M. 6:00 P.M.	video
ITHACA	Cornell Law School - Classroom A	9:00 A.M.	video
LOS ANGELES	TENTATIVE - Contact New York Office		audio
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NEWARK	Rutgers University School of Law - Room 343 Room 348	10:00 A.M. 6:00 P.M.	video video
NEW HAVEN AREA	Koala Inn, 490 Sawmill Road, West Haven, Ct.	9:00 A.M.	video
NORTHERN CALIF.	Contact New York Office for Details		audio*
PHILADELPHIA	Holiday Inn, 18th & Market Streets	9:30 A.M.	video
POUGHKEEPSIE	TENTATIVE - Contact New York Office		audio
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ROCHESTER	The Harley School, 1981 Clover St. - Room W-04	10:00 A.M.	video
SPRINGFIELD	Western New England College School of Law Room D	1:30 P.M.	video
STATEN ISLAND	Wagner College - Student Union Rm. 204 631 Howard Avenue	10:00 A.M.	audio*
SUFFOLK	Touro College School of Law Nassau Road, Huntington - Moot Court Room (No class 6/3 & 6/4 - double session on 6/7) EVENING schedule TENTATIVE - Contact New York office.	10:00 A.M. 6:00 P.M.	video video
SYRACUSE	Syracuse University College of Law- Brooks Lecture Hall	9:30 A.M. 6:00 P.M.	video
TOWN HALL	See Separate Schedule on Reverse of LIVE Schedule	1:30 P.M.	video
VERMONT	Doran House, Apt. #1, Green Valley, S. Royalton	9:00 A.M.	audio
WASHINGTON, DC	Georgetown University Law Center - Hall 3 Ben Franklin University (16th & L St.) Rm. 31	9:00 A.M. 6:00 P.M.	video
WESTCHESTER	Best Western Coachman Hotel 123 East Post Road, White Plains	10:00 A.M. 6:00 P.M.	video

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# The Death of the Presumption of Innocence

by Peter J. Mollo

The competing interests of the first amendment's guarantee of a free press and the sixth amendment's guarantee of a fair trial sometimes results in a sacrifice of the sixth amendment right. This unfortunate result is due to the great value we attach to our first amendment freedoms and the power they give us to monitor our government.

For example, heightened public awareness of abuse of power in the post-Watergate era, has led to the appointment of many special prosecutors and commissions which has resulted in the convictions of corrupt public officials. An informed public forms the keystone of the democratic process. Without this vital element our system ceases to function. But when an overzealous prosecutor, public official, or reporter allows too much information to flow into the public domain, he may unwittingly damage the reputation and livelihood of an innocent person.

Lawyers have a special obligation to make sure that their behavior does not work against the presumption of innocence. The American Bar Association's Code of Professional Responsibility states:

A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would

expect to be disseminated by means of public communication . . . (DR 7-107)

The footnote to this disciplinary rule cites *Sheppard v. Maxwell*, 384 U.S. 333. Dr. Sheppard was accused of murdering his wife in 1957. Before the trial, Sheppard was subjected to a televised coroner's inquest for two days without benefit of counsel. The subsequent trial was characterized as unfair by the Supreme Court, because the press was allowed to set up a table inside the court, and the prosecutors made many damning statements to the press from which the jury was not shielded. Dr. Sheppard was convicted and spent eight years in prison.

Twenty-five years later, Father Bernard Pagano was accused of being 'The Gentleman Bandit' sought by the Delaware police. The conduct of the prosecutors, police, in this case and the press was so prejudicial that Father Pagano lost the support of his diocese and the general public. When the actual perpetrator came forward and confessed Pagano was exonerated. Yet the Delaware police and prosecutors continued to intimate that Pagano was guilty despite the confession from the actual perpetrator. Their behavior was so egregious that Father Pagano instituted civil proceedings against them. He has since gone on to create a foundation dedicated to reclaiming innocent people from prisons.

Neither Dr. Sheppard nor Father Pagano had

a prior criminal record. Both were professional men of privilege and standing in their communities. But false accusations destroyed the reputations of both these men and changed their lives forever. For them, the presumption of innocence was more myth than reality.

Politicians are in a very difficult position. A politician's most valuable asset is his reputation. Once that is sullied in the press by irresponsible investigators, prosecutors, or reporters, it is nearly impossible to repair the damage. If a politician publicly supports a colleague who is accused of wrongdoing and the colleague turns out to be guilty, the supportive political friend will look foolish, guilty, or both. On the other hand, if he publicly condemns the colleague, he disregards the presumption of innocence. Disciplinary Rule 7-107 of the ABA Code of Professional Responsibility should be broadened to include public officials who also happen to be lawyers. A broadening of this rule would enable politicians who feel compelled by circumstances to add their voices to the extrajudicial hysteria accompanying a case to function responsibly and reserve resolution of legal matters for the court. This restraint would not damage the first-amendment right of free speech and press but would safeguard the sixth-amendment right to a fair trial and help preserve the presumption of innocence.

## The Night Owl's Final Hoot

by Scott M. Sommer

And so the journey is finally coming to an end. To think that four years ago we streamed into this place on a hot August day to find out what a legal process was without fully understanding how our lives would change once we entered these halls.

There we were, thrust into an orientation group listening to an upper-class student ramble on about how "it's not that bad" and "you'll get by," "the professors are pretty nice and they'll go easy on you at first," and so on. For the first few weeks we hung pretty close to our orientation groups, grappling with the frustrations of first-year life: balancing the job with school, balancing family life with school, negotiating our way through the New York City subway system in time for our 6:00 p.m. classes.

Then there were the larger battles we fought that first year and continue to fight as we pass through the legal education machine and into the legal system itself. For some of us it is the constant struggle not to lose sight of the larger picture, of what is going on *outside* the law school and the legal world's overly narrow way of viewing society. Pause now for a moment and choose a world problem, i.e. hunger, which may trouble you.

Before law school it was simple enough to view this matter broadly and formulate a comprehensive solution to the problem. Now we run through a series of mental steps which act as a barrier to solving this problem. First there is the major step of even allowing oneself the freedom to tear the mind away from law school and the law to even think about this problem. Then there is this constant effort to narrow things down to the most discrete element, thus losing sight of the whole picture. Finally, once you have narrowed it down to the point you will examine, the fun really begins—the search for the legal theory and the appropriate remedy.

What if there is no obvious legal theory and/or Published by BrooklynWorks, 1987

remedy? *You may have to be creative!* Now that is the real problem, for in many ways, this desensitizing experience called law school has stifled our creativity, our ability to take chances and to be daring. Unfortunately law school has *not* taught us to (as they say in the Army) "be all that you can be." There are only so many times that one will allow him or herself to get knocked around in school, both in and out of class, before they stop taking chances in life and go out on a limb. Believe it or not, even the egos of law students and lawyers have limits!

So now we have a narrow view of the world. What about the way we treat each other? Remember kindergarten class, (I'll never forget Mrs. Soskis, rest her soul, and the tissues she always had shoved up her left sleeve) where we were taught to share and interact with each other in caring, productive ways? Sharing the building blocks and the doll house, the tools of the trade one could say, was the way of life. Now we in law school share a lot less and have become overly suspicious of people who are asking for something, even classmates.

After a while most of us broke off from our orientation group and settled in with others for the long march to freedom.

With these people we were comfortable. With these friends we would share everything, both material and emotional. These are the people who got you through Federal Income Tax when you had to work a zillion hours of overtime at work; these are the people who listened when your life was in shambles. These friends understood you and propped you up when others chewed you up and spit you out. This circle could not be penetrated. But as time went on even this circle started to crumble.

The final year brought new tensions, most prominent amongst them the great job search. The job

search is a topic that is rarely discussed for fear of someone having a convulsion. When the topic is broached, demons appear and some good friends have misunderstandings which unfortunately may grow too large to ever become truly repaired. One can only hope that apologies are accepted and time heals the wounds.

And so my consciousness steams ever onward and I cannot figure out how to end this rambling piece of thought. How about some shortcuts and farewells? First off, a thank you is in order to the editors of *The Justinian* for allowing me to write on whatever I wanted to and to get it in at my convenience. It's been especially fulfilling to focus on life as part-time students, as we are generally ignored. For example, two recent slights occurred when 1) this esteemed paper did an article on the Moot Court Honor Society and *did not even mention* that there is an Evening Moot Court Honor Society and 2) in the recent "Second Circus," (which was quite enjoyable) there was not even lip service paid to the part-time students, let alone any portrayal of life for them at BLS.

Survival of this experience would have been impossible were it not for the National Lawyers Guild chapter here at BLS. Always a supportive group, my brothers and sisters in the Guild helped provide a community for progressive thought and action which really made it easier to weather the bump and grind of BLS. Happy 50th Anniversary NLG!!

Finally, part-timers, keep the faith. It is easier to strike a balance on the scales of justice than to go to law school while you work and/or take care of your family. When you're through, however, the satisfaction that you will feel will be indescribable. The light at the end of the tunnel shines bright and awaits your arrival. So let me take my leave; life's clock is tickin' and I've got some appointments to keep.

Scott M. Sommer, a fourth year evening student, can be heard suffering through the bar exam and readjusting to a "normal" life on "Housing Notebook," broadcast every Saturday at 7:30 P.M. over WBAI 99.5 F.M.



## EDITORIALS

### A Question of Courtesy

Those of you that have managed to squeeze out the time to go and see a movie between studying might have been amused or irritated by the pre-feature cartoon that is shown in most metropolitan New York theaters to warn you, the paying theater-goer, not to talk, smoke, or disturb your neighbors that are there to see the show. The message, in a single word, is courtesy. There is a lesson to be learned and carried over into the classroom and the second floor of the library by those law students who are operating under the mistaken illusion that simply because they have been accepted at an institution of higher learning and are paying tuition, they have the right to revert to the type of behavior for which the pre-feature cartoon was obviously designed.

With all the public space the five boroughs has to offer, it is certainly not necessary to socialize in the library where some of your fellow students are really trying to learn and research the law. And in the classroom, both your fellow students and your professors deserve more courtesy than is presently being extended in most classes. If you find yourself surrounded by the voices of inconsiderate little children when you are trying to listen to the professor, ask for and then demand silence. Finally, for those that can't stop themselves from speaking, take the GRE's next time they are given.

### FIRST YEARS' SUMMER BLUES

With summer fast approaching, first year students are experiencing the gut-wrenching anxiety associated with attempting to secure legal employment. Although high paying (or for that matter paying) jobs for first years are scarce, there do exist a number of clinical and internship opportunities that students should seriously look into.

First years' focus at this point should be in attempting to find a resume building job for the summer, not money. The unfortunate reality for first years is that most employers do not believe that first year students are knowledgeable enough to warrant salaries of more than a pittance. For the amount that you might receive working for \$7.50 an hour for a Court Street negligence firm, your time would be better spent learning the law and doing more respectable work in a clinic while at the same time building up your resume.

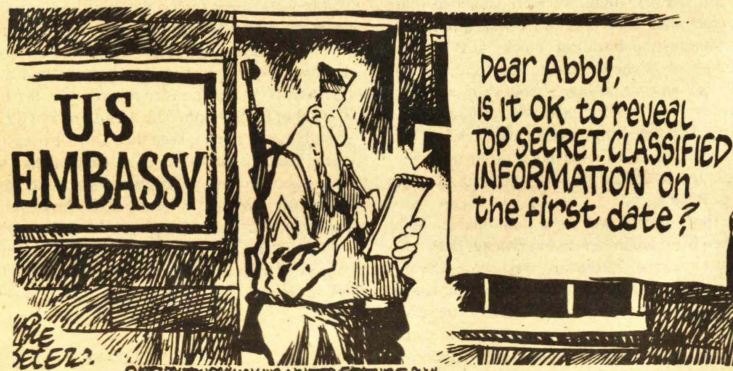
When second year interview time rolls around next August, the interviewer will be much more interested in your experiences at the Corporation Counsel or a Judicial Clinic than where the proper place to file papers is in Brooklyn Supreme. While it's true that doing volunteer work or low paying clinics may not help too much in paying the bills, one should not lose sight of future goals for short term gain.

### Changing of the Guard

As the last issue of the school year, THE JUSTINIAN would like to take this time to acknowledge the efforts of the outgoing editors and staffers who during their stay at Brooklyn actually managed to find the time and patience to write, edit or proof articles, aid in production, cover a school event or simply lend a helping hand when hands were scarce.

Most notably we would like to give our sincerest thanks to Matthew Flamm who put so much time into the paper's day to day functioning, that people often thought he was participating in a sleep deprivation experiment. The wearer of many hats, without Matt's efforts it is doubtful at best if there would have been a paper at all this past year. We thank him for all his contributions and wish him well. He will be missed.

We would also like to thank the following graduating editors and staffers for their contributions to the paper's success: Gina Pettinelli, Ron Warfield, Grace Lee, Jon Hudis, Nina Keller, James Locantore, Scott Sommer and Donna Riccobono. You've made this place bearable. Good luck to you all!!



## THE JUSTINIAN

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## CORRESPONDENCE

### Does Not Compute

Computers are present and future necessary tools for legal writing. Citation, for example, on an ordinary typewriter can be extremely time consuming, whereas, on a computer, it can be accomplished with two key strokes. Revision, a constant in legal writing, with a computer, becomes extremely easy and almost a pleasure. The ease with which citing and revising can be accomplished on a computer is an example of the many functions which computer software offers to make legal typing easier.

The ease of legal writing with computers, however, becomes marred by the difficulties a student encounters at BLS if she does not own a computer. The first problem I encountered, as a first-year student, was that although I had access to computer terminals, there were no software programs available in the library. I overcame this particular obstacle by purchasing my own DOS and WORDPERFECT. The obstacles to use of a computer for legal writing, however, were not over: the library does not have a printer. The library staff informed me that I could use the SBA's printer. Being allowed and being able are two different things, however, as I soon discovered. The first problem was that the SBA does not keep regular hours and is very rarely open in the late afternoons or evenings, which limits the access to the printer to times when classes are being held. Even if, however, an SBA representative can be found to open the door, the computer hardware is lacking. On the first two occasions I had to use the printer there was no ribbon, and one time the keyboard was missing. After using BLS's computer facilities to write several drafts of two memos and my brief, I have only had one occasion to use the

SBA printer. Only because of Marsh's and Deanna Handler's kindness have I been able to get my papers printed.

While computers are necessary and competitive in legal writing, unless changes are made in the BLS facilities to allow students access to software printers, the competitive edge will be lost for the students who cannot afford computers.

Laura Co

### BLSA Take Divestment Stance

In the 1984-85 school year, prior media attention now surrounding divestment in South Africa, BLSA, the Brooklyn Law School Association, and several other school organizations attempted to have the law school divest its holdings and make a moral decision about its financial investments. The obstacles to use of a computer for legal writing, however, were not over: the library does not have a printer. The library staff informed me that I could use the SBA's printer. Being allowed and being able are two different things, however, as I soon discovered. The first problem was that the SBA does not keep regular hours and is very rarely open in the late afternoons or evenings, which limits the access to the printer to times when classes are being held. Even if, however, an SBA representative can be found to open the door, the computer hardware is lacking. On the first two occasions I had to use the printer there was no ribbon, and one time the keyboard was missing. After using BLS's computer facilities to write several drafts of two memos and my brief, I have only had one occasion to use the



## Baby M from p. 1

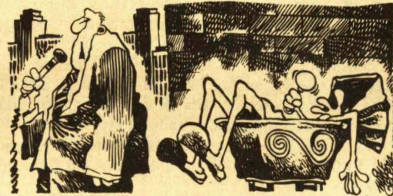
and discussion of the issue of surrogate parenting in the media. Several things became clear during this debate. Surrogate parenting evokes intensely personal emotional responses from many, if not most, people concerned with the issue. It is a subject on which reasonable people can and do differ. Standard categories such as liberal, conservative, civil libertarian, feminist, lay person, professional, do not serve as adequate predictors of opinions on this complex and difficult issue.

Having agreed to say something on the subject for this newspaper, I want to preface my remarks by a very important caveat. These are preliminary thoughts on an issue which cries out for painstaking analysis and sober reflection. In my judgment, no responsible person can, at this time, present a final reasoned answer to the emerging problems that surrogate parenting presents for the law and for our society. This is but one of a growing number of very complex moral and social issues with which medical technology confronts our society today.

I put myself in the critical camp on this decision; although I want to say at the outset of my criticism, that given the immediacy of the problem presented to Judge Sorkow and the inadequacy of existing law to deal with it, no one could have been expected to write the perfect opinion. Secondly, this is not a problem with an adequate solution—it is about as close as one could get to the agony of King Solomon presented with the competing claims of two "mothers" to the same baby—fortunately, the Judge did not attempt Solomon's solution. Nevertheless, within the established parameters of the law, I believe there is room for some serious criticism of Judge Sorkow's decision.

There are several areas of law to which the Judge might have turned for guidance, if not for controlling precedent. One is contract law, another is the law of custody between two nat-

ural parents, a third is the law of adoption. The application of any of these discrete bodies of law to the problems presented by surrogate motherhood might require modification in light of constitutional rights to parenthood and autonomy articulated by the United States Supreme Court in a series of decisions elaborating the constitutional right of privacy first identified in *Griswold v. Connecticut*. To some extent each of these bodies of law must inevitably play a role in the decision making process, whether or not acknowledged by the Judge.



AFTER 40 YEARS OF SUITS AND COUNTER SUITS, THE SUPREME COURT HAS FINALLY RULED ON THE BABY M CASE....

To begin with, there was a contract between adult (therefore, presumably competent) parties regarding the conception, pregnancy, birth, and relinquishment of parental rights by the mother. Contract principles must therefore play a role in the decision-making process, if only to the extent of declaring the contract unenforceable on grounds of public policy or for lack of "informed consent."

Secondly, since there is no dispute over the biological parenthood of both Marybeth Whitehead and William Stern, one could plausibly assert that the "best interest of the child" standard which generally governs the resolution of custody disputes between natural parents should control. On the other hand, since this was a conception by artificial insemination of a married woman, one might argue that the traditionally irrebuttable presumption that the husband of a married woman is the father of

any child born to that woman during coverture should control. This would effectively prevent William Stern from asserting his paternity and litigating the issue of custody.

A less draconian argument might simply assert that the best interest standard is inappropriate under circumstances where there is no relationship (other than the possible critical contractual one) between the biological parents and where there has been no voluntary surrender of the child by the mother. This would require the court to adopt an alternative stan-

child. Absent such a finding, a natural parent cannot, under normal circumstances, be deprived of all contact with his or her child. Clearly there was no such finding in the case of Marybeth Whitehead, Judge Sorkow did not make such a finding against Marybeth Whitehead, his gratuitously derogatory comments to the contrary notwithstanding.

The law of adoption reflects this same fundamental commitment of our legal system to respect for individual autonomy and a distrust of state intervention in such highly personal matters as child rearing and family life. Adoption occurs in basically one of two ways. A child is "freed for adoption" by a final determination of abuse or neglect against his/her parent pursuant to the standard set forth above, or a child is voluntarily surrendered by a mother (and/or father under appropriate circumstances). In the case of voluntary surrender, however, the law of adoption specifically allows for a change of heart by a mother who decided upon reflection, after the birth of her child, that she cannot separate from the child. Marybeth Whitehead was not permitted such an option under the terms of the surrogacy contract. It was possible that the Judge in such a case might have read such a term into the contract as a matter of public policy. To be sure, there are sound reasons for not doing so, the primary one being that, at least as to the father, this is not really an adoption.

Even this cursory review of the available strands of legal doctrine from which the Judge might have constructed his opinion in this case, reveals that no particular answer is compelled by existing law. A case, therefore, can certainly be made for the position which Judge Sorkow actually took—that his inherent equity powers and his responsibility as *parens patriae* permit him to base his decision simply upon his determination of the best interests of this child in this case, weighing the relative merits of the home environment and consequent life

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seize whatever political devices are within our grasp to eradicate this Nazi-based, so-called system of government. Thus, we call upon the Board of Trustees, Dean Trager, and the faculty to remove all of the Law School's holdings, if any, in companies doing business or investing in South Africa.

Recently, a growing number of foreign companies have sold their operations to white South Africans and ostensibly severed their ties with the country. The opponents of economic sanctions against the South African government have seized upon this new development to demonstrate that sanctions will not end this racist regime. While concededly economic sanctions alone will not eliminate apartheid, sanctions will lend moral support to those South Africans who are fighting to gain the right to study and speak their own language; to own property owned by their forefathers; to vote for their leaders in their own land.

Polish workers recently assessed the effectiveness of five years of United States sanctions against their country. While these sanctions did not cripple the Communist Polish government, the intangible and, therefore, immeasurable benefit of sanctions was to "sustain the victims" in their struggle for rights in Poland. See *The New York Times*, February 9, 1987, p. A18. We believe that sanctions will lend moral support and create an opportunity for black South Africans to participate in the running of their country.

Until very recently, America was content to merely vilify the repressive and racist system of apartheid. This half-measure was tantamount to giving affirmative support to the South African government. Constructive engagement, a weak foreign-policy position, clearly could not work in a country of racist zealots who base their right to repress the "kaffirs" on an order from God. Congress took a strong positive stance and ordered economic sanctions

tion about the evils of apartheid was not a sufficiently strong tool for the law-making body of this country and should not and cannot be strong enough for this law school.

How can Brooklyn Law School justify supporting, in any sense, a system so repugnant to the legal and ethical principles upon which this country is based? There is a moral dilemma which BLS faces, for which the unique resolution is symbolic and financial disassociation from the white racist regime of South Africa. The Board of Trustees, the dean, and the faculty may fear divestment based on a belief that the school will suffer financially. However, ethical investments are possible, and educational institutions like Columbia University, and state governments like New Jersey, are in the process of so doing. To decide against divestment will effectively preclude Brooklyn Law School from calling itself an institution of higher learning.

Our position is clear: the Board of Trustees, the Dean and the Faculty of this law school must take a firm stand against apartheid by divesting all of the law school's funds from those companies having holdings in South Africa.

Black Law Students Association  
(BLSA)

## Trial Advocacy Troubles

As a recent participant in the Trial Advocacy Competition, I feel compelled to voice my opinion in regard to the manner in which the competition was organized and judged as well as the complete lack of support and participation of the BLS Moot Court Honor Society. An unfortunate realization that quickly came to light after participating in the competition is the status of Trial Advoca-

cacy in the Moot Court Honor Society. While the society is composed primarily of members of both intramural and intermural Appellate Advocacy teams, the Trial Advocacy team is also part of the society and competes in a national competition as well. It deserves some of the time and effort of society members. Why then was the competition held to select next year's trial advocacy team run so shabbily?

The competition was run primarily by two former members of the Trial Advocacy team. What became evident as students competed was that additional support from the society was entirely lacking. Additional members of the society and the former Trial Advocacy team were nowhere to be found on the day of the competition, and it was clear that neither the chairman nor the vice-chairman of the society had any role in the competition. Without such support, two students were left to run the competition as best they could.

Judging for membership on appellate teams is traditionally done by a panel usually comprised of a combination of society members, professors, local judges, and outside attorneys with many rounds to insure objective judging and the selection of only the best qualified students for membership. In light of such formal and careful judging for the appellate teams, the judging for the Trial Advocacy competition is baffling. There was only one round in which participating students were either judged by one of the two student organizers or a criminal law professor highly experienced in trial advocacy. It is clearly evident that objective judging and the insurance of selecting only the most qualified students gave way to expediency. As a result, a great injustice was served against all the students who participated in the competition and, in the long run, against an entire school concerned with selecting and sending top-rate students to national competitions.

In a recent issue the Justinian profiled the Moot Court Honor Society. Sadly enough,

neither the Trial Advocacy team nor the competition for membership was mentioned. It's difficult not to conclude that trial advocacy is not viewed as very worthwhile by the society and treated as second class. Perhaps Mr. Enright's successor will see fit to rectify this situation so that next year's participants are judged fairly and objectively.

Name Withheld

## Grounds For Objection

There really couldn't be a more amiable group of people at BLS than the cafeteria (Blackletter's) staff.

Students are greeted every morning with freshly baked muffins, various types of bagels with cream cheese, butter, both, jelly—any way you want them. A variety of juices are available, even prune juice, in case that bran muffin failed to do the job.

Hot meals, a salad bar, trail mixes, decadent cookies and brownies—we really have it pretty good! An assortment of teas to fit every personality is available for those who prefer some choices within this environment of limited choices of courses that seem available. Wait until next term...

So what, you may ask, is the purpose of this fusillade of praise for our culinary cafeteria? What is missing? O.K. I'll tell you. Coffee, JAVA, JOE, that all impor-

continued on p. 22



# OUT ON THE TOWN: LOUSY THEATER, GREAT DINNER

by Judith A. Norrish

I always welcome the opportunity to see theatre, but my enthusiasm was certainly dampened when I viewed **WOMEN BEWARE WOMEN** which opened at Playhouse 91 in late March. **WOMEN BEWARE WOMEN** was a Jacobean tragedy authored by Thomas Middleton which addressed the double standard in seventeenth-century England. In this version, Howard Barker, a contemporary playwright, has updated the piece to address the double standard through modern eyes.

The first act is a condensed version of Middleton's original work. However with few exceptions, the actors are oceans away from the spirit of Middleton. In the second act, the actors are somewhat more comfortable with the material, and the lan-

guage of Barker's earthy vernacular replaces the period flourishes of Middleton. But it doesn't work. Performances for the most part were mediocre and ineffective. Judson Camp, Sally Kirkland, and Chet London were the pillars of granite in an otherwise shanty-town construct.

Fortunately I planned my evening of theater with a marvelous friend who has been a singer, songwriter, actor, television star, playwright, and director. He is also a wonderful cook. The highlight of my evening was *not* **WOMEN BEWARE WOMEN**; it was **RAY'S CHICKEN FRICASSE**. For your dining pleasure, I have wrangled the recipe from Ray in the belief that good dining makes for a good law student.

## RAY'S CHICKEN FRICASSE

### INGREDIENTS:

1/2 large bulb fresh garlic, minced  
4 medium onions, diced  
3 large green peppers, diced  
8 oz. unpitted green olives  
4 oz. capers  
2-3 oz. olive oil  
salt and pepper  
2 or 3 cups cooked white rice  
3-lb. whole chicken in parts  
1 six-oz. can tomato sauce

A five-quart pot, preferably cast iron, should be used. Begin by sautéing garlic

in olive oil. (Note for novices: always heat the oil before adding garlic.) Add onions and green peppers and sauté. Then add olives, capers and pepper; salt to taste. (Note that capers and olives are salty, so for salt-conscious chefs, no salt may be necessary.) Introduce the tomato sauce and simmer for about ten minutes. Add the chicken parts and pour three to four cups of water in the pot. **THE WATER SHOULD COMPLETELY COVER THE CHICKEN.** Cover the pot. Raise to a high flame until the water boils; then lower the flame so that ingredients can simmer for forty-five minutes. Serve over white rice.

BON APPETIT!

# Make Tracks To The Transit Museum

by Linda Price

The New York City Transit Authority's Transit Exhibit is a real museum and it's only a few blocks away from Brooklyn Law School. Located at 37 Jay Street, admission costs a subway token. (Half fare for children under 17) The entrance is on the northwest corner of Boerum Place and Schermerhorn Street. The hours are 10 am-4 pm week days.

It is a step back in time. Its located in a 1930's subway station and is often used by film crews who appreciate the exhibit's air of authenticity.

Once inside you will see photographs, models and actual old fashioned subway

cars including the wooden ones with their rattan seats, an operating tower with an active rail busily moving trains in and out of the Court Street station and the first IRT train whose route was City Hall to Upper Broadway.

Subway lights, turnstiles, buses, trolleys, those incredible mosaics of the NYC subway system—they're all here and displayed in a fascinating way.

A gift shop sells "transit trinkets." There is a theater where films about transit are shown and a lunch room for school groups.

For further information call the museum at 718-330-3060.

## Brooklyn Museum Upcoming Exhibits

### HOME SCENES: AMERICAN GENRE PAINTINGS FROM THE BROOKLYN MUSEUM COLLECTION

A display of fourteen 19th—and 20th-century paintings featuring domestic imagery by such artists as Mary Cassatt, William McGregor Paxton and Francesca Alexander. The show takes its name from Thomas Eakins' painting *Home Scenes*, which will be included. (American Galleries, 5th floor)

Opens April 22 (through July 20)

### HIROSHIGE'S ONE HUNDRED FAMOUS VIEWS OF EDO: SUMMER

The last in a series of five exhibitions organized by season and devoted to the complete set of 118 woodblock prints by one of Japan's greatest masters of landscape, Utagawa Hiroshige (1797-1858). This selection features views of Edo (modern Tokyo) in summer. The entire set will be shown from September 12 through November 30. (Japanese Gallery, 2nd floor)

Opens May 6 (through July 6)

### BEVERLY PEPPER: SCULPTURE IN PLACE

The first major survey of this important contemporary sculptor will include 60 works spanning two decades and ranging from highly polished stainless steel sculpture of the '60s and earthbound geometrics of the '70s to recent soaring vertical monoliths of cast iron. The exhibition was organized by the Albright-Knox Art Gallery, Buffalo, New York. It was made possible by a grant from GFI/Knoll International Foundation. (West Gallery, 5th floor)

Opens June 5 (through August 24)

### GENERAL INFORMATION

#### MUSEUM HOURS:

Open daily, except Tuesdays, 10 am—5 pm. Closed Tuesdays, New Year's Day, Thanksgiving and Christmas.

#### ADMISSION:

Suggested contribution: \$3.00; students with valid I.D. \$1.50; senior citizens \$1.00. Free to members and children under 12 accompanied by an adult.

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# New York, New York

by Peter Schaffer

Moma Leone left a note on the door. She said "Sonny, Move out to the country." . . . Workin' too hard can give me a heart attack . . . It seems such a waste of time If that's what it's all about If that's movin' up then I'm movin' out. —Billy Joel, "Movin' Out (Anthony's Song)" "If I can make it there, I can make it anywhere." —From the song "New York, New York"

As the winter's snows melt into my final spring of law school, and the days to graduation have dwindled to two digits, I feel it necessary to reflect on my three years at Brooklyn Law School and in the city of New York. Having grown up in upstate New York (the city of Cortland, population 17,000 humans, 17,000 head of cattle), and having done my undergraduate studies at a rural school, the last three years have been quite an adventure, one that I am grateful for having experienced yet happy and relieved to be leaving behind me. New York is definitely a unique and extraordinary area, but as the song goes, "Sonny, move out to the country."

New York City is a living definition of the term *Catch-22*. It offers to the adventurous soul the opportunity to take part in almost any imaginable activity created by our society and some activities that have yet to be discovered. At the same time, there exist just as many negative situations and conflicts to experience, to avoid, and to remedy.

For example, students at BLS are offered the priceless opportunity of legal training in the most prestigious and litigious city in the world. New York is the center of the cultural and legal world. One has the opportunity to work and learn the law in any number of private law firms and/or public agencies, and at the same time money on down to any number of courts in the city to see the law being created. The numerous Mafia trials, the Agent Orange case, the NFL/USFL Anti-Trust case, and even the Joe Peppone trial (a trial in which I worked for the defendant) all have occurred within a five-minute subway ride from our school.

Yet at the same time, the pressure, extraordinary work environment, and working hours of a New York legal practice often make the experiences not worth the effort expended. Also, one of the major reasons that New York is the most litigious city in the world is that more crime, illegal activity, and cutthroat practices take place within the five boroughs than anywhere else in the world. One can witness any number of criminal activities firsthand by just walking down a street or riding a subway.

One is also constantly bombarded with news accounts of tragic and violent crimes and accidents occurring within earshot of the reader or listener. The old saying that one can be killed by just walking across the street is true anywhere, it's just that I do not believe the creator of this saying was envisioning muggings by crack addicts, murders by gangs, rub-outs by Mafia types, or the like. It just does not seem sane or logical to continue to live in this type of environment.

New York also offers the widest spectrum of cultural, social, and sporting activities anywhere around. Even one from the country gamers tremendous joy out of a day spent wandering through the MOMA (that is the Museum of Modern Art for those of you not in the know) or the Museum of Natural History. Where I grew up, a Friday-night discussion of what to do whittled down to which of two different bars, located a stone's toss from one another, to congregate at. In New York, the number of discos/nightclubs is only outnumbered by the number of bars and assorted waterholes, which of course is only outnumbered by the throngs of restaurants which feed the city any number of cuisines. And then there are the sports. New York is famous for both its sports and its sporting fans.

I will never forget the euphoria and excitement that I experienced as the Mets came from behind to crush the hated Red Sox. Being at the seventh game of the World Series and also at the ticker-tape parade the following day and celebrating with what seemed like all of New York is an experience that I will not soon forget. There of course is also football, basketball, hockey, the U.S. Open, and even tractor pulls at Madison Square Garden to fill any sports-crazed fan's calendar. As the song goes,

"I want to wake up in a city that never sleeps."

But along with all the culture, social events, and jubilation come poverty, filth, homeless people, crime, insensitive, pushy, cranky citizens, outrageous and even usurious prices, and pressure. A five-minute drive with a non-English speaking, horn-honking, half-crazed cab driver through a midtown traffic jam can be the most harrowing experience of one's life. A walk through Grand Central Station on a Saturday night in mid-December, seeing all the homeless and destitute human beings snuggling for warmth by the heating vents, watching as New Yorkers pass right by them, averting their eyes, pretending not to notice them, can be as sobering as any pictures of famine from Ethiopia. Sitting on a park bench across from the World Trade Center at nine on a weekday morning to witness the single-minded commuters moving toward their anointed offices like cattle being herded at a roundup is another horrifying New York experience.

And then there are the people who make up the city: fighting for subway seats, ignoring the destitute, honking their car horns during the inevitable traffic jams, rubbernecking at accidents, or showing their impatience at any type of delay. People constantly rush and push just to have the privilege of waiting and complaining.

Hindsight is always twenty-twenty, and as I look back at the past three years, I am happy that I chose to attend school and live in New York City. I have learned to live, to adapt, and to succeed, in the biggest, busiest, and craziest of all cities. I have made many good friends to whom I owe a great deal, from whom I have received tremendous satisfaction, and whom I hope to keep as acquaintances forever. Yet, I have discovered that while I have learned a great deal about life and about myself and have had many great experiences, I will be happy when June rolls around and I pack my bags and head west.

Life for me is not the hustle and bustle. It is not the eighty-hours-a-week job with a summer house in the Hamptons and a winter cottage in Vermont, nor is it the constant lines and crowds and all the pushing and shoving. It is not co-existing with eight million impersonal people. I have made a "quality of life" decision because "if that's movin' up, then I'm movin' out."

## SPRING FEVER AND THE ARTS: A REBIRTH

by Judith A. Norrish

As the old song so wisely goes: "Don't get around much, anymore." This is true of most law students. Fortunately the first days of spring delivered me from the books for some artistic and musical treats.

The Lawrence Gallery sponsored a wonderful show of the works of Liz Gorrill during the month of March. Ms. Gorrill's works were collectively entitled "JAZZ ATMOSPHERE," an apropos title for an artist who is an accomplished jazz musician. I had the good fortune of studying jazz piano with Liz a few years ago, and her style is based on improvisation both in her music and her artwork. The pieces were done in pastel, and pen and ink. She describes the process of creation as unplanned: she begins with a blank sheet and the materials that feel 'right' and uses them instinctively-not knowing what the final product will be. What magnificent unplanned expression comes forth in her work! Because most of us live very planned lives, it was refreshing to experience the beauty that shines forth from Ms. Gorrill's spontaneous expression. The Lawrence Gallery is a modest one-room space located at 423 East 81st Street in Manhattan, with gallery hours Tuesday through Saturday 1-7 p.m. From April 28 through May 9, the Lawrence Gallery will be presenting paintings by Roland Ruocco in a show entitled PLACES. The people there are nice, and if you're in the neighborhood, drop by and see how another half lives. (There's no pressure to buy).

On April 7, the National Museum of Women in the Arts opened in Washington, D.C. It is located at New York Avenue and Thirteenth Street, two blocks from the White House. Although a flurry of con-

trovery has surrounded it since its inception, the National Museum of Women in the Arts will certainly correct a deficiency in the minds of Americans who believe that the art-world was, and is, solely a man's domain. Feminists argue that separate is not equal, and object that the Museum's curators want to avoid controversial artworks by women; however the existence of such an institution will give recognition to many women artists heretofore unknown to most Americans. The museum will also contain a library and research center housing what has been called "the most extensive collection of information on women artists." Thus far the \$17 million raised to support the museum has come from private funding. Hopefully neighbors of the National Museum of Women in the Arts will vote to support it with funding from the U.S. coffers.

On the first day of Spring, I was graced to hear Walter Klaus conducting MUSICA VIVA at the Unitarian Church of All Souls, on Lexington Avenue. The first piece was SERENADE TO MUSIC by Ralph Vaughan Williams (1872-1958). The piece contains typical Vaughan Williams' devices: sensuous, languorous sonorities and freedom in its form. Eight soloists and a small chamber orchestra performed it. One soloist, Betsy Rae Watson, sounded like an angel from the languor of heaven. The performance was excellent in execution and the acoustics of the Unitarian Church of All Souls are noteworthy. Other performances that evening included the Wedding Cantata of J.S. Bach, and two works by Maurice Duruflé, who died in 1986.

Although the first of Spring has passed,

there will be another opportunity to hear Walter Klaus. Ms. Watson and the other musicians of the ensemble. On Monday May 11, at 8 p.m. Musica Viva will be performing works of Handel, Scarlatti, and Haydn. The concert will be held at Merkin Concert Hall, located at 129 West 67th Street (near Lincoln Center). Although May 11 is exam time, an evening of Musica Viva is well worth the subway ride into Manhattan. Student tickets are only \$4. I personally recommend this concert to anyone who feels burned-out or stressful about exams. As a music therapist, I can assure you that Klaus,

Handel, Scarlatti, and Haydn are very healing sources for those of us with jangled (nerves). As Shakespeare wrote in *The Merchant Of Venice*:

The man that hath no music in himself, nor is not mov'd with concord of sweet sounds, Is fit for treasons, stratagems and spoils; The motions of his spirit are dull as night; and his affections dark as Erebus; Let no such man be trusted.

Wishing you the concord of sweet sounds, the beauty of spontaneous expression and a wonderful summer.

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Thursday	10:30-6:00
Friday	11:00-3:00



## Terry Kawles President

I announce my candidacy for President of the Brooklyn Law School Student Bar Association during the 1987-88 academic year.

Experience as a first year student representative and member of the budget committee, has given me an in-depth understanding of the duties and responsibilities of the Student Bar Association, especially when it comes to student life problems.

My experience as a professional music producer, conductor, and music director in New York as well as my years as faculty at the university level gives me confidence that I am able to be a strong advocate for student needs within the law school community.

Although SBA implemented some valuable programs and offered various social/recreational activities this past year, it is my belief that SBA can offer a more effective agenda of services and programs designed to supplement the normal academic curriculum. Some of my ideas for next year's SBA are as follows:

1. A comprehensive activity schedule which is more evenly balanced between first and second semesters.

2. A better system of communications, in order to more effectively inform students about activities which might be of interest to them. (Including the electronic display sign which I helped acquire this spring.)

3. A well-managed SBA office, which will be available on a consistent, scheduled basis.

Anyone who wishes to discuss my other views on SBA business may reach me at (212) 873-4891.

## Martin E. Valk ABA/LSD Representative

I hereby declare my candidacy for the office of ABA/LSD representative of Brooklyn Law School. I feel I can express the views of the BLS student community well, as I have been doing exactly that for the past academic year as a member of the faculty Curriculum Committee. As the only student on this committee, I feel I served the students satisfactorily in presenting what I believed to be their views. As a second-year delegate to SBA, I never missed a meeting and was at the forefront of vital student concerns.

Besides my student government positions, I also serve the student body in two other organization offices. I am presently the Parliamentarian of Phi Delta Phi. In this office, I have prepared a panel discussion on "Legal Ethics and *Brown v. Board of Education*," to be presented April 21. As president of the BLS Republicans, I have brought an alternative political view to the campus, featuring such speakers as Hon. Susan Molinari, the City Council Minority Leader.

I feel I am very qualified for the position of ABA/LSD representative. I hope the voters feel the same during the election period.

Martin E. Valk

## The Dedicated Party

President: Bradley Hamburger  
Day Vice President: Jean Mandic  
Treasurer: Timothy Tripp  
Secretary: Steven Charno  
ABA/Rep.: Ross Abelow  
Evening Vice President: To Be Announced

Idea? Anyone can have ideas. However, very few people have ideas and act upon them. We have continuity and experience. As first year participants in the Student Bar Association, we have been receptive to the problems with which students are most concerned. As second year officers we will respond to these problems and implement the changes which are necessary. Most importantly, with another full year at BLS, we will be able to insure that the Administration does not postpone or ignore the needs of BLS students.

These students have all represented you on the SBA this year.

We have represented you in meetings with Dean Trager to discuss issues of importance to the BLS community. (In fact, first year representatives were the only ones present other than the current president, Bill Ferro.)

We have represented you on the Faculty Appointments Committee. (In fact, first year representatives were the only ones to attend every interview.)

We organized all the SBA parties. (And didn't you have a good time?) [If not, you should have come!]

We are actively participating in student orientation programs.

We are the organizing force behind this year's upcoming Mayfest Celebration.

We participated in the clothing drive for the needy.

We established the forthcoming Student Directory.

We have continuity and experience. We will not be third year students with one foot out the door. We will be second year representatives with both feet in the SBA office.

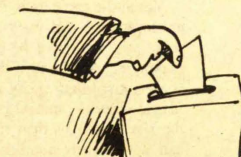
## Brenda Byrd ABA/LSD Representative

I am a second year student interested in the position of ABA/LSD Representative. The American Bar Association (ABA) is a governing body for attorneys and the Law Student Division (LSD) is the largest student organization. The Association addresses many issues which effect attorneys as well as law students. It is good to have a student as part of this association representing law students' needs and interests.

As your representative I would be responsible for providing you with the necessary health insurance information. There are many students unaware of this information as well as the benefits they can receive. The ABA also provides programs such as V.I.T.A. (Volunteer Income Tax Assistance) and a Guardian Ad Litem program.

I have been an active member of the SBA for 2 years as a representative. I have also served on the Budget Committee of the SBA. I believe I am hard working, industrious and genuinely concerned with the needs of my fellow students. If elected to this position I promise to represent the students of BLS to the best of my ability. I also promise to address the issues you are concerned with effectively at the meeting and provide you with all information.

I ask for your vote and support so that I may represent you—the students. Thank you.



# Vote

## Students' Coalition Candidates

President: Barry Yablen  
Day Vice President: Carole Paynter  
Evening Vice President: Vickie Rook  
Treasurer: Judith A. Norrish  
Secretary: Maria Trattles  
ABA/LSD Rep.: Brenda Byrd

Our ballot is a reflection of BLS: a community of students with diverse interests and backgrounds. Candidate Barry Yablen is an ambitious entrepreneur with a successful business. Carole Paynter has been active in various student organizations at BLS and serves on the faculty committee addressing the issue of divestment in South Africa. A Barnard graduate, Carole was active in student government there. Vickie Rook, who is employed by the Brooklyn D.A., and Brenda Byrd, a member of the Moot Court Honor Society, are both experienced, active members of the SBA. Judith Norrish and Maria Trattles are officers of LAW which brought speakers, rap sessions, and free film screenings to BLS this year.

The candidates support the following propositions: first, to develop policies to insure efficient spending of student funds. This includes consideration of the diverse needs of the students when planning activities and forums. Secondly, all candidates want to effectively address the special needs of evening students. Thirdly we have proposed the establishment of a student grievance committee to hear students' opinions and gripes and take appropriate action where necessary. In conjunction with this policy, we would schedule periodic information sessions, open to all students, to share opinions and experiences in selecting courses, coping with stress, and networking. We also like to give parties, encourage fledgling student organizations, and represent your interests.

## THE "CONCERNED PARTY"

It is our intention to be the next administration of the Student Bar Association. Our platform simply stated is that when elected there will be more public telephones installed on school property.

Thank you for your support.

### THE CONCERNED PARTY

Frank Blangiardo	President
Nancy Bertolino	Vice President
Laura Ewall	Treasurer
Diane Fortune	Secretary
Craig Saunders	ABA/LSD Rep.

## Robert E. Hanlon Candidate for Evening Vice-President

The students of Brooklyn Law School are interested and committed to representation and advocacy. The Student Bar Association must reflect this commitment. The student government should function in a manner that demonstrates the legal principles to which we aspire. The levels of advocacy and assertiveness must do justice to the students that we represent.

The students in the evening division overcome great obstacles to become lawyers. This dedication is often frustrated by the lack of access to the services and opportunities taken for granted in the day program.

Many evening students are involved in social services and government work. Many share a social consciousness developed through their wide range of experiences. The programs sponsored by the Student Bar Association must reflect this social consciousness.

As Evening Vice-President, I will continue to work to build an active Student Bar that serves as an assertive advocate for the students. I will continue to attempt to develop schedules that meet the needs of evening students. I will continue to support and encourage activities that foster commitment to social issues.

### The Working Party

This letter is to express our intention to run for SBA office. Our ticket consists of Robert Federici, President; Rick Brodsky (Day) Vice-President; Tricia Schonger, Secretary; and Therese Doherty, Treasurer.

The primary objective of our 1987-1988 team is to increase the visibility and availability of SBA representatives. We plan to establish definite time periods during which representatives will be available, in both the SBA office and the cafeteria, to speak with members of the student body. By affording all students the opportunity to voice their opinions and concerns, the SBA will be better equipped to implement desired changes.

In addition, we believe it is necessary to increase student interaction with the placement office in order to ensure a more diverse representation of firms conducting on-campus interviews. The majority of the student body will benefit substantially by the wider range of job opportunities necessarily created by increased contact with small and mid-sized firms.

Another one of our goals is to establish a student counseling service. It is our belief that upperclassmen can provide an invaluable service to first-year students by offering continual direction and guidance regarding class schedules, resumes, job-hunting, and the tension that inevitably accompanies the first year of law school.

Finally, and in furtherance of the goals of past administrations, there will be continued efforts to have the fall exam period scheduled prior to the holidays and to ensure the early posting of grades.

We look forward to achieving our goals and know that, with the aid of our fellow students, our term in office will be a rewarding experience for everyone in the BLS community.

Very truly yours,  
Robert Federici  
Rick Brodsky  
Tricia Schonger  
Therese Doherty



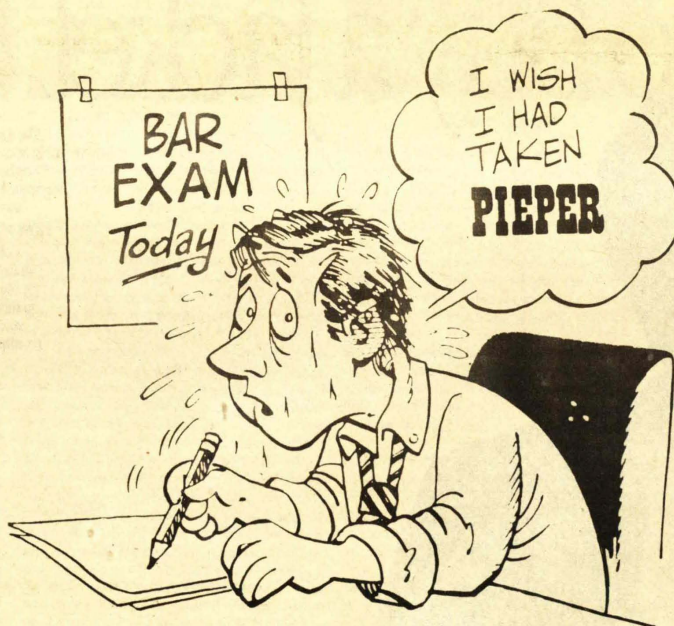
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# So You Want To Be A Clerk

by Lance Gotko

Besides the fact that it gives you the chance to work one-to-one with a judge; that you get to see the glut of humanity come and press claims in the sovereign's court; that you observe countless lawyers, and learn what to do and what not to do; that your research and writing skills are honed to a fine point; and that large firms will substantially augment your starting salary if you first clerk for a judge . . . besides all these reasons, why would you want to be a judge's clerk for a year or two when you graduate? Well, for these and many other reasons, some of you are going to decide that that is exactly what you want to do. If you're even *thinking* about thinking about a clerkship, here are a few observations culled from those now interviewing for Fall '88 positions.

—1989 graduates, attention! It is *not* too early to start laying the necessary groundwork. If you can afford not to get paid this summer, BLS's Judicial Clerkship Program is a must. Get into this clinic early and often. Interning in a judge's chambers is a good idea—it shows you what clerking is all about, and if you later decide to go for a clerkship you'll have the experience for which judges are looking. Also, there is nothing more comforting to a judge trying to make the difficult, yearly clerkship hiring decision than to have a fellow judicial officer's letter of recommendation in hand with a fuller description of you only a phone call away.

—Speaking of letters of recommendation, you are going to need three. Developing a resume-worthy rapport with a professor is vital. Those who do not take advantage of the faculty's open door policy, have to go hat-in-hand to the ninth floor when application time rolls around. Do some competent work for a professor ahead of time, and spare yourself the pain of having to grovel in front of near-strangers later on. (N.B.: Professors are busy and so are their secretaries. 1989 graduates should request their letters of recommendation by February 1, 1988 at

the latest. After making the requests be patient but persistent.)

—Speaking of pain, you should know that the whole clerkship application process is nothing but grief. If you intend to do your own mass mailing please be advised that Murphy's law will reign supreme. The computer will experience a core dump, the mailing labels will be devoured by the printer, the mail merge *won't* merge, and the project will proceed in fits and starts as you periodically run out of money and time. Those who can afford the luxury have the option of enlisting the services of professionals who will do practically everything but go on the interviews for you. Whatever your budget, you must start assembling your packets (cover letter, resume, transcript, writing sample, letters of recommendation) as early as possible. What's the bum's rush? Well, even though the judges have more or less agreed to mark April 1 of each year as the first day of open season for clerks, some judges (most S.D.N.Y., E.D.N.Y., and circuit judges) start making offers immediately thereafter. The little sneaks jump the gun and clandestinely start to interview in March. This means that your chances of getting the most sought-after clerkships decrease exponentially every day your packets are not in the mail after, say, March 10. Graduates of 1989 should "hit the deck running" just after exams next January. Forewarned is forearmed.

—I've spoken of a computer. The hardy mass mailing do-it-yourself-er will need access to a computer, a letter-quality printer, and a program capable of doing a mail merge. If you don't know what "mail merge" means, don't worry. At least one of your friends is well-versed in the mysteries of Wordperfect, and probably owns a computer. Find that friend. Impose on that friend. Take that friend to dinner.

—Mass mailers are advised to bifurcate the project. The sheer numbers involved in a mass mailing conspire

to bring on a parade of horrors and delays. Put the S.D.N.Y., the E.D.N.Y., and the circuit judges on the front burner (as well as judges in D.C., California, Boston, and Chicago), and get applications out to these by March 10. For example, don't wait until you have the time to zip off 100 customized cover letters. Do the cover letters for the twenty-five clerkships you most covet, get those applications out, and then return to the applications for clerkships in less "sexy" locales.

—Clerkships in less sexy locales, incidentally, are not to be overlooked. These clerkships pay the same and have the same duties as those in N.Y.C. Your chances of getting a clerkship increase greatly if you are willing to extend your search outside of the New York area. The gentlemen from Harvard ("Ve-Ri-Tas") and Yale (Honors; Fail; Pass) prefer to clerk in New York, and, Divine Right Monarchy being what it is, we Brooklynites start out with a strike against us.

—The Almanac of the Federal Judiciary is a great tool to use when deciding to whom to apply. In addition to giving extensive information on every sitting federal judge, the Almanac has a section entitled "Lawyers' Comments" with quotes ranging anywhere from "Brightest star in the circuit" to "Worst judge in the district—should have retired years ago." Through a combined use of the Almanac, the NALP book (you'll find out what that is), and the front of the most recent bound volume of the Federal Reporter, you should be able to ascertain the names, addresses, requirement, and demeanor of all but the most recently appointed federal judges (keep your eyes peeled to catch the most recent appointees).

Apply only to judges in areas where you can realistically afford the time and money that travel entails. The cost can be onerous.

—Other than these tips there is much you should know. Use your mouth, ask questions. Although, typically, the answers you receive will differ, a prudent exercise of judgment should separate the wheat from the chaff. Watch for notices announcing the informative meeting about clerkships held annually at the law school. Happy hunting.

## How to buy a jacket.

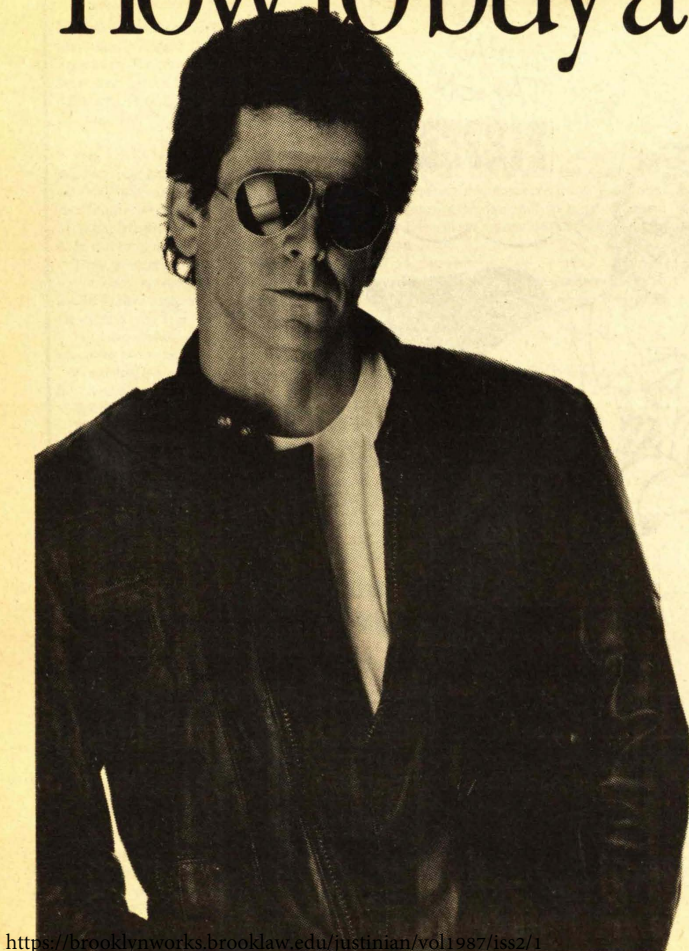


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## Interview from p. 8

**MB:** And again, we thought it was something that ought to be integrated, to be seen as part of a problem and not some separate little category of "oh yes and then there's legal ethics but that has nothing to do with anything."

**UB:** That in a lot of situations there are ethical problems in criminal practice and in civil practice. People don't really see it.

**MB:** And as a matter of fact, many of the things that we pick to do as problems and what things that are really tangential to both a procedure course and a legal process course and a legal ethics course, but are very tied into the attorney's work—things like attorney's fees, legal ethics—things of that sort that involve the role of the lawyer; that's where a lot of the supplementary materials come in. [It] falls between the cracks [I mean all books], you can get out of law school and not have dealt with any of it.

**Q:** Do you feel that if the first year seminar sections are successful, that you would like to see, notwithstanding the other seminar courses, a seminar in this particular area expanded to include the rest of the [next] first year class?

**MB:** I don't know if that's feasible. I don't know if there's enough person power out there to do it.

**Q:** Where I'm going is if it seems to be that more advantageous, does it then, by analysis, put the other students at a disadvantage . . . granted that there are other seminar courses in [i.e.] torts and contracts . . . but if we work off of the presumption that there is a particular importance to the combined subject matter that you are teaching to the entire law school experience, does it not put the other students who are not privy to this experience at a disadvantage?

**MB:** I think that's really giving this more than . . . what's the word . . . I don't think we really make that claim. I think that if students work intensively on any subject they are going to benefit.

**Q:** Now you will stay together for the second semester in that legal writing and civil procedure are both two semester courses?

**UB:** To a more limited extent, but yes. The section will stay together.

**MB:** In terms of writing I might well give drafting of legal documents . . . and I would love, if it's possible, to end up the semester with alternative dispute resolution . . . I'd love to do a summary jury trial . . . if we don't collapse before that.

**Q:** But students that are not in a two semester course for their seminar course will not pick another one up second semester?

**UB:** That's right. And some don't have a seminar section Fall semester. Only civil procedure carries through both.

**Q:** Is the [student to section] selection process totally arbitrary?

**MB:** It's whatever the admissions office does, we have no idea how they do it.

**Q:** Have you found preparing for the course and teaching the course more challenging and more satisfying?

**UB:** When students write more Professors read more.

**MB:** Well, I really feel more like a teacher than I usually do. This is really hands-on teaching, very close to one-to-one . . . two-on-one.

**UB:** And it's nice to have another faculty member in the classroom with you . . .

**MB:** Oh, that's terrific. . . . I mean that's really one of the nicest things of all! It's good to have someone to discuss things with: what we should try, what can we do . . . we've adjusted things that we were planning to do as we went along.

**Q:** I would think that the chemistry would have to be right?

**UB:** I don't think I could team teach with everybody . . . this [team] just happens to work. When Margaret is discussing something with a student, for example, I'm observing and I might see something she doesn't see because she is the one involved. It's really complicated.

**Q:** How are you going to divide up the grading?

**UB:** We work together. It's really fortunate that we see things the same way. The final exam will be a take-home that covers all aspects of the course.

**Q:** What are the drawbacks to the program?

**MB:** The only drawback is the institutional one. Clearly, we are spending an enormous

amount of time that we would not otherwise be spending. And that is going to have to be evaluated. If it makes very little difference in terms of the final result with students, then it may not be viable.

**Q:** What about the effect this has had on your extensive outside activities [committees, writing, pro bono work . . .], if this went forward would you have to make changes?

**MB:** One thing that I suppose starts to work is that often when you are doing a lot you sort of . . .

**UB:** Get into the groove . . .

**MB:** And become more efficient and do more. So I can't say that I've accomplished less in these weeks than I normally would . . . but I think I'm more tired this point in the semester than I usually am. I mean I really have more papers to grade each weekend in addition to other things . . . we'll just have to see.

**Q:** Is there anything I haven't asked that you want to comment on?

**UB:** It seems like the students in the semester section are more of a group, and more relaxed [Berger agreeing while rounding up papers and books].

## PART II. Interview with Dean David Trager

**Q:** I want to talk about the new "Structure of Procedure" course.

**DT:** Why are you talking to me?

**Q:** I spoke with Professors Bentele and Berger, who told me that everything started with the long range planning committee. And both professors also said that you were the one that made the match, putting them together to teach the course. And I also think that there are some questions that are better answered by you than by the professors teaching the course. For example, I saw a memo that referred to some criticism of law school education that this type of course was meant to address, and I am really not sure exactly what the criticism referred to was or what your overall approach is?

**DT:** [Looking at the memo in question.] They mention three reasons: I'll try to make it a little more comprehensible. A student walks into law school and is confronted, for the first time, with a mass of new material. To the student, it's very much like learning a new language, and the material has to be organized in some way. For the last hundred years or so, the traditional method of organization has been to pigeon hole doctrine in certain substantive areas of law, such as torts, contracts, and so forth and to attempt to teach the material by having students read appellate case law which expounded the doctrine in these neat categories. The trouble with this type of organization is that it misleads students into thinking of the law as a series of separate boxes. We all have to think in boxes in order to organize material, but this approach becomes overwhelmingly rigid if it is not tempered by an understanding that the boxes are merely a convenient organizing scheme. For example, I teach the Conflict of Laws course, and in this course the artificial boxes break down. It provides an opportunity for students who by this point in their education have mastered what's in the boxes to see how the boxes interrelate. In fact, this is the principal reason I like to teach this course. A course like Conflicts gets you to see, for example, that what happens when a product causes someone injury can be dealt with by what's in the box called Contracts or by what's in the box called Torts. My point is that in order to be a good lawyer, students have to learn at some point that these boxes are not the product of the natural order of things, that the arrangement is arbitrary and that things could have been arranged in any number of ways. Some schools, in fact, offer a course called Con-Torts in an attempt to avoid boxing in students' view of the law.

Now, with that background, I had two things in mind. One is that given the radical changes that have affected many areas of law over the years, it may well be that the boxes—as currently arranged—are no longer useful for teaching law. The other has to do with pedagogical methodology. It would be nice if we could convey to students from the very beginning that the boxes are made to help them master an enormous amount of material; but that they should not think of the law as a box in any other sense.

There are ways of analysis, methodologies

of purposes, rules, policy reasons beyond rules, which all vary from case to case. How to analyze rules in these terms is an important component of learning to be an effective lawyer; it's not just learning what the rules are. The second consideration is that I personally believe that giving the students an opportunity to get feedback on their written work, as they do with their oral work if the Socratic method is used in class, is extremely important. But I don't see writing as being effective if it's taught in isolation. It is very important to have writing assignments which are related to what is going on in the classroom. I just think that on the merits it's much better if it's in the context of some substantive course.

I'd like to add a third consideration. It seems to me, and many other people have pointed out, that being a lawyer involves a lot of skills other than analysis. I just read a surprising statement by President Bock of Harvard that students at Harvard are having trouble learning analytical skills. There are skills other than analysis that a lawyer must possess; for instance, there are the skills involved in writing persuasively, arguing as an advocate, drafting contracts. Some skills may deserve more emphasis than others, but it seems to me that while it's true that the principal focus of the first year has to be learning this new language, so to speak, we must also introduce students to some of these skills which exemplify what it is to be a lawyer.



Dean Trager

**Q:** One of the interesting points in my conversation with Professors Berger and Bentele, was that they both seemed to feel that there was also an opportunity to introduce the subject of ethics, not divorced from practice, or from the substantive law as it might be in a separate course, but to begin to explain that these questions exist, as with the other things that you are talking about. I'm interested in what you feel the role of ethics ought to play throughout the teaching of law.

**DT:** I have always opposed this [ABA] requirement of teaching a separate ethics course. It seems to me that it ought to be incorporated into almost every course as students go into their second and third years.

**Q:** Wouldn't that require changing the teaching styles in some respects for some of the professors?

**DT:** I think that any professor could introduce ethics whatever his or her style. I don't know of any course that is taught in the second or third year that couldn't incorporate some discussion of the kinds of ethical problems that arise in practice. And these problems could be put in concrete examples which, I believe, is the best way to help students to understand them.

Now it turns out that these new influences which—while they may or may not be unique to BLS—are very interesting in the development of the interest in lawyering skills. In a way it has helped BLS overall. It used to be that not being University affiliated was viewed as a negative. Now, in terms of the major goals of legal education, as well as the economics of legal education, being independent puts us in a pretty good position to be innovative in our approach to developing programs consistent with our concept of the changing philosophy of legal education.

Then, finally, there are some other very practical reasons for smaller sections. One is feedback. One of the problems with larger classes is that they intimidate many students into silence. I think the small section program

is designed to give students a chance, to encourage them to take a risk, so to speak. In seminar sections, first year students should feel free to speak up, to participate, even to make a mistake without feeling that they are the dumbest person in the world. The impersonality and fear of a large section are mitigated by this program. Giving students a chance to hear their own voice as well as the opportunity to get some real feedback is, to me, a very important function of the small section. These are the reasons that led me to push for this program when we had an opportunity to do it.

**Q:** And this goes along with what Professors Berger and Bentele were saying about students being more motivated in their first year, and that this was the time to grab them. This seems to be in line with what you were saying about getting students off on the right foot.

**DT:** That's true, but there is also an element of timing involved. Over the last couple of years this school has expanded the number of elective course offerings enormously. This is fine, but I think it is also important to put more resources into the first year program. Last year we took great pains to admit a smaller entering class than in prior years so that we could try the small section approach. If the approach works, we hope to continue it.

**Q:** That brings me to my last question. A sense of what I came away with from my interview with Professors Berger and Bentele, is that there could be, in the long run, a manpower problem. Professor Bentele had to forgo completing an article that she had planned to complete this past summer, and I know—knowing the two of them for a while—the sincerity of what they said: that they spent an inordinate amount of time preparing for this joint class, and that it also takes a good deal of time during the week [class time, conferences, reviewing papers]. Now if the long range plan is to continue the program [this refers to semester sections in one of the major courses required of first year students], do you foresee a manpower problem in terms of the faculty?

**DT:** There is no doubt that the small sections are very labor intensive and expensive. The professors who teach them spend an extraordinary amount of time reviewing papers, meeting with students, and developing course materials. I think, however, that as the program becomes more institutionalized—that is, after we have a better idea of what works and what doesn't—the faculty will not be in the position of having to re-invent the wheel each semester and the burden will grow lighter.

**Q:** Did you find resistance among the faculty to this seminar program or was it pretty much accepted across the board?

**DT:** [Most] everybody was very interested, and they think, as I do, that the experiment is worthwhile. This just may not be the right approach, but I think it is. Now, in terms of team teaching, it may work for Professors Bentele and Berger, but it wouldn't work if I tried to emulate it with every other professor.

**Q:** Well, you might not really know for a couple of more years, after having had an opportunity to track the first year class.

**DT:** I hope to keep the experiment going for a while. The truth of the matter is that students are often asked who they think their best law school teacher is. They really ought to be asked—five years after graduation—who they think their best teacher was! If I had been asked at the time of graduation who I thought were my best teachers, and then asked the same question again five years later, some answers would have remained the same, but some would have changed radically, based on . . .

**Q:** Experience . . .

**DT:** Experience and on whose methods I found myself drawing upon when I had problems. You don't remember any words that any professor says. What you remember are approaches. They give you a sense of how to deal with issues and problems.

**Q:** Well, I'll check back with you in five years. O.K.?

**DT:** O.K.

**Q:** Thanks for your time.

**DT:** Thank you.

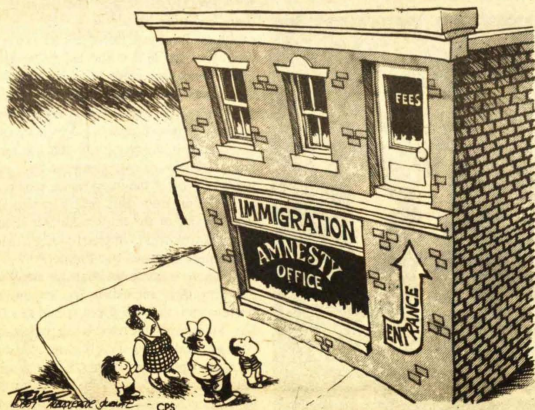
I would like to thank Professors Berger and Bentele for their time and patience; not just in the interview, but over the last three years. My thanks also to Dean Trager for his time and his candor.



HILSA from p. 3

erately avoid detection by the INS by using aliases and falsified documents. Cardona also noted that as a result of the act's employer-sanction provisions, many undocumented aliens will not be able to meet this burden because they will be unemployed or underpaid. Eligibility for temporary residency also requires that the applicant has not been convicted of a serious crime in the United States.

Cardona stated that the requirements for permanent-resident status were equally burdensome. For example, to be eligible for permanent residency, temporary residents must either demonstrate minimal knowledge of the English language and American government and history or show that they are studying these topics. Previously, this requirement was only applied to permanent residents seeking citizen status. Moreover, even though an immigrant has been a temporary resident for eighteen months, permanent status may be denied if the immigrant has been convicted of any felony in or out of the United States or three misdemeanors in the United States.



Cardona stated that under the act employers are prohibited from hiring undocumented workers. Therefore, employers must check the documents of all employees hired after November 6, 1986. Such documents must attest to a person's identity and legal authorization to work in the U.S. Employers are required to maintain verification forms provided by the government on all employees. The INS regulations, which are subject to change, require one of the following documents: a U.S. passport; an unexpired foreign passport with work authorization approval; an alien registration card ("green card"); a certificate of U.S. citizenship or naturalization papers; or one of the following: a) a document indicating work authorization or, b) a document establishing identity. An employer may not hire anyone who does not present documents sufficient to support a reasonable belief that they are legally authorized to work.

Cardona noted that under the act employers are forbidden to require workers to give money or other security as protection against possible INS fines. And, under a so-called anti discrimination provision of the act, an employer may not

discriminate against an employee based on his/her citizenship status. However, an employer can prefer a citizen who is equally qualified over a permanent resident who has not yet filed an application for citizenship.

Under the act no sanctions will be imposed until June 1, 1987. After that date, citations will be issued for first offenses. Stricter sanctions, including imprisonment of employers who demonstrate a consistent pattern or practice of violations, will be fully effective after June 1, 1988.

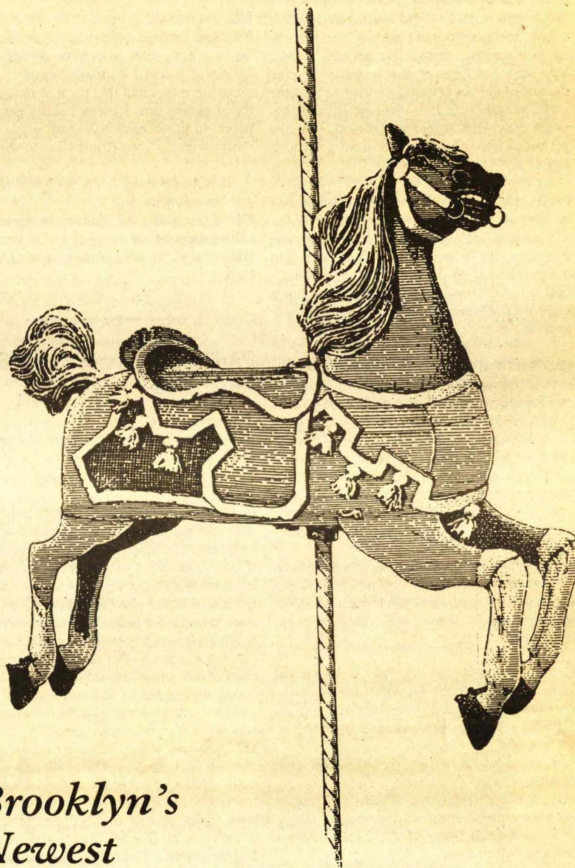
Panelist Monica Schurtman, Coordinator of the Central American Refugee and Asylum Defense Program at CIR, discussed the special problems faced by Central Americans who arrived in the United States after the January 1, 1982 cut-off date. She noted that most Salvadorans and Guatemalans have not been granted refugee status and have no hope of being legalized under the act. Schurtman noted that the act has caused these groups especially to panic because they not only fear deportation to the war-torn countries they fled, but because many of them have already lost their jobs as a result of the act's passage. According to Schurtman, some

employers of undocumented Central Americans who are ineligible to apply for legalization have increased the number of hours these workers are required to work each week but reduced their salaries since the act went into effect last November. Schurtman expressed her concern for undocumented Central Americans who are finding themselves in this Catch-22 situation.

Father Francisco Dominguez, Director of Immigrant Services for the New York Archdiocese, discussed the role of the Catholic Church in facilitating legalization. Dominguez stated that the Archdiocese is setting up legalization centers throughout the New York metropolitan area to facilitate the application process. He noted that the Brooklyn diocese will also be setting up centers in its local parishes. Dominguez stated that volunteers will be needed in every aspect of the legalization process, and he urged members of the audience to volunteer their services at the legalization centers.

Persons wishing to volunteer or to obtain more information on the issues presented at the conference should contact Father Dominguez at (212) 371-1000.

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## Too Tired To Type?

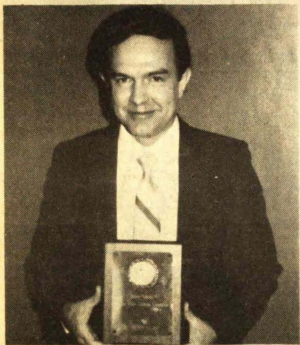
Why not send your material to me? I am a professional typist and can offer you very reasonable rates. Call Jill Eliezer at (718) 615-0012 after 4:30 P.M.



Prince from p. 1

Jones testified that early in 1968 she had written to Stifel of her plans to marry Ronec and that Stifel responded with a "very cordial and friendly letter" congratulating them on their impending wedding. Additional testimony by a friend of Stifel's indicated that later in 1968, while in Columbus to use the Ohio State Library, Stifel decided to write a note to Ronec and have his friend deliver it to where he believed Ronec was living. Stifel testified that the note was a friendly one to wish Ronec luck in the wedding. The friend attempted to deliver the note but found the apartment vacant. He returned the note, and Stifel never mailed it. The prosecution then offered evidence indicating that Ronec's address would have been readily available from The Ohio State student directory. The prosecution thus tried to infer that if Stifel truly wished to contact Ronec he could have done so with a minimal amount of effort.

The remaining evidence against Stifel bore on his ability to fashion the bomb and his access to materials of the type used in its making. From the scene of the explosion,



Orville E. Stifel II, winner of Best Oralist Award

investigators were able to determine its components and that military C-3 or C-4 explosives rather than gunpowder had been used. The government's witness testified that the bomb was made by someone skilled with explosives.

The only connection the government was able to produce regarding Stifel's knowledge of bomb making and access to equipment was that he had some exposure to firearms and explosives and that his father had tools and machinery on the premises where the Stifel family lived. No evidence was introduced to show where Stifel could have possibly obtained C-3 or C-4 military explosives. Other items found in Stifel's home and offered to prove his guilt were several out-of-town newspapers reporting the bombing, a catalog listing a type of switch used in the bomb, a gun and some gunpowder.

The prosecution also attempted to show through expert testimony that the bomb canister and materials used in the bomb were taken from the storeroom at the office in which Stifel worked. The government's expert, through microscopic analysis and a procedure known as Neutron Activation Analysis (NAA), testified that he believed the fragments matched materials taken from the storeroom at Stifel's place of business. The expert witness went even further to say that the storeroom tape samples were from the same batch as those in the bomb fragments. This testimony was particularly damaging to Stifel's case. Although the items were widely sold throughout the country, identifying the batch they came from limited availability of the product to two businesses in Ohio, one of them Stifel's firm.

An additional objection raised in Stifel's *habeas corpus* petition was the persistence with which the prosecution insisted that Stifel was the only person who could have committed the crime. Recognizing the highly circumstantial nature of the evidence, the prosecution repeatedly

assured the jury that things had been "checked and rechecked" and that all signs pointed to the defendant's guilt. This aspect of the case was reinforced by the presiding trial judge when he told the deadlocked jury to continue deliberation because there was not "any reason to believe that the case can be tried again by either side better or more exhaustively than it has been tried before you." Only after Stifel exercised his rights through the Freedom of Information Act would the hollow ring of these words come back to him.

### New Evidence, New Hope

Armed with the newly found evidence obtained through the FOIA petition, Stifel made four specific claims in support of his position. First and foremost was the suppression of evidence indicating there had been another suspect in the bombing. The other suspect had been Andrew Roen, father of the victim. Second, the prosecution had suppressed statements by Cheryl Jones indicating that she had no reason to believe Stifel sent the bomb, and that he never had made any threats against her boyfriend's life. Third, the prosecution suppressed material exculpatory evidence of a police investigation that tended to show that neither Stifel nor his father had purchased the type of switch used in the bomb. The fourth and last claim centered on the prosecution's use of what Stifel asserted amounted to perjured testimony by the expert witness.

### The Habeas Corpus Petition

At the hearing before the court on Stifel's *habeas corpus* petition, the following facts were brought to light and weighed by the court.

asked her if she considered Stifel a suspect. The report filed by the inspectors specified that she was definite in her defense of Stifel. This statement was never revealed to the defense.

### The Switch Mechanism

At trial, the prosecution introduced a copy of a catalog found in the defendant's room advertising the type of switch used in the bombing. The inference sought to be drawn was that Stifel had used the catalog to order the switch. But the prosecution failed to disclose that an investigation into the company's sales invoices indicated that neither Stifel nor his father had ordered switches from the firm. The results of this investigation were not made known to Stifel's counsel.

### The Expert Testimony

A further source of prejudice to the defendant's case was the opinion testimony of the prosecution's expert witness as to whether the tape and other supplies at Stifel's workplace came from the same batch as those comprising the bomb fragments. The expert's imprecise testimony gave rise to highly prejudicial inferences. For example, when defense counsel in his hypothetical asked if additional tape samples from the same batch would yield the same results, the expert responded, "It is possible."

The misguided emphasis on the "same batch" portion of the testimony resulted from a lack of understanding of the continuous nature of tape production. While some products, such as paint, are heavily batch oriented, differences rarely occur between tape batches. Actually, the expert



The final verdict: Judges Weinstein, Sloviter and Lazer.

### The Other Suspects

The evidence produced overwhelmingly supported Stifel's claim that Andrew Roen had in fact been the chief suspect in the bombing. Subsequent to his divorce from Daniel Ronec's mother, he had sent numerous threatening letters and telegrams wishing her death and had made statements about planning to shoot "those people in Lorrain" (the town in which the Ronecs lived). Roen's animosity was directed not only toward his ex-wife but also toward other family members as well. A telegram to Roen's brother-in-law preceding the bombing indicated that if money wasn't paid by a certain date, the brother-in-law would suffer the consequences. After showing this telegram to the postal investigators, the brother-in-law remarked, "That bomb was meant for me. Instead he killed his own son."

This testimony never made it to trial nor was it disclosed to the defense in preparation for its case. It was also noteworthy that as a merchant seaman who often worked on military munitions ships bound for Vietnam, Roen was far more likely than Stifel to have had access to the type of military explosives used in the bombing. Later cablegrams and letters sent by Roen seem to show a consciousness of guilt. Stifel and his counsel were not apprised of these findings.

testimony merely confirmed that the two tape samples were of close elemental composition. They could not in fact be identified as having come from the same batch without prior knowledge of a specific sampling of tape. Although the court refused to categorize the expert's testimony as perjury, it stated that when taken in connection with the suppression of evidence at the trial level, (i.e. subsequent tests on tape batches for confirmation purposes) the expert's credibility could have been more readily impeached.

### The Final Verdict

Upon review of all Stifel's claims, the court held that the failure of the prosecution to divulge material, exculpatory evidence in its possession had deprived Stifel of a fair trial in violation of the Fifth Amendment. Accordingly, the judgment of conviction was vacated and set aside. Thus ended Orville Stifel's fifteen-year-long walking nightmare.

### Conclusion

Although winning the Prince Evidence Moot Court Competition was indeed an accomplishment Mr. Stifel and his Cleveland-Marshall teammates can all be proud of, the real victory lies in Stifel's application of the knowledge obtained through his real-life search for justice. Added to the irony of his very participation in an evidence competition, was the line uttered by Chief Judge Jack B. Weinstein during his critique of the Cleveland-Marshall team after the final round. "You have the air of a prosecutor," he told Stifel. Indeed, truth is stranger than fiction.

### The Cheryl Jones Statement

Information acquired through the FOIA revealed that the day after the bombing, postal inspectors interviewed Jones and

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## Registration: A Guide

by Angela M. Rossitto

The registration process is probably the single most exasperating aspect of the BLS experience. The following guide should be of some interest to those among you who have been as traumatized by the course selection process as I have been in the past:

1. Many professors who show up to teach in a particular semester are, in fact, retired, on-leave, or simply deceased. Often, neither the catalog nor the registration packet will reflect this fact. The prudent student should ask his or her class-

are in big trouble.

4. When you register, do not be troubled if you write down the "perfect program" on your worksheet, turn to the tentative exam schedule, and discover that all of your exams are scheduled for the same Wednesday at 6-9 PM. The Registrar will be happy to rearrange your exam schedule to take one exam every day until you are old enough to collect Social Security.

5. Be aware of who the professor is when you register for a course. Many of the instructors who have "tough" reputations have done much to deserve them. In fact, it is a little-known fact that more than half of the BLS faculty were up for the Lou Gossett, Jr. role in "An Officer and a Gentleman."

6. If you are having a rough semester and are experiencing a lot of stress, take

## TOP TEN QUESTIONS OR REQUESTS IN THE BLS CAFETERIA?

by ALLEN BOND '88

10. Where is your greencard?
9. Can I have some change for the juke box?
8. How much is it to rent shoes?
7. Is your lettuce fresh?
6. So, this is the dining room?
5. Did you secretly replace your regular coffee with Folger's Crystals?
4. Does Sal Minella still work here?
3. Who does your windows?
2. Should I unwrinkle my dollar, the light is on?
1. "Thriller" by Michael Jackson.



mates for the inside scoop about who's hot and who's not.

2. It is often said that you must take "bar courses" in order to prepare for the bar exam. A number of courses, currently being offered at the Montague Street Saloon, may fit the bill. Stop in and make some inquiries when you get a chance.

3. It is not a bad idea to find out in advance which professors are anal retentive when it comes to grading: miserly graders should be avoided like the plague. Remember: if your rank currently resembles the area code of a city in Paris, you

Remedies instead of Conflicts.

7. In order to lighten your course load, take a gut course every now and again. A gut generally results in a high grade for a minimal amount of effort. Any course that approaches the law in an abstract way is a gut. For example, a course entitled "The Philosophy of the Jurisprudence of the Theory of the Public Policy Behind the Law" is probably a gut.

8. Finally, to keep all of this in perspective, remember: there is a God, but he, she or it is also completely dumbfounded by the BLS registration system.



" TESTING...1...2...3...4..."

### Baby M from p. 13

with which each parent can reasonably be expected to provide the child.

This is a contest in which few, if any, surrogate mothers could ever win custody of their children. It seems quite clear that the average surrogate mother is likely to be an unequal match for the anxious couple eager to pay upwards of \$10,000 to \$20,000 for the desired offspring. The would-be parents are likely to be considerably wealthier and, therefore, probably better educated than the mother. Such couples will necessarily appear to the average middle class Judge, to be better prospective parents, given the usual cultural and class biases which inevitably color the decision-making process under the best interest standard. Perhaps this is as it should be, since the Judge is presented with the apparent opportunity to maximize the child's future possibilities in a very difficult situation in which someone will inevitably be the loser. Since the child is clearly the one party in the case who is totally without responsibility for the situation presented to the court for resolution, maximizing his or her interests is clearly justified on general principles of equity.

Having conceded all of this, I must confess that I am extremely troubled by the enormous potential for the exploitation of poor and/or ill-educated and informed women which such an approach invites. Secondly, I cannot help but ponder over the apparently equal recognition which is given by this approach to the act of sperm donation and to the conception, pregnancy, and birth which are the mother's contribution to the production of this new life. I am perplexed by the devaluation of the maternal bond which pregnancy and birth create for many women and the law's apparent willingness to ignore this most desirable aspect of human nature because of a contract made under circumstances in which the ultimate emotional consequences can be only vaguely appreciated. If we are unwilling as a society to commit to the State the power to determine the best interests of the overwhelming majority of children born in all sorts of undesirable circumstances, simply on the basis that there are "socially more desirable" childless couples

ready, willing, and able to adopt them, then I am not fully convinced that based simply upon an ill-advised contract, surrogate mothers should be vulnerable to this form of state intervention.

### Letters from p. 13

tant medicinal elixir that becomes such a crutch, a source of sanity for students, faculty and staff.

In very plain terms—it's awful—I don't know if it's the grinds, the fact that the machine itself has never been cleaned or maybe it's just the water. The Johnson Commission's next project after they wrap up the "Condogate" scandal is to uncover what has come to be known as "The Java Junkies' Demise."

Was it a bad crop? Is it Chock Full 'O Nuts protecting its interests? Was the stuff really being paid off by neighboring delis? Stay tuned—the answers are brewing.

David Pollack



IT'S A LANDMARK CASE..THIS CABBAGE SAYS SHE WAS FORCED TO GIVE UP THOUSANDS OF HER KIDS FOR ADOPTION...

## Note to Members of the Class of 1989:

One thing that may surprise you about law school employment is how early interviewing takes place. Before you return to classes in September employers will be at the Placement Office conducting interviews. Many employers will be on-campus interviewing individuals from your class for summer associate positions for the summer of 1988.

It is in your best interest to have a Placement Office staff member review your resume before you leave BLS this term. During the summer you will be receiving information about the On-Campus Recruitment Program and you will be able to submit your resume to potential employers. It is important that your resume present a professional and accurate picture since a recruiter looks solely at that single sheet of paper. Preferably your resume should be typeset by a professional printer; this method results in the most polished and business-like resume. Word processed resumes are the next best thing—but be sure to use high quality paper. Having your resume typeset takes time, so be sure to take care of this early in the summer, in order to meet Placement Office submission deadlines.



of the school paints them to be. But finding this out took months of breaking down barriers created by preconceptions (on both sides). Many of the members of Law Review keep exclusively to themselves outside of class. This is sad, because I found these people to have a wit and charm all their own. There are those, however, who fit the above-it-all stereotype and make things hard on everyone else.

People on Journal turn out to be less stuffy than members of Law Review. They are more outgoing and less introverted. I found making friends with them a lot easier. As a matter of fact, the people on Journal seem to be the ones (at least in my estimation) who bridge the gap between Law Review and the rest of the third-floor dwellers. My many thanks go to them all, especially the editors, for helping me out with advice whenever I needed it.

Moot Court was the hardest of all for me to talk about. All at the same time, my closest friends and my greatest annoyances come out of this organization. On the up side are my experiences with the Entertainment Law Competition and the Prince Evidence Competition. The people who were my teammates for the Entertainment Law Competition were terrific. That project was probably my best experience in law school. My two years helping out with the Prince Competition were also great. The competitions proved that people really could get together and represent BLS at its best.

On the down side, I saw many people who held offices on the Moot Court Board turn from nice people to power-hungry bureaucrats. Artificial rules were imposed upon me and others for what seemed at times foolish reasons. Opportunities and benefits of organization membership were selectively doled out to people on a purely arbitrary basis. Many of us found our efforts on behalf of the society discounted when the time for rewards arrived. And final mention must go to the illusion of faculty and administration support. Lack of faculty participation in practice rounds and lack of funding for computer supplies left Moot Court members feeling abandoned.

Although I would not call it an elitist organization, the *Justinian* staff has a persona all its own. What does make this organization elitist is that its members are the few who care enough to give their time to report to the student body something of the world around us. While we all differed in temperament and experience, we shared the common goal of putting together an award-winning newspaper and having fun doing it. Thanks, guys, for three terrific years of news.

### The Student Bar Association

During my three years at BLS, I have had varying degrees of involvement with this organization. The general view of SBA is that all it is good for is throwing parties. Unfortunately, this is basically true. However, this problem is not the fault of those who run the organization. SBA is carefully controlled by the administration, and thus reduced to a rather noninfluential body.

Monies given to SBA are insubstantial compared to what BLS could afford to give its student government. In addition, the dean does not hand this money over to SBA until late in the fall semester (and it seems to be given out later every year). As a result, SBA is not as effective as it could be.

In terms of decision making, SBA is virtually powerless. Policy concerning such matters as grading curves, hiring of faculty, and improvement of services is determined during the summer months, when the student body is on vacation. Without explanation or notice, students are sent letters to the effect that the administration has made decisions affecting us all. The choices are made, and we are forced to live with them. When SBA is allowed to participate, its committees are given the end run when the time comes for their voices to be heard.

So what is left for SBA? Parties, football leagues, basketball leagues, a school newspaper, and funding student groups—nothing that could threaten the administration's decision-making authority on core issues concerning the BLS community.

### The Placement Office

The difference between what students think of the Placement Office and what its staff thinks of it is vast indeed. Students

have asserted over and over again that the Placement Office is useless to them. Many accuse it of catering strictly to the top 10 percent and Law Review people. Yet the Placement Office staff themselves believe they are doing all they can to help students.

I think the truth lies somewhere between these two extremes, and a lack of communication between the Placement Office and the student body accounts for the difference of opinion.

As one professor said my first year of law school, "This institution does not guarantee any of you a job upon graduation. One way or another, you have to earn it yourself." Part of earning a job is preparing a résumé on time, writing an effective cover letter, and sending letters out promptly to prospective employers. A mass mailing undertaken without consideration of such basic issues as the specialty one wants to practice can prove a waste of time and money.

Many of the pitfalls of job hunting can be avoided through consultation with those in the placement office, if students bother to go over and talk to them. Waiting until the last minute for a rushed cover letter or poorly drafted résumé will only result in hurried advice and a frustrated job applicant.

Though students sometimes contribute to the problems of the job search, they are not entirely to blame. There are many practices at the BLS Placement Office that must be corrected, problems that have bothered me to no end for the last three years.

To begin with, the Placement Office has a long-standing policy of allowing employers to list jobs (temporary or otherwise) with an "open" or "negotiable" salary. As many students have found out, the term *open* is a code word for a low salary, often in less than pleasant surroundings. The term *negotiable* is an even greater misnomer. With supply exceeding demand, long hours and low salaries are now offered on a take-it-or-leave-it basis. This is just plain unfair.

My next criticism is leveled at the attitude some (but not all) of the placement staff has toward students. As a whole, the staff is quite congenial and helpful. But a few members seem to regard themselves as shepherds over a pack of mindless sheep. Furthermore, once on-campus interviews are over (a privilege available to some 10 to 15 percent of BLS students), making an appointment merely to compose a simple cover letter can become a difficult task. And these appointments may still be broken at the last minute.

### The Administration

I have, of course, saved the best for last. Dean Trager and company generally run BLS with a more or less even hand. Dean Trager himself has not let his job so consume him that he is left out of touch with the student body. Though he gives his all in raising the quality and reputation of our school, I never had trouble getting

in to see him for advice or an interview for the *Justinian*. One criticism I do have is that the Dean is slow in paying attention to the grumblings of students regarding provision of services.

Dean Johnson seems to have the day-to-day running of the school well under control. I have seen many a student walk into his office anguished or furious to emerge minutes later smiling. He has a curious way of knowing just how to smooth over the rough edges when a student is frustrated with the registrar or a faculty member. I have observed, though, that given a tough decision to make, Dean Johnson can be quite hard-nosed. While this is the mark of a good administrator, it can be unsettling when you are on the other side of his desk.

Also on the ninth floor are a potpourri of senior and emeritus faculty, each with an aura all his or her own. This group sports the best collection of funny war stories, brilliant minds, and cyclone-strewn offices ever assembled. Waiting to see the dean could hardly be called dull with a cast like this around.

Last, but certainly not least, are the secretaries manning their stations outside the offices of the great ones. If you ask me, these are the people who *really* know what is going on at BLS. If you ever want the actual scoop on grades, your class rank, a clinical program, or anything else, just ask these women. They are the heart of our school.

The many individuals not mentioned here were well covered in the Second Circus review just a few weeks ago. I don't think I have ever seen the Moot Court Room as crowded in my three years at BLS as it was for those three performances. I had a lot of fun participating in the show, and I am glad that many of my friends had a good time watching it.

Looking back, I believe that on the whole I received what I came to this school for: a well-rounded legal education. To all my graduating classmates, good luck in your future endeavors. To those people and memories that I leave behind; it was an enlightening experience.

## Sabes Odiar? Lea Esta Poema

by Antoinette Wooten

Don't proscribe my speech.

Allow me to think.

I will try to make the truth

as painless as possible for thee.

What but—guilt should not be.

Speak!

A soul is never insignificant.

Choose words of peace.

Help is not a kind smile or an open hand.

Speak!

All must yield to the truth and peace.

In this world there are more than just two!

Please don't prohibit my speech.

Communication will lead to truth and peace.

Help me to grow, but don't forbid my speech.

Talk . . . but not at me.

I cannot . . . will not . . . hide the truth.

Say what you want

but please say them in peace.

An open mind is helpful

useful to the truth and peace.

I will not use words that strike you.

If my words harm I will look for words of peace

but still of truth.

Don't attack with words

your force field will harm many souls.

If theory is put to the test we will learn . . .

the truth.

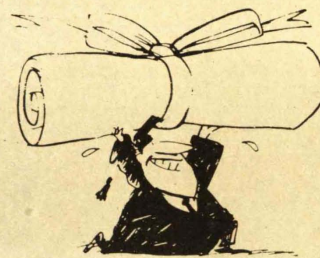
Say what you will, but use peaceful words.

Speak!

But please don't proscribe my speech or yours.

Vaya con dios.

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WITHIN REASON

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