**The Justinian**

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# The Justinian

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# THE JUSTINIAN

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

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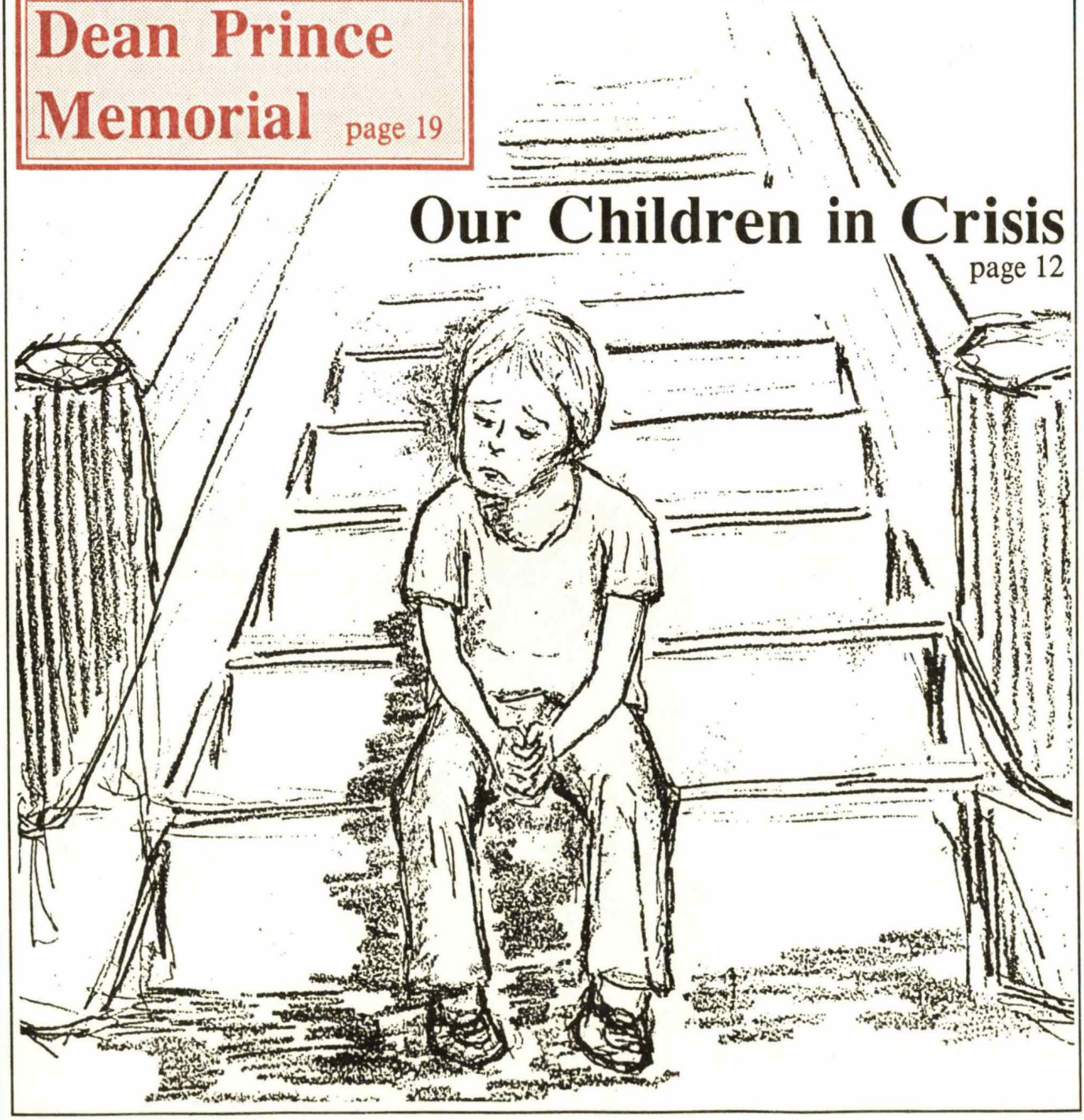
## Our Children in Crisis page 12



# The Justinian

Member of American Law Student Association

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# Law Students' Deferments To Continue-If

*by HAROLD L. LEVY*

"The full time, matriculated law student, who is now doing satisfactory work in his studies by law school standards, and who is presently deferred from military service because of his student status, will in all probability continue to be deferred in the forseeable future."

These encouraging words for all male Law School students were spoken this week by Colonel Paul Akst, New York City Director of Selective Service, in a recent interview with The Justinian.

Colonel Akst, Brooklyn Law School, '34, said that this was his interpretation of Selective Service procedure as it stands today. No direct ruling on this issue has yet been formulated, but this is the way things stood at the time of the Korean conflict "call-up," which is serving as the guideline for the newly announced regulations governing the eligibility of students for military service throughout the country.

At the present time young men pursuing a graduate degree, whether it be in law, science, the humanities, etc., will be allowed to complete their studies, with the exception of those who are not doing "satisfactory" work as the term is defined by the students' school.

Colonel Akst, one of the Law School's illustrious alumni, is a native New Yorker, who has always resided in the city except for his tour of duty in the United States Air Corps.

He was admitted to practice law in New York State in 1936, and did so until 1942, at which time he entered the Air Corps. His distinguished Air Corps career included positions as Legal Officer and Trial Judge Advocate of various bases throughout England, as well as those of Defense Attorney and Summary Court Officer. He gained an admirable reputation in these posts, especially as Trial Judge Advocate in the famous Countess of Hesse trial of Captain Kathleen Nash.

The Selective Service Director returned to civilian life in 1946, but within 18 months, military duty called again and he was assigned to the Board of Veterans' Appeals, the highest veterans appellate jurisdiction in the United States. He returned to active duty shortly thereafter, and was assigned to the New York City Selective Service System, of which he was appointed Director in 1955 by President Eisenhower upon the recommendation of Governor Harriman.

Col. Paul Akst

Colonel Akst has held many prominent positions in his long and distinguished career, including that of president of the Federal Business Association, which is composed of the heads of all federal agencies in the New York area. He has been chairman of the New York City Youth Board Committee on Military Affairs, since 1956.

The most relevant point of the situation facing the law school student, and the prospective student, is exactly where he stands in the current scheme of things.

As previously stated, the law student who is fully matriculated, which may mean taking at least 12 credits or, more specifically, proceeding towards his degree at a pace that will enable him to achieve it within the normal period of time, and who is doing satisfactory work in his courses, will be exempt from military duty while he is in school.

Another important factor is that in the future only those students who are in the top 25% of their college graduating class, or who receive a score of 80% or better on the Student Qualification Test, will be deferred from military service and allowed to enter graduate school.

This Student Qualification Test, which has been the subject of much journalistic comment of late, will begin to be administered in May. While the exam will not be a mandatory one, it is advisable that all undergraduate and high school students take it. In this

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*The Justinian*

A Forum for the Brooklyn Law School Community



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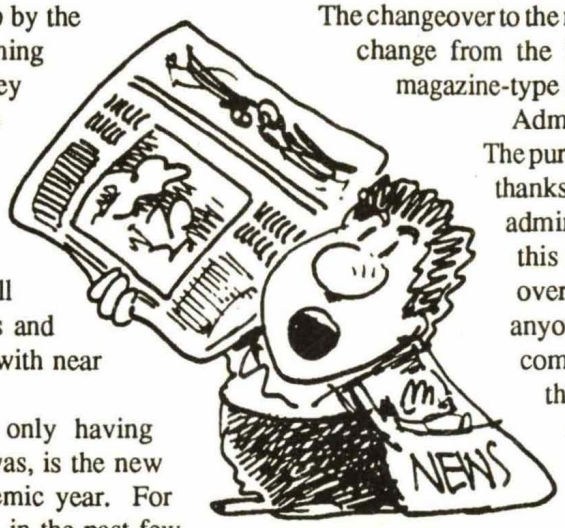
EDITOR'S CORNER

# And Here's The Issue...

by Stanley Lee

Yes, this is another issue of *The Justinian*. It almost seems as if there are more new episodes of *Moonlighting* then there are new issues. There are several reasons as to why we haven't come out with more.

One reason is the size of the *Justinian* staff. Putting out a newspaper is a very labor-intensive effort, and we simply don't have the numbers at present. To look at the masthead you wouldn't think so, but the fact of the matter is that not everyone is available at the same time. Many times we are asked by students who stop by the office, "When is the next issue coming out?" When we ask them if they would like to join the staff, the answer is usually, "I've always wanted to write something, but I just don't have the time." This is a feeling we understand all too well. However, the staffing shortfall has been prevalent in other years and sometimes issues have come out with near monthly regularity in spite of it.




The major reason for our only having published one issue, grand as it was, is the new format we've instituted this academic year. For those of you who haven't noticed, in the past few years we've been using what is known as the tabloid format. Last semester we went to the magazine format, which is what you're reading now, even though we still consider ourselves a newspaper.

There are several advantages to the magazine format. One of these is the ease of production. Under the old tabloid format, all the typewritten articles were sent out to graphics shops to be retyped. The sheets of print would then be sent back to our office, where we would cut them into columns and paste them up in the desired configurations, making corrections along the way. The paste-ups would then be sent back to the graphics shop, which would do a preliminary layout. Staffers would then have to go to the graphics shop, which was in Manhattan, to read all the proofs to check for accuracy. Then there would be another trip to approve another layout. All this was expensive, time-consuming, error-prone, and very messy.

Presently, we have eliminated most of the above steps with the purchase of a desktop publishing system, which consists of an image scanner, a Macintosh II computer, a large-screen monitor, a laser printer, and appropriate software. The image scanner allows us to feed typewritten material and graphics directly into the computer for editing. This obviated the need for an outside graphics shop, messengers, and the messy paste-up, as well as saving us valuable person-hours. Keeping everything in-house also made for less errors, as there are less steps in the handling of the proofs.

The changeover to the new technology necessitated a format change from the familiar tabloid format to the new magazine-type layout.

Admittedly, progress doesn't come cheap. The purchase of the system was made possible thanks to the combined efforts of the BLS administration and the SBA. The cost of this new desktop publishing system was over $10,000, a sizeable expenditure by anyone's standards. However, when you compare this one-time expenditure against the $10,000 per year that will be saved annually on graphics shop fees, even the dimmest economist would agree that this capital investment is a financially prudent move.

As with any drastic change, we ran into some problems at the outset. We had planned for the equipment to arrive early in the summer of 1988 so that we could familiarize ourselves with the system before the start of school. We were unpleasantly shocked by the delayed arrival in mid-October. Being technologically illiterate for the most part, we had to learn how to use our new machinery in the midst of job interviews and classes. There was also a major glitch in the computer which seemingly disappeared the instant the repairman walked in the door. Then came finals. We're dedicated, but not *that* dedicated.

Now that we've come out with the first issue of the semester, hopefully we'll continue on a monthly basis. What we would like even better is some more help, either with reporting, proofreading, or layout work. It's fun, rewarding, and keeps you off the streets. We even have a training session in the works for the *Justinian* staff. Now if we only had a microwave oven...

# THE JUSTINIAN WANTS YOU!

EXERCISE YOUR CONSTITUTIONAL WRITES! IT'S RIGHT FOR THE JUSTINIAN! BE A WORD WRIGHT!

# CORRECTION

Last issue, our *Inter Alia* column reported that last year's joint Law Review and Journal of International Law writing competition was 600 pages of reading material. The competition packet actually only contained 301 pages of material, using the same counting method used to count NYU pages for comparison. Although that still leaves a significant difference in length between the BLS and NYU competitions, we sincerely regret that the difference was so incorrectly exaggerated. In addition, the author's stated opinions depended on his own definition of what is best writing and of course in no way reflects on the quality of the writers who had the ability and motivation to tough out the competition. We hope in the future to publish a more detailed discussion concerning journal competitions in general. Again, we extend our congratulations to all those who were able to complete their competitions and we strongly encourage all those who will be competing at the end of this semester.

Stay Alive!

Don't Drink & Drive.

# Correspondence

## Protesting Editing

*Editor's Note: To the best of our knowledge, the following text is reproduced with no changes from the original except for spelling corrections.*

To the editors:

I am writing to protest the deletion of an item that was to appear in the column I wrote for inclusion in this issue. The item concerns political "leaders" of all stripes who exploit and encourage racism in the guise of championing the cause of victims of rapes in which the criminal's race happens to be different from that of the victim. I think that all people who engage in this type of exploitation are pigs. You have suggested to me that this is not an appropriate topic for a one liner, but could be better discussed in a longer essay. I disagree. My training as a writer (despite the evidence of this letter to the contrary), has been to make my point in a manner as brief and succinct as possible, never using four pages where four words will do. The item in question is the following: "What do George Bush, Roger Ailes, and Lee Atwater have in common with Alton Maddox Jr., C. Vernon Mason, and Al Sharpton? If Willie Horton had raped Tawana Brawley, none of them would have found the case worth talking about."

Once you've said that, I believe that adding anything else would be superfluous. However, since you've expressed concern that such an item would be misunderstood by your readers (Why? Are they unfamiliar with the obscure figures involved in this analogy? ), I will explain it.

I meant that if Tawana Brawley had been the victim of rape by a Black male, then her three advisors would have never championed her cause; since sympathy for Blacks who have been the victims of brutal crimes committed by other Blacks has never been and will never be part of their agenda. The reasons for this are not necessarily illegitimate; perhaps they believe that (a) White on Black crime is a far more serious problem than Black on Black crime; or that (b) the criminal justice system already adequately protects Blacks who are victims of crimes committed by other blacks; or (c) that bias related incidents of violence are far more repugnant than any other type of crime, no matter what the race, religion or sexual orientation of the victim. However, I tend to think (a) that the true seriousness of a crime is measured by how it makes the victim feel, and it is highly unlikely that a Black woman raped by a White man would feel much better if her assailant were of African origin; and (b) the criminal justice system adequately protects nobody; Black crime victims least of all, no matter what the ethnic background of their perpetrators; and (c) that it is highly unlikely that people who glorify homophobic anti-Semites like Lewis Farrakhan tend to shed many tears about Gay White Males beaten to a pulp by youth gangs, or that they get morally incensed about vandalized synagogues. But sympathy for crime victims is not the point here. This was about building a political power base by exploiting race hatred and the psycho-sexual anxieties of Black males.

Likewise, if Willie Horton's victim had been Black, it is highly unlikely that his case would have evoked the response it did from the focus group panels that the Bush campaign conducted; focus groups made up of voters from the targeted (white) voting blocs that Bush and company were interested in attracting. Without that response, the campaign would have thrown the idea in the garbage, and gone onto the next item from the opponent research department. It is unlikely that the Horton case would have even made it to the focus group at all without the hidden subtext the case contained; a subtext that stretches in popular culture from "Birth of a Nation" to "Mandingo." The Horton case was only one of many examples of the Bush campaign's efforts to exploit race hatred, one that was hinted at in not so Freudian slips by Lee Atwater and Bob Michel (who apprently continues to be obsessed by the subject); protestations to the contrary were rendered absurd by the brochures mailed to white neighborhoods featuring Willie Horton's smiling face on the cover. This wasn't about sympathy for crime victims, this was about building a power base by exploiting race hatred and the psycho-sexual anxieties of White Males.

Frankly, these observations have all been made before and better. What was not done before was drawing the parallel (which is flawed only because most White males fell for Bush's hustle, and most Black males didn't fall for Sharpton's), but my parallel was a lot stronger standing all on its own, without the road map I'm drawing now.

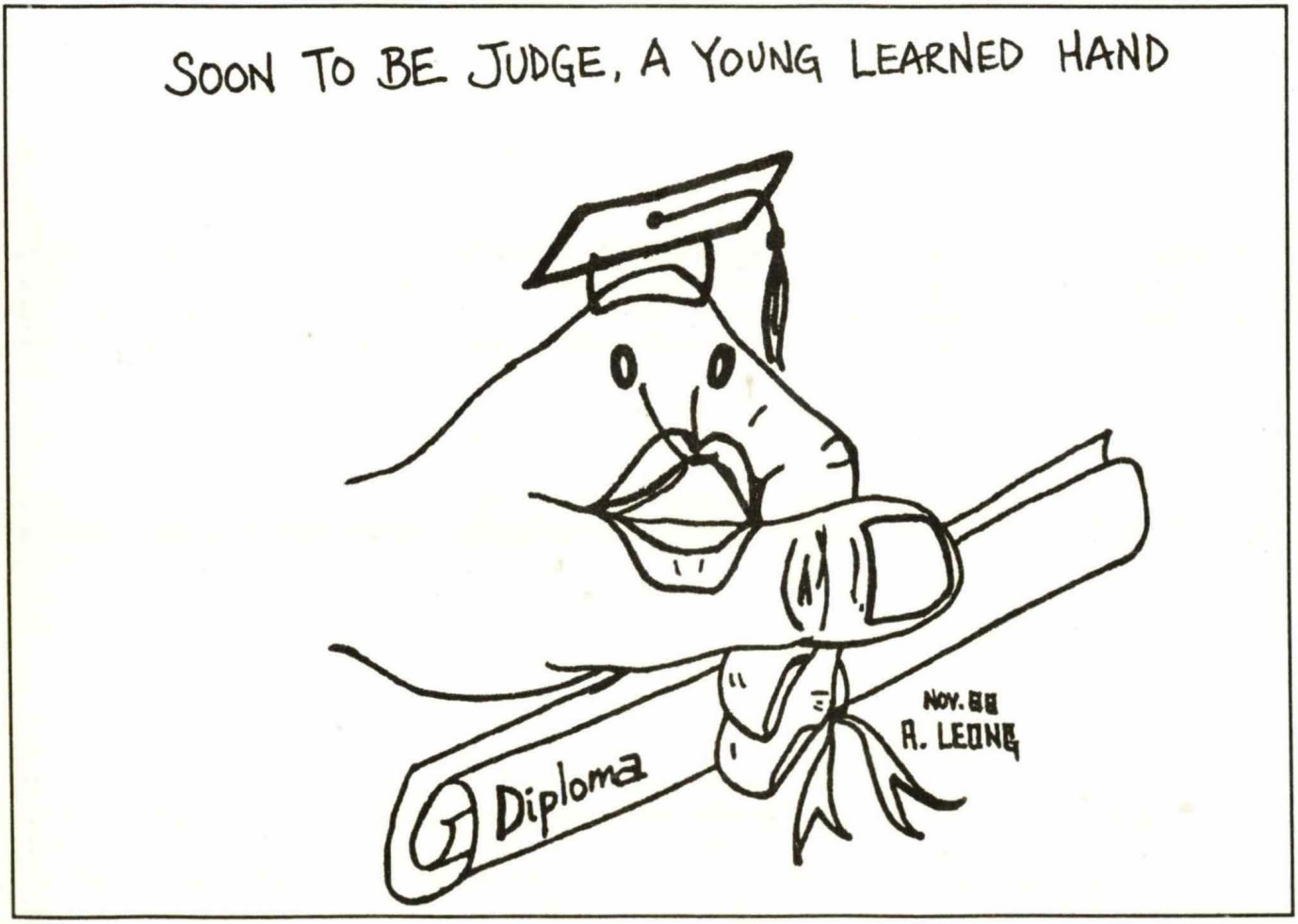
What puzzles me is your suggestion that addressing this issue with a two line analogy would make me as bad as those I criticize. By this do you mean that the thing that made the exploitation of the Horton case reprehensible was that its implicit racial message was delivered by the means of soundbites? If instead of using one liners, they had chosen to exploit racism by the means of a well-written essay, would that have been less offensive; rather than merely less effective? Pardon me, but I thought exploiting racism and rape was the crime, not bad taste. Short, blunt, hard hitting analogies that grab people in the gut are the way the game is played. To require that the response to such garbage be delivered only in the form of "thoughtful" long winded essays is like insisting upon playing football in a tuxedo. It's also exactly what the bastards want us to do, since messages conveyed this way inevitably reach far fewer people (Surely fewer people will read this letter than would have read the column item). One should fight sound bites with sound bites; unless liberals learn this hard fact they will never govern again.

Frankly, I think the fact that I made a very serious point with a sarcastic two liner is not what bothers you; since that's what most of the column consists

of. Neither are you worried that, without hiding my outrage behind a phony veneer of thoughtfulness, I've implied in no uncertain terms that the President-elect behaved in a manner more becoming of a swine; since some of the items you did leave are open to the same (accurate) interpretation. What bothers you is that I committed the politically incorrect act of equating reprehensble actions committed by George Bush with actions committed by "Black leaders," and you're afraid this will offend the National Lawyers Guild and the Center for Constitutional Rights. This is both ironic and absurd, since the essence of the item is "Hey, white people, if you think what Sharpton does is so evil, why don't you hold your leaders accountable to the same standard?" This is a message that I think white people don't hear very often, and I think they need to hear it. It's pretty funny that an item intended to hold Bush and his campaign to the same standard of decency that White society thinks C. Vernon Mason has violated, should be suppressed because it implicitly holds Mason to that standard. If you are saying that given the injustices of our society, it is not wrong to set a higher standard before a White writer criticizes a Black person on a racial matter, I don't necessarily disagree with you, if only because I haven't walked a mile in their shoes. But that standard should not be the "Kuntsler standard" whereby every Black person or socialist can do no wrong. Whatever is the right standard, Maddox, Mason, and Sharpton have breached it. Their conduct has reached the point where even cheap shots like mine are as acceptable as rescue invited by danger; especially in the context of a column that takes similar shots at the President, President-elect, Supreme Court, and leaders of Israel and Canada without ever pretending to be thoughtful. If anything, Maddox's and Mason's status as members of the bar ( at least George Bush has ignorance as an excuse for his idiotic ramblings about the legal system) should subject them to a higher standard of judgement for their conduct, rather than the professional courtesy you seem to want to give them.

Finally, as to your point that my comment was offensive to women because it made light of rape, I reject the premise. My comment didn't make light of anything. It was utterly and deadly serious, and though it has drawn many responses from friends I've shown it to; even its greatest fans haven't laughed at it. At most it can be accused of pithyness. As I said to you earlier,my column was basically meant to address serious issues in a quick and succinct manner, with some humorous padding thrown in; and if the context was the problem, you were welcome to delete any item that was purely humorous, so that no one could be mistaken about my intentions. I think that my item makes it clear that I consider Maddox, Bush and their cohorts to be the moral equivalent of the drooling slobs at Big Dan's Tavern, who also used a rape for their own cheap thrills.

Howard Graubard



# DAYCARE FOR BLS

IN REPLY TO MS. LEPORE'S LETTER ON DAYCARE:

About three years ago the school undertook a study looking toward the possibility of providing this service. We retained a consultant to check on the requirements of the State and City law and to explore various alternatives. We even explored the possibility of a relationship with the local Montessori school. The final result of the study was that it was simply too expensive to undertake such a project, even if the school were fully reimbursed by the participating parents. The cost for an effective, appropriate program turned out to be from $4,000-$5,500 - even more expensive than local reputable private day care centers. A minimal program requiring heavy involvement by parents would still cost approximately $2,000 per child.

Also a survey of our students found that while there was some interest, more wished to make provision on their own closer to home.

Finally, we explored the possibility of non-programatic day care for emergency situations. We found that even this was not feasible because of certain legal requirements.

Sincerely,
David G. Trager
Dean, BLS

# Response

IN REPLY TO MR. GRAUBARD:

Experience has taught us to be aware of the power of the written word. In the past, *The Justinian* has been criticized for publishing comments interpreted as offensive to certain individuals or groups. We recognize the lessons of our past and have become increasingly sensitive to the real harm that certain offensive words may cause. We strongly believe that we have a duty to communicate ideas to our readers in ways that will minimize any unintended offense.

Witticisms about rape, even if incisive and fair political commentary (as Mr. Graubard suggests his comments are) may fall into that category of unintentionally offensive. Granted, words should have emotive effect. Often times, the non-emotive is non-effective. But that does not mean that we will abdicate our responsibility to our readers.

*The Justinian* seeks a provocative forum for the consideration of today's issues, but such consideration need not be done at the unnecessary expense of members of our audience. Our concern was not what was said but that what Mr. Graubard said could have been said equally well in a way that would not be thought of as making light of rape.

Mr. Graubard's expansive explanation of the excised one-liner also takes several pages to suggest interesting theories for the deletion, but spends precious little time on the reason we offered: That the line was offensive and unnecessary. Although Mr. Graubard is correct that brevity is to be preferred over verbosity, the demands upon journalists are greater than avoiding verbal flatulence.

Bruce Kaufman
Articies Editor

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As a news publication, *The Justinian* advocates a free and open press. Censorship of an article, quote or comment leaves a bitter taste in most people's mouths, whether the deletion is by the government, or by the editors of the publication itself. Whether the staff of *The Justinian* agrees or disagrees with Mr. Graubard's thoughts behind his comments is not an issue. The policy of *The Justinian* is not and cannot be to reject an article merely because the views of a contributor and the editors differ. Nor is it the policy of our publication to shy away from politically controversial issues. Indeed, political commentary and satire have long been a legitimate execise of the freedom of speech and the Supreme Court recently in *Hustler v. Falwell* has held that such speech is of a protected status.

However, it must be noted that the job of an editor is difficult and much time and consideration is expended to insure that *The Justinian* lives up to being a forum for the BLS community. It is the responsibility of a publication such as ours to inform our readers of current events. It is also our responsibility to insure that materials are presented in an effective manner - without causing undue harm or offense to our readers. It was the opinion of the editorial staff that Mr. Graubard's comment was inappropriate for inclusion in our publication due to its potential for misinterpretation.

We hope that the policy of *The Justinian* is now more clear and that future *Justinian* contributors, including Mr. Graubard, will not be discouraged from submitting articles, comments or whatever to *The Justinian*.

Jeff Schagren
Associate Editor

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The policy of *The Justinian* remains that of being a forum for the BLS community. We gladly consider all contributions and are grateful for the continuing support from our community. We do make a distinction, however, between submissions which are letters to the editor, and articles which are often written by our own staff. In the interest of fostering a free forum, letters to the editor are seldom altered. Articles written by our own staff are often very heavily edited. Mr. Graubard submitted an article. Our editors judged that alterations were proper. He preferred to write a letter to the editor. We welcome the opportunity to consider the issues that have been raised. We continue to welcome submissions of all kinds. Most importantly, *The Justinian* continues to be a forum for the BLS community.

Ching Wah Chin
Editor-in-Chief

# BLS Alumni Appointed New Brooklyn DA Bureau Chiefs

Anne J. Swern (BLS '80) has been appointed as the Brooklyn District Attorney's Office Chief of the Screening Bureau. Assistant District Attorneys in the Screening Bureau process cases after police have made an arrest, decide on appropriate charges, draw up complaints, and oversee arraignments, where defendants are formally presented with charges before a judge. William Gurin (BLS '77) has been appointed as the Chief of the Economic Crimes and Arson Bureau. The bureau investigates and prosecutes white collar crimes including bribery, embezzlement, extortion, arson, and insurance fraud.

Swern joined the Brooklyn DA's in 1980, and since 1986 she has served as Deputy Chief of the Criminal Court Bureau. While a law student, she had worked as a student law clerk for U.S. District Judge Leonard Sand.

Swern was a member of the BLS Moot Court Honor Society. She graduated from the State University of New York at Buffalo in 1977 with a B.A. in political science. She lives in Brooklyn Heights with her husband and a fifteen-month old daughter.

Gurin worked for four years as Deputy Bureau Chief of the Economic Crimes and Arson Bureau. He also served for two years as a Supervisor in the Grand Jury Bureau, and for three years as a Senior Trial Assistant in the Narcotics Bureau and in the Transit Crime Unit. He first jointed the DA's office in 1978.

Before attending BLS, Gurin worked for the United States Veteran's Administration. He received a Master's in political science and psychology from Columbia University in 1970, and graduated *cum laude* from the City College of New York in 1968 with a degree in political science. He lives with his wife and two children in Brooklyn Heights.

# MOOT COURT HONOR SOCIETY - EVENING DIVISION

To the editor:

The last issue of *The Justinian* contained an article describing the activities of the Moot Court Honor Society. That article neglected to mention the role that the Evening Division of the Moot Court Honor Society plays in the Brooklyn Law School community.

The main objectives of the Evening Division of the Society are to coordinate and administer the Moot Court Program as it pertains to Evening Division Students at BLS and to develop advocacy and legal research skills.

First-year evening students can qualify for membership in two ways. As part of the first-year legal writing program, students must prepare a brief and present oral arguments at the Moot Court Competition. Those students who present outstanding oral arguments through two rounds can qualify for admission to the Society. Additionally, outstanding written briefs can qualify for admission with one round of oral arguments.

Members of the Evening Division are responsible for all aspects of administering the Evening Moot Court Competition. The members work on various committees involved with the competition, including recruitirrg attorneys to serve as judges, scheduling etc. Members also sit as judges for the first round of the competition.

The Evening Division is involved in other activities as well. We arrange to have speakers from the legal community, including prominent attorneys and jurists who address our group with the aim of honing our advocacy skills. We are planning to sponsor a local Moot Court Competition in the spring to cater to the needs of the evening students who would like to develop their oral advocacy skills within the constraints of attending classes at night and working during the day. We will also be working with the first-year evening students to help them prepare for their oral arguments.

Sincerely yours,
Christopher Sorgente
Chairman, Evening MCHS

## Party v. Vending Machine

To the editor:

I am writing to express my surprise and dismay at being denied access to the vending machines in the third floor student lounge by the Law Review and *The Justinian* because these groups were having a private party there. I was told by someone named Andrew Funk that he was being paid to keep non-invitees out of the student lounge, and that I would not be allowed in to buy a soda. Mr. Funk blocked the student lounge door bodily.

I know that other machines were accessible in the cafeteria. However, I am offended at being turned away from our student lounge by a bouncer hired by the school's Law Review and newspaper.

The collegial spirit we should all be trying to foster is undermined when an elite student group such as the Law Review pays someone to deny other students access to the student lounge vending machines (used frequently by night students like myself).

I have seen many parties going on in the student lounge during my first semester in the night division; however, I have never been banned from using the vending machines by somebody guarding the door (which, incidently, was covered with aluminum foil lest any uninvited student try to peer through the glass).

May I suggest that students who want to have a strictly private party seek a non-communal space in the school or rent a private space outside of the school?

Sincerely yours,
Louis M. Haber

IN REPLY TO MR. HABER:

To the editor:

In response to Mr. Haber's letter, we would like to make the following points:

First, the party was the joint undertaking of five groups, not two, as he incorrectly states. Moot Court, the Journal of International Law and the Student Bar Association also sponsored the party and all agreed that it would be by invitation only.

Second, Mr. Andrew Funk was more a simple ticket collector than the vicious "bouncer" you make him out to be. He was instructed not to let anyone in without an invitation. You fit that description, Mr. Haber, and that is why you were kept out. Further, we fail to see what is so unreasonable about that procedure. The party was paid for with dues money collected from the members of these organizations. Surely they should have a say as to who attends their party. Would you admit uninvited strangers to yours? We think not.

Third, the retort that the lounge is open to all, at all times, is simply wrong. Your implication that students have some vague, undefined "right" to enter the lounge at any time they wish is not generally the case. The lounge is routinely closed to students, not only during a function but also during set-up. Faculty parties and first-year orientations are the best illustrations.

Fourth, Mr. Haber suggests that in the future we find a "non-communal space" to hold our party. But this ignores two facts: first, that there is no other non-communal space available on-campus, and second, it is very expensive to rent space off-campus. We appreciate being allowed the use of the lounge for these functions. It is both convienent and inexpensive.

We suspect that Mr. Haber is transferring his anguish at the elusive nature of membership in these "elite" (his word, not ours) groups to his denial of entry through the lounge door (which, incidentally, was covered for decorative purposes and not to keep the uninvited, as he facetiously puts it, from peering in). In short, Mr. Haber's spurious letter does more harm to the "collegial spirit" (again, his words) than what he so childishly complains about.

The Executive Board
Brooklyn Law Review

*Editor's Note: Although the staff of The Justinian is gratified by the inclusion of us into the "elite," we also wish to point out that we have a rather open membership. ALL those who regularly work for our publication are embraced by our editorial board as staff members. In fact, we have been long hoping for a greater presence of evening students in our roster. Perhaps you yourself could submit contributions which are more "collegial," Mr. Haber?*

# Public Interest Coordinator Appointed at Placement

by Amy Rhodes

In response to a long-standing request by students pursuing careers in the public interest, the position of Public Interest Coordinator has been created in the Placement Office. Nancy Bodurtha, a placement office staff-person since April 1987, will be the first to fill the position.

Bodurtha says she sees her position as primarily a means to heighten students' awareness of the broad areas available to them in public service. Despite students' contention that the placement office serves only the needs of students in the top 10% of their class, Bodurtha says the office is well-stocked with various resources for use by all students. The biggest obstacle the office faces, Bodurtha claims, is that "we can't help students if we don't know what they want." She plans, therefore, to create means by which the placement office can learn what students want and to bolster the existing resources. With an understanding of the specific interests of individual students, she says, when a notice of a particular job comes across her desk, she will know which students to contact about it.

Several projects will be developed during the year to reach students interested in public interest, Bodurtha says. Currently, she is working on developing a new speaker series geared towards presenting various different areas within the broad heading of public interest. The first presentation will concern prepaid legal services. Subsequent lectures, to be presented on a monthly basis, will include spotlights on protecting the homeless, and environmental law. In addition, Bodurtha says, she is working on developing a handout of funding sources and developing a workshop to be held early this semester in preparation of the New York University Public Interest Job Fair (held February 23 and 24). Meanwhile, Bodurtha says, much of her energy is spent networking with alumni and other sources to maximize Placement Office resources. The goal, she says, is to determine what various public interest groups do, what is available for students, and then to make students aware of the available opportunities.

Bodurtha says her concern for public interest goes back to her days at Hamilton College, where she interned with some non-profit groups and spent a semester working with a non-governmental organization helping to organize community water projects in Kenya. Since coming to BLS, she says that she has had a great interest in developing the non-traditional aspect of the placement office, leaning heavily toward public interest. "I find it really encouraging," she said, "that with all the people who walk around New York in their own private world, there is a group of students at Brooklyn with such a great interest in public interest work."

# Student Bar Association UPDATE

by Tara Christie

The Student Affairs Committee of the SBA has a **SUGGESTION BOX** in the basement near the entrance of the cafeteria. Answers to student suggestions will be posted on a bi-monthly basis under the "Daily Announcements" section of the lobby's main bulletin board. The administration requires approval of all answers before they are posted. The answers will be written only by the members of the Student Affairs Committee and will indicate what, if anything, is the administration's comment to the suggestion and what, if anything, can, and will be done to resolve the problem. The committee is comprised of Tara Christie - Chairperson, second-year day; Illyssa Esgar - Secretary, first year evening, Lori Mann, third-year day, Jill Mindlin, Michael Shanker and Christopher Stanley, all first-year day.

The Student Affairs Committee has met with Dean Trager concerning the new **PAY PHONES**. The Dean has agreed to look into the complaints. Stay tuned for further developments!

The Publication Committee is drawing up **GUIDELINES REGULATING THE POSTING OF NOTICES** and school announcements. Restrictions are needed to make announcements more legible to the student body. The regulations will also deal with students who maliciously rip down notices. These regulations will be announced once they are approved.

The **SBA BUDGET** had less to work with than last year and as a result, almost all SBA organization tightened their belts. Organizations which were new last year and which proved their mettle had slightly increased budgets. The following is a breakdown of the allocations:

| | |
|---|---|
| AALSA | 800 |
| BLSA | 2000 |
| HILSA | 1600 |
| Irish LSA | 600 |
| IALSA | 1500 |
| International Law Society | 800 |
| Legal Association of Women | 2000 |
| Environmental Law Society | 900 |
| National Lawyers Guild | 750 |
| Gay and Lesbian Society | 800 |
| Christian Legal Society | 610 |
| Republicans | 200 |
| Democrats | 400 |
| Lawyers League Basketball | 1350 |
| Intramural Basketball | 1100 |
| Student Loan Association | 600 |
| The Justinian | 7000 |
| ABA/Law Student Division | 1600 |
| Second Circus | 5000 |
| Student Bar Association Admin. | 600 |
| Intramural Football | 300 |
| SBA Social Events | 3500 |
| Mayfest | 2000 dollars. |

# PLACEMENT NEWS

For those who have not yet done so, please tell the Placement Office what you will be doing this coming summer. The Office needs the information to better plan its programs and help students.

The NYU Public Interest Symposium will be held on February 23 and 24 at NYU Law School. January 31 is the deadline for submitting resumes for interviews. Please contact the Placement Office for more information.

Resume and Cover Letter Workshops for first-years will be held in early February. Groups 1-4 on February 7, 1-2 pm. Groups 5-8 on February 8, 9-10 am. Groups 9-11 on February 1, 1:30-2:30 pm. Groups 12 on February 2, 8-9 pm.

Law Student Civil Rights Research Council (LSCRRC) Fellowship applications guidelines will be available early February.

National Lawyers Guild Summer Projects Internships deadline is February 1. Applications are at the Placement Office front desk.

The firm of Trief & Olk is interviewing top 25% of the '89 class on campus. Submit your resume to the Placement Office by February 3.

Contact the Placement Office for MORE!

# Our Children in Crisis: Failure of our Foster Care and Adoption System

by Mary Schwartz

The children come, deeply hurt and imperiled, from families that no longer provide them with care, love or safety. But often the system designed to protect them deepens the hurt and increases the peril. Such were the conclusions set forth in two recent articles in Newsweek and McCall's magazines which detailed the current foster care crisis faced nationwide. Children's advocates are in agreement — that burgeoning numbers of children throughout the country in need of foster care have strained a system already rife with the very problems it was created to handle — abuse and neglect. The child spends too much time in foster care and the government is too lax in administrating effective foster care.

Chris Hansen, associate director of the American Civil Liberties Union's (ACLU) Children's Rights Project is dedicated to the cause of remedying foster care wrongs. Hansen travels the country conferring with officials who decry the foster care conditions in their state and have sought aid from the ACLU, often in a last ditch effort to improve the system. Legislatures can pass laws but unless these laws are adhered to, they remain only words. The children continue to suffer.

In 1983 the ACLU represented parents who wished to obtain state-subsidized care for their children in a class action challenging the New York State requirement that a parent must transfer custody of his or her child to the local social services district in order to obtain out-of-home services for the child. The district court ruled that such transfer of custody requirement was an infringement on the parent-child relationship. Although on appeal the Second Circuit vacated that ruling, the case was remanded for further clarification of the harm caused to the family relationship under the transfer of custody requirement and settlement discussions have begun.

In a state court action, the ACLU brought suit on behalf of parents who had been frustrated by the city's practice of placing and keeping their children in foster care without ever evaluating the family's needs or providing that family with preventive services as provided by law. The parents had exhausted administrative means to obtain the services needed to get their lives together but were denied relief at every level. The court found the city's failure to provide the services "arbitrary and capricious" and granted plaintiffs preliminary relief as to emergency housing, counseling and other services pending further discovery and a final determination.

> Foster care, a temporary solution, has become part of the problem.

The most recent litigation against city practices of providing foster care to its children is the case asserting that New York City's use of religion-based child welfare agencies violated the First Amendment's prohibition against government establishment of religion. The ACLU asserted that black Protestant children placed in foster care were receiving lower quality care, while the Catholic and Jewish agencies were the best and most richly funded foster care services in the city. A consent decree was entered into whereby the city would set up a new referral system ensuring equal access to quality services for all children regardless of race or religion.

Estimates of the number of children who pass through the foster care system annually range from 250,000 to nearly one-half million children. Approximately 21,000 children are expected to be in the foster care system in New York City alone this year. The problems experienced in New York are the problems faced by foster care throughout the country. There is simply not enough funds for enough foster homes and properly trained and supervised social workers.

In 1980, Congress passed the Adoption Assistance and Child Welfare Act in an effort to cure one much-publicized defect of the foster care system — the "warehousing" of children who spend their lives bouncing among different foster homes. The 1980 law established specific timetables and goals to regulate what happens after a child is removed from a troubled home. Its aim is to help families in crisis and to reunite them whenever possible. Studies have shown that for every day a child is in foster care over 18 months, the more severe the emotional damage to the child becomes. Within 18 months a decision is supposed to be made either to return the child to its family or to put that child up for adoption.

In 1981, social service budget cuts, particularly cuts in child welfare services imposed by President Reagan, followed on the heels of the new law. (The federal government appropriated only $46,000,000 to the National Center for Child Abuse and Neglect. Meanwhile each B-1 bomber of the defense budget cost $280,000,000, six times the entire amount allocated to our children in crisis. Consequently, the Child Welfare Act is not being implemented and families are not getting the services they need to stay together as a family. Caseworkers are unable to provide counseling and other services the family might need, such as job placement or housing.

Children who leave foster care are often caught in a revolving door. They are returned to parents who still cannot

cope, who still are without jobs or home; fifty percent of the children will return to foster care within nine months. Foster care is not the temporary placement originally envisioned. Foster care has become a neglected, malignant institution, part of the problem instead of the solution.

The emotional problems brought about by removing a child from its home and placing it in foster care is often overlooked because of the image we all have of what that home must have been like. Yet, as ACLU's Hansen points out, not all children in crisis are there because of abuse or neglect. Financial difficulties arising from loss of job or employment problems can break apart a family as well. Homelessness is often a reason for placing a child in foster care.

The New York Times has reported on how the city's housing crunch is keeping children in foster care. A survey of foster care agencies identified roughly 400 children who could be returned home immediately if their parents were to find appropriate housing. Overworked city agencies will return a foster care child to its parents even if that parent is living in a room in a welfare hotel with other children. Private foster care agencies will usually require that a family has its own home before reuniting the child with his parents. Finding an affordable apartment often is the one insurmountable obstacle facing families that have already struggled to overcome problems of alcoholism or drug abuse. Of the 4,000 apartments renovated by the city, less than 100 are distributed to agencies who aid abused and neglected children.

All too often, however, abuse and neglect are the reasons for placing children in foster care homes or institutions. Reports of child abuse and neglect have increased dramatically in the past decade and, as a result, the number of children in the foster care system is climbing. In addition, the AIDS and crack epidemics, together with the upsurge in teenage pregnancies have forced more children into the system.

Another problem with the system is that many times children go from home to home. The result of being bounced from one foster home to another over the course of years, and not bonding with anyone is that the child becomes unable to form attachments vital to a child's maturing process. According to Hansen, children who may not have existing emotional problems when entering the system are all too likely to have such problems as a result of having entered the system.

It is these defects: the loss of children to the limbo of the nation's foster care systems, the lack of protective and preventive services to families in crisis, and the shuttling of children from foster home to foster home that the ACLU and other children's advocates, through litigation, lobbying and education, are working to overcome.

## ON A SINGLE DAY OF A CHILD'S LIFE IN AMERICA

| | |
|---|---|
| 2753 | teenagers get pregnant |
| 1099 | teenagers have abortions |
| 367 | teenagers miscarry |
| 1287 | teenagers give birth |
| 666 | babies are born lacking care |
| 72 | babies die in their first month |
| 110 | babies die in their first year |
| 9 | children die from gun wounds |
| 5 | teenagers commit suicide |
| 609 | teenagers get STD |
| 988 | children are abused |
| 2269 | illegitimate children are born |
| 2989 | children's parents divorce |
| 3288 | children run away from home |
| 49322 | children are in some jail |

* from the Children's Defense Fund

# Child Abuse, Children's Rights, and Foster Care

by Chun Wai Wong

"When emergency-doctors opened his skull in a futile attempt to relieve the pressure on the child's brain, they discovered pools of rotted blood that were the result of months of intracranial bleeding. They also discovered old bruises all over the boy's body." Thus began a recent American Bar Association Journal account of what befell Joshua, a three-year old living in Winnebago, Wisconsin. Joshua fell into a coma just two weeks short of his fourth brithday. The person responsible for Joshua's injuries was his father Randy DeShaney, a man heavily involved with drugs and alcohol. Randy DeShaney was eventually convicted of child abuse. He served less than two years before being paroled.

According to Melody DeShaney, estranged wife of Randy DeShaney and Joshua's mother, Randy DeShaney was not alone in his reckless behavior towards Joshua. The Winnebago County, Wisconsin, Department of Social Services was notified in January of 1982 of the beatings Joshua suffered but it did nothing but watch for more than two years. The Department assigned a caseworker who visited the family about a dozen times in the year before Joshua fell into a coma. Although the signs of abuse were apparent, the caseworker did nothing. Joshua eventually came out of his coma but as a result of his injuries, he lost half of his brain tissue. He is now permanently paralyzed, profoundly retarded and must be institutionized for the rest of his life.

Melody DeShaney sued Winnebago county under Article 42 of the U.S. Code, Section 1983, claiming that the Department's failure to protect Joshua from his father amounted to a deprivation of liberty in violation of the Fourteenth Amendment. The district court and the U.S. Court of Appeals in the Seventh Circuit found for the Department. The question is now before the U.S. Supreme Court.

*DeShaney* is a case of first impression in that it brings before the Court the question of whether aggravated negligence by the state in failing to protect a child from physical abuse can amount to an unconstitutional deprivation of liberty. The Court has held in *Daniels v. Williams* that as a general rule "ordinary negligence" by state actors does not amount to a constitutional violation. But the Court also noted that a state could be held responsible for failing to act if a special relationship exists between the state and the injured party. The Court has held that there is a special relationship between the state and prison inmates (*Estelle v. Gamble*), and psychiatric inpatients (*Youngberg v. Romeo*). Whether there can be a special relationship when the injured party isn't in state custody, however, has not been decided by the Court.

> Is the failure to protect a child from his parent a violation of the 14th Amendment?

The Seventh Circuit decided that the state is not obligated to protect someone unless it has first taken steps to deprive that person of liberty. The First, Second, Fifth, Sixth, Eighth, Eleventh and D.C. Circuits have joined the Seventh in this holding. The Third, Fourth and Ninth Circuits have decided that state custody is not essential.

Melody DeShaney argues that there was a special relationship between the department and Joshua, and that the department was making some effort to watch over Joshua. DeShaney also argues that the Department's actions were so egregious a lapse of judgment that it approached an intentional deprivation of liberty.

*DeShaney* appears to raise a clear cut question of constitutional doctrine, easily decided by ideological inclinations. However, the facts of the case are so wrenching that some of the justices may have trouble deciding. According to Professor Geoffrey Miller, dean of the University of Chicago Law School, Justice O'Connor is one member of the Court who may have a hard time deciding because of her sympathy towards women and children on one hand and state's rights on the other hand. Miller also thinks that Justices White and Stevens may side with the liberal justices on this case because Justice White is not so conservative on civil rights and Justice Stevens tends to vote with the liberals. *DeShaney* is potentially an explosive case that could launch the Rehnquist Court in a new direction.

However, not all of the legal problems that affect children center around child abuse. Other issues that are prominent in the area of children's rights include school suspensions, investigative searches of minors, emancipation of minors, censorship of school newspapers, conditions of reform schools, and health insurance for children.

In the case of suspensions, the courts have found that schools may at their own discretion suspend children for a short period of time. However, a student facing expulsion or long term suspension is entitled to more elaborate procedural protections such as a hearing where the child can be represented by counsel.

Mark Soler of the Youth Law Center in San Francisco believes that for children who seek independence from their parents, emancipation may be the correct approach in extreme cases. Many states have emancipation statutes which are simple enough for young people to use without the assistance of adults.

In general, the courts try to treat children on the level of adults when it comes to constitutional rights. However, children may be questioned by the police if they are not in school

# Interview with Judge Judith Scheindlin of the New York City Family Court

by James Sherman

**What's the problem?**

To begin with, it's the numbers, they're astronomical. There's been a tripling in the number of petitions filed in the Family Court alleging abuse and neglect. It stands to reasons that there's been a corresponding increase in the number of children entering the foster care system.

**Where are they coming from?**

In a large part, from the "crack" epidemic. "Crack," which is much more popular than heroin ever was, is destroying families. There is a swelling number of babies born who test positive for cocaine. The hospitals are required to report these children.

**Procedurally, how does a child enter the foster care system?**

It starts with what is called a Department of Social Service (DSS) 2221 Report of suspected child abuse or neglect. These reports come from a variety of sources. As you know, hospitals have an affirmative duty to report children born who test positive for cocaine. In addition, teachers, relatives, or anonymous persons also file these petitions.

Once the decision to place a child into foster care has been made, the court places the child in the custody of the Commissisoner of Social Services, initially, for no longer than eighteen months. At that point the Commissioner has the right to place the child in a willing relative's home, in "direct" city owned and operated foster homes, or with private planning and foster care agencies who basically operate as subcontractors to the city.

**What about these agencies, what do they do and are they doing it?**

The private planning foster care agencies take over the case. They take over the planning, developing a plan for the child and trying to find a suitable foster care home. Towards the goal of reuniting children with their biological parents, the social workers and case workers provide or arrange counseling, social work services, supervision of visitation, drug and alcohol rehabilitation, housing referrals, and job referraals.

**Are they effective?**

Some more than others. It's one thing to develop a a plan for an infant. But, as is happening with increasing frequency, when it's determined that a family is abusing and neglecting an infant, that infant's fourteen or fifteen year old sibling will probably also be removed as well. The older children are much more difficult to place in foster care homes and have probably developed certain emotional difficulties. Look, these older children don't have a fixed future, they don't know where they are going to be next year. If they want out, they can get out, get on a bus, and be back with their biological parents.

**When do you make the decision to remove a child from his or her biological parents?**

Legally, when as a judge, I believe a child is at risk of abuse or neglect or has already been abused or neglect.

**What is the prognosis?**

I don't have a prescription pad. But I don't see sufficient quality facilities to absorb these children. At the moment, the system is unable to effectively place and supervise the swelling number of children. I don't have an answer.

during school hours. In addition, school newspapers may be censored by school officials. The Supreme Court has held that school officials are entitled to control student expression so long as their actions are reasonably related to legitimate pedagogical concerns.

Children who are in custody have the right to C.H.A.P.T.E.R.S., which stands for Classification, Health, Access, Programming, Training and supervision of employees, Environmental issues, Restraint and punishment issues and Safety. Children must be classified and separated from adults, and violent inmates must be separated from vulnerable inmates. Children in state institutions are entitled to medical and psychological services. They must have access to telephones and visits from family members. They must be allowed to see their attorneys or otherwise obtain legal information and materials. Programs of adequate education, regular exercise, games, books, magazines, and other recreation must be provided for. Training and supervision of state employees guarding children must meet minimum requirements. The environmental living conditions must be adequate. There are also guidelines on restraint and punishment techniques. The right to safety, whether from accident or violence, is also a child's right.

Lastly, in the case of hospitalized children, state insurance policies may be available to low and middle income families. These programs often cover the costs of medical care, medications, and ancillary services such as in-home nursing care and physical therapy.

Another area of major concern for children's rights advocates is foster care. In a recent *Harvard Civil Rights-Civil Liberties Law Review* article, Professor Michael B. Muslin explored some of the problems children under foster care are subject to. Muslin explained that in the last twenty-five years the number of children in foster care has increased fivefold. At present, there are approximately half a million foster children. In many cases these children receive less federal judicial protection than other institutionalized persons in state care. There is only one reported

federal case that has enforced by injunctive decree a constitutional right of foster children to protection from harm while in foster care.

One study reported that the rate of substantiated abuse and neglect in New York City foster family care was more than one and one-half times that of children in the general population. One explanation of why foster care is so inadequate is that the foster families are generally unqualified for the task of providing foster care. Professor Muslin suggests that this can be cured by imposing higher standards when hiring foster parents and by having continual supervision by competent caseworkers. Also, mandatory training should be imposed on those who want to provide foster care.

Muslin explains that some of the problems of foster care are inherent. For instance, because there the foster children and their foster parents are not related, the incest taboo is not present. Also, foster parents know that they will not be guardian to the foster child for more than a few years and thus feel that they do not have parental responsibility for the child.

At present the number of remedies available for children who are subjected to insufficient foster care are few and inadequate. Various immunity doctrines available for government employees limit damages severely and even if damages were available they would not affect the root causes of abuse and neglect of foster children. Remedies are also limited by the fact that federal courts have a self-imposed abstention policy which isolate them from cases involving custodial conditions.

Muslin concludes his article with the contention that without federal court intervention in foster care cases the improvements sought in the foster care system will not come about. Federal courts should be the appropriate forum for foster care right-to-safety cases. The present political process has failed in trying to alleviate the problem. This is mainly because children in foster care are mainly from underprivileged minority groups who have traditionally been underrepresented in the political process. Federal courts have historically served as the forum for the protection of citizens' constitutional rights from abridgement by the state. Therefore, they are the preferred forum for foster care right-to-safety cases.

# Christian Legal Society of BLS at Teen Challenge

by M.Z. Heller

The Teen Challenge Center in Ft. Greene, Brooklyn is a non-profit, Christian, Drug Rehabilitation Center. Begun by Pastor David Wilkerson, Teen Challenge was originally a place where troubled youth struggling with such problems as prostitution and drug addiction could come and receive counseling and help to overcome their problems. Pastor Wilkerson is also the author of "The Cross and the Switchblade," which details the story of his coming to New York in 1958, working with a number of the local street gangs and the establishment of the center.

The BLS Chapter of the Christian Legal Society (CLS) visited the center to learn more about the program, both from Christian and legal perspectives. Sandra Segrist, the director of the program in Brooklyn, shared a more detailed history of the center, and then discussed some of the ways legal assistance is needed in this type of organization.

Both the men's and women's residences, called "crisis centers" are located on the Ft.Green property. The men's center houses between forty and fifty men, at least seventeen years old, for a period of six weeks to three months. The women's center next door houses twelve women for a three month stay. Both centers have counselors living there and available to the participants at all times. Each participant in the program attends daily chapel services, Bible study classes and prayer meetings. They learn basic Christian principles through the teachings of Christ, building their character and developing a strong relationship with God to overcome drug and other problems. Both centers are constantly at capacity and have long waiting lists.

After the first phase of the program, many of the participants continue their rehabilitation program at facilities outside of New York City. They receive more Bible training as well as learn skills to help prepare them for going back into their environment.

Legal assistance is needed to help the individual participants. Some require assistance in the preparation of wills, others need assistance in dealing with landlord/tenant problems. Some of the women have had problems with child custody after getting out of the program.

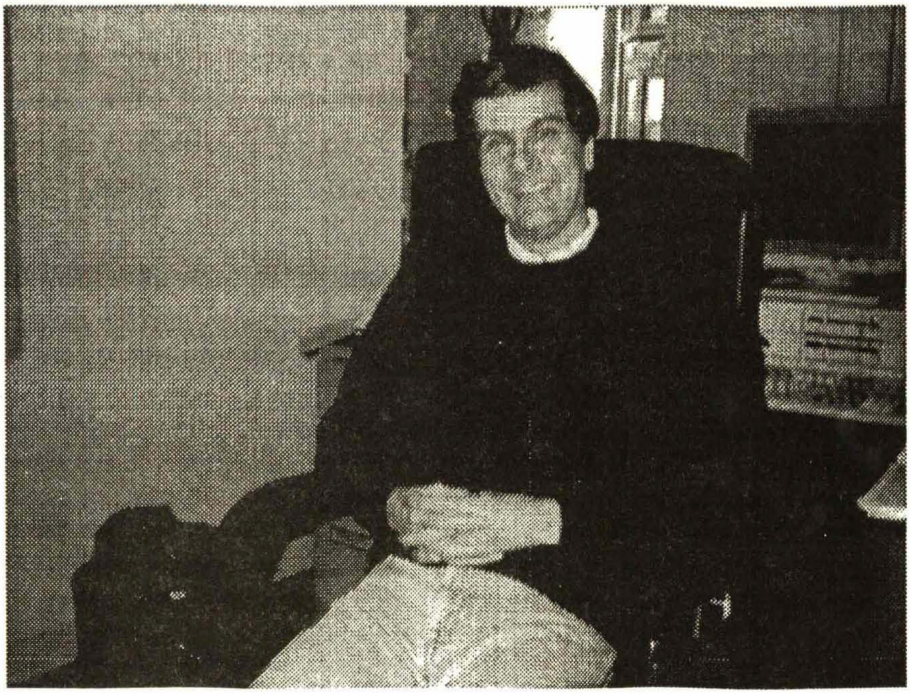
Corporate needs also exist. The center itself is having a major problem trying to get occupancy status changed from commercial to residential in order to qualify for a reduction in electric costs. Although the government now recognizes the center as residential, its requests for hearings before the Public Service Commission are being denied. The BLS Chapter is now looking into ways to possibly assist the center.

Prior to our tour of the facilities and meeting some of the participants, we found out that there are now over 100 Teen Challenge Centers around the country, and centers are setting up around the world. Centers have recently begun in Poland and Hungary. Each center is run independantly but Ft. Greene is the central point for correspondance.

The most amazing thing about the program was a study conducted by the National Institute on Drug Abuse. While a high percentage of people from other programs went back to using drugs in a short period of time, the study found that 86% of the graduates of the Teen Challenge program were still drug free seven years after completing the program. That's a lot more effective than "Just say[ing] no to drugs!"

# Interview with Chris Hansen of the ACLU's Children's Rights Project

by Mary Schwartz



Chris Hansen of the ACLU's Children's Rights Project.

**What is the Children's Rights Project?**
The Children's Rights Project has been with the American Civil Liberties Union (ACLU) for something like fifteen years. For the last eight or nine years the project has focused almost exclusively on test-case litigation on behalf of children who are in - or in danger of falling in - the foster care system.

**How do you get your cases?**
We get cases in one of two ways really. One is that someone will call us, either a child, an adult who is interested in the child's welfare, a local legal services office, Legal Aid or a local children's advocate.

**What about the parent?**
Sometimes a parent will call and say, "We have a very bad foster care system in our jurisdiction. I'm in Butte, Montana, and our foster care system is terrible and it's hurting kids, or I'm in Sacramento, California and my foster care system here is terrible and here's a story about a kid who was hurt by the foster care system." We sometimes get involved in those cases, but we rarely handle individual cases. Our cases are almost all test cases, so we would use that story as an illustration of the broader problems of the foster care system. What we would do is investigate that situation, see if it is in fact typical of problems in whatever area it is that this person called us from and if it is, and if we have the resources at the time and it's possible for us to do it, we will bring a lawsuit.

**Against that system — the Butte, Montana, foster care system, for example?**
Right. The other way we get cases is by looking for the worst foster care systems in the country. We talk to people in the area and see if, in fact, the system is as bad as it seems and if the people in the area think litigation would solve the problems in their area. If they do, we then explore with them the possibility of bringing a lawsuit.

**What is a good foster care system? Which places have a good system?**
There really isn't a place. There are places that do it better than other places. There isn't any place that really does it really well.

**It's not like you could say, for example, Albuquerque has just found a way to do it?**
No. As it happens, Albuquerque is one of the places we sued. We have a suit against the whole New Mexico foster care system.

**What is meant by a bad foster care system?**
Foster care is supposed to be temporary. The theory is that the family is in trouble and is temporarily unable to take care of the kids. The government has a responsibility to take care of these children during the period of family crisis. The government must also decide if the crisis is really temporary. If it is not, the children must be put up for adoption. But what often happens is that children enter the system and stay in it for a very long time. During this time, they may be moved from one home to another. They often become troubled. Some studies suggest that children in foster care suffer physical and sexual abuse at ten times the general rate. These children lose the ability to form relationships. We sue a system to force them to properly evaluate each family, to determine what each family's needs are, to make reasonably prompt decisions as to whether a child is going to return home or not. If the child is going to return home, the system must provide whatever services the family needs and then send the child home. If the child is not going to return home, the system must free the child for adoption. We also encourage the system to consider preventive services. These are designed to keep the family together whenever possible by helping them through difficult times.

**Is there a point at which foster care becomes harmful?**
People tell me that after eighteen months, foster care becomes more harmful than helpful. The average length of stay, in Louisiana, where we have a lawsuit pending, is over four years.

**With nothing being done to help the parents?**
Louisiana would disagree with me, but I would say nothing serious is being done to help the parents. If the proper services are offered, most of the kids could be returned to their parents in a relatively short period of time. Where the parents can't be helped, it shouldn't take four years to decide the child should be adopted.

**Is there an age beyond which the child becomes less adoptable?**
The older he is, the less adoptable he is; the longer he's been in foster care, the less adoptable he is.

**So time is of the essence?**
Yes. Time is very much of the essence. All other things being equal, most parents would rather have a baby than a twelve-year-old.

**We've talked about rehabilitation services for parents during the foster care period. Are there comparable services for the children?**
Sure. It may be that the child is the one causing the disruption in the family. If so, you give the kid whatever he needs to help him deal with his problem. If the child's mentally retarded, you help him with that. Usually you deal with the problem in the context of the family. If the child is mentally retarded and the family's having trouble dealing with him, you teach the parents how to deal with mental retardation. You make sure the kid is in the right school and in programs that enable him to function at his maximum potential. You help the family stay together rather than simply saying, well, retarded kids are hard for parents to deal with, so we'll just take the kid away and put him into foster care, or worse, in an institution. Kids who go into foster care don't necessarily end up in foster homes. Some of them end up institutions.

**I have a mental image of babies in New York City encaged in cribs. Is that foster care?**
Yes. There are mothers here in the city who, for one reason or another, can't take their newborns home with them. Sometimes they're drug addicts; sometimes they just don't want their babies. Particularly in cases where the

You're never going to make perfect decisions in child protection.

mothers clearly will never want their children, the city ought to quickly terminate parental rights and get those kids adopted. But the city doesn't do that. Instead, it takes the children into foster care. And because there aren't enough foster homes to take care of the babies, the city leaves them in the hospital. The kids get older, the open crib can no longer hold them, and so you have to turn the crib into a cage to make sure they don't crawl out.

**And yet this is the most adoptable age for the child?**
Absolutely. But not all those kids are up for adoption. Some of these parents are trying to get their act together, and probably some of them will. There is no excuse for the city's failure to develop more foster homes. It's just a matter of making the proper effort in the area of recruitment. There's no excuse for the city leaving those kids in hospitals for extended periods of time.

**How long do the children stay in those hospitals?**
There are other people in the city other than the Children's Rights Project that have done most of the work on the "boarder babies." Legal Aid has done more of the work on the boarder babies so I don't really know how long, at worst, those kids stay. And I've certainly seen stories of infants who came into care and stayed their whole lives, you know, graduated from foster care at age eighteen never having had a permanent home their entire childhood. They don't stay in cribs till they're eighteen but there are plenty of stories of the foster care system where kids stay in care their whole lives.

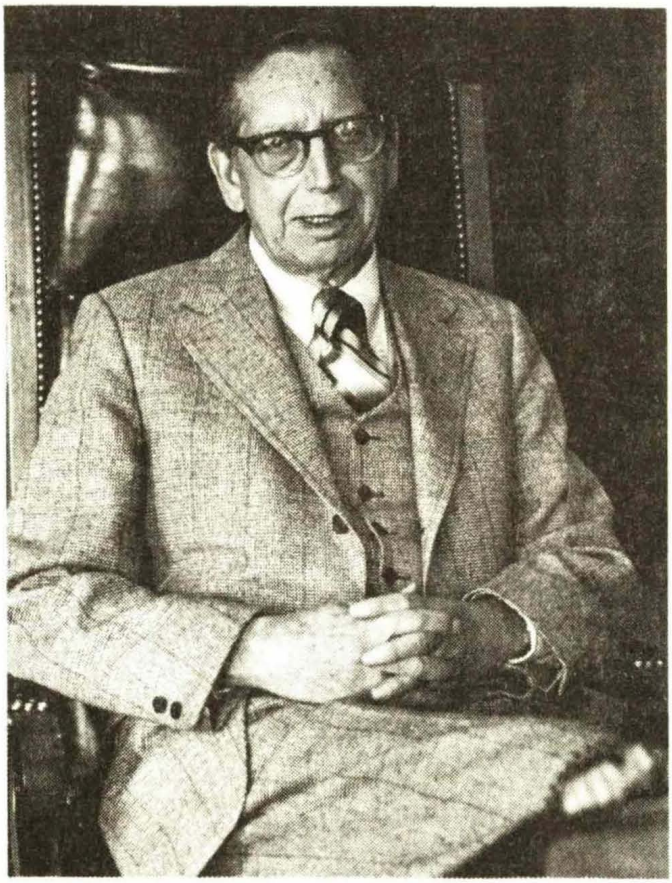
**Is the Children's Rights Project involved with the Lisa Steinberg matter?**
No. What you know about it, I know about it. For the most part the ACLU does not get involved with individual matters. The Lisa Steinberg story is a story about the protective services part of the child welfare system. The child welfare system is generally considered to consist of protective services which is where people come out and investigate whether there has been abuse or neglect. Preventive services, which I talked about earlier, are services that prevent children from having to go into foster care in the first place. Foster care services and adoption services. The Steinberg story is a protective services story and I don't know enough of it for sure to know where there was a breakdown in the protective services system, but clearly the system failed to adequately protect that child. Now, that being said, you're never going to make perfect decisions in child protection. You're being asked to make very, very difficult judgments. The social workers for the most part are very overworked, very undertrained, very poorly supervised. Foster care is not necessarily a good thing for a child. In fact, most of the time it is not. So the danger in talking about the Steinberg case is to say, well, whenever there is any suspicion of abuse, we ought to take the kid into foster care. That is not the answer. In addition to that, I am somewhat uncomfortable with lawsuits against individual social workers because as I say, social workers are undertrained, undersupervised, underpaid and overworked. It is not fair to blame the social worker for those conditions.

(continued on page 24)

# A Tribute to Dean Prince

by David De Gregorio

There was hardly a member of the BLS community that was not saddened to hear of the passing of Dean Emeritus Jerome A. Prince last December 24th. Few knew him well enough to appreciate his courage and the true depth of his genius, while the great majority (like myself) were only allowed rare, privileged glimpses. However, we all sensed that his passing marked the loss of a prolific and deeply humane man and the closing of a chapter in the history of our School.



His academic and professional achievements were certainly spectacular. Born on August 26, 1907 in Manhattan to Mr. and Mrs. Henry Prince of 534 West 178th Street, his career was marked early on by excellence and achievement. In 1930, he earned a B.S. from the City College of New York, *cum laude*, and was elected to Phi Beta Kappa. He attended BLS in the same year and was elected to the very first staff of the Law Review two years later. In the following year, his last as a student, he became Law Review's first student editor-in-chief. Prince also wrote for *The Justinian*. He graduated first in his class, *summa cum laude*, and was elected its president. In 1934, the School conferred on him the title of Doctor of Juridical Science, again *summa cum laude*.

With that accomplishment came an appointment to the BLS faculty, where Dean Prince was to distinguish himself and serve the law school continuously for nearly six decades. In 1940, he became Assistant to the Dean, followed by Vice-Dean in 1945. That was followed by an appointment to Associate Dean in 1950, and in 1953, with the death of Justice William B. Carswell, Prince became the law school's third Dean, resigning in 1971. For the next seventeen years, he shared the distinction of Dean Emeritus with only one other man, Dean Raymond Lisle.

His career in public service was no less distinguished. Prince was a member of the American Bar Association, the New York State Bar Association, the Association of the Bar of the City of New York, the Brooklyn Bar Association and the New York County Lawyers Association. In 1963, he served as Chief Counsel to the New York State Joint Legislative Committee on Court Reorganization and the Committee to Study the Administration of Justice. Prince was a member of the Mayor's Committee on the Judiciary from 1970 to 1975, appointed by Mayor John Lindsay to the New York City Conciliation and Appeals Board in 1969 and reappointed and designated its chairman by Mayor Abraham Beame in 1974. Prince has been a member of the Board of Editors of the *New York Law Journal*; member and former chairman of the Board of Trustees of the Brooklyn Supreme Court Library; and a senior consultant to the New York State Law Revision Commission. His work on numerous other committees and organizations was so extensive that it defies easy summary.

Dean Prince has also contributed a wealth of written material to the study and practice of law. *Richardson on Evidence*, the definitive treatment of New York's law on that subject, as well as *Cases and Materials on Evidence*, the standard casebook for students of New York evidence, are among his best known. He has written scores of Law Review articles, including fifteen consecutive yearly reviews of evidence law developments for the *Syracuse Law Review*. He was also a man of no small literary talent, collaborating with his brother Harold in the writing of a number of mystery short stories. The first of these, the *Man in the Velvet Hat*, was later produced on television and radio.

This brief sketch of such a rich and varied life can hardly do it justice. My hope was merely to paint a picture with broad enough strokes to suggest the depth and breadth of the man to whom our School owes so much. However we choose to remember Jerome Prince -- as a prominent dean, professor of law, activist, author and scholar, or more simply as the kind and gentle old man sitting in the lobby everyday after his class -- his memory inspires us to attain the sort of excellence that was his hallmark. That is a fitting legacy, one very few can claim and even fewer can live up to.

Goodbye, Dean Prince.

The Justini
Brooklyn Law School
St. Lawrence
THURSDAY, MARCH 15, 1934

# Annual Junior Prom At Ritz-Carlton Resplendent; Large Gathering Attends

### Colorful Event, Attended by Students and Faculty, Featured by Grand March; Prince Is Chairman

The glittering Crystal Room of the Ritz-Carlton Hotel was the scene of the Annual Junior Prom tendered the school by the Junior Class on Saturday night. More than two-hundred and fifty couples attended this traditional affair, which was hailed a most successful and colorful event.

Professor Humble and the Committee received the early arrivals and shortly the ball-room was enlivened with convivial groups of guests. The dancing was temporarily interrupted when Jerome Prince, Chairman of the Committee, introduced the guest entertainers for the evening. The artists are performers in the current musical comedy, "Vanities" and delivered a number of songs which were received enthusiastically.

Jerome Prince

**Grand March Led By Council**

The Grand March, led by the Committee and the Student Council, followed the entertainment. The procession was accompanied by the boom of flash-lights, and the gaiety resumed its cheerful pace until the customary curfew.

The committee in charge consisted of: Jerome Prince, Chairman; Bernard Brandt, Nathan Skolnick, and Joseph Cohen.

Beside the men, prominent in activities at the school, a large delegation of the faculty were present, among whom were: Profs. Wrigley, O'Neill, Flouton, Humble, Frankham, Sealy, Swetlow, Rotwein, and Sugarman. The patronesses included Miss Curnow, Miss Magrena, Mrs. Wrigley, Mrs. Humble, and Mrs. Flouton.

Meyer Davis and his orchestra, a popular Broadway favorite, furnished the dance rhythms. The affair was marked by a surprisingly informal atmosphere despite the formal habiliment.

# PLAN CHANGES IN CRIME LAWS

(Continued from Page 5)

account for that figure of 212 fourth offenders of the present day, when at the rate they were going to the state prisons of New York prior to the passage of the Baumes Law the figure would be between 1,000 and 1,300, if the Baumes Law had not been a deterrent in those five years.

Innocent folk, at the very lowest estimate, have been saved by the Baumes Law from becoming the victims of from 700 to 1,000 felonies by third or more offenders in that five years. Is not that worth something to the community? Who are more important, those 700 to 1,000 honest citizens, saved from physical or financial injury, or the 212 Baumes Life Sentence prisoners?

Not one of the Baumes Life Sentence Law prisoners has yet served six years, but the sentimentalists who had bills passed in 1932 that would make the lot of fourth offenders easier than the lot of hundreds of first, second or third offenders, have appealed to the emotions of the Legislature, and are appealing to the Governor, as if the law had been in effect a century, and tearing down an old prison had revealed forgotten prisoners buried in the dungeons for forty years, as was said to have been the case when the Bastile was destroyed.

Viewed in the light of less than six years from July 1, 1926 and the figures I have given, the passing of the Sargent and Robinson bills by the Legislature was a magnificent triumph—for professional criminals.

# CRIME TRIAL PROCEDURE WORKS WELL AFTER INDICTMENT

# Jerome Prince To Retire From Review April 14

### Matheson Prize Winner Was Graduated Summa Cum Laude Last June

### MEMBER SINCE INCEPTION

### Created New Department on Legislation and Prepared Cumulative Index

The retirement of Jerome Prince as Editor-in-Chief of the Brooklyn Law Review on April 14 will bring to a close a long and colorful student career.

Prince, who was admitted to the New York Bar in December, 1933, received his B.S. in S.Sc., *cum laude*, from the College of The City of New York in 1930, and his LL.B., *summa cum laude*, from Brooklyn Law School in 1933. He is a member of Phi Beta Kappa and the Philonomic Council. At the commencement exercises last June, Prince was awarded the Matheson Prize, which is conferred annually upon the student who in character, scholarship and attainments evinces the highest degree of legal capacity.

**One of Organizers**

One of the organizers of the Review, Prince served on the editorial board from 1931-32; he was student editor from 1932-33 and has served as editor-in-chief since May, 1933. He is the author of numerous notes, one of which—"Ex parte Injunctions"—was republished in the editorial columns of the New York Law Journal last year.

As editor, Prince accomplished the creation of a legislation department and the compilation of a cumulative index which will appear in the forthcoming issue of the Review. Much of his time has been devoted to the train-

# *U. S. Supre Of*

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**Legal Decisi**

As a member of T edited the Current column. In a statem Prince said: "I wo the executive board board, and then rig He was also a memb board of the 1932 Cl

He was chairman Prom and was ele his junior and seni latter by a unanimou senior year, he serve the Student Council.

Prince, a member post-graduate class, his J.S.D. degree fro in June.

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# Prince Awarded Matheson Prize

### Law Review Editor Was Graduated Summa Cum Laude This Morning

The Donald W. Matheson Memorial Prize was awarded to Jerome Prince by unanimous vote of the Law School Faculty at a Faculty meeting held Friday, June 2, at the Law School.

This annual prize of one hundred dollars is offered by Dr. George W. Matheson, of the class of 1917, in memory of his brother, Donald W. Matheson, of the class of 1914, and is conferred upon the student who in character, scholarship, and attainments evinces the highest degree of legal capacity.

Prince, who is editor-in-chief of the Brooklyn Law Review, was graduated this morning with the degree of Bachelor of Laws, summa cum laude.



# Students Elect Class Officers

### Prince Installed As President of Third Year Class By Unanimous Vote

### TEN STUDENTS RE-ELECTED

One unanimous vote and ten re-elections featured the recent balloting for the 1932-1933 class officers of the Brooklyn Law School. Jerome Prince student editor-in-chief of the Brooklyn Law Review, was re-elected president of his third year 6-8 class by the only unanimous vote, while Leo J. Margolin, George L. Weisbard, Alfred A Chaisen, William Polan, Frieda Miller, Nathan Skolnik, Clement Eicks, Bernard Brandt, Leonard Thorner and Helen Henis received re-elections in their respective classes.

Nominations, numbering as high as six and seven for an office were received by Vice-Dean John H. Easterday. Campaigning occupied an entire week. In some cases the voting was so close, that several ballots had to be cast in order to elect an officer.

## HONOR STUDENT

JEROME PRINCE

The Brooklyn Law School today graduates one of the most brilliant students in the history of the institution—Jerome Prince, who this morning received the Doctor of Juridical Science degree, summa cum laude. School records indicate that his average has been surpassed but once.

He received the B.S. in S.S. degree, cum laude, from City College in 1930, where he was also made a member of Phi Beta Kappa. A year ago he was awarded the LL.B. degree, summa cum laude, and the Matheson Prize. In recognition of his outstanding scholarship, he was also made a member of Philonomic Council.

During the past year Dr. Prince has edited the Brooklyn Law Review, and previously was affiliated with the Chancellor and THE JUSTINIAN. At the annual meeting of the Alumni Association last month, he was elected to membership in the Executive Committee.

# Urges New Auto Liability Rule

*(Continued from page 6)*

cases are young people whose incomes are small.

**Broader Scheme**

Judge Moscowitz also proposed a more comprehensive system based on the Workmen's Compensation Law, which would possibly require amendments to the State Constitution. Such amendments have been made in removing the limit on damages recover-

# Plan Life Now, Dean Counsels

### Program Should Embrace Broad Cultural and Historical Knowledge

### WILL POWER ESSENTIAL

"Although your law school days are happily ended, your professional life is just beginning," declared Dean William Payson Richardson in his address at the Commencement exercises, held in the R. K. O. Albee Theatre this morning.

In asserting that instead of a hit and miss system things should be planned, he said "This is the day for industrial planning, and this should be also the day for professional planning. Whatever your plan may be, it must be individualistic. Let the interrogation be: What shall I do week after week, month after month, year after year for a period of years? Since the law touches every human interest, your program should embrace the development of a broad cultural and historical knowledge of civilization and human relations, to the end that you may appreciate the economic and social forces back of our legal institutions.

"The greatest potential force that a lawyer can possess for a distinguished career is will power," counselled Dean Richardson. "Character, honesty, and integrity are all absorbed in will power. Will power to resist temptation. Will power to resist crookedness. If you have this will power, proceed; if not, stop."

Commenting that the overcrowding of the Bar was not a new problem, he said: "The legal and medical professions have been overcrowded from time immemorial. For more than a century lawyers have protested the overcrowding of the Bar. During the eighteenth century, before the days of law schools, young men made their preparation for the Bar in the office of lawyers, and to such an extent was this system of taking students carried

## *Dean Prince*

# "I, somehow, got into administration"

*by Louis R. Rosenthal*

Prince became a member of our faculty in 1934 and was Dean from 1953 until 1971.

"I, somehow, got into administration," said Dean Prince as he traced his career at Brooklyn Law School. Although law is to Jerome Prince as music was to Mozart, his professors back at City College must be wondering why he chose a career in law. Upon his graduation from City, in 1930 (cum laude, Phi Beta Kappa), he was recommended for research in biochemistry. But he explains it, "I always wanted to be a lawyer."

During his undergraduate days at Brooklyn Law School, the future educator and author worked on the first staff of the *Law Review*, was Editor-in-Chief of that publication and wrote editorials for *The Justinian*. He received his LL.B., summa cum laude, number one in the class, in 1933, and a J.S.D., summa cum laude, number one in the class, the following year. Admitted to the Bar in December, 1933, he maintained a private law practice until 1938 when he became a full-time faculty member at Brooklyn Law School. He had taught part-time at the School since 1934. He has been the recipient of the degree of LL.D. *honoris causa*, and is a Trustee of the School.

It was his appointment, in 1940, as an assistant to the then Dean William Payson Richardson that Dean Prince "somehow got into administration." Richardson, who was the first Dean of the School, was also its founder.

In 1945, Dean Prince was promoted to the office of Vice-Dean, and in 1950 he was made Associate Dean. He became Dean in 1953 upon the death of Dean William Brown Carswell. Dean Carswell was also a Justice of the Supreme Court, Appellate Division, Second Department, as well as chief administrative officer of the School.

All during his administrative career, Dean Prince has made time in his busy schedule to teach because he likes to keep in close contact with the student. He has also accepted many public service assignments such as appellate counsel in murder cases, referee in disciplinary proceedings, appointments as a special master, and service as counsel to a legislative committee.

Recently when he was assigned as appellate counsel, he came up against members of the Brooklyn Law School faculty such as Prof. William I. Siegel, who is also Chief of the Appeals Bureau in the Kings County District Attorney's Office, and Albert V. DeMeo, trial assistant district attorney. Neither he nor his opponents mind, as they are all members of the legal fraternity. However, there is one attorney he doesn't care to oppose in court. That person is his wife, Martha, a 1942 graduate of Brooklyn Law School. Mrs. Prince is a member of the Brooklyn District Attorney's Appeals Bureau. Dean and Mrs. Prince have two children and live in New York City.

The Dean, who has seen the Law School make "enormous strides" since World War II, believes that Brooklyn is one of the superior law schools in the country. While stating that the faculty is "truly effective" he also acknowledges that one member of the faculty might not be as effective as another member. "However, as a whole, (and this is where his famous illustrative method of general to particular came in) when you compare the faculty of other schools (arms wide apart) to our faculty members (wide arm expanse now contracted to small space between thumb and index finger) you will see what I mean."

**Dean Prince**

The Dean realizes that the new policy on notification of grades causes much concern among the students, but he points out that grading and evaluating is a difficult, sensitive and complicated task. At the end of each semester, the Dean personally examines each student's record, and participates with the Committee on Scholastic Standing in making the final decision. He stresses that although the administration is constantly looking for different methods of appraisal, they will not compromise on quality.

The Dean is proud of our outstanding record on the New York Bar Exam (number one for the last three years), but is quick to assert that claims that Brooklyn merely teaches a Bar course are nonsense. He explains that just after World War II, the School changed its policy of using New York texts and case books to the use of national texts and case books, and ever since then our record of success on the Bar has improved.

As far as the difference between the law students of the thirties and today, Dean Prince believes that greater demands are placed on today's students. When he attended during the thirties, 60 credits were required instead of the present 80, and the classes were almost entirely lecture rather than the present recitation method. He believes that today's instruction demands more thinking on the

student's part. Although he believes that the student of today, as a whole, is an improvement over the student of yesterday, he asserts that the "good of yesterday are as good as the good of now."

Apathy among the student body, asserts the Dean, is chronic and is found in every professional school: "He (the student) won't move unless he sees a cash surrender value."

Dean Prince is currently involved in plans for the new building. The Dean envisions certain changes in the curriculum which include a course option elective program and specialization seminars. Services will be added such as a full-time placement office and an alumni secretary. He happily explains that the new building's complete study, research, seminar and recreation facilities will put everything at the student's fingertips.

Aside from being an administrator and teacher, Dean Prince is the school's representative to the public as well as an imagemaker. As an image maker, the Dean possesses the two prerequisites for image making in the field of law. Those two prerequisites are two words: *Dean Prince.*

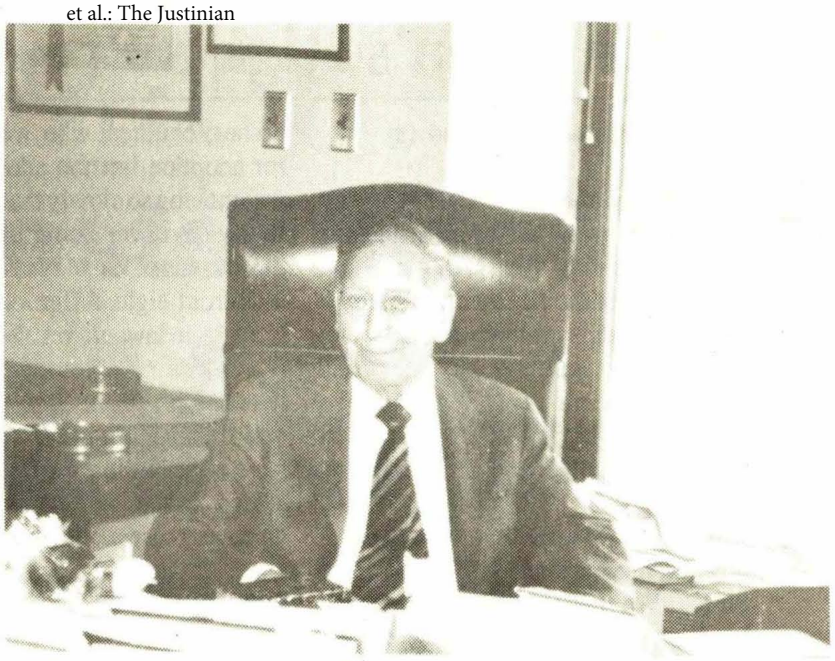
There isn't a judge or trial attorney in the State of New York who doesn't know or know of Dean Prince. If they don't know him personally, they know him through his text, *Richardson on Evidence.* That book, now in its 9th edition, first authored by Dean Richardson, is authority in the field of evidence in every courtroom of the State. Dean Prince worked on the revisions for the 5th and 6th editions and has been in complete charge of it since the 7th edition. He is also the author of many much cited law review and law journal articles.

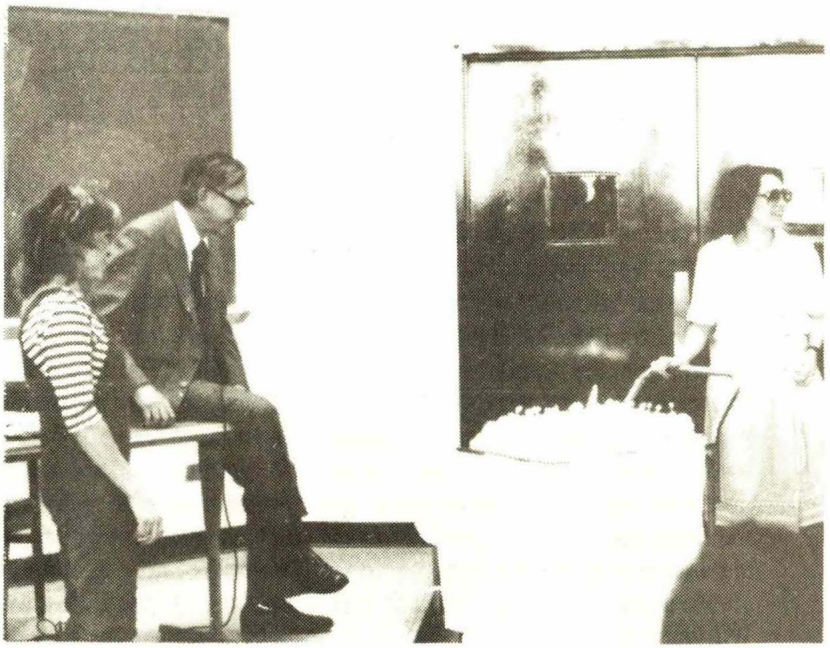
He is the Chief Counsel to the New York State Joint Legislative Committee on Court Reorganization, has served as Chairman of the Criminal Evidence Panel of the New York State Trial Judges Conference at Crotonville for several years, and this year will serve as Chairman of the Evidence Panel dealing with proposed reforms in the law of evidence. He has also served as a panelist at the County Judges Conference. He is very active in many Bar Associations and is Chairman of the Program Committee of the Brooklyn Bar Association.

Speaking about prestige and reputation of law schools, the Dean points out that although many of our professors are top men in their fields, and many of our graduates are very successful practitioners and leaders in government, the greatest problem in building reputation is to get the alumni to talk about the school. At each alumni luncheon, the Dean details our vast accomplishments to the alumni, and says now it is up to you to tell the world. "It is not enough to be good," he explains, "we have to be talked about."

In summing up, the Dean says the secret of a legal education is money, the proper library, the proper instructor and the proper student—and not necessarily in that order.

**First published in *Justinian* May 19, 1967.**





# Children's Rights Project

(continued from page 18)

**Is there any correlation between the size of a city and the efficacy of that city's foster care system?**

Oh, the bigger the city the crummier the system I think is probably a rough rule. That's purely an impressionistic view but it does seem as if every state we work in, the big cities are the worst. They're overwhelmed by the numbers.

**Could you walk me through a typical lawsuit you handle?**

Sure. We have a suit against the Louisiana foster care system. We got a call from the local affiliate who said that there had been some people meeting locally there about the inadequacies of the foster care system; that the conclusion in Louisiana was that it's a terrible, terrible system. That most of the people involved in child welfare had been meeting on the subject; they had tried lobbying the legislature for new bills that would help the situation; they got the new bills and it didn't help; they had tried going to the newspapers to get stories about the scandals that go on in foster care; they had gotten the stories—it didn't help, and they were in some level of despair about what they could do that would in fact have an impact on the foster care system. They called us and asked us if we would come down and do a lawsuit. We agreed to do that. We went down; we talked to all the people we could find in Louisiana who knew anything about the foster care system. Everyone thought it was a terrible system; everyone thought it ought to be sued. We then began looking for children who illustrated the problems in the lawsuit; children who were in care too long; children who shouldn't have gone into care in the first case because preventive services would have made it unnecessary for them to go into care; children who were institutionalized when they could have been in foster homes; children who had been in a lot of different foster homes and had been harmed as a result; children who had been abused while they were in foster homes; children who were scheduled for adoption but the adoption process was moving so slowly that it looked like they were never going to get adopted; those kinds of kids. We secured fifteen kids from eight different families; we brought a lawsuit on behalf of those fifteen kids and asked the judge to certify it as a class action. That was about two and a half years ago. Since that time we have been in the process of discovery. These cases are massive factual discovery cases. We have gathered two or three file cabinets full of paper about the system itself; we gathered another two or three file cabinets of paper about the named plaintiffs themselves and we have to analyze all of that. In addition to that, we've done about 100 or 150 depositions of social workers in Louisiana to determine what the facts were. We have also done a case reading, in most of our cases we do original social science research. We hire an expert who secures from the court a statistically significant, random sample of case records of children in care in Louisiana; our expert reads all of the records, hires people to read all the records and fill out a questionnaire about each of the records that they read. We then computerize all that information and create tables of information from which we can draw a picture of the entire Louisiana foster care system. We are just in the process now of finishing all of that discovery effort and we have a trial scheduled for March, 1989. What typically happens in these cases is the process of gathering all the facts; there's a big fight about the law early on — there's a motion to dismiss or a motion for summary judgment early on. There's a huge fight about whether these kinds of lawsuits can be brought and if so how they can be brought, under what circumstances. If we survive the motion to dismiss as we always have so far, and the law is still not firmly established in this area, then we go through all the discovery. Once we go through all the discovery, we're able to develop such an overwhelming case, because foster care systems are in general so bad, that on the eve of trial the defendants usually will for the first time discuss settlement and in fact all of our cases thus far have settled on the eve of trial in which we settle for a consent decree that sets very elaborate and extensive rules for the foster care system in a given jurisdiction. We then get the judge to approve the consent decree; we then spend five to ten years trying to enforce the consent decree. Just as passing a law against murder doesn't mean that there is an end to all murder; getting a court order that says that every child has to be evaluated upon coming into the foster care system or every family has to receive services prior to the child going into foster care doesn't mean that it actually happens. The hardest part of these kinds of lawsuits in fact is the process after you win the lawsuit of trying to make the court order that you've achieved actually happen in the real world. That's a very, very difficult process and one that no one's really quite figured out how to do yet.

> Foster care systems are so bad that defendants usually will settle because the cases is so overwhelming.

**Who are the defendants in this type of lawsuit?**

The state officials. You cannot sue the state, because of eleventh amendment

problems, but you can sue state officials. The governor and the commissioner of social services.

**Do these consent orders lead to legislation affecting foster care?**

In most foster care systems the legislation is not the problem. The problem isn't that there are bad state laws or bad federal laws. These are almost all federal court cases. The problem usually is that what is the promise of the law or the requirements of the law are not being obeyed. The legislature, has very limited power, other than budgetary, to force the executive branch to obey statutes and the budgetary process is sort of an odd one for them to use. Suppose the kids aren't getting case funds. Federal law says that every kid within six months of coming into care has to have a case plan: Is the kid going to go home or is the kid going to be adopted? What are we going to do to achieve that goal? Let's assume the kids in a given jurisdiction don't get a case plan. It's sort of hard for the legislature to know what to do in order to fix that. If they cut the budget, that's likely to make the situation worse rather than better. So what do they do in order to force the executive branch to actually make sure that every child does have a case plan within six months? It's even harder in this instance where the requirement is federal, Act of Congress rather than act of legislature. I don't know what Congress does, Congress I suppose can cut off, I mean Congress says you're not supposed to get federal money unless all the kids get the case plans but in fact the federal government doesn't really enforce that.

**There's no policing?**

No. There is very perfunctory auditing by the Department of Health and Human Services but not anything meaningful. So the legislature has limited power to enforce the requirements of the state or a federal statute. The courts, on the other hand, have broader powers to enforce their own orders. It is difficult to enforce an order like the kind we get which requires, for example, that every child in the state have a case plan within six months. What does the court do if it what do we do if it doesn't happen? Well, the first thing we have to do is prove that it didn't happen. So we have to have a system in place for gathering enough data so that we can prove whether the defendants obeyed the court order or didn't obey the court order. The second thing we have to do is figure out why it didn't happen and then what can be done in order to fix the problem. That part of the task is usually done by a court-created master or monitor or panel or committee or some sort of body answerable to the court whose responsibility is to determine why a court order is not being obeyed and what steps can be taken in order to bring the defendants into compliance with the court order. Ultimately the judge has the power of fine and imprisonment like they're using in Yonkers. The interesting part of what we do is to try and figure out creative ways to use the court to force the defendants to obey the law.

**Is the consent decree anything like an injunctive order?**

A consent decree is the equivalent of an injunction. It is both an injunction and a contract at the same time.

**So abuses aren't the result of faulty state statutes?**

Right. For the most part. It's not always the result of faulty statutes. It's more the result of faulty administration of these statutes. There is some part of it that is due to lack of budget which I suppose is a state statute; the legislature passes the budget and a lot of these systems are underfunded. It's my view that it's more of a problem of poor management than it is a problem of insufficient funds.

**Is there any consciousness raising involved here? Is a legislature less apt to slash the children's services budget after there has been litigation?**

Well, there is an embarrassment factor to this. You try and present these same facts to the legislature, but it doesn't necessarily have the same effect. I think that if we ask for twenty-day legislative hearings and tried our case in the legislature I'm not sure we'd have the same effect because ultimately the legislature still doesn't have — I mean what are they going to do with all these facts? You can tell the legislature that only fifty percent of the kids in Louisiana are getting case plans within six months as required, what does the legislature do with that? The court issues a court order requiring that they do it; the court then keeps - we and the court then keep at them until defendants actually comply with the order. Ultimately with the threat of the governor or the commissioner or somebody going to jail for failing to comply.

**What effect does reading about poor foster care in newspapers have on the public officials involved?**

Scandals in the foster care systems, like a lot of social care systems, are remarkably impervious to that kind of embarrassment. At any given moment there's probably some paper in the country running a scandal story about their local foster care system - it doesn't do any good, I think. Any more than it does any good regarding prisons or mental health or mental retardation or welfare or homelessness, housing. I think the public exposure of those issues is important. But I don't think it's usually sufficient to produce change.

**So far, have the courts been the most effective avenue available to you?**

So far courts have not been very effective in foster care yet. I think they will be. Courts have been quite effective I think in other contexts — schools, prisons, mental health, mental retardation. The use of the courts in the foster care context is very new. Only within the last few years have courts really tried this task and no one's really accomplished it yet. But I think we're moving in the right direction and I think we will accomplish it. Our foster care litigation is a classic example of using the courts to try and change a large, hostile bureaucracy, like the prison litigation does, like school desegregation does, like mental health institutions conditions or mental retardation institution cases. The foster care system is another outgrowth of the same kind of model and that model is still very much in development.

# A FORMULA FOR VICTORY

by Steven Riess, President of BLS Democrats

Any time a major political party loses five of the last six presidential elections, the last four by landslides, something has to be wrong. The purpose of this piece is to explain what happened and to suggest ways to prevent its recurrence in the future.

First and foremost, the Democrats must deal with the word liberal. Instead of running away from the term, we should define it. Failure to do so permits our opponents to do so. This failure on the part of Governor Dukakis in the last election contributed greatly to his defeat. George Bush initially called him a liberal, and he replied that Bush was mistaken. Then Bush defined what a liberal was: pro-criminal; weakness and vacillation on defense; higher taxation and a return to the days of Jimmy Carter on economics; and unpatriotic — Dukakis' veto of the Pledge of Allegience. Then Dukakis finally admitted it, he was a liberal. Thus, he became the liberal already defined as the above by Bush, and his credibility was further diminished because it appeared he had been caught in a lie.

Thus, a redefinition is not only warranted, but essential.

There are three forms of liberalism: Liberalism in economic issues, liberalism on social issues, and liberalism on issues of foreign policy and defense. There is no need to bundle all three of these together and hence I will deal with each separately, the way in fact that they should be viewed. The theme of this piece is that the Democrats are in the position that they are today not because of economic issues, but because they have run afoul of social and foreign policy issues.

Liberalism on economic matters in its most basic sense is the protection of "the little guy." This New Deal liberalism remains a very potent political force. It manifested itself recently in the fight over a sixty day provision providing workers notice that their plant of one hundred or more workers was about to close. The Republicans opposed it. Reagan vetoed the measure, but then after public opinion polls demonstrated that more than eighty percent of the American populace supported it, it was reintroduced. Reagan was forced to capitulate and it is now law.

The Democratic Party in the past was the Party that facilitated unionization, established social security and created Medicare and Medicaid. The Democrats today should return to a re-emphasis of New Deal issues in their contemporary manifestations. For example, Dukakis struck a responsive chord when he reminded Americans that today many Americans, especially those between the ages of twenty and thirty-four, are unable to purchase their own homes, long a centerpiece of the American deram.

**Liberalism must be redefined.**

Concurrently, with this re-emphasis on economic issues must come a recharacterization of the role of government. The Democrat cannot afford to be characterized as the party of the bloated bureaucracy while the Republicans merely recite their dogma about getting the big bad government off the backs of the American people. What the Republicans characterize as regulation the Democrats must demonstrate as necessary protection. It's no coincidence, for example, that after eight years of Reagan, less goverrment protection has led to an environmental crisis.

Democrats should also put forth a realistic free trade policy. What Reagan proclaims to be free trade is in truth nothing of the sort. We provide a large and accessible market for foreign competitors while they do not permit us equal access to their markets. Since in the end what most Americans want is merely an equal opportunity, Democrats must point out that our current policy of doing practically nothing is unlikely to produce any change. In the area of strategic arms control, Reagan strenouously argued that if Congress cut weapons systems, the Soviets need not cut back because there would not be any incentive. Democrats must show why that is exactly the same common-sense rationale behind the need for retaliatory trade legislation. The end is not to punish, but to force our competitors to compete fairly. Utilization of this key and sensitive issue is not only good policy but good politics because it will also afford the Democrats the opportunity to wrap themselves in the flag by the use of economic nationalism. This demonstration of patriotism will prove that the Republicans do not have a patent on nationalism.

Democrats need to change the perception of being out of touch and too far left on the social and cultural issues such as crime and abortion. On the issue of crime, Dukakis' furlough of Willie Horton and his opposition to the death penalty created an impression that he was pro-criminal. On this issue, Democrats must toughen their act and change their perception. On the death penalty for example, opposition to it is simply a losing issue. However, since it is a matter of conscience, should our nominee be opposed to it on moral grounds, that nominee must also substantiate that position. For example, he should explain the difference between opposition to the death penalty and a perception of softness on the crime issue.

Those opposed to the death penalty as an issue of conscience must come to grips with the fact that the overwhelming majority of people including the great majority of minorities, are in favor of

the death penalty. Even while as a matter of conscience they can continue to disagree, they must stop treating this overwhelming majority position as immoral.

In short, we must change our reputation of being more concerned with the rights of criminals to that which is more sympathetic to those of the victim.

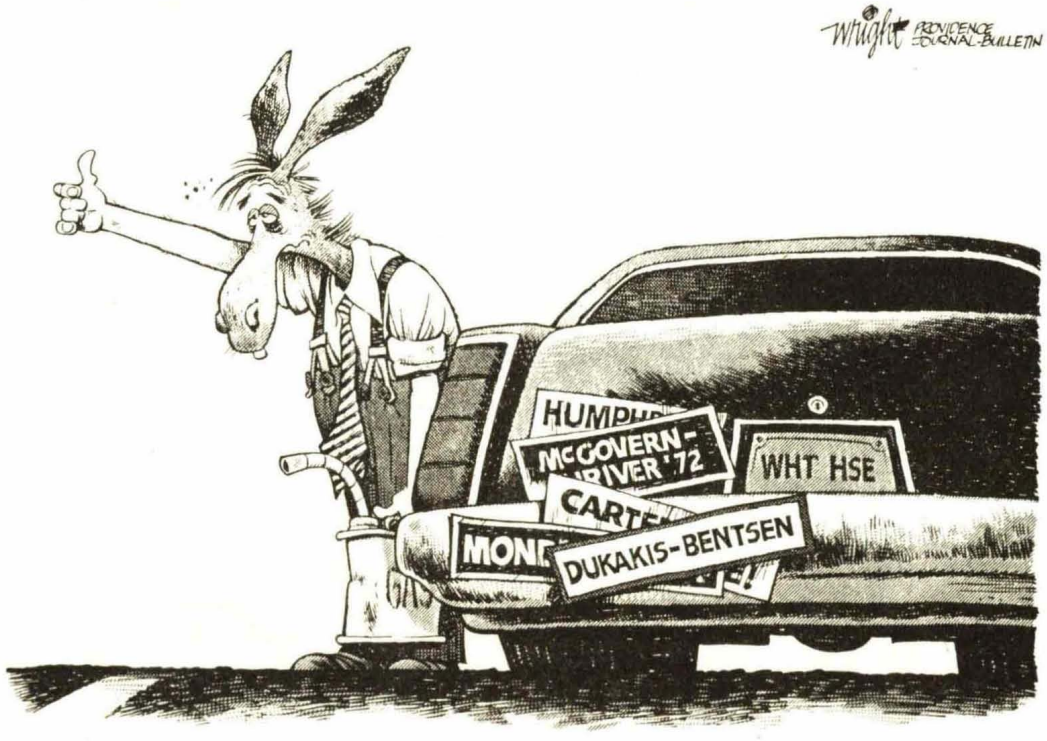
On the issue of abortion, public opinion polls demonstrate that more people are in favor of a woman's right to make her own decision on this matter. Democrats, in this instance with public opinion on their side, still manage to transform this to into a losing issue. Democrats merely parrot that a woman has an inalienable Constitutional right, but offer no substantiation. Conservatives counter with logical support for their position. Conservatives can thus mobilize their constituency, with the result that those to whom the issue is important cast ballots for the Republicans. Democrats should instead remind voters why we legalized abortion -- to curb the phenomenon of child abuse which resulted from many unwanted births, and the opportunity to prevent the bringing into this world of mentally retarded children who were bound to lead painful lives. These practical life and death realities have led most Americans to support abortion right. It is this straight talk and common-sense that will appeal to the American people.

The issues of defense and foreign policy are in the opinion of this author the most significant reason the Democrats are unable to win the White House. There must be an end to the denunciations of the sort that followed our successful intervention in Grenada and our revenge action in Libya. There must also be an end to the holier-than-thou attitude toward foreign policy. The unfortunate reality is that this is not a fair world and we as a party must cope with that reality. You cannot just proclaim that it is not morally correct for us to do something and overlook, the actions of the Soviets. This ostrich approach guarantees failure. We must return to the pre-Vietnam War liberalism exemplified by Presidents Truman, Kennedy and Johnson. President Kennedy himself stated in his Inaugural Address that "We will pay any price and bear any burden in the defense of liberty."

Examples of the problem which I referred to above is the support of many in the Democratic Party in the early 1980s for the nuclear freeze proposal as well as the reluctance on the part of many Democrats to fund and deploy many new weapons systems. Positions such as these have established a perception among many Americans that the Democratic Party is weak on defense and should not be entrusted with setting the course of our foreign policy. Thus, while Democrats hold majorities in almost all State legislatures, and perennially have a majority of the Representatives in Congress, the Senate and governorships, this prevents us from winning the White House.

Among the seven contenders for the 1988 Democratic nomination, only Tennessee Senator Albert Gore recognized that only from strength can you guarantee peace. This principle, first given to us by George Washington, is as true today as it was then. The recent INF Treaty is evidence of this. Unfortunately, many in the Democratic Party today would prefer to attribute the treaty to the internal restructuring occurring today in the Soviet Union. That, however, is just an attempt by those in the extreme left wing of the Democratic Party to avoid admitting they were previously wrong. Thus, the key to winning back the White House is to win back the trust of the American people on this issue.

Thus, with some adjustments, the Democrats can again regularly occupy the White House, and with that goes the Judiciary to boot.



*A WOMAN'S PERSPECTIVE*

# Feminist Views on Trafficking in Women

by Lisa Muggeo

The issues of prostitution and pornography have long been divisive and troublesome to feminists. There are feminists who argue that the sexual exploitation of women by profit makers and consumers of sexual services only serves to increase the objectification and denigration of women. In contrast, there is another group of feminists who argue that women must have the opportunity to determine their financial autonomy through all available means, including the options of prostitution and pornography.

According to an article on prostitution by Priscilla Alexander in *Sex Work*, prostitution has been in existence for many centuries. Alexander argues that for a long period in our history the only economic opportunities available to women were to get married, become a nun or become a prostitute. She claims that the invention of the spinning wheel in the 13th century was the first opportunity women had to become economically self-sufficient, while working as a spinster.

Prostitution exists throughout most of the world. However, it is a stigmatized profession and is illegal in most countries. Efforts which have been made to decriminalize, legalize and regulate prostitution in the United States have been stagnated by fierce opposition and have been largely unsuccessful.

The seemingly overt, yet covert existence of prostitution in our society today only serves to encourage the subordination of women by portraying them as objects whose primary function is to provide sexual gratification to those who seek it.

One organized group which is seeking to eradicate prostitution is WHISPER (Women Hurt in Systems of Prostitution Engaged in Revolt). WHISPER was founded by women who had escaped the prostitution system and wanted a forum to urge change. One of the challenges which WHISPER confronts is to refute the notion that prostitution is a valid occupational alternative available to women which they choose freely to enter into.

## Prostitutes are the Victims

WHISPER views prostitution as a crime committed by men against women. It rejects the contentions that women become wealthy as prostitutes and that women are in control and empowered as prostitutes. It is WHISPER's position that these contentions are myths, rather than realities.

WHISPER is against criminalization, legalization or decriminalization of prostitution. Instead WHISPER wants laws targeted against the men who traffic in women: the pimps and the johns, rather then the prostitutes, who they believe are the victims. Finally, WHISPER advocates that the enforced sexual abuse of prostitution must be eradicated before women can achieve equality in today's society.

In contrast to WHISPER, there is the National Task Force on Prostitution (NTFP). NTFP seeks solidarity for prostitutes and the promulgation of prostitute's rights. The main goal of NTFP is to repeal all laws which outlaw prostitution. NTFP argues that repeal of existing prostitution laws will allow prostitutes financial autonomy enable them to bargain with their employers, and remove the stigma attached with being a prostitute.

NTFP characterizes prostitution as being divided into two categories; voluntary and forced. They primarily view prostitution as a viable means of economic support, ie., sexual services for money, rather than as exploitation of women. They do believe that some prostitution is forced but merely categorize it as aggravated sexual assault.

NTFP has other significant purposes: helping prostitutes who are the victims of violence, dispelling the myth that prostitutes are rapidly spreading the AIDS virus, and providing general services and assistance to prostitutes. However, the NTFP seems to overlook the incredible amounts of coercion, denigration and sexual abuse which continue to escalate in the world of prostitution.

Prostitutes are the victims of the patriarchal society which we live in. It cannot be easily believed that prostitution provides financial autonomy to women. Given the sexual mores which have flourished over the centuries, the view that prostitution is 'just another job' will not be accepted today or any time in the immediate future.

In order to stop the trafficking in women's bodies there must be laws which protect prostitutes while punishing the those who profit in the sale of women's flesh and those who consume it. As future attorneys, perhaps some of us who will be able to influence the drafting of laws which will squash the trafficking of women. Perhaps those of us who become involved in the criminal justice system, prosecution or defense, will treat prostitutes fairly and remember that they are the victims, not the criminals. We need to stop the abuse. No woman should have to yield to the proliferation of coercion and denigration imposed by the traffickers in women's bodies.

The Starr Chamber

# CHASED TO BROOKLYN, PASS GO, COLLECT $235 MILLION

by James Sherman

Upon hearing the news that The Chase Manhattan Corporation had decided to shift some five thousand back-office workers to the Metrotech complex soon to rise in downtown Brooklyn instead of Sam Lefrak's built-to-suit million square foot office building in his Newport, New Jersey, mixed-use development, Howard Golden, the Brooklyn Borough President said "They made a wise choice. We may have lost the Brooklyn Dodgers, but we got Chase. That's not a bad trade." The fact of the matter is that it's a lousy trade and the taxpayers of New York City are going to be paying for Chase's $ 235 million booty.

This article was conceived when Chase and the city were deep in negotiations and the party line out of the Chase camp was that downtown Brooklyn was unsafe for their round-the-clock workers. But after the city and state anted up $26 million to pay for some lighting and roadwork, the deal went through and it seems the "safety" problem was solved.

The security problem Chase allegedly perceived was in fact never borne out by the reality of the crime statistics. As reported in *Crain's Business New York*, a recent U.S. Justice Department-sponsored study of the trade area around downtown Brooklyn shows the perception of crime far outpaces reality. About 70% of the respondents to the survey thought there were two to seven times as many street robberies in the area as actually took place. The crime figures, gathered by the Regional Plan Association, were based on a combination of police reports and high estimates of unreported crimes. Besides, it's hard to believe that Chase, who ran headlong into the developing country lending business for which it is now paying dearly, is any more concerned with the risk to its operations personnel than they are with their depositors' money.

The *New York Times* headline announcing the deal read, "Chase, With $235 Million Incentive Package, Picks Brooklyn." You don't have to be a first year law student to pick out the material element of the headline. At the current point in the real estate cycle, there is just no way New York can compete on a relative cost basis with the cheap office space offered by the seriously overbuilt New Jersey realty market. Thus, this saga was never about the security problem or the self-evident bottom line but rather about how much "greenmailing" the city would cave into to close the gap whenever a large company threatened to play the "Jersey" card like a sword over the city's head.

> To acquiese to greenmail is nihilistic.

Some might like to call it regional economics, others fiduciary responsibility to shareholders, still others basic business sense, but call it what you like, greenmail is still greenmail. To put it in some perspective, the $ 235 million extracted by Chase is the largest "incentive package" to date topping NBC's dance with the city by $100 million only eighteen months earlier. That's a whopping 49% annual inflation rate by my calculation. Chase is getting a $35 million discount on its electrical consumption through both city subsidies and the use of power from a state-owned nuclear power plant. The power and the discount can be applied to either their soon-to-be Metrotech installation or their Manhattan headquarters. Previously this energy subsidy was only for companies moving to an outer borough or Manhattan above 96th Street. Next, Chase will see its real estate taxes reduced by $108 million over the next twenty two years and computer equipment cut by $49 million. To round out the tab for keeping Chase in the five boroughs, it will receive tax credits of $ 500 for each employee it moves, or a total of nearly $17 million. In addition, as a praline on the side, the "arrangment" allows Chase the option to buy the land and build its own office tower. In exchange, the developer, Forest City Metrotech Associates, a partnership controlled by Cleveland's Ratner family who also built and owns the recently completed Pierrepont Plaza office building on the edge of Brooklyn Heights, agreed to relinquish rights to Chase's land in exchange for a pledge from the city that it would be able to buy a nearby parcel. In this way Forest City will be able to take advantage of the critical mass created by the Chase deal to attract further corporate relocations to the Metrotech complex.

As an interesting side note, the city has begun condemnation proceedings on the Metrotech sites and the displaced residents and businesses have banded together as the group STAND, Stand Together for Affirmative Neighborhood Development, and brought an environmental law suit charging that the density of development planned for the assemblage would "grossly violate" the Federal Clean Air Act due to the anticipated increase of private vehicles in the area.

The whole point of retaining corporations in the city is to prevent erosion of the tax base of which real estate taxes make up the single largest component. Regional economists would argue that as long as these businesses remain in the metropolitan regional economy the region stays strong and hence the parts of the region get a corresponding benefit. While it is true

a move to the New York suburbs is better than a Mobil move to Fairfax, Virginia, or a J.C. Penny move to Plano, Texas, the logic is flawed. By giving away the store without sufficient consideration, the city has eroded the tax base it wishes to preserve. The reduction in real estate taxes and sales taxes shifts an increased burden onto the welfare sector while at the same time decreasing the money available and delivery of social services to these sectors of the urban society. Yet Mayor Koch, labelled critics of the Chase deal as "nihilistic" anti-development forces who only "cared about the poor in an abstract sense." The mayor continued: "But the nihilistic, anti-development people don't care about the poor, they say it's the city's problem... Well, it is my job, and it's their job. More development means expanding the tax base to create more revenue..." Thus the Mayor is saying one thing and doing another: the incentive packages give away what the development is suppose to contribute to the city coffers. Thus we have private real estate development proceeding apace while the corresponding benefit the Mayor claims the city is to derive is being traded away up front.

The city must codify a pre-determined list of incentives it will grant to corporations currently doing business in New York to retain them. The present ad hoc, closed-door, bargaining where economic giants bring the city to its economic knees is arbitrary and damaging in the long run. Besides, you don't see the city going out of its way to give the same kind of incentives to the small businessman whose company of five to twenty-five employees accounts for the vast majority of employment in New York City.

Beyond the greenmail being extorted today, New York and New Jersey need to establish a joint economic cooperation zone so that this intra-regional conflict can be played right back into the laps of these corporations. The most dramatic solution conceivable would be for the New York and New Jersey central business districts to merge into one taxation jurisdiction so that companies could make their decisions on real business dictates instead of the tax rate differential. In this way, businesses would be unable to play off one municipality against the other leading to the current sad state of incentive package pork-barrel dealings.

Brooklyn is an attractive alternative to Manhattan for the same reason New Jersey is attractive. The cost of doing business is markedly lower than the Manhattan central business district and that's why downtown Brooklyn has already attracted the back-office operations of such Manhattan powerhouses as Morgan Stanley, Goldman Sachs & Co., and others. But Brooklyn can stand on its own now and the time is gone when the city has to lay prostrate for every corporation that threatens to leave for the countryside. Besides, it's been going on for twenty years and will go on forever. Planned, well-considered development is what makes a city grow. Yet the city survives by preserving its tax base to take care of its own. To acquiese to the greenmailing is nihilistic. Long live Brooklyn and bring back the Dodgers.

# SIXTY MINUTES WITH SUKHREET GABEL

by Michael Harding

Justinian reporter Michael Harding and Sukhreet Gabel.

The Federal Court House at Foley Square is the scene of many well-publicized trials involving notorious defendants. There is a never-ending flow of witnesses offering testimony during these trials. Whether they are subpoenaed or come voluntarily, most witnesses quietly come to offer their testimony and then just as quietly depart, fading back into oblivion. Occasionally, Foley Square is the backdrop for the trial of a celebrity defendant, celebrity being a person of favorable distinction known for past achievements and not present notoriety. It is rare that a witness will come forward and overshadow such a defendant, but that is what has happened in the trial that has become known as the Bess Mess.

Bess Meyerson, a former New York City Cultural Affairs commissioner and a former Miss America, is currently on trial along with co-defendants Andy Capasso and ex-judge Hortense Gabel. It is alleged that Ms. Meyerson, acting in her capacity as Cultural Affairs Commissioner, hired then Judge Hortense Gabel's daughter, Sukhreet. In exchange, it is alleged that Judge Gabel lowered the monthly alimony payments made by Andy Capasso (Miss Meyerson's boyfriend) to his former wife. The government's key witness was Sukhreet Gabel. Within hours of the start of her ten days on the stand, Sukhreet emerged from obscurity to become a very popular news figure. For two weeks it was impossible to watch a news telecast or pick up a paper without finding some coverage devoted to Sukhreet. For the press, Sukhreet proved more than a willing subject. To some, it was inconceivable that this woman who stood as the key prosecution witness against her mother could laugh and joke and pose for the press. Sukhreet got my curiosity up. I wanted to know who this woman was and what she perceived her role to be in this trial.

I arranged to meet Sukhreet for lunch. We met in midtown and proceeded to a local coffee shop. During our hour, she had two teas with lemon. I had a coke. Sitting there opposite her, I didn't know where to begin. There were so many rumors about her personality and so many questions about the Meyerson trial that I wanted to ask. What I realized right away was that Sukhreet was not a lunatic and she wasn't stark raving mad. In fact, it was surprising to learn that Sukhreet has a degree in nursing and had spent time working as a registered nurse. Additionally, Sukhreet earned a B.A. from New York University before attending Oxford, Johns Hopkins, and the University of Chicago where she was enrolled in a doctorate program. She left U. of C. having done all of the prescribed work, except for her dissertation which she decided was unnecessary. Sukhreet speaks five languages and is divorced from a Dutch diplomat. She was friendly, pleasant, articulate, and very talkative.

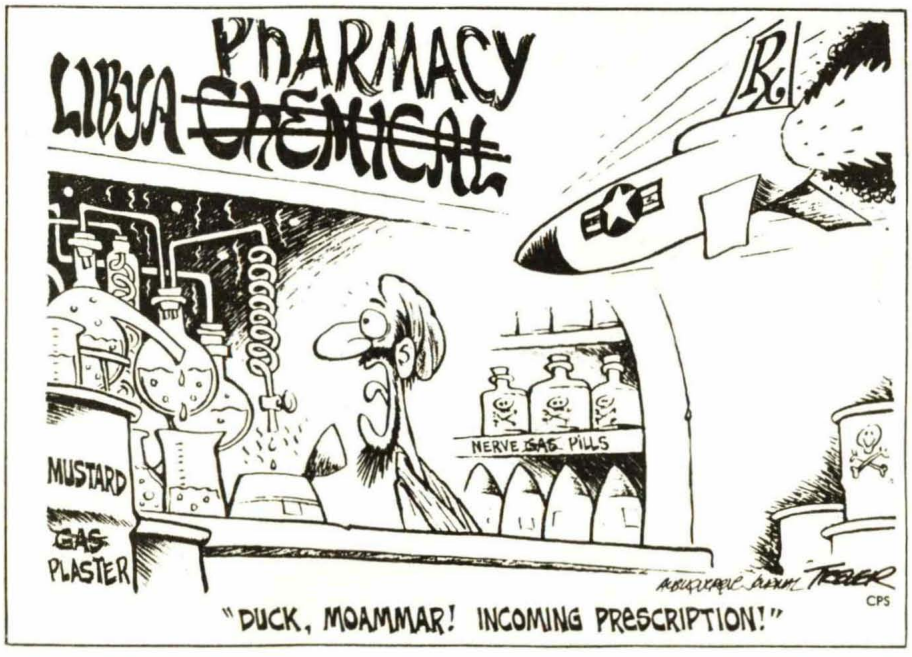
We had no sooner sat down when Sukhreet began to open up to me. She was amazed at all of the attention she had attracted. Sukhreet told me that she was just a regular person and to be besieged by the media was quite startling. She claims that she is trying to handle the press and the attention as best she could, but it was hard. They (the media) were constantly misquoting her or taking her statements out of context. I asked Sukhreet, "Why talk to them (the media) at all, if they continue to misquote you?" Sukhreet believes that she has to be understanding of the press. "They are just doing their jobs." However, she hopes that one day the stories will come out right. One day she hopes that people will come to appreciate the anguish that she is enduring. Until then she can just try to get through "as graciously as I can." According to Sukhreet, that smiling, cheerful face seen on the evening news is hiding a frightened and tormented person inside.

Our conversation turned to the Bess Mess and Sukhreet's role as a witness. Sukhreet's first hint of any possible impropriety came when the Capasso

housekeeper inadvertently mentioned that Judge Gabel was presiding over Capasso's divorce. It was a matter of time before Sukhreet found herself testifying before three investigative committees. Those committees were the Tyler Commission, investigating Meyerson's duties as a commissioner; the Committee on Judicial Conduct, investigating allegations of judicial misconduct on the part of Judge Gabel; and the Federal Grand Jury, investigating allegations of criminal misconduct.

From her first experiences as a witness, Sukhreet did not think that she was being taken as seriously as she should have been. Her own attorney had referred to her as being "crazy." Sukhreet attributes this attitude to her desire to be an efficient witness. Sukhreet feels morally and legally obligated to testify to the best of her knowledge. Sukhreet stated that twenty-four hours after giving grand jury testimony she began to recall certain events which she thought were pertinent to the investigation. Led by her fears that this might have constituted perjury and and driven by her desire to be an accurate witness, Sukhreet contacted her attorney. Her attorney advised her not to say anything. It was about this time that he began to refer to her as being crazy. Sukhreet felt she had an obligation to disregard her soon-to-be ex-attorney's advice.

Sukhreet agreed that she went beyond the scope of the normal witness. But this was in response to her feelings that some of those individuals involved in these investigations were trying to prevent her from telling her side of the story. Sukhreet learned that an attorney's "best witness is a baggage handler; he says yes, he says no, he says I don't remember." However, this situation is too complex for simple yes, no answers, and Sukhreet admits to her willingness to circumvent these answers. Sukhreet made reference to a side bar during which one of the defense attorneys asked the Judge to do something about her elaborate responses to his questions. The Judge referred to Sukhreet as a "tragedy" on the stand. The prosecutor told the Judge that the government




couldn't control her and never knew how she would answer a question.

Our conversation began to stray. Sukhreet just had so much to say and I could see that there wasn't much she was going to hold back. At times I thought I was going to hear things I didn't want to know. At one point Sukhreet began to talk about Andy Capasso's business and his dealings with various trade unions. When I realized where we were headed I prepared to change the topic when a diner in the coffee shop interrupted us. The diner told Sukhreet she was wonderful and wished her well.

Returning to her role as a witness, I asked Sukhreet how difficult was it to testify in a case where her mother was a defendant? "It's very hard!" she responded. I asked Sukhreet, "Are you a witness for the prosecution?" Sukhreet said, "No, I am a fact witness, a witness for the truth." Sukhreet sees herself as being neutral. To an extent it appears that she is being used by the goverrment in that she is a willing and convenient witness. Sukhreet felt that direct examination was almost as grueling as cross-examination. No one was on her side. Sukhreet believes in the American jury system and she felt it was her duty to provide the facts as she knew them.

I asked Sukhreet, "What if your mother is convicted?" Sukhreet took a deep breath and said that she doesn't believe that her mother will be convicted. I pressed my question. Sukhreet answered in this way. Her mother has been a lawyer and a judge. In these positions her mother has strengthened her belief in the judicial system. "The system works best when all of the cards are on the table." Sukhreet feels she has helped to place all of the cards on the table and this will be an asset to her mother's case. Sukhreet readily admits she never saw any money change hands, nor does she have first hand knowledge of any secret deals between her mother and anyone else. Personally, Sukhreet does not believe that her mother ever compromised her judicial authority and is 100% innocent. My mother did not "throw the case."

Sukhreet considers herself a responsible citizen and a good daughter.

I asked Sukhreet how was her relationship with her parents now. Sukhreet replied that she has a "great" relationship with her mother. Her mother understands. It is her mother's belief that when an issue of law exists: litigate. The system works for all. It would be a contradiction in terms for her mother to reject this belief. As for her father, he is trying to understand. As we finished up our talk, Dr. Gabel, Sukhreet's father, joined us. He and Sukhreet were going to accompany Judge Gabel to a doctors appointment.

Sukhreet wants and believes this trial will end with her mother being exonerated. As for Bess and Andy, Sukhreet said she has strong feelings on this matter, but she didn't think it was appropriate to reveal them at this time. However, after this is all over, if Bess wants to have lunch, it's okay with Sukhreet. Why? Because it was never anything personal, it was just Sukhreet performing her moral and legal obligation.

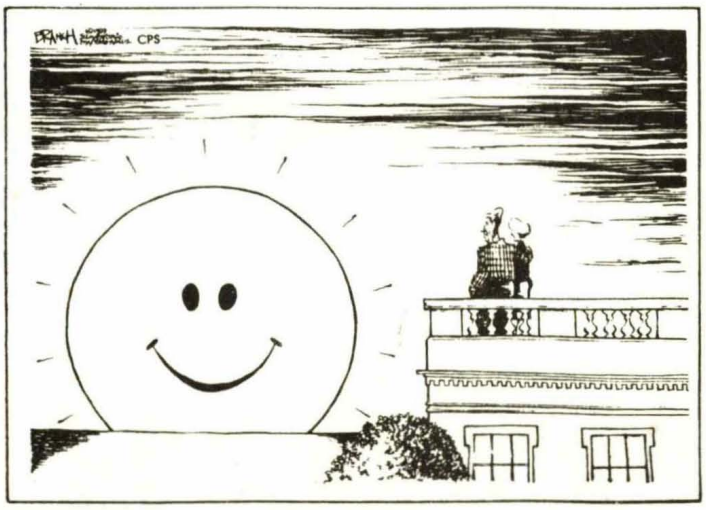
# FOOTNOTE RECORD BROKEN

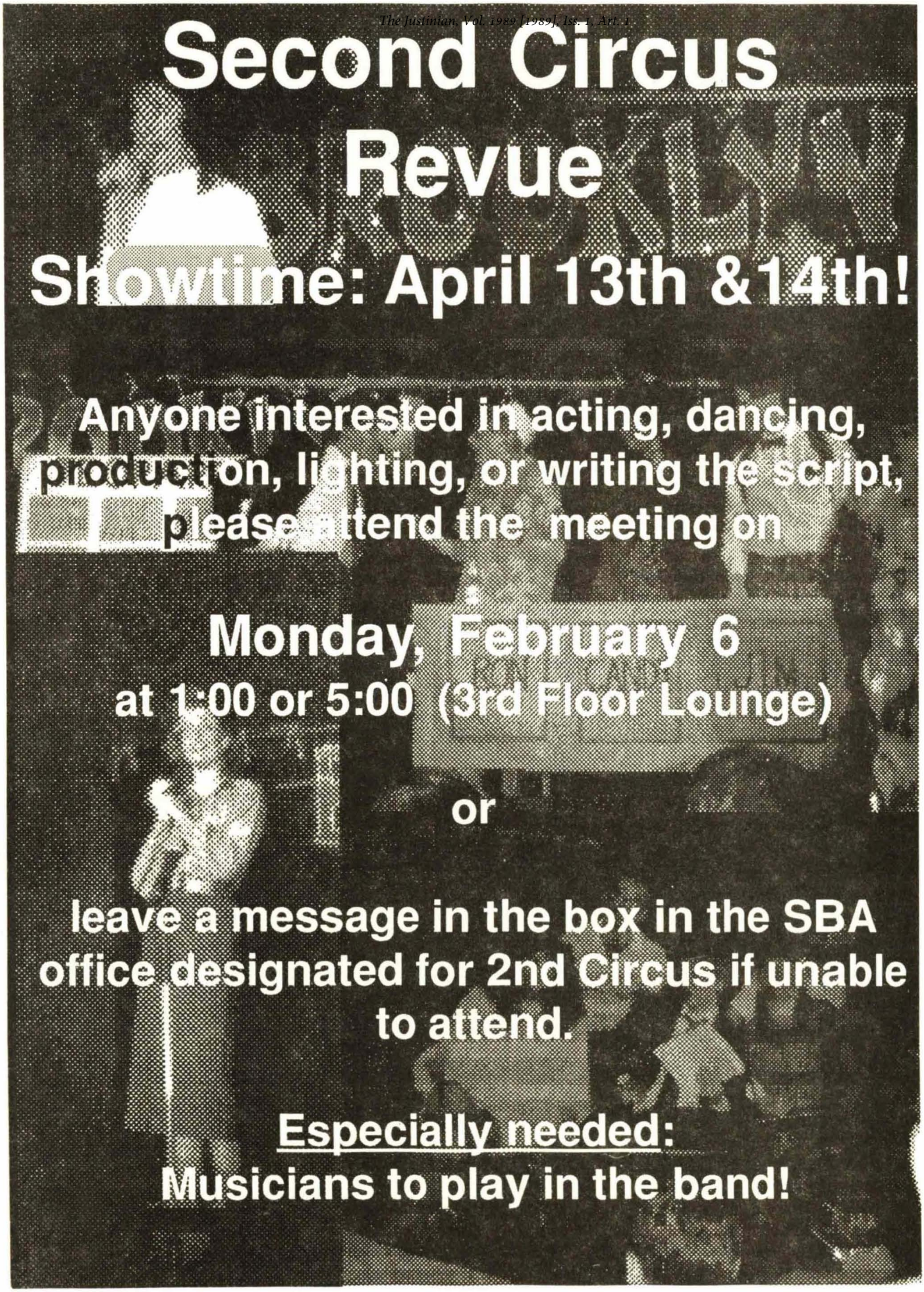
Even legal records are not inviolate. In the latest frenzy of legal minutiae, an unabashed partner at Shea & Gould has smashed the standing record for the number of footnotes contained in a law review article.

As reported in The Wall Street Journal, Arnold Jacobs found it necessary to include 4,824 footnotes in his article "An Analysis of Section 16 of the Securities and Exchange Act of 1934," a 495 page article in the New York Law Review. This effort has decimated a paltry 1,611 footnotes credited to the Dean of University of California at Berkeley's Boalt Law School in his article on the Supreme Court.

All aspiring law review members take note; the rest, as you were.






Second Circus
Revue
Showtime: April 13th &14th!
Anyone interested in acting, dancing, production, lighting, or writing the script, please attend the meeting on
Monday, February 6
at 1:00 or 5:00 (3rd Floor Lounge)
or
leave a message in the box in the SBA office designated for 2nd Circus if unable to attend.
Especially needed:
Musicians to play in the band!

# ARTS AND ENTERTAINMENT

## 1969, Sanitized for Your Protection

by Barry Stelboum

*1969* is the new film from writer/director Ernest (*On Golden Pond*) Thompson. It takes place in a small rural town somewhere in Maryland in the year--you guessed it--1969. It was the time of the Vietnam War, free sexual expression, political turbulence, space exploration, experimentation with hallucinogenic drugs and wonderful rebellious music.

Unfortunately, the only good thing from that period that we get is a dose of great music (Blind Faith, Cream, Hendrix, and CSNY to name a few). As far as the rest of the elements that comprise the era, Thompson presents them all in a flowing, congruous manner so that they seem inextricably intertwined with one another in a harmonious way--which, as we all know, is far from the way it was. The film is presented as almost a fantasy of the period, nothing seems completely real and yet you get the feeling that everyone in the film knew what was going to happen next. The unfortunate fact of the matter is that no one, from the leaders of the country to the hippies protesting the war, knew what was coming next.

All the events and all the characters in this film are so sanitized and contrived that there is no feeling for anything or anyone in this film. The story focuses on Scott (Kiefer Sutherland) and Ralph (Robert Downey Jr.), two boyhood best friends who go off to college together to, among other reasons, avoid the draft. Scott plays a virtuous yet naive character who really digs the freedom and poetry of the times but at the same time is repulsed and angered by the drug exploits of his more free-spirited alter-ego Ralph. I guess Thompson thought it best to make the countercultural protagonist a model for the "Just Say No!" campaign so that the conservative element of society could relate to the character and the film. Wrong.

On the other hand, there is Ralph who is in college to "have fun", he talks about sex all the time, he does drugs and even has a bad trip. But when the two of them hit the road of experience the world in their psychadelic VW van, all the frightened Ralph wants to do is go home.

Perhaps more aggravating than these contradictions is that Scott and Ralph don't really portray characters. They come across as two good actors reading a bad script that attempts to employ the two as symbols--as "Everyman"-types of the period. It would have been nice if the writer/director had been able to pull it off, but there was just so much going on that it would have been virtually impossible to convey all the emotions and realities of the era through the two main characters.

Anyway, so the home sick Ralph has his way and the two return home. Guess what, Scott's brother, who bravely followed in his father's footstep, went to the 'Nam and got himself killed, excuse me, I mean he was "missing in action." I guess it would hurt too much to lose all hope at this early point in the film. Besides, the funeral scene would be better placed later in the film where it could be "used" to make some powerful statement against the war. Unfortunately, it fails to even do that. You know what else? Ralphie had a little too much fun in college and flunked out. So the boys break into the local draft office and steal their files. But Ralphie gets caught and goes to jail. Scott falls in love with Beth, heads for Canada, Beth talks Scott out of running away, the two return just in time for Scott's brother's funeral where Scott makes a big trivial speech about how Vietnam is everybody's war and that everyone should protest it. He begins by getting his buddy out of jail. The two hug, everyone hugs, all is well. Hey, but wait a minute, Ralphie still has to go to the 'Nam. Oh, forget it, that's depressing.

*1969* is an obvious big-budget production that views the events of the sixties with a great deal of Hollywood hindsight. The result is that we get high-gloss, fanciful and uplifting images of a 1960s that had a great deal of continuity--of a 1960s that simply never existed.

## COCOON II, Deja Vu

Have you ever gone into a movie theater, eased back in a sticky seat, munched on greasy buttered popcorn and smiled at the expectation that you're about to be taken away by way of flickering celluloid images to a place that you're never been before? If the answer to the above question was "yes", then you were definitely not in the movie theater with me as I watched an all too predictable sequel to a wonderfully original film. *COCOON-THE RETURN* is simply a dull rehashing of the same plot, jokes, sight gags, emotions and special effects that were fresh and original in the first film.

Admittedly, there are some changes this time around. First of all, it is four years later. Second, Ron Howard, who has a knack for creating emotional heart-felt films, did not return to direct this time. Third, whereas the first *Cocoon* was fresh, witty, charming, and touching, *The Return* is merely an exploitation of the success of the first without any of the sensitive qualities that made you alternately want to laugh and cry.

As in the first movie, but more blatantly here, the plot in *The Return* is used merely as a skeletal device for the characters to show off their natural charm. If you need to know, the plot, whatever there is of one, is best summed

up as follows: The Antareans come back to get the cocoons they left behind and the geriatric set hitch a ride. Again, there are problems with the cocoons so they all have to stick around on good old unhealthy earth. Some get sick, some miss the old place, one dies and one gets pregnant. That's about it.

Granted, no one ever said *E.T.* had a particularly revolutionary plot. Nor did the first *Cocoon*. But what made both of those movies successful was the sense of warmth that the characters conveyed. It was impossible not to smile while watching E.T. get drunk, and seeing the old men doing flips off the diving board. And at the same time, you couldn't help but weep despite yourself when E.T. got really ill or when Bernie's wife died.

Unfortunately, the spectrum of emotions remain untapped, except for a few exceptions, in this film. The insightful nuances of the first film that helped remind us that the elderly are still valuable and are still "people" and not just some burden that has to be dealt with are all gone here. The lack of these insights have made the characters that were so likeable in the first film, mere cartoon reproductions of themselves in the second. For example, imagine the three old men (Hume Cronyn, Don Ameche, and Wilford Brimley) playing "keep-away" on the beach with a half-dozen bikini-clad teenagers.

Perhaps the fault lies not within the film but in the reviewer. I realize that this movie was intended to be light Hollywood fluff for the holiday season and that's just what it is. And there were some inspired scenes which were genuinely touching, but they were few and far between. Unfortunately, what transpired in between these scenes was inane quasi-scientific dialogue like "It's a life form" upon discovering what was contained within the cocoon, and a ridiculous four-on-four basketball game between the rejuvenated senior citizens and some very large jocks. I don't want to tell you who won because it would spoil the surprise.

Ultimately, *COCOON-THE RETURN* is the cinematic equivalent of a butterfly turning back into a caterpillar.

# Two Big Winners

by Samuel Abraham '56

The Off-Broadway theaters have recently had two fine additions to their productions. *The Big Winner*, at the Folksbiene Playhouse in Manhattan (123 East 55 Street) and *Jolie, You Ain't Heard Nothin Yet* at the Harry Warren Theater in Brooklyn (2445 Bath Avenue).

## The Big Winner

*The Big Winner* is a musical comedy in Yiddish (with simultaneous English translations by headphones) in the genre of the immortal Sholem Aleichem (Rabinowitz). The scene is impoverished, rural pre-war Russia. The story revolves around country folks who have deep feelings for the rituals of Judaism in an environment of xenophobic nationalism and alienation. A pious tailor is possessed of a comely daughter who is sought by a myriad of suitors, including two of the tailor's lowly but charming apprentices. The young lady is hesitant to consort with the wealthy landowners and merchants of the community who cast eyes in her direction.

The tailor enters the realm of the affluent by winning a local lottery after nineteen years of hoping. His life is radically transformed as he and his family are catapulted into the sphere of social greatness and communal prestige. The tailor is beseiged by matchmakers, elevated patrons of nobility and charities. However, it turns out that the bank misplaced a digit in the lottery and the tailor is thrown back into a life of poverty, always worrying about paying the landlord's rent. The play remains hilarious, however, and appropriately ends on a happy note. The tailor's beautiful daughter ultimately marries one of the apprentices, choosing integrity, love and devotion over the accumulation of wealth.

Sholem Aleichem's comedy points out that wealth does not bring inner contentment, happiness and fullfillment. This is a old adage which all of us should reflect upon. As Justice Murphy of the Appellate Division of the First Department in his recent New York Law Journal article wrote, the lure of money of young lawyers is not very healthy for all concerned.

## Jolie, You Ain't Heard Nothin Yet

*Jolie, You Ain't Heard Nothin Yet* is a one-man revue performed by John Michael Sannuto, a sociologist, English instructor and terspichorean artist, associated with the Ryan Repertory Co. This magnificent performer gives us a true picture of the extraordinary breadth and vision of the late Al Jolson. Sannuto provides us with what it might have been to experience a Jolson performance. The program consisted of Jolsonian music from the early 1900s to the 1940s, spanning the entire career of this unique American phenomenon. Jolson composed and sang a variety of songs in a variety of styles throughout his stage, concert and radio days. Sannuto, with his charismatic good looks and bellowing vocal chords, captures a good part of Jolson's essence.

The Ryan Repertory Company is a wonderful addition to the cultural and artistic aachievments of Brooklyn. Credit should be given to Barbra Parisi for her artistic directing, Jonathan Rosenblum for his recent Ben Franklin presentation for the company, and Michelle Jacobs for her managerial abilities. A play of the life of Emily Dickenson, entitled the *Belle of Amhearst*, is next on the Company's agenda.

# INTER ALIA

by Michael Harding

**Bells.** The one thing I had to look forward to during each class was the bell. Unfortunately, the bell is now a thing of the past. I hope it returns next semester because, whether or not your class ended on the bell, it kept the professor conscious of the time. Since the demise of the bell the most overheard quote by professors is, "We ran 5 to 10 minutes over, I'll make it up to you next time."

**Library Copiers.** If we could put a man on the moon and Quayle a heart beat away from the presidency, is it asking too much to have more than one copy machine working at any given time? In all fairness to the library staff, during the day the copy machines usually work fine. At 5:00 p.m. the copiers take a dinner break. If you ever tried to make a copy after 5:00 p.m., this is what you could expect.

The first stop would be the main floor. Here you find one machine displaying the "add toner" message and two students waiting on line at the coin operated machine. Since you have your copy card you don't want the coin machine anyway so you shoot up to the second floor. What a surprise, all three machines are unable to copy. So now you run down to the basement. The two students on line for the only working machine are the same two who were running down the stairs while you were running up to the second floor. After waiting ten minutes you learn that the copier only has one size paper and it's not the size you want. For some unknown reason, segments of the Twilight Zone abound in your mind. Suddenly you turn around expecting to see Rod Serling behind you, but you remember this is the BLS Library. Now you debate running back to the main floor or holding your ground and using the wrong size paper. You opt to hold your ground because you have your copy card and you'll get more copies in less time. But don't worry, the copier runs out of paper before you can. Now you find yourself standing on line at the main floor copier with your obsolete copy card. You need 25 copies and you realize you only have 30 cents and a ten dollar bill. Don't worry, be happy!!!

**Phones.** The worst judicial decision of the decade was to break up AT&T. The worst administrative decision made at BLS was to cash in on this catastrophic decision by installing brand "X" phones throughout the school. The name of the company, listed on each phone, is Smart Phones. This is analogous to calling a men's room the Fresh Scent Rose Room. The victims are the students. Faculty and staff have access to school lines and privacy. As mentioned in a Letter to Editor (Oct. 1988), no phone booths mean no privacy. Ever try to call information? It costs fifty cents a call. After Louis Goldberg complained, the school tried to alleviate that problem by supplying Brooklyn directories. Not bad if you can still find one, but what if you want to call someone in another borough? As for the cost of calls, Smart Phones charges more than New York Telephone. Some calls into Manhattan are forty cents with the new phones as opposed to twenty-five cents with N.Y. Telephone. You'll find the same disparity in price with long distance calls. There are no phone numbers listed on the phone, so forget about someone calling you back.

If you ever lose your money in one of these phones, don't even waste your time trying to get a refund. I called the listed repair number (the only number available) and requested a refund. The woman on the other end of the line wanted the phone number. I had to remind her that none of these phones have numbers. It turns out that not only has she never seen one of these phones, she is an employee of an independent answering service that takes messages for Smart Phones. As for my refund, she stated that she had never dealt with such a problem and the best she could do would be to pass my problem, along with my name and address, to the company. I hope the school makes enough money on this deal to get the library copiers working. Or maybe we'll get a rebate on our tuition.

**Exams.** Again exams come after the holidays. This translates into a holiday season marred by nervous tension, late night studying and limited social activities. Sitting for a Corporations final two days after welcoming in the new year is not my idea of a happy holiday season. Has the administration considered the advantages of starting the school year two weeks earlier? Exams would be over before the holidays. Intercession would be combined with the holiday break, allowing students to enjoy the holidays, relax after exams and mentally prepare for the new semester. The second semester would start and end earlier. This would allow students to take a break before starting summer jobs, an advantage shared by most law students. But perhaps most importantly, it would relieve BLS students of the burden of studying for the bar exam while studying for final exams.

**Election.** Well, it's over. Or maybe it's just beginning, depending upon how you look at it. George Bush and Dan Quayle, what a dream ticket that is. Bush has insured his safety and security over the next four years. Americans may not have agreed on their choice of president, but I'm sure we all agree Bush must remain healthy. As for Quayle, everything happened so fast that he wasn't able to spend much time with his wife until after the election. They spent a few quiet days together and Dan had promised his wife they would be the best since their honeymoon. After their brief vacation, Dan asked his wife if she had enioyed herself. Her reply, "Let's put it this way Dan, you're no Jack Kennedy!"

Poor guy.

**Atlantic City.** If you are interested in a Saturday evening bus trip to Atlantic City in late January or early February, let me know.