The Justinian

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Article 1

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The Justinian

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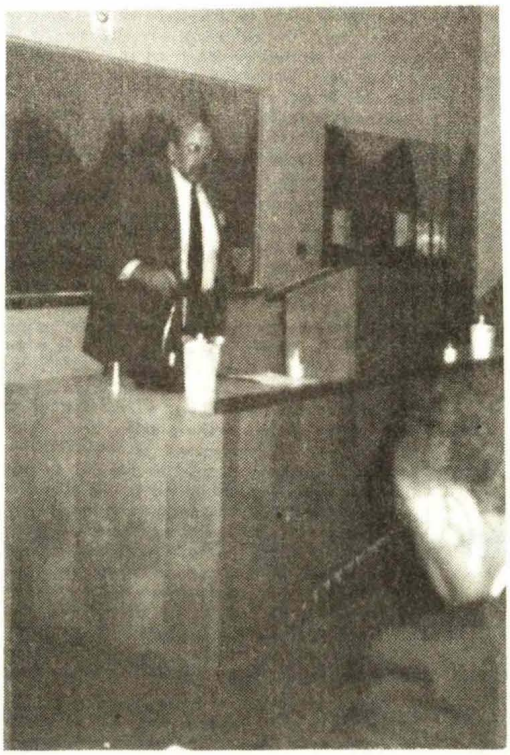
THE JUSTINIAN

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

BLS FACULTY COMMITTEE PROPOSES SEXUAL HARASSMENT GUIDELINES

Annual Seminar on Criminal Law, Criminal Procedure, and Evidence



Also in this issue:

Working at Legal Aid

Around the Neighborhood...

The Court Street King

In Search of the Judicial Clerkship

plus...another crossword puzzle (with answers, this time!)

YEARS AGO ...

ALUMNI URGED TO SUBSCRIBE TO JUSTINIAN

THE JUSTINIAN

Brooklyn Law School — St. Lawrence University

ALUMNI REQUESTED TO CORRESPOND WITH JUSTINIAN

VOLUME I, NO. 3 — BROOKLYN, N. Y., TUESDAY, FEBRUARY 13, 1934

A Murder Case

THE prevalence of crime in recent years has given the press, the drama, and the movie, an opportunity to picture crime and criminal procedure in a manner which gives the public an erroneous impression of our law enforcing agencies. The result: unjust criticism of the Police Department, the District Attorney's Office and the Courts.

Let us run through a murder case from the time of the discovery of the crime, to the execution of the defendant.

A body is found in the street with a bullet wound in the head. The policeman arriving sees to it that nothing is touched or taken away. He immediately notifies Boro Headquarters. The latter notifies the Homicide Squad, and all other departments which may have something to do with the investigation of the crime or the arrest of the defendant, viz: the Photographic Bureau—Fingerprint Experts—Medical Examiner and high Police Officials.

Arraignment on Short Affidavit

At Headquarters, there is a telephone typewriter which receives and transmits reports of all crimes to the Metropolitan area in less than a minute, giving as many details as are at the time available. The District Attorney's office or the assistant in charge and his stenographer, if it happens to be at night are notified. Immediately every available evidence is gathered and all clues are tracked. Witnesses are thoroughly questioned both by the police officers and the District Attorney. This questioning is usually done at the nearest police station, or if convenient, at the scene. A photograph is taken of the scene so that if necessary it could be used as an exhibit at the trial. The best description of the alleged defendant is immediately broadcast, and every policeman and detective is on the lookout for the defendant.

Upon his arrest, he is immediately taken to the police station in the precinct where the crime was committed. He is fingerprinted to determine his previous record; warned by the District Attorney that anything he says might be used against him.

The prisoner is given an opportunity to communicate with friends and relatives and to see counsel.

The next morning, he is arraigned in the Homicide Court, on a short affidavit. It is made out by the detective in charge of the particular case. Briefly he alleges that he has sufficient information to connect the defendant with the commission of the crime. This is done for the purpose of giving the Police Department sufficient time to gather all its evidence for presentation either before the Magistrate or the Grand Jury. The defendant is held for a period of 48 hours or longer without bail. Murder is not bailable.

On hearing before the Magistrate, the "People" by the District Attorney, present sufficient facts to make a prima facie case. The attorney for the defendant is given an opportunity to cross-examine. The Magistrate, if satisfied that a prima facie case has been presented, remands the defendant to the City Prison without bail, to await the action of the Grand Jury.

THE Grand Jury consists of 23 men, chosen every month by the Commissioner of Jurors. Their deliberation is secret, sixteen constitute a quorum, and a vote of twelve of them is sufficient to vote an indictment or True Bill. This indictment is signed by the foreman of the Grand Jury, and the District Attorney of the County. Thereafter, the Grand Jury makes its presentment to a County Judge, and the defendant is notified to plead to the indictment. If he has no counsel, and no money to obtain counsel, the Court will assign him one. The State pays the sum of $1000 to such attorney. A date is set for trial. The trial is had before a Petit Jury. First, the prosecution questions the prospective jurors, making challenges to those whom it wishes to excuse either for cause, or peremptory. The attorney for the defense is given the same privilege. When the Jury is satisfactory to both sides, it is sworn. The District Attorney opens and then presents his evidence. That is what is known as direct examination. The testimony is presented subject to the rules of evidence. The defense counsel then cross-examines. When all the testimony is in, the attorney for the defense can move to dismiss the indictment.

Defendant Need Not Take Stand

Upon the denial of this motion, the attorney can rest—or put in his defense. The defendant need not take the stand. No inference may be drawn from his failure to do so. If he does, he is subject to cross-examination. The District Attorney can then present testimony to rebut the defense, and the attorney for the defense can present testimony to surrebut the prosecution. The defense counsel can then move to dismiss the indictment or for the direction of a verdict. Upon the denial of those motions, the attorney for the defense sums up to the Jury. The prosecution sums up last. The Court charges the law.

The Jury however, are the sole judges of the facts. Their verdict must be unanimous.

Further motions are made by the defense to set aside the verdict as provided by the law. Upon the denial of these motions, a date is set for sentence. The prisoner, in the meanwhile, is remanded to prison. On sentence day, the Court imposes the Death Penalty made mandatory by law.

Hyman Barshay,
Assistant District Attorney, Kings County

The Justinian
A Forum for the Brooklyn Law School Community

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November 1990

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DEPARTMENTS

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

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EDITORS' CORNER

It isn't often that a major daily newspaper finds itself in its own headlines every day. Unfortunately, this has become a standard practice for "New York's Hometown Newspaper" - the *Daily News* - in the past two weeks.

Many media experts have predicted that the current labor strike at the *Daily News*, which once had the largest daily circulation (over 2,000,000 copies) of any newspaper in the country, will lead to its ultimate demise. In fact, the *Daily News* has lost over 750,000 readers over the last decade due to a potent combination of a rising competitor (*New York Newsday*), antiquated production facilities and technology and a changing newspaper reader and advertiser market (due mainly to the advent of cable television in the outer boroughs during the 1980's). These factors have led to a war of attrition over the badly-needed advertising revenue available to New York's three daily tabloids (the *Daily News*, *New York Newsday* and the *New York Post*).

Historically, it has been the print media that has provided individuals with the "open marketplace of ideas," which fosters the expression of the truth, guaranteed and encouraged by the First Amendment. But, in today's shrinking local print-media market, that precious freedom of expression is endangered by this publication's current crisis, apparently caused by union rifts and unfair labor practices.

Let the labor unions do the job they are supposed to do: vigorously represent and earn better working conditions for their members through sincere negotiations rather than practice "strong arm" tactics. At the same time, let the owners of the *Daily News* restore "fired" employees, long the loyal, middle-class backbone of this newspaper, in a good faith effort to avert the total collapse of the paper. Let both sides take a page from this past summer, where the *New York Post* and its labor unions saved that beleaguered newspaper from extinction with reasonable compromises and concessions.

After all, this strike isn't just about labor unions, strikes, "scabs," picket lines, protests and violence and death threats to carriers and distributors of the *Daily News*. Settling this strike concerns saving valuable jobs in an ever-shrinking local job market. It also represents saving rare industrial jobs in a city that is slowly inching its way toward another major fiscal crisis. More importantly, this episode concerns saving an important voice in the "open marketplace of ideas," for freedom of expression will always be enhanced by as many voices as are available.

And in today's shrinking New York media marketplace, the silencing of the *Daily News*, so long the voice of working-class New Yorkers, will deprive an important sector of this city of an invaluable outlet of First Amendment expression that, for all practical purposes, can never be replaced. *J.M.A.*

NOTICE

The Faculty's Special Committee on Sexual Harassment is pleased to present its report in this issue of *The Justinian* for your consideration and comments.

On Wednesday, December 5, from 4:30 p.m. to 6:30 p.m. in the Third Floor Student Lounge, there will be an open hearing to which all members of the Brooklyn Law School Community are invited to comment on the report and the proposals contained in it.

If you are unable to attend but would like to comment, please send your comments to me in writing.

Professor William E. Hellerstein
Chair
Special Committee on Sexual Harassment

LETTERS TO THE EDITOR

To The Editor:

I write briefly to bring attention to the procedures or, more accurately, the lack thereof, by which SBA delegates allocate student activity fee monies among student organizations. Without going into the substantive merits of each group's budget proposal, such as whether the group is engaged in community-wide - or at least school-wide - public-interest work as opposed to a group which is merely organized by race, color, religion, etc., and conducts no publicly-redeeming work other than a once-a-semester beer bash, the budgeting procedures need immediate, but simple, restructuring. To keep it simple, I suggest the delegates adopt minimal due process procedures, such as the following:

1) Notice - At first, organizations were told they could not attend the budgeting meeting. Why the need for a closed-door meeting? It later turned out that representatives of student groups could attend, but were apprised of this fact only after the meeting had concluded.

2) Opportunity to be Heard - The current procedure utilizes "advocates," members of the SBA who speak on behalf of designated student groups. Other members of the SBA direct questions about a particular group to the advocate, not to the members of the organization who bother to attend. What could possibly be the basis for this substitution and the refusal of the SBA delegates to allow the student organizations to speak on their own behalf if they choose to do so? The duty of SBA delegates in deciding budgeting allocations is to arrive at an informed decision based on the facts. Instead, under the current procedures, the groups - the real parties in interest - are barred from speaking on their own behalf. Thus, the SBA insulates itself from the facts and the means of discovering the facts and arrives at its budget decisions with its collective head in the sand.

While I know that first-year, first-semester delegates probably have not been exposed to the concepts of procedural due process, it is unimaginable that second and third-year delegates have forgotten this elementary lesson so quickly. Worse still is the facile acquiescence of these delegates in a Tammany Hall-like carving of the student activity fee funds.

I know that certain SBA delegates were revolted by the budgeting meeting and intend action, and I do not mean to implicate those persons with the rest. As for the rest: do the job you wanted and do it fairly.

James Sherman '91

SBA UPDATE

by

LARRY GREENBERG

I would like to start off by thanking all of the Student Bar Association delegates who helped out with the Halloween Party, which took place on October 30, 1990. A good time was had by all. Special thanks to the *Rude Mechanicals*, a truly stupendous band, despite Adam Edelstein on backup vocals. I'm sure no one will forget Howard Graubard's unforgettable portrayal of Groucho Marx (there really is an uncanny resemblance).

Here are some of the important issues currently facing the Student Bar Association:

HOMELESS DRIVE - The SBA is proud to announce that it will be running a Holiday Homeless Drive from Monday, November 26, through Friday, December 14. Donation boxes will be set up in the basement, near the entrance to the cafeteria. This year, we will be collecting food, clothing, toys and toiletries for local homeless shelters in the Downtown Brooklyn area. All students are encouraged to lend a hand to those who are less fortunate. All food items should be in sealed packages. Canned goods are preferred. If you have old clothes you don't wear anymore or an old pair of shoes that are in decent shape, put them to good use. Each student at BLS should give something, whether it be a can of soup, an old sweater, or even a bar of soap. Every little bit helps. Let's make the holidays a little warmer for the homeless. Brooklyn Law School can make a difference!

BUDGET ALLOCATIONS - On Monday, October 22, the SBA held its annual Budget Allocation meeting. The following allocations were approved by the SBA for the following organizations:

Asian American Law Student Association	$1760
Black Law Students Association	2960
Hispanic Law Students Association	1460
Irish Law Students Association	560
Italian American Law Students Association	1160
International Law Society	410
Amnesty International	260
Legal Association of Women	2460
Environmental Law Society	1260
National Lawyer's Guild	1460
Lesbian & Gay Law Students Association	1260
Christian Legal Society	760
Jewish Heritage Society	260
Jewish Law Students Association	300*
Phi Delta Phi	260
Animal Rights Society	260
Democratic Club	360
Sports & Entertainment Law Society	960
Intramural Football	150
Intramural Basketball	1360
Law Students for the Public Interest	260
Greek Law Students Association	160
Justinian	6560
Second Circus	5960
ABA - Law Student Division	900
SBA	6800

* Because of a procedural difficulty, the SBA has reserved an additional $600 for this organization, subject to the approval of the SBA.

These amounts reflect a *pro rata* reduction approved by the SBA to compensate for any budget overrun.

SBA COMMITTEES - The constitution committee is currently working on a first draft of the Brooklyn Law School Student Bar Association Constitution. The final version of the first draft will be presented to the SBA by Constitution Committee Chairperson De De Brown at the next delegate meeting on November 19th. When a final draft is ready, there will be a school-wide referendum to approve the constitution.

The Calendar/Curriculum Committee has been hard at work with faculty representative Assistant Dean Margaret Berger. SBA delegate Laura Amos has informed the SBA that a school-wide advisory referendum is acceptable to Assistant Dean Berger. The purpose of the referendum will be to find out what the spread of opinion is among both day and evening students concerning the scheduling of exams.

Yearbook editor and SBA delegate Hemalee Patel has informed me that anyone who is interested in working on this year's yearbook should leave her a note in the SBA office.

The Club Scene

Amnesty International

by Mark Munschenheim

Amnesty International collected nearly 200 petition signatures from Brooklyn Law School students, professors and Dean David Trager on behalf of Gitobu Imanyara, the founder and editor of the *Nairobi Law Monthly*. Imanyara had been charged with sedition in Kenya. The petitions urging that the sedition charge be dropped immediately were sent to the Kenyan ambassador in Washington D.C.

Amnesty International is now working on the human rights situation in the Sudan. Reliable reports indicate that over 300 people have been arrested and detained without charge or trial since the National Salvation Revolutionary Command Council came to power in June 1989. Recently, there have been confirmed reports of the use of torture by Sudanese authorities against those held in prisons there.

Sadiq el-Shami, the Deputy Director of the Sudanese Bar Association, is one of those who has been improperly imprisoned and tortured. Students and faculty are encouraged to write politely-worded letters expressing concern about our colleague, Sadiq el-Shami. Please send letters to:

Mrhassan Ismu'il al-Balil
Minister of Justice and Attorney General
Ministry of Justice
Khartoum, Sudan.

Asian-American Law Students Association

by Melody Chang

On October 26, 1990, a delegation of seven AALSA members went to Boston and attended the 1990 Annual National Asian Pacific American Law Student Association (NAPALSA), held at Harvard University. NAPALSA is the organization that links the Asian American Law Student Associations of law schools across the country into a national network of law students of Asian Pacific descent. Among the various schools that attended the conference were Stanford, Georgetown, New York University, Northeastern, Vanderbilt, and Boston University (which also co-hosted the event)

This diverse gathering precipitated animated debates and discussions under the conference theme, "Empowerment Through The Law." Thought-provoking panels tackled issues of Asian Pacific American law students and lawyers within the American power structure. The speakers were inspiring role models who have strived for Asian Pacific representation in the legal profession. They are pioneers in their respective fields: partners in major law firms, tenured professors in law schools, justices in state courts, activists in public interest firms, and, one, a dean of a national law school. Throughout the weekend, these men and women shared with the students the common self-doubts, as well as community reinforcement, on the unique experience of being Asian Pacific American lawyers. Among the law students, the forum was the perfect opportunity to voice personal aspirations and, at the same time, seek guidance and advice from the panelists.

The NAPALSA conference was the second of three AALSA events that have taken place this year. The welcome reception for Professor Leung Yee, held in September, was our opening event, where students met the school's first Asian American professor. The most recent event was a screening of Juzo Itami's "The Taxing Woman," the first installment of our Asian Culture Film Series.

BLS Animal Rights Group: The Fur Industry

by Hayley Greenberg
(Vegetarian)

"Custom will reconcile people to any atrocity, and fashion will drive them to acquire any custom."

GEORGE BERNARD SHAW
(VEGETARIAN)

"It's a matter of taking the side of the weak against the strong - something the best people have always done."

HARRIET BEECHER STOWE
(VEGETARIAN)

Every year, approximately 100 MILLION animals die or suffer needlessly due to anal electrocution, placement in decompression chambers, imprisonment in small wire cages,...their minds broken, stomachs filled with ulcers from the stress of lifelong captivity. All for the sake of vanity and supposed glamour - the fur trade.

Do not let the numbers numb you. These beautiful animals suffer one at a time, experiencing torture individually. Most of us would not sit still if we saw a murderer slamming a kitten's tiny foot with a hammer or a tire-iron, yet, we politely and cowardly accept fur-wearing.

Many claim that the fur trade provides livelihoods for many trappers, but, in fact, trappers earn only a small fraction of their income from trapping. In fact, the price of each pelt has decreased and now trapping is almost exclusively done by "weekend trappers, hobbyists, and "sportsmen," who torture these helpless animals merely for the thrill of it.

On a fur ranch, minks, normally solitary animals, are forced to live close together in wire-floored cages. These crowded conditions cause stress and abnormal behavior. The mink will bite their own skin, gnaw at their own limbs, and constantly run around in their cages for hours at a time. This is stereotypical behavior - a sign of insanity.

The Danish Government, which supports the fur trade, reported that "{fur} animals do not adapt to their small all wire cages and are exposed to cold and drought without any shelter. They perform stereotypical behavior, constantly tumbling upside down and making vigorous attempts in trying to escape through the corner of their cages by attacking the floor in deadly fear."

Beautiful foxes, raccoons, bobcats, lynx, mink, and other fur-bearing animals are gassed with carbon dioxide, and electrocuted at these ranches. The apparatus consists of a battery, a metal bar, and a clamp, which is fastened around the mouth while the rod is inserted in the animal's anus. A switch is turned on, the electric current shoots through the body, and after about 20 seconds, the animal is usually dead. Sadly, this is what fur-glamour is all about. .

What are some distinctions between fur and leather? Simply, fur coats consist of an animal murdered for the sake of fashion, while leather is a by-product of animal consumption where the remainder of the animal is not discarded. Sadly, this minor distinction is rather insignificant to animal rights activists, most of whom do not wear leather. I don't. In fact, no one needs to eat corpses (I mean meat) or wear leather!

Fortunately for activists, fur sales are plummeting. In West Germany, Britain, and Switzerland fur sales have dropped 40% in the past decade, while in the United States, the three largest publicly-held fur companies lost tens of millions of dollars last year. In fact, the largest furrier in New York recently went bankrupt. Don't feel too sorry for the furriers: keep in mind the 40 raccoons that were mutilated to make just one coat. For the furrier, it's only money; for the animals, it's their lives.

To show your support, come the most important march of all. FUR FREE FRIDAY, on November 23 at 10:30 A.M. Meet at the corner of Columbus Circle West and Broadway in Manhattan. Bob Barker will be there with thousands of animal supporters and television crews.

WE NEED YOUR PRESENCE. BRING FRIENDS. HELP US CONTINUE TO MAKE THIS TURNOUT A SUCCESS. For more information, call the Animal Reform Movement at (212) 966-8490.

NOTICE

As you may have already noticed, receptacles for recyclable cans and bottles are now in place in the cafeteria, student lounge, and the halls of floors 4, 5, and 6. Your cooperation in disposing all recyclable cans and bottles in the receptacles will be greatly appreciated. Proceeds of recycled cans and bottles will be donated to local organizations.

Environmental Law Council
and the BLS Administration

Brooklyn Law Students For the Public Interest

Brooklyn Law Students for the Public Interest (BLSPI), one of the school's newest and fastest growing student organizations, was founded in September by 45 students. BLSPI's main purpose is to increase the availability of legal services to under-represented individuals by making the practice of public interest law more financially feasible for both current students and recent graduates. BLSPI plans to accomplish this by awarding public interest law fellowships, expanding Brooklyn Law School's new loan-assistance program, and educating students about opportunities in public interest law careers.

Today, there is a great demand for public interest lawyers, as disadvantaged groups increasingly are being denied access to the courts. According to recent bar association estimates, approximately 85% of the civil legal needs of poor and lower middle-class individuals go unmet because these individuals cannot afford to pay attorneys' fees. At the same time, most public interest law organizations are poorly funded and cannot pay salaries that would allow law students and recent graduates to pay back their outstanding loans. BLSPI's plan would help bridge these gaps by awarding fellowships to students who take low-paid or unpaid public interest part-time jobs during the school year or full-time jobs during the summer. This would allow these students to provide legal representation to individuals who otherwise would have to do without legal services.

Throughout the year, BLSPI will conduct several fund-raising and educational events. In late November, the organization will hold a raffle to award a free bar review course. (Tickets will cost $1 each or $5 for a pack of six.) In early December, BLSPI will sponsor a faculty panel discussion entitled "Getting Started in a Public Interest Law Career," featuring several current faculty members who came to the law school after distinguished careers as public interest practitioners.

BLSPI president Paul Zimmerman says that the organization's success will depend on the response of the school community. "I hope that everyone gets excited about what we are trying to do and becomes involved. Many students came to law school wanting to help people or to 'do justice' in some small way. Unfortunately, the reality is that most of us go on to do the legal work of large corporations, while only a small fraction protect the legal rights of the less powerful members of our society. The basic reason for that is not lack of interest. It's lack of money. Every graduate who wants to practice public interest law should be able to do so. Our goal is to make it financially possible."

Anyone interested in learning more about the organization or becoming an active member should look for signs announcing the next meeting. You may also call Paul Zimmerman at (718) 625-7021.

Phi Delta Phi

Phi Delta Phi held its fall initiation ceremony on November 3. Eleven members were inducted, as well as Professor Benjamin Ward, who was made an honorary member. A delightful dinner at Peter Hilary's on Montague Street followed the ceremony.

Phi Delta Phi has several events planned for the upcoming year, and we urge all students to look for club postings. For those students who wish to join, we will hold another initiation ceremony in the spring. If anyone wishes to become a member, please leave a note in our SBA mailbox.

MOOT COURT UPDATE

The Moot Court Honor Society is looking forward to another successful year. We would like to congratulate Tad DiBiase, Linda McMahon, and Albert Khafif on their performance in the Benton Information and Privacy Competition. Additionally, a team of Brooklyn Law School students will be participating in the National Competition, which will be held on November 28, at the New York Bar Association.

The Society would also like to announce the bench for the final round of the Jerome Prince Invitational Evidence Competition, to be held at Brooklyn Law School on Sunday, March 17, 1991: the Honorable Pamela Ann Rymer (United States Court of Appeals, Ninth Circuit), the Honorable Wilfred Feinberg (United States Court of Appeals, Second Circuit), and the Honorable Sol Wachtler (Chief Judge, New York State Court of Appeals).

Deputy Mayor Of Public Safety Speaks to BLS Students

by Laura Amos

Milton Mollen, the Deputy Mayor of Public Safety for the Dinkins administration, presented what turned into a political forum to the Criminal Clinic class on Monday, October 22. Of the 30-35 students in the class, many said that they learned the extent of Mollen's jaunts from one newsworthy crisis to the next.

With an impressive background of 11 years as a trial judge and 12 years as an appellate judge, Mollen is no stranger to the criminal justice system. He stepped into the position of Deputy Mayor of Public Safety directly from his role as the chief judge of the Appellate Division, Second Department. Mollen, whose duties include the coordination of all of the city's criminal justice agencies, said that under his leadership, problems will not be blamed on any one individual, but will be dealt with by the entire system. He went on to explain that under the Koch administration, the position of Deputy Mayor of Public Safety was downgraded to Criminal Justice Coordinator, making it largely ineffectual. Mollen explained that "the job was characterized as begging other people to cooperate." He added that the ineffectiveness of the Criminal Justice Coordinator was not due to the individual who held the position at the time, but it was due to "an inherent defect in the nature of the position."

Furthermore, Mollen identified one problem as the independence of many city agencies. For example, the five District Attorneys are each individually elected and are responsive to their electorate, while not necessarily being responsive to the Mayor or to each other. Also, Supreme Court justices are elected for 12-year terms, but Mollen notes that they are "practically elected for life" and may not feel an obligation to anyone. Additionally, while the Police Commissioner is appointed, he becomes " a victim of his own bureaucracy." Mollen characterizes these agencies as "a group of shiekdoms."

Mollen believes that in his upgraded position, one which is linked to the mayor's power, he has an element of control over the budgets of these "shiekdoms" so that he may establish some cooperation between them. Mollen adds that he is also focusing on increasing cooperation between state and federal agencies, such as the state police, the Federal Bureau of Investigation and the Drug Enforcement Agency.

Mollen states that the cliche, "No chain is stronger than its weakest link," applies to his updated program. Each agency has the power to limit the entire criminal justice system by displaying its own deficiencies. He said there must be enough police using the "correct approach" to law enforcement, enough District Attorneys with "proper values" and efficiency, a capable court system - not "turnstile justice" - an effective correctional system and, lastly, an effective parole system, which Mollen believes is one of the weakest links in the entire criminal justice system. Mollen wants to create an intensive supervision department to work with probatioiners, noting that while probation officers "now have a case load of about 150, it has been as high as 300 in past years."

Mollen's answer to New York City's recent "crime wave" is "redeployment of police officers to the streets." He complained that no police commissioner has analyzed the police department since 1963, while Mollen boasted of "Operation Take Back," which included placing extra police on the streets of seven of the highest crime precincts.

Mollen would also create a system of prioritizing "911" calls, which currently comprise 90% of all police responses. Mollen feels that many of these calls would be better handled by other agencies. Mollen also advocates "civilianizing" the police department in order to provide more police on the streets, especially since civilian employee salaries are lower. Additionally, he suggests cutting down on specialized unions, hiring 3416 additional police officers, and reducing the time from arrest to arraignment to under 24 hours. Mollen, however, admitted that there is an insufficient number of holding pens, such that arrestees are shipped out to various locations in the city and picked up in a haphazard manner.

Mollen also recognized that the juvenile criminal justice system is not geared toward the more violent, hardened juvenile defendants. He said that arrests of persons under 16 has grown 60% in the last three years and the violent nature of their crimes has also grown dramatically. Mollen suggested a preventive program involving youth organizations and school boards, but failed to address an existing approach in the family court, which is one of the "links in the chain" that Mollen coordinates.

Mollen discussed many grand ideas, but cited few hard facts. When asked by one student, why the administration had appealed the enforcement of the injunction at the Korean grocery store on Flatbush Avenue, he blamed Police Commissioner Brown for the decision and bypassed the question. If Mollen's goals are accomplished, they will improve New York City's criminal justice system. The question is whether Mollen is aware that he is also a "link in the chain," and that he must be strong in his position in order for his plan to work.

There Ought To Be A Law

by Joe Accetta

"Let's go Rangers." "Let's go Rangers," roars the crowd at New York's Madison Square Garden. This familiar chant always begins with a smattering of participants in the "blue seats" (the upper level in the Garden's seating arrangement), and builds to a deafening crescendo within seconds at nearly every Ranger home game. The blue-seaters are the pure fans: the blue-collar, middle-class, city-dwelling fans who, by and large, trek to the world's most famous arena by subway or commuter bus in order to root for their beloved hockey team and their basketball co-tenant, the Knicks.

Yet, every so often, when the game below is decided early and the venom of the blue-seaters is no longer necessary to distract the other team, the blue-seaters redirect their verbal abuse toward the "guys in the suits," those corporate executives sitting in the expensive red seats, located at ice level, and toward those sitting in the growing number of luxury sky boxes, located around the upper perimeter of the arena. Unfortunately, the blue seaters are often profane and downright disgusting in their taunts directed at corporate New Yorkers, whom the blue-seaters accuse of coming to games merely to drink mixed drinks and discuss business deals in these heavenly boxes while ignoring the game. This practice, any blue-seater will argue, takes away valuable seating opportunities from "real fans" who want to enjoy a live game, despite the exorbitant admission prices ($45 for the best seat in the house).

With the expansion of the luxury sky boxes, the number of blue seats have been reduced, thus leaving middle-class fans with even fewer opportunities to obtain available, inexpensive seating. (Of course, there is always Madison Square Garden cable television, which now owns the exclusive rights to all Ranger and Knick games, for those of you who have cable available in your neighborhood.)

Yet, in another blow to the faithful blue-seaters, a recent New York Court of Appeals opinion, in what was termed as a "test case," has excluded the seasonal cost of luxury boxes in New York's arenas and stadiums from the city's commercial rent tax, thus encouraging corporate New York to further monopolize seating availability in places such as Madison Square Garden. (*Matter of Peat Marwick & Main Co. v New York City Department of Finance*, No. 201)

The relevant section of the city's Administrative Code is Section 11-701[5], which defines "taxable premises" as "any premises in the city occupied or used for the purpose of carrying on or exercising any trade, business, profession, vocation or commercial activity...." In 1988, a Manhattan Supreme Court ordered the city to refund to Peat Marwick & Main Co., a major accounting firm which rented one of the Garden's luxury boxes, a 6% commercial rent and occupancy tax it had imposed on the firm for the firm's use of the box in 1987. However, the Appellate Division, First Department, reinstated the tax assessment, finding that Peat Marwick used the sky box for "commercial activity" including "entertainment and relaxation of their clients and favored employees, which is sufficient to bring such use within the broad definition of the code...."

The Court of Appeals reversed and stated that the "essence of [luxury sky box] agreements" was "for admission to sports and entertainment events, with the amenities and conveniences to make their viewing more comfortable." The court approved of Peat Marwick's choice to use the sky box to host guests as a "business advantage." This, by itself, was found not to render these boxes subject to the city's commercial rent and occupancy tax. Furthermore, the court suggested that the language of the code "is intended to apply to premises where an integral part of the commercial enterprise is carried out."

In a sense, it seems that this opinion is an adequate assessment of the city's provision on commercial rent and occupancy taxes, since a broader application of the statutory language could unreasonably be extended to facilities not currently subject to the tax, including corporate day-care centers and homes of business associates, where business is conducted regularly. Unfortunately, this decision is another victory for corporate America in the realm of sports, since it will be the average fan who will ultimately foot the bill with increased admission prices and less available seating. This failed attempt to tax wealthy corporations that use sports arenas for business purposes solidifies a trend that has become all too apparent in the last few years. The corporate bottom line is the ultimate issue in sports, and the average fan, who is willing will spend his hard-earned money, will continue to be sacrificed on the altar of corporate America.

FIRST ANNUAL SEMINAR ON CRIMINAL LAW, CRIMINAL PROCEDURE, AND EVIDENCE HELD AT BLS

by Daniel Tam

On Saturday, September 29, 1990, Brooklyn Law School held the first annual seminar on Criminal Law, Criminal Procedure, and Evidence in New York. Conducted by Professor Robert Pitler, this seminar brought together some of the most prominent members of the legal profession, and was attended by about 250 people. The Honorable Judith S. Kaye, of the New York Court of Appeals, opened the program by speaking of the enormous change in the law, especially in the areas of expert testimony and electronic surveillance.

The Honorable Carol Berkman, an acting Supreme Court Justice in Manhattan, spoke on the areas of pleas and sentencing. She expressed concern over the ever-increasing pressure to dispose of cases as quickly as possible, and explained that the emphasis on speed often results in illegal pleas to which both the prosecution and defense agree. Justice Berkman cited *People v. Bullard* as an example of a case of an illegal plea, stating that defendants cannot rely on promises which the court cannot lawfully carry out.

The next panelist, Mark Dwyer, Bureau Chief of the Appeals Bureau of the New York County District Attorney, spoke on the areas of identifications and searches & seizures. Dwyer noted that, in identifications, there is no absolute right to call a vicitim to testify at the hearing. *People v. Chipp*, 75 N.Y. 2d 327, 553 N.Y.S. 2d 72 (1990). He said that, in a suppression hearing, "the defendant's confrontation rights go only so far." Dwyer commented, though, that it would be unreasonable for any judge, if the victim is present at the trial anyway, to ask questions of the victim out of the presence of the jury to see if there are any facts which will allow defense counsel to reopen her suppression motion.

In the case of show-up identifications at police precincts, Dwyer stated that the court in *People v. Riley*, 70 N.Y. 2d 523, 522 N.Y.S. 2d 842 (1987), held such show-ups to be unduly suggestive. The *Riley* court found that exigent circumstances must justify the police station show-up before it will become admissible. According to Dwyer, many confirmatory identifications done at the stationhouse are show-ups.

Dwyer also identified two types of witnesses in this context: civilians and police officers. He argued that where a civilian victim knows the defendant, a lineup procedure could not really be suggestive. Even where the defendant is a stranger, a confirmatory identification is not really one at all. But, according to Dwyer, there are benefits to this confirmatory identification process. "First," he said, "there is no possibility of extra suggestion when the vicitm sees the defendant for a second time...," since the victim has already picked out the defendant once before. Secondly, Dwyer noted that a confirmatory identification may help set an innocent man free, where the victim is unsure.

Police officers, who as trained observers must often make confirmatory identifications, have been allowed somewhat more discretion in these identifications. Dwyer stated that, in *People v. Morales*, 37 N.Y. 2d 262, 372 N.Y.S. 2d 425 (1975), the court held that a police officer's confirmatory identification was valid even though it was made six hours after the defendant's arrest. He cautioned, however, against interpreting this case too broadly. As an example, Dwyer cited *People v. Hayes*, 556 N.Y.S. 2d 922, where the court held that six days between arrest and the police officer's confirmatory identification was too long, and that a suppression hearing was necessary.

In the area of searches & seizures, Dwyer stated that, under *Alabama v. White*, _U.S._, 110 S.Ct. 2412 (1990), the Supreme Court will require more than a mere matchup of a defendant's description with the description given by an anonymous caller of the actual defendant. In *White*, a caller tipped off the police with information that the defendant would be in possession of cocaine after leaving a specific apartment at a certain time and in a certain vehicle, and would go to a particular location. The Court found reasonable suspicion here, as this information was corroborated by the police, and the caller seemed to know more about this defendant than anyone on the streets. Dwyer said that the Court seemed to suggest a need for some prediction of behavior in addition to the description of the defendant. The Court reasoned that, without that "extra" information, the stop-and-frisk might not have been possible.

In New York, the Court of Appeals in *People v. Salaman*, 71 N.Y. 2d 869, 527 N.Y.S. 2d 750 (1988), held a stop-and-frisk by a police officer to be justified, where an anonymous caller described a particular person at a particular location, and reported that he had a gun, and the police saw only one person at the location who fit that

description. Dwyer argued that in *Salaman*, the area's high crime rate and the fact that it was nighttime may substitute for the predictive behavior requirement in *Alabama v. White*. But whether this meets the requirement is an unsettled question in New York, according to Dwyer.

As to security sweeps, Dwyer pointed to the recent Supreme Court decision *Maryland v. Buie*, _ U.S. _, 110 S. Ct. 1093 (1990). In that case, the Court found that police may make a protective sweep of the premises upon reasonable belief that the area to be swept harbors a person who poses a danger to arresting officers. He noted that *People v. Febus*, 157 A.D. 2d 380, _ N.Y.S. 2d _, (1st Dep't. 1990), expanded the *Buie* case. In *Febus*, police officers arrested a 15 year-old boy who was seen carrying drugs, while responding to a report of some men with guns in an apartment building. Finding that the door to the apartment which the boy came out of was not latched shut, the police entered the premises and found two men with guns and drugs present in the apartment. The First Department held that the police acted properly in pushing open the door to see if there was anyone there who presented a danger to the arresting officers. But Mr. Dwyer cautioned that this case will go to the Court of Appeals.

In the area of plain-view seizures, Dwyer spoke of the recent *Horton v. California* case, _U.S._, 110 S.Ct. 2301 (1990), where the Court held that, in executing a search warrant, the plain-view discovery of an item not listed in that search warrant need not be inadvertent. This rule applies, so long as the police are lawfully on the premises and the incriminating nature of the item is immediately apparent. New York, Dwyer contrasted, still recognizes inadvertence as a requirement for plain-view seizures.

Following Dwyer, Professor Pitler spoke on the area of confessions. He cited *People v. Bing*, _N.Y._, _N.Y.S. 2d_ (July 2, 1990), which overruled *People v. Bartolomeo*, 53 N.Y. 2d 225, 440 N.Y.S. 2d 894 (1981), as the most significant case to come around. In *Bing*, the Court of Appeals held that police may seek and obtain a fully-informed and effective waiver from a person just taken into custody even if they know that that person is represented by counsel on an unrelated pending case, provided that counsel on the pending case has not, to the knowledge of the police, "entered the proceeding" on the new crime. The Court of Appeals,

The Honorable Judith S. Kaye addresses the audience

in *Bartolomeo,* held that knowledge by the officers interrogating the defendant that the defendant is represented by counsel, even though on another charge, precludes interrogation in the absence of counsel and renders ineffective any purported waiver of the assistance of counsel when such waiver occurs out of the attorney's presence. The *Bing* court concluded that there was no sound basis for the *Bartolomeo* decision, and that the case was worthy of being remanded. *Bing*, in effect, allows suspects to waive their rights. However, there are still some exceptions to this rule. Professor Pitler noted that *People v. Rogers*, 48 N.Y.2d 167, 422 N.Y.S. 2d 18 (1979), is still the law governing interrogations after the defendant's attorney has entered the proceeding, whereby the police cannot obtain an admissible confession from the defendant without the presence of counsel.

In *People v. Cawley*, _ N.Y. 2d _, _ N.Y.S. _ (July 2, 1990), decided with *Bing*, the court upheld the defendant's confessions to two murders unrelated to the robbery which he was charged with because counsel was present. In *Cawley*, the defendant was arrested for a robbery and was represented by counsel at the arraignment. Subsequently, he fled and was rearrested on a bench warrant. The argument here was that since he was arrested for a crime on which he was represented by counsel, any interrogation without counsel was prohibited. The defendant was interrogated, even though the District Attorney's Office told the police on three occasions not to question the defendant, and he confessed to two murders unrelated to the robbery. The trial court suppressed the confession, and the Appellate Division affirmed it. Professor Pitler noted that *Cawley* was argued as a *Rogers* case, and not as a *Bartolomeo* case. Yet the Court of Appeals treated *Cawley* as an overruled *Bartolomeo* case. The *Rogers* argument was never addressed by the court. Professor Pitler went on to say that *Cawley* sends the wrong message to the police, because the police lieutenant who disobeyed the instructions of the District Attorney's office actually succeeded in changing the law. According to Professor Pitler, he ended up a hero, when, in fact, he should have been disciplined.

Professor Pitler also noted that *Bing* left certain unanswered questions as to when an attorney is considered to have actually "entered the proceedings," whether an attorney has to affirmatively enter, or whether he must be brought in, on unrelated crimes. The Supreme Court has granted *certiorari* in *Bing*.

Professor Barbara Underwood, a law professor at New York University and former Chief of the Appeals Bureau of the Kings County District Attorney, discussed the prohibition on the discriminatory use of peremptory challenges. In New York, this prohibition was extended to defense counsel by the Howard Beach case, *People v. Kern*, 75 N.Y. 2d 638, 555 N.Y.S. 2d 647 (1990). Originally, this prohibition applied only to the prosecution, as a result of *Batson v. Kentucky*, 476 U.S. 79 (1986). In *Batson*, the Court found that equal protection prohibits prosecutors from using peremptory challenges to strike members of a jury panel on the basis of race. The prosecution must rebut an inference of a discriminatory use of peremptory challenges where facts and relevant circumstances indicate such a use.

Professor Underwood stated that the defendant probably does not need to be a member of the excluded group in order for the rule to apply. But she noted that it is unclear whether or not the Supreme Court will agree.

What constitutes a sufficient rebuttal to an inference of discriminatory use of peremptory challenges? One example is *People v. Hernandez*, 75 N.Y. 2d 350, 553 N.Y.S. 2d 85 (1990), where the Court of Appeals found that exclusion of Hispanic venire members was valid because of the prosecutor's fear that they would not accept the interpreter's interpretation of Spanish speaking witnesses. She stated that this was, in effect, discrimination based on language, which the Court of Appeals found permissible. The Supreme Court has also granted *certiorari* in this case.

The Honorable Phylis Skloot Bamberger, Judge of the Court of Claims in Bronx Supreme Court, spoke about issues involving the jury. In particular, she discussed the question of whether the defendant must be present in the courtroom. She noted that the defendant must be present at all communications by the court with the jury, including the impanelling of a jury, and the court's response to a jury's notes during deliberations. In determining whether the defendant must be present "the question here is," she stated, "what tasks are ministerial and what aren't." Judge Bamberger noted that this rule also extends to discussions between the trial court and an individual juror, under *People v. Cain*, 76 N.Y. 2d 119, _N.Y.S.2d_ (1990).

On the question of when a juror may be discharged, Judge Bamberger noted a case which came before her. In that case, one of the jurors was to be married. The illness of the prosecutor delayed the trial, and the juror's wedding day was rapidly approaching. She stated that the easy way to solve this might have been to have the court officer go with the juror to her wedding, go with the juror to the wedding reception, and then bring the juror back to court for the jury deliberations. The question, however, was whether the juror had to give up her prepaid airline tickets for her honeymoon. Judge Bamberger could

not know whether the jury deliberations would be completed before the day the juror was to leave for her honeymoon. Judge Bamberger discharged the juror, "over the vehement objections of the defense counsel, who had their own reasons why they couldn't be available to expedite the trial proceedings." Judge Bamberger predicts that this case will be appealed.

In the same case, another juror was scheduled to take a civil service examination during the jury deliberations. Judge Bamberger stated that this situation was controllable and she did not discharge the juror. A court officer would go with the juror to the examination, and bring the juror back when the examination was over, with the deliberations suspended until the juror's return.

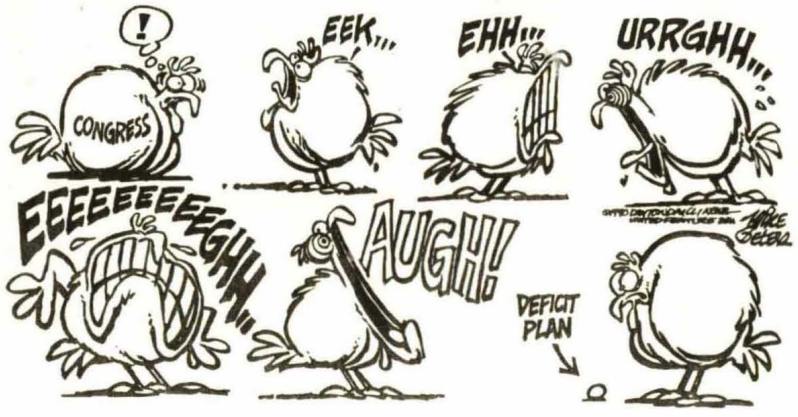
Judge Bamberger also posed an open question to the audience: What happens, during jury selection, when a juror wants to answer a question privately? She gives, as examples venire members who are victims of rape, or whose children are in jail. She asked, "Do we run the risk of having the juror not level with us?...We must give the jurors an opportunity to level with us. A requirement to make statements in open court may therefore not be fair."

The Honorable Michael R. Juviler, a Court of Claims judge in Kings County rounded out the day's panel of outstanding speakers. Judge Juviler spoke on aspects of evidence law affected by recent New York decisions. In the area of hearsay testimony, he highlighted the case of *People v. Huertas*, 75 N.Y. 2d 487, 554 N.Y.S. 2d 444, where the Court of Appeals held that if a complaining witness testifies about a description he gave to the police, it would be admissible, so long as it was not offered as hearsay for the truth, but offered only so that the jury could compare the description with the appearance of the defendant at the time of the incident. Judge Juviler commented that an eyewitness doesn't always remember the description he gives to the police. "Some [eyewitnesses] don't even remember giving one," he said. "The police are more accurate [than the eyewitnesses] about the description given to them by the eyewitnesses." This led him into his next question, posited to the audience: "May a police officer who interviewed the complaining witness and received the description [of the defendant] give testimony as to that description on the people's case?" Judge Juviler argued that the rationale of *Huertas* would apply to police witnesses giving testimony as to the description of the defendant.

In contrast, Judge Juviler noted the case of *People v. Rice*, 75 N.Y. 2d 929, 555 N.Y.S. 2d 677 (1990), where the Court of Appeals held that if a police officer testifies that a victim gave prompt complaint, the police officer cannot then testify as to the description given by the complaining witness. Judge Juviler noted that the Assistant District Attorney should put the police officer on the stand to testify as to the description given for the description itself, not for the fact that prompt complaint was made.

Judge Juviler also spoke on the concept of "Depraved Indifference Murder" in New York, where no proof of intent to kill is needed. Penal Law §125.25 (2). Judge Juviler observed, "Courts are troubled by this concept," and he cited *People v. Roe*, 74 N.Y. 2d 20, 544 N.Y.S. 2d 297 (1989), as a true example of depraved indifference murder. In *Roe*, the defendant, who was 15 years old, deliberately loaded a mix of live and dummy shells at random into the magazine of a 12-guage shotgun, pumped a shell into the firing chamber, pointed it at the victim, declaring that they play "Polish roulette," and pulled the trigger, discharging a live round, which hit the victim in the chest and killed him.

Professor Pitler hopes that this seminar will become an annual event.



Working at The Legal Aid Society: An Interview with Lou Fasulo

by DeWayne Chin

The Legal Aid Society is a private, non-profit, public-service law firm which provides legal representation to indigent persons. The Criminal Defense Division, with a staff of over 600 attorneys, is the largest division in the Legal Aid Society, and serves as New York City's primary public defender.

Staff attorneys, who are expected to make a three-year commitment to the Society, handle an average caseload of approximately 60-70 cases at any given time. New attorneys begin by handling both misdemeanor and violations cases, and after approximately 8-12 months will usually begin to handle felony cases.

Depending on a staff attorney's trial experience, it takes about five years before he or she can apply for a position as a supervisor, whose main responsibility is to work with both new and experienced staff attorneys on their cases. Supervisors are expected to make sure that staff attorneys explore all the possible outcomes which may occur at hearing and trials. Although a supervisor's caseload decreases to approximately 10-20 cases, their cases consist of more serious charges such as homicides and rapes.

Lou Fasulo joined the Legal Aid Society as a staff attorney in 1983, and in just four years became a supervisor in the Manhattan office. Recently, on the eve of his seventh anniversary with the Legal Aid Society, he spoke with *The Justinian*.

The Justinain: What made you choose the Legal Aid Society as a career?

Fasulo: I guess I chose it because I always wanted to become a criminal defense lawyer. I am not one of the guys I went to law school with and had anything else in mind. My father was an attorney and did some criminal defense work. I thought it was the most interesting aspect of the practice - dealing with people and helping out the indigent.

The Justinian: So you never had a thought of going into the private sector?

Fasulo: Right away? No. I always wanted to work for the Legal Aid Society because I figured it was a chance to do something public-interest- oriented.

The Justinian: Is that still the reason you work here?

Fasulo: Yes! I feel that whether somebody has a lot of money or no money at all, they still should have the same quality representation. The reason why I'm here is to help them to afford that kind of quality representation through training and working with new lawyers.

The Justinian: How do you perceive the criminal justice system in our society?

Fasulo: That's a good question. I think the criminal justice system is oppressive to the poor. I think it is unfairly slanted against people with less money in that they have less opportunities in society generally, and the criminal justice system just pretty much eats away at every opportunity that they find for themselves. For example, go all the way to quality of life crimes such as vending. We have people arrested everyday for vending on the street. True, they are not paying taxes and, true, they are working without a license, but they are still trying to make a couple dollars through that activity, and yet, the criminal justice system just seems to try to penalize them for doing it.

The Justinian: What do you think the role of the defense attorney is in the system?

Fasulo: I think the role of the defense attorney is to protect the clients from the strengths of the District Attorney's office. I think the state is so powerful that it is left up to the defense attorney to protect the defendant from the power of the state.

The Justinian: How does overcrowding in the system effect the defense attorney's job?

Fasulo: I think in two ways. One, I think that, at times, overcrowding benefits our clients. Some clients end up with better dispositions because of overcrowding. There's no doubt about it, and I'd be a fool not to say that that's not true. But I think that, more importantly, the overcrowding is a result of the prejudices built into the system. For example, we have many clients who are held in on bail of less than $1000 which a middle-class individual would be able to make, but because our clients are of such an indigent nature, they are not able to make that kind of bail. It just perpetuates the criminal justice system as a whole by creating this illusion that there are more people that need incarceration, according to society, than really do need incarceration.

The Justinian: What, then, is the purpose of bail?

Fasulo: The purpose of bail is to make sure that the defendant comes back to court, but you'll find that our clients are not going anywhere. They are not going to run off to South America. They're not going to pick up their passport and go to another country and relocate. Their families are here! Their lives are here! They barely make it here, and they're certainly not going to run from the system. So, I think that bail in this system is a means to expedite the system. By holding the defendant in on bail, there is a greater likelihood that defendants will plead guilty in order to get out of jail, rather than to fight a case which they think they should legitimately fight!

The Justinian: Who benefits and who loses in the criminal justice system?

Fasulo: I'm not sure if anyone is benefitting. Who loses? Our clients lose and society loses. Society loses because there are many problems that need to be addressed outside the criminal justice system that are now being addressed within the criminal justice system. The drug problem, for example, is one area that needs to be addressed outside the criminal justice system. We have clients who we want to get into drug programs, but there are no beds available or the beds are available, but not for three to four weeks. Well, during that interim period, it is very difficult for our clients to make it! So there are not enough alternatives to incarceration right now to serve the system. I think that, from society's point of view, the system is probably not serving society well either, because we are spending too much time on offenses which should be outside the criminal justice system.

The Justinian: So, are you saying that incarceration is only a short-term solution?

Fasulo: There are very few crimes that I think incarceration is an answer to. I think we have to reeducate the public in general. There is no doubt that there are some very serious crimes and there are some crimes that justify some incarceration, I guess in society's view, but as a criminal defense lawyer, I have not seen incarceration benefit many, if any, of my clients. So if you are asking me about incarceration as it is currently used, I don't think it is working. I think if there was reeducation, if there were job-training skills available, if the incarceration was even closer to their own environment so that when they leave their housing or incarceration facility, they would integrate back into the community. Maybe those are some of the answers we should be looking at, but under the current system, I think it is just punitive and it is not serving the needs because the needs are economic and our clients are suffering economically.

The Justinian: As a whole, do you think the system works?

Fasulo: I don't like that question because, as a whole, I think the system works for some of our clients. I think that we play an important role in making sure that the system works. If I didn't believe the system worked at all, then I wouldn't be a part of it because that would be hypocritical. I think that in terms of the court system, in terms of representation, I think we play a role in making sure the system works for some of our clients. In terms of the ultimate result, which is sometimes incarceration in the hope that the individual, because of the incarceration, will not commit the crime again, I think the system fails in that respect.

The Justinian: What is the general profile of the Legal Aid Society's client population?

Fasulo: I guess the overwhelming similarity amongst our clients is poverty. Our clients are poverty-stricken. A great deal of them don't have the same education as other population groups in the city. But I guess poverty would be the overwhelming thing, I would say. In terms of make up, there are studies that have just come out - I don't know if it is the Hastings' study or some other study that just came out - that indicate that one out of four black males would end up in the criminal justice system - black males between the ages of 18 and 22, I think it is. So a great deal of our clients are minorities. Ninety percent are from minority backgrounds. I think the reason is, once again, economic.

The Justinian: How did you feel when you met your first client?

Fasulo: I guess the thing I felt was, [one] I was excited and [two] I felt an overwhelming responsibility to my client. I mean every word out of his mouth - not that it is not true today - but any word out of his mouth I felt was important because I had now become responsible for his freedom. That's a pretty heavy responsibility.

The Justinain: Is that the feeling you still have today toward your clients?

Fasulo: In terms of responsibility, absolutely! I think the toughest part of this job is making decisions that affect people's lives. It's not the arguments in court and it's not summing up in front of a jury. Those are skills which I

think I'm very good at and you can develop, but I think that responsibility you have towards someone else - making a decision or helping someone else make a decision that affects their lives - is overwhelming and, sometimes, you question whether or not you are making the right decision.

The Justinian: What do you feel is the client's perception of the Legal Aid Society attorney?

Fasulo: I think the client's perception of the Legal Aid Society attorney is basically that if the client is not paying for the service, then the service mustn't be as good as if the client was paying for it. Plus the media hype, when you look at the media and our clients are like everyone else, they can read about the top-name criminal defense lawyers who are getting large fees to represent high-profile individuals and their impression is that if they had that money and they had that representation, they would probably be getting better representation. I do think that the majority of our clients realize, however, that we are the best litigators in the courthouse - bar none - and that they are getting that representation.

The Justinian: So how do you develop a working relationship with the clients?

Fasulo: I think that it comes by communication. First, you let the client know what you are doing for the client. You let the client make themselves feel a part of the decisions that you have made and you make sure the client is well-informed on all aspects of his case. The more you do that, I think you start to develop a better rapport with your client. Once you get the trust of your client, I think that is one of the most important aspects of your job.

The Justinian: In your opinion, what percentage of the clients are guilty of the crime they are charged with?

Fasulo: With the way you phrase that question, I would say that a majority of our clients are not guilty of the crime they are charged with.

The Justinian: How do you answer those people who ask you, "How do you defend a guilty person?"

Fasulo: Well, one of the points I was going to make under the last question is that, in this system, our clients are overcharged because District Attorneys know that plea bargaining may occur. It is likely that the District Attorney will take a chance with a charge or indictment which is above what the proof at trial is going to be able to be established. So, in fact, a lot of times what we are doing is mitigating damages. Say our client is charged with a high-level robbery when, in fact, they maybe just committed a grand larceny. If we get a grand larceny after trial, I consider that a victory. So, in essence, how I defend somebody whose been charged and who admits to the grand larceny to me by hoping that I will be able to show that it wasn't a robbery - that it was grand larceny. In more serious cases, where a defendant tells me he is guilty of the crime and there is only one charge in the indictment and it's all or nothing? I have no problem representing that client. I think the District Attorney has a job to do and their job is to make sure that they're perpetuating the truth of the case. They're the factfinders. We're not the factfinders! They're suppose to go ahead and present the evidence and show why they believe our client is guilty. We are there to challenge that evidence - to make sure that that evidence is of a quality nature. I defend what I do very easily in public. I tell this story to people. It's kind of like if you had two products. You have a high-profile soft drink and a generic-brand soft drink. You compare the two. Now, if you drink both, you hope that the high profile of the big name soft drink - the Coke or the Pepsi - is going to be a lot better-tasting than the generic-brand soft drink. Same thing in court; the District Attorney should have the stronger case. If they have the stronger case, they should win. No matter what I do as a defense lawyer the end result should not change. The District Attorney should still be able to win the case. If I challenge the evidence successfully, or if they don't prepare the case properly, that's not our problem; that's the problem with production of the District Attorney. It's not my issue.

The Justinian: You mentioned plea bargaining earlier. Do you feel that there is too much plea bargaining in the system?

Fasulo: I feel that the mandatory sentencing structure of New York State leads to plea bargaining. Clients are faced with mandatory state jail terms and judges are in the position where they can't give appropriate sentences based on the needs of an individual case, and this leads to plea bargaining, where the District Attorney has to reduce the charges, etc. I also think that the way that the system is now plea bargaining is a necessity of the system. When District Attorneys are going to overcharge cases - get indictments that they know they're not going to be able to prove at trial for certain charges - I think you need to have plea bargaining to justify the current system.

The Justinian: If you have a case that you think is hopeless, but your client refuses to take the plea, what do you do?

Fasulo: I push it to trial! I explain the options to the client. If the client refuses to take the plea, we're going to trial. I have no problem at all trying that case.

The Justinian: So, essentially, you are saying that it's the client's decision in the end?

Fasulo: It is absolutely the client's decision: there's no doubt about it. Our clients make the decision, but the way we present - and this is the responsibility that we have as defense lawyers - the options to the client obviously affects what decision they are going to make. I think that's where we make the decision for our client. As we present our options, in whatever fashion we may do that, we're making the overall decision as to what the client is going to do. But if a client says, after I present that option in a way in which I think, perhaps, the client should take a plea, for example, I'll present the options in a way in which I hope the client will read into it and say, "Maybe I should take the plea," he's making a lot of sense. If the client rejects that, that's the client's absolute right. I'm not insulted; that's the client's case. He has to understand the consequences and he should go ahead and fight the case; that's his right. That's why we have the system.

The Justinian: How would you describe the typical Legal Aid Society attorney?

Fasulo: Committed to our clients. I think that the Legal Aid Society attorney is an excellent advocate for our clients. Our oral advocacy skills and public speaking skills are far above the average lawyer's skills. I think they are committed to our clients and committed to fighting the system; fighting the District Attorneys and being zealous in their advocacy.

The Justinian: What is the working atmosphere at the Legal Aid Society?

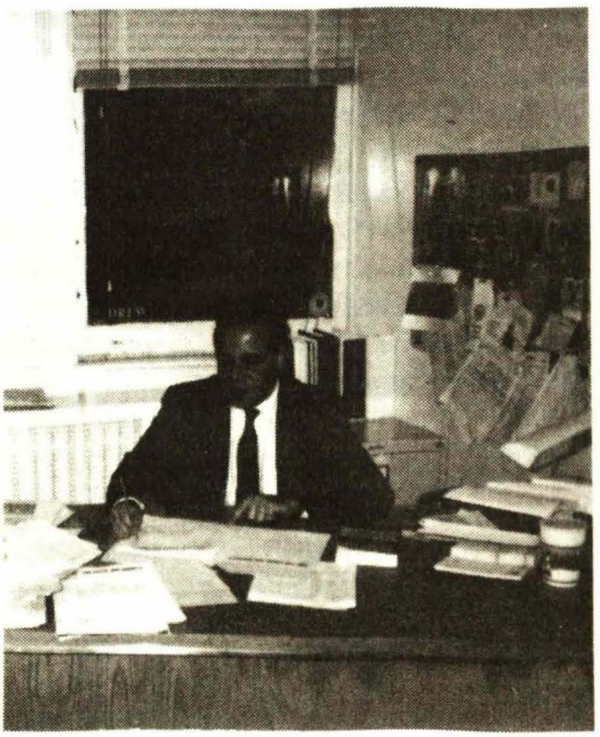
Fasulo: One of the reasons I have been here for seven years is because the camaraderie in the office is so great. You are fighting the court. You are fighting the District Attorneys. Sometimes, you are even fighting with your clients. It is nice to go back to the office and talk about your cases and feel like you are amongst very good friends. While they're your colleagues on a professional level, many of my best friends in life have been formed through the Legal Aid Society. I also think that the kind of supervision and leadership that I got here when I began, and that I hope to give to new attorneys, is also something that is important in deciding to stay in an office for so long; obviously, I am happy with that above all.

The Justinian: What frustrates you most about the job?

Fasulo: Probably the most frustrating part of the job is trying to explain to our clients or their family members why there seems to be no other options available to them under the system. When a client says to me, "I know I've been convicted of a felony before, but I really want to get into a drug program," and I believe they're committed to that and yet, on this sentence, if they are convicted or take a plea that they have to go to state prison, trying to make the client understand that that is the only option available to him.

The Justinian: What is the best part of the job?

Fasulo: The best part of my job is working with new lawyers and seeing how they relate to clients. I think the most exciting part of the job is watching new lawyers develop from basically not knowing too much about dealing with people and dealing with our clients, to really becoming true advocates for our clients: true and effective advocates for our clients. That's the most exciting part of my job.



BROOKLYN LAW SCHOOL

REPORT OF THE SPECIAL COMMITTEE ON SEXUAL HARASSMENT

October 31, 1990

William E. Hellerstein, Chair
Brian Comerford
Elizabeth Schneider
Carol Ziegler

INTRODUCTION

Since 1986, the faculty of Brooklyn Law School has been considering a sexual harassment policy to govern the conduct of the law school community. In the past, the faculty briefly considered a set of guidelines. However, after the reports of other law school reports were published, Dean Trager asked the Special Committee on Sexual Harassment to reconvene to develop new guidelines and procedures. Consistent with Dean Trager's charge, and in accordance with the discussions had by the faculty in May and December 1989 and March 1990, the Committee now transmits this revised Report and Proposed Regulations and Procedures Governing Sexual Harassment to the faculty for its consideration.

The Committee has reviewed a number of other law school and university sexual harassment policies as well as other developments in this active field. In particular, the Committee looked closely at the comprehensive report by the New York University Law School Committee on Sexual Harassment and Gender Bias, published in March 1988. The Committee found the NYU Report both persuasive and useful in drafting the rules and procedures governing sexual harassment; indeed, the Special Committee's Report borrows liberally and often verbatim from the text of the NYU Report.*

In this segment of the report we briefly describe the scope of the problem of sexual harassment in educational institutions, our operating assumptions concerning what conduct is to be proscribed, our definitions of what would constitute sexual harassment and some aspects of the procedures which would govern complaints as to proscribed conduct. As we discuss each of these issues, we give particular attention to those questions which generated the most debate and concern among the Committee and faculty.

THE SCOPE OF THE PROBLEM

Sexual harassment has been documented as a serious problem in higher education. As the NYU Report notes, in a 1983 study by McCain, reported in *Academic Women: Working Towards Equality*, by Angela Simone (Bergin & Garvey Publishers, Inc., 1987), 32 percent of tenured female professors at Harvard University, 49 percent of its untenured female faculty, 41 percent of its female graduate students, and 34 percent of its undergraduate women "reported having been sexually harassed by a person in authority at least once during their time at Harvard." (p. 115) Simone also reports on a "similar study of 1446 women and men at the University of Pennsylvania [which] showed that 26.4 percent of the female undergraduates, 30 percent of the female graduate or professional students, 41.6 percent of the female faculty, and 33.1 percent of the female staff reported experiencing sexual harassment over the previous five years from persons in authority." (*Id.*)

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* We wish to acknowledge at the outset that the discussion of the scope of the problem, that the definitional portion of the section on sexual harassment is taken verbatim or virtually verbatim from the NYU Report.

In a study entitled "Sexual Harassment of University Students," published in the November 1983 issue of the *Journal of College Student Personnel*, the authors defined eight categories of behavior that might be considered sexual harassment. Respondents, students at Iowa State University, were asked to identify whether they had ever experienced each kind of behavior. Among females, 65 percent experienced sexist comments, 43 percent experienced undue attention (defined as "flirtation, being too friendly"), 33 percent experienced advances through body language ("standing too close"; "leering"), and 17 percent experienced verbal sexual advances. (For males, the corresponding numbers were: 26, 13, 10 and 3.)

Closely entwined with the problem of basic sexual harassment is that of "consensual" sexual relationships in certain contexts. We begin with the conclusion that the relationship between a faculty member and a student should be considered one of professional and client, in which sexual relationships are inappropriate. The power differential inherent in a faculty-student relationship (as well as relationships between administrative staff and students and students who exercise supervisory responsibility for other students) compromise the subordinate's ability to freely decide.

Although the rules that we recommend do not specifically forbid sexual relationships in all circumstances between individuals where a professional power differential exists, they are intended to discourage even apparently consensual sexual relationships. However, where a faculty member has direct professional responsibility or supervisory responsibility for a law student, even arguably consensual relationships are prohibited.

Finally, we conclude that even in the absence of a direct professional or supervisory relationship, a faculty member, staff member or student should remove himself or herself from any activity or discussion involving the merits or demerits of any person in the law school community with whom he or she is having or has had a romantic relationship.

POLICY

Sexual Harassment

We recommend the following definition of sexual harassment, which incorporates sexual assault, because we believe that the definition should encompass all conduct that our community considers inappropriate in an educational institution. The conduct defined below is conduct that is likely to interfere with our educational purposes as a professional school training future lawyers, who have and will have an obligation to uphold the law:

(1)Sexual harassment is conduct that (a) constitutes an attempt, physically or verbally, to coerce a person into a sexual relationship, or (b) subjects a person to sexual attention that the actor knows or should know is unwanted, or (c) encourages a person to participate in a sexual relationship through the promise or rewards or threats of penalties which the actor is able to promise or threaten by virtue of an authority conferred by the law school.

(2)Sexual harassment is also behavior that constitutes a pattern or practice of sexually charged conduct or speech whose purpose* it is to create or which has the effect** of creating an intimidating, hostile, or offensive academic or work environment.

This definition encompasses the dual definitions of sexual harassment which have developed in employment discrimination contexts. Thus, section (1) involves what has become known as *quid pro quo* harassment, while section (2) incorporates the "hostile environment" prong of sexual harassment recognized by the Supreme Court in *Meritor Savings Bank v. Vinson*, 477 U.S. 7 (1986). With respect to section (2) we believe that harassing behavior is sanctionable conduct when it constitutes a pattern or practice that is so hostile, offensive or intimidating to a student that she or he is unable to receive the full academic benefits to which she or he is entitled. Environmental harm may occur as a result

* "Purpose" focuses on the intent of the actor.

** "Effect" focuses on the consequences of a person's behavior and not on any element of intent. This is, in part, why the rule requires a pattern or practice, the consequences of which no reasonable person could fail to perceive.

of the professor's behavior towards a single student of a particular gender or a group of students of a particular gender.***

These regulations are intended to apply across the board to faculty, administration, staff, and students. We recognize, however, that portions of the regulations would not apply in all instances. For example, part (1)(c) of the definition may not apply to all student-student relationships, as do parts (1)(a), (1)(b) and (2); a student is not ordinarily in a position to promise or to withhold an academically conferred benefit (e.g., a grade), but some students are. For example, law journal editors have benefits to confer or withhold.

In considering whether statements constitute sexual harassment, it is important to consider the context in which the statement was made, the relationship of the parties, and the number or frequency of the comments. At Brooklyn Law School "no" means "no." A person seeking to establish a sexual relationship may not assume that an individual who says "no" in fact means "yes."

The following examples, each of which falls within our definition, are drawn from a publication of the Association of American Colleges. Most sexual harassment falls into two categories, verbal and physical:

Verbal harassment may include:

.sexual innuendos and comments and sexual remarks about one's clothing, body, or sexual activities;
.suggestive or insulting sounds;
.whistling in a suggestive manner;
.sexual propositions, invitations or other pressure for sex.
.implied or overt threats.

Physical harassment may include:

.patting, pinching, and any other inappropriate touching or feeling;
.brushing against the body;
.attempted or actual kissing or fondling;
.coerced sexual intercourse;
.assault.

Other types of sexual harassment may include:

.leering or ogling (for example, an advisor who meets with a student and stares at her breasts);
.making obscene gestures.

Some types of sexual conduct are really inappropriate behavior because such conduct continues after the student makes it clear that it is unwanted. For example, *some* people may like to be patted or touched on the back or arm as a gesture of support, but it may not be universally liked when a teacher does this. The gesture becomes sexual harassment when a student asks the other person not to do it or, in some other way, clearly indicates displeasure and the other person continues to do it.

*** In light of the faculty's decision to separate the issues of sexual harassment and gender bias and to defer consideration of the latter until the faculty has studied the question of prohibiting various forms of bias, the speech and conduct reached by this regulation do not include gender bias activity. In order to clarify what is covered and, conversely, not covered, under this rule the following examples are provided:

1. A faculty member posts a *Playboy* calendar featuring nude "pin-up" pictures in his or her office in plain view of visitors.
Covered.

2. A faculty member repeatedly tells "dirty jokes" or makes gratuitous and sexually suggestive remarks in class.
Covered.

3. A faculty member consistently uses the masculine pronoun in referring to persons, including students, lawyers or judges.
Not covered.

4. A faculty member characterizes men or women in sexually stereotypical ways.
Not covered.

"Consensual" Sexual Relationships

Whether "consensual" sexual relationships between students and faculty or staff, or faculty in power positions as to other faculty (and even between students and other students), should be subject to sanctions engendered considerable debate among the Committee. In this instance, the important right of freedom of association conflicts with the law school's strong interest in eliminating the dangers to a productive academic environment posed by even arguably consensual sexual relationships where power differentials exist between the parties. This conflict has led different schools to take different positions on this issue. Some, including Harvard and the University of Iowa, forbid even consensual sexual relationships between a faculty member or other person in a position of authority and a student for whom the person in authority has a professional responsibility. M.I.T. appears to be in accord. The University of Minnesota does not forbid these relationships but warns that any charge filed against a faculty member will carry the strong presumption that the relationship was not consensual. The University of California at Santa Cruz permits consensual relationships between faculty and staff and all students but cautions that apparently consensual relationships between persons in unequal power relationships may not in fact be mutual. Other schools whose policies we have examined do not appear to have focused on the issue of consensual relationships.

Notwithstanding that "consensual" sexual relationships are not within the pure definition of sexual harassment, the committee concluded, after lengthy deliberations, that no person with direct professional responsibility over another faculty member or supervisory authority over a law student, by virtue of an authority conferred by the law school,should enter into even an arguably consensual relationship with the student during the time that the professional relationship is in existence. This prohibition applies to faculty, administration and staff in their relationships with other faculty, administration and staff where power differentials exist and to faculty in their relationships with students in their classes or who are their research assistant(s) or who are doing independent study with them. It also applies to administration and staff in their relationships with students and to law review and journal editors and teaching assistants with regard to students under their supervision or subject to their editorial discretion, to members of the Moot Court Honor Society, the Student Bar Association and *The Justinian*, who are in positions of authority as to other members of those organizations as well as to members of the law school staff who are in positions of authority.

We take this position because there is often reason to doubt whether a sexual relationship entered into under the circumstances described is consensual in the full sense of the word. Where power differentials exist between faculty members, the existence of such a relationship could give rise to less than objective assessment of a faculty member's entitlement to promotion or tenure. In the faculty-student context, the existence of such a relationship creates an appearance of unfairness and preferential treatment in the eyes of other students who are also under the authority of the particular teacher or student. Should the relationship end while the student continues under the other person's authority, the student may conclude that negative treatment by the other person is motivated by recriminations arising from the end of the relationship. In short, fairness and trust, two of the most important qualities for an educational institution and a successful education, are threatened by these relationships.

We recognize that, on occasion, it may happen that a faculty member who has professional responsibility for a student may develop a reciprocally romantic interest in that student. More often, students who have professional responsibility for other students will find themselves in that situation. The remedy is simple. In the case of a relationship between two faculty members, the faculty member in a superior position should disqualify himself or herself from any participation in the decisional process concerned with promotion of the other faculty member. In the case of a faculty member and a student in his or her class, if feasible, the student should transfer to another class. If not feasible, then the parties will have to await the end of the semester to pursue their relationship. In the case of a faculty member and his or her research assistant, the position of research assistant should be terminated immediately. If a law journal editor and a student working under his or her authority develop mutual romantic interests, the student should be assigned to another editor. The same is true for relationships between teaching assistants and students (at least where the class has more than one such assistant) and to members of the Moot Court Honor Society, the Student Bar Association, and *The Justinian*, who are in positions of authority as to other members. We think this is a small price to pay to further the values our prohibition intends to recognize.

Pre-existing Relationships

We believe that a student and faculty member (or other person with a professional responsibility for the student) who are romantically, emotionally or sexually involved with one another should be precluded from entering into a student-teacher or equivalent relationship. Although such an intrusion on people's freedom to combine personal and professional relationships may seem onerous, we believe that the existence of potential favoritism or the appearance of favoritism outweighs this intrusion.

ENFORCEMENT

The enforcement procedures we propose function through a Committee on Sexual Harassment and include an informal complaint process as well as a formal hearing procedure. If a charge is sustained following a formal hearing, the Committee may recommend to the Dean that formal proceedings be initiated *de novo* pursuant to the law school's regulations, rules, procedures or practices governing discipline against faculty, administration, staff or students.

In developing complaint procedures, the Committee considered a number of policy and practical questions. These included (1) whether control over prosecution should rest with the complainant or the lawschool, (2) the degree of formality of the procedure and (3) how these inherently informal procedures should relate to the formal mechanisms necessary to sanction students, faculty or staff.

Underlying most of these questions was the inevitable conflict between encouraging individuals with meritorious complaints to come forward and the important interest in protecting the privacy of those against whom unproved charges are brought. If these procedures lean in the direction of encouraging complaints, it is because of the Committee's belief that charges of sexual harassment are not lightly or frivolously made. Particularly within a law school community, students who bring such a charge against a member of the faculty do so at no small risk to themselves, not the least of which is making their own veracity and character the focus of considerable public attention and scrutiny. In particular, the Committee debated at length whether and at what stage a complainant may, by declining to go forward, terminate the proceeding. The Committee considered both the law school's independent interest in assuring that wrongful conduct be definitively addressed as well as the right of the person against whom a charge of sexual harassment has been made to seek vindication. The Committee concluded that the negative consequences of forcing an unwilling complainant to go forward or alternatively authorizing the law school to prosecute a complaint on its own behalf outweighed even these serious countervailing concerns. The law school's interest can be satisfied to some extent by centralizing all complaints in the Committee charged with responsibility for enforcement. The confidentiality provisions can at least ensure that access to information pertaining to a complaint will be strictly limited.

Lastly, the enforcement procedure designed by the Committee balances competing interests. It provides for both informal and formal resolution mechanisms. With respect to the most serious forms of sexual harassment, the complainant is given the option of seeking resolution either through an informal mechanism or a formal complaint procedure. With respect to the type of sexual harassment that results from a pattern or practice of sexually charged speech or conduct, a complainant must first resort to the informal mechanism and then, only if the Committee finds that there is a basis for the charge and that its seriousness warrants invocation of the formal procedure, may it be invoked. The reason for this additional requirement in this instance is twofold. Firstly, given the nature of the conduct proscribed, an initial determination by the Committee that there is indeed a basis for the charge is desirable in order to avoid unnecessary formal proceedings to arrive at the same conclusion. Secondly, the proscribed conduct does not necessarily require intent. Therefore, the respondent may be unaware that he or she is in violation of the rule. Since an informal mechanism can alert him or her to the fact, the need for a formal proceeding can easily be obviated.

LAW SCHOOL
REGULATIONS AND PROCEDURES GOVERNING SEXUAL HARASSMENT AND "CONSENSUAL" SEXUAL RELATIONSHIPS

Article I: DEFINITIONS OF PROSCRIBED CONDUCT

(A) Sexual Harassment

(1) No member of the Brooklyn Law School community shall engage in conduct within the Brooklyn Law School community that (a) constitutes an attempt, physically or verbally, to coerce a person into a sexual relationship, or (b) subjects a person to sexual attention that the actor knows or should know is unwanted, or (c) encourages a person to participate in a sexual relationship through the promise of rewards or threats of penalties which the actor is able to promise or threaten by virtue of an authority conferred by the law school.

(2) No member of the Brooklyn Law School community shall engage in a pattern or practice of sexually charged conduct or speech with either the purpose* or which has the effect** of creating an intimidating, hostile, or offensive academic or work environment.

(B) "Consensual" Sexual Relationships

(1) No member of the Brooklyn Law School Community with direct professional responsibility or supervisory authority for another member of the Brooklyn Law School Community by virtue of an authority conferred by the law school or who enjoys a power differential over another faculty member shall enter into a consensual sexual relationship with such faculty member, student or staff person during the time that professional relationship is in existence. This applies to:

(a) faculty with respect to students (i) in their classes, (ii) who are their research assistants, (iii) who are doing independent research under their supervision;

(b) faculty members who, by virtue of their position, are empowered to vote on the promotion or tenure of another faculty member;

(c) law journal editors and teaching assistants with respect to students (i) under their supervision or (ii) subject to their editorial discretion;

(d)members of the Moot Court Honor Society, the Student Bar Association and *The Justinian* who hold positions of power and authority over other members of the organization; and

(e) all other members of the law school administration or staff who are in positions of authority.

(2) In the event that a faculty member and a student in his or her class shall become involved in a consensual sexual relationship, the student shall, if feasible, be transferred to another class. If such transfer is not feasible, the faculty member and the student shall postpone their relationship until the end of the semester.

(3) In the event that a faculty member and his or her research assistant shall become involved in a consensual sexual relationship, the position of research assistant shall be terminated immediately.

(4) In the event that a faculty member enters into a consensual sexual relationship with a student who is engaged in independent research under his or her supervision, such supervision shall terminate immediately and the student shall be placed under the supervision of another member of the faculty.

(5) In the event that a law journal editor or teaching assistant or member of any of the law school sponsored organizations listed in section B(1)(d) above shall become involved in a consensual sexual relationship with a student working under their respective authorities, the student shall be assigned to another editor, teaching assistant or other supervisor. Where, in the case of a teaching assistant, such reassignment is not feasible, the relationship shall be postponed until the end of the course. In the case of a member of a law school sponsored organization in a power relationship to another member of the organization, where another supervisory arrangement cannot be instituted, the relationship should either be postponed or the person in the power position should remove him or herself from that position.

(6) Where a consensual sexual relationship already exists between a faculty member and a student who is not in the faculty member's class or under his or her supervision in any manner, the faculty member shall disqualify himself or herself from voting upon any question involving the conferring of any academic scholarship, prize, honor or award for which said student is qualified to compete.

(7) Where a consensual sexual relationship already exists between a faculty member and another faculty member,

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* "Purpose" focuses on the intent of the actor.

** "Effect" focuses on the consequences of a person's behavior and not on any element of intent. This is, in part, why the rule requires a pattern or practice, the consequences of which no reasonable person could fail to perceive.

the faculty member in the superior power relationship shall disqualify himself or herself from any participation in the decisional process concerned with the promotion or the granting of tenure of the other faculty member.

(8) Where a consensual sexual relationship already exists between a staff member and another staff member, the staff member in the superior power relationship shall disqualify himself or herself from any participation in the decisional process concerned with the evaluation, promotion or salary recommendation as to the other staff member.

Article II: ENFORCEMENT*

(A) The Committee on Sexual Harassment - Composition

(1) The Committee on Sexual Harassment shall consist of three members of the faculty to be appointed by the Dean and the Dean shall designate one of the members as Chair of the Committee.

(2) In a proceeding held on complaint of a student, the Dean shall augment the Committee's membership by adding one or two members of the student body to the panel, unless the com- plainant requests to the contrary.

(3) In a proceeding held on complaint of a member of the law school's staff, the Dean shall augment the Committee's membership by adding one or more members of the staff to the panel, unless the complainant requests to the contrary.

(B) Procedure (Informal)

(1) A person who wishes to complain aboutsexual harassment or assault as defined in Article I, section A(1) above, or about the existence of a proscribed "consensual" relationship as defined in Article I, section B above, may consult a member of the Committee. In the alternative, he or she may wish to consult a member of the faculty who is not a member of the Committee. In such circumstance, however, the complainant shall be advised that if he or she wishes to pursue the matter beyond this initial consultation, he or she will have to meet with a member of the Committee. At any stage herein, the complainant may bring with him or her another person. The complainant need not reveal the identity of the person believed to have acted improperly. However, the complainant should then understand that the Committee will be unable to take action.

(2) Depending on the seriousness of the behavior described, the Committee member (after consulting his or her colleagues on the Committee) may counsel the complainant to proceed to a further informal stage or, with respect to conduct that is alleged to violate Article I, section A(1) or B above, advise the complainant to initiate a formal proceeding. In the end, however, the complainant's decision to proceed or not must be respected.

(3) If the complainant wishes the Committee to take steps to reach an informal resolution of a complaint within the Committee's jurisdiction, then the Committee members or one of them, as they may think best, shall meet with the respondent to discuss the allegation. The name of the complainant shall not be revealed in this discussion, unless the complainant gives permission for the disclosure even though sometimes it will be evident who he or she is.

(4) Alternatively, the Committee may recommend that the complainant meet personally with the respondent, perhaps accompanied by one or more Committee members. What happens next will depend on the result of these informal efforts: the matter may end after the parties, either through the Committee or in person, have had an exchange of views; an ambiguity may be clarified; there might be an apology for a misunderstanding or an inappropriate word or deed or the parties may just agree to disagree.

(C) Procedure (Formal)

(1) If the informal procedure does not produce a result that is satisfactory to the complainant he or she may, by written complaint made to the Chair of the Committee, obtain a formal hearing.

(2) The Chair of the Committee shall advise the complainant that invocation of the Committee's formal procedure will preclude the possibility of confidentiality with respect to his or her identity and that the Dean will be informed of the pendency of the proceeding. If the complainant so advised still wishes to proceed, the Chair of the Committee shall promptly notify the respondent of the complaint, furnish him or her with a copy of same, and schedule a prompt hearing, taking into consideration the respondent's need for adequate preparation time.

(3) The complainant and respondent shall be present at the hearing, and the proceedings shall be conducted in

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* The enforcement procedures set forth below shall be available to all members of the law school community, although we would urge considerable restraint in their use by faculty members, at least for a substantial period after their adoption. That is because the major area of concern pertains to complaints by students about the conduct of other students, staff or faculty. This is the area in which threats to the school's educational goals are greatest. In any event, if a member of the faculty believes that he or she has been the subject of the proscribed conduct, that person is free to go to the Dean or informally seek the aid of another faculty member (including a member of the Committee hereafter proposed).

accordance with such rules of evidence, practice, and procedure as the Committee shall prescribe. Such procedures shall preserve the right of the parties to call witnesses on their behalf, cross-examine adverse witnesses, submit documentary evidence, and to be represented by counsel, if they so choose. A transcript shall be made of the proceedings.

(4) The burden shall be upon the complainant to prove, by a preponderance of the evidence, the charge or charges made against the respondent.

(5) Within seven working days of the closure of the hearing, the Committee shall issue its decision in writing and transmit it to the parties and to the Dean. If one or more charges against the respondent are sustained, the Committee shall also recommend what action should be taken against the respondent. The Committee may recommend to the Dean that: (a) the respondent be admonished, (b) in the case of a faculty member, formal disciplinary proceedings be initiated pursuant to the Law School's governing regulations pertaining to faculty suspension and dismissal, (c) in the case of a student, member of the administration or staff, disciplinary proceedings be initiated pursuant to the appropriate regulations, rules, procedures or practices governing conduct, or (d) such other action as the Committee may deem appropriate. The Dean may accept the Committee's recommendation or may take such other action as he or she deems warranted.

(6) If the Dean concurs in the Committee recommendation that formal disciplinary proceedings be initiated against a faculty member, there shall be a de novo hearing pursuant to the Law School's regulations governing faculty dismissal.

(D) Limited Bypass Option

A person who complains about sexual harassment as defined in Article I, section A(1) or conduct proscribed in Article I, section B may, if he or she wishes, bypass the informal procedure and invoke the formal complaint process. However, as to a complaint pertaining to conduct described in Article I, section A(2), the complainant must first attempt to resolve the matter at an informal proceeding, and the formal complaint process may not be invoked unless the Committee determines that there is a basis for the complaint and that invocation of hearing such process is warranted.

(E) Confidentiality of Records

(1) Complainant's Identity

Upon request, the Committee will attempt to attempt to protect the complainant's identity to the greatest degree possible. However, the complainant shall be advised at the outset that, in some instances, the Law School's legal obligations may override the desire for confidentiality. For example, information in the Committee's files may raise the prospect of a significant threat to other members of the law school community, or for some other compelling reason, require official action. Where the Committee so concludes, it shall have the authority to share the information, to the extent necessary, with the Dean. In any case, the complainant shall be informed in advance before any information is shared with others. If such sharing does become necessary, every effort will be made to limit the number of persons who must be made aware of the identity of the complainant or respondent.

(2) Confidentiality of Records

(a) The Committee shall keep a record of all complaints, verbal or written, whether or not the complainant wishes to proceed. The complainant shall be told at the outset that such a record will be made and shall be informed of the confidentiality obligations of the Committee. The Committee's confidential records shall include the identities of the complainant and respondent when they are revealed. Only the Committee members and the Dean shall have access to these records, except that no Committee member shall have access to such records if he or she is the subject of the complaint. Wherever possible, records shall be prepared by a Committee member rather than by a member of the secretarial staff.

(b) The files of the Committee shall be confidential insofar as is legally possible. Except as stated above, their contents shall not be revealed except to Committee members and to the Dean. All records shall be kept in the possession of the Chair of the Committee. Committee members or the Dean shall have access to them only on reasonable need presented to the Chair. In the event that a disciplinary proceeding is initiated, the person or body conducting such proceeding shall have full access to relevant Committee records.

(c) The Committee shall instruct the parties, and any person appearing before the Committee, that its discussions and proceedings are confidential but that confidentiality can be waived upon consent of the parties.

(F) Annual Report

The Chair of the Committee shall transmit to the Dean an Annual Report setting forth the number of complaints processed during the school year and the nature of the disposition of each complaint.

A Law Student's Guide to Reform Politics

by Eric Wollman

Brooklyn Law School has produced an enviable list of graduates who have gone on to establish impressive and powerful careers in government and politics, including Mayor David N. Dinkins, Assemblyman James Brennen, Councilman Sal Albanese and State Senator Donald Halperin. Equally impressive are all the judges who have been taught and trained by the Brooklyn Law School faculty.

Surprising, then, is the dearth of partisan political activity at Brooklyn Law School. Instead, there is a wide-ranging selection of special interest groups. Nevertheless, as good citizens, all Brooklyn Law School students entitled to vote should take a few minutes to be briefed on the state of politics in Kings County.

DEMOCRATS RULE

Simply put, New York City is a one-party town. The governor, who hails from Queens, is a Democrat. The attorney general, a Bronxite, is also a Democrat, as are the mayor, comptroller and City Council president. Four of the five borough presidents are Democrats as well. Do you get the picture?

On a micro-scale, some communities do elect Republicans to serve on legislative bodies, notably Staten Island's Congresswoman Susan Molinari, and Brooklyn's Chris Mega, a state senator. But they are few and far between, and they are lonely G.O.P voices against a tidal wave of Democrats. Despite the near monopoly the Democratic Party has on the local political franchise, or perhaps because of it, an opposition movement within party ranks does exist and strives to make itself heard.

HISTORY OF OUR WORLD - PART I

Democrats in New York are not a unified group, and the fracture manifests itself between Regulars and Reformers. The Reform label first appeared, in modern times, when Eleanor Roosevelt became involved in New York City politics in the early 1960's. Arguably, however, the roots of today's Reform Democrats movement are traced to the Vietnam War and the growing opposition to Lyndon Johnson, who, in 1964, told Americans that he "would not send American boys to do what Asian boys should be doing."

After Johnson assumed office, the United States' involvement in Southeast Asia grew, Congress passed the Gulf of Tonkin resolution and off we went. Slowly, the student opposition to the war grew until 1968, when many students, especially those pre-chosen as Selective Service cannon-fodder, realized that Johnson had to be removed from office. During and after the Chicago riots at the 1968 Democratic National Convention, New Yorkers began to band together to oust Johnson and force Congress to assert itself in the undeclared war. As an outgrowth of the Eugene McCarthy campaign in 1968 and the murder of Robert Kennedy, the stage was set for a new team to take over.

LET GEORGE DO IT

The summer of 1972 saw the full-flowering of the anti-war movement, the campaign of Senator George McGovern, and locally, a David vs. Goliath race between long-time Congressional powerhouse Emmanuel Celler and an upstart Reform Democrat named Liz Holtzman. In Brooklyn, Reform Democratic clubs were formed or strengthened by these candidates and they pushed their candidates into office. In the upset of the year, if not the decade, Holtzman beat an over-confident incumbent and won the Democratic nomination for Congress. While McGovern was soundly beaten by then President Nixon (winning only the Commonwealth of Massachusetts), Reform clubs had cut their eye-teeth.

KCDC, NDC

In New York City, political clubs are generally set up on the assembly district level - a system tradition. Therefore, Kings county, which has 19 members in the state assembly, has the prospect of 19 regular Democratic clubs, which were once fonts for patronage and jury-duty notices, but are now shadows of their former past glory. Regular clubs, affiliated with the Kings county organization, have been weakened beyond recognition by such systematic reforms as campaign finance disclosure laws, reduced patronage and a lack of interest by voters. Other locally-based organizations, including block associations and non-partisan civic associations, have siphoned off membership as well. Nevertheless, both district-wide clubs and umbrella organizations endure, in the hope of promoting the candidates of progressive, liberal Democrats and for the purpose of reforming the Democratic party in our town.

Two of these umbrella groups serving the reform Democratic community are the New York State New Democratic Coalition (NDC) and the Kings County Democratic Coalition (KCDC). NDC is a statewide organization with constituent clubs located in the five boroughs and has some suburban and upstate affiliates. NDC is a "club of clubs" and doesn't foster individual membership. The organization holds at least one endorsement convention

each year and, from time to time, has tripped up the best laid plans of never-to-be office holders. In 1976, the NDC convention, held in Manhattan, addressed the Presidential nomination issue. Liberal, Progressive and Reform Democrats were split in their support for Senators Birch Bayh, Fred Harris and Morris Udall. While the Regulars sewed up New York for Senator Henry "Scoop" Jackson, some Reformers were even honing in on Pennsylvania's Milton Shapp. NDC voting provided for fractional votes to be cast, and when the smoke cleared, Birch Bayh, the favorite, had been blocked. Bayh had been unable to get 60% of the delegate vote and his odds-on favorite candidacy to be the liberal candidate were smashed. At the same convention, an unknown peanut farmer-turned-Georgia governor received little notice. So while the NDC volunteers toiled for Mo Udall, James Earl Carter was nominated and later elected President.

In 1982, a Queens Democrat was rebuffed by the regular machine, in his lonely quest for governor. His quixotic travels brought him to an NDC convention, where he won their endorsement, became the Progressive's choice and beat Mayor Ed Koch in the gubernatorial race. Of course, his name is Mario Cuomo.

NDC also provides election law workshops for Reform Democratic candidates and takes positions on virtually every topic of social responsibility known. The New Democratic Coalition is located at 150 Nassau Street in Manhattan.

The KCDC is the Brooklyn affiliate of NDC. Like NDC, it too is a "club of clubs" and does not solicit individual memberships. KCDC works with NDC and serves as a clearinghouse for the KCDC clubs in Brooklyn. The 52nd Assembly district, in which Brooklyn Law School is located, is the home of two reform clubs: the West Brooklyn Independent Democrats, which draws most of its members from the Brooklyn Heights area. The Independent Neighborhood Democrats, which includes Assemblywoman Eileen Dugan, also vies for membership from the 52nd district and the bulk of its memebrs reside in Carroll Gardens and surrounding communities.

Park Slope claims Central Brooklyn Independent Democrats as its own. This club, in the 51st district, has become a mini-dynamo, having elected two successive assemblyman (Joe Ferris and James Brennen) against powerful, firmly-entrenched clubhouse candidates. In addition, it claims Congressman Charles Schumer and Councilman Steve DiBrienza among its political officials.

To the southeast, the 45th district (Midwood-Sheepshead Bay) is the home of the Eleanor Roosevelt Independent Democrats (ERID). Serving a gadfly role against the regular Kings Highway Democrats, ERID has successfully promoted candidates, including Mark Green in his 1986 attempt to unseat Senator Alphonse D'Amato, and has worked to oppose luxury high-rise condominiums in Brighton Beach. BLS faculty member/Assemblyman Daniel Feldman is a public official affiliated with ERID.

That, then, is a survey of Reform Democratic activity in Kings County. To be sure, there are a number of other independent clubs throughout the county, including Central Brooklyn Mobilization, Parkway Independent Democrats, and Lambda Independent Democrats, which is a powerful county-wide gay and lesbian reform club and has had much success in promoting its agenda and overseeing the election of its endorsed candidates.

For more information on how to join a Reform Democratic club, call the New Democratic Coalition at (212) 349-3690

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ANSWERS TO THIS MONTH'S CROSSOWRD PUZZLE

In Search of the Judicial Clerkship

by Andrea Lewis

Judicial clerks are employed by judges to assist in handling cases that come before the court. Depending upon the particular judge, a clerk's responsibilities may include writing memos, drafting opinions, researching legal issues and communicating with attorneys. A judicial clerkship is an excellent opportunity to learn about the litigation process first-hand and is usually an interesting as well as an educational experience. Clerks are generally hired for the first year after graduation from law school or, sometimes, after an attorney has practiced for a number of years.

It is neither too early nor too late to consider clerking. Applications to federal judges for positions commencing in the fall of 1992 should be mailed no later than February 1, 1991. Second-year students who want to clerk immediately after graduation and third-year students who want to clerk after working for one year should begin to preparing applications now.

The application process can become time-consuming, expensive, and frustrating, but is potentially rewarding. (A detailed explanation of the application process is contained in *The Brooklyn Law School Judicial Clerkship Handbook*, which will be available from Professor Hellerstein after November 14.)

In preparing to write this article, I spoke with Brooklyn Law School students who have applied for clerkships as well as with Professor Hellerstein who is chairman of the Brooklyn Law School Judicial Clerkship Committee. The following are 10 "inside" tips that should be useful to anyone considering a clerkship.

1. It is like a lottery - Anyone who decides to apply for a clerkship should be informed from the start that the application process is very competitive, but it is also a great deal like a lottery. Your odds are certainly increased if you have a very high class rank and write for a journal, but even those students with the best credentials who interviewed with numerous judges have come up empty-handed. Alternatively, several students with less impressive credentials who interviewed with only a few judges succeeded in securing a clerkship. In short, getting a clerkship does not depend exclusively upon your class rank.

2. Promote Yourself - Second-year students in the top 10% of their class receive a letter from the Judicial Clerkship Committee encouraging them to apply for a clerkship and inviting them to meet with a member of the committee. Professor Hellerstein explains that the committee's aim is to "supplement" the applications of already highly-qualified students. According to Professor Hellerstein, the top 10% is an arbitrary cutoff point and interested students with an "academically credible record should not exclude themselves." An informal survey of students who applied for clerkships last year reveals that even highly-ranked students did not always receive a great deal of assistance from the committee network. In fact, many of these students believe that their own persistence and creative networking was the most useful tool in obtaining a clerkship. Students who are not in the top 10% of their class, including a few ranked in the middle of their class, have obtained clerkships and should not be discouraged from applying.

This does not mean that you should not inform anyone of your intention to apply. In fact, tell as many people as possible that you are applying. You never know who might think of you when they hear about an opening for a clerk. See if any of the judges to whom you are applying have clerks who are Brooklyn Law School alumni. Give these contacts a call and let them know that you are applying. Be aggressive!

3. Choose Your Judges Carefully - *The Almanac of the Federal Judiciary*, a looseleaf binder available both in the library and in the placement office, contains up-to-date information about every federal judge in the country. Each entry includes employment history, important opinions and any notable media coverage of that particular judge. The most valuable information provided by this almanac is the section which contains lawyers' comments about the judge. An applicant should think twice about applying to a judge who is described as "one of the worst on the federal bench." If a judge has comments that make you wonder if they are worth applying to or interviewing with, do some research to better determine his or her reputation.

4. New Appointments - *U.S. Law Week* lists the judges who have been confirmed recently. Check this list regularly. These judges will not be listed in either the NALP directory or the *Almanac*. Competition may be less intense for positions with these less well-known judges.

5. Don't Limit Yourself To Federal Judges - In general, clerkships with federal judges are the most difficult to obtain. Wonderful opportunities exist with federal magistrates, bankruptcy judges and state court judges. Clerkships in these courts are often easier to obtain. (You never know where that unknown judge may end up - just think about Justice Souter!)

6. Be Persistent - Do not get discouraged if you do not receive a call on the first day that judges extend offers. (Many students who apply for a clerkship mistakenly give up after

the first-round offers are announced.) Not all judges choose their clerks on the earliest possible dates. Determine which judges have not extended offers to applicants. Call or write to let these judges know that you are still interested in a clerkship position. (You might also mention any new information about yourself - new grade, an internship, etc.)

7. Out of Town Interviews - If you get an interview out of town, immediately call the other judges in that district and inform them that you will be in town and will be available to interview. (The judge may become interested in you when he or she discovers that a colleague is taking time to interview you.) This is an excellent way to obtain an extra interview and cuts down on expenses by eliminating another trip to the same city at a later date.

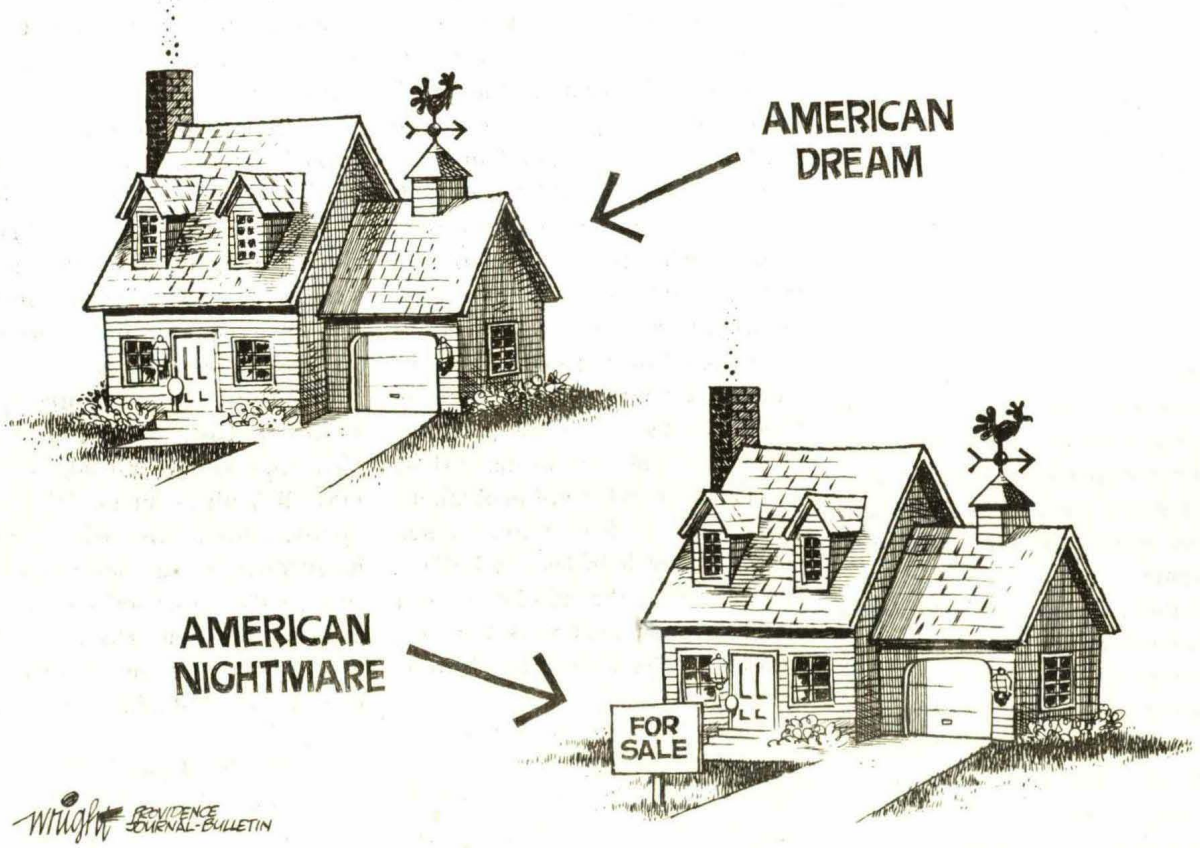
8. Schedule Interviews Early - Schedule your interviews as soon as you hear from a judge (ideally, within a week or two). It is not uncommon for judges to stop interviewing when they find several candidates that they like. (One Brooklyn Law School student who scheduled an interview one month in advance forfeited a $500 plane ticket when the judge hired a clerk and cancelled the interview at the last minute!)

9. Get Organized and Apply Early - Write your cover letter, assemble a list of prospective judges, and review your writing sample so that your application will be complete and ready to be mailed by February 1, 1991. Make sure that the people who are writing recommendations for you mail them in a timely fashion.

10. Be Prepared to Make a Fast Decision - Judges have been known to call and tell applicants that they have a good possibility of getting an offer. Be enthusiastic! Any ambivalence will hurt your chances. Judges often force students to make a decision regarding an offer in a very limited amount of time (less than 24 hours in some instances). Be prepared to make a decision quickly!

Applying for a clerkship involves a great deal of work, but for anyone who truly wants to clerk, it is worth the effort.

For students who are interested in clerking, a meeting will be held on November 14 from 5:00 to 6:30 p.m. in the Student Lounge. Brooklyn Law School alumni will be available to discuss their experience at this meeting. Anyone unable to attend the meeting should obtain a copy of the handbook from Professor Hellerstein.



Panel Speaks On Effects of Censorship on Gay and Lesbian Community

by Inge Hanson

Today, "censorship" immediately provokes thoughts of the controversies surrounding Robert Mapplethorpe's homoerotic photographs (which resulted in the prosecution and acquittal of the Cincinnati museum that exhibited his works), of Andre Serrano's photograph of a Christ figure submerged in urine, or of 2 Live Crew singing "Nasty As They Wanna Be" (before being prosecuted and acquitted in Florida under the local obscenity statute. By closely following these events, the media have generated much public awareness of the effects censorship on the arts.

In a program aimed at generating awareness of censorship's tremendous impact on the lesbian and gay community, the Lesbian and Gay Law Student Society and the National Lawyer's Guild co-sponsored a panel discussion that drew upon a broad range of perspectives - artistic, historical, social, and political - to examine the effects of censoring homosexuality and lesbianism. The panel included Brooklyn Law School Professor Nan Hunter, a former director of the ACLU's Lesbian and Gay Rights Project, Evan Wolfson, an attorney with the LAMBDA Legal Defense and Education Fund, and Gabriel Rotello, editor of *Outweek* magazine.

Rotello opened the discussion with a brief history of censorship and its consequence for gays and lesbians. He asserted that from the Middle Ages through the mid-twentieh century, "[t]he open discussion of gays and lesbians in Western civilization was completely disallowed, with enormous consequences for us as people and for the whole evolution of sexuality in our society." Rotello added that "how we live today is, to a very large extent, a result of this long period of censorship and attempts to reimpose [censorship] which occur[s] from time to time."

Reading from *Christianity, Social Tolerance and Homosexuality*, by John Bosworth, Rotello provided an example of this censorship in a medieval editor's decision to change "a boy's love appealed to me less" from Ovid's "The Art of Love" to "a boy's love appealed to me *not at all*." In a footnote, the censor concluded that this phrase showed that Ovid was not a sodomite. Another form of censorship involved switching gender pronouns to transform passages depicting gay and lesbian relationships into descriptions of heterosexual romances. Translations of the Rubayat, Persian moral fables and Greek classics were also subjected to such editorial censorship.

According to Rotello, this type of censorship "crumbled" only 20 years ago at Stonewall, a gay bar in the West Village, which was the site of riots sparked by a police raid during the summer of 1969, and which many mark as the beginning of the gay rights movement. "The reason [the issue of censorship] is so important to gay and lesbian people is because, unlike other minorities, when we are censored, we tend to completely disappear. Most other minorities that are censored continue to exist as minorities, though as muffled minorities....[Gays and lesbians] have no other way of finding each other. We are not delineated by any kind of physical characteristics. When our lives are censored, that's it, we're gone." Rotello concluded that it is, therefore, "very important for us to fight censorship and to be aware of its implications in our movement."

Rotello considered the media's "self-censorship" of the information on the AIDS epidemic a "tragic" example of the censorship's consequences. He claimed that the press did not initially report information on AIDS because writing about the disease required references to homosexuality which was deemed "inappropriate for family newspapers." Rotello proposed that this "self-censorship" by the press prevented known facts about AIDS from reaching persons who might have benefitted from the information. He believes that "there are probably a lot of people today who have AIDS who would not have had it had information been generated by the press."

Self-censorship, Rotello asserted, results in the "institutionalization of silence about the subject of homosexuality" which is widely accepted, even by the gay community. His magazine, *Outweek*, is involved in the controversial practice called "outing," whereby the names of public figures who have kept their homosexuality a secret are disclosed. According to Rotello, gays and lesbians who refuse to publicly admit their homosexuality perpetuate the idea that "censorship of gay and lesbian lives is legitimate." In response to a student's question about the propriety of revealing a public figure's homosexuality due to the potential prejudice such a disclosure might have, Rotello asserted that *Outweek* would only reveal the names of "closeted" gays and lesbians for newsworthy reasons and where the revelation was not damaging. Rotello concluded that it is not very healthy for members of the gay and lesbian community to fight censorship while other members struggle to maintain censorship.

Following Rotello, Professor Nan Hunter provided a current example of censorship in the arts by discussing her role as co-counsel for four performance artists who were denied grants by the National Endowment

for the Arts (NEA). The artists, Karen Finley, Holly Hughes, John Fleck, and Tim Miller, brought suit against the NEA and its chair John E. Frohnmayer, in Federal Court in Los Angeles. They charged that their First Amendment free-speech rights had been violated because funds were denied on political rather than artistic grounds.

Hunter sees several dynamics operating in the NEA's decision to deny funds to these artists which, she believes, are rooted in earlier debates over the artistic merit of the Mapplethorpe photographs and of Andre Serrano's photograph of a Christ figure submerged in the artist's own urine. One such dynamic, Hunter noted, is "an anti-sexual hysteria we, in this culture, are prone to," and another is what she views as a fundamental error in First Amendment law - the obscenity exception - which denies speech deemed obscene the constitutional protections afforded other types of speech. A third dynamic which Hunter perceives as especially significant to her clients' case is the "backlash against controversial political speech, particularly in the realm of sexuality." She described the dynamic at issue as resulting from confusion over the distinction "between obscene speech and political speech about sexuality." Lastly, Hunter articulated a dynamic arising out of the debate over speech and government funding.

Hunter's clients were initially denied funding after Congress passed strict anti-obscenity restrictions on the NEA's funding authority, precluding grants to any art or performance which "might be considered obscene." Built into this limitation is the Supreme Court's test for obscenity which, among other factors, identifies an obscene work as one having no serious literary, political, or artistic merit. Because liberals believed that the NEA would only fund works of serious artistic merit, Hunter said it came as a shock when the restrictions formed the basis for prosecuting the Cincinnati museum for exhibiting Mapplethorpe's works. Congress recently repealed this obscenity restriction and inserted a requirement that the NEA recoup funds of a grantee's work which is found obscene by a criminal appeals court. The legislation, however, also requires that the works of art "take into consideration general standards of decency" and "the values of the American public."

In the midst of the controversy over these curbs on NEA funding, Hunter's clients applied for grants under the category of "solo performance art." According to Hunter, the artists were denied funding after Frohnmayer lobbied individual council members not to recommend the performers for grants on the now-repealed obscenity restriction. The NEA declared that political realities in Congress precluded the artists from receiving funding.

In their suit, Hunter's clients argue that although the Constitution does not require the government to fund the arts, upon adopting a funding program, the government cannot manipulate public monies to suppress ideas it considers dangerous or controversial. In addition, they argue that the NEA ignored statutory funding criteria required and based its decision on purely political grounds.

According to Hunter, many people mistakenly believe that her clients' work had been deemed obscene and was therefore ineligible for NEA monies. This confusion, she said, points up the difficulty of distinguishing between "explicitly sexual speech and political speech about sexuality." In Hunter's opinion, her clients' work clearly falls within the latter category since their performances are "very political" and deal with a range of issues including sexuality. Hunter claims that right-wing conservatives have gained a lot of ground by confusing the distinction between these two categories, thereby deeming political speech about sexuality to be obscene.

Hunter argued strongly against the "obscenity exception" which has been built into First Amendment protections. She termed this exception a "fundamentally flawed principle in free speech law that haunts us whenever we're talking about speech in the realm of sexuality," and declared that it should be abolished. [Editor's note: On November 3, 1990, two days after Hunter's discussion, The New York Times reported that the advisory council of the NEA "overwhelmingly recommended grants" for both Karen Finley and Holly Hughes although the final decision on whether to award the grants rests with Frohnmayer.]

Building upon Hunter's discussion of the NEA case, Wolfson discussed several other cases that raise censorship issues ranging from prohibitions on indecent speech to the constitutionality of banning "hate speech." The "battles" against censorship began with *American Information Enterprises v. Thornburgh*, an attempt to prevent regulations from being implemented under the Helms amendment, which would have essentially eliminated the phone sex business. The plaintiffs argued that restrictions on the "dial-a-porn" industry violated the right of association under the First Amendment by preventing people from meeting with each other over the telephone. The plaintiffs also asserted that since government cannot restrict speech based on content under the First Amendment, the Helms amendment was constitutionally invalid because it contained a content restriction regarding "indecent

speech" Wolfson explained that because the word "indecent" is too vague to convey what speech limitations the term encompasses, it has a chilling effect by discouraging speech that might fall within the definition. A federal judge agreed with these arguments, deciding that the Helms amendment was constitutionally defective and issuing a nationwide preliminary injunction that prevented the restrictions from being enforced.

A case that raised similar censorship issues concerned a contract provision New York City had inserted into its cable television franchise agreement which restricted "indecent" advertising to programming between 12:00 a.m. and 3:00 a.m. Wolfson asserted that injecting the word "indecent" into the franchise agreement represented an attempt to halt speech by using an undefined and vague term. Wolfson argued that eliminating "indecent" or sexually explicit advertising has a disparate effect on the gay and lesbian community. "As is obvious to many of us, we don't see Dorritos, Adidas, McDonalds or TWA rushing to advertise on our programs or to fund magazines like *Outweek* and other sources that we in the community use."

Thus, Wolfson argued, if our producers are unable to run advertisements that "might run afoul of someone's idea of indecency," it might mean the end to gay and lesbian programming or at least a sharp cutback on programming that is commercial."

Wolfson stated that as a result of negotiations with the city, various political activists in the city and with Time-Warner, the indecency clause is still in place, but enforcement is essentially in suspension. The question remains as to whether it matters that a constitutionally defective clause that is not being enforced is still in existence. Wolfson thinks so, stating, "Expression is so essential a value to us and our identity as gay people, it is incredibly important to stand up and fight for that expression and to be vigilant against censorship wherever it occurs."

Wolfson also raised the issue of whether censorship should be used to restrict "hate speech" on campuses and in other venues. According to Wolfson, the goal of these restrictions is to combat the rising tide of harassment on racial, religious, sexual orientation, gender, and other grounds. In the only case Wolfson is aware of, a Michigan court struck down such measures.

Wolfson summarized the arguments offered by proponents of such restrictions as asserting that "hate speech" does not rise to the level of speech, that it is just aimed to hurt, and that it is not worthy of protection either because it is so offensive or so wrong.

Opponents of restrictions on "hate speech," including Wolfson, rely on First Amendment arguments that such speech is constitutionally protected. In addition, he argued that repressing "hate speech" is not an effective means of combatting the underlying prejudices.

Finally, Wolfson argued that "hate speech" often invites a dialogue about the deep-rooted issues of racism, sexism and heterosexism that provokes the speech. This forces hatred to the surface where it can be dealt with, Wolfson concluded, and that because expression is "so essential to who we are as gay people and to what we want to accomplish," it is imperative that "we use the other means available to us rather than turn to an attempt at censorship which is a futile one to begin with."

BLS Holds Fifth Annual Dean's Day Program

by Claire Wee

Most current Brooklyn Law School students probably do not give much thought to what the school does for its alumni. (I certainly don't.) Well, I was surprised to discover at least one reason to return to Brooklyn long after graduation: Dean's Day.

The fifth annual Dean's Day was held on October 13, a gray, dreary Saturday afternoon - very conducive to tete-a-tetes in the third floor lounge. An opportunity for alumni to make new friends and renew old ties, Dean's day is also a chance for alumni to attend "classes" presented by faculty and distinguished alumni. For the class of 1985, this year's festivities were extra-special, as it was also their alumni reunion dinner, which was held in the recently-renovated reception gallery at One Boerum Place.

For most students who face the daily regimen of attending classes, the thought of returning to Brooklyn Law School to attend classes long after graduation is far from appealing. However, the attendance at the "classes," suggested that the painful memories of those early morning classes do, indeed, fade (This comes from a true night person who struggles to make her 9:00 a.m. Federal Courts classes, which, by the way, should be banned. They are cruel and unusual punishment for students and violate our constitutional rights. Which amendment is it, now?)

This year, six one-hour lectures were presented. However, since lectures were conducted in two sessions (each session consisting of three simultaneous lectures), one could only attend two lectures (except for this ubiquitous lecture-hopping, photo-snapping reporter.)

The first session consisted of

presentations by Professors Berger and Cohen on "Adjudicating Science and Technology Issues," by Professor Gilbride on "The Amended Code of Professional Responsibility," and by Dean McLaughlin and Thomas Vartanian (Class of '76) on "Unbundling S & L Myths."

A common theme in most of the lectures was a discussion of recent developments in the law. For example, Professor Gilbride discussed the controversial issue of mandating *pro bono* work in the legal profession. He also discussed the role of a supervisory lawyer under Ethical Canon 1-8 of the Model Code of Professional Responsibility, stating, "These days, you just can't close your eyes to what's going on in the office."

Professors Berger and Cohen discussed the validity of DNA testing and the differences between standards of certainty used by the scientific community and those used in courts of law. Professor Cohen also spoke on the problems presented in class action suits ("Think of them like a deck of cards," he said), including the Agent Orange, Bendectin and asbestos cases.

Also, the "Unbundling S & L Myths" session was presented as a retrospective of the S & L problem. Tom Vartarian, currently a partner in the firm of Fried, Frank, Harris, Shriver and Jacobson, eloquently unraveled the factors which contributed to the crisis by analogizing the crisis to the fable "The Emperor's New Clothes." The problem, he said, had been "escalating for 12 years," until "people finally recognized that the emperor had no clothes on."

Varatarian also spoke on the lessons the American financial services industry should extract from this crisis. "There's not a United States bank in the top 25 banks in the world today," he said, and added that having "less financial institutions and proper regulation" would better enable American banks to compete in today's global market.

In the second session, Professor Hellerstein spoke on the 1989-90 United States Supreme Court term, Professor Habl and Raymond Levin (Class of '84), an associate in the law firm of Brown & Wood, spoke on "Discretionary Land Use Decision Making Under the New Charter," and William Finkelstein (Class of '83) spoke about his experience in both writing and producing *L.A. Law*.

Discussing the possible repercussions to the recent appointment of Justice Souter to the Supreme Court, Professor Hellerstein quipped, "For those of you who see Souter as a direct replacement of Brennen, well, hope springs eternal." On Justice Kennedy, Professor Hellerstein humorously commented, "As our former president rode out into the sunset, he probably had the last laugh."

In his segment, Professor Habl discussed the dramatic changes caused by the recent New York City charter revision, including the elimination of the Board of Estimate and the enlargement, in membership and in power, of both the City Planning Commission and the City Council.

The best-attended session was the *L.A. Law* session (as Professor Farrell says, "Shows you the power of the boob tube"), which was scheduled to encourage alumni to bring along their non-lawyer spouses or guests.

Held in the Moot Court room (all other sessions were held in classrooms) with a huge television screen set up to show segments from different episodes (By the way, can we have a large TV to watch Professor Fullerton's personal video tapes on the Souter nomination? Or is it only for such important things as *L.A. Law* screenings?), Finkelstein spoke on how he researched some show's topics. One episode focused on Tourette's syndrome, where, because of the disease, an employee swore , cursed and offended his fellow employees and was dismissed. Finkelstein says that he "tries to have his audience care about the characters." One person in the audience commented that she was offended by the language used in that particular episode, but Finkelstein replied "Hey, without the offense, you ain't got no story." (It must be a good show. I wouldn't know. I've never seen an episode. I left as another person asked, Iis it true that Susan Dey will not be continuing any longer? Who is Susan Dey?....)

Anyway, if participation and attendance on this afternoon are true indicia of success, then Dean's Day 1990 was enormously successful.

THE COURT STREET KING

by

P.J. Brackley

TO THE READER: Unfortunately, I omitted a crucial disclaimer from the first installment of our story - the characters and situations in this story are fictional and all similarities to real people are purely coincidental. If one more reader attempts to draw a similarity between the characters in this story and real life.... it's back to *Shakespeare and the Law*!)

The summation was complete. King breathed deeply the dead air of the courtroom - the air just used up by his hacking, splitting and chopping. He used all that air to gallantly give what was one of his finest speeches. Although he spoke of the same guns and drugs and marked-money, there was an indisputable originality to his fervor. The gun was here, the drugs were there, the photographs were everywhere - but he swept the clouds away. The fog of reasonable doubt had rolled in thick after this summation and he pitied the defendant's pathetically-dressed live-in girlfriend, who bravely smiled at the defendant like it was all over and the verdict was a thing of the past and the trial was over, and King knew this attitude as the kiss of death. But he made the fog roll. He sensed its invisible power seeping in and out of the jury room. They wanted to hear the cop's testimony. They were fogged all right. Luckily, the prosecutor couldn't fire up the sun enough to burn any of that fog away. It lingered. It bit. It froze. There were clouds. He waited for the bailiff now to emerge from the jury room and sound the foghorn - to create the lighthouse and save his cherished boy from hitting the rocks. The fog horn. Then, the jury foreperson would take center stage and bellow out the verdict above the fog. A sonic boom!

King knew he did good. He stood as the Colossus - unequalled in all the modern world for what he had just completed. He was proud of himself for the first time in days. Beneath his rumpled suit and aching shoulders, his chest swelled with pride. He basked in the promethean heat of the deed. A quick call to his office from the marbled, dim lobby of the courthouse eased him back to reality. The equally dim, gum-chewing secretary opened another universe of unsolved problems by speaking, through a plastic receiver, of cases yet untackled.

But the waiting period was here and there was nothing left to do but soak up compliments and chat it out with his secret pals - the Court Buffs. He called them that because they sat there, these retired old Brooklyn gents, trial after trial, and watched and opined. He loved them. He loved their age, their pinched faces, and their knowledge. And they had always been here. Sitting with a folded newspaper, like any old folks would, King thought. They made him feel welcome, these Court Buffs - the old men who gave him a totally meaningless and unfounded prediction that "he did a good job" - were as indispensible to him as water in a waterfall. They truly were his element.

He had just painted his canvas and all the patrons were milling about his framed masterpiece. And he, a mere mortal, mucking his way between heaven and earth, was elated that he could do this for them and for his client. All of those bastards who spend a discontented life trapped in a box with a typewriter and "In" and "Out" boxes would never feel the scalpel cut the skin as King had felt it, time and time again. He roamed the asphalt jungle as the top link of the predatory chain. King could fell a redwood with a Q-Tip if he needed to. If he wanted to. If he had to. His law degree was the atomic subparticle when tapped - emitting the blinding, melting and phosphorescent human truth that is himself. Indeed, King's word was law.

The jury was out, so this soliloquizing had a place amongst the unsettled moments.

Then it came. The upwelling from that place in his heart, that cavern of his brain which stitched all this realty together. The memory of the Flatbush Avenue corner shooting trial. He lost that one. He lost it big. He lost it because he didn't know any better at the time, and some wizened, old prosecutor did to him what he now does to the wet young assistant district attorney's. He could have, should have, would have, might have and ought to have won that case. But he couldn't have known how to cross-examine that cop in those early days.

In fact, it was like telling a 19-year-old Marine to pick up that damned M-16 and forage through rice paddies looking for Viet Cong. King was just like these Marines, or he felt like them as his client was convicted. He might as well have been taken from the courtroom on a stretcher,

howling and wondering why he couldn't feel his legs, and wondering whose blood it was and maybe even screaming to the silent God, or to his mother, for that matter. Unfortunately, the propeller of the Huey chopper was not in the clearing to rescue him and fly him to some recuperative center where pretty nurses and good meals abounded.

King had to go back to court the next day. But the Vietnam connection was strong for him because he lost that case in the heavy days of the late Sixties. He rode home on the subway after the guilty verdict came in that day and read a protest placard carried by some poor, pathetic kid that read, "Useless Death in Vietnam." King was a young upstart and he had just been beaten on a case where his client should have, could have, would have and might have been acquitted - but he, like those green-souled angels who got shuffled off to Vietnam - didn't have chance, because he didn't know that Viet Cong don't just stand there waiting to be shot. They, like the truth, hide and remain disguised, and come up with a smile of brutality beneath the furred gowns and under cover. A policeman can hide the truth as easily as a liar could tell the truth. But King was fumbling with those keys in those days, in those times. And he lost. And his client lost. And as he sat in that courtroom on that day and remembered his client who was at this time and on this day sitting in jail, he wanted the memory to fade. He wanted the acquittal to come. He wanted the fog to thicken.

The verdict came in a resounding "Not Guilty." King felt as if it was for him, and for him alone. There was a burst of winter air in the courtroom as the bailiff slid the window up. This was the King's Joycean moment - that irreducible split-second when his life meant what it should. Never one to dramatize, he shook his boy's hand and slipped away. He rushed out into the coarse night, half expecting that helicopter to fly him the hell out of there. But again, he was alone with his thoughts....

Around The Neighborhood: The Brooklyn Museum

Historic Dutch Farmhouse Rooms On View At the Brooklyn Museum Subject Of New Book

The history of two Dutch homesteads, built in the 17th and 18th centuries in Brooklyn, which are reconstructed in part on the fourth floor of The Brooklyn Museum, is detailed in a new book, *Dutch By Design: Tradition and Change in Two Historic Brooklyn Houses*. The book, written by Kevin L. Stayton, Curator of Decorative Arts at the museum, and published this October by The Brooklyn Museum in association with Phaindon Universe, is lavishly illustrated with black-and-white as well as color photographs of the houses on site and in the museum.

"The book tells something of the history of Brooklyn - and by extension, America - through an analysis of the life of a typical Dutch American family living on Long Island from the time of its first colonization by Europeans, to its emergence as a part of a new republic," comments Robert T. Buck, Director of The Brooklyn Museum, in the book's Introduction. "We remember this family through an accident of fate because their houses have been preserved. And a lucky accident it is, for it allows us to study a classic case of American assimilation."

The older of the two houses was built in the latter part of the 17th century by farmer and miller Jan Martense Schneck on Mill Island, in what is now the Flatlands section of Brooklyn. Dismantled in 1952, it was reconstructed at The Brooklyn Museum in 1963-64. A simple, but well-crafted two-room structure, organized around a central chimney with a loft for storage, it was constructed according to a Dutch or Continental framing plan.

The home of Schneck's grandson, Nicholas Schneck, was built approximately 100 years later about one and one-half miles northeast of the Mill Island house. In 1929, the entire ground floor, consisting of two bedrooms, a stairhall, dining room and parlor, was dismantled and reconstructed at the museum.

Although both of these houses have miraculously survived the ravages of time and urban development, Stayton, the author, points out that there are about 14 surviving Dutch farmhouses in Brooklyn that are endangered by either development or neglect.

Stayton comments, "It is critical that the appreciation of these houses, already in the museum's care, be extended to their counterparts still standing on site. With the loss of any one of these tangible connections to the past, we would lose more than just a house, we would lose a part of our spirit and history as well."

The Brooklyn Museum is located at 200 Eastern Parkway, and is open every day (except Tuesday) from 10:00 a.m. to 5:00 p.m.

For further information concerning upcoming events, exhibits or memberships, please contact the museum's Public Information Department at (718) 638-5000, Extension 330.

Lessons From Kuwait: Another Perspective on the Middle East Crisis

by Ching Wah Chin

The world has become frighteningly smaller recently. Instead of only a happily-democratic Eastern Europe that we expected, we are preoccupied with chemical warfare in the Middle East. This time, we are not spectators and there are serious questions as to why we are there.

Anti-war warnings have sounded again. "We should not meddle in other nations' affairs." "The old men are sending young men to battle." "Big oil is not a reason to fight." "Undemocratic monarchies are not reasons to die." All of these warnings should stir a reflective heart. However, reflection should not cause blindness.

War has long been recognized as an extension of politics. Regardless of the cause of conflict, the rules governing its progress are set in the realm of reality. These rules are not abstract rules of international law. International laws apply only to those civilized nations that consent to their application. In a world of excess weapons, rule of force, poverty and ostentatious wealth, international laws may be more of a hindrance than an ideal goal. Any consideration of international law must be grounded in the fundamental purpose of such law - to lessen the collective cost of international conflicts. The present objective must be simply to proceed at the lowest cost of blood and treasure.

We must sustain the military effort in Saudi Arabia because Iraq and the realm of international politics have made it unavoidable. However, such an expenditure is, by nature, wasteful and inefficient. Sending in troops after a war breaks out is costly and unlikely to return the world to exactly the way it was. More importantly, the world exactly as it was before is no longer acceptable. The crisis has brought to light many of the world's inadequacies.

In the midst of the crisis, perhaps we can look at the emerging lessons. The parallels cry out for comparisons. Not only the apt foreign policy comparisons of Munich and Hitler, but the comparisons for our own society. For instance, just as we disregarded the dangerous buildup of forces in the Middle East, we continue to disregard the root causes of our own society's problems. Just as the sending of troops to the Middle East is a necessity brought upon by short-sighted foreign policy, the massive infusion of police to combat crime is a necessity brought upon by short-sighted domestic policy.

Many of our streets are overrun with violence, poverty and excessive wealth - a description that also applies to the Middle East, where we are now mobilizing our troops and building fortresses. We plan to use killing machines and may ultimately cover the blood in a cynical application of international law. In our own society, we deal with crime by mobilizing police and building prisons, using capital punishment and disregarding civil liberties. In both cases, effort is channeled into necessary but destructive capabilities. We should have avoided this waste by applying ourselves earlier to our root problems, instead of waiting for a crisis to awaken us.

Arrests and indictments with capital punishment and prisons can only be used after the damage has been done, after a potentially productive citizen has already been lost to poverty and violence. Promoting education and safety would have far greater returns. Safe, sleepy streets are more valuable to society than glamorous raids on criminals. Every youth that, through training and education, quietly slips out of the jungle is one less criminal or welfare recipient that drains interminably on our society. If nothing else, Kuwait should teach the old lesson that an ounce of prevention is worth more than a pound of cure.

Perhaps another lesson from Kuwait is that we cannot let others fight our battles. The Kuwaitis thought they could buy security by paying Iraqis to die in battle with Iranians. Meanwhile, the Kuwaitis generated resentment through the ostentatious wealth. As corporate attorneys sit in their large firm offices and collect massive salaries, they might as well remember the Kuwaitis. They might do well to consider the public-interest attorneys protecting our civil liberties and ensuring that low-income citizens have access to our legal system. Those public interest attorneys are fighting the battle to keep our society afloat. They are the ones manning the barricades against the anarchy that threaten quiet suburban communities.

At the same time, self-righteous attorneys with their causes might consider what they are really serving to protect. They might consider that corporate attorneys serve a valuable function. Corporations and millionaires might not be sympathetic clients, but they do employ and provide a livelihood for the masses in society. They are at least partially the tool for generating the wealth that can potentially be distributed to all of us. Both sets of attorneys should remember that we are all members of the same community and no one portion can exist without the other. We can all add harmony towards the future, or we can add bitterness and disdain to our mutual profession.

The simplest lesson from Kuwait is that we cannot afford to be complacent. It does not take much to shake our world to pieces. The

mansions and luxuries gathered by Kuwaitis were raped by Iraqi tanks. Violence can strike at any of us at any time. And when we are gone, there are precious few monuments to our passing. What monuments exist are built up over time from many small stones. The smaller stones that hold up the citadel are just as important as the towers themselves. The inconspicuous acts of honesty and decency are just as important to the health of society as a crime-fighting robocop.

If the forces of the civilized world fail to reestablish Kuwait, Kuwait will be swept into the sand and the Kuwaiti existence probably will merit a mere mention in history, which might never tell us more than a paragraph about Kuwaiti accomplishments. We, as individuals, probably will not rate even a sentence in history, but we can choose to add our minor accomplishments on either the positive or negative side of human existence. As we ourselves are swept inevitably into history, we might at least attempt to ensure that we were part of the positive balance.

A Perspective on the Budget Crisis

by Alan Podhaizer

The last several weeks have witnessed the virtual paralysis of the American government by the failure of Congress and the president to reach an agreement on the budget, showing a fundamental weakness in the laws that govern the budget system.

The founding fathers were afraid of placing too much power in any one branch of government, and this fear is expressed in the budget process. The Constitution, in Article I, Section VII, mandates that all revenue bills originate in the House of Representatives. However, Article I, Section VIII allows either the House or the Senate to lay and collect taxes. This concurrent power does indicate that the Senate can initiate the budget process.

This dichotomy worked reasonably well when America was a rural, agricultural society without major budgetary concerns. Twentieth century America, being a world leader on one hand and a nation deep in debt on the other, needs a new approach to the budgetary process.

We have witnessed the month-long paralysis of the American government as the three branches could not agree on a budget that would satisfy their constituencies. The president tried to keep to his campaign promise of "no new taxes," despite the record deficits incurred during the Reagan years. Their scuttling of regulatory controls led to the S & L scandal, which has resulted in a huge increase in the national debt. That is the legacy of the Reagan promise to reduce taxes and government expenditures.

The Democrats, having been portrayed so often as the tax-and-spend party, will not take the lead on necessary tax revenue increases because they are afraid, justifiably, of the political consequences. The political bickering over the budget has made a mockery of the political process and has left the American government open to ridicule. Who can forget the sight of American families having their vacations ruined because George Bush would not sign a temporary spending measure that would have enabled the government to function beyond the imposed budget deadline? This came from a man who prides himself on his support of traditional family values and the importance of vacations.

America cannot afford many more charades between the different interest groups and parties that we have just witnessed. The president tried to keep to his pledge of no new taxes, despite the vast budget gap, partly caused by the decrease in regulation that led the S & L crisis. Since Congress did not want to shoulder the responsibility for creating a tax increase and making spending cuts, the budget talks were at a stalemate, as each party wanted to appear as the "good guy."

This time, the only consequence was delay and embarrassment. In future budget situations, we might restrict our ability to spend and tax if an emergency would arise and we did not have the resources to meet it.

Therefore, I am proposing the following change in our budgetary process. Both Congress and the president should appoint a permanent commission with the sole function drawing up a budget and planning expenditures. This committee would be comprised of people from all walks of life, and their only purpose would be to analyze the needs of the country and present it to Congress, which would then vote on it. This would satisfy the constitutional provision mandating the House to initiate all revenue legislation. I realize that Congress will still be subject to the same interest-group pressure that they now face, but it would be easier to levy the blame at the committee than at themselves.

In fact, these are bodies created to take the heat off politicians when it comes to raising fees or expenses. In New York City, for example, the Rent Guidelines Board determines the allowable increase for rent stabilized apartments. This procedure helps isolate public officials from criticism. My plan would serve the same purpose, as well as remove the budgetary process from most of the political machinations that do not serve the best interests of America.

ARTS & ENTERTAINMENT

Legal Paradigms and *Black Robes, White Justice* (Reread)

by Gary Quan

While listening to Professor Gary Minda expound legal paradigms - law is economics, law is politics, law is shaped by the feminist movement - thoughts of Tawana Brawley, C. Vernon Mason, Alton Maddox, Howard Beach, Bensonhurst and the recent shooting sprees in this city entered my mind. Of what relevance are such academic theories to the present reality of crime and its attendant tragedy? Although I did not express my heart-felt concerns to the class, perhaps I can refer you to the voice of one crying in the wilderness: former New York Supreme Court Justice Bruce Wright.

Although Wright's book, *Black Robes, White Justice: Why Our Legal System Doesn't Work for Blacks* (1987) is slightly dated, his searing indictment of racism and "American apartheid" is still pertinent. With a strident tone of conviction borne of experience, the former justice elegantly articulates the pervasiveness of racial bigotry in our society by pointing to its effect on the legal system, where, he says, "in the halls of justice, justice is in the halls." While this view has been expressed elsewhere, this erstwhile poet breathes life and color into this controversial charge.

Wright recounts a paradoxical experience, where, upon joining the First Infantry Division in World War II to fight Hitler (the ultimate practitioner of racism), a captain greeted him with the words, "I never thought I'd live to see the day when a nigger would wear the Big Red One." The aggregate of similar experiences may explain why Wright debunks men such as Thomas Jefferson, Franklin D. Roosevelt and Oliver Wendell Holmes, Jr. for their inconsistent and insensitive behavior toward blacks. He continues by decrying the criminal justice system, where white judges are ignorant of the blacks they judge, where there is a glaring disparity in the treatment of crimes committed by the white and the rich as compared to to those committed by the black and the poor, where sentencing is biased, and where custody in sate prison, including Attica and Greenhaven, does not "inspire penitence."

Although the former justice's diatribe is overstated, he recognizes that the problem may be unsolvable. Perhaps Wright should recall our founding fathers' notion that men are not angels and proceed to analyze our ills from that angle. Maybe the problem of racism, which, Wright feels, manifests itself in our legal system, stems from the human nature of selfishness and merely takes the form of bigotry. In my opinion, human nature, rather than color, should have been the focus of Wright's inquiry. In short, both judges and the accused alike should be held accountable for their actions.

This book's true value lies in its presentation of a contemporary viewpoint held by a significant minority of Americans. By bringing the problem to the general public and engendering debate, perhaps the issues can be resolved with civility. This would be preferable to the use of force to quell well-armed minority groups who sense that survival through a life of crime and drugs overrides the risks involved.

Also, Dean Roscoe Pound's belief that the powerful influence of the law and lawyers in society and the concomitant emphasis on the "human factor" should serve to encourage our study of and commitment to the second oldest profession.

We can learn something about Black America from Wright's book. The history of the law, as Oliver Wendell Holmes, Jr. implied, has not been predicated on logic but on experience. Gaining insight to any sector of American society could benefit us all if we seek to prevent the racial confrontations caused by an unjust legal system.

LOOK FOR THE RETURN OF "RESTAURANT REVIEW" IN NEXT MONTH'S ISSUE OF THE JUSTINIAN

The Miser: Not Stingy On Laughs

by M.Z.Heller

The Miser, written by Moliere in the 1600's, is a satirical farce about an old man, Harpagon, and his money problems, which consist of never getting enough of it, and refusing to part with any. One character in the play describes him as so cheap that when he passes you on the street he would never *give* you a 'good day', but only *lend* you one.

As his obsession for money increases, Harpagon alienates himself from his two children by arranging a contract of marriage for his daughter Elise with a wealthy, middle-aged man because the groom will accept her without any dowry. He also arranges the marriage of his son Cleante to a wealthy widow so that the son will stop spending Harpagon's money. In the meantime, Harpagon is making arrangements with Frosine, the local matchmaker, for a contract of marriage to the beautiful Marianne, a young, virtuous woman with very simple tastes, who will care for him in his old age, yet not be a big expense. Unfortunately, Cleante and Marianne are in love and have been secretly seeing each other. What happens after Harpagon announces his intentions are battles for love and money with a wild and crazy twist for an ending!

The cast is excellent. Philip Bosco, last year's recipient of the Tony Award for *Lend Me A Tenor*, adds just enough sympathy to Harpagon to keep the character real. By staying within the realm of reality, Bosco heightens the humor because you are able to identify with the character instead of being distanced by the portrayal of Harpagon as a buffoon.

Also wonderful is Carole Shelly, whom you may remember as one of the Pigeon Sisters from the movie *The Odd Couple*, as Frosine. She is delightfully funny as she attempts to get money from Harpagon for matchmaking services. She encourages, flatters and downright lies to him, and receives heaps of gratitude but not one dime.

Mia Dillon as the wistful daughter Elise, Thomas Gibson as the foppishly stylish son Cleante, and Christian Baskous as Valere, the handsome young steward with a secret are all superlative, as are the remaining members of the cast.

Circle In The Square is a wonderfully designed theater with a history of production excellence. *The Miser*, directed by Stephen Porter, keeps that tradition alive with an evening of smiles and laughter. Playing through December 30th, it is definitely worth a look.

Once On This Island: A Nice Place To Visit

by M.Z. Heller

On a recently-aired television commercial aired not too long ago, a survey participant stated that when she bit into a York Peppermint Patty, it was as if she had been transported onto a tropical island, standing by a waterfall, feeling wind blowing through her hair. Such are the feelings one gets when attending *Once On This Island*, the new musical at the Booth Theater.

As the evening begins, we are on an island in the French Antilles during a tropical rainstorm. A young girl is told a story of a magical island to keep her from being frightened by the storm. On this island, a little girl named Ti Moune is found in a tree by a peasant couple who loved her and raised her as their own. As the story unfolds, each of the actors become a character in the fable. The child Ti Moune quickly becomes a young woman, who falls in love with a young man from the other side of the island and their star-crossed relationship brings about issues of class distinctions and the power of love.

The evening is light musical fun with a tropical flavor. The music by Stephen Flaherty contains some beautiful ballads and enjoyable calypso-like songs and dances. The set, scenery and costumes are simple, yet colorful, and, thankfully, not overbearing like many of the current musicals.

All of the performers are enjoyable despite some occasionally forced Islander accents. Deserving special recognition was Kecia Lewis-Evans in her role a Asaka, Mother of the Earth. She has a wonderful number, "Mama Will Provide," as Ti Moune travels across the island to be with her love. Her powerful voice supported by the rest of the cast made the audience feel as if she could protect the entire world by placing it within her loving arms.

The evening, although short (the show runs 90 minutes with no intermission), was very enjoyable and the audience seemed to leave the theater smiling and feeling very good about *Once On This Island.*

Rotisserie Round-Up

by Rob Dashow

In Cincinnati, the Reds and their fans are joyously celebrating their victory over the Oakland Athletics' paper dynasty with parades and pep rallies, while in Brooklyn Heights, the **Ann Arbor Gold McMiners'** supporters are celebrating their own dynasty in a more sedate manner.

For the benefit of those who do not read *The Justinian* cover to cover, I should explain. The **Ann Arbor Gold McMiners** are a rotisserie baseball team and are managed by Marc Miner, a Brooklyn Law School alumnus. Because the school does not sponsor an intramural softball league or field a representative team in an organized league, rotisserie baseball is most of its participants' only connection with the game of baseball.

Rotisserie baseball was 'invented' by several New York professionals at a then-popular New York restaurant which included the word "rotisserie" in its name. Since that date, the game's popularity has grown more quickly than it once took George Steinbrenner to fire a manager. The game can be found in some form at workplaces across the city. Several leagues exist at Brooklyn Law School, and there are even rumors that former minor-leaguer Mario Cuomo participates in a league. Anyone who reads *The National* or listens to WFAN (660 on the AM dial) can attest to the widespread popularity of rotisserie baseball. *Spy* magazine recently featured an article entiled "Rotisserie Life," which proposed a variation on rotisserie baseball in which participants draft "annoyances" in life and score points based on their performances.

While there are variations on how the game is played, there are common rules. Briefly, owners acquire major league players and receive points based upon how well those players perform in designated statistical categories. Owners may trade players with other owners and may acquire players by claiming "free agents" who are not already on a team. The winner in each league receives a set percentage of cash proceeds, as do the second, third and fourth-place teams.

Despite it's popularity, rotisserie baseball is not without its critics. Many say it takes the fun out of rooting and replaces it with cold numbers. Others claim it dehumanizes America's national pastime. The qualities that fans either love or hate about Darryl Strawberry are removed from the game by people who care only about isolated statistics rather than the "complete player". Sports columnist Mike Lupica of *The National* continually refers to rotisserie baseball players as "geeks." Even Irene Chang, the managing editor of *The Justinian*, refuses to read the rotisserie articles published in *The Justinian* to protest the nonstop chatter heard in *The Justinian's* third-floor office.

The Brooklyn Baseball Association, the league in which I am the owner of a perennial second-division team, demonstrates how rotisserie baseball can mirror its major league counterpart. Darryl Strawberry is currently a member of **Dave's Team**, currently owned and managed by Dave Rubin, who must face a predicament similar to that of the New York Mets: should he make Strawberry one of the highest-paid players in the game or allow him to become a free agent and hope the decision does not come back to haunt him?

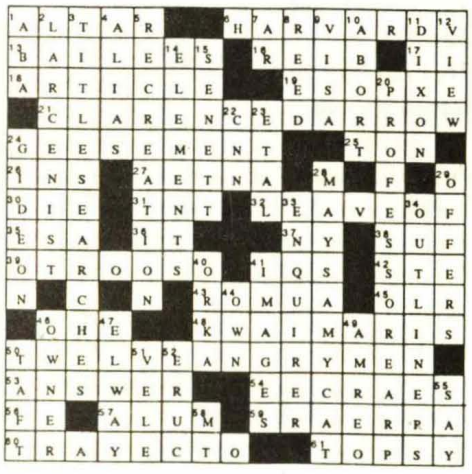
The close of the baseball season is the time for the presentation of awards, and with that in mind, I would like to present two.

Best Owner: Marc Miner. No contest. Marc's midseason acquisitions appear to have been made with the aid of a crystal ball rather than *Baseball America*. His second consecutive championship is due to his patience and baseball acumen. Break up the **Gold McMiners**!

Worst owner: Fabio Valentini. To really appreciate how pitifully Fabio ran his team, it is necessary to look to the team that finished just ahead of him in the standings. **Bob Lives**, owned and managed by Randy Amster and Paul Kaufman (runners up for best owner) is a team made up of players named Bob. Just think, Fabio's **Hammers** finished behind a team selected by virtue of its players' first names.

I would also like to take this opportunity to thank David Pratt, whose **Yankees** finished third behind the **McMiners** and ***The Justinian***, for his efforts as commissioner. I would also like to thank Dale Pratt for tolerating the long, incoherent messages we've left on their answering machine.

ANSWERS TO LAST MONTH'S CROSSWORD PUZZLE

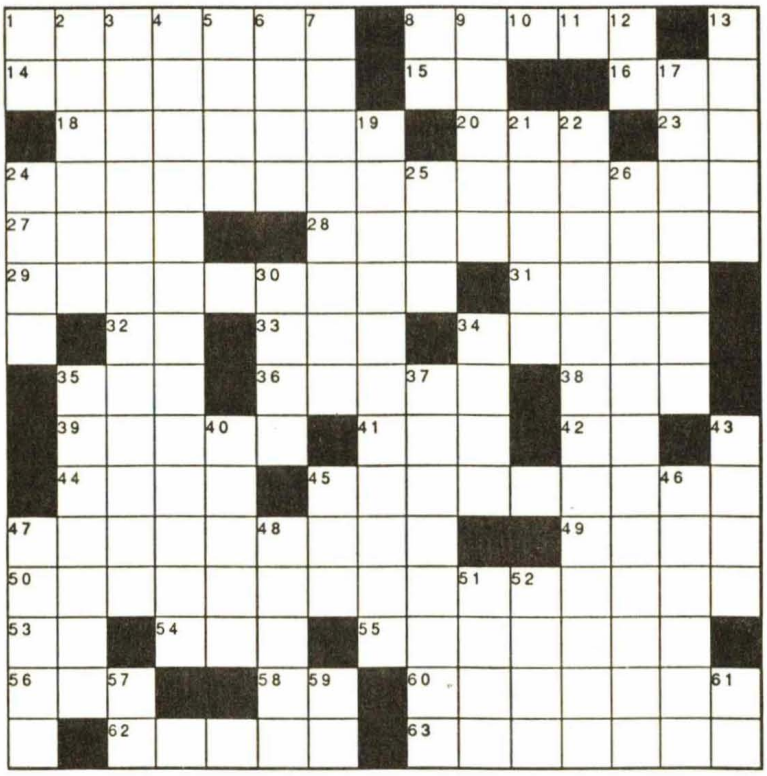


CROSSWORD PUZZLE

THIS MONTH:

CROSS EXAMINATION

by Marcus A. Spevak



ACROSS

1. State flower of South Carolina or a girl's name
8. Portents
14. Assumed names
15. Second tone of the diatonic scale
16. Med. students' life saving technique
18. Streisands
20. Mill preceder or see follower
23. Teetoalers' org.
24. Florida inhabitants of old or mascots of a Florida team
27. ——'s, an imported beer
28. Listen secretly
29. Very small or spider preceder
31. Former Buffalo Congressman, presently HUD leader
32. 14th letter of the alphabet
33. — Lanka, country near India
34. Danger
35 Bank mach.
36. Prudential follower
38. YES, scrambled
39. _____ in testimony
41. Barbie's male friend
42. The COnstit. State
44. Tangent's brother of mathematics
45. What a peeping Tom does to singer Turner (backwards)
47. Full of amusement?
49. PICA, scrambled
50. Welles of movie fame + pitcher Don of baseball fame + Virginia is for ——
53. In —
54. He is, in Latin
55. Places for skis to sleep?
56. Literary monogram
58. Expression of mild doubt or surprise
60. Green stone
62. Swap
63. No votes + one yes vote

DOWN

1. First month, abbr.
2. Even though
3. Siblings attached at the hip
4. Blond movie star
5. Lib. of Congress' catalogue acronym
6. Roman Emperor from 54-68
7. "that letter" in Spanish
8. Conjunction of choice
9. Type of lord
12. Ernest Hollings' state, abbr.
13. Take hold of
17. Full suit of armor
19. Nausea on a boat
21. ASKED, scrambled
22. Lynn Swann, O.J. Simpson, and Jerry Rice
24. Expectorate
25. League that Dartmouth is a member of
26. November 11
30. Same as 5 Down
34. _____ up; confined
35. Ensures
37. Holland beer
40. Straps of a bridle for horseriding
43. Venomous snakes of Egypt
45. Dental org.
46. ———, a green herb
47. # of Montana's Niner (not really)
48. Noted the time of writing
51. Type of bean
52. Yield to command
57. Spielberg's creation
59. Second atomic elem.
61. Joe Hynes

POET LAWREATES

Please Help Me, Walt Whitman

I stayed up all night trying to be
A great poet, like you.
I observed life from every angle I could find.
I spoke intimately with every single person I met.
With the saxophone who blinded
By napalm in Vietnam,
With the girl in blue jeans who told me
Why she liked to dance,
With the five-year-old in the beauty parlor,
Wearing her mother's shoes,
With a man with black hair and sapphire
Eyes, whose hands I wanted to touch...

I stood naked, in the street, in the rain,
With the light on, trying to feel
Something! Trying to be
A great poet like you.
I contemplated taking lesbian lovers.
I went to New York and rode
The Staten Island Ferry two hundred times,
It was the best I could do.
I watched patriotic shows on television.

And I cried like a baby,
With no mother's arms,
Because I'll never be
Able to find the beauty. I'll only see
Glimpses, when the moon is white and the trees
Are black, and the sky is ink blue,
And I'll never be
A great poet like you.

- Geanine Towers-Dioso -

The Foundling

Hey ocean,
I grew up in you,
brave-facing your sand-whipped surf.
Sea-drone drowned my panicked cries
when I was small;
shells and weeds and man of war
tided off my body.
Older, I stood abandoned,
singing lonely to your gulls,
their shrill laughter intermittent with my song.
In pitch night,
I swam naked, beyond breath,
waiting moon-buoyed
for your crash to swallow me.
Wave on wave,
you dumped my land-made legs up the coast,
but I always came back.
Drag me under now,
and take me.

- Deborah Fried-Rubin -

Inter Alia

by Lawrence Schuckman

ABA Inspection: Every seven years, the Accreditation Committee of the American Bar Association, as well as of the American Association of Law Schools, conduct a sabbatical inspection of every accredited or member law school. This year was Brooklyn Law School's turn. There was an on-site inspection of the school from Sunday evening, November 11th through Wednesday, the 14th. This year's inspection team, chaired by Dean Emeritus Richard C. Huber of Boston College Law School, visited classes and observed activities throughout this period.

The ABA's accreditation report is not to be treated as a *pro forma* matter by the school or the student body, as graduates from a non-accredited law school cannot sit for the New York Bar Exam. Last year, Patrick J. Rohan, dean of the St. John's University School of Law, began an unexpected 17-month sabbatical shortly after an inconclusive reaccreditation visit. To my knowledge, the Committee has not rendered a final decision, and it should be noted that many St. John's students have voiced complaints similar to those expressed here at Brooklyn Law School.

Personally, I am unhappy with the scheduling of fall semester finals after New Year's Day, and with the overlap of spring semester finals with bar review classes. Additionally, I find that there is a general lack of communication between the students and the administration. I also feel that there is a great deal of inconsistency in exam-grading. Furtheremore, there is no mechanism to appeal grades, there are too many multiple-choice exams, the placement office has failed to adequately adapt to the declining job market, and worst of all, the elevators sometimes change direction for no reason at all!

Unlike at St. John's, however, I think that the school's administration does a very good job overall. Although we all want improvements, it helps to know that we have a lot of things going for us that other law schools in the area do not. For example, while we all want Tom Curtin and the Financial Aid Office to provide more scholarship money, our school provides more in financial aid to its students than any other law school in the area! This year, according to Dean Wexler, 68% of all students received some form of financial aid. The total amount of aid awarded this year exceeds 2.6 million dollars. Columbia and New York University only award scholarships - providing little assistance in acquiring a GSL, SLS or Perkins loan. Fordham only provides need-based scholarships, and these are nowhere near the amount provided at Brooklyn Law School. In addition to their need based scholarships, Brooklyn Law School's Financial Aid Office provides "probably the best program in the city in regards to minority recruitment," according to Tom Curtin. This year, the school is providing $981,000 in minority awards alone.

Everyone complains, "The school doesn't do this, they don't do that." I feel, that more than anything else, most people don't know how to deal with a bureacracy effectively. Although the administration should make efforts to improve things from their end, when compared to other law schools, Brooklyn Law School is a very responsive institution. So let me remind you, that after the ABA evaluates our school, we should take some pride in our school and the quality of our education. As one professor put it, "If the ABA comes here next week for its inspection and merely gives it's approval, we'll be insulted. We expect to be commended for the fine work we have done here at Brooklyn Law School."

Can & Bottle Receptacles: Thanks to Roger Brennan of the school's administration, who recently installed can and bottle disposal bins throughout the building. They're on every floor now, so please make sure to be environmentally conscious and use them!

First-years: For first-year students, this is the time of year many of you begin to feel overwhelmed by your workload with the spectre of finals seen on the horizon. You're dissatisfied with your grade in your Legal Writing paper and other students in your section seem less chummy in sharing their notes with you. Remember: DON'T PANIC! There are still two months until your final exams, which is plenty of time to catch up on your reading and work on those outlines! The school administration gives the student body more than two weeks from the last day of class this semester to help you prepare - which is more than enough time if you have kept up in class. So while not advocating flying to your beach house in Aruba before finals (see Dan Tam), just take one day at a time and pace yourself. Good luck to everyone!

Et cetera: Congratulations to Larry Komar at the Bursar's Office, who ran in his sixth straight New York Marathon last week. Larry found this year's marathon his toughest yet due to the weather, but perservered (although he did call in sick the next day!).

The Justinian wishes to congratulate those recent graduates who learned last week that they passed the New York Bar Exam. It's reassuring to know that if our esteemed ex-Editor-in-Chief, Stan Lee, can pass on the first try, there's hope for us all.