The Justinian

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The Justinian

Founded in 1931 • A Forum for the Brooklyn Law School Community

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September 1986 Volume LVI No. 1

THE JUSTINIAN

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

Conservative Shift? Rehnquist-Scalia to Supreme Court

by James C. Locantro

The summer of 1986 could conceivably be regarded by constitutional historians as the beginning of the end for long standing Supreme Court decisions ranging from abortion to the relationship between church and state to affirmative action.

In a move that surprised even Washington insiders, Warren Burger, Chief Justice of the Supreme Court for the past seventeen years, announced his retirement from the country's highest court. President Reagan nominated William Rehnquist to succeed Burger, and nominated Antonin Scalia to replace Rehnquist. Both are expected to be confirmed by the Senate.

Although rumors were rampant in Washington for months about Burger's imminent departure, no one had suspected it would be so soon. Washington insiders believe that, although the official story is that Burger left the court in order to do justice to the 200th anniversary of the constitution, the real reason for his departure was twofold.

The Real Reasons?

One, Burger believed confirmation of a conservative chief justice would be easier prior to the 1986 elections where there was a possibility of the Democrats winning a majority in the senate. That would make a confirmation hearing all the more difficult for the present administration.

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Dean Trager Airs Views/Goals:

BLS "On the Move"

by Jonathan Hudis

"I envision Brooklyn Law as the best regional school," stated Dean Trager during an in-depth interview with the JUSTINIAN this past summer. The interview covered many issues confronting the BLS community, including tuition, admission standards, job opportunities, faculty hiring and the future of the school. Trager expressed that the actions he has taken thus far as Dean, and those he plans to take in the future, are necessary for a school that is "on the move."

A REGIONAL PRESENCE

"I have no desire to lose sight of the school's goal of serving the Bar of New York. Brooklyn Law School should be thought of as the best regional institution," explained Trager.

Trager commented modestly that "I am just a little piece of a big picture. A picture of a school that is on the move."

Thus far, the Trager administration has been largely defined by the growth of the quality of the faculty and the physical growth of the school from a single building at 250 Joralemon Street to include administrative offices at One Boerum Place and a 12-story residential building on Pierrepont Street, purchased for $2.2 million.

The purpose of the expansion, among other things, is to enable BLS to successfully compete with Fordham Law School for the New York City area's "number three spot," behind Columbia and NYU.

Trager, however, does not want BLS to be a copy of these schools. "We are not making any type of tender for New York City," said Trager. "If anything, I would like to see Brooklyn Law School with a first-rate J.D. program comparable with that of the University of Minnesota. Brooklyn Law School is not looking to expand its current curriculum into an L.L.M. program, nor are we going to be a landlord for anyone else but our own students. We are not a financial institution, but an educational institution."

NUMBER THREE?

A law school rating service recently placed Hofstra Law School, only 15 years old, above BLS for the 1985-86 academic year. The Dean's rather annoyed response was that Hofstra's Dean "managed to catch the ear of the person who ran that service." Trager stated that "It is beneath my dignity to go to a promoter. If one wants to accumulate ratings of Brooklyn Law School . . . look to the Deans of national law schools, who, I am sure, rate Brooklyn right after Columbia and NYU." Trager added that "Recently, we have lost two faculty members to NYU, a clear sign that the quality of the faculty at BLS is rather high."

The Dean's words are supported by a sampling of those outside activities in which the BLS faculty engage themselves. Professor Hellerstein has recently been appointed to chair the New York City Bar. Professor Karmel has been a major figure in securities law, sitting on several state and national advisory panels and writing for the New York Law Journal. Professor Garrison is Chair of the City Bar's Family Courts Committee. Trager himself has been involved in the investigation of the New York City corruption scandal in his

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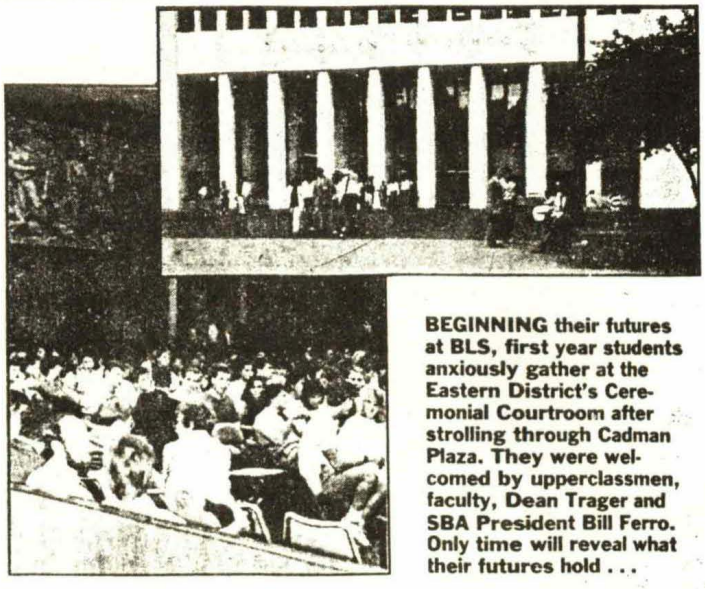

BEGINNING their futures at BLS, first year students anxiously gather at the Eastern District's Ceremonial Courtroom after strolling through Cadman Plaza. They were welcomed by upperclassmen, faculty, Dean Trager and SBA President Bill Ferro. Only time will reveal what their futures hold . . .

Copies of the blueprints of the new BLS are in the display cases in the lobby

The Justinian

A Forum for the Brooklyn Law School Community

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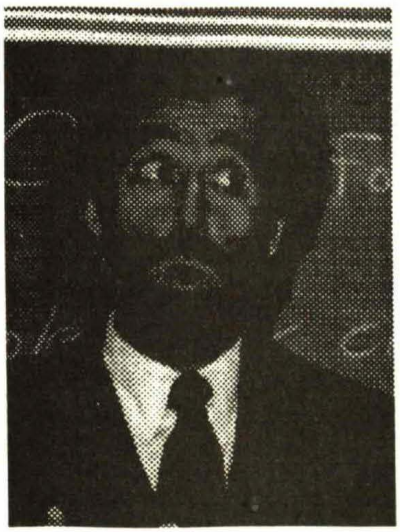

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Editor's Corner

As we celebrate Thanksgiving and contemplate our Christmas and holiday shopping habits, let us not forget the purpose and spirit of the holiday season: to be considerate of others.

Indeed, Thanksgiving is a time for introspection. We reflect upon our lives and are thankful for all that is proper. Expressions of our thanks usually manifest themselves in the form of charity to those less fortunate that ourselves.

Although this is highly laudatory, it is disappointing that such good will amongst ourselves only occurs on these few significant dates. While it is safe to assume that many poor and homeless individuals may receive a warm meal on this feast day, courtesy of numerous shelters and soup kitchens throughout the area, it is a shameful reality that these same people will be shunned and forgotten afterwards. Sadly, hunger and homelessness are two societal ills which are both prevalent and pervasive throughout the balance of the year. Therefore, the spirit of Thanksgiving should and needs to be continual.

What can be done? Plenty. Closer to home, many student organizations at Brooklyn Law School are sponsoring a holiday food and clothing drive to help alleviate hunger and physical discomfort. Certainly, one need not have to "give" anything significant in order to sustain the "spirit of giving" so closely associated with this holiday season. Simple acts of kindness will suffice. For instance, as finals approach, fellow students should harbor good will for one another around the school, especially in the library and lounge areas. Such simple gestures will go a long way toward fostering both self-respect and respect for others that will carry on, hopefully, throughout the year.

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To the Editor:

Your cartoon cover on the October issue deserves comment. The illustration depicts one character wishing another character's mother had an abortion instead of giving birth to the individual. This is both stupid and tasteless.

Good-luck in the coming year.

James Broderick '92

P.S. This would not have happened under the previous administration.

[Editor's Reply: As the artist of the work you criticize, I feel I am obligated to educate you. The aforementioned cartoon depicts, in what I consider a witty fashion, the futility of the Democratic senators' attempts to elicit the judge's opinion regarding abortion. Therefore, contrary to your allegation, the cartoon is not stupid. In addition, since you did not understand the drawing, I believe your conclusion that the cover is tasteless is unfounded.

Good Luck & thank you for the input.]

R.C.F

I Witnessed a Murder and Nobody Cares?

There are very few matters in life truly worth recording since there are already too many annals clogged with the rhetoric of impotent theorists. Today though I witnessed a MURDER!! I bore witness to the assassination of a man for no reason other than his point of view. But what truly made this grotesque display amazing is that the entire scenario transpired before the American public on primetime television.

I am not referring to the actors on some over-zealous television pilot but instead ONE BLACK WOMAN and SEVEN ELECTED WHITE MEN, with MALICE AFORETHOUGHT, murdered a lone black man and his family. The blood did not trickle from the side of the victim's mouth as he sat poised and motionless, but I could see him suck it back up through the corners of his set lips. I saw him struggle to maintain a composure which was challenged and lashed at callously by his ATTACKERS! I witnessed one woman and a panel of middle- to senior-aged WHITEMEN, whose seats were purchased by their victim, reduce to nothing a man whose entire existence has been dedicated to the enhancement of our society.

I tried to report this crime but I was told that none had been committed!! I was told that what I had was a FRIVOLOUS and VINDICTIVE allegation!! A FRIVOLOUS AND VINDICTIVE ALLEGATION!! I witnessed a murder. It was quite a sight to see and I only now wish that I had never lived to see it!!!

Michael J. Monahan '92

LET THE TRUTH BE TOLD

Dear Editor:

I am writing to reply to the letter to the editor by Robert Radman printed in the October 1991 edition of *The Justinian*. Mr. Radman expressed his 'horror' concerning the content of the discussion he had at a meeting with Professor Obrad Stanojevic, Dean of the Belgrade University Law School. After associating 'Comrade' (as Mr. Radman referred to him) Stanojevic with Serbian perpetrated atrocities in Yugoslavia, Mr. Radman went on to lambast the law school administration for favoring 'commercial exploitation' of connections with foreign law faculty over the value of human rights. What Mr. Radman neglected to apprise the law school community of in his acidic letter is what actually occurred in the meeting with Professor Stanojevic.

Firstly, although a minor point, the meeting actually was an opportunity for fellows of the Brooklyn Law School International Business Law Fellowship to meet with the Professor to ask questions concerning comparative and international commercial law. Nonetheless, Mr. Radman attended the meeting. Specifically, Mr. Radman attended with the express purpose of antagonizing and confronting Professor Stanojevic because the Professor is Serbian and Mr.

Radman is of Croatian descent.

Mr. Radman, after a few questions on point from other students, proceeded to badger Professor Stanojevic with loaded questions concerning the civil war in Yugoslavia. Mr. Radman began relating grotesque stories of how Serbian 'communists' had tortured Croatians and presented Croatian Nationalist symbols and slogans.

As for the law school administration, they are certainly not to be castigated for a poor human rights stance. The school took advantage of an opportunity to learn about the legal system of another country. There is hardly a better forum than a law school for the presentation of different or opposing views. Furthermore, the school did not actively recruit Professor Stanojevic to visit. The professor was part of a contingent of Eastern European law practitioners touring the United States to edify themselves as to our legal system and the virtues of democratic government. The school administration provided a learning experience, not a platform to espouse the 'virtues of Boesky and Miliken' as Mr. Radman incorrectly claims.

This letter, however, is not meant to protect the Professor from criticism. Professor Stanojevic behaved just as poorly as Mr. Radman and both were, in Mr. Radman's words, 'rank amateur propagandists'. From the Professor we were also treated with graphic torture descriptions. In addition, there were claims that Croatians had a strong history of fascism and anti-semitism during World War Two, to which Mr. Radman replied that history had no impact on present life and policy - an extremely disturbing and hypocritical remark. Instead of being a professional and offering to discuss politics at a later time, Professor Stanojevic traded accusations and epithets with Mr. Radman.

The pall of warfare and bloodshed that has befallen provinces of Yugoslavia pains us all. It is troubling to see destruction, uncontrollable nationalism, surfacing fascism, communism in its death throes and faltering democracy. There are many truths, untruths and explanations concerning the civil war it is difficult to determine where reality lies. However, this meeting was not a time or place for political discussion.

If Mr. Radman was so anxious to be abusive, he could have approached the administration in order to organize a forum on war crimes and oppression in Yugoslavia. At such a forum, both sides, if it can be said that there are only two, could have presented their views, debated and presented the law school community with a more controlled understanding of the conflict in Yugoslavia. Mr. Radman, as a law student and a member of an oppressed minority, should know, above all, that facts and truth are the best instruments with which to underscore injustice.

Miles Flamenbaum
Class of '93

A Reply to William J. Smyth

After having read Brooklyn Law Student William J. Smyth's reply to Jane Easter Bahl's article "Dissenting Opinions" that appeared in the November issue of *Student Lawyer*, I too must reply. Mr. Smyth considers himself to be representative of a minority whose viewpoint is being stifled by a sweeping tide of "political correctness" that has infiltrated the classrooms of BLS. While I agree to a certain extent that students occasionally exhibit immature behavior by anonymously booing or hissing viewpoints contrary to their own, I would hardly characterize such acts as a "...dangerous and unwelcome development in the law school community." Mr. Smyth should remember that he elected to attend law school in a predominantly liberal region. It seems likely to me that somewhere a liberal student is suffering the same fate amongst an audience of equally immature conservative students.

However, even if such acts can be attributed to the PC movement, it occurs to me that any movement that seeks to secure its beliefs through the intimidation and bullying of the so called "politically incorrect" is doomed to failure at the hands of those students who adhere to their convic-

tions and refuse to be intimidated by such simplistic tactics. Any student who is so easily influenced by the acts of such individuals should seriously reconsider whether his or her personality lends itself to effective advocacy.

Mr. Smyth goes on to express his concern over BLS professors who "...actually participate in belittling and making fun of students who express 'politically incorrect' ideas." His concerns also include professors who "...feel free to use their classrooms as forums to indoctrinate students to their schools of thought." I feel such accusations are unwarranted. While some professors may occasionally interject their own political beliefs into the subject matter they are teaching, Mr. Smyth's pernicious characterizations suggest that BLS professors have motives other than teaching Law. Additionally, it suggests that BLS students are wayward in their own political beliefs and are susceptible to the first pied piping professor who crosses their path. Mr. Smyth stands firm in his convictions. Why is it difficult for him to believe other students stand firm in theirs?

However, Mr. Smyth's final point has some merit. He suggests that if a faculty is not representative of the entire population, including political orientation, it cannot truly be called diverse. While in theory the instruction of law should be nonpartisan, professors inevitably reveal their true political colors. This can be useful in challenging students to participate in the free exchange of ideas. However, while I have frequently heard professorial commentary emanating from the left, the right seems to have somehow fallen conspicuously silent.

In my opinion, the term "political correctness" is becoming a phrase associated with a political tactic more than a ideological position because, as Ms. Bahl's article suggests, attention is often drawn away from the substance of the message by the methods used to convey it. Few who criticize "political correctness" attack the often tenable goals of the movement. Instead, it is the fervor with which some PC members seek to assert their beliefs and their occasional intolerance to contrary opinion that draw conservative fire and obscure the overall message.

Therefore, to attribute the acts of a few immature students and the liberal political views of professors to the "politically correct" movement seems unfair. In addition, such characterizations only serve to increase the perceived pervasiveness of the movement that concerns Mr. Smyth. It is my belief that the vast majority of BLS students and faculty, both liberal and conservative, are truly conscientious and feel that in order for political gains to be long-lasting and meaningful, the process of justice must be as dignified and fair as the eventual outcome.

Charles M. Hampshire
Class of '93

To the Editor:

This is an open letter to Professor Stacy Caplow, Director of the Brooklyn Law School Judicial Clinic, and all students enrolled in or applying to the Judicial Clinic. I write to highly recommend a one-semester student-clerkship sponsored by Hearing Examiners Rachel Adams and Amy Rood of the Kings County Family Court. A judicial clinic with the hearing examiners would be first-rate research and writing experience for anyone interested in public interest law. Additionally, students who work for the hearing examiners provide a much-needed service in aiding the process of getting child support to families in our area.

Hearing examiners are quasi-judicial employees of the New York City Family Court System, who preside over child support matters. Hearing examiners are empowered under the Family Court Act (FCA) to issue subpoenas, hear evidence, direct disclosure proceedings, make findings of fact in paternity and child support proceedings and set orders of support. FCA § 439 (c). In New York City, all child support issues are heard separately, by the hearing examiners, from other matters over which the family court has jurisdiction. Sometimes, cases are referred (using the Individual Assignment System now in place in the New York courts) by Family Court judges to a hearing examiner for a decision of the child support component of the proceeding.

Sometimes, a petition is made directly to the Hearing Examiners for a determination of paternity and/or for an order of support.

Students from Brooklyn Law School's Family Law Clinic (formerly the Child Support Enforcement Clinic), which is run by Professor Caroline Kearney, try cases before the hearing examiners on a regular basis. Most often the petitioners who seek child support through the clinic, and on their own, are poor or disenfranchised parents who cannot meet the needs of their families on their own. These parents' struggle with their estranged partners who are unable to meet their financial obligations without the structure of court-enforced support orders has been widely documented as one of the biggest issues surrounding child neglect and abuse. Additionally, lack of child support is one of the main reasons why there are more children than adults living in poverty.

I am a recent graduate of BLS who worked for Hearing Examiners Adams and Rood during the Spring semester of my second year of law school. In that position I researched and reported on (or submitted rough drafts of) as many as three orders for child support proceedings a day. I was involved in a vast number of proceedings and the Hearing Examiners took my conclusions from research, my advice and my thoughts about the case very seriously. I learned not only a great deal about child support issues, but also quite a bit about litigation in general and jurisprudence from hearing examiners.

During my stay at Family Court, I made lasting and valuable contacts with people who have an excellent reputation in the family law field and in the realm of public interest law in general. Most notably, the Hearing Examiners themselves have greatly extended their aid to me in finding employment in this harrowing job market.

I am currently volunteering two days a week, working for Ms. Rood and Ms. Adams on their present dockets. Because I will not be able to retain this position once I accept a full-time job, and because even with my help the Hearing Examiners are still overworked, I urge any who are interested in the position to apply for the position through the Judicial Clinic for the Spring semester. I can be reached at the Family Court after 12:00 noon on Mondays and Fridays by students who wish to hear more about the position.

Very Truly Yours,
Geanine Towers-Dioso,
Class of 1991

ERRATA

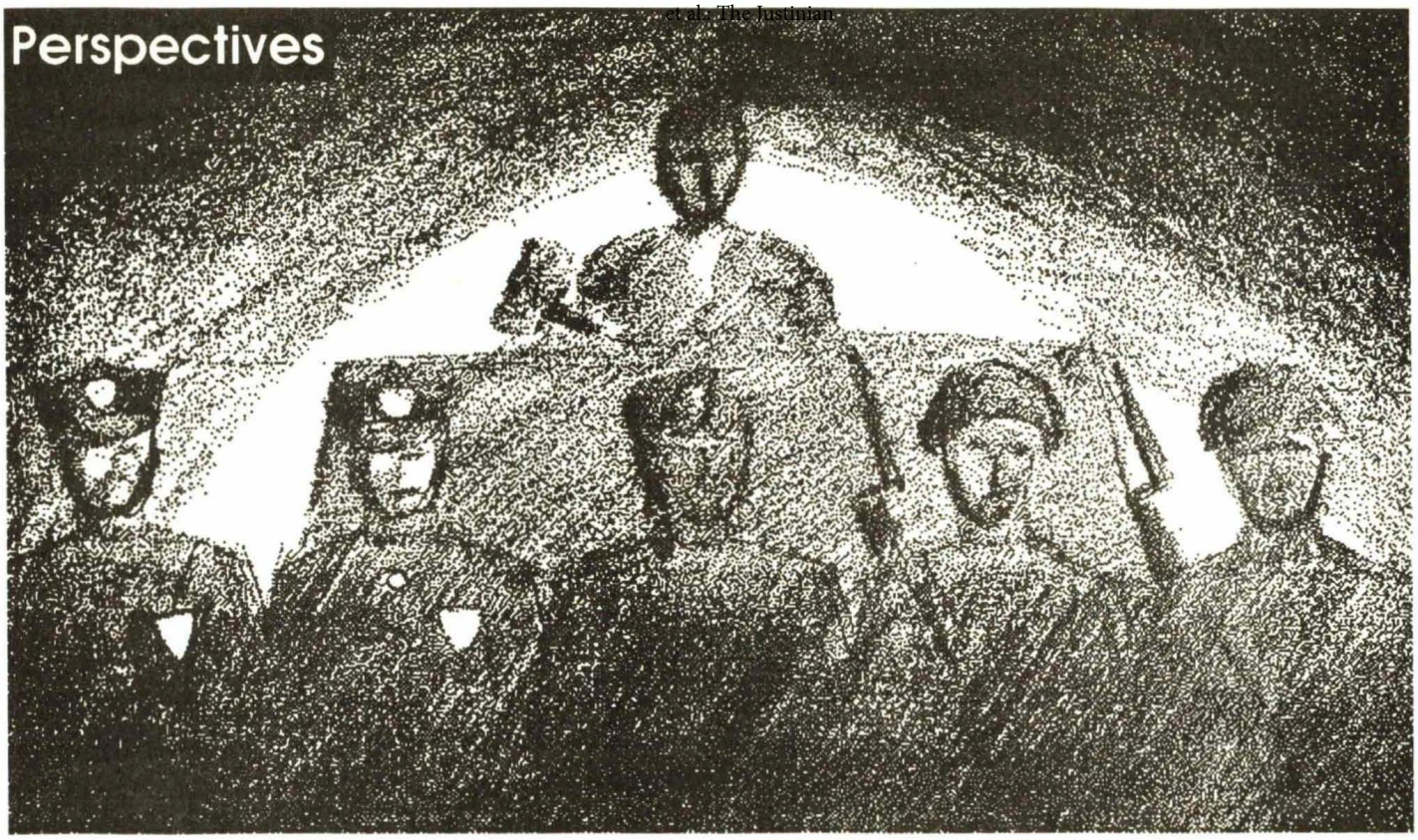
Hi again all, just like to make some corrections regarding the errors made in the October Issue. First, with regards to the photo caption of Professor Hellerstein, on page 53, I apologize to the good professor for any misunderstanding which may have arisen through the three quotationed ("'..."') remark "'They say I'm the greatest; I say admissible hearsay!"' This quote was concocted from a statement made by Alan Dershowitz, prominent appellate advocate and darling of the media, in which Dershowitz stated that two lawyers were better advocate than himself, Professor Hellerstien being one of the two. The statement was made on an October telecast of "The Charlie Rose Show." Dershowitz merely stated the obvious, but we at *The Justinian* are grateful nevertheless.

Second, I regret the unfortunate misspelling of Donna Euben's name in the *Law Review* listing. Donna: accept my apology in this matter and thanks for being a good sport.

And finally, "The Reasonable Man" column incorrectly stated that Judge Thomas was formerly an aide to Senator Specter. Judge Thomas was in fact an aide to Senator Danforth of Missouri.

A. F.

Perspectives



A Commentary on The Supreme Court's Fourth Amendment Jurisprudence

by Austrack Fong

In the ordinary vernacular of present day society, the Fourth Amendment protects individuals from unreasonable searches and seizures. The Framers of the Constitution considered these rights to be fundamental and worthy of protection. The Supreme Court's recent interpretation on the meaning of the Fourth Amendment reveals a trend towards limiting the protections traditionally provided. Within the context of the Fourth Amendment, two clauses have been subjected to much scrutiny. These clauses are the "search and seizure" clause and the "warrant" clause. Both of these clauses contain terms which openly invite interpretation. Two such terms are "unreasonable" and "probable cause". In determining the meaning and applications of these terms with regards to the interactions between the police and the public, the Supreme Court has or is moving towards a position favoring law enforcement officials.

Traditionally, the two clauses of the Fourth Amendment were thought to be interrelated. Specifically, a search or seizure was considered to be presumptively "unreasonable" unless it was based upon probable cause. Now, however, it appears that the Supreme Court is moving towards a position of interpreting these clauses independently, thereby analyzing the propriety of a search or seizure only in regards to whether it is reasonable. The determination of whether a search or seizure is "reasonable" under such a scheme would most likely be dependent, in part, on the balance of the governmental/societal interest served and the level of intrusion on an individual's privacy. It is almost inevitable in any such balance that the governmental interest would outweigh the individuals interest. All the government needs to do is articulate a compelling or substantial interest for conducting the search or seizure.

One may forcibly argue that the Framers of the Constitution, in consideration of the importance of these rights, have already balanced these interest, governmental and individual, in favor of

individual by their creation of the Fourth Amendment. The present Court, however, seems to take the position that deference should be given to the findings and actions of the government. Therefore, any interpretation of the Fourth Amendment under this viewpoint would appear to be skewed in the favor of the government.

The current philosophy of the Supreme Court, judicial restraint, is tailored to stem the creation of any new rights not specifically enumerated or traditionally recognized. This necessarily conflicts with the Court's traditional role of protecting individual or minority rights and interest from governmental or majoritarian encroachments. The Court's current philosophy requires the individual or aggrieved party to seek redress through the mechanics of the political process. In the criminal or Fourth Amendment context, the Court's current disposition is rooted in the notion that the choice as among which "reasonable" alternative law enforcement program should be implemented belongs not with them but rather with politically accountable officials.

This dichotomy is most apparent in the area of "searches and seizures" where the Supreme Court has based the concept of seizures on the theory of the "objective reasonable person," even though, the Fourth Amendment protections are supposedly personal inuring to the benefit of each member of society as a whole.

The purpose of the Fourth Amendment is not to eliminate all encounters between the police and the public, but is to prevent arbitrary and oppressive interference by law enforcement officials with the privacy and personal security of individuals. *U.S. v. Martinez-Fuerte*, 428 U.S. 543, 554 (1976). To distinguish between encounters which are seizures and those which are consensual, the Supreme Court has articulated that a seizure occurs only when the police, through a show of force, restrain the liberty of an individual. *Terry v. Ohio*, 392 U.S. 1 (1968).

In determining if a "restraint of liberty" has occurred the Court asks whether a reasonable person, under the totality of circumstances, would have felt free to leave. *U.S. v. Mendenhall*, 466 U.S. 544, 554 (1980). This test, in conjunction with the Court's recent opinion in *Michigan v. Chesternut*, 486 U.S. 567 (1988), in which the Court stated that a restraint of liberty does not occur unless a reasonable person stopped would not have felt free to disregard the police presence and go about his business, reveals that the Court is willing to engage in some form of "cost-benefit" analysis on the propriety of potential privacy invasions by the police upon individuals.

In *Chesternut*, Justices Scalia and Kennedy in concurrence, stated that "[i]t is at least plausible to say that whether or not officers' conduct communicates to a reasonable person a reasonable belief that they intend to apprehend him, such conduct does not implicate the Fourth Amendment until it achieves a restraining effect." *Id* at 577. Thus, the focus of the seizure inquiry is thereby shifted from whether a person would feel "free to leave" to whether a person is actually restrained. This was the actual the holding of the Supreme Court case of *California v. Hodari*, 111 S.Ct. 1547 (1991) decided just last term.

The Supreme Court in *Brown v. Texas*, 433 U.S. 47 (1979), articulated that the reasonableness of seizures which are less intrusive than a traditional arrest will depend on a balance between the public interest and the individual's right to personal security free from arbitrary interference from law officers. Application of this test requires the courts to balance the state's interest involved in the seizure, the extent to which the procedure developed reasonably advances that interest, and the degree of intrusion upon an individual stopped.

Although, the Court stated that the stop or brief detention usually requires some quantum of articulable suspicion, they also stated that this requirement could be suspended if the state or government conducts stops or seizures pursuant to a procedure, embodying explicit, neutral limitations on the conduct of individual officers. *Id* at 51. This waiver or suspension of the requirement of articulable suspicion has been applied to stops of motorist on the borders and on public highways. See *Michigan Dep't of State Police v. Sitz*, 110 S.Ct. 2481 (1990) and *Martinez-Fuerte*, 428 U.S. 543, (where the Court upheld a sobriety checkpoint stop and a checkpoint stop at the national border in order

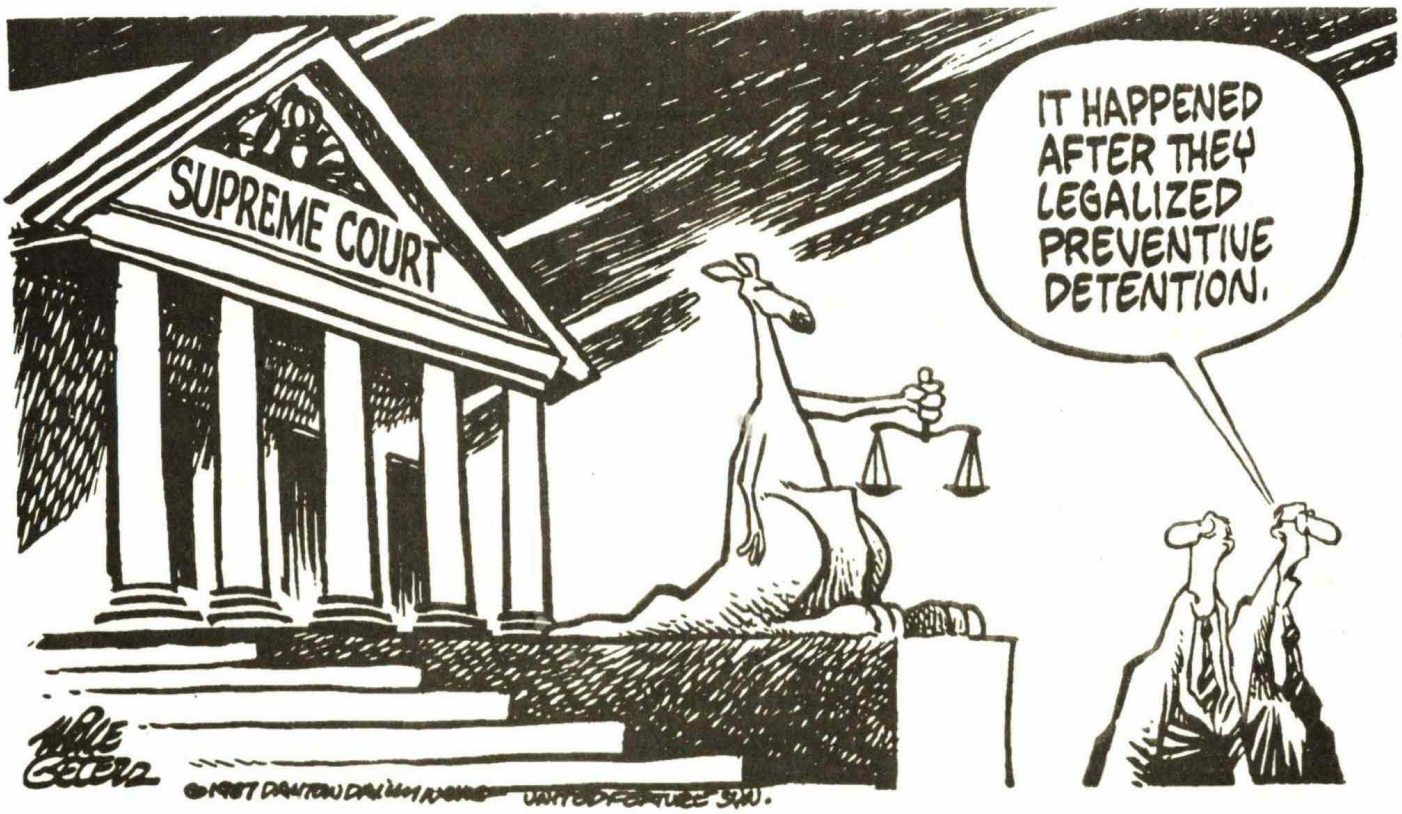
to stem the flow of illegal aliens. Both of these checkpoint stops were conducted absent any articulable suspicion.)

The Court, however, has tempered its proclivity of waiving the requirement of articulable suspicion before condoning searches and seizures which are conducted pursuant to a procedure, embodying explicit and neutral criteria limiting the discretion of the officers. In *National Treasury Employees v. Von Raab*, 489 U.S. 656 (1989), the Court stated that before any balancing between the state's interest and the privacy interest of the individual could be performed, in determining whether it is impractical to require a warrant or some level of individualized suspicion, it is necessary to first determine whether the state's actions serves a special need, beyond the normal needs for law enforcement.

Von Raab dealt with the issue of mandatory drug testing of federal drug enforcement agents who sought promotion to field work in which they would be required to carry firearms. (The testing was to be conducted through taking urine samples from the agents.) These samples would be taken from an agent as he/she went to the bathroom accompanied by a fellow agent/monitor who would stand outside the place of urination and listen for the sounds of the excretory function, thereby confirming the authenticity of its source. The test was mandatory for all agents who sought field promotion, even though no evidence existed that any individual agent was under the influence of drugs or was susceptible to drugs.

The Supreme Court upheld these searches which were lacking in any particularized suspicion to be constitutional. The Court dispensed with the requirements of probable cause because the government's drug testing procedure served a special need, beyond the normal need for law enforcement. The government's interest in an effective "drug free" interdiction force outweighed the privacy intrusion which was visited upon the individual agents tested. The fact that the results of the drug testing were not to be used to incriminate the agents, for the use of illegal contraband, was essential to the Court's analysis in finding that the testing procedure satisfied a special need, beyond the normal need of law enforcement.

It should be noted that Justice Scalia dissented vehemently. He believed that the per-



sonal intrusion on the privacy of the individual tested was severe. It struck him as being indecent, and he, therefore, did not partake in the majorities effort to conduct a cost-benefit analysis in balancing the interest involved. While Justice Scalia generally adheres to a strict construction of the Constitution and believes in providing deference to the governmental choices, he believed that this case, of mandatory drug testing, created an immolation of individual privacy in furtherance of the symbolic fight or war against drugs.

The Supreme Court's treatment of the "probable cause" requirement for "searches and seizures" as well as for the "warrant requirement" again reveals a history of giving deference to the needs of the government. Beginning with *Terry v. Ohio*, 392 U.S. 1, (where the Court first condoned a seizure on grounds less than probable cause,) the Supreme Court has increasingly expanded the once limited exceptions to the probable cause requirement for searches and seizures. This movement is readily apparent in light of the Court's decision in *U.S. v. Montoya De Hernandez*, 473 U.S. 531 (1985) (27 hour detention of an alimentary canal drug courier based only on reasonable suspicion was reasonable) and *INS v. Delgado*, 466 U.S. 210 (1984) (A factory survey, conducted by INS agents, in search of illegal aliens did not even constitute a seizure. This despite the fact that armed agents were placed at the exits while the other agents systematically moved throughout the factory and accosted the workers.)

In addition, the Court's willingness to dilute the standards of what constitutes probable cause, see *Illinois v. Gates*, 462 U.S. 213 (1983) (rejecting *Spinelli's* twin and independent requirement for reliability and basis of informants knowledge, in favor of the totality of circumstances test,) is compounded by the fact that the Court is also willing to dilute the standards of what constitutes reasonable suspicion. The most startling example of this dilution in Fourth Amendment protections occurred when the Supreme Court articulated that the so called "drug courier profile" meets the standards of reasonable suspicion. *U.S. v. Sokolow*, 490 U.S. 1 (1989). This means that activity which is equally probative of innocent behavior as well as criminal behavior can be aggregated to create an overall sum which provides more probability of criminal activity than if taken in isolation. Therefore, under the "drug courier profile" many innocent individuals may and are constitutionally subjected to seizures at the discretion of the police.

The need for the Supreme Court to grant some leeway to the governmental and law enforcement officials, even if it is unwelcomed, is foreseeable in this era of rampant crime. The Supreme Court, however, must not judicially abdicate its role: for a police force unrestrained by any procedural barriers upon their conduct may be a far worse fate than the occasional felon who escapes justice, witness the cases of police brutality in Los Angeles and elsewhere. Just where exactly should the Court draw the line between and an individual's freedom from governmental harassment and the police's duty to protect society in general? I do not know. Regretfully, however, it appears that the present Supreme Court doesn't care.

The Luckiest Man on the Face of the Earth

LAKERS

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An Essay By Joe Accetta

"Basket scored by number 32, Magic Johnson." These words will echo throughout basketball arenas no more, as Earvin "Magic" Johnson, age 32, has retired from the Los Angeles Lakers after having contracted the HIV-virus. This shocking revelation has thrust this sports star into the public spotlight, not as a beloved athlete but as a spokesperson in fighting the dreaded AIDS disease.

Strangely, this is not the first time an athlete of Johnson's stature has been stricken by a life-threatening disease in the waning years of the prime of a great career. The unfortunate illness Johnson has contracted and the hastily-assembled retirement announcement eerily conjure up the similarly tragic circumstances surrounding the retirement of New York Yankee first baseman Lou Gehrig in 1939. Gehrig, known as "The Iron Horse" for his tremendous durability, power and agility, set countless records in his 14-year career with the Bronx Bombers; most notably, Gehrig's amazing record of 2,130 consecutive games played still stands (although Baltimore Orioles' shortstop Cal Ripken, Jr., who needs nearly 500 more games to catch Gehrig, poses the only threat to this record). In fact, Gehrig led the American League in home runs, runs batted in, and batting average countless times before being stricken by amyotrophic lateral sclerosis - the mysterious, incurable, crippling muscle and nerve ailment that bears this great star's name today. He died merely two years after his retirement from baseball at age 38.

Certainly, many of us are familiar with the famous words uttered by Gehrig on that 2nd Fourth of July, 1939. There was Gehrig -a man facing an imminent and untimely death, caused by forces outside of his control - bravely declaring that on this, his retirement day, he felt as if he was "the luckiest man on the face of the earth." To feel lucky on a day when he knew his death was near and to graciously thank those that poured their adulation upon him over the years because of the pleasure he brought to them: surely, this was a unique man.

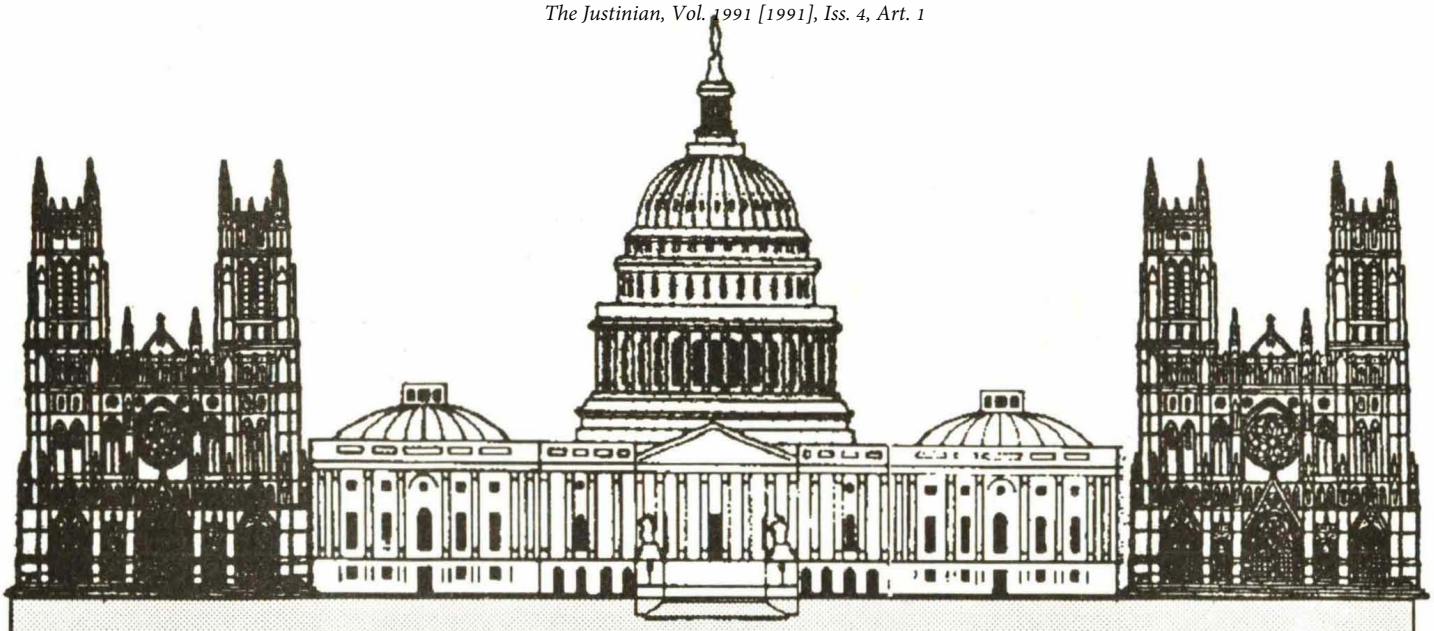
Similarly, Magic Johnson has had few peers as a professional basketball player. His Laker career closes with these impressive numbers: 12 All-Star seasons, five National Basketball Association championships, nine trips to the championship round, and three Most Valuable Player awards. Moreover, the popularity of Johnson and rival/friend Boston Celtic forward Larry Bird, who both entered the league in 1980 after a memorable NCAA championship game (Johnson's Michigan State team defeating Bird's Indiana State squad), arguably resurrected what was considered to be a dying league. Coincidentally, Johnson seemed to echo Gehrig's famous sentiments in a recent television interview when discussing death, stating, "If I go tomorrow, I have led the greatest life that anyone could ever imagine."

Indeed, by all accounts, including his own, Johnson lived the prototypical "bachelor's life," and apparently contracted the HIV virus through heterosexual contact. Predictably, the life of a star professional athlete often leads to promiscuous one-night stands, as former NBA star Wilt Chamberlain can attest to, having recently boasted of over 20,000 sexual encounters in his life. However, by any standard of morality - let alone responsibility - such a lifestyle is an open invitation to trouble, and sadly, Magic Johnson has learned a painful lesson.

Admirably, Johnson has turned his plight into a positive experience by promising to crusade against AIDS by promoting safe sex and education. In effect, Johnson is trying to convey a point to a confused public: "If I can get it - anyone can."

Clearly, one can only hope that Johnson's presence and influence will encourage the general public to behave more responsibly, for their own sake as well as for that of others. Hopefully, Johnson is sincere in these efforts, and one prays that he remains with us long enough to have a lasting impact on those that still choose to forsake responsibility for their actions. Johnson certainly hopes as much, since he feels that this was God's way of directing him "to carry the message of the dangers of AIDS to everyone" after educating himself on the subject.

In the aftermath of the tragic end that awaits him, one wonders if Magic Johnson - hero to some, pariah to others - in the wake of all the possible partners he may have infected, can feel as "lucky" as Lou Gehrig did when faced with his ultimate fate. God's speed, number 32.



The Constitution and the Church: How Many Degrees of Separation?

The Reasonable Man

by Peter A. Sullivan

There is something about these separation of church and state issues that really aggravates me. The issue always starts with a practice that has benignly endured for generations, like the pledge of allegiance or the display of a creche or menorah during holiday time, that is being challenged because of the threat of state establishment of a new Church of England. Some court then decides that the practice is indeed deleterious to the general population — an overwhelmingly religious population mind you — an prohibits the practice. Acknowledging a little facetiousness and oversimplification, I am nonetheless disturbed by the application of the separation of church and state doctrine in many cases.

Our discussion of this issue stemmed from the *Weisman* case, which was recently argued before the Supreme Court and concerned the use of a benediction at a public middle school graduation. The rabbi in this case said what could probably be termed an ecumenical prayer — religious but nonsectarian. I agree with J.S. that the graduation is not an appropriate time to be referring to a supreme being, mostly because those who do not wish to subjected to prayer have the Hobson's choice of taking it (the prayer) or leaving it (the graduation). That is the type of subtle coercion that the First Amendment should seek to avoid.

While on this point we agree, J.S. and I diverge on some other applications of the church/state doctrine. While I believe that the invocation in *Weisman* was unconstitutional, the state could have allowed the school to be used for a prayer service in conjunction with the graduation for those who wish to thank their God for their wonderful accomplishment. Likewise, if the children voted for a person of the cloth to speak at a commencement, the school should not stand in the

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The Reasonable Woman

By Jennifer Sessler

There is something about the separation of Church and State issue that really aggravates me. The issue always starts with a practice that has been "benignly" endured for generations, like the pledge of allegiance or the display of a creche or menorah during holiday time, that is being challenged because of the threat of state establishment of a new Church of England. I suppose that this same argument would have been helpful when women's suffrage was an issue in the early 1920's. After all, the denial of women's right to vote was "benignly" endured for generations and was challenged because of the threat (reality) of male political domination. Yes, I recognize that this is an extreme comparison, but I do not believe that legal and moral precepts should be trivialized by the concept of accommodation or under the guise of tolerance.

As P.S. points out, our discussion arose from the recent Supreme Court case involving a benediction made at a public middle school graduation in Rhode Island. We both agree that a graduation ceremony is an inappropriate time for a reference to a supreme being. Peter's discussion of potential solutions is a positive step towards the resolution of this problem. His suggestion of providing school grounds for a religious ceremony in conjunction with the graduation ceremony raises the issue of non-secular use of school property.

In colonial times, the church building played the role of both schoolroom and town meeting hall, not out of any religious/political ideal, but rather out of necessity. In modern times, notwithstanding the expansion of cities and communities, we still come across the problem of convenient meeting places for community activities. It is certainly practical that the French club or Math club should have access to school rooms in which to meet. By the same token, community groups should have similar access to school space. However, when we consider the local Bible study group, we are daunted by cries of "Religion is coming, religion is coming!" This analysis in relation to the Establishment Clause is overreaching. Can we really say that the use of school property, by a religious group, after hours is an establishment of religion? No. As long as the process in which groups are selected to use the school space is fair and democratic, the use of public schoolrooms should not be denied to a group merely because the issues they discuss are religious in nature. The "reasonable man's" argument that the substitution of the word "communist" for "Bible study" would invoke a First Amendment right to association protection, is particularly apt.

Religion in schools, in the form of a prayer or moment of silence, is a completely different issue. My grandmother, who was a public school student in the 1920's, recently told me what it was like to have a *voluntary* prayer in school. She explained to me that while she would stand and mouth the words to "Our Father" she would never "really say it." When I asked her why she would even stand and mouth the words when she, in fact, did not even want to acknowledge the prayer, she revealed that the repercussions were a lower grade, peer ostracism, being given a "hard time", or a "smack on the wrist", she felt that she had to, at least, appear to say the prayer. While P.S. and I both agree that prayer in school, voluntary, mandatory or in the form of a moment of silence, is coercive, I cannot stress strongly enough the inherent, obvious and acute coerciveness of such a situation.

The real problem arises when people begin to distinguish between subtle and obvious persuasion. The distinction, in my opinion, is unnecessary. Subtle persuasion is no more acceptable than the more forceful garden variety. P.S. recognizes that this area is "pregnant with subtle coercion of this country's most impressionable people" and I completely agree. However, we cannot neglect our establishment analysis by failing to recognize that the subtle coercion of anyone is still, in fact, coercion.

Our efforts to eradicate subtle coercion needs to be that much more diligent than our attempts to eliminate obvious coercion, simply because the nature of that which is subtle is obscured by the obvious. Nowhere is this more "clearly" seen than in the example of the appearance of "In God We Trust" on our money.

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way. These two alternatives completely remove any pressure on nonreligious people to endure any religious indoctrination.

My tolerance for some "entanglement" between church and state is because I believe that removing all reference to religion in public life is insensitive to the rich religious tradition of this country and at times a restriction on the Free Exercise Clause, also a tenet of the First Amendment. For example, there was great concern a few years ago about allowing a Bible study group to meet in a public school. The Bible study group wanted to be treated just like the chess club and the french club, but because of their "beliefs" the state challenged the club's use of state property. If you changed the term "Bible study" in the previous sentence and substituted "communist", there would be no question that the First Amendment would protect that form of associational right. Only when the "belief" is something so sinister as a deity does all right thinking people's feathers ruffle.

The Establishment Clause is in the Constitution to protect the people of this country from the coercive aspects of a state sponsored religion or belief in God. The Constitution should be a potent weapon to wipe out religion-based pressure that involves the state. That means no school prayer, and no moment of silence. This area is pregnant with subtle coercion of this country's most impressionable people.

On the other hand, when no such religious coercion exists, the government should be an enforcer of equal treatment of religious groups in relation to nonsecular groups. For example, the government should not restrict the use of school grounds to only secular groups, effectively punishing religious groups for their beliefs. In addition, the Constitution should not be an impediment for tax credits for parents who send their children to private schools because some portion of children who go to private schools are in parochial schools. This tax credit is an acknowledgement that private school parents must pay twice to educate their children. In fact, those who wish to incorporate religious instruction into their children's education are penalized for that desire by not getting some rebate on money paid into the public school system. Poor parents are then restricted by the tax system from religious exercise in the form of parochial education. Reducing this problem in the form of tax credits is certainly not in conflict with the separation of church and state and also allows *all* parents to take advantage of private school education. By allowing the tax credit, the state is letting the parents decide which school the children will attend without penalizing the private school parents with a tax on top of tuition.

J.S. disagrees with me on tax credits and offers a compelling policy argument for denying the tax credits to private school parents. While certainly compelling, the argument does not stem from restrictions set forth by the Establishment Clause. This is a prime example of the mixture of motives and means that we see in these cases. Tax credits involves political difference over how to run government. By employing some constitutional angle into the debate, those who disagree with this program obfuscate their real motivations with the guise of "protecting our cherished First Amendment principles."

There are other examples that may also infringe on free exercise while attempting to avoid the Establishment Clause. A public school teacher who reads a bible during her breaks is asked to put it in her desk so the children do not see it. Far from the coercive nature of school prayer, this person is exercising her own religious freedom on public land and being required to suppress her religious identity in front of the children. Any other book could be displayed on her desk, but once the subject matter of the book is religious, it is now state supported religion. This is simply going too far in sanitizing religion from public life, at the expense of freedom of religious expression. J.S. agrees with me on this point, but keep in mind that this case went to the appellate court. Thus there are many people less "accommodating" than Jennifer when analyzing these issues. At the balance point of establishment and exercise, there is a slippery slope in both directions.

The drafters of the Constitution understood the potential of church influence into matters of the state. One need only to look to history to see the

vast majority of conflict in this world was due to differences in religion. Today, it still remains an obstacle to peace in the Middle East. Our own country has spawned such heinous groups as the Ku Klux Klan because of religious intolerance and required the recitation of Christian prayer before the start of the public school day to the persecution of non-Christian children like Jennifer's grandmother. We must not allow this to go on, but suppressing religious belief is not the answer. We must strike the balance between safeguarding our country from religious control of government, however subtle, but also further the goal that this is a country where each of us may safely practice our beliefs without persecution by the government. Going too far in either direction impugns the other, and both are equally vital under the First Amendment.

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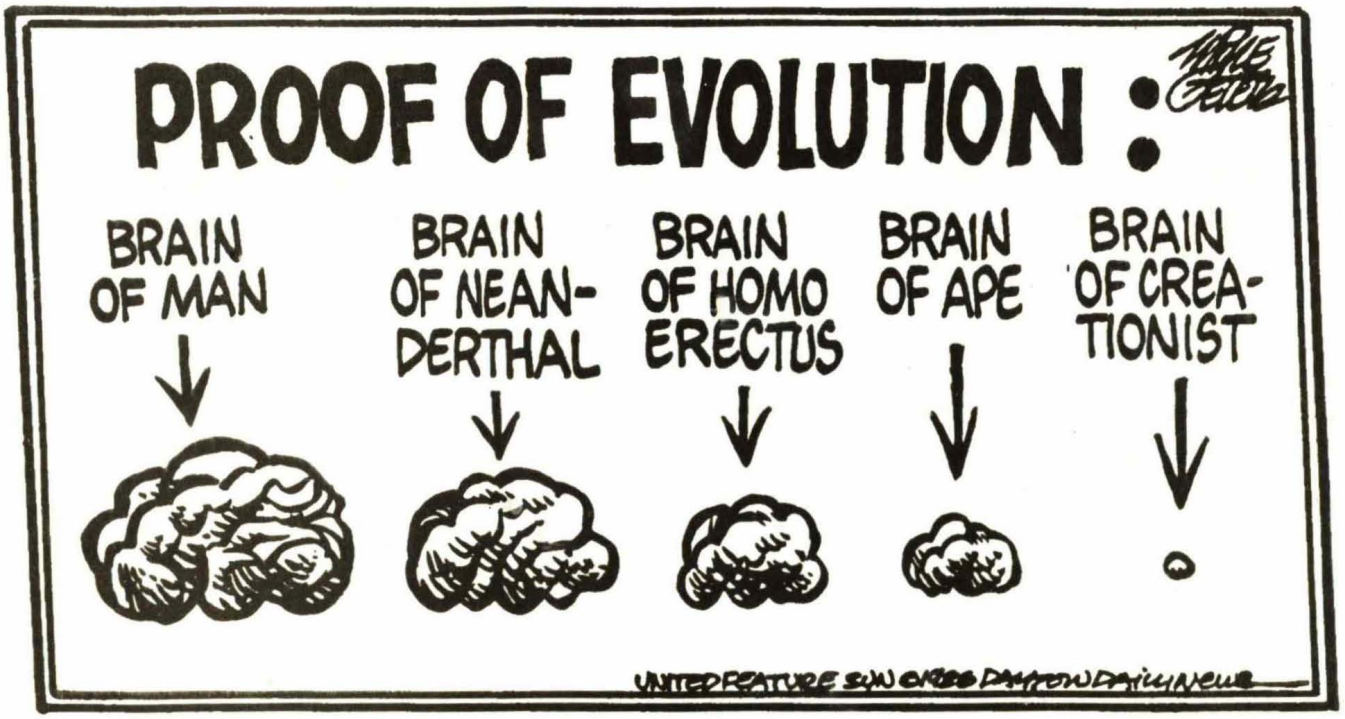
Everyone handles, uses, examines and generally deals with money on a daily basis. Everyone sees, consciously or otherwise, this phrase continuously and whether we realize it or not we are affected by the government's inclusion of this phrase on their/our money. We must realize that this is a form of subtle coercion and admit that the use of "In God We Trust" is a governmental acknowledgement and establishment of religion. The notion that the non-denominational use of the word God, as opposed to the use of the names Christ, Allah or Buddha, for example, includes all religions and therefore cannot be deemed to be associated with a particular religion, fails in that the establishment analysis does not provide that, as long as the government acknowledges or establishes all religions, we are not faced with a constitutional problem. The affiliation of our government with all religions is no less an establishment than the association of our government with a particular religion. (Remember, we are not, in fact, "one nation under God"). This argument is bolstered by the fact that considering agnosticism and atheism, the inclusion of the word God on money is an unconstitutional establishment of religion in general. There are those who might argue that the cost (albeit theoretical) to the government to "erase" the phrase "In God We Trust" from all of the plates would be astronomical and wasteful. However, the transition need not be immediate. In addition, one of the plates was recently stolen from the mint and the government is contemplating designing a new plate to replace it. Perhaps this could be the test plate in which they remove the unconstitutional phrase. As each plate needs to be replaced, a new plate, where that phrase is omitted, could be



substituted in its place. This would accomplish a long-term, and therefore, relatively cost-free replacement of the plates.

Another area of interest in the establishment analysis is that of governmental aid to private and parochial schools. While many private schools are parochial in nature, the real issue here, for me, is private school v. public school. No private school, or family with children in private school, should receive tax benefits or financial assistance from the government. This has nothing to do with religious curriculum but rather, the deleterious effect of shifting our focus from problems concerning our public schools. We have long recognized a right to public education in this country. As such, it is right we must cherish and preserve. Parents send their children to private schools for many reasons, but most evident is their fear of violence in public schools and their concerns for "better" educational opportunities for their children. While concern for your own child's education is certainly laudable, we cannot ignore the condition of our public schools by allowing our communities to desert them. The statement that private school parents may be "penalized" by paying tuition in addition to public school tax is an unfair characterization of the issue. Parents who send their children to private schools do so willingly and freely, and their decision to pay for that education denies them the right to argue that they are burdened by inequitable taxation. Also, the desertion of our public schools, which would result if parents received tax credits or benefits for their private school tuition dollars, would result in a society where the rich are educated and the poor are not. While particular individuals would receive adequate, or better, education, a large, and ever growing, portion of the population would be relegated to the disproportionately inferior public school education. Some may see an increase in lifestyle, but at what cost to society? The additional argument, that parents who can't afford to send their children to parochial schools are restricted by the tax system from religious exercise in the form of parochial education, is absurd. Religious organizations in this country are tax exempt (I'm not even going to address this issue here) and perhaps these organizations should accept the responsibility of assisting those less fortunate among them who desire a parochial education.

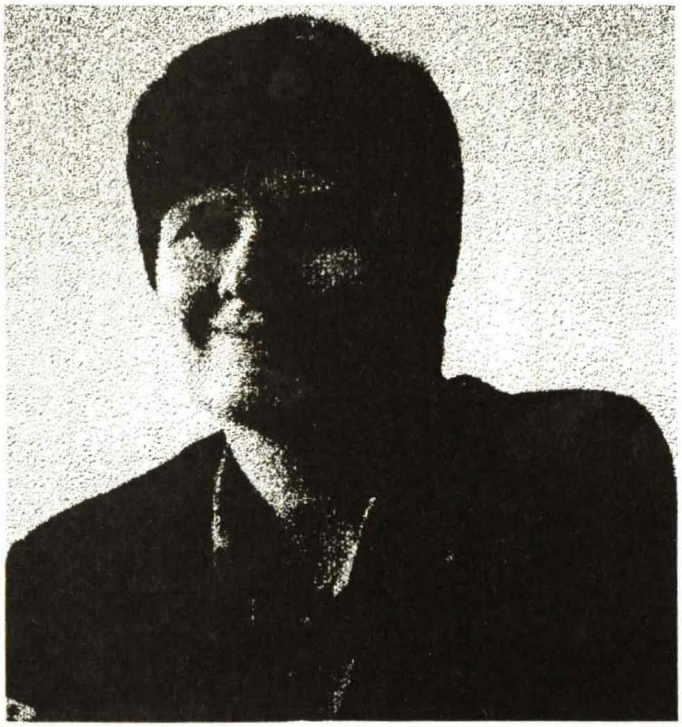
An additional analysis concerns the tension between infringements on the free exercise of religion and the establishment of religion. The case discussed by P.S. regarding the public school teacher who wished to keep a bible on his desk addresses this tension. While I agree with Peter's discussion of the issue, I would like to add that I believe there is no difference between a public school teacher who is Jewish and wears a yarmulke and the teacher who keeps a Bible on his desk. There should be no insinuation that a teacher who wears religious garb is engaging in coercion and therefore, it should not constitute an establishment of religion by the state. It would be unconstitutional to require a Jewish public school teacher to remove his yarmulke when he is in the classroom. This is the perfect example of where the line between free exercise and establishment should be drawn. While the teacher is an agent of the school, and is therefore affiliated with the state, it cannot be construed to be an establishment of religion by the state to allow the teacher to teach in religious garb.

While almost any argument can be defeated by a journey down the "slippery slope", no where is it more important to take that trip than in the area of civil liberties. Once we begin to "accommodate" we are on our way towards chipping away at the core of this First Amendment protection. This process is seen in many other areas, most notably in the area of privacy rights. The Supreme Court has yet to overturn *Roe v. Wade* (and please God it should never happen) but have successfully, and "benignly" hacked away at the decision, making the future of a woman's right to privacy painfully clear. Every time we accept a seemingly harmless entanglement of church and state due to the notion of accommodation, we are one step closer to an unconstitutional governmental establishment of religion. I end on this note: It is ironic that a country founded amidst recollections of religious persecution would have problems recognizing a dangerous trend exacerbated by notions of accommodation and "harmless" entanglement of church and state.

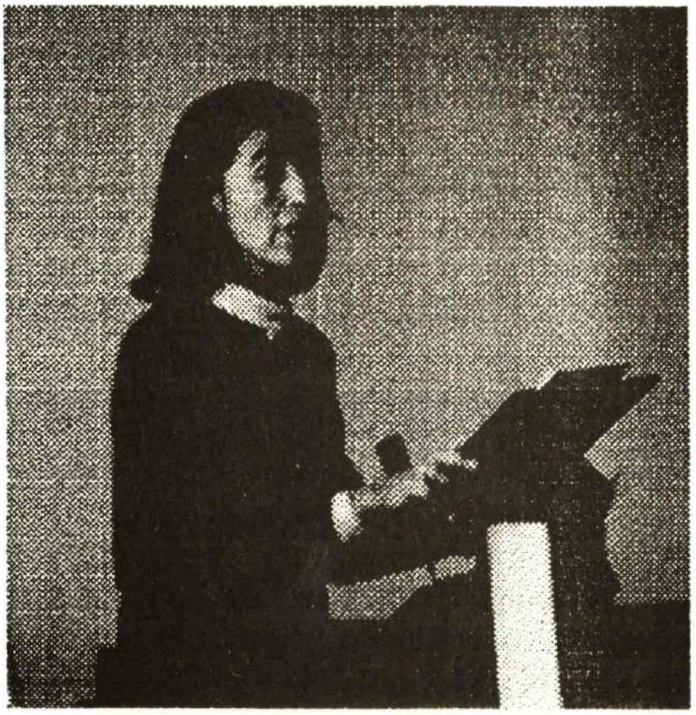
Ruminations Regarding The Sparer Forum

by R. Chang Feldman

On October 23, 1991, Brooklyn Law School's Sparer Organization presented a hastily, but timely, organized symposium on the lessons of the Clarence Thomas Confirmation Hearings. A panel consisting of Manhattan Borough President, Ruth Messinger, and Brooklyn Law School's professors, Nan Hunter, Margeret Berger, Minna Kotkin, Michael Madow, and Susan Herman, addressed the issues brought forth by the hearings: namely, the advise and consent role of the Senate ("The Process"); sexual harassment, the history and requirements of the claim; and the media's handling of the confirmation hearings.



Professor Hunter: Madame of Ceremonies



Manhattan Borough President Ruth Messinger: "Congress needs more tough mothers."

The Madame of Ceremonies, Professor Nan Hunter, commenced the symposium by reeling off the list of questions the panel was supposed to address; among them "What values should be promoted?" and more specifically, "Should formal rules of evidence be followed?" and if so, what would be the outcome?" Unfortunately, the panel as a whole failed to effectively answer these questions or advocate any clear positions. Not to worry, though. The panelists did present the audience with a cornucopia of quasi-insightful pontification.

First on the agenda was Manhattan Borough President Ruth Messinger. The gist of her generic speech was that women are still the "Irish of modern America" and therefore, must get involved politically if they are ever to improve their status. However, it appears that many of the misogynistic ills which Ms. Messinger condemns, such as gender bias in the areas of hiring and employment practices, are ingrained in society and therefore, not easily susceptible to legal redress.

Still, Messinger suggests that female involvement in government is desired as it works to the betterment of all. For example, she asserted that if a few "tough mothers," such as herself, sat on the Senate Judiciary Committee, Judge Thomas would have been subjected to a barrage of inquiries, the likes of which he could not deftly evade.

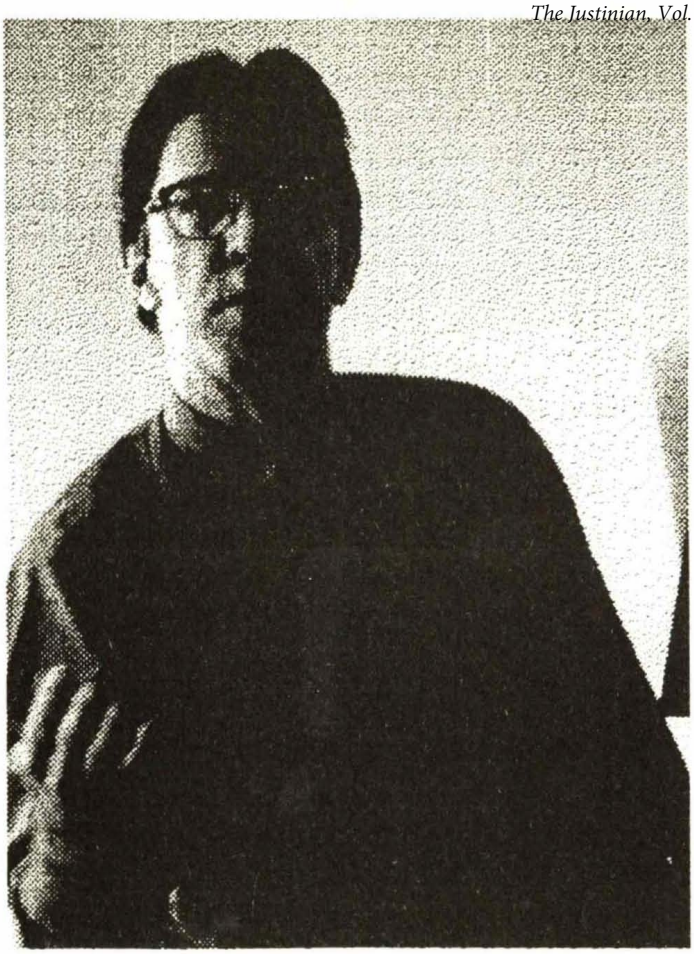
Next, the revered Professor Berger stepped up to the podium. The crowd grew silent as the "Mother of Evidence" began her analysis. Surely, more than any other professor, Berger could teach us the lesson derived from the confirmation fiasco. She began by explaining how the hearings differed procedurally from a trial. For example, she noted that the speech making, inadmissible hearsay, and the leading of witnesses on direct examination which are all prohibited in a court of law were prevalent throughout the hearings, thereby "detracting from the focus on the truth." As for her opinion regarding what type of evidentiary rules would be most appropriate during the hearing, Professor Berger did not stake any clear position.

Professor Kotkin arrived to dismiss the notion that sexual harassment was as novel claim. The cause of action arises from Title VII which, promulgated in 1964, prohibits sexual discrimination in the workplace. Today, two types of sexual harassment actions exist: the *quid pro quo* form involving requests for sexual favors; and the more insidious species, involving a hostile working environment .

The "hostile work environment" is a recent creation of case law. It was not until 1986 that the Supreme Court, in *Meritor Savings Bank v. Vinson*, 477 U.S. 57, concluded that a hostile work environment constituted actionable sexual discrimination under Title VII. In order to establish a hostile environment, the woman must prove that the behavior was "unwelcome," "based upon sex," and "sufficiently pervasive so as to alter the conditions

Professor Berger: (Mother of Evidence)

Professor Kotkin debunking the "Tough Woman" standard.



Professor Madow:
"Call a lie a lie!"or "I could've been a contender!"

of employment and create an abusive working environment" (*Henson v. City of Dundee*, 682 F.2d 897, 903-04.(11th Cir. 1982). The "unwelcome" requirement, asserts Kotkin, "is the key." The woman must prove that the work place was hostile to a reasonable person who happens to be a woman. The difficulty, complains Kotkin, is that a male judge has to decide what offends a reasonable woman. As a solution, Kotkin suggests that a jury not a judge make the reasonable woman analysis. However, some courts have found that even where a particular workplace would deeply offend a reasonable woman, a women that acts like a man may not necessarily be offended. (See generally *Reichman v. Bureau of Affirmative Action*, 536 F. Supp. 1149) According to Kotkin, this "tough woman" defense, often available to lecherous employers, has been "highly criticized." Ironically, while some employers claim the woman is too tough to be offended, others claim she is so sexy that she provoked the despicable response. In fact, in *Vinson*, then Justice Rehnquist, joined by Justice Sandra Day O'Connor and four other justices concluded that "[t]he correct inquiry is whether respondent by her conduct indicated that the alleged sexual advances were unwelcome" where such welcomeness may be determined by the complainant's "sexually provocative speech or dress." (p.68,69) Thus; courts often reason that a masculine woman cannot be offended while a feminine woman provokes abuse. Sadly, it would appear that the only woman given a fair opportunity to prove sexual harassment must be both unattractive and mild- mannered.

Finally, Kotkin lamented that Title VII relief exists only in the form of back pay and injunction. Therefore, a woman who manages to suffer through hostile treatment without quitting is offered no remedy from the courts . On the bright side, a bill now sits before Congress which would provide such a woman relief in the form of punitive damages.

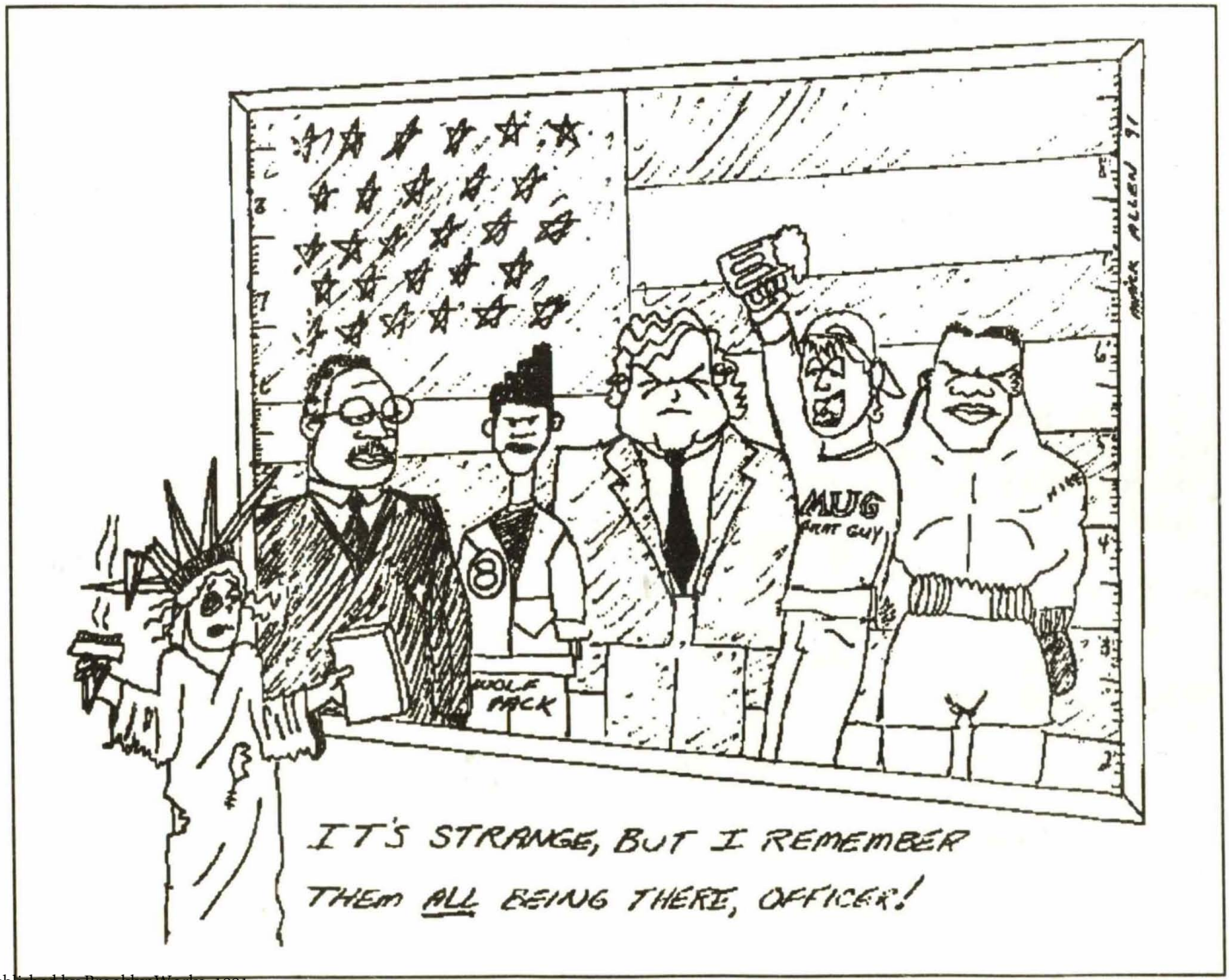
Professor Madow, who teaches Mass Media Law, discussed the media's coverage of the entire confirmation process. Madow criticized the press for "failing to call a lie a lie" by lackadaisi-

Professor Herman: "There is nothing wrong with the process."

cally accepting Thomas's statement that he had never discussed *Roe v. Wade*. The lecture ran smoothly until a member of the audience premised a question with "...considering that the process was going so well until Professor Hill brought forth the allegation..." "Going so well? interjected Professor Madow, "the process had broken down from the start!" Clearly, the professor was referring to the senators' failure to question effectively. The professor offered us one note of optimism, claiming the televised hearings presented the public with two valuable images: a row of knotted ties attached to the heads of 14 middle-aged white men running the show and intelligent, and articulate African Americans in positions of prominence.

Lastly, Professor Herman described the Senate's role in the confirmation process. Emanating from the Constitution's Advice and Consent rule, the Senate's role in the confirmation process is "whatever they want it to mean," claimed Herman. Historically, the Senate has disapproved 20% of the president's nominees. The Senate's methods of persuasion have ranged from blatant to sloppy. For example, the Senate had informed President Hoover to appoint Judge Cardozo or no one. During the reign of President Andrew Johnson (1865-68), Congress reduced the number of justices on the high court in order to prevent the President from appointing one. Professor Herman concluded that while nothing is wrong with the process, "you may believe there is something wrong with what the people do with the process."

While the symposium was officially entitled "Lessons of the Clarence Thomas Confirmation Hearings," the panel taught us no real lesson. All that can be surmise is that we must not stand idly by while sexist Republicans and spineless Democrats politely stab us in the back.



The Standard of Judicial Excellence: Judge Leslie Crocker Snyder

by Teresa Matushaj

Last spring, as part of the Brooklyn Law School Judicial Clinic program, I had the distinct pleasure to work for the Honorable Leslie Crocker Snyder.

Judge Snyder is currently an Acting Supreme Court Justice in Manhattan. She presides over drug cases, primarily A-1 felonies and drug-related murder cases, with a yearly caseload of over 250 cases. These drug cases are not your run of the mill street corner busts but cases that are the result of intensive investigation by both the police and the district attorney's office.

Before Judge Snyder came to work on the bench, she had an illustrious career as an assistant district attorney in Manhattan. While there, she became the first woman to try felonies and the first to try homicides. It was not until 1970, that a woman, namely Judge Snyder, had the chance to try a rape case. She also created the first sex crimes unit in the country. Moreover, her work with sex crimes led to a significant change in the sex crimes laws. As Judge Snyder saw it, "women were being treated in a an inferior manner by the law" and that could not stand. Through the dedication of herself and others, the corroboration requirement of each element of the crime of rape was eliminated. In addition, she co-wrote Criminal Procedure Law §60.42 which limits the cross examination of a victim as to their prior sexual history. When she looks back to her time as an assistant district attorney, she believes that she ultimately was able to do the things she wanted as well as enjoying her

work immensely. However, she does admit that her achievements were "definitely a novelty. People were not always receptive to it on the whole, but it worked out extremely well." Given her accomplishments, that is an understatement, especially at a time when Judge Snyder recalls, "there were a lot of old men on the bench and people did not feel that women belonged in the courtroom." Although, Judge Snyder believes that the problems of gender bias are subsiding, she recognizes that certain obstacles will remain.

Judge Snyder, however, does not find any special difficulties in her relationship with male attorneys. Even if there is tension, it has not impeded her from working with them in the courtroom. The difficulties can occur with the male defendants in her courtroom, some of them seem to resent "having a woman judge talk tough to them and sentence them for lengthy sentences." Her lengthy prison sentences, sentences which are entirely within the bounds of the law, and her high bail have given her the reputation for being one of the toughest and fairest judges on the bench.

Defense attorneys consider her pro-prosecution, however, she doesn't see herself as pro-prosecution, but "perceives that in serious cases defendants should be treated very seriously and that seems to translate in some people's minds as being pro-prosecution." More importantly, she often makes exceptions for cases where the defendants were deserving. For example, working with both the prosecutor and defense attorney, she worked out a plea that kept a misguided youth out of prison. The irony in labeling Judge Snyder as pro-prosecution is that she was once a defense attorney herself for a few years after she left the district attorney's office.

In regards to the drug problem, which constitutes a majority of her caseload, Judge Snyder very strongly believes that there is a great need for more resources, in terms of drug rehabilitation as well as law enforcement. Yet, she reminds us that the courtroom is not the place to get to the root causes of the drug problem. Rather, she states, "we need better schooling, better housing, better efforts to have mentor programs and efforts in terms of beefing up the family so that we don't end up with the violence and other drug-related problems." The sentencing scheme for A-1 felonies stipulates a minimum sentence of fifteen years to life. For some this may seem harsh, but as Judge Snyder sees it, it is necessary to have this stiff sentencing structure so that there is an adequate penalty for the more severe cases.

Judge Snyder has broadened the scope of her message concerning the current drug plague. To that end, she has appeared on a Ted Koppel primetime show entitled, "Drugs, Crime and Doing Time," as well as part of a PBS panel discussion called "Hard Drugs, Hard Choices." Although she no longer deals with sex crimes cases, she continues to educate the public about sex crimes through various lectures across the country. She is scheduled to appear on a PBS panel discussion on sex crimes that will air early next year. Supreme Court Justice Antonin Scalia is also scheduled to be on the panel.

Benjamin Disraeli, a pre-eminent 19th century British prime minister and author once wrote "Justice is truth in action." This definition fits Judge Snyder perfectly. When dealing with the complexities of legal issues, Judge Snyder's objective and non-partisan methodology of dispensing justice stems from a simple ideology: "I call them as I see them. I try to do the right thing and that is all I can do as a judge."

Judge Snyder with her law secretary, Alex Calabrese.

A Look at The Queens District Attorney's Office Under the Stewardship of Judge Richard A. Brown

by Jae Chun Won

Which District Attorney's office has the highest trial conviction rate of New York City's five boroughs? People often respond with Manhattan or Brooklyn, but the answer is the Queens County District Attorney's Office, which may have once been the most underrated prosecutor's office in New York City. This situation, however, has recently changed very rapidly. In the last few months, many favorable articles about Queens District Attorney's Office have been written in the press and mass media. As an example, *New York Magazine* carried an exclusive article on the Queens District Attorney's Office and its newly installed training program for new Assistant District Attorneys.

All the good reports are primarily the result of one man's efforts: Richard A. Brown, the new District Attorney. Judge Brown (because of his former position as judge, it is customary at the office to refer to him as a judge) commands a no-nonsense working presence. It is not surprising, therefore, to often see him with his sleeves rolled up and ready to actively engage his capable staffers with serious work. Within a relatively short period of time, people at the office discovered that Judge Brown routinely begins his working day at six a.m. Clearly, all visitors sensed the excitement and anticipation, shared among the Assistant District Attorneys and supporting staff, concerning the bright future of the Queens District Attorney's Office.

District Attorney Brown brings over 30 years of legal and governmental experience to the office. He is uniquely qualified to serve as the

District Attorney, having served in all three branches of New York State's government: legislative, executive and judicial.

After receiving his law degree from New York University Law School, Judge Brown entered the legislative world; Obtaining positions such as Associate Counsel to the speaker of the State Assembly and Legislative Representative of the City of New York. As the Director of the City's Office of Intergovernmental Relations, Judge Brown coordinated the work of the City's Albany and Washington offices and had political and policy responsibility for the City's legislative programs at the state and federal levels. His experience in the judiciary branch began on September 24, 1973, when he was appointed by Mayor Lindsay as a judge of the Criminal Court of the City of New York. On November 8, 1977, Judge Brown was elected a Justice of Supreme Court of the State of New York, 11th Judicial District (Queens County).

Judge Brown first served in New York's executive branch in his capacity as Counsel to Governor Hugh L. Carey. The position required him to be the Governor's chief legal advisor.

On March 3, 1981, Judge Brown returned to the judiciary as a Supreme Court Justice. On June 1, 1991, Judge Brown accepted Governor Cuomo's appointment as the District Attorney of Queens County and was subsequently elected to the same position by the people of Queens County.

Judge Brown, when asked about his opinion concerning the criminal justice system in New York City responded by stating, "the criminal justice system in New York City was built for the 1930s and there is a tremendous need at the back end of system." He points out that eighty percent of the criminal justice system dollars are provided to the police, and thereby leaving only twenty percent of each dollar to providing for arraignment, hearing, trials, appeals, jails, and supervision. Although, Judge Brown feels that the criminal justice system leaves a lot to be desired, he believes that positive change is possible and he wants to be a District Attorney who can materially effect the quality of life of the people of New York City.

In his endeavors to become the best district attorney possible, Judge Brown does not believe that his transition from judge to district attorney will be difficult. As he sees it: "the duty of public prosecutor is not merely to convict but to do justice. That of course is what I have been doing over the course of my eighteen years on the bench. So, the role of the public prosecutor and the role of a judge are in many respects closely allied in the administration of justice."

Judge Brown insisted that people of New York deserve the best protection and justice and that he will do his best to create a first class prosecutor's office to serve the people. He emphasized that bringing in right people to the office and providing them with superior training and support will be one of the key factors for success. Thus far, Judge Brown has been able to attract many first class professionals such as Professor Barbara Underwood, formerly of New York University School of Law, and Jack Ryan, formerly of the New York State Attorney General's Office. Professor Underwood and Mr. Ryan will, respectively, be heading training and investigations.

The Queens County District Attorney's Office, according to Judge Brown, has tremendous potential to be one of the most professionally and efficiently operated prosecutor's offices in the country. He also predicts that his office will be a major player in monitoring the two major airports and investigating and prosecuting any mid-upper level drug-trafficking and labor racketeering in the county. He also believes that the Queens District Attorney will be able to foster a new sense of trust in the criminal justice system and be able to bridge the gap between the office and the various minority communities.

Judge Brown concluded my interview with him by stating that he is always looking for dedicated individuals who want to serve the community and administer justice and he is strongly encouraging Brooklyn Law School students to take advantage of the internship and career opportunities available at the Queens County District Attorney's Office. It seems quite clear that under the command of Judge Brown, the Queens District Attorney's office will become a premier prosecutor's office in the nineties and definitely a place to be for aspiring law professionals.

From the Desk of the SBA President

SBA UPDATE

By Marni J. Schlissel

THE SBA SUGGESTION BOX

"What have you done for me lately?" The SBA is asked that question all the time. So, now it's our turn to ask a question ... What do you want us to do? In order to effectively represent you, we need to know what is on your mind. In order to facilitate better communication, the SBA Suggestion Box is awaiting your questions, concerns and comments. Located in the lobby, this beautiful electric blue box is starving for attention! The SBA Student Affairs Committee, chaired by Simon Bock, will respond to issues presented in future editions of *The Justinian.*

A BUDGET WELL DONE

Thanks to the work of the SBA Treasurer, Eric Schwartzman, the SBA balanced its budget with few bumps and bruises. The budget allocation system was re-crafted this year in order to afford each student group its due process. While it took ***many*** hours to properly allocate funds, the final product was a fair budget package and the SBA's first finance policy. So, if you see Eric walking down the hall give him a pat on the shoulder for a budget well done! And to all the delegates working on the Budget Committee I have one thing to say ... NO MORE PIZZA!

HOMELESS DRIVE

It is almost time for the annual Holiday Homeless Drive. The SBA will be working hard with Phi Delta Phi and the Christian Legal Society to top last year's successful drive. Donation boxes will be placed near the entrance to the cafeteria to collect food and clothing for the homeless. Any students interested in helping should contact Homeless Drive Chair-person Kim Gilman in the SBA office. Please be generous!

ON SMOKING REGULATIONS ... AGAIN

Compliance with state smoking regulations is mandatory. Please smoke in designated smoking areas only.

HAVE A HAPPY THANKSGIVING!!!!

An early holiday gift ... there will no longer be a fee to drop/add classes!

The Treasurer Speaks...

YOUR $30 - WHERE DOES IT GO ?

By Eric S. Schwartzman - SBA Treasurer

Each student at BLS pays a mandatory $30 per year in student activity fees. These fees fund the roughly 30 student groups that operate within this school. The student activity fee monies are separate from the fees each of us pays towards the campus publications and the moot court honor society. This year there are 1,455 students enrolled at BLS. At $30 per student that works out to be $43,650 that can be allocated among these groups as well as SBA itself. During a special House of Delegate's meeting (held October 25th) the allocation of these funds for the 1991-1992 term was ratified.

The process of allocating the funds actually began in mid-September with each group submitting a budget **request** application. This year a record of approximately $73,000 was requested. In the past the process had been rather messy and from what I'm told somewhat adversarial usually concluding in a late night session where delegates and group leaders all left with a sour taste in their mouths.

This year it went much smoother except for about 2 to 3 days where many of the groups did want to kill me. Once the groups had submitted their **requests** a special budget committee was set up within the House of Delegates. This committee met on a Saturday and Sunday, October 19th and 20th when each group was invited for a "scheduled" period of 15 minutes to speak to the committee and describe their hopes and priorities for the current year and basically why they should be given the funds they requested. [Note that each group in the end got to speak on average for 45 minutes]. Each group was made aware of the budgetary constraints in place (i.e. that somebody was not going be happy - because from $43,650 you can't squeeze $73,000). The committee also informed the groups of the guidelines being used across the board to ensure fairness among the allocations. These guidelines focused on the expenditure areas of food, liquid refreshments, and speaker fees/costs. The committee met from 12 noon to 10 p.m. on that Saturday and from 11 a.m. on Sunday until around 1:30 a.m. that Monday. Each committee member should be congratulated for their dedication.

On Tuesday, October 22nd the groups were informed of the budget committees proposed budget package that was going to be submitted to the House of Delegates for ratification. It was at this point that the groups became somewhat testy in that many felt they had been "cut." It seems that many forgot that somebody was going to be unhappy. That Friday, the House of Delegates met in **full** (?) to vote on the budget package. The groups in random order were given the opportunity to speak to the full House of Delegates for up to three minutes each as per the SBA Constitution. (Last year's SBA Constitution Committee should be given a hand at this point - your work definitely paid off here). This final meeting started at 4 p.m. and finished up at around 10 p.m. Overall I believe the process went a bit smoother than it ran in the past. (Nothing personal Ramon!)

The individual group allocations for the 1991 - 1992 term are as follows:

AALSA	$2,078
ABA-LSD	900
AMNESTY INTN'L	180
ANIMAL RIGHTS	500
BLSA	2,094
BLSPI	1,876
CLS	1,037
COMPUTER	400
DEMOCRATIC	325
EASLS	844
ENVIRONMENTAL	1,095
EVENING LAW	300*
FEDERALIST	300*
HILSA	2,306
INTERNAT'L	654
INTRAMURL B-BALL	1,900
IALSA	$1,475
JEWISH HERITAGE	825
JEWISH LSA	400
JUSTINIAN	5,000
L.A.W.	950
LAWYERS BUS DEV	200*
LEGALS	525
NAT'L LAW GUILD	1,148
PHI DELTA PHI	755
REAL PROPERTY	200*
REPUBLICANS	525
SECOND CIRCUS	5,000
WOMEN'S REPORTER	300*

Groups denoted by an asterisk are new groups that at a maximum were allocated $300.

SBA Treasurer, Eric Schwartzman, surveys the results of his draconian budget cuts as evidenced by the K-rations served at a recent student organizational function.

BROOKLYN LAW SCHOOL STUDENT BAR ASSOCIATION
FALL, 1991 EVENING LAW STUDENTS' QUESTIONNAIRE

Brooklyn Law School's Student Bar Association is the liaison between the student body and the faculty, administration and staff of BLS.

This questionnaire has been designed to help the SBA to become more aware of the concerns and problems of evening law students.

Please deposit this questionnaire in the Ballot Box located in the lobby at 250 Joralemon Street by next week. Thank you.

Marni Schlissel, President, SBA Eric Wollman, Eve. V.P., SBA

I. STUDENT'S PROFILE (circle selection)

1. I am an evening/parttime student in my ____ year of studies.

a) first b) second c) third d) fourth

2. I attend classes ____ nights a week.

a) one b) two c) three d) four

3. I belong to ____ clubs, publications, Moot Court.

a) none b) 1,2,3,4,5

IF YOU ANSWERED NONE TO QUESTION 3 PLEASE ANSWER 3A and 3B, OTHERWISE GO ON TO THE NEXT SECTION.

3A. I do not participate in any extracurricular activities because:

a) I have no spare time b) there are none that interest me
c) the meetings are held at times that conflict with my employment
d) other:

3B. I work

A) full time (35 hours or more)
B) part time
C) I don't work.

II. QUALITY OF CAMPUS LIFE (please pick the best answer)

4. I patronize the cafeteria:

a) frequently b) once in a while c) only during breaks d) not often e) never

5. The food service at BLS is:

a) excellent/good b) adequate c) inadequate d) poor

6. When I get to the cafeteria:

a) there is a good selection of offerings b) usually I find something I want c) often there is little or nothing left

7. I would like the following vending machines installed:
a) fruit juice b) coffee/hot chocolate c) fresh fruit/yogurt d)cigarettes e) the current snack/soda/ice cream machines are adequate

8. The Book Store could be improved if:
a) it kept later/weekend hours b) it had a better inventory of new books c) it kept a wider selection of used books d) its fine as is e) other:

9. I buy books from other sources:
a) from other students b) from off-campus bookstores c) mainly from the BLS bookstore d) a mix of all of the above.

10. I use the Library:
a) only during normal class hours b)late nights and weekends c) a mix of the above
d) I dont use the library.

11. The Library's hours are:
a) adequate for my research/study needs b) insufficient c) open more than needed; a good place to cutback service.

12. When I'm at BLS at night/weekends/holidays:
a) I feel safe b) I think security should be increased with uniformed security officers roving the floors and stairwells c) I haven't given it much thought.

COMMENTS:

PLEASE DEPOSIT THIS IN OUR SURVEY BOX IN THE LOBBY AS QUICKLY AS POSSIBLE. THE SBA WANTS TO HEAR FROM YOU, THE EVENING STUDENT. THANK YOU.

Moot Court Update

by Idette Grabois

Every student, as part of their legal writing course, will have the opportunity to compete for membership on the Moot Court Honor Society. Each student writes an appellate brief and presents an oral argument before a panel of attorneys, faculty and Moot Court members who evaluate the student's performance. Successful students advance to subsequent competition rounds administered by the Moot Court Honor Society. The most successful advocates are invited to membership in the Moot Court Honor Society.

Additionally, students may be chosen from appellate advocacy courses or the trial advocacy competition in their second year. Members of the Moot Court Honor Society are selected to compete in appellate and trial competitions around the country.

This year, Brooklyn Law School will be hosting the Jerome Prince Evidence Competition. Thirty two schools from all parts of the nation will compete. Brooklyn Law School will also host the regional rounds of the Philip C. Jessup Competition. The Jessup competition is a worldwide International Law Moot Court competition.

Congratulations to the **Privacy Team! Laura Amos** and **Jennifer Baum** advanced to the octofinals in a field of 40 teams at the John Marshall School of Law in Chicago. They zealously argued that disclosure to a doctor's colleagues that he was infected with the AIDS virus was a violation of his privacy rights.

The **National Team** met their deadline in completing their brief and will be arguing on November 20th on the fair use of copyrighted materials and the right to a jury trial under the 7th amendment. **David Mandelbaum, Joseph Mirabella** and **Robert Williams** were selected by faculty and Moot Court members to represent Brooklyn Law at this prestigious National Moot Court Competition. We wish them luck in advancing past the regional rounds in New York City to the nationwide competition where they will be competing against 226 law schools.

Still to come this semester are the **Environmental Law** and **F. Lee Bailey** Competitions. These teams are now writing their briefs to meet November 29 and November 25 deadlines.

Holiday Food and Clothing Drive

Volunteers are Needed to Solicit Donations from Local Establishments.

Volunteer Sign-up Sheets are Located in the SBA Outer Office

Give the Gift of Time, It's Free and Most Genersous

Starting Monday, November 18, 1991
Ending Friday, December 13, 1991

1991-92 Intermural Moot Court Teams

Administrative Law

Kenneth Brown
Jeff Melcer
Elizabeth Mihalyek-
team editor

Constitutional Law

Idette Grabois
Jennifer Naiburg
Ilyssa Rothman

Environmental Law

Kim Gilman
Marcy Norwood
Mike Ulysal

Evidence

Lee Trink
Phoebe Wilkinson
Stephanie Wissinger

F. Lee Bailey

Norman Leon
Karin Segall

Kelly Carr
Anthony Zepf

International Law

Brian T. Frawley
David Kim
Trayce Klein
Rene Redman
Helene Werner-team editor

Nassau Trial Team

Helene Fisher
Gary Heller
Richard Noll

Products Liability

Stacey Charkey
Beth Chetkoff
Benay Cook

Securities Law

Michael Boyajian
Marty Diamond
Carmine Venezia

Tax Law

Jewell Espositi
William Inzerillo
David Lyness

Privacy Law

Laura Amos
Jennifer Baum

1991-1992 National Team

David Mandelbaum
Joseph Mirabella
Robert Williams

Trial Advocacy

Team A

Stacey Frascogna
Melissa Lukeman
Samuel Rudman

Team B

Suzzane Triebitz
Stevis Landis
Tina Giampino

Alternatives

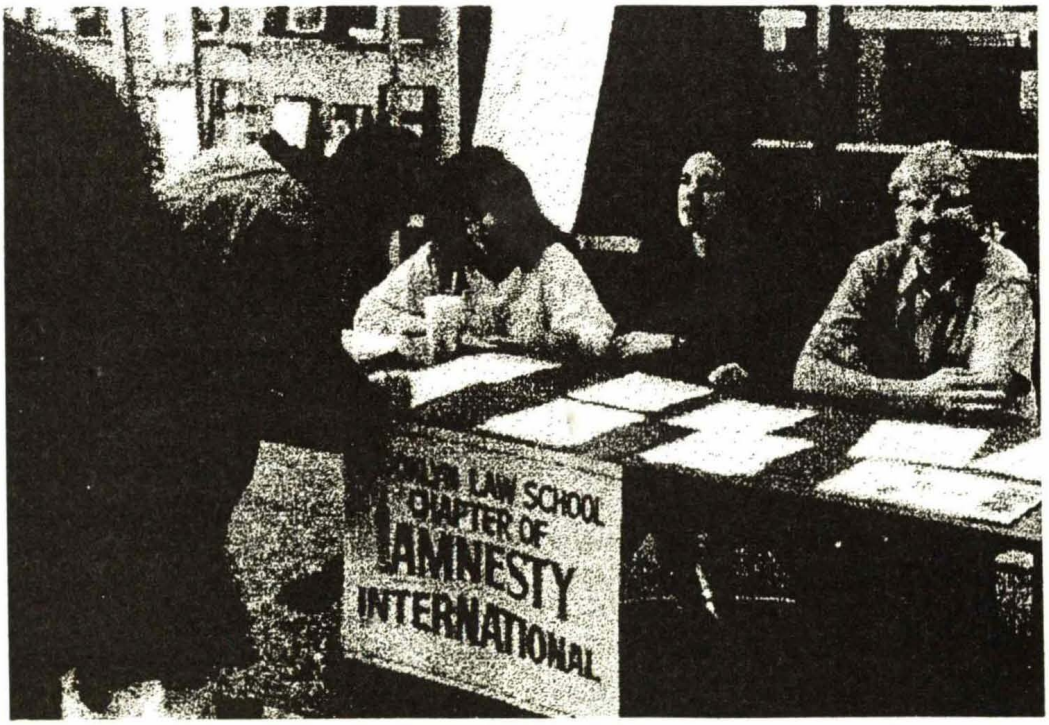
Adam Firestone
Karen Grottalio

Amnesty International
by Joseph Bondy

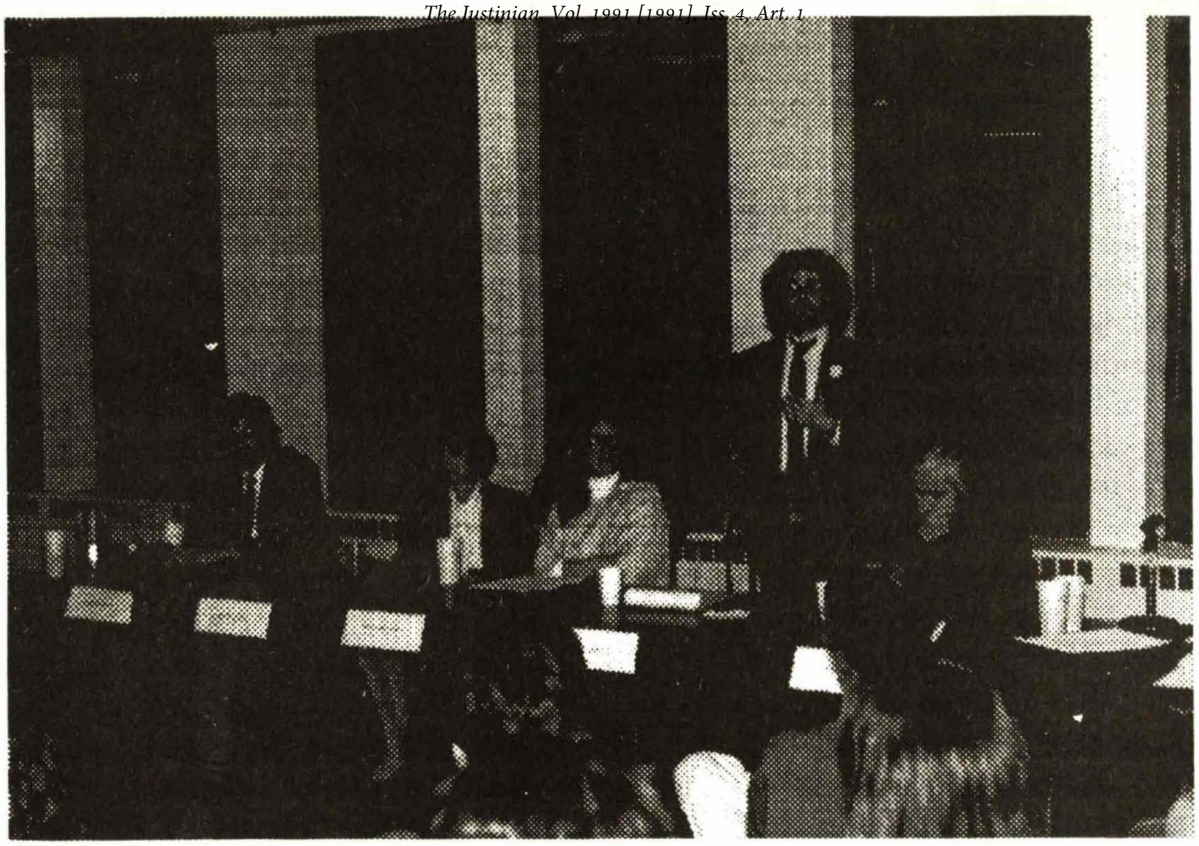
Recently, the Brooklyn Law School chapter of Amnesty International collected over 100 petition signatures from the Brooklyn Law School community on behalf of Ali Ardalan, a 75 year-old lawyer who was imprisoned following a secret trial. At his trial, Mr. Ardalan was denied legal counsel and no observers were permitted to attend. His arrest stemmed from his involvement with an open letter sent to Iranian President Rafsanjani, which criticized the government's failure to uphold constitutional rights and freedoms. His case violates Articles 14(1) and 14(3)(d) of the International Covenant on Civil and Political Rights, which provides that trials shall be public and that those accused shall have the right to legal counsel. Iran is a party to the International Covenant. Additionally, Mr. Ardalan was recently transferred from Evin prison to the Ministry of Intelligence Detention Center where he is now being kept in solitary confinement with no natural light and inadequate ventilation. In view of Mr. Ardalan' old age and his history of heart trouble, these prison conditions raise concerns about his health. Amnesty International encourages the Brooklyn Law School community to write diplomatically worded letters expressing their concern over the continued imprisonment of Mr. Ardalan. Letters should be sent to:

H.E. Dr. Kamal Kharrazi
Ambassador Extraordinary and Plenipotentiary
Permanent Representative to the United Nations
Permanent Mission of the Islamic Republic of Iran
622 Third Avenue, 34th Floor
New York, New York 10017

These types of petitions and letters to governments have proven effective in the past. For example, last year the Brooklyn Law School community collected over a hundred signatures on behalf of Mr. Esber Yagmurdereli, a Turkish lawyer who was imprisoned in 1985. Mr. Yagmurdereli had been serving a 36 year sentence for his political activities. Like Mr. Ardalan, Mr. Yagmurdereli's trial had failed to conform to internationally accepted standards for fair trials. In August of this year Mr. Yagmurdereli was released by the Turkish authorities.



Members of the BLS chapter of Amnesty International at work collecting student signatures.



The BLSPI Faculty-Alumni Forum

by Lance W. Sealey

Last month, BLSPI hosted a fascinating, well-attended (by 90 people!), Faculty-Alumni Public Interest Forum. This is one of two forums BLSPI is sponsoring this academic year.

The participants were BLS alumna Judge Ruth Moskowitz of the New York State Supreme Court; Professor Ursula Bentele, who teaches Appellate Advocacy and Criminal Appeals Clinic; Professor Caroline Kearney, who teaches the Family Law and Child Support Clinics; Professor Bailey Kuklin, who teaches Legal Process and Torts; and BLS alumnus Scott Sommer, Esq., an attorney with Brooklyn Legal Services.

The forum consisted of the panelists relating the circumstances that led them to the practice of public interest law and their experiences as public interest attorneys, followed by a question-and-answer session.

Professor Kuklin's, Judge Moskowitz's and Professor Bentele's concern with public interest law began during the Civil Rights Era of the 1960s. After a teaching fellowship at Stanford and a two-year involvment in the Peace Corps in Nepal, Kuklin received a Reginald Heber Smith Fellowship to work at the Westchester County branch of the Legal Aid Society. At that time, Kuklin explained, there were community action programs aimed at providing legal counsel and empowerment at the grassroots level. "We worked on high impact legal reform cases," Kuklin said. "We primarily sued the government. Although we won in court, the government was slow to implement the reforms mandated by the judgment of the Court." Finally, many of these community legal efforts lost their government funding, because it became more and more difficult for the government to justify funding an organization that was constantly taking it to court.

Professor Kuklin characterized the present day job situation as "desert days" for the aspirant to public interest law; he predicted that conditions will be better "ten years after you graduate."

Whereas Professor Kuklin's public interest legal work seemed to originate from academia and the Peace Corps, Judge Moskowitz's impetus for public interest law came from within a jail cell. During a forty-day jail sentence upon a conviction for ordering coffee in he black section of a coffee shop in Jackson, Mississippi, Moskowitz reasoned that although the causes furthered by such arrests were good, she "couldn't keep getting arrested for the rest of (her) life". Understanding that she could impact the civil rights movement more effectively as an attorney, she enrolled at BLS.

After graduation, when her application for em-

ployment was rejected by the NAACP because she "wasn't black and hadn't graduated from Columbia", she represented Legal Aid clients for several years before assuming a seat on the bench, where she could conceivably have an even greater impact on the poor and disadvantaged.

Like Judge Moskowitz, Professor Bentele also ran into problems when she tried to integrate a segregated facility, a roller skating rink in Kalamazoo, Michigan. However, unlike Moskowitz, Bentele knew from the eighth grade that she wanted to be an attorney.

Upon graduation from law school, after working for "Citizen's Alert", an organization that investigated police brutality complaints in 966 Chicago, she located a law school alumnus who was working for Legal Aid in New York and worked with him in the Criminal Appeals Bureau. Bentele is involved with Legal Aid criminal appeals to this day.

One of Professor Bentele's most memorable accomplishments occurred while she volunteered to work on death row cases for the NAACP. In a case in the South in which jurors had heard testimony for only one day, a judge refused to call a recess until the jury reached a decision. Bentele found out that the lone juror who would have voted for acquittal had been dismissed in mid-trial, and she appealed. The appellate court ruled in the defendant's favor, and the defendant is alive today, thanks to Professor Bentele.

Unlike Professors Bentele and Kuklin and Judge Moskowitz, Professor Kearney faced a different set of social problems upon graduation from NYU Law School in 1975: she was seeing a general de-emphasis on human and civil rights in the Unites States, illustrated by then-Attorney General John Mitchell's statement that he and the Nixon Administration would "turn things so far to the right, it'll make your head spin."

After working in a criminal-reform agency in Hartford, CT, she represented criminal defendants for Legal Aid for five years. Often she was disrespected and unappreciated, even by her clients. One judge asked her why she was "wasting (her) life and ruining (her) career representing scum like this."

Professor Kearney then switched to family law, and that has been her focus ever since: first as a family law specialist with DC37, then as a hearings adjudicator, and for the past five years as an instructor in the Family Law and Child Support Clinics at BLS.

Mr. Sommer's current practice at Brooklyn Legal Services overlaps Professor Kearney's family law concentration in that Sommer focuses on a certain type of conflict that plagues many families: housing disputes.

Mr. Sommer's first involvment in the housing arena began while he was an evening student here at BLS; he worked full time as a tenant organizer. Sommer's proudest day as an attorney was the day in which he obtained a warrant on behalf of a tenant who had been unjustly evicted from his apartment. Sommer personally oversaw the marshal, who is usually accustomed to carring out physical evictions, put furniture back into the apartment. (Is this an "inviction"?)

The forum ended with a question-and-answer session. Among the issues raised were employment at public interest organizations other than Legal Aid or Legal Services, the possibility of law firms being required to do *pro bono* work and sexual harassment in court.

The panel helpfully and industriously provided interesting ideas as to the pursual of public interest employment. Besides the usual suggestion to speak with Karen Comstock, Professor Kearney suggested talking with professors and alumni and looking for opportunities in legal reform organizations and legislatures. Professor Bentele suggested looking for work outside of New York. Mr. Sommer, looking at Judge Moskowitz, suggested clerking for a judge who was formerly a public interest lawyer and looking toward judgeships later in our legal careers.

However, some of the most riveting discussion during the Q & A was provided by Judge Moskowitz on *pro bono* work and courtroom sexual harassment. Surpringly, Moskowitz is against required *pro bono* work. "Most lawyers in two-lawyer firms really can't afford to do *pro bono* work," Moskowitz pointed out. "And then, if they have to do it, maybe they won't do a good job. Is the government willing to say to a physician, 'You have to do three free operations a year?'"

Later, Her Honor provided hope for women regarding sexual harassment in court. After relating comments she has received about, for example, her fitness as a "young lady" to represent criminal defendants, her skirt lengths and being called "honey" by male attorneys even as a judge, she related: "Conditions are much better than they used to be. You should be treated very fairly. Judges may unconsciously be biased. Sexual harassers could go before the Stern Commission and be disbarred. Stand up for yourself. Stand up for your clients."

Sean Ryan, a third-year BLSPI delegate, adjourned the Forum by displaying the plaque BLSPI was awarded by the National Association for Public Interest Law: "Most Growth for a Member Program 1990-1991".

PHI DELTA PHI

By Laura Amos

Hopefully, everybody saw the signs posted around school about the meetings, reception and initiation to Phi Delta Phi. The oldest and best legal society continued the tradition of inducting respected members of the legal community into its hallowed halls.

Professor Gilbride, Professor Farrell and Professor Comerford presided in the ceremonies on Friday night, November 15, 1991. Assisting in the ceremony were Marlene Vasquez , an attorney for the Legal Aid Society, Criminal Appeals Division and Laurie Bigman, 1990 Magister of Phi Delta Phi. The new initiates, present members and alumni went to dinner afterward to celebrate.

PHI DELTA PHI in conjunction with the SBA, Christian Legal Society and *The Justinian*, is running a food and clothing drive at this time of thanksgiving and holiday spirit. Be generous and join in the effort. The drive will start, November 18 and end December 13. Help is needed to get people and food establishments to contribute.

Nothing in this school can be accomplished without the basic donation of time and concern by members of the BLS community. Become one of the doers not just a watcher.

PHI DELTA PHI is also sponsoring in conjunction with the Italian Club a sing along with several choral groups from local Senior Citizens Centers during the Christmas Party on Friday, December 13, 1991.

PHI DELTA PHI is pleased to announce that all first year students are invited to join the fraternity this spring and are invited to all PHI DELTA PHI events. The co-ed fraternity based on ethics and honor has over 160, 000 alumni members. The fraternity is mostly last year students and will cease to exist without the interest of worthwhile and dependable people to carry on the tradition of charity and ethical guidance.

So why does the PHI DELTA PHI symbol have a Skull & Crossbones in a crest? To be continued.

CLS

by William Smyth

The Christian Legal Society recently held its National Conference at St. Simons Island, Georgia. The 450 law students and lawyers from around the country who attended were treated to a host of excellent speakers. Missouri Governor John Ashcroft spoke about being a Christian in politics. He challenged those in attendance to stand up for what they believe and to make choices that reflect God's eternal values. U.S. District Judge Kenneth Ryskamp, who was recently nominated for a seat on the 11th Circuit Court of Appeals, shared about his experience with the Senate Judiciary Committee and his thoughts about the nomination process. It was a very timely topic since the nation's attention was focused on Clarence Thomas' nomination to the Supreme Court. Other speakers included Dr. Richard Halverson, who is the Senate Chaplain, Prof. Mary Libby Payne of Mississippi College School of Law, and Steve McFarland, who is the Director of the Center for Law and Religious Freedom. Mary Szto, who is the Chairperson of the New York City Christian Legal Society, moderated a panel discussion on diversity in the workplace. The discussion focused on the changing face of the legal profession and the effects that women and minorities are haying on the practice of law. Conference attendees were offered a Variety of seminars to choose from. Some seminars could be taken for CLE credit while others were offered for personal enrichment. Students were able to attend Choice of Career Seminars taught by lawyers who practice in their fields of interest. Despite a very full schedule, it was a refreshing break from the law school routine and both Jae and I have returned with some great ideas for the Brooklyn Law Chapter of CLS.

The measure of a great society is the way it treats the neediest.

Volunteer for the Holiday and Clothing Drive!!

International Law Society

by Scott Richman

!Hola! Bonjour! Shalom! Buon giorno! Greetings from the International Law Society of Brooklyn Law School, an organization dedicated to educating students about important international legal issues, as well as providing practical information about international law careers. We're a rapidly expanding group, whose membership this year has more than doubled as many new first-years became members. We encourage anyone interested who has not yet joined to attend our general meetings, as well as the various programs that we sponsor throughout the year.

Most of our programs this semester were designed to educate Brooklyn Law School students about current international issues. We focused mainly on bringing speakers to campus, such as Armen Khachaturian, a visiting professor from Kiev State University who discussed the independence movements in the Soviet Union. He noted that through more than 70 years of oppression, nationalist movements have stayed alive in the Soviet Union. Today, the slogan "proletariat of all countries unite" has been changed in Professor Khachaturian's republic to "proletariat of the Ukraine unite." Though he is worried about the future of this different system, he is very optimistic that it will succeed and strongly encourages participation from the west. Also, from a legal standpoint, he is excited to bring back information about how business is regulated in a market economy and how the Ukraine's new constitution can greater reflect democratic ideals.

Professor Hernandez speaking on international money laundering.

We also co-sponsored a program with HILSA on November 4, featuring adjunct Professor Berta Hernandez. She dealt with the growing privacy issues in the international arena that have arisen with increased efforts to stop money laundering. Her main concern is the extent to which the government can appropriate tainted money, specifically, how far down the line they can freeze funds. She also cautioned that many countries have different privacy laws; what may be legal in Brazil may not be legal in the United States. Thus, there must be a "balanced approach" to curbing such activity. "We must be careful where we throw the net."

Most recently, Professor Ken Abbott, a professor from Northwestern Law School who was in Brooklyn for the Brooklyn-Law-School-sponsored GATT (General Agreement on Tariffs and Trade) symposium, presented an overview of the North American Free Trade Agreement. Though many of the details of the agreement have been refined with Canada, the United States still appears to be at a preliminary stage in its discussions with Mexico. Many felt that the negotiations would conclude in 1991, but it does not appear likely that anything will materialize before Spring of 1992. In addition, many questions have been raised about the proposed agreement's effect on American labor, making it clear that this will be an important presidential election issue in 1992.

Finally, ILS sent 5 delegates to the annual International Law Weekend, jointly sponsored by International Law Association, the American Society of International Law and the Association of the Bar of the City of New York. Thomas Pickering, U.S. Ambassador to the United Nations, was the keynote speaker and the programs included a panel on the claims against Iraq arising from the Gulf War, a discussion of the multinational law firm in the 1990's, a panel on the effectiveness of trade sanctions, and many other timely topics. Since Brooklyn's ILS is a member of the International Law Students Association, a national organization, ILS members attended the weekend free of charge.

We have many more events such as these planned for the second semester, as well as an international careers panel, a practical discussion on how to research international issues, and presentations of students' papers. In addition, we hope to send several students to a symposium being held at Albany Law School in February dealing with international war crimes.

It's not too late to join. As soon as the new semester starts, we will have a general meeting which all interested students are strongly encouraged to attend.

Real Property and Estates Association

by Charles Hampshire

Here we are approaching the end of the fall semester and the thoughts of industrious Brooklyn Law Students begin to focus on the inevitable culmination of weeks of study: FINAL EXAMS. However, despite this fact, there are opportunities to momentarily leave the world of academia by participating in one of the numerous organizations established at BLS. One such organization is the Real Property and Estates Association.

The Real Property and Estates Association is comprised of a group of students interested in the study and practice of Probate, Trusts, and Real Estate Law. RPEA seeks to offer students the benefit of contact with both practicing attorneys and other BLS students who share similar interests. The organization provides students with the opportunity to explore the areas of Real Property and Estates by offering a forum for students, faculty, attorneys, and others to discuss their experiences and viewpoints. In order to meet these goals, RPEA will sponsor several lectures to be held throughout the year with speakers from various New York law firms, agencies, and schools. Speakers are expected to address such issues as the impact of the 80's, the role of the attorney in today's real estate market, and perceptions of what lies ahead in the areas of Real Property and Estates. Many of the speakers are also graduates of Brooklyn Law School and can offer insight into the transition from Brooklyn Law Student to practicing attorney. Lectures will be held in the early evenings and are open to all students.

In addition, RPEA will hold various general meetings throughout the year to discuss new ideas and developments. All are welcome to attend.

In conclusion, I would simply like to urge all students to take advantage of any one or more of various organizations present at BLS by offering your active participation. BLS organizations provide a wide diversity of thought and interests providing something for virtually everyone.

P.S. If you have any questions or comments, please contact us through the RPEA mailbox in the SBA office.

Virus Protection

by Austrack Fong

In the customary minefield of law school necessities, the personal computer looms verily large. Computers have become essential to law school life. Their importance stems from the varied purposes served. Chief among these being the writing of memorandums and briefs. Other important uses include mass mailings, spreadsheets work, and legal research — via home access to Lexis and Westlaw. Computers, therefore are quite clearly a worthwhile investment.

However, along with the ambit of goods which computers provide resides the downside of complexities of use and dangers of viral infections. The importance of documents, produced with the help of computers, to all cannot be understated. Therefore, it is essential that users of computers take safeguards to protect both their work products, i.e. papers, as well as their hardware.

With regards to papers, I would advocate that all student make backup copies of all vital documents. Users of Wordperfect, the dominant word processing program, should take advantage of the program's abilities to automatically create back-up copies of current work. This feature can be activated by going to the setup menu, (Press Shift-F1) and entering the appropriate command to change the environment variables. Once there you will be questioned as to whether you wish the computer to make backups, and the time interval in which to make such backups. Answer these questions affirmatively; 15 minutes is a good interval to use. If you did everything correctly you should not have any foreseeable difficulties should you either accidently erase your file or suffer from an external power failure.

Concerning the question of computer safety. I would advise everyone to get some form of protections from virus. A virus is a rogue computer program, usually written by some fiendish fellow, which basically does either of the following: 1) reformats a hard drive, thereby destroying all data on such hard drive; 2) rewrites or replicates itself on a disk and eventually filling up the entire disk with copies of itself; 3) makes a program or file unreadable. Along with the damage to data, viruses may also be capable of widespread physical damage to a computer system. Your computer may simply fail to function at all if infected.

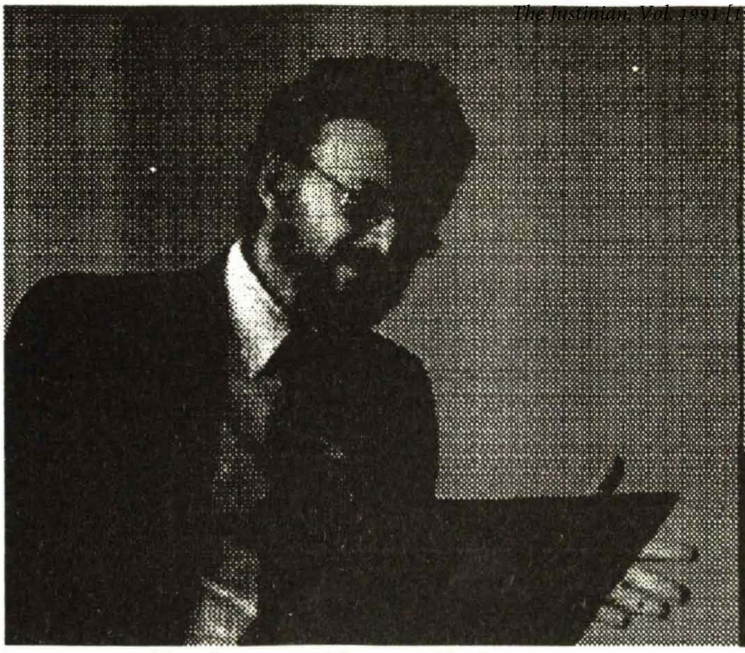
You are probably inquiring "how does one catch a computer virus?" The answer is simple: You can get a virus by putting your diskette in a computer which is already infected. Once infected, your disk will transmit the virus to your computer at home and any subsequent computer which you should come into contact with. Viral infection may occur at work, school, or through contact with a friend's computer. While the school, via the computers available in the library, has attempted to maintain a virus free computer environment for student use, through elaborate protection schemes, including scanning of student diskettes and the removal of keyboards to prevent unauthorized use, viruses still continue to remain a daunting problem.

The next logical question to ask is "how do I know if I have a virus?" Although there is no clear answer to this questions, one can frequently observe the symptom of viral infections. These usually take the forms of documents or files either changing size or being totally eliminated, therefore watch out for missing files. Additionally, infection may be gleaned from observing whether the performance of your computer applications is slower than before, or if your computer constantly "freezes up."

If you observe these symptom on your computer, you probably have some sort of viral infection. In order to disinfect the computer you should invest in some good computer protection. I recommend that you use the "anti-viral" programs Scan and Clean. These programs are distributed under the "shareware" concept, which allows the users to try the program free for a limited time, to see if it meet their purposes. If the user finds the program worthwhile, the author of the program requires that the user pay a registration fee. Payment of the registration fee is operated under the the "honor system." (You remember what that is don't you?)

The latest version of Scan and Clean are Scanv84 and Cleanv84. Scan, which is short for Viruscan, will examine your disks, floppies and hard-drives, for over 700 viruses and their related strains, which accounts for over 98% of all the known viruses. If Scan discover the presence of a virus, It will notify you of what the virus is, and from there you can use Clean to remove the offending program. Clean can often remove the virus safely from your disk, while preserving the integrity of your file. In some cases it can restore your programs to working condition by undoing the damage caused by the virus.

You may get these two programs from any Bulletin Board System, or through Compuserve and other like online computer services. Or you may seek out Brooklyn Law School's own Computer Society. If you drop a note in their mailbox at the SBA office, which is in the basement, I am sure that they will be able to accommodate your needs.



Professor Henry Holzer

Timothy Maguire

Symposium: Reverse Discrimination in Law School Admissions

by Austrack Fong

On Wednesday, November 6, 1991, the Federalist Society held as their first function of the year, a forum on the topic of reverse discrimination in law school admissions. The appearance of two speakers highlighted this rare mid-afternoon gathering. The first speaker was Brooklyn Law School's Professor Henry (Hank) Holzer, followed by Timothy Maguire, a former Georgetown Law School student, who exposed that school's alleged preferential admissions policy favoring minorities. Throughout the meeting, both men generally stressed the need to end the use of race as a factor in law school admissions because of its unjust results.

Speaking first, Professor Holzer explained the facts of the CUNY Law School admissions case which he is currently handling. The facts, he stated were very simple: David Davis, a middle-aged white male is suing for admittance to CUNY Law School on the grounds of racial discrimination. Over the course of eight years he has applied and been rejected eight times, despite the fact that he has higher grades and LSAT scores that many of the minority students already accepted. The plaintiff's case is, therefore, premised on a violation of the Fourthteenth Amendment's bar against "state actors" engaging in discriminatory practices. Professor Holzer first argued that since CUNY Law School is a public law school, it qualifies as a state actor and its discriminatory admissions policy could not "heretofore" stand!!! He believes that the city's goal of achieving multicultural representation in the legal profession, in isolation, did not justify the depravation of his client's equal protection rights.

Professor Holzer harkened to the quote made by the first Justice Harlan (dissenting from the majority opinion *Plessy v. Fergusion* ,) that the Constitution is "colorblind," in order to point out that affirmative action plans are unconstitutional because people of different racial makeup are not treated equally. Holzer continued by stating that he was in agreement with *Board of Regents v. Bakke*, and *Brown v. Board of Education of Topeka*, and in disagreement with *Korematsu v. U.S.*, because the Court dismissed or should have dismissed the

negative use of racial classifications. Regarding *Bakke*, Professor Holzer agreed that race may be used as a factor, in determining admissions criteria, so long as it was not the determinative factor. If race was one of 20 factors then it could and would be permissible. He went on to say that given two equally-qualified candidates, of different racial background, for admissions purposes, it may be appropriate to further the goals of student body diversity by accepting the minority student. However, in practice it is almost impossible to find two truly equally qualified applicants.

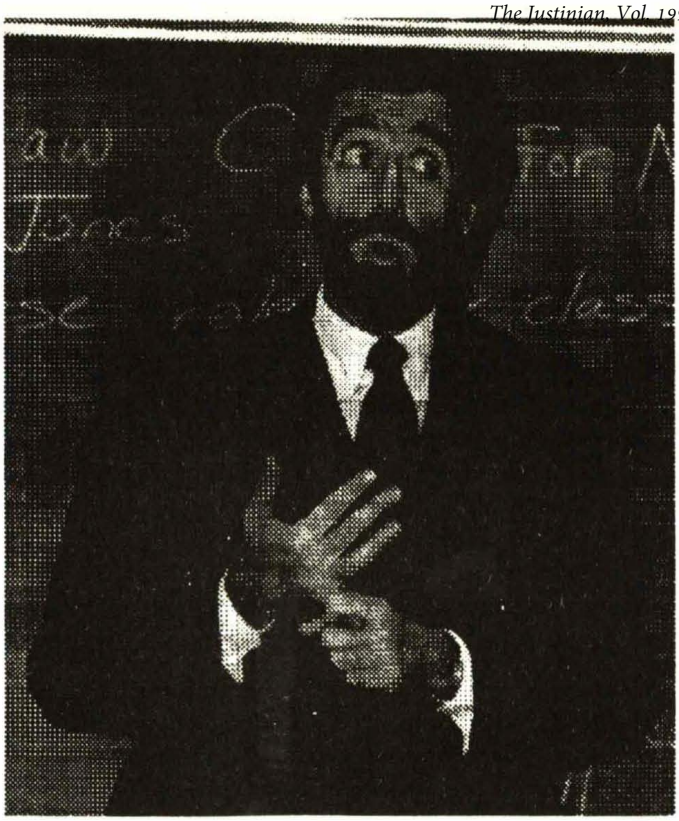
Professor Holzer ended his presentation by asserting that the American Association of Law Schools and the American Bar Section of Legal education was acting unconstitutionally by tying in their standards of accreditation to the school's efforts to provide "full opportunities" for "groups which have been the victims of discriminations in various forms." Afterwards, Professor Holzer, answered a few questions from the audience. One questioner, fellow Professor Paul Finkelman, asked Holzer how he would address the issue of preferential admissions for alumni children. Professor Holzer ducked the question by "slyly" asserting that alumni children do not implicate any suspect classifications.

Timothy Maguire spoke for the remaining time, outlining how he, as a clerk in Georgetown Law School's admissions office, had come to know information, which he later used to reveal the school's discriminatory admissions practices. Mr. Maguire discovered that Georgetown had structured its admissions policy in such a manner as to guarantee that they would accept an entering class which meets the exact percentages of students, of different racial groups, which they desired. Mr. Maguire stated that the admissions criteria were skewed to allow minority groups with lower GPA's and LSAT scores to be given preference over white applicants with better scholastic records. Mr. Maguire cited to the fact that the the median LSAT scores for whites at Goergetown is 42, while the average scores for blacks is 33. He continued by postulating that students with lower LSAT scores invariably do worse than students with higher scores, who are presumptively white. Therefore, he argued that it serves an injustice to both the student and the law school to admit students with lower qualifications.

Even though Mr. Maguire views were contested by many members of the audience, he capably defended his opinion. Mr. Maguire' argued that disproportionate representation in law school and in the profession cannot be used as the determinative factor in choosing the make up of a law school's student body. Acceptance of this criteria would require that Jews and Asians, who represent only a miniscule percentage of the general population, but remarkably represent almost a quarter of the student boy at the top law and engineering schools respectively, should be denied admissions because a less qualified candidate from a different racial background is available. The gist of Mr. Maguire's argument was that merit should control admissions criteria. Mr. Maguire conceded that the use of race as a factor, again something like one of twenty factors, could be permissible. He did, however, assert that Georgetown failed to comply even with the standard "Harvard" plan of admissions because the students of minority backgrounds were not compared against other white students but only against other minorities; specifically, the same minority group to which the student belonged. Therefore, race was not being used as only a factor of admissions, but in the context of white and black students, it was used determinatively.

Mr. Maguire concluded his presentation by putting forth the thought that the real issue in his argument against affirmative action is that equality of opportunity is the goal, not preferential treatment for less qualified persons. He suggested that equality of opportunity should be a by-product of merit. In his opinion, the true inequities which needs to be resolved are the disparate level of education currently imposed upon society, rather than a misconceived form of educational welfare.

Although many students and faculty members of the audience had a different opinion than the speaker, the forum served a useful purpose in exposing each side to the others' arguments. Kudos to Pat Russo, and The Federalist Society, for an informative forum.



Barry at BLS: "Liberty's Last Champion"

by Ron Santos

On November 4, Brooklyn Law School hosted one of the most prominent defense attorneys of our time, Barry Slotnick. Mr. Slotnick has defended such controversial figures as Meir Kahane, Bernard Goetz and other notorious individuals. He spoke for about an hour on the nature of his job before opening up the floor for questions from the students who packed room 502.

Mr. Slotnick took pains to explain how essential it is that the unpopular be given competent legal counsel. He argued that it was a common misconception that blatantly guilty criminals were often set free on some "technicality" conjured up by some scheming and cunning lawyer However, the legal safeguards built into the criminal justice system, such as the requirement for the prosecution to prove his or her case beyond a reasonable doubt and moral certitude, will, from time to time, invariably yield undesirable results. Mr Slotnick explained that if improper evidence is used to convict the right man (i.e. the one who in fact committed the crime) then improper evidence will eventually be used to convict the wrong man. It is much more desirable that the guilty occasionally escape justice than the innocent party be mistakenly punished. Unfettered police discretion and unchecked prosecutorial misconduct would paint a far worse picture.

It has been said that the difference between the great leaders and traitors in our history has simply been a matter of timing. George Washington and Benedict Arnold could easily have played different roles had circumstances been different. Meir Kahane is a prime example of the class which Mr. Slotnick has dubbed the "unpopular." Whether or not Mr. Kahane's voice is shared by the majority is irrelevant in determining the quality of his legal counsel, and more importantly how the law should be applied to him. The voice of the disgruntled, often faint to begin with, can not, must not be extinguished by the majority. For who is to say that the voice of the majority will always enjoy their present status. Anyone can easily be thrust into the unenviable role of the "unpopular." It is exactly for this reason why the sacred duty of protecting an individual's rights, entrusted to the legal profession should not be brazenly shelved and forgotten. Although his clients may lose the media battle, Mr. Slotnick is much more concerned with winning the constitutional war, something which should and does concern us all. To that end he has dubbed himself: "liberty's last champion."

Announcement: Faculty/Student Committee

This is a newly-formed committee dedicated to helping students deal with issues involving the faculty, i.e., grievance suggestions for improvement or joint student/faculty events. If you have any questions, suggestions, or comments that you would like the Committee to review, just drop them in the first floor suggestion box. Be sure to mark it to the attention of the Faculty/ Student committee. Your name need not be included.

Brooklyn Journal of Law and Policy

The returns are in and the results are promising. On our first try, we have received close to 50 positive responses to the creation of a new journal. While this is a good start, more support is required to make a compelling argument of the need for a new journal to Dean Trager. To that end, a coupon is appended for those bashful scholars to respond.

Once this next batch of responses is collected, we will need to assemble a team of people who would be willing to help "start up" the journal. This work will include strengthening student support, garnering support from the faculty, constructing a budget, establishing publication procedures, etc. A dedicated group of people will be needed at this crucial juncture; if you believe you can offer such dedication, let us know. We will be calling everyone that has reponded during December to find some willing souls. Work will not start on this aspect of the start up process until after finals. We will continue to keep you informed in this space.

Please complete form and return to response box in the lobby.
Thank you.

I am interested in participating in the Brooklyn Law School Journal of Law and Policy.

Name: _____

Address: _____

Full Time _____

Part Time _____