

The Justinian

Volume 1989

Issue 2 *April*

Article 1

1989

The Justinian

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Recommended Citation

(1989) "The Justinian," *The Justinian*: Vol. 1989 : Iss. 2 , Article 1.

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April, 1989 Vol. LVIII, No. 3

THE JUSTINIAN

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

Protest Against Military Discrimination page 21



Also in this issue:

Professor Hellerstein
on Capital Punishment
in New York

Asbestos in BLS

Grade Point Anarchy

***Good
Luck on
Finals!***

Justinian

Volume XXXI - No. 1

TUESDAY, OCTOBER 13, 1970

Student-Faculty Senate Proposed To Decide Issues

By M. EDWARD CHALE

The Student Bar Association has voted to create a Student-Faculty Senate.

Resolution passed at Sept. 23 1970 meeting

Whereas there is a feeling of discontent among Students and Faculty, and

Whereas there are many issues confronting the Students and Faculty, and

Whereas there is no forum for these issues to be discussed by the concerned parties, and

Whereas the lack of this forum deprives the Students of due process and adequate representation

Therefore, be it resolved that a Student-Faculty Senate be created consisting of members of the Student Body and the Faculty to resolve problems between the parties.

Said Student-Faculty Senate will have equal voting representation which will be binding on Students, Faculty and Administration.

Overwhelmingly passed with only two negative votes and two abstentions.

As of Oct. 7th S.B.A. meeting the resolution has not yet been presented to the administration and the Faculty. S.B.A. President, Richard Schneyer, explained that in an informal discussion with Prof. Leitner, Mr. Schneyer had learned that there is presently existing a Faculty committee on student relations (of which Prof. Lietner is a member and Prof. Glasser is chairman). Mr. Schneyer believed that the delegates at the Sept. 23 meeting were unaware that the faculty committee provided a channel for the

communication and mediation of student grievances. Mr. Schneyer added, however, that the committee possesses no actual authority to make final decisions. After considerable discussion the original resolution was re-affirmed.

Student Referendum Rejected

Considerable discussion turned about the idea of conducting a school-wide student referendum. So as to avoid the administration's usual argument that such resolutions do not represent the will of the majority but only a small minority. The referendum was defeated with arguments to

SBA Calls For Modifications In Examinations and Grading

The Student Bar Association has voted to change the examination and grading system at the law school.

The proposed modification would make all finals available to students regardless of grade, eliminate the use of names on exam papers, and change the class ranking system to indicate the attrition rate at the school.

Under the first motion, students would be given the right to see their examination papers despite the grade received. Under the present school policy the student is able to see the examination only if the grade is a D or an F. Art Block, third year representative, noted that the true purpose of exams is to enable the student to learn from his mis-

takes. The motion was carried unanimously.

Exams To Be Identified By Number

Under the second motion, the prior system of identifying examination papers by name has been replaced by a system providing for identification by number. The motion was put forth by third year representative Jerry Labush who remarked that BLS is the only law school which employs identification by name. In the ensuing debate, students urged that the elimination of names would prevent any favoritism or retribution. It was also urged that if students did not feel that they were being judged by a particular instructor, and that that instructor did not feel he was judging the

student, it would be significantly easier to make friendships. In arguing against the motion, many students stated that while they supported the motion, they believed that a committee should be established to present all the grievances at one time instead of working in a piecemeal fashion.

The motion is as follows:

"In the interest of professionalism and impartiality, there shall be a numerical identification on all tests with student's names nowhere appearing on test booklets and student's names matched to the numerical identification after marking.

20 for 15 against

A third motion was passed, the purpose of which is to make known to prospective employers the high attrition rate at B.L.S. The following is the text:

"Be it resolved that the Student Bar Association desires that the present system of class ranking by rank/present class enrollment/original Freshman class enrollment, so that prospective employers be aware of the marked attrition rate."

The Justinian

A Forum for the Brooklyn Law School Community

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The Justinian, the community forum of Brooklyn Law School, is published three times a semester. Advertising inquiries may be directed to the Business Manager at 718-780-7986. *The Justinian* is funded by the Brooklyn Law School Student Bar Association and through advertising revenues.

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250 Joralemon Street * Room 305
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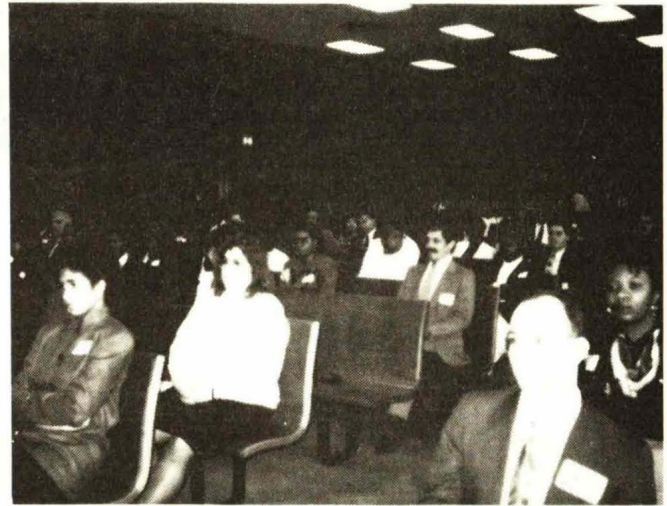
Editor's Corner

Sending Mixed Signals on Minority Recruitment

The eleventh annual conference on minority recruitment, held earlier this semester, was a verifiable success by most standards. Over 100 bright-eyed, prospective law students from the metropolitan area were greeted by BLS deans, faculty and helpful students, eager to show the school at its very best. The main building — or at least the third floor — was all spiffed up and polished, the way it usually is on the first day of classes. Hapless posters were torn down. Used-up newspapers were thrown away. Even the discarded legion of coffeecups were, well, discarded, once and for all.

All was well as long as none of the BLS hopeful ventured through the rest room doors, only a few feet from the buffet luncheon in the student lounge. For therein lies a new law school. Where sexism and racism and hate still rule. Where civil rights and diversity and respect are meaningless phrases better left for casebooks and legal arguments.

What kind of message can we be sending to the hundreds



of innocent students, not to mention conference participants, who are forced to bear witness to the wretched products of some mental midgets?

Of course we are speaking of the graffiti. Sure there are some winners. "Make love not law review" still nets chuckles. But for every one like that there must be a dozen that would give the NAACP, Lambda or B'Nai B'rith angina.

Certainly, more frequent paint jobs are in order. But spiffing and polishing can hide just so much. It's what lurks beneath the surface that has us so scared.

Correcting an Imbalance of Power: Toward a New Policy on Sexual Harassment

Student-teacher relationships are founded on the existence of an imbalance of power. In particular, the first year of law school can leave many students feeling a loss of self esteem and questioning their own abilities. Grades are emphasized as the stepping stone to a good job or as the mark of a potentially successful career. With this looming large in the minds of students and certainly well known to professors, law school has the potential in many ways to be the ideal situation for an instructor to exploit the student-teacher relationship.

Rumors abound throughout the school about certain instructors who are described as acting "inappropriately" towards students. Regardless of the truth to these rumours it demonstrates that the subject is one much on the minds of students. Sexual harassment may seem like a strong word that conjures up images of physical assault and overt propositions but it can also come in subtle yet frightening forms. A teacher offers to get a student a job if she will see him socially. Or an instructor insists that a student come to his office and tell him about her personal and sexual life on the pretext of "helping" the student sort out her problems. What does a frightened law student do?

Many law schools have adopted a sexual harassment policy so that students have a means of bringing these kind of incidents to the attention of the school's administration. Yet, a policy alone is not enough without an accompanying grievance

procedure that assures a students that when reported, these incidents will be routinely heard in a manner that is known to both student and teacher, rather than leaving it to the discretion of the current administrator.

Although the school administration would be quick to defend itself against charges of insensitivity toward students, to discuss a sexual harassment policy without a student grievance procedure would guarantee such a policy little chance of success. In an environment where only last year the sexual assault of a woman student was not revealed to the student body, how can students have any faith that this is an administration committed to its own students?

With every semester that passes more women in this school are subject to fear and intimidation by certain professors who continue to secretly harass students. Yet in the very school that indoctrinates us with notions of rights, procedures and remedies, we as students are provided with none. It's time to see an anti-sexual harassment policy and a grievance procedure developed that will allow students to come forward without fear of retribution and in the knowledge that they will be heard if they have the courage to voice their experiences.

We look forward to hearing from members of the BLS community on their own ideas for implementing an effective policy for Brooklyn Law School.

CORRESPONDENCE

Howard Comes Eyeball to Eyeball with Gay Issue:

To the Editors:

For the first time I feel I owe you an apology. The following is a newly corrected version of the expanded version of the section of my column dealing with the discrimination policy. This is hopefully the last revision.

Leaving Justinian bashing for Trustee bashing: Brooklyn Law School has a policy barring recruiting by employers who discriminate on the basis of race, religion, gender, and sexual orientation. The Board of Trustees has granted one employer an exemption to this rule, but they haven't yet come up with a plausible rationale to justify their decision. Why not? Maybe they're afraid that their reasoning will look as ridiculous under scrutiny as the Military's excuse for barring Gays and Lesbians from service.

The Pentagon's line is that G's and L's are susceptible to blackmail because of their sexual activities; funny thought at a Department nearly headed by a man whose greatest achievement is proving that the abuse of alcohol does not necessarily cause impotence in older men; but also a ridiculous thought since an admitted homosexual can't be blackmailed by the threat of exposure. Of course, it's possible that the real reason is that the Joint Chiefs believe that Gay males are too effeminate to kill in cold blood (apparently nobody at the Pentagon reads the New York Post, which is something to be thankful for; nor have they seen *Lawrence of Arabia*, which is their loss). If the Joint Chiefs are really stupid enough to believe those sorts of stereotypes, they should be welcoming Lesbians with open arms.

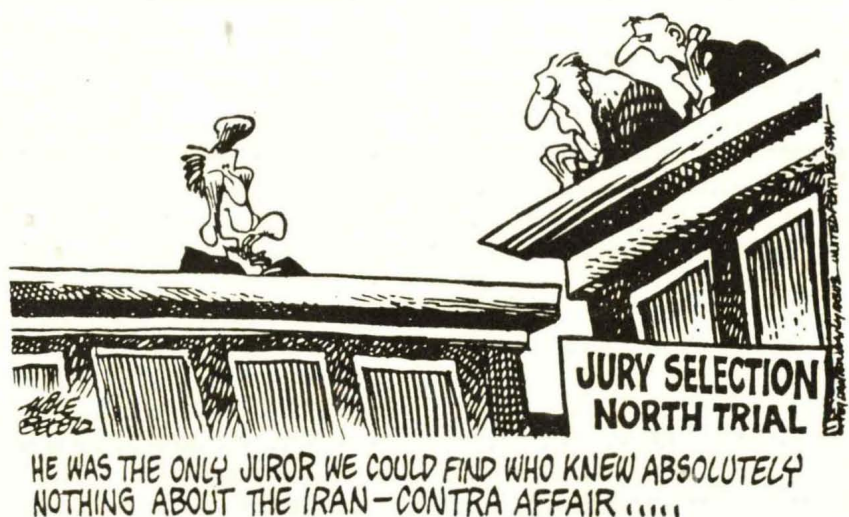
Maybe the Board is rightly appalled by the plausible thought that some of those calling for an end to military recruitment are knee-jerk leftists looking for any excuse they can find to keep the

military off campuses. I too find this thought distasteful, but in this case the knee-jerk leftists are right. It's very nice to have an anti-discrimination policy and feel noble about it; but easy cases (recruitment of in-house counsel for the Hitler Youth) rarely come along to test it. The real test of whether an anti-discrimination policy really means what it says is when it comes eyeball to eyeball with a blatant and flagrant violation by an institution of some formidability. It's easy to turn away an employer with jobs nobody wants, but a real anti-discrimination policy is a statement of willingness to sacrifice lucrative opportunities for the reward of clean hands. Did BLS really mean what it said? Our policy went eyeball to eyeball. The Board blinked. Dirty hands are apparently better than empty ones.

The Military's position is all the more repugnant because it is poor public policy, and they know it themselves. In wartime such a rule would serve as a better draft dodge than the Indiana National Guard, so it is conveniently ignored. When the wars are over heroic veterans who've found national service so much to their liking to make a career of it have found themselves dumped in time to deny them pensions, even if they've saved the life of our President. In peacetime we apparently can afford our prejudices.

I do not condemn the military, only its policy; national service is a noble calling, and some students may find the military's programs allow them educational opportunities they otherwise couldn't afford. Some say these opportunities are reason enough to allow recruitment to continue, but if the military offered these opportunities only to Christians, would they still feel the same way? Is this analogy valid? After all isn't homosexuality just a behavior? Not according to the Pentagon; like true anti-semites, they aren't particularly concerned about whether the objects of their prejudice are practicing or not. All homosexuals are banned from service be they prurient, chaste, or even have an occasional urge for a night with the other kind. Since all that makes a chaste homosexual gay are thoughts and fantasies, the policy has an almost Orwellian effect: to punish thought crime. What it doesn't have is a rational basis. Likewise the exception, no one I know would publicly admit they'd permit an exception if race, religion, or gender were involved; damned the opportunities. To permit an exception one must believe that when push comes to shove prejudice against gays is permissible. Is this what the Board of Trustees believes??

Howard Graubard



BLS Trustees are Hypocritical

To the editor:

BLS requires all employers who wish to interview on campus to state that they do not discriminate on the basis of race, sex, or sexual orientation. However, Brooklyn Law exempts the military, an organization that refuses to hire lesbians and gays, from this requirement. The military exemption turns our law school's non-discrimination policy into a worthless piece of paper.

In June 1986, after the establishment of an ad hoc committee and the preparation of a faculty report, the faculty voted to add sexual orientation to Brooklyn Law's non-discrimination clause. The faculty also voted to bar any employer from campus that refused to comply with the Law School's equal opportunity policies. However, the Board of Trustees overrode the faculty and exempted the military from the new policy. The action of the Board of Trustees has gutted Brooklyn Law's policy of protecting the rights of lesbians and gays. A policy meant to protect lesbians and gays is useless if the

very group that discriminates against lesbians and gays is exempted from it.

Dean Trager has claimed that barring the military from campus would deny straight students jobs. This is false. Many law schools, including N.Y.U., bar the military from recruiting on campus because of its homophobic policies. N.Y.U. students who want to interview with the military simply do so off campus. Barring the military from this campus would not prevent Brooklyn Law students from interviewing with and joining the military, or place Brooklyn students at a disadvantage in relation to other law students in the area.

The Dean has suggested that he would propose revoking the exception if an "overwhelming majority" of students agreed in a referendum to the change.

Why does the Dean insist upon an "overwhelming majority" before extending to gays and lesbians the same protections that cover every other group in the law school community? I doubt that the Dean and the Board of Trustees

would need an "overwhelming majority" to bar an employer who refused to hire Jews and women.

The Board of Trustees has established, and the Dean supports, a bigoted double standard. Some forms of bigotry are unacceptable. If an employer discriminates on the basis of race, sex, or religion the Law School refuses to allow them to use the Law School facilities. If, however, the employer discriminates on the basis of sexual orientation the law school flings open its doors.

The Board of Trustees must end this hypocritical double standard. The Board of Trustees must breathe life back into this school's non-discrimination policy and bar the military from recruiting on campus until it agrees to state like every other employer, that it does not discriminate on the basis of sexual orientation.

Luke Martland

Co-chair, Gay and Lesbian Law Students

Disappointed with BLS Discrimination Policy

To the editor:

As a member of the BLS community, I am disappointed by the Board of Trustees' decision to override the faculty and grant a waiver of the non-discrimination policy to the U.S. military. The fact that discrimination is practiced by the government (Dean Trager's defense of his support of the Trustees' decision) is no excuse for condoning it by granting waivers of BLS policy. Former judges asserting the same defense were tried and convicted in postwar Nuremberg.

As a law student, I am dumbfounded by Dean Trager's promise that he would consider asking the Trustees to change their position if students were to support by an overwhelming majority (75-80%) a referendum demanding that all employers be held to the non-discrimination policy. Perhaps I have

received a very poor education in constitutional law at BLS, but I am under the impression that mob rule is not the standard of equal protection. Perhaps again, I have been poorly taught and am on the verge of graduating under the misapprehension that a referendum is antithetical to the very concept of protection of minority groups. If state referenda had been called on the issues of civil rights, we would be living in a very different country.

I am struck not only by the patent irrationality of Trager's suggestion but also by his gloating assurance that the proposed referendum will fail. If he is right, it is only a further indication that the non-discrimination clause is not yet an obsolete protection.

Reasonable people might disagree about whether or not BLS should ban from campus any prospective employer

for any reason. But as long as we have a non-discrimination clause which we purport to enforce, reasonable people versed in the fundamentals of logic and fairness should not disagree about whether BLS should 'drop its briefcase and run' the first time an employer says that it stands by its practice of discriminating against the most misunderstood and reviled minority group on the list.

BLS gays and lesbians are not unaware of the pressures on students to find employment. But as we would not demand that any employer who discriminates in our favor be welcomed to use BLS as a recruiting ground, so we ask that our interests be respected and that school policies be upheld to protect even unpopular minorities; after all, that is the spirit and basis of a non-discrimination clause.

Lesley Yulkowski '89

Objection to Town Meeting 'Bias'

To the editor:

On Monday April 24 at 4:00, a "town meeting" was held in the third floor lounge to discuss the issue of military recruitment on campus. Much debate centered on the typical issues of homosexual discrimination, but this student failed to hear the real issue discussed in depth. The following represents my views of what occurred, what did not occur, and my feelings of whether the military should be entitled to on-campus recruitment privileges.

The meeting began by a statement of the SBA's position on the matter, which was presented by an SBA representative who was also the moderator of the meeting (hereinafter "the Moderator"). He stated that the SBA would support a position denying the military access to the BLS campus by formally presenting the SBA view to the Board of Trustees. The Board is to reconsider the exemption accorded the U.S. military regarding BLS's non-discrimination policy.

First, I would like to know why the SBA already decided the position of the students they represent BEFORE this "town meeting". Surely, an issue as highly debated as this should be presented to the students first before a minority representation of delegates makes the decision for them. If not, then what exactly was the purpose of this meeting? Was it to genuflect before a small minority of students who wish to impose their political agenda on other students? Or was it just a duck shoot for these same students to attack the military and those who support the military at our school by "justifying" their infringement upon the rights of students who do not happen to be affiliated with a bloc who can so easily command the attention of Dean Trager? Surely it was not aimed at the Board of Trustees who is to make the final decision since 1) they did not appear to be formally represented, and 2) since I have not heard why they have granted the exemption in the first place, I cannot hear their arguments pro and con.

Whatever the reason for this meeting, I did not hear what the students wanted but only sophists on both sides arguing

the justification of discrimination. If the issue is framed that way, then we might as well pack it in, because who wants discrimination? Not me, believe it or not. But that is what some students have done. By asking the question "Do you want to exempt the US military from BLS's non-discrimination policy?" is to load the question. Of course the military discriminates, and therefore, ergo, we should deny them access or be hippocrates as the Moderator argued. I, however, am not asking that question. I want to know "Do the students of this school want the US military to have access to students just as any other firm or employer does?" I do, and I don't think that just because a few students disagree with government policy we should all be denied exposure to the government's legal programs which have been described as a "marvelous opportunity" and an "excellent experience." Yes, the military has a formal policy of discrimination against homosexuals, but many other firms and employers regularly discriminate on several bases, yet we do not deny them access. Is it only because the military "admits" to discrimination that we must attack them for it? Is it only their refusal to sign an affidavit of non-discrimination upon which we base our selectivity?

Second, the issue of alternative access for interested students was discussed several times during the meeting, but the arguments were bald. Agreed, interested students can march (no pun intended) down to the local recruitment office to inquire about military opportunities, but some students (myself included) had no idea legal opportunities with the military even existed before I noticed their participation in the on-campus recruitment program. Surely, a law student pressed for time enjoys a great advantage and convenience of easy access to information and interviews on campus. If it is "so easy" for a student to go down to a recruitment office, then I think it is just as easy for troubled students to go down to the same office and protest the military's policies there. Isn't that what this is all about? After all, if your beef is with the government, then take it up with

them on their turf. Or perhaps it is too inconvenient for these students to do so, what with studying and all. How nice it must be to be able to protest on school property, where access to other students and faculty is so convenient (and can be so easily taken for granted.)

Another problem I have is with some statistics weakly advanced by the moderator at the outset of the meeting. I apologize if I misquote your figures but you claim that to date, only one student has been successfully recruited through the military's program, and that only four students even participated this past semester. First of all, rate of recruitment success does not justify infringement of my rights. That's like saying "Cravath only takes one student from BLS, so lets deny everyone access." And if my memory serves correct, I recall at least a dozen names on the interview sheet for the USMC's law program which was located on the lobby bulletin board this past semester.

Finally, I ask only that free access be given to those who may want it, and that students who support this view drop a note to the Board of Trustees. Don't let a few self-righteous students make the decision for you! You pay for this school (with government loans in many cases I might add), and your views count!

Anonymous

Editor's Note: The Justinian frowns on the publication of anonymous submissions. In a law school especially, views which are of merit should not be afraid of being expressed by, and attributed to its authors. If those who support Gay and Lesbian rights are willing to be public, when they have historically been an ostracized minority, then those with opposing viewpoints should have an equal courage. In this particular instant, because this submission has certain merits, seems to further the discussion of the issues, and does not irresponsibly attack individuals or groups, we have allowed this publication. We assume that this author realizes that his views would count more if he was willing to stand by them. Again, please be aware that anonymous submissions are very likely to be excluded from publication.

Baseball Trades

To the Editor:

Here it is, hot stove league fans, the ultimate baseball trade:

Mets Give:	Dykstra Fernandez Hojo	Yankees Give:	Henderson Pena Pags Kelly	Padres Give:	Kruk Alomar	Blue Jays Give:	Henke Moseby
Mets Get:	Henderson Pena Henke	Yankees Get:	Hojo Dykstra Alomar Moseby	Padres Get:	Pags Fernandez Quirk	Blue Jays Get:	Kruk Kelly

METS: Give up three very valuable but very expendable assets for the righty/lefty bullpen combo, while landing the big righthanded bat for leftfield that they covet. Aguilera/West replace El Sid in the rotation, as the bullpen of Myers/McDowell/Leach/Henke/Pena becomes totally awesome. The acquisition of Rickey Henderson requires open minded, creative thinking on the part of the Mets. True, the Mets were seeking a righty slugger to bat at the end of the lineup to "protect" McReynolds, but a leadoff man who will hit .300 with 90 walks, 90 steals and 15-20 homers might tend to help ones offense also (The concept of "protecting" a hitter is one of the biggest myths in the collective knowledge of baseball, somewhere between that of pitching being 90% of the game and the irrelevancy of what shortstops hit -adapted from the collective works of Bill James).

Hojo is replaced by Jeffries at third, while Miller/Teufel take over 2b chores. While the Mets are giving up a lot of talent in this deal, it is nothing they need. On the other hand, this trade will open up spaces for the highly capable young men already in the organization. Plus, an option year Henderson will win them the championship.

How does a starting five of Henderson - Jeffries - Hernandez Straw - McReynolds sound, Met fans?

PADRES: Are probably getting the best deal of all the clubs, as they give up the very expendable players they have been dangling all winter to obtain exactly the players they wanted (Pags, Fernandez). If anything, Trader Jack McKeon should sweeten the pot here.

BLUE JAYS: Are giving up two high salaried players they have been trying to unload for two young, potential stars. The Mets might want a different pitcher than Henke. Kelly would play centerfield while Kruk would become a monster D.H. in the A.L.

YANKEES: To trade Rickey Henderson, or not to trade Rickey Henderson? This superstar, future Hall-of-Famer has been with the Yanks for four years, during which time they have won nothing but the indigestion championship in the heart and souls of their fans.

Roberto Kelly is a 24 year old non-prospect who will never hit over .250 or have an on base percentage over .300 in the major leagues. According to the pre season analysis for the last four years, Kelly has been the team's starting centerfielder. Guess what gang, he hasn't been. Yet, there are many teams that really want this guy. I say get rid of him while he has any value left at all. It kills me to know that at any time over the past few years (up until a year ago) they could have gotten Jose Oquendo for this guy. Oquendo is absolutely an all-star shortstop; calling him a valuable utility man would be like using and referring to Don Mattingly as a valuable pinch hitter, Dwight Gooden as a valuable mop up man, or Kirby Puckett as a valuable backup defensive outfielder. I would sacrifice Steinbrenner and his firstborn to have Oquendo play shortstop on my team.) But I digress. Moseby still has lots of years left in his 29 year old bat, and a Sax/Dykstra leadoff tandem would give the Bombers the coolest, most hardnosed dudes of both coasts. The Yank outfield

loses nothing on the exchange.

Pagliarulo for Hojo is basically a wash. Hipolito Pena is a talented young lefty whose career will never see the light of day on the Yankee staff.

Just because Joel Skinner can't hit Karen Carpenter's weight, people assume that he is a great defensive catcher. This guy is the epitome of a stiff, yet like Roberto Kelly, there are teams that really like him. Go figure.

Despite all the explanations given, the real reason the Yanks should make this deal is for Sandy Alomar Jr. I won't bore you with the reasons why the Yanks could use him, because I think Dickey to Berra to Howard to Munson to the Mule Skinner speaks volumes.

This big deal probably would need minor alterations with lesser and fringe players, but I intentionally kept them out lest they confuse the picture. Even though in the real world four-team trades are rare, I'm curious to know what you BLS'ers think of this one.

Andy Rothstein

THE PASSWORD:

barbri



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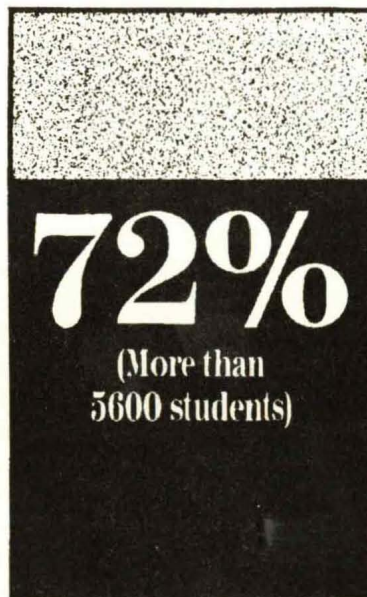
1988 New York Bar Exam Results

The following percentages are based on all persons who took the Summer 1988 New York Bar Examination for the first time.

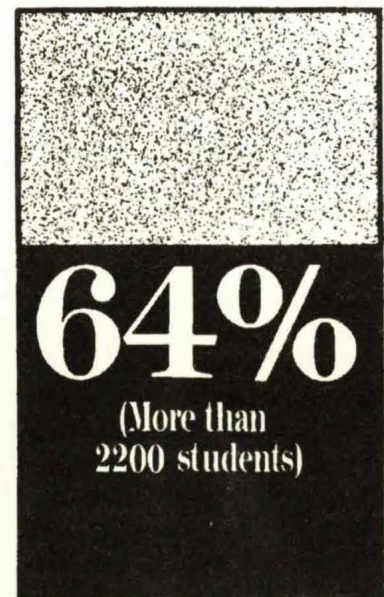
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1989 BAR/BRI

CAPITAL PUNISHMENT IN NEW YORK: IS IT WORTH THE HUMAN PRICE?

by William E. Hellerstein

At the very moment when capital punishment may be but one vote shy of enactment in New York, the news from Dallas is that the conviction of Randall Dale Adams, who barely missed execution for the murder of a police officer, was unanimously reversed on the grounds that the prosecution had both suppressed exculpatory evidence and had used perjured testimony. These are not events that should be considered separately. As New Yorkers and their legislative representatives ponder the capital punishment issue, the question is not whether the death penalty is a deterrent, or whether it is a justifiable societal release for revenge, or whether the cost of imprisoning a person for life is greater than the cost of his execution. The single question is whether, given what we know of the capacity for error in the criminal justice system, we are willing to run the substantial risk of executing innocent men or women for the putative benefits, whether real or unreal, of the death penalty.

Cases such as that of Randall Adams do not occur with the infrequency of Halley's Comet. The incidence of error, unintentional or inadvertent, in capital-crime level cases creates a truly substantial risk that innocents will be executed. Unless one can say that such a price is worth paying, an argument favoring a return to execution cannot be sustained. Thus, if you are willing to abide the execution of innocents, read no further; you will not be touched by my argument. But if you cannot subscribe to such a prospect, then the realities of the perils of our criminal justice system will be meaningful and will be, I believe, dispositive of the issue for you.

Since 1975, there have been numerous cases throughout the country in which people under sentence of death have been subsequently found innocent, have been acquitted following a new trial, or have upon a retrial been found guilty of

a non-capital offense. Consider as merely representative, the following: Arizona, 1977: Jonathan Treadway, acquitted upon retrial; Georgia, 1978: Earl Charles, freed after his innocence when a police detective



The only civilized
option is to vote
down the return to
this state of the death
penalty.



came forward to admit that he had seen Charles at work on the day and time of the crime; Ohio, 1979: Gary Beeman, acquitted on retrial; Nebraska, 1980: Erwin Simants, acquitted by reason of insanity at his second trial; Georgia, 1980: Jerry Banks, released after six years in prison because the prosecution was found to have withheld critical evidence; South Carolina, 1981: Michael Linder, acquitted upon retrial when it was established that the shots which were fired had come from the dead officer's gun, not his, which made Linder's claim of self-defense irrefutable. At Linder's first trial, the test results which established that fact were never introduced.

Because we have not had capital punishment in New York since 1963, there are, of course, no such recent occurrences. In my own personal experience, however, I have represented at least two innocent men who were convicted of capital-level offenses and who, had New York had the death penalty, could have been executed: Nathaniel Carter, convicted in Queens County in

1982 for the murder of his ex-wife's mother and sentenced to 25 years to life and Erick Jackson, convicted in Kings County in 1980 of six counts of arson-felony murder and sentenced to 25 years to life for setting fire to a Waldbaum's supermarket in which six firefighters perished. Carter was freed after serving two years when his ex-wife confessed to the crime. Jackson was freed this summer after ten years in prison when it was determined not only that exculpatory evidence had been withheld from the jury but that it was unlikely that any arson had been committed at all. In the Carter case, the fortuity of my own post-conviction investigation produced the required evidence. In the Jackson case, the fortuity of the dedication of the attorney who represented the firefighters' widows and had been exposed to certain evidence in their civil suits led to a setting aside of the conviction.

New York's experience, when executions were in vogue, does not lack for near misses. Consider the following examples rehearsed by Professor Hugo A. Bedau in his classic study, "The Death Penalty in America." In 1915, Charles Stielow received a stay forty minutes before his scheduled execution. After three years in prison, he was exonerated when the real murderer confessed. In 1925, Edward Larkman was convicted of murder and sentenced to death. In 1927, the sentence was commuted to life imprisonment and in 1929, another convict confessed to the crime. In 1933, Governor Lehman pardoned Larkman. In 1940, Louis Hoffner was convicted of murder and sentenced to death. His sentence was commuted to life imprisonment by Governor Dewey. In 1955, Hoffner was released and indemnified for false imprisonment by the Legislature.

No case in New York's life with capital punishment stands out more starkly than that of Isidore Zimmerman.

Convicted of murder in 1938, Zimmerman spent nine months on Sing Sing's death row. Two hours before his execution, his sentence was commuted to life imprisonment. In 1962, the New York Court of Appeals reversed his conviction on the ground that the prosecution's chief witness had lied and that the prosecutor had withheld that information from the Court. In 1981, Governor Carey signed a bill that allowed Zimmerman to sue the State for damages for his 25 years of wrongful imprisonment.

Have we reached the point in New York where we are willing to tell the Charles Stielows, Edward Larkmans and Isidore Zimmermans of the future that despite their innocence they are

expendable because we need capital punishment? I would like to believe that despite the ugliness of contemporary crime, all, or at least most, New Yorkers would find the execution of an innocent man or woman repulsive and a truly repugnant trade-off for the perceived benefits of the death penalty. And until the criminal justice system can assure us

that grievous mistakes cannot occur, a dubious proposition in any event, the only civilized option is to vote down the return to this state of the death penalty.

William E. Hellerstein is a Professor of Law at BLS and from 1969 to 1985 was Chief of the Criminal Appeals Bureau of the Legal Aid Society of New York.

Placement News

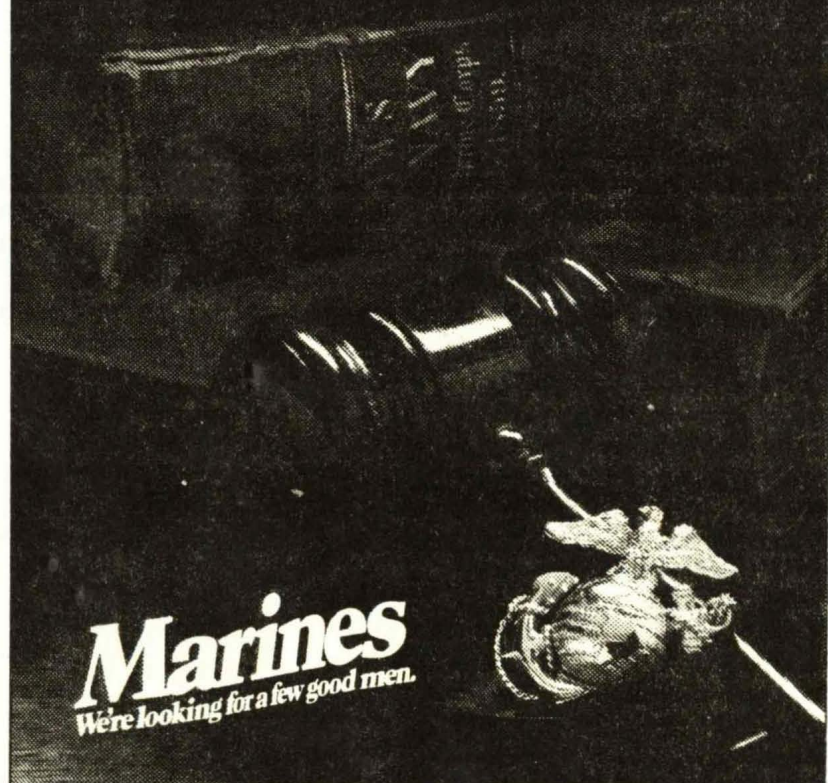
The Placement Office will conduct two **On-Campus Interviewing Orientation Sessions** for first-year full-time students and first and second year evening students on **Monday, May 15, 1989 from 1-2 p.m. and 5-6 p.m. in Room 303 at One Boerum Place** (next to the Placement Office). If your last name begins with A-M, please try to attend the afternoon session. If your last name begins with N-Z, or if you are an evening student, please try to attend the evening session. **Attendance at one of the sessions is mandatory** in order to participate in On-Campus Interviewing this Fall.

Class of 1990: You can pick up your On-Campus Interviewing Informational Packets in the Placement Office starting on **Tuesday, May 16th.**

Applications for the **Skadden Fellowships** are available in the Placement Office. Skadden Fellowships provide financial support for 1990 law school graduates and outgoing judicial law clerks who will work for public interest organizations which provide civil legal services to the poor, the elderly, the homeless, the disabled, or those deprived of the civil rights. Applications are due **October 16, 1989.**

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ASBESTOS IN THE CEILINGS OF 250 JORALEMON

by James Sherman

Asbestos is a construction material which was popularly used in the 1950s and 60s as insulation and as a fire retardant. It's now known that asbestos fibers cause various lung diseases when inhaled. The exposed structural steel of 250 Joralemon Street is covered with asbestos insulation. This fact was confirmed in the April 7 issue of the New York Law Journal which reported on the school's attempts to win money damages in a law suit brought against several asbestos manufacturers and installation companies. Roger Brennan, Director of Engineering and Maintenance for Brooklyn Law School, is not alarmed: "We're safe here, the article is misleading and we're in no danger." According to Mr. Brennan, the school has been air and bulk testing for asbestos contamination for at least three years and no hazardous levels have yet been found anywhere in the building. "As long as it's left undisturbed, it's no immediate threat" said Mr. Brennan.

The asbestos contamination problem came to the fore because of the school's litigation in *Brooklyn Law School v. Raybon Inc.* which was filed in New York County in late April. Fortunately for the school, Judge Stanley Sklar found such "extraordinary circumstances" as to bypass the rule of the case doctrine and

reinstated the school's negligence and strict liability claims after a Brooklyn judge had already granted summary judgment for the defendants.

The school is seeking to recover money damages for the installation of asbestos as it gears up for the expansion of the main building at 250 Joralemon Street. Ground-breaking is now estimated

"As long as it's left undisturbed,
it's no immediate threat." — Roger Brennan

Director of Engineering and Maintenance

to be one to two years from now. The school originally brought suit in June 1987 with a view toward the high removal costs which will be incurred when the \$15 million annex is appended to the existing building. Mr. Brennan's professional opinion is that "whenever it's going to be disturbed, it's got to be removed. I don't like encapsulation. I've seen it tried twice and I've seen it fail twice." Encapsulation is an asbestos management handling technique which attempts to immobilize the asbestos fibers in place by use of some kind of impregnable shroud.

The asbestos in the school is six to eight feet above the ceiling tiles on each floor. The school has been conducting

steel beams and performing x-ray analysis of the constituent elements present. According to Mr. Brennan, Brooklyn Law School got ripped-off during installation when the contractors mixed inferior insulation products in with the asbestos insulation prior to spraying it onto the steel beams. The testing for the school is performed by Asbestos Abatement Consultation and Engineering Associates of New Jersey whom Mr. Brennan described as "honest and reliable."

The school has alleged in its complaint that the "defendants have wrongfully caused plaintiff's law school building to become contaminated by a dangerous, toxic substance which unless removed, contained or managed, presents an imminent danger and potential hazard to students, staff and others using the law school." While Mr. Brennan feels the containment effort is sufficient for the meantime, the school's lawsuit is aimed at recovering the cost of abating the contamination threat once construction on the annex is begun. In addition, the school's breach of implied warranty claim was dismissed, without prejudice and with leave to replead after discovery is completed, for failure to allege specifically which defendants sold asbestos products to the school. The school was represented by Donald I. Marlin of Morris J. Eisen P.C.



Safe for now, but when construction starts...

Environmental Law at BLS: Taking Root

by Amy Rhodes

In its first full year in operation, the BLS Environmental Law Society (ELS) is alive and well and cleaning up New York. Headed by co-chairs Larry Andrea and Amy Levine, ELS has begun work in conjunction with the Audubon Society to monitor a section of Jamaica Bay in Queens. The Audubon Society is concerned that the wetlands there are being destroyed by people building without New York Department of Environmental Conservation (DEC) permits. ELS members have already physically surveyed the grounds and will be doing title searches and research at the DEC offices to investigate the Audubon Society's allegations. If ELS finds violations of environmental law, it will notify DEC. Subsequently, ELS will continue to monitor the project. If necessary, a law suit will be filed to compel DEC to enforce the law.

ELS is also a vehicle for disseminating information on environmental issues to the Brooklyn Law School community. The first ELS forum in April 1988 focused on the controversy surrounding the proposed Greenpoint

Resource Recovery Plant in Brooklyn. Advocates and opponents of the project, including representatives from the Environmental Defense Fund, NYPIRG, the Department of Environmental Conservation, and counsel for the incinerator advocates, all came together to debate the proposal.

A second forum, held during the fall 1988 semester, was geared to the needs of law students as ELS hosted practitioners of environmental law. Attorneys from public interest, the private sector and government discussed their experience with and feelings about environmental law. In a two-hour roundtable discussion, the lawyers addressed, among other things, how they reconcile their personal visions of what is best for the environment with the philosophy they are required to advocate in their work.

The spring 1989 forum focused on environmental terrorism. Held on May 1, 1989, a panoply of activist groups were represented at the forum, including the New York City Audubon Society, the Environmental Action Coalition, Earth First, and the Straphanger's Campaign. Proposals for future ELS programs include a canoe trip, a forum to address

neighborhood environmental concerns and further attendance at national law conferences.

At the interscholastic level, last year's chairs, Larry Andrea and John Piccarrazzi attended the first conference of the National Association of Environmental Law Societies in Michigan. Brooklyn ELS has since become a member of NAELS. This year, nine Brooklyn ELS members attended the first annual National Environmental Law Moot Court Competition/Litigation Workshop sponsored by Pace University Law School. Brooklyn was the largest non-participating delegation that attended the conference. The competition this year featured citizen suit issues arising under section 505 of the Clear Water Act and included participants from both local law schools and from as far as Ontario and Hawaii. The Brooklyn Law School Moot Court Society was not interested in participating at the competition this year, according to Andrea. However, ELS plans to put its own team together to participate as moot court contenders next year.

Anyone interested in joining ELS is invited to attend any of the meetings, usually held on a bi-weekly basis.



BLS Telephones: An SBA Update

by Tara Christie

I met with Walter Bender, the sales representative from Smart Phones, Inc. The following constitutes what problems we discussed and their solutions.

1) 50 cents for directory: According to Mr. Bender, AT&T is also starting to charge for directory calls in some areas. The company gets charged 46 cents from AT&T for this service, the cost of which is passed on to the students. Mr Bender will do one of two things. He will check into the actual number of directory calls placed on the phones, and if insubstantial, Smart Phones will absorb the cost. If the amount is substantial, and the school administration agrees, he will have the directory service made free to the students and bill the administration for the cost by deducting the amount from the monthly commission check. He will respond to this within 2 weeks.

2) Credit Cards and answering machines: The phones are now charging 25 cents for certain credit card calls and answering machines cannot be reached at all. The company engineer, who was present at this meeting, verified that there was a problem with credit card use. Both of these problems will be fixed immediately, whether through reprogramming or changing the chip.

3) Call backs: The present phones have no return phone number on them. Mr. Bender was hesitant about installing phone numbers for fear that the company would lose money because students would have the other person on the line call them back rather than pay for the call themselves. I told Mr. Bender that return phone numbers are a necessity for those

4) Booths: I have promised to call Mr. Bender with the approximate number of booths needed (probably only one or two in the most noisy areas; the basement and the third floor). Mr. Bender will get the company to install them and the company will absorb the cost.

7) Refunds: Mr. Bender will put notices

Phone spokesman promises to check into all complaints.

students (almost all) who spend most of their time at the school and need to conduct their business (i.e. set up interviews, etc.). Most of the call backs would probably be of short duration and that pressure from other students waiting for the phones would keep such calls short. The upshot of this is, he will see that numbers are put on all the phones within 2 weeks.

5) Rates: According to law, private phone company rates must be exactly the same as AT&T's. Mr. Bender will immediately fix all inconsistent and higher rate charge problems.

6) Delayed or No connections: These are problems with incorrect power packs or chips used in the phones. Mr. Bender's engineer will check each and every phone and fix those with a problem.

on all the phones as soon as possible indicating where to call for a refund. This call will be free and a refund will be issued through the mail, by check, directly to the students. It is not possible to refund money directly to a student or to have an operator put through a call if the caller lost his/her money in the phone.

8) Operator refusals: According to Mr. Bender, AT & T operators can not refuse to check a number for the caller, or refuse to make an emergency breakthrough, etc. However, due to rivalry between AT&T and private companies, this often happens. Two things should be done: we must inform the students that if this occurs, they should ask the operator to put the supervisor on the line and insist on the service. Also, it is advisable to write to the AT & T area supervisors, inform them of the exact problems students are having in dealing with the operators and insist it be stopped.

Mr. Bender has asked the Student Bar Association to keep a list of the problems encountered with the phones and the exact phone involved. Mr. Bender promises he will check into all complaints and immediately have repaired whatever is broken. I propose to do this by putting a notice to this effect on the lobby's main bulletin board and to direct students to put their complaints in the student suggestion box in the basement. I will then forward such complaints either to Mr. Brennan or directly to Mr. Bender.



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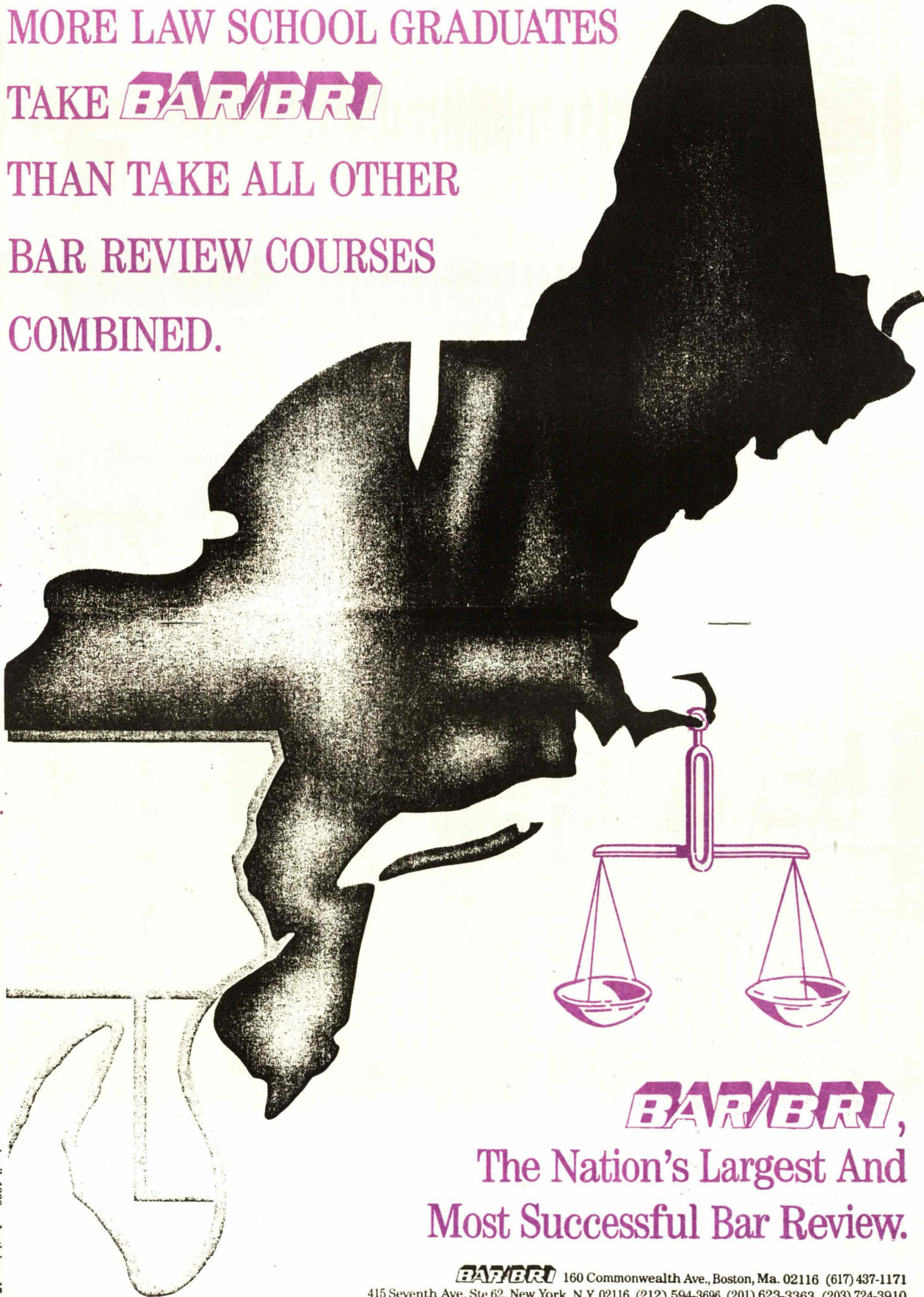
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Grade Point Anarchy

by Bruce Kaufman

Pity the poor first year BLS evening student who wrote earlier this semester to the American Bar Association and the Brooklyn District Attorney's office after he suspected a final examination given by Professor Jerome Leitner bore suspicious similarity to one he had given before. He probably should have called the F.B.I. Maybe it could have conducted an investigation and let him in on the process to go through when a student thinks he has been unfairly awarded with a grade, say 30 points below his G.P.A. Or when the multiple choice questions on his exams give him a haunting sense of *dejavu*.

Maybe someone could have told him that if a student thinks she's been graded unfairly by a professor, who doesn't like her and might have managed to subvert our impregnable "anonymous" grading system and give an unusually low mark, that the grade can be reviewed by a neutral panel. Why didn't someone tell him? Didn't he have any friends? He could have just asked Dean Joan Wexler, who I asked in an interview to elaborate on the school's student grade review and grievance policy.

"They can go to the professor," Wexler said.

"And then?"

"That's it."

"You mean there is no policy for reviewing potentially meritorious student complaints about grading or final exams?"

"No."

She did assure me that the student has the absolute right to go to the professor. Surely a helpful sign where the complaint is that the professor didn't like the student and probably still doesn't.

Wexler said "her door was open" but that the administration will not overrule a professor's decision as to grading. Never has, never will.

In a letter posted earlier this semester on the first floor bulletin board, Wexler called the first year evening student "cowardly and immature" for not

including Leitner on his mailing list, and said that her perusal of the most recent Leitner exam compared to the one he had given before (a copy of which was kindly enclosed by the anonymous student in his

The real sham
is
anonymous
grading.

letter) revealed that only one out of five questions on the recent exam "was even close" and that the resemblance was only in the fact pattern and not the short questions that immediately followed.

Certainly, if true, Wexler is absolutely right. That was not a real copycat exam and the student should be tarred and feathered for accusing Leitner of duplicating exam questions.

But is Wexler's intimation that 'it couldn't happen here' necessarily correct? Was her claim that the student should "do his research before making accusations" fair or even to the point? Would research prove or disprove whether professors repeat substantial parts of their exams? I wondered too, so I interviewed several student "experts" to determine whether professors duplicate their exams. The specific professors and classes they took are listed below. All students were given anonymity.

Professor John Meehan, Wills, Fall 1988.

"I'd say 25 questions out of 60 (short questions) were repeats."

Professor Raymond Lisle, International Law, Fall 1987.

"His tests are the same as previous ones, same words, same questions, same answers." The student said he has taken Lisle more than once. No wonder.

Professor Robert Habl, Property, Spring 1987.

"He duplicated the multiple choice questions almost completely." Habl's name has come up repeatedly among students.

Professor Habl, Insurance, Fall 1987.

"He gave the exact same take home exam to the Summer 1987 and the Fall 1987 class."

Professor Albert DeMeo, Real Estate Practice, Fall 1988.

"All he does is white-out the old dates on the exams and substitute new ones."

Professor Leon Wein, Property, Spring 1986.

"There were a significant number of repeat questions. He had even told the class before the semester ended 'Don't even look at my past exams, they're not helpful.'"

Professor Richard Farrell, New York Practice, Fall 1988

"Having old copies of his exams, even the quizzes he uses during the semester, will help you with maybe 75-90 percent of the multiple choice questions. A lot of students do his old tests at home then bring them in with the answers. You don't even have to read his questions for content, just make sure they match exactly with the old questions and fill in the old, correct answer. It's sort of like proofreading."

Professor John Ronayne, Unincorporated Business Associations,

Fall 1987.

"He's got a stockpile of 100 or so questions form which he draws from."

So it does happen here. Happens elsewhere too. Doesn't make it bad either. In fact, I ran into many students who defended copycat exams. They said more power to those who bother to get copies of copycat exams left on reserve in the library. Gee, what skill. Not to mention value. At an average of over \$1,000 per class, aren't there any consumers out there.

At least when copycats are left on reserve, it places us all on equal footing. Not so with students who have access to old copycat exams that are not left on file. Since only the last two or three exams are kept on reserve, a first year student must seek out at least a second year student to get exams sufficiently old enough. So first year students bargain with second year students. Second year students with third year students. It not only works. It works well. But only with those students who know the ropes. The others are on their own.

The real sham is anonymous grading. I thought it was designed to protect students from professors. Dean Wexler told me it was designed to protect professors from students. Well whatever. Maybe it protects everyone. But it sure as hell doesn't work.

The process is real simple though. Professors assign grades anonymously to students based only on their confidential four digit numbers. They then send the grades alongside the confidential numbers to the registrar, who likely copies them, and sends them back to the professor with the students' names. The professor then adjusts the raw grade assigned to the student -- now with full knowledge of the student's identity -- up or down, based on factors such as class participation. Up or down? By as much as they want? With full knowledge of the student's identity? What ever happened to the anonymity? The only time the scores are truly confidential is before they are sent to the registrar. A professor need only be honest and unflinching and the anonymous grading system will work. But doesn't that go to the heart of the reason we installed the system in the first place.

Hard to discuss grading without touching on the school's "recommended" curve. According to Wexler, a curve is "strongly suggested" to faculty. She also said she urged professors to lower grades when they were, in her opinion, too high. She acknowledged that she would also urge professor's to raise grades if they were too low. She couldn't cite any instances of this however.

This comes as little shock to many students, particularly those in Prof. Gary Schultze's Negotiations seminar class. He reportedly told students that the "administration was on his case for giving grades that were too high." He cautioned his students not to expect the same marks as previous classes.

couldn't believe it."

Another student, who said he lost two points in one class, was "angered" when he went to the registrar's office to ask why the grades were removed. He said he was told by a staff member that they were 'not authorized' to tell him who was responsible or where he should take his complaints.

According to Wexler, students in Seavey's class who complained to her were told that it was an error. She said that Seavey mistakenly sent in grades and that the registrar's office was told not to post them but did so anyway. She said she did not know anything about Masterson's grades or why the scores were replaced after being lowered.

Two professors had last term's grades mysteriously removed from the bulletin board and replaced with lower grades.

Wexler said some professors didn't like the bell curve and probably do not follow it. She said she could not force professors to adhere to it, only "strongly urge" them to do so.

Two professors widely thought to have been "urged", Avery Seavey and Joseph Masterson had last term's grades mysteriously removed from the bulletin board earlier this semester and replaced the following week with lower scores.

Maria Giresi, a third year student, said she and everyone else in Seavey's Land Finance course and Masterson's Antitrust class were "in disbelief" when they saw their Fall 1988 final grades. Giresi said she lost four points in one class and two in the other.

Jill Daitch, a third year student in Masterson's class said she had to go back and tell her mother that she got an 87 after first telling her she had a 90.

"When I saw my number," Daitch said of the "updated" grade, "I just

Seavey said he knew nothing of the controversy.

"No one from my class has really griped," he said. "All I did was submit the grades. The rest was up to the law school."

Seavey, an adjunct professor here, said he had no comment on whether he was urged by the administration to lower grades.

Masterson, also an adjunct professor, had a different story. He said as a result of "urging" by the administration he lowered his grades to conform with the school curve.

"I submitted grades initially and was told that the grades don't conform to the model curve that the law school established," he said. "I reduced the grades accordingly."

Masterson was asked who did the "urging."

"I spoke with Dean Wexler," he said.

Protest Against Military Discrimination

by Bruce Kaufman and Jeff Schagren

Luke Martland was a 20-year-old junior in 1983 when he was faced with one of the toughest decisions of his life: whether to join the Marine Corps or be openly gay. He decided to be openly gay and was barred from entering the Corps. Many of his other friends selected a different path. They decided to remain closeted.

Six years later, Martland is among the leaders of a determined group of BLS students who are challenging Dean David Trager and the Board of Trustees to reverse a nearly three-year-old decision allowing the Army to recruit on campus.

According to school regulations, before employers may recruit on campus they must certify that they do not discriminate in hiring based on any of 11 different categories, including sexual orientation. [See sidebar on school policy.]

In 1986, the Army was asked to sign a form certifying their compliance with the new policy. The Army refused. They were nevertheless granted a waiver by the Trustees despite the protests of members of a deeply divided faculty, which narrowly voted on June 16, 1986

to bar the military from campus unless it would comply with the school's non-discrimination policy, according to Prof. Bailey Kuklin.

Kuklin, who at the time of the Trustees' decision chaired the faculty Ad Hoc Committee on Discrimination on the Basis of Sexual Orientation, had presented a 52 page report to the faculty

"Homosexuality is incompatible with military service."

Army spokesman

recommending that the school's non-discrimination policy be extended to include sexual orientation and that the military be barred from campus unless it agreed to comply.

According to Martland, a co-chair of the BIS Gay and Lesbian Law Students (GALLS), almost 400 signatures have been collected from students and faculty calling on the Trustees to retract the waiver given to the Army on October 20, 1986.

Recently the Student Bar Association and eleven other campus organizations voted to support the protest. The groups include: The Legal Association for Women (LAW); Gay and Lesbian Law Students (GALLS); National Lawyers Guild (NLG); Hispanic Law Students Association (HILSA); the Student Loan

Statement of the U.S. Army

"The Department of Defense policy as to uniformed personnel is that homosexuality is incompatible with military service. The Government will hire homosexuals, but the Armed Forces of the United States will not hire or retain homosexuals.

"The most important reason for this policy is to maintain public acceptability of military service. Should the policy change, there wouldn't be enough hours in the day to receive and handle all the questions. We are convinced that the public considers this good policy. We would receive thousands of phone calls protesting the change while now we only receive a few phone calls and letters.

"We have had similar protests at Michigan, Wisconsin and Temple. Usually a state statute or a school by-law bars discriminating employers from recruiting on campus.

"What happened at Brooklyn Law School is nothing new but we stand by our policy. We take note of protests and we want to take note of public opinion. However we are confident regarding our policy. We believe we are correct and have legal backing and precedent to support our position."

Lt. Col. Greg Rixon,
Office of Public Affairs
Dept. of the Army



Students calling for BLS to revoke the military's exception.

Assistance Committee (SLAC); the Environmental Law Society (ELS); the Black Law Students Association (BLSA); International Law Society (ILS); the Italian Law Students Association (IALSA); the Asian American Law Students Association (AALSA); and the Irish American Law Students Association.

CAMPUS DEMONSTRATION

On February 22, the demonstrators, composed mainly of members of GALLS, the Legal Association for Women (LAW), and the National Lawyers Guild (NLG), marched in front of the school to protest the presence of an Army recruiter on campus.



Student protesters confront Dean Trager and Dean Wexler in front of school.

BLS POLICY

Policy of Non-Discrimination

It has always been the policy of Brooklyn Law School not to discriminate on the basis of sex, age, handicap, race, color, religion, national or ethnic origin, sexual orientation, marital status, or parental status in its admission or employment policies or in access to any of its educational, financial aid, or other school-administered programs.

Statement of Equal Employment Opportunity

Brooklyn Law School is committed to a policy against discriminatory practice in the interviewing and employment of its students. The Law School cannot give countenance to any form of discrimination based upon sex, race, color, religious creed or national origin, sexual orientation, marital status, or parental status. It is expected that employers will conform to this policy, expressed in law by Title VII of the Civil Rights Act of 1964, and take positive steps to assure that no such discrimination occurs in hiring, promotion, compensation, or work assignment. Brooklyn Law School will extend its facilities and placement services only to those employers whose practices are consistent with this policy.

The military is the only employer for whom the Law School makes an exception to this declaration.

"The message we are trying to send to Brooklyn Law School," said Martland, "is that it's hypocritical to say the law school doesn't discriminate, yet allow on campus employers who do discriminate as a matter of policy."

Toni Kousoulas, a third-year student, said the school's policy "is unacceptable." She was holding a sign reading: Board of Trustees Welcomes Bigots.

"The school should not make an exception," Kousoulas said. "They wouldn't have done it if the military discriminated on racial grounds."

MILITARY WOULDN'T SIGN

According to Dean David Trager, the decision to grant the waiver was a difficult one. "It's a hard issue both ways," he told the demonstrators during a face-to-face exchange in front of the school.

"We asked the military to sign [certifying they would not discriminate], but they wouldn't," he said. "Anyone else who wouldn't sign it, we wouldn't allow here."

According to Lt. Col. Greg Rixon, a spokesman from the Army's office of public affairs, "Homosexuality is incompatible with military service." [See sidebar on statement of the U.S. Army.]

"The most important reason for this policy is to maintain public acceptability of military service," Rixon said. "What happened at Brooklyn Law School is nothing new, but we stand by our policy."

In an earlier interview, Dean Joan Wexler said that the "feeling [when the issue was discussed two years ago] was that it would violate the rights of several of our students to not permit recruiters to come."

Trager said he saw too the issue as one of competing rights. "What about the other students?", he asked the demonstrators. "They pay tuition. To them it's a moral issue too. You have no right to impose your point of view on them," he said.

"Then what about the KKK? Would you invite them to school," asked Lesley Yulkowski, who was carrying a sign asking the same question.

"I consider the Army to be different from the KKK," Trager responded. "The KKK is illegal."

"Or the National Association for the Advancement of White People? Would they be allowed?"

"I don't know," Trager said. "I don't think so. I don't think we would allow them on campus. But we would have to review each one on a case by case basis."

Trager told the group that New York City law would bar the school from granting waivers to most organizations that continue to discriminate in their hiring. "But federal law still supercedes," Trager said. "I think the Supremacy Clause is still in effect." The Clause would prevent the City from passing legislation interfering with the functioning



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DECISION NOT IRREVERSIBLE

Trager told the protesters that the Trustees' decision was not irreversible. "I would think, that if the students wanted to vote [on allowing the military on campus], and it was an overwhelming vote, our attitude would change," he said.

Trager also said he would allow students to speak directly to the Trustees on this issue. According to Yulkowski, several of the protesters will be meeting directly with a subcommittee of the Board on April 27, immediately prior to the full Board meeting.

Several demonstrators doubted whether a student referenda to ban the military from recruiting on campus would be effective. Others questioned whether they could get the super-majority vote that Trager indicated would be necessary for him to recommend to the Trustees a reversal of their decision.

"What Trager is saying," said Martland, "is that if the students support racism or anti-semitism or homophobia — then that's it. That that should be the policy of the school. But that's wrong."

Reaction to the demonstration, which

(continued on page 26)

SBA BACKS PROTEST

The Student Bar Association voted by overwhelming margins on March 8 and 9 to support the student protest and to urge the Board of Trustees to rescind a nearly three-year-old decision granting the military an exemption from the School's non-discrimination policy.

By a 20-1 margin, the student elected board voted to back the student protesters and called upon the Trustees to reverse their October 20, 1986 decision.

The SBA also voted to reject the suggestion of Dean David Trager to place on the Spring ballot a non-binding referenda to gauge student body support of the protest. The SBA concluded that it was inimitable to the goal of protecting the rights of minorities.

WHERE OTHER LAW SCHOOLS STAND

The following list is based on interviews with officers of the respective law school placement offices cited below.

Columbia University School of Law

"Columbia does not allow the JAG to recruit on campus. We will not even publish their job listing in the alumni newsletter. Columbia's policy is that no employer who discriminates is allowed to recruit on campus."

Hofstra University School of Law

"Employers who recruit at Hofstra are not required to sign any policy statement. Since Hofstra has the ROTC on campus at the undergraduate level, it would be extremely difficult to eliminate the JAG from recruiting at the law school."

New York Law School

"New York Law School is committed to a policy against discrimination based on sex, sexual orientation, marital or parental status, race, color, religious creed, national origin, age or handicap. The placement facilities of the school are available only to employers whose practices are consistent with this policy."

In view of the importance of these principles to the students and faculty, the school asks employers who will be interviewing at the law school to subscribe to this policy."

New York University School of Law

"Although there is no policy as to the JAG, NYU does have a non-discrimination policy, which includes sexual orientation. It has been in effect since the 1978-79 school year. An employer must sign a policy statement in order to be able to recruit on campus. If they do not sign the statement, they are not allowed to interview on campus."

There have been some government agencies which would not sign the statement and therefore were not invited to recruit. The JAG has not sought to come to campus, for at least three-and-a-half years. If a question or complaint arises as to an employer who signs the statement, the placement office will check up on it. We take this policy very seriously, as we believe the employers do."

St. John's University School of Law

"St. John's promotes a policy of non-discrimination based on race, color, national or ethnic origin, religion, sex, age, marital status and handicap. The JAG is permitted to recruit on campus."

Benjamin N. Cardozo School of Law

"Cardozo follows a university-wide anti-discrimination policy which does not make reference to sexual orientation. The JAG used to recruit on campus, but as the school's on-campus recruiting program expanded, space for interviewing became limited. Due to the lack of space and because the JAG was not creating jobs for students, they were eliminated from the program. This choice was made for economic reasons. Information for students who are interested in the JAG is available in the school's library."

STUDENTS SPEAK OUT

by Jeff Schagren

Question:

BLS has a non-discrimination policy which requires employers who wish to recruit on campus to certify that they will not discriminate in hiring based on any of eleven different categories including sexual orientation. Failing to sign prevents the employer from recruiting on campus. The Army Judge Advocate General refused to sign the statement because they acknowledge that they do not retain or hire homosexuals. Our Board of Trustees then waived the policy as it applies to the military. Do you think this waiver is justified?

Answers:

Andrea Sharrin 2nd Year- I think the school's actions are hypocritical. While they have a valuable across the board non-discriminatory policy on paper, it is arbitrary and discretionary in effect.

Tim Tripp 3rd Year- The Board of Trustees breached its own rule and that I disagree with. I do not see it focused so much on the sexual orientation issue.

In the interest of fair play, we the students have the right to rely on the fact that the governing body will not arbitrarily transcend their own rules.

A more equitable rule is to either abolish the standing requirement thereby providing more employment options to the Brooklyn Law School community or to maintain the present policy in both word and deed.

Robert J. Bellinson 3rd year- No. The waiver was not justified. The non-

discrimination policy is correct, and if the law school permits selective adherence to the policy, then in the final analysis discrimination will be deemed acceptable.

Nancy Strohmeier 3rd Year- No. If it was a civilian employer who discriminated and wanted to come on campus, I'm sure the Board of Trustees would not afford the exception to them. I do not see why the United States government or its entities are entitled to a waiver. We are not that desperate that such a policy should be violated for any employer. What is the point of having such a policy if exceptions are going to be made.

Hemalee Patel 1st Year- My gut reaction is yes, it is justified. I think that it is important that the Army comes on campus to recruit. If they do not sign the policy, and therefore do not come on campus, there would be less of a chance for people who want to interview to meet with the J.A.G. It is important to the people who want to interview with the J.A.G. to be able to do so on campus. I personally do not believe that an employer should discriminate based on sexual orientation, but the United States government is not going to change its policy for Brooklyn Law School. People who want to interview should be given the chance.

Dominic Morandi 1st Year- It does seem unfair on one hand but if it means opportunity for students then it should be allowed. If a student feels morally obligated not to interview with a certain group, that is their choice, but a person who wants to interview should be allowed to do so. The school should not speak for each individual student. Each student should make their own moral decisions.

David Garren 3rd Year- No. Why should we foster and perpetuate the Army's bias and prejudice. I think Brooklyn Law School's admittance of the

J.A.G. is a blatant endorsement of a military policy which clearly seems to be unconstitutional if not unethical and most certainly unnecessary.

Richard Geduldig 2nd Year- No. If any other employer were to refuse to sign a no discrimination statement we would not allow them to interview on campus, so why should we make an exception for the Army?

Robert Preston 2nd Year- The school's policy is very clear and there is no reason to make an exception in this case since the Army's approach is totally contradictory to the school's policy. The school should not back down.

Christine Mendola 1st Year- No. I think it would make more of a statement by opposing their recruitment on campus. Obviously the Army will still continue with their policy because not enough people speak out against it.

Robert Kramer 3rd Year- The school's policy to prohibit prospective employers from discriminating against gay persons should not be displaced. Many people applaud the policy and will be disappointed if the school assists the Army in abridging our student's rights. This occasion will determine if the Board of Trustees' policy is sincere.

Debra Baker 1st Year- If the Board's justification for allowing the J.A.G. on campus without signing the policy statement is because the students should have the opportunity (to interview), then the students should have been asked their opinion instead of causing a disruption on campus over the issue.



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Protest

(continued from page 24)

had been timed to coincide with on-campus interviews by the Army's Judge Advocate General Corps, was generally positive, according to Rosemary DiSavino, co-chair of GALLS.

"Most people we have spoken with would like to see a policy change," DiSavino said.

"I think [the demonstration] is really healthy," said Prof. Gary Minda, who stopped to sign one of the petitions. "It is an indication that the law school is a vibrant institution." Minda successfully spearheaded efforts two years ago to force the Trustees to divest funds from companies that deal with South Africa.

Grace Glasser, Director of Placement, said that the action of the Trustees did not necessarily reflect the views of her office. "The Board's policy has nothing to do with the policy of the Placement Office," she said.

MIXED FEELINGS

Irwen Abrams, a third year student said he had "mixed feelings" about the protest.

"BLS is not yet at the level of an NYU or Columbia," Abrams said. "[Barring the Army] would make it harder for those BLS students who are not in the top 10 percent to compete." Neither NYU or Columbia permit the military to recruit on campus because of discrimination against gays and lesbians. [See sidebar on where other schools

stand.]

Abrams, one of 10 students who interviewed with the Army during the protest said that the recruiter, an Army major, was not aware of the demonstration.

"He was very concerned when I told him," Abrams said. "He said the Army takes it very seriously."

According to Lt. Col. Rixon, a spokesman for the Army, there have been similar protests recently at law schools in Michigan, Wisconsin, and at Temple.

"We take note of protests and we want to take note of public opinion," Rixon said. "However we are confident regarding our policy. We believe we are correct and have legal backing and precedent to support our position."

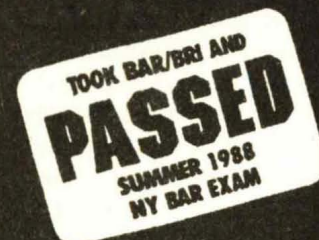
Take Their Word For It

“Overall I think you have a very good program. Having talked to people who are doing Pieper, I think I made the right choice (with BAR/BRI).”

Graduate, Brooklyn Law School

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Library Noise Solution: Ban Students!

by Joe Cardieri

In the library all noise is amplified because it permeates silence. I ask a boisterous bunch to please lower their voices. Immediately there is a hush, as if the students reproached recognize that they were, in fact, being loud and discourteous. Yet, a moment later, competitive human instincts kick in. What was a second before a startled hush is transformed into a low level confrontational muttering. Now although their voices are lower than before, I find I am listening more intently to see if my reproach has been successful. Typically, the students huddle together with greater allegiance at having found a common enemy and I, the reasonable antagonist, acutely focus my attention on my colleague's voices as they oh-so-gradually rise to meet the perceived challenge...

I will now postulate a new scientific formula: The quality of an academic institution is inversely proportional to the level of noise in its library. At other law schools that I have studied at after school or on weekends (Such as NYU and Yale) there is virtually no noise in the libraries. Future leaders can solemnly study the laws of the world in which they must transit, uninterrupted by the babbling of first year students trying to locate just one more case for their moot court briefs. These students apparently have a degree of respect for their libraries. It's apparent from the behavior of a good number of students at BLS that such respect

obviously does not exist here.

So... how is such respect instilled? Obviously, trying to reason with many of these discourteous people doesn't work. Also, forget getting the librarian; for as soon as their admonishment ends so does the silence. Something else is called for. Dare I bring the solution on in the form of another scientific principle? Why not... When students are being discourteous and obnoxious in the library

outgrowth of the lack of respect for the institution outlined above. It seems likely that if a student can get away with minor transgressions, i.e. talking aloud, he's more apt to commit other, more serious transgressions, i.e. defacing a book. So, conversely, if one can stop the talking it seems more probable that book destruction will diminish. One may question the causality postulated here. But I think it's reasonable to say that the general attitude of disrespect correlates in some degree with book destruction.

So, we know what the problems are. We also know the solution. Now comes

The stigma of being tossed out coupled with the inability to continue research is prudent and sufficient punishment.

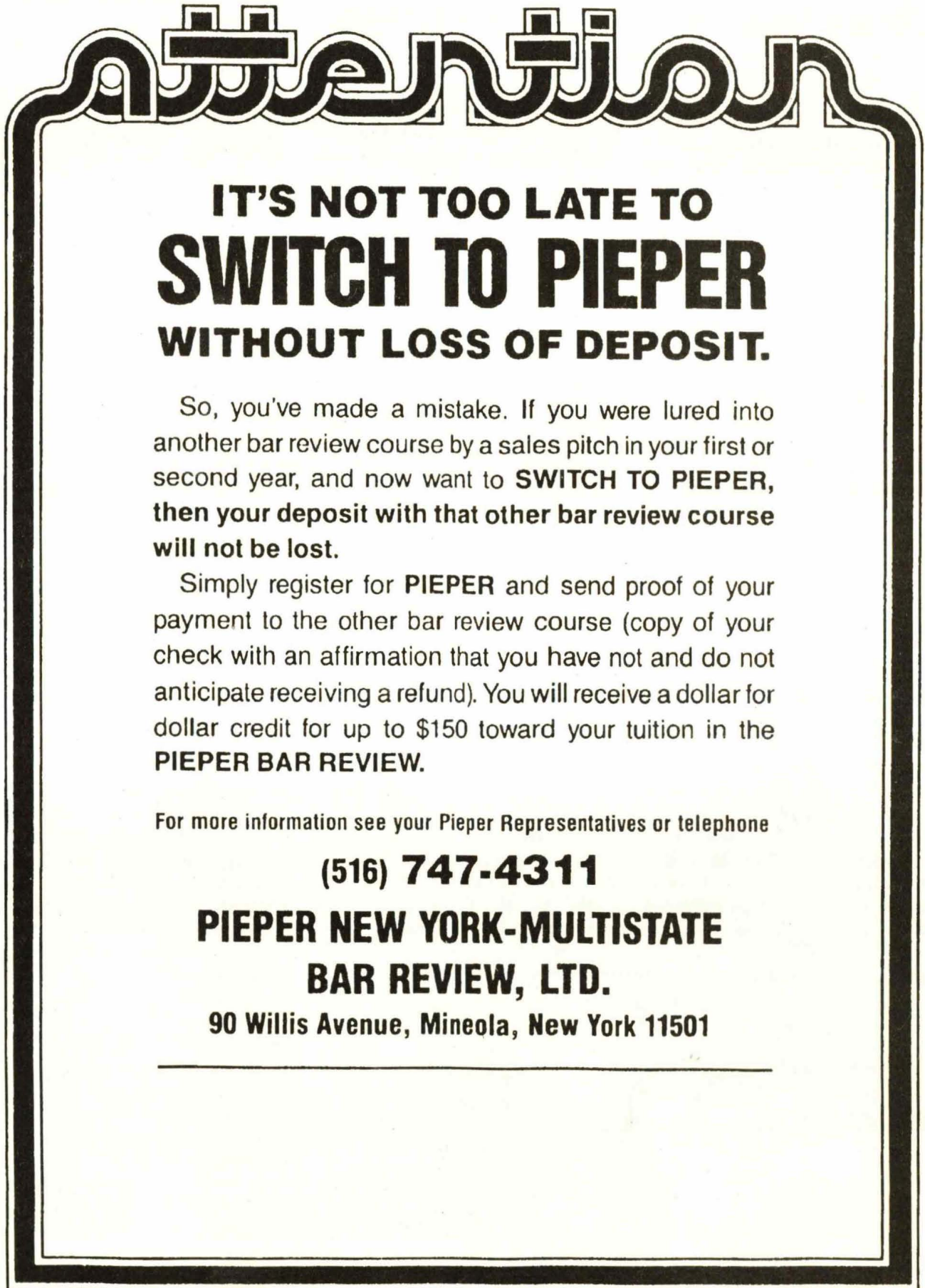
and will not acquiesce in the face of reproach, fear, by the way of punishment, will do the work of reason. Students who are being loud and discourteous in the library must be forced to modify their misbehavior by prudent punishment.

Before I detail the punishment, and how it is to be enforced, let me give a reason why such punishment is absolutely necessary, outside of the fact that it will compel expected silence. During my many discussions with the librarians, I have learned that a few law books have been defaced in the library. I don't know the details, but I imagine an overeager student was less than eager to pay for the services of the copying machine and thus tore what he needed straight out of the book. Mind you, I'm not surprised by such an act; it seems to be the natural

the hard part: How to practically apply the solution/punishment. Maybe it's not that hard. I think the discourteous student should be banned from the library for the day and evening. I think the social stigma of being tossed out coupled with the inability to continue research for the day is prudent and sufficient punishment. Ah, now here's the rub. How does one ensure the banished doesn't return? Surely the librarians are too busy to ably patrol for returning exiles. How about this? When a student is banished for the day, the librarians also take possession of his ID card. Placed at a strategic spot on the librarian's desk, this card will serve notice to all other librarians to be 'on the lookout', as it were, for this discourteous person returning. If he is caught returning he gets another day's banishment and a visit with Dean Wexler. If the librarians are too busy to check the incoming, and he gets by... well, such is life. Yet the anxiety invoked in trying to squeeze by the librarian might have done the trick to compel courtesy in the future.

It's unfortunate, and even a bit embarrassing, that comments such as these need to be written. Its underlying premise is that in certain instances certain adults need to be treated like children so that those students who are courteous — the vast majority — can enjoy the fruits resulting from punishing transgressors will nourish the student body as well as the institution.





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A WOMAN'S PERSPECTIVE

Confronting Sexual Assault on Campus

by Lisa Muggeo

In "Sexual Assault on Campus: What Colleges Can Do", authors Aileen Adams and Gail Abarbanel address the incidence of rape on college campuses across the country. The authors collaborated on the pamphlet in response to the dramatic increase in the number of victims of campus and acquaintance rape seeking help at the Rape Treatment Center in Santa Monica, California. Gail Abarbanel is the founder and director of the Rape Treatment Center and Aileen Adams is legal counsel at the center.

The pamphlet begins with a discussion of the many incidents of rape on campuses in which a woman was sexually assaulted by either someone she knew or a stranger. Not surprisingly, a vast number of victims were raped by an acquaintance. In many circumstances what initially began as a social activity among friends often ended up with a woman being sexually assaulted.

In general, the pamphlet goes on to talk about specific sexual assaults on campus and the aftermath of how victims were treated (if they were brave enough to report the rape). The grievance procedures available to victims (or lack of them) on campus is also discussed. Then the authors set forth their own recommendations for new sexual assault policies, along with procedures and

programs to be initiated on campus to deal with this problem. They also advocate establishing a comprehensive program for assisting victims who are encountering the trauma of a sexual assault.

The authors stress that one of the tragic outcomes of sexual assault on campus is that victims do not seek help. Many victims remain silent and do not seek the help they need from family,

educate and sensitize students, faculty, and staff about these crimes. Students' unique vulnerabilities also need to be focused on to heighten awareness both on and off the campus environs.

Additionally, they encourage the establishment of protocols and programs which would respond to sexual assaults when they occur. This way students who are victimized would receive sensitive and appropriate treatment and not become

Too often shame, fear and ignorance shroud the crime of rape.

friends, the police, or school authorities. To make matter worse, many campuses are unequipped or ill-prepared to help the victims who do come forward, therefore causing those victims to become victimized even further. Victims who never report their rape often suffer serious disruption in their lives as well as various other serious traumatic effects.

To alleviate the emotional and psychological effects of rape on campuses (fear, silence and embarrassment), Adams and Abarbanel suggest that colleges adopt and publicize a clear institutional policy condemning rape and other sexual assaults. They suggest that effective prevention programs be instituted to

victims again by inadequate campus procedures. Their final recommendation is that schools implement security measures designed to reduce the likelihood of attack.

Rape is a crime of violence against women. According to Adams and Abarbanel and a recent article in the New York Times which discusses rape on college campuses, the incidence of rape is a growing problem on campuses today. Complicating matters is the failure of school administrations to recognize and react to this violence.

Far too often shame, fear and ignorance shroud the crime of rape. School officials ignore the fact that rape can and does get committed on campus. In addition, students (and many women in general) tend to take an "it can't happen to me" attitude, which disassociates them from the reality of rape. Rape cannot remain a silent issue. Awareness and sensitivity are the tools necessary to confront rape. Denying the problem of rape on campus is dangerous.

Students, staff and faculty need to be able to protect themselves and one another. They also need to be able to rely on a system which will protect them as well as assist them if they become a victim of rape. The remedies exist. To address the violence these remedies and preventive measures must be implemented.



Inter Alia

by Michael Harding

Intersection. The intersection of Boerum and Joralemon has been a death trap long enough. A trip between the main building and the administration building could easily end in serious physical injury or possibly death. I'd like to know how much money the City of New York paid the genius who designed the traffic signal sequence at this intersection. Is there an intelligent reason why four lanes of north bound traffic can be held at a red light, while buses barreling down the fifth lane have a green light to wipe out the pedestrians who were lured into the street after the four lanes of traffic had halted. Anyway ... I have fired off a letter to Ross Sandler, Commissioner of the New York City Department of Transportation, asking that he have his engineers reevaluate the traffic control structure at the intersection of Boerum and Joralemon.

Hollywood. I just want it on the record that Peter "Hollywood" Fields has promised that when he becomes a big man in Hollywood, he will introduce me to a few stars. Likewise, when I become police commissioner, I'll introduce him to a few criminals.

Bar Review. The battle between Bar Bri and Pieper is heating up and no doubt will get hotter as the Summer '89 bar exam draws near. Instead of all the name calling, if they want to impress me, cut the price. Or put together attractive packages that include the first year review, MPRE review, the bar review, and the essay writing review for the bar. It might also be beneficial to hold informative lunch time and early evening meetings of students to fill them in on bar requirements, explanations of the difference between Multistate v.s. Bar v.s. N.J. Bar, and the MPRE.

Open Door. One of the good things about BLS is the open door policy which gives all students access to their professors, but this policy doesn't stop

with the faculty. The door is always open to members of the administration. Mr. Thomas Curtin III, Director of Financial Aid; Ms. Jane Ezersky, Director of Career Services; and Mr. Edward Schabes, Registrar, are just three of the many members of the administration ready to assist you.

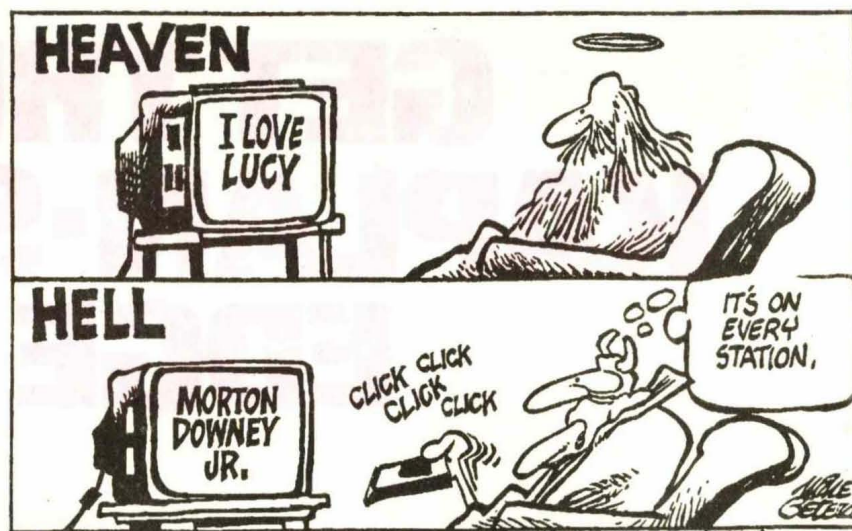
Engagement. Congratulations to Marina Nisi '90 on her engagement to BLS alumnus, Ken Schiff '85. The happy couple plan to wed on July 15, 1989. Good luck and best wishes!

Phone Update. Tara Christie, Student Bar Representative, is hot on the heels of Smart Phones, Inc. and I understand that we can expect a substantial improvement in phone service in the near future. Thanks, Tara.

Great Legal Minds. For that specific group of first-year evening students who actually sent an anonymous letter protesting Professor Leitner's Torts exam to the Brooklyn District Attorney's Office: How could you fail to see the federal issues involved? Obviously, this letter should have been addressed to the United States Attorney's Office, but maybe you couldn't figure out whether it should have gone to the Southern District or Eastern District. But it is

understandable to see how a group with your limited mental capacity could get confused. Seriously, grow up. P.S. For your next assignment, decide whether your action was reckless, negligent, or just plain stupid. Then answer the following three true or false questions. 1) A "condom" is an apartment complex. 2) Fetus is a character on Gunsmoke. 3) An "anus" is a Latin word denoting a period of time. Okay, question one wasn't fair, you haven't taken property yet.

Slob. You know who you are. You're the one who comes to class with your meal and leaves your mess for the busboy. You're the one who spills your coffee on the desk, but when your class is over you don't have the common decency to wipe it up. Is it asking too much for you to throw your trash out before you head off to your next class? Do you think it's fair for a student to enter a class to find your empty coffee cups and soda cans surrounding their desk area? If you answered yes to the last two questions, push your nose up and grunt like a pig. All of us share the classrooms, library, and cafeteria. Let's try to keep things relatively clean for the next student. PICK UP AFTER YOURSELF! If you see a fellow student failing to pick up after his or herself, point your finger at them like a gun and pull the trigger.



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