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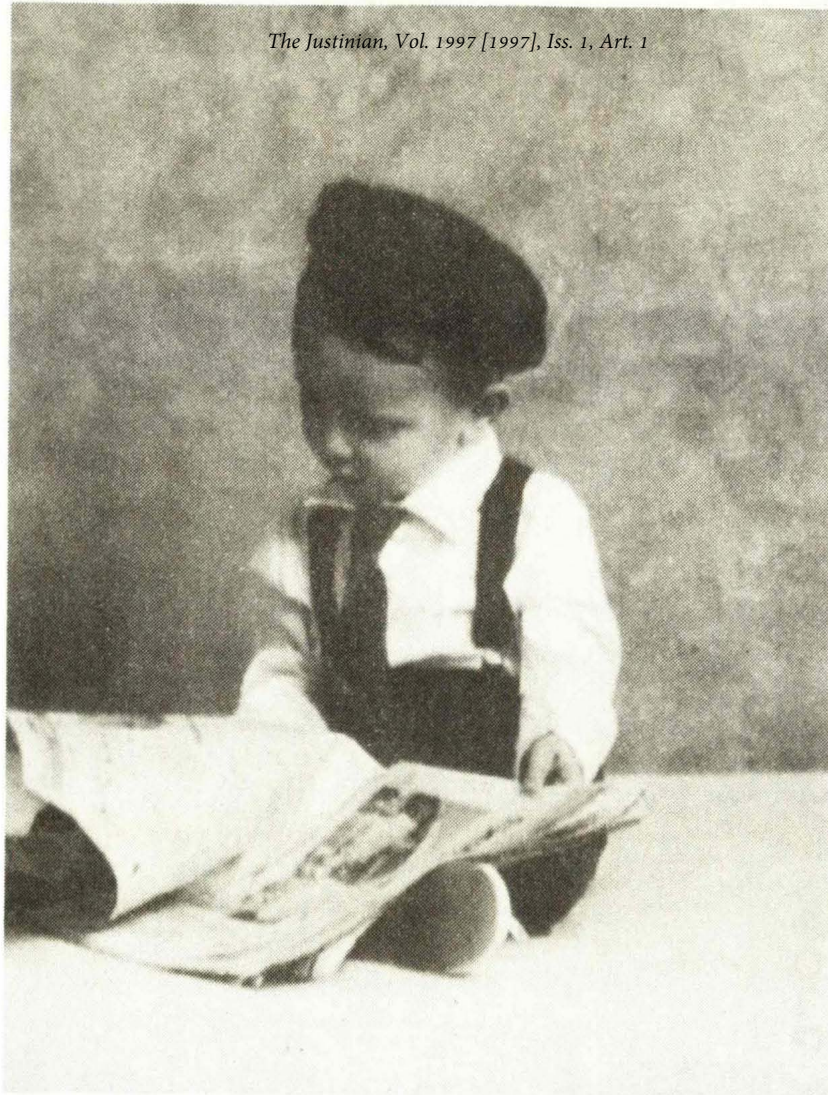
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The Justinian

Founded in 1931 • A Forum for the Brooklyn Law School Community
February/March 1997 • Volume 66 • Number 3





“I cannot wait to see what is in *The Justinian*”

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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 Bar Association and through advertising revenues.

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EDITOR'S CORNER

By Muriel Richards

In this issue of *The Justinian*, we have the distinct honor of presenting an interview with New York State Supreme Court (Richmond County) Justice John Leone. In the interview, Justice Leone discusses potential areas of reform in the criminal justice system. His Honor also comments on the recent changes in the jury system and the impact those changes have effectuated upon the courts.

The Justinian extends gratitude to Justice Leone for taking time from his demanding schedule in order to provide our readers with this informative interview.

The Justinian has also had the fortune of interviewing Professor Lisa Smith. In addition to teaching at BLS, Professor Smith is Executive Assistant in charge of the Domestic Violence Bureau of the Kings County District Attorney's Office. In this interview, Professor Smith comments on the Domestic Violence Court, which was implemented in 1996. She also discusses various problems that are prevalent in prosecuting domestic violence cases—i.e., complainant recanting the corroborating statement, cultural issues involving domestic violence, etc. *The Justinian* expresses appreciation to Professor Smith for sharing her insights on this aspect of the criminal justice system.

Part II of the interview with Student Bar Association President Michael Baston appears in this issue (Part I was published in our December 1996 issue). Mr. Baston discusses procedures in the law school that he, in his capacity as SBA President, would like to alter. Additionally, he provides his view of what the law school experience may mean to law students.

The Justinian is grateful to Mr. Baston for expressing his ideas and viewpoints in this forum.

Joseph A. Hayden has written yet another "On Political Correctness" column that readers should enjoy. Additionally, he has provided an update on the Ellie Starr Nesler case. (Readers may recall from our December issue that she is a terminally ill woman who is in a California prison for shooting the man accused of molesting

her young son. She is currently seeking parole so she may spend her remaining time with her children.) Daniel Ajello and our most recent staff additions, Annette Warner and Lisa Solbakken, have written thoughtful articles on abortion. Kevin Gomez has submitted a well-researched article on the role of Teen Courts in dispensing justice to juveniles accused of a crime. He has also written a thoughtful and well-written article on President Carter's role in the Camp David Peace Accords.

All of the above and Spring break too! It is our hope at *The Justinian* that you will find this issue both interesting and entertaining. As always, we welcome the submission of articles and photographs on law and non-law related topics. If an author/photographer wishes to remain anonymous to the BLS community, we will withhold that person's name upon his/her request. Submissions may be brought to Room 610 and to our 5th floor mailbox.

Finally, you may have seen the notice (posted on *The Justinian's* board space in the cafeteria) regarding the upcoming vacancies for the editor-in-chief and managing editor positions at *The Justinian*. Managing editor Joseph A. Hayden and myself are graduating this June. Brooklyn Law students who are interested in applying for these (or staff) positions are encouraged to contact me at *The Justinian*. *The Justinian* has been a forum for the Brooklyn Law School community for the past sixty-six years. It is an ideal format for the exchange of information, expression and creativity. It has been an honor for me to have the privilege to assist in the continuation of this tradition. The duties of the editor-in-chief position are more than compensated by the sense of achievement and satisfaction that I derive from contributing to the creation of each issue. I strongly recommend both this position as well as the managing editor position to students who wish to have the same enriching experience.



NEW YORK SUMMER 1997 LOCATION INFORMATION

(ALL LOCATIONS BEGIN 5/29 & ARE VIDEO UNLESS OTHERWISE INDICATED)

ALBANY	Albany Law School - (Begins 5/28)	9AM/1:30PM/6PM
ANN ARBOR, MI	Univ. of Michigan Law School	9AM
ATLANTA, GA	TENTATIVE	
BERKELEY, CA	UC Berkeley - Boalt Hall School of Law	1:30PM
BOSTON, MA	Boston Univ. School of Law - (Begins 5/28)	9AM/1:30PM/6PM
BRISTOL, RI	TENTATIVE	
BROOKLYN	Brooklyn Law School	9AM/1:30PM/6PM
BUFFALO	SUNY at Buffalo School of Law	9AM/1:30PM/6PM
CAMBRIDGE, MA	Harvard Law School - (Begins 5/28)	9AM/1:30PM
CAMDEN, NJ	TENTATIVE	
CHARLOTTESVILLE, VA	DEFINITE - location to be announced	9AM
CHICAGO, IL		
1) HYDE PARK	Univ. of Chicago Law School	9AM
2) GOLD COAST	Northwestern Law School	9AM
CONCORD, NH	Franklin Pierce Law Center	9AM
DANBURY, CT	TENTATIVE	
DURHAM, NC	Duke University School of Law	9AM
HAMDEN, CT	Quinnipiac College School of Law	9AM
HARTFORD, CT	Univ. of Hartford	9AM/6PM
HEMPSTEAD	Hofstra Univ. School of Law - (Begins 5/28)	9AM/1:30PM/6PM
ITHACA	Cornell Law School	9AM/1:30PM
LOS ANGELES, CA	BAR/BRI Office - 3280 Motor Avenue	1:30PM
MANHATTAN		
1) DOWNTOWN	NYU Law School	9AM/1:30PM
2) MIDTOWN	A - Eastside - Loews New York Hotel - 569 Lexington (at 51st St.)	6PM
	B - Westside -	
	(1) Town Hall - 43rd St. (bet. 6th Ave. & B'way) - (Begins 5/21)	9:30AM (LIVE)
	(2) BAR/BRI Lecture Hall - 1500 B'way (at 43rd St.)	9AM/1:30PM/6PM
3) UPTOWN	Columbia Law School	9AM
4) WALL STREET AREA	Marriott Financial Center - 85 West Street	6PM
MIAMI, FL	TENTATIVE	
MONMOUTH CTY, NJ	Holiday Inn - 700 Hope Road - Tinton Falls	1:30PM
MONTREAL, CAN.	McGill Univ. - Old Chancellor Day Hall	9AM
NEWARK, NJ	Seton Hall Law School - (Begins 5/28)	9AM/1:30PM/6PM
NEW HAVEN, CT	Colony Inn - 1157 Chapel Street	9AM
NEW ORLEANS, LA	Tulane Law School	9AM
NEWTON, MA	Boston College Law School - (Begins 5/28)	9AM
PALO ALTO, CA	Stanford Law School	1:30PM
PHILADELPHIA, PA	International House - 3701 Chestnut St.	9AM
POUGHKEEPSIE	Vassar College	9AM
QUEENS COUNTY		
1) FLUSHING	CUNY Law School - (Begins 5/28)	9AM
2) JAMAICA	St. John's Univ. Law School - (Begins 5/28)	9AM/1:30PM/6PM
ROCHESTER	Radisson Hotel - 175 Jefferson Rd.	9AM
ROCKLAND COUNTY	Nanuet Inn - 260 West Route 59	9AM
SO. ROYALTON, VT	Vermont Law School	1:30PM
SPRINGFIELD, MA	WNEC School of Law	9AM
STATEN ISLAND	Wagner College	9AM
SUFFOLK COUNTY		
1) HAMPTONS/RIVERHEAD AREA	DEFINITE - location to be announced - (Begins 5/28)	9AM
2) HUNTINGTON	Touro College of Law - (Begins 5/28)	9AM/1:30PM/6PM
SYRACUSE	Syracuse Univ. College of Law	9AM/1:30PM/6PM
TORONTO, CAN.	Ontario Driving Training Center - 20 Eglinton Ave. East	9AM
WASHINGTON, DC	American Univ. Law School - TENTATIVE - (Begins 5/28)	1:30PM
	GW Law School - (Begins 5/28)	9AM/6PM
	Georgetown Law Center - (Begins 5/28)	1:30PM
WHITE PLAINS	Pace Univ.	9AM/1:30PM/6PM

PLEASE NOTE: BAR/BRI RESERVES THE RIGHT TO ALTER LOCATION STARTING
DATES AND TIMES BASED UPON LOCATION AVAILABILITY.

INTERVIEW WITH JUSTICE LEONE

By Muriel Richards

(*The Justinian* recently had the distinct honor of interviewing Justice John Leone. ¹Justice Leone currently presides in Supreme Court, Richmond County, in both a Criminal Trial Part and a Civil Part. He is a graduate of the University of Miami and New York Law School. He practiced law with the Legal Aid Society, U.S. Attorney's Office of the Eastern District and the District Attorney's Office for Kings County. From 1971 until his appointment to the bench, he was engaged in private practice.

In 1976, Justice Leone was appointed to the Criminal Court in Kings County until October, 1978, at which time he became an Acting Supreme Court Justice and thereafter,

Administrative Judge, Criminal Court of Kings County and Richmond County. He served in that capacity until his election to the Supreme Court in 1983.)

Interviewer: "Many individuals in the legal profession have stated that the O.J. Simpson trial was atypical in the criminal justice system. Do you agree or disagree with that assessment? Why?"

Justice Leone: "I would agree that the O.J. Simpson trial was atypical in that the case attracted an extraordinary amount of media attention. The defendant and many of the criminal defense attorneys enjoyed celebrity

status even prior to the commencement of the case. Additionally, O.J. Simpson's financial situation was such that it allowed for attorneys who specialized in certain areas, such as DNA analysis, to participate in the case and experts on jury selection to prepare in depth multi-paged jury questionnaires in order for O.J. Simpson's

defense team to assess each juror presented. A culmination of all these factors created a climate of 'atypicalness'."

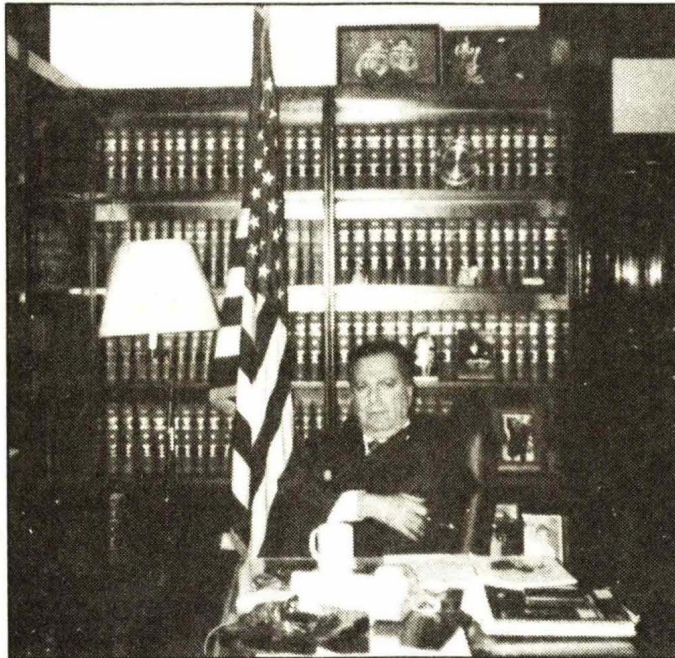
Interviewer: "Do you wish to comment on Judge Lance Ito's management of the trial?"

Justice Leone: "I think Judge Ito had a herculean task set before him in regard to this case. I have been on the bench for over

twenty years, and in my opinion, I am able to state that he carried out his responsibilities as a judge superbly. He confronted the difficult task of presiding over a widely-publicized murder trial admirably."

Interviewer: "What aspect of the criminal justice system would you like to see altered?"

Justice Leone: "The criminal justice system in New York State, at present, processes tens of thousands of cases annually. Plea bargaining has become a necessary tool in order to handle an already over-burdened system with limited resources. The justices, district attorneys and defense counsel skillfully manage these cases. However, more resources in the form of finances, personnel and courts are needed in order to render a final disposition in **all** cases in a just, efficient manner. This would curtail the number



¹The *Justinian* wishes to extend credit to Justice Leone's Law Clerk, Judy McMahon, for her preparation of Justice Leone's biographical information.

of offenses subject to plea bargaining. It would also have the effect of providing more defendants with a speedy, fair trial, which is every defendant's right under the Sixth Amendment of the U.S. Constitution. Victims of crimes would be afforded a more expeditious legal resolution of the case. I would like to see more funding for alternative programs for drug offenses. In my experience, it is drug rehabilitation that has been the most effective preventative to repeat drug offenders, not necessarily incarceration. This is particularly true of the first offender. More community work-fare programs are also needed in order to deal with many of the first time and second time petty criminals. It is important to attempt to assimilate the young offender into the mainstream of society. Community programs assist in this manner. Unfortunately, while every citizen desires for these improvements to be initiated, few want to pay the tax dollars necessary in order to achieve these goals. I feel that the strides Chief Judge Judith Kaye has made in altering the jury system so that the public is more amenable to service has made a significant effective improvement in our system.*2 Initiatives such as this will pave the road for greater public service and participation and awareness of the importance of the Courts."

Interviewer: "What achievement during your tenure on the bench are you most proud?"

Justice Leone: "I cannot say that there has been any particular event, but I do take satisfaction from my endeavor to give all parties who come into my Courtroom in either a criminal case or a civil matter a fair, impartial trial. A trial's ultimate goal is seeking justice, truth; I feel that within the confines of evidentiary rules, I attempt to give each attorney the latitude to seek the truth for their client. I do not believe in curtailing an attorney's effort to advocate aggressively in his or her client's behalf as long as

it is done within the proper framework of respect for the Court and jury."

Interviewer: "Can you provide an example of a behavior that is particularly egregious in the Court's opinion?"

Justice Leone: "I have observed counsel engage in practices that cause them to lose credibility with both the Court and their colleagues. While they might win that case, the next time they come before the Court, they have to work twice as hard to convince the Court that what they are saying has merit. Word of this chicanery spreads fairly quickly amongst the attorneys as well. I would also like to comment at this time on the fact that in my over twenty years of experience as a judge, I have **never** held an attorney in contempt of court. This is true because I sincerely recognize and appreciate that an attorney must advocate zealously for their clients and, human nature being what it is, some attorneys, in the heat of battle, engage in conduct that is not exemplary. I manage those instances by calling counsel to the sidebar and admonishing them for whatever conduct I deem to be inappropriate in a judicial proceeding. It is a great credit to the profession as a whole that the attorneys have always apologized. I have always accepted those apologies. I was a trial attorney in both the state and federal courts; I understand the frame of mind that trial counsel are in when advocating on behalf of their clients. The ends of justice are not best served when client's attorneys are held to a standard of conduct that has the practical effect of impinging on their duty to zealously defend their client.

Of course, a courtroom should not be the setting for a 'street brawl.' In my experience, most attorneys recognize this and adhere to the standards of our profession embodied in the Model Code and the ABA Canons. In order to accomplish the ultimate goal of providing everyone with a fair trial, a judge must balance the interest of advocacy and the duty of professionally responsible behavior.

Further, an attorney who enters a trial unprepared is, in my opinion, behaving egregiously-not only to the Court but to the attorney's primary responsibility, the client.

Law schools, although having a number of very fine courses, should require an internship which would allow the

*In January 1996, the law regarding jurors was amended. As a result, many exemptions to jury duty were eliminated. One of those exemption categories included lawyers and judges. Justice Leone's brother, the Honorable Sebastian Leone, served as a juror in a criminal trial last year. The two are the only brothers who are simultaneously both sitting N.Y.S. Supreme Court Justices.)

students to get a 'hands-on' pragmatic approach to trying a case which would clearly show the import of being prepared."

Interviewer: "What qualities do you look for in a law clerk?"

Justice Leone: "Someone who knows the law, who is a quick, effective researcher of the law and who possesses excellent writing skills. A good law clerk has an analytical mind. This is crucial, because the court is called upon to determine legal questions dozens of times in a week."

Interviewer: "Do you have any advice for graduating law students in addition to the caveats contained in your earlier responses?"

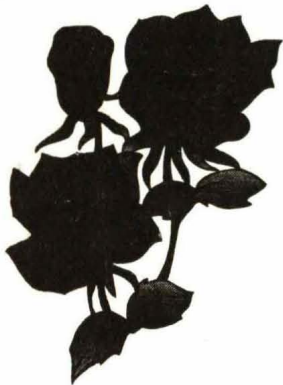
Justice Leone: "I would emphasize the importance of keeping one's word in accordance with keeping one's honor. This is a principle that I have always taught to my children. Secondly, lawyers commencing their careers should go into the area of law that is most interesting to them, not merely what is most lucrative. There is a saying, 'Where your heart is, there will your treasure lie.' This is a maxim that everyone, not solely attorneys, should bear in mind when deciding on a particular line of endeavor."

Interviewer: "Thank you."

ATTENTION 1997 GRADUATES!!!

It has often been said that behind every person of achievement, there is another person who has encouraged, supported and assisted that person in obtaining his/her goals. In the April 1997 issue of *The Justinian*, we would like to publish any expressions of appreciation that 1997 graduates would like to bestow. So, if you have a "grey eminence" (i.e., your

father, mother, sibling(s), spouse, professor(s), friend(s), etc.) that you wish to publicly extend gratitude to, please submit a "thanks" statement to *The Justinian* by March 30, 1997. If possible, please submit a hard copy as well as a disc (WP 5.1, 6.0 or 6.1) of your statement. Please try to keep your statement limited to a paragraph.



A REPRESENTATIVE FROM ART CARVED JEWELERS WILL BE IN THE CAFETERIA OF BLS ON MONDAY, APRIL 28TH FROM 10:00AM TO 6:00PM WITH A DISPLAY OF VARIOUS STYLES OF SCHOOL RINGS FOR BLS STUDENTS TO ORDERING A SCHOOL RING. SELECT FROM WHEN

INTERVIEW WITH PROFESSOR LISA SMITH

By Muriel Richards

(Professor Lisa Smith is the Executive Assistant responsible for the Kings County District Attorney's Office Domestic Violence Bureau. In the following interview, Professor Smith comments on recent strides made in the management of domestic violence as well as continuing difficulties in addressing the issue.)

Interviewer: "Domestic violence is now being treated as a serious issue. For example, judges are now required to consider incidents of domestic violence when determining issues of custody and visitation. Additionally, it is now a felony when an Order of Protection is violated by assault or harassment. These are positive changes in the law. However, there are still legal barriers confronting victims of domestic violence. Would you cite some examples of legal impediments that are particularly difficult?"

Professor Smith: "There are a lot of problems for victims of domestic violence. When a witness comes into our office, as a first step, we generally perform a threat assessment. We want to establish the level of risk that the defendant poses to the victim. However, in New York, the bail statute only allows prosecutors to discuss the risk of flight, not the risk of danger to the complaining witness. The federal system allows you to discuss danger to the community. Many other states permit this as well.

Of course, the system in New York results in defendants often being released on bail. This results in the victims of domestic violence being placed in a shelter or relocated to a hotel. This is not pleasant for the victims. Most have children who are attending local schools. This relocation disrupts the children's academic routine. Many victims find that it is more difficult for them to get to work because of the relocation. The extended family members of the victims are often left at risk because the defendant is aware of their residence.

The initial stalking law in New York is a Class A misdemeanor. Stalking is one of our most serious problems. People who

stalk are obsessed. They are amongst our most frightening defendants. I think the penalties for stalking should be increased. Another legal impediment in prosecuting domestic violence cases is that the level of physical injury required (by case law) in order to successfully convict a defendant of Assault in the Third Degree, does not include bruises. Many victims of domestic violence sustain repeated, so-called physically minor injuries that do not meet the legal criteria necessary to charge the defendant with Assault in the Third Degree. Many domestic violence cases then become completed violations cases. Which is not, I think, what the public would support."

Interviewer: "The O.J. Simpson murder trial highlighted the problem of domestic violence nation-wide. In Brooklyn, the murder of Galina Komar by Benito Oliver generated a lot of media attention. In a letter to the editor which appeared in the May 7, 1996 *New York Law Journal*, you wrote, '...the real problem was Benito Oliver's violence against a defenseless victim' in response to a comment made that Ms. Komar could have, in essence, avoided her death by managing her pet better or keeping a cleaner house (issues that supposedly functioned as catalysts for Mr. Oliver's rage). How much resistance does your office encounter in the form of 'blame the victim' attitudes expressed both by others as well as the victims themselves?"

Professor Smith: "The victims always blame themselves and never blame the defendant. Victims will sit in my office with two black eyes and say to me, 'You know, he really is not a bad guy. It is just that I forgot to pick up the dry cleaning, the kids were misbehaving, he only does it when he drinks alcohol and he can't control his drinking, etc'. In Ms. Komar's case, he hit her with a vacuum once because she allegedly didn't vacuum well enough.

Victims frequently drop the charges. That is very frustrating for prosecutors. It would be a very good thing if all judges understood that most domestic violence

victims are going to want to drop the charges. Some (judges) certainly do understand this pattern."

Interviewer: "One of the chief positive features of the Domestic Violence Court is that one judge and one prosecutor manage the case from beginning to final disposition. Has that had a positive impact on the victims reluctance to proceed with the case?
For example, they no longer have to continually reiterate the facts of the crime."

Professor Smith: "I do not have the statistics yet because the Court has only been in operation for a few months, but I would say that it has had a positive effect. One, the judges in this Court are highly aware of the syndrome of victims wanting to drop the charges. Accordingly, it has reduced the instances where the judge wants a hearing to determine if we committed prosecutorial misconduct in the form of coercing a complaining witness to sign the corroborating affidavit that verifies the accusations in the complaint. The complaint and corroborating affidavit are required to obtain an Order of Protection. Often, victims want the Order of Protection but do not want to follow through with the prosecution of the offense.

In Domestic Violence Court, because the judges are so familiar with this scenario, this is not the legal impediment it could be in other courts. It is not infrequent that a victim and the defendant, along with members of his family and her family, testify *against* us."

Interviewer: "Many victims of domestic violence state they cannot flee the abusive situation for reasons of financial dependency. It was only in 1996, after the N.Y.S. Legislature amended the Labor Law, that the agency's Unemployment Division issued a Review Letter, which advised staff of the procedures to be followed when an applicant seeks benefits because she/he had to leave employment because of domestic violence. They can only get unemployment benefits under the 'good cause' provision. Maine is the only state that has a specific category where applicants who are victims of domestic violence may seek benefits under that state's direct provision for victims of

domestic violence. This reduces the amount of documentation that an applicant for unemployment must provide. How much of a factor are economic concerns for the victims that you encounter?"

Professor Smith: "In addition to fear of losing their own paycheck, victims of domestic violence are often terrified of losing the batterer's salary. We have social workers and victim advocates in our bureau who work on solving these concerns for the victims by securing housing, welfare benefits and medical care for the victims and their children."

Interviewer: "It is estimated that men who are victims of domestic violence report the incidents at an even lower rate than women. Does your office have any special techniques to encourage men to report the abuse?"

Professor Smith: "We have cases where men are the victims of domestic violence, but those cases are far fewer in number than the cases involving women who are victims. They are just as reluctant to prosecute as the women. Even though the reasons for their reluctance are usually different, we are able to manage their reluctance in the same manner."

Interviewer: "How does your office approach issues regarding cultural defenses of domestic violence?"

Professor Smith: "In cultures where the women accepts physical abuse because she has been reared to, we may never hear about that case. There are over two hundred different ethnic groups in Brooklyn. I think there is probably under reporting in a number of these communities. We are attempting to create relationships with these communities so victims will feel comfortable reporting abuse to us."

Interviewer: "Are those efforts similar to your office's Adopt-a-School program, where prosecutors go to local schools and speak to grade school children on a periodic basis in an effort to positively influence the children?"

Professor Smith: "Yes. We speak at community centers. Also, when we start the new

Domestic Violence Part in the Criminal Court, we will be establishing further relationships with different communities."

Interviewer: "If a victim kills her batterer in self-defense, how likely is she to receive deferral on her case? What about those cases where she premeditates the killing?"

Professor Smith: "At present, I have a case where we deferred prosecution against a woman who stabbed her husband in self-defense when he was choking her. There was a record of him choking her twice before. While this was not a murder case (the husband did not die as a result of the stabbing), it is an example of appropriate deferral."

Interviewer: "How do judges react to requests to defer?"

Professor Smith: "Most judges are very sympathetic because when we request deferral, we have very good documentation."

Interviewer: "Has the trend in educating judges about domestic violence, such as the training program implemented by Chief Judge Judith Kaye in March 1995, to increase judges' sensitivity on this issue, had a positive impact?"

Professor Smith: "I think so. I think more judges are aware of the problem. An example of this is the fact that judges allow prosecution in cases even where the victim recants the complaint if there is other evidence on which to base the prosecution."

Interviewer: "Thank you."



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INTERVIEW WITH SBA PRESIDENT MICHAEL BASTON

By Muriel Richards

(The following is Part II of a two-part series. Part I of this interview appeared in the December 1996 issue of *The Justinian*.)

Interviewer: "Many students and some faculty complain about the grade curve. Is this one of your concerns? If so, what do you anticipate doing to alleviate that concern?"

Mr. Baston: "It is a concern. We had a town meeting where we had some professors present who vehemently defended the grade curve. But, I think that it is a topic on the list of things to discuss. I would like to sit down with the Administration and seek to have this changed.

I am also concerned with devising a system where course registration will be easier and faster on students, thereby allowing more students to obtain the courses that they desire."

Interviewer: "Is there anything the SBA can do to ameliorate the often difficult job placement process that many students experience?"

Mr. Baston: "We need to find out where BLS graduates are employed. We need to maintain contact with graduates who are in a position to help students who require assistance in obtaining positions as lawyers. This might yield more results than simply executing a search on a computer."

Interviewer: "Is there anything else that you wish to comment on?"

Mr. Baston: "This is my last year at Brooklyn Law School. I have had a good time here; I have met some wonderful people. The thing that I want to leave with the readers is that law school is an opportunity. It is not simply a place where you learn to make a living. It is an opportunity for you to expand your whole life. What I mean by that is that here, you can build lasting

relationships that will remain with you long after you pass the Bar. I do not think enough people understand that aspect. If you just come here to read the cases and leave, you will never understand everything that law school can be. People view law school as something to be 'dragged through'; but that view is a matter of choice. I made a choice not to view law school in that manner.

I especially want first year students to understand that this law school can mean so much more than that. I have been across the country and met with lawyers and law students who are genuinely interested in this profession. There are more lawyer jokes than there are about the U.S. President!"

Interviewer: "Let us not forget that he is a lawyer in addition to being President!"

Mr. Baston: "And so is his wife! But seriously, this is a noble and honorable profession. No one pays tuition to be a part of a profession that is disreputable. Make the most of law school. Use your legal education as a tool for greatness."

Interviewer: "Do you wish to comment on some of the 'cut-throat' horror stories concerning competition at any law school?"

Mr. Baston: "I like the saying, 'The race is not given to the swift nor the strong, but to the one who endures to the end.' I believe that. If you steal or hide a book or otherwise act in a cut-throat manner in order to obtain an edge over your fellow students, you will not win the race. At exam time, everyone has the same information anyway. Success in law school stems from, among other things, your ability to express the law and find the nuances. There is no need to be cut-throat, to attempt to subvert the chances of others."

On Political Correctness

By Joseph A. Hayden

It amazes me that Anglophones seem the most preoccupied with gender than speakers of any other language. Those of us who admire or despise the language have, as of several weeks ago, lost a woman who made her mark on the lingual hoola-hoops we have been asked to jump through since political correctness became PC. Casey Miller, died at age 77. Her obituary read that she was "A Promoter of Using Nonsexist Language". I didn't know of Ms. Miller until I saw her obituary, but kudos to her because she gave me a wealth of material to discuss in this issue's column.

One of Ms. Miller's ambitions with her co-author and friend, Ms. Kate Smith was to use "genkind" in lieu of "mankind". This was not a palatable suggestion obviously and received broad criticism when it was first purported in the early 1970s. Their valiant efforts at such changes to the language were designed to express how oppressive the English language can be. I don't know, however, if I agree that English is any worse than other well-known tongues. In "One Small Step for Genkind," they wrote:

"Except for words that refer to females by definition (mother, actress, congresswoman), and words for occupations traditionally held by females (nurse, secretary, prostitute), the English language defines everyone as male. The hypothetical person ('If a man can walk 10 miles in two hours . . .'), the average person ('the man in the street') and the active person ('the man on the move') are male. The assumption is that unless otherwise identified, people in general -- including doctors and beggars -- are men.

"It is a semantic mechanism that operates to keep women invisible; MAN and MANKIND represent everyone; HE in generalized use refers to either sex;

the 'land where our fathers died' is also the land of our mothers -- although they go unsung. As the beetle-browed and mustachioed man in a Steig cartoon says to his two male drinking companions, 'When I speak of mankind, one thing I DON'T mean is womankind.'"

Apparently a handbook used in a sex education course which used the pronoun "he" in ways that made it impossible to know whether the author was writing about both males and females or only about males gave Ms. Miller and Ms. Smith the inspiration to write on the subject of gender in language.

It is interesting, as pointed out in my criminal law course a few years ago, however, how seldom the pronoun is interchanged in gender-neutral hypotheticals to feminine pronouns when one is speaking of a criminal act, particularly when the criminal hypothetical contains a violent act. It is very obvious during a lecture or in a text if a one does not refer to "Her Honor's opinion" or "if the attorneys deems it to be in her client's best interests" at periodic intervals. While statistically it may be appropriate to use feminine pronouns far less in criminal hypotheticals, I am not convinced that this is politically correct since one may imply that women are physically less able to commit heinous acts. Perhaps men who abstain from using feminine pronouns in this situation are making a chivalrous gesture by acknowledging men's disproportionate responsibility for violence.

In that vein, one could argue that it was very misogynist to start naming storms after women. Only after all the feminine names were exhausted did meteorologists, who are predominantly male, resorted to using masculine names. On the other hand, how many ships and countries are referred to in the masculine pronoun? It is appropriate to say,

"France is beautiful, isn't she?" but we would not dream of saying "That Argentina is a pretty neat guy!" Ships, planes and trains are female too, but I would wager that more cars -- the symbol of masculinity for so many men (especially in California, where I am from) -- would be too compromising with a female gender. This is even more so for butch trucks like my grandfather's "Jimmy". What people need with these trucks in Brooklyn is beyond me, but there is no shortage of these representations here and especially in California, where I am from.

English is harmful to the flow of otherwise feminine and masculine words in other languages as our "short-cut" words which undoubtedly are spared creative translation in TV shows shown abroad are not replaced by traditional words in foreign languages. For example, my relatives in Italy now use words like "Lui e troppo sexy" to say "He is very

sexy" but "sexy" is neither masculine nor feminine and the flow of the language is hurt by the adoption of this language. "Ho bisogno de un babysitter" for "I need a babysitter" is even more teeth-clenching.

Nuances are inherent in every language, but the romance languages have a gender for all nouns and the speakers of those languages are hardly concerned with weather it is sexist to say a bonnet is male or a pair of pants if female. At the same time, Mexican Spanish (in combination with Native American languages and as opposed to Castillian Spanish) gave us the word "macho" -- something that Anglophones had no succinct way of expressing before the word came about. This fact, and the non-gendered adjectives in English evidence that it is less sexist in everyday usage than its counterparts abroad.

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TAKING A BITE OUT OF CRIME: THE TEEN COURT SUCCESS STORY

By Kevin Gomez

The jurors are dressed in cheer leader outfits, designer sneakers, jeans and jewelry. The 17 year old prosecutor skims through his notes as the 15-year-old defense attorney huddles with the defendant, 14 year Michael. Michael is on trial for attempting to steal candy from a local store, and giving a false identification to the security guard who detained him. During direct examination the defendant testifies his friend pressured him to steal the candy. The prosecution shoots back, "let's get down to the facts of the case, did he force you to steal the candy bar?" For closing arguments the prosecution urges the jury to punish the defendant for his attempted robbery and obstructing an investigation. The defense calls for leniency, stressing "peer pressure is a major factor in a teenager's life," and that the defendant has already "paid his debt to society" by being suspended from school, and spending 5 hours at a local youth services center. After 20 minutes of deliberation the jury returns a verdict against the defendant, assigning him 12 hours of community service, 2 jury duties and to write a letter of apology to the store owner he attempted to rob.³

Sounds like a scene from William Golding's *Lord of The Flies*. The judge and prosecutor may be too young to vote, the defense attorneys and court officers are below the drinking age, and the "jury of your peers" are the neighborhood kids you see off to school every morning. However, this trial scenario is no work of fiction. Rather, "Teen Court" is one of the latest efforts of juvenile justice to spare first time misdemeanor juvenile offenders from becoming career criminals.

Teen Court operates by having teenagers play the major courtroom roles of judge, jurors, prosecutors and defense attorneys.

3. Bill Briggs, *Teen Court Sentencing By Jury Of Peers Doesn't Come Light*, Denver Post, March 17, 1994 at E-01.

First time juvenile misdemeanor offenders appear before

the court, with those found guilty sentenced to community service. The program preserves elements of traditional juvenile justice by promoting *community based rehabilitation*. At

the same time it adopts an *offender oriented juvenile justice model* through its use of criminal trial procedures to hold juveniles accountable for their deeds.

Teen Court has proven successful in reducing first time offenders recidivism rates in communities throughout the country. The overall nationwide recidivism rate for juvenile offenders adjudicated through Teen Court programs is 10% compared with 40% of juvenile offenders tried in traditional juvenile proceedings.⁴ But why has Teen Court proven to be such a successful tool in fighting juvenile crime in America? A look at the origins of Teen Court and how it operates, reveals why.

Teen Court began out of the need to prevent juveniles from becoming career criminals. The experiment first originated in California during the 1940's.⁵ However, its current popular implementation began in Odessa, Texas in 1983.⁶ Like many American cities, Odessa faced overcrowded court dockets, limited financial resources, and a surge in violent juvenile perpetrated crime. With a population of only 100,000 residents, Odessa held the nation's

4. Teresa Owen Cooper, *Court Lets Teens Peer Into World Of Crime, Justice Youths Try Cases, Help Ease Dockets*, Denver Post, July 9, 1995, p. C-07.

5. Gary Kriss, *For Tarrytown Teen-Agers, a Court of Peers*, New York Times, February 13, 1983, at B1.

6. Wayne King, *In A Texas Teen Court, Teen-Agers Face Juries of Peers*, New York Times, April 14, 1984, at A18.

highest per capita homicide murder rate. The county was "swamped with shootings and nothing was happening to the smaller crimes," says Tammy Hawkins, Odessa Teen Court coordinator.⁷ Failure to prosecute first time juvenile misdemeanor offenders gave them a green light to commit worst crimes. For this reason Teen Court was started to deter juvenile crime by stopping juvenile delinquents early in their careers. Within 14 years the Teen Court experiment begun in Odessa, Texas expanded to 156 Teen Court programs nationwide.

Today most Teen Courts operate under the administration of local Juvenile(or Family) Court magistrates. Others are run by local bar associations, the YMCA and high schools.⁸ Teen Courts exercise jurisdiction over misdemeanor crimes such as traffic violations, vandalism, shoplifting, as well as more serious crimes like assault and alcohol-marijuana possession. First time misdemeanor offenders must plead guilty to their deeds in order to have their juvenile court adjudication waived for a Teen court trial. The juvenile defendant is then assigned defense attorneys who like the prosecutors are recruited from local high schools. Prosecuting and defense attorneys are given extensive training on trial advocacy. For example, the Tarrytown, New York Teen court program trains participants in the municipal ordinances, state penal and traffic laws the court will apply.⁹

In all Teen Court models teenagers serve as jurors. The jurors are mainly recruited from local schools. However, many Teen Court programs require their former defendants to return in the future to serve as jurors. This allows them to return on the right side of the law, giving them an

understanding of why it is better to be law abiding instead of a law breaker. Massachusetts' Malden County State District Court Judge Paul J. Cavanaugh explains, "I want a kid who's a delinquent one day to be an advisor the next, so he can tell them, 'I was in your spot once. I was stupid; maybe I thought I was a wise guy!'"¹⁰

Once the trial begins the prosecution attempts to prove beyond a reasonable doubt the defendant's guilt, while the defense pleads for leniency on behalf the defendant. Defendants found guilty are sentenced to do community service, attend rehabilitation or counseling programs if necessary, and write long compositions on why they will not become repeat offenders. The sentences are designed to redress a juvenile delinquent's wrong and encourage socially responsible behavior.¹¹

Making Teen Court work are its underlying supporting principles. First, Teen Court is a *diversionary* program. A diversionary program provides juvenile delinquents alternative sentencing through community service with educational or counseling services instead of adjudication by Family Court.¹² In most jurisdictions Family Court judges have the discretion to dispose of a delinquent's case by having the minor participate in a diversionary program like community service, and restitution service to crime victims.¹³ The programs persuade delinquents to avoid deviant behavior and become law-abiding citizens. At the same time Family Courts are allowed to concentrate their resources on more serious juvenile offenders. As a diversionary program Teen Court provide first time juvenile misdemeanor offenders the option of waiving their Family Court adjudication for a Teen Court trial. The

⁷ Peter S. Goodman, *Youth Court Not For Hard Cases*, Anchorage Daily News, September 17, 1995, at 1A.

⁸ Currently there are 156 teen courts in the United States. Some like those in Texas, Los Angeles, and Massachusetts are run through the local court systems. The Denver, Colorado teen Court began as a project sponsored by the local bar association while the Tarrytown, New York Teen Court began as a police department crime prevention program.

⁹ *Youth Court Of The Tarrytowns And Irvington Training Manual* (Revised 1987).

¹⁰ Karen Levine, *Trial 'Teen Court' May Be Enacted*, Massachusetts Lawyers Weekly, January 10, 1994, at 3.

¹¹ American Alliance For Rights and Responsibilities Newsletter, Chicago Tribune, June 10, 1990, at C3.

¹² Linda Borg, *Teen Court Program Proposed*, Providence Journal-Bulletin, July 7, 1995, at 1D.

¹³ Like Juvenile Court, diversionary programs are rooted in the concept that courts should use informal discretionary procedures to diagnose the causes and find the cures of juvenile delinquency.

teenager must comply with the Teen Court program by carrying out the sentence rendered by the Teen Court which includes community service, apologizing for their deeds, and possible future service as teen jurors. The program thereby satisfies the diversionary justice goals of alternative sentencing through community service.

Second, Teen Court has the mission of *early intervention*. Today's typical criminal is a male who began his career around the ages of 14-15, with 30-40% of these boys growing in urban areas arrested once by their 18th birthday.¹⁴ By focusing on first time misdemeanor offenders, Teen Court attempts to prevent such youngsters from going on to commit more crimes, as Los Angeles Teen Court founder and Juvenile Court Judge Jaime Corral expresses, "we hope to reach the kid who is on the edge of going over into something heavier."¹⁵ Otherwise, most of these misdemeanor offenders would not get prosecuted because of court dockets overcrowded with more serious cases.

Third, Teen Court is an *offender oriented* model of juvenile justice. Unlike traditional juvenile justice which approaches delinquency as a social ill which must be cured, Teen Court uses punishment to convey the message that crime does not pay, and that criminal behavior has negative consequences. Teen Court makes this possible first through its adjudication of a misdemeanor delinquent's case as if it were a criminal case, and second, through sentences imposed by Teen Court juries which have proven to be more punitive than those rendered in traditional juvenile hearings. "Kids are much tougher than any adult. If the jury thinks the defendant is lying they'll usually nail him to the wall," says Natalie Rothstein, coordinator of the Odessa, Texas program.¹⁶ An example of Teen

Court's jury verdict at work is seen in the case of Michael Cabral.¹⁷

Fourteen year old Michael Cabral was sentenced to 600 hours of community service lawn mowing for stealing a car stereo.¹⁸ His Teen Court experience brought a change in heart. "I didn't expect them to be so hard on me, but I deserved it. When I walked in there, I didn't care. I had a bad attitude and was talking back to them. They said, 'If you don't care, then we don't care, and we'll give you all this work to do.' Now I care!"¹⁹ Michael Corral is just one of many former juvenile delinquents who have made Teen Court work by never committing a delinquent act again. Through Teen Court's use of criminal trial procedures juveniles see the workings of the criminal justice system, and get a taste of the consequences that follow for being on the wrong side of the law.

However, the driving force behind Teen Court's success is its use of *peer justice*. Peer justice is based on the belief that a young offender is more likely to accept his punishment and stay out of trouble if he is judged by his true peers, teenagers themselves. Most sociologists agree that individuals are influenced by the groups with which they most associate.²⁰ "It's one thing for an adult to say that drinking or drug use is unacceptable behavior. It's another thing for that message to come from other teenagers," says Ms. Linda A. Ostermeier, executive director of the Indiana Youth Services Association.²¹ In fact, Teen Court participants agree that it is peer justice which makes Teen Court work. "The hardest thing for a teenager isn't to be judged by someone older, it's to be judged by one of their

14. Roger Tatarian, *In This Court Teens Truly Face Jury Of Peers*, Fresno Bee, February 19, 1995, at B5.

15. Lianne Hart, *Teen Courts Make A Case For Peer Law*, Los Angeles Times, March 11, 1993, at 5.

16. King, *supra* note 3, at 18.

17. New York Times News Service, *Young Offenders Face Peers In Teen Court*, Dallas Morning News, December 23, 1994, at 33A.

18. In a Teen Court the presiding judge may override an excessively harsh verdict. In Michael Cabral's case the judge reduced the number of community service hours to 200.

19. New York Times News Service, *supra* note 14, at 33A.

20. MARTIN GOLD AND D. WAYNE OSGOOD, *PERSONALITY AND PEER INFLUENCE IN JUVENILE CORRECTIONS* 16 (1992).

²¹21. Dirk Johnson, *In a Court For youth, Judgment By Peers*, New York Times, April 16, 1990 at A10.

own peers," says Wendy Woolgar, a former teen judge.²² "I feel like when they see us up there, it makes them think about themselves and what they really want as their future," adds David Aguilar, a 16 year old high school junior who has served as a juror numerous times.²³ Unlike a traditional juvenile adjudication where the adult judge is the single decision maker giving a reprimand which may make a rebellious youth more rebellious, Teen Court operates to make teenagers realize that delinquent behavior will not win acceptance by their peers.

Through peer justice, Teen Court has fulfilled traditional juvenile justice and due process ideals. First, Teen Court acknowledges the legal principle that the conduct of a minor should be judged according to the average or expected conduct of juveniles of the same age and experience.²⁴ Indiana Judge Douglas Haney agrees, "often times a jury of their peers is more in tune with their real motives and attitudes and is able to come back with a sentence that's appropriate for some one their age."²⁵ Teen Court allows a delinquent's conduct to be judged according to the average or expected conduct of a peer by having them appear before juries of their peers. This allows delinquents to realize that law abiding behavior is the expected conduct their peers really expects from them.

Second, Teen Court makes the case to preserve a separate juvenile justice systems. The current escalation of juvenile perpetrated crime has cast public doubts on the rehabilitation goals of juvenile justice, leading states from New York to California to enact laws imposing fixed criminal sentences for juvenile committed crimes, and waiving serious juvenile felony cases

from Family Courts to be tried in Criminal Courts. Teen Court, however, makes the case that the problem with traditional juvenile justice is not that it was founded on lofty ideals but that it cannot work alone without a punishment component.

Teen Court exposes juveniles to the rigors of a criminal trial, using punishment to convey the message that crime does not pay, but will be punished swiftly and to its fullest extent under the law. At the same time Teen Court fulfills the juvenile justice rehabilitation mission by allowing first time offenders a chance to redeem themselves by enabling them to acquire a sense of responsibility over their actions, engage in community service to compensate for their wrongdoings, have a chance to be in the right side of the law as future Teen jurors, and avoid the beginning of a criminal record. Teen Court fulfills the purpose behind confidentiality here by denying delinquents the stigmatizing effect of an early criminal record. Unlike family court adjudications where delinquents may get sealed records, Teen Court defendants get no record at all! So its a second chance for them to be clean. Second, Teen Court public trials restore confidence in the juvenile justice system by giving the public an opportunity to see the system work, forcing courts to enforce greater procedure decorum within juvenile courts regarding observance of due process procedures, adequate fact-finding measures, and sentences designed to meet the best interest of the youth.²⁶ Third, Teen Courts emphasize the need to provide a measure of punishment suited to juveniles individual needs, in order to make them responsible and accountable citizens.²⁷

22. Lori Baker, *Trial Run: High School Uses Teen Court Program For Problems With Discipline*, Arizona Republic/Phoenix Gazette, March 23, 1994, at 1A.

23. N.Y. Times News Service, *More Teens Now Judged By Peers; Offenders Tend To Stay Out Of Trouble*, Chicago Tribune, December 21, 1994, at 22.

24. *Charbonneau v. Macrury*, 84 N.H. 501, 153 A. 457 (1931).

25. Kirsten A. Conover, *Teen Offenders Face Jury Of Peers*, Christian Science Monitor, December 31, 1991, at 12.

26. Teen Court fulfills the argument made by the National Council of Juvenile and Family Court Judges against confidentiality: "The public has a right to know how courts deal with children and families. The court should be opened to the media, interested professionals and students and when appropriate, the public in order to hold itself accountable, educate others and encourage greater community participation." Gordon A. Martin Jr., *Open The Doors: A Judicial Call To End Confidentiality In Delinquency Proceedings*, 21 New Eng. J. on Crim & Civ. Confinement 393 (1995).

27. Elizabeth Wade Hall, *Aspiring 'Legal Eagles' Flock To Teen Court*, Herald Sun(Durham, N.C.), October 24, 1994, at B1.

Teen Court's "peer justice" experiment has proven successful in stopping juvenile delinquents from becoming repeat offenders. Recidivism rates, which are the indicators primarily used to measure the success of juvenile justice programs report startling figures on Teen Court. The Texas Teen Courts Association reports less than a 5% recidivism rate compared with a 30-50% recidivism rate for offenders adjudicated through Juvenile Court. Meanwhile in Los Angeles only 3% of Teen Court defendants have been tried again.²⁸

As a program aimed at first time misdemeanor offenders, Teen Court addresses delinquency at its earliest stage, one too often ignored by a court system overburdened with more serious offenses. It strikes at the core of the delinquency problem of many youths, peer pressure. Through peer justice Teen Court shows youths who their true peers are, those young people that will give them a helping hand to move along in life, and not destroy them. As Texas Justice of the Peace Tom Lawrence expresses, "this gives the kids the chance to see how the whole system works and sometimes the opinions of their peers makes more of an impact than their parents, teachers or police officers."²⁹

Furthermore, Teen Court is a cheap alternative to traditional juvenile justice. The Odessa, Texas program only cost \$30,000 a year. The program has also reduced backlogs. "It takes care of a certain number of kids who aren't necessary bad kids. It prioritizes the system. It lets some of the slots be filled by more serious offenders," says Denver Municipal Court Judge Edward Colt, who volunteers his services to the local Teen court.³⁰

Finally, the Teen Court program may not cure juvenile delinquency, but it may work to stop delinquency at its infancy through the proven effective power of peer justice. In doing

so Teen Court fulfills the rehabilitative aims of juvenile justice, providing offenders both a guarantee of due process protections and corrective justice against lawless behaviors. According to Ms. Sara Faur, an Indianapolis Teen Court Coordinator who previously worked with inner city delinquents in Chicago, "every big-time city needs to have some sort of intervention program to stop the cycle of crime. By the time kids get caught, they've usually done it more than once. There's no way you can beat teen court costwise."³¹ Clearly, an innovative program like Teen Court which promises to reduce delinquency levels through early intervention, while allowing a less burdened court system to address more serious crimes, all for a lower cost, is a bargain communities across America cannot afford to be without.

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28. Editorial, Atlanta Journal and Constitution, December 21, 1994, at 20.

29. Glen Golightly, *Justice In Teen Court Carried Out A Little Differently*, Houston Chronicle, November 22, 1993, at 11.

30. Cooper, *supra* note 2, at C-07.

31. Conover, *supra* note 23, at 7.

GRADUATION JITTERS

By Muriel Richards

As the date of graduation draws closer and closer, I am sure that most graduating students are feeling anxious. After all, the leviathan known as the Bar Exam lurks before us in the not too distant future. The commencement of the repayment of student loans is another major concern for many students. Add to that the fact that we will, very shortly, no longer have free access to Lexis and Westlaw computer services, one can see the basis for stress. However, these worries can be rationally analyzed and put into perspective. First, thousands of individuals have taken the Bar Exam in the past and survived. There are Bar review courses to reduce the number of times in a night one wakes up in a state of panic after experiencing a nightmare where the Bar Exam's essays concentrate on the Rule Against Perpetuities and the questions are all in Latin. Oh, Bar review courses can never entirely eliminate the fear that the Bar Exam will concentrate on the Rule Against Perpetuities and be administered in a language that has not been part of the vernacular for the past several centuries, but they do help.

As for student loans, well, many students have grown accustomed to living below the poverty line. Let's face it, people who have spent seven-eight years perfecting three hundred ways of draining every drop out of their highlighters are not going to be phased for long by having to continue to clip a few coupons at the grocery store. The sagacious among us have taken Debtors & Creditors Rights as an additional coping mechanism/strategic maneuver. (Of course, I am not among that group, so I will have to call classmates who had the foresight to enroll in that course. I can harbor hopes of being able to convince them to reduce their fee for a classmate.)

In regard to the sudden deprivation of free Lexis and Westlaw computer services, well, try to consider this as an opportunity for one to bridge the chasm between those lawyers educated in the law prior to the

widespread use of computer research tools and those lawyers who regard "book" as a four-letter word. It is a chance to narrow the great divide. While I personally believe the Geneva Convention as well as the Eighth Amendment to the U.S. Constitution would be violated if I were coerced to Shepardize using "the books", I am endeavoring to maintain a positive outlook. However, other little gnawing worries cannot be as easily dismissed. For example, am I the only one who secretly wondered if there was a dual purpose to measuring our heads for the graduation caps? What if it was the school's method of determining how much knowledge one has accumulated over the past three-four years? I do not recall having the circumference of my head recorded when I entered this school, but who *can* remember anything that came before *Hamer v. Sidway*? Suppose I have failed the graduation "cap test"?

And, getting back to the topic of the Bar Exam, I wonder if I will be charged extra because of the necessity for the Bar Examiners to hire a translator fluent in "scribble-ease" to read my essays. Also, I am beginning to feel the effects of my glaring omission in not enrolling in the Negotiation Seminar as relatives begin to squawk for tickets to the commencement exercises. Every time I see an adult in public with a baby, I almost feel compelled to say to the baby, "Learn how to change your own diapers, kid! It may be difficult at first, but trust me, in thirty years, you'll thank me, as no one can use that as guilt leverage for a law school commencement ticket!" Do not be surprised to find a case in the Torts and Family Law textbooks in a few years where a grandmother successfully sued her granddaughter on an intentional infliction of emotional distress claim for failing to secure a law school commencement ticket for said grandmother.

Actually, studying for the Bar Exam appears to be a peaceful diversion right now.

A VIEW ON ABORTION

By Daniel Ajello

Abortion is one topic that works its way into many law school classes. The interesting legal rationalizations of judges and the moral debate never seem to end. Many unique theories regarding the essence of life itself have emerged from legal and medical scholars. Yet as each argument grows more imaginative they also seem to concentrate less on the underlying issue of the value of life itself.

Most students will analyze the *Roe v. Wade* (410 U.S. 113, 93 S.Ct. 2791) and *Planned Parenthood of South Eastern Pennsylvania v. Casey* (505 U.S. 833, 112 S.Ct. 2791) decisions numerous times. Essentially, *Roe* found the right to privacy and restrictions against state action broad enough to cover a woman's right to terminate her pregnancy. It focused on trimester framework and used viability as its tool. *Casey*, in upholding *Roe*, found that state's may set requirements for women to meet before having an abortion as long as those requirements did not place an undue burden on a woman's right to an abortion before fetal viability. State laws which place a substantial obstacle in the path of a woman seeking to exercise her right will be struck down as unconstitutional. This is an admittedly brief summary of the Court's holdings.

Arguments, both legal and moral, supporting abortion rights rely either on a woman's autonomy (the right of a woman to make her own decision regarding her body) or the fact that the fetus is not a human being. Regarding the second issue the court has developed their reasoning, and the law, around viability. However, viability is to uncertain a standard on which to make life and death decisions.

Black's law dictionary defines viability as, "*Capable of living. A term used to denote the power a new-born child possesses of continuing its independent existence. That stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supportive systems.*" The court in *Roe* found that as the fetus approached viability the state's interest in protecting the fetus increased. However,

viability is not a fixed point in time which can apply to every fetus. A fetus' viability does not depend on a calendar, like the court supposes, but instead on its individual fetal development.

Thus, no one, including the court has any way of knowing if an aborted fetus was viable or not. Weight and length may be better indications of a fetus' viability. The viable fetus which the court seeks to protect, in some cases is surely unprotected, and at times, aborted. Admittedly, the time framework is easier to apply, but when the interest is as high as it is in abortion cases shouldn't we be as exact as possible?

Further, why is viability a key to the analysis? Is it because the fetus depends entirely on another for its existence? Is it because the fetus is so dependent on its mother for shelter and food? This dependence may make the fetus seem "less human". This dependence may help rationalize ending its existence since the fetus, in some people's opinion, has no independent life. Some argue that the fetus is not human enough yet to warrant protection as a person. Yet if one analyzes factors which contribute to human existence, fetuses qualify at least in some respects as human.

For instance, viability is a poor criteria for humanness since all newborns depend on another for life itself and continue as dependent beings for a long period of time. Some would argue that a new born requires more attention than a fetus. Though the womb is certainly a more intimate and personal location than a crib, the infant still depends entirely on another for its continued life.

If it is experience which contributes to humanness is it not true that fetuses can hear and be affected by outside factors? A fetus even reacts to outside factors such as music or movement. A fetus may even be able to react more than some severely disabled individuals. Surely, no one would question the disabled individuals humanness.

Viability is too tenuous a standard to use to determine the fate of a fetus. Even so, courts use viability in conjunction with a

woman's privacy interest to justify abortion. One can assume that a woman's privacy right alone is not enough to justify abortion. Though each person is allowed to make individual decisions regarding their body there are numerous ways in which the state can abridge these rights. (For example, laws which address smoking, suicide, drinking alcohol, and abortion.)

Abortion has been legally accepted on two primary grounds. One is a woman's right to decide what to do with her body and the other is the court's acceptance of the idea that a fetus is not human enough to warrant state interest until a certain age.

I, for one, am not satisfied enough with the reasoning which justifies abortion. It does not make sense to me that there are places in the United States where a child cannot get his or her ears pierced without parental consent and other places exist where the same child can have an abortion. Also, it seems contradictory that our government protects certain animal eggs by federal law while not protecting completely the unborn fetus. States have even gone so far as to outlaw disturbing certain bird nests. Yes, these laws apply to endangered species. But, even if human life is not considered endangered, one hopes that its potential is more valuable than a bird's egg.

It seems the court wanted to find a way to justify abortion. Like many cases one reads, its seems the decision was reached and then the reasoning was formulated. Surely, the court did not want to face criticism for not allowing abortion in light of all the unsafe abortion information which arose during that time. However, unsafe abortions still continue. Perhaps, part of the reason the court's decision seems incorrect is that the court, and even the supporters of abortion rights, did not anticipate the numbers of abortions which would be performed. With such great numbers of abortions being performed, unskilled medical personnel have performed many of these procedures.

In using viability as a key factor in abortion analysis morality is invited into the legal reasoning. The court could not bring itself to support the woman's right to end a life unless it found a way to diminish the value or status of that life.

Whether one is pro-choice or pro-life there should be some common ground. I would hope that individuals on each side would acknowledge that a fetus is a life. I would also hope that each side would agree that a woman's right to an abortion should not be used as a method of birth control. Lastly, everyone would probably agree that all life deserves some level of respect; of course, human life is to be valued the most.

With this in mind it seems to me that a great casualty of legalized abortion is a respect for life. What I personally oppose is not that abortion is legal, but that it has become socially acceptable. Some people argue about the right to abortion with a tone of pride in that right. Even if one believes in the right to an abortion it seems that support should be expressed in a different way. Even supporters of abortion could acknowledge that the ending of a life is not preferred. Even supporters could support counseling on alternatives to abortion.

One would think that the life being extinguished would not end with a shout or sigh of relief, but with a heavy heart. I am not saying that the choice to have an abortion is an easy one, but the numbers of abortions performed in this country seem to indicate that it is becoming an easier choice. Legalizing abortion has given some individuals a court supplied rationalization which allows them to have an abortion with a little bit less guilt and less of a feeling that a human life is being ended. Yet a life is definitely ended and if I am to be convinced that the life ended is less than human, it will take more than *Roe*.

In the end I could live with abortion being legal. However, the sheer numbers indicate to me that life is not held in such high regard. Even with abortion being legal, if attitudes were different and respect for life greater, abortions would not be so commonplace. Ideally, I would like to see the practice of abortion end, with or without a legal decision. I would rather the practice ended because people valued the life of a fetus enough to not abort that life, regardless of the court's position. The decision to have an abortion is certainly not a legal decision as much as it is a decision regarding life.

ANOTHER VIEW ON ABORTION

By Annette Warner and
Lisa Solbakken

In 1973, the United States Supreme Court declared that a woman's decision to terminate her pregnancy within its first trimester is a fundamental right. Almost twenty-five years later, a vocal minority of extremists continue to violently oppose this decision reached in *Roe v. Wade*, 410 U.S. 113, 112 S.Ct. 705. Health clinics are bombed. Doctors who perform abortions are kidnaped, shot and murdered. Women seeking reproductive health services are tormented by angry mobs. Misleading advertisements and erroneous statistics about abortion procedures are displayed in public transportation systems.

These militant tactics have had the intended results. The March 13, 1996 edition of *Network News* reported that 84% of the counties in the United States have no provider of abortion services. States continue to enact legislation that significantly curtail access to abortion services, with the effects of such measures falling most harshly on the poor and women who live in rural areas. The right to choose, once deemed fundamental by the highest court in the land, continues to be abrogated to a point where it is, in a practical sense, an empty guarantee for most American women.

This abrogation was condoned by the United States Supreme Court in *Planned Parenthood of South Eastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S.Ct. 2791. The decision was the result of a challenge to the Pennsylvania Abortion Control Act of 1982. The law required that a woman who wished to exercise her right to choose must endure a 24 hour waiting period, sign a written statement indicating she has notified her husband of her decision, agree to allow a provider to keep detailed records of the procedure, and if under 18, obtain permission from her parents (although the statute does provide for a judicial bypass for parental notification). With the

exception of the husband notification provision, the legislation was upheld.

Although not explicitly overturning *Roe*, the Court intimated that the right to choose, even in the first trimester of a pregnancy, is no longer to be considered a "fundamental" right. The Court abandoned the trimester framework set up by *Roe* and articulated that the constitutionality of abortion legislation will be determined by evaluating whether the proposed measures "unduly burden" pregnant women. In applying this test to the Pennsylvania Act, the Court found that four out of five of the provisions posed a mere inconvenience to the right to choose, and were constitutional restrictions of access to abortion services. Only the clause that required a woman to notify her husband of her decision was struck down as an "undue burden."

Aside from the disproportionate effect *Casey* has on the poor and those women who live in rural areas, the most offensive aspect of the holding is its implicit acceptance of the infantilization of American women as a whole. The Pennsylvania legislature and the United States Supreme Court no longer recognize the American woman's right to make reproductive choices for herself.

- So what is a fundamental right? How can the highest Court of our nation declare a right as fundamental and then recede from this position? The Court in *Casey* attempts to justify their decision and discusses how precedent can be overturned. *Brown v. Board of Education* is used as an example. The Court maintains that as facts and circumstances change, the law can change. Imagine if the Supreme Court applied a similar analysis to other controversial issues or fundamental rights. Imagine this analysis applied to state legislation that restricted political speech. Such action would call the legitimacy of the Court into question.

- Yet, within the context of women's rights to choose, no such questions are asked, and American women are left twisting in the wind of an ever changing political climate. The Court and state legislatures turn a dumb ear to the powerless voices of those most likely to be

adversely affected by the permitted restrictions on access to abortion services. Ultimately, American women, once again, must assert their right to individual autonomy, and fight the erosion of a legal doctrine that is inextricably bound to the notion of equality.

ADVICE FROM PRACTITIONERS TO LAW STUDENTS

"I am an alumnus of Brooklyn Law School, Class of 1981. I was a member of the Moot Court Honor Society and Commissioner of the Intra-Mural Softball League. I now have the privilege of managing the Litigation Division of The New York State Insurance Fund, New York State's largest workers' compensation insurer. I began my career at The State Insurance Fund fourteen years ago as an Attorney Trainee after taking a New York State Civil Service test. I suggest you take the test as well. It cannot hurt, and good jobs are hard to find.

I hope you are all enjoying your beautiful new building on Joralemon Street. I also hope that Professor Farrell is still as good a dancer as he used to be. Good luck!"

Edward Hiller, BLS '81

"Don't do this. Being a lawyer is not what it is advertised to be. Studies have shown that lawyers have one of the highest dissatisfaction rates amongst professionals. Add to this the lack of jobs, you'd have to be masochistic to do this.

Don't do this."

Louis D. Schwartz, BLS'73

"You may have a vision of what you want to do, but fate may have other plans. I wanted to do civil rights and poverty law, but in the early 1980's, there were no civil rights positions and the poverty law centers were too poor to pay me. So I did debt collection, domestic relations and personal injury defense. Better than driving a cab, I suppose. Flexibility is the key."

John Bradley, Seton Hall

New Foreign Study Program

By Linda Harvey

BLS students will have an exciting new opportunity this summer to study abroad at Italy's Bologna University—Europe's oldest university founded in the 11th Century. The American Bar Association recently gave its stamp of approval for Brooklyn Law School and Loyola Law School of Los Angeles to jointly sponsor a summer law study program in Bologna. Students may enroll in either a two- or four-week session, from June 9 - June 21 or June 9 - July 4, up to a maximum of four credits. The program's primary focus is on international business law. The application deadline is March 10th, and information packets can be picked up in room 928.

Professor Arthur R. Pinto, co-director of BLS's International Center for the Study of Business Law, will share the responsibilities of running the program and teaching courses, along with Associate Dean Lawrence Solum of Loyola Law School and faculty from the University of Bologna, one of the most distinguished in Europe. Pinto says the program offers a terrific opportunity for students to immerse themselves in an intense educational and cultural experience in an international setting. "Students who want to practice in the international law arena can take advantage of a concentrated study of important international and comparative topics in a stimulating environment."

The courses that will be taught include Comparative Business Organizations, International Dispute Resolution, International Sales, International Business Litigation, and European Human Rights. Students will attend classes in a beautiful Renaissance building with modern classroom facilities and then will have access to the University's excellent multi-million volume law library and other student facilities. The University is located in the heart of the old city of Bologna, within walking distance of the major cultural and artistic attractions of the city. Student accommodations will be in nearby hotels.

The University is a central feature of life in Bologna, where some 100,000 students reside among its population of 400,000. Considered one of the forerunners of today's higher education system, Bologna University is believed to have been founded in 1088. The University has been described as a window in to the past, permitting students to experience education in a setting that has been preserved for centuries. The city of Bologna includes many of the charms of northern Italy, including beautiful churches and palaces, a wonderful marketplace, and an abundance of cafes and restaurants. It is ideally situated in a region known for its beauty and historical richness, and it is a short distance from Venice, Sienna and Florence.

THE NEW YORK WOMEN'S BAR ASSOCIATION

THE FLORENCE P. SHIENTAG AWARD COMPETITION

Legislative proposals having a special impact on women are increasingly at the center of our country's debates. Welfare reform, enhanced criminal sanctions for drug addicted pregnant women, HIV testing of newborn babies, and the education of children of illegal aliens are, to name a few, issues that have and will continue to be the focus of federal, state and local legislative initiatives. Many of these proposals have significant constitutional ramifications.

You are invited to submit an original essay, not to exceed ten double-spaced typed pages, on a recent legislative enactment or proposal that has particular consequences for women (such as, but not limited to, the topics suggested above) and address its legal ramifications.

There will be one winner, who will be a guest of the New York Women's Bar Association at its annual dinner in May, 1997 and who will be presented with the FLORENCE P. SHIENTAG AWARD and a check for One Thousand Dollars.

All entries become the property of the New York Women's Bar Association and will not be returned. The New York Women's Bar Association reserves the right to publish any entry or make use of the ideas presented, with appropriate credit given to the author). Taxes that may be due or owing on the financial award are the sole responsibility of the winner.

Entries will be judged by a panel of members of the New York Women's Bar Association. The decision of the New York Women's Bar Association will be final.

The competition is open to all students who are attending a law school located within New York City. Entries should include the author's name, address, telephone number, law school and law school class.

Submissions must be postmarked no later than April 14, 1997. They should be sent to:

The New York Women's Bar Association
245 Fifth Avenue, Suite 2103
New York, New York 10016
Attention: Florence P. Shientag Award

PRESIDENT CARTER & THE MAKING OF THE CAMP DAVID PEACE ACCORDS: A FOREIGN POLICY ANALYSIS

By Kevin Gomez

INTRODUCTION

A national foreign policy determines the principles and practices used by a nation to govern its relations with the world around it. In the United States the President holds the trust of chief foreign policy officer. As such, the President has broad power to deal directly with foreign heads of states without many legislative restraints.

Influential leadership, achieving world peace, and economic benefits for the country are among the major foreign policy of any president. However, underlying them is the important goal of building a broad base of support for the President and his party within the American electorate. For these factors underlying a president's foreign policy, may well decide the future of the country, as well as the president's own reelection and place in history.

Middle East peace was a top foreign policy objective for President Jimmy Carter from the start of his presidency. Seeing major economic, moral, political and strategic national interest at stake, the Carter Administration devoted more than two years to reaching a comprehensive peace settlement between Israel and Egypt. As President Carter later wrote in his memoirs: "looking back on the four years of my presidency, I realize that I spent more time working for possible solutions to the riddle of the Middle East peace than any other international problem."³²

There were many obstacles and events working both for and against Administration policy here. However, presidential determination and close working foreign policy-diplomatic teams made possible the Camp David Peace

Accords in September 1978. Though not a comprehensive peace settlement between Israel and its Arab neighbors, it set a framework for future dialogue between Arabs and Israelis, as well as the terms for the first peace treaty between Israel and an Arab nation, Egypt. An analysis on the making of the Camp David Peace Accords illustrates how one president, James Earl Carter developed his foreign policy, and used the power of the presidency to achieve a framework for peace in the Middle East.

HISTORICAL BACKGROUND

Ever since the founding of the nation of Israel in 1948, peaceful coexistence had never been possible between Israel and the surrounding Arab countries. Arabs claiming the land of Palestine, saw the Jewish state as an unwelcomed intruder. When President Franklin D. Roosevelt suggested creating a Palestinian Jewish state, Saudi Arabian King Saud responded that the best Jewish state would be in the "land and homes of the Germans who oppressed them."³³

Concerned with stopping the spread of Soviet-communist influence in the Middle East, the United States was among the first nation to recognize and support Israel. In Israel the United States found a strategic ally to deter Soviet sponsored aggression and secure American-Western commercial interest in the nearby waterways. Bonding the United States to support Israel were not only common political values and interest, but moral and religious values as well. As Steven Spiegel writes, "in a country (U.S.A.), founded on Old Testament oriented Protestantism, with a frontier ideology and optimistic sense that miracles were possible, the

32. JIMMY CARTER, KEEPING FAITH: MEMOIRS OF A PRESIDENT 429 (1982).

33. STEVEN L. SPIEGEL, *The United States And the Arab-Israeli Dispute*, EAGLE

ENTANGLED: U.S. FOREIGN POLICY IN A COMPLEX WORLD 338 (1979).

notion of a Jewish return to Palestine was seen by many as historically conceivable."³⁴ In fact, as early as 1818 John Adams had written "I really wish the Jews again in Judea an independent nation."³⁵

Between 1948-1973, United States Middle East policy consisted of solid support for Israel, while expanding influence with friendly Arab states. This policy, known as the *New Look Approach* sought to prevent communist influence in the Middle East by holding ties with both Israelis and Arabs. At the same time it expanded American economic interest in the region, with American dependence on Middle East oil growing drastically by 1970.³⁶ It was not until the 1967 and 1973 Arab-Israeli wars that the United States began to pursue a diplomatic solution for peace in the Middle East.

In both 1967 and 1973, Egyptian led Arab forces mounted military assaults to destroy Israel. However, Israeli victory in 1967 gave Israel possession of Syria's Golan Heights, the Sinai from Egypt, Jerusalem, and the West Bank from Jordan. In 1973 American military aid helped make Israeli victory possible, but the 1973 war almost brought a superpower showdown. With Israeli forces advancing into Egypt, the Soviet Union warned of possible direct military intervention. To this the United States responded by placing all its worldwide military bases on nuclear alert. From this point on Middle East peace became a top priority for United States foreign policy, first shaped by Secretary of State Henry Kissinger under Presidents Nixon and Ford.

Secretary of State Kissinger helped bring the 1973 Arab-Israeli war to a cease fire through passage of United Nations Resolutions 242 and 338. Resolution 242 called for Israeli exchange of 1967 war occupied land for Arab peace. Resolution 338 established the Geneva Conference for the United States and Soviet Union to get together with Jordan, Israel, and Egypt to reach Middle East peace. The Kissinger

policy known as the *Step by Step Approach* was based on power politics. Its main objective was Soviet containment. The key state for this was Egypt. Following the death of Egyptian nationalist President Nasser in 1971, plus defeat in the 1973 war, Egyptian-Soviet relations declined. With Egypt moving in a western pro-American direction, winning the support of the Egyptian government promised greater American influence in the Middle East, plus reduced possibilities of another Arab-Israeli war.

While the Kissinger foreign policy began the first major American effort for a more stable Middle East it did not produce immediate results. The Geneva Conference met only once in December 1973. United States relations with the oil producing Gulf states remained shaky following an oil embargo imposed by Saudi Arabia and the OPEC states against the United States for supporting Israel during the 1973 war. The result was felt in long gasoline lines and rising inflation back home.

By 1976 Saudi Arabia and Jordan had accepted the United Nations Resolutions 242 and 338 terms for peace, while Egypt in deep financial distress, with unstable neighbors in Ethiopia and Libya, also expressed interest in resolving the Middle East conflict, plus avoiding another war. This was the state of the Middle East when Jimmy Carter was elected President in 1976. For the new President it was a promising situation and the launching of a long diplomatic search for peace.

THE CARTER MIDDLE EAST PEACE PLAN: SETTING THE AGENDA

James Earl Carter was elected President with the belief of a mandate to try a different approach to resolve the Arab-Israeli conflict. As Carter Administration National Security Advisor Zbigniew Brzezinski wrote: "Every new Administration feels it has a mandate for a new foreign policy. This was especially here with the new President coming from a different party than his predecessor's."³⁷

34. *Id.*...336

35. *Id.*...336

36. *Id.*...351

37. RAYMOND MOORE, "The Carter Presidency & Foreign Policy," THE

Rejecting the Kissinger "Step by step" approach, the Democratic president agreed with the advice of his National Security Advisor Zbigniew Brzezinski of seeking a comprehensive peace settlement to the Arab-Israeli conflict, by resolving all the issues dividing both sides.³⁸ Reasons for a comprehensive peace settlement included avoiding another Arab-Israeli war and a super power showdown that could accompany it. Crucial to a U.S. sponsored Arab-Israeli peace settlement were American relations and economic interest with the oil producing states, particularly Saudi Arabia. Carter administration analyst saw Saudi Arabia emerging as a major power among the OPEC nations and the Arab world as a whole. Being the United States Israel's strongest ally, a comprehensive Arab-Israeli peace settlement could definitely assure a lasting Middle East peace and secure American economic and strategic interest in the region. On this Carter National Security Advisor Brzezinski wrote: "It is possible to seek a resolution to the energy problem without tackling on...in an urgent fashion the Arab-Israeli conflict. Without a settlement of that issue in the near future, any stable arrangement in the energy area is simply not possible."³⁹ American economic interest regarding domestic fuel cost, use, and energy consumption all depended on the Carter Middle East foreign policy.

As early as December 1976 President elect Carter told his advisors: "unless we do something in 1977, I don't think we'll get another chance in our life time. We can't impose our will on the disputative nations in the Middle East, but we can search among them a catalyst for grounds of agreement, particularly those that are expressed privately and confidentially to us. And when we see it without timidity and without constraint we will use our influence to bring together disparate ideas which in the past have not been able to agree."⁴⁰

POLICY DEVELOPMENT & CONSIDERATIONS

From January 30 to February 23, the President met with his policy review and national security councils to develop his Middle East Foreign policy. First, it was agreed Middle East Peace would take top priority in the Administration. Second, the President agreed to a comprehensive peace plan, and an activist policy as his approach. It was President Carter's first year in office, and he had the time and needed political leverage to carefully reach a peace settlement. During the first 108 days of the Carter presidency the first round of diplomacy on behalf of the peace initiative was held. In February 1977 Secretary of State Vance traveled to the Middle East to meet with the various heads of states and discuss the President's interest in achieving a peace settlement. As a result of the Vance trip and policy negotiations, President Carter was finally able to announce in a March press conference his Middle East peace initiative.

Carter's peace initiative called for double borders for Israel (its original 1967 border and extended security borders), 2-8 years rule of a demilitarized occupied region promising greater autonomy for its Arab inhabitants. In exchange for the land the Arab nations would recognize Israel and establish normal diplomatic, economic, and cultural relations.⁴¹ Principle elements to the peace initiative were Israel's security, compliance with the U.N. Resolutions 242 and 338, and solving of the Palestinian issue. In a change from past policy, Carter was the first President to openly advocate a self governing homeland for the Palestinian Arabs living in the West Bank and Gaza strip. This was a condition the Arab states felt crucial for a peace settlement and one the President felt was the principle dividing issue between Jews and Arabs.

Differing with National Security Advisor Brzezinski, Carter felt the need of providing a major role for the Soviets in the Geneva negotiations to provide a balance, especially when both superpowers shared interest in the Middle East, be it economic, political, or moral.

41. CYRUS VANCE, *HARD CHOICES* 173 (1983).

CARTER YEARS: THE PRESIDENT & POLICY 56 (1984)
38. ZBIGNIEW BRZEZINSKI, *POWER & PRINCIPLE: MEMOIRS OF THE NATIONAL SECURITY ADVISOR 1977-1981*, 87 (1983).
39. SIEGEL, *supra* note 2, at 332.
40. HAYNES JOLINSON, *IN THE ABSENCE OF POWER*, 151-158 (1980).

Nevertheless, the Carter policy was new in emphasizing Israeli concession of land for Arab peace. It was originally developed by former under Secretary of State George Ball, and supported by Democratic party foreign policy analyst. Formulated by Ball in a report titled "How to save Israel In spite of Itself" it stressed increased American interest among Arab states by requiring Israel to return to its 1967 borders because of Arab willingness for peace, Palestinian rights to a homeland, and the better prospects for peace with a smaller Israel.⁴²

This was bound to create conflict between Israel and the United States. The prospects of a Palestinian state and return of the occupied territories for a promise of Arab peace raised concerns about undermining Israel's security and right to safe borders. At the same time the occupied region of the West Bank was considered part of the ancient Jewish state regions of Judea and Samaria. For the Carter administration any image of discord between Israel and the United States had to be avoided.

First, supporters of Israel, and the American Jewish community overwhelmingly supported President Carter during the 1976 presidential election. It was not in the political interest of the Carter Administration or the Democratic party to alienate them.

Second, a devout Southern Baptist, Carter felt a moral obligation to support Israel and Middle East peace. "The Judeo-Christian ethic and study of the Bible were bonds between Jews and Christians which has always been part of my life. I also believed deeply that the Jews who had survived the Holocaust deserved their own nation, and that they had a right to live in peace among their neighbors. I consider, this homeland for the Jews to be compatible with the teachings of the Bible, hence ordained by God. These moral and religious beliefs made my commitment to the security of Israel unshakable."⁴³

But at the same time the Carter Administration affirmed its commitment to

Israel, it was concerned with securing its economic-oil interest with Saudi Arabia, and consulted Saudi Leaders continually regarding the Middle East peace initiative. As Steven Siegel writes, "an Arab-Israeli settlement "in all parts" was stressed in orders to gain the confidence of the Saudis in American leadership and to maintain Arab confidence in what Washington perceived as a growing primary Saudi role in the Arab world."⁴⁴

Following Secretary of State Vance' February 14-22, 1977 Middle East trip, President Carter received at the White House top Middle East leaders. In the month of April he met with Saudi Arabian Crown Prince Fahd, Syrian strongman Hafez Al Assad, and Egyptian President Anwar Sadat, separately. Carter also met with Israeli Prime Minister Yitzak Rabin, and his successor, Menachem Begin. Despite major differences there was overall consensus to work for peace. But at the same time Carter would learn that private assurances of support by Middle East leaders were not consistent with their public actions or statements. This held especially true for Syrian President Assad who later denounced the Carter peace initiative, plus led an Arab boycott against Egypt for its peace treaty with Israel. Only Egyptian President Sadat, proved an exception. In Carter's eyes Sadat ranked as "a man who would change history, and whom I would come to admire more than any other leader."⁴⁵

The importance of the Middle East peace initiative was further affirmed by President Carter at his Notre Dame University Commencement speech on May 22, 1977. "We are taking deliberate steps to improve the chances of lasting peace in the Middle East....I've also tried to suggest a more flexible framework for discussion of the three key issues which have so far been so intractable: the nature of a comprehensive peace- what is peace; what does it mean to their Arab neighbors; secondly the relationship between security and borders- how can the dispute over border delineations be established and settled with a feeling of security on both sides; and the issue of Palestinian homeland.. This may be the

42. Spiegel, *supra* note 2, at 352.

43. CARTER, *supra* note 1, at 432.

44. Spiegel, *supra* note 2, at 353.

45. CARTER, *supra* note 1, at 282.

most propitious time for a genuine settlement since the beginning of the Arab-Israeli conflict almost 30 years ago. To let this opportunity pass could mean disaster not only for the Middle East but perhaps for the International political and economic order as well."⁴⁶

Determined to make the peace initiative a success, President Carter met with Congressional leaders, especially supporters of Israel, to broaden his base of support back home. Congressional Democrats were most supportive. In a letter signed by 9 Senate Democrats on June 30, 1977, Senators Hubert Humphrey, Majority leader Robert C. Byrd, Senators Alan Cranston, Edmund Muskie, Abe Ribicoff, John Sparkman, Gaylord Nelson, Daniel Inouye, and Ted Kennedy expressed, "we join in assuring ... you have strong support in the Senate for your efforts to help Israel **and** the Arab nations secure a genuine and lasting peace ... We understand that the key elements of your approach ... consistent with U.N. Resolution 242, supported by all parties involved."⁴⁷

This was in response to Republican criticism two days earlier by New York Senator Jacob Javits who described the Carter initiative as "unrealistic" and more likely to lead rather than avoid war.⁴⁸ Javits was critical of Administration policy demanding Israel's concession of land which Javits charged as taking away Israel's bargaining power.⁴⁹ Javits was also critical of Carter Administration support for creating a Palestinian state, citing its main proponents, the Palestine Liberation Organization as an advocate for Israel's destruction. While acknowledging the Carter policy with being full of detail, the Senator was critical of it being silent on three most crucial aspects: "Jerusalem's status as an undivided city, the integrity of Lebanon, and the future of the Golan Heights."⁵⁰ Joining Senator Javits in his criticism were fellow Republicans Edward Brooks, Bob Packwood, Richard S. Schweiker, S.I. Hayakawa, and Pete Domicini. Two

Democrats joining the Republicans were Richard Stone and John J. Sparkman.

Responding to Republican criticism, the State Department declared: "We believe strongly that progress toward a negotiated peace in the Middle East is essential ... the Arab states will have to agree to implement a kind of peace which produces confidence in its durability ... The peace to be durable must also deal with the Palestinian Issue ... Within the term of Resolution 242, in return for this peace, Israel clearly should withdraw from occupied territories. We consider this ... means ... Sinai, Golan, West Bank and Gaza ... Every Administration since 1967 has consistently supported Resolution 242 and it has widest International support as well."⁵¹

Into the fall months of 1977, the Carter Administration continued to work for a Geneva Peace conference. To preserve U.S.-Israeli relations the Administration decided not to confront Israel directly over policy differences, but to convince both sides that a comprehensive peace settlement was in their interest. Early in October, Secretary of State Vance and Israeli Foreign Minister Moshe Dayan reached terms for peace talks. They were:

- A. Arabs to attend conference in a single delegation, including Palestinians.
- B. Bilateral Committees will draw individual treaties based on U.N. resolutions.
- C. Issues of territories to be discussed separately.⁵²

To set the stage for the Geneva Peace conference both the United States and Soviet Union issued a joint statement of sponsorship. But the momentum soon faded. With the exception of Sadat no Arab leader responded favorably. This was in regard to the Israeli position rejecting reaching any preconceived plan on the occupied territories. It was time now to pursue a different approach to the Middle East conflict.

46. U.S. GOVERNMENT PRINTING OFFICE, PUBLIC PAPERS OF THE PRESIDENTS 959-960

(1977:I).

47. N.Y. Times, June 30, 1977.

48. N.Y. Times, June 28, 1977.

49. *Id.*

50. *Id.*

51. *Id.*

52. VANCE, *supra* note 10, at 193.

On October 21, 1977 President Carter recommended to Egyptian President Sadat a goodwill visit to Israel. After U.S. consulting with Saudi officials, and arrangements between the Egyptian-Israeli governments were met, Anwar Sadat, holding an olive leaf appeared before the Israeli Knesset on November 19, 1977. It was the first trip of an Arab leader to Israel, and seemed promising for peace. But reaction within the Arab world was not very pleasant. Syria broke diplomatic relations with Egypt, while the governments of Iraq and Libya called for Sadat's assassination. Despite this, the United States, Israel and Egypt remained committed to the peace process.

With a Geneva Conference never fulfilled, and Egypt being the only Arab state willing to negotiate with Israel, President Carter first considered holding a three way summit in January 1978, following a meeting with President Sadat in Aswan, Egypt. National Security Advisor Brzezinski recommended it for the "central role" the President would play in such negotiations.⁵³ In his meeting with Sadat, Carter agreed with him to keep the Palestinian question high on the agenda, including their right to "participate in the determination of their future" as long as Israel's security remained secured.⁵⁴ But Sadat was also distressed with the failure of bringing the Israeli opposition to a consensus with the Arab terms for peace. To improve U.S. leverage in the negotiations, the President and National Security Council agreed to "explore a special meeting with Sadat and in that meantime we will at least for the time being postpone any firm decisions on the arms transfer to the Middle East. This will enable us not to have a major commitment immediately to Israel, and this may avoid a bruising fight on the Hill with the Saudi request for the latest F-15s."⁵⁵

POLICY STALEMATE & SETBACK

Between February and April 1978 President Carter met separately with Sadat and Begin, two leader's losing patience with each

other. Prime Minister Begin resisted Administration call for halting Israeli settlement building in the West Bank territory. At the same time Begin rejected U.N. Resolution 242 application to the territories. On February 4, President Sadat met in the presidential retreat of Camp David, Maryland with President Carter, Vice President Walter Mondale, Secretary of State Vance, and National Security Advisor Brzezinski. To their surprise he made known his intention to call off talks between Egypt and Israel. Sadat was convinced to back off, and to announce instead resumption of talks while criticizing Israel for its position.

President Carter who had developed a personal relationship with Sadat also felt anger toward Israeli Prime Minister Begin, and his position. While meeting with Begin between March 21-22, Carter had harsh words for Begin, questioning his sincerity in regard to peace. The months of April to July saw almost a total collapse of the peace process as Egypt and Israel reached little common ground. United States attempts to bring Jordan to the peace process also had no success.

As a result of the peace talks stalemate, relations between the Carter Administration and Begin Government deteriorated. The President proceeded in his push for the sale of F-15 fighter jets to Saudi Arabia. So bothered was the President with Israeli Prime Minister Begin, that he intentionally increased the number of arms sales to Egypt and Saudi Arabia despite the warning not to do so by National Security Advisor Brzezinski.⁵⁶

President Carter was now faced with the possibility of a major foreign policy failure that could imply loss of American leadership credibility abroad and political support on the domestic front. Pressure was also mounting on the president from within and outside the Administration to change the course of policy. "I was really in a quandary. I knew how vital peace in the Middle East was to the U.S., but many Democratic members of Congress and party officials were urging me to back out of the situation to repair the damage they claimed I had

53. BRZEZINSKI, *supra* note 7, at 240.

54. *Id.* 239.

55. *Id.* 241.

56. *Id.* 248.

already done the Democratic party and the United States-Israeli relations. It seemed particularly ironic to be so accused when I was trying to bolster our relations with Israel and strengthen its security.⁵⁷

Within the Administration Press Secretary Jody Powell urged the President to increase pressure on Israel to make concessions. Carter aids Stuart Eisenstadt and Robert Lipshutz also warned against any action forcing Israel to a "compromising position."⁵⁸ Secretary of State Vance and Vice President Mondale also insisted on requiring the Begin Government to accept application of U.N. Resolution 242 to all the territories.⁵⁹ But Vice President Mondale was also weary of a foreign policy failure at a time not far from the 1980 Presidential politics, and was urging a more passive role for the U.S., as time went on. Advisor Hamilton Jordan was even "more ambivalent already thinking ahead to the forthcoming congressional elections" in 1978.⁶⁰

Outside the White House, despite having a solid Democratic Congress, the President in his first year scored only a 75% congressional support rate compared with John F. Kennedy's 81%, and Lyndon B. Johnson's 93% in their first years in office.⁶¹ By 1978 the Senate had given Carter 23 legislative defeats and the House 34.⁶² Carter's major initiatives: the Panama Canal treaty, Energy Policy legislation, and diplomatic recognition of mainland China were either stalled in Congress or faced tough legislative battles. Rising inflation also caused the President to reverse his election pledge against price controls.⁶³ A possible breakdown in the peace talks would further increase the perception of Carter being ineffective. By the summer of 1978, the Carter foreign policy had reached a 54% disapproval rating according to a CBS-Gallup poll.⁶⁴ Damage control was now top priority for

the Carter Administration now was to save both its Middle East policy and presidency.

PRESIDENTIAL DAMAGE CONTROL: A CHANGE IN POLICY

Opened to the idea of a Camp David peace summit, President Carter asked National Security Advisor Brzezinski to explore the possibility of reaching an agreement between Egypt and Israel, plus the reaction it may receive particularly from the Soviet Union. The President, long opposed a separate Egypt-Israeli treaty as hurting American interest among Arab nations, and possibly causing a Soviet realignment among them.

Responding to the President's request, Brzezinski set the goals for a Camp David summit. Drawing an Egyptian-Israeli peace could be possible if connected with a framework for peace between Israel and its other Arab neighbors, including a solution to the Palestinian problem.⁶⁵ At the same time the President worked to restore the Middle East peace process he was also polishing the public's perception of his administration, and attempting to improve his image. Former media whiz and campaign manager Gerald Robinson was brought on board the White House staff to cast the President's image as one of a tough, competent, and in control leader. A reason for this was the belief within the Carter staff that the President was given poor and negative press coverage. According to Press Secretary Jody Powell "even the press coverage of the President's vacation trip was sort of negative."⁶⁶

To improve the President's standing within the Jewish community the President of the American-Israel Affairs committee Edward Sanders was added to the Presidential staff of advisors. At the same time to improve U.S. leverage with Israel, National Security Advisor Brzezinski met with Israeli Foreign Minister Moshe Dayan. The result was an Israeli agreement to work for an Arab entity in the West

57. CARTER, *supra* note 1, at 316.

58. BRZEZINSKI, *supra* note 7, at 239.

59. *Id.* 242

60. *Id.* 239.

61. CONGRESSIONAL QUARTERLY, PRESIDENT CARTER 15 (1978).

62. *Id.*

63. *Id.*

64. NEWSWEEK, *Glimpse of Peace*, March 26, 1979, at 31.

65. BRZEZINSKI, *supra* note 7, at 147-150.

66. JODY POWELL, THE OTHER SIDE OF THE STORY 71 (1984).

Bank, a major break-through in negotiations. By August 7, 1978 both Begin and Sadat agreed to attend a Camp David summit. The Carter Administration had kept the Camp David summit planning out of public knowledge until it was official. Originally the President wanted to hold the summit abroad, considering the political advantage it gave with the image of International leadership. Brzezinski had recommended Morocco. The President returned to the idea of a Camp David summit for being able to have control of the "flow of information."⁶⁷

CAMP DAVID & THE POWER OF DIRECT PRESIDENTIAL DIPLOMACY

On August 8, 1978 President Carter made public the plans for a United States sponsored summit between Egypt and Israel in Camp David during the month of September. The President's direct diplomatic mediation showed his commitment to the peace process, which also was a gamble. Furthermore, Carter enjoyed full staff support, and was determined to go all the way until reaching a comprehensive peace settlement. The President consulted with members of Congress, and worked closely with Vice President Mondale, Secretary of State Vance, Defense Secretary Harold Brown, Hamilton Jordan, and of course National Security Advisor Brzezinski, who served as his mentor on Middle East Politics.

Preparing the President for the summit, Brzezinski reported to Carter, "Sadat will define success in terms of substance, and in particular on Israel's withdrawal on all fronts. Begin will define success largely in terms of procedural arrangements, and will be very resistant to pressure for substantive concessions. You will have to persuade Begin to make more substantive concessions while convincing Sadat to settle for less than an explicit Israeli commitment to full withdrawal and Palestinian autonomy."⁶⁸ With this in mind, President Carter had a sense of what to expect and what to do to make the summit productive.

On September 6, the Camp David peace talks officially began. President Carter, President Sadat, and Prime Minister Begin all issued a joint resolution calling on their fellow citizens to keep them in prayer as they negotiated peace. President Carter's strategy was to reach an Egyptian-Israeli agreement leading to a comprehensive peace settlement. Determined to make the summit a success Carter limited press contacts to those releases issued by his press spokesman Jody Powell. He further restricted departures to those in the Camp David compound until the end of the summit. Even photographs had to be authorized. The President wanted nothing of substance to be said until the summit ended. His main concern was running the summit free from the damaging effects that could be caused by press releases on negotiations. On this Chicago Tribune's White House correspondent Harry Kelly wrote: "Carter had an honest reason for the news blackout at Camp David. Although he insisted during his campaign he would conduct an open administration and denounced the secret diplomacy of past administrations, he has found it difficult to achieve anything with the Prime Ministers and foreign secretaries criticizing each other in press."⁶⁹

In setting the right atmosphere for the summit the President also prepared himself with research done by the intelligence community for him on the family, political backgrounds, religion, goals, ambitions, and reputations of Begin and Sadat. To provide support the President had with him political and professional working teams. The political group dealt directly with top Egyptian and Israeli leaders. It included National Security advisor Zbigniew Brzezinski, White House press spokesman Jody Powell, Carter political strategist Hamilton Jordan, and Defense Secretary Harold Brown. The professional group consisted of Secretary of State Cyrus Vance and his staff. They worked closely with the Egyptian and Israeli teams providing expert advice on analysis and develop of positions.

President Sadat and Prime Minister Begin also brought with them their top cabinet members and advisors. With Sadat came

67. BRZEZINSKI, *supra* note 7, at 251.

68. *Id.* 253.

69. 124 CONG REC. 31,794 (1978)

Egyptian Foreign Minister Mohammed Ikammel and supporting staff. Prime Minister Begin brought with him foreign minister Moshe Dayan, Defense Minister Ezer Weizman, and Attorney General Aharon Barak. Each party had their own cabin and sleeping quarters. Getting the summit to a high start President Carter began it by reflecting with the two leaders their religious faith, and hopes for peace. The topics on the summit agenda included the future status of Jerusalem, Egypt's economic boycott of Israel, Israeli access to the Suez canal, its security, and its presence in the West Bank, and Sinai peninsula.

During the first three days of the summit general positions were discussed. While President Carter got both leaders to talk to each other directly, much distrust was evident between Sadat and Begin. Outburst broke between the two leaders with Begin charging Sadat with wanting to destroy Israel, and Sadat criticizing Begin as being inconsistent. Carter had to intervene and remind them of each others good points as well as summarize issues before them were there was progress or no change.

THE CAMP DAVID PEACE ACCORDS: MISSION ACCOMPLISHED & AFTERMATH

On Tuesday, September 12, 1978, the American delegation began working on a draft for a final treaty. Deep division still laid regarding Israeli withdrawal from the Sinai, its interpretation of U.N. resolutions 242 and 338, and Palestinian autonomy in the West Bank territories. To break the stalemate Carter shifted summit focus to reaching an Israeli-Egyptian peace treaty, where differences were smaller. Between September 15-16 the issue of Jerusalem was dropped from discussion, and the treaties were drafted outlining conditions for a general comprehensive Arab-Israeli peace settlement, and peace between Egypt and Israel. Sunday, September 17, 1978 finally made history when the Camp David summit was ended at a treaty signing ceremony in the White House. There in the mansion's East Room, President Carter, Prime Minister Begin, and President Sadat signed a *Framework for Peace in the Middle East* and a

Framework For the Conclusion Of A Peace Treaty Between Egypt and Israel. The first treaty invited Arab states to negotiate with Israel on the basis of UN Resolutions 242 and 338, with the West Bank status to be negotiated by Israel, Jordan, Egypt and Palestinian representatives. The second treaty set conditions for Israeli return of the Sinai to Egypt in exchange for peace and diplomatic recognition. The accords set conditions for final agreements, requiring that Israel remove its Sinai settlements by 1982, with Knesset approval for Egypt to sign on to the treaty.

Camp David received general public approval. President Carter's approval rate rose as he came out as a persuasive negotiator in international diplomacy. British Prime Minister James Callaghan referred to the President as a "breath of fresh air in the Western world."⁷⁰ Not everyone was pleased however. Texas B'Nai B'rith President Stanley Latman expressed, "Israel has given away too much, because anything given away is dangerous. After all when you win a war you expect to keep the spoils. All Israel has got in return is an Egyptian ambassador."⁷¹ Senator James Abourezk (D-S.D.) criticized the treaty as failing to meet a comprehensive peace, hurting the Arab cause. "The dreaded hour, has finally arrived. The separate peace between Egypt and Israel which President Sadat swore would not come from him and for which Israel has hoped for, so long a time. "⁷²

Begin and Sadat also faced negative political reactions. On November 21, Arab nations met in the Iraqi capital of Baghdad to suspend Egypt's membership in the Arab league, and approved a \$3.5 billion military war chest for Syria, Jordan, and the PLO. Egyptian Foreign minister Ibrahim Kamel resigned following the Camp David summit charging Sadat abandoned a comprehensive peace treaty for a separate treaty with Israel. Prime Minister Begin was bitterly criticized by Israel's religious community. Nationalist Knesset member Geula Cohen

70. NEWSWEEK, *Jimmy the Persuader*, March 19, 1979, at 27.

71. JEWISH CHRONICLE, September 27, 1978, at 2.

72. EDITORIAL RESEARCH REPORTS, *U.S Foreign Policy*, (1979) at 91.

charged Begin with "deceiving Israel." Responding to domestic pressure, Begin reaffirmed his opposition to a West Bank plebiscite, a separate Palestinian state, and to negotiations with the PLO. Regarding Jerusalem, Begin said: "Jerusalem will remain the eternal capital of Israel and that is that."⁷³ However, despite political pressures both Begin and Sadat remained committed to the Camp David Accords peace talks.

On December 17 a final agreement was supposed to have been reached regarding an Egyptian-Israeli peace treaty. But the deadline was missed due to what President Carter called "technical difficulties" regarding an ambassador exchange, Arab-Egyptian military alliances, and use of Sinai resources by Israel.

On March 6, 1979 President Carter departed for Israel and Egypt to bring the parties to a final agreement. The objectives of the trip was to prevent the Israeli-Egyptian talks from failing, plus settling the differences that were impeding a final treaty. Arriving first in Jerusalem, the President scolded both the Israeli and Egyptian leaders for showing little flexibility, as he spoke before the Knesset. In Egypt he was given a hero's welcome, returning to the United States on March 10. To resolve the final aspects of the treaty the President assigned U.S. Trade Representative Robert Strauss.

Finally, on March 25, 1979 a final agreement was reached. On March 26th in a solemn ceremony outside the White House, Prime Minister Menachem Begin, and Egyptian President Anwar Sadat joined President Carter to sign the peace treaty between Israel and Egypt. The peace treaty officially: a) ended 30 years of war between Egypt and Israel, b) established grounds for mutual respect and secured borders between the two countries, c) prohibited the threat or use of force between both countries, d) began a phased Israeli withdrawal from the Sinai peninsula under United Nations supervision and U.S. air surveillance, to be completed by 1982, e) allowed light defense for both countries by the Suez Canal boundaries, f) required Egypt to destroy Israeli built military airplane paths in the

Sinai, g) required after 7 months Egypt to take over Israeli developed Sinai oil refineries, and sell oil not needed for domestic use to Israel at commercial market prices, and h) required Egypt to end economic boycott of Israel and open normal economic, cultural, and diplomatic relations with Israel. Under the treaty Egypt, Israel, and the United States set April 1980 as the date to open discussions on Palestinian autonomy, setting with government administrated councils for West Bank Arabs. However, failure to meet this deadline would not veto the treaty. In case of an Egyptian treaty violation the United States on an "urgent basis" would assist Israel. The treaty also required the U.S. to meet Israel's oil cost for 15 years.⁷⁴

For President Carter this was his brightest hour. Both Begin and Sadat credited him with making the historic treaty possible. Begin referred to the Camp David summit as the "Carter Conference," and Sadat saluted the President by saying "the man who performed the miracle was President Carter. Without exaggeration, what he did constitutes one of the greatest achievements of our time."⁷⁵ There was now talk of Carter receiving the Nobel Peace Prize. President Carter though jubilant knew much work laid ahead for lasting peace in the Middle East. "We have won at least the first step of peace, a first step on a long and difficult road. We must not minimize the obstacles that lie ahead. We have no illusions, we have hopes, dreams, prayers, yes but no illusions."⁷⁶

With one of the major foreign policy objectives of the Carter presidency accomplished, White House aides were able to say, we've got the peace part of a peace and prosperity campaign slogan."⁷⁷ It was now only months before the 1980 Presidential campaign. Camp David was not only a historic foreign policy achievement but a political boost shedding a positive image on the leadership qualities of the President, a strong appeal to the voters. Perhaps Newsweek described it best, "even the possibility of peace in the Middle East was a powerful boost for Carter

73. Jewish Chronicle, *supra* note 40, at 2.

74. N.Y. Times, March 27, 1979, at A1, A9-A19.

75. Wall Street Journal, March 27, 1979, at 7.

76. Wall Street Journal, March 27, 1979, at 7.

77. Newsweek, *supra* note 33, at 31.

when he needed it most, when his ability and America's will to influence events in the world had fallen under deep corrosive doubt at home and abroad. The cheers were still ringing last week when by apparent coincidence his agents filed papers formally launching the Carter-Mondale presidential committee for 1980."⁷⁸

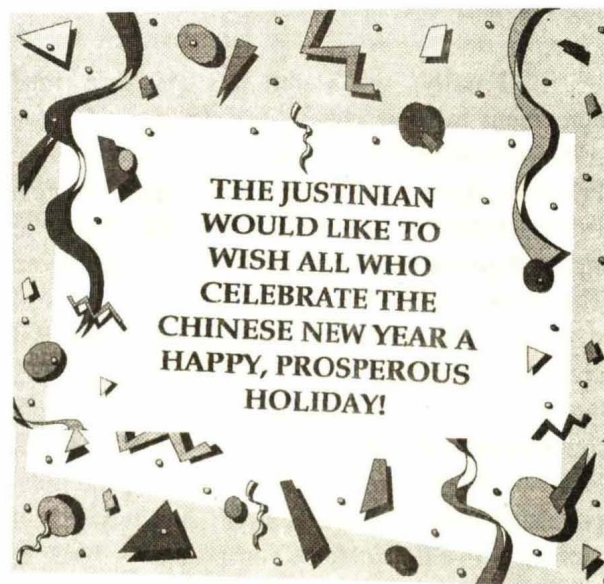
THE CAMP DAVID PEACE ACCORDS: AN ASSESSMENT OF PRESIDENTIAL LEADERSHIP

In looking back at the making of the Camp David Peace Accords credit belongs to the active role President Carter played in achieving this foreign policy objective. It was a close working foreign policy team that measured the benefits of peace, freedom, and economic interest available in an Arab-Israeli peace treaty. Likewise, bold leadership by the President led his foreign policy team in search of that goal despite political risk, and international prestige at stake. This made the Camp David accords possible. The President's leadership is what made the difference. President Carter called the shots and determined the course of his foreign policy. Not only was President Carter involved in the policy planning, normally left to State Department experts, but he made a personal diplomatic effort to accomplish his policy. This by no means placed the President above politics. Though showing statesman qualities in his direct negotiations the President was equally working hard to build a respectful Presidential record and popular support for the Democratic Party as its standard bearer.

Every step in the Middle East peace initiative was done in consideration of the effect it would have politically. That is as election time got closer greater did the pressure increased for the President to change or meet policy goals. But if politics were a concern, they were not top. Rather, President Carter was primarily interested in making his policy a success. The direct role he played in Camp David negotiating and diplomacy shows how willing he was to risk his own political career. "I would be willing to loose my election because I will alienate the Jewish community, but I think it is important to prevent

the Arabs falling under Soviet sway."⁷⁹ Primary concern for the President was to carry a policy which he felt possible to succeed and vital to American interest. Commenting on Carter's role in making the accords possible, Administration National Security Advisor Zbigniew Brzezinski later wrote, "No other U.S. President has made a comparable personal effort to obtain peace in the Middle East. No other President has ever been as directly involved in the search for compromise. No other President has negotiated so actively to overcome the enormous psychological and historical barriers even to a limited peace in the Middle East."⁸⁰

Today the Camp David Accords continue to be observed. Times of course will determine their impact on the future of Middle East nations. Judgment on them varies from. However, by analyzing them what's evident is the tremendous influence the broad powers of the presidency has in foreign policy. It is enough to move nations, and change the course of history. In the case of Camp David, most evident is the world power the American presidency commands, plus the style a particular President adopted for his foreign policy. As President Jimmy Carter later wrote, "there have been presidents in the past, maybe not too distant past that let their Secretary of State make foreign policy. I did not."⁸¹



79. BRZEZINSKI, *supra* note 7, at 277-278.

80. *Id.* 288.

81. MOORE, *supra* note 6, at 67.

78. *Id.* 31.

BEST BRIEF PRIZE

Dean Wexler and Professor Walter would like to congratulate the following students who, in 1995-96, were nominated by the faculty for the Joan Offner Touval Memorial Scholarship. The scholarship is awarded annually to the student who has submitted the Best Brief in the First Year Moot Court Program. Professors Cary, Crawford, Dachowitz, Dietz, Falk, Harris, Susman, and Teitcher chose the seven semi-finalists. From this group Professor Walter selected the Best Brief.

Best Brief

Lisa Solbakken

Semi-Finalists

Jonathan Beemer

Russell Brenner

Jay Levinton

Kara Naiman

Boyd Rogers

Michael Tremonte

Antonella Troia

Honorable Mention

Ron Berenblat

Anita Briant

Kerry Chicon

Amy Coccocia

Richard Costa

Christine D'Ambrosia

Matthew DeCoster

Linda Donovan

Olga Egorova

Alice Hegel

Susan Jackson

Daniel Joe

Aliza Katz

Stephanie Kraus

Helene Landau

Michael Lewandowski

Peter Liuzzo

Philip LoScalzo

Sonia Low

Theodore McEvoy

Melissa Pedone

Peter Piazza

Amie Rappoport

Joanna Riesman

Randi Seltzer

Courtney Shapiro

Megan Sheetz

Yoon Shin

Louis Silvestri

Jennifer Sinton

Christian Soller

Joshua Sprague

Jeffrey Sugarman

David Tolchin

Alison Winick

Ann Marie Waupotic

Update on The Ellie Nesler Story

By Joseph A. Hayden



I have been advised by Ellie Nesler's family, with whom I am in contact, that the California State Supreme Court has agreed to review the latter part of the trial held in Ellie Nesler's manslaughter trial. In particular, they are reviewing the fairness of the temporary insanity portion of the trial.

Ellie Nesler may be released during the interim. Her prognosis is not good at this stage so if she is home during the interim, she may very well not survive the pendency of the re-trial.

At The Justinian our prayers are with Ellie and her family.

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Human Rights Update

By Muriel Richards

Relief efforts by the United Nations High Commissioner for Refugees (herein "UNHCR") to assist refugees from Rwanda and Burundi were thwarted when fighting occurred between rebels forces in Zaire. The refugees were staying at a camp in Kalima. Workers from the UNCHR and other humanitarian organizations were attempting

to deliver necessary supplies to the refugees when the fighting was ongoing. The refugees were once again coerced to flee. This is an example to the extreme disruption and danger that plagues the lives of the innocent people residing in that region of the world.



**HAPPY
ST. PATRICK'S
DAY!**

WHAT DO YOU THINK?

What do you think the decision should be in the *Vacco v. Quill* (physician assisted suicide) case?



"I am against physician assisted suicide for the same reason I am against capital punishment-I do not believe the State should be in the business of performing or sanctioning the death of its' citizens. While I understand the idea of vengeance in murder cases and the end of suffering in euthanasia cases, neither should be the province of our government. The Netherlands has an aggressive euthanasia policy and it frightens me to think it could be adopted here. I worry about the limits-first the suffering adult who wants to end it all; then, handicapped infants who may be thought to lack a certain 'quality of life', and then maybe advanced Alzheimer's patients or the comatose. Once life has been devalued, i.e., some lives are worth taking, it becomes easier and easier to take other lives, for their own good and for the good of the community. This is a path we should not start down."

Michael Sapio, BLS '97

(Photograph not available)

"America has the most freedoms of any nation. The right to physician-assisted suicide should be included amongst those freedoms."

Shakuntala Davi Jewram, BLS '97

(Photograph not available)

"I assume, for the purposes of this comment, that we are addressing the limited situation in which a

terminally ill individual's death is imminent, she has decided to hasten own death, and she lacks the physical capacity or volition (or both) required to perform the act herself. Expecting that our complex legal system can develop a set of rules that will facilitate a workable solution to this problem is unrealistic. When discussing the issue, it becomes readily apparent that the rule of law is a very crude tool with which to address difficult questions at the end of life. The term physician-assisted suicide is oxymoronic. See Webster's...

The Supreme Court recently heard oral argument on physician-assisted suicide. Among other things, Solicitor General Dellinger argued that lethal medication was the right answer to intractable pain. Lawrence Tribe argued that the state should not be permitted to force someone to bear unbearable pain. Both arguments are valid. In response, and dripping with his usual mordant acrimony, Justice Scalia replied, 'All of this is in the Constitution?' Buried in his sarcasm is the recognition that there are boundaries and limits to the rule of law.

While all jurisdictions recognize an individual's right to refuse medical treatment, no jurisdiction recognizes a legal right to suicide. Notwithstanding and with rare exception, all but infants and the most severely disabled have the physical capacity to end their own lives through suicide. Importantly, the act of helping another commit suicide is fertile ground for misunderstanding and conflict. In New York it is also unlawful, and enforceable sanctions are available. Agency is not a recognized justification. Any attempt to change the law in this law will be extremely controversial, riddled with conflict, and, most important, will provide no meaningful assistance to those who are dying and those attempting to comfort them. Are we to have picket lines at the local hospice?

Standards for the care and comfort of the dying should remain under the purview of the medical

profession and their colleagues. Our energy and resources are better spent developing more effective methods of pain control, and educating those insufficiently skilled. All could agree that a terminally ill person has a right to alleviation of pain, even if the required pain medication eventually overcomes her ability to breathe. Required pain medication meaning all, and no more than necessary, to control the pain. This is not the equivalent of suicide (assisted or otherwise) and the difference is more than semantic. Medical standards should guide the practitioner. It is important for those providing

care to be able to characterize their conduct as the alleviation of pain and suffering, and not the cessation of life. I have trouble envisioning a life terminator. Long held, and still current, social, moral, ethical and legal norms instruct us that alleviating pain and suffering is permissible, even obligatory. These same norms instruct us that it is not socially, morally, ethically, nor legally permissible to commit suicide nor to assist another to do so. Those who ignore these norms do so at their peril."

Roger N. Parker, BLS '97



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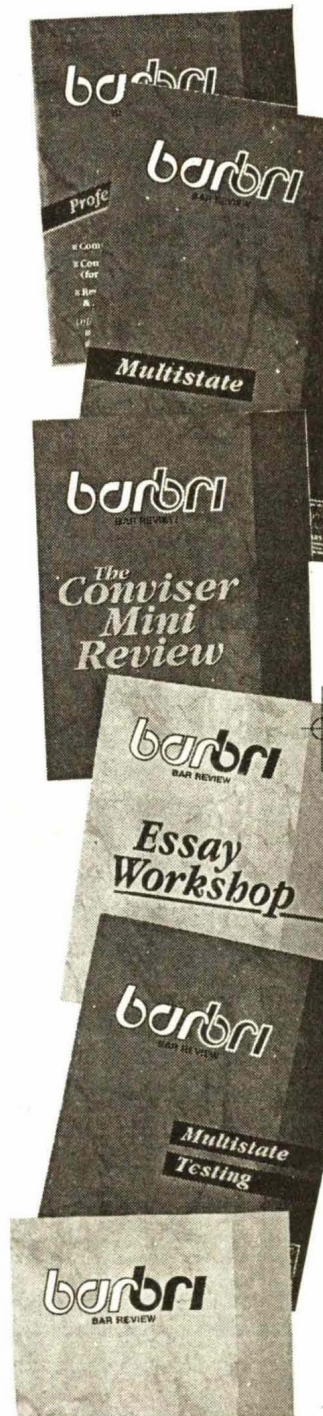
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CULTURAL EVENTS AROUND TOWN...

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Mistress of the House, Mistress of Heaven: Women in Ancient Egypt is an exhibition of more than 250 treasures which depict the roles of women in Ancient Egypt. For further information, please call (718) 638-5000.

**Brooklyn Center for the Performing Arts
at Brooklyn College
George Gershwin Theatre
Campus Road & Hillel Place
Brooklyn, New York**

Grammy Award winner Roberta Flack is scheduled to sing at the Brooklyn Center for the Performing Arts on Saturday, March 8, 1997 at 8:00PM. Please call (718) 951-4500 for additional information.

Gilbert & Sullivan's *The Pirates of Penzance* is scheduled to be performed by Albert Berget and the New York Gilbert and Sullivan Players on Sunday, March 9, 1997 at 2:00PM. For further information, please call (718) 951-4500.

FEBRUARY IS BLACK HISTORY MONTH



LAW AND POPULAR CULTURE

SPENCER WEBER WALLER

ANTHONY SEBOK*

Since I no longer have to devote half of the column to Professor Sebok's post-modern rambling about the contemporary cinema, I have room for two reviews of holiday movies and the best and worst of 1996.

STAR TREK: FIRST CONTACT

The producers of this long running series have achieved what must have been inconceivable just a few years ago. First, they have created the first pay-per-view television series shown for \$8.50 in theaters. They then were able to switch casts when the original Trekers were getting a little long in the tooth and broad in the gut. Each episode features now familiar regulars, recognizable guest stars, a substantial budget, and mind numbing familiarity. In short, it has become the Barnaby Jones of the 1990s!

This particular episode offers two of the classic Star Trek themes, the seemingly invincible and utterly alien threat (the deliciously creepy Borg) and the circularity and paradox of time travel. Once again, someone has gone back to the past to change the future, so the good guys must go back even further to ensure the present remains the same. If this is at all confusing, please see the Back to the Future and the Terminator series before continuing with this review.

One of the weaknesses of the Star Trek series is the irresistible desire of the actors become directors. Only Mr. Spock was up to the challenge. The one film directed by William Shatner was an unmitigated disaster. First Contact, as directed by Jonathan Frakes, is a mitigated disaster, mitigated by a better script and the fact that directorial duties were sufficiently

tasking that we are spared more than token appearances of Frakes' wooden acting in front of the camera as Commander Riker.

First Contact looks and feels like very expensive television. The outer space sequences look great. The scenes on earth in the early 21st century look like they were shot for about a nickel in the back yard of the producer's home in the Hollywood Hills. I hope I am not giving away anything if I end by saying Captain Picard and company save the earth, both past and future in a perfectly watchable but unexceptional manner. I predict the next episode will feature the popular character "Q" and will appear whenever the producer's bank account needs refilling.

MARS ATTACKS

This film was an undeserving victim of the expectation game. It did not do as well as expected because people erroneously believed that it was supposed to be a parody of Independence Day. Even the critics missed the essential point. Mars Attack is simply an homage to grade B science fiction movies of the 1950s and represents the kind of cheezy movie Tim Burton would have made in that era with a seventy million dollar budget.

There is some humor but that isn't the point. Burton overdoes the gore to an extent, but isn't the point either. Burton loves the old genre movies, but seeks to subvert their utter guilelessness with his professionalism and big Hollywood budget and stars. Just as Ed Wood was a through act of genius about a completely incompetent horror director, Mars Attack is a work of genius, duplicating for the 1990s the generic science fiction of another era. People

*Professor Sebok is on leave for the semester teaching at Cardozo Law School. While I continued to write my half of the column while I was on sabbatical, Professor Sebok apparently cannot bother to do the same. I have left Professor Sebok as a co-author in case he returns to his senses or in case I choose to write his half of the column pretending to be him.

seem to object that all the big name stars die and the plot seems to wander a bit, but that is the point. Stay up late and watch bad sci-fi on cable, or watch these movies critiqued while they play on Mystery Science Theater 3000. In the end, only Jim Brown and Pam Grier survive, which is only fitting since they both know more than little about genre films.

TOP TEN OF 1996

- 1) Fargo: The movie that features geography and regional accents rarely noticed on the East Coast.
- 2) Lone Star: John Sayles is the true master of independent film writers and directors.
- 3) Il Postino: Sure it came out in 1995, but I didn't get around to seeing it until after the Academy Awards.
- 4) Richard III: Shakespeare on screen is hot right now and this is the best of the revisionist Bard. But will there be a sequel?
- 5) Smoke: Harvey Keitel and Brooklyn rules.
- 6) Jerry McGuire: Hollywood makes a big budget star vehicle that works. Tom Cruise at his best and dazzling newcomers as well.
- 7) Everyone Says I Love You: Woody Allen returns with musical! Actually the musical part is just a gimmick, but the writing is the best since Hannah and Her Three Sisters. Will go down as one of the top 5 Allen films ever.
- 8) Antonia's Line: The feel good feminist film of the year.
- 9) Mother: Albert Brooks is a misunderstood genius whose dark humor finally connects on a subject we can all appreciate.
- 10) Things To Do In Denver When You're Dead: 1996's Pulp Fiction, sort of.

WORST OF 1996

- 1) The Funeral: Even Professor Sebok promises not to go see any more films directed by Abel Ferrara.
- 2) Tin Cup: It's all Kevin Costner's fault.
- 3) Citizen Ruth: Neither funny nor insightful.
- 4) Striptease: Unerotic agony.
- 5) Primal Fear: Suspense works best when you cannot guess the plot twist in the first thirty seconds.
- 6) Escape From L.A.: John Carpenter should only be allowed to make small budget independent films.
- 7) Nick of Time: Too uninteresting and derivative even for a 20 hour trans-Pacific airplane flight.
- 8) Virtuosity: A waste for the great Denzel Washington.
- 9) Dracula, Dead and Loving It: First Leslie Nielsen parody without O.J. Simpson.
- 10) Rumble in the Bronx: Waste of Jackie Chan and, hey, the Bronx doesn't have a harbor with mountains, does it?

Predictions for 1997:

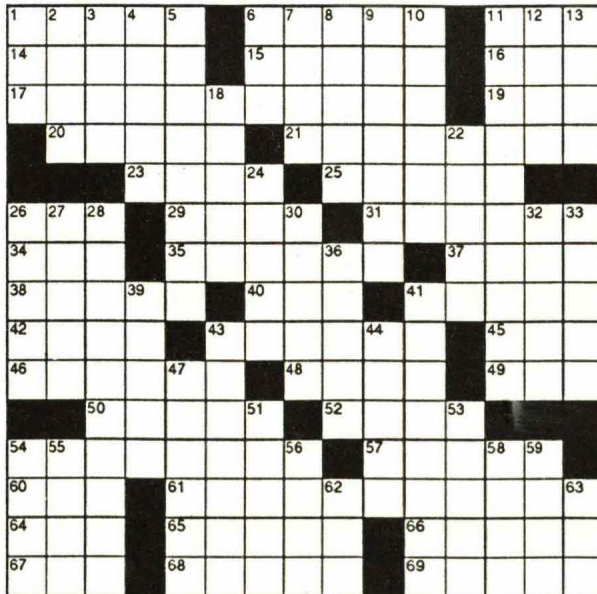
When all the dust clears, Waller and Sebok will cheer Star Ship Troopers and Alien IV: Resurrection (with Sigourney Weaver and Winona Rider).

CROSSW RD® Crossword

Edited by Stan Chess

Puzzle Created by Richard Silvestri

- | | |
|--------------------------|--------------------|
| ACROSS | DOWN |
| 1 Angler Walton | 1 Ending for |
| 6 Take to task | 2 <i>You Never</i> |
| 11 Do some | 3 Lake of Thun's |
| grounds- | 4 Peace |
| keeping | 5 Quick profits |
| 14 Belafonte or | 6 "Quiet!" |
| Lewis | 7 Sorority |
| 15 Manic Mandel | 8 Had the deed |
| 16 Attorneys' | 9 Sticks around |
| letters? | 10 "My |
| 17 Actress to dye | 11 Spy to dye |
| for? | 12 Stage award |
| 19 Cacophony | 13 Magic stick |
| 20 "___ live in a | 18 Worrier's risk |
| yellow | 22 Stradivari's |
| submarine" | teacher |
| 21 Brought down | 24 Low-lying |
| 23 Sets the dog | wetland |
| on | 26 Bones up |
| 25 <i>The Silence of</i> | 27 Navigators |
| <i>the Lambs</i> | Islands, today |
| director | |
| 26 Gray initials | |
| 29 Brokaw's | |
| bradcast | |
| 31 Fostered | |
| 34 Took off | |
| 35 Prepares | |
| Romano | |
| 37 "___ she | |
| blows!" | |
| 38 Wrongly | |
| 40 Schisgal play | |
| 41 Wrangler's | |
| line | |
| 42 Shed a shell | |
| 43 Specify | |
| distinctly | |
| 45 Round figure? | |
| 46 Deli ware | |
| 48 Brouhaha | |
| 49 Bankbook | |
| col. | |
| 50 Standing up | |
| 52 Vexed | |
| 54 Choral | |
| compositions | |
| 57 Central part | |
| 60 5th century | |
| invader | |
| 61 Actress to dye | |
| for? | |
| 64 V-mail | |
| destination | |
| 65 Beginning | |
| pianist's | |
| piece | |
| 66 Vacation | |
| mansion | |
| 67 CBS rival | |
| 68 Provide with a | |
| new staff | |
| 69 Through | |
| 29 Singer to dye | |
| for? | |
| 30 Things | |
| 33 Polished off | |
| 33 Kind of beer | |
| 36 Bad things | |
| 39 Use jumper | |
| cables | |
| 41 Let off the | |
| hook | |
| 43 Ruling | |
| principle | |
| 44 Ruth's mother- | |
| in-law | |
| 47 "___ than a | |
| junkyard | |
| dog" | |
| 51 Ryan's | |
| daughter | |
| 53 Language | |
| maven | |
| Newman | |
| 54 Child, e.g. | |
| 55 Flivver | |
| 56 Actress | |
| Thompson | |
| 58 Trafficked | |
| in | |
| 59 Fairy follower | |
| 62 Author | |
| Deighton | |
| 63 Pop | |



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No gunshots were fired, no church bells rang out signaling chaos. Yet the most powerful man, in the most powerful office in the world, ejected himself from the apex of power — the Presidency of the United States of America. And the greatest legal document ever drafted, the Constitution, held the fabric of our nation together during this tumultuous time.

While it is the most significant legal event in the last twenty-five years, few would recognize it as such, because we too often neglect and take for granted the sacred charter. Few would remark that it was the 207 year-old dusty parchment that provided for an orderly and fair judicial process by which citizens, through their chosen representatives, called into question the conduct of their sovereign leader.

And so, with much trepidation in the summer of 1974, the House of Representatives — following the Constitution — drew three Articles of Impeachment accusing the 37th President of extremely serious crimes. The accusation of obstruction of justice stood foremost among the charges as an impropriety with grave implications upon the person charged with "faithfully executing the laws" of the United States.

The Judiciary Committee voted to impeach; now the question would go to the House floor for a full vote on whether to subject the President to a trial by the 100-member Senate, mandated by the Constitution. Such a trial would rock the nation to the very core of its existence. It did not occur; the President resigned from office. Again the Constitution was there. Following its detailed instruction, the Vice-President became the 38th President.

For all the dismay and outrage exhibited at the time, no riots erupted, no fight for power ensued, no military coup took place and no revolution broke out. In like circumstances, such frightening incidents have occurred in every corner of the globe. With peaceful, determined order, the Constitution handed over the mightiest of its responsibilities - the presidency. We have it to thank for our nation's continuing stability and prosperity.

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