The Justinian

Volume 1990
Issue 6 *December*

Article 1

1990

The Justinian

December 1990 Vol LX, No. 4

THE JUSTINIAN

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

PUBLIC INTEREST LAW: THE QUEST TO SERVE OTHERS

Sparer Fellows Discuss Their Summer in Public Service

ALSO IN THIS ISSUE:

Calendar Change?

A Date with The Supremes

Current Trends in Libel Law

Restaurant Review

Subway Begging

plus...another Crossword!!

Years Ago...

Justinian

"A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves."
SUTHERLAND, George in Grojean v. American Press Co., 297 U.S. 233, 250 (1936)

Vol. XXXV - No. 6 WEDNESDAY, FEBRUARY 12, 1975 Page Or

Why Is BLS Different?

By Jay B. Hashmall

BLS has an academic calendar that is almost one of a kind. It seems amazing that with the student radicalism of the 1960's, the progressive tide passed right over the school calendar, leaving it unchanged and unloved.

What can be said of an arrangement which (1) places exams after Christmas vacation, (2) contains an intersession ranging only from 5 to 7 days, (3) has a Passover/Easter vacation which fails to connect two weekends, and (4) continues spring semester classes and exams an appreciable time after most other law schools in the Northeast have finished?

Perhaps the unique features of the BLS calendar are not really so bad. Only a person who wants to vacation during the Christmas holidays rather than prepare for upcoming exams would complain. The calendar is unsatisfactory only for those who like to take a deep breath after winter exams. It is difficult only for those who must find employment during the summer in order to attend school in the fall. Otherwise the academic calendar is great.

There are no classes on Thanksgiving Day, Election Day, Jewish holidays, or Washington's Birthday. Classes are rarely scheduled on Saturday. According to Dean Hambrecht, who formulates the calendar each year, these are the major guidelines which must be followed. The only state requirement is that the school semester last sixteen weeks, including exams. The semesters at BLS last over seventeen weeks, including exams.

Most law schools and colleges have adopted new and creative academic calendars in recent years. Few are perfect, but almost all are an improvement over the archaic one at BLS.

The most fundamental change has been scheduling exams and terminating the semester before Christmas. Schools which have instituted this improvement, such as Columbia Law School, Georgetown Law School, George Washington Law School and American Law School, as well as many colleges including the State Universities of New York, seem quite content with the innovation.

There are very few schools which have as short an intersession as BLS. In the immediate area, Fordham Law School and NYU Law School had intersessions last year of nine and ten days respectively. Columbia had a fourteen day break, excluding the adjoining Christmas holiday. And even the local colleges, such as Kingsborough Community, Brooklyn, and Hofstra, enjoy breaks of from nine to fourteen days.

Not surprisingly, there are few schools which have spring vacations beginning at mid-week and ending at mid-week. Most last from one restful weekend to the next. A brief glance at the spring exam schedule at a few law schools will show the unwarranted extension of the BLS school year. Last year, Fordham Law School students finished exams on May 24, Columbia on May 10, Georgetown on May 18, NYU on May 25, George Washington on May 18, and Yale on May 16. Here at BLS, exams began on May 20th. After most law schools had finished, exams were just beginning at BLS.

Are the number of vacations days important, or are we not here for the best legal education $2,000+ can buy? If students are more interested in their vacations than in their courses, something is wrong somewhere, right? Wrong!

The study of law is a full-time business. Like any other occupation, it requires hard work, diligence, and total involvement. A calendar which allows the mind to relax periodically with real vacations permits steadier and more energetic application to studies. A calendar which creates better and more enjoyable working conditions produces better and less anxiety-ridden workers. If other schools can successfully follow such a calendar, so can BLS.

If it means beginning the fall semester a little earlier, it would be well worth it. If we lose the few days between exams — who knows? — perhaps frustration, fatigue, and irritability will not be evident by the fourth or fifth exam. Perhaps everyone will even fell and do better! It is definitely worth a try.

— editorial —

What ever became of vacation? A number of students have proposed a two-fold change in the academic calendar: 1) complete fall semester exams before Christmas, and 2) schedule a Monday through Friday spring semester intersession.

Completing fall semester exams before Christmas has its advantages, but there are also drawbacks. Classes must begin in August, and there is less time to study for exams. On the other hand, pre-Christmas exams would permit students to enjoy their vacations without the threat of impending doom.

The real problem is that there is little opportunity for student input. Students should be allowed to participate in planning the academic calendar.

We fail to see why the school persists in beginning spring semester on Thursday. Two or three-day weeks are non-productive. The administration refuses to change the beginning day of this semester's spring vacation to a Monday because "the calendar has already been printed." We find this excuse untenable.

As a gesture of good faith, the administration should immediately reschedule spring intersession to begin on a Monday.

The Justinian

A Forum for the Brooklyn Law School Community

CONTENTS

December 1990

FEATURES

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.

250 Joralemon Street * Room 307
Brooklyn, N.Y. 11201 * (718) 780-7986

EDITORS' CORNER

Recently, the administration decided not to change the academic calendar. The issue has been heavily debated for many years (see "Years Ago"), among students as well as between the student body and the administration. The battle lines have been drawn in different ways from year to year, but there has always been a substantial number of students seeking to change the calendar.

There are several reasons for switching to an earlier academic calendar. Foremost is the fact that spring finals coincide with bar review classes. Depending on the bar review course, finals overlap or even conflict with the classes. Third-year students are forced to either sacrifice their final semester grades, choose a bar review course based on its schedule or disadvantage themselves in taking the bar examination. Isn't this a "cruel trilemma?"

Another reason to change the calendar is the late start Brooklyn Law School students have in summer employment. For first-year students, the Writing Competition pushes start dates into late June. While this may not be a problem for many employers, many summer intern programs end on a specific date so that a student employed in such a program may have difficulty working a full eight to ten weeks, especially if the program is outside New York. In fact, the current schedule may make it impossible to secure a position in an out-of-town program.

The other reasons for changing the calendar revolve around students desires to enjoy the holidays, to have time to go away between semesters and to rest before starting bar review. While this may seem frivolous to the administration, students should be able to preserve their personal well-being by spending time with family and friends. After all, there is no inherent reason to perserve a situation where "law students have no life."

Rumor and speculation are rampant as to why the administration has opposed the change for so long. Among the reasons hypothesized are: "professors like their summers to include Memorial Day and Labor Day," "professors don't want to grade fall examinations during the holidays," "the administration is resistant to change," and "the administration does not care what students want." While there is no evidence to support these statements, they do represent students' explanations of the administration's ongoing opposition.

This year, a committee headed by Professor Berger attempts to provide reasons for keeping the present calendar. They polled the part-time students and the results are reported elsewhere in this issue. But are these results really an explanation for keeping the current calendar or are they merely a justification? Surely, the administration should consider the concerns expressed by the part-time students, but the concerns of the full-time students should not be overlooked.

Understandably, there is a presumption towards maintaining the status quo, perhaps because students have been surviving on this calendar for years. But there is a workable solution - decide this year to change the schedule four years from now. By effecting the change in the future, the administration need not compromise the part-time students' needs and will finally deal with the legitimate concerns of the full-time students (who comprise the majority of the student body). Besides, if the academic year began in the middle of August, part-time students would still have a significant amount of time to catch up or study. Perhaps some students fear they will have to work a little harder in the fall under a new calendar without the few extra days during holiday break. But we all work much harder each spring when there are only three reading days. In reality, no student would really complain about being given the opportunity to enjoy the winter holidays without having to worry about final examinations. In order to promote the well-being of students and assist them in bar prepartion, the administration should adopt a new academic calendar. It's not enough to just "survive" law school. *I.C.*

ANNOUNCEMENT

The Justinian is pleased to announce the appointment of **Professor Gerard Gilbride** to a two-year term as Chairman of the Grievance Committee for the Second and Eleventh Judicial Districts by the Supreme Court of the State of New York, Appellate Division, Second Department.

LETTERS TO THE EDITOR

The SBA Budget Battle

To the Editor:

While James Sherman s letter in the November issue of *The Justinian* concerning the SBA budget makes a few valid points, it is ultimately a cheap shot, spending most of it s length making mountains out of molehills and crying crocodile tears. Mr. Sherman focuses his attack upon what were, at worst, a few arguably bad ideas and instances of less than excellent management caused by inexperience rather than by malice. In the process, he unfairly maligns the integrity of people who made a sincere and largely successful effort to pass a budget that allocated the student activity fee money in ways that attempted to foster a happier and more fulfilling law school environment for all the segments of the student body.

Mr. Sherman s attitude seems to stem from both elitism and a bias in favor of special interests. He states that student groups were the real part in interest in the budget process. He is dead wrong. The real party in the interest was the student body; a collection of people Mr. Sherman seems to regard as children who must be forced to eat their spinach.

Despite his protestations to the contrary, it is obvious that Mr. Sherman is angry because he feels too much money went to groups merely organized by race, color, religion [which] conduct no publicly redeeming work other than a once a semester beer bash rather than to groups engaged in community wide... public interest work. While I share Mr. Sherman s obvious concern about the low level of public-spirited activities at Brooklyn Law School it should not be the function of the SBA to force feed such activities to the students, when a large portion of the student body has shown more interest in beer bashes. Instead, the SBA is obligated to examine and give some weight to each group s actual track record of student participation. Throwing money at groups like Mr. Sherman s Environmental Law Society will not insure that these groups are going to have more than three active members. Actually, when public interest-oriented groups had good track records, the SBA delegates voted them generous funding in amounts out of proportion to any discernable student interest (e.g. the Environmental Law Society received a whopping $1274). The SBA also funded new groups of this nature as well, on the promise of nothing more than a good idea and a will to serve. Truthfully, the substantive merit of a group s stated goals carried a lot of weight, as well it should have; far more weight than Mr. Sherman gives the SBA credit for.

Even worse, Mr. Sherman mischaracterizes the role of groups merely organized by race, color, religion, ect. (Why not add gender or sexual orientation? Are you afraid of being politically incorrect, Jim?). First of all, these groups are all open to all students. The SBA will not fund groups that discriminate. Secondly, law school can often be a difficult, frustrating, and trying experience. For many students, these groups go a long way in making Brooklyn Law School more pleasant, fulfilling, rewarding, and fun. By allocating money to such groups, the SBA fulfills its mandate of using student money to make law school a better place for more students; students who might otherwise not be reached by allocations to more general interest, white bread organizations.

For instance, last year s Jewish Law Student Society-sponsored lecture by Professor Twerski attracted a large audience of all faiths, most of whom were deeply moved by what they heard. BLSA brought us David Dinkins at the beginning of his mayoral race; the Irish Students have done far more to publicize human right issues than any other campus group; the Christian Legal Society gave us free cider and cookies during study period when the cafeteria was closed; and the Italian Students run a Christmas party that is far better than any beer bash, and more well-attended than almost any other campus event. Mr. Sherman callously dismisses the important contributions made by such groups. And, what s wrong with beer bashes, anyway?

Mr. Sherman goes on to suggest reforms in the budget process. These reforms are not only merited, but under active consideration at his time. However, he exaggerates not only the degree of the problem, but the benefit of his proposed solutions. In addition, he gets his facts wrong. As to notice, it is clear that the SBA executive committee could have done a better job of publicizing the budget process. But as President Greenberg clearly stated in his pre-budget meeting column, the meeting was not closed. Yes, the executive board should have taken some additional steps to notify groups of this, but to say there was no notice was to ignore reality.

Likewise, the process used to evaluate budget submissions was not the best possible means to insure that groups had the "opportunity to be heard." The executive committee was forced to set up a process without the benefit of a written constitution, and it is quite possible that with more experience they would have made better decisions. The whole budget process needs to be rethought. Frankly, I thought it was ill-advised to not allow groups to speak. (When it was clear that this couldn t be stopped, I successfully proposed that, in all fairness, SBA delegates who belonged to groups not be allowed to speak on that group s budget.) However, the idea that the budget process denied the right to be heard is sheer nonsense.

All groups submitted written budgets which were open for inspection by all SBA delegates before and during the budget meeting. Groups made their cases before panels of two SBA delegates who then reported their findings in a manner analogous to a legislative committee. (The members of these panels were unfortunately referred to as advocates by the SBA treasurer, but their role was clearly fact-finding and evaluation.) While I did not think such a procedure should have precluded any group from speaking before the full SBA meeting as well, a similar procedure suffices for due process in Congress, the state legislature, and the City Council.

In addition, many SBA delegates, in an effrt to do a better job, made independent inquiries about other items in the budget. In a similar manner, many group leaders consulted the posted lists of SBA delegates and exercised their right to lobby their representatives before and during the budget meeting. Some delegates made efforts to consult group leaders before and during the meeting as well. I know of no student desiring to sway SBA opinion on the budget who was refused an ear by any SBA officer or delegate. Mr. Sherman may consider such informal lobbying and consultation Tammany Hall-like, but I call it democracy.

Frankly, I have my doubts that extending the three hour meeting with extensive group presentations would have helped any group obtain more money; it is, at least, equally likely that the resulting delays would have resulted in delegate resentment. Nonetheless, I favored allowing groups such a right because it would have made the groups feel that the process was more fair. But make no mistake; while the process could have been better, acceptable minimum standards of due process were met and exceeded. Once the acceptable minimum standard has been satisfied, it is perfectly permissable to balance any further potential safeguards for due process against legitimate competing considerations, such as efficiency. While the SBA used a different balance than the one Mr. Sherman and I would have preferred, such a decision does not taint the process. Since Mr. Sherman has taken Administrative Law, it is unimaginable that he s forgotten this elementary lesson so quickly.

Yes, there were a few instances when the budget meeting was disorganized; a few instances of heavy-handedness by the leadership; but these problems were usually understandable, and often unavoidable. More importantly, there is no dispute that the actions of the leadership were always well-intentioned; and that measured by the results, they did a good job, especially considering the circumstances. By and large, the people Mr. Sherman accuses of a facile acquiescence... in a Tammany Hall-like carving of the student activity fee funds took their task very seriously, worked hard to get the facts, and then tried their best to be fair. They really strived to allocate the student activity funds in ways that would touch the lives of as many students as possible, so that their stay at Brooklyn Law School wold be at least a little bit more endurable. Besides myself, I don t believe that there is a single SBA delegate or officer who is enough of a political junkie to actually enjoy the task of carving the pie . Most treated it as a grave but pressing responsibility.

Take a look at this budget, Mr. Sherman; it reflects the real effort of a lot of people to stretch themselves beyond the borders of their sometimes limited experience. It is a budget that reflects the understanding that Brooklyn Law School is made up of many different people, at least some of whom are not single, white, heterosexual, Jewish, and 23. Although, at times, I was displeased with things that went on at the meeting, I was impressed with the real work people did, and the sincerity of their efforts to be fair. In the end, I was not revolted. Actually, I was kind of proud. All and all, a rather pleasant surprise.

Howard Graubard 91
SBA delegate

To The Editor:

I write briefly to respond to James Sherman s recent letter to the editor criticizing the process by which Student Bar Association Budget decisions were made. Mr. Sherman s claim that there was inadequate due process is factually groundless and barely warrants a response.

1) **Notice**- In the October issue of *The Justinian*, formal notice was given to every student organization

that the Budget Committee meeting would be open to all students. Mr. Sherman s statement that organizations were apprised of this fact only after the meeting had concluded is simply incorrect. Representatives from many student organizations took the time to read the Justinian and attended the meeting.

2) **Opportunity to be Heard-** Every student organization requesting funds from the SBA is required to submit an extensive budget application to the SBA Budget Committee. The budget applications are available for every SBA Delegate to inspect during the two weeks prior to the Budget Committee meeting. The SBA Treasurer goes over the budgets and makes a recommendation based on the number of students who are members of the particular organization and their planned activities. Additionally, each organization is assigned two SBA Delegates who are charged with the task of sitting down with an organization s representative and listening to the reasons why they deserve what they have requested. These delegates are not advocates , as Mr. Sherman puts it. They are impartial fact-gatherers engaged in the legislative process. When an organization comes up for budget consideration, the SBA Delegates assigned to that organization inform the entire SBA of what the group is all about. They also give the SBA their personal recommendations based on the impressions they get from the individuals involved. If a question arises that can only be answered by an organization s representative, they are permitted to relay that information to the SBA through their delegate. These procedures clearly satisfy due process requirements.

Organizations are not permitted to speak directly at the meeting in the interest of legislative efficiency. You do not have to be genius to figure out that if every organization were permitted to speak the meeting would last forever. The SBA makes no judgments as to the merits of a particular organization s cause. We are simply trying to allocate the student activity fee fairly so the students get the greatest bang for the buck."

I concede that the process is not perfect, but it is the fairest and most efficient method we have at this time. The SBA Constitution Committee welcomes your suggestions to improve the process. However, Mr. Sherman, before you start waving the flag in my face, get your facts straight.

Larry Greenberg
SBA President

Wrong Number?

I would like to bring attention to a serious problem with the pay phones in Brooklyn Law School, which are used most commonly by the students. My recent billing from such use has made me fearful to use them. I recently received my phone bill on which I had numerous calls on my NYNEX calling card to Westchester, San Francisco, and the local area. The use was much heavier than usual, as there was a wedding, and unusual business. On the face of the phones in Brooklyn Law School it says, ".30 for 1 min. anywhere in the U.S." My bill, attributable to the use of the school s phones, was $114.50. That alone is many times my usual bill.

I have been billed from ITI, and Integretel, whom I have no contractual relationship with, and do not recall ever doing business with. Together, these two companies have charged me $114.50 for what I estimate, according to the charges stated on the Brooklyn Law School phones, as follows: ITI=21 min. (total of all calls) X .30=$6.30, and Integretel=34 min (total of all calls) X .30=$10.20. On most of these calls, there was no operator assistance, only a recording or series of recordings giving instructions for use. When an operator was necessary, it was because the call would not go through, as is often the case without the operator. I would inform these operators that I was having difficulty calling with my calling card and they would connect me. I have been charged up to $3.93 per minute on these phones, which is a substantial difference from the .30 amount per minute stated on the phones.

The Justinian informed me that they have received numerous complaints from other students about the phones. At their suggestion, I contacted Student Services, which suggested I contact Dean Wexler. I am, of course, also pursuing the problem with the companies involved.

I am not suggesting the use of the phones is incorrect, but that the charge is inconsistent with the service received, and with what is stated on the phones. I do not think this is a case of mere wrong billing, but, instead a problem in the phone service at Brooklyn Law School. The distraction of dealing with this giant bill while trying to maintain my class work, and prepare for the holidays is not pleasant. I hope the matter can be resolved quickly with the provider, or I would suggest a change in the provider of such telephone service.

Yours Truly,
Linda Maher

BEST BRIEF AWARD

Dean Trager and Professor Walter would like to congratulate the following students who, in 1989-90, were nominated by the Faculty for the Joan Offner Touval Memorial Scholarship. The scholarship is awarded to the student who has submitted the Best Brief in the First-Year Moot Court Program. Professors Cary, Dietz, Falk, Fleisher, Teitcher and Ziegler chose the six semi-finalists. From this group, Professor Walter selected the Best Brief.

Best Brief

Renee Cyr

Semi-Finalists

Joseph Accetta
Jacqueline Bryks
Stephanie Hack
Debra Toppeta
Lori Ann Wardi

Honorable Mention

Mitchell Ahlbaum, Nancy Barr, Anne Bederka, Lori Bienstock, Jacqueline Siben Davies, William Epstein, Joan Stanley Fizulich, Karin Fromson, David Grill, Andrew Goldman, Jill Hollander, Nancy Kliot, Sven Krogius, Tracey Lazan, Norman Leon, Margaret Lowery, Kenneth Maiman, Christina McCloskey, Kevin Melody, Mark Munschenheim, Sean O Donnell, Kathleen Pacheco, Philip Presby, Michael Prior, Jill Rosenthal, Kathleen Warner, David Weinreb

---

LAW REVIEW UPDATE

Earlier this year, when the 1990-91 *Brooklyn Law Review* roster was published in *The Justinain*, two names were inadvertantly from the organizational chart. Annabel J. Hubbard and Edmond T. FitzGeraldare both Senior Editors on the 1990-91 Editorial Board of the *Brooklyn Law Review*. We sincerely regret this omission.

Jack Moore
Editor-In-Chief

MOOT COURT UPDATE

Congratulations to Anna Cline, Sarah Hamilton, and Jeff Kimmel, who were semi-finalists in the National Moot Court Competition.

Upcoming events include competitions in International Law, Civil Rights, Constitutional Law, Environmental Law, and Evidence Law. We would like to wish the teams success in their preparation for these competitions.

Additionally, the regional rounds of the National Trial Competition will be taking place in early February and will be held at the Brooklyn Supreme Court. The competition is open to all, and we hope that interested students will attend.

MOOT COURT NOTICE

The Moot Court Honor Society will be sponsoring the annual Intramural Trial Advocacy Competition during February 1991.

This competition is open to *ALL* second-year day students and second and third-year evening students. Individuals who excel in the competition are selected for the Moot Court Trial Advocacy Team, become members of the Moot Court Honor Society, and represent the school at the National Trial Advocacy Competition.

An informational meeting will be held on Tuesday, February 5, and notices will be posted at the beginning of next semester as to its time and location. All details concerning the competition will be explained at the meeting. For further information, you may contact Andrew Levi at the Moot Court office, (718)-780-7970.

SBA UPDATE

by Larry Greenberg

I would like to begin by thanking all the SBA Delegates and my faithful Executive Board for all their hard work during the semester. We have done some good work as well as given the students a louder voice in the affairs of Brooklyn Law School as seen through our extremely active SBA committees. At this time I would also like to commend Joe Accetta and Daniel Tam, Co-Editors-in-Chief of *The Justinian* for putting out the finest newspaper this school has seen in recent years. Increased publication has obviously resulted in a better informed student body, faculty, and administration. I look forward to continued success in the upcoming semester.

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

HOMELESS DRIVE: As you probably already know, the Holiday Homeless Drive has been progressing smoothly. Homeless Drive Chairperson, Lawrence Schuckman has informed me that we have gotten a tremendous student response and that donations are coming in so fast he is considering becoming a professional fundraiser. Many thanks to all the students who have been so generous. Donation boxes will remain throughout exams near the entrance to the cafeteria. So there s still time to help those who are less fortunate. Show them you care.

FACULTY-COURSE EVALUATIONS: During the last two weeks of regular classes (Monday, December 10 - Wednesday, December 19, 1990) Student Bar Association Delegates will be coming to your classes and handing out Faculty/Course Evaluation Forms for you to complete. This year the SBA will be compiling a comprehensive evaluation that will be made available to all students.

SBA COMMITTEE ON SEXUAL HARASSMENT: What follows is a report from the SBA Committee on Sexual Harassment. The report was voted on and adopted by the Student Bar Association at the General Delegation Meeting on November 29, 1990. Special thanks to SBA Delegates Howard Graubard, Chairperson, Jenifer Naiburg, Jessica Gladstone, and ABA Representative Lawrence Schuckman for all their hard work on this matter. I have recently been informed by Mr. Graubard that the report was submitted on December 5 at an open hearing to the Brooklyn Law School Special Committee on Sexual Harassment. What follows is the complete text of that report. [Note: The following report should be read in conjunction with the regulations contained in the report of the Special Committee on Sexual Harassment published in the November 1990 issue of *The Justinian]*

Report of the Student Bar Association Committee on Sexual Harassment.
Repectfully Submitted,
Howard Graubard, Chairperson
Jenifer Naiburg
Jessica Gladstone
Lawrence Schuckman

The Student Bar Association is in general accord with the recommendations of the Special Committee on Sexual Harassment. There are, however, a few instances where clarification or more detail would make the proposed code more useful as a working policy for everyday life at Brooklyn Law School. In addition, the section dealing with consensual sexual relations between students could benefit from a more realistic perspective on where actual and potential problems exist in student organizations and what the appropriate solutions are for such problems. In addition to these recommendations, the SBA asks that at least one female and one male student should be added to the Committee as voting members before a final version of the rules are drafted. Our preference would be equal student-faculty representation.

Article I: DEFINITIONS OF PROSCRIBED CONDUCT

(A) Sexual Harassment

(1)(b) The language from the policy statement about an action becoming sexual harassment when [the actor] is asked not to do it or in some other way clearly indicates displeasure and the actor continues to do it should be included here.

(c) This should apply when the promise of rewards or threat of penalty is clearly implied as well as when it is explicit.

In addition, the list of examples of what constitutes sexual harassment should be incorporated into the code, with a proviso that the listing is not all inclusive.

While much in the above suggestions may seem inherent in the code, or is explicit in the policy, the sensitive nature of this policy makes clarity imperative. In some cases this greater clarity will also hopefully have a prophylactic effect.

(B) Consensual Sexual Relations

(1)(c) The rules here are both over and underinclusive. While the rule should apply in cases of direct supervision (e.g., a second-year student and the editor they are assigned to), there does not seem to be any real need to apply it all the way up and down the chain of command in all cases. While it may be that an editor-in-chief or managing editor should be prohibited from having a relationship with any second-year member of the law review, it is doubtful that the same issues of questionable consent or appearance of unfairness apply to a relationship with a third-year member, even if there is technically a supervisory relationship

according to the chain of command. While it may be that specific reasons do exist to apply such rules to certain of these relationships, it seems that the committee has not adequately investigated to find out what the real or potential problems are. Rather, they seem to have contented themselves with one standard for all, in a situtation where different classes of people may justify different standards.

We suggest that the committee do further fact finding on this specific issue and that they request the journals to submit their own proposals to deal with this problem. Such proposals can explicate which relationships are forbidden, which require a shift of assignment, and which are permissible. These proposals should also specify what situations would require a member to disqualify themselves from a decision making process; a matter that should be detailed in a new clause (9) of this section. Such a clause should explicitly cover the competitions run by these journals, and apply a rule requiring disqualifications to such situations. It is very likely that more students find the potential for questionable consent and the appearance of unfairness to be a potential problem in the competitions than in the actual day-to-day operations of the journals.

(d) As to the Moot Court Honor Society, all the comments made concerning the Journals, apply as well, especially those concerning the competitions; although in the case of Moot Court it is possible that disqualification may be a more appropriate solution in day to day affairs than it is in the case of journals.

As to the Student Bar Association and *The Justinian*, we feel that the Committee has acted in an inappropriate manner. These organizations have no power to give their participants academic credit, and sadly they carry little cache in the business world. As the subsequent paragraphs should make clear, the provisions of section (1)(c) of the proposed rules regarding sexual harassment probably already cover any real or potential problems.

The Justinian is a voluntary organization. The SBA is unaware of any instances where a student has been turned away from participating in *The Justinian*. While it is true that *The Justinian* has from time to time, rejected an article, such rejection is rare, and we are unaware of any accusations that this was done for a personal reason involving a sexual relationship. The question here of where a supervisory relationship even exists is problematic; anyone in the school may submit an article; when does the supervisory relationship begin? When does it end? Does an editor have a supervisory relationship with a professor who submits an article? If such rules must apply, the appropriate standard would seem to be that editors disqualify themselves during the consideration of any article where a relationship does eixst or has existed; and that in choosing editorial positions, voters disqualify themselves in any situation where they are or have been in a relationship with a candidate. Given the realities involved even these rules would probably be going too far. In addition, any rules regarding the selection of articles have first amendment considerations that should be examined.

As to the SBA, one must first remember that the question of power and authority is not clear. All students are members of the SBA, but except in the areas of deciding what is appropriate use of student activity funds, and what can go on bulletin boards, SBA officials have little power and authority over other students. Even internally, SBA officers have little or no supervisory authority over each other or SBA delegates. SBA delegates are not subordinates, they are independent actors who are not obligated to obey orders (except to come to order, etc.).

The SBA has precious few perks to convey that would justify application of the rule against certain consensual sexual relationships. An SBA president can t promise to make someone the next president; that position is elected by the entire student body. Only two potential areas for conflict exist.

One is SBA appointments. While it can be argued taht these appointments convey no academic credit, little power, and almost no cache, there is at least the potential for an appearance of unfairness. If rules must be applied, however, the committee could require the SBA to require all actors involved in the selection process to exercise either disqualification or disclosure where a relationship exists or has existed with a candidate for such a position. This set of procedures could also apply to removal proceedings and the filling of vacancies. It should be noted that there is usually little or no competition for any of the positions in question, and that appointments are usually done on a voluntary basis. It should also be noted that such rules will have little meaning unless the SBA adopts a clearer set of rules governing its appointment process, especially in the area of requiring the posting of announcements regarding the availability of such positions.

The disqualification rules could also be applied to the budget process. In this case the school gives theSBA so much discretion over the allocation of student activity funds, that it can be argued that the process of allocation should be free from any appearance of unfairness or potential for questionable consent. Any actor who is or has been involved in a relationship with an officer of any organization applying for funding could be required to disqualify themselves from participating in consideration of that group s budget application. Conceivably, such rules could even by applied where the relationship was with a group member rather than with an officer. Of course, such procedures beg the question of whether actors must disqualify themselves when they are an officer or a member of an organization; while this was the SBA procedure this year, the continuation of this rule is a matter of great controversy within the SBA. The question has not been settled, and the committee should be aware that adopting a rule in this area could lead to the ludicrous situation of requiring actors to disqualify themselves when they had relationships with group members, but not when they were group members themselves.

It is the position of theSBA that section (1)(c) of the proposed rules regarding sexual harassment adequately covers any real or potential problems here. If there are to be any further rules, they should at the maximum cover only appointments and the budget process. If those areas are covered, then a procedure

requiring disqualification (or disclosure in the case of appointments) is the only workable policy. The SBA would also appreciate further consultation by the committee before any such rules adopted.

(5) This rule has no reasonable application to the *The Justinian* for the reasons stated above. This rule has no reasonable application to the SBA for the reasons stated above; and no practical application because as it is currently organized, no real supervisory relationships exist within theSBA.

(6),(7),(8) These rules set up procedures for requiring a faculty or staff member to disqualify themselves from certain proceedings. As suggested above, a similar rule would be appropriate for students involved in the journals and moot court; both in their day to day activities, and in their competitions. A new clause **(9)** would probably be the appropriate place for such a rule. If there is to be any application of these rules to the Justinian or the SBA, this clause would seem to be the only appropriate area for such coverage, in those limited instances discussed above.

Article II: ENFORCEMENT

(A) The Committee on Sexual Harassment - Composition

(2) We recommend that an equal number of students be added to the panel, unless the complainant requests to the contrary.

(3) We recommmend that an equal number of staff be added to the panel, unless the complainant requests to the contrary.

CALENDAR COMMITTEE: Special thanks to SBA Delegates Laura Amos, Chairperson, Degna Levister, and Marni Schlissel for all their endeavors to work out a calendar that is pleasing to all at Brooklyn Law School. The Calendar Committee has been working closely on this with Associate Dean Margaret Berger. What follows is an open letter to the student body from the Calendar Committee:

Fellow Students::

For the past year, a group of students has lobbied for a change in the law school calendar. Responding to Dean Trager s concern, we have worked with Professor Berger, whose approach has centered on the opinion of the part-time students. It seems hesitant about a change. Furthermore, even if the majority of all students would prefer a change, such a decision would be subject to a faculty vote.

To determine the opinion of the part-time students, Professor Berger drafted and mailed to them a questionnaire this past October. At first, the letter contained only negative inferences about the change, but the SBA committee was permitted to insert some positive aspects of such a change.

However, since a narrow majority (116 after - 99 before - 3 no answer) requested exams after the holidays, the faculty has decided not to undertake a calendar revision at this time.

The committee appreciates the responses that were returned with statements asking for clarification of the issue, since this shows us showed the survey was misleading and the students were not well informed about the proposed changes. Furthermore, the committee elected not to hold its own referendum at that time because of the inherent problems that were displayed by the faculty survey. Only 60% of those sent were returned and only 28% were from first-year students, who have no basis on which to form an opinion. As a result, some of these votes may be based on misconceptions. Also, since so many students failed to answer the survey, there exists a question as to whether this proposed change remains much of an issue at all.

Students who have failed to complete and return the survey have made a huge mistake! The faculty and all those concerned with the change or lack of change need your opinion! Since the faculty places so much emphasis on the part-time class, each response is important (particularly the third and fourth-year students who speak from experience).

The SBA plans to respond to the survey by conducting a referendum to garnish the true opinion of every day and part-time student. It will be held in January or February while the experience is fresh in your mind and first year students have a basis for an opinion. Furthermore, the referendum will contain market research standards to determine whether or not this is an important enough issue to pursue.

In order to make an informed decision, we have set out below our referendum proposal, some possible advantages and disadvantages of a change, and a sample schedule.

PROPOSAL - To alter the schedule of Brooklyn Law School to contain the required ABA amount of 70 days of instruction in the Fall semester, ending prior to December 25, and 70 days of instruction in the Spring semester, ending in mid-May prior to the commencement of bar review courses. Subject to a majority vote in both the full-time day part-time sections.

ADDITIONAL OPTIONAL PROPOSAL - The proposed change in the schedule shall take effect in the Fall 1994 semester and shall be reported in the admission packet so that all prospective students have notice of the change.

SOME ADVANTAGES: having almost three weeks of semester break encompassing Christmas, New Year s and, on rare occasions, a part of Hanukkah; having uninterrupted time during the break to travel and spend time with your family; ending the Spring semester prior to the commencement of bar review courses; having a longer study period for Spring exams, and having a more competitive edge in competition for jobs and clinics.

SOME DISADVANTAGES: starting the semester the third or fourth week of August, before Labor Day; having considerably less time to study for Fall exams; developing day care problems, since children are on vacation from school during the end of August, but not in May; having more difficulty in making vacation reservations during the holiday season, and, for part-time students, possibly having less days off from work during the new study period before the holidays.

PROPOSED SCHEDULE: FALL

Classes begin 8/20/90; Classes end 11/30/90; Study Period 12/1 -12/10/90 (9 Days); Final Exams 12/11-12/21/90 (10 Days). This schedule, as does the current one, would include the same days off for Labor Day, Rosh Hashanah, Yom Kippur, and Thanksgiving. The present schedule

also includes days off for Columbus Day.

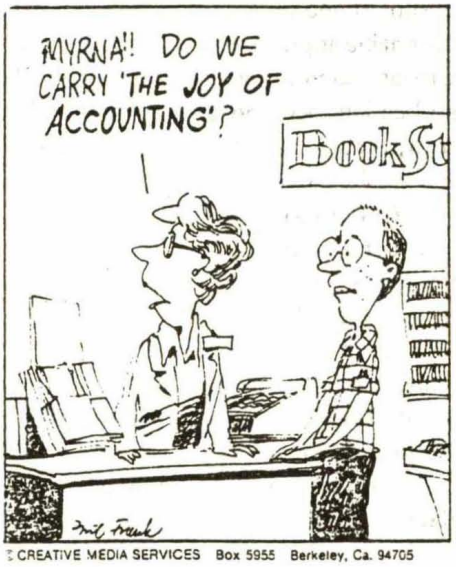
PROPOSED SCHEDULE: SPRING

Classes begin 1/7/91; Spring Break 3/29 - 4/7/91; Classes end 4/24/91; Study Period 4/25 - 5/1/91 (7 days); Final exams 5/2 - 5/15/91 (14 days). An extra week for study period may be given to first-year students. This schedule, as does the current one, would include days off for President s Day, Martin Luther King s Birthday, Good Friday, Easter and Passover.

The SBA Calander Committee
Degna Levister, Marni Schlissel, Laura Amos

BUDGET ALLOCATIONS: Apparently, there were errors in the Budget Allocation numbers that were printed in the November 1990 issue of the Justinian. According to SBA Treasurer Ramon Reyes, How am I supposed to know what *pro rata* means, I never took accounting. Nonetheless, the correct budget allocations follow:

ABA-LSA	$882.90
Animal Rights	294.30
Amnestry Int l	294.30
AALSA	1765.80
BLSA	2943.00
BLSPI	294.30
CLS	784.80
Democratic Club	392.40
Environmental	1275.30
Greek LSA	196.20
HILSA	1471.50
Int l Law	441.45
IM Basketball	1373.40
IM Football	150.00
Irish LSA	588.60
IALSA	1177.20
Jew ish Heritage	294.30
Jewish Law Students	294.30
Justinian	6768.90
LAW	2452.50
Lesbian & Gay Assoc.	1275.30
NLG	1471.50
ΦΔΦ	294.30
Second Circus	5886.00
Sports & Ent.	981.00
SBA	6670.80



FACULTY DECLINES TO CHANGE ACADEMIC CALENDAR

By Joe Accetta

The faculty has decided not to alter the current school calender at this time, according to a memorandum obtained by *The Justinian*.

The November 30 memorandum states, in part, that the results of a survey, distributed to 350 part-time students in October, indicated that a majority of the respondents expressed a preference for retaining the present calender. In light of this, the memorandum stated, the faculty, at its November 28 meeting, decided to maintain the current calender at the present time.

The survey, which elicited 218 responses, a 60% response rate, was accompanied by a letter, drafted by Academic Calender Committee Chair Professor Margaret Berger, outlining the pros and cons of a calender change. Of the 116 students that expressed an opinion on this matter, a majority of first and second-year part-time students indicated a preference for taking Fall exams after the holidays, while a majority of third and fourth-year part-time students preferred to take exams before the holidays.

Student comments that accompanied the returned surveys indicate mixed emotions concerning a proposed calender change affecting Fall semester exams. Following are sample student comments on this issue:

PRO CHANGE

This change will probably not affect me and... the holidays could be enjoyed without the anxiety of impending exams. (PT/Eve/4th yr)

Also, I would prefer to start classes in mid-August, if this is necessary to accommodate. (PT/Eve/1st yr)

It s about time! (PT/Eve/4th yr)

Bravo!...Preparing for exams between the holiday seasons in December is not conducive to being well-prepared... (PT/Eve/4th yr)

ANTI CHANGE

Since Christmas-New Year s is a slow week at work, it allows me valuable time to study for exams. (PT/EVE/3rd yr)

This proposal would cause a great hardship for me and might ve even affected my decision to attend Brooklyn Law School. (PT/Eve/3rd yr).

As is. Thank you for consulting part-time students! This is the first time the school has ever solicited our view on such a matter! (PT/Eve/4th yr).

It would...make it impossible for any part-time student to complete the upper division writing requirement in any fall semester... and to adequately prepare for exams. (PT/Eve/3rd yr).

The Club Scene

Brooklyn Law Students for the Public Interest

by Eric Firestone and Mark Weprin

On December 4, 1990, over 100 students and faculty members filled the Student Lounge for a faculty forum entitled How To Get Started In Public Interest Law, sponsored by Brooklyn Law Students for the Public Interest (BLSPI). Six faculty members spoke to the students about their experiences in the public interest field, and offered advice on how to get started in public interest law. After the forum, a raffle was held in which $1400 was raised. This was the first event for the newly formed group, which has been greeted with overwhelming student and faculty support.

The panelists, which included Professors William Hellerstein, Susan Herman, Minna Kotkin, Gary Schultze, Nan Hunter and Oscar Straus, shared stories about their various experiences in the public interest field. The discussion proved to be humorous, enlightening and inspirational. Professor Herman told a fascinating story about how her first public interest law case unexpectedly led her all the way to the United States Supreme Court. Professor Hellerstein amused the crowd, recalling that his first office at the Legal Aid Society was an old jail cell. The faculty members strongly encouraged Brooklyn Law School students to work for the public interest at some time during their legal careers.

The event culminated with Karen Comstock, Brooklyn Law School s Public Interest Placement Coordinator, drawing the winning raffle tickets. The money raised in the raffle will go towards funding Brooklyn Law School students to work for the public interest during the summer or on a part-time basis during the school year. Bar-Bri provided refreshments and the top two raffle prizes. Ben Coopersmith won the grand prize, $850 towards a Bar-Bri review course, Lisa Levin won $310 towards a Bar-Bri review course, and Ada Clapp won a hornbook, graciously donated by MJ&K Bookstore.

BLSPI plans to hold several events during the spring semester, including a goods and services auction and a 1% For Justice pledge week. BLSPI wishes to thank the Brooklyn Law School community for making the raffle and the faculty forum such a great success!

Amnesty International

by Mark Goodwin

Reports of human rights abuses frequently come from Sri Lanka, an island nation of 16.5 million in the Indian Ocean. Faced with armed opposition, the Sri Lankan government has invoked emergency regulations which have actually abetted abuses by their own security forces. Thousands have disappeared and many have been executed without judicial process.

The *AI Sri Lanka Briefing* (September 1990) states: Extrajudicial executions occurred in several contexts: defenseless prisoners were deliberately killed; unarmed demonstrators and curfew violators were shot dead; people in the vicinity of atrocities attributed to the opposition JVP (People s Liberation Front) were killed in acts of reprisal; and individuals were targeted for assassination, including JVP suspects, members of other opposition parties, journalists, lawyers and witnesses to violations committed by the security forces.

These abuses have been frequent since 1983, but have intensified and spread throughout the country in the last three years. According to the *AI Sri Lanka Briefing* over 20 lawyers are known to have been threatened with death if they continue to file *habeas corpus* petitions or fundamental rights petitions or continue to represent suspected members of the JVP. Several lawyers have been killed and others have fled the country or have gone into hiding.

Amnesty International is recommending that the Sri Lankan government set up an independent commission to assess such extrajudicial executions and to verify the whereabouts or fate of all people reported to have disappeared." Such a commission s findings should then be made public.

International Law Society

by Liz Stern

Students are often mystified by the lawyer s role in an international context. To provide some clarification, the International Law Society sponsored a discussion on November 15 with Professors Yee and Waller. The meeting was informative, as both professors shed light on their personal experiences in the area of international litigation and business transactions.

Professor Yee described different job opportunities available to American lawyers in the field of international law, saying that there was a wide array of opportunities, both within the United Sates and abroad, including working for an American law firm s overseas office, for an American multinational corporation, translating foreign legal documents, or teaching at foreign law schools.

Professor Waller elaborated on the diverse paths law students might take toward an international law career, stating that the best path to explore if interested in a full-time international law career is working for the United States government abroad.

If anyone is interested in an international law career, or just wants to explore such career opportunities, all are encouraged to join the International Law Society. Look for posted signs announcing our next meeting.

Animal Rights Group

PRODUCT TESTING ON ANIMALS

by Hayley Greenberg

The time will come when men such as I will look upon the murder of animals as they now look upon the murder of men.
Leonardo Da Vinci, 1452-1519 (Vegetarian)

Every second, three animals die needlessly in product testing conducted to protect corporations from civil suits; there are no laws requiring such testing. According to *The New York Times*, the answer is legal, not scientific: The fear of product liability litigation is an even stronger barrier to change. There are cases where toxicologists would like to use *in vitro* [cell culture] tests in the early stages of product development, but top management has been aggressively not interested because of potential legal problems. They don t want anything in the records to contradict the animal tests. They want to make sure they stick to one method and do nothing else. (Feb. 28, 1988). Substances tested on animals include Ajax, white out, bleach, soaps, and cosmetics. In fact, millions of rabbits, guinea pigs, mice, and rats are abused to death each yearin cosmetics laboratories.

Products are often tested in the eyes of rabbits. Why? Rabbit eyes, unlike human eyes, do not tear. Rabbits can t cry and wash away some new and improved laundry detergent, fabric brightener, or makeup. And so, toxic substances stay in the eye for weeks at a time and sometimes, the eyes dissolve while the rabbit is immobilized. THESE ANIMALS ARE NOT ANESTHETIZED. Rabbits are not the only victims. Cats, dogs, mice, birds, and even chimpanzees fall into what can only be described as a living hell called product testing.

Although many companies still test, more and more are no longer subjecting these helpless animals to highly repetitive, useless tests. Many of these tests show varying results even when conducted under similar conditions. There are hundreds of documented horror stories told by employees of these labs. One worker tells of a mix-up between the control group and the test group. It seems that results are important, not accuracy.

An example of a typical mild test is where one company tested two fragrances, placing them in the eyes of a group of conscious rabbits, while the other fragrance was force-fed to other rabbits. One fragrance was classified as mildly irritating with the test animals showing mucous discharge, staining of the cornea, redness, and swelling. The other fragrance was classified as severely irritating after one hour, yet the test continued for seven days. In another test, 20 animals were force-fed an ingredient. One died immediately and three became comatose. All surviving animals were killed after two weeks.

Thousands of pages could be filled with even worse examples of such disgusting cruelty. Those of you who desire more graphic details can simply attend any of our meetings, events, or call any animal rights group listed in any of these columns.

Admittedly, some larger corporations, including Beauty Without Cruelty, NOW, Revlon, Avon, Estee Lauder, Clinique, Yves Rocher, Prescriptives, and Aramis, now produce products that specifically indicate cruelty-free or not tested on animals. READ CAREFULLY! Health food stores are a good place to find these products. Also, they can be found less expensively at large discount stores, including, Odd Lot, Cheap Johns, and Lamstons.

However, some companies, including Gillette, L Oreal, Proctor & Gamble, Cosmair, Johnson & Johnson, Chesebrought Ponds, Inc., and many others, still conduct these cruel tests.

The best thing to do is call or write to PETA (People For the Ethical Treatment of Animals) and ask for your free CRUELTY-FREE HOLIDAY SHOPPING GUIDE. THEY CAN BE REACHED AT P.O. BOX 42516, Washington, D.C. 20015, (301) 770-7444. A similar guide is also available from ARM (Animal Rights Mobilization) at (212) 966-8490, or (800) CALL-ARM.

Watch for our next event where we will have videos, and samples of cruelty-free products.

Sports & Entertainment Law Society Hosts Libel Law Talk

by Inge Hanson

Until this summer, libel lawyers representing clients who were sued over an offending statement could rest assured that the expression would be constitutionally protected under First Amendment free speech guarantees if characterized as opinion rather than fact . The Supreme Court, however, erased the opinion privilege last June in *Milkovich v. Lorain Journal Co.*, 100 S.Ct. 1695 (1990). In a program sponsored by the Sports & Entertainment Law Society, Laura Handman of Lankenau & Bickford, who represents media clients such as Rolling Stone, Penthouse, Bantam/ Dell/Doubleday, and Mother Jones, discussed the profound effect *Milkovich* has had upon libel practice. In *Milkovich*, the Court held that the First Amendment does not extend protection to statements of opinion thereby wiping out a privilege courts had long recognized as shielding opinion from attack in libel suits.

As background to the *Milkovich* decision, Handman reviewed an earlier case where she argued that opinion is entitled to absolute protection under First Amendment free speech guarantees. Handman and her firm represented the well-known journalist Shana Alexander and Doubleday & Co. who were sued for libel over two passages in the bestseller, *Nutcracker: Money, Madness, Murder: A Family Album.* The book is Alexander s non-fiction account of the murder of Franklin Bradshaw. Bradshaw s 17-year-old grandson was convicted for the murdering Bradshaw, a murder he committed at his mother s urging. He and his mother, Francis Bradshaw Schreuder (Bradshaw s daughter), are serving prison terms for their roles in the killing.

One section of *Nutcracker* explores the question of why psychological treatment did not prevent Bradshaw s murder. The author refers to Herman Weiner, the plaintiff in the lawsuit, one of Frances Schreuder s psychiatrists. Weiner, prominent in primal scream therapy, had testified at Schreuder s divorce proceedings that she was a fit mother. The key sentence in *Nutcracker* that formed the basis of Weiner s suit was a statement by one of Schreuder s friends that Frances always slept with her shrinks. The author also noted that the family had suspected hanky panky .

The case, *Weiner v. Doubleday & Co., Inc.*, 550 N.Y.S.2d 251 (Ct.App. 1989) ultimately turned on these passages, as Weiner claimed that these sentences, in the context of the rest of the paragraph, defamed him by falsely accusing him of having sexual relations with a patient. Handman asserted that the book is clear that no one is to be trusted, especially not Frances and her relatives and [friends]. The argument she advanced on the defendants behalf was that in the context of a true crime work, where all the characters are unreliable, the most you can do is present an array of competing versions of the facts, not endorse any, and let the reader choose [among those versions presented]. The author used this technique and wrote that the details of Frances s domestic existence must of necessity be reconstructed from the recollections of other members of her always carefully locked and guarded household: children, ex-husbands, ex-servants, Behrens [Schreuder s friend] and Bernice [Schreuder s mother] - her only visitors. Not the best of sources in any circumstances, especially these.

Handman argued that the author had plainly alerted the reader not to take statements by these characters at face value. Following this argument, Handman argued that the challenged sentences were not assertions that Frances had indeed slept with her shrinks, but opinions which are protected expressions. The New York Court of Appeals, however, held that the sentence Frances always slept with her shrinks [was] reasonably susceptible of a defamatory meaning and refused to carve out an exception within the opinion defense for the genre of true crime works. Although the court rejected the argument that the challenged statements were protected opinion, it ultimately affirmed summary judgment for the defendants and dismissed the case on other grounds. The court concluded that the statements were of legitimate public concern and were adequately confirmed through research and interviews.

Handman stated that it was fortunate for the *Weiner* defendants that the Court of Appeals rejected their opinion defense because the Supreme Court concluded in *Milkovich* that opinions do not merit First Amendment protection. Subsequently, the Supreme Court denied the *Weiner* petition for certiorari as the case was decided on adequate state grounds.

According to Handman, *Milkovich* has had a profound impact on libel practice in the few months the decision has been in effect. The case was the culmination of a 15-year litigation brought by a high school wrestling coach against the *Lorain Journal* for publishing a sports column

that called statements he had made a big lie . The Supreme Court held that there was no privilege for opinion under the First Amendment. Therefore, even though the article might have constituted an opinion that the coach had lied, the statement would be actionable as capable of being proved true or false. Having removed opinion from the scope of constitutional protection, the Court concluded that the Lorain Journal s column would not be immune from attack under the state libel laws.

Handman interprets the *Milkovich* decision to mean that, now, the only issue in a libel suit is whether a challenged statement is susceptible to verification as to its truth or falsity. If the statement is susceptible to such verification, then the libel plaintiff bears the heavy burden of proving the statement was false or made with reckless disregard for the truth. If the statement is not susceptible to such a determination, the defendant will win. The Court concluded that these hurdles, which a libel plaintiff must overcome to prove their case, provide sufficient protections to ensure the freedom of expression guaranteed by the First Amendment without a"separate constitutional privilege for opinion . *Milkovich* made clear, however, that rhetorical hyperbole, satire and cartoons remain constitutionally protected forms of expression.

The effect *Milkovich* will have upon libel practice is uncertain, although Handman asserted that the decision has resulted in her reviewing statements contained in restaurant reviews, editorials, [and other] areas I don t normally have to look at for libel reasons. As a result of *Milkovich*, the Supreme Court remanded *Immuno AG. v. Moor-Jankowski*, which the New York Court of Appeals decided on the same day as *Weiner*. *Immuno AG* held that a letter to the editor of a scientific journal was protected opinion. The case was reargued before the Court of Appeals on November 15 in light of the *Milkovich* decision.

Even Andy Rooney of Sixty Minutes has experienced the impact of *Milkovich*. Rooney was sued for libel by the maker of a product called Rain-X for saying that the product didn t work, during one of his weekly commentaries. In *Unelko Corp. v. Rooney*, 912 F.2d 1049 (9th Cir. 1990), the Ninth Circuit concluded that because the opinion test was now obsolete. . .the conclusion that the statement It didn t work enjoys First Amendment protection is unwarranted. Rooney ultimately won his case on the ground that the plaintiff had failed to demonstrate that his statements were false in substance.

"The [Milkovich] case was the culmination of a 15-year litigation brought by a high school wrestling coach against the *Lorain Journal* for publishing a sports column that called statements he had made a 'big lie'."

At least one lawyer has personally benefitted from the *Milkovich* decision. In a recent case, an attorney for Kodak Corporation sued *Business Week* for libel over a story about a deal involving Kodak in which the attorney was described as arrogant. The deal fell apart and the lawyer lost his job. In its defense, *Business Week* argued that using the word arrogant was classic opinion, and therefore, a protected form of expression. The court rejected the argument and the jury awarded the attorney 1.6 million dollars in damages. According to Handman, *Business Week* has prepared motions for JNOV but, the verdict indicates the impact *Milkovich* has had upon libel litigation. We didn t used to worry about this type of statement pre-*Milkovich*.

Handman sees these results as a lesson that trade journals, consumer reports and other similar forms of media must look closely at libel problems that were not considered issues before the *Milkovich* decision. Lawyers representing libel defendants can no longer move to dismiss a case on grounds that a challenged statement is merely opinion. Courts will likely require discovery on the issue of whether the statement is capable of proof as to its truth or falsity and even then might conclude that the question is one for the jury to decide. Libel defendants don t do well in front of juries and don t want to go before them or go through the expense of discovery. The *Milkovich* decision is, therefore, likely to increase and protract libel suits considerably.

Handman suggests that one means of circumventing the impact of *Milkovich* is for lawyers to urge state courts to find an opinion privilege in state constitutions. She explained that because conservative Reagan and Bush appointees stock the federal courts, the more liberal state courts are being looked to for constitutional protections. In New York, a center of publishing, the Court of Appeals has often recognized that the state has a vested interest in extending protections to the publishing community. It is hoped, Handman asserted, that such protection will be extended to statements of opinion.

Roots of the Public Interest Law Movement in the United States

by Karen Comstock

[Editors Note: The author is the Public Interest Coordinator at the Brooklyn Law School Office of Career Placement and Planning.]

A recent article in the ABA Journal stated that despite a population of over 690,000 lawyers in the United States, or approximately one lawyer for every 354 citizens, all of the legal services attorneys and private attorneys volunteering their skills through *pro bono* programs are currently serving only 6.8% of the legal needs of the poor. In other words, 93.2% of the legal needs of the poor go unserved. Similarly, other groups and interests that are typically marginalized in society cannot rely solely upon the market to provide the legal representation needed to give voice to their specific concerns. Minorities, women, gay men and lesbians, immigrants, the handicapped, children and consumers, to name a few, have a severe need for committed legal advocacy.

Efforts to provide legal representation to individuals and interests that historically have been inadequately represented in the legal system is what public interest law is all about. Public interest activists employ a wide array of strategies to secure legal representation for the powerless and disenfranchised in our society. Through litigation, public education, community organizing and lobbying, advocates pursue causes that would otherwise go unrepresented. Some public interest law organizations focus on serving a large number of individual clients on a wide variety of matters. Other organizations focus on policy-oriented cases, where a decision will advance a major law reform objective or affect a large number of people.

This article is designed to outline the roots and accomplishments of the public interest law movement in this country. This is necessarily a very generalized history, as the story of every significant organization and its struggles could not possibly be told in the space provided in these pages. The issues addressed by public interest lawyers span a wide spectrum of human experience. The common thread binding these efforts is the belief that lawyers have an obligation to examine the social implications of their work.

The term public interest law was coined in the 1960 s, but efforts to increase society s recognition of the rights of poor people and other disadvantaged segments of society began over a century ago. In 1876, a program of legal assistance for recently arrived immigrants was established by the German Society of New York. Now known as The Legal Aid Society, today, the organization has a full-time staff of 950 attorneys working in 22 locations throughout thefive boroughs. The Society s legal staff provides representation to more than 250,000 persons each year in all trial courts in New York City, in the state appellate courts, in federal courts, and in the United States Supreme Court. The Legal Aid Society is the country s oldest and largest legal services organization.

The turn of the twentieth century was a time of rapid industrialization as well as social and political change. Progressive Era activists took issue with the traditional legal doctrine that defended unregulated business enterprise. The Progressives believed that government had the obligation to respond to society s changing needs and interests and should therefore intervene in the economic life of society to ensure that the market did not operate in a way injurious to the general public. While the Progressive movement never succeeded in its most ambitious goal, remedying the maldistribution of wealth, the most durable legacy of Progressivism was its social legislation, embodied in the development of new protective labor and consumer laws. These law reform efforts were the forerunner of President Franklin D. Rosevelt s New Deal legislation.

During World War I, the American Civil Liberties Union (ACLU) was founded as a citizens lobby to call attention to violations of the First Amendment rights of pacifists and conscientious objectors. Dedicated to opposing intrusions upon the constitutional rights of individuals in cases involving issues of free speech, privacy and due process, the ACLU s strategies focus on lobbying, litigating, grass roots organizing and public education. The ACLU works mainly through volunteer attorneys, and is often limited to a friend of the court role. The group has evolved into a national organization which now has more than 275,000 members with local affiliates in every state. Current ACLU projects include: the Immigration and Alien s Rights Task force, the AIDS Project and Lesbian and Gay Rights Project, the Women s Rights Project, the Children s Rights Project and the Reproductive Freedom Project.

The National Lawyers Guild, founded in 1937, is an organization of lawyers, legal workers, law students and jailhouse lawyers with over 7,000 members in 215 chapters throughout the United States. The Guild was founded in 1937 as a multi-racial and

progressive alternative to the American Bar Association. For 53 years, the Guild has been in the forefront on many of the most significant battles for political, economic and social justice. Guild members were active in the struggle against government union busting campaigns in the 1940 s. At the height of the Cold War, Guild members represented artists, labor leaders, and others against the red-baiting tactics of the McCarthy Committee. Guild attorneys represented Civil Rights activists during the Montgomery bus boycott and other campaigns. During the late 1960 s and 70 s, Guild members were defending activists and demonstrators, training draft counselors and counseling registrants. Throughout the 1970 s and 80 s, the Guild took on tasks ranging from affirmative action to defending nuclear disarmament activists to fighting U.S. intervention in Third World countries and defending international human rights.

The National Association for the Advancement of Colored People (NAACP), founded in approximately 1910, established a Legal Defense and Education Fund (NAACP/LDF) in 1940 and launched a long-term litigation campaign to establish the unconstitutionality of the separate but equal doctrine, which was the legal basis of segregation. In 1954, the NAACP and the NAACP/LDF won the landmark case *Brown v. Board of Education* before the United States Supreme Court. *Brown* and its progeny eventually eliminated the legal basis for segregation in public facilities. Subsequent cases successfully challenged segregation and discrimination in higher education, voting, housing and other aspects of American life. The NAACP/LDF has won landmark cases involving a host of rights that we take for granted today, including: the right to be represented by counsel, the right to buy and sell a home free of racially restrictive covenants, the right not to be convicted on the basis of a coerced confession, the right to peaceful protests, and many others.

The NAACP/LDF organizational model and strategies inspired the development of the National Organization for Women (NOW) Legal Defense and Education Fund in 1970, The Puerto Rican Legal Defense and Education Fund in 1972 and the Asian-American Legal Defense and Education Fund in 1974. Each organization is dedicated to ending discrimination against and protecting the legal rights of their constitutiencies through impact litigation and advocacy and community education.

"The term 'public interest law' was coined in the 1960s, but efforts to increase society's recognition of the rights of poor people and other disadvantaged segments of society began over a century ago."

The civil rights and antiwar struggles of the 1960 s and 1970 s compelled many ordinary citizens to engage in political and social activism. These two decades saw the emergence of many community-based organizations agitating for equal opportunity for the poor, as well as for consumer protection and environmental preservation.

The roots of the modern consumer movement can be traced to the 1965 publication of Ralph Nader s book, Unsafe At Any Speed , which blasted General Motor s auto safety standards as embodied in their newest car, the Corvair. General Motors retaliated by hiring a private detective to spy on Nader in an attempt to uncover any personal information about the young activist that would discredit his findings. GM s strategy backfired. When Nader learned of the investigation he confronted the automaker, whose sheepish chairman publicly apologized to Nader at a press conference. Nader sued General Motors and won several thousand dollars in an out-of-court settlement. He used this money to begin building the vast array of watchdog organizations for which he has became famous.

Among the groups founded by or affiliated with Ralph Nader are the Center for Study of Responsive Law, the Center For Auto Safety, Public Citizen, the Public Interest Research Groups (with affiliates in 26 states and the District of Columbia), and Trial Lawyers For Public Justice. Nader s groups have played a role in the passage of a variety of laws in such areas as pesticides, food, medical products and autos, including the Auto Safety Act of 1966 (its structure and rule-making procedure was later used as models for the creation of the Environmental Protection Agency, Occupational Safety and Health Administration and Consumer Product Safety Commission), the 1974 amendments to the Freedom of Information Act, the Federal Election Campaign Act of 1974, The Civil Service Reform Act of 1978, deregulation of the airline and trucking industry in 1978, and environmental Superfund legislation in 1980 and 1986.

(continued on page 22)

(continued from page 19)

The first public funding for civil legal services in the United States began in 1965 with the creation of the Office of Economic Opportunity s Legal Services Program, part of President Lyndon Johnson s War on Poverty . In 1974, the OEO Legal Services Program grants to over 200 civil legal services programs throughout the country, totalled almost $70,000,000.

In 1975, Congress replaced the OEO Legal Services Program with the Legal Services Corporation (LSC), which still exists today. By 1981, LSC s annual appropriation of $321,000,000 funded over 300 legal services programs in the United States and its territories. In 1981, LSC realized a very modest goal of providing minimum access , that is,funding two legal services attorneys per 10,000 poor people throughout the United States.

While this may have been a modest goal, given the existence of approximately one lawyer for every 354 citizens in this country following President Reagan s election in 1980, minimum access became history almost immediately.

While governor of California, Reagan waged an unsuccessful battle to prohibit OEO funding for legal services in that state. Congress did not allow Reagan, as president, to succeed in his goal of eliminating all funding for the Legal Services Corporation. However, funding for LSC was cut to $241,000,000 in 1982, growing slowly to $308,000,000 by 1989. When adjusted for inflation and increases in the poverty population, LSC s funding is forty percent lower today per capita than it was in 1981.

President Bush procrastinated for months before nominating new members for the Legal Services Corporation Board. The nominees have received mixed reviews from leaders in the Legal Services movement, and they have yet to be confirmed by Congress. However, there is little hope for any significant increase in federal funding for the Legal Services Corporation in the near future.

According to The Alliance For Justice, a national association of public interest organizations and advocates, long-term trends in funding for public interest law give reason for cautious optimism. Over a decade of political conservatism and a tightening economy have forced public interest groups to diversify their revenue bases, especially the groups who rely to some degree upon federal appropriations. Reliance on foundation money is also decreasing. Private foundations played a major role in the development of public interest groups in the early 1970 s, but the philanthropic community s contributions did not keep pace with the growth of public interest organizations in the late 1970 s and early 1980 s.

However, other strategies have been developed to counter the decrease in federal government and foundation contributions. Statistics show that currently over 85% of the money given to non-profit legal organizations comes from individual donations. This is due partly to the public s perception during the Reagan years that advocacy groups were losing a large portion of their funding at a time when the need for services was particularly acute. Public interest organizations began to hone their fundraising skills by making a special effort to build their membership bases through direct mailings, canvassing and individual contacts. As a result, the overall funding picture showed a 51% increase in total resources from the mid-1970 s to the late 1980 s.

Another growing source of funding for public interest law are the public interest law student organizations who sponsor student-funded fellowships at nearly 100 law schools throughout the country, like our own newly formed Brooklyn Law Students for the Public Interest. In 1989, law students raised over $1.2 million dollars. This money funded over 550 public interest law summer internships and post-graduate fellowships.

Much more needs to be done. In an age of government inaction, at best, and hostility, at worst, towards the pressing social issues of the day, the need for public interest advocates is especially great. We are facing a host of incredibly alarming problems at a national and global level; the AIDS crisis, the rising rate of homelessness, devastating environmental catastrophies, and grievious human rights violations.

History shows that public interest lawyers have time and time again risen to the occasion during times of national crises. The 1990 s, by many accounts, brings a resurgence of social consiousness. There are many things that you, as a law student, right now, can do to make a difference. Educate yourself about the agonies of our time, then get involved in some way with a legal organization that commits itself to easing the burden for those who are unable to speak for themselves. Enroll in a clinic, find out about opportunities for public interest internships, and support the public interest efforts of the Brooklyn Law Students for the Public Interest and the National Lawyers Guild.

Remember, there are over 690,000 lawyers in this country, yet a large segment of society is without adequate legal representation. You can do something to change that. You just have to begin somewhere.

Sparer Fellows Reflect On Experiences

My Sparer Fellowship: Legal Services

by Susan Robertson

As part of my internship at Legal Services, made possible by a Sparer Fellowship, I spent time in Landlord-Tenant Court in Downtown Brooklyn, observing the Legal Services attorneys in action. One day, someone I knew, who was working for a firm representing landlords *en masse*, remaked to me that tenants were "lazy bums who didn t want to work."

I was initially shocked at this blatantly ignorant remark because it certainly did not comport with what I had observed since I had been working with Legal Services. Then, I realized that he did not know that there, but for the grace of God, goes he.

Contrary to my acquaintance s biased indoctrination, most of Legal Services clients do have jobs. Last summer, I wondered how our clients could maintain a humane existence while two-thirds of their income went toward rent: a fact that holds true for the great majority New Yorkers. A person earning the minimum wage takes home $584 a month (or $7,008 a year) a figure barely at the poverty level. Have you ever tried to find an apartment in New York for less than $500 a month? Also, don t forget that most of Legal Services clients have families to provide for as well.

Of those clients who did not have jobs, many were senior citizens who have raised a family, worked their entire lives, and are now forced to subsist on $400 a month or less. Of those who were on welfare, many were single mothers.

I remember one woman in particular who had just had a baby, was in the middle of a divorce, and was forced to quit her secretarial job during her pregnancy because she became seriously ill. In addition, she had another autistic son for whom she was providing. Such clients leave memorable impressions in one s mind.

My first client during my summer intership was an older man whom the city was evicting because he was allegedly creating a nuisance by dealing drugs from his apartment, where he was living with his girlfriend and her 21-year-old son. The man and his girlfriend s son both worked for the same temporary food service employment agency and the son had a full-time job as a file clerk with a large corporate law firm.

Within two years after the couple had been living together, the woman became ill and died. The man and the son were served with the City s eviction petition on the day of her funeral. After a default judgment on the eviction petition was issued against them (a typical case at Legal Services) they came to Legal Services after having received the obligatory 72-hour notice of eviction after such a default judgment is entered.. Apparently, they simply did not understand, or pay attention to the papers the eviction papers, due to the woman s death.

The man was highly offended that the city was accusing him of being a drug dealer or addict. He brought his pay check stubs to prove that he worked, which, he said, he wouldn t have to do if he was dealing drugs. He also submitted proof that he had just spent three days serving jury duty. While the paralegal was trying to get more information from him about the case, his illiteracy became apparent. The function of Legal Services is to provide such indigent, illiterate clients with legal advice and representation in matters affecting their livelihood and basic needs, including shelter, welfare and social security benefits.

Besides representing individual tenants in court, Legal Services organizes tenant associations to help bring actions against landlords to force them to make repairs and to implement programs to make their buildings and communities safer. Lastly, Legal Services networks with other legal and nonlegal housing associations as advocates for such indigent tenants in New York City.

Legal Services provides a vital and important service in New York. Anyone who has ever been to Landlord-Tenant Court knows that a person ignorant of their rights who tries to deal with their landlord s attorney, usually the person informing the tenant of his rights, has little chance in obtaining an equitable settlement.

Currently, due to a shortage of staff attorneys, Legal Services is forced to turn away half of the people who seek representation. Unfortunately, quite often, Legal Services can only provide advice on what to do in court without the benefit of having an attornney there to deal with the adversary s attorney, the judge, and the judicial system.

In short, Legal Services needs attorneys to help provide sorely-needed legal representation for the majority of the population, who will lose basic necessities and be deprived of basic rights because they cannot afford a lawyer.

Montana Legal Services

by Sean Ryan

If you were handed a check and told , Take this and spend the summer practicing public interest law, what would you do? This is what happened to me when I was awarded a Sparer Fellowship. I took the check and went to Billings, Montana, even though I had absolutely no idea where to find Montana on a map. However, I did know that I wanted to work with a program that provided legal representation to both Native Americans and migrant farm workers. Montana Legal Services had such a program and my summer there turned out to be a fantastic cultural and legal experience.

Montana Legal Services, like most legal services offices, is severely understaffed. This situation worked to my benefit, since I was given a tremendous amount of responsibility due to the shortage of attorneys there. On my second day in Billings, I started what became my weekly routine. Once a week, I went circuit riding with one of the attorneys in my office. In the mornings, we drove to Crow Agency, a town on the Crow Reservation. In the afternoons, we drove to Lame Deer, a town on the Northern Cheyenne Reservation. At each town, we occupied an empty office at the Tribal Courthouse and people would form a queue in the lobby. We spoke with as many people as possible during our limited time at each reservation. The legal problems we encountered were endemic to an environment where the unemployment rate surpasses 50 percent.

Generally, I spent the remainder of the week working on cases picked up during the circuit ride. The cases spanned the full spectrum of civil legal services work, allowing me to explore many aspects of the law. At any given time, my caseload included issues of family, consumer, labor and public entitlements law.

When my schedule permitted, I would spend the day working with the paralegal from the Migrant Farmworkers Unit. The paralegal and I spent these days in the field, counseling migrant farmworkers in an effort to inform them of their legal rights. We also disseminated practical information about a variety of topics, including the availability of prenatal care and the enrollment of children in migrant summer school. Inevitably, we would encounter families of farmworkers who were being paid unfairly or not at all. These days would usually end in protracted discussions with the farm owner, as we would attempt to convince the him that he had a moral and legal obligation to pay his workers the wages they deserved.

I also worked on a single housing discrimination case throughout the summer. The plaintiffs were a young Crow couple who were denied housing because of their race. The case became increasingly important to me on a personal level as I developed a strong affinity for this young couple who had come to the office after filing a *pro se* complaint with the Montana Human Rights Commission, which is designed to administratively adjudicate discrimination complaints. I represented them throughout the administrative process and I negotiated a favorable pre-trial settlement , which included a monetary award as well as a stipulation that the landlady would post signs stating that she does not discriminate and would henceforth use a non-discriminatory rental application form.

Living in Montana provided me with the incredible opportunity to experience the modern American West, a place where the deer and the antelope still roam, where attorneys wear cowboy boots in the courtroom, and where people smile and say good morning to perfect strangers. I was able to camp in Yellowstone National Park, hike in the Rocky Mountains, and fly fish for the elusive native cut throat trout which successfully eluded me. Without the Sparer Fellowship Program, I would not have been able to pursue this diverse and demanding cultural and legal experience.

The Legal Aid Society's Criminal Defense Division

by DeWayne Chin

The summer internship program at the Legal Aid Society s Criminal Defense Division is an invaluable experience that would benefit any law student. Aside from exposing interns to all aspects of criminal defense trial practice, the internship provides exposure to a world that students could never learn about by sitting in a law library. Furthermore an intern is encouraged to be aggressive and independent in his work, while always being able to turn to the support system for assistance.

The program exposes summer interns to all aspects of criminal defense trial practice by allowing them to work directly with staff attorneys on case preparation. The intern s work includes second seating trials and hearings, participating in investigations and line-ups and doing some legal research and writing assignments. Additionally, interns are encouraged to accompany staff attorneys to court in order to learn how to cover all aspects of a criminal case. The program also provides weekly lectures on specific topics of criminal law and procedure, as well as simulated trial exercises. The summer

The Sparer Public Interest Fellowship was created in 1985 to honor the late Edward V. Sparer, a pioneer in the poverty and health law fields, who died in 1983 at the age of 55. Mr. Sparer graduated from Brooklyn Law School in 1959 and then spent four years as an attorney for the International Ladies Garment Workers Union. In 1963, he helped found and served as the first of Mobilization For Youth (MFY) legal services on Manhattan s Lower East Side.

Sparer and the other founders of MFYwere not only concerned with providing legal services to enable the poor to assert their legal rights but also, as Sparer once said, "to enable people to assert their own dignity.

Sparer was also responsible for establishing the successful Center on Social Welfare and Policy with the primary goal of reforming existing welfare laws.

In that context Sparer stated, We guarantee income to farmers for not producing crops. We guarantee subsidies to railroads and to oil companies. It seems to me only reasonable that we should guarantee the subsidy of life to those who are starving and to those without shelter or medicine - reasonable not only on humanitarian grounds, but because there is a Fourteenth Amendment, which guarantees equal protection of the Laws.

The center was involved in several landmark Supreme Court cases, including decisions striking down residency requirements for welfare recipients and establishing their rights to a hearing before aid is terminated.

After many years of public interest work Sparer became a Professor at the University of Pennsylvania, where he taught until his death.

The Sparer Fellowship was created in Sparer s memory but to also encourage law students to continue Sparer s ideals and his commitment to the public.

Lori S. Gentile

internship climaxes for an intern when he is allowed to represent clients accused of misdemeanor crimes. While being supervised by an experienced attorney, the intern is allowed a great deal of independence during the representation of their clients. Not only does this include interviewing the client before arraignment proceedings, but also participation during plea bargaining negotiations and bail hearings.

Staff attorneys are constantly exposed to some of society s greatest problems up close: violent crime, substance abuse and poverty. This exposure is apparent to an intern on his first visit to the holding pens, where defendants are held as they await their court appearances. The holding pens which are grossly overcrowded and are filled with defendants who are often too poor to afford bail that most middle-class persons could easily afford. Many of the detainees are noticable drug addicts who should be getting treatment for their afflictions instead of a jail sentence.

It is through client contact that interns learn that they are dealing not only with the criminal justice system, but also with the real problems that affect our society. The long arrest records of many clients clearly show that incarceration is only a short term answer to crime. Instead, more money should be spent on reeducation and drug treatment programs which could possibly counteract the existing turnstile justice system.

The atmosphere at the Legal Aid Society is one of constant support . There is an open door policy in all offices, allowing an attorney preparing a case to freely exchange ideas with other attorneys and interns. The discussions help the attorney to consider all possible theories and options available to him in a specific case. Furthermore, such discussions allow interns to gain an invaluable look at how defense attorneys think and formulate case theories. While these free discussions amongst attorneys are encouraged strongly, the final decision is left to the attorney handling the case. As a result, attorneys can develop their own style and a sense of independence; both encouraged at the Legal Aid Society.

The support system, however, is not confined to the office. Whenever a lawyer or intern has some free time, they are encouraged to go to courtrooms where other attorneys are either on trial or conducting hearings. There are two reasons for this practice. The first reason is to show support for the attorney working in the courtroom at that time. The second reason is so that both the attorneys and the interns can learn the trial techniques of other attorneys.

For the reasons stated above, I recommend the Legal Aid Society s Criminal Defense Division internship to anyone interested in applying.

The Case to Be a Public Interest Lawyer

by Gary Quan

The few, the proud, the Marines . After undergoing the toughest regiment of training in boot camp, the leathernecks are prepared for arduous service. Perhaps dwarfed by the other branches of the U.S. military, often overlooked and sometimes unappreciated by the civilian sector, usually misunderstood and held in disdain by liberal and/or intellectual college students, and generally dispatched to inhospitable regions of the world, the Marines, ever faithful and disciplined, stand ready to serve wherever the need is greatest. Their only reward, barring an honorable death in the line of duty, is faithful service. This analogy properly characterizes the public interest lawyer.

Unsung, underpaid and inundated with a seemingly endless caseload, the public interest lawyer is the link between the purported mission of the legal profession: to serve society and provide legal services to the many who cannot afford it. In 1946, the American Bar Association stated that it is a "fundamental duty of the bar to see to it that all persons requiring legal advice be able to attain it, irrespective of their economic status... Though this objective has yet to be fulfilled, even then, the ABA acknowledged that the attempts to aid the disadvantaged in the areas of poverty law, civil rights law, public rights law and charitable organization representation were insufficient.

John Yanas, President of the New York State Bar Association, in a letter to the *New York Times* printed on September 19, 1989, decried the fact that only 15% of the civil legal needs of the poor citizens in New York City are met. Despite the efforts of community action, the Legal Aid Society and volunteer workers, the overwhelming majority of indigent individuals lack the legal help they need.

Unlike their elitist counterparts, who earn large salaries at large law firms or who garner political points as high-profile prosecutors, the public interest lawyer can only count on thankless toiling in obscurity. However, public interest lawyers may take heart in the knowledge that their chosen calling in the legal profession is the highest and the purest. With only the welfare of their clients in mind, unheedful of possible gains in wealth and power, the public defenders stand in the assurance that but for their actions, more suffering and injustice will abound. They alone stand in the certainty that their efforts will only enhance the reputation and honor of the legal profession.

As Christmas approaches, as the specter of war beckons in our foreign relations, we should reflect on our own role in domestic affairs. Perhaps we should recognize the concern of the Person whose birth we are about to celebrate for the fatherless, the widow, the weak, the feeble-minded and the hungry, and remember His words, The harvest truly is plenteous, but the laborers are few. So should be the sentiments that reflect the calling of the public interest attorney now and in the future.

PLACEMENT OFFICE NEWS

Information Session on How to Participate in the NYU Public Interest and Public Service Legal Career Symposium

Wednesday, January 23, 1991, 1:00 p.m. - 1:30 p.m. and 5:30 p.m. - 6:00 p.m.
Office of Placement and Career Planning, 3rd floor, 1 Boerum Pl.

The two-day symposium (February 21 and 22 at NYU School of Law) brings together over 100 public sector employers to conduct interviews for summer and permanent positions, as well as group informational sessions and panel discussions on the practice of public interest law. The January 23 session will be a brief presentation explaining the process of selecting employers to apply to and submitting resumes for possible interviews.

Resume and Cover Letter Writing Workshop for the Day Class of 1993 and Evening Class of 1994

Monday, January 28, 1991, 4:30 p.m. - 5:30 p.m.
Moot Court Room, 7th floor, 250 Joralemon St.

This is the introduction for first year students to the services and resources offered by the Office of Placement and Career Planning.

National Student Campaign Aims At Legal Crisis

Angered that low-income Americans cannot afford a lawyer, students from over half of the nations law schools in October launched a campaign for *pro bono* work in law schools that could add millions of hours of legal services to the poor.

Students from several schools - including Harvard, University of Hawaii, Whittier, Hastings, Georgetown, University of Michigan, and American University - announced the formation of a new group called Law Students for *Pro Bono*. The goal of the group s campaign is to incorporate a *pro bono* requirement into the traditional curriculum at each of the nation s 175 accredited law schools.

In the United States, the principle equal justice under the law really means equal justice under the law for the few , said Sandra Hauser, a third-year law student at Harvard and an organizer of the campaign. It is time for our legal educators, the leaders of our profession, and the Bush White House to realize that our legal system is not delivering on its promise of justice for all.

Citing a report of the American Bar Association showing that 90% of the legal needs of the poor go unmet, Law Students for *Pro Bono* aims to organize student campaigns at every law school in the country with the goal of making *pro bono* work a required part of legal education by the year 2000.

The group has enlisted the National Association for Public Interest (NAPIL) to coordinate the effort and announced the campaign on the heels of NAPIL s public interest law conference. It also follows a vote in favor of a *pro bono* requirement by the prestiguous student division of the American Bar Association.

It is a fact that 33% of African-Americans in the United States live in poverty, said Juliette Williams, a Georgetown law student and the national president of the Black Law Students Association. I am taking part in this organizing campaign because it is imperative that more programs be created to increase the amount of legal services available to the underrepresented.

The legal profession is grossly failing to deliver, said consumer advocate Ralph Nader, who came out in support of the law students effort. Most lawyers are working for polluters and not the environment, for landlords and not tenants, for mangement and not workers, for the wealthy and not the poor. Under the campaign announced today, law students around the country are working to change that.

Under *pro bono* programs established at their schools, students will be working on the critical issues of the day and learning how to meet their professional obligations in advancing justice in their society, Nader said.

Organizers say that if each of the nation s 129,000 law students performed 100 hours of *pro bono* work per year, they would be providing 12,9 million hours of legal services. Given that pro bono cases taken an estimated ten hours, it is possible that upwards of one million Americans can have some of their legal needs met if the requirement is adopted by the nation s law schools. A *pro bono* requirement already has been adopted by Tulane, University of Pennsylvania, Valparaiso, and Florida State. Several other law schools are currently considering such a program, including Hawaii, Harvard, UCLA and Stetson.

In the classroom we learn that the United States more than any other country in the world promises every person a fair shot in court, said Scott Saiki, a student at the University of Hawaii Law School. On the streets outside, we find a tragically different story.

We find people evicted because they cannot afford to go to housing court, we find battered women who do not have money to hire a lawyer, and we find elderly people who cannot enforce their rights under the law because of lack of money, added Saiki. These problems must be incorporated into our education so we can start doing something about them now, and so that we will be better equipped to deal with them when we graduate.

For general comments from student organizers, call Steven Donziger (Harvard) at (617) 876-4842; Juliette Williams (Georgetown) at (202) 583-1281; Matt Nicely (American) at (202) 296-1594; Pam Herzig (Michigan) at (313) 995-5884; Scott Saiki (Hawaii) at (808) 262-4642.

[The offices of NAPIL are located at 1666 Connecticut Avenue NW, Suite 424, Washington D.C. 20009, Telephone: (202) 462-0120.]

Evaluating The Subway Begging Case

by Robert Dashow

The recent United States Supreme Court decision denying a grant of *certiorari* in *Young v New York City Transit Authority* (903 F.2d 146 [2d Cir. 1990]), in effect upholds the decision of the Court of Appeals for the Second Circuit, where a divided three-judgepanel held that a New York City Transit Authority (TA) and the Metropolitan Transportation Authority (MTA) of the State of New York regulation prohibiting begging and panhandling within the New York City subway system withstands First Amendment scrutiny. The regulation states that no person. . .shall upon any facility or conveyance. . .solicit alms. . .for any purpose. Also included in the regulation is an exception for licensed charities that are registered with the Secretary of State of New York and are exempt under the United States Internal Revenue Code.

In its analysis, the Court was faced with determining whether begging constitutes speech, conduct or a combination of the two. The majority found that begging is not speech, in part, because tpersons will not interpret a person begging as communicating any message other than a request for money. In arriving at that determination the Court said, [g]iven the passengers apprehensive state of mind, it seems rather unlikely that they would be disposed to focus attention on any message let alone a tacit and particularized one. (*Young*, at 154.)

In the same paragraph, the Court noted the First Amendment protection guaranteed topersons convicted of burning the American flag at the site of the Republican National Convention and to black protestors who conducted a sit-in at a segregated library. Surely, in both instances, the observers were in "an apprehensive state of mind, and yet, the Supreme Court was able to recognize the message inherent in both acts and accorded such speech First Amendment protection. Those who ride the subway regularly are well aware that beggars do not necessarily pass silently with cup in hand. Many choose to address the passengers singularly and a group. The Court says that such speech is unaffected by the ban on begging. It is, however, an unavoidable conclusion that the regulation will effectively stifle such speech.

On the other side of the argument, both the MTA and the TA should not be portrayed as Charles Dickens Scrooge as the comparison may spring to mind now that Christmas approaches. The regulation was passed in response to what they interpreted to be the needs and demands of its riders. Evidence was presented in the form of surveys indicating that the general public finds begging threatening and intimidating. Begging, both the TA and MTA claimed, has "escalated" to where it is indistinguishable from extortion from the perspectives of both commuters and police officers. Undoubtedly, the TA and the MTA have an interest in protecting those utilizing its facilities from such concerns. Also, there is a strong argument that there is a great difference between flag burning and sit-in protesting on one hand and begging on the other. The first two are intended primarily as political protests while the political message in begging is secondary.

The dissent based its opinion on a 1980 Supreme Court decision in which the Court held that charitable fundraising is constitutionally protected speech. Begging, the dissenting judge asserted, is indistinguishable from charity fundraising. A homeless person holding a paper cup is, in the dissent s view, "identical to the Salvation Army Santa Claus with ringing bell and kettle." The majority stated that charitable solicitation, as opposed to begging is, "intertwined with informative, and perhaps persuasive speech urging support for particular cause or for particular views. (*Young*, at 155, citing *Schaumberg v Citizens for a Better Environment*, 444 US 620, 632[1980].) The Court said that there is a nexus between the solicitation and the persuasive speech so that the charitable solicitation is also protected.

There is no clear answer to this all too familiar problem. The Second Circuit s ruling and subsequent Supreme Court denial of *certiorari* does not affect the everyday decisions of those who have contact with the subway system. The problem, which will stand out more clearly during this holiday season, is hardly solved for the common New Yorker.

The Draft and You: Conscientious Objector Status

by Steve Landis

The United States military action in the Middle East revives the issue of whether the draft should be reinstated. At this time, most observers do not believe the situation will lead to a draft. However, if the Middle Eastern conflict should escalate, or if Congress reconvenes to discuss a declaration of war against Iraq, Congress might then consider a return of the draft.

According to the Central Committee for Conscientious Objectors (CCCO), a return to the draft is likely to produce the following scenario:

1. Congress will pass a law reinstating the authority to draft.

2. The same day, a lottery will be held to assign a priority number to each birthdate in the year. Young men turning 20 in the current calendar year will be called first, according to their lottery number.

3. The next day, mailgrams will be sent to registrants with low lottery numbers.

4. Draftees will have 10 days to report for active military duty from *the date the mailgram is sent, not the date that it is mailed.*

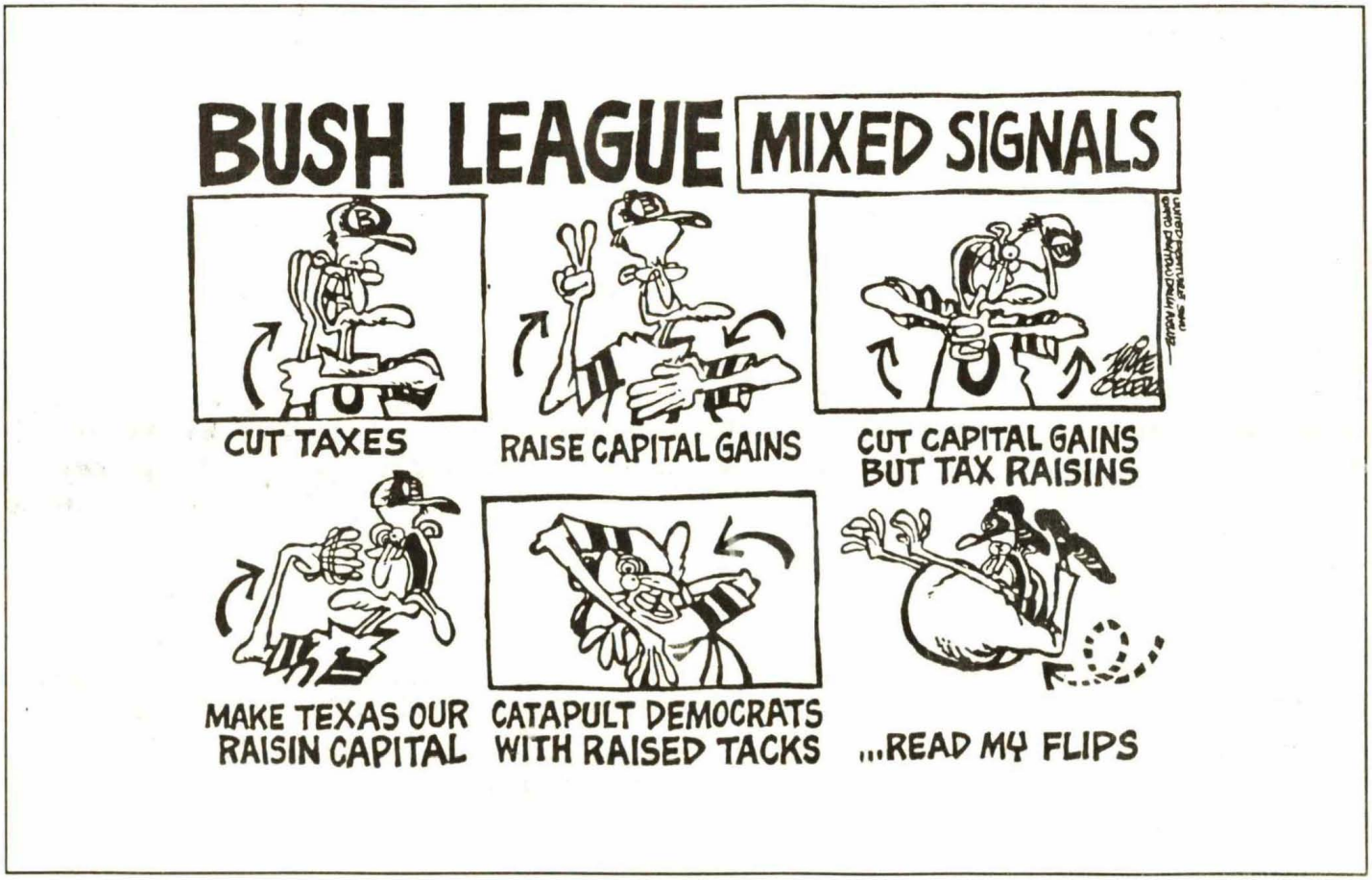
5. Draftees will have *less than 10 days* to file for deferments and exemptions.

6. The following exemptions and deferments are available: conscientious objector, hardship, minister or ministerial student, medical, homosexuality, sole surviving son, and other less widely used deferments and exemptions. *Student deferments do not exist.*

Given the short 10-day period from when the mailgram is sent, both men and women must now consider if they might be a conscientious objector. While the Supreme Court, in *Rostker v. Goldberg*, (453 U.S. 57 [1981]) upheld draft registration that excludes women, the Court did not hold that Congress had to exclude women from the draft. In 1980, the President urged Congress to amend the law to allow the registration of women. After lengthy debate, Congress decided only to authorize the registration of men. In *Rostker*, the Defense Department concluded that there are no military reasons that would justify the exclusion of women from registration and the draft. Thus, a return to the draft could affect both men and women.

A United Nations Commission of Human Rights resolution (E/CN.4/1989/L59) recognizes the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience, and religion. A conscientious objector is someone opposed to all wars, whether

(continued on page 30)



Political Campaign Funding: Time For Changes?

by Alan Podhaizer

After enduring another media blitz at election time, I would like to express my views on role of the media in campaign funding.

Attempts to place limits on the amount of money that individuals or groups can contribute to political campaigns have been restricted by Supreme Court decisions. For example, in *Buckley v. Valeo* (424 U.S. 1 [1976]), the Supreme Court upheld a provision of the 1971 Federal Election Campaign Act that restricted individual contributors to a $1,000-limit on donations to one candidate. However, in the same decision, the Court struck down provisions of the same act that forbade a limitation on the total amount that a candidate could spend on a campaign if the money was raised either from his own funds or from private contributors.

The Court felt that a ceiling on expenditures was a violation of free speech, arguing that suc a ceiling put a damper on the type of campaign one could run. I disagree, since I believe that by not putting a cap on expenditures all but the rich are prevented from controlling elections. A cap on total expenditures, however, is only part of the story.

In 1956, the Democratic Party used 89 five-minute political programs. Today, the vast majority of political campaigns on a state-wide or nation-wide level rely almost exclusively on 30-second sound bites to get their message across. In 1964, 35% of campaign television money was spent on commercials, in 1968, it was 75% and today, it is probably 95%. Dependence on commercials cheapens the political process as well as forcing politicians to turn to the affluent for contributions.

Since 1960, there has been two major changes in the American political system. The first has been public financing of political elections, the other one has been the growing influence of television on political campaigns.

Public financing was introduced fin order to eliminate monetary influence in the election of American public officials. However, the fact that the operators of the savings and loan institutions received special favors from large contributors is proof that public financing has not yet cured the illness it was supposed to prevent.

The dependence on advertising prevents some candidates from discussing serious issues. George Bush would not have furloughed Willie Horton, therefore, he was qualified to be president. Michael Dukakis rode in a tank to show how tough he was on defense. No restraints are placed on the content of political commercials. Unlike product advertising, political advertising does not fall under the Truth in Lending Act.

In order to restore a little fiscal and intellectual integrity to the American political process, I would like to see the following reforms instituted. The political parties and the networks should voluntarily limit the amount of commercials allowed. After each commercial for a particular candidate, the opponent should be granted an equal amount of time to discuss the truth of the advertisement. This rebuttal would address solely the issue in the commercial and would compel all candidates to adhere more closely to campaign facts and issues.

In addition to granting equal response time to all factions in major political races, the networks should set aside more time and money for debates. This proposal would serve several functions. Firstly, it would elevate the level of political dialogue. Secondly, it would lower the cost of political campaigns, as candidates would have low-cost access to media. Thirdly, it would reduce the influence of political contributors on elected officials and keep special interest legislation and the destruction of necessary regulatory safeguards to a minimum.

I do not envision my plan as a panacea, but merely as a first step in bringing the cost of political campaigns to a reasonable level.

(continued from page 29)

based on religious, moral or ethical reasons. If you decide to become a conscientious objector, you must be prepared to document your claim to the local draft boards. While the law doesn t currently recognize conscientious objector status in the draft registration process, early preparation to prove the existence of one s beliefs may affect one s chances of securing conscientious objector status should a draft be called.

Gather all the documents you will need to support your claim, i.e. information on your beliefs if you are a conscientious objector, medical documents for a medical exemption or deferment, and financial information for a hardship exemption. Should a draft be called, early preparation may help prove a claim of conscientious objector status.

For more information, contact CCCO at 2208 South St, Philadelphia, PA, (215) 545-4626, the National Interreligious Board Serving Conscientious Objectors-NIBSCO at Suite 750, 1601 Connecticut Ave., Washington, DC 20009, (202) 483-4519), or the War Resisters League at 339 Lafayette St., New York, NY 10012, (212) 228-0450).

ARTS & ENTERTAINMENT

Billy Joel - Live At Yankee Stadium

by Joseph Ragno

Those who saw either of Billy Joel s two concerts at Yankee Stadium this summer may recall two problems resulting from the size of the stadium: a persistent echo and video screens that were out of synch with the actual performance. Fortunately, neither of these problems was apparent in the new CMV video, *Billy Joel - Live at Yankee Stadium*. Inn fact, this package seems intent upon capturing the strength, spirit and historical significance of the performances.

The video begins with an acknowledement of Yankee Stadium s lore and these concerts distinction as the Stadium s first in 67 years. The concerts impact upon the fans, media and workers involved, building toward opening night, is also prominently featured. In strong voice throughout, despite having walking pnemonia, Joel leads off with Storm Front, the title song from his latest album, as well as the 1990 summer tour s title, and I Go To Extremes, another of the half-dozen hits from the *Storm Front* album.

The tape does not dwell on the imenseness of the Stadium. The high-quality sound and picture give an impression that much of theseperformances could have occurred in a smaller, more intimate arena. Joel does give us a glimpse of the vastness of this venue during Pressure, when he runs across the stage (the length of Yankee Stadiums outfield) to perch alone at alternating keyboards, located high above both the left and right-field playing surface. Joel remains active throughout his performances, often coming out from behind his trademark piano to take center stage, particularly to perform songs from the *Storm Front* album. For many of these songs, he plays other instrumnents - accordion for The Downeaster Alexa , guitar for We Didn t Start The Fire, and harmonica for That s Not Her Style.

Though the tape emphasizes newer material, Joel includes older favorites, including a charged Miami 2017, a stunning New York State of Mind, and a fabulous encore of Piano Man, where a surprised-looking Joel barely needs to sing, as more than 60,000 fans completed the performance on their own.

This video will be enjoyed by both those who attended these concerts and those who didn t. In either case, it provides an opportunity to find out just what was missed the first time around.

TOWNSHIP FEVER!

by M.Z.Heller

In March 1987, a strike by black workers of the South African Transport Services (SATS) led to the death of four scab workers. The events leading to the trial of the strikingworkers, accused of these murders form the story line of a new musical, *Township Fever!* , at the Brooklyn Academy of Music s (BAM) Majestic Theatre.

The musical opens up in prison, where the convicted killers await their execution. As the leading character, Jazz Mngadi, an aspiring musician, writes a final letter to his young wife, the musical unfolds in retrospect, retracing the incidents leading to the awaiting execution.

The first scene goes back to the last New Year s celebration and the music he wrote for the large musical festival. Although the festival is a big success, his mother pressures him to "become a man" and to get a real job, rather than become a poor musician. He goes to work for SATS, saves his money and marries Tonko Mnisi, the young girl he loves. After the wedding, we hear of the terrible working conditions at SATS for all of the black workers. As the poor treatment of blacks emerges through conversations among the workers, Jazz agrees to organize a strike. In the face of continuous government intimidation and violence during the strike, growing numbers of strikers demand retaliation, calling for the death of the workers caught scabbing . Though Jazz and some of the other organizers kill four of the scabs, a fifth escapes and identifies the organizers as the killers.

At the trial, the defendants try to explain that the murders were a product of frenzied panic and anger caused by the masses involved with the strike. Despite their pleas, they are sentenced to death.

The musical is a message of the pains, hopes, sorrows and joys of black South Africans. Written by Mbongeni Ngema, *Township Fever!* is the latest of a series of productions by Committed Artists, the theater company Ngema founded, whose other productions include *Asinamali!* and most recently, the critically-acclaimed *Sarafina!*, which was nominated for five Tony Awards.

Committed Artists are a company of actors who truly are committed. As stated in the program s Author s Notes, from the first day of auditions to the voice, movement and theater training, to the first performance, the performers have worked for 21 months, and, sometimes, as many as 19 hours a day. (Talk about billable hours!)

Not surprisingly, the finished product reflects this hard work, and, to put it simply, *Township Fever!* is excellent! The cast works as one cohesive unit, and they truly enjoy what they are doing. The harmonies are beautiful, the choreography splendid and the energy level never wanes.

Two of the big musical scenes were very memorable. The New Year s Celebration and the wedding scene were filled with beautiful music, colorful costumes and joyous dancing, yet the wedding still touched the heart by revealing a frightened young bride and the cries of the mothers asking God to watch over their children upon their marriage.

Even though the media coverage of the apartheid issue has dwindled since Mr. Mandela s visit this past summer, *Township Fever!* reminds us that we still have a ways to go before we can bury this important social issue.

Father s Inheritance

Now Playing at Folksbiene Playhouse

Reviewed by Samuel Abrahams-Class of 1956

The study of wills and estates is a vital component of legal education these days, and a recent musical comedy, *Father's Inheritance*, playing at the Folksbiene Playhouse in Manhattan (123 East 55th Street), gives us insight into the trials and tribulations of families, vis-a-vis the distribution of estate assets. While the production is in Yiddish, there is simultaneous live English translation for those who are not versed in the nuances of Yiddish.

Father's Inheritance is a classic stage presentation going back to its original American opening in 1896 at the old Adler s Theatre. The current version has been adapted and modified by the lead actor and singer, Emil Gorovets, who wrote the music and lyrics for this stirring musical. Gorovets is a most gifted musical personality with deep cultural roots in Russia, where he began his sensational career almost 50 years ago. He played the same role in his Ukrainian homeland of Geisen at the tender age of 15, and was an acclaimed crooner in Russia during the hectic 1960 s until 1974 when he migrated to the United States where he has earned praise for his musical achievements.

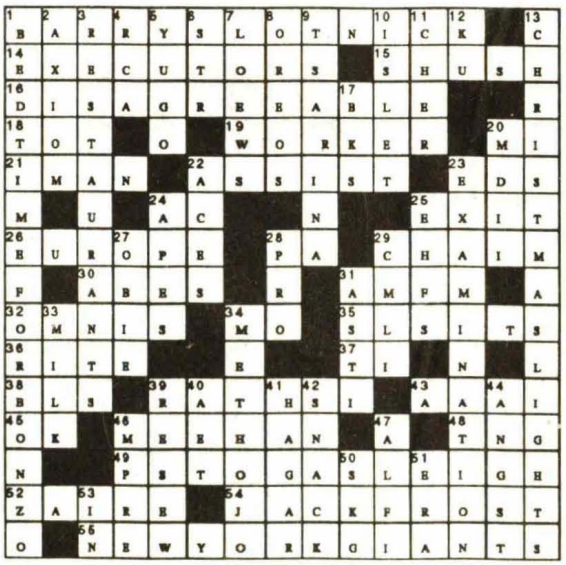
Father's Inheritance revolves around a family squabble over the estate of an extremely affluent old gentleman from Odessa, Russia late in the 19th century. His miserly and surly sister, Ester Rokhl (played by Zypora Spaisman) cleverly schemes to deprive her comedian brother (Gorovets) of his rightful share of the inheritance. She claims that she is turning over one-fifth of the estate funds out of the goodness of her heart. Her brother, who is penurious and barely ekes out a livelihood from his histrionic feats, accuses his sister of being a swindler, but finally yields to the inevitable by saying that God will reward him in the hereafter with plenty of money.

After many years pass, Esther becomes extremely rich and influences an American banker to meet her pulchritudimous daughter at her swank European abode. Esther still harbors deep animosity toward her ne er-to-do brother who sinks lower on the social scale d e to his heavy drinking. She is also bitter toward her boo eeper, who is madly in love with her daughter. At one point, she demands that he remove his Cossack hat, though to do so would violate his religious beliefs requiring the constant covering of the head as at sign of respect for the deity.

By this time, the brother had become a widower shortly after his marriage and never traced the whereabouts of his natural offspring, but he discovers, to his amazement, that the bookkeeper in his long-lost son. While Esther s daughter resents the banker as being boorish, elderly and repulsive, she still longs for her true lover who is constantly denigrated by her mother. Meanwhile, the brother recognizes the banker as a fraudulent, immoral operator who had a reputation for marrying and divorcing several women in a most unsavory fashion. When this is related to Esther, she swoons and finally agrees to the union of the bookkeeper and her charming daughter. The brother tells his sister to give his share of the inheritance to the newlywed couple, and he deems this gesture as a vindication of his father s intentions.

This musical comedy has a myriad of fine tunes and songs that leave the audience happy, content and satisfied. More importantly, it shows law students the inherent difficulties involved in probate, estate and testamentary matters due to problems in human nature.

ANSWERS TO "CROSS-EXAMINATION"



RESTAURANT REVIEW

by Dan Tam

Casa Rosa
384 Court St.
(Corner of Carroll Street)
625-8874

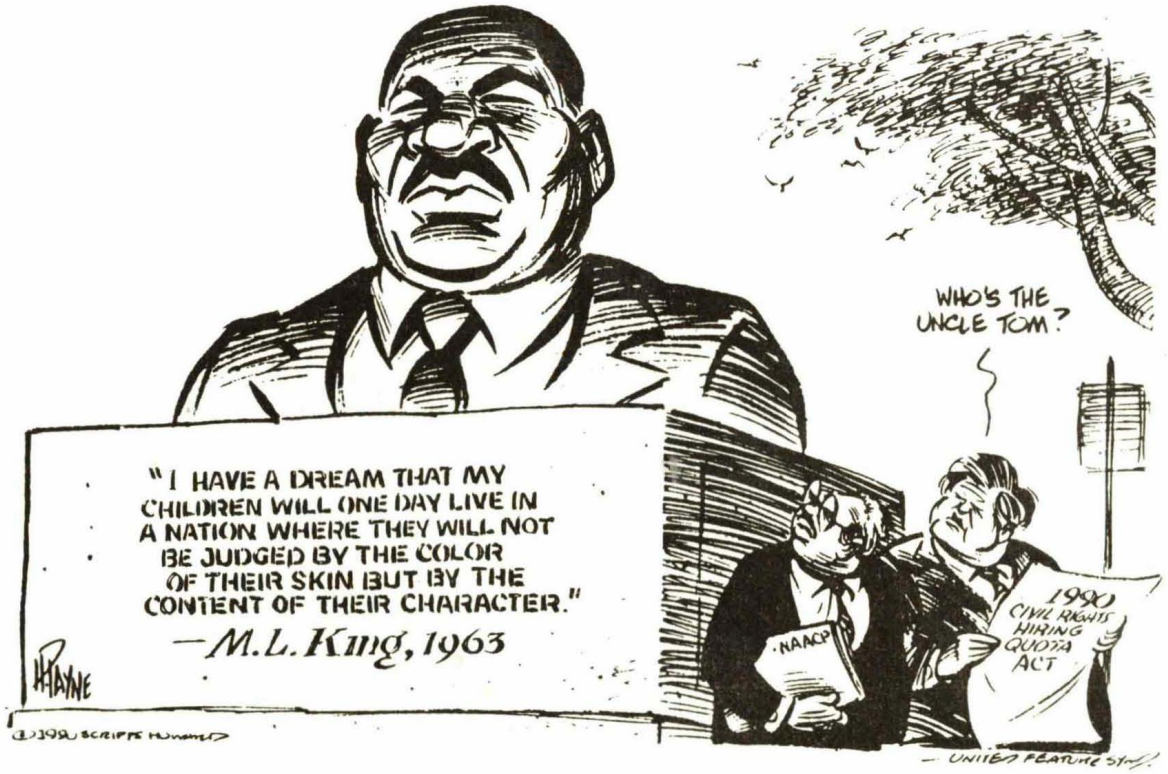
[NOTE: I must thank Dave Pishy Frydman, who told me about this fine establishment]

Well, I m back. And hungry! So hungry that I brought my co-chief, Joe Accetta, with me to make sure I wouldn t eat too much. Well, so much for that. This month, we went to Casa Rosa, which is located on the border between Cobble Hill and Carroll Gardens.

Casa Rosa is a truly fabulous Italian restaurant. The food is great. But don t take my word for it. Listen to Joe: "Even *I* almost couldn t finish my meal!!" (Control yourself, Joe.) But then again, why not just go and try the place out yourself? My only word of caution is: Don t eat the bread. You ll get filled up before the food comes, and you may not be able to fully enjoy your dishes. The menu lists many of the usual favorites, like Veal Scallopini and Fettuccine Alfredo, while containing some house specialties. My suggestion is to try the Frutta di Mare or the Zuppe di Pesce. The Frutta di Mare is an outstanding dish of seemingly unlimited seafood on a bed of linguini. This is one of the most expensive dishes on the menu, but well worth it. I barely got through half of the meal, and I had to bring the leftovers home (which my roommate, unfortunately, found in the refrigerator and subsequently INHALED - thanks a lot Norm . I guess that means reheated Casa Rosa leftovers are just as good).

Eat slowly, and enjoy the atmosphere. Finish off your meal with a delicious (and I mean delicious) cup of cappuccino, which, by the way, is served in large cups. As Joe puts it, Yeah, ...not like those damn pinky cups you get at other restaurants."

The restaurant is informal, and the people who work there are friendly and helpful. Prices are, for the most part, reasonable. Service is usually pretty quick, but depends on the day you go. On weekend evenings, there is usually a line, so try to get there early, or call for reservations. Should you find yourself in the area, you would do yourself a dissrevice by not going to eat at Casa Rosa. Buon Apetito!!



A Date With The Supremes

by M.Z. Heller

While boarding the 7:00 A.M. Amtrack to Washington D.C., childhood thoughts of going to the circus for the first time went throught my mind. As the train sped past Philadelphia, I remembered the excitement of seeing my first Broadway show, *Two By Two*, starring Danny Kaye. As a struggling actor, seeing *A Chorus Line* for the first time sent chills down my spine. Now as a third year law student, I was about to attend a session of the United States Supreme Court. It may sound corny, but I was excited.

As part of Professor Hellerstein s Constitutional Law - Advanced Litigation Seminar, the class had reserved seats for the November 5 afternoon session. Justice Blackman had agreed to meet and talk with the class afterward.

Since first year, we ve all read Supreme Court decisions in every class and every professor has at one time or another shared in class their favorite Supreme Court anecdote (some more humorous than others). Many of us have even seen the video *This Honorable Court* . Now, however, we were going to see the illustrious nine in person, in action, in all their intimidating splendor.

Meeting a few of my classmates on the train, and arriving early, we first stopped for lunch at the Supreme Court Snack Bar on the first floor. I looked around for Sandra or Antonin or any of the other justices, but, seeing none, I assumed they must be eating in today, or had gone out to McDonalds.

No stay at the Supreme Court would be complete without a stop at the Supreme Court Souvenir Shop, so after our quick bite, we headed off with plastic in hand. Rumor had it that Professor Hellerstein, a Supreme Court *aficionado* spent quite a nice piece of change on books, pictures and other memorabilia (now artistically on display in room 304C). (I, myself, picked up a few postcards, a miniature gavel, some pamphlets, and some of those small booklets of the U.S. Constitution which any student of Professor Hellerstein s has seen him pull out from his inside jacket pocket on many occasions.

On our way up to the main lobby, our designated meeting spot, our group passed through a hall full of historical information on the Court, individual justices and the building itself. Justice Blackman later told us that one of the main reasons for the building,s existence was the heavy (no pun intended) influence of former President and then Chief Justice Taft. Prior to that, the Court met in the Capitol Building.

At noon, the 18-member class and Professor Hellerstein met in the lobby, all white (except for the ceiling) with beautiful marble busts of each of the former chief justices. It was an awesome feeling to view the faces of these men who had carved out their own pieces of history, and about to go into the courtroom where the nine present justices were currently carving their own places. We all walked through the metal detectors, passed through the heavy red curtain that surrounds the courtroom, and were ushered to the spectator benches. In front of us was the section of seats reserved for attorneys admitted to the Supreme Court Bar. In the center, there it was: THE PODIUM. On the video *This Honorable Court*, the justices talked about how they could tell a novice attorney because they would try to adjust the podium until someone explained to them how crank it up or down. We were on the opposite side, so I never did get a chance to see the crank, but right on top of the podium, in plain view for everyone to see, were the white and red time lights, (signifying five minutes left to speak, & goodbye, respectively.) On either side of the podium were the tables for the petitioner and respondent, and directly behind them were two identical tables for the attorneys in the immediately following case.

Beyond the podium was the semicircular table behind which the justices specially-made chairs are located. Looking around, and taking it all in like a child in a candy store with a quarter in his hand (well nowadays $5!), I was surprised how small the actual courtroom was compared to the size of entire building.

The clock struck 1:00 P.M. everyone arose, and similar to the opening of the old *Muppet Show*, each of the justices passed through a portion of the closed curtain and took their seat. Chief Justice Rehnquist sat in the center, and each of the other justices, in order of seniority, sat on either side of him. As we faced them, Justice Kennedy was on our far left. Next to him Justices O Connor, Blackman, and White. Justice Souter was on our far right, followed by Justices Scalia, Stevens, and Marshall. Yes, I was star-struck!

There were two cases on the docket for that afternoon. The first, *Michigan v. Harmelin* , an Eighth Amendment, cruel and unusual punishment case, addressing whether a Michigan statute mandating a sentence of life in prison without opportunity for parole, for the possession of 650 or more grams of a substance containing cocaine, was constitutional. The other case, *In Re Owen*, addressed whether the Bankruptcy Code would permit a debtor to avoid a judicial lein on Florida homestead property when state law provided for such an exemption.

Needless to say, the courtroom was full and buzzing over *Harmelin*,

and empty and snoring over *Owen*. Even Justice Blackman, when first greeting us in the conference room after the two cases, commented humorously on the huge contrast.

By the luck of the draw, I sat next to Professor Hellerstein for the oral arguments. During *Harmelin*, while we all watched the performances, I could hear him grunt in agony at several statements made by the petitioner s attorney , and murmur under his breath while the Attorney General of Michigan spoke. He seemed to be fighting back a very strong urge to run up to the podium and plead the petitioner s case! You could tell that he would be back up there someday. Once an advocate, always an advocate!

During *Owen,* it was interesting not only to watch the spectators heads begin to nod wearily, but also to watch the justices. Chief Justice Rehnquist had one of the pages bring him what appeared to be an atlas, and he began to flip through it, stopping to show something to Justice White and share a laugh. Some of the other justices started rocking heavily in their chairs, while others stared blankly into space as the lulling voice of the petitioner seemed to make everyone daydream.

Suddenly, Justice White blitzed the petitioner with a question as if the attorney was holding a football and White was an onrushing linebacker! It seemed to send the petitioner reeling and bring some of the other justices back from the fog. Unfortunately, it was only momentary, but the second argument finally ended, and at approximately 3:00 P.M., everyone in the courtroom exited through the curtains.

We were then ushered into a conference room which contained portraits of some of the earlier chief justices. After a few moments, Justice Blackman entered. I never realized just how small he was, but he gave us a big greeting, made his humorous comment about the contrasting cases, and then gave us a brief history of the Court building and this specific conference room. He also told some interesting anecdotes. For instance, with former Justice Brennan s recent retirement, he explained, as a tradition, when a justice leaves the bench, the remaining justices contribute money to purchase from the government the chair the retiring justice used in the Court and present it to him. Even though the chair is made to each justices specifications, they are still property of the U.S. government, so they must be purchased in order to be given. He also told us that the second Justice Harlan, when he was on the court, had in his office, the chair his grandfather used when he was a member.

As quickly as it all began, it ended. Thanking Justice Blackman as he exited, we grabbed our belongings and departed. After stopping for a quick group picture for our final memento and saying goodbye to Professor Hellerstein, who had to hop into a cab to the airport and get back to New York for his evening Criminal Procedure class, we walked back to the Amtrack station, and boarded the New York-bound train back. I now had another memory to add to my list of firsts!

Auxiliary Police Union Seeks To Define Volunteers' Legal Status

By Eric Wollman

Questions pertaining to the legal authority granted to New York City s auxiliary police officers (apos) and the Police Department s (PD) failure to comply with State law, may be heading toward a resolution in 1991, according to the Auxiliary Police Benevolent Association (APBA). The debate revolves around the issue of peace officer status and a state mandate which requires that the PD must register apos with the appropriate state agency.

MONEY AND DITHERING

As the city enters a severe budget crunch and its bloodiest, most violent year draws to a close, one may wonder why the city administration doesn t put the auxiliary police to better use. Politicians, including Council Speaker Peter Vallone, have promoted a 25-cent surtax on lottery tickets, while the Mayor has a police financing package that languishes in Albany. Others, including Councilman Sal Albanese (BLS 90), point out that the thousands of cops we do have aren t being wisely deployed. There is no doubt, therefore, that public safety is on the minds of our elected officials. The difficulty appears to emanate from the PD bureaucracy, which continues to dither over the peace officer status.

WHAT THEY DO

New York City has had an auxiliary police force since 1951. Presently, it consists of approximately 4,000 uniformed volunteers who serve in each of the city s 75 police precincts, mainly on foot patrols. According to a document published by Auxiliary Forces Section, the mission of auxiliary police is threefold: to assist the police in deterring crime by having auxiliary police perform uniformed patrol, to maintain a force of trained auxiliary police that would augment the regular police force, and to help bridge the gap between the police and the community.

Auxiliary police patrol in pairs, and are equipped with a walkie-talkie radio, a nightstick and handcuffs. Each precinct has a white auxiliary

radio car and, when available, they operate the traditional blue and white radio cars as well.

THE NATURE OF THE DISPUTE

The Police Department s official position is that auxiliary police officers are neither police or peace officers. The APBA, an independent union claiming to represent about one-half of the apos, disagrees and that a rhubarb is brewing between the PD and the APBA which may involve the State Attorney General, and has already involved such luminaries as former Police Commissioner, Benjamin Ward, former Comptroller Harrison J. Goldin and State Assemblyman James Brennan.

LEGAL ROOTS

In 1951, the Defense Emergency Act was passed in 1951 by the State Legislature. Chapter 131,/ 3 (22) provides that each city recruit, equip and train auxiliary police...to maintain order and control traffic in the event of an attack. Thus, from the humble beginnings of the Cold War came forth the mandate to create the auxiliary police. However, this law so provides, [t]he local legislative body of any...city...may...confer or authorize the conferring upon members of the auxiliary police the power of peace officers... In New York City, on August 14, 1951, the City Council adopted resolution which reads, in part, Resolved, That the City Council pursuant to section one hundred five of the state Defense Emergency Act confers upon members of the New York City Auxiliary Police the power to act as peace officers, provided, however, that such members of the auxiliary police shall exercise such powers only during periods while such members are actually performing duty officially prescribed....

As decades passed, police officials become less concerned with the Cold War and worried more about the war on crime. In fact, an earlier lawsuit had been brought to hold back the inevitable change from civil defense to law enforcement function for the apos. A court held that a city s use of a small group of auxiliary police to conduct limited nighttime patrols constituted a permitted drill exercise within the meaning of the 1951 act, which defined a drill as "...synonymous with authorized test, training, practice or exercise." *Portanova v. Scher* 75 Misc. 2d 570 (1973).

The Criminal Procedure Law, Article 2,/ 2.10(26) grants such status to peace officers designated pursuant to the provisions of the. . .defense emergency act. . .during a period of attack. . .or during official drills in preparation for an attack by enemy forces or in preparation for a natural or man-made disaster. By July 27, 1981, the state Attorney General wrote in an opinion, Auxiliary police must be trained in accordance with the training requirements for part-time peace officers in / 2.30 (4) of the CPL. This position was confirmed in a 1984 opinion, which stated, Auxiliary police may be authorized to direct and control traffic as a component of official drills...In undertaking this role, auxiliary police possess those powers of peace officers under section 2.20 of the CPL that are necessary for such purposes.

ANOTHER APPROACH

The PD s steadfast opposition to recognizing the status of apos has remained entrenched. However, under Article 35,/ 845.2 of the state s Executive Law, the APBA opened a second front in its campaign. This law established a central state registry of peace officers. Meanwhile, C.P.L. / 10.10 states that "every employer who employs part-time peace officers shall transmit to the municipal police training council the proposed traing program for its officers. . . ." This section is consistent with the Attorney General s 1981 opinion on this matter.

THE STATE REPLIES

By May 1986, the pieces of this puzzle began to fit together. The APBA wrote the State s Division of Criminal Justice Services (DCJS) regarding registration. The deputy commissioner wrote back, advising the APBA to bring the matter to then Police Commissioner Ward. While DCJS agreed that apos should be registered in accordance with the Executive Law provision, it would have to be done by the Commissioner. Fifteen months later, the Director of Peace Officer Training advised the APBA that there were no records of such officers having registered.

In January 1989, almost three years after the APBA first raised the issue, City Comptroller Harrison J. Goldin wrote to Commissioner Ward, asking if the Police Department had taken steps to register its auxiliaries. Assembly member Jim Brennan wrote a similar letter. The PD informed Goldin that the Auxiliary Forces Section was registering each of the approximately 4,300 auxiliary police officers as part-time peace officers with the New York State Central Registry of Peace Officers.

POSTSCRIPT

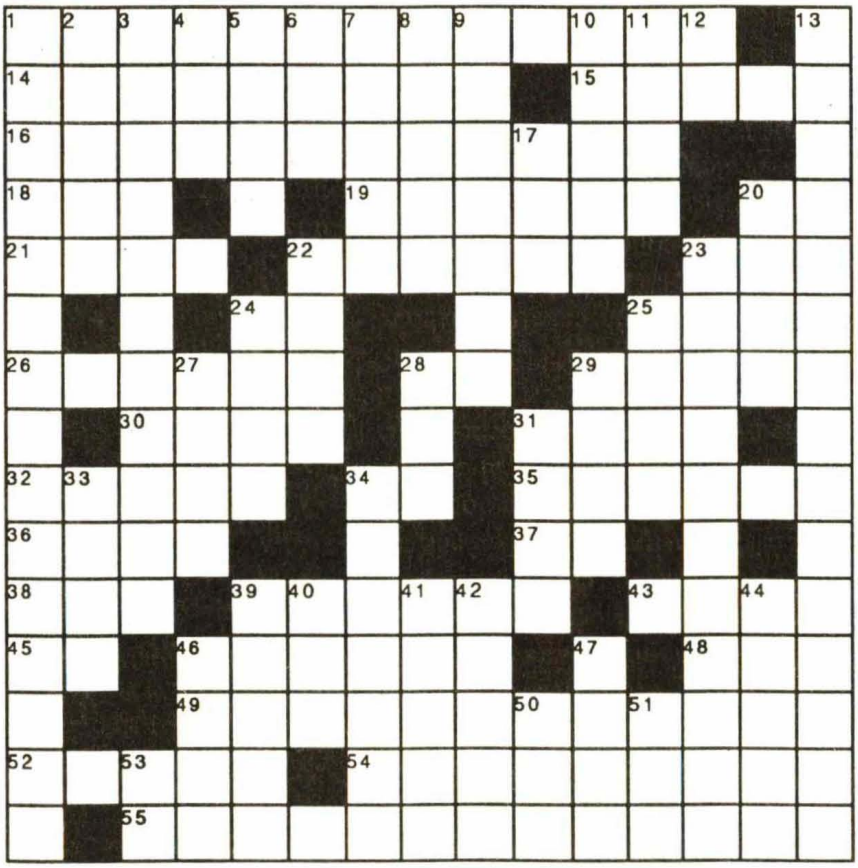
To date, most of the auxiliary officers serving with the NYPD have not received the certificate issued by the DCJS and may still not be registered with that agency. The Police Department continues to deny that auxiliary police officers are peace officers, while the apos continue to serve the city to the best of their ability - orphans as they may be in the ranks of law enforcement.

CROSSWORD PUZZLE

CROSS EXAMINATION

ANSWERS ON PAGE 32

by Marcus A. Spevak



ACROSS

1. Bernhard Goetz s defense attorney
14. Testator s performers
15. Command to noisy moviewatchers
16. Unpleasant to the stomach or nonconforming
18. A small child
19. Type of bee or construction follower
20. Roman 1001 or 3rd note in musical scale
21. Afro-American model
22. Help
23. Sullivan and Koch
24. DC preceder of music fame
25. Not an entrance
26. Continent with famous Downing Street
28. Short for father
29. Author Potok of *The Chosen*
30. Fortas and Lincoln
31. - - / - - radio
32. Type of Dodge cars
34. - - Jo Risin or Better Blues
35. Type of loan + - - - A Wonderful Life
36. Baptism, e.g.
37. 7th tone of musical scale
38. Bruce Cutler s law sch.
39. Beatty/Hoffman flop (*spelled backwards*)
43. Motor club assoc. + XV minus XIV
45. Short for all right
46. BLS Professor of Wills
48. Abbr. for training
49. Letter afterthought abbr. + Roman garment + Santa s means of motion
52. Country that pays with matuka
54. _____ _____ nipping at your nose
55. Baseball team of old or football team that plays in Jersey

DOWN

1. Reagan film
2. Maxim
3. Alice s _____ (plural)
4. GE took this over
5. Inexpensive car from Eastern Europe
6. Road, abbr.
7. Theatre chain
8. Double-stuffed cookies
9. The wife of a tsar
10. A small island
11. *Moonstruck* star
12. Klux Klan preceder
13. December 25 ornamentation
17. What law students carry, abbr.
20. Roman 1502
22. Playing card and McEnroe s forte
23. Doctor s or professor s dreaded act
24. Planet of the _____
25. Extremely high frequencies, abbr.
27. Advertising award
28. ____ se motion
29. Roman 951
31. ____ Spumanti
33. It s good for ya, America!
34. What Howard Johnson is + his nickname
39. Sew again
40. Darjeeling or pekoe, e.g. (*spelled backwards*)
41. _____ the Horrible
42. Pretzel or potato chip, e.g.
44. A feeling of anxiety
46. Multistate bar ethics exam
47. TV alien character + LIV minus LIII
50. Athens people (*abbr. and backwards*)
51. Failed Amendment
53. ___ the Heat of the Night

POET LAWREATES

The Last Winter

In the spring, when you will be a stranger,
you and I will walk together to pray.
Please don t worry.
God will understand why you have been away so long.

I will seat you on the porch
underneath the beach umbrella,
so you can watch the neighbors parade past the house,
and invent impossible gossip about them
as you always used to.

It will be so beautiful outside then,
and warm, when the spring comes up,
tossing bright salad-green breezes to your face again
like all the brilliant renewals before,
resurrecting the world and you both.

And out in the fine spring rain
the wind will hide,
but, even briefly forced indoors,
you will hear it through your window -
also on early mornings when it stirs
under moisture decked leaves to sing.

Then we ll unearth long buried chores
of tomato lush geranium planting,
of honeysuckle healing in your touch.
The sweet melon seeds, drenched in the garden, wait,
so by spring you will be well.

I m sure you ll be walking again by then,
although slowly.
You ll roam around the house,
poking into corners and my business,
and we ll irritate and scrap at each other
just like the old days.

In the spring you ll turn and smile when I call your name -
we ve so much lost talk to find -
and I m sure you will swallow
when eyedropper fed.
Then your bones will not press through your paper scaled skin,
and you won t moan anymore
if the bed shakes from my vibrations
as I cross your room.

Oh, we will be so glad to be well again, won t we?
And there will be so many together pleasures to share
in the spring, if you will be stronger,
and God will understand,
even if we cannot,
why you have been away so long.

- Deborah Fried-Rubin -

The Quiet Winter

Just the hint of snow, like dust,
Has touched the pavement, barely real.
Disturbing still: the sparkle stings
The lips and glares in the eyes of those

Who wait in the shelter of the wool and fire
For light when it s dark and heat when it s cold,
With hands to hold, to pass the bread to chew,
Or sitting alone and still with a window to close,

To keep out the hint of snow.

- Geanine Towers-Dioso -

Justinian Notices

To The Reader:

The Court Street King has retired and has gone the way of most retired lawyers - to a place with lots of sun, water and large game-fish.

Although no article will appear this holiday season, since we are law students, and spend most of our time grappling with the Commerce Clause, the Equal Protection Clause and the Confrontation Clause, since it's Christmas, I ask that you not forget about the "Santa Clause!"

Best regards for the New Year! See you next issue!

P.J. Brackley

The authors of Inter Alia and "There Ought To Be A Law" received an early Christmas present this year - a vacation!

Not to worry, though. Both of these columns will once again grace the pages of The Justinian in the spring.

We'd like to wish you all happy and healthy holidays, and good luck on finals!

Joe Accetta and Lawrence Schuckman