

# The Justinian

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## The Justinian

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# THE JUSTINIAN

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

## Judge Acquitted, Prosecutor Vindicated

by Ethan Gerber

On April 23, in a packed State Supreme courtroom in Brooklyn, Justice Jerome Cohen sat—not behind the bench which he had occupied since 1983—but at the defendant's table. The judge, a graduate of Brooklyn Law School and former National Commander of the Jewish War Veterans, had served in the Civil Court from 1979 until 1983, as an acting State Supreme Court Justice in 1984, and as a justice since January 1985. Cohen was charged with seven counts of bribery involving the now-defunct HYFIN Credit Union. After a grueling two and a half days of deliberation, the jury finally came to a decision: Not guilty on all seven counts.

As the verdict was announced, Cohen's supporters, which included many members of the Brooklyn Bench and Bar, actually broke into loud applause. Cohen turned to reporters and said, as if he had always been completely confident, "I'm ready to go back to work tomorrow."

Justice Cohen was accused of receiving \$127,000 in interest free loans from the HYFIN Credit Union in exchange for ordering the placement of \$241,000 in children's trust funds in the credit union. Apparently, the prosecution's case was built around the accusations of a former HYFIN official, Edmond Lee, who has pleaded guilty to Federal fraud and conspiracy charges and is now cooperating with the government.

Mr. Lee also testified as the chief witness in the trial of the former Taxi and Limousine Commission chairman, Jay Turoff. Similarly to Justice Cohen's trial, Mr. Turoff's trial resulted in the acquittal of the defendant. As the polling of both juries revealed, Mr. Lee's testimony was not considered credible. Turoff was later convicted in an unrelated tax evasion charge.

Mr. Lee was originally cooperating with the federal prosecutor's office. The U.S. Attorney's office after intensive investigation declined to seek an indictment of Justice Cohen, perhaps finding Mr. Lee as unreliable as the Turoff jury did. Brooklyn District Attorney Elizabeth Holtzman, apparently anxious to achieve the publicity involved in securing a conviction of a judge, forged ahead, regardless of the fact that the key witness was a known perjurer.

Judge Cohen is currently back on the bench, but has voluntarily limited himself to civil cases so as to not put himself in the position of hearing cases presented by the same office that attempted to put him

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## Prof. Wexler is Named Associate Dean of Academic Affairs

by Esther K. Rowin

This past summer, Professor Joan Wexler was appointed Associate Dean of Academic Affairs. She is replacing former Associate Dean George W. Johnson III, who will be resuming his post as a full-time professor this fall.

Dean Wexler joined the faculty of Brooklyn Law School in 1985, and has since taught Family Law, Trusts and Estates and Gift Estate Tax. Prior to teaching at BLS, she taught at New York University School of Law for 6 years. Dean Wexler attended Cornell University as an undergraduate and then received a Masters in Education from Harvard University. After teaching for several years, she entered Yale Law School and served as Articles Editor of the Yale Law Journal. Subsequently, Dean Wexler clerked for Judge Jack B. Weinstein, Chief Judge of the U.S. District Court for the Eastern District of New York. She was also an associate at the Manhattan based law firm of Debevoise and Plimpton.

### New Courses Highlighted

Dean Wexler considers her new position to be a "challenge" and hopes to "continue the tradition of being available to students." She expects to work closely with Dean Trager in the administration of the law school and the planning of the curriculum. Commenting on the fall semester class schedule, Dean Wexler pointed to the variety of new courses being offered to second and third year students.

These include the addition of an in-house Child Support Enforcement Clinic directed by Caroline Kearney; a Legal History course on American Criminal Law taught by William Kuntz; a Criminal Law and Procedure seminar on Historic Criminal Trials, taught jointly by Professors Herman and Madow; a Constitutional Law seminar on Foreign Affairs and the Constitution conducted by Professor Holzer; and a Problems in Jurisprudence seminar led by Professor Kuklin.

In an attempt to ease the transition from college or work to law school, most first-year students have been programmed for a seminar section limited to thirty students or so in Torts, Contracts, or Civil Procedure. This seminar program was implemented last year for the first time and was positively received by both students and faculty. "To those whom we could give this small group experience in the first semester," notes Dean Wexler, "the seminar section provides the first-year student with greater individual attention" than he or she might otherwise receive in a larger lecture class.



Associate Dean  
Joan Wexler

### Faculty Updates

There have also been new additions to the faculty. Joining BLS are Karen Brown, who will be teaching federal income tax; Robert Pitler, who will be teaching in the criminal law and procedure area in the spring; and Lisa Smith, who will be heading the Prosecutor's Clinic. Joining on as permanent members of the faculty are Gerald McLaughlin and Michael Madow. New faculty members of the legal writing staff are full-time instructors Molly Falk, Marc Fleischer and Philip Genty; half-time writing instructor De-

borah Jacobs; and adjunct writing instructors Linda Feldman, Thomas Moore and David Nocenti. Returning from sabbaticals are Professors Maryellen Fullerton and Barry Zaretsky. On sabbatical this year from BLS is Professor Arthur Pinto.

### Cosmetic Changes

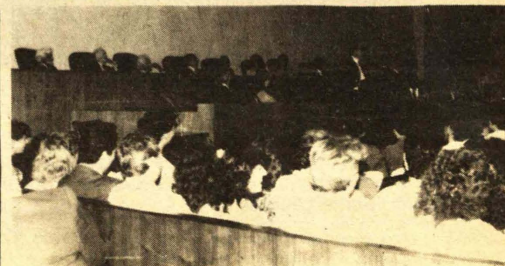
Dean Wexler highlighted some other changes that have taken place at BLS, including the remodeling of the third floor at One Boerum Place, located across the street from the main building. The renovations have provided more space for the five in-house clinical programs housed on the floor (Elderly, Landlord-Tenant, Child-Support, Federal Litigation and Prosecutor's Clinics), and the Offices of Student Services, Career Placement and Planning and Alumni. The cafeteria, located in the basement floor of BLS, is presently undergoing renovation, and the ninth floor, which houses the offices of the Dean and faculty has also undergone expansion to make room for new faculty members.

### Wexler's Viewpoint

Dean Wexler describes herself "as an educator first, and then as a lawyer." She enjoys "working with young people" and "the stimulation of the classroom." She loves teaching and explains the differences in teaching two of her courses: Family Law and Trusts and Estates. While both courses focus on family related problems and issues, they are different types of courses teaching wise. "Family Law," notes Dean Wexler, "is very policy oriented. Class discussions tend to be rather broad, since everyone has had some experience with families. It is interesting [in Family Law] to think about what the law ought to be." Trusts and Estates, on the other hand, "is more rule oriented and leads to different types of class discus-

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BLS'  
ANNE FLANNERY,  
SEC ENFORCEMENT  
CHIEF, AIRS  
INSIDER  
TRADING VIEWS**



Dean Trager Addresses  
Incoming Students at  
Orientation Ceremony  
(Other photos inside).



## MISC. REPORTER

### BLS ALUM NOMINATED FOR CIVIL COURT SEAT

Randolph Jackson, a 1969 Brooklyn Law School Graduate, was recently nominated by Mayor Koch for appointment to the Civil Court. Jackson, a housing judge since 1981, previously was a hearing examiner in Brooklyn Family Court, and private practitioner until 1981.

### CITY BAR NAMES COMMITTEE HEADS

The City Bar Commission recently announced the appointment of thirty-three new chairpersons of committees of the Bar of the City of New York. Among those named was BLS' own Professor Marsha Garrison chair of the Family Court and Family Law committee.

### CORP COUNSEL ADDS '87 GRADS TO STAFF

Recent Brooklyn Law School graduates joining this year's Corporation Counsel staff are as follows; Diane M. Conyers, Matthew Flamm, Brian King, Chlarens Orsland, Elaine S. Plotkin, Jordan Sklar, and A. Orli Spanier.

### BLS GRADS NAMED TO A.D.A. SPOTS

The District Attorneys' offices for Brooklyn, Bronx and Manhattan, have made their selections for this year's Assistant District Attorneys. The following Brooklyn Law students were among those selected.

**Bronx District Attorney's Office:** Michael Barsky, Valerie J. Corder, Catherine Davis, Phillippe R. Dusek, Eva Ferro, Shahab Katirachi and John V. Wynne.

**Brooklyn District Attorney's Office:** Nelson Apponte, Eric Buckvar, Suzanne Corhan, Robert Dapelo, Michele DiFede, Keith Dolan, Peter Gray, Regina Kelly, Cesar Ottey, Charles Ouslander, Gregg Peterman and Deborah Salumn.

**Manhattan District Attorney's Office:** Mary P. Bausbacher, Nina Keller, Paula Milazzo, Steven Ringer and Ronald J. Warfield.

### SEDDO TO HEAD STUDENT SERVICES

June Seddo has been named the new Assistant Dean for Administration and Student Services. Ms. Seddo replaces outgoing Assistant Dean Robin H. Siskin.

### BLS INTERNS SUMMER AT SOUTHERN DISTRICT COURTHOUSE

The following students participated in the Judicial Clinic Program with summer clerk positions in the Southern District. Judge Mary Johnson Lowe: Ann C. Myers, Catherine E. Needham. Magistrate Naomi Buchwald: Michael A. Sussman. Magistrate Kathleen Roberts: Marian E. Lupo. Magistrate Ruth V. Washington: Alizer Silber. Judge Cornelius Blackshear: Craig Lustig.

### GRAD APPOINTED TO APPELLATE TERM

Justice Leroy B. Kellam, class of '61, has been appointed to the Appellate Term for the Second and Eleventh Judicial Districts. Justice Kellam succeeds Justice Alfred D. Lerner, who has been appointed Acting Administrative Judge of Queens County. Justice Kellam, a Supreme Court Justice since 1983, was previously a Criminal Court Judge for four years.

### EASTERN DISTRICT ACTS AS SUMMER ANNEX

The following students worked as student clerks in the Judicial Clinic Program in the Eastern District.

Judge Mark A. Costantino: Scott Esbin, Sheila Gowan.

Magistrate John Caden: Milagros Farnes.

Judge Bramwell: Edward Armstrong, David Bolton, Ellen Kornfield.

Magistrate Carol Amon: Wendy Callahan, Sondra Modell Hirsch.

Judge Edward R. Korman: Jill Lashley Greenbaum.

Judge Thomas C. Platt: Laura Anne Hastings.

Judge Raymond J. Dreare: Jennifer Langley.

Judge Conrad Duberstein: James Oswald, Scott Evan Rynecki.

Judge I. Leo Glasser: Steven J. Selby.

### CLASS OF '87 CLERKS

The following students from the graduating class of 1987 will be commencing clerkships in the fall of this year.

Ian Bjorkman U.S.D.C. Miami Judge Marcus Edward Christenson U.S.Ct. of Appeals Justice Mahoney—2nd Cir.

Andrea Coles U.S.B.C. EDNY Judge Feller

Cynthia Dachowitz U.S.D.C. SDNY Judge Sand

Bennette Kramer U.S.D.C. EDNY Judge Platt

Michael Novara U.S.D.C. WD Pa Judge Diamond

Timothy Parlin U.S.D.C. ND Texas Judge Belew

Roseann Psem U.S.D.C. SDNY Judge Owen

Ira Reid U.S.B.C. EDNY Judge Goetz

Michael Solomon U.S.D.C. EDNY Judge Korman

Jan Uzzo U.S.D.C. SDNY Judge Cannella

David Wohl U.S.D.C. N.J. Judge Brotman

Geraldine Zidow U.S.D.C. M.D. Pa. Judge Rambo



sions." This course lends itself to a more traditional teaching approach. On the whole, Dean Wexler likes the contrast between the two classes, as it provides her with "the opportunity to use two different teaching styles."

### Outside Interests

Dean Wexler serves on a number of committees. She is Vice President of the Women's Bar Association and is a member of the Matrimonial Committee of the Association of the Bar of the City of New York, as well as the Bar Association's Ad-hoc Committee on AIDS and Surrogate Parenting. Dean Wexler often writes on child custody issues and is presently at work on an article tentatively entitled "Estate Rights of Unmarried Cohabitants," which she notes effectively combines both her interests in family law and trusts and estates.

All work and no play would make Joan a dull Dean, but Dean Wexler finds time for some recreational activities. She enjoys "good music, good food, a good novel and spending time with my husband and children, Matthew, aged 10, and Laura, aged 7," not necessarily in that order. When pressed, she jokingly adds white water rafting in the southwest to this list. And just to set the record straight, she met her husband of nineteen years and a fellow Yale Law School alumnus in high school. Contrary to popular law school opinion, they did not meet at Yale.

Certainly a Dean and Professor who can handle the rough waters of the southwest can handle the wilds of Brooklyn Law School with the same steady hands. During the course of this interview, Dean Wexler calmly accepted a subpoena being served on the law school, answered phone calls from flustered students closed out of Corporations, and spoke slowly enough so that this fledgling reporter could take notes after her tape recorder refused to function.

The staff on *The Justinian* would like to wish you the best of luck, Dean Wexler, in your new role as Associate Dean of Academic Affairs.

### Judge Acquitted from p. 1

in prison for up to seven years.

While the Kings County District Attorney's office was attempting to make a case against Judge Cohen, a special prosecutor was looking into allegations against a Kings County District Attorney. The investigation was centered around Assistant District Attorney Kathy Plasznar who was accused of failing to disclose evidence which could have been used to undermine the testimony of the key witness in the prosecution's case against Robert McLaughlin. McLaughlin spent over six years in prison for murder before his case was reopened (due to the urging of his father, presiding Judge Milton Marlon and the outrage of the public and the press) and the indictment was dismissed due to the exculpatory evidence.

In a seventy-six page memo prepared by Special State Prosecutor for the New York City Criminal Justice System, Charles J. Hynes, Ms. Plasznar as well as Homicide Detective John D'elia were cleared of any charges of aiding perjury or tampering with witnesses.

## OCTOBER

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Brooklyn Supreme Court Justice Jerome Cohen and Brooklyn Assistant District Attorney Kathy Plasznar, BLS graduates, are cleared of any wrongdoing in separate investigations.

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#### Flannery and the SEC

BLS Alum Anne Flannery shares her thoughts as outgoing head of the SEC Enforcement Division. Insider trading, Wall Street greed, and other less nefarious activities are discussed.

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#### Gilbride Glistens in Faculty Spotlight

Professor Gilbride inaugurates The Justinian's Faculty Corner, a forum for the faculty to share their views with the BLS student body, free from late arrivals and coffee spills. Ethical ramifications of ex-parte communications are explored.

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An attempt to obtain novel answers from first year students proves futile. Nonetheless, we present some reactions to the first year experience.

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# BLS GRAD AND FORMER SEC ENFORCEMENT CHIEF LAUDED BY TOP OFFICIALS

by Rosemary Townley

**A**nne C. Flannery, a 1976 Brooklyn Law School graduate, is considered to be one of the key figures in insider-trading litigation.

Gary Lynch, chief of Enforcement of the Securities and Exchange Commission (SEC) in Washington, calls her a "first-rate, aggressive litigator with excellent judgment skills whose contribution to the commission's enforcement program was enormous."

The chief of the Securities and Commodities for the Southern District of New York, Assistant United States Attorney Charles M. Carberry considers her to be a "very bright attorney and well-respected administrator who played a major role and was influential in the development of a consistent and effective program of the prosecution of insider-trading cases."

This Brooklyn Law School graduate served as associate regional administrator for enforcement in the SEC's New York office, the largest of the commission's regional offices. Flannery, who worked for the SEC for eight years, both in Washington and New York, left in late August to become a securities litigator in the national law firm of Morgan, Lewis & Bockius. She decided to leave the SEC because she "missed the opportunity to do more litigation work personally, rather than overseeing the work of other attorneys."

Following graduation from Brooklyn Law School, Flannery joined the SEC's Investment Management Unit at its Washington, D.C., headquarters. (Ironically, she had been interviewed and rejected for a position by the New York office, where she later returned as chief trial counsel and enforcement head.) During her first two years in Washington, Flannery was responsible for regulation of investment companies and was heavily involved in the commission's various administrative proceedings. For the next three years, she was involved in appellate litigation, appearing before the Court of Appeals and the U.S. Supreme Court. She also litigated on behalf of the commission when it was sued by various companies. In this position, she participated in the drafting of securities legislation and in counseling SEC executives on personnel decisions involving its three thousand employees. After five years in Washington, Flannery realized she was homesick for New York City and transferred to the New York regional office.

## SPEEDY RISE TO TOP

As chief trial counsel, Flannery managed a staff of forty-five who worked exclusively in litigation and enforcement. She credits her wide range of experience in Washington as a critical foundation for the management positions she later held. Her theory appears to be supported by Assistant U.S. Attorney Carberry. He noted that Flannery was "a fine administrator who was well-respected by the people who worked for her" and that among her many strengths was her ability to counsel the younger attorneys entering the commission. Within a few years, she was named associate regional administrator of the enforcement division in New York and apparently served with distinction in this role. The Securities and Exchange Commission's Lynch commented that Flannery "contributed to the success of the SEC's enforcement program as much as anyone else did in the entire commission."

Flannery's seventy-five-member enforcement staff included thirty-five attorneys and twenty investigators, as well as accountants, paralegals, and other support staff. Among her responsibilities as head of the enforcement division, Flannery was responsible for deciding which cases to pursue and bring in an SEC proceeding or litigate in federal court. Her office worked closely with Assistant U.S. Attorney's Carberry's Securities and Commodities Unit in these decisions. Approximately 20 to 30 percent of the matters that were investigated resulted in an SEC proceeding or in litigation, according to Flannery. Additionally, her office was responsible for



Anne Flannery at the helm.

conducting proceedings involving the suspension and/or revocation of securities broker-dealers' licenses for regulatory or legal infractions.

Flannery had a reputation for keeping an open mind when investigating a matter or conducting litigation. As Carberry noted, "She was very fair in dealing with outside counsel representing the subjects of investigation and litigation." She displayed serious concern for the potential impact that publicity could have upon the careers of those individuals being scrutinized by her office. If an investigation resulted in a finding of no violation of the SEC regulations or federal securities law, according to Flannery, it would not be fair to expose the individuals who were under investigation, as this could have a profound effect upon their livelihood and reputation.

## INSIDER TRADING PROSECUTIONS

Flannery supervised several important cases in the development of the law of insider trading. One of her cases established the basis for a memorandum of understanding between the United States and Switzerland, allowing for the disclosure of the identity of Swiss bank-account holders. According to Flannery, this diplomatic solution laid the foundation for the criminal conviction of such individuals as Dennis Levine and Ivan Boesky.

One of the successful insider-trading cases handled by Flannery, whose involvement Assistant U.S. Attorney Carberry considered "influential," involved a printer who had revealed sensitive information regarding a company's stock.

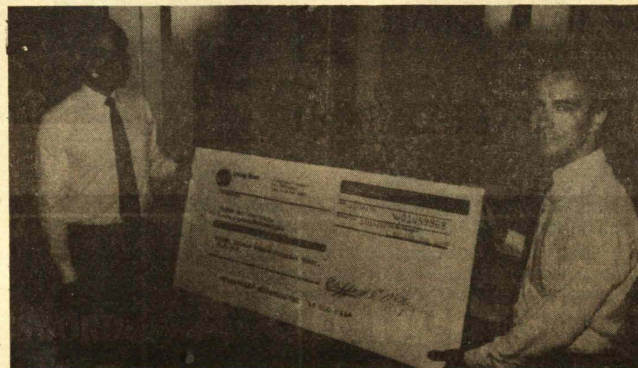
*S.E.C. v. Materia*, 745 F.2d 197 (2d Cir. 1984), cert. denied, 471 U.S. 1053 (1985). Flannery noted that this case was one of the early successful applications of the misappropriation theory. This theory, which has been supported by the SEC but has not as yet been addressed by the U.S. Supreme Court, maintains that it is illegal for a person to use nonpublic market or insider information, entrusted to them by their employers, for the purpose of making a stock-market profit.

The SEC contends that anyone can be guilty of misappropriation, whether they are high-level corporate officials, such as officers and directors, or individuals not directly connected to the company but with access to insider information.

## THE TOME CASE

A memorandum of understanding (MOU) between the United States and Switzerland regarding insider trading was the result of a significant case in which Flannery played a major role, *S.E.C. v. Tome*, 638 F. Supp. 596 (S.D.N.Y. 1986). According to the SEC, it is the only case in the commission's history to obtain a federal-court order compelling a Swiss bank to disclose customer account information. Judge Pollock's decision was a significant factor in the formulation of the Memorandum of Understanding between the United States and the Government of Switzerland, signed August 31, 1982, and numerous subsequent government-to-government negotiations and agreements concerning the availability of information from foreign countries to the Commission.

Flannery noted that the other important aspect of this case is that the District Court found insiders to be jointly and severally liable for the purchase of the stock of those who had been "tipped" in an insider-trading action. Therefore, the government would be able to file charges against any one person, even if more than one person were involved, to recover the entire amount of the identifiable profits of an insider trade.



Anne Flannery flanked by (l.) Robert B. Blackburn, Senior Trial Counsel, and (r.) Joseph G. Mari, Chief, Enforcement Branch #1 with mockup of recovery from the Tome case.

## THE SCANDAL SPREADS

The Tome case had national as well as international ramifications. It was one of several insider-trading cases that aided the government in its prosecution of well-

known individuals for violations of insider trading.

Among the first of the notorious Wall Street executives-turned-defendants was Dennis B. Levine, a former managing director at the investment firm of Drexel Burnham. Levine was criminally convicted for illegal insider trading and is now serving time in Lewisburg Federal Prison. Levine's discussions with government authorities led to the detection of the illegal activities of arbitrageur Ivan F. Boesky. Boesky, apparently in an attempt to avoid severe penalties, decided to cooperate with the U.S. Justice Department and revealed his dealings with Murray Siegel, a former Kidder Peabody & Co. investment banker who, in turn, implicated another arbitrageur, Robert Freeman from Goldman, Sachs & Co.

The government is still in the process of investigating other street people, and some of the most prestigious investment houses are beginning to scrutinize their staffs and practices. The tenacity of the SEC and the Justice Department in the prosecution of the criminal activities on Wall Street has focused the public eye on white-collar crime. Congress will be addressing the problem when it begins to review the numerous drafts of bills currently under consideration for legislation to define insider trading.

## DEFINING INSIDER TRADING

In early August, 1987 the SEC proposed language for a specific definition of insider trading as Congress is now considering legislation that would spell out the precise circumstances under which a person could be charged with the illegal use of confidential information for insider-trading purposes. Case law interpreting the federal securities legislation that defines fraudulent behavior has previously served as the basis for defining insider trading.

Flannery commented that, at this stage, it was a good idea to have a specific definition of insider trading, provided it incorporated the factors that had been articulated in the case law. Her major concern regarding a precise definition is that it might exclude a number of persons who could have been charged through the use of broad definitions that have emerged from court decisions. She noted, however, given the national publicity surrounding Levine and Boesky and other major cases, that there appears to be a consensus, both on Wall Street and in the country, that a need exists for a statutory definition.

Five years ago, according to Flannery, a number of prominent individuals argued that the securities industry should not be regulated because regulations would result in an atmosphere not conducive to capital formation. This fear probably disappeared, she added, because of the number of cases brought by the SEC and the U.S.

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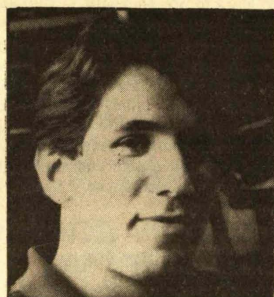
# The Inquiring Photographer Asks:

## After one week of law school, how does it compare to what you thought it would be?

by Leslie Steineker



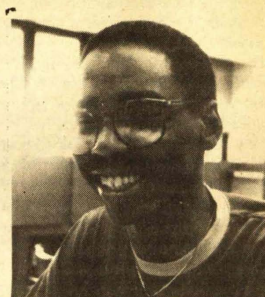
**Andy Frankel:** "It's challenging, gets you to think, but I'm not going to have to make as many sacrifices as I thought I would."



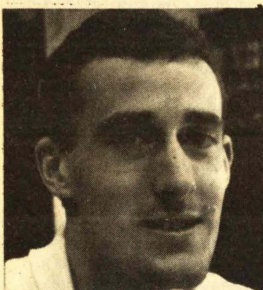
**Daniel Gilbert:** I thought it would be what it is. I had no views that it would be different than it is.



**Gary Hisiger:** It's not as bad as I thought it would be. It's volume, not degree of difficulty.



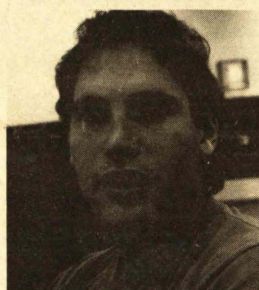
**Craig Ramseur:** It's a lot easier than I thought, but I think the volume is where they get you. But it's fun.



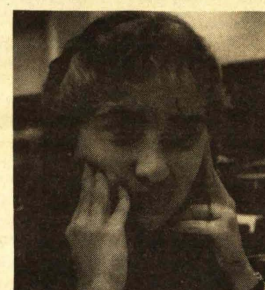
**Ted Wilson:** It's more interesting than I thought it would be. I was preparing for it to be a lot tougher . . . but I can foresee eating those words.



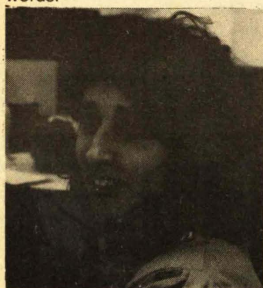
**Elizabeth Love-Goot:** It's not as strict or tough as I thought it would be. But there's just as much work as I thought there would be.



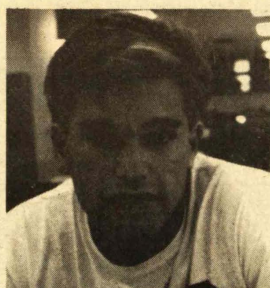
**David Gartenstein:** A lot more work than I thought there would be. Not as hard as I thought.



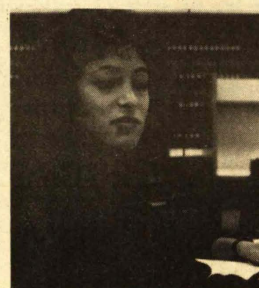
**Irene Skidan:** It's definitely as much work as I thought. The professors make you build on what you read.



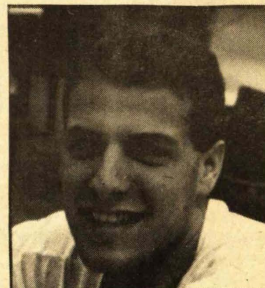
**Elizabeth Salmon:** What's important is that it's a whole different way of thinking. It's overwhelming.



**Gregory Katz:** The work load is not as much as I expected.



**Sharen Gold:** Same as what I thought it would be. The work is not as difficult as I thought it would be, but it's more tedious.



**Bob Preston:** I sometimes have trouble with the substance, but I thought I would. I have more free time than I thought I would. The professors are excellent and are very bright.

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# Saturday Night Massacre Revisited

by Craig Saunders

October 20, 1973 has been dubbed the "Saturday Night Massacre." Attorney General Elliot L. Richardson tendered his resignation to President Richard M. Nixon after he refused to fire special Watergate prosecutor Archibald Cox. President Nixon then gave the job of firing Cox to Deputy Attorney General William D. Ruckelshaus. When he could not, in good faith, terminate Mr. Cox, Nixon discharged him. The president then turned to the third ranking official at the Justice Department, Robert H. Bork, who promptly followed the president's order and dismissed the special prosecutor.

Mr. Bork had come to Washington in 1972 at the request of the president. He left his position as professor at Yale Law School and assumed the responsibilities of Solicitor General, which include arguing the government's position in cases before the Supreme Court and handling the administration's business in the appellate courts. Mr. Bork was selected by Mr. Nixon because he was a conservative Republican, and his ideology was favored by the administration.



**Judge Bork (I.) as he appeared in the closing ceremonies of the first annual Jerome Prince Moot Court Evidence Competition. Judge Bork presided over the final round arguments.**

The president knew that Mr. Bork would have no reservations about the dismissal of Mr. Cox, and Mr. Bork was promptly promoted to Attorney General under Title 28, Section 508(b) of the United States Code, and under Title 28, Section 0.132(a) of the Code of Federal Regulations. After his first official order—the firing of Mr. Cox—Mr. Bork had the Federal Bureau of Investigation seal off the special prosecutor's office, making sure no documents were removed. The problem that is being raised today in the light of Mr. Bork's nomination as associate justice to the Supreme Court, is the legality of the dismissal.

According to the guidelines that were set up, the only way the special prosecutor could be removed was if he committed "extraordinary improprieties." President Nixon ordered the firing of Mr. Cox after the latter requested that nine tapes made by the President concerning the Watergate break-in and cover-up thereafter be turned over to the Justice Department. The President resisted and took the issue to court, where he lost in the United States District Court and the Supreme Court. Clearly, the special prosecutor's actions did not fall into the category of "extraordinary improprieties," and Mr. Bork was certainly aware of this fact.

Asked why he carried out the president's command, Bork responded, "I was not in the special position that Mr. Richardson and Mr. Ruckelshaus found themselves to be in. I did it because his departure [Mr. Cox] had become inevitable—it was going to be done anyway. There were no ill feelings towards Mr. Cox in any way."

This decision was widely criticized by the media, the public and the American Bar Association. The episode caused irreparable harm to the president. Shortly thereafter, impeachment proceedings commenced against Mr. Nixon, while Mr. Bork received sharp criticism.

Chesterfield Smith, then president of the A.B.A., was extremely critical over this move, and said that the firing challenged the American system of justice. "We have an adversary system of justice in this country. It appears to me that if one of the adversaries, whoever he is, can instruct the other not to bring evidence into court, then the system of justice is breaking down." Seventeen deans

continued p. 15

## Faculty Corner

# Ex Parte Communication *Brown v. Board of Education*

by Professor Gerard A. Gilbride

The Code of Judicial Conduct was adopted in August of 1972 and thereafter by the respective states. Canon 3A-4 states that a judge neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. The Commentary to this canon states: "The Proscription against communications concerning a proceeding includes communications from lawyers, law teachers and other persons who are not participants in the proceeding."

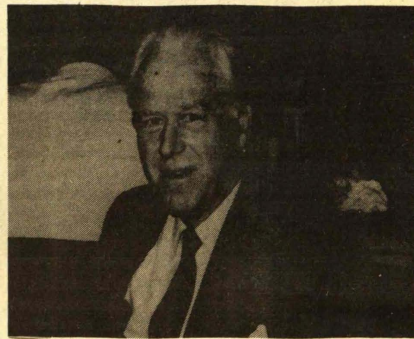
Some of you may recall the Fuchsberg case, which arose out of the New York City Fiscal Crisis and the constitutionality of the legislation it spawned (i.e. *Wien I* and *Wien II* et. al.). Judge Fuchsberg was censured for not recusing himself because of his substantial holdings in Municipal bonds. In the course of the hearings it was discovered that the Judge had consulted ex parte with law professors on issues raised by Court of Appeals cases. His defense was that he was unaware of the Canon 3A-4 and he [Judge Fuchsberg] looked upon the law professors he consulted as "ad hoc law clerks."

The next time ex parte judicial activity received media attention was in 1982 when Professor Bruce Murphy published the Brandeis/Frankfurter Connection. In the book, the author chronicles in great detail the Brandeis and Frankfurter extensive involvement in political activities. Both Justices publicly nurtured the ideal of a Supreme Court Justice as a thoughtful, disinterested and largely apolitical person of the highest character, sitting at the pinnacle of the American legal system, exercising their powers of judicial review based not on personal political philosophy but on the requirements of Justice and constitutional government. (i.e., the court must avoid activities that risk seriously damaging the expectation that courts will dispense justice without fear or favor.) In one of his letters Frankfurter put it this way: "When a priest enters a monastery, he must leave—or ought to leave—all sorts of worldly desires behind him and this court has no excuse for being unless it's a monastery. And this is not high flown talk. We are all poor human creatures and it's difficult enough to be wholly intellectually and morally disinterested when one has no other motive except that of being a judge according to one's full conscience."

The evidence brought out in Professor Murphy's book from the private correspondence of the justices indicated that both Justice Brandeis and Justice Frankfurter found it impossible to curb their political zeal after their appointment to the Bench. In fact, both remained as involved in politics once in the court as they had been before appointment.

Justice Frankfurter's ex parte involvement in the *Brown* case made front page news only recently because of the publication of an article in the February 1987 issue of the *Harvard Law Review* by Philip Elman entitled "The Solicitor General's Office, Justice Frankfurter and Civil Rights Litigation (An Oral History)." Mr. Elman had served two years as Frankfurter's law clerk in the 1941 and 1942 terms and had continued to have a close personal relationship with him during the Justice's tenure in the Court until Frankfurter's death in 1965.

Mr. Elman joined the staff of the Solicitor General's office in 1944 and served in that office until 1961 where he handled all the civil rights cases in the Supreme Court in which the United States was a party or filed a brief as amicus curiae. It was while preparing the Government's brief in *Brown* that Mr. Elman reveals his ex parte conversations with Justice Frankfurter concerning the case. Mr. Elman felt that the only way to get a viable decision overruling *Plessy v. Ferguson*, (i.e. separate but equal theory) was not by overruling *Plessy* and requiring immediate integration of public schools in about 21 states as urged by the NAACP. But he proposed a middle ground that nobody had previously suggested and that both sides in the case opposed. His proposal was HOLD PLESSY=SEPARATE BUT EQUAL-UNCONSTITUTIONAL—but delay enforcement by giving the district courts a reasonable time to decide the timing and implementation of the desegregation. Mr. Elman states that the idea "grew out of my many conversations with Frankfurter over a period of many months. He told me what he thought the other justices were telling him about the case: 'I knew from him what their positions were—if the issue was presented in yes and no terms. He, Frankfurter, could not count five votes to overrule *Plessy*.' He saw Vinson, Clark and Reed as simply affirming *Plessy*, Jackson leaving it to Congress, Black, Douglas and Burton for overruling *Plessy*, Minton unsure. What concerned the entire court was the possible anarchy and violence that might result if they ordered immediate desegregation. Thus Mr. Elman's and ultimately the court's



unanimous decision—Separate but Equal—is unconstitutional—DESEGREGATION WITH ALL DELIBERATE SPEED."

If any of you read the New York Times article revealing the ex parte conversations—Frankfurter [FF] even had code names for the various Justices: i.e., Stanley Reed was the Chamer, which means "fool" or "dolt" or "mule" in Hebrew; Murphy was "The Saint"; and Roberts "The Squire." Elman says he never mentioned his conversations with anyone, reasoning: "He [FF] didn't regard me as a lawyer for any party. I was still his law clerk." When asked in the oral history recounted in the *Harvard Law Review* article the following question: "By having ongoing private conversations with Justice Frankfurter about a pending case, (i.e., *Brown v. Board of Education*) you were submitting, in effect, a Government brief to which the opposition never had a chance to reply."

Elman replied:

Yes, I suppose there is a point there. In *Brown*, I didn't consider myself a lawyer for a litigant. I considered it a cause that transcended ordinary notions about propriety in a litigation. This was not a litigation in the usual sense. The constitutional issue went to the heart of what kind of country we are, what kind of Constitution and Supreme Court we have: whether, almost a century after the fourteenth amendment was adopted, the Court could find the wisdom and courage to hold that the amendment meant what it said, that black people could no longer be singled out and treated differently because of their color, that in everything it did, government had to be color-blind. I don't defend my discussion with Frankfurter; I just did what I thought was right, and I'm sure he didn't give it much thought. I regarded myself, in the literal sense, as an amicus curiae.

He summed up his attitude:

*Brown v. Board of Education*, which we fully discussed, was an extraordinary case and the ordinary rules didn't apply. In that case I knew everything—or at least he [FF] gave me the impression that I knew everything that was going on in the court. He told me what was going on in conference and who said it.

As I look back now, I can see myself in *Brown v. Board of Ed.* as having been his junior partner or law clerk emeritus, in helping him work out the best solution for the toughest problem to come before the Court in a century. He [FF] succeeded in the end, but it was nip and tuck. I would like to think I contributed an important assist.

In his [FF] letter (to McGeorge Bundy) he states: "It was Phil (Elman) who proposed what the Supreme Court finally decreed, namely, that the Court should not become a school board for the whole country, that the question of how non-discrimination should be brought about should be left primarily to the local school boards, and that any dissatisfaction with their plans should go to the local federal courts."

Neither Frankfurter nor Elman had anything but the highest motives in attempting to get a unanimous court to overrule *Plessy*. Desegregation with all deliberate speed was the practical solution. But the question remains: Are judges justified in using unethical means to acquire what all men of good will would say was a totally moral result?

In other words, does the end justify the means? Not usually, and certainly not under the existing Code of Judicial conduct.

Courts need all the assistance they can get from whatever source is available but it seems clear that such assistance must be given openly and with notice to the opposing party.



# WILL THE BAR EXAM BE YOUR LAST TEST BEFORE THE BIG JOB??

by Rosmary Townley

Most law students expect the bar examination to be their last encounter with any form of testing before landing that first job in a law firm, corporation, or agency. But do you know what an EMIT test is? Do you know what it measures or what the margin of error is with such a test? Even if you are not a drug user, what are the chances the EMIT test will still show a positive result? What recourse do you have if you are tested and an improper result occurs?

Are you aware that the *American Bar Association Journal* reported last November that a large number of Manhattan law firms may begin drug testing within the next year, following the lead of some of the major investment-banking firms, such as Kidder Peabody? If you are required to submit to a drug test as part of the application process for a position, what are the potential consequences? What constitutional issues are raised in drug testing, and which issues have been reached by the United States Supreme Court?

Does the arbitration of baseball salaries make sense? Why are players subjected to drug testing, while other employee groups are not?

Additionally, how knowledgeable are you on current, vital topics such as AIDS in the workplace? How would you advise a client who is faced with potential litigation over sexual harassment or an immigration-violation claim? What guidance have the courts and legislatures provided on these matters? Labor law is not merely dealing with unions. The issues just mentioned are an integral part of the field and are being addressed on a daily basis by attorneys who are not only dealing with their clients but are facing these issues within their own firms.

To keep yourself apprised of developments in the labor-

and employment field, *the justinian*, Vol. 1987, Iss. 3, Art. 1

the New York State Bar Association and of the Labor and Employment Law Section. In addition to the benefits of membership in the State Bar Association, you will receive a free copy of the section quarterly, *Newsletter*, which regularly contains articles on these and other timely issues. You will be invited to attend various conferences where you can hear and meet with the attorneys who are experts in these emergent fields.

If you are already a student member of the New York State Bar, you will be receiving a letter within the next few weeks, inviting you to join the section at the reduced membership rate of five dollars per year. If you have not as yet joined the State Bar as a student member, look for the yellow brochure entitled "Labor and Employment Law Section" and the accompanying letter, which have been placed in the SBA office and on the stands near the cafeteria and third-floor elevators. For ten dollars per year, you can join both the State Bar and the Labor Law Section.

Ten dollars is a small investment to make to further your understanding of some of the key issues that have been or will soon be addressed by the courts.

The Labor Law Section has provided a special *Newsletter* edition for your perusal, along with an application form. A message from the chair of the section is found on the front page of the special edition.

As a student member of the State Bar, you will become eligible to join other sections of the bar at a low fee, such as antitrust; banking, corporation, and business; criminal justice; family law; insurance negligence; tax; real property; and trusts and estates, among others.

If you are unable to find an application, check with your SBA office or drop a postcard to: Membership Services Department, N.Y.S. Bar Association, One Elk Street, Albany, New York 12207 and ask for an application form. Remember, your first contact with the attorneys you hope to be working with need not be at the interview. Maximize your opportunities for networking while you are still in school.

Can you think of a better way to meet the executive director of the Major League Baseball Players Association, the chief counsel of the Major League Owners Associations, and the Assistant Secretary of Labor than to play in a softball game with them? If you had been a member of the Labor Law Section last September, you might have played right field in Cooperstown last September! (Rosemary Townley is the Law Student Liaison to the New York State Bar Association, Labor Law Section)

## NEW LAW INSURES FINANCIAL FITNESS OF HEALTH CLUBS

by Brian Rattner

The Health Club Services Law (General Business Law Article 30) was recently amended by the adoption of Sect. 622-a, which protects consumers in the event a health club closes or becomes financially unable to meet its obligations. Health clubs will now be required to file a performance bond with the Secretary of State or, alternatively, to procure and file an irrevocable letter of credit or a certificate of deposit.

The amendment affords a significantly higher level of financial protection to the thousands of health club members throughout the state. Advance membership fees are often paid by consumers with the expectation that the health club has the financial ability to honor its service obligations. Prior to the amendment, the consumer was often victimized by unscrupulous health club operations that collected membership fees even after they had become insolvent. Losses to consumers have amounted to hundreds of thousands of dollars, since health clubs often leave behind few, if any, assets upon going out of business.

The effective date of the new amendment is the ninetieth day after it becomes law; provided that for clubs in operation on July 1, 1987, the act's effective date shall be one year after it shall have become a law. The new amendment will assure the availability of funds to provide restitution to health club members who previously were almost certain to lose most if not all of the advance membership fees paid in the event the club closed.



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# Now That You're Here . . .

by Robert J. Roth

As with any new experience there is bound to be a considerable amount of anxiety, preconceived notions and sometimes outright fear. While most first year students harbor these feelings in varying degrees there is one common thread that runs through each first year student's mind, that thought being "but what's the answer?" In many other disciplines such as medicine or engineering there is inevitably that "bottom line"—the "yes" or "no" that settles the argument once and for all. More often than not such is not the case in the practice of law.

Sure, there are many questions especially those concerning procedure which have right and wrong answers, but most legal issues defy such easy categorization. Perhaps the expression "you're confusing the issue with the facts" capsulizes how grey seems to be the color of choice among members of the legal profession. A new angle here, a novel theory there, often results in an outcome that disturbs what for years may have been the "right" answer.

Herein lies the frustration that so many incoming students will face. The mere mention of Legal Process class becomes anathema. Confusion reigns unfettered from the shackles of yes and no and their soothing simplicity. Instead of tackling this unsettling demon head on, and commanding it to fit neatly into its place in the orderly scheme of things, the student would be better off stepping back for a moment and simply let the ideas bounce about the lecture hall walls. Your time will be more effectively spent not trying to discern any absolutes, but rather on concentrating on the thoughts behind the various arguments. How you got there as opposed to what you see on arrival, is the important lesson.

Although developing such a mindset may take some time, it will be time well spent. In practice the situations you will be challenged with will not fit into anything remotely resembling order. Most fact patterns encountered will be testaments to the theory of entropy. It is said that without laws there would be anarchy. Perhaps to the first year student a more accurate view is that without laws there would be Legal Process. Enjoy your confusion while it is still excusable.

Law School can be a bewildering experience at many different levels. Like the teenager forcing himself to believe that he actually enjoys that first beer, there will come a time when most if not all of what you are currently going through will eventually make sense. In retrospect you'll wonder what all the commotion was about.

Keep things in perspective. Remember, this too will pass. The first year is going to be your hardest by far. Not because the courses are so difficult, but rather due to the tremendous adjustment one has to make in the learning process. You'll make the adjustment and if its any consolation, you may even enjoy your second and third (and in some cases fourth) years.

## Orientation Ceremony Kicks Off '87 Season



Dean Trager wows first years with his version of "New York, New York."



**BEFORE:** Ordinary entering students . . **AFTER:** . . . Ordinary entering students after Dean Trager's motivating opening remarks.



**"Yes, Virginia, there is an Admissions Office."** Professor Leitner awes faculty by standing on his head.

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Dean Trager instructs Claudia Werman to get the hook.

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## The Importance of an Informed Opinion

This past couple of weeks an interesting phenomenon has been taking place, its importance unappreciated by its participants. Students have been signing their names on a petition to prevent the nomination of Judge Robert Bork to the Supreme Court. The significance of this event goes beyond the goal of the petition; for many it marks the first time that they have attached their names to a document as members of the legal community.

This document, signed and circulated in a law school, purports to be a serious message of concern by students of the law. Ironically many of the names on the petition belong to first year students whose experience in the law can still be measured in hours rather than years. This is not to say that people uneducated in the law cannot express an opinion regarding the nomination of a justice to the Supreme Court. Laypeople have the luxury of being able to rely on newspaper accounts and editorials in forming their opinions on legal issues. Those who aspire to be members of the Bar do not.

Law students and attorney's have an obligation to conduct original research before rendering an opinion. The second floor of the library contains many opinions written by Bork which are available for inspection to all those truly interested. It is only after careful analysis of Judge Bork's actual writings that one could come to an educated decision on whether or not signing such a petition is in fact an appropriate action.

## Interview Insanity

Once again, the fall recruitment season is upon us, and once again, the Placement Office has been unable to keep the system running smoothly. The most troublesome aspect of the early-interview process is the problem of notifying students of their interviews in a timely fashion. The current procedure of posting interview notices on the bulletin board in the lobby of 250 Joralemon is simply inadequate.

Students not living in the area are unable to check the board daily, and there is considerable doubt as to whether even doing so would insure proper notification. Horror stories abound of individuals finding out the morning before an interview that the list of the previous day has been revised and they have actually missed an interview. Sloppy posting procedures, delays in posting lists, and revisions all contribute to the problem.

If the inadequacy of the posting procedure were not enough, the Placement Office has an absurd policy of calling students after a missed interview while refusing to phone the day before to make sure the student is aware of the scheduled interview.

While the onus may be on the student to watch the bulletin board for firms he has submitted resumes to, it would be much easier for the Placement Office to call the few individuals slated for interviews rather than having fifty or more students playing the waiting game of bulletin-board Russian roulette.

Nobody wins under the current system. Students lose valuable interviewing opportunities, prospective employers waste their time on no-show interviewees, and most of all, the school loses, because employers will not in all likelihood be willing to waste their time two years in a row.

It's time we got our act together.

## Tarnished Memories

For most of us, the trophy case in the main lobby simply provides a convenient meeting spot for embarking on lunchtime jaunts. But for some, especially those whose painstaking efforts helped garner the prizes inside, it elicits memories of a job well done and a sense of personal and school pride.

Unfortunately, the memories of many of those whose energies went into obtaining these trophies are becoming tarnished, both literally and figuratively. During an interview last spring, an alumna whose name appears on one of the trophies remarked sadly on how little care seemed to be given to maintenance of the case. She urged upkeep of the hard-won honors and she even offered to buy polish.

While this may seem a minor point in the grand scheme of things, it is worth taking a minute to reflect that this school is not made up simply of its current residents but of all those students of who have passed through its portals. We owe it to our alumni to keep their memories of BLS alive and bright.

**Justinian  
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Out**

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## by Darren Saunders

Until recently, there was no need for any type of federal regulation or law regarding genetic-engineering research, because the science was in its preliminary stages. In the

Genetic-engineering research at univer-

The legal profession is seriously lagging in its efforts to create a strong framework in which to resolve these fast-growing technologies. Although in some instances (surrogate parenting, for example) we can afford to limp from case to case without articulating a uniform policy without disastrous consequences, controversies involving

Although in some areas future legal decisions may correct for past social injustices or injuries caused by prior legislative or judicial shortsightedness, this is not the case in the sphere of genetic engineering. The effects of judicial errors regarding field testing of newly created life forms may be irreversible, enduring indefinitely.

The complacency with which our judicial system is reacting to these new technologies is therefore most disturbing. It is time that the judicial and legislative branches both took a serious and comprehensive look at the ramifications of their actions. Without a well-defined policy in place, we are courting disaster in the not-too-distant future.



# Believe it or Not . . .

## Fees Reduced At Law School

## Board of Trustees Take Heed of Prevalent Industrial Conditions

Dean William Payson Richardson has recently announced that, beginning with the new Summer Session, there will be a ten per cent reduction in tuition at the Law School, making the amount payable \$45 a quarter. This revision will continue until further notice.

Universities and colleges throughout the country have been steadily increasing their rates, predicating the rises on the increased cost of education. The Board of Trustees of Brooklyn Law School, however, remarked the Dean in his announcement, prefer at the present time to take heed of financial and industrial conditions prevalent and meet the exigency by alleviating the burden of the students. Dean Richardson pointed to this as another of the many instances in which the Administration has displayed its willingness to cooperate with the student and to help him cope with his individual problems.

# JUSTINIAN HAS ANOTHER AWARD WINNING SEASON

In keeping with its track record for taking top honors in the annual ABA sponsored Law School Newspaper/Magazine Competition, THE JUSTINIAN concluded the 1986-87 season with awards for best Feature/Internal Law School Affairs-Class B and second place runner-up in Overall Newspaper Category-Class B (Class B law schools are those with more than 700 students).

Thirty-six newspapers and four magazines participated in the contest.



# Off the Record

## (A Column Designed To Dispel Common First Year Misconceptions)

by Lance Gotko and Robert J. Roth

J. is not the first initial of every judge.

Calimari & Perillo is not a squid dish served on Italian cruise ships.

Subpoena duces tecum is not one of George Carlin's "seven dirty words."

Moot Court is not a forum for those who are unable to speak.

A 1983 action is not a testament to the overburdened court system.

WESTLAW is not the rough and tumble justice meted out on the other side of the Mississippi.

Buffalo Creek is not the sewer system beneath the law school.

Condemnation proceedings are actions unrelated to the AIDS crisis.

Supra has nothing to do with high octane gasoline.

New York Supp. is not a light meal consumed by residents of the Empire State.

Prima facie was not the precursor of Cro-Magnon.

Et al. is not the national airline of Israel.

Corps is not a course about dead people . . . it's just taught to them.

Mandamus is not a character on the He-Man She-Ra cartoon series.

Codification is not a bodily function.

Burger and Frankfurter are not favorite picnic items.

Am. Jur. is not a way to get rich selling cleaning products on the side.

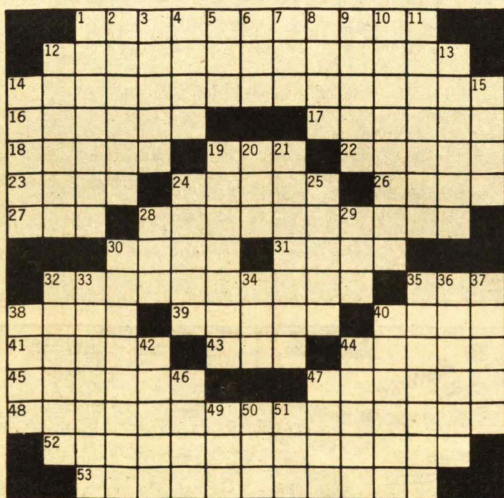
A derivative suit is not a hand-me-down.

Id. is unrelated to Ego and Superego.

Source checks are not yet another variety of breakfast cereal.

Nutshells are not items found on the floor at the Manhattan Brewery.

## NOT THE NEW YORK TIMES



© Edward Julius

### ACROSS

- 1 Where one might study Andy Warhol's works (3 wds.)
- 12 Enrollment into college
- 14 "Calculus Made Simple," e.g. (2 wds.)
- 16 Evaluate
- 17 Extremely small
- 18 Follows a recipe direction
- 19 Belonging to Mr. Pacino
- 22 Of land measure
- 23 Meets a poker bet
- 24 — Gay (WW II plane)
- 26 Capri, e.g.
- 27 Belonging to Mayor Koch
- 28 Little state of Ohio
- 41 "...not with — but a whimper."
- 43 Return on investment (abbr.)
- 44 Pondered
- 45 Belonging to Mr. Starr
- 47 Part of the classifieds (2 wds.)
- 48 Possible place to study abroad (2 wds.)
- 52 Small school in Canton, Ohio (2 wds.)
- 53 Orson Welles film classic (2 wds.)

### DOWN

- 1 Those who are duped
- 2 "Do unto —..."
- 3 Fourth estate
- 4 Goals
- 5 Well-known record label
- 10 Match
- 31 — and the Belmonts
- 32 Processions
- 35 Diet supplement (abbr.)
- 38 Scottish historian and philosopher
- 39 College in Greenville, Pa.
- 40 The Venerable —
- 7 151 to Caesar
- 8 Prefix meaning milk
- 9 Confused (2 wds.)
- 10 — husky
- 11 Most immediate
- 12 Like a sailboat
- 13 Cash register key (2 wds.)
- 14 En — (as a whole)
- 15 Auto racing son of Richard Petty
- 42 "...for if I — away..."
- 44 Actress Gibbs
- 46 African antelope
- 47 Well-known TV band-leader
- 49 Pince— (eyeglass type)
- 50 1968 film, "— Station Zebra"
- 51 1965 film, "— Ryan's Express"

The Justinian, Vol. 30, No. 1, 1987, listing, A well-known king

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- 50 1968 film, "— Station Zebra"
- 51 1965 film, "— Ryan's Express"

## TOP TEN QUESTIONS NOT TO ASK ON THAT FIRST INTERVIEW

By Robert J. Roth and Darren Saunders

10. WHY SHOULD I WORK FOR YOUR FIRM, AND WHEN DO YOU WANT ME TO START?
9. IS IT TRUE THAT YOUR FIRM DOES PRO BONO WORK FOR UNITED ARYAN NATIONS?
8. ARE ALL EMPLOYEES REQUIRED TO WEAR SOCKS?
7. HAVE YOU EVER FELT SELF CONSCIOUS ABOUT THAT HAIRLIP?
6. WHAT IS THE MAXIMUM NUMBER OF SICK DAYS ALLOWED IN THE FIRST MONTH?
5. WHEN ARE THE TRY-OUTS FOR THE FIRM'S BOWLING TEAM?
4. DO YOU KNOW THE QUICKEST SUBWAY ROUTE FROM ASTORIA?
3. DO YOU HAVE A KOSHER MEAL PLAN?
2. DOES THE DENTAL PLAN COVER CLEANING AND GUM TREATMENTS?
1. IF THERE ARE NO FURTHER QUESTIONS, WOULD YOU LIKE A URINE SAMPLE NOW?

## JOE BIDEN'S TOP TEN ORIGINAL CAMPAIGN SPEECHES/SLOGANS

10. TIPPECANOE AND BIDEN TOO.
9. WE HAVE NOTHING TO FEAR BUT FEAR ITSELF.
8. ASK NOT WHAT YOUR COUNTRY CAN DO FOR YOU. ASK WHAT YOU CAN DO FOR YOUR COUNTRY.
7. FOUR SCORE AND SEVEN YEARS AGO OUR FOREFATHERS . . .
6. NEVER HAVE SO FEW DONE SO MUCH FOR SO MANY . . .
5. I LIKE JOE.
4. HOW MUCH DID SYRACUSE LAW SCHOOL KNOW AND WHEN DID THEY KNOW IT?
3. WHEN IN THE COURSE OF HUMAN EVENTS . . .
2. I REGRET THAT I HAVE BUT ONE LIFE TO GIVE FOR MY COUNTRY.
1. WE THE PEOPLE OF THE UNITED STATES IN ORDER TO FORM A MORE PERFECT UNION . . .



## SECOND CIRCUIT ROUNDUP

(Decisions you may have missed)

IKILDA v. SEE  
TEE v. ADDICT  
LOST v. KEND  
POCKET v. TOE  
HEVV v. HITTER  
GREW v. DRUGGS  
GRAY v. TRAYNE  
LEV v. DeFINE  
CHEV v. IMPALA  
NAY v. BLEW  
A. v. SQUAD  
POURMORE v. NO  
CHEV v. CHASE  
SAA v. BIZNIZMIN  
EYE v. LEEGUR  
TRIV v. ILLPURSUIT  
PERU v. ENRUBIL

TELLA v. EEVE  
EUGENE v. DEBBS  
SEE v. ESSFARMACY  
LaDOLCE v. TAH  
VELL v. TACHEESE  
MOOH v. STARR  
REE v. LINDRESS  
I.M. v. HEMENT  
R.U. v. HEMENT  
HAR v. FIERSTEIN  
GROSSLAV v. TORY  
IBROKE v. NESS deMYLO  
MOHA v. DESERT  
STEE v. RAYVORN  
OBLI v. US  
ANCHO v. PEETSA  
CLAV v. KORD



# Moot Court News

by Karen Cooke

The following students are elected to the 1987/88 Moot Court Honor Society Executive Board: Chairman, Randall J. Chiera; Vice Chairman, Karen M. Cooke; Treasurer, Geoff Dunham; Intermural Coordinators, Mary Abbene, Jeffrey Ruggiero, and Claudia Werman; Fall Intramural Competition Coordinator, Deborah Levine; Spring Intramural Competition Coordinator (Trial Advocacy), Paula Kelly; and Prince Evidence Competition Coordinator, Ira J. Levy.

## Fall Intramural Competition

This competition is open to all second-, third- and fourth-year students. There are only two methods by which upperclass students may apply for Moot Court membership: 1) by participation in the Fall Competition; and 2) by successful completion of Appellate Advocacy. The problem will be handed out on September 21 and will be due October 13. The oral-argument rounds will begin the week of October 20 and the final rounds will be held November 4. All students are encouraged to attend the final round of arguments held in the Moot Court Room; watch the bulletin boards for announcements.

## Intermural Competition Teams

The Honor Society is currently preparing four intermural competition teams; later this fall we will select an additional 8-10 teams for competitions which take place in the spring. The Benton Privacy and Information Law Competition will be hosted by John Marshall School of Law in Chicago during the last week of October. Last year's BLS team took eighth place out of forty-two teams, making the quarter-final rounds. This year's team consists of: Mary Abbene, a third-year student and veteran from last year, and David Bolton and Michelle Reed, both second-year students.

The Honor Society is participating for the first time this year in the Starr Insurance Law Competition held in Hartford, Connecticut in early November. Our team

# Calendar Call

## October

- 1 (Thu) Award of October Juris Doctor degrees.
- 2 (Fri) Eve of Yom Kippur—evening classes suspended.
- 5 (Mon) Last day for first-year students to receive a pro-rata tuition refund upon withdrawal.
- 12 (Mon) Dean's Day (Columbus Day)—Day classes only are suspended. Evening classes will follow a regular schedule. Last day for upperclass students to receive a pro-rata tuition refund upon withdrawal or leave of absence.

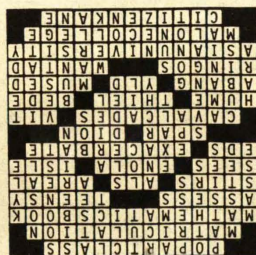
consists of three second-year students, David Berger, Amy Goganian, and Nancy Strohmeier. Jeff Ruggiero is the coordinator for this team.

The National Competition, one of the most prestigious competitions which we will enter this year, is sponsored by the American Bar Association. Regional rounds will be held in New York City in mid to late November. This year's team consists of Jim Tenney, Erica Tukul, and Claudia Werman. Karen Cooke is the national team's coordinator.

## Other Intermural Competitions

The Honor Society will be fielding a team at the Trial Advocacy Competition. We are considering entering the following additional competitions in the spring: Constitutional Law, Tax, Administrative, Evidence, Entertainment, Product Liability, Securities and Intellectual Property.

The Jessup International Law Competition will take place in February, 1988. This year's team consists of five students: Jessie Brooks, Virginia Gulino, Eileen Ryan, Ann Marie Vroman, and Renee Zarelli. Randy Chiera will coordinate the Jessup Team.



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# Journal Symposium Scheduled

The Brooklyn Journal of International Law will be presenting its symposium this year on International Securities Regulation. It will take place from 5pm-7:30pm on December 2, 1987 at Federal Hall.

Moderated by Professor Roberta Karmel, the participants will be Professor Norman Poser, Brandon Becker, Associate Director of the Division of Market Regulation of the Securities and Exchange Commission, Roger Kubarych, Chief Economist of the New York Stock Exchange, and Stephen Boughton, Esq., member of the London law firm Linklaters & Paines.

Topics the speakers will address include *The Big Bang and the Financial Services Act through American Eyes*, *The Safety of International Capital Markets*, and *Multinational Surveillance and Information Sharing by Regulators*.

The Journal expects heavy attendance by the New York financial, academic and legal communities.

## Behind the Scenes Glance at Writing Competition Selection Process

The Law Review competition began several days after the last spring final exam. The subject of the competition was the Second Circuit's opinion in *Random House v. Saling*. The students were required to write a case comment, which is a critical analysis of a court's decision and reasoning. The competition was "closed world." That is, all of the permissible materials were provided to students to use at their discretion. Students were allowed six days to complete their papers, which time included one weekend. Students were required to meet strict format requirements for the competition papers as outlined in the competition instructions. Papers submitted later than the scheduled deadline were penalized three points for every fifteen minutes late; these points were deducted from the maximum score of 120 after the first round of grading was completed.

Every competition paper was graded by at least three members of the Law Review. Papers which received a grade of 70 or higher out of 120 maximum progressed to the second round. Each of these papers was then read and graded by a member of the Executive Board of the Law Review. From this second round, fifty of the best papers were chosen for the third and final round. These papers were then read by at least two members of the Executive Board, excluding the editor who selected the paper to progress to the third round. The very best papers were then chosen for acceptance. Papers which were considered to be of equal merit, and which thus received tie scores, were matched with students' first year grade point averages. Class ranks were not used. The students with the highest combined competition scores and first year grade point averages were then selected from this category of papers.

## Fall Moot Court Problem Unveiled

Each Fall the Brooklyn Law School Moot Court Honor Society sponsors an Intramural Appellate Advocacy Competition open to all second-, third- and fourth-year students in good standing. This year's problem concentrates on the present restrictions sought to be placed upon family-planning grants by the federal government. Each participant is required to complete an appellate brief and present oral arguments. The competition is well under way, with participants having received the problem on Monday, September 21, 1987. The following is a schedule for the remainder of the competition:

### Briefs Due—

- Preliminary Round I—
- Preliminary Round II—
- Quarterfinal Rounds—
- Semifinal Rounds—
- Final Round—

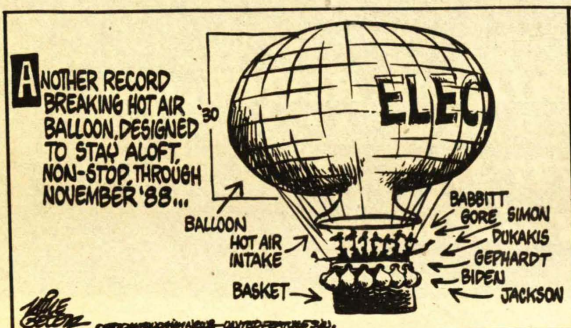
Tuesday, October 13, 1987  
Before 1 p.m.

Tuesday, October 20, 1987  
Thursday, October 22, 1987  
Tuesday, October 27, 1987  
Thursday, October 29, 1987  
Wednesday, November 4, 1987

Everyone (except competitors who have not been eliminated) is invited to attend the oral arguments. We encourage you to observe the final round, which will be held in the Jerome Prince Moot Court Room on the 7th floor.

There are three methods by which students may qualify to join the Moot Court Honor Society as follows:

- 1) by competing in the Fall Intramural Appellate Advocacy Competition; 2) by successfully completing the Appellate Advocacy course; or 3) by competing in the Spring Intramural Trial Advocacy Competition.





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continued from p. 3

Justice Department that were "truly egregious," where individuals were "stealing real money." In essence, there would be no chilling effect on capital formation, unless outright theft were involved. The well-known cases probably provided the impetus for Congress to get moving on the establishment of a definition.

Flannery commented on the pros and cons of working in the glare of the public spotlight while attempting to conduct an investigation or try a case. Given that the commission's process is a confidential one, at times it is difficult to investigate when publicity is generated, because the publicity inhibits some people who would otherwise step forward to report violations or to testify. If an investigation results in a finding of no violation of the SEC regulations, careers could be ruined.

On the positive side, publicity is an important factor when a case is brought, Flannery concluded, because it serves as a deterrent to those who may be considering violating the SEC rules. The media coverage of white-collar crime probably offended the public's sensibilities and led to a general conclusion that something had to be done. Flannery sensed an attitude change, both in Congress and in the investment community, once firms realized their reputations among clients were at stake and the conduct of their officers and employees could expose them to liability. The publicity may also have generated concern among clients of major investment firms, causing them to fear confidential information they gave the firms was being used by individual employees for their own profit.

## THE NEED FOR ETHICS

"WITH THE GREAT PART OF RICH PEOPLE, THE CHIEF EMPLOYMENT OF RICHES CONSISTS IN THE PARADE OF RICHES, WHICH, IN THEIR EYE, IS NEVER SO COMPLETE AS WHEN THEY APPEAR TO POSSESS THOSE

DECISIVE MARKS OF OPULENCE WHICH NOBODY CAN POSSESS BUT THEMSELVES."

ADAM SMITH,  
THE WEALTH OF NATIONS, 1776

Flannery's ethics appear to be consistent with those expressed by Adam Smith over two hundred years ago. She expresses deep concern about the atmosphere that apparently pervades Wall Street in the compensation of its securities employees. She fears that the firms have made money the sole incentive for success. Consequently, the system is producing individuals who measure their success by how much money they accumulate. This leads to an erosion of ethical behavior, as individuals begin to think about how much more money could be earned through side arrangements in the style of Levine and Boesky.

Investment firms have fallen into the habit of bidding for the best and the brightest producers, she commented, so that it is not unusual for people to work for ten different institutions during their careers. This situation does not foster loyalty to a company or a client but does make it easier for firms to attract employees who are more concerned with money than with the quality of their work. Flannery cautioned that it would not be a fair conclusion that all Wall Street firms fall into this category or that all employees are without institutional ethics or loyalty. But the problem has emerged as a by-product of the current system, and more thought should be given by institutional leaders to discourage such behavior.

She noted that the ethics courses now being hotly debated among the academics running MBA programs may be of some use if they serve to sensitize students to

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the obligations that all parties have toward their clients and society. Additionally, the courses should be structured so that a heightened sense of awareness toward potential liability resulting from unethical behavior is instilled in students. She believes that managers, to avoid scandal for their firms, should give greater consideration to the character of the individuals they hire.

Flannery sees an analogous problem with certain law firms that perpetuate a valueless system of practice in which a lawyer's self-worth is equated with his or her net worth. She has seen young blue-chip lawyers, with no value system to guide them, being courted and hired by major firms merely because of the schools they attended and the backgrounds they may possess. Flannery notes the apparent disdain of major firms toward attorneys who have worked in the public sector. The basis of this attitude is the belief that attorneys who work for government agencies are there because they could not get jobs at top law firms. She emphatically pointed out that those attorneys who are at the SEC (who may earn up to one-third of what their peers in firms make) have freely chosen to join the commission. Flannery noted that as a general rule, an attorney in a government agency can gain much more experience, especially in litigation, in a shorter period of time than can those who join major firms and must wait seven or eight years before they are permitted to argue a case on their own.

## PARTING ADVICE

If law students are interested in work at the SEC or a government agency, Flannery suggests they take as many courses

as possible in the areas of criminal law and procedure, corporations, and securities transactions. She believes, however, that a special emphasis should be placed on clinical programs that allow students the opportunity to work directly in a litigation setting, especially for those students who do not participate in law review or moot-court activities. Before graduating from Brooklyn Law School, Flannery had held internships with the offices of the U.S. Attorney, Eastern District; the Brooklyn District Attorney; the Manhattan District Attorney's Department of Investigation; and the Police Department.

Flannery noted that her most memorable professors were Judge Kevin Duffy, Judge Edward Korman, and Dean David Trager. Dean Trager said that "if more students were like Anne Flannery, teaching would be a most pleasurable job." She interned for Dean Trager when he was U.S. Attorney in the Eastern District and notes that he has done a tremendous job of "putting Brooklyn Law School on the map." She further notes that since he became dean BLS graduates have become better equipped to compete with graduates of other New York law schools. She has also credited the Distinguished Alumni Lecture Series, which has been noted by the legal community, as an excellent showcase for Brooklyn Law talent.

Flannery's goal is to return someday to public service, where she has spent most of her career and energy. But first, she is headed for a month-long vacation and some quiet sailing before she returns home to New York.

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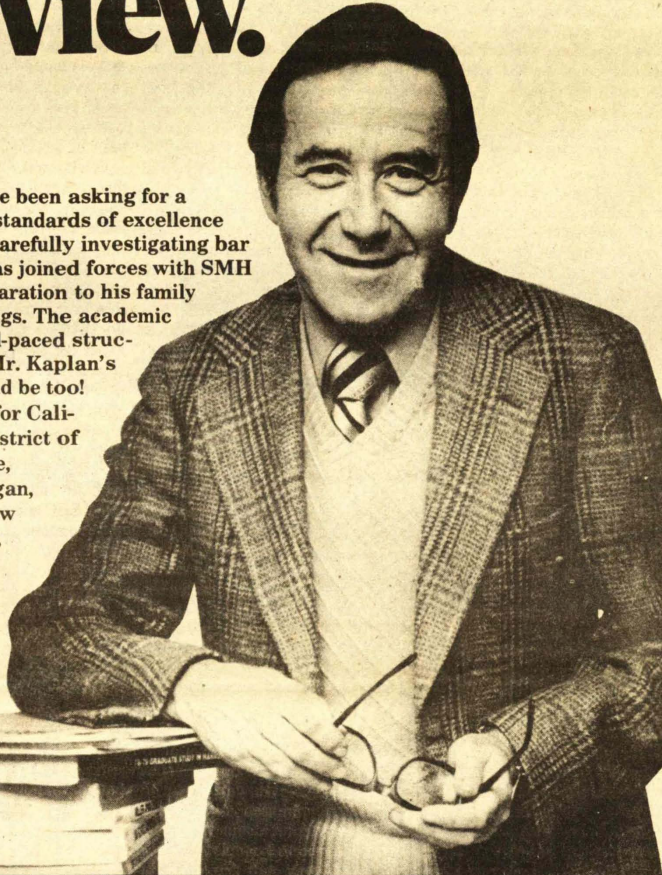
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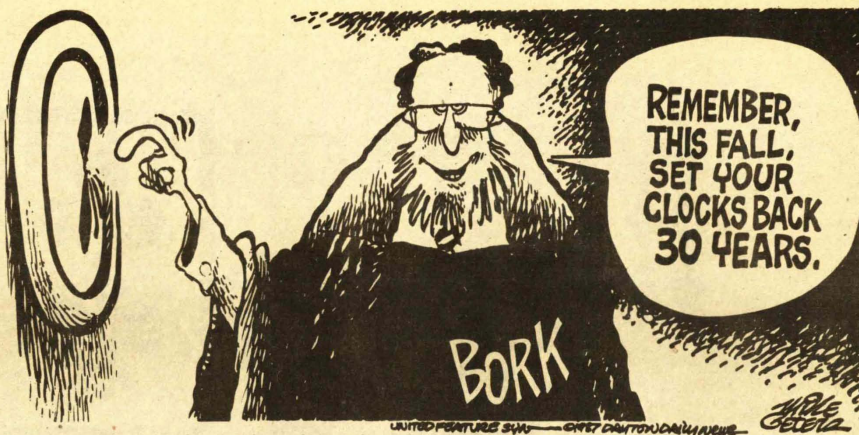
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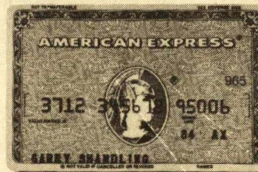
## Massacre from page 5

from the top law schools in the nation (including Harvard, Yale, and Georgetown) started petitions to impeach the President. Mr. Bork was not immune from the fallout that arose from carrying out Mr. Nixon's order.

Several interesting questions remain unanswered. First of all, what was Mr. Bork's real reason for dismissing the special prosecutor? It wasn't because he wanted to help cover-up the Watergate scandal. Mr. Bork stated that if the next special prosecutor didn't have the same freedom as Mr. Cox, he would resign. He also never explained what he meant when he said that he wasn't in the "special position" that Mr. Richardson and Mr. Ruckelshaus were in. And finally, Mr. Bork being a law professor at Yale certainly knew that Mr. Cox did nothing wrong in going after the Nixon tapes. These questions have remained unanswered for fifteen years and, hopefully, the Senate confirmation hearings will bring forth his responses. His approval or disapproval could depend on what he says. It should be an interesting confirmation proceeding.



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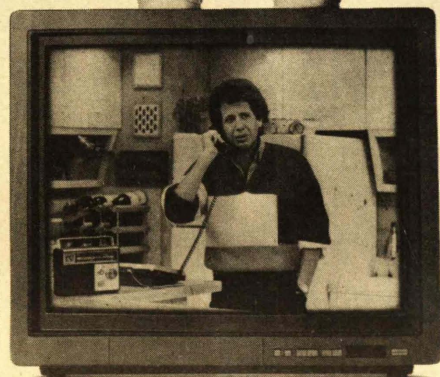
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