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THE JUSTINIAN

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

NEW FACES ON THE BLOCK

by Stanley Lee and Brian M. Rattner

Professor McLaughlin

The fact that a subject taught at BLS tends toward the dry side usually results in the students and professor of such a course being lulled into a deep slumber. This trend has been halted, at least in the area of the Uniform Commercial Code, by the teaching methods of Professor Gerald McLaughlin, who officially joined us as a professor this summer.

McLaughlin received his LL.B. from New York University Law School. He initially taught legal writing at University

Professor McLaughlin

of California Law School at Berkeley, and then became an assistant professor at the University of Connecticut Law School. He then entered private practice for two years, and since 1971 has taught at Fordham Law School. McLaughlin had been an adjunct professor at BLS prior to becoming a full professor this term.

McLaughlin is currently teamed with Professors Cohen and Zaretsky in writing a monthly newsletter on the U.C.C. entitled the Commercial Law Report. He publishes a monthly column in the New York Law Journal in conjunction with Professor Cohen and is Co-Editor of a bi-monthly publication called The Letters of Credit Report.

"I try to show that there is a little more to the subject matter than meets the eye and try to relate it to some things outside the U.C.C. itself," said McLaughlin. "I know that most people were brought up

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Second Annual Dean's Day Program Overwhelming Success

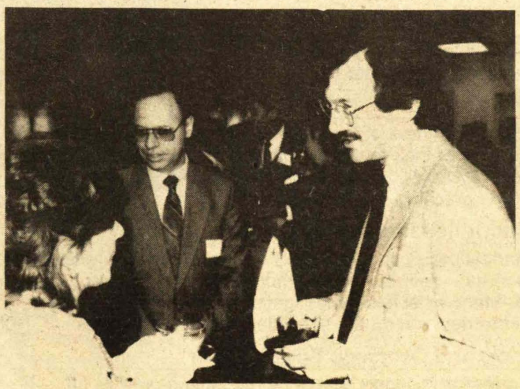
by Bessie Bazile, Ching Wah Chin and Rosemary Townley

OPENING REMARKS

Throngs of BLS graduates joined Dean David Trager on Columbus Day to participate in the Second Annual Dean's Day sponsored by Brooklyn Law School and the Alumni Association. Representing the association, Judge Louis Rosenthal welcomed his colleagues and offerred the regrets of ailing President Rose Hoffer, who was unable to attend.

Various courses on current legal issues were taught by BLS faculty during the morning session. Alumni then joined with their former professors for cocktails, lunch, and further discussion of the lecture subjects. Dean Trager presented an historical recounting of the origins of the school and an overview of long-range goals.

The morning's agenda consisted of the courses Securities Law: Insider Trading, by Professors Roberta Karmel, Arthur Pinto, and Norman Poser; Recent Developments in Criminal Law: An Introduction to RICO and the Organized Crime Control and Criminal Forfeiture Acts of New York State (CPLR Article 13(A), by Professors Stacy Caplow and Richard Farrell; Constitutional Law: The Rehnquist Court,The First Year, by Professors Joel Gora, William Hellerstein, and Susan Herman; Current Trends in Federal Civil Procedure, by Professors Margaret Berger and Jeffrey Stempel; and Tort "Reform": Legislative and Common Law,by Professors Jerome Leitner and Aaron Twerski.



Dean Trager (top) and Professor Kuklin (bottom) enjoying conversation with returning alumni.

ARBITRATION AND THE SECURITIES LAWS: AN INTERVIEW WITH BLS' MADELAINE EPPENSTEIN

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Securities Law and Insider Trading

The historical development of securities law and the insider-trading debate currently raging on Wall Street and in Congress were among the topics addressed in this forum. The anticipated U.S. Supreme Court decision in the insider trading case

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New Faces
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in an environment where a negotiable instrument or letter of credit wasn't something that was discussed over the dinner table."

Some professors teach the U.C.C. in such a way that the student fails to obtain a clear view of the big picture, an understanding of how and why the U.C.C. evolved into its present form. McLaughlin feels that a student must carefully analyze the U.C.C., and take this analysis to the extreme of interpreting every comma, semi-colon, and colon. Speedreading is not advisable in any of McLaughlin's courses if a student hopes to understand the policy issues contributing to the unique construction of a particular section of the U.C.C.

McLaughlin is currently teaching only upper level courses, but hopes to someday become involved with first year courses. His unbridled enjoyment of his work would undoubtedly exert a positive influence upon the minds of the first year students he taught, hopefully imparting to them his sense of enthusiasm for the law.

Professor Smith

The Brooklyn Law School faculty has been bolstered by the recent addition of Professor Lisa Smith. Her confident outlook for the Prosecutor's Clinic she heads is a definitely positive addition to BLS.

Smith is a BLS Alumnus who graduated in 1978. She took a position with the Brooklyn District Attorney's office subsequent to her graduation, eventually becoming the Deputy Bureau Chief in Criminal Court.

Smith utilizes her vast prosecutorial experience in Criminal Court to impart to her students an accurate, real-world perspective of the system. She feels that the prosecutors' job is actually even more interesting than an outside observer would perceive. Smith assures that clinic participants receive intriguing cases through her careful case selection.

A student enrolling in Professor Smith's clinic can expect to be treated much like an Assistant District Attorney. Each student receives an individual case load which, under the supervision of Smith, he or she is expected to see through to trial if necessary.

Smith finds the atmosphere at BLS quite conducive to student/teacher interaction. She perceives an openness in the relationships of students with their professors that fosters the learning process. Within her own clinic she tracks the progress of each student and eventually accompanies the student to court where she introduces the student to the court system and the judges and clerks who staff it. Smith is looking forward to the spring semester, when many of the cases students have laid the extensive groundwork for will go to trial.

Professor Brown

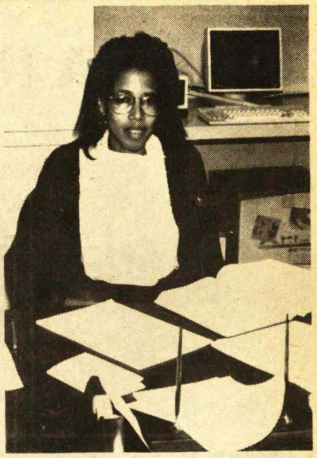
One usually doesn't like to talk to anybody about taxes except during tax season. Even then, it isn't because you want to, it's because you have to. You might, however, make an exception in the case of newly hired Professor Karen Brown, an instructor of Federal Income Taxation. Her bright and friendly demeanor may change your attitude towards tax law. This is on the assumption, of course, that it is negative to begin with.

A native of Wilmington, Delaware, Brown attended Princeton University for her undergraduate work and specialized in Romance Languages Literature. After receiving her J.D. AND L.L.M. at New York University Law School, she knew that she would eventually go into teaching. However, she realized that practical experience in the tax field would be beneficial in her teaching career, so four years were spent in the Department of Justice doing civil tax litigation, followed by a three year stint as an associate at the Washington D.C. law firm of Steptoe and Johnson doing tax planning. Brown is currently Performing research on foreign tax credits and is hoping to make this her first published work.

Professor Brown is looking forward to an expanded tax program at BLS, including the development of a tax research course. So far, her reaction to the faculty and the student body has been positive. She enjoys working with the talented faculty, and finds her students to be stimulating. She labels them as bright, curious, and interested.

Her outside interests include reading, swimming, and foreign films. Presumably, she hasn't been able to find any foreign tax credit films. Fortunately, she is able to indulge herself in these pursuits in New York City, which she grew to love from her schooling at NYU.

When asked for any suggestions that she might have for her students, she replied that they should keep an open mind, be flexible to new ideas. Of course, there is a need to be well prepared for class, but that's a given for all law classes.



Where tax courses differ from other types of courses are the perceptions of students who've never taken a tax course, or even considered taking one. "It's not an accounting class; You don't need to have an accoungint background, much less even taken an accounting course. If you can understand the theory behind what the tax code endeavors to accomplish, you can do the work." Brown feels that a tax law career is practicable even for someone who presently has an aversion to tax law. She stresses the importance of taking at least a few tax courses while at BLS. "Any good lawyer should have tax knowledge."

Professors Madon and Pitler who have also joined the BLS full-time faculty were unable to schedule interviews for this article. We hope to have profiles on these Professors in a future issue of The Justinian Eds.

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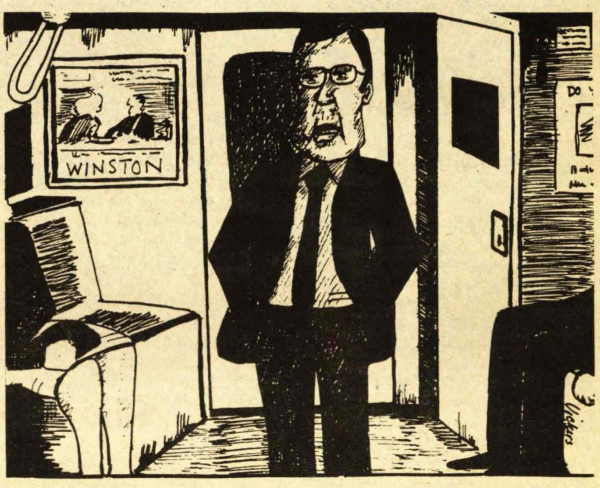
FEATURES

DEPARTMENTS



"Excuse me, ladies and gentleman. I am sorry to bother you, but I recently lost my job as an investment banker. I am unable to find employment in the current bear market and cannot afford to maintain the lifestyle I am accustomed to. Anything you could spare . . . nickels, dimes, quarters, junk bonds, CD's, T-Bills, municipal bonds . . ."

ALUMNA IN THE NEWS

MADELAINE EPPENSTEIN, CLASS OF '79, CHAMPIONS THE CAUSE OF THE SMALL INVESTOR TO THE SUPREME COURT IN THE LANDMARK CASE OF *SHEARSON/AMERICAN EXPRESS v. McMAHON*

by Robert J. Roth

INTRODUCTION

On June 8, the U.S. Supreme Court handed down its landmark decision in *Shearson/American Express v. McMahon*, 107 S.Ct. 2332, *reh'g denied*, --- U.S. --- (1987), upholding in a 5-4 opinion the validity of brokerage firm arbitration agreements signed by customers agreeing to arbitrate any prospective disputes including controversies raising statutory claims under the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. Sect. 78j(b) and the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. Sect. 1961 et seq.

While the decision was lauded as a victory for the securities industry, the dust has yet to settle on the decision's far reaching consequences as to the ultimate form of arbitration and whether investors will retain the option of pursuing federal securities claims in a judicial forum other than through the arbitration system. The decision also raises serious questions as to the remaining role of the federal judiciary in interpreting the securities laws.

In the words of Madelaine Eppenstein, a graduate of Brooklyn Law School's class of 1979, "Currently, not only is Congress conducting an inquiry into the abrogation of investor rights, but the SEC has for the first time issued proposals that would, if adopted, substantially alter stock exchange arbitration procedures to make them fairer for the investing public. I am disappointed that we lost the Supreme Court battle, albeit by a closely divided Court, but in light of Congress' and the SEC's recent actions I think we and investors will ultimately win the war."

Eppenstein who along with her husband Ted Eppenstein are partners in the Manhattan firm of Eppenstein & Eppenstein, represented the McMahons in their appeal to the Supreme Court. Just as she has made a name for herself and her firm through their representation of the McMahons, so too, Eppenstein while a student at BLS contributed much to the school's reputation, both in her capacity as Executive Editor of The Journal of International Law and as a member of the winning Phillip C. Jessup International Moot Court Competition team. Most recently, Eppenstein has continued her affiliation with BLS through her participation as guest speaker in the Placement Office sponsored Distinguished Alumni Lecture Series.

ROOTS OF THE DISPUTE

The controversy that would eventually lead the Eppensteins and Shearson to the Supreme Court had its genesis in 1982, when the McMahons placed individual and employee pension and retirement funds in an account with Shearson/American Express, Inc. The McMahons' account was handled by Shearson representative Mary Ann McNulty. Part of the initial paperwork involved in opening the account was the signing of standard customer agreement forms containing the boilerplate arbitration clause which provided that any disputes arising from the relationship would be resolved through arbitration, with the customer having the choice of arbitration through the facilities of either the New York Stock Exchange, the National Association of Securities Dealers or the American Stock Exchange.

After approximately two years, the McMahons charged that McNulty, through numerous unauthorized trades, had churned their account resulting in an excess of two hundred thousand dollars in commissions while at the same time causing their portfolio to suffer losses allegedly amounting to three hundred fifty thousand dollars. The McMahons brought suit in federal court, including claims under the Securities Exchange Act of 1934 and RICO, and pendant state law claims for fraud and breach of fiduciary duties.

Madelaine Eppenstein

HEART OF THE MATTER

Shearson, after litigating the matter for over one year, eventually moved to compel arbitration of all claims pursuant to the customer agreement and the Federal Arbitration Act (9 U.S.C. Sect. 1 et seq.). The district court ruled that the federal securities and state law claims should go to arbitration, but that the RICO claims were nonarbitrable. The Second Circuit reversed the portion of the decision ordering arbitration of the federal securities claims citing *Wilko v. Swan*, 346 U.S. 427 (1953), and the clear precedent in the Second Circuit following the *Wilko* decision, which extended the policy rationale of nonarbitrability to 1934 Act claims.

The Supreme Court granted certiorari to resolve a conflict that arose only recently among two other Circuits regarding the arbitrability of the claims under Sect. 10(b) of the Exchange Act as well as the arbitrability of the RICO claims. The Court in its decision held that claims arising under Sect. 10(b) of the Exchange Act and RICO are arbitrable, in cases involving valid arbitration agreements between investors and their brokers.

THE WILKO DECISION

In *Wilko*, the U.S. Supreme Court held that, despite the existence of the Federal Arbitration Act, claims arising under Sect. 12(2) of the Securities Act of 1933 were not arbitrable. The Court explained that a pre-dispute agreement to arbitrate prospective claims was void under Sect. 14 of the 1933 Act as a stipulation binding the securities customer to waive compliance with a provision of the Act. The Court noted Sect. 22(a) of the Act which codifies the aggrieved party's right to select a judicial forum.

The nonwaiver provision of Sect. 14 of the Securities Act of 1933 has an almost identical counterpart in Sect. 29(a) of the Securities Exchange Act of 1934. In view of the *Wilko* decision and the similarity of the nonwaiver provisions of the 1933 and 1934 Acts, eight Circuits addressing the issue had held that Sect. 10(b) and Rule 10(b)5 claims were not arbitrable.

POST WILKO EMPHASIS

In reaching the decision that Exchange Act claims are indeed arbitrable, the *McMahon* Court emphasized how in its view the nature of arbitration had changed significantly since the *Wilko* decision. Further, the Court rejected the McMahons' position that a congressional intent to require a judicial forum for the resolving of Exchange Act claims could be deduced from Sect. 29(a) of the Act. The Court therefore refused to extend *Wilko*, a Securities Act case, to claims brought under Sect. 10(b) of the Exchange Act.

In qualifying, but not overturning, the *Wilko* holding and its aversion for arbitration, the Court explained that "Wilko must be understood, therefore, as holding that the plaintiff's waiver of the right to select the judicial forum, was unenforceable only because arbitration was judged inadequate to enforce the statutory rights created by Sect. 12(2)."

To support its abandonment of the *Wilko* doctrine as applied to Exchange Act cases, the Supreme Court found further solace in its prior decisions requiring arbitration in international securities and antitrust disputes, *see Scherk v. Alberto-Culter Co.*, 417 U.S. 506 (1974), and *Mitsubishi Motors v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985), and in *Dean Witter Reynolds v. Byrd*, 470 U.S. 213 (1985). Justice White's concurrence in *Byrd* gave the Court yet another peg on which to hang its hat. In *Byrd*, a case holding pendant state law claims arbitrable, that never actually reached the issue of the arbitrability of Exchange Act disputes, Justice White opined that *Wilko* could not be "mechanically transplanted" to the Exchange Act.

ARBITRATION ABOUT-FACE

Among the factors considered by the Court in its approval of the resolution of securities disputes through arbitration was the enhanced role of the Securities and Exchange Commission via its oversight authority in reviewing the arbitration procedures of the self regulatory organizations (SROs). Recently, however, the effectiveness of the Commission's oversight of the SROs has been seriously called into question.

A General Accounting Office report issued in September 1986 was highly critical of oversight and the state of self-regulation in the securities industry. The report cited inexperienced examiners, misapplication of rules, and errors by individual examiners as symptomatic of the problems among the SROs. Nonetheless, the GAO report indicated that despite these conditions the SEC had continued to refer sales-practice complaint cases to the SROs for resolution.

In connection with SRO arbitration, there remain other difficulties with, in the words of Justice O'Connor, the SEC's "expansive power" over SRO arbitration policy. First, the SEC has admitted in a report to Congress in August 1986 that it had no authority to review a specific arbitration proceeding to determine whether the arbitrators followed the procedural requirements of the Uniform Code of Arbitration or accurately interpreted the underlying federal securities laws. Second, the SEC has no authority to overturn an arbitration award. The only affirmative power the SEC has over arbitration is the ability to review SRO rules and require adoption or abandonment of a particular rule.

Perhaps one of the more disturbing developments in the case was the SEC's filing of an *amicus curiae* brief on behalf of Shearson and the securities industry. The SEC abandoned its earlier stance that agreements to arbitrate securities disputes were unenforceable. The SEC opined that the *Wilko* view (that arbitration was inadequate to enforce compliance with the substantive requirements of the securities laws) was no longer valid under current arbitration systems.

Of additional importance, the SEC stated that under the 1975 amendments to the 1933 and 1934 Acts, the agency gained additional oversight and regulatory authority over the SROs such as the New York Stock Exchange. Therefore, according to the SEC's newly announced policy, an individual's agreement to arbitrate Exchange Act claims was not interpreted as

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The Supreme Court's Magic Number

By Alan Dershowitz

The Supreme Court began its 1987 term without its ninth member. There is, of course, nothing unconstitutional about deciding cases with fewer than nine justices. The Constitution does not specify any particular number of justices or even that the total be an odd number, to avoid ties.

It is Congress that has determined the current numerical composition of the high court: one chief justice and eight associate justices. Although Congress could not eliminate any current seats without impeaching their incumbents, it could decide either to increase or decrease the number of associate justices in the future.

In the 1930s, President Franklin Delano Roosevelt tried to add several associate justices for political reasons. His court-packing plan, which had the support of future nominee Felix Frankfurter, was rebuffed. As a nation, we seem to have become comfortable with the number nine, and suspicious that any attempt to change it might be politically motivated.

The temporary absence of a ninth justice—and in this instance a potential swing vote—should not trouble us greatly. The vast majority of important cases decided by the Supreme Court require only four votes, not five. Of the thousands of cases submitted annually, only a relative handful are actually heard by the justices.

Thus, the decisions not to hear the cases—not to grant certiorari, to use the legal jargon—are often the most significant ones made, since they leave undisturbed the lower court decisions and generally put an end to the litigation. Under the Supreme Court's own rules, it takes but four votes to grant review. Even if five justices are opposed, the minority of four prevails on the issue of review.

Of the cases actually heard, relatively few are decided by a five-to-four vote. In those few cases, either the court will decide by a tie vote, or it can await its full complement before rendering its judgment. If the vote is a tie, the lower-court decision remains in effect, which is similar to a decision to decline review in the first place. Of course, the few five-to-four cases are the ones that make the most headlines and are most controversial. It is those that are likely to be held in limbo pending the confirmation of a ninth justice.

It now looks like the court may remain shorthanded for some time. The Senate Judiciary Committee's nine-to-five disapproval of Judge Robert Bork's nomination not only dooms him—unless President Reagan can engage in massive "Bork-barrelling" among the senators—it also sends a message of caution to the White House about subsequent nominees. The message is that the American public is not ready to accept a justice who wants to roll back fundamental constitutional rights.

Nor should those who will recommend nominees assume that a Senate that has rejected one nominee will somehow be forced to accept his successor. President Richard Nixon made that mistake in nominating G. Harrold Carswell following the defeat of Clement Haynsworth. Now that a coalition of concerned Americans has managed to persuade nearly 60 percent of those polled that Judge Bork should be defeated, there is every reason to believe that this coalition will remain together to monitor the next nominee.

In order to avoid a repetition of the Bork disaster, the president should nominate a true moderate who will have approval from American men and women of every social, ethnic, economic and religious background. This should be a time of healing and consensus rather than of future divisiveness. Although the Supreme Court could survive with eight justices for several months, it would be preferable to have the vacancy filled before very long. This will not happen if a Bork clone—or someone even more divisive—is nominated.

If President Reagan and his advisers make the mistake of nominating another reactionary, and if that nominee is also defeated, this lame-duck president may lose the power to fill the current vacancy, as President Lyndon Johnson did in 1968 following his abortive attempt to promote his buddy Abe Fortas to chief justice.

The Constitution provides that a presidential appointment must be made with the "advice and consent" of the Senate. This would be a good time for the president to seek the advice of the Senate—including its Democratic majority—before he requests its consent. And the Senate leadership should not be content to play a passive role in the appointment process. It should present the White House with its own list of acceptable candidates, and should make clear its unwillingness to confirm anyone who would roll back fundamental rights that many Americans have come to take for granted.

The Senate is a full partner in the Supreme Court appointment process. The 1986 election, which turned the Senate over to the Democrats, was as relevant a mandate as the prior presidential election. Lest there be any doubt about that, the recent public opinion polls—even with their margins of error—confirm the fact that President Reagan and Attorney General Edwin Meese have lost touch with the pulse of mainstream America, at least when it comes to the Supreme Court. Perhaps it has something to do with the bicentennial, but for whatever reason, it seems clear that most Americans do not want to cash in their constitutional insurance policy of liberty. The Bill of Rights is alive and well. Let's keep it that way.

Your Choice

By David M. Pollack

Don't just do something—stand there.
William Safire, N.Y.T. October 21, 1987, commenting on President Reagan's response to the stock market woes.

You may have come to law school because it looked like a weigh-station to money, status, purpose, fulfillment of your family's expectations, a career path to explore or just something to do. While most of us in school seek, at least in part, to prepare ourselves for the job market, there is more to be derived from a legal education than the prospect of future employment.

"There are many games to play in law school. The key is not to let any one of them become too important. There will always be grades, law review and jobs to pursue. Yet, it's not likely that in the near future you will be afforded such a rare opportunity to learn, grow, explore topics of importance to you as an individual or just find out what is important to you. Be sure to make the most of the opportunity."

And so went my pre-law school advice. It is in this spirit that I write on a topic of great concern to me as a student. It doesn't take an attitudinal survey to realize there is somewhat of a minimalist, apathetic attitude pervading the student body at Brooklyn Law School these days. Representative is the reaction of one group of students to the question of whether they were thinking of participating in the Moot Court Honor Society's Fall Competition: "What will I get out of it? Will it get me a job, a line on my resume, or even a manicure?"

Are we "the Hollowmen" T.S. Eliot wrote of? There is, I propose, something very rewarding about a healthy intellectual pursuit. The fruits of one's labor may or may not be as tangible as others, yet they are probably more enduring. It is quite easy to float through school by simply doing what is required. What I wonder is whether or not anyone requires anything of themselves? While people are busy preparing themselves for a job, the community, whether it be the legal one or society in general, is in need of minds to address some of the larger issues affecting people's lives. I know, you have a family to support, a pet that needs to eat and a bartender whose livelihood depends upon you. Nevertheless, sooner or later you will have to make the choice of whether you want to be an attorney involved in the law or just another lawyer with a diploma on the wall. "Shape without form, Shade without color." You decide!

This writer does not mean to say that law students have a civic duty to help the poor, oppressed or less fortunate people of the world. I do mean to say that you have a duty to yourself to become involved in what is going on around you, to tap into the resources you have and use them, to pursue goals beyond those serving your ultimate physical gain. It really doesn't matter how you set out to accomplish this, and since I'm nobody's father I don't think it's my place to tell you how. As one coach in the past said: "It don't mean squat if you don't get out there and play" (he was referring to practice).

The reality is that the important lessons are rarely, if ever, learned in the classroom. There is far more to be learned through one's personal endeavors than through traveling those more well trodden paths. John Dunne may have said it best:

> *No man is an island, entire of itself; every man is a piece of the continent, a part of the main; if a clod be washed away by the sea, Europe is the less, as well as if a promontory were, as well as if a manor of thy friends or of thine own were; any man's death diminishes me, because I am involved in mankind; and therefore never ask for whom the bell tolls; it tolls for thee.*
>
> —Devotions XVII

YOU'RE MISSING!

by Antoinette Monica Wooten

A circle has reciprocity, what is given is taken—what is taken is given—there is no emptiness.
Love, like an Amoeba, when cut off reproduces itself. There is no death, always a beginning.

With departure I am less fortunate. It leaves an empty feeling inside—creates in me a parasite to eat away at my existence. There is no joy until the return from the journey.

Memories like ink fade all within time. Afraid is now what becomes. But it is only the beginning until the end of the journey.

Truth like "life" will end at the (departure). Wait and watch cautiously is what will be done—until the return from the journey.

It is quite painful to feel you're missing!

Like eternity the journey seems, yet is has only been—

But it does seem the journey has taken you forever from me.

Consistent with sorrow I've been since the journey began.

After the journey will come the unknown.

What will be superficial and what will be reel?

Will I become a part of your memory of the blood bath that you'll leave? A body weeded out during triage? NEVER TO BECOME—Yet still while on your journey it is you who is MISSING!

A Woman's Perspective

Where Have All the Feminist Law Students Gone?

by Lisa Muggeo

Yesterday's deficiency of women law students no longer exists. In the BLS class of 1990, women comprise *more than* fifty percent of the class. However, despite the high visibility of women on campus, the law school has few feminists. Yes, feminists! Where are they? Could it be that they *are* here—but remain incognito for fear of being labeled as feminists? It may be possible that many are lurking within the confines of the BLS campus, reluctant to speak out on the multitude of women's issues relating to BLS and the community. Or maybe there aren't many feminists, just the few who clearly make themselves visible by their adamant opposition to the suppression of women's rights. Considering the number of important legal, social and economic issues which confront today's woman, the apparent lack of feminists at BLS is perplexing.

Just twenty years ago at BLS, there were usually two or three women per class. These women had to sit on the far side of the room "so that they wouldn't distract their male colleagues." Professors didn't call on women students, except on "Ladies Day," which was the only day of the school year when the women of the class were invited to participate. On other days, the women students were virtually ignored and unheard. It is difficult to imagine having to continuously endure this gross mistreatment. But somehow, these brave women struggled through such degrading experiences and ultimately succeeded.

The victories achieved through the perseverence of our feminist predecessors have enabled us to be in law school. Perhaps because many women at BLS are unaware of what the law school experience was twenty years ago, they are impassive to current feminist issues. Yet as future attorneys, we need to educate ourselves about social and economic policies and practices that now influence and shape our careers and personal lives.

There are many issues that should be of interest to women law students. In law school, as well as in our communities, we *can* promulgate change in areas such as: gender bias in the classroom, sexual discrimination and harassment in the workplace, maternity and parental leave, and child care. There are other current and exciting issues which need to be addressed to continue the ongoing battle for equality in our society.

Finally, a plea to the BLS community is in order: Feminists, come out, come out, wherever you are! Make yourselves known! Perhaps you can get involved in BLS' women's organization (Legal Association of Women). But be certain that your voice is heard! Be proud to be a feminist!

FACULTY CORNER

NOTES ON LEGAL EDUCATION OVERSEAS

BY PROFESSOR MARYELLEN FULLERTON

In July 1986 I left my eighth floor office in Brooklyn Law School bound for Belgium and a year's sabbatical leave. As my People's Express flight headed to Brussels, I avidly read *The New York Times* in preparation for going cold turkey for a year. The stories about corruption among high officials in New York City government were more amazing than fiction, but after a while my attention wandered and I began wondering what life at a European law school would be like. Fortunately, I had an appointment as a visiting professor at the University of Louvain, and would soon find out.

I was not disappointed. Louvain as a city is the most amazing mix of astonishing 15th century Flemish architecture and cafe (read beer-drinking) life I have ever seen. It is home not only to one of the oldest universities in Europe (founded in 1425, Louvain had 6000 students and 52 colleges by 1520), but also to the country's largest brewery, Stella Artois. Everywhere I turned there were student types, with huge goblets of beer in front of them. There were also lots of grandmothers and grandfathers who had ordered similar goblets. No one was rowdy. There was no litter. There was no graffiti. Ornate buildings with colorful flower boxes were everywhere. The sun came out. This was Europe.

By August I had confirmed that the Belgians consume more beer per capita than the Germans, that there are more than 250 brands of beer manufactured in Belgium (a country one and one-half times the size of New Jersey in area and population), that many Belgian cafes sport art nouveau glass and wood panelled interiors that surpass Gage and Tollner, and that Belgians smoke like fiends. They also bring their dogs everywhere with them, even into restaurants and cafes, and smile when the dog puts its head in your lap. In my book both dogs and cigarettes definitely detract from the cafe ambience. But then I'm not Belgian.

You may wonder if I ever did any non-cafe research. Take my seminar on political asylum next spring and decide for yourself. I admit that it did take me a while to get started, however. It was not just the cafes that delayed my academic pursuits; the Belgian university style also presented obstacles. First, the academic calendar interfered. Classes don't start until the first Monday in October, and I literally couldn't get a key to my office before then. When the academic year finally began, I set out to locate my office. The signs and posters didn't help because they were in Flemish (a dialect of Dutch), but the students all seemed to speak English fluently and guided me on my way. My office was in a new building of extreme ugliness, but it had two picture windows looking out on the elaborate spire of the world famous library of the University of Louvain. This is the library dating from the 15th century that the Germans burnt in the First World War to punish the Belgians for resisting the invasion. It was rebuilt in the old style after the war through contributions from educational institutions in the United States. The names of the American schools and colleges are carved into the exterior facade. I couldn't complain.

The home of the law school is the 16th century Collegium Falconis (or College De Valk, if your prefer Flemish to Latin). Originally an educational institution for sons of the deserving poor, the College of the Falcon contains all the lecture halls, faculty offices, and administrative offices pertaining to the study of law at the University of Louvain (Leuven in Flemish). The university is totally decentralized, with separate faculties (departments or schools) scattered all over the city. As a result of the decentralization and the absence of dormitories, students often do not get to know many other students in different fields of study.

As in all European systems, law is an undergraduate study at Louvain. Students must choose their field of study before they enroll in the university. Thus, you make your career choice at the age of 18. Students who choose law in Belgium are choosing a five year degree program. The first two years are called the kandidatuur (candidacy). The last three years are known as the first, second, and third licentie (license), respectively. After a student passes the third licentie, thus graduating from the university with a law degree, she is eligible to become an advocaat (lawyer). There is no bar exam, but a law graduate must do a certain number of pro bono cases under the supervision of an experienced attorney before she may be "called to the bar."

Professor Maryellen Fullerton

A lot happens between enrolling in the university and being called to the bar, obviously. First, there are huge lecture courses to attend. Or not to attend, if the student prefers. (I'll explain that later.) To an American law teacher's eye, the beginning of the autumn term in Belgium is marked by a sort of chaos that is utterly unnecessary. For example, the schedule might say that Labor Law meets on Mondays and Wednesdays from 2:00 to 4:00 p.m. It turns out that that is only a suggestion. Therefore, the first class is largely spent deciding when the students want the class to be held. Since different students have different schedules, there are always conflicts, of course. Thus, there have to be a series of votes, and the conclusion is usually that indeed the course will meet on Mondays and Wednesdays at 2:00 p.m. That is only provisional, though, and the entire matter has to be revisited during the next class to determine whether anyone has come up with a better solution. This is apparently designed to provide the appearance of student input into administrative matters. Everytime I asked how classes could be sure that there would be a vacant classroom if they chose a time other than the provisionally scheduled time, I got a shrug in response.

Classes, once they decide when to meet, almost always consist of lectures. Students generally are not expected to have read any particular assignment for the class, or to attend classes regularly. In fact, a lot of the basic courses are so over-enrolled that only half of the students can fit into the assigned classroom. Professors pass out a reading list, and then sometime during the semester pass out a syllabus. This syllabus, often 20 to 40 pages in length, is the professor's summary of the course contents. An American professor's query as to how many pages per class one could reasonably expect the students to prepare provoked gales of laughter from Belgian professors. Pressed for an answer, they shrugged and said, "Maybe three." Toward the end of the course the professor asks the students to let her know which of them has decided to take the exam. Up until this point, dropping the course is permissible. Adding the course can also be done at any point prior to the exam sign-up time. As a result, professors don't receive a class roster and rarely get to know the names of the students taking their classes.

Exams are generally held once a year—in June and July. By and large, they are oral. Professors post sign-up sheets and students hurry to schedule the most advantageous time slot, which, on occasion, can be sold to another student who needs it more desperately. Professors sit in their offices for days on end, questioning one student after another for 15 to 30 minutes each. Lines of students in coats and ties, or the female equivalent, crowd the halls, nervously chattering and smoking. It is not unheard of for a professor to have three classes of 300 each. That is a lot of oral exams. Maintaining the breakneck pace of four exams per hour still results in 255 hours of grading oral exams, or more than six and one-half weeks of eight hour days sitting in the office asking questions. It is, of course, possible for the professor to move much more quickly by failing the student on the spot if she can't answer the first few questions. This is reported to happen. Some professors also tried to change to written exams, but a student sued and the Council of State (essentially the highest court) ruled that students had the right to have at least part of their grade based on an oral exam.

As hinted above, the exam results are even more different from the American system than the exam process. One of my faculty friends was one of the 13% of the first year class who passed all of their first year exams in 1980. Although I don't know the more recent statistics, I understand that this result is not out of line. There is a re-exam period in September. If you are one of the students who failed only one or two courses, you probably will sign up for a re-exam. If you pass on the re-exam, you can join the second year students when classes begin again in October. If you do not pass the re-exams, you can repeat the first year. Or you can find a less taxing field of study in the university. Or you can enroll in a non-university technical school (called hogeschool, high school). Or, if you are male, you can go do your 18 months of mandatory military service (yes, Belgium is a member of NATO).

You may wonder why students put up with all this to study law. The answer is pretty familiar: "If you don't know what to do, law is a nice general field of study that can prepare you for a variety of jobs." Besides, law is a popular field, thus the courses are oversubscribed, therefore all the students can't fit into the classrooms, and as a result there is plenty of time to enjoy those cafes. And Louvain is, after all, the zenith of the Belgium student cafe scene.

STUDENT BAR ASSOCIATION UPDATE

The Executive Board of the Student Bar Association welcomes the 1987-1988 class delegates: Ross Abelow, Steve Altamore, Debarah Ball, Inez Mary Beyrer, Scott Brenner, Peter Brodsky, Brenda Byrd, Tara Christie, Dorothy Dolan, Lenny Leo Faustin, Foster Gibbons, Louis Goldberg, Bradley Hamburger, Natalie Jasen, Paula Kay, Paul May, Diane Meyers, Peter Mollo, Judith Norrish, Andy Puccini, Vivien Riviera, Bennet Silverstein, Sonia Valdes, Martin Valk, Enrique Vassallo, and Lesly Yulkowski.

We urge students to voice their concerns about BLS to their delegates. In addition, the SBA delegates meet on alternate Tuesdays at 5 P.M. and all students are welcome and encouraged to attend these meetings. Recently, committees were established to undertake various projects. In particular, the Budget Committee has been diligently working to allocate funds to the many student groups at Brooklyn Law School. Committees have also been formed to organize SBA-sponsored parties, and to present speakers and show films, for the student body. Delegates have been chosen to participate in the administration's Faculty-Hiring and Curriculum Committees. Finally, the Student Affairs and Student Grievance Committees were organized to resolve both academic and nonacademic problems at BLS.

Our office is located on the third floor and our door is always open. We invite students to drop by and bring their problems, solutions, or ideas to our attention.

NIGHTLY NEWS

This column will attempt to be a compendium of the goings on of the first year evening class. Would you believe some of our classmates have time for Intermural Football? Others are talking about a Rugby Team. One of our group will be running in the New York City Marathon on November 1st. Plans are also underfoot for a ski weekend, as soon as exams are over. Jerry Donavan is busy running a pool on Neal Philip's future blessed event. Meanwhile people are wondering if we have wonderwoman among us. Sheila Murphy is getting married in November, in the middle of the first semester of law school. Everyone affectionately calls Sheila our "sacrificial lamb." We all held our breath in anticipation during our first law school class. An audible sigh of relief was heard when Professor Minda said, "Miss Murphy, will you explain the first case?" Well Sheila, that's what you get for sitting smack in the middle of the class. A number of us have had some upper-respiratory infections during the past few weeks. Talbot states that they are due to stress. Do you get lonely on weekends—nothing to do?—Stop down at the library where it seems half of the class if frantically studying. Just in case you want to know how long we have been in school—ask Kay Donahue. Kay has kept track of the days, hours and minutes. As a final note, will someone please explain one of our last cases in Legal Process to Jim Hegarity? It was the case about the poster, and during our library tour, he was overheard questioning the position of the golf ball.

Long arm of the law board

Law school grads grind for the big one

DAILY NEWS
NEW YORK'S PICTURE NEWSPAPER
Monday, February 2, 1987

By GAIL COLLINS
Daily News Staff Writer

An unidentified student walked into the BAR/BRI law board preparation lecture at Town Hall the other day, flashed a "V" sign and then vanished, grinning, forever.

Thanks to a change of heart by law board graders, he and 29 other summer flunkees had been rescued from a winter of four-hour surveys of contracts, torts and suretyship.

"Can you imagine that? It would be like winning the lottery—my God," breathed Fred Tecce. A recent emigre

CITYSCOPE

from Pennsylvania, Tecce is taking the boards for the first time this month, and thus has no hope of a last-minute reprieve.

The Happy 30 missed passing the summer boards by a single question, and were salvaged by a persistent fellow victim who convinced the Board of Law Examiners that multiple choice question 28 had two possible correct answers.

"It took me *weeks* to realize I wasn't going to have to take that test again—and that I would *never have to sit through another review lecture!*" said one of the 30, who is now tending bar and requesting anonymity.

Wrinkled warriors

Last Friday night, hundreds of less fortunate young men and women—dressed for success but wrinkling rapidly—were slumped in the plush red seats at Town Hall on W. 43d St., stoically contemplating the prospect of a four-hour review of the wonders of commercial paper.

"This is *terrible*," said Janet Ramusack, 29, who had been napping on the shoulder of her seatmate, Phil Levine.

"We knew each other before," explains Levine. "This is *not* a bar exam romance."

Preparing law school graduates for the bar exam is a mini-industry. BAR/BRI, which rents Town Hall for its lectures, draws about 4,000 local customers a year for summer and winter sessions, at up to $825 a head.

The winter classes, veterans say, are *much* bleaker than the summer ones. "They laugh at your jokes more in summer," says BAR/BRI director Stan Chess.

Most winter students work all day, go to lectures all evening, and spend Saturdays at the office. "During the week we can only put in seven to eight hours a day, which is *not enough* for a law firm," said Ramusack. On Sunday, she added grimly, she returns to Town Hall to watch movies of missed lectures.

The winter crowd's depressed mood is not improved by a heavy concentration of summer bar exam casualties. No one's spirits appeared to be elevated by the discount rates for repeat customers.

"The last place they want to be is Pieper's course," says John Pieper, who runs another popular lecture series. "It's almost like going to a 42d St. peep show. You don't want to be seen."

To motivate the flunkees, Pieper says, he points out: "How fortunate they are. There are a lot of people who never got *into* law school."

Sagas of students rescued from disaster or plunged into despair by errors in grading the law boards are a popular topic at Town Hall these winter evenings.

There was, for instance, the dreadful time a computer error was uncovered, giving 35 new people a passing score, and causing 26 others who thought they were already lawyers to flunk retroactively.

"That was 1980—it was DEVASTATING," said Pieper, who had a *lot* of trouble psyching up the victims. ("Those students had *peaked.*")

Chess, whose students have included retired Weatherwoman Bernadette Dohrn (who passed the first time out) and Robert Kennedy Jr. (who didn't), says the very worst story about bar exams he ever heard happened in Vermont.

The scene, he says, was a cocktail party, where two lawyers who served as graders for bar exam essay questions were having a casual conversation.

"Suddenly one of them says: 'What do you mean 10 is the high score and zero is the low score?' For five years, it turned out, he'd been grading every paper backward."

STAN CHESS lecturing law school grads preparing to take bar exam. JOHN ROCA/DAILY NEWS

Interview Insanity Or Misdiagnosis?

by Ruth Bernstein

It seems as if all you have to do these days to get a lively discussion going among BLS students, is mention the Placement Office. Everyone has something to say about it. Why is the discussion especially heated right now?

One reason is, it's that time of year when students are most aware of what Placement is doing. 'Tis the season of on)campus interviewing, and everyone is interested in knowing what types of jobs BLS students can aspire to.

Another reason for the current hoopla is an editorial that appeared in this publication last month complaining that students have missed important interviews, and blaming the Placement Office staff for the problem. It is true students have missed interviews this year.....more than in previous years. But the reasons why that's been happening are not so easy to discern. Both the students who missed appointments and the Placement Office staff would like to point fingers at each other. As usual, the truth lies somewhere in between.

"A classmate came up to me and said, 'Did you know you had an interview?'", relates Eileen Ryan. "I said, 'No, I didn't know. It wasn't posted.' She said, 'It was only posted across the street (at One Boerum Place).' So I went over there and there it was. They never made an attempt to get in touch with me and let me know. Even after I missed the interview, I never had any notification."

Debbi Levine says, "I looked at the list four days before the firm I applied to was going to be interviewing on campus, and my name wasn't on the list. Then later I found out I missed an interview. They had added my name to the list later on, but never posted the change on the bulletin board. I went to the Placement Office to ask why they didn't call me...they said, 'We tried to contact you, but didn't have the correct phone number.' I told them they had a current resume with my phone number, or they could have called the Registrar. All they said was, 'We tried to contact you.' Of course at that point, there was no remedy."

This year the Placement Office can boast that twice as many firms are interviewing on campus than last year. That's an exciting indication of BLS' growing reputation among law firm recruiters. It's also extra work for the Placement Office staff. More than they've had in recent years. With all the extra work, and the simple fact that more interviews provide more chances for error, mistakes have been made. Those mistakes have resulted in a small number of missed interviews. Not many, just a few. But even one missed interview can have a drastic effect on a student if it was with his or her dream firm, points out a third year student. And that's why people are so upset about the problem.

The Placement Office staff is also concerned. But they say students who missed appointments because of a staff mistake are at a minimum. The majority of students who missed interviews this year, they say, have only themselves to blame. Some planned out-of-town trips when they knew the firms they applied to would be on campus. Some merely decided they didn't want to interview with the firm after all, and didn't tell Placement until it was too late to get another student into the valuable slot. Still others plainly did not check the bulletin board every day to look for changes to the list.

Assistant to the Dean for Placement, Carolyn LeBel says, "I'm concerned about the way students cancel their interviews at the last minute, when it's too late to notify another student who could benefit from the interview. It would help if people were responsible about keeping their appointments and were more considerate of their fellow students."

"It's hard for me to understand how some students see the listings and some don't," says Grace Glasser, BLS Director of Placement. "Our policy is to post the interview listings in both places (250 Joralemon and One Boerum Place). We hope the system doesn't break down, it's too important to us. It would be an error on our part if the listings weren't done.....but there are mistakes."

To the handful of students who missed interviews because of a mistake on the part of Placement, these remarks can inspire resentment. But many students agree with Placement Office staffers that some of those seeking on-campus interviews aren't diligent enough in verifying interview dates."

"You should know if the firm you applied to is coming on campus on September 8, that the list is going up a day or two before," says third year student Eileen Johnson." It's the whole mentality that 'I'm not responsible for my own career path.' We're professionals now, at least we're supposed to be. You can't blame everyone else for missing interviews."

"What if there was no Placement Office, and everyone had to mail out 150 resumes and go knocking on doors," points out second year student Harry Dunsker. "People shouldn't be ungrateful."

Another second year student said, "With any Placement Office you have to take an active role. You can't just sit back and expect them to do everything. That's what a lot of students expect and that's why they're disappointed."

Whether an interview is missed because of a student's mistake, or a Placement Office mistake, everyone agrees it reflects poorly on the school at a time when BLS is starting to attract more influential and well)known firms. The Placement Office is considering policy changes that the staff hopes will reduce the number of missed interviews next year.

"Our rules here aren't strict enough," says Glasser. "We called other schools to see what their policies are with regard to missed interviews. At Georgetown, if you miss one interview, you're out of the program. At Fordham, if you miss one, you've got to write a letter of apology. If you miss two, you're out. We'll probably adopt a program like Fordham's for next year."

Glasser also said Placement is considering holding an orientation program for first year students, to make sure they become aware of the services Placement has to offer, and the various deadlines for use of those services.

Students also have suggestions. Many say the bulletin board at 250 Joralemon is too small, and haphazardly arranged. They suggest enlarging the board, and organizing it chronologically, so that students' names aren't lost in a sea of paper.

Many students complain about the policy of sometimes listing interviews on a Friday afternoon for Monday morning interviews, even during the Jewish holidays. "It's mostly unfair to students who work,

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THE WORLD ACCORDING TO BORK

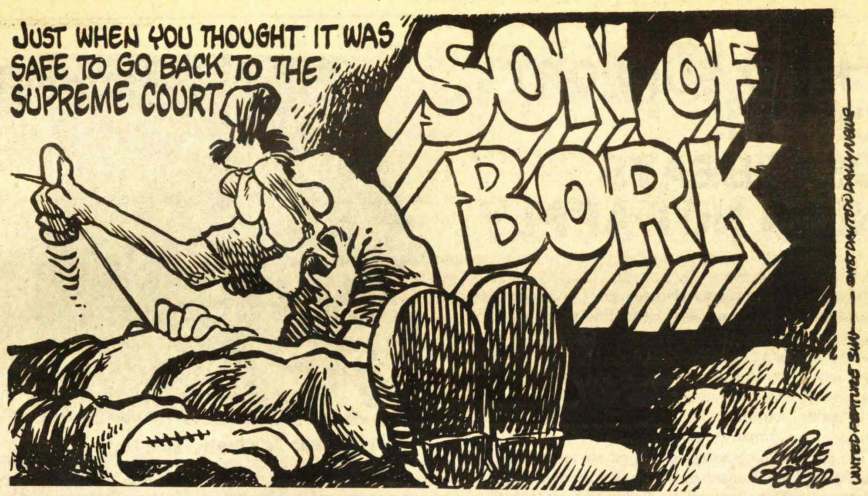
by Ethan Gerber

After a fierce contest, Judge Robert Heron Bork became a footnote rather than a chapter in the history of the Supreme Court, losing by the largest margin ever, 58 to 42. The President and leading conservatives criticized the confirmation hearings as both a public crucifixion of the outspoken judge and as a "politization of our court system." Democrats and other opponents of the nomination hailed the process as a victory over a conservative zealot and a proper exercise of the Senate's constitutional prerogative to give advice and consent to the selection of justices to the nation's highest court.

The first tactic of Bork's supporters was to protest that only the judge's credentials (which everyone agrees are superb) should be in issue, and that it would be improper for the Senate to examine and debate the political beliefs of Judge Bork. Ironically, Strom Thurmond and Howard Baker, the senators who most fervently voiced this opinion, had said just the opposite 20 years ago when the Senate was asked to confirm the appointment of liberal Abe Fortas as chief justice. Senator Baker, on September 26, 1968, eloquently argued that more than mere credentials were at stake:

> I feel that the Senate . . . has all too often in the last several decades consented too much and advised too little . . . If the Senate believes, for whatever reason, that it is not desirable or preferable or wise or advisable that a nomination be confirmed, it has the constitutional responsibility to reject the nomination . . . The Senate must consider many factors [including] the nominees . . . social, economic, and legal philosophies; and the wisdom of the appointments at this particular time and place in history.

Senator Thurmond was just as adamant when he said on July 18th, 1968:



It is my contention that the Supreme Court has assumed such a powerful role of policymaker in the government that the Senate must necessarily be concerned with the views of the prospective justices . . . as they relate to broad issues confronting the American people, and the role of the court in dealing with these issues . . . I believe the Senate must concern itself with the role of the Supreme Court in our system of government, both what this role has in fact become, and what it should become . . . for these two reasons I shall not confine my questioning to . . . personal qualifications . . .

Thus even by the admissions of Bork's defenders, the Senate was merely doing its constitutional duty and breaking no new ground in examining the controversial beliefs of the would-be associate justice.

The second gambit was to portray Bork as a moderate. This had the undesirable affect of turning the confirmation hearings of the Senate Judiciary Committee into a diving expedition with the real beliefs of the judge as the sought-after treasure trove. Both conservatives and liberals balked at this tactic and many believed it had disastrous consequences for the judge. Philip Kurkland of the University of Chicago remarked in the September issue of *American Lawyer* that the Senate had to play the game of "will the real Robert Bork stand up?" As Kurkland observed, "The one thing we know is that the senate should not be asked to consent to the appointment of both Dr. Jeckyl and Mr. Hyde." Garnishing Judge Bork in sheep's clothing gave the appearance that Bork was either capable of "confirmation conversions" or was hiding something. This cast serious doubts to Bork's allies as well as to his enemies. Senator Heflin from Alabama, one of Bork's last holdouts, remarked that Bork "could be an evolving individual with a great intellectual curiosity to experience the unusual, the unknown, the strange . . . or on the other hand he may be a reactionary weirdo."

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CHILD SUPPORT CLINIC: DEADBEATS NEED NOT APPLY

By Risa Messing

Teaching students about advocacy, and providing representation for clients who have almost no resources for legal representation, are the two main goals of Brooklyn Law School's new Child Support Enforcement Clinic, according to its director, Professor Caroline Kearney. Professor Kearney comes to BLS armed with experience as a hearing examiner with the Manhattan Family Court and as a practitioner in family law.

The clinic, which accepted its first students this fall, was started by the impetus of both BLS and the Federal government. The clinic will be evaluated to see whether it is a good method for providing representation to legally indigent custodial parents and other custodians who have a right to child support, according to Professor Kearney.

The clinic is in the process of building up its case load and so far there have been several referral sources for clients, among them, women's groups, the NYC Office of Child Support Enforcement and word of mouth.

The mechanisms for collecting and enforcing child support orders have been plagued with problems for as long as the child support system has been in existence, Professor Kearney said. She sees two major problems: inadequate awards and inadequate enforcement.

"Historically, there's been a problem of inadequate orders and in enforcement of these orders," Professor Kearney states. "Judges have been very ready to forgive past support that is owed and have not been very rigorous in enforcing it." Although these problems still persist, they have been alleviated as a result of federal legislation that has required states to change their laws regarding enforcement of child support obligations.

Two new mechanisms for enforcing child support orders are income deductions and interception of state and federal tax returns. Local child support enforcement agencies must certify to Federal and state governments that there are arrears owed in child support. If the debtor-parent is due any tax refund, it can be withheld and forwarded to the child support agency.

Professor Caroline Kearney

Custodial parents entitled to child support from the absent parent are often unable to locate the parent. They can be aided through social services departments via an increasingly sophisticated computer system that has links with other computer systems so that people can be found through various records such as the Department of Motor Vehicles, State Department of Labor, tax records, etc. The net result is that if somebody is either being paid on the books or receiving any kind of governmental benefits, they can be found.

However, Professor Kearney states that the biggest problem occurs when a parent owing child support is paid off the books. It is very difficult to track down this type of individual. "We have a case right now in which the man has a history of quitting his job as soon as his wages become attached and he has skills that enable him to work off the books."

Although the seeker of child support enforcement is theoretically gender neutral, Professor Kearney states that it is almost invariably women with children trying to get money from the fathers of their children.

Professor Kearney views child support cases as being ideal for a law school clinic since they normally do not drag on for years. They tend to be expedited procedures and therefore a student can handle the case from start to finish. The typical chronology of a case from the time the case is assigned to a student is first, the client is interviewed. The clinic only handles cases in which the father's whereabouts are known, since only then will the student have a legal role.

When the whereabouts of the absent parent are unknown, the client is referred to the NYC Office of Child Support Enforcement. As the second step in the case chronology, a petition is drafted and filed with the family court. A summons is then issued. Due to the backlog of cases, court dates are given weeks in advance. However, once in court, the case can often be resolved without an additional court appearance, according to Professor Kearney. This is more true of the relatively straightforward types of cases than in those that involve more extenuating circumstances that would involve lengthy discovery.

Professor Kearney, a native Brooklynite, grew up in a small town upstate. While a law student, she did not have a grand plan to develop a specialty in family law. Even upon graduation from New York Law School in 1975, she was not bent on practicing in this area of the law. In fact, Professor Kearney's first position after graduation was with the Legal Aid Society Criminal Division. Later, she wanted to practice civil law and got a job in the family law unit of a labor union. The trial experience garnered from her years at Legal Aid proved a valuable asset in getting the job since the union sought someone with trial experience. Her duties in this position ranged the gamut of family law including custody, visitation, adoption and abuse. She then switched into the matrimonial unit where she did divorce work. Professor Kearney's next move came when she worked as a hearing court examiner where she issued decisions and orders. Professor Kearney has also worked with battered women and has lectured on the subject.

The students taking the Child Support Clinic will receive a solid grounding in the "nuts and bolts" of trying child support cases. Professor Kearney additionally has her own agenda of learning experiences and goals, which she hopes to impart to her students. "Students will not only learn how to do child support cases, but will learn how to be lawyers and learn about things they can use

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Growing Pains

by Ruth Bernstein

As Brooklyn Law School's reputation improves in the recruitment marketplace, the Placement office must accept new responsibility in serving its students. With more high-powered law firms recruiting on campus, the P.O. staff has to market students on a more competitive basis.

How well are staffers doing their job? The BLS student body has decidedly mixed feelings about that question. Many students have had good experiences with Placement, and talk about how helpful and hard-working the staff is. But there are also many who complain about their experiences, and even more who stay away altogether under the mistaken impression there's nothing the Office can do to help them.

"It seems as though the Placement Office serves the needs only of the top 10-percent, or maybe the top 20 percent . . . if you're not in that range, the services provided by the Placement Office have not been complete," says a second-year student. Another second-year student involved in on-campus interviewing added, "I don't think the Placement Office really cares about anyone else but its favorites. That's who they'll push for. Since they want to build up a reputation with the law firms, they only send out the top resumes. But there are only 20 or 30 people in the top 10 percent of each class. They have to work harder for the rest of the students."

"If they like you, they'll circulate your resume," says a third-year student. "If not, it just sits there. And if they don't like you, you won't get into the 'at random' spots in the on-campus interviewing schedules."

Complaints about playing favorites are among the most common to be heard from the student body. The Placement Office staff says they are unfounded.

"That's an unfortunate and erroneous perception," says Associate Placement Director Jane Ezersky. "The students I have met and am working with run the gamut from the top 2 percent to the bottom 2 percent. It's more the initiative the students take in making an appointment with one of us, telling us their career plans, inviting us to work with them . . . those are the students who will benefit from all we have to offer. If students don't take the initiative it's easy for them to assume that the students who have top grades and are able to interview with the top firms are favorites."

To be sure, the Placement Office offers many different programs that are designed to help all BLS students and alumni, as well. The JobNet newsletter is circulated to alumni who are still looking for jobs after graduation, or for those looking to change jobs. Within the school, the Placement Office runs the Distinguished Alumni Lecture Series, it holds programs on resume writing and interview skills, and students are always welcome to come in and speak to a counsellor about career guidance, or use the library.

Still, showing students how to use the library is not the same as marketing them and going to bat for them with the large law firms that many outside the top 10 percent aspire to. One second-year student tells her story:

"I was working for a law firm and they asked me to submit a resume. But when the firm received the resumes from Brooklyn, mine wasn't among them. The firm recruiter asked me why mine wasn't in the pack. So I called the office and they said 'We can't send it. You don't have the right criteria.' I pointed out that the firm asked for people with other qualifications besides grades. I'm in the top 75 percent of my class. They said, 'We can't send it. We owe these firms a responsibility.' Meanwhile, they spend all their energy working for the top 10 percent who are on Law Review. These people can only take one job apiece. If you send them out on 20 interviews, you're wasting spots."

Other students say they recognize that in trying to place BLS students, the Placement Office is hampered by Brooklyn's standing in the marketplace.

"The Placement Office definitely takes a lot of the rap for the frustrations students feel when they don't get the jobs they want," says another second-year student. "A lot of people who feel bad about Placement don't deserve the jobs they're seeking. And since Brooklyn doesn't have the alumni network that the other schools have, the Placement Office can only do so much."

The school seems to be aware of this inadequacy in its placement program, and added Jane Ezersky to the Placement Office staff this year to address it. "That's very much why I was hired," Ezersky says, "to work on furthering our alumni network. I'm contacting hundreds of alumni all over the city, finding out what their needs are, . . . and trying to make matches between their needs and our students."

There are other complaints about Placement among the student body. Many believe they are understaffed, and this leads to disorganized operation and unfortunate mistakes during on-campus interviewing. Others say they were misled by the Placement Office as to their chances in landing desirable jobs. "The counsellor I spoke to gave me a false sense of security," says one second-year student. "She wasn't honest about my chances, and didn't give me enough direct criticism on my resume."

Many students seem dissatisfied with the resume-writing help they received from Placement. "One time I went there they told me to include my rank. So I did. When I went back to show it to them, they said, 'Why did you put your rank in here?' One hand doesn't know what the other is doing half the time," complains another second-year student.

"As far as resumes go," says Director of Placement Grace Glasser, "we always tell the student, it's up to you, what you're comfortable with. We don't follow a formula. It wouldn't be productive if all the resumes coming from BLS students looked alike."

Two other students, in their last year at BLS, said Placement doesn't do enough follow-up with students, to help them with interviewing problems. "They need to prep students doing on-campus interviewing, and they need to do follow-up. If someone has five interviews, and he or she gets five rejections, they should talk to the student and find out what he's telling the firms that's hurting his chances. They don't catch the problem in time."

Another student adds, "They push the big law firms too much. They need to advise students more about other options, like government agencies and judicial clerkships. Especially first-year students who don't know where to begin planning their careers."

"IT'S VERY CONFUSING"

"They should have some kind of program to tell first-year students what they have to do to get a job," moans one new law student. "First year students are worried about when to start. Some upperclass students say start now, some say start in April, some say it's already too late. . . . it's very confusing to us."

This fear is echoed among many first-year students, and second-year students say they felt the same way last year—that the Placement Office didn't do enough to reach

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THE JUDICIAL-TECHNOLOGICAL RACE AT WARP SPEEDS

by Ching Wah Chin

In last month's article "The Judicial-Technological Time Warp," Darren Saunders properly raised the specter of an imminent crisis arising from the judicial and legislative branches' lagging behind developments in technology. Genetic engineering, for instance, is a technological field fast outstripping its regulations. Recombinant-DNA bacterium carelessly released into the environment could possibly cause irreparable damage to future generations. Despite this very real threat, "[t]he legal profession is seriously lagging in its efforts to create a strong framework in which to resolve these fast-growing technologies." In some ways, however, this warning is at the same time too bleak and too optimistic.

A bleak view towards genetic engineering is unwarranted simply because recombinant-DNA existed in nature long before humans meddled with it. Dangerously destructive organisms have long occurred without human intervention, but with new technology, we can harness this once largely random process and push the percentages vastly in our favor. We can harvest from those organisms what we want: drugs, hormones, nutrients and perhaps as yet unimagined benefits.

The fears about some human-created virulent mutant can be further eased by considering several questions. In the worst case scenario, if some one or group was madly bent on developing a deadly organism, what would be the need for new regulations, if it was already possible to recognize and stop that process in the first place? If we could design organisms, how much more resilient are organisms that nature designs, considering her global laboratory and milleniums of time? And if some organism we designed accidently does get loose, why not design another organism to hunt that other one down?

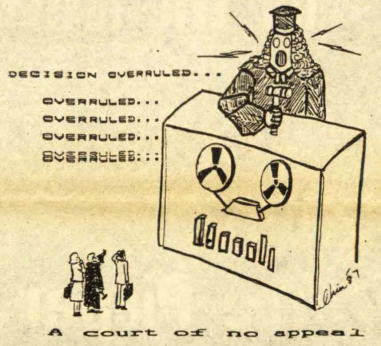
Indeed this last perspective can be used in other technologies as well. If energy-intensive agriculture is exhausting our topsoil, why not develop better conservation techniques and hydroponic harvests? If industrial processes are spewing out pollutants, why not develop new processes and new ways of cleaning the environment? If medical advances are causing a population explosion, why not expand to colonize outer space? Why not use technology to correct technology?

Fears about technology, however, are genuine and well-founded. There is always the possibility that some novel idea will be implemented without sufficient study and cause more problems than it was intended to solve. There is also the possibility that the new idea simply will not work. Fake technological solutions, if not examined thoroughly, may look like real solutions.

This trap of fake solutions, however, is not uniquely a technological one. Social programs, political agendas, and business decisions are all subject to this danger of fake solutions. Many of these policies have wide-ranging effects which can twist the lives of future generations. Caution is necessary in any policy, not only in technology policy. Technology policy shares the same requirements as other policies in order to perform satisfactorily. Similar to other public policies, the regulation of technology is not a purely judicial concern. Unlike most other issues, however, technology offers a special challenge to the judiciary.

The main technological challenge confronting the judiciary is the strain between racing technological advance and static precedent. The court looks back to precedent to guide its way through the present. Technology, however, races forward from the present to create problems in the future, often raising issues which have little precedent. Technology doesn't follow a steady predictable path which fosters judicial foresight. Advances may or may not come in the near or distant future and might or might not be affected by other advances. The judiciary is forced to decide on current issues without knowing for certain where technology will lead.

The *Roe v. Wade* decision on abortion, for instance, uses a discomforting reliance on the 1973 level of medical technology to mark off the first trimester of pregnancy. But the mortality limits used by Justice Blackmun on abortion have since changed. The day may come when conception and birth will be totally subject to human intervention. What would be the standing of decisions regarding human life, when those decisions are based on obsolete levels of medical technology?



A court of no appeal

Technology does not limit its race ahead of the courts to only the biological fields either. Consider our electronic communications, which can disseminate information and opinion far more quickly and widely than the framers of the First Amendment ever envisioned. Digital signals and narrow band transmissions have vastly increased the feasible number of communication channels. Yet they all depend somewhat on communication choke points like satellites or switches which, while still limited, are growing in capacity. In the past, scarcity excused government regulation of electronic media. But what would be the standing of those First Amendment decisions which are based on obsolete limits of rapidly changing equipment?

In addition, consider the ultimate technology inherent in our society's amassing of information. What will happen as more information is gathered on the effect of an individual's genetic make-up on that individual's susceptibility to illness? What will happen as the human mind becomes better and better understood? Already statistical data can give predictions of how a given individual will react, both mentally and physically, in a given environment. What will happen as those predictions become more and more accurate? What will be the standing of court decisions that are based on individual "freedoms" when those "freedoms" become more and more mechanical? In other words, what would happen to precedents which, by the nature of their opin-

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continued from p. 3

tantamount to a waiver of compliance with provisions of the Act. In fact, the SEC's stance seems ironic in view of a 1979 and 1983 commission releases that took the position that predispute arbitration agreements, that did not apprise an investor of his right to a judicial forum were misleading and possibly actionable under the securities laws. Further support for this longstanding opposition to boilerplate arbitration clauses may be found in the text of Rule 15c2-2, promulgated by the SEC in 1983.

The SEC's voice on the current status of arbitration rings especially hollow when addressed with respect to a September 10 proposal sent by its Division of Market Regulation to all Securities Industry Conference Association (SICA) members. The proposal calls for substantial revision of current arbitration systems at the various SROs.

The proposals call for stringent standards in selecting public arbitrators, including background checks, and for the establishment of training programs for new arbitrators. In addition, the proposals recommend that a more substantial written record be maintained to provide for sufficient appellate review. The proposals also

Shearson's lead counsel Ted Krebsbach and associate Jeffrey Friedman (BLS '85)

recommend that parties be given the option of pursuing claims before arbitration panels independent of the SROs such as the American Arbitration Association (AAA). The scope of the proposals and the perceived difficulties it seeks to remedy, is in stark contrast to the SEC's brief to the Court which stated that the arbitration process in place at that time was sufficiently capable of impartially and effectively resolving claims arising under the securities laws.

PROBLEMS WITH ARBITRATION

Several substantial differences between arbitration and litigation in the federal courts warrant consideration. First, the problem of judicial review has persisted since the time of *Wilko*. Arbitrators are not required to give written opinions providing the basis for their decisions.

Additionally only four grounds warrant vacating an arbitrator's award: fraud in procuring the award, gross misconduct by the arbitrators, partiality on the part of the arbitrators (See *Tinaway v. Merrill Lynch & Co.*, 661 F.Supp. 937 (1987) (vacating an SRO award that reduced a claim by 95% citing evident SRO bias), and failure of the arbitrators to render a final decision. As to interpretation of the law, an arbitrator's decision would have to show "manifest disregard" to prompt judicial review.

While there may be the need to introduce changes to the arbitration system to guarantee its proper functioning, there is also the danger that those who wish to substantially overhaul the arbitration process may wind up causing arbitration to take on more and more characteristics of litigation. This would ruin the long recognized benefits of arbitration; speed and cost effective dispute resolution.

These very real limitations of arbitration may in some cases be a high price to pay for speed and cost effectiveness. As the dissent in *McMahon* points out, "the uniform opposition of investors to compelled arbitration and the overwhelming support of the securities industry for the process suggest that there must be some truth to the investor's belief that the securities industry has an advantage of a forum under its own control."

FREEDOM OF CONTRACT RAMIFICATIONS

According to Ted Krebsbach, Shearson's lead counsel in the McMahon litigation, it is entirely foreseeable that the major brokerage firms will refuse to open accounts with individuals who attempt to strike out the arbitration provisions in the customer account agreements. Shearson has yet to establish such a policy, nor could it confirm the possibility that it would do so in the near future. When pressed to categorize such tactics as contracts of adhesion, Krebsbach countered that contracts of adhesion require an element that runs contrary to public policy. "Our arbitration clause has been enforced by just about every court that has addressed it. They basically say it's an enforceable contract of adhesion because it is not against public policy (i.e., there is a national policy favoring arbitration.)."

Krebsbach continued, "From our point of view when we get sued in federal court we're the ones that wind up getting settlements extorted from us in cases with no merit, just because we have to look at two hundred thousand dollars worth of legal fees down the line, and from our point of view, that is fundamentally unfair. We would rather be in front of a system where we can keep our costs under control, all other things being equal. That's the bottom line."

Attorneys representing small investors point out a problem with this view since it ignores the fact that truly frivolous lawsuits brought by disenchanted customers are already subject to sanction in federal court under Rule 11 of the Federal Rules of Civil Procedure. Further, as the arbitration process currently functions there is substantial skepticism that arbitration is on an "equal" footing with the federal courts.

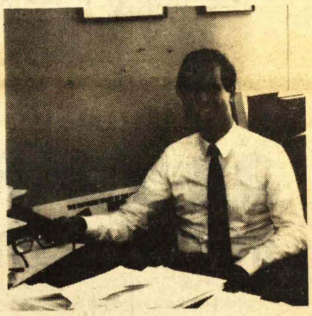
A far more troubling aspect of the decision's fallout is the loss of the element of voluntariness and choice. Should brokers refuse to allow customers to strike the arbitration provision, brokers will essentially be coercing investors into prospectively waiving both a meaningful choice and right to access the federal courts as the vehicle for resolving securities law grievances. Even if, as Krebsbach states "No one wins by going to court," at the very least the individual should have the right to make that decision of his own volition. If an individual has sufficient resources and time to proceed with his case to federal court, the decision to litigate should not in effect be vetoed by the brokerage industry. The much larger issue is that if access to federal court is precluded with respect to securities law claims, the remaining role of the federal courts in administering the federal securities laws is in doubt and brokerage houses as a result will be able to shield themselves from ever having to play the part of defendant in federal court.

Under the current circumstances, most investors will continue to routinely sign their brokerage agreements with a minimal amount of comprehension. Only later, if and when a problem should arise over the account's handling, will they realize that a valuable option (the right to adjudicate their dispute in the forum of their choice) was unknowingly signed away. Although the investor may well favor forgoing federal court proceedings in favor of arbitration, such a decision is one that should not be imposed upon him through a contract prepared by a party wielding superior bargaining power.

Eppenstein ready for the next move

IT AIN'T OVER 'TIL ITS OVER

As noted earlier, it appears that the Court's decision in *McMahon*, including the lengthy dissent by Justice Blackmun, has caused a sufficient backlash to warrant further consideration by Congress as to whether a legislative solution may be necessary to insure that investors' rights are adequately protected. Hearings are scheduled later this fall to determine what legislative steps, if any, may by necessary. Both Krebsbach and the Eppenstein firm are scheduled to testify. Perhaps Justice Blackmun's wish "that there is hope that Congress will give investors the relief that the Court denies them today" will be realized.



Krebsbach reflecting on the decision

EPILOGUE

In reflecting on her role in the *McMahon* case Eppenstein characterized the Supreme Court appeal as a "challenging, exhilarating experience" that she would gladly do again. When asked, given the benefit of hindsight, whether her firm would have done anything different in their presentation of the case, she confidently remarked, referring to the strenuous dissent by four justices, "Not a thing." Even in light of the unfavorable holding in the case, it appears that in terms of the bigger picture, the consciousness-raising efforts of skilled and articulate individuals such as Eppenstein will insure that the system will ultimately function properly.

EDITORIALS

At What Price Printers?

Brooklyn Law School recently celebrated Dean's Day, touting the growing awareness of BLS as a law school with a national presence. The introduction of the latest technology, into the school environment is part of that progressive effort. The availability of personal computers, as well as access to LEXIS and WESTLAW, gives students the opportunity to develop the skills of computer literacy which will be necessary for the next generation of lawyers.

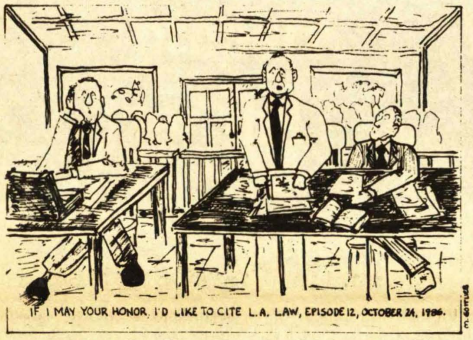
There is, however, one problem which does not seem to be addressed by this progress into the twenty-first century. Where are the letter quality printers: for the student who has prepared his moot court brief; who has spent hours at school because there is no computer at home; who has written and rewritten with the ease a computer allows; who has hammered out that all important cover letter but can't afford a commercial printer? And why must the student plead, beg, seek in vain for a printer?

Where are the letter quality printers anyway? The library supplies computers but no printers. They are noisy affairs and might disturb the noise on the ground floor. Of course, LEXIS and WESTLAW printers are quiet. The third floor computer room machines have dot matrix printers, all that is necessary for rough drafts.

There is only one operational letter quality printer on the third floor and it is only sometimes available to the student body. The Justinian, Law Review and Journal have only dot matrix printers. The SBA office has a letter quality printer but it has a broken number. The Moot Court office has the one printer that is operational, but the many teams justifiably have first priority.

In the administration's effort to propel BLS into national prominence do not let Brooklyn be remembered for the color of the paint or the beauty of posters but for the quality and professionalism of the writing and the positions and help of alumni.

Lastly let us not forget that there are no typewriters either, but that's an old story.



Justinian
Submission Deadline
December 7
Your Chance To Speak Out

22 YEARS AGO IN THE JUSTINIAN

The Justinian
Member of American Law Student Association
BROOKLYN LAW SCHOOL, BROOKLYN, NEW YORK

LOOKING AHEAD

On March 9, 1965, the Brooklyn Law School purchased at auction the site of the former Supreme Court House in Brooklyn. This will be the site of the proposed new law school building.

The arrangements for the purchase and construction of the new building are being handled by a special committee of the board of trustees of the Brooklyn Law School. The committee includes: Henry L. Ughetta, as chairman, Leonard P. Moore, Paul Windels, Sr., and M. C. O'Brien.

Law school officials indicated that while the present building is capable of handling the present enrollment, and that expansion plans do not call for a great increase in the number of the the student body, the basic aim is a more modern and better equipped legal institution.

Tentative plans for the new structure call for it to be completely air conditioned with expanded library and moot court rooms.

THE JUSTINIAN
A FORUM FOR THE BROOKLYN LAW SCHOOL COMMUNITY

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CORRESPONDENCE

Differing Opinions

To the Editor:

Law students and attorneys should not only "conduct . . . research before rendering an opinion," ("The Importance of an Informed Opinion," October editorial) but should, as I suspect Judge Bork would agree, choose their words carefully especially when their words will be subject to the scrutiny particular to that which is printed and circulated. The word phenomenon is typically used to describe an unusual occurrence. Keeping this in mind, it is difficult to understand how anyone could characterize a law student's interest in politics as a phenomenon. I fail to see anything remarkable about law students expressing concern about who the next Supreme Court justice will be. Likewise, there is nothing inherently peculiar about students attempting to prevent the Bork nomination.

Putting semantics aside, it seems to me that the editorial board has demonstrated a certain inconsistency in asserting that "original research" is an essential, if not the paramount element, of rendering an intelligent opinion insofar as the board seemingly neglected to investigate a given law student's ability to appreciate the importance of signing a petition. The board presumes that "for many (students) it marks the first time that they have attached their names to a document as members of the legal community." I would like to know how it is that the board became privy to the actual numbers supporting their allegations concerning the naivete of the student body. I sincerely doubt the board collected "original" data in forming this particular opinion.

The editorial board's seemingly erroneous presumptions only serve to emphasize the fact that "original research" does not necessarily have to be the cornerstone of an informed and intelligent opinion. The board is guilty of committing an injustice to the newspapers of the United States of America, the Justinian included, when it asserts that these mediums are fit for laypeople only. Inasmuch as the Bork nomination and its impact on American government and the American people is more of a political than a legal issue, as many irate republicans and satisfied democrats would agree, it would seem to me that domestic correspondents, who are adept at synthesizing and interpreting the crucial events in our nation, would have a lot to offer the members of the legal community. If our liberal arts educations have taught us anything it should be that one must incorporate various elements in order to realize a specific goal. There is a certain danger inherent in viewing an issue in a single and rigid perspective—tunnel vision. The Bork nomination—the good, the bad, and the ugly—affects each American in multiple ways. Members of the legal community should not cocoon themselves in judicial opinions and law review articles. Law students and attorneys have an obligation, as members of the American people, to consider *all* the aspects of the Bork nomination.

Furthermore, the editorial board has added insult to pomposity when it questions the intelligence of first year students, many of whom are older than the members of the editorial board. The life experience of first year students should not be negated. I suggest, in future, more care should be taken, more thought should be expended, and more data should be collected before the board embarks on criticizing anyone's opinion.

Maria Isabel Trattles, BLS '88

To the Editor:

Although I commend your encouragement of lawyers and law students to conduct research before forming opinions on legal issues, I strongly object to the tone of condescension and high mindedness in last issue's editorial. Scolding law students for signing a petition against Judge Bork's nomination and declaring the *only* way to come to an "educated decision" to sign such a petition is "conducting original research" is absurd. By reprimanding the BLS legal community for its audacity in expressing a political opinion, your editorial only serves to reinforce the paranoia that has traditionally paralyzed the legal profession and prevented many lawyers from taking positions on public issues.

Certainly, the more informed we are, the more informed our decisions will be, but one of the questions the Senate confirmation hearings have raised is, do court opinions reveal the author behind them? How about articles and speeches? Former jobs? Do *these* adequately depict an individual? Writings do not exist in a vacuum. They must be considered in relation to the current social and political climate as well as from a historical perspective. Not every lawyer or law student has the opportunity to do all of this, yet that should not prohibit all of us from informing ourselves as best we can, nor should we be discouraged from relying on reliable and thoughtful legal analyses that are published by prominent legal organizations or utilizing other legal sources.

As lawyers, we have been trained to be analytical and argumentative. Let's bring those skills to social and political involvement rather than just burying our noses in reading opinions on the second floor of the library as you suggest. Despite your editorial disdain for lawyers who sign petitions without first exhausting all research possibilities, there are those of us who do not share your elitist view of what is an appropriate way for lawyers to conduct themselves.

Sure, read, read and read some more; just don't forget to come out of the library when you're done.

Andrea Montague

To the Editor:

I would like to compliment you on your editorial "The Importance of an Informed Opinion."

The ideas expressed served as a good reminder of the need to base opinions in fact.

There is a great deal of emotionalism surrounding the Bork confirmation hearings. It's nice to hear a calm voice recommending an informed opinion.

Thank you,
Sheila Gowan

To The Editor:

Your lead editorial in the October *Justinian*—"The Importance of An Informed Opinion"—is an unfortunate example of what happens when one tries to speak with their head buried deeply in the sand—they make loud, gurgling noises and no practical sense. Your claim that many signatories of a petition opposing the confirmation of Judge Bork to the Supreme Court were unqualified to register their opinions on the judge's much-publicized record because they failed to conduct original research before signing, is hardly self-evident and raises more questions than it

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In Praise of Placement

To the Editor:

This letter is in response to the editorial appearing in the Justinian's last issue entitled "Interview Insanity."

Many students complain that they are distressed and inconvenienced by the fall recruitment process. Unfortunately, much of the confusion is generated and perpetuated by the students themselves, the BLS Placement Office is not solely to blame.

The "Interview Insanity" editorial suggested that the Placement Office "call *the few individuals* slated for interviews" (emphasis added). Notifying each interviewee personally by telephone is a nice idea but administratively impracticable and overindulgent. Between August and October 77 employers were on-campus and approximately 1550 interviews were conducted which means at least 1550 phone calls would have to be made by the Placement Office staff. Most students would undoubtedly be in class or at work during the business hours when such calls would be placed and not everyone has an answering machine. In addition, the Placement Office staff has a myriad of other responsibilities including: taking job listings over the phone for part-time and full-time career positions; counseling students and reviewing resumes; and assisting those students not eligible for the on-campus interviewing process in obtaining jobs. All this for a staff of six individuals is already an awesome burden.

As I see it, the responsibility is on the student for charting his or her own job search. This responsibility includes the burden of "checking the boards." The bulletin boards are in the lobby and in the Placement Office. While it is true that many students do not live in the area and are unable to check the boards daily most have colleagues who would not be terribly inconvenienced by checking the postings and making a phone call. The Career Planning Directory issued to every student in the summer suggests a morning and afternoon check because often employers do not promptly phone in the names of students so occasionally lists are posted late. Checking the boards requires a minimal amount of time for those who are conscientious. As professionals we will be expected to be mature and responsible enough to take charge of our lives—that training should begin now. After all are you going to tell a judge or a client that you were unaware of the amended statute because no one called you to tell you about it? Yours is the duty to check the pocket part and the postings.

While our Placement Office does a valiant job assisting students the misconception that it alone will get you a job while you sit back is just that—a myth. You are solely responsible for the success of your job search. It's time to get your act together.

Eileen M. Johnson

Cosmetic Consternation

To the editors:

You have to be completely oblivious not to notice the changes at our beloved institution, BLS. When I received Dean Trager's notice that our tuition was going to increase for the 1987)88 semester year, I thought the funds derived would be used to keep our institution academically abreast with the legal community. Instead our money is being thrown into the garbage*literally! Don't tell me you haven't noticed our new nifty garbage pails? I'm sure Fordham and N.Y.U. have purchased similar hanging dispensers in an effort to compete with Brooklyn Law's strict sanitary standards.

Call me an ingrate but if the administration really believes that by adding a few plastic plants and some "choice" art work our cafeteria will miraculously change into an eating paradise, they're dead wrong. Anyone who has had the opportunity of dining out at "Blackletters" knows that we're talking about a living hell. It's so hot down there that I give the plastic plants a month before they melt! Let us install some air)conditioning or provide for some ventilation—we're tired of eating in the tropic zone.

I would just like to make some last remarks about the condition of our bathroom facilities, namely the womens' room since I've never had the pleasure of the mens'. Now I don't expect to be able to sit down on the toilet seats, but nor do I expect to have to wrestle with the door every time my "neighbor" decides to enter or leave the stall. Additionally, our bathrooms can be characterized as dark and dingy, comparable to those facilities offered at Grand Central Station. Okay, so I'm exaggerating—I guess I'd be content with more light, doors that recognize a right to privacy, and rust)free water.

I can go on and on about the unnecessary improvements which are in actuality poorly spent funds, i.e. the Cezanne in room 600 and the carpeting in room 602, but this member of the student body feels she has made her point quite clear. Let's just keep our fingers crossed that next semester's tuition will not be used to install a decorative fountain in the lobby!

Leslie Schneider

I would like to express my gratitude towards all those who extended their love and sympathy to me and my family during our recent troubles. You were all tremendous. Thank you.

—Mike Dineen

Upcoming Placement Events

All students are invited to the following upcoming Placement Office programs:
DECEMBER 2. Distinguished Alumni Lecture Series. Speaker: Jacalyn Barnett, BLS '77, of Shea & Gould. 1-2 p.m., Student Lounge.
DECEMBER. Date, time, place to be announced. Judicial Clerkship Orientation Program. How to apply for post-graduate judicial clerkships.

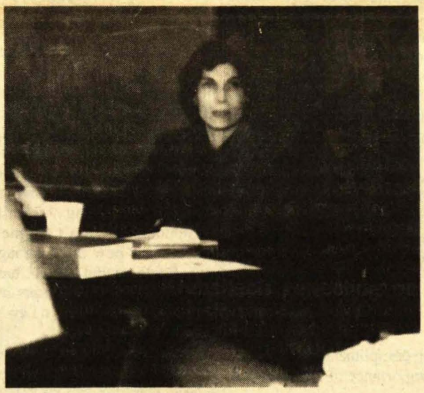
Schafran Speaks on Gender Bias in the Courts

by Andrea Montague

On October 14, Lynn Hecht Schafran, staff attorney at N.O.W. Legal Defense and Education Fund and director of the National Judicial Education Program, spoke at Brooklyn Law School on "Sex Discrimination in the Courts." The program, sponsored by the Legal Association of Women, focused on Schafran's work as a member of the New Jersey Supreme Court Task Force on Women in the Courts and as advisor to the New York Task Force on Women in the Courts. Both of these task forces were begun only a few years ago as a result of NJEP's work in research and education on the problem of gender bias in the courts.

Schafran spoke about the results of the investigations conducted by the NY and NJ Task Forces which revealed some startling information about the existence and impact of stereotyped myths, beliefs and biases about women which were found to affect decision making in the areas of rape, domestic violence, juvenile justice, family law and damages.

In the area of domestic violence, Schafran spoke of the Task Forces, findings that judges are not adequately educated about battered women's syndrome, the economic dependence of the battered wife on the husband, and the problem battered women have in obtaining orders of protection. There were instances reported to the Task Forces in which some judges trivialized domestic violence complaints by saying things such as, "Let's kiss and make up and get out of my court." On the issue of rape, attorneys reported to the NJ Task Force incidents where comments were made in the courthouse and chambers about the appearance and physical attributes of rape victims implying that the victim was a sex object. One incident Schafran told of was a judge who had handed down a minimum sentence to a rapist. Defending the sentence the judge said, "As I recall (the defendant) did go into (the victim's) apartment without permission . . . He was drunk, jumped into the sack with her, had sex and went to sleep. I think it started without consent, but maybe they ended up enjoying themselves . . . It was not like a rape on the street . . . People hear rape and they think of the poor girl in the park dragged into the bushes. But it wasn't like that."


Lynn Hecht Schafran

On the subject of family law, Schafran spoke of the Task Forces' discovery that judges often award only a small portion of the marital assets to the woman, as well as overestimating the earning power of women who had been out of the job market for a long time. In formulating child support awards, judges are often found to award insufficient amounts that appear to be based on what the father can pay without lowering his standard of living, instead of assessing the needs of the children. Judges are also reluctant to enforce payment of court ordered child support and unwilling to award counsel fees to the parent seeking payment. Schafran told of an incident where a woman had been attempting to collect child support from her former husband that had been ordered by the court. The husband's attorney addressed the judge by saying, "Your honor, this woman has been bothering my client for fourteen years, why doesn't she leave him alone?" The judge turned and said to the woman, "Yes, why don't you leave him alone?" The attorney representing the woman said, "Judge, why don't I hear any language about why after fourteen years this man hasn't paid his child support?" The judge finally responded to this last comment and agreed that was the issue before the court.

On the issue of custody, judges were found to routinely award custody to the mother in the belief that men do not want to or are unable to care for children. At the same time, judges were critical of those mothers who work full time rather than staying home to care for the children. In one scenario Schafran reported, a homemaker mother is awarded custody without enough spousal or child support to remain a homemaker, then loses custody when the father remarries and tells the judge that his new wife is at home and can properly care for the child.

In the area of courtroom behavior, women as litigants, witnesses and lawyers have been subject to demeaning forms of address, comments on their personal appearance, their clothing and their bodies, sexist remarks and jokes, as well as unwelcome physical and verbal advances. Schafran emphasized the humiliating and infuriating experience of the woman who is the target of such behavior and the effect this has on a woman's credibility as an advocate, litigant, and as a witness. The problem is particularly complex for the attorney who does not want to injure her client's case. The Task Forces noted that for women of economically disadvantaged backgrounds and women from minority groups, the behavior can be much worse.

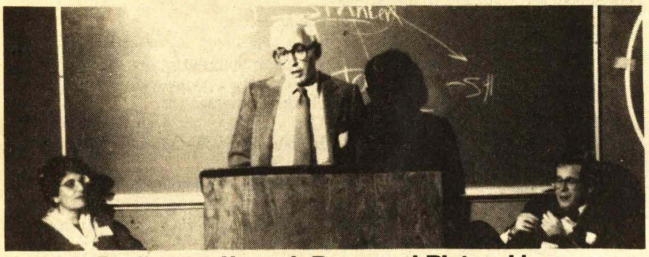
Chief justices in NY, NJ and more recently other states have formally established task forces made up of men and women judges, lawyers and others to investigate gender bias in their own state and make recommendations on how to improve existing sexist conditions, environment and attitudes that treat women judges, lawyers, litigants and court personnel unfairly. In conducting its investigation, Task Forces have held public hearings and meetings, conducted surveys and mailed questionnaires to judges and lawyers, judicial nominating and screening committees, and accepted letters and written submissions. Recommendations have been and will continue to be made to every element of the legal community including enactment of legislation, education of judges, lawyers, court personnel and changes in law school curriculums.

Schafran closed by saying that although some small changes in courtroom behavior have taken place, gender bias still exists in the substantive areas of the law. She urged the audience to sensitize themselves to gender bias, starting in their own law school classrooms. This is an environment where sexist behavior by professors and students exists. The sex discrimination that has been institutionalized in the law, the use of women stereotypes and lack of gender neutral language in casebooks and in conversation, hypotheticals that trivialize women, and in-class discriminatory jokes, remarks and attitudes all have harmful effects that exclude and discredit women. The Legal Association of Women will be presenting additional programs this year to educate the BLS community about gender bias in the law.

Dean's Day
from page 1

based on a newspaper reporter's misappropriation of nonpublic information from his employer was also discussed.

Professor Arthur Pinto focused on the development of insider trading problems, especially in the area of hostile takeovers. He reviewed the Securities and Exchange Act of 1934, Rule 10b(5), which deals with some of the deceptive and manipulative practices of securities trading. Professor Pinto noted that this provision does not offer any definitive guidance for the government and Wall Street in dealing with their present problems.



(L. to r.) Professors Karmel, Poser and Pinto address the latest insider trading developments.

He explained the Kansas Rule, a narrow precept under which the fiduciary duty a corporate director owes his shareholders is violated only when the director buys—not sells—securities. A shareholder has a cause of action only when such a purchase is made and privity exists.

Pinto also discussed Section 16(b) of the 1934 act, which requires that directors make a public disclosure if they acquire 10 percent or more of a corporation. Recent U.S. Supreme Court cases addressing the issue of insider trading were highlighted.

Professor Norman Poser credited merger mania with changes in market conditions, which he noted have profoundly affected a whole line of cases. Where a corporate officer has nonpublic information regarding the company's stock, he must either disclose the information or abstain from voting on any action that could affect the fate of the company. An insider, according to Poser, is prohibited from trading on the information or tipping other individuals. Since the late 1970s, the most critical insider-trading problems have dealt not with company information but with market information. Poser discussed misappropriation of nonpublic information and briefly reviewed the facts of the recent U.S. Supreme Court case involving R. Foster Winans, the *Wall Street Journal* reporter who was convicted of misappropriation. Winans stole information that belonged to the WSJ and tipped off dealers, who acted on the information and paid Winans a share of the proceeds. Poser commented that the Winans matter may be one of the weakest cases of misappropriation to come before the Court and predicted that the decision would be problematic. He noted that the oral argument on the matter provoked a number of questions from the justices that may reflect their concern about the government's position.

Professor Poser closed with an overview of the Insider Trading Sanctions of 1984, which impose criminal penalties of monetary damages and prison terms on those convicted of insider trading. He predicted that there could be a profound effect on tender offers within the changing climate of legislation, case law, and regulations.

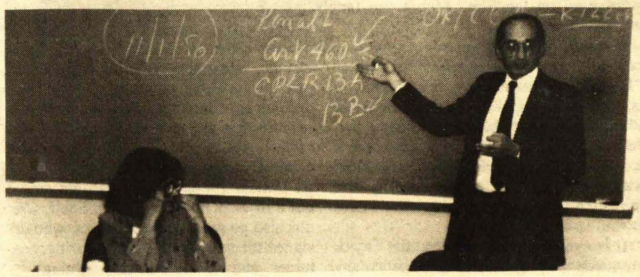
Professor Roberta Karmel reviewed pending legislation intended to provide a clear definition of insider trading. She noted that in the past, the SEC had strenuously opposed any legislative definition, for fear of limiting the number of investigations and prosecutions. She indicated that the SEC theories on insider trading were rejected by the Supreme Court in both *Dirks* and *Chiarella*. The misappropriation theory may be in trouble, according to Karmel, and the Winans case may be inappropriate to demonstrate the efficacy of the theory. Winans was not a member of the securities community but a reporter who stole information from his employer in breach of his employment contract. Karmel remarked that the Winans case, in addition to other well-publicized cases, such as those involving Ivan Boesky and Dennis Levine, has compelled the consensus in Washington that the insider-trading problem must be remedied.

Major proposals have been submitted by the Senate, the House of Representatives, the Legal Advisory Committee of the New York Stock Exchange (LAC), and the Securities and Exchange Commission (SEC). Karmel revealed that all proposals stress the need to ban insider trading to maintain the integrity of the stock market without interrupting the flow of information into the market for analysis. (For a complete discussion of proposed legislative reforms, see Professor's Karmel's column, "Securities Regulation," in the October 15, 1987, issue of the *New York Law Journal*).

RICO and the Organized Control and Criminal Forfeiture Acts of New York State (CPLR Article 13-A)

Professor Stacy Caplow discussed recent developments in the Federal Racketeer Influenced and Corrupt Organizations Law, 18 U.S.C.1961. Professor Richard Farrell focused on the New York State counterpart to the Federal RICO statute, the Organized Crime Control and Criminal Forfeiture Acts of New York State (CPLR Article 13-A).

Professor Caplow addressed the proliferation of federal prosecutions of RICO cases in the civil area, which require approval from the Department of Justice. She stressed that Congress has construed RICO to apply not only to organized crime but to any group involved in racketeering activities, including banks and major corporations. In a civil RICO case, she noted, a private individual can sue for treble damages.



(L. to r.) Professors Caplow and Farrell explain the intricacies of RICO.

According to Caplow, conviction requires proof of a crime and a pattern of racketeering activity. This pattern may be very complicated to prove. The racketeering activities must have occurred within a ten-year period, and there must be a relationship between the activities. Some of the more intriguing elements of civil RICO cases, in Caplow's opinion, are the enterprise and the legal-entities concepts. An enterprise, such as drug sales, union or business takeovers by means of extortion, or conducting business through bribery, would constitute a violation of RICO. Caplow noted that illegal enterprise is the more difficult concept to establish. She cited a U.S. Supreme Court case, *Turkette,* that held that an organized-crime family can be considered an enterprise if they further their legitimate ends through illegal means.

Under Section 1962 of the Code, a RICO proseution may be based on mere agreeent to commit a conspiracy without the subsequent enactment of it.

Penalties for these crimes under the federal code and the New York statute include forfeiture of monies and properties as well as jail sentences, according to Caplow, as the purpose of RICO is to prevent defendants from continuing their operations. Treble damages can be imposed under RICO, pursuant to Section 1964 of the code.

Professor Richard Farrell discussed the New York equivalent of RICO, Article 460 of the New York State Penal Law, which he calls VOCCA (The Very Organized Crime Control Act). He pointed out the lack of case law based on this recently enacted statute.

Farrell noted the similarity between the federal RICO provision and Section 460.10(4) of the N.Y. Penal Code, which both focus on conduct, the enterprise element, and the requirement that the action commence within ten years. Section 175 of the Penal Code defines an enterprise as "any entity of one or more persons," according to Farrell. The comparable forfeiture penalties are found in CPLR 13A and B.

Farrell stressed the importance of establishing a pattern in making out a state RICO case, pursuant to Section 460.10. An "occasional" arsonist would be excluded from prosecution, because of the isolated nature of his action, Farrell said. Under the Rule of Three, unless you have done something at least three times, it will probably be difficult to establish the pattern element for a state RICO claim. Forfeiture proceedings in rem were enlarged by Article 13A of the New York Civil Practice Law & Rules, said Farrell, which makes it possible to seize property such as automobiles, which might have been used in transporting illegal goods.

Farrell closed by mentioning the one case to date dealing with these recent amendments, *Morgenthau v. City Source*, which reiterated RICO principles and addressed forfeiture remedies. Farrell expressed his belief that district attorneys will now be empowered to use "imaginative remedies" to attach fiscal assets of criminals convicted under RICO.

Constitutional Law: The Rehnquist Court

This seminar was divided into three segments. The first segment was presented by Professor Joel Gora and dealt with the Supreme Court's analysis of affirmative action from the *Bakke* decision to the most recent case, *Johnson. The second segment was presented by Professor* Susan Herman and dealt with the retrenchment of rights of the criminal defendant under the Burger and Rehnquist Courts. The third segment was pesented by Professor William Hellerstein and consisted of an evaluation of Justice Scalia's views as evidenced through his record on the bench.

Professor Gora stated that the Court's analyses of the affirmative-action cases are often in disarray and lack consensus.

(L. to r.) Professors Hellerstein, Gora and Herman review the decisions of the Rehnquist Court.

Within the limited time allowed, he scrutinized the various factors the Court considers in making its ultimate determination: prior-discrimination patterns, remedies applicable to issues other than gender and race, and the content and forms from which these issues arise.

Professor Gora concluded that the law does not flow consistently from *Bakke* to *Weber*. He looks forward to the day when race and gender will no longer affect our legal decisions.

Professor Herman's presentation was tactfully persuasive. She told her audience that the Rehnquist Court is as preoccupied today with curtailing defendants' Constitutional rights as was the Burger Court. She illustrated this point by showing how both courts successfully extended the good-faith exception to the exclusionary rule. The Court has evidently allowed law-enforcement agents to take advantage of defendants' lack of understanding of the system. Professor Herman appeared to be frustrated and angry over the Court's continuous infringement of the Constitutional rights of criminal defendants.

Professor Hellerstein entertained his audience as he informed them about Justice Scalia. He described this justice as having been a brilliant student who made law review at Harvard prior ot becoming a professor at the University of Chicago Law School. He noted that the justice's voting record on the Supreme Court would not classify him as a liberal as the term is generally understood. Professor Hellerstein ended his speech by saying, "Justice Scalia is not a liberal. His point of view is unpredictable, but he makes life interesting."

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DEAR FELIX

Dear Felix,

Last week I was in the lobby about five minutes before class. I was waiting anxiously for the elevator and was about to run up the stairs when the elevator doors opened. The elevator was packed but I jumped in anyway and wedged myself in, to everyone's consternation. Embarrassed, I turned around quickly and just stared at the elevator doors. One of my friends, whom I hadn't noticed in my haste to get on the elevator, called out my name and asked me how I was doing. I don't know what came over me, maybe it was from a long night of studying, but I just let loose with a long stream of expletives about the assignment, the course, and especially the instructor. When the elevator stopped at my floor and everybody got off, I found to my horror that the aforementioned professor had been in the same car, and had heard everything I'd said. During the class the professor refused to look at me, as I cringed inwardly. What do you think is going to happen to me, and what do you think I should do?

Concerned First-Year Student

Dear Concerned,

I'd say that you were correctly troubled by your misdeed. I wouldn't want to be in your Reeboks. First of all, most professors are fair understanding human beings like you and I. They understand that you've probably spent all night studying, and your nerves might be a little raw. With your luck, though, you've probably insulted the one professor who plans to make a personal vendetta the next burning goal in his or her academic career. Secondly, professors are always conferring with each other. When you see them in the cafeteria, they're not mulling over Bork's rejection or why Goetz got time. Rather, they're trying to decide which student to screw over that week. You didn't think that it was a coincidence that the same people get called on to recite cases, did you? It's your turn now, buddy.

Third, don't believe for a minute that exam grading is done on an anonymous basis. I know for a fact that's the only reason that I haven't been able to get on law review.

Your options are limited. Forget about a bribe, money means nothing to these people. That's why they're teachers. I would say, go to your professor and plea bargain. Offer your professor names of fellow students who've expressed sentiments similar to yours. If necessary, pick names randomly. Remember, even though it's BLS, law school is supposed to be competitive.

If this doesn't work, I hear New York Law is accepting transfers for the spring.

Please address all letters to:
Dear Felix
The Justinian—Rm 305

Moms Mabley: The Legend Lives On

by Judith A. Norrish

Jackie "Moms" Mabley, a legend in the history of Black entertainment, was born Loretta Mary Aiken in Brevard, North Carolina, in 1894, one of sixteen children. She was raped at the age of eleven by an older Black man, and raped again two years later by the town's white sheriff. Both rapes resulted in pregnancies, and both infants were given away. Her father, a successful businessman, and volunteer firefighter, was killed when a fire engine exploded, and her mother was struck and killed by a truck on Christmas Day. At the age of fourteen, Loretta ran away from home to join a minstrel show. Her family felt humiliated by her work in show business and requested that she change her name. She adopted the name Jackie Mabley, after her friend and paramour, Jack Mabley. Her early fans called her "Moms" because she addressed her audiences as "my children."

By the twenties, Jackie Mabley was a show stopper at the Apollo Theater, the center of the Black Renaissance. At that time in Harlem the Cotton Club and Connie's Inn were also jumpin' joints, but these clubs presented the finest in Black entertainment—for whites only. At the Apollo, Moms was home—with her people—fostering the renaissance with her comic genius.

In the sixties, mainstream America was finally ready to accept the legendary Ms. Mabley who had been entertaining audiences for fifty years. Moms appeared on national television with Johnny Carson, Merv Griffin, Mike Douglas, the Smothers Brothers, Flip Wilson, and Bill Cosby. White comediennes like Carol Burnett, Lucille Ball, and Lily Tomlin owe a debt to Moms for their "washerwoman" and "bag lady" characters; she'd been doing them for fifty years. In the last years of her life, Moms Mabley played Carnegie Hall, the Kennedy Center, and the Copacabana. In 1974, the year before she died, she starred for the first time in a movie, *Amazing Grace*. (Although critics were hard on the film, Moms garnered great reviews.)

Clarice Taylor is a veteran actress who currently plays Grandmother Huxtable on "The Cosby Show." However, Ms. Taylor is cookin' six nights a week at the Astor Place Theater with her Obie-winning performance in *"Moms."* The show, which is a celebration of the life of Moms Mabley, was also conceived by Ms. Taylor, who remembers Moms from the good old days at the Apollo.

It is even more noteworthy that Taylor produced the play herself. She spent many hours researching, and interviewing the family, friends, and colleagues of Moms Mabley and the production reflects Taylor's interest in the personal and public sides of this theatrical pioneer. Biographical events are interwoven with actual comic materials from Moms' shows, delivered with an uncanny flair for realism. The result is a cohesive presentation of Moms Mabley as woman and legend. As a co-founder of the American Negro Theater, Taylor has many performances to her credit including those with the New York Shakespeare Festival and in *"The Wiz."* She admitted however that her work as conceiver and producer of *"Moms"* is her most ambitious and consuming project to date.

Hats off to Ben Caldwell, who wrote the present version of the play. I was especially impressed with Grenoldo Frazier who plays Moms' piano player and chauffeur. Mr. Frazier also wrote the music and lyrics for the show, and plays a 'mean,' albeit excellent, piano throughout. Besides his accomplished musicianship, Frazier demonstrates good stagecraft and is truly a sight for sore eyes. His number "I've Been Good to You," sung by Carol Dennis, is as memorable as any musical offering on Broadway. Ms. Dennis, who appears as Moms' dresser and confidante, exhibits fine acting and vocal skills. This review would not be complete without acknowledging the work of director Walter Dallas. The production is tight, and it has a rhythm all its own. Top Shelf. Credits also go to Rosario Provenza, who designed the scenery, Judy E. Dearing, costumes, and Robert Wierzel, lighting.

"Moms" is a play for everyone. You will leave the theater feeling good, feeling laughter, feeling proud for a woman who weathered stormy times of racism and oppression, and came out on top. There is not one foul word in it, so it is a fine show for children.

"Moms" runs Tuesdays through Sundays at the Astor Place Theater, 434 Lafayette Street, opposite the Public Theater. Curtain at eight—except Sundays when it is at seven-thirty. Matinees are Saturdays at two and Sundays at three. For reservations and information, call (212) 254-4370.

LAW SCHOOL DISEASES AND THE SYMPTOMS

This is one of those "tests" that people take to see how they fare compared to the rest of the world. These are a few of the physical complaints and symptoms I have heard law school students make during the course of the year and a half I've been in law school. Check one of the answers which you think is the proximate cause of these physical and emotional problems:

A. Excruciatingly painful migraine headaches: you feel like someone has just hit you over the head with a baseball bat and all you want to do is crawl in a dark corner with an ice pack on your head and cry.

1. You actually have a tumorous growth on your brain.
2. Someone has just hit you over the head with a baseball bat.
3. You've just spent the last fourteen hours studying civil procedure/criminal law/legal process under poor lighting conditions, in a room that's poorly ventilated.

B. Weight loss/weight gain: You've either gained or lost twenty pounds while in law school and you can't figure out why.

1. You are anorexic/have some glandular defect.
2. You've been eating breakfast, lunch and dinner in the cafeteria/you've been taking those weight loss pills again and working out for four hours a day.
3. Reading tort cases where four year old girls are permanently disfigured by a fire caused by a design defect in children's nightgowns.

C. Diarrhea/Constipation/Stomach upset/Gas: You have not been regular for the past three months/you feel like a hole is being burned in you stomach/you constantly have to run to the john/you haven't gone in two weeks.

1. Your family has a history of ulcers/you were born without a belly button.
2. You've just tried to get into the book of world records by drinking three hundred cups of coffee/you've been drinking the cafeteria's coffee/just smoked two packs of cigarettes when you don't even smoke.
3. You're absolutely terrified of being called on in class because you aren't prepared/You have a memorandum/brief/law review deadline due in two days and you haven't started yet/You are already worried about finals.

D. Loss of sex drive: I don't need to describe the symptoms—you know what they are.

1. You are a eunuch/Catholic priest/nun.
2. You've just had a blind date with an acne infested, fat, size fourteen shoed slob who consumed a greasy bacon-cheeseburger, fries and bubble-gum malted through a straw.
3. You've just spent the last twenty-four hours studying civil procedure/torts/contracts/legal process and are simply too tired and all your senses are so numbed that not even Dennis Quaid/Christie Brinkley will turn you on.

E. Loss of eyesight: After reading for fifteen minutes the page begins to blur and words like "jurisdiction" begin to look like "gon8llol10m".

1. You have cataracts/your eyelids are sealed together.
2. You forgot to bring your glasses to school/you're not wearing your contact lenses.
3. You've been reading Gunther's Constitutional law/poorly copied cases where half the words are blurred and the footnotes are so tiny you need a magnifying glass to read them, but forgot to bring one along/you've been studying in the library since before the sun came up until the sun went down and have been under artificial lighting the whole time (why do the plant engineers even bother to replace those blinking lightbulbs, we're just law school students, right?? Why not just go back to candle light?

F. Insomnia: Around three a.m. you crawl into bed after you've been falling asleep in the middle of a sentence for the last hour or you've been reading the same sentence for the last half hour. You lie there, thinking about the difference between in rem and in personam jurisdiction. No amount of sheep counting will help. Your bed feels like a piece of cardboard and no position is comfortable.

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WHAT'S NEW? DON'T ASK MORT SAHL . . . . . .

by Judith A. Norrish

Whether you are to the left or the right Mort Sahl will dazzle you. Nixon, Vanessa Redgrave, Alex Haig, the Kennedys, Reagan. Bob Dylan, Kurt Waldheim, Donald Trump, Sylvester Stallone: These sacred cows and others are all fair game in his satiric shooting gallery.

Mr. Sahl was a hipster in the fifties when attacking the establishment was even more taboo than it is at present. His non-staged Broadway show, currently at the Neil Simon Theater, could have been performed in a club, an auditorium or on a street corner.

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Clarice Tyler as Moms Mabley

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1. You've been diagnosed by a licensed psychiatrist as an insomniac.
2. You just drank three cups of cafeteria coffee/taken six No-doz.
3. You're worried that you'll never understand the difference between a question of fact and a question of law/you have a memorandum/brief/etc. due the next day and you're worried that your Blue Book citing is incorrect/you don't have a job and it is already October (this last one is for second years only).

G. Lower back pain: It hurts to sit, stand or lie. It feels like a freight train has just run over your midsection.

1. You have scoliosis/a slipped disk.
2. A freight train has just run over your midsection/you've just lifted free weights for the last two hours/your bed is made of eiderdown.
3. You've been squinting at those poorly copied cases and been leaning over your books for the past ten hours/you squat down in your seat during class because that way you think the professor can't see you and won't call on you.

H. Sudden heart-rate acceleration: For no apparant reason your heart speeds up to the point where you feel like you're going to burst a blood vessel in your forehead.

1. You're having a heart attack.
2. You've just finished aerobics for the first time.
3. You've just been called on in class and have completely blanked on the perfectly prepared brief under your nose/you have to make an oral argument in front of 100 people in five minutes and you've just realized you have forgotten your notes at home in Manhattan.

I. Recurring cold: Every month you get a runny nose, watery eyes, clogged sinuses.

1. You have asthma/sinusitis.
2. You've just spent the last half hour counting beef carcasses in a walk-in meat locker/someone slipped pepper into your nasal spray.
3. You never get any sleep because of your insomnia, can't eat good-for-you meals because you don't have time to prepare them, you study in either the library or the lounge where it is permanently 60 degrees and generally your body is run down from too much work and no play.

J. Brain death: You can't seem to speak properly. You can't write a single sentence of prose in English. You can't understand any legal concept. You can't have a normal conversation with anyone without thinking of the legal ramifications. You forget your keys constantly. You haven't written letters to any friends or family. You can't remember your last meal.

1. You are comatose.
2. You just woke up.
3. You are in law school.

Now, give yourself zero points for every question that you answered 1., one point for every question that you answered 2., and two points for every question that you answered 3. Now, add up your total (I know this is hard, since you went to law school hoping you would never have to make a mathematical calculation).

If you scored between 1-6: YOU REALLY ARE SICK. YOU NEED TO MAKE AN APPOINTMENT TO SEE A PHYSICIAN TODAY!!!

If you scored between 7-11: YOUR SYMPTOMS ARE TEMPORARY. TAKE TWO ASPIRINS AND CALL YOUR MOTHER IN THE MORNING AND ASK HER TO BRING SOME CHICKEN SOUP.

If you scored between 12-20: WELCOME TO LAW SCHOOL. The sad part of scoring in the upper half of this category is that probably you'll be an A student. As a second year student I can tell you that it doesn't get any better. Maybe, just maybe all these symptoms will go away the day we graduate.

Laura Cooper

"Year of the (Dead) Duck"

by Judith A. Norrish

The Hudson Guild Theater launched its thirteenth season with a new comedy by Israel Horovitz: "YEAR OF THE DUCK." Mr. Horovitz is no newcomer to the New York off-Broadway scene. Some of his best-known plays are: "The Indian Wants the Bronx," "Today, I Am A Fountain Pen" and "A Rosen By Any Other Name." In "Year of the Duck" Horovitz takes us to Glouster, Massachusetts, where an amateur theater group is rehearsing a production of Ibsen's "The Wild Duck." Ibsen's play centers around the Ekdahl family: husband, wife and fourteen-year-old daughter. Alas, so does the Horovitz work. In both plays Grandpa lives with the family and does photography in the attic.

Friend of husband and family returns after fifteen-year absence with theories about total honesty, and rejection of 'the saving lie' also known as the White lie. Friend tells husband about heretofore unknown adventures in his wife's past, and husband rejects wife and daughter. Daughter, in order to prove her love for her father, kills that which she loves most—a pet duck. (In the Norwegian winter of Ibsen however, the daughter shoots herself.)

In Glouster, 1986, the husband also has a girlfriend who is in the theater group, and they neck between rehearsals, while his 'fallen' wife is downstairs preparing dinner. Girlfriend also has a black eye now and then because *her* husband doesn't really buy this total honesty stuff. And wife, though irritated, tolerates a lot under her roof before it's all over. One of Grandpa's memorable lines comes when he is discussing the memory of his deceased wife with his son. When reminded that mom worked, Grandpa quips: she *taught*—don't ever confuse *teaching* with *working*. Ha ha, Gramps.

Although the content of the play left me cold, there were some good performances. Ann Sarah Matthews as Margaret Budd, the mother, just got better during the performance with a quiet, New England understatedness that was appealing. Kathryn Rossetter, as Rosie Norris, was the most outstanding actor on the stage.

(L. to r.) Katherine Hiler and Ann Sarah Matthews

Her stammering was done in perfect moderation, and she displayed a wide range of emotion without appearing to be acting.

Bernie Passeltiner was the veteran actor of this show however, in the role of Nathan Budd (Grandpa). His list of theater credits is long, and his presence in this show was the cohesive factor in its success. His performance was excellent—that of a pro who has worked hard for many years. Even though his character didn't always delight me, his accomplishment cannot be denied.

Husband Harry Budd, played by James Huston, was not impressive. He exhibited no depth of passion, anger, love or enthusiasm, although his character called for at least some of the above. Paul O'Brien, likewise, who brought the message of truth after a fifteen-year absence, was quite unmemorable.

Katherine Hiler, who played the distraught daughter, brought life to the performance. However I found her affectation toward her father quite out of step with 1980s America.

Please don't give up on the Hudson Guild Theater, 441 West 26th St. They have presented some wonderful plays which have gone on to Broadway runs such as "On Golden Pond." And Israel Horovitz has been awarded two Obies, the Emmy, The French Critics' Prize, The New York Drama Desk Award, and a nomination for a Pulitzer Prize.

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He attacks liberals with as much gusto as he musters up for any other group. Where does that leave audience members? Laughing at themselves? Probably not. A couple of lines which I liked:

* Washington could not tell a lie; Nixon could not tell the truth. Reagan cannot tell the difference.

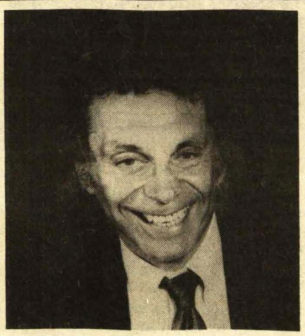
In discussing potential presidential candidates:

* Jesse Jackson's slogan is "I have a scheme."

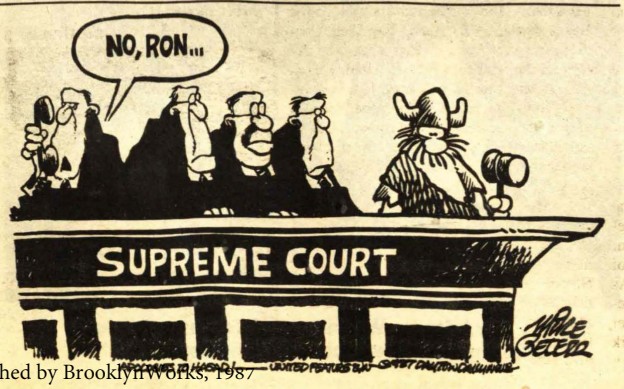
* I think Alexander Haig is a terrifically bright guy. I presume he'll throw his helmet into the ring.

An entertaining experience if you don't read the newspapers, missed the sixties and seventies, or want to see "a famous person" being COOL like he thought he was way back when.

"Mort Sahl on Broadway" at the Neil Simon Theater.



Mort Sahl



REASONS WHY BORK WAS NOT CONFIRMED BY THE SENATE

by Judson Vickers

* Unnecessarily confused Howard Metzenbaum by using words with more than five letters in them.
* Referred to present Supreme Court as "Those two fat white guys, that fat black guy, that dame, and those other skinny guys."
* Admitted having stolen ideas for *Indiana Law Review* article from Joseph Biden.
* Said his favorite Supreme Court Justice was Clement Haynsworth.
* Disappointed liberals by holding no Constitutional right to linguine with pesto sauce in 14th Amendment.
* Dicta in *American Cyanamid* that employers may also require wearing of Groucho glasses as condition of employment.
* Seen having vicious tug-of-beards with C. Everett Koop in Capitol Rotunda.
* When asked by Edward Kennedy whether he would overrule *Roe v. Wade*, responded "I'll drive off that bridge when I come to it."
* Too cool to idea of nationwide chain of Strom Thurmond-Arlen Spectre charm schools.
* Kept insisting that the best safeguard against judicial activism was the use of a condom.
* Upset potential Supreme Court colleagues by advocating abandonment of traditional Friday night Twister parties.
* Missed key meetings with swing Senators due to failure to check White House bulletin board on a regular basis.
* Kids not buying Judge Bork Action-Adventure dolls; Lawrence Tribe Mr. Potato Heads selling like hot cakes.
* No more size 50 robes in Supreme Court dressing room.

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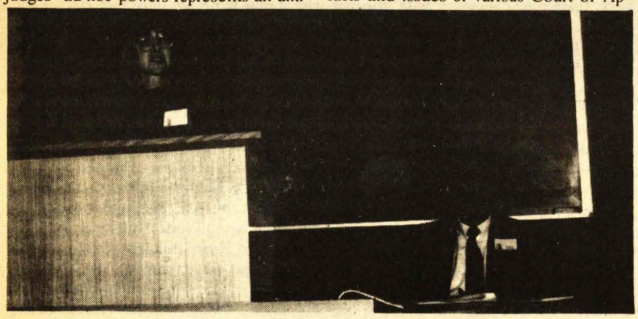
Current Trends in Federal Civil Procedure

The civil-procedure seminar focused on recent trends stemming from the 1983 amendments to the Federal Rules of Civil Procedure. Professors Margaret Berger and Jeffrey Stempel discussed the increasing tendency of courts to settle cases without resorting to trial, apply proportionality limits to pretrial discovery, and accept motions for summary judgment. Stricter application of Rule 11 sanctions on frivolous actions was also addressed.

Professor Margaret Berger summed up the trends as a shift in emphasis toward efficiency. She noted that the increase in judges' ad hoc powers represents an anti-democratic swing. Plaintiffs are inhibited from employing novel claims, while defendants' rights are promoted.



(L. to r.) Professors Berger and Stempel review practical impact of 1983 amendments to the federal rules of civil procedure.

Professor Jeffrey Stempel warned that more care is needed in the discovery process, because evidence in hand has an increased effect on judges' decisions. Attorneys should not wait until cross-examination to bring out a client's case, because a summary judgment could preclude ever reaching this stage. Summary judgments are on the increase, because courts are interested in preventing weak cases from taking up trial time.

The reasons for these trends range from courts' concern over excessive litigation to the competition between judges to clear their calendars. Computers that enable judges to view each other's case loads fuel this competition.

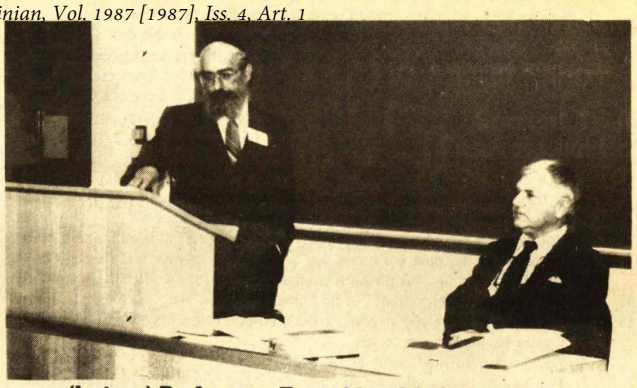
Both Professors Berger and Stempel are studying the possible chilling effects these changes may have on litigation. Professor Berger noted that large institutions are better equipped to deal with these changes and that they are are well-represented on the committees that initiated the changes. Professor Stempel noted that the changes have been implemented lagely without public overview.

Tort Reform: Legislative and Common Law

The tort seminar, presented by Professors Jerome Leitner and Aaron Tweski, focused on new legal developments in the tort law. Professor Leitner used New York case law to demonstrate how the courts perpetuate doctrinal inconsistencies. Professor Twerski discussed the complexity and significance of comparative negligence.

Professor Jerome Leitner outlined the facts and issues of various Court of Appeals cases, demonstrating the inconsistency of the court's reasoning. Particularly troublesome was Barker, a case in which the court borrowed from wills law, employing the doctrine that prohibits a beneficiary who causes the death of a testator from benefiting under the will.

Professor Aaron Twerski began by explaining the various legal theories that may arise under the comparative-negligence rule, which apportions liability among multiple defendants. One possible theory is that a defendant must pay only for the portion of the total harm he has caused. Under the old approach, the plaintiff had the burden of proving the portion of harm caused by a particular defendant. Using the Agent Orange and DES cases, he showed how difficult it is for a plaintiff to prove the portion of harm caused by any one of many companies that manufacture a particular harmful product. Twerski concluded that the new standard that apportions liability according to the defendant's market share of the harmful product relieves plaintiffs' harsh burden.



(L. to r.) Professors Twerski and Leitner shed light on tort law reforms.

Dean Trager's Closing Remarks

Dean David Trager presented a brief historical overview of Brooklyn Law School. He noted that the school is growing in reputation, thanks in part to alumni support, and that there is no longer a need to be defensive about the school.

The history of BLS is fascinating. Trager described how Norman Heflery, who ran a number of profit making business schools, sold the building that was to house Brooklyn Law School to St. Lawrence Univerity for one dollar. Disturbed by the lack of a law school in either Brooklyn or Long Island, Heflery was determined to provide a law school for the children of immigrants. But over a period of forty-three years, St. Lawrence ran the school into the ground. According to Trager's account, the upstate university drained funds from BLS throughout its period of administration.

Dean Trager imparts some final words to the returning grads.

During World War II, St. Lawrence attempted to close the school, as a great number of students were off serving in the military. A group of alumni, led by Appellate Judge Carswell, protested, charging St. Lawrence with breach of fiduciary responsibility. At that point, the alumni, along with Deans Richardson and Prince, bought the school.

Trager pointed out that if BLS now "had the money that St. Lawrence drained from us, we would have assets that New York University Law School posesses.

Trager credited Professor Joel Crea with leading the change in curriculum toward a more national orientation. The dean further noted that the school's priority today is not merely to produce an impressive number of students who can pass the bar but to enhance its own growing reputation. He noted the close relationship between the faculty, student body, and alumni and offered a personal aside on his days at Harvard Law School. "If I met one professor during my three years there, that would have been a lot."

According to Trager, Brooklyn Law School follows a medical- school model. It places great emphasis on clinical programs that sharpen students' skills in actual legal settings. Brooklyn's location is ideal for this, surrounded as it is by courts from the municipal to the federal-district level.

While the student body has not increased, the faculty has, according to Trager. Seven years ago, the student-faculty ratio was one to seventy-five. Today that ratio has been increased to one to twenty-five. There remains a need to expand library and classroom facilities, Trager said, adding that alumni will be "hearing more about a planned extension of the building."

Trager's goal is to attract a national student body, so that at least one-third of each class will be residential. The school is off to a goood start with the purchase of the buildings located at 2 and 100 Pierrepont Street.

The overall philosophical orientation of Brooklyn Law, Trager said, is to maintain its public-policy commitment yet continue to attract the ever-growing number of major law firms to the campus for interviewing of prospective graduates.

Brooklyn Law School is the number three school in the metropolitan area, following Columbia and New York University, Trager declared. He closed by urging the alumni to continue the support that will enable the school to further enhance its reputation.

(L. to r.) Dean Wexler and Professor Caplow enjoying the post-lecture festivities.

Insanity from p. 6

and don't come to school everyday," says a third year student.

To this criticism Glasser replies, "we do call the firms and ask them to let us know ahead of time who they are interviewing. But if the senior partner has a brief due the next day, BLS students are the last thing on his mind."

"That's the whole point," responds another student. "Placement is too accommodating to the law firms. When we go into interviews we expect Placement to be behind us. Instead, they seem to be catering to the law firms at our expense."

Even those students who knock the Placement Office admit it has improved over the years, and seems to be getting better all the time. And they expect the on/campus interviewing program to follow suit. As one student remarked, "With all these new firms coming on campus, all of a sudden BLS' Placement Office is a big deal. Maybe they're not used to the idea, yet. Maybe the students aren't either. Maybe everyone will start taking the process more seriously from now on."

Ruth Bernstein is a first year student at BLS. She spoke to more than twenty students to research this article, most of whom requested that their names not be used.

Time Warp from p. 9

ions, were based on a static technological level while technology continued to change at an ever-increasing pace?

The courts in many cases, however, have been able to envision changes which will occur. Where drastic changes have already occurred, the courts can overrule obsolete decisions. Perhaps the courts can reexamine old values, or even promote new values. Nevertheless, the courts are forced to decide issues of immediate relevance. They cannot spend their time considering all the possible hypotheticals which may never occur.

Naturally, the courts must take into account those factors which will change interpretations of the law. Ignoring those hypotheticals could mean creating law doomed to obsolescence. Consideration of hypotheticals must be balanced with the need for decisions that have immediate relevance. Keeping that balance satisfactory is part of the continuing race that the judiciary has with technology. Maintaining that balance is part of the judicial role.

Deciding how to maintain this balance is not only a role for the judiciary, however, but for others as well. Technology alters the very image of our humanity. This image is a concern for all of humanity, not only for those in the legal profession. Perhaps more of the answers can be found in the philosophical realm which defines humanity. Perhaps more of the answers are in the everyday existences untouched by litigation. But it is clear that a strong policy concerning technology cannot be formulated by the legal community in isolation.

Technology is a tool, and like any tool can be used and abused. A strong policy toward technology is essential if we wish to control that tool. Such a policy must be created by a consensus of all those involved or the policy will risk becoming irrelevant. The use of fluorocarbons, which was damaging the earth's atmosphere, for instance, was only recently restricted by international agreement after long debate. The dangerous DDT insecticide continued to be used in lesser developed countries because they did not have the alternatives available to the more industrialized nations. Even in our own country, a consensus on technology does not currently exist except in a very broad sense. This present lack of consensus is perhaps the most obvious hurdle that must

continued p. 21

Pains from p. 8

them, and they wish there had been an introductory program. At least one second-year student said she would have liked more guidance in what types of employment and extra-curricular activities to add to her resume, to make it stronger.

Glasser says Placement may offer an orientation program this year for first-year students, so they know how and when to start. Ezersky advises new students to wait until second semester to come to the office for help with finding summer jobs. She says there are jobs available, although she indicated they may not be easy to find.

AVOIDING THE PITFALLS

Upperclass students and Placement Office staffers have advice for those who haven't begun to plan their careers yet, or who have, but wish things were going better.

Some of the suggestions are:

— Don't wait for the Placement Office to come to you. Take the initiative and seek out their help.

— If you are involved with the on-campus interviewing program, check the bulletin board every day. Make follow-up calls to see if your resumes have been sent out. Always check with the office the night before an interview to find out if your name was a late addition to the list.

— Do your own resume mailing on the side. Don't depend on Placement to do everything for you.

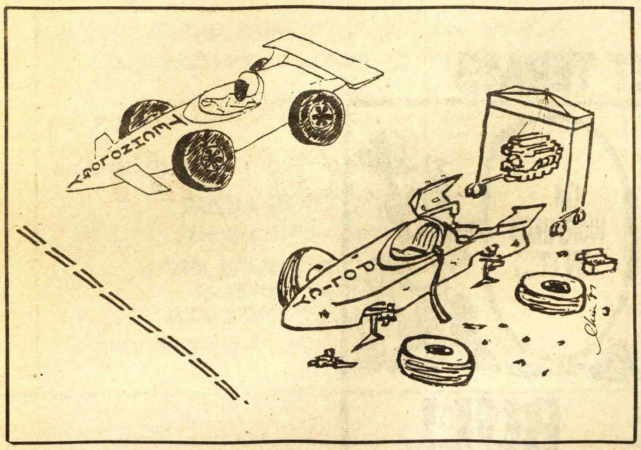
— Try to become friendly with a professor. They can often offer guidance in planning your career.

— Get to know the Placement Office staff, and find someone you feel comfortable working with. The quality of your experience there often depends on who you work with.

The Placement Office staff knows it has a public relations problem among sections of the student body. Glasser says, "Image, that's a serious problem. If students have complaints, I invite them to come up and voice them. We're here to serve the students, and not for any other purpose."

Even those students who have complaints about the Placement Office will admit the office has improved immeasurably over the last few years. The Office has even begun reaching out to students in all parts of the class through professors. On the recommendations of professors, Placement counsellors have been inviting students to talk, and attempting to help them explore options in the legal profession outside the Wall Street firms. As Ezersky points out, many students aren't interested in working for those firms, anyway. One second-year student who was helped by the program praises it: "There are reasons why many students don't seek out the Placement Office. The perception that only people in the top 10 or 20 percent of the class can find things through Placement is problematic. They need to do a P.R. campaign much like they're doing with this outreach program."

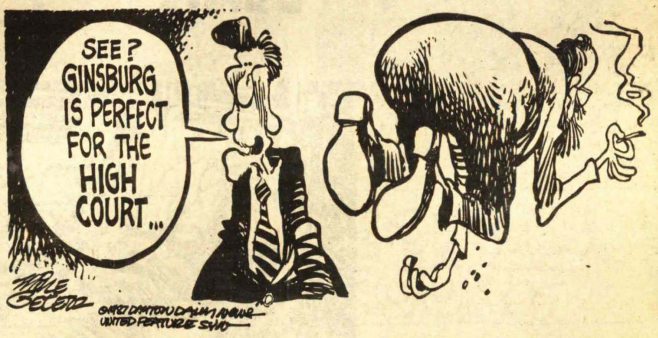
"The school is finally starting to receive the kind of recognition it's due," says Jane Ezersky. "That means that more firms will be interested in hiring our students, and hiring further down in the class. More employers will be coming here, and more students will be actively using the Placement Office. I feel very good about what this office is doing. I have no doubt that once word starts getting around, the image of the office will change. I'm completely confident the service we provide for the students will be recognized."



Time Warp from p. 19

be overcome if we are to ever formulate a coherent policy toward technology.

In his article, Darren Saunders warned that "[w]ithout a well-defined policy in place, we are courting disaster in the not-too-distant future." We have often, however, made policy only after disaster has already struck. Can we create a well-defined technology policy without a dire emergency forcing the issue? Can we gather the consensus necessary to support the judicial role in dealing with technology? These questions may very well suggest the bleakest realities of the judicial-technological race.



To the Editor coninued from p. 13

seeks to answer. It is asserted without any evidence, supported by only a bare minimum of reasoning, and is chock full of questionable premises and assumptions.

For example:

—Why did you term this peitition drive a "phenomenon?" What about virtually every other law school in the country? Did you really believe this was unusual.

—Why do you state that the petition "purports" to be a serious message of concern? Do you have inside information? Can you tell us?

—Why can't attorneys and future lawyers rely (or at least lean heavily on) newspaper accounts in forming opinions on legal issues? Are you seriously suggesting that everyone trek to the second floor of the library before exercising their First Amendment rights.

—How do you know that signatories failed to adequately research the issue? Did you ask them? Did you ask anyone else? Did you do any research at all before writing this editorial? Can you spell h-y-p-o-c-r-i-s-y?

Perhaps in the future, before I—and others like me who volunteered time to offer students a vehicle to express their views on a timely and critical issue—permit any further blemish on the legal profession, we should strive to insure an adequate level of competency from potential signatories. Maybe a thorough "Judge Bork Quiz" will be appropriate. Or a literacy test. I'm sure the good judge would be proud of us.

Sincerely yours,

Bruce Kaufman

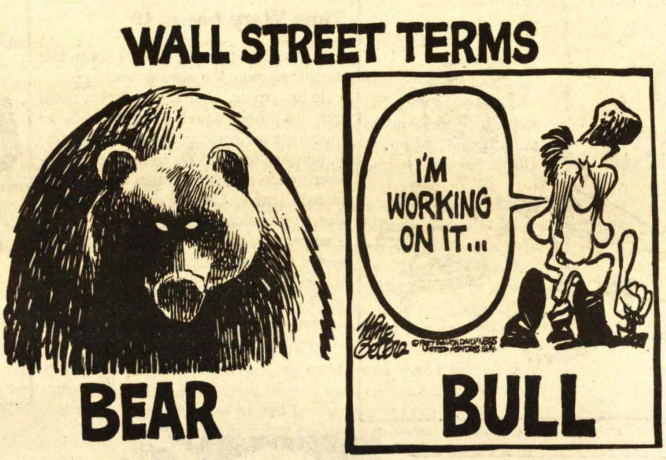
Child Support from p. 8

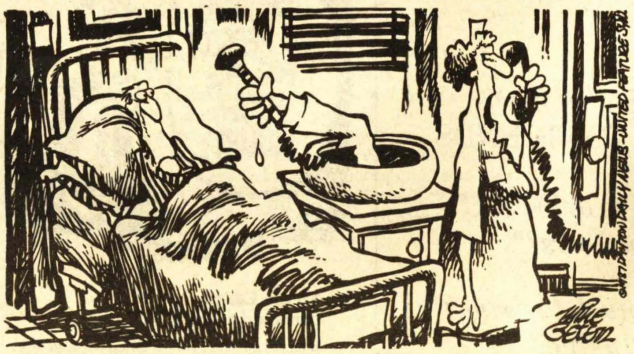
in other situations." Elaborating, Professor Kearney adds, "The clinic is a good place in which to examine the ethical issues that come up in the practice of law in a way that is more concrete than a course in professional responsibility."

Professor Kearney's personal plans reflect the excitement and enthusiasm she feels for the clinic. "I've wanted for a long time to teach," she says. She adds with a grin that she could imagine teaching for a long time. It is apparent from her conversation that her desire to teach has met her expectations. She finds she very much enjoys the interaction with students and that teaching is very stimulating. As Professor Kearney puts it, "There's always more to learn."

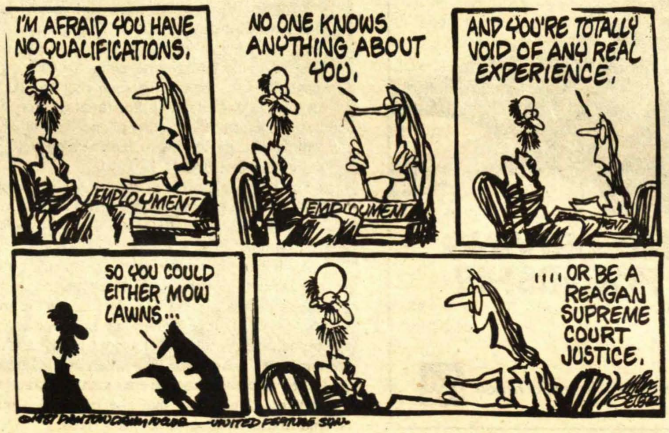
Some possible projects she would like to pursue in the future include writing and doing more academic teaching. For now, however, Professor Kearney plans "to work hard on making this a good course and a good clinic."

Aside from her enthusiasm for teaching and being the clinic director, Professor Kearney describes the emotional and intellectual satisfaction she finds in the area of family law. "There is much more law involved than one might suspect," she muses. "It's not simply arithmetic; how much does this person make, how much does that person make." She adds that the emotional satisfaction emanates from the conviction that she is doing something that makes a difference in people's lives.


WALL STREET TERMS
I'M WORKING ON IT...
BEAR
BULL


GET SECURITY... BOB WOODWARD SNEAKED IN AGAIN.....


HOW'S THE MARKET DOING TODAY?
HANG ON, I'LL ASK MY STOCK BROKER...
...OH, WAITER.


I'M AFRAID YOU HAVE NO QUALIFICATIONS.
NO ONE KNOWS ANYTHING ABOUT YOU.
AND YOU'RE TOTALLY VOID OF ANY REAL EXPERIENCE.
SO YOU COULD EITHER MOW LAWNS...
....OR BE A REAGAN SUPREME COURT JUSTICE.

Bork from p. 7

But it was not just a poor choice of strategy that cost Bork his seat on the Court. The reputation of the judge was forged from the fire of controversy that surrounded his numerous opinions, lectures, and law review articles. In the end it became clear that the Senate was not comfortable with Bork's views on such subjects as the right of privacy, freedom of speech, the expansion of the fourteenth amendment and the relatively new role of the judiciary as the guardian of individual liberties.

One of the strongest items of contention in the hearings was Bork's view that the right of privacy, articulated by Justice Douglass in *Griswold v. Connecticut*, is not expressly provided for in the Constitution. It is nonexistent. Bork has stated that "although marital privacy is essential to a civilized society," it is not in the Constitution and therefore is not protected. While the Judge agreed with Senate Judiciary Chairman Biden that the ninth amendment, which states that the "enumeration . . . of certain rights shall not be construed to deny or disparage others retained by the people," was meant to assure the existence of rights not mentioned in the first eight amendments, apparently Judge Bork believes that no one, and certainly not members of the judiciary, can try to articulate what those rights are.

In the world according to Bork even those rights guaranteed by the Constitution must be limited in their scope. Mr. Bork is perhaps most prolific in the area of free speech. Although he has recently said that the first amendment may include some aspects of moral, scientific and literary speech, he has repeatedly argued that only political speech is protected. Even political speech, however, can be prohibited if the government has a compelling interest at stake. According to Bork, "government cannot function if anyone can say anything anywhere at any time." Thus not only can the government prohibit certain topics, it can prohibit certain views. In the 1986 D.C. Circuit Court of Appeals case of *Finzer v. Barry*, for example, Judge Bork, writing for the majority, held that a District of Columbia ordinance which prohibits the "displaying of any placard designed to bring into the public odium any foreign government" within 500 feet of that government's embassy, but allows placards in favor of that government to be displayed, was constitutional. According to Bork, "A statute which is not viewpoint-neutral is [not] automatically invalid . . ." 798 F2d 1450, 1469.

Perhaps more important than any constitutional theory was Judge Bork's view of the role of the court. Advocating judicial restraint, Judge Bork repeatedly suggested that "courts must accept any value choice the legislature makes unless it clearly runs contrary to a choice made in the framing of the Constitution." Thus, as he argued in a 1971 Indiana Law Journal article, a married couple has as little grounds to object to a statute prohibiting the use of contraceptives as a utility company has to object to anti-smoke pollution laws. One has an interest in sexual gratification while the other has one in economic gratification. "There is no principled way [for a court] to decide that one man's gratifications are more deserving of respect than another's." In Bork's world the interest of a married couple in deciding the size of their family is no more worthy of protection than a factory owner's right to pollute his environment and endanger his neighbors.

It was Judge Bork's ideas, and not his individual character, that were his undoing. Little time in fact was spent in questioning him in what many guessed would be the focal point of inquisition—his role in the Saturday Night Massacre. (In that seedy episode of the Watergate affair, Richard Nixon ordered Attorney General Elliot Richardson and later his deputy William Ruckelshaus to fire Special Prosecutor Archibald Cox who was about to serve a court order to obtain secret White House tapes. Both men refused and resigned that same night. The next in command, Solicitor General Bork, obeyed Nixon and fired Cox.) The hearings were in fact, to the credit of all those involved (with the possible exception of Senator Kennedy), extremely fair and polite. *Newsweek* commented that Senator Biden, perhaps fearing a public backlash, went past fairness and slipped into obsequiousness. Of course Bork's advocates would scream that he fell due to the efforts of left-wing political interest groups. While there is a certain amount of truth in this view, it should be noted that there was no groundswell of support for Bork from the right. As we saw with Oliver North, America often rallies to the support of an underdog under the gun of the Senate. There was no such cry of support for Judge Bork.

In the Senate confirmation hearings Judge Bork had the opportunity to voice his opinions on the role of the Supreme Court in interpreting the Constitution. It was his goal to return the Court to the pre-Warren days of judicial restraint. Many legal scholars praised this effort, and there is much merit to this position. The majority of Americans and the majority of the Senate, however, seem quite content with the role of the Court as the watchdog of individual liberties carved out during the Warren era.

IF YOUR JURY IS STILL OUT . . .

A SPECIAL NOTE FROM LSD REPRESENTATIVE

The Law Student Division Assembly met at the San Francisco meeting. Each of the 175 ABA-approved law schools were entitled to two official voting delegates, usually the LSD representative and SBA president. The Assembly elected two Division delegates, Andrew Siegel of the University of Texas School of Law, and Charlotte A. Wereb of Cleveland-Marshall College of Law, who will represent the Division in the ABA House of Delegates. The Assembly also considered 20 resolutions.

The Law Student Division also sponsored several workshops and substantive programs during the meeting. A workshop was presented for LSD representatives introducing them to the Division's programs and membership benefits. Workshops were also conducted for LSD section and committee liaisons and student bar association presidents.

Deborah Roeger, Benson A. Wolman and Susan Geary, of Capital University Law School won the finals of the National Appellate Advocacy Competition, held in conjunction with the meeting. This competition is sponsored by the Division, Section of Litigation and the Appellate Judges' Conference.

Dear Classmate: If your are reluctant to make a commitment, I know how you feel.

But, there is so much to gain through membership in the Law Student Division of the American Bar Association, the nation's largest and most prestigious organization in the legal profession.

And I can testify that the benefits far outweigh the $10 cost. These include valuable publications, insurance programs, and a $70 discount on the Preliminary Multistate Bar Review (PMBR) course. Also, you can take advantage of a MasterCard program that offers a card that is *free*, with competitive interest rates.

Maybe I'm prejudiced, but stop and think. With the constant changes facing the legal profession, what better way can you complement your legal education and get the jump on the "real world" than through the wealth of accurate, concise and timely information you'll receive as a law student member?

I hope that you will weigh the "evidence" and accept this special invitation to join, today.

Brenda L. Byrd