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The Justinian

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**Perspectives: Crime Does Pay!?!
Reasonable Man/Woman: Holiday Special
Book Review: Make No Law
... and More!**

Good Luck On Finals!!!

Monday, February 1, 1937

THE JUSTINIAN, BROOKLYN LAW SCHOOL

Page 3

Alumnae Differ a Problems Facing Modern Woman Lawyer

'Greater Opportunities,' Believes Magistrate Brill, '08; More Recent Graduates Take Pessimistic View, Claiming Discrimination

It was not so long ago that women who entered into any of the professions were looked upon as strange freaks of nature and anomalies of their sex, and this was especially true about those who presumed to venture into so masculine a preserve as the law. Most certainly those pioneer Forties were strange sights in the courtroom, arguing their points before a male judge, and a male jury, against male attorneys with a courtroom audience composed mainly of men. Their opponents complained bitterly that these women were taking advantage of their sex by imposing on their chivalry, that they disturbed the judge and bewildered the jury.

Whether or not there was any justification for their complaints, or because it was merely an attempt to save injured male superiority, still the early woman attorney found it tough sledding.

With the increased emancipation of women, however, more and more of them have been entering the legal profession. According to a survey conducted by THE JUSTINIAN among various women graduates on the problems facing the modern woman attorney, opinion seems to be divided as to whether or not the practicing woman lawyer faces as many difficulties as did her predecessors.

Equality At Bar

Pauline J. Malter, a cum laude graduate in the class of 1922, believes that the modern woman attorney is "on an equal footing with her brother at the bar, if she conducts herself with dignity, has a meritorious cause, comes carefully prepared and presents her case in an orderly fashion."

Miss Malter, who is Director of the Brooklyn Women's Bar Association, and financial secretary of the Lawyers Club of the Brooklyn Federation of Jewish Charities, said that women lawyers face the same problems as do the men.

A similar viewpoint is presented by Evelyn Baker Richman, '27. Mrs. Richman has specialized in trial work, and has also been called in to do general work for other law firms.

"I believe that a woman has an excellent opportunity as a trial lawyer and that she receives as much consideration in the courts as does the opposite sex," Mrs. Richman declared.

A more pessimistic view, however, is voiced by Anne Brenner Mankes, '28. Mrs. Mankes practiced law in New York City, and Monticello, New York, and now maintains an office in Miami, Florida.

Mrs. Mankes said that although women have been recognized as the mental equals of men, they are still being discriminated against in the legal field.

Women Face Difficulties

Brooklyn Law School, and Margaret J. Eaton, '30, are inclined to agree with Mrs. Mankes.

"There is a great deal of truth in the generally prevailing opinion that it is more difficult for a woman to succeed in the practice of the law than for a man of equal ability," Mrs. Rattiner said. "However, I feel that it is up to those women who are sincere in their desire to contribute something worthwhile in the field of law to put forth that added effort which is still needed to put them on an equal footing with men attorneys."

Mrs. Rattiner is now a Junior Counsel to the Board of Statutory Consolidation of the City of New York, which is engaged in the preparation of the administrative code for the new city charter.

Miss Eaton, who for nine years was associated with the Law Department of the Interborough Rapid Transit Company and was a Co-Director of the Young Republicans of the Eastern Division during the recent presidential campaign, declared that "we must face the fact that the door is still closed to most women except in mediocre positions."

Law Firms Discriminate

"Few firms are inclined to give consideration to the woman attorney. She must be an expert in almost every field to gain outstanding recognition. She must have courage to go forward, learn to give and take, succeed or fail on her own ability, personality and effort without emphasis of sex, and above all learn not to take her disappointments emotionally," Miss Eaton said.

"The most difficult question for her to decide is whether or not to 'hang up her own shingle' or to associate with a law firm. I know of no law firms of size consisting solely of women."

"As always there is placed and I believe unfairly, but it exists, a greater responsibility upon the women in the practice of law than her fellow men. Let any conduct of hers professional or social assume the aspect of unethical or indiscreet and the harpies are quick to attack her, and, which is for her sister practitioners far worse, the whole cause, even the right of women to engage in any profession beyond the home. The hard fight for

Women Graduates Succeed in Practice



Top row, left to right—Magistrate Jeanette Brill, '08; Evelyn Baker Richman, '27; Sarah Stephenson, '04.

Center row, left to right—Pauline J. Malter, '22; Margaret J. Eaton, '30; Anne Brenner Mankes, '28.

Bottom row—Jeanette Brody Rattiner, '35, (left); Minnie R. Schwartz, '22, (right).

yers Club of the Brooklyn Federation of Jewish Charities. Sarah Stephenson, '04, has main-

Answers to Quizzer's Corner

T. J. Kinsella

Cuff Deplores 'Legal Larceny'

(Continued from Page 1)

recognized that a practice in mortgage foreclosure suits had grown up that was shockingly unfair, if not legalized larceny. The lender of a mortgage loan would foreclose his lien. In almost every instance there would be no bidder at the sale except plaintiff, who would bid a nominal figure and become the owner of the property. Later the referee would file his report of sale. It would show that the amount realized at the sale was less than the principal and unpaid charges.

Judgments Exceeded Loans

"Based upon the fiction that the bid represented the real market value of the property, and upon the further fiction that the real difference between the principal plus charges and the amount bid was a total loss to plaintiff, the court permitted—in fact it had to permit—the latter to enter a judgment against the mortgagor for that difference, which became known as a 'deficiency judgment.' These judgments were always substantial and often greater than the loan itself.

"At the conclusion of the foreclosure, plaintiff would not only have title to defendant's property, but in addition a judgment against him often in excess of the amount of the money originally advanced. This was intolerable and unconscionable.

"If any reform was to be inaugurated during the period that the devastating depression raged to relieve owners with mortgages upon their property it was plainly evident that this was the place to begin.

"Much valuable legislation was passed in that 1932 special session of the Legislature, when sections 1083a and 1083b of the C.P.A. was enacted. They have been fully adequate to right a great wrong. They provided that no deficiency judgment should be entered in foreclosure actions unless a motion was made granting leave. Then, regardless of whether or not defendant appeared, the court was required to determine the fair and reasonable market value of the property as of the date of the sale, and if no such value could be established as of the date of the sale, then at such nearest date when there was a market for that property. The courts held that such value could be proved only by taking evidence at a hearing.

Old Way Oppressive

"The deficiency judgment was not allowed to be entered except when there was a real difference between the value determined for the property by the court and the charges against the property. That was just.

The Justinian

A Forum for the Brooklyn Law School Community

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- 2 Years Ago: Women Graduates Succeed n Practice
- 4 Editor's Corner
- 5 Letters to the Editor
- 8 The Reasonable Man/Woman - The Twelve Days of Law School This is Hell
- 10 Interview with Todd Krichmar
- 12 Perspectives: Crime Does Pay!?!
- 15 You've Come A Long Way, Baby ... But You've Got Miles to Go Before You Sleep
- 18 Notes from The Office of Placement and Career Services
- 20 Judicial Clerkship Report
- 21 Brooklyn Law School's Annual Christmas Party
- 22 The ARG
- 24 Phi Delta Phi Update
- 25 New Leaders for the New World Order, Are You Ready?
- 26 Book Review - *Make No Law: The Sullivan Case and the First Amendment*
- 28 Highlights from BLS Events - Fall 1991
- 30 Poetry Corner: Where Have You Gone, #5?
- 31 Wordfind

The holiday season approaches and Brooklyn Law School's students will once again spend a great majority of their time, secluded from their friends and family, studying profusely for ill-timed finals. While this situation is not a new story to many students, first year student experiencing this mean-spirited exam schedule should be comforted in the knowledge that upperclass students have been able to survive, albeit barely.

Hopefully, the school administration will attempt to ameliorate the present problem by being more sensitive to the students studying needs during the holiday reading period. Extended library and cafeteria hours are not a great deal to ask for under the circumstances.

In addition, students who smoke should be allowed special consideration in taking exams: namely, a room in which they can smoke while taking their exam. As we all know, anxiety and nervousness, are not the optimum conditions for any student to take exams. Although arrangements were previously made for smokers to have their own separate rooms, *The Justinian* has discovered that no separate rooms shall be provided for smokers. Needless to say, we are bewildered as to the logic behind this policy. Another area of concern is the supposed lack of available classrooms for examinations. This problem was highlighted by the fact that some students in Professor Raskind's Tax class were almost forced to have their examination in the cafeteria. It is unreasonable, if not insulting, to require students, all of whom have paid a premium price, to be tested in this manner and locale.

In closing, we wish all good luck on finals. (Merry Christmas and a Happy New Year! Can't forget that now.)

P.S. If we seem to be overly critical of the administration, it is only because we care.

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A Comment on Reverse Discrimination

On November 6, 1991, I attended the Symposium on Reverse Discrimination sponsored by The Federalist Society. Although, the Symposium was informative, the speakers, Professor Holzer and Mr. Timothy Maguire presented a one sided view of affirmative action. Nevertheless, the absence of panelists speaking on behalf of affirmative action served as an impetus for students to speak out on this issue. Of particular concern was Mr. Maguire's comments regarding race and the law school admissions policy at Georgetown Law.

Mr. Maguire, a former Georgetown Law student, alleged that his school engaged in giving preferences to black applicants under the guise of affirmative action. In particular, Mr. Maguire referred to the "random sample" of LSAT and GPA scores that he collected while working as a clerk in the school admissions office. He asserted that blacks were admitted with an average LSAT score of 33 out of a possible 48 while whites were admitted with an average score of 43. He also purported that the undergraduate GPAs of blacks averaged 3.2 out of a possible 4.0 compared to an average of 3.7 for whites. With this information in hand, Mr. Maguire charged that Georgetown had structured its admissions policy in

such a manner as to guarantee that an entering class which meets the exact percentage of students of different racial groups desired by the school. He then concluded that the admissions policy were skewed to allow minority groups with lower LSAT scores and GPA's to be admitted over white applicants with better test scores and scholastic records.

Thus, Mr. Maguire created the perception that unqualified minority students were displacing more deserving white applicants and that by admitted "less qualified" applicants, Georgetown was doing a disservice to minorities who were less likely to excel at that school and are better suited to schools that are less competitive.

However, the notion that worthy whites are being displaced by unqualified minorities is misleading, short sighted, and dangerous! The reality is that preferential treatment is commonplace in law school admissions. At Mr. Maguire's alma mater, preferences are given to children of alumni and faculty, to those of the Catholic faith, by geographic location, and to age. Even Mr. Maguire admits that but for his three years of service with the Peace Corps, it would have been doubtful that his LSAT score would have secured him a spot at Georgetown. Thus, can it be fair to say that Mr. Maguire, himself, displaced a more qualified white applicant? Despite the way Mr. Maguire fluidly espoused the "facts," the quality of a law school applicant is more than just grades and LSAT scores. There are additional factors that Georgetown uses in evaluating prospective students: community service, work experi-

ence and leadership ability, recommendations, and personal statements.

Affirmative action provides access and opportunity, that is, a level playing field in a society that is not colorblind. Affirmative action does not, however, guarantee success as a matter of right nor does it attempt to suggest that. Once a person is provided the opportunity, it is up to that person to carry his or her own weight. Even Mr. Maguire would concede that neither exam grading nor the graduation requirements implicates preferential treatment. All student must satisfy the same rigorous standards imposed by the school. The ultimate test is whether the law graduates have met the standards set forth by their state bar association in order to practice law. Thus, the actual test of the effectiveness of affirmative action is in assessing the qualities of the practicing lawyers. In the May 30, 1991 issue of the New Jersey Law Journal, one writer points out that Mr. Maguire and those supporting his view would have an argument if all "alumni of color were all failing in practice, subjects of an abnormally high number of disciplinary proceedings, or regularly [embarrassed themselves] before the nation's courts." This, however, is not the case. If one is to make the argument that the quality of advocacy is tied to race then one need not look further than those involved in the savings and loan crisis and the subsequent feeding frenzy by lawyers in that debacle. Nor does one need to look any further than the public's perception of the esteem they hold for the legal profession.

Peter Chin
Class of '92

Dear Editor:

This law school is supposed to treat its students equally and fairly. It has come to my attention that a flagrant abuse of this concept by Professor Hauptman in his accounting for lawyers class, which is not open to any student with any previous accounting experience. (Presumably this would mean a class in college to an average reader of the student outline, but it can also mean in practice, this depends on what the teacher feels.) Thus, ignorance seems to be the policy if you want to take this course, because if you don't ask, and you think it doesn't apply to you, you will register for it. Those, who ask, may be denied. This is up to Professor Hauptman. If you feel you need the class, you may still be denied the right to take it regardless of whether you have practiced accounting, have an accounting degree, or have taken one accounting course. However, the fact still remains that certain discriminated classes of persons are precluded from taking the class.

It should not be up to the teacher to decide whether a student needs the information being taught by this class. It should be up to the paying admitted student. If Professor Hauptman feels this is such a beginner class, that would be repetitious for certain students who he personally feels don't need it, and if the course doesn't have any application to law, which is why he won't let you take it if you have to much accounting "background" then it

should not be allowed to be taught in this law school. If it has even the slightest application to law, then no one should be precluded from taking it merely because they have accounting experience. And even if some students might find it repetitious it should be up to the student. Professor Hauptman says its not fair to the other students. That is ridiculous, since that is the policy of the school with regard to all other classes; none, of which PRECLUDE A STUDENT. (Except for prerequisites.)

This prejudice towards accountants, is unmatched by any other class at school. For example, a professional real estate seller can take "real estate practice" despite the obvious large advantage they will have over everyone in the class. The same logic would apply for the owner of an extremely large insurance practice who knows all the ins and outs of the business, has to know insurance law to be registered, but nonetheless is permitted to take "insurance law." A similar example is a brokers dealer, who obviously, also knows all about the topic and must be licensed in the state, who can take the course "securities regulation".

Perhaps Professor Hauptman and the school did not realize this prejudice, hopefully it will be changed immediately to allow all students who wish to EDUCATE THEMSELVES to take a class offered by the school which they have paid to be admitted to.

Of all people, lawyers should know about these types of

prejudices, as exemplified by their being refused housing because they're lawyers. (Now there is a law against that in N.Y.) It is sad indeed that the school and teachers continue to show their prejudices towards the accounting profession, accountants, and anyone else with an accounting class in their background.

Name withheld upon request

[Editor's Note: Due to the lateness of this submission, we were unable to request a response from either the administration or Professor Hauptman. Should either feel it necessary to respond, their response will be printed in the next issue of The Justinian.]

Dear Editor:

I know it is an issue that keeps coming up over and over again, but obviously it needs repeating. The cafeteria staff and the maintenance people should not be expected to clean up after us. When you eat or drink in the student lounge or cafeteria, throw away your garbage. If you spill something, clean it up. Fellow students or school employees should not have to throw away your refuse before another can sit down at a table to do work. I do not think that some consideration and respect for the other people in this building is too much to ask for.

Joanne Matthews
Class of 1992

To the Editor:

Reading R. Chang Feldman's description of my remarks at the Sparer forum on the Thomas hearings was an informative experience. I learned things about sexual harassment law that I never knew, let alone said at the forum. For example, I did not say or imply that "a woman that [sic] acts like a man may not necessarily be offended [by certain conduct]." Nor did I say or imply that in order to prove sexual harassment, a woman must be both "unattractive and mild-mannered."

Ms./Mr. Feldman should be careful in the future to distinguish his/her editorial comments from reportage.

Sincerely,
Minna J. Kotkin
Professor at Law

[Editor-in-Chief's Reply: To the extent that your comments were not readily distinguishable from those of R. Chang Feldman, I apologize. I, however, found no defect in either the case law analysis or the personal conclusions made by R. Chang Feldman. If you should still not agree, I would be more than willing to entertain (publish) any writings which you feel may be necessary to set the record straight as to the modern status of sexual harassment law and jurisprudence.]

Respectfully,
A.F.

A RESPONSE TO CHARLES M. HAMPSHIRE

In the November edition of *The Justinian*, Charles Hampshire takes issue with my letter that recently appeared in *Student Lawyer* concerning the PC movement. He said that "Mr. Smith should remember that he elected to attend law school in a predominantly liberal region." Apparently, Mr. Hampshire does not believe that people should choose to go to law school in a "predominantly liberal region" if they do not intend to share the same liberal views as many of their colleagues. So much for diversity! Frankly, I do not feel that as a conservative I should have to attend law school in the Midwest or the South in order to see both conservative and liberal views discussed in class.

Naturally, professors are going to hold certain views and can be expected to express them from time to time, but when a professor constantly pushes his view in class, he does little to foster an environment of open discussion. Our school has made the decision that the Socratic method is the best way to teach law and professors owe it to their students to create an environment where different views can be freely expressed. Professors should make it clear that rude conduct like booing and hissing is damaging to open discussion and will not be tolerated.

Mr. Hampshire sees no problem with the current state of

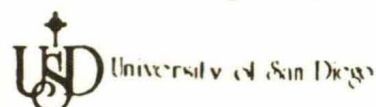
affairs and the exhibited intolerance that is the hallmark of the PC movement. However, since my letter appeared, I have received numerous comments from fellow students and almost everyone that I have spoken with agreed that those who find it necessary to boo and hiss in class do not belong in law school. Furthermore, a great majority acknowledged that they have felt inhibited from speaking out in class because what they had to say was not politically correct. Most everyone agreed that many professors inappropriately exhibit liberal views and should try to conduct class in a more neutral manner. The feedback that I have received further convinces me that the PC movement has arrived and has taken hold of Brooklyn Law School.

William Smyth
Class of '93

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The Reasonable Woman/ The Reasonable Man

Jenn and Peter did not feel like writing for this issue - something about studying for finals. At last look, they were conducting a study session at O Keefs. They left these ditties to keep you busy.

The Twelve Days of Law School

<i>On the first day of law school, Kuklin gave to me —</i>	<i>a summary of legal policy.</i>
<i>On the second day of law school, Habl gave to me —</i>	<i>offer and acceptance, and</i>
<i>On the third day of law school, Gora gave to me —</i>	<i>collateral estoppel,</i>
<i>On the fourth day of law school, Caplow gave to me —</i>	<i>Dudley versus Stephens,</i>
<i>On the fifth day of law school, Walter gave to me —</i>	<i>An Appellate Brief,</i>
<i>On the sixth day of law school, Wien gave to me —</i>	<i>death on a cracker,</i>
<i>On the seventh day of law school, Stempel gave to me —</i>	<i>Rule 11 Sanctions,</i>
<i>On the eighth day of law school, Johnson gave to me —</i>	<i>adverse possession,</i>
<i>On the ninth day of law school, Trager gave to me —</i>	<i>a noisy library,</i>
<i>On the tenth day of law school, Leitner gave to me —</i>	<i>another boring story,</i>
<i>On the eleventh day of law school, classes gave to me —</i>	<i>an ulcer and a headache,</i>
<i>On the twelfth day of law school, finals gave to me —</i>	<i>alternate career plans,</i>

This is Hell

(To the Tune of "Jingle Bells")

*Blasting through the night,
Caffeine is coursing through,
Its high better last,
There's a lot to do.*

*Four more cases done,
seventeen to go,
Its no real surprise,
Why my grades are low.*

*CHORUS: This is HELL, this is HELL,
What am I to do.
Its six O'Clock and I'm not done, I'll never
make it through.*

*This is HELL, this is HELL,
law school is so cruel,
If I knew then what I know now,
I'd never gone to school.*

*Final starts at ten,
The clock is reading six,
Ever since the first year
I've used the same old tricks.*

*Now they're running thin,
My future's not so bright,
Maybe I should close the books
And just turn off the light.*

*CHORUS: This is HELL, this is HELL,
What am I to do
I'm out of gas, I hope I pass
and finally make it through.*

*This is HELL, this is HELL,
law school is so cruel,
If I knew then what I know now,
I'd never gone to school.*

*OH MY GOD ITS NOON,
MY FINAL HAS BEGUN,
I CAN'T BELIEVE I MISSED IT
WHAT HAVE I JUST DONE?*

*I'll never make it now,
never graduate,
Burger King is hiring
I'll apply today at eight.*

*CHORUS: This is HELL, this is HELL,
I never got a break,
I missed one test, forget the rest,
now its "you want some fries with that shake"?*

*This is HELL, this is HELL,
law school is so cruel,
If I knew then what I know now
I'd never gone to school.*

Interview with Todd Krichmar

by John DiSanto

Brooklyn Law Students for the Public Interest's (BLSPI) successful fund-raising activities enabled it to offer its first Summer Fellowship last year. This achievement paid off for Todd Krichmar who made a contribution to Brooklyn Law School history by becoming the first recipient of the BLSPI fellowship which allowed him to work at The Legal Aid Society, Office for the Aging. Todd continues to work part-time at the office.

The Justinian: What was your work load like and how was it structured?

Todd: I worked mostly with one of the staff attorneys and she was really generous with giving me substantive work to do. She would consult with me about the cases and ask me where we should be going with them. I felt really good about that. She basically let me structure my own summer. I really didn't do much formal writing, like writing an internal memo. That's more something you do in a firm so that a client can see he's getting something for his money. Also, in the public sector there is this egalitarian ethos and lack of money; so often the lawyers will do a lot of their own legal research and administrative work and typing and filing. There are no paralegals or LEXIS terminals.

The Justinian: Is it more the egalitarian ethos or the lack of money?

Todd: I'd prefer to think of it as the egalitarian ethos.

The Justinian: What types of cases does the Office for the Aging deal with?

Todd: Well, since the office is partially funded by the N.Y.C. Department of the Aging, it operates under a mandate to address all the civil legal needs of the entire senior citizen population; but within that mandate we are allowed to prioritize. As a result the Office mostly works on landlord-tenant, real property and government benefit cases. Theoretically though, we can help any senior citizen with a legal problem.

The Justinian, Vol. 1991 [1991] Iss. 5, Art. 1
The Justinian: You probably had quite a few clients from which to choose. How large was the staff and how any cases was the Office able to handle?

Todd: There are five attorneys which handled about fifty active cases at a time with a bi-weekly new case intake.

The Justinian: Since the legal service is free did you receive a lot of spurious claims?

Todd: Sometimes we'd go to Senior Citizen Centers and listen to their problems. A lot of them were not really legal problems, they were more like how to file for Senior Citizen Rent Increase Exemptions, and other administrative things. We'd tell them where to go and find the information. A lot of these people were property owners and it was kind of funny; they would come in and say, "Listen, we've got this problem. See our neighbor's tree is abutting our front yard". That's an example of the kind of thing that Legal Aid is within its right not to deal with.

The Justinian: Were you able to settle any of the cases that you were working on?

Todd: A lot of the things I've dealt with are still going on. There was one case where we were able to get this woman's eviction prevented.

The Justinian: You dealt with a lot of eviction cases. Generally, what were the grounds for eviction?

Todd: Well, there are two kinds of eviction proceedings. There is the non-pay proceeding, where a tenant just stops paying rent and there are holdovers which are just about anything else. The non-pay proceedings were the ones where we didn't have much of a fight because often these people didn't pay. But the mitigating circumstances were that they didn't understand. A client might be on certain public assistance programs like Section 8 Housing, where the government pays for part of the rent. So, they'd think they wouldn't have to pay anything. Sometimes, we'd get these people who were refusing to pay rent because they said they were living in sub-standard conditions. Often, I'd go to the apartment to check it out and some of these places were really nice. There were like these nice co-ops on Ocean Parkway. These were really bogus claims that seemed real to these people.

The Justinian: Is there anything the Legal Aid Office can do for its clients if they are forced to evict?

Todd: There is a social worker at the Office and when

there is a dead end at the housing court the social worker will start trying to find new housing or will deal with family problems. The interesting thing about that office is that you see where legal assistance stops and where social service work begins.

The Justinian: What do you find frustrating about working in the public sector?

Todd: I think more and more, public interest work is becoming a class proposition. The people who can really afford to work in it are people who didn't need to take out loans for law school or have already worked in a private firm and have paid off their loans. Public interest people can be a bit self-righteous about the fact that some people will choose to work in the private sector; and I found that those people are usually the ones that have the financial security to remain in the public sector.

The Justinian: In other words just having the desire to do public interest work isn't enough?

Todd: Yes, even the lawyers at the Office told me in no uncertain terms that you have to be realistic. Ten years ago, I was told, the starting salary of a public interest lawyer was in the 20's, and the average private associate's salary was in the 30's and 40's. Now the difference is between the 30's and 80's. Also, if you work in the public interest for a while and then hope to go into the private sector, the transition is difficult because employers see it as kind of a taint. Another frustrating thing I found was that the system is slow and arguably loaded against tenants and the elderly. Often, eviction proceedings are thrown out on very technical grounds during what are called summary proceedings. The process is a streamlined one created by statute. The policy behind it is that it's to the advantage of the landlord to get the apartment back more easily without having to go through a trial. I'm not saying the landlord is the villain all the time, maybe, 85% of the time.

The Justinian: What was the most interesting case you worked on?

Todd: My favorite case was a nuisance holdover. There was a man who had been living in this little decrepit three-story building in Buschwick for fifty years. He worked in some shop in the area and his employer owned the building. It was a cozy life he had there. The employer died and eventually his daughter sold the building. Last fall, some new people bought it and they were trying to get him out by making up these bogus claims that his dogs were creating a nuisance by

attacking people. These dogs, they claimed, were preventing potential tenants from renting there or even visiting. They were creating health hazards by leaving messes all over the place. It was patently untrue. There were so many factual questions we had about this. We went to the apartment and we were a bit nervous about these dogs. We thought maybe they were kind of vicious. We ended up getting pictures for evidence of me with these dogs which were the friendliest and sweetest animals. It was really kind of sad. This man had no family and referred to his dogs as his children. He just wanted to live and die with them in that apartment.

The Justinian: Has the case been settled?

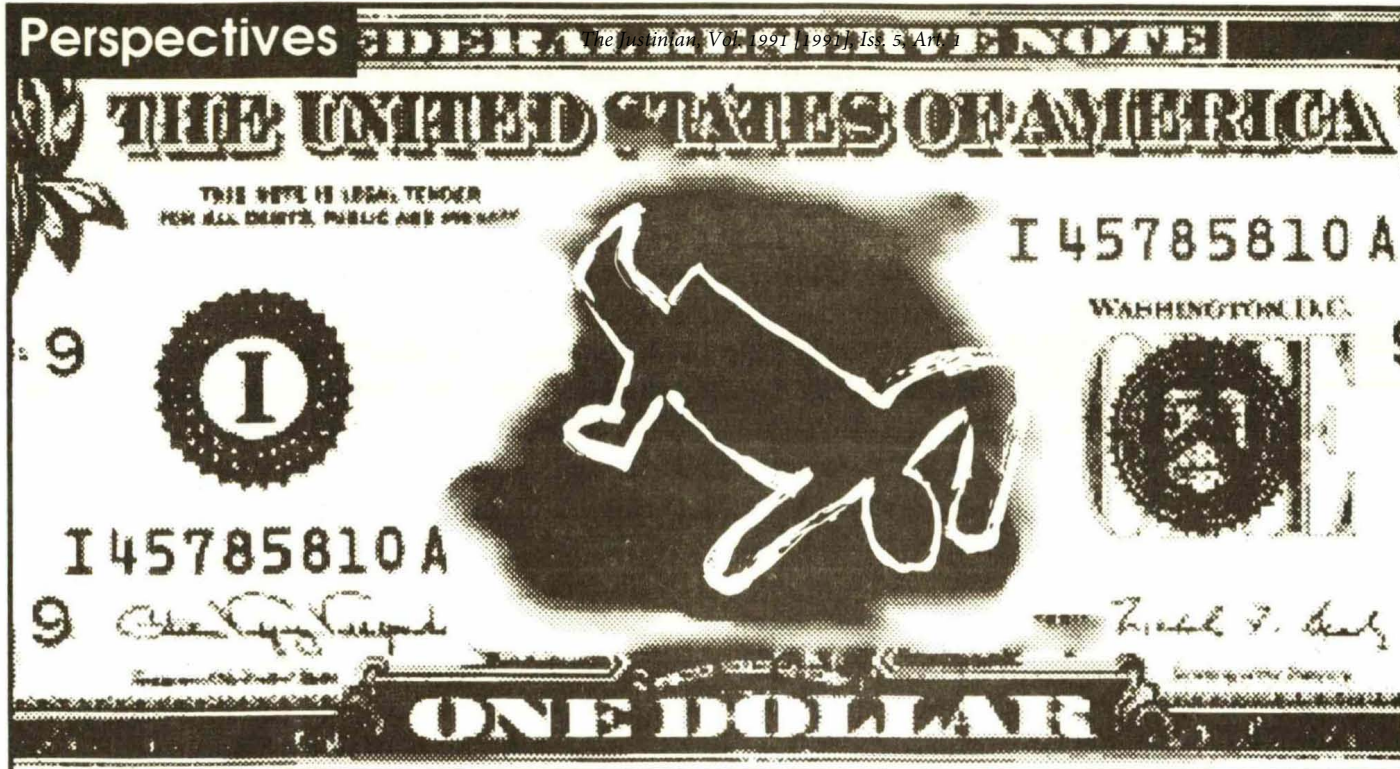
Todd: It's being settled now from what I hear. We basically won. We were able to disprove these allegations. One of the factual issues was whether the mess in the hallway was from a dog or a cat.

The Justinian: Were stool samples collected?

Todd: We didn't actually have to do that. We have an investigator who's a former NYC policeman and we went with the client to the lot where he usually lets the dogs go and took pictures. It was really kind of funny because this stuff was either planted in the hallway or it was from a neighbor's cat. It really didn't make sense that the new landlord would want our client out of the building because it was in the worst part of Buschwick and not some area on the verge of gentrification. What was the motivation? It turned out to be a cultural thing because the landlord was Pakistani and it came out in testimony that he wanted to bring his countrymen in. I did some non-legal research that we were able to introduce which was that there is this Pakistani cultural bias against dogs based on Hindu-Muslim beliefs that dogs are the guardians of hell. The landlord's parents actually said that dogs should not be living where humans are because they are dirty animals. That explained the motivation behind the bogus claims and I was able to help develop the line of questioning.

The Justinian: What was the most rewarding aspect of working at the Office?

Todd: I've had the privilege of working in an office full of exceptionally talented people who are uniformly excited about and committed to, their work and I've done much more than carry someone else's briefcase for the summer. More importantly, I know that my work at Legal Aid will have made a difference in people's lives in very real ways.



Crime Does Pay!?!

by Austrack Fong

Wonders upon wonders, it appears that the Supreme Court in its eagerness to appear legitimate to a disenchanted public has chosen to pontificate absolutionist positions regarding the First Amendment. Their folly, however, does a disservice to the First Amendment and the public it intends to serve. My disdain towards the Supreme Court stems from their recent decision to unanimously declare New York's Son-of-Sam law unconstitutional. *Simon & Schuster, Inc. v. Members of the New York State Crime Victims Board* [No. 90-1059 (1991)]

The Son-of-Sam law, New York Executive Law § 632-a (McKinney 1982 and Supp. 1991) is a statute which generally aims to ensure that no criminal derives unjust enrichment from, *inter alia*, the exploitation of his victim or victims, through the writing or authoring of literature detailing his past criminal exploits, before such victim or victims are compensated for their injuries. The policy

is based upon the deep seeded equitable principle that an individual should not be allowed to profit from his own crimes. The statute was originally enacted by the New York Legislature in reaction to the possibility that the Son-of-Sam serial killer, David Berkowitz, would profit from his crimes by selling his sensationalistic, if not heinous, story to the media for an exorbitant amount of money. Ironically, David Berkowitz was never subjected to the statute as he was never convicted of his crimes, due to the fact that he was adjudicated insane. The statute, however, still served the state's and society's valid goal of guaranteeing that victims have an opportunity to receive restitution from the criminal who seeks to profit from his criminal exploits by selling his so-called "story" to the media.

The statute requires that any party which contracts with an accused or convicted person, to tell his/her story, to turn over the contract for

review to the New York State Crime Victims Board which will determine whether the contemplated work falls under the statute. The exact language of the statute states that “with respect to the reenactment of such crime, by way of a movie, book, magazine article, ... , live entertainment of any kind, or from the expression of such accused or convicted person’s thoughts feelings, opinion or emotions regarding such crime, shall submit a copy of such contract to the board and pay over to the board any moneys which would otherwise, by terms of such contract, be owing to the person so accused or convicted or his representative.” The profits or payments which would go to the accused or convicted individual will then be placed into an escrow account for five years for the benefit of and payable to any victim, who should win a civil judgment against the accused or convicted individual. Should no claims be brought against the account, during the five-year period, or any money still remains, these funds would then return to the possession of the accused or convicted individual.

To date the Son-of-Sam law has thus far been applied to: Jean Harris, convicted of the murder of the creator of the Scarsdale Diet, Dr. Herman Tarnover; Jack Henry Abbot, convicted murderer who turned into a celebrated author while in jail; and Henry Hill, career criminal and paid source for Nicholas Pileggi’s best selling book *Wiseguys*, which was turned into the critically acclaimed box-office smash movie *Goodfellas*. Henry Hill’s was the case which the Supreme Court ruled upon on December 10, 1991. Ironically, Sidney Biddle Barrows, author of *Mayflower Madam*, a book which recounts her past as the leader of an exclusive prostitution ring was not held to be subject to the Son-of-Sam law. The statute was held to be inapplicable in cases involving victimless crimes. (Prostitution is a victimless crime? Well, I guess so.)

Returning to the Supreme Court’s decision to overrule New York’s Son-of-Sam law, it is readily apparent from a cursory reading of the opinion that the Supreme Court analysis leaves much to be desired. First, Justice O’Connor, author of the opinion, relies too heavily on the tax precedent of *Leathers v. Medlock*, 499 U.S. — (1991), and

Arkansas Writers’ Project, Inc. v. Ragland, 481 U.S. 221 (1987) for striking down the Son-of-Sam law. The tax cases dealt with disproportionate taxes being placed on the medium being used to express an opinion— tabloid versus magazine format or daily versus weekly or monthly publications, and a tax which inadvertently affects the content of the publication. It should be noted that the governmental interest asserted in these cases was weak. While the language used in these opinions regarding content based restrictions on speech is valuable, it is clearly not directly on point with the case at hand. The premise behind the tax cases was that disparate treatment with regards to placing burdens on speakers because of the content of their speech is presumptively inconsistent with the First Amendment. While it is true that the specter of content-based restriction on the First Amendment may be grave—the power to restrict conversation or dialogue on a particular subject prevents the free expression of all viewpoints, popular and disfavored alike, the Son-of-Sam law, however, poses no real serious threat of evolving towards this harrowing end. Former Supreme Court Justice Goldberg once stated that the true test of constitutional adjudication is the ability to distinguish real threats from mere illusions. These words are as true today as they were then. A careful reading of the Son-of-Sam law shows it to be merely an illusory threat to the First Amendment.

The Son-of-Sam law is narrowly aimed at a specific category of speech: namely, the speech regarding the tale of a criminal’s past crimes. The state has no interest in extinguishing any disfavored viewpoint nor is it attempting to censor the entire subject matter: the statute is content neutral. All that it requires is that the potential author realize that he may not freely exploit for profit his victims a second time. The financial burdens placed on publications in the form of taxes does serve as an impediment. However, this is an affirmative action of government which financially burdens an individual’s ability to speak and be heard. The case of individuals who fall within the ambit of the Son-of-Sam law is quite different: the individual in question is not affirmatively burdened financially by the state. The accused or

convicted person is not prevented from getting his death and was used by the convict to commit a message out. Any burden suffered is only incidental. Nothing in the Constitution nor in the history of constitutional jurisprudence has ever deemed the right to payment for speech to be a fundamental right. As universally understood, the right to free speech is protected not the right to payment.

Apparently, the Supreme Court has now legitimized a criminal's right to receive full payment for speech, unencumbered by any consideration for compensating the victim(s) of his crime(s), which again exploits his victim(s). Looming large in the Supreme Court's reasoning was their belief that New York had no justification for specifically choosing to target only "storytelling" as a criminal asset for compensating the victims under the statute. They indicated that there is no compelling reason to classify expressive activity (i.e. storytelling) differently from any other activity with regards to transferring the fruits of the crime from the criminal to the victim. The gravamen of the Court's decision was that even though the state has a compelling interest in compensating victims from the fruits of the crime, it has little if no interest in limiting such compensation to the proceeds of the wrongdoer's speech about the crime.

I agree with the holding in so far that the wrongdoer's speech ought not be the only source of redress for victim's, and it is not. Any victim may bring a civil action to attach the property of the convict for use in restitution. The problem is that criminals have an almost unique, if not uncanny, ability to dissipate their own assets. The statute, therefore, seeks to insure that any funds received from the exploitation of a criminal's victim(s) should not readily be dissipated. Regarding the Court's position that the state is not justified in putting greater emphasis on "storytelling" than on other assets of the criminal, I believe that the state's position is inherently fairer to the convict than a law which would subject all of a criminal assets to be deemed fruits of the crime—a law the Supreme Court stated would be perfectly constitutional. Under New York's Son-of-Sam law a convict who writes a cook book with the intention of making a profit would not have his income placed in a trust for the victims benefit. Since a cook book, unless it details how to make poisonous concoctions of

crime, has nothing to do with a crime or the reason for which the individual is imprisoned. There is no reason, therefore, to have funds received through this source to be handed directly over to the victim. However, in the case of a convict writing a book about his crime and his victims—take the example of the rape of a celebrity, if you will, there exist a direct causal link between the speech and the victim. If not for the wrong doing of the criminal, at the expense of the victim, he would not have been able to produce such an interesting story. In this case, it is only logical to require that the criminal not profit from his own crime, lest we acknowledge a new doctrine that "CRIME DOES PAY." Actually, the Son-of-Sam law may allow for "crime to pay" under some circumstances. These instances may occur if no victims makes a claim within the five-year period in which the funds are held in escrow or if there exist funds in excess of the convict's liability to the victims. Certainly not an impossibility in these days of multi-million dollar movie or entertainment budgets.

I am not saying that the Son-of-Sam law is perfect: clearly, it is over-inclusive. The provision which relates to an accused or convicted individual's thoughts, memory or feelings regarding a past crime is overly broad. Justice Scalia, during oral arguments, asked counsel for New York State, Assistant Attorney General Howard L. Zwickel, if books by Saint Augustine would be subject to the Son-of-Sam law since Saint Augustine recounts in his writing having stolen an apple. Zwickel answered affirmatively and stated that the whole book would be considered proceeds of the apple stealing. To which Justice Scalia exclaimed "that's ridiculous." And he is correct. However, every other part of the statute is acceptable.

It is disturbing that the Supreme Court chose not to provide any guidance for New York and the other 41 states which have similar Son-of-Sam laws. If the Supreme Court has chosen to become the true defender of the First Amendment, as their opinion, especially as Justice Kennedy's concurring opinion suggests, my only questions then is why didn't the First Amendment "carry the day" in *Rust v Sullivan*, 111 S.Ct . 1759 (1991)?

YOU'VE COME A LONG WAY, BABY...

by Maggie Tim

On the heels of the explosive and political Thomas Confirmation Hearings, Brooklyn Law School held a meeting to specifically address the confirmation hearings. Shortly thereafter, the Legal Association of Women (LAW) saw fit to sponsor a symposium to specifically address the issue of sexual harassment. The distinguished panel included Professors Minna Kotkin, an expert on Title VII, the sexual harassment bill, and Professors Carol Ziegler and Brian Comerford, two of the authors of the current BLS sexual harassment bill, patterned closely after Title VII. The panel also included two practicing attorneys with considerable experience in gender bias cases, Katherine Ritchie, Esq., court attorney at the New York County Family Court and member of the Gender Bias Committee of the New York State Courts, and Anne Vladeck, Esq., partner at Vladeck, Weldman, Elias and Engelhard, a firm that litigates employment matters, including discrimination and sexual harassment.

Professor Kotkin discussed the evolution of Title VII and the recent developments regarding this area of law. Generally, two types of actions are brought under Title VII: quid pro quo harassment (where a superior gives a "choice" of "sleep with me or you will not be promoted") and the hostile working environment situation (i.e. Thomas/Hill Senate Hearings, although there was evidence that the former type of harassment was also involved).

Title VII in its present form attempts to provide a comprehensive defense for the increasing number of women in the work force against on-the-job harassment, although men with similar grievances are also entitled to its protection. However, in light of the relatively short statute of limitations (180 days after the last act of harass-

ment) and the inadequacy of redress upon a positive finding for the complainant (no compensatory damages or out-of-pocket losses; an injunction prohibiting the employer from continuing his offensive behavior is the most likely award), Title VII clearly acts as an unsatisfactory palliative for people with grave and legitimate complaints of mistreatment, based on sex. The emotional and economic consequences of bringing a suit against an employer is greatly outweighed by the paltry benefits and futility of victory. However, the recently enacted Civil Rights Act of 1991 creates a greater incentive for victims by providing for compensatory and punitive damages.

The difficulty in proving a sexual harassment charge is a tremendous deterrent to initiating the process. Attorney Anne Vladeck noted that the Thomas/Hill Senate Hearings typified the reasons why women would rather face sexual harassment than scrutiny and character-bashing from one's peers. Aside from the general societal tendency to believe the word of a man over a woman, there is also a prevalent "blame the victim" mentality.

One of the defenses to sexual harassment is that the conduct was **not unwelcomed**. Therefore, if a woman laughs at a dirty joke, or if a female dresses in a manner perceived to be even somewhat provocative, or she had a less than pure reputation, her character is effectively sullied to deny relief. In addition, although Title VII actions have a short statute of limitations, the case may continue to be litigated for ten years after the occurrence. (The individual may be grilled, not unlike Anita Hill, for ten years after she decides to bring suit.)

In a situation where an employee alleges misconduct by an employer, the company must be put on notice of the complainant's position and

most likely initiate an internal review. Frequently, student/faculty relationships but still addresses senior faculty/junior faculty, as well as student/student situations. Because sexual harassment is basically an abuse of the power differential among two parties, and the law school is comprised of a basically two-tier infrastructure of students and faculty, the students require a sexual harassment bill that insures confidentiality and impartiality, and enumerates with a certain degree of specificity of what is considered sexual harassment conduct. (Professor Comerford noted that the Special Committee quickly agreed to what conduct constituted sexual harassment.) The purpose was to encourage complainants to come forward with legitimate allegations and guarantee confidentiality.

While sexual harassment has been discussed solely in terms of the work place, BLS recognized a necessity to address this issue in relation to the academic community and student/faculty relationships. Last year, BLS formed the Special Committee on Sexual Harassment to draft a policy in reference to sexual harassment in the school. Professor Ziegler stressed that even though sexual harassment allegations are not prevalent in the law school, in the absence of clear policy, the impact on a self-contained community may be astronomical.

School policy is primarily directed toward

If a student charges a faculty member with misconduct, the Committee acts as a liaison between the student and faculty. The Committee gives an assessment of the charge and there are provisions for a full and complete inquiry into the accusation. Such findings of fact and conclusions of law by the Committee then goes to the Dean who can then accept or reject the determination. In the meantime, if the situation occurs in a supervisory setting, the faculty member must absent (him/her)self from the position.



...But You've Got Miles to Go Before You Sleep

Although Brooklyn Law School fulfilled its obligation (Twice!) to address relevant and pressing concerns regarding the hot topic du jour of sexual harassment after the Thomas travesty, neither symposium effectively proposed any salient solutions or at least inroads to the problem. BLS demonstrated sensitivity and insight to a burgeoning problem by drafting a sexual harassment bill prior to sensationalism of the hearings. The law school policy purports to be more encouraging to victims and provides a greater incentive to vocalize misconduct within an insular community. However, because the rate of incidents reported is extremely rare, individuals who are protected under the aegis of law school policy might never invoke its protection. Once out of the law school community, an individual no longer has the support of a liberal sexual harassment policy in the face of a greater likelihood of sexual harassment in the place of employment. BLS may have alerted students to the risks of filing charges under Title VII, but it has also created an artificial calm by conveying the notion that if it occurred in BLS, an individual's claim will not go unnoticed. But what is actually happening is evident in the Thomas/Hill Senate Hearings. So what is the message that these symposiums want to relay?

It has been a Fall of great confusion to women. We witnessed an intelligent and articulate law school professor, Anita Hill, uphold an unpopular and untenable position, while our elected officials interrogated her on her social life, sexual proclivity and questioned her every motive, in an attempt to impugn her character in order to confirm a mediocre man to the highest court in the land. Simultaneously, we heard a woman accuse a member of one of America's foremost families of raping her on the family estate and there is immediate speculation as to her character (Teddy's another story). One of basketball's legends is HIV positive, contracted through heterosexual sex, and the nation rises to his defense without hesitation, but sadly, seems to show little, if any, concern for his

admittedly numerous female partners.

The confusion lies in how each scenario is treated inconsistently. There is confusion as to what conduct remains within the ambit of proper female conduct and what crosses the line into **unwelcome** behavior. There has always been the dichotomy of "although she said no, she really meant yes." There has not been any significant change in this attitude and some men may be more subtle but sexual harassment still occur. Some women are also guilty of contributing to this misconduct by being socialized into accepting unacceptable behavior and not supporting victims.

The existence of a liberal school policy is comforting to the student body, but outside these hallowed halls, what mechanisms stand ready to support the graduated student/employee? Not Title VII. Not yet, anyway. Attorney Anne Vladeck suggested that the use of gender neutral terms may act as a foundation to public awareness. But that fails to address the primary problem that women will nonetheless be women regardless of what title one uses, and will, undoubtedly, be treated accordingly.

So, what did the two symposia reveal? [That woman's right to vote was the last significant advance made in the women's movement]. [General disclaimer: author is not ignoring the advances women have made but on the grand scheme, even women who have broken into a predominantly male field tend to make some sort of compromises, whether it is hiding their sexuality i.e. dressing more "masculine" or trying to fit in by acting like their male counterparts, or denying the existence of the disparity in treatment or accepting the disparity. For the women who have not compromised in any form, this article does not pertain to you.]



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NOTES FROM THE OFFICE OF PLACEMENT AND CAREER SERVICES

WE ARE GROWING

We are pleased to announce that Joan A. King, J.D., a former partner of Berger, Steingut, Tarnoff & Stern, has joined the Placement Office as Director of Career Services. Joan King is a graduate of Barnard College and Hofstra Law School, where she was Articles Editor of the Law Review. Prior to attending law school, she was a personnel/placement specialist with the Crowell-Collier Publishing Company and with Enwood Personnel Agency, specializing in the placement of college graduates. We expect Joan King to assume a major role in our placement services and recruitment efforts.

FIRST YEAR STUDENTS

The Office of Placement and Career Services is committed to helping you with every aspect of your legal career, from resume writing and interviewing skills to specific job search strategies. We encourage you to visit our office on the third floor of One Boerum Place to become familiar with our resource library, including our books of specific job listings. While there, you may wish to make an appointment with one of our counselors to review specific needs.

On Thursday, January 23, 1992 from 4:30 p.m. to 5:30 p.m. we will be conducting a workshop for the class of 1994 and the evening class of 1995 on writing an effective resume and cover letter. The workshop will be held in the Moot Court Room. We hope you will attend.

If you have not already done so, please come to the office to pick up your Career Planning Manual. We hope that you will read the manual before the workshop and keep it for reference throughout your law school career.

SUMMER EMPLOYMENT OPPORTUNITIES IN THE PUBLIC SECTOR DECEMBER 1991 UPDATE

This is a guide to various sources of funding for summer legal positions in public sector agencies and organizations, as well as to key public interest internships programs. You can obtain detailed information in the Office. Our summer job books are also a valuable resource for locating summer jobs in the public sector.

FUNDING SOURCES

Brooklyn Law Students for the Public Interest (BLSPI)

As a result of a year of dedicated and creative fundraising efforts, BLSPI students have raised over \$30,000 to fund public interest internships for Brooklyn Law School students. This year, BLSPI is offering four summer internships with a stipend of \$3,250 for 10 weeks of work. Two internships are "open" and two are "designated." In the "open" internships, BLSPI will assist the successful applicants with funding a specific placement after the fellowship is awarded. **Application deadline for the "open" internships is mid-December.** The "designated" internships are in two specifically-designated public interest law offices: South Brooklyn legal Services and The Legal Aid Society's Brooklyn Office for the Aging. **Application deadline for the "designated" internships will**

be early next semester.

Law Students Public Interest (LSPIN) Fellowship Program

LSPIN is a program that awards approximately 50 stipends at \$3,250 each to first and second year law students in New York and New Jersey law schools for ten weeks of full-time public interest work during the summer. Internships must be in the New York metropolitan area. LSPIN defines public interest work as work for non-profit organizations, legal aid and legal services, and government agencies. Judicial clerkships are not included. Applicants must have secured volunteer summer placements with public interest organizations in the New York metropolitan area. **Application deadline is January 31, 1992.**

Work-Study

Work-Study stipends are available on a limited basis through the Financial Aid office. Grants are need-based. Students have used work-study funding in the past to work in public interest organizations. **The deadline to apply is April 1, 1992.**

INTERNSHIP PROGRAMS

Legal Services of New Jersey Summer Legal Intern Fellowship Program

This program provides employment opportunities for 20 first and second year law students in the field of public interest law. Approximately 75% of the students will be placed in Legal Services' field offices and the remainder will be placed with other New Jersey non-profit and public civil legal providers. **Application deadline is March 15, 1992.** Early applications are encouraged.

The Everett Public Service Internship Program

This program is supported by the Everett Philanthropic Fund in The New York Community Trust, and awards stipends of \$125 per week for work in various non-profit organizations. Several placements are law-related. Information on the Summer 1992 program will be available in our office in February, 1992.

American Bar Association Division For Public Services

Public Service Summer Internship Program

The ABA offers one paid internship every summer in Washington, D.C. in which a first or second year law student will undertake a public interest law research and writing project intended to result in a work to be published by the ABA. **Application deadline is January 31, 1992.**

Public Interest Law Initiative Summer Internship Program

PILI offers 16 paid internships (\$3,500 stipend) at Chicago-area public interest law organizations. **Application deadline is February 1, 1992.** The earlier you apply, the better your chances of being selected.

Other Sources of Public Sector Summer Opportunities

- * NAPIL Directory Of Public Interest Legal Internships- directory of summer legal internships with public interest organizations across the country- paid, partial stipend or volunteer.
- * Federal Government 1992 Summer Legal Employment Guide -the guide to summer legal jobs with Federal agencies.

Report

by Jennifer Layug

A judicial clerkship is not an animal, a vegetable, or a mineral, but what exactly is it? Why are judicial clerkships smart career moves? Answers to these and other fine questions were given at the judicial clerkship forum. Speakers for this year's forum included Professor Hellerstein, Edward Korman, Federal District Judge, EDNY, BLS '66, Professor Fullerton, Cynthia Dachowitz BLS '87, Mark Levine BLS '91, and Naftali Dembitzer BLS '92, all of whom have experience working for a judge. The speakers offered insights and anecdotes about the various duties and rewards of clerking for a judge. In addition, procedural tips for obtaining a judicial clerkship and a judicial clerkship manual were given to attendees.

What does a judicial clerkship entail? A judicial clerkship is a prestigious opportunity wherein clerks hone their analytical, research, and writing skills. Although a clerk's duties may vary depending upon which judge employs the clerk, clerks generally research and write about legal issues for a judge. Learning to research and write quickly about legal issues enhances the clerk's appeal to prospective employers. A judicial clerkship may also help to distinguish the clerk from other job applicants.

Clerkship opportunities exist in both general and specialized areas of the law. If an individual is unsure about which area of law to specialize in, clerking in a court which deals with many different types of law may be a good idea. If the prospective clerk has already chosen a specialization, then gaining experience in a court which deals with that area of the law is beneficial. For example, tax courts, immigration courts, and bankruptcy courts are just a few courts to gain specialized knowledge and experience.

Contrary to popular belief, a student does not have to be in the top 10% of the class in order to become a judicial clerk. Although, traditional experience like law review, moot court, and jour-

nal are helpful in acquiring a clerkship, lack of this type of experience is not detrimental. Judicial clerkship opportunities exist at both the federal and state levels in every state in the country. Students who truly want to clerk should not overlook state and federal opportunities out of the New York area; New York happens to be one of the most competitive areas for clerkship opportunities. Also, state courts are less competitive than the more prestigious federal courts for obtaining a clerkship. However, a clerk can learn just as much from a state judge as from a federal judge.

Students interested in working for a federal judge upon graduation must start their research and application process as soon as possible during their second year (third year for evening students). Third year students (fourth year evening students) may have luck clerking for a newly appointed federal judge who has not had the previous year to assess and interview prospective clerks. Also, third year students should not overlook clerking for state judges; state judges, unlike federal judges, do not hire prospective clerks a year in advance.

The general timetable for applying for a judicial clerkship at either the state or federal level is as follows: begin researching and applying for clerkships as soon as possible. Applications should be mailed out to the judges no later than February 1, 1992. In March, interviews are conducted, and hiring decisions are often made by the early Spring.

Researching and applying for a judicial clerkship is expensive and time consuming. However, the rewards of obtaining a clerkship can be great. For more details about the procedures for obtaining a judicial clerkship, contact Professor Hellerstein, the Chairperson of the Judicial Clerkship Committee. In addition, interested students should definitely obtain the two volume judicial Clerkship handbook from the Judicial Clerkship Committee.

BROOKLYN LAW SCHOOL'S ANNUAL CHRISTMAS PARTY



Brooklyn Law School's annual Christmas party was held Wednesday, December 11. The party was jointly sponsored by the Italian American Law Students Association, the Christian Legal Society, Phi Delta Phi and the Democratic Club. Laura Amos of Phi Delta Phi arranged for a group from the Marlboro Senior Citizens Center to come and sing Christmas carols. They did a wonderful job spreading Christmas cheer and many students joined in the singing. The Christian Legal Society sponsored a speaker, Louis Gelormino, who spoke on "the meaning of Christmas." Louis Gelormino is the president of the Congress of Italian American Organizations (CIAO). He also is a criminal defense lawyer in Brooklyn, and a volunteer with the Bowery Mission in Manhattan. Everyone enjoyed the food obtained by the Democratic Club, IALSA and through special efforts of Mike. Students were treated to fresh bread and antipasto as well as Italian specialties like chicken Parmesan, eggplant parmesan, ziti and meatballs. The hot

apple cider Jay picked up at the farmer's market was a big hit with party goers, who finished off ten gallons of it.

Without the contributions of the many people who selflessly gave of their time and energy, this party would not have been possible. We would like to thank Scott and the cafeteria crew who stored the apple cider, provided the means for us to heat it up, and supplied extra plates and cups when we needed them. We would also like to thank Tina, Dawn, Steve, Arty, Anna, John, Rich, Dawn and Mickey for decorating the lounge and setting up the Christmas tree. The time and effort that Eric Schwartzman spent coordinating the funding for the party is greatly appreciated. Also, a special thanks to Maureen who was responsible for planning the event and getting the different groups together.

We wish everyone a blessed Christmas and relaxing winter break.

William Smyth

The A.R.G.

by Johnny Fernandez

Her baby is born in a cool, fall evening, and she happily snuggles with him. He is weak and unsure of himself and makes sure he is touching her at all times for assurance that he's ok. After so long inside her the outside world seems cold and harsh already. After being cleaned up mother and baby rest together as she looks at him, wondering how he could be so lovable already! As she recovers from the trying experience of birth she thinks of all the fun they'll have together in the future. She doesn't know where his father is, but she figures she can make it on her own with him even if the father isn't around. She'll give him enough love for two! She isn't sure what life has in store for him, but as every mother does she just wants him to be happy and healthy.

It's a girl! Oh, and a boy! Two little babies both clamoring for their mother's attention. She does her best to keep them warm and close to her. She has a natural instinct to protect them and she knows she is not in a safe neighborhood so, she has her guard up, she has heard the horror stories of mothers having their babies stolen but she vows that it won't happen to her!

Dad is out working, "what does dad do when he's out working?" the little baby wonders, but he knows that he has a full day of staying with mommy as she does her chores, or whatever it is she does all day. He's happy that he'll get to play with the other babies, maybe he'll get to lay in the sand again, fun times for sure. Mom brought him outside and set him down with the other babies as she went with the other mothers to gather food for the family.

These wonderful scenes of birth and life were cut short. The first little baby boy was taken from his mother the morning after he was born, never to be seen or heard from by his mother again. Of course she was heartbroken, and never did seem the same again, "how could life be so cruel as to take away my baby and the morning after he was born no less?"

The second mother was a little more fortunate. Well, sort of. Her little baby boy was taken right from her clutches and thrown into a plastic garbage bag to suffocate to death. This is one of the horror stories she heard of but she could not believe it was actually coming true. Her baby girl was left with her and although she wasn't quite sure of what exactly happened, she sensed that something wasn't right. She probably missed

her sibling. The mother mourned but had to keep herself together to take care of her other baby.

The third little baby boy was stolen as his mother was out of sight. She and the other mothers heard their babies screaming as they were being taken away. They rushed over to save them, but they were quickly overpowered and beaten into submission as they cried out as their babies were being stolen. The babies' cries were shrills of bloody murder as they watched their mothers being beaten down. They never saw their mothers again.

Does any or all of this sound wrong? Cruel? Inhumane? If your first response is "well, that depends on who they are: who the babies are and who the mothers are" then you can feel comfort because you probably live your life every day reinforcing that belief - that the wrongness of those situations is dependent on who the victims are. If, however, your gut response is that it sounds wrong, then brace yourself for a little enlightenment. You are, maybe just in thoughts and feelings, not in actions yet, but you are what is known as GASP! an animal rights advocate! You can take a breath now. Don't worry, it doesn't show on your face yet.

You see, the little babies mentioned above were a baby calf, a baby chick, and a baby chimpanzee. The baby calf was taken away by the dairy farmer who "owns" him to be sold to a farm that raises calves for veal. Since he won't be able to use the little boy to produce milk, he is useless to the dairy farmer. The people that will raise the calf to be veal meat will make sure that he is not well-fed, not exercised, and not shown any sunlight in his short life lest he develop muscles that make flesh tough instead of the tender, anemic, iron-deficient "delicacy" that people will pay such hefty sums for. And that second little baby boy was of no use to anyone, as he could not be raised to lay eggs, or be fattened up to be a "broiler" so he, along with every other baby chick born there was simply thrown into a garbage bag to suffocate to death the same day he was born. Some life. That last little baby boy was stolen from his mother in his native land so that he could be an attraction at a zoo, or maybe a testing lab, or maybe a circus, whomever pays the most.

But we've got to eat right? And people should be allowed the finer things in life, like veal meat, right? And people should be able to see a chimpanzee at the zoo, right? And they're so cute when they squish their little faces between the bars and reach out for a peanut, or when they dress up like a clown and entertain us at the circus. Oh, and medical research must continue to rid

us all these dreaded diseases.

Folks, let's be real here, there are plenty of happy and healthy (both physically and ethically) pure vegetarians (or "vegans" as we are also known), eating no animal or animal products whatsoever. And do we really need to see an animal in a cage to learn about him or her? Don't we learn more about the animals by watching National Geographic films of them in their natural habitat? And if animal testing is so vital why is that no major medical discovery ever resulted from it?

We don't have to learn in law school what's right and what's wrong - we can feel it. If these injustices were going on in some South American country or other "third-world" little place under the iron-handed rule of some dictator we'd probably all send money to stop the injustice, to overthrow the oppressors. Remember that it was not even a hundred years ago in this country that Africans were considered "beneath us" and "put here for our use" and "not like us" and the outrage of their enslavement continued until a moral lawyer in a position to stop it did just that. Now,

et al: The Justinian

we wonder how it could have gone on as long as it did.

As tomorrow's lawyers, let us please remember that while our sense of right and wrong does come from intellectual pondering it also comes from the gut, and if your gut is telling you that kidnapping, murdering, enslaving, and torturing those "not like us" is wrong then consider the alternative: live as cruelty-free as possible and you'll probably sleep better at night, and so will they.

Intrigued? Come to our next meeting to learn more about these issues and look for flyers of our events, designed to be of interest to all. If you'd like to consider plant-based dietary alternatives we'll be putting a couple of vegetarian cookbooks on reserve at the library so that you can dabble without spending money on a cookbook yet. As the new president of the Animal Rights Group, I hope to make as much info as possible available to anyone who asks - just leave a note for me in our mailbox in the SBA office if you would like to learn more for if you have a comment on this article. Thanks, peace.

IN '88 HE ASKED FOR DUKAKIS.
LAST YEAR... DESERT STORM.
THIS YEAR HE'S ON HIS OWN.



GOVERNMENT
CHEESE,
PERHAPS?



Phi Delta Phi Update

by Laura Amos

I am pleased to announce the new initiates to
THE INTERNATIONAL LEGAL FRATERNITY - PHI DELTA PHI .

Simon Bock
Hemantha Parvatharaj
Eric Schwartzman
Marni Schlissel
Yves-Merry Telemaque
Kathleen Schepker
Susan Im

Frank Calahan
Howard Tygar
Patrick Falcone
Helene Spielman-Sherman
Camille Allen
Susan Li
Charles Hampshire

All of these people display the ethics and talents that make them honored members of
PHI DELTA PHI.

The Annual Christmas Party held in conjunction with IALSA, CLS, The Democrats and **PHI DELTA PHI**, which featured a wonderful performance by the **MARLBORO SENIOR CENTER CHORUS**, was a great success. A terrific time was had by all. This year marked the first time that BLS students and senior members of the community were able to celebrate the holiday season together. One of **PHI DELTA PHI** goals is to encourage interaction between the law school community and the Brooklyn community.

FIRST YEAR STUDENTS are encouraged to join **PHI DELTA PHI** in the spring semester as they are now eligible under the constitution of the fraternity provided they are in good academic standing. If you are interested please make an effort to attend the membership meetings and rush party in the spring. As always, all students are invited to attend any **PHI DELTA PHI** function. We look forward to a terrific semester for **PHI DELTA PHI**.

BYOB !!!!!

Bring your old books to the **SPRING USED BOOK FAIR** which will be held on Wednesday, January 22, 1992, hopefully in the Student Lounge. Don't miss it. Remember to bring your old books, study guides and hornbooks to the fair. Make big bucks and save big bucks. After your finals, leave your books in your locker so you can easily get them to the fair.

Good luck on finals and happy holidays.

P.S. The Holiday Food Drive was a tremendous success. Thanks goes out to all who volunteered and contributed. A special thanks also to the members of *The Justinian* (Peter Chin) for their tireless work in this endeavor.

NEW LEADERS FOR THE NEW WORLD ORDER, ARE YOU READY?

A social studies survey self administered test
by Eric Wollman, B. A., Political Science,
Brooklyn College

When President Bush announced the "new world order" most Americans shrugged their shoulders, perplexed by this vaguely ominous slogan. Meanwhile our European friends saw yet another example of Uncle Sam clumsily trying to set things right. (As a trivia test, in what movie did actor Sidney Greenstreet declare "a new world order" while portraying a Nazi agent?) But, with the virtual evaporation of the Soviet Union, civil war in Eastern Europe, Arab-Israeli peace talks (albeit in the infancy stage) and the release of the American hostages from Lebanon, it is fair to ask the future leaders of America "Are You Prepared?" Chances are that a good number of those reading this *Justinian* will be among the movers and shakers, leaders and opinion makers of this decade and well into the 21st century.

George Santayana once said "those who ignore the past are doomed to repeat it," while Henry Ford is said to have uttered "History is bunk." As we wrap up fifty years of the post-Pearl Harbor American century, it is an appropriate time for you to measure your awareness of the tidbits of history ... the flotsam and jetsam of colonialism, expansionism, conquest and reconciliation. This self-administered geo-political test will be graded by your toughest critic ... YOU. It is closed book. Good luck. Answers next month.

1. Flanders Field is not a baseball stadium. What is it famous for?
2. Why were Americans urged to "Remember the Maine"?
3. What do the initials IRT, BMT and IND stand for?
4. Where is the Outback?
5. Who built the first concentration camps?
Bonus: in which war and what country?
6. Why did Fidel Castro give the U.S. permission to establish a naval base on Cuba?
7. What was the Manhattan Project? (not a blues band)
8. During our War of Independence, which side did the Loyalists support?
9. During the Spanish Civil War, who were the Republicans.
10. Did the Abraham Lincoln Brigade fight in the War Between The States?
11. What was the name of the first satellite launched into space?
12. During which war did the Draft Riots occur in New York City?
13. How many airplanes have crashed into the Empire State Building?
14. Shortly after the Russian Revolution of 1917 how did the U.S. react?
15. What happened at Gallipoli?
16. Who was Captain Boycott?
17. What happened to Mormon leader Joseph Smith?
18. Who were the Scotsboro Boys?
19. Who was Colin Kelly?
20. What happened at Sutter's Mill in 1849?
21. What was Seward's Folly?
22. What was Billy Mitchell's theory and how was it received?
23. Why is baseball popular in Central America?
24. The Office of Strategic Services is now what agency?
25. Who was Joe Hill?
26. Who were Sacco and Vanzetti?
27. Who were the Rosenbergs?
28. Who was Senator Joe McCarthy?
29. Who is Senator Eugene McCarthy?
30. Who was Charlie McCarthy?
31. Where is Watergate and what is it?
32. What public office did "Boss" Tweed hold?
33. Who said "We will bury you"?
34. Who was Nathan Hale?
35. Why does the Porridge Bird lay its eggs in the air?

Make No Law: The Sullivan Case and the First Amendment

By Anthony Lewis

Random House, 354 pages, 1991.

The ability to criticize our government, its leaders and its policies is a right we often take for granted. Merely 25 years ago this right was vigorously challenged within the halls of the Supreme Court in the landmark case of *New York Times Co. v. Sullivan*. Anthony Lewis, acclaimed author of *Gideon's Trumpet* and noted columnist for *The New York Times*, has memorialized the drama and struggle behind the story of this great case in his new book *Make No Law*. A book which, under another writer's control, could have very easily been presented as merely a story of "facts," becomes instead a epic of literary and legal power. The book discusses not only the facts of the case but goes beyond to explore the history of the civil rights movement, the evolution of First Amendment law, and the making of a Supreme Court decision and its ramifications. Mr. Lewis, in his book, makes the observation that "a skillful brief is readable; it should tell a story..." Fortunately for all, this is exactly what he has done in writing the "story" of the landmark case *New York Times v. Sullivan*.

The "story" begins innocently enough with the placement of an advertisement entitled "Heed Their Rising Voices" in the March 29, 1960 edition of *The New York Times*. This ad was the basis of numerous libel lawsuits which were brought against *The New York Times*, including one by the then commissioner of police, L.B. Sullivan. Sullivan was awarded \$500,000 in his case against *The Times*. This judgement was unanimously reversed by The United States Supreme Court in 1964. The Supreme Court's holding established the standards for determining liability when an individual or the press acts to criticize the government and/or public officials. This test, which is commonly referred to as "the Times test," requires that a public official (other decisions have extended the reach of this

test), in order to be successful on a claim of libel or defamation, must prove that the statements were made with "actual malice, that is, knowledge that it was false or with reckless disregard of whether it was false or not."

Mr. Lewis reminds those familiar with the case and those who are unfamiliar with it that there was more at stake than a "simple" libel suit (although no libel suit is ever really "simple.") He points out that the primary goal of the *Sullivan* and related libel suits was "to discourage not false but true accounts of life under a system of white supremacy ... it was to scare the national press off the civil rights story." This "strategy of intimidation [would have] slowed the political revolution that overtook the South ... Martin Luther King's belief that nonviolent resistance could overthrow white supremacy in the South was premised on the existence of an audience, the American public, whose conscience could be aroused ... [but it] depended on a press that would tell a story." And what is most frightening is that they almost succeeded. *The New York Times*, however, was a paper that was both unwilling and financially unable to settle.

The author continues by presenting an illustrative accounting of the history of the First Amendment. Mr. Lewis explains the Madisonian premise of the First Amendment, that is, "the right of freely examining public characters and measures." He goes on to explain the Sedition Act and the role of Justices Holmes and Brandeis on the evolution of First Amendment law, including the famous *Abrams* dissent which said among other things that, "the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out." This

historical background will play an important role in the preparation of the Times' argument before the Supreme Court.

As the book continues, it describes the arguments advanced by the Times' counsel, Herbert Weschler, noted Columbia Law School professor. One of his key arguments was an analogy of the effects of libel against the government to the Sedition Act. The Sedition Act of 1789 made criticism of the government punishable by a fine and/or imprisonment. In effect, allowing Sullivan to win his libel action was tantamount to punishing criticism of government. Interestingly, the Sedition Act of 1789, had never been declared unconstitutional; it was repealed by the Jefferson administration. (The Supreme Court declared the Sedition Act of 1789 unconstitutional in the *Sullivan* opinion.) The irony of this case lies in that the Times' believed that their strongest argument was on a jurisdictional question, a question that was never reached during oral argument. (The jurisdictional argument based on Alabama's lack of in personam jurisdiction over *The New York Times*. Only 394 copies of *The New York Times* were sold in the entire state of Alabama.)

Afterwards, the book delves into the unanimous decision of the Supreme Court reversing the libel judgment. Mr. Lewis manages to give the reader an insightful, behind the scenes and almost first person, glimpse into the process of writing a majority opinion. He is able to do this because Justice Brennan had his law clerks keep records of the process that took place in any decision where he played a key role. It is an intriguing look at what goes on behind the closed doors of the Supreme Court. Lewis notes that "an aspect of the Supreme Court that is not generally understood: ... [is that] [i]t functions largely as nine separate offices, not as a collaborative institution."

This discussion also shows Justice Brennan's brilliance in gathering a majority of the Court to accept the actual malice test. (He got six justices to join his opinion, whereas the other three wanted to give even more protection to First Amendment freedoms.) Included is the interplay between Justices Brennan and Harlan, where Justice Harlan, an advocate of "federalism," advanced

et al. v. The Postmaster General
the position that the Supreme Court should say that no new trial need be had in state court, an intriguing position for a justice who usually balks at interference with state power. The reader also has an opportunity to understand the progression of the opinion by reading the Justice Brennan's initial opinion as well as the final published opinion which have been included in the Appendix.

The book ends with an exploration of the progression (or as some may believe regression) of libel law. Mr. Lewis includes discussion on the extension of the Times test to other cases and includes other challenges to First Amendment freedoms including the Pentagon Papers case. For all the positive results of the Sullivan case, there still remains a negative aspect, namely, the increase of libel litigation.

Indeed, even the press finds intrusive aspects inherent in the recklessness standard. In determining whether the press has acted "recklessly" in their writing/broadcasting of a story, the libel plaintiff is allowed to conduct "an exploration of the editorial process." However, "[t]he press," as Mr. Lewis fairly points out, "aggravates the public perception of arrogance by the way that it speaks of its constitutional rights ... [s]ome editors and publishers act as if the press clause of the First Amendment were designed to protect journalism alone, and to make that protection superior to other rights in the Constitution—propositions that have no support in logic or history."

Mr. Lewis explores all these issues with great dexterity. He has not only an ability, but a gift, to explain complex legal principles such as first amendment law and jurisdictional issues with relative ease and clarity that many law students would greatly appreciate from some of their professors. Moreover, this book is presented in an easy to read, almost page turning manner, quite unlike most legal literature. (Footnotes are placed at the end of the book.) *Make No Law* is highly recommended reading for all who wish not only to gain an insight into first amendment law but the Supreme Court as well.

Teresa Matushaj

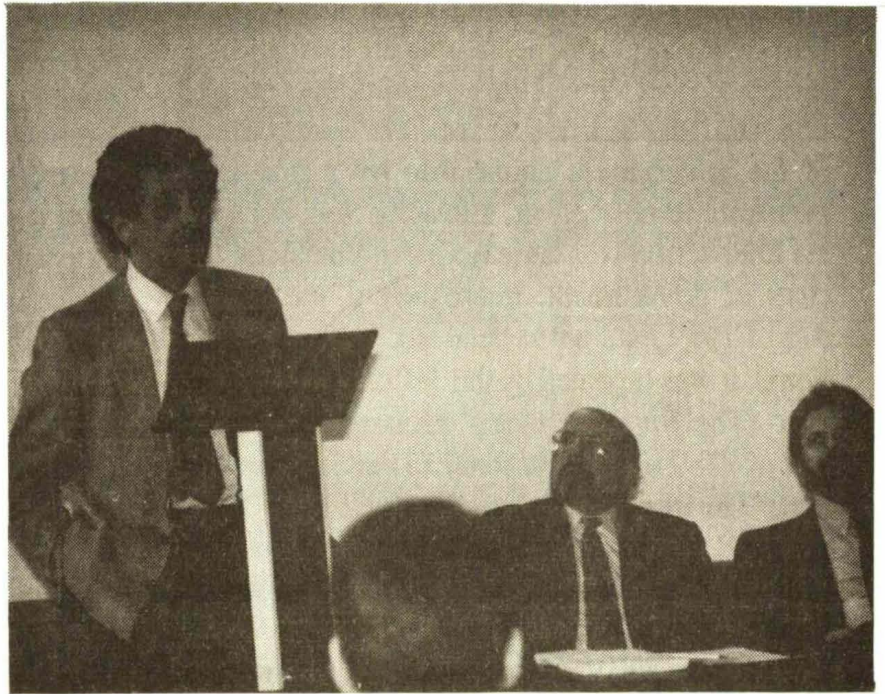
The Justinian Vol. 1991/11991, Iss. 5 (Fall 1991)

Highlights from BLS Events

Fall 1991



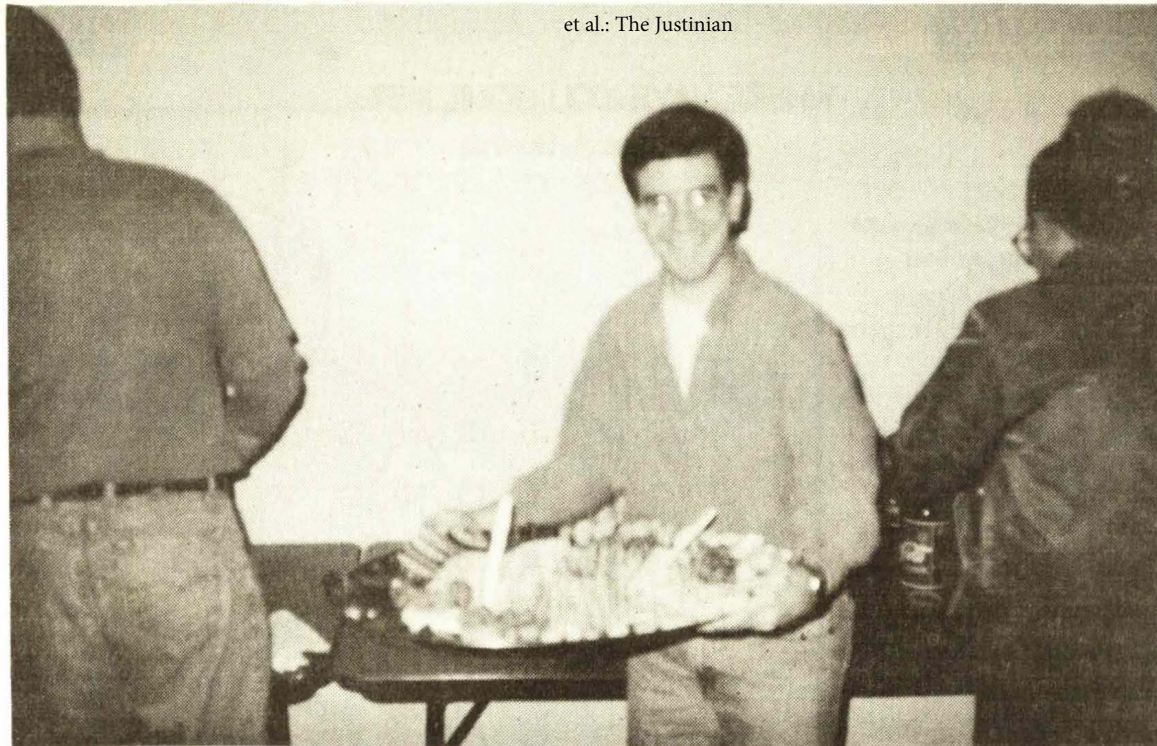
Greetings from the Halloween Party!



Judge Korman speaking at the judicial clerkship informational session.



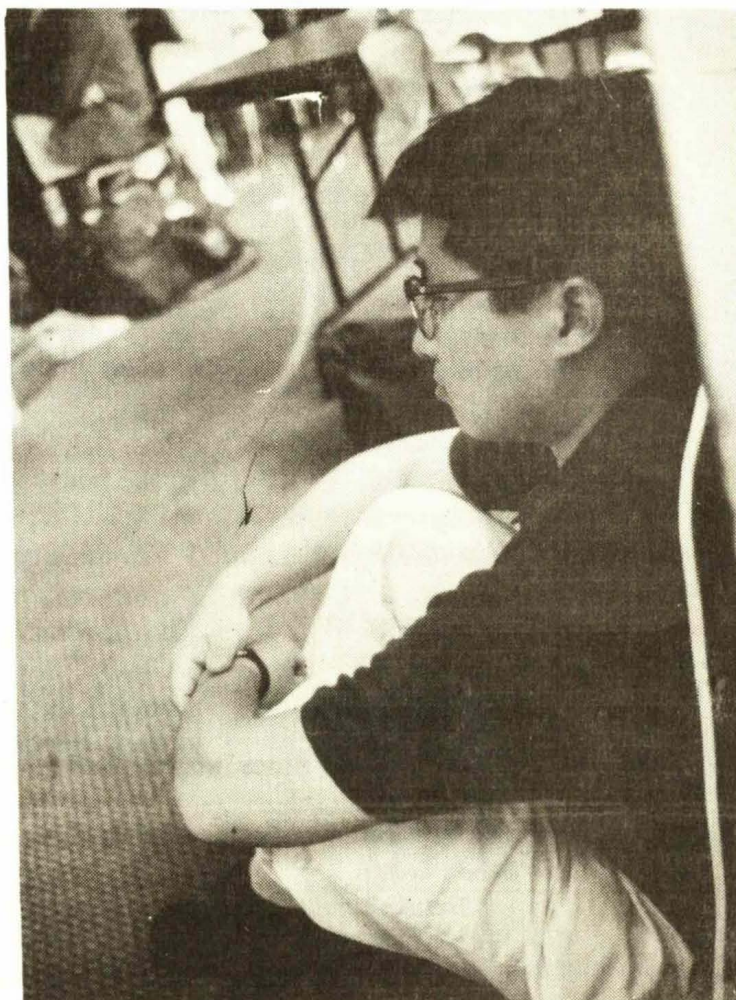
Members from the Entertainment and Sports Law Society with guest speakers.



A little constructive criticism causes SBA Treasurer Eric Schwartzman to generously donate his own food.



A little holiday cheer from the CLS/IALSA/PHI DELTA PHI Christmas party.



We'll see you in three years Jae. Serve your country well.

WHERE HAVE YOU GONE, #5?

By Marcus A. Spevak

A nation turns its lonely eyes
To Yankees' center field
In the house that #3 built
For famous numbered retirees

Say goodbye to #9
For oh, could Maris play!
And Casey retired #37
(He did the same at Shea)

Put #7 on the Mantle
For he never left us bored
And neither did his pinstriped friend
#16, Whitey Ford

Rizzuto or "The Scooter"
Retired #10
And rests this no-longer-used number
On the wall of Immortal men

How sad it was when #15 died
In the summer of '79
The same is said of "The Iron Horse"
Whose #4 was rested in '39

Elston Howard was no coward
And retired 32
His is one of twelve numbers retired
For the men in white and blue

"It ain't over till it's over"
Said Yogi, #8
For so far is unmentioned
One of Yankees' greats

A list of all the greats
Is anything but done
Without the name of Billy Martin
Of course, #1

Stats I would have tried to put to rhyme but for exams:

The Yankees' retired numbers are located in Monument Park, behind the left-center field fence at Yankee Stadium.

The Mets' retired numbers are painted on the left-field fence at Shea Stadium. In addition to Casey Stengel's #37, the Mets retired Gil Hodges' #14 and Tom Seaver's #41.

The New York Yankees retired #8 for Yogi Berra and Bill Dickey.

The New York Yankees originated uniform numbers in 1929. Lou Gehrig's #4 was the first number ever retired (in 1939). The Yanks' twelve retired numbers are the most of any team.



p u m p k i n r u b e n y
s i i o b t s a e b r a e
w o l l e y t r a g e r k
q a k u t o w e r u a b r
w r i s t d r u m m e r u
l s a q e v e v o l v o t
z a s u r a h s l i a n f
f n p a e q s s t a s t l
g d i r s u u p h r i e o
r w o d a m m a o e f h r
t a r t l a u i r c a s i
m r e w e r r n n t k i d
q f o i s n t u s p e w a
x s a n s i n s p r a t s
z m i s e r a b l e s a p

The number in parenthesis indicates the number of letters in the word.

1. The Fall of the House of _____ by Edgar Allen Poe (5)
2. Res _____ loquitor (4)
3. Leonard Nimoy role (5)
4. Last name of professor who teaches Mass Media and Criminal Law
5. Holland flower (5)
6. Snow White and the 7 _____ (6)
7. First name of the managing editor of Justinian(6)

8. Last name of the Dean of BLS
9. Adam and _____ (3)
10. _____ and Secured Transactions(5)
11. Thanksgiving bird (6)
12. Last name of professor who teaches Torts and Products Liability (7)
13. Traditional holiday pie (7)
14. Color of Beatles' submarine (6)
15. First name of SBA president (5)
16. Beauty and the _____ (6)
17. Jingle _____ (5)

18. Jane Eyre author Charlotte _____ (6)
19. 1991 World Series winning team (5)
20. The _____ Birds by Colleen McCullough (5)
21. Broadway play Les _____ (10)
22. Mets home field (4)
23. The Little _____ Boy, Christmas carol (7)
24. Sunshine State (7)
25. Foursome (7)
26. Madrid is its capital (5)
27. Oat _____ (4)
28. Chewing _____ (3)
29. Cookies and _____ (4)
30. Wedding vow, "for _____ or worse" (6)
31. Lessor/ _____ (6)
32. Billy the _____ (3)
33. Where a watch is worn (5)
34. Leaning _____ of Pisa (5)
35. Temper _____ (7)
36. Finger _____ (5)
37. Cleopatra killer (3)
38. Jack _____ could eat no fat (5)
39. A Raisin in the _____ (3)
40. Swiss mountain range (4)
41. What a rolling stone doesn't gather (4)
42. When you _____ upon a star (4)
43. Amore (4)
44. A person who doesn't tell the truth (4)
45. Swedish car (5)
46. A way steak is cooked (4)
47. Cat in the _____ (3)
48. Cookie with creme in the middle (4)
49. Phony (4)
50. Hourglass contents (4)

DON'T LOSE THE LAST PIECE

Study with



and pass.

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