

# The Justinian

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## The Justinian

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# *The Justinian*

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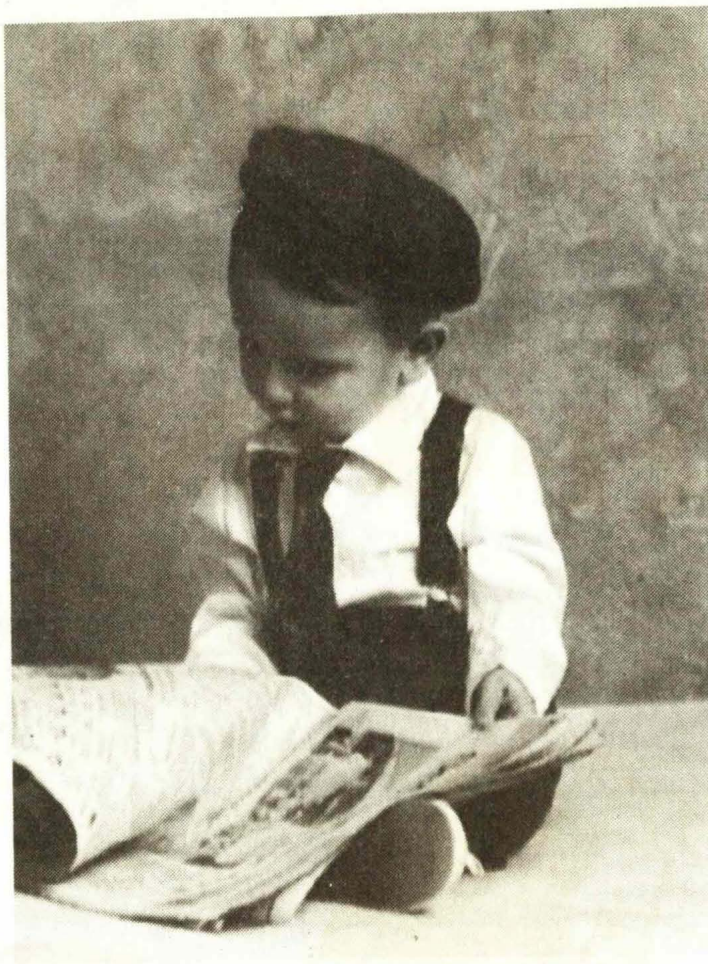
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Muriel Richards

**Managing Editor**

Joseph A. Hayden

**Special Contributors**

Prof. Spencer Weber Waller

Prof. Anthony Sebok

**Staff**

Daniel Ajello

Albert Gavalis

Kevin Gomez

**Photograph of Charles Hynes**

Christopher Griffith

*The Justinian* is generally published about three-four times a semester. Advertising inquiries may be directed to Muriel Richards at (718) 780-7986. Advertising on *The Justinian's* home page is now available! *The Justinian* is funded by the Brooklyn Law School Student Bar Association and through advertising revenues.

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Brooklyn Law School  
250 Joralemon Street  
Room 610

Brooklyn, N.Y. 11201

(718) 780-7986

Email: [blsjustin@aol.com](mailto:blsjustin@aol.com)

Web: <http://www.brooklaw.edu/~jhayden/Justinian>

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# Editor's Corner

By Muriel Richards

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On behalf of *The Justinian*, I would like to wish all of our readers a productive semester at BLS. It is the privilege of myself and Managing Editor Joseph A. Hayden to have the opportunity to serve *The Justinian* for another academic year. Last year, this editorial board stated its commitment to continuing *The Justinian's* sixty-five year old tradition of providing a forum for the BLS community. We believe we have adhered to that goal and will continue to do so. As always, *The Justinian* welcomes the submission of articles and photographs on law and non-law related topics. If an author or photographer wishes to remain anonymous to the BLS community at large, we will withhold the name upon request. Submissions may be brought to room 610 or placed in our 5th floor mailbox.

Congratulations and appreciation is extended to all those who contributed to *The Justinian* last year. Our efforts were recognized and rewarded by the American Bar Association Law Student Division Newspaper 1995-96 Newspaper Contest in August when we received Third Prize for the Entire Magazine. This contest was open to law schools nation-wide. Your submissions this year will enable *The Justinian* to be awarded further accolades on behalf of Brooklyn Law School.

In this issue, we are pleased to present an interview graciously granted by Brooklyn District Attorney Charles Hynes. In the interview, District Attorney Hynes comments on the impact of the death penalty upon the criminal justice system in New York. He also comments on alternative sentences to incarceration for certain offenses under particular circumstances. In addition, District Attorney Hynes discusses the disposition of cases involving battered spouses. We trust that *Justinian* readers will find his comments on these and other matters timely and relevant. We wish to express our appreciation to District Attorney Hynes for taking time out of his busy schedule to grant *The Justinian* this interview.

On a related note, BLS student Kevin Gomez has written an article on his experiences

working in the Queens County District Attorney's Office. Daniel Ajello has submitted yet another informative article concerning the rights of children who are physically challenged which should be of great personal and/or professional interest to many *Justinian* readers. Albert Gavalis has submitted a comprehensive book review of the Autobiography of Armand Hammer. And, by popular demand, Joseph A. Hayden's "On Political Correctness" also appears in this issue.

We are pleased to announce that *The Justinian* now has a page on the World Wide Web. This was made possible largely due to the efforts of Managing Editor Joseph A. Hayden and with the assistance of BLS student Francis Chin. Joseph A. Hayden has provided information regarding this development, which appears following my editorial.

Best wishes for an informative and interesting year at BLS!

## WORLD WIDE WEB INFORMATION

By Joseph A. Hayden

*The Justinian* is now online in more ways than one. We not only have an email address to which articles, photographs, suggestions and comments can be sent, but *The Justinian's* Managing Editor (yours truly), who is authoring and maintaining home pages for several clubs at Brooklyn Law School, has created a home page on the exciting World Wide Web for the *Justinian* which contains an abundance of useful information about us and other points of interest at the magazine, the school and elsewhere. Ultimately, I hope to put samples of previous issues since the *Justinian's* inception in 1931 online and full issues of the current year's issues.

Please note our email address for sending submissions or comments at any time is [blsjustin@aol.com](mailto:blsjustin@aol.com) and peruse and bookmark our web page at <http://www.brooklaw.edu/jhayden-/Justinian>, checking it regularly for deadlines and other tidbits of information and entertainment. Please remember that the "J" in the homepage must be capitalized, but the rest of the address must be in lower case.



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## INTERVIEW WITH BROOKLYN DISTRICT ATTORNEY CHARLES HYNES

By Muriel Richards

(Charles Hynes has been the Brooklyn District Attorney since 1990. Mr. Hynes' prior positions, ranging from Legal Aid lawyer in the 1960s to Special State Prosecutor in the 1987 Howard Beach trial, provide him with comprehensive insight into all facets of the criminal justice system. In the following interview, Mr. Hynes discusses a current death penalty case as well as other situations confronting the DA's office.)

Interviewer: "You have stated that you are against the death penalty. Under the current death penalty law in New York State, prosecutors have the option of seeking the death penalty for certain statutorily defined crimes, including torture murder, murder for hire, the intentional killing of witnesses, etc. It is not mandatory, however, for a prosecutor to seek the death penalty in such cases. Additionally, a prosecutor may withdraw a request for the death penalty, as in cases where he/she obtains evidence indicating that the death penalty is not warranted in that case. Yet, you are seeking the death penalty in the case of Michael Shane Hale, who is accused of stabbing to death and then dismembering the body of another man. Why are you seeking the death penalty in this case?"

DA Hynes: "I cannot say why, and that is because the Courts are going to determine, down the line, in judicial review, either before or after a conviction, in the penalty phase, whether the decisional judgment made by a particular prosecutor is within the statutory bounds. As I understand the option available to the prosecutor, while it is discretionary, discretion does not mean complete and unfettered discretion. In other words, there would be no reason for a proceeding based on abuse of discretion. I do not pretend to be a

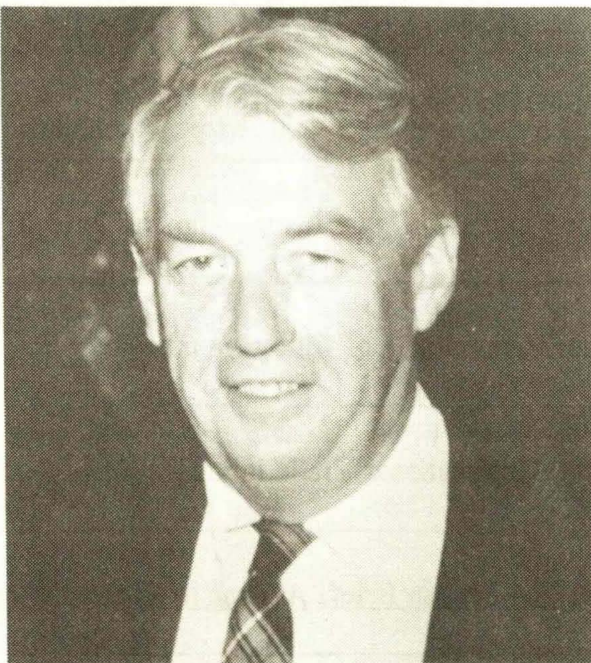
legal scholar, like my colleague in Queens County, (the District Attorney, who is a former Associate Member of the Second Department's Appellate Division). That is his reading of the law as well. I think the discretion means, in the exercise of this ultimate penalty, that it must be exercised in the appropriate cases, but nonetheless, it has to be exercised."

Interviewer: "The death penalty became effective in New York September 1, 1995. Months prior to that, you had organized a special team within your office, managed by your executive assistant district attorney

Barry Schreiber, to analyze the procedures utilized in other jurisdictions where the death penalty exists. A concern surrounding the death penalty is the expense. These cases require a great deal of money to prosecute. How does the funding situation appear for your office at this time?"

DA Hynes: "We have a handshake from the Governor's Office. I am not entirely happy with that any more than I am happy with the fact that the sixty-two DAs throughout New York State who, after all, are going to be the ones to carry out this policy, had no hand in the drafting of this legislation. I think that is unfortunate and resulted in a number of quirks in the law.

But the funding is something that is in doubt. The Capital Defender's Office was funded with something like 5 million dollars. I have no quarrel with that. Anyone charged with a capital crime ought to receive the best representation that they deserve under our system of law. On the other hand, the estimate of the costs of prosecuting a death penalty case runs between \$3.5 and \$5 million dollars because of the incredible number of appeals available to someone charged with a capital offense.





The first capital punishment case that we had in New York State was in Ulster County. We have a mutual aid agreement between the larger DA offices and the smaller county DA offices. I dispatched two of my assistants from the Appeals Bureau. We had been charging an hourly rate. It took a while for me to get reimbursed for my first demand for reimbursement. I hope the next time I send a bill to the Governor's Office, I will receive payment faster.

As it is now, there is no specific allocation of funds as there are for the Capital Defenders. There is rather, what is in a sense a revolving fund and a promise that if we need money because of the excessive costs of appellate review, we'll receive the money. Having said that, I can tell you as the former President of the State District Attorneys Association and now as the Director of the national board representing the sixty-two DAs, I have made it abundantly clear that if we do not get compensated, we may opt not to seek the death penalty."

Interviewer: "Does your office still adhere to the policy that permits any assistant district attorney to request removal from a case because he/she cannot seek the death penalty because of his/her personal moral reasons?"

DA Hynes: "Absolutely. The reason I decided to personally prosecute the first case is because I do not believe I can ask an assistant district attorney to try a death penalty case unless I am willing to step up to the bat. Since I am a trial lawyer by training and a teacher, I can try cases. I think that is my obligation."

Interviewer: "As a law student, I believe if I was a prosecutor, I would rather see five individuals who are guilty of the crime of which they are accused be acquitted rather than to see one innocent person be convicted. Is there special training for prosecutors regarding this ethical dilemma? How do you *know* when the person you are prosecuting is really guilty?"

DA Hynes: "That is a much tougher question if you are a defense lawyer, and I have been that. The concern when you represent an innocent person is an agonizing one; it is a nightmare. I have never forced anybody to prosecute a case unless they believed, ultimately, in the evidence that they had. If someone came to me through one of the bureau chiefs or other supervisor and said, 'I just do not think that we have a case here', he/she would not be required to prosecute and that would lead to a very careful evaluation.

Our standard for proving a case beyond a reasonable doubt is a very difficult one. We are put to the test regularly, whether it is in prosecuting a misdemeanor case or a homicide case. The training program here is among one of the best available anywhere in the state. As far as our ethical responsibilities here, we are honor bound and legally bound through cases like Brady v. Maryland to make very sure that we do not do things which are unethical. 373 U.S. 83 (1963). I think it is fairly well-known throughout this office that if you are a prosecutor and you commit an intentional ethical violation, that would be the last time you would work here."

Interviewer: "How much prosecutorial discretion is there in seeking the length of a sentence? For instance, an example of two different crimes that are both Class-E felonies are eavesdropping (N.Y.S. Penal Law §250.05) and criminal anarchy (N.Y.S. Penal Law §240.15). What factors would determine the sentence that the prosecutor would seek for each crime?"

DA Hynes: "Those are sophisticated crimes. In dealing with crimes of violence, I do not permit plea bargaining. We tell the defendant what the sentence is going to be and they know if we convict, after trial, we are going to ask for more jail time. On the other hand, I do not believe it is, from an economic or moral standpoint productive to place non-violent drug addicts in jail. We have a very aggressive program, the singly most aggressive program in the country of which I am aware. We isolate people who are charged with non-violent crimes who face two and a half to four years in prison as second felony offenders under the Rockefeller drug laws, and we put them into long-term rehabilitation. We tie that to job-training and job-placement. The success rate has been incredible. We have a sixty-seven percent success rate, as measured six months after someone leaves the program. That compares with the fourteen percent success rate nation-wide (for comparable programs). The essential difference between our program and all other programs is the job-training and job-placement."

Interviewer: "In another article that appears in this issue of *The Justinian* (Recollections & Reflections On My Experience At The Queens District Attorney's Office by Kevin Gomez), the student-writer mentions, in discussing his experiences working in the Queens District Attorney's Office, that VTL 511 cases create a backlog. Basically, this is a non-violent crime that often involves a teenager driving without a license. Are



you aware of any procedure that might assuage the backlog that VTL 511 cases can create for prosecutors and the arraignment Court?"

DA Hynes: "I do not know how to react to any antidotal experience. I have great respect for the DA of Queens County. He is a former judge and he is very careful. I believe that while the VTL 511 charges are 'victim-less' crimes, if there are repeats and an offender habitually violates misdemeanors and violations, there is a price that ought to be paid. Initially, the attempt should be to have alternative programs; we have thousands of people who are ordered to clean up the parks, and paint as well as do minor maintenance work in senior citizens centers.

Just over the past weekend, we had a defendant who was arrested for farebeating. His record contains ninety violations of non-violent offenses. He should not be allowed to continue to violate the law with abandon."

Interviewer: "Do you have any systems in place to expeditiously process a case where, for instance, a fifteen year old is charged with violating VTL 511 (first offense) in order to reduce the backlog and free the Courts to dispense with more serious crimes?"

DA Hynes: "First of all, we (DAs Office) have almost no backlog, both in felonies and misdemeanors. We have an extremely aggressive alternative program for young people who are first offenders. Typically, they are put into these programs where they perform real community service. If someone walks away from community service, he/she is brought back to Court and might spend a weekend in jail. But we do try in the first instance to offer some rehabilitative service."

Interviewer: "To remain with my earlier example, what would be the average length of community service that your office would recommend for the fifteen year old who is a first time VTL 511 offender?"

DA Hynes: "These community service programs are designed to be measured and to respond to the problem. If the kid violates VTL 511, he/she should not be placed in endless community service but there should be appropriate community service."

Interviewer: "It is an often quoted maxim that 'justice is blind.' However, it is also true that prosecutors have discretion. For example, one defendant who commits murder in the second degree (NYS Penal Law §125.25) may face twenty-five years to life in a state prison, whereas another may avail himself/herself of the extreme emotional disturbance

affirmative defense and spend five years in Kirby Forensic. When is it a case where the prosecution agrees that the defendant should be placed in a forensic facility as opposed to a state prison? What would be some of the likely factors that lead to that decision?"

DA Hynes: "We have a great deal of discretion, which is exercised on a case-by-case basis. If someone has suffered an extreme emotional trauma and there is a showing through medical and psychiatric evidence, we can defer on agreement. I have deferred felony cases where people have agreed to enter psychiatric treatment. I have deferred cases where the defendant offers to get counseling-for example, a batterer in domestic violence cases-and there is no repeat of the violence during the period of deferment. We employ a lot of those strategies because that approach allows us to focus on career criminals (i.e. drug sellers) who commit violations, misdemeanors and felonies. Those people are often sociopathic in their behavior.

We took this county, which is eighty-four square miles and divided it into five separate geographic zones for the purpose of being able to focus our energy. This enables us to interact with the community better. We deal with the local synagogues and churches as well as school officials. In this manner, we obtain a better sense of what the community is like. That is the reason that this county has had a dramatic drop in crime (39.4% in seven major categories of crime) since 1990, according to the Police Department study. That reduction has not occurred by accident. And it was not achieved by an across the board, 'Let's throw the key away' approach, either. Rather, it was achieved by an intelligent approach to alternatives to incarceration."

Interviewer: "To follow up on a subject that you mentioned in response to the most recent question, how likely is a woman who kills her batterer to receive deferment? Perhaps it is a case where she has been beaten consistently for ten years, hospital records exist to document the abuse, neighbors recall her being beaten by him, etc. In some jurisdictions, prosecutors as well as the Courts say, in effect, 'Well, we are sorry she was battered for a decade, but she took a life and now she has to go to prison for the same length of time as someone who kills another person over a parking space.'"

DA Hynes: "That would be a case that we would watch extremely carefully. Professor Smith, who is on leave from Brooklyn Law School, is in charge of the



Domestic Violence Bureau. In the appropriate case, she would recommend deferral, counseling and dismissal."

Interviewer: "Police officers have a job that is not to be envied. Most are exemplary in the performance of their duties, and law-abiding people are glad when we see one on a dark street late at night. However, there are occasional 'dropsy' cases, where the defendant alleges that the police officer searched him/her in violation of his/her Fourth Amendment right against unreasonable search and seizure, whereas the police officer maintains that he/she witnessed the defendant drop the illegal substance (drugs). How should a prosecutor proceed in an instance where the evidence indicates that the defendant is guilty of the crime but he/she is not certain that the evidence was obtained legally?"

DA Hynes: "It is very difficult. 'Dropsy' cases have been around since Mapp v. Ohio, 367 U.S. 643 (1961). What I used to do when I was a defense lawyer working for the Legal Aid Society was put eight or nine dropsy cases on the calendar in a row. I remember one instance where a judge, who is now probably retired or even dead, said, 'What do you want me to do with these perjury cases?', and I responded, 'Grant one motion.' He did and denied the other motions.

Prosecutors cannot play God. I may know that someone is lying; I may not be able to prove it. What

zone prosecution does is target the very good cops and the handful of bad cops. In this manner, prosecutors who are assigned to a particular zone will become familiar with the police officers. It is a built in way of excluding fabricated testimony.

No one has more respect for police officers or fire fighters than I do. I served as the New York City Fire Commissioner for two proud years. The men and women who serve in those jobs never know when they leave their homes for work if they will return. Having said that, I have had the dubious distinction of putting more police officers in jail than any prosecutor who is alive today. (The instances include cases from) when I was Chief of the Rackets Bureau in this office back in the 1970s to the 77th Precinct scandal when I was a Special State Prosecutor.

So there are bad cops. There are lousy lawyers as well. We deal with lousy lawyers by prosecuting and disbaring them. I think that the bottom line is that we must be very vigilant. This is particularly true, given the enormous power a police officer has as an enforcer of the law and the more enormous power that a prosecutor has executing the rule of law. One manages it by being careful. Have we had problems in this office? Sure we have. I deal with them very simply by firing any prosecutor who is not living up to our standards."

Interviewer: "Thank you."



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# ON POLITICAL CORRECTNESS

By Joseph A. Hayden

Until recently I never dreamed that pejoratives for our neighbors to the North even existed. I never heard the end of ethnic slurs against Mexicans when I lived in California for 13 years, although my very Caucasian high school teacher used to call the state "American-occupied Mexico". However, my father made the mistake of using a word he heard one evening to "kid" a Canadian woman who had married one of his military buddies. He called the woman a "Newfie" in jest. Little did he know that she would not speak to him for the next two years. Apparently the nerve was hit when this woman, from Newfoundland, Canada -- that part of Canada stretching over the Atlantic which is almost universally-held to be inhospitable -- since the term was used primarily by Central and Western Canadians to describe those people who had chosen to live in such a barren, out-of-the-way province which has its own unique time zone. I found out many years later from my now ex-wife that Newfoundland, where she lived for several years, is indeed barren and a place which time has forgotten. It was the kind of place, she described, that you couldn't let your dog wander onto other people's property without expecting it to get shot. This is what happened to my wife's family. Now I see how militias get started. Rural bullies.

However, times have changed, I'm told. I met a Canuck (just kidding) over the Summer who told me that the stigma that used to apply to Newfoundlanders (that's New FOUND-landers to you stranger), is now just a term of affection, adopted by the younger generation as an acceptable label to describe their unique positioning in the world. Still, St. John's is a long way from 90210.



What I conclude from all of the above is that, contrary to what political commentators are fearing, some of the new "rules" for being politically correct are being relaxed instead of becoming more burdensome (see my first "On Political Correctness" columns in which I described the burdensome use of "differently-abled" which, for extremist-PC fans, would be used in lieu of what we used to call "handicapped"). How many more labels will just roll off people's backs? Admittedly, the progress made with "Newfie", which is a relatively obscure yet former slander, is at least a step away from extremist correct speech. I'm sure there are more clever and derogatory terms for separatist Quebecois (Keh-be-kwah). Or is that "Quebeckers" to Anglophones? Lets not go there.

Our jurisprudence is of course full of incorrect speech. We still use "illegitimacy" to describe out-of-wedlock children in the legal setting, no matter how hard Oprah and others strive to ban its use in everyday language. I guess it is just to convenient to say the word. In *Buck v. Bell*, the United States Supreme Court even got away with saying that "three generations of imbeciles is enough" when speaking of sterilization of mentally disabled people. In the same way that illegitimate is an improper way to describe any child, no children are the result of "artificial insemination" anymore. The correct term for "AI" is "Alternative Insemination". I don't see the harm in that one because just as I would hate to label a "crack baby" instead of an "addicted baby" and an out-of-wedlock as an "illegitimate child", I would not want any child to be called "artificial". I only foresee reversing a couple of decades of speech as the challenge,



especially when the acronym stays the same! Nevertheless, I wish us luck with that one.

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A colleague of mine in the MIS Department of the large law firm we work in recently had an incident with an attorney which made him boil. He was helping a secretary recover her mouse and keyboard when he suggested that the terminal be "rebooted". The attorney, who has been known for touting her 140 IQ, came out in mid-conversation and said, "Oh, you're just turning it off and on again?" to which my colleague simply answered, "Yes, in layman's terms, that is what I'm doing" (emphasis mine). Before he could catch his breath he was told, "What did you say?! It's **layperson**!! If you ever use another sexist term like that around here again, I'll lay you out!" I have not found the word "layperson" in any dictionary to date. If you've finished this column, please write make an oath to yourself never to practice law like that! The world will be a safer place if you don't.

A few weeks later I accidentally dialed this attorney's extension with my modem, something modem users are bound to do since her phone number is a common digit plus an area code.

Promptly I received a message on my phone identifying her as the caller (attorneys' names are in all-caps). I realized the sin I had committed. After hearing a story about all the troubles she's had with people inadvertently calling her number and how important it was for her to keep this very memorable number and that she was trying to practice law here, she advised that if I didn't

put up a sign warning against dialing her number, she would have to "come down there and ring somebody's little neck". Eventually I heard a rumor that the firm keeps a slush fund for all the lawsuits that this very successful tax attorney generates with her insults and threats of violence.



## MARY CAMPBELL GALLAGHER, J.D., Ph.D.

**Mary Campbell Gallagher, J.D. (Harvard), Ph.D.**, is a professional writer and teacher. She has passed the bar exams in MA, CA, and New York. She is a member of the Massachusetts and D.C. Bars. She is author of *Scoring High on Bar Exam Essays* (Arco 1991, Sulzburger & Graham 1996). Her articles on legal writing have appeared in *Student Lawyer* and *National Jurist*.

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# THE RIGHTS OF DISABLED CHILDREN: RESPONSES TO A PLEA FOR CHANGE

By Daniel Ajello

Special education services for disabled children begins at birth and continues through a child's school years. After age three services are provided through the Board of Education. Prior to age three services are provided through a web of City and State agencies directed through the State Department of Health and the Department of Mental Health, Mental Retardation and Alcoholism Services of the City of New York (DMH). Services for children under three are referred to as Early Intervention Services. Plans are developed for each child through meetings and evaluations among parents, service providers, therapists, doctors, and city/state representatives.

Some of you may recall last year's article regarding pending legislation affecting special education and related services. This legislation, in its original form sought to diminish some of the services children receive and would make it harder to qualify for some services. I was able to gather over three-hundred signatures opposing the legislation with the help of fellow students. These signatures were sent to Albany as part of a larger petition drive organized through United Cerebral Palsy. I wanted to let everyone know what has happened since last year's *Justinian* article, and the sending of the petition.

Copies of the *Justinian* article were forwarded to various members of the Senate and Assembly, as well as City officials who direct some of the special services for children with disabilities. Responses contained some useful information.

Speaker of the Assembly, Sheldon Silver, (a BLS alumnus) responded to the issue of service providers having a vote in the plan and services developed for each child. The problem is that the service provider has a financial stake in the types of services each child receives and may tailor their evaluation to fit the school's particular available services rather than give an individualized evaluation for each child.

Speaker Silver writes, "...the 1996-97 State Budget includes provisions which reform the

preschool education program by eliminating service providers as voting members of the evaluation team. This move prevents service providers from the practice of self-referral protecting the consumer and the state from potential waste and abuse of the program."

Regarding waste and abuse in the system, Charles M. Dias, Deputy Commissioner for Child and Adolescent Services of the DMH, writes "...during the past year the Department as well as the State Department of Health have intensified our efforts to both train and monitor contracted providers...through the establishment of Quality Assurance and Service Coordination Monitoring Units...the Department is confident that our increased presence in the field and ongoing audits of contracted providers of...services will have a significant impact on the overall quality and effectiveness of the program."

Information regarding the 1996-1997 Budget was sent by Assemblyman Robert A. Stranieri, 61st District. In his correspondence the Assemblyman reported some significant highlights of the budget which affect special education. He writes that the budget:

1. Prohibits the use of funds provided for special education for any other programs.
2. Maintains the parent advocate participant on the CPSE.
3. Eliminates the 50% delay requirement proposal for services, and allows the continued provision of 12-month services for qualified children.
4. Continues the current method of calculating tuition rates.
5. Maintains the level of State contributions to municipalities for the costs of pre-school special education."

Number two refers to the Committee for Preschool Special Education. The parent advocate is a specially trained parent of a child with a disability. The parent advocate is to be present at



the initial meeting to assist parents in obtaining services for their child entering the Board of Education system. This is to serve as a tool to make sure the parent is well-informed and aware of their rights and choices available in obtaining services for their child. Unfortunately, parent training so far seems incomplete and parent advocates are many times not knowledgeable enough to assist the parents as much as the plan envisions.

Assemblyman Straniere added that he is confident pre-school special ed programs will maintain their current level of services.

Senator Joseph L. Bruno, Majority Leader, responded by addressing the overall budgetary concerns of the program. He writes,

"Included in the final 1996-1997 State Budget are a number of refinements that were adopted in an effort to make the preschool program for children with disabilities (which has grown from \$334 million in 1990-91 to an estimated \$713 million in 1995-96) more cost-effective. Specifically, those items agreed upon by the Legislature include strengthened criteria for more efficient transportation services, establishment of a continuum of services designed to help ensure placements in least restrictive settings, refinements in the membership and procedures of Committees on Preschool Special Education, and the establishment of a strategic plan by the state to better serve preschool children with disabilities, among other changes."

Much attention has been focused upon the needs of special education children and it seems from the correspondence that refinements to the system are beginning to take place. It seems that legislators and parents are becoming more educated regarding the special education system. This is probably due in a large part to the fact that the expense of the system to identify and deliver services to these children is so large. Besides the fact that the system deals with disabled children, for whom we all share concern, the system now draws so much money from state and county government that it cannot avoid scrutiny.

I would like to think that every voice that speaks up for our children in some way helps direct the actions of our state and county officials. With this in mind I thank the fellow students and friends who signed the petition and ask everyone to keep the concerns of our children in mind as they continue with their everyday lives and their legal lives. Supporting the rights of children, as well as any group, certainly does not end with the signing of a petition. I urge everyone to become as involved as they could be with helping those with special needs who are not able to voice their own concerns as well as other groups.

I am thankful to *The Justinian* for giving me an opportunity to voice my concerns and opinions regarding children's rights. The time and effort I have expended have reaped great personal rewards and have given me the opportunity to help ensure the rights and needs of my daughter, Megan, and those like her, are not ignored. My personal efforts were recognized last year when I received a phone call asking me to submit my name to Governor George Pataki's office for consideration for appointment to the New York State Developmental Disabilities Planning Council (DDPC). I was appointed in September to a volunteer position as a parent to represent concerns of those families and children with disabilities.

The DDPC's mission is to improve the overall quality of services for individuals with developmental disabilities and their families. To do this, the DDPC coordinates service linkages among agencies, direct providers and consumers, initiates and funds model and pilot programs, monitors existing programs, and serves as a catalyst for change in the current service delivery system.

Obviously I am excited about traveling to Albany several times a year to voice my concerns and opinions. I thank all those who have spoken to me in support of the issues raised in the past and would welcome any information or concerns the Brooklyn Law School community may have regarding special education and issues revolving around disabilities.



I have been relating my experiences with handicapped children's services to fellow students for the past year. My daughter, Megan, was diagnosed with Cerebral Palsy when she was six months old. She will be three in November. Another article in this issue of *The Justinian* relays additional information about last year's petition to stop state budget cuts.

Another problem has presented itself. My daughter takes a bus to and from the United Cerebral Palsy center in Staten Island for therapy and related special education services. A plan for services for Megan was composed with the NYC Board of Education, the Committee on Preschool Special Education, UCP, therapists and others. It was determined for various health reasons that she not be on her bus for longer than 45 minutes each way. This plan started September 1st, 1996. Her trip to school has been consistently over the 45 minute limit. Her trip home has been within the 45 minute requirement. Each day the bus ride has exceeded the 45 minute limit I have been contacting those involved to obtain information and try to get the parties involved to comply with the legal document that was composed.

The Department of Transportation, who oversees the bus company, has told me that they are, at times, collecting liquidated damages from the Bus Company each time they violate the 45 minute requirement. However, the problem remains unsolved and is not moving towards a resolution.

I am trying to resolve this matter as quickly as possible on my own. Besides asking for the help of my fellow students I am in contact with an attorney to determine if I should bring legal action.

This matter is of course more involved than I can put into this limited space. If anyone wants more information, or needs information on how to obtain services for a handicapped child, please contact me at *The Justinian*. Meanwhile, I ask that those who wish to assist in resolving this immediate problem please tear out, or copy the below letter, fill in your name, and if you wish your address and phone number. Then, slide the copy under the *Justinian* door.

These letters will be sent to the Department of Transportation, UCP, The Board of Education, and the Bus Company (Guardian/Protransit). I will address and place postage on all of them.

I thank you for your support and I will let everyone know the outcome of our efforts.  
-Daniel Ajello

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To whom it may concern,

I ask that you please do all you can to ensure that Megan's plan for services is met. Specifically, I ask that her transportation requirement of 45 minutes to and from her school be met.

I remind you that this transportation requirement stems from the medically fragile condition of the child you are transporting.

Sincerely yours,



# RECOLLECTIONS & REFLECTIONS ON MY EXPERIENCE AT THE QUEENS DISTRICT ATTORNEY'S OFFICE

By Kevin Gomez

*"Vindicate the weak and fatherless;  
Do justice to the afflicted and destitute.  
Rescue the weak and needy;  
Deliver them out of the hand of the wicked."*

-Psalm 82:3-4

From Wednesday, January 24, 1996 to Friday, April 26, 1996 I interned in the Queens District Attorney's Office Intake Division. The internship gave me a better understanding of our criminal justice system, an opportunity to reflect on policy changes to make the system better, and allowed me to make a difference in the lives of others, the most rewarding aspect of this experience. Here are some of my recollections.

My internship at the Queens District Attorney's Office served as a window for me to see the criminal justice system at work. At the Intake Bureau criminal cases are first initiated. The division receives all the police paper work on defendants and complainants. The office interviews crime victims, drafts affidavits and depositions, to bring charges against defendants at arraignment Court within less than 48 hours after arrest. At arraignment Court most cases are pleaded, while a few go to trial.

Working at Intake gave me an opportunity to reflect on policy and procedural changes that would make the criminal justice system better. For example, at arraignment Court, a bulk of the cases involve defendants charged with VTL 511, operating a vehicle without a valid license. These cases bring time consuming paper work to the District Attorney's Office, and backlog the arraignment court. Personally, I hated them, a waste when compared to violent crimes which should be the primary focus of prosecutors and the criminal justice system. A change I would recommend is to have these VTL cases handled by an administrative Court within the State Department of Motor Vehicles. This would allow for a more effective disposition of cases involving drivers with suspended licenses, giving the State Department of Motor Vehicles greater discretion on how to better ensure

that our streets are safe with valid drivers. At the same time, the interest of efficiency and fairness are served for the criminal justice system by allowing more swifter adjudication of violent criminal offenders. Only drivers with suspended licenses involved in serious accidents, or charged with additional crimes like drug possession, should be tried in the criminal justice system for a VTL offense. In the long run, a separate administrative Court for VTL offenses can provide more efficient adjudication of both criminal cases and suspended license cases.

Second, the Queens District Attorney's Office handles many cases involving prostitution. Mere criminal penalties for soliciting a prostitute will not discourage patronizing. Diversionary disposition can prove effective here. New York should adopt a program that has proven effective in Chicago which requires prostitute patrons to attend classes offered by former prostitutes on the painful and humiliating experience of prostitution. Furthermore, defendants are then required to engage in community outreach to reach out to the many young women who are bonded to this tragic lifestyle. The program has made a positive difference in the lives of both former patrons and prostitutes to move away from prostitution. Such a diversionary program could make a far greater difference than a misdemeanor fine or prison time can. I'm not saying that we should do away with misdemeanor fines or prison terms. While they serve the purpose of punishment, an effective diversionary program should be considered for prostitution cases.

Third, the Mayor's *Quality of Life* campaign has increased the number of "petit" offenses being adjudicated at the District Attorney's office. These include jumping subway turnstiles and urinating in the subway stations, crimes often committed by juveniles. If the defendants are 16-18 years old they are prosecuted by the District Attorney's Office. For a more effective adjudication of non-violent juvenile misdemeanor cases, *Teen Courts* should be set up. In a Teen court teenagers charged with first time



misdemeanor offenses appear before a jury of their peers, where the jurors and the attorneys are other teenagers. The success of teen courts throughout the country is measured by their very low recidivism rate, compared with the higher rate for offenders tried in Criminal or Family Court. Teen Court could make a real difference in adjudicating juvenile committed quality of life crimes.


Fourth, nearly every day I faced a domestic violence case. I will never forget speaking to a seven year old little boy who saw his father abuse his mother and point a gun at her head. Though I could still hear the innocence in his voice, from the facts he described I was aware that he was being exposed to violence that no one (particularly not a child) should ever face. Yet I was troubled to find out that pointing a loaded gun at someone within a residence carries a lesser charge than when done outdoors. Considering that most violent crimes occur within the confines of the home, this distinction just doesn't make sense. Any effort to address domestic violence must involve changing this law.

Finally, interning at the District Attorney's Office gave me an opportunity to make a difference in the lives of others. I often interviewed,

telephoned, and translated for Spanish-speaking crime victims. Most were hard working immigrants, new to the American criminal justice system. Helping them meant more than translating, it involved giving these future Americans a sense of confidence that our justice system can work for them.

The cases I handled in Intake were diverse. One involved a working woman fearful of death threats by an estranged lover. Another involved a livery cab driver nearly knifed to death by an 18 year old thug. There was also a couple worried for their son because of attacks by neighborhood bullies. Whether it was drafting depositions, or explaining family orders of protection, these crime victims felt at ease that someone was speaking not just to their minds, but to their hearts to calm their fears.

Looking back at my internship I will not forget the many faces I saw. I will remember the remorseless looks of the accused, as well as the sobs of victims, and mothers of young defendants. In summary, I thank God for my internship experience, and the opportunity it gave me to do justice to the afflicted, needy, and fatherless and to help them be delivered out of the hand of the wicked.



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# CIVIL COURT JUDGE ELECTION IN RICHMOND COUNTY

By Muriel Richards

Ralph Marra, a native of Staten Island's South Shore, is currently up for election as a judge in the Civil Court of Richmond County. The areas to be served include the South and Eastern Shores of Staten Island. Mr. Marra is running on the Democratic line. He is a 1982 graduate of Nova Southeastern School of Law. Upon becoming licensed as a lawyer in New York State, Mr. Marra obtained a job in the New York City Civil Court, but was assigned to the Criminal Court. He worked on an alternative basis in the Courts located in downtown Brooklyn and the Stapleton section of Staten Island for two and a half years. Mr. Marra then commenced working for Judges Pasquale Bifulco and Thomas Aliotta on Staten Island. He held that position for ten years, during which he participated in hundreds of trials, both civil and criminal, jury as well as bench trials. Mr. Marra is presently a principal law clerk to Justice Philip G. Minardo in Supreme Court, Criminal Term, Brooklyn. He has operated in that capacity for nearly a year. This position requires Mr. Marra's involvement in the prosecution of major felonies, including murder. In an interview with *The Justinian*, Mr. Marra stated that he is seeking election as a judge in Civil Court because he believes that his years of experience in the Civil Court have provided him with a comprehensive, working knowledge of the day-to-day operations of the tribunal. "I do not need on the job training...I know the procedures; I know the law. After a total of over thirteen years, I know the 'in's and out's' of the Civil Court like the back of my hand", Mr. Marra told *The Justinian*. Additionally, he noted that his experience with criminal trials could well be advantageous if he is elected. Currently, one

*Civil Court judge has been assigned to Criminal Court in an effort to reduced the backlog.* Mr. Marra also cited the fact that he was born and raised on the South Shore of Staten Island (one of the areas to be served by the judge successfully elected to the bench) and thus possesses a clear comprehension of the problems facing those residing there. He currently resides in Grant City with his wife of eleven years, Diane, and two children, Angeline, age six and Anthony, age four. Both children attend school on the South Shore.

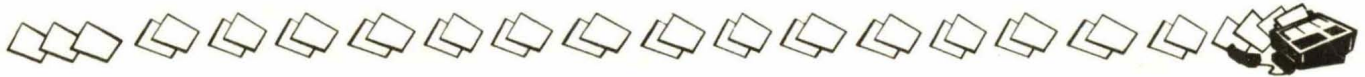
Philip Straniere is the candidate running on the Republican line. Mr. Straniere is a 1973 graduate of New York University School of Law. He is a practicing attorney who specializes in matters involving real property and employment discrimination. He has also been an Impartial Hearing Officer for the New York City Board of Education since 1983. Mr. Straniere handled over one hundred and fifty cases in the last year alone in that capacity. He also informed *The Justinian* that he did collection work several years ago. Mr. Straniere was a co-representative on an intermittent basis with John Marchi for fifteen years. Mr. Straniere stated that in order to efficiently reduce the backlog in Criminal Court, the Office of Court Administration should assign more judges to Criminal Court and not remove judges from their duties in Civil Court, which also experiences backlogs. He currently resides in West Brighton with his wife of twenty-five years, Jennifer, and their three children, Gregory, Amanda and Nicholas.

Remember, election day is Tuesday, November 5, 1996.





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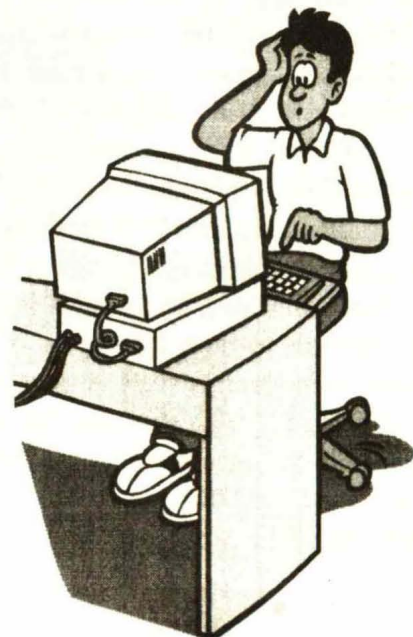
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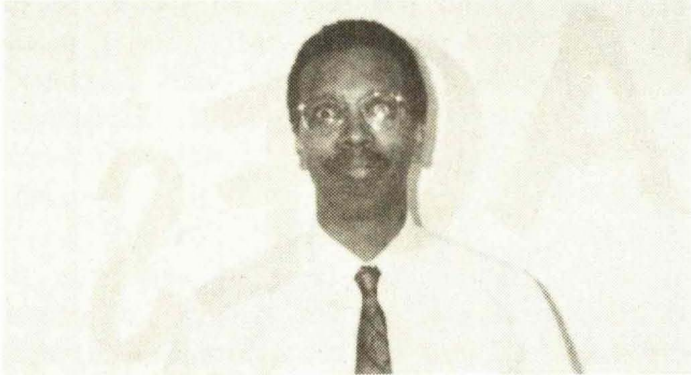




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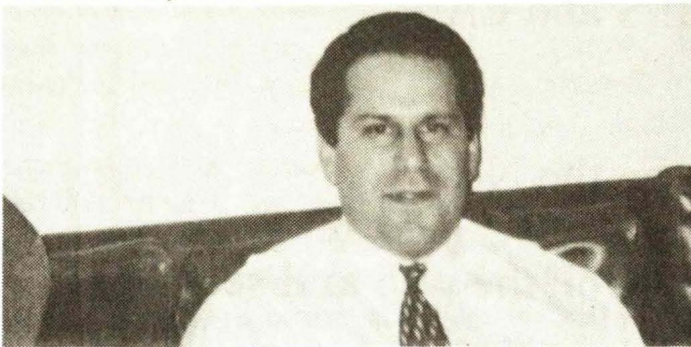
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## What do you think will be the result of the 1996 Presidential Election?



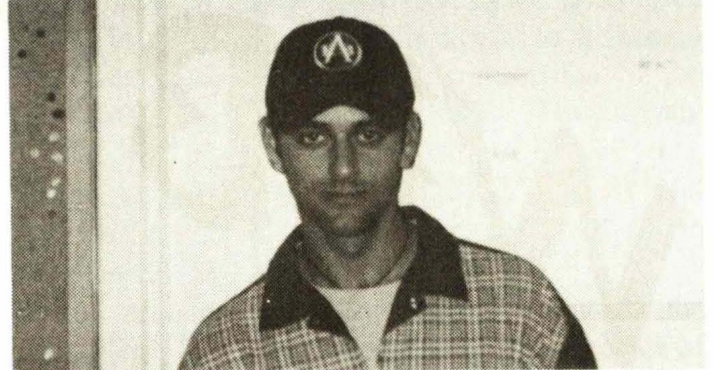
"I think Clinton will win because most folks are doing better than four years ago."

William Ford, BLS '97



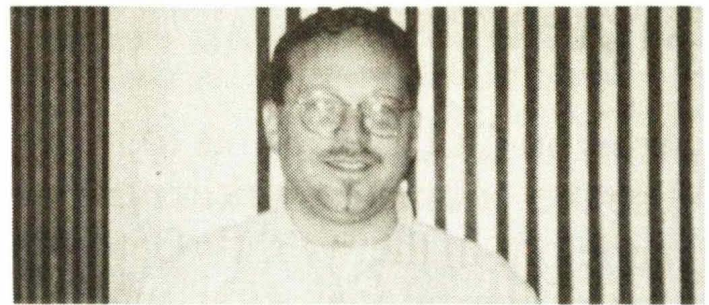
"As seems to be the trend over the last several presidential elections, unfortunately, the choice to be made is a lesser of two evils decision. However, I would feel much safer if the future of the country remained in the hands of Bill Clinton, who is a younger, more energetic gentleman. He is more in tune with modern trends and the attitudes of the younger Americans. Mr. Dole has consistently wavered on his policies and platform, which at this stage of the game is all he has to go on. He has traditionally demonstrated himself as a worthy politician. However, the President of the United States needs to be more than just a politician. He needs to be a figure head of the country and represent us in foreign matters as opposed to just those of the state. Additionally, his conservative politics are not to my personal liking, nor are they best for the immediate future of this country."

Jeffrey Gold, BLS '97



"I think Clinton will win the election because, although I like Dole and will probably vote for him, he is a little too scary to run this country."

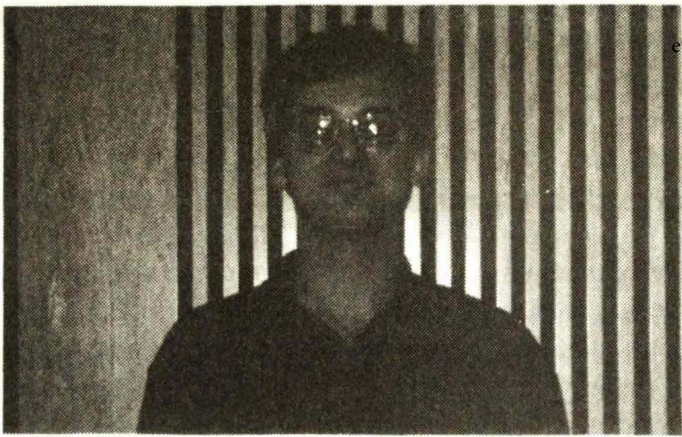
Wayne Kaufman, BLS '98



"I think Clinton will win the election because most people seem satisfied with the job he is doing. The economy feels okay, and he has made changes in welfare and immigration without getting too extreme. I do not think the rigid planks of the Republican party appeal to most rational thinking and voting Americans."

Michael Sapio, BLS '97





et al.: The Justinian

"I think Clinton will win. People do not care about the issues. They do not understand the role of the President in our government. And they do not like Dole's monotone speaking style. I will vote for Dole and be happy about the two-term limit."

Daniel Ajello, BLS '97

# HAPPY HALLOWEEN





# CONTRIBUTION CLAIMS AGAINST EMPLOYERS IN NEW YORK STATE LIMITED BY NEW LEGISLATION

By Muriel Richards

In September 1996, Governor George Pataki signed into law legislation that will severely restrict the cases in which third-party contribution can be sought against an employer. Employers and carriers of workers' compensation policies are in favor of the newly enacted legislation. In a typical workers' compensation case, an employee suffering an injury that arises out of and in the course of employment will file for workers compensation benefits. Workers' Compensation is a no-fault system of insurance and except for a few instances<sup>1</sup>, the employee will receive benefits. The expenses arising from the injury are normally paid for by the workers' compensation carrier (or, if the employer is self-insured, by the employer directly). Virtually all employers in New York State are required to have workers' compensation insurance.<sup>2</sup> The responsibility of the employer to carry this type of insurance was originally balanced out by the employer's immunity from a negligence suit brought by an employee. The exclusivity provisions<sup>3</sup> of the law limit the injured worker's recovery against the employer to payment of medical expenses and lost wages. If, for example, an employee sustains an injury because a machine he was using during the course of employment malfunctions, he may not sue his employer if he seeks workers' compensation benefits, but he is able to sue the manufacturer of the machine. Under CPLR §1401, the direct defendant may implead the employer and seek third-party contribution. (Common law indemnification is usually also sought in these actions.) This practice is unique amongst the various states to New York and has existed since Dole v. Dow Chemical Company 30 N.Y.2d 143 was decided by the Court of Appeals in 1972. In Dole, the Court held that the exclusivity provisions of the Workers' Compensation Law would not be violated by the impleader as the claim of the direct defendant/third-party plaintiff arose from a breach of duty owed to it by the third-party defendant and was not based on the death of the employee/decedent. While theoretically the third-party defendant is liable under a separate duty that it owes to the direct defendant/third-party plaintiff, the

lawsuit would not have been commenced if not for the work place injury/death. Thus, the employer is doubly liable—first for insurance policy premiums and in cases where the plaintiff's claim is successful, for contribution. Employers and their insurers view Dole as a method by which plaintiffs circumvent the exclusivity provisions of the Workers' Compensation Law. In order to further comprehend the opposition to the Dole decision, it is necessary to understand the history and purpose underlying the Workers' Compensation Law.

The Workers' Compensation Law was designed to provide employees with compensation (i.e. lost wages and medical expenses) for injuries "arising out of and in the course of employment."<sup>4</sup> New York, in 1910, as a result of increased awareness amongst labor reformers and based on the findings of the Wainwright Commission<sup>5</sup>, enacted both compulsory and voluntary worker's compensation acts.<sup>6</sup> The acts were modeled upon the English Workmen's Compensation Act of 1897. The compulsory coverage applied only to workers engaged in eight types of highly dangerous employment, where the threat of injury was both "likely and serious." The voluntary coverage also sought to secure lost wage compensation for employees not engaged in the eight enumerated categories. The need for this coverage was especially crucial at that time. In an era when each subway station was painted a different color so illiterate workers would be able to recognize their stop, it would have been unreasonable to believe that many would have been cognizant of their legal rights and able to successfully assert a claim under a fault-based system of recovery. Despite the recognized need for this type of protection for employees, the New York legislation was quickly overturned in Ives v. South Buffalo Ry. Co., 201 N.Y. 271 (1911) on the grounds that it was an unconstitutional deprivation of liberty and property "under the Federal and State Constitutions"<sup>7</sup> that could not be justified under the state's police powers, as the legislation was deemed to benefit one group (workers) and not society as a whole. The New York State Court of Appeals held



that there was no connection between the health, safety or morals of the employees and the purpose of this statute.<sup>8</sup> In his concurring opinion, Chief Judge Cullen stated that the legislation was unconstitutional because it also impinged upon the right of freedom to contract by requiring employers to indemnify their employees against their acts of negligence.<sup>9</sup>

Based on dicta in *Ives*<sup>10</sup> and motivated by the compelling necessity for compensation for workers injured or killed on the job, the New York State Legislature amended the state constitution (Article I, §19) by popular referendum on November 4, 1913<sup>11</sup>. The compulsory Workers' Compensation Law was re-enacted and became effective July 1, 1914. It has been a viable piece of legislation in this state since that date. (The Workers' Compensation Law survived an attack on its' constitutionality under federal law in *New York Central R.R. v. White*, 243 U.S. 188 (1916). The Supreme Court held that the compulsory Workers' Compensation Law was not violative of due process<sup>12</sup> fell within the constitutional orbit of the state's police powers (the Court cited the economic benefit to society in not having injured workers or the survivors of deceased workers become public charges)<sup>13</sup>, nor was it an impairment of contracts.<sup>14</sup>) From 1914 until the *Dole* decision in 1972, the dual purpose of the Workers' Compensation statute to provide employees with compensation for work related injuries (regardless of their negligence) while providing employers with immunity from negligence claims brought by injured employees was basically served, except in certain indemnity cases. However, *Dole* paved the way for expanded liability of employers by abrogating the common law ban against allowing contribution claims to be asserted against employers in impleader actions.

Michael Coyle, a Supervising Attorney with The State Insurance Fund<sup>15</sup>, commented that a lawsuit

<sup>8</sup> Employees who sustain the injury solely as a result of intoxication or because of their willful intent, as in the case of suicide, are usually barred from receiving Workers' Compensation. In both instances, however, the employer or carrier must prove that the employee sustained the injury solely due to intoxication or committed suicide. §10 W.C.L.

<sup>9</sup> §2(3) W.C.L.

<sup>10</sup> §11, 29(6) W.C.L.

<sup>11</sup> Workers' Compensation Law, Sec. 10

<sup>12</sup> The Commission on Employees' Liability, more commonly known as the Wainwright Commission (termed after Senator Wainwright who was the Chairman of the Commission), was created by statute in 1909 to study the compensation received by workers involved in industrial accidents in Manhattan and Erie County. At that time in New York State, employees could avail themselves of The New York Employers' Liability Act (N.Y. Laws 1902, Ch. 600). Railroad workers were also covered under the Barnes Act (N.Y. Railroad Liability Law of 1906, Ch. 657). However, both statutes required a finding of fault on the part of the employer to establish liability. In addition, the New York Employer' Liability Act did not void the assumption of risk, contributory negligence and fellow-servant rule defenses, which barred any recovery for the employee-plaintiff.

The Commission found, in the majority of cases, the compensation awarded under The New York Employers' Liability Act and the Barnes Act to be wholly inadequate. For example, the Commission found in Erie County during the 1907-1908 year, out of 103 closed cases where a man with dependents was killed on the job, 79% of the time, the

brought by an injured employee is often an invitation to implead the employer, even when the employer's liability is non-existent or highly questionable at best. As an example he cited those situations where an employee is injured when he slips and falls at a premises other than the employers (as in the case of a delivery person, etc). Even though the employee may have received the injuries as a direct and proximate result of his own negligence or through the negligence of another party who is responsible for the condition that caused the fall (i.e. a homeowner who does not clear the driveway of ice), the employer is often impleaded. Impleader suits in no way frustrate an injured employee's absolute right to seek Workers' Compensation benefits, but they do leave the employer facing liability never contemplated under the Workers' Compensation Statute.

The new legislation will restrict the holding of *Dole* by permitting the seeking of third-party contribution from an employer in limited circumstances. An employee needs to prove "through competent medical evidence that such employee sustained a 'grave injury' which shall mean only one of the following: death, permanent and total loss of use of or amputation of an arm, leg, hand or foot, loss of multiple fingers, loss of multiple toes, paraplegia or quadriplegia, total and permanent blindness, total and permanent deafness, loss of nose, loss of ear, permanent and severe facial disfigurement, loss of an index finger or an acquired injury to the brain caused by an external physical force resulting in permanent total disability." It is not clear how the legislation will affect existing claims. It does appear, however, based upon the history underlying the Workers' Compensation Law, that the legislation will curtail the circumvention of the exclusivity provisions of the Workers' Compensation Law by restricting cases where the employer is doubly liable.

dependents received a lump sum of less than \$500; in Manhattan in 1908, 39 out of 48 families similarly situated also received less than \$500. It is important to remember that this was a time when government social programs like Social Security for dependents of deceased workers were non-existent. Albert J. Millus, Willard J. Gentile, *Worker's Compensation Law and Insurance*, pgs. 13-14, 21-22, (1976)

<sup>13</sup> 1910 N.Y. Laws 625

<sup>14</sup> 201 N.Y. 271, 294 (1911)

<sup>15</sup> *Id.* at 294, 295

<sup>16</sup> *Id.* at 318

<sup>17</sup> *Id.*

<sup>18</sup> Albert J. Millus, Willard J. Gentile, *Worker's Compensation Law and Insurance*, pgs. 26-27, (1976)

<sup>19</sup> 243 U.S. 188, 208 (1916)

<sup>20</sup> *Id.* at 207

<sup>21</sup> *Id.* at 206

<sup>22</sup> The State Insurance Fund is an agency that was created by Article 6 of the 1914 Workers' Compensation Law. It functions as an insurance carrier and is required to provide workers' compensation to any employer who requests coverage. It cannot cancel a policy except for non-payment of premiums. Albert J. Millus, Willard J. Gentile, *Workers' Compensation Law and Insurance*, pgs. 84-85 (1976)





# CONGRATULATIONS!

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# HAMMER

**Author: Armand Hammer**

**Publisher: Putnam, New York 1987**

## Book Review

Student: Albert Gavalis

Armand Hammer was a greedy and cruel reprobate. After reading Hammer's autobiography you will come to believe that greed is selfless, cruelty is a form of kindness, and reprobates are more virtuous than saints. Hammer's presentation of his own case unwieldedly dupes the reader into believing that he was a "nice" person merely reacting to and manipulating the deck of cards that life dealt him. Perhaps a book written by the people who experienced the bad side of his bargains would yield a different reality. Armand Hammer was perhaps one of the last of the great old-world style capitalists who created his wealth more from cunning and shrewdness than from skill and expertise. Though no relation to Arm & Hammer baking soda, Armand Hammer jokingly conceded there were times when new people he met thought him to be the "baking soda king." As an entrepreneur, cunning and shrewdness were skills in themselves to be mastered which carried Hammer beyond immediate inventions or devices and created independent economic systems in each of his ventures.

In his autobiography, with some "literary" assistance from Neil Lyndon, Hammer presented the world as he saw it — the way in which the world influenced him and how he, in turn, responded and reciprocated. However, by reading self-reflectively and overlooking objective veracity, one may contemplate how one's own life pattern may manifest itself and how previous methods of one's own accomplishments might be used in future and different ways.

One cannot help but read the life of Armand Hammer without being overwhelmed by the simplicity of style with which his life appears to have been lived. Although comparatively wealthy, along with an innate ability to increase and perpetrate that wealth, Hammer places himself as "not" having been numbered among the multi-billionaires of the world. His claim to life in the opening introduction of his autobiography was that of a simple "prayer" — "to be

given the strength to help deserving people as much as he was able." Though between the lines one may also read: in helping oneself one is that much more able to help others also. The theme of the book, and Armand Hammer's life itself, was that of seizing mutually advantageous opportunities to the reciprocal advantage of both parties. In the process of healthy business and "barter" exchanges, mutual advantage was to be gained by both parties exchanging each others excesses for each others needs.

The whirlwind first chapter of the book consummates a DNA-like pattern of recent ancestry into his own life. A spiral-like circular progression of descendants reincarnated into a more advanced stage in his own life. The book progresses by tracing this pattern back to the author's new-world beginnings. Contrary to Armand's own success, his grandfather Jacob was very unsuccessful in business ventures. Once in an attempt to manufacture mattresses, grandfather Jacob got stuck with a warehouse full of feathers and a seemingly good idea to produce a potentially marketable product faltered. Though the seed of business aptitude was prevalent in grandfather Jacob, Armand's father Julius carried this DNA seed in a subdued form through the political winds of socialist-communism and capitalism.

Julius Hammer, unlike his father Jacob, was more competent in creating and managing a profitable business. The drugstore he started became two, then three and became a Manhattan chain-entity. The drugstore chain was later to blossom into millions under Armand's control in a different way. Both father Julius and son Armand pursued medical degrees in their respective academic years while managing the drugstores. The senior Julius became a practicing physician while the son Armand became a practicing businessman.

What chance of fate produces a wealth greater than that derived from mere technical excellence? According to Armand Hammer, chance is not entirely a matter of chance. Chance is a window of



opportunity to be seized upon for the hard worker who recognizes it as such. If you work hard, concentrate on your problem and pay attention to any possible solution, you can make your own luck to a large extent.

As a medical student Armand Hammer was once awkwardly placed in a situation to perform his first baby delivery -- a breech delivery with potentially fatal consequences to both the mother and child. Having missed the lecture on breech deliveries, he literally followed instructions from a standard textbook he had on him at the time and the delivery was a success. Later reprimanded by the school officials as to why he should not be expelled immediately, Armand turned the tables on the accusing school officials to point out their incompetence of delegating to him -- a "novice" student.

While in medical school the pharmacies began to notice a short supply of a certain ginger-tonic amalgam needed for certain prescriptions. Upon investigating the matter Armand found that the apothecaries in the South were exploiting the ginger-tonic as a form of "legal" intoxicant during an era of liquor prohibition. With doctor's prescriptions to cool ailments derived from the hot southern sun, a shortage developed that threatened national supply. As such, Armand bought out the overseas supply source itself and capitalized upon the entire situation, apparently just out of reach from the recent American anti-monopoly laws. Bordering the legal limits of monopoly by cornering the sources of supply, as well as bordering the legal limits of intoxicants of tonic in the form of ginger during the era of liquor prohibition, the exploitative genius of Armand Hammer always found itself on the edge of circumstances and not at the center cores.

In 1921, equipped with a new, small fortune and a newly minted doctoral degree, Armand, still in his youth at 23, sought to combine the two in his ancestral roots of Russia. A then-recent famine and typhoid epidemic which disastrously imprisoned the new Bolshevik regime prompted Hammer to ship a relief hospital for the dying from America. Once there, however, Hammer saw an opportunity for a greater good, and greater profit, by bartering surplus American grain in exchange for former Czarist artworks. Anathema to the Bolsheviks, they were glad to rid themselves of the aristocratic remnants.

Likewise, American grain which would have otherwise gone to waste was put to a better use.

The executor of communism, Lenin himself, was found to be more pragmatic as an overseer of a nation and less of a zealot than some of the followers of communism themselves. In doing business with the nation of Russia, Armand dealt directly with its "Chief Executive Officer" -- namely, Lenin himself. By dealing directly with the head of state, Hammer was able to avoid the yeast-like fermentation of bureaucracies that were developing. In other words, Hammer was able to cut through the "red" tape and make things happen. It was no matter for the idealist communists, economics was a reality even Lenin had to deal with. Hammer later in life continued to develop kinships with heads of state as a means of doing business with equals. Hammer also met with the other Bolshevik revolutionary, Trotsky, and arranged for a shipment of unprofitable grain tractors from the industrial revolutionary, Henry Ford. The communist ideal overshadowed that arrangement before its fruition and the communist workers would have to produce their own tractors to harvest their own grain now that the famine was over.

Through Lenin's National Economic Plan, the pragmatic leader overshadowed unsuccessful communist idealism with capitalistic incentives. Armand Hammer's forceful and simple participation involved establishing, of all things, a pencil factory. Future leaders of the Soviet Union would grow up in school with the name "Hammer" imbedded in their pencils. To them it was the emblem of their flag, to Armand it was subliminal advertising. The pattern of establishing the factory was similar to that of the drug store. Make an unbeatable contract, set up shop, bring in the best management, and go to work. Czarist art objects were again a form of solidifying the liquid cash created by the new venture.

With the rise of Stalin rising like a storm on the horizon, Hammer left Russia in the early 1930's anticipating the blockade of future business dealings with the West. With a new wife and a simple merchant banking business in Paris, France, Armand took a step back from the ventures left behind in Russia. However, having been there as a participant, Hammer knew as an insider that the new Bolshevik regime -- even in a degenerate form under Stalin -- needed to promote credibility by not breaching any of their existing contracts, even though they may be barred from creating new ones. The West, in fear



that the communist ideology was incompatible with capitalism, distrusted existing contractual arrangements and thought their money from existing contracts was lost since new ventures were barred. As such, Armand "brokered" the Soviet promises with the parties from whom the old Bolsheviks had done business and once again created a small fortune. Even political turbulence can be capitalized on for profit, Armand realized, especially when you bridge the weaknesses each side perceives of the other.

Meanwhile, the frozen assets of Czarist artworks were being shuttled across the Atlantic, with the senior Julius Hammer overseeing the shipping end in Russia, and Armand's younger brother Victor overseeing the receiving end in America. Just after the 1929 stock market crash and with the United States in an economic depression, the warehouse full of artworks in New York appeared to have paralleled grandfather Jacob's botched attempt at a feather mattress enterprise. Only when "Doctor" Armand came back to America were the ailing Czarist artworks revitalized.

By creating a circus-like marketing scheme, the Czarist icons were shuttled to -- of all places -- department stores. In St. Louis, Chicago, Los Angeles, and ultimately back again to New York, circus-barker and ringmaster Armand made the show captivating and irresistible. This national whirlwind finally settled and became known as Hammer Galleries in New York. The "circus" acts now came to him instead of vice-versa. From an English eccentric millionaire disguised in rags to a king with his own "adult" playground, the art of the art business reached to outer extremes. One thing led to another and Armand found himself as art agent for the publishing giant William Randolph Hearst.

Hearst's need for liquidity of \$11 million was to be delicately disguised and not to be associated with the sale of \$11 million from Hearst's private art collection, even though this was obviously where it was to come from. "Broker" Armand bridged a gap between the rich and poor by organizing a joint exhibition between the elite Saks Fifth Avenue and bargain-basement Gimbles. In doing so, the "everyday" person was able to grasp "high-art" at bargain prices set by Armand.

In reflecting upon an example in Armand's personal art collection, an irony of the times was manifested. A particular painting of his in Russia, a forgotten masterpiece, turned out to be a forgery,

while in America an almost forgotten work, believed to have been relatively minor, turned out to be an authentic hidden masterpiece. Likewise, the "ideal" of Bolshevik communism, that forgotten masterpiece forged over by Stalin, was now a reality in America, the heart of capitalism. While the minor-work of capitalism in pre-Stalin Russia was now forgotten, an authentic "Bolshevik" working class now flourished in America.

Just before and during the early days of World War II, a parallel business in liquor distilling came to fruition. Not only did it parallel the art business in time, but it paralleled the ginger-tonic concept from Hammer's early medical school days. Like the intoxicant monopoly in his medical school days and the capitalist-communist ventures in Russia, the outer-limits of law and politics, which blew open like a door of opportunity for a brief moment, were seized upon, and then closed forever.

The approaching war begat the rationing of grain as a precious commodity. A substitute for grain alcohol was to be found in potatoes and other vegetables. In mixing spud alcohol with lesser elements of pure grain alcohol, a business came about by stretching existing quantities of aged grain alcohol by distilling excess potatoes into it. After a slump in the "blended" brand business, Hammer once again cornered a market, this time by pricing the pure-grain alcohol to equal to the big brands blended version. Needing office space in Manhattan for this new found enterprise, rare space was literally "opened-up" when a B-25 bomber crashed into the Empire State building. Guessing that the former tenants would have no desire to remain there, Armand immediately contacted the managing agent to lease and renovate the space. He got the space. Again the lesson to be learned from yet another event in Armand Hammer's life is to move upon and not be astonished by events that happen. Instead of pondering such events, one can make fate happen to one's own advantage by acting upon those same events.

The post-war years initially begat tough years for Armand Hammer. Going into a second broken marriage, Hammer once again benefited from otherwise despondent circumstances. When an "old flame" Frances read of the spectacle divorce in the papers, she eventually became Armand's third and final wife. With the war over, and a compatible wife of fortune and wealth, Armand sold the alcohol distillery business and small venture in prize-Angus



cattle breeding. Was Armand ready to retire with his new wife and their "millions"?

The gift of insight prohibited the owner of that insight to forsake it. A "little company called Occidental" thrust Armand ever forward into the latter years of his life into greater transactions than had been realized in his earlier days. Armand's DNA-like pattern of his life-cycle repeated itself yet grew larger as life itself gained momentum. Initially taking an interest in an ailing oil company as a tax write-off, the semi-retired Armand could not write-off the rest of his life to the gainful insights entrusted to him. The latter 1950's eventually found Armand Hammer as CEO and the largest stockholder of what was to yet become the "8th" rival to the "7 Sisters" of the oil industry. Acquisitions beyond oil in Occidental led Armand back to Russia once Stalin was no longer in power. Greater acquisitions in oil in Occidental led to the initial explorations in Libya and adjunct contracts in the middle east.

The need to grow and perpetrate wealth found Hammer improvising knowledge much as he had done as a medical student intern who had to spontaneously link textbook knowledge to emergency situations. In Libya, threats of nationalizing the private company's oil fields, where 90% of their asset base existed, forced the CEO Armand to search elsewhere once again for untapped oil fields -- this time in the northern seas off Great Britain. One time during a particular Middle Eastern contract negotiation, Hammer was "swindled" by signing his single signature on a two party contract. The other party, instead of signing after him, whisked the one-sided contract away and paraded it to the rest of the oil industry mavens to manipulate their cooperation. Eventually Occidental was able to become diversified enough outside of the Middle East to not be bullied by menacing governments or cartel agreements. After an internal takeover attempt by a 5% shareholder in Occidental had failed, Occidental became a "White Knight" of favorable terms to another oil industry giant undergoing it's own threat of takeover. That "friendly" merger created the nation's 12th largest industrial concern and the 8th largest oil company.

The cycle of Russia as a trading partner reoccurred throughout the tenures of Khrushchev, Brezhnev, Andropov, Chernenko, and Gorbachev. Occidental's diversification into fertilizer products as an outgrowth of industrial oil and gas products kept Armand in touch with his Soviet fatherland. More

importantly, Armand Hammer was able to function as a "world" citizen -- as that of a bridge between the corresponding heads of state in America such as JFK, Johnson, Nixon, Ford, Carter, and Reagan.

A latter chapter of the book purports the art of business to be a type of diplomatic intermediary. "Trading partners seldom make war" and "business as peacemaker" were set forth as a life-slogans as well. Like works of art, business functions were seen to serve a higher function other than that of an end in themselves. Such "business as diplomacy" opened dealings in China for Armand only when he crashed a party that a reluctant administration kept him from being officially invited to in order to meet with Chinese leader Deng Xiaoping.

The last chapter of the book, entitled "Pushing towards the Summit," has intermingled within it sub-chapters each with their individual focus. In between the dealings with intermediate Soviet leaders funerals, the chapter presents issues of medical research and education realized in the development of a cancer research center and United World Colleges. Having been able to help others all his life, within the process of helping himself, Armand Hammer at the end of his life left a legacy to that testament. The book's final epilogue presents a case for world-peace through shared-research, specifically in reference to the American's Strategic Defense Initiative defense plan. Ideals themselves have now become the items of barter. With the fruits of a life time realized, Armand Hammer presents a case where luck itself is realized as a fruit of hard work. Idealistic aspirations themselves are also resultant fruits of the process.

The life of Armand Hammer stands as a testament and inspiration to greatness (unless of course you have personally been burned by him). Regardless of one's individual wealth, status, or ability, one is left to ponder one's own "pattern" of life. A person gifted with the "knack" of business -- a knack which Armand's grandfather and father did not possess to the great degree that Armand did -- acknowledges that insight coupled with hard work are indeed the main ingredients of success. But like the doctors who use the medical research foundations that bear the Armand Hammer name (a practicing doctor Armand himself never became), or the artists of earlier eras whose paintings Hammer collected, these types of people attest to another type of success of humanity outside of the business realm. One is left



inspired therefore look inward to find one's own  
"knack," one's own inherent abilities, inherited or  
developed otherwise, in order to pursue that which

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comes natural and that which one is most capable at,  
along with hard work, to likewise leave behind a  
legacy of idealistic endeavors realized.

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Les Enfants Terribles: Children of the Game, the third installment of Philip Glass' Cocteau trilogy, will be performed at the Brooklyn Academy of Music Opera House. Scheduled performance dates are November 20, 22-24, 1996. For further information, please call (718) 636-4129

**New York City Opera**  
New York State Theater  
20 Lincoln Center  
New York, New York 10023

Lerner and Lowe's Brigadoon (scheduled performance dates are November 13, 14, 15, 16, 17, 19, 20, 21, 22, 23 and 24) and Offenbach and

Barbier's Les Contes D'Hoffmann (scheduled performance dates are November 7, 10 and March 7 and 15) are just two of the many productions scheduled to be performed this season. For further information, please call (212) 870-5570.

**New York City Ballet**  
New York State Theater  
20 Lincoln Center  
New York, New York 10023

George Balanchine's The Nutcracker is scheduled to be performed on November 29, 30, December 1, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15 and 17. For additional information concerning this holiday classic, please call (212) 870-5570.

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# HUMAN RIGHTS UPDATE

By Muriel Richards

The dissension amongst Catholics and Protestants in Ireland continues to create concern over human rights in that country. The ever-present threat of violence because of differing political, ideological and religious views has led to the infringement of liberty.

An example of this occurred last week (September 29, 1996) when five individuals were arrested in Newry, Ireland, during a march by a Protestant Group to a Protestant church. Area residents were not allowed to enter the area where the

marchers were. Parishioners of the local Catholic church were detained and questioned by officials prior to being allowed to proceed to the church. The local government also prevented a regional group, the Newry Town Coalition Against Sectarian Marches, from keeping a watch on the parade, despite the group's position that they would not protest the parade. This event highlights the restraints on individual liberty that occur because of the unrest in that nation.

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# PLAY REVIEW OF "POLITICAL ANIMAL"

By Muriel Richards

This play, written, produced and performed by Douglas McGrath (his credits include writing for "Saturday Night Live" and the "New Yorker") satirizes a presidential candidate who is a caricature of many of the odious qualities that can exist in politicians. The play opens with the candidate, Alistair Farrell, praying in a church to be allowed to win the presidential election. His prayers are punctured with hypocrisy. His attempt to ingratiate himself with God through double-speak are comically evident, much in the same manner that such political speech is plainly recognized as such by voters. McGrath's excellent timing in the delivery of lines and his body language give the audience the impression that they are really viewing a genuine, stereotypical political candidate. McGrath, through his character, traces the candidate's political aspirations from an early age. The audience is made to feel the boy's pain as he is neglected by a father too busy working on his career to pay attention to him. In an effort to obtain his father's attention, McGrath's character devotes his life to becoming the "best". He is elected class president at his boarding school, becomes a successful lawyer at a high profile law firm, where he successfully defends every lawyer's dream clients, the NRA and the tobacco industry. He decides to run (unopposed) for President of the United States. His campaign is replete with all the political pitfalls that exist for candidates -- an extramarital affair, his mistress getting pregnant, etc. The audience is treated to a

meaningless debate (achieved by McGrath by switching voices and political buttons) where the candidates spend the bulk of their time dredging up ancient history in each other's personal past; no current, serious issues are addressed.

This play unceasingly focuses on the hypocrisy and hilarity underlying many political campaigns and the psychology underlying this candidate's drive for success. Despite the lack of opposition, McGrath's character loses the election (his parents failed to vote for him and he neglected to vote for himself). Upon realizing that he did not vote for himself, he muses, "Do I hate myself or was I just giving into peer pressure?" McGrath's character decides to use his talents as the president of a motion picture company (of which his father is a shareholder). He is not only successful in his job but finally achieves his ultimate goal: getting his father's attention. His father threatens to bring a shareholder's derivative action against McGrath's character for using millions of corporate dollars to decorate his presidential office. McGrath's character's joy is palatable as he says, "A lawsuit? That takes time and attention!"

This play should be enjoyed by anyone who has watched anything even semi-political in the news, as it is accurate and humorous. For more information, call McGinn-Cazale Theater located at 2162 Broadway at 76<sup>th</sup> Street at 212-315-2302.



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# LAW AND POPULAR CULTURE

SPENCER WEBER WALLER  
ANTHONY SEBOK

"I can't believe that of all the movies playing in New York City, you guys dragged me to Sergeant Kabukiman, NYPD!"

Laura Matalon, June 1996

We begin our third year of reviewing and our second in syndication (Thanks BU and Vanderbilt) with a look back at the summer offerings. The summer traditionally is the time of wildly inflated budgets, mindless blockbusters, over-reliance on special effects, and needless violence, those being the best things we can say about this summer's crop of offerings.

We have nothing to say about Twister except that Professor Waller saw it on an airplane without the sound, which had no apparent effect on his enjoyment of watching flying cows while the 747 went through heavy turbulence. Neither of us saw Eraser, but Professor Sebok did see every independent movie with either Steve Buscemi or Eric Stoltz.

We focus our attention in this column on the two movies that defined our summer: Independence Day and Sergeant Kabukiman, NYPD.



## Independence Day

**SWW:** When I was a kid I went through an intensely nerdish phase where I went to the library and read all the science fiction novels of Robert Heinlein. Prior to Stranger in a Strange Land, virtually every one of his books told the same story in the same way. They were short, simply told tales of Earth being threatened, invaded, conquered, etc. by evil alien hordes. Even a twelve year old boy could tell these were allegories to the Cold War where the evil aliens were slightly veiled substitutes for the Russians, the Chinese Communists, or domestic subversives who would replace our American way of life with brutal suppression aided by domestic quislings. These

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books taught me an important lesson; namely that it was easier to write the same book twelve times than write twelve different books.

I hoped against hope that Independence Day would be in this tradition. In fact, based on the producers' admitted borrowing from classic sci-fi of the 1950s and 1960s, I thought I would be watching the big budget version of July the Fourth, the Heinlein novel where a band of plucky Earthmen climbed out of the rubble of the alien conquest of the United States to reclaim our way of life.

Instead, I ended up leaving Fire Island and schlepping into the city to watch a big screen disaster movie of a kind probably not intended by the producers. Independence Day features Jeff Goldblum, Judd Hirsch, and Randy Quaid all of whom make me cringe every time I watch them attempt to ply their craft. Unlike a Star Wars, which I have watched with wonder probably 15 times so far, this movie creaks. The plot is moronic, full of holes, padded to a nearly unbearable 2½ hours, and they don't even blow up stuff all that well. As an antitrust lawyer, I was amused by the fact that the alien's hidden weakness is that even an all powerful alien race from another planet cannot avoid having to use a computer operating system based on Microsoft products.<sup>1</sup>

Independence Day does borrow the worst of the right wing militaristic claptrap from the Heinlein oeuvre. Politicians are weak and bureaucrats even worse. Only the military can be trusted and the only reason we survive as a people is that this President did not duck his military service and the rest of the world just shuts up and does we tell them to. If the twelve year old boy in you finds this appealing, go to the library and read some Heinlein, or wait for the big



screen version of Heinlein's masterpiece Starship Trooper being directed by Paul Verhoeven.

**AS:** I have a theory about ID4, and, like most of my theories about cinema, it involves Oliver Stone. The question that ID4 poses is not "why is this such a mediocre sci-fi film," but rather, "why is this such a good World War II movie?" The answer to the second question is, of course, *Oliver Stone*.

You see, Stone has made it almost impossible to make a feel-good war movie anymore. The last, as far as I can tell, was Heartbreak Ridge, a relatively obscure Clint Eastwood movie from the late '80s about our glorious victory in Grenada. It is not hard to see why Hollywood is not producing war movies in the same vein as The Longest Day or The Battle of the Bulge. Like the western, the classic war film belongs to another era; one in which the simple values upon which the genre was premised were shared broadly and uncritically. Oliver Stone did not single-handedly push the classic war movie beyond the pale, he just made the one film that perfectly memorialized its demise. Platoon took all the conventions of a World War II movie and turned them inside-out: foxhole camaraderie was really racial conflict; the gritty platoon leader was really a psychotic; and at the end of the battle, bravery had nothing to do with who lived or died.

Of course, movies are just as, if not more, violent than they were in the past, but that's not the point. The point is that the typical action adventure hero today is a rebel, albeit a patriotic one: he is an individualist, and more often than not, he is fighting against the corrupt "regular" military in the name of truth, justice, and the American way (see e.g. Rambo: First Blood or this summer's The Rock). Notwithstanding the Reagan revolution the classic war movie is irrevocably beyond our reach, even though we have recently experienced wars very different from Vietnam. It has been over five years since the Gulf War, and yet there has only been *one* movie made about that conflict so far--and that movie, Courage Under Fire, it scarcely needs to be pointed out, bears almost no resemblance to The Sands of Iwo Jima or The Green Berets.

So what does all this have to do with ID4? It's simple: The reason the film is so successful,

despite its weak script and wooden acting, is not just its special effects, but because it allows the audience to experience the guilty pleasure of an old-fashioned, jingoistic, classic war movie. Everything that Oliver Stone turned around has been put right again. American men of different ethnicities learn to trust and respect each other in the cockpit of an alien craft (not a foxhole). The President inspires his troops to victory with an appeal to their sense of patriotism to the earth (not their country). And of course, in the end, the victorious soldiers come home to their wives, without a trace of Post-Traumatic Stress Syndrome. I'm sure Oliver Stone hated this movie. I loved it.

#### Sergeant Kabukiman, NYPD

**SWW:** At the opposite end of the budgetary and publicity spectrum was the trashy yet enjoyable Sergeant Kabukiman, NYPD. Kabukiman was the most recent of the no-budget offerings of Troma studios which has created such camp classics as The Toxic Avenger (I, II, and III) and The Class of Nuke 'Em High. Seen only at the Film Forum for a two week run in the early summer, Kabukiman is a must see for any video evening featuring enjoyably bad movies. The plot, to the extent I could follow, chronicled the exploits of a hapless NYPD officer who became imbued with the spirit and powers of a Kabuki Samurai Warrior while investigating a murder at a Kabuki performance of The Odd Couple. As Kabukiman, he must master his new found powers (think a cross between Luke Skywalker and the Three Stooges) and foil the powers of darkness led by a real estate tycoon played like a short version of Donald Trump. Complete with a love interest, cheezy themesong, astrological prophecies of doom, a monkey that mumbles under his breath, \$2 special effects, and buckets of ooze (a Troma trademark), this film charmed me and had me laughing out loud. I also owe my wife big time for asking her to come with me and Professor Sebok.

**AS:** Sergeant Kabukiman was one of the highlights of my summer moviegoing. I have a soft spot in mt heart for Troma Films, the company that produced Kabukiman, partly because they are based on 50th and 9th, and therefore represent NYC in the



low-budget horror and splatter film market. They are the local team, and they deserve your support.

I also like Troma because it seems that their scriptwriters think they are still working for DC comics. For example, after the hero is turned into a Kabuki superhero, the movie insists, per regulation comic book style, to equip Kabukiman with an increasingly bizarre arsenal of superhero weapons based on Japanese food. Thus, whereas Batman had a boomerang shaped like a bat, Kabukiman foils criminals by throwing chopsticks at them or wrapping them up in seaweed, like sushi. I just can't

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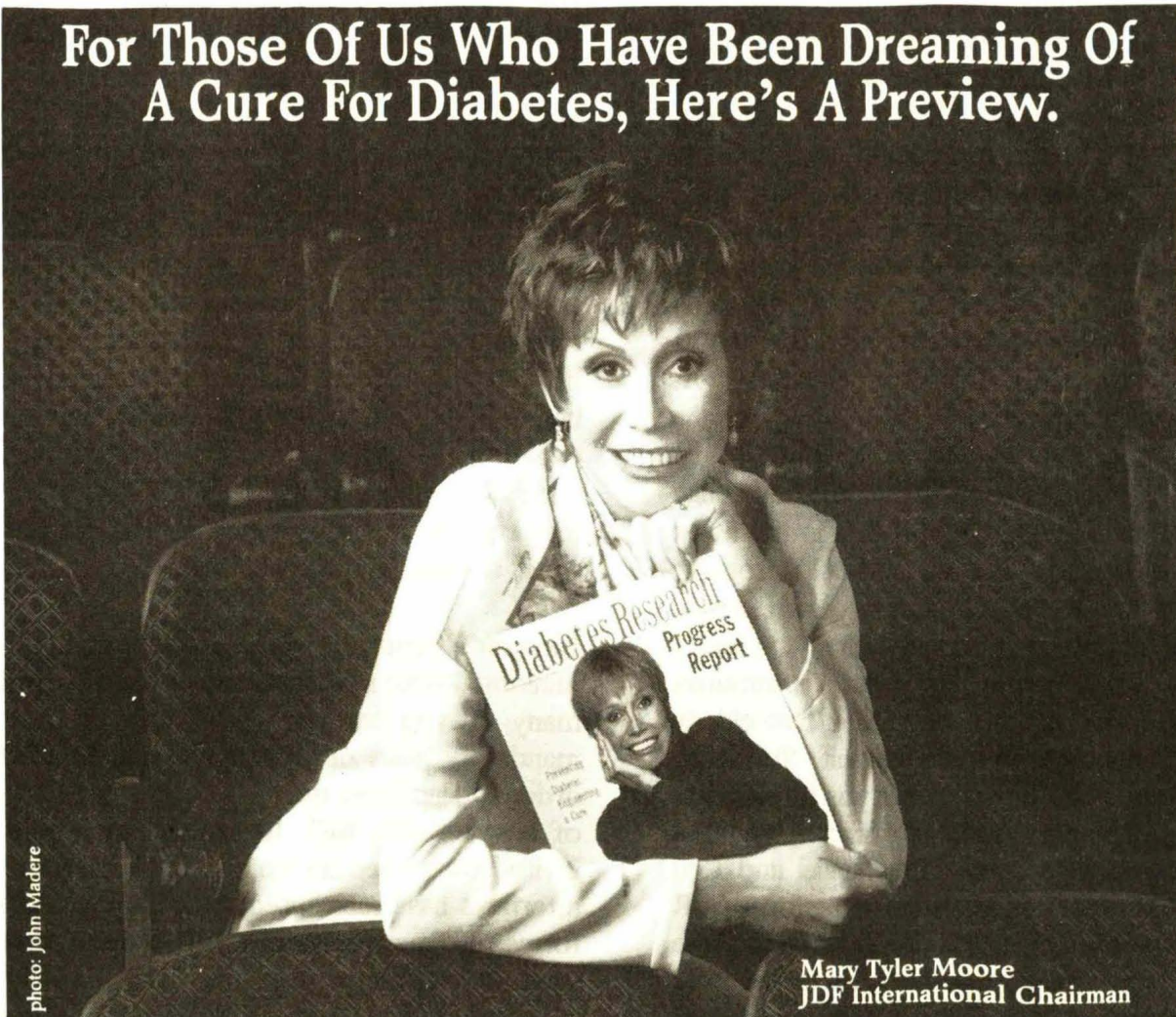
see why Spencer's wife didn't have a ripping good time at Kabukiman, or why she wouldn't speak to me for weeks after I helped her husband convince her to see it with us (instead of a Jane Austin movie, which was her choice).

◆◆◆◆◆◆◆◆

Oh, by the way, if you want to see a quality film about justice see Lone Star by John Sayles and skip A Time To Kill.

<sup>1</sup>If this gives away too much of the plot, I don't really feel too bad. The film has grossed over \$300,000,000 so if you haven't seen it by this point, you can't be all that interested.

## For Those Of Us Who Have Been Dreaming Of A Cure For Diabetes, Here's A Preview.



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# SOME GUIDANCE

By Muriel Richards

As a fourth year evening student, I believe I have garnered a little wisdom that I wish to share with others at this time. (Please indulge me, as this time next year I will be low-woman on the totem pole, provided I am able to find work at a totem pole.)

**Transportation Safety:** Since first year, I had always presumed that the best way to avoid becoming a crime statistic on the subway was to carry the textbook on Contracts and the UCC. Well, I learned this term that I was wrong. Yes, it is true the two texts mentioned, *supra*, outweigh the others by sheer volume and thus create an intimidating appearance. Would-be offenders of NYS Penal Law §155.25 (Petit Larceny) are usually cowed by the potential of these texts to inflict damage if thrown at them in self-defense by a would-be crime victim. However this term, by serendipity, I discovered a more effective means of ensuring one's safety on the subway: the Federal Income Tax Code and Regulations. I first observed its chilling effects one evening on the train after class. At my older brother's insistence, I was sitting in the subway car where the conductor is located. I personally have my doubts about the conductor's ability (or willingness) to intercede on my behalf in the event of a threatening situation, but he/she would probably make a good witness in a wrongful death action brought by my family. So, I comply with my brother's request. On this evening, my fellow commuters consisted of a woman with a sleeping baby, two elderly women and a man dressed in a business suit. Suddenly, I noticed the man in the business suit was turning this ashen color. I fervently hoped he was not having a heart attack, as we were stuck in the tunnel and I do not have a lot of energy at 10:30PM to perform CPR on anybody. Just when I was wondering if anyone else in the car was knowledgeable concerning life resuscitation techniques, he lifted a trembling finger, pointed in my direction and screamed, "No!"

I did not know what I had done to provoke such a reaction. I tried to ignore him, but he began to cry so loud that the conductor finally emerged from his booth. "What seems to be the trouble here?" he inquired of the obviously terror-stricken man. "Look at

what she's holding!" he shouted, pointing at me. The conductor looked at me, expecting to see a knife-wielding criminal. Instead, I was merely holding my notebook and the Federal Income Tax Code and Regulations. "What is the matter? I do not see a weapon," the conductor replied. "*You don't see a weapon?!?*" Good God man, are you literate? I was audited last year by the IRS! That thing is more dangerous than fifty cannons put together!" With that, the hapless commuter fainted and slumped down in his seat. The conductor and I attempted to revive him. When he began to regain consciousness, I tried to make him feel more at ease. "You can relax," I said. "I am not with the IRS. I am a law student". The poor man collapsed again and I was asked to leave the train when we arrived in the station. (The conductor said he was only willing to wait that long because it was payday and he was thus in a good mood.) Suffice it to say, your chances of anyone wanting to be within twenty feet of you, let alone commit larceny, while holding this text are virtually non-existent. (I even heard a rumor that museum officials nationwide are debating the potential effectiveness of placing the Federal Income Tax Code and Regulations around masterpieces on display when the museum is closed in order to keep them safe.)

**Lawyer Etiquette:** Now, I know some of you are thinking, "What a contradiction in terms!" But, really, many lawyers are very polite and do not require mandatory hours of viewing Sesame Street tapes in order to learn basic manners. However, I have heard of lawyers who, well, let us just say would not be invited back a second time to the Kissingers. These attorneys have substituted the widely accepted basic forms of etiquette with their own style of manners. A snarl is substituted for the more popular "good morning" greeting and "You'd better make out that will-no one in his/her right mind would consider you young anymore" has replaced "happy birthday". It is unfortunate, but this unconventional system of manners may even infiltrate the vocabulary of usually polite attorneys. For instance, an attorney that I respect was observed, when asked a legal question, to respond,



"Humpf!" Thinking that perhaps that was an acronym for some Latin legal term, I ran to Black's Law Dictionary but could not find it listed. Later, the attorney explained to me that he had been to Court that day and had run into a rude attorney in the form of opposing counsel. He had not yet switched back to the more conventional form of etiquette instilled in most of us in youth.

Speaking of youth, a conscience (along with the manners mentioned, *supra*) is typically developed in a person when he/she is of tender years. As very young children, we have all probably been told, "It is not nice to make your brother eat a crayon" or some similar restraining rebuke. However, as in the case of manners, some people never seemed to get the message. More unfortunately, some of these people grow up to become attorneys. I am not referring here to the cases where the dearth of ethics involves patent facts (*i.e.*, accepting an offer of settlement without your client's knowledge) but rather the more bizarre breaches of ethics (and, in many instances, the law).

A friend of mine's cousin worked in a law firm where a series of events transpired that were so twisted, only a writer of soap opera scripts could truly appreciate this story. It appears that one of the attorneys working there was more than secretly smitten with a co-worker (also an attorney). When the cousin graduated law school and obtained a job there (see,

readers, there is still hope), the enamored attorney became threatened of potential interference in her romantic quest and (I kid you not) arranged to have the cousin's home and work phones tapped. In this manner, she was able to obtain enough information about the cousin's life to malign her. Because of this "insider" knowledge, she was able to incorporate enough elements of the truth to make her falsehoods plausible. For example, if the cousin had a phone conversation one evening (with an individual not connected to work in anyway) during which she mentioned a conversation that occurred when only she and a co-worker were present, the eavesdropper would come in the next day and say, "She told me you said," and by including enough elements of the conversation that had transpired between the cousin and the other co-worker, convinced co-workers that she was attempting to stab them in the back. The cousin began to become suspicious of this activity and pre-arranged a conversation with her cousin, in which she stated that she was "dying."

When people began to let her jump ahead of them in the photocopy line at work and started to recommend colleagues who were especially good at estate planning, her suspicions were confirmed. Suffice it to say, this (eavesdropping) strategy, aside from being unethical, is illegal and should not be utilized by anyone who desires to have a career in the legal profession that will last longer than six months.



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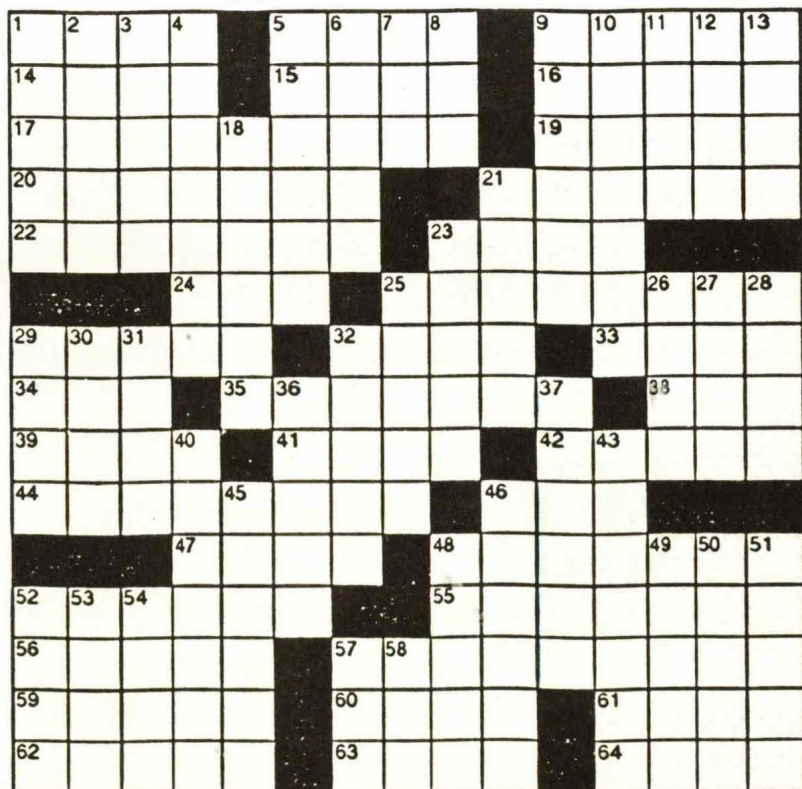
## ACROSS

- 1 Collars
- 5 Just one of those things
- 9 Sing softly
- 14 Med. sch. subj.
- 15 Romeo or Juliet
- 16 Cliff protrusion
- 17 Rd. named for an actress?
- 19 Fend off
- 20 Deep green
- 21 Nixon's *Six*
- 22 Mocks
- 23 Writer Silverstein
- 24 Not sm.
- 25 Rd. named for a ballplayer?
- 29 River embankment
- 32 Assurance from *Good Housekeeping*
- 33 *Blue Velvet* star
- 34 Rapper Vanilla
- 35 Studio do-overs
- 38 Gumshoe
- 39 Disposable-razor brand

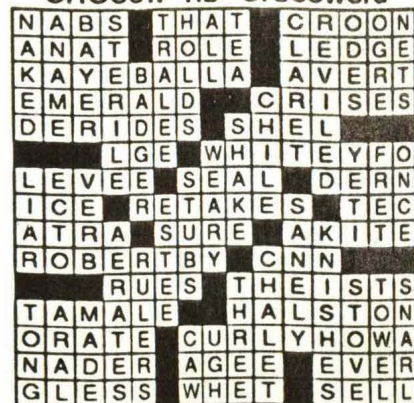
- 41 Beyond a doubt
- 42 High as \_\_\_\_
- 44 Rd. named for a West Virginia senator?
- 46 Peter Arnett's employer
- 47 Wishes one hadn't
- 48 Believers in the Almighty
- 52 Mexicali munchie
- 55 Fashion designer of note
- 56 Perform on the soapbox
- 57 Rd. named for a stooge?
- 59 *Unsafe at Any Speed* author
- 60 Pulitzer Prize winner of 1958
- 61 "Did you \_\_\_\_?"
- 62 Actress Sharon
- 63 Excite
- 64 Hawk
- DOWN
- 1 Sporting one's birthday suit
- 2 "What's in \_\_\_\_?"

- 3 Anacin alternative
- 4 Like most mules
- 5 "The Rose of \_\_\_\_"
- 6 Full nelson and others
- 7 \_\_\_\_ wet (mistaken)
- 8 Crumpets complement
- 9 Bordeaux wine
- 10 Addressed abrasively
- 11 Poems of devotion
- 12 Cruel dude
- 13 Lets touch them
- 18 Nag
- 21 Tierra del Fuego co-owner
- 23 "\_\_\_\_, Rattle and Roll"
- 25 Pooped
- 26 Sherpa sighting, perhaps
- 27 Agonize
- 28 As soon as
- 29 Pinocchio, for one

- 30 Outer: Prefix
- 31 Sentence essential
- 32 Movie-theater litter
- 36 Cosmetics name
- 37 In a sensible way
- 40 Exposes to the atmosphere
- 43 Deli delectables
- 45 Saddam Hussein and King Hussein
- 46 Ski lodge
- 48 Field-goal value
- 49 Franklin \_\_\_\_ (heating device)
- 50 It's sometimes thrown in
- 51 Traffic tie-up
- 52 Chinese secret society
- 53 Sea east of the Caspian
- 54 Assured of success
- 57 Cornfield cry
- 58 "That's disgusting!"



## CROSSWORD® Crossword



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