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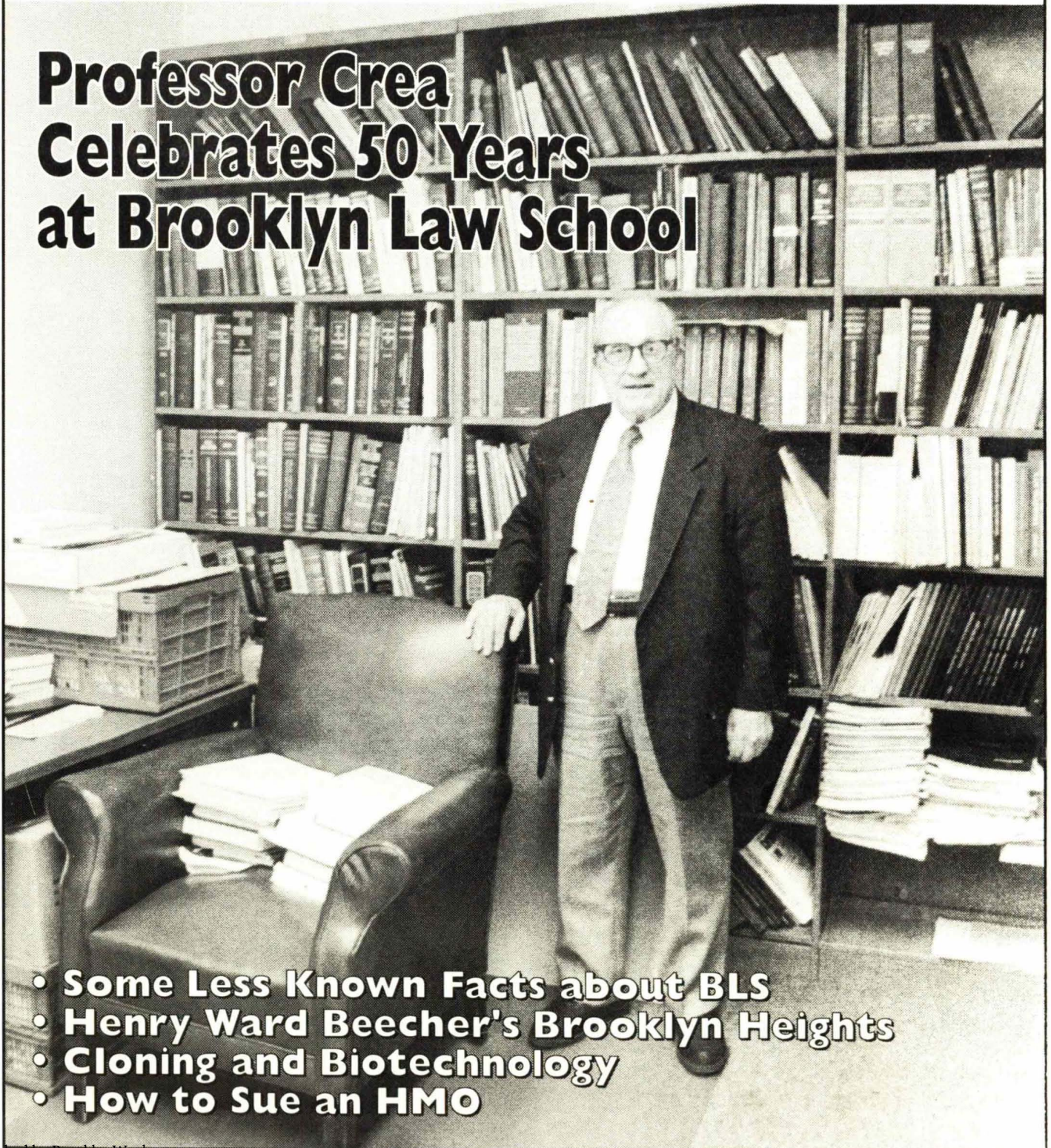
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The Justinian

Founded in 1931 • A Forum for the Brooklyn Law School Community
Spring 1998 • Volume 67 • Number 2

Professor Crea Celebrates 50 Years at Brooklyn Law School



- **Some Less Known Facts about BLS**
- **Henry Ward Beecher's Brooklyn Heights**
- **Cloning and Biotechnology**
- **How to Sue an HMO**



The Justinian Staff

From let top: Amie Rappoport, Annette Warriner, Marria Pocchia. From left bottom: Shoshana Brenenson, Emily Mindel. Missing: Ian Linker, Gabriel Nugent.

LETTER FROM THE EDITORS

Dear Reader:

As co-editors-in-chief of *The Justinian*, we are honored to dedicate our Spring edition to Professor Joseph Crea. Professor Crea joined the Brooklyn Law School community in 1947. Over the past years, he has participated in and observed the transformation of Brooklyn Law School into the institution it is today. As an integral part of Brooklyn Law School, *The Justinian* salutes you and thanks you for dedicating fifty years to Brooklyn Law School.

Good luck on exams and best wishes for those graduating with us this June!

Sincerely yours,

Amie Rappoport

Annette Warriner

The Justinian

BROOKLYN LAW SCHOOL

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Cover photograph by Emily Mindel

STUDENTS' THOUGHTS ON PROFESSOR CREA

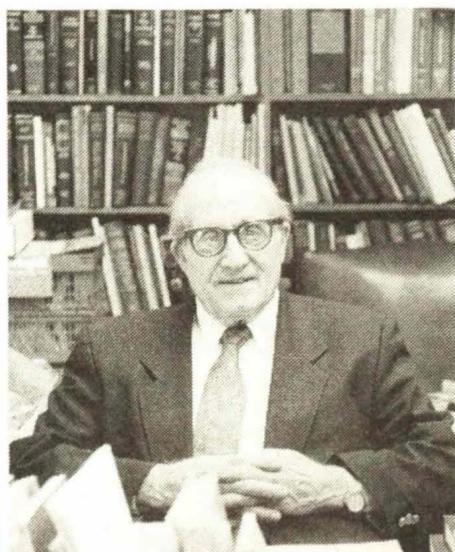
"It's incredible. It seems like he remembers every student he ever taught."

— Adam Skolnik



"One of the most caring professors in the law school; one of the most irreverent."

— Ezra Levy and Jon Kim



GETTING TO KNOW PROFESSOR JOSEPH CREA

When we approached Professor Joseph Crea to interview him on the occasion of his fiftieth anniversary as a Professor at BLS, he told us that he had recently been interviewed. As we did not want to reveal our surprise, we reached into *The Justinian's* archives and found two articles written about him. From these two articles, a picture of Professor Crea emerges as a down-to-earth instructor and as an ebullient individual endowed with abstract principles of color, depth, and feeling.

Professor Crea was born in Manhattan's Lower East side and attended public school on Oliver St., just a short distance from the late Gov. Al Smith's boyhood home. His elementary schooling was uneventful, but his high school years comprised a crazy-quilt pattern of transferring from one institution to another, changing courses, obtaining his working papers at the age of fourteen and finally quitting school. At a time when he should have been graduating from secondary school, he made a fresh start by going to Bay Ridge Evening High School. The added adversity of night study seemed to be just the catalyst needed to make him put forth his best effort. He graduated second in his class losing first place to a mere female. He then attended Brooklyn College at night while working by day. In four years he had not amassed quite enough credits to obtain his degree. His work with one of the largest draft boards in Brooklyn forced him to interrupt his education in 1940, and after two years as Chief Clerk of the board, he enlisted in the army himself. On St. Patrick's day in 1943, between a transfer from one infantry post to another, he married the former Regina Vigliante. In August of 1944 he was discharged as a second lieutenant.

Professor Crea returned to work with the Selective Service System on his return to civilian life and continued as a coordinator of a group of local boards. He matriculated at Brooklyn Law School in the evening accelerated session, obtaining his degree in the Fall of 1947. On graduation he accepted a position as law librarian and instructor at the law school. He showed his disdain for chronology as a logical factor in the attainment of academic degrees by again attending Brooklyn College at night and obtaining his Bachelor of Arts degree.

In 1959, Professor Crea lived in Flatbush with his wife and four daughters: Catherine, Regina, Lorraine and Elizabeth. His adventures as a father sometimes overlap in his conversations with his students, and the effect on his listeners is often uproarious laughter. Laughter might well be the hallmark of Joe Crea's personality, and as one of the boys put it when reference was made to him: "Joe Crea! He's for real!"

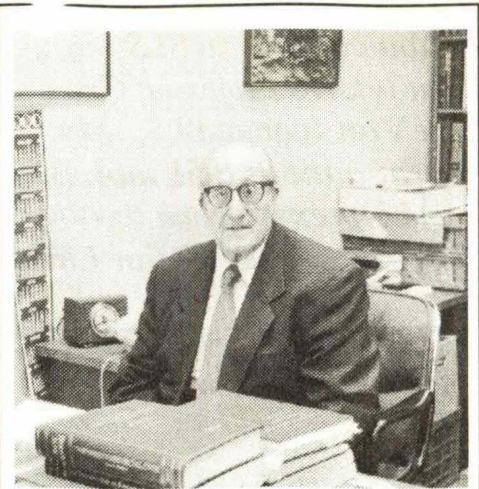
While a Professor, he attended all school affairs unless he was teaching a class. He even attended school dances. In 1996, Professor Crea recounted,

I still have my yearbook, which came out in 1948, showing a school dance at the Vanderbilt Hotel. There are photographs of that dance

in the book. It also shows that Leonard Garment, who went on to Washington in many important positions, played the maracas . . . As an evening student, during my school days, going to a school dance did not seem important. But when the event involved BLS, I was there. The faculty was not attuned to going to student dances. As a matter of fact, not until the 60s did students and faculty show common interests involving the "institution." It was the period of questioning, a rebellion, if you will, for a change. Students, who looked like revolutionaries, entered law school in the form of long hair, blue jean, sandal wearing disciples. This was the beginning of "change." The students were not interested in dances. They sought action. Some of the faculty looked askance at "what" we were admitting. As for me, I saw the future and change which would benefit BLS. Let it be known that the 60s provided BLS with alumni who seem to be the largest contributors to the interests of the "institution" by way of financial and job assistance. The 60s planted a seed for change and change we got. We danced to new pipers.

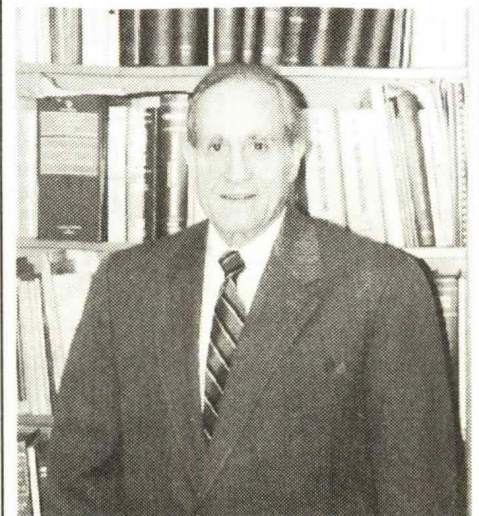
Professor Crea remembers Brooklyn Law School as a structured school,

students were assigned courses, teachers, rooms and seats. Women were assigned seats in the second row of the room. There were no variations. There were no electives until the late 60s when Environmental and Urban Law was introduced as an elective. The deconstructing process took hold in the 70s after Dean Prince retired as Dean. In the process of selecting a new Dean, the search committee was divided between Prof. I. Glasser and Assistant Dean Gerard Gilbride. The Board observed the division in the faculty and proceeded to select a person who was not a candidate for Dean, Professor Raymond E. Lisle. . . During the term of Dean Lisle, deconstructing accelerated. The faculty was increased. New courses were added to the curriculum. New rules and regulations affecting faculty and students were adopted by the faculty and the Board of trustees. During this period, first year courses were mandatory; the rest of the curriculum and the selection of professors were elective. The development of the legal writing program and the clinical courses and practicum were major changes for BLS . . . The change had benefits and drawbacks. Under the system as it exist-



"He's very nice and caring. He noticed in class one day that we had brought a birthday cake for our friend and asked, 'Where are the candles?' We told him we had forgotten them so he went and brought some down from his office."

— Liz Eylward



"His classes were fun. You were always waiting for his next story or joke."

— Merima Cobaj

"Never trust your mother"

— Professor Joseph Crea

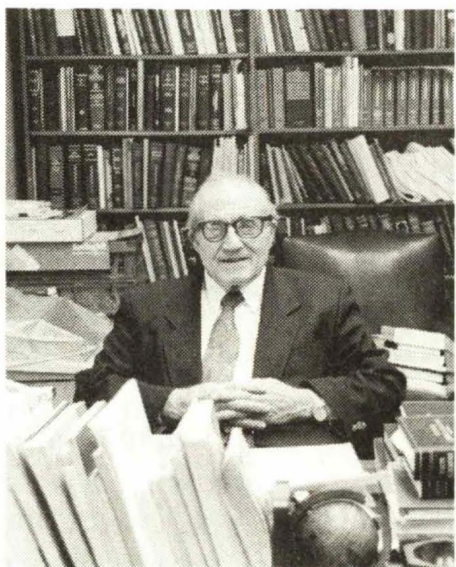
"You can't go to BLS without taking Professor Crea. He's an icon at BLS. My great aunt in 1951 took Bill and Notes with him."

— Ian Linker



"He taught me never to drop my briefcase and run!"

— Diane Mall



"He's the best professor I've ever had in this school. I had him twice."

— Dexter Cumberbatch

ed, students were required to attend classes, and when monitoring ended in 1971, students were required to provide affidavits of attendance to comply with the Court of Appeals rules on courses and attendance. The faculty is now under a duty to certify to the Dean good and regular attendance, who in turn certifies to the Court of Appeals compliance with the rules. My own view is that a student who doesn't attend my classes should not register to take my courses. I will not certify that he or she was in good and regular attendance as required by the rules and I further request that the student be removed from the roll of my course. Other faculty members follow the same approach. When students did not attend classes in the early 40s under Dean Richardson, they were given the immediate due process of expulsion. "Go get your money and go home . . . Another benefit of the de-structuring was the preparation for an application for admission to the Association of American Law Schools (AALS). In 1973, Brooklyn Law School was voted into the AALS. For many years there was an erroneous belief that for admission, a law school had to be part of a university. The error was corrected by Dean Lisle when he sought advice and consultation for admission. Brooklyn Law School was now on the move to the 21st Century.

Professor Crea believes BLS

has been enriched by the diverse backgrounds of new members of faculty. Some have come from practice, some from outstanding law firms, some after completing a clerkship tour, some from other law schools. The faculty members are different in many ways: as individuals; as to point of view; as to plans for the law school and their vision for BLS in the 21st century; in teaching approach; in scholarship; in their specialization. Gone are the days when faculty was required to teach whatever course assigned and how many hours of assignment given. The good old days were not so good. The benefit for me, or for some others, was that they and I learned a lot of law from teaching many courses. I'm sure the students benefit from this background. Publish or perish came in later. Preparation, preparation, and more preparation was the mode of the day.

In 1996, Professor Crea commented on the changes he observed over the years.

The students in the 40s were those who were discharged from the military and entered law school either to complete their studies after being drafted out of school or entered as first year students. There were also refugees from Europe who escaped from the horror that existed. The latter were older accomplished lawyers, judges and professors. These groups were hungry to get back into society with their lives. Large numbers were admitted and given an opportunity to succeed in law school. Unfortunately many did not for varied reasons. The refugees had language difficulties; the veterans need to re-hone their skills. Students were required to maintain an 80 average (C) to stay in school, and that wasn't easy. There was no curve system of grading. There was a consolation granted by the Court of Appeals. Students petitioned the Court of Appeals to be admitted to the bar on motion in they were drafted after two years of law school. In addition, those who entered law school after military service petitioned to take the bar examination in the last year of law school. Both petitions were granted. I took the bar before finishing my courses in my last year. Yes, I passed. Incidentally the petitions were debated in the auditorium of BLS at 375 Pearl St. . . It was a post war cry for justice and fairness for those whose education was interrupted by military service. I recall the debate was lead by Leonard Laurance. The influx of veterans gave Dean Prince a survival plan for the law school. He instituted a veterans refresher program in the form of continuing legal education. The school also benefited from the G.I. Bill of Rights which paid the educational expenses of veterans based on a formula for time in service. . .

There was a period in the 50s and 60s which transformed the law school from one barely surviving to a robust institution. The influx of accountants included CPAs and treasury agents. A decision of the Court of Appeals ruled that accountants cannot work for a contingent fee unless they were members of the bar. As a result, there was an increase in matriculation, especially at night in the part time division. I taught several classes including these students. Or maybe they taught me. Nevertheless, I taught taxes for 20 years until 1972. I learned the key to tax administration: deduct or disallow. The accountants deducted, the treasury agent disallowed.

The third major change in the student body came after 1972. At that time nine per cent of the student body consisted of women. The growth in women population was a steady climb to almost fifty per cent in the 90s. The 90s student is younger, poorer (that is- burdened with debt) frustrated and concerned with the future. I can tell them that poverty, hopelessness and the same concern for the future was abundant in the 30s and early 40s. My feeling is that the present student is burdened with a need to supplement income for tuition purposes and this deprives them of the concentration needed to perform well in law school. The 80s were again years of decision. A new Dean had to be chosen among many candidates, who by this time showed an interest in the "new" Brooklyn Law School. Again the faculty divided. It recommended David Trager, a professor and former U.S. Attorney for the Eastern District of New York. Dean Trager turned the 80s into a revival appealing to all alumni to come back home. He conducted a series of cocktail parties for many of the graduating classes over a period of time. The alumni came in droves. They were welcomed. Dean Trager convinced them that they were not forgotten. I might add that this policy continues today under Dean Wexler.

We wish Professor Crea well and thank him for teaching us to "Never trust our mothers."

As the ABA Survey is underway, we felt it was appropriate to educate the BLS community about our own history. The following article by Marcia Knigin appeared in the March 29, 1977 issue of *The Justinian*. A follow-up article concerning the events from 1977 until today will be included in the next issue.

IT STARTED IN A BASEMENT . . .

Brooklyn Law School began in 1901 as a department of Heffley School of Business. Dean William Payson Richardson, the first Dean of BLS, met Norman P. Heffley, a New York businessman, at a convention in Providence, R.I. Richardson had written a textbook on commercial law that had impressed Heffley, and when they met, Heffley asked Richardson if he would be interested in starting a law school in Brooklyn. Heffley said he had been considering the idea for a while and though such a school would be highly successful since there were no other schools in Brooklyn at the time.

Heffley became the President of the Board of trustees and Richardson became the Dean.

In 1901, the first classes were held in the basement of the Heffley school building at 243 Ryerson Street. There were seven students in the first year class, one of whom was Francis X. Carmody, co-author of the Carmody-Wait treatise in New York Practice, who later became a member of the BLS faculty. The tuition was \$80 a year and a college degree was not a requirement for admission. Candidates were required to pursue a three year course of study for admission to the Bar. The requirement could be fulfilled by attending class or by work in a law office. College graduates needed only to fill a two-year requirement.

In 1902 the school became an autonomous institution for the first time. After disassociating with the Heffley School, Brooklyn Law School moved to the third floor of a brownstone at 187 Montague Street. The library was situated in a bedroom measuring only 96 square feet. Two classrooms were set up in larger front and rear bedrooms. A shingle hung from the window announcing to the community that Brooklyn Law School was located there.

University Affiliation

By 1903 the first class was about to graduate. They were concerned about their fate in light of the fact that BLS had no degree conferring power. Richardson searched the state for a university that would be willing to affiliate with a brand new law school. He learned that St. Lawrence University in Canton, N.Y. had had a law school, but it had been closed down. The Dean negotiated with St. Lawrence and entered into a contract of association between St. Lawrence and Brooklyn Law school which provided that Brooklyn Law school students would be granted degrees from St. Lawrence University.

In 1904 BLS again moved its headquarters to the Brooklyn Eagle Building on Washington and Johnson Streets, the present site of the Surrogate's Court. This building one of the most famous in Brooklyn, has since been demolished. It housed Brooklyn law school on the third, fourth, and fifth floors for fifteen years. The remaining floors were occupied by others, including the Brooklyn Eagle newspaper.

In that year Richardson contacted a fellow alumnus from the University of Maryland Law School, John Howard Easterday to help teach the subjects BLS was to offer. The two men sat down and wrote a horizontal list of the courses they felt should be taught. Richardson tore the list in half and said to Easterday, "You teach these and I'll teach the rest." Unfortunately, neither Easterday nor Richardson felt equipped to teach New York Practice since they were both unfamiliar with New York Law. So they hired another faculty member to teach the course.

Another Move

In 1928 the school again moved, this time to 375 Pearl Street. This was the first building built specifically

ly for Brooklyn Law School. The building still stands on Pearl Street between Willoughby Street and Myrtle Avenue and presently houses the Brooklyn Friends School. The building when owned by BLS was called Richardson Hall, named after the dean. The library was considered large at the time with 50,000 volumes of reference books. (our present library has over 120,000 volumes.)

When the United States entered World War II in 1941, the school was practically decimated. There was a time during that period when there was only 30 students and three full time professors in the entire school, contrasted with a student body of over 1,5000 before the war began.

The Justinian was first published in 1931. Law Review began the following year. The first volume was dedicated to Benjamin Cardozo, then Chief Judge of the New York State Court of Appeals. By fall semester dean Jerome Prince and Professor Milton Gershenson, then students at BLS, were both on the Review.

In 1943 St. Lawrence was besieged by financial difficulty and decided to sell the law school. Justice William Carswell, then a member of the Board of Trustees of BLS, violently opposed this action. He negotiated a separation agreement between BLS and St. Lawrence. Although Carswell saved the school, this separation agreement left BLS with virtually no funds. In 1945 Dean William Payson Richardson died, and Carswell still a sitting judge of the Appellate Division was appointed dean. Jerome Prince, now dean Emeritus, was appointed vice Dean and later Associate Dean, and virtually ran the school while Carswell attended to his duties in the Appellate Division. Prince set up a refresher course for veterans from the war. Prince and one other professor taught all the courses for virtually no salary, and funds collected in tuition served to get institution through the financial crisis.

Since its inception, Heffley and Richardson owned the school as a proprietorship. Soon after its separation from St. Lawrence, BLS became a non-profit institution. Professor Richard J. Maloney became the school's counsel when he drafted the agreement for the purchase of the BLS stock from Richardson's wife and Heffley's two sisters.

In 1948, BLS won the National Moot Court Championship by defeating Harvard in the final round. The team, which was the only one to win the championship for BLS, was led by Leonard Garment, former White House Special Consultant during the Nixon administration. In 1953, dean Carswell died, and Dean Prince assumed the position as Dean.

When the site of the old Supreme Court building on Joralemon and Boerum Streets went up for auction, Prince was authorized to bid up to half of a million dollars on behalf of the school. This site, which houses our present building, was also the site of a burial ground for victims of yellow fever in 1803.

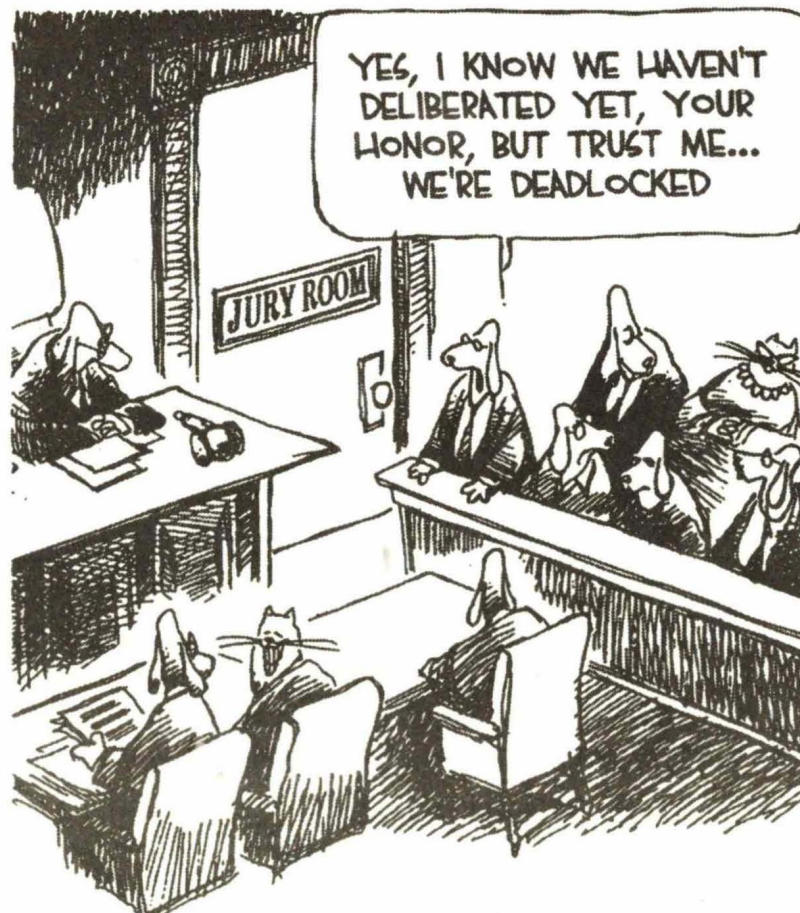
In 1969 the building was completed and dedicated in time for fall semester. It was designed by the designers of Shea Stadium. The building is really three in one, in that there are separate electricity, heat, and air conditioning controls for the executive offices, the library, and the classrooms.

In 1971 Dean Prince retired as Dean and was named Dean Emeritus. Raymond Lisle, a former United States State Department official and professor at BLS, was appointed in his place . . . Lisle was effective in bringing the law school onto the national scene by gaining accreditation by the American Association of Law Schools in 1973. Until that time it was the policy of the AALS to limit accreditation to law schools associated with universities. BLS broke this precedent, and thereafter other unaffiliated law schools gained accreditation. During Lisle's years as Dean the curriculum was also drastically changed from one principally of required courses to one primarily of electives.

SOME LESS KNOWN FACTS ABOUT BLS . . .

- 1901:** Brooklyn Law School (BLS) begins as a department of the Heffley School of Business. Tuition is \$80 a year.
- 1902:** BLS became an autonomous institution for the first time. The library was a bedroom on the third floor of a brownstone located at 187 Montague Street.
- 1904:** BLS moves location
- 1905:** BLS moves again
- 1931:** First issue of *The Justinian* is published.
- 1932:** Law Review is established at BLS.
- 1934:** Dean William Payson Richardson, returned from ten weeks vacation spent in Miami, Florida. While on vacation he battled and landed a 105 pound Marlin swordfish. (Dean Richardson also met with several graduates of BLS while in Miami.)
- 1935:** *The Justinian* voices concern about the fact that pin ball games are up for judicial review on a recent application for a mandamus to compel the License Commission of the City of New York to issue permits for such games. The Corporation Counsel office appeared for the City to oppose the application, and contended that the Esquirol Act bans the devices as gaming instruments. The familiar story of the player who made better scores with his back turned to the machine than when he carefully aimed his shots, was recounted at length.
- 1947:** Professor Joseph Crea graduates from BLS and begins his teaching career at BLS in the same year.
- 1948:** BLS wins the National Moot Court championship defeating Harvard in the final round.
- 1957:** Supreme Court Justice Brennan addresses assembled BLS students. His talk is divided into two main topics. First he noted the great difference which had taken place in the general field of law in the course of the past generation. Secondly, he focused upon the lawyer's eternal preoccupation with the preservation of liberty.
- 1964:** Professor Richard Farrell graduates from BLS.
- 1966:** Professor Robert Pitler graduates BLS.
- 1967:** Women members of the class are no longer required to sit together in the front of the classroom.
- 1969:** The construction of 250 Joralemon Street is completed.
- 1970:** BLS Student's International Meditation Society sponsors a lecture on Transcendental Meditation by Jack Forem, a student of the Maharishi Mahesh Yogi. The Maharishi was made famous by The Beatles.

- 1971:** "The Bluff", a **Brooklyn Law Revue**, opens and closes with success. The cast includes Professors De-Meo, Farrell, Hauptman, and Wein in starring roles. Also this year, BLS graduate Geraldo Revera.
- 1978:** BLS begins an expansion of the library. The movie "Animal house" is released.
- 1980:** The BLS Moot Court team goes on a futile strike.
- 1984:** Twenty new IMB PCs are installed.
- 1986:** Apartheid is characterized as "a burning issue of our time . . ." by Professor Minda. A debate about economic divestment grips BLS.
- 1992:** Construction begins on the new addition.
- 1995:** Dedication of new library.
- 1998:** BLS celebrates Professor Crea's 50th Anniversary!



BROOKLYN HEIGHTS HISTORY: HENRY WARD BEECHER

Sisi Keghida

Brooklyn Law School has recently hung photographs of old downtown Brooklyn in the first floor lounge. The old Kings County Courthouse, demolished in the late 1960s to make room for Brooklyn Law School, was designed by Borough Hall's architect Gamaliel and constructed of limestone with a classic dome. It represented the heart of the 19th Century legal system. Brooklyn, prior to the construction of the Brooklyn Bridge in 1883 and the unification of the five boroughs five years later, was its own city representing a respectable oasis from its sister city, Manhattan, across the river. Retaining traditions from its Dutch Reformer settlers, many Brooklyn citizens and politicians of the 19th century were leaders in the progressive campaigns of the time including abolition, women's suffrage and fighting the local corruption embodied in Tammany Hall.

Henry Ward Beecher represented this reformer spirit. He was born in Connecticut and his sister was Harriet Beecher Stowe, author of the historic book, *Uncle Tom's Cabin*. Beecher traveled to Brooklyn and founded the Plymouth Church of the Pilgrims in 1849 on Orange Street between Henry and Hicks Streets in Brooklyn Heights. Under his leadership, the Plymouth Church became one of the most influential in the nation concerning the abolition of slavery. Many notable guests visited his church to share their views and lend support to the cause, including Charles Dickens, Abraham Lincoln, Booker t. Washington, Mark Twain, and Horace Greeley. In addition to his fervent work against slavery, Beecher campaigned for women's suffrage making him very popular with the middle class women of Manhattan and Brooklyn. Furthermore, he published and edited a various newspapers at his office in 131 Hicks Streets.

Despite his accomplishments and popularity in civil rights, his public image was tarnished by one of the most scandalous and sexy trails of its days. In 1974, Beecher was accused by his close friend and newspaper editor, Theodore Tilton of having an adulterous affair with his wife. Tilton filed suit against Beecher demanding \$100,000 in damages. During the ensuing six month trial that was held at the old King's County courthouse, evidence revealed that Beecher had in fact visited Mrs. Tilton numerous times at her home while she was alone. Aside from the alleged adultery, the trial may have established Beecher as a sex symbol because the gallery of the courtroom was packed with loyal female supporters.

Ultimately Beecher is remembered as a moral leader. A bronze statute of him wearing an austere cape with three young children placing flowers at his feet in tribute to his work and memory was unveiled four years after his death. The statue is located to the left of Supreme Court on Court Street.

Any club wishing
to inform the BLS community
of an issue or event of interest,
please contact Shoshana Brenenson
of The Justinian
at (718) 780-7986.

THE CURRENT DEBATE OVER CLONING AND BIOTECHNOLOGY

Maria Pocchia

In February of 1997, the world was watching when Dr. Ian Wilmut successfully cloned Dolly, a lamb produced from taking a cell from one organism and then creating its genetic duplicate or perfect twin. The possibilities available because of this new found technology are astounding. In an interview with Barbara Walters, Dr. Wilmut explained the potential benefits of cloning. "It will be a very, very powerful research tool to understand our natures, both physically and our personalities."¹ Cloning may aid the development of proteins which treat diseases and the growth of human organs for transplant. It is already helping infertile couples and reducing birth defects.

As a result of Dolly, a group of women in England have frozen their aborted fetuses so they can resume their pregnancies later. Using the Roslin Institute technique developed by the Scottish research team that produced Dolly, the nucleus of a cell from a thawed fetus which contains all the genetic material to create a new being is removed and placed in an empty egg cell "envelope." If all goes well, the removed cell begins to divide like a normal embryo and can be placed in the womb and left to grow into a fetus that is identical to the one aborted.

Despite all of the potential medical benefits and some interesting sideshows, society still feels that scientist should not tamper with human DNA. While Dr. Wilmut says that human cloning is still only a theoretical possibility, society has reacted with a "mix of fear, fascination and ignorance."² There has been a rush to legislate. As of November 1997, three anti-cloning bills and twelve genetic privacy bills had been introduced in Congress.³ The primary concern is to avoid restricting genetic research that could aid in developing new medicines while prohibiting human cloning. Scientists in Florida were outraged that a bill proposed making any cloning of human DNA a felony even though cloning human genetic material is standard practice in genetic research, pharmaceutical research and police DNA fingerprinting. Although the bill was withdrawn after its authors "realized this would have stopped biomedical research in Florida in its tracks" the bill is typical of other bills introduced in state legislatures imposing civil and criminal sanctions on anyone attempting to clone a human.⁴

One congressional bill, S.1601- The Human Cloning Prohibition Act of 1998 written by Rep. Vernon Ehlers, a nuclear physicist has made the most progress.⁵ The proposed act specifically prohibits the use of somatic cell nuclear transfer technology for the purpose of human cloning providing civil and criminal sanctions. It also established the National Commission to Promote a National Dialogue on Bioethics. Ostensibly, it protects other areas of genetic research that do not involve human cloning. Why is there such a rush to ban cloning? Although the ramifications of human cloning and genetic research include legal and economic concerns, the language used by Congress and the President reveal a fear of individuals playing God. In Virginia, while introducing legislation banning human cloning, George W. Grayson said that the bill was "an outcry that this [cloning] is wrong, that man is playing God. I'm very much a product of the Judeo-Christian religion, and I just find these scientific breakthroughs are abhorrent to the values that I hold dear and I believe that most Americans embrace."⁶ "There is universal agreement that human embryo, whether or not is legally recognized as a legal "person" in the constitutional sense, is a form of human life – i.e. a complete human organism. It is clear that the President's objection is not so much to the process of human cloning and the creation of a new embryo (an individual organism) as it is to allowing that newly created embryo to be implanted and born alive."⁷

The rush to legislate is the result of the fear that we are learning to use scientific tools without the least understanding of how we should use them. The questions being asked revolve around who decides what characteristics get cloned. government? Marketplace? what types of personalities should be cloned? Type A or B? Other contingent questions include society's responsibilities and the legal ramifications. "If someone obtains a few of your cells and creates a clone, are you its parent? Are you its sibling? Do you have rights? Obligations?"⁸ Another fear concerns what would happen if such knowledge ends up in the wrong hands.

While cloning received most of the attention, in the very near future we will have the ability to select, control and manipulate DNA due to these advances in genetic research. The Human Genome Project is an attempt to mark the exact order of the six billion pieces that make up human DNA. Although generously supported, it is highly criticized. "On one level, the Genome Project is simply knowledge, and knowledge is neutral," said Mary Maholwald, a professor at the University of Chicago's center for Medical Ethics, "but you don't spend billions simply for knowledge. This project lays the groundwork for applications: gene therapy; designer generations; abortions; advanced cloning. Will all this happen? Probably not. But I have to wonder how different the world would be today if Adolf Hitler had possessed this knowledge."⁹

Another fear is that cloning will subvert the evolutionary process. "At the heart of the matter is that cloning sidesteps the reshuffling and screening inherent in its genetic process and strips evolution of the main source of the variation that drives it."¹⁰ A counter-argument is that any scientific progress we make is part of the evolutionary process, since evolution caused us to have the ability to make such discoveries in the first place. The Genome Project raises practical issues as well concerning what will happen once insurance companies and employers get a hold of our individual genetic profiles.

While these concerns were discussed when Dolly was first cloned, the debate reached towering proportions in January when physicist Richard Seed loudly announced his intention to be the first to clone a human being and said that "cloning and the reprogramming of DNA is the first serious step to becoming one with God."¹¹ While it seems that Dr. Seed may be short a few strands of DNA, the amount of hubris he has so far exhibited is probably enough to justify the rush to draft anti-cloning laws. Yet, as Carl Sagan said, do not accept extraordinary claims unless they are accompanied by extraordinary proof. Dr. Seed lacks the credentials and the resources to make his statement a reality.¹² Of course, other scientists are waiting in the wings.

Anti-cloning legislation may be a good idea if we do not let our fears cloud our judgment. Legislators must be careful when drafting so as not to prohibit all genetic research. When it comes to human cloning, a wait and see approach should be employed since we do not know what is or is not possible. In the meantime, limited cloning of human material such as DNA and human cells could produce beneficial medical advances.

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Livingston, New Jersey

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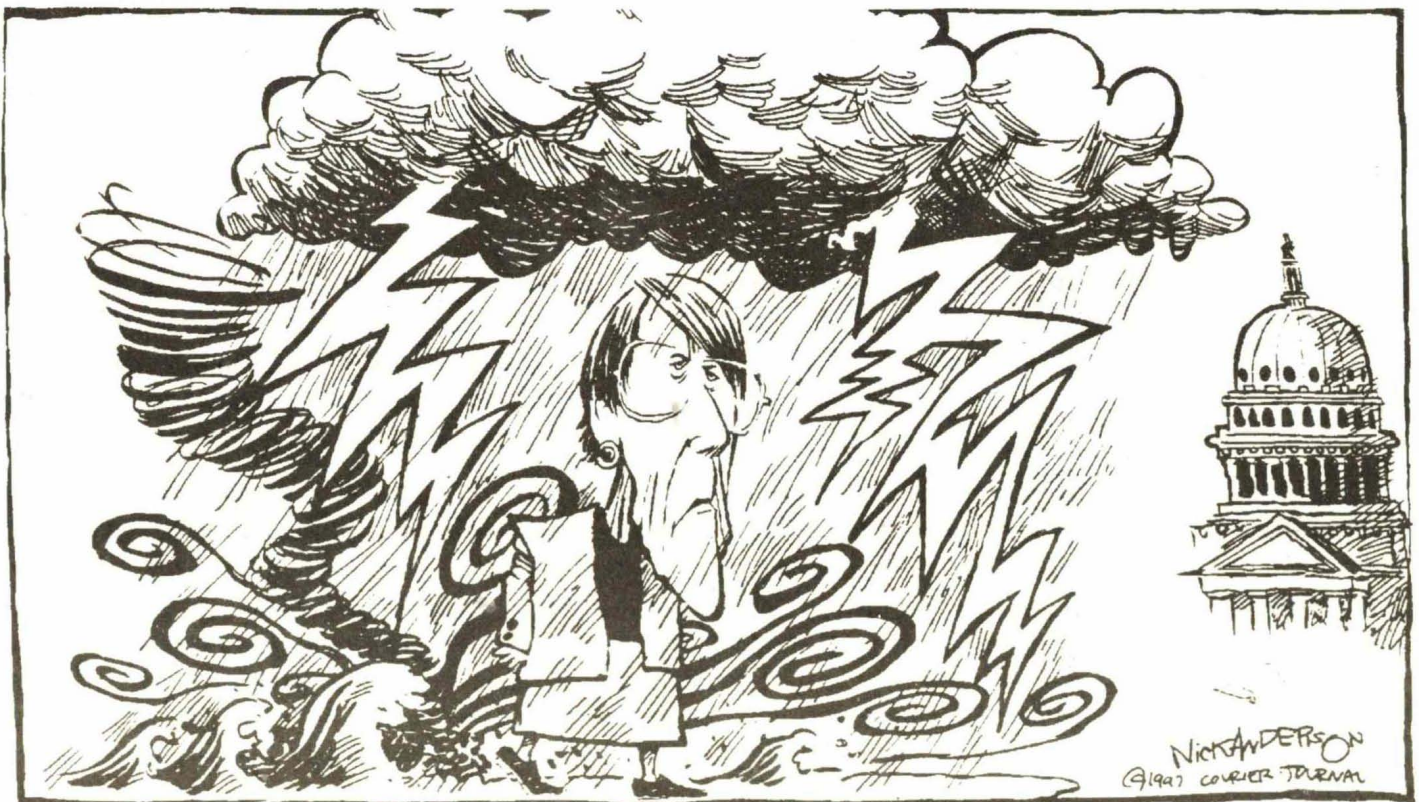
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EL REÑO

HOW TO SUE AN HMO

Eric West

As the line between physicians who provide health care and Health Maintenance Organizations (HMOs) becomes less clear, new issues of medical malpractice have arisen. HMOs are a form of managed health care, and thus the manner in which an HMO provides health care differs from the traditional fee-for-service care.¹ Under a traditional health care service, the only involvement of a patient's insurance company is to compensate the doctor, clearly separating the benefits of the insurance plan from the medical care received by the patient. Unlike this traditional fee-for-service arrangement, HMOs charge a fixed premium, and then personally select the physicians who administer the health care.² Consequently, HMO plans often not only pay the cost of health care, but also arrange for the treatment. Instead of merely reviewing and paying for participant's health care, many HMOs contract with health care providers or directly hire their own medical staff, directly providing health care.³ Typically, HMOs review the medical procedures recommended by the doctor and can refuse to provide treatment if they deem it unnecessary. A plaintiff who wishes to sue an HMO can try to hold the HMOs liable on a myriad of legal theories including direct corporate negligence or traditional principles of agency law. A plaintiff can also sue under a theory of vicarious liability through ostensible agency as well as other approaches not mentioned due to the limitations of this article. These types of claims are sometimes necessary since it is almost always the physician, and not the HMO who is providing the actual health care service. Naturally, a plaintiff would benefit from bringing suit against an HMO rather than an individual physician because of the deep pockets of an HMO. A plaintiff may also be justified in suing the HMO rather than the physician because of the physician's relationship with the HMO.

An HMO operates very differently from a traditional hospital or fee-for-service physician. In most instances, hospitals and physicians who are not participating in an HMO are providing medical service that is more costly than treatment by an HMO physician. Every time an HMO physician must make an outside referral, it costs the HMO extra money which could eventually threaten its financial stability. Therefore, the HMO has a huge incentive to control these costs, usually by employing specific cost control devices. In certain models of HMOs, the HMO may award bonuses to physicians if the cost of outside medical services is held below a certain amount. Also, all types of HMOs may withhold a percentage of the physician's fees and allocate this to a risk pool. This risk pool covers any unanticipated costs or budget overruns resulting from excessive outside medical treatment.

Another way that HMOs cut costs is by offering less costly alternatives to inpatient hospitalizations. This can be accomplished by providing services on an outpatient basis, and by promoting less costly non-surgical procedures to subscribers. Whereas hospital doctors are more inclined to do whatever is necessary to help the patient, HMO doctors are more restricted in their options due to the nature of the HMO and its goal of saving money. This goal of cost cutting has become highly controversial, as many HMO patients are unable to receive what turn out to be life saving procedures that they would otherwise obtain from a traditional hospital.

One unresolved issue is whether liability based on theories of direct corporate negligence, or the traditional principles of agency law should be extended to managed care organizations. It is not clear exactly when liability can be imposed since the relationships between physicians and hospitals are very different from the relationships between physicians and HMOs. In 1981, a successful tort suit against an HMO was virtually nonexistent. However, in recent years numbers of successful suits have greatly increased. In order to know which kind of tort liability claim to use, both the model of HMO and the specific HMO-physician relationship must be considered. The plaintiff can claim HMO liability on a variety of theories including corporate negligence, or traditional theories of agency law. Some courts have also found HMOs vicariously liable for the negligence of a physician under theories of respondent superior, breach of contract, and other various tort theory which will not be discussed due to the limitations of this article.

The doctrine of corporate negligence has traditionally been applied to hospitals for the liability of the negligence of its practicing physicians.⁴ In order to apply this doctrine to HMOs, the plaintiff must claim that the HMO owes an independent, nondelegable duty to its patients to exercise reasonable care in determining that the physicians on the staff are competent.⁵ The corporate negligence theory could be applied to find an HMO liable for the negligent selection or oversight of a physician who participates in the HMO. The independent contractor status of the physician is irrelevant to liability based on this theory.⁶

Most of the direct negligence suits arise when the HMO employs a cost-containment device called the utilization review. As part of its efforts to cut costs, an HMO typically monitors, authorizes and denies certain medical treatments. For example, In *Wickline v. State of California*, the plaintiff, a plan beneficiary, was hospitalized and underwent surgery.⁷ Before she was released from the hospital, her doctor recommended an eight day stay to ensure that the procedure was a success.⁸ However, upon a utilization review, the HMO refused the doctors request and the plaintiff subsequently developed an infection and needed an amputation procedure.⁹ The plaintiff sued the HMO for negligence, claiming that the HMO's refusal to allow the recommended treatment was the proximate cause of her injury. The Court denied her any relief, stating that since the HMO did not render treatment, it would not be held responsible. Nevertheless, the court recognized that in certain instances the HMO can be held liable in the utilization review process when there is a wrongful withholding of payment.

This decision highlights a major difference between HMO and hospital potential liability. Hospitals employing residents who commit malpractice will be held directly liable for their employee actions. This does not seem to be the case with HMOs as the HMO in *Wickline* was not held liable.¹⁰ However, the court reached an opposite conclusion in *Adams v. Kaiser Foundation Health Plan, Inc.* In that case, the jury found the HMO liable for negligently instructing a mother to take her baby to a hospital forty two miles away since the HMO received a discount at that hospital.¹¹ A principle that appears to be set forth from these and other cases is that when one is injured as a result of an HMO policy, and that policy is deemed to be defective, or unreasonable, the injured party may be able to recover.

Ostensible or apparent agency is another theory which can impose vicarious liability on the HMO. An ostensible agent is one whom the principal, either intentionally, or by want of ordinary care, induces third persons believe is the, and thereby causes third person to justifiably rely upon the skill or care of such apparent agent, though he has not, either expressly or by implication, conferred authority on him.¹² In order to establish ostensible agency, the plaintiff must prove three elements: (1) the third party must have a reasonable belief in the agent's authority, (2) the belief must be generated by some holding out or neglect of the HMO (principal), and (3) the third party must justifiably rely on the representation of authority. So the true relationship between the HMO and Physician is immaterial, with liability completely riding on the third party's reasonable belief.

Another factor to be considered in whether ostensible agency exists is whether the patient is limited in choosing a physician.¹³ If the HMO has provided the patient with a very limited selection of physicians, an appearance of overall control by the HMO may be created.¹⁴ In contrast, if an HMO has a large number of enrolled physicians, there may be less control over the system. Those HMOs which allow greater freedom of choice by subscribers in the selection of physicians will lessen their chances of liability on the theory of ostensible agency.¹⁵

While this article is narrowed to a discussion of direct corporate negligence, traditional principles of agency law and ostensible agency, many questions springing from the current status of HMO liability emerge. For example, should HMOs be allowed to prevent their physicians from providing certain treatments to patients? Also, should HMOs have a duty to provide patients with every option, not merely the least expensive alternative, when treatment decisions are decided upon. Certainly, new case law and possibly new legislation will help to define the role of HMOs and physicians in the future.

¹ Laura H. Harshbarger, ERISA Preemption Meets The Age of Managed Care: Toward a Comprehensive Social Policy, Syracuse Law Review, 47 Syracuse L.Rev. 191, 192 (1996).

² See Id. at 194.

³ Id.

⁴ Micheal Kanute, Comment, Evolving Theories of Malpractice Liability for HMO's, 20 Loy U. Chi. L.J. 841, 860 (1989).

⁵ Id.

⁶ No. 93-VS-7895-E (Ga., Fulton County St. Ct., Feb, 1995).

⁷ Wickline v. State, 239 Cal. Rptr. 810 (Ct. App. 1986).

⁸ Id. at 815

⁹ Id.

¹⁰ 69-FEB N.Y. St. B.J. at 21.

¹¹ No. 93-VS-7895-E (GA., Fulton County St. Ct., Feb, 1995).

¹² RESTATEMENT (2ND) OF AGENCY

¹³ Id.

¹⁴ Id.

¹⁵ Id.



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BEST BRIEF PRIZE

Dean Wexler and Professor Walter would like to congratulate the following students who, in 1996-97, 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, Dachowitz, Dietz, Falk, Harris, Kelly and Lowe chose the seven semi-finalists. From this group Professor Walter selected the Best Brief.

Best Brief

Sondra Roberto

Semi-Finalists

Ella Argamon
Brendan Down
Paul Hare
Danice Kowalczyk
Eric Post
Stacy Weinberg

Honorable Mention

Sheri Abramson
G. Brownscheidle
Dianna Chen
Lauri Cohen
Randall Cude
Michael Elbaz
Jennifer Fallacaro
Joseph Fonti
Pamela Garas
Alice Gerstel
Wendy Greenseich
Robert Hoff
Joseph Horn
Kisa Jenkins
Ashley Kim

Jeffrey Lehman
Charles Lent
Wendy Levy
Lisa Mondschein
Jonathan Moskowitz
Sheldon Mui
John Pashby
Karri Rakow
Zalman Schochet
Jeannie Sha
Anya Sobodinska
Emily Sweet
Kristi Tumminello
Jaime Wilsker

LAW AND POPULAR CULTURE

Associate Dean Spencer Weber Waller
Professor Anthony Sebok

THE BIG 80'S

SWW: The View from the 9th Floor

By the time, Professor Sebok and I could coordinate schedules, both *Alien:Resurrection* and *Spice World* had entered that netherworld where they are not being shown in first-run theaters but not available either on video or at the \$3 movies. Having bargained extensively and in the process disproved the Coase Theorem, and rejected each other's suggestions of brooding art films, we agreed to a President's Day showing of *The Wedding Singer*. Although this was in fact my suggestion, I went with great trepidation and anxiety. The problem is Adam Sandler. I have despised him from the moment he first paraded his whiny little insipid self during one of the many periodic troughs in the talent pool on "Saturday Night Live."

What sold me was the trailer which was simply brilliant. In three minutes, it perfectly depicted the classic boy meets girl, boy fails to win girl's heart, boy might win girl's heart, boy loses girl, boy and girl enjoy big comeback and live happily ever after genre. The trailer gave me every reason to hope that Sandler would sing classic rock anthems of the 80's rather than his own insipid drivel (although I am told that his song "Monica" about Monica Lewinski, sung to the tune of "Hannukah", isn't bad). Then there was Drew Barrymore and a rapping grandmother.

The movie fulfilled the promise of the trailer and more so. Forced to actually act in places, and with a screenplay by a seemingly real screenwriter, Sandler is charming and self-deprecating and never lets his innate whining overwhelm his sweetness as a musician whose dreams of stardom are fading and slowly being replaced with the realities of the quotidian existence of a wedding singer in a mid-1980's New Jersey reception hall.

He meets and falls for Drew Barrymore who is rapidly becoming America's sweetheart in my book. She plays the good girl, cute but not classically beautiful, better than any of the other pretenders to that throne. She is truly having a magnificent third act in a career marred by the premature success of being a Barrymore and being in *E.T.*, and then the collective indignity of being the youngest actress in rehab, being ogled by David Letterman, and forced to star in trash like *Poison Ivy*.

It is eery seeing the mid-1980s as the object of soft gooey nostalgia. *The Wedding Singer* invokes this era (in case anyone has forgotten or was too young to have been there the first time) in an uncannily accurate sense of costume and art design. Each shot is lovingly crafted to replicate the down market aspect of the yuppie era in a manner akin to the recreation of up-market 1970s suburban WASPness in *The Ice Storm*.

Oh yeah, the music rocks. Boy George, Psychedelic Furs, and even Van Halen whose music is absent, but whose presence is a brooding omnipresence as the story unfolds. This movie was a charming trifle which lightened my day and sent me home humming songs otherwise moldering in my pre-CD record collection. How fitting that as the credits roll, we hear "Video Killed the Radio Star," the first video ever played on MTV, the true cultural avatar of the era.

AS: The View from 7M

There were many reasons why I really didn't want to see this movie. From what I could tell from the trailer, *The Wedding Singer* involved Adam Sandler, a rapping grandmother, and an awful lot of nostalgia from the early '80's. I have to stop for a moment to explain my resistance to the last item. As far as I can tell, popu-

lar culture has just barely entered a 1970's nostalgia phase. *Boogie Nights* and *Jackie Brown* were just the beginning. We still have so much more to explore (for example, Oliver Stone really ought to do a film on the Carter presidency). I just think that it is way too soon to move onto the 1980's. Besides, the '80's wasn't a great decade for me—I missed most of it on account of graduate school—so I have less to remember than most.

But I have to admit that I quite enjoyed this little cupcake of a film. Unlike other recent post-SNL movies, its humor isn't vicious or scatological. The jokes are slight and at no one's expense. In fact, if I could indulge in a bit of nostalgia myself, Adam Sandler and Drew Barrymore kind of reminded me of Frank and Annette in the Beach Blanket movies. There were a host of well placed cameos, including Steve Buscemi as a drunk best man, John Lovitz as a rival wedding singer, and Billy Idol as, well, Billy Idol (this is a movie about the early 80's, after all). My favorite cameo was by a 1979 AMC Pacer that was last seen, if I'm not mistaken, in *Wayne's World, Part II*.

So, in the end, I recommend the film, but with a few reservations. First, avert your eyes when Adam Sandler tries to act. He is pretty good with single sentences, but anything more than that is painful to watch. Second, don't expect to see more of the rapping grandmother than you saw in the trailer. Although she is in the film quite a lot, the movie never explains why, inexplicably, 30 seconds of granny-rapping is included in a scene where she sings (quite nicely) "Til There Was You." Third, after this movie, you may never want to be seated at Table 9 at a wedding ever again.

GUILTY PLEASURES II:

In light of the film reviewed in this column, and the tremendous interest generated by our past Guilty Pleasures column listing the films we were just ever so slightly embarrassed to enjoy, we thought we would share with you the guilty pleasures of our faculty colleagues. This issue we begin with Professor Stacy Caplow who, when she is not teaching, writing, and directing clinics, rents the following films under an assumed name at her neighborhood video store:

Fame, Flashdance, Footloose and Fever (Saturday Night)

The Way We Were

The Lost Boys

Eddie and the Cruisers

Love Story

Now Voyager

Any Pre-American Gigolo Movie with Richard Gere

Animal House

Revenge of the Nerds

Next column, the Guilty Pleasures of Professor Jennifer Rosato.

BOOK REVIEW

Annette Warriner

Last week I merrily set off to the Brooklyn Heights branch of the Brooklyn Public Library in search of an inspirational book to review for the edification of the Brooklyn Law School community. Two weary hours later, I was at a loss. Not due to a lack of books about law related topics. At least at first glance, it appears that three out of four books in this branch of the library are about law in some capacity, the others are about sex. I had already, of course, eagerly scoped the shelves of the most recently published books. Along with the obligatory O.J. Simpson saga, (this one offering the new and fresh perspective of a family member of O.J.'s finally coming forward to tell THE TRUTH about O.J. and, I assume, about the murder), there were books about losing fat, loving fat, sailing, and the latest edition of *The Rules*.

I divided the law related books I could possibly review into two categories. The first category includes books that would impress people at the types of cocktail parties attended by Professor Sebok¹. This category includes books constituting required reading for undergraduate political science majors including anything by, or making a reference to, The Federalists, Plato, Socrates, or anything about political game theory. The second category includes books about law that are read by lots of people who know nothing about law.² These are the books that are made into major motion pictures and are usually written by Jon Grisham.

I discounted the first category because I was an undergraduate political science major and I have not been to a cocktail party in a very long time. I rejected the second category because the latest Grisham will be soon brought to life on screen with the protagonist brilliantly depicted by Mathew McConaughey or Matt Damon with lots of special effects. So, in the end, I closed my eyes and selected a book at random. I chose *Becoming Gentlemen: Women, Law School, and Institutional Change*³ by Lani Guinier, Michelle Fine, and Jane Balin.

Becoming Gentlemen makes an convincing, and controversial, argument that women are shortchanged by the current state of legal education. While the authors are careful to state that not all women are adversely affected by the format of law school education and that some men are, the premise of the book is that most women in law school today are working within a system that is in and of itself dysfunctional. The authors came to their conclusions using written first person narratives, interviews, questionnaires, and quantitative research data (although their research is limited primarily to the University of Pennsylvania Law School.)

The experiences of the women polled can be extrapolated to women's experiences at law school in general, of course, but I found some of the women's experiences to be inapplicable to my experience at Brooklyn Law school.⁴ I was more impressed by her contention that legal education, the Socratic method in particular, is antiquated and rewards behavior that is not conducive to becoming a productive lawyer of the present and of the future. Guinier writes, "...what does the present approach to legal education accomplish?....The twenty first century may require fewer litigators and more negotiators, fewer solo practitioners and more in-house counsel, fewer brilliant advocates and more brilliant collaborators." Her argument continues "Teamwork, listening skills, and creativity in problem solving may be equally important, and sometimes even more important than argumentativeness, aggressiveness, or individualism as we prepare to enter a new era".⁵ The authors write clearly and concisely, offering poignant illustrations of some women's experiences in their first year at law school. Women write about feeling alienated from their classmates, intimidated by their professors, and losing their self esteem.

Becoming Gentlemen moves beyond mere commentary of the current status of women in law school today to offering suggestions for more effective gender integration and, consequently, a more efficient study of law. Lani Guinier also includes an afterword that I found as troubling as the findings of the Fine, Balin, and Guinier study of the women of the University of Pennsylvania Law School. Using Alice in Wonderland as a metaphor, she writes about how she found parallels between her experiences at law school and her experiences as Assistant Attorney General for Civil Rights. In both situations, she felt excluded by the mainstream because of her

gender and as an African American.

So, in the end, I find myself lucky to have stumbled upon a book I might otherwise have missed. A book that voices ideas and even sparked a debate amongst a group of law students I spoke with.⁶ I highly encourage law students of both genders to read *Becoming Gentlemen* and write *The Justinian* with responses.

¹ April 1, 1998, Professor Sebok's Jurisprudence class discussion. Professor Sebok commented that deconstruction is a fun word to bandy about at cocktail parties.

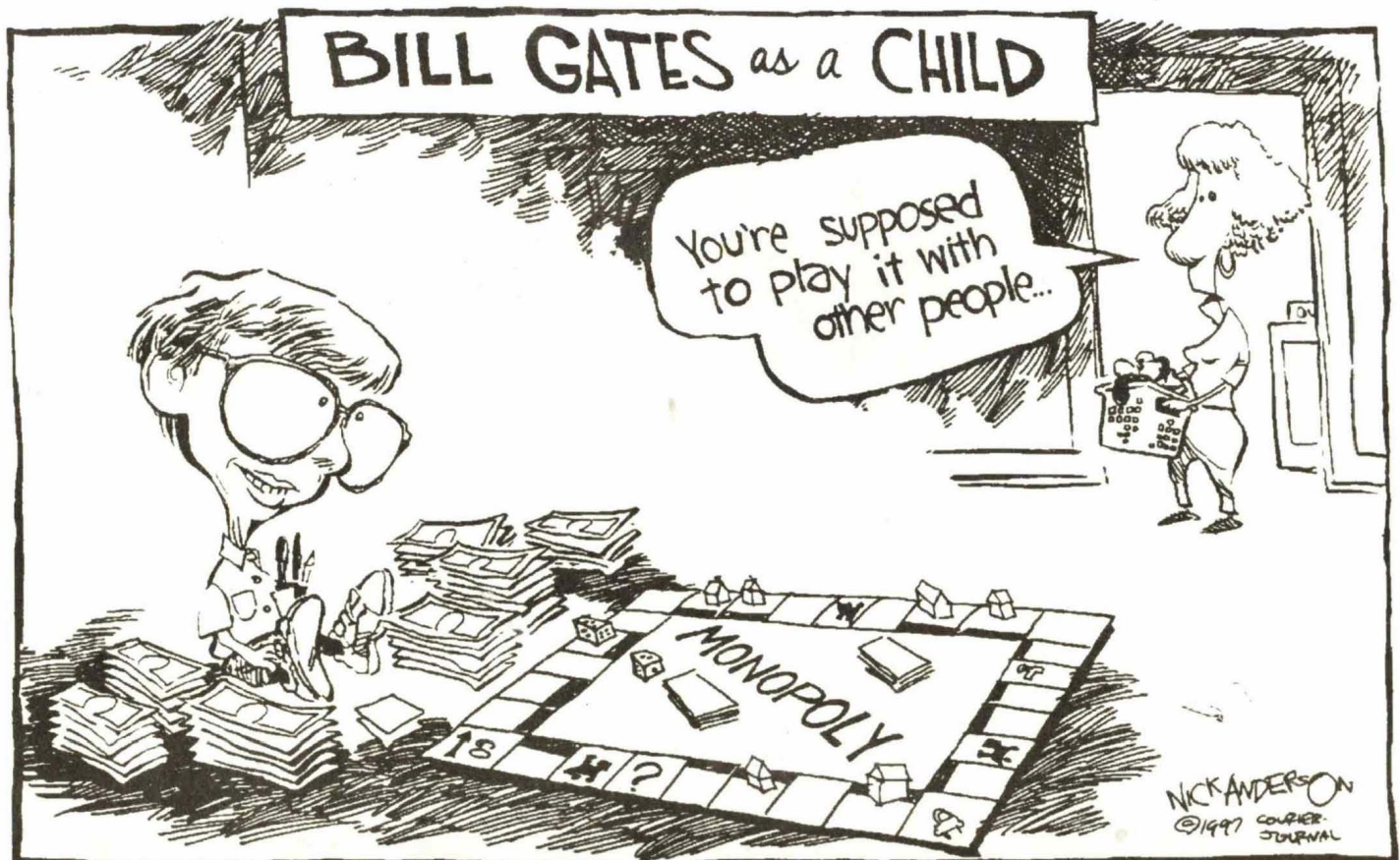
² This includes law students. A fellow law student remarked to me that she was shocked when another student complimented her on her ability to formulate a legal argument. She remarked that a third year law student who cannot put together a legal argument is like a first year medical resident who cannot locate the appendix. Mental note: buy Gray's Anatomy, locate appendix. Be able to helpfully point it out to resident in an emergency.

³ Jane Balin, Lani Guinier, and Michelle Fine, *Becoming Gentlemen, Women, Law School, and Institutional Change*, (Boston: Beacon Press, 1997).

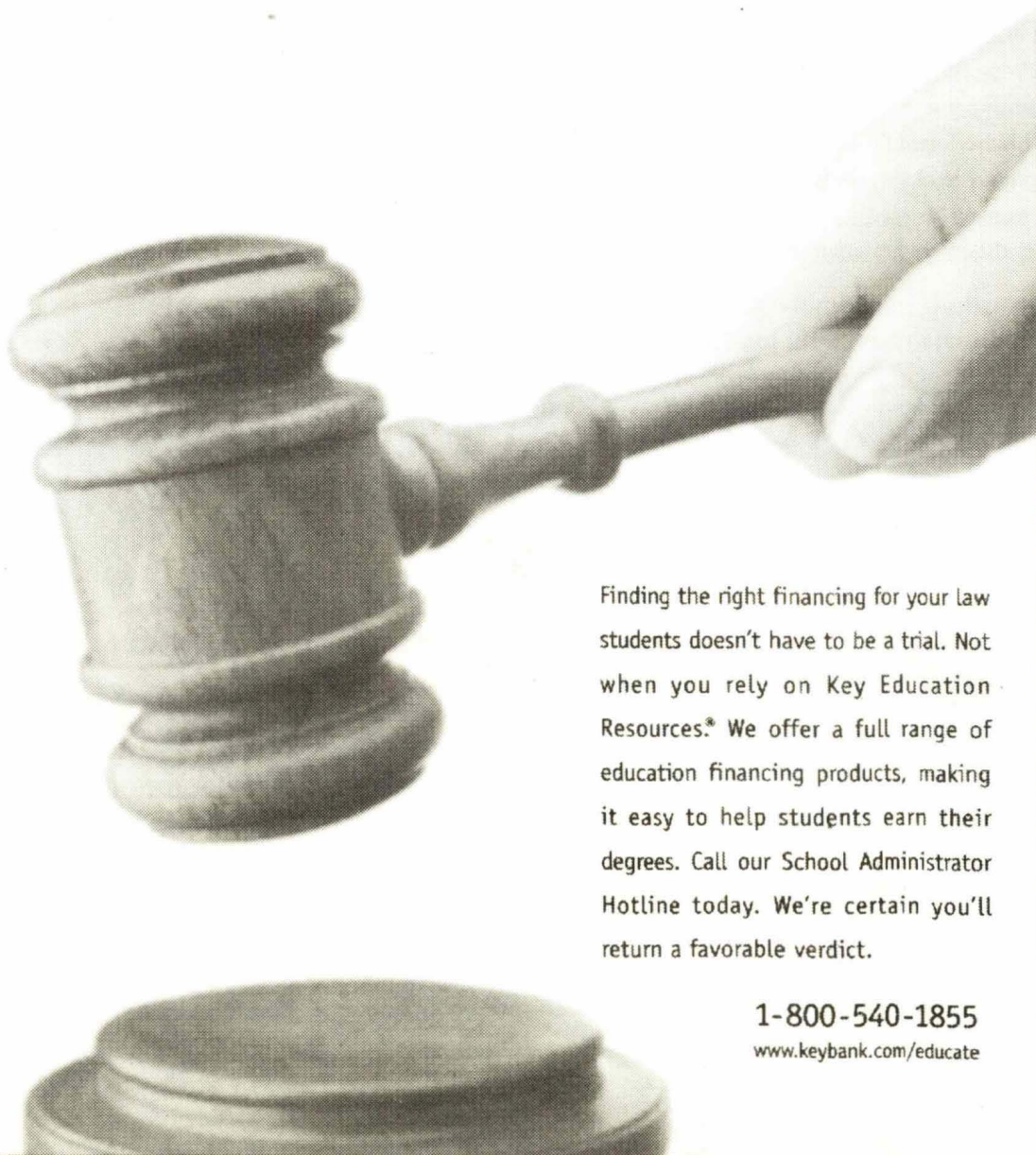
⁴ For example, the title of the book is a reference to a law professor who addressed his students as gentlemen regardless of their gender. I have found that several Brooklyn Law School professors are very conscious of gender issues and make efforts to interchange gender in classroom hypotheticals.

⁵ Balin, *supra* 5-6.

⁶ The fact that most law students will debate virtually ANYTHING is imaterial.



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H E L P A T E V E R Y T U R N

THE JOB GODDESS GIVES SOME ADVICE

Kim Alyane Walton

Getting Another Employer To Want You -When Your Summer Clerkship Employer Didn't

Dear Job Goddess,

The worst thing that could possibly happen, happened. On the last day of my summer clerkship, the hiring partner called me in. I was sure I was going to get an offer, but instead he said, "I'm afraid we're not going to be inviting you back." I was so shocked that I don't remember anything he said after that. I'm dreading the prospect of interviewing with other firms because I know they'll ask me if I got an offer. Tell me, Job Goddess, what should I say?

MT, Colorado

Dear MT,

The Job Goddess realizes that the last thing you need to hear right now is that annoying business about silver linings. But you need to know that for all the pain you feel right now, many of the happiest law school graduates are those who got the heaveho after their summer clerkship. To get from here to there, MT, you've got to realize that it really doesn't matter that you didn't get an offer what counts is how you present it to future employers. And in order to make a convincing presentation, you need to do a bit of spadework.

First, you've got to determine exactly what happened. The Job Goddess realizes that you're in shock, but you must take a deep breath, and look for clues. As Suzanne Mitchell, career services director at the University of Chicago Law School advises, "Tell the story of your summer. Look at your assignments and interactions with lawyers at the firm and your reviews, and see if you can piece it together. "Were you too proud to ask questions about your assignments, such that you turned in work your supervisors couldn't use? Or was your research incomplete, or your documents misspelled and shoddylooking? Did you miss deadlines? Did you lock horns with somebody important?"

If you honestly cannot figure it out, call the firm, and ask why you weren't invited back. Suzanne Mitchell warns you, "Don't be defensive! This is a factfinding mission. You aren't offering excuses for what happened or defending your work. Instead, you need to say something like, 'I'm not challenging or blaming, but I need to know what to do to succeed.' Listen carefully to what you are told, and see what you might do to avoid having the same problem happen again."

As you do this evaluation, you might find, MT, that the underlying problem was actually that you sabotaged yourself. Ask yourself: Did you really want the job, or did you really not want to be rejected? If you didn't want the job, you may have subconsciously dropped the ball to avoid having to turn down an offer. You wouldn't be alone studies show that as many as a third of law students don't actually want to be lawyers! And if that's the case for you, your firm did you a favor by encouraging you to determine right now, instead of five years down the road, exactly what it is that you do want.

Once you've figured out what went wrong, you need to find out from the firm what they are going to say when prospective employers call them. As Suzanne Mitchell says, "Don't assume that people won't call! They will." Seek out people who are willing to say good things about your work, and write down their names, addresses and phone numbers.

Now that you've learned about what went wrong along with what the firm will say, plan what you yourself will say. The key here is to focus on what you learned as a result of your nonoffer. For instance, if the problem is that you didn't ask questions about your assignments, you can say something like, "Frankly, I was afraid of looking stupid, so that when I got assignments I sometimes researched issues that my supervisors didn't really want to know about. That taught me a valuable lesson about making sure I have my assign-

ments crystal clear. When I did clarify my assignments, the lawyers I worked for were very happy with my work. In fact, here are their names and phone numbers they can tell you about the quality of my work” at this point, of course, you’d fork over the list of attorneys who’ll say nice things about you.

The key here, MT, as Suzanne Mitchell points out, is to “Practice what you’ll say, until you feel as comfortable talking about it as you would talking about the weather.” Be sure not to answer a monosyllabic “no” when you’re asked about whether you got an offer. Remember: It’s not the substance of what happened, but rather what it portends for your future employers. And if you can credibly explain why your summer bug-bear will not reappear, you’ve vanquished the problem.

The Job Goddess knows that you will find it hard to believe that you can overcome a nonoffer this easily but you can. In fact, no matter how much it hurts right now, in the long run you really will be much better off. Why is that? As Suzanne Mitchell explains, “A rejection forces you to do something everyone should do, but most people don’t: think about what you’re really good at, what you really want.” So your rejection will unwittingly ensure your happiness in the long run. The Job Goddess can ahem attest to this firsthand. She summerclerked for a megafirm which told her, at the end of the summer, she wouldn’t be coming back. If not for that rejection, the Job Goddess might never have become the Job Goddess. (Of course, while she is ultimately grateful to that firm for rejecting her, the firm will nonetheless not be making an appearance in the Job Goddess’s upcoming blockbuster, “America’s Greatest Places to Work with a Law Degree” (Harcourt Brace, to be launched April, 1998).)

So, MT, follow the steps the Job Goddess has outlined for you and realize that your unlucky summer does not mark you for life any more than it defined the Job Goddess.

Eternally yours,
The Job Goddess

Handling Jekyll & Hyde Grades

Dear Job Goddess,

I just started my second year in law school, and I don’t know what to do about my grades on my resume. My first semester grades were terrible and my second semester I did much better. Overall I am in the middle of my class. What should I put on my resume? Is it possible to highlight my second semester performance and hide what happened before?

NR, North Carolina

Dear NR,

For all practical purposes, yes you can hide your slow start. The Job Goddess doesn’t mean to suggest that you actually, physically ditch your overall GPA or your unfortunate first semester. But you can take advantage of the psychology of resume readers to make your first semester seem invisible.

How? As Kathy Brady, former career services director at Fordham Law School, explains, “You have to realize that most people just scan resumes, from top to bottom and left to right. The first number they see on the left hand side of the page is the one they’ll remember.” With that in mind, NR, you need to take your three figures—your second semester average, your first semester average, and your overall GPA—and space them out on your resume with the best grades flush left, the worse semester in the middle, and your overall GPA flush right, like this:

Second semester GPA

First semester GPA

Overall GPA

With the natural way people scan a page, the first number your readers will see, and the only one they’re likely to remember, is that second semester GPA. And whaddya know—that’s exactly what you want them to

do.

Incidentally, NR, your law school colleagues who are metaphysically peering over your shoulder and reading this advice will enjoy knowing that this spacial setup can cure a variety of credential ailments. It obviously would work if you were a third year, and had one year of law school when your grades far surpassed those of your other year.

It would also work in a situation where you excelled in classes relevant to the employer, and not in others. For instance, let's say that you wanted to work for the prosecutor's office, where your wonderful grades in classes like Criminal Law, Criminal Procedure, Trial Tactics, and Research & Writing would be most relevant. You'd set up your "grades" line as follows:

GPA in relevant classes

GPA in other classes

Overall GPA

"Well, OK, Job Goddess," she hears you saying. "What if your grades don't divide so nicely into positives and negatives?" The Job Goddess reminds you that mediocre grades do not a mediocre lawyer make, as the Job Goddess has advised in previous columns and will undoubtedly revisit in the future. To put it briefly, employers don't care about what you can't do for them, but what you can. When you prove that to their satisfaction whether in the form of grades, or work experience, or volunteer positions, or anything else you'll get the offer.

Eternally yours,
The Job Goddess

How Do I Get My Own Law Firm Without Starting My Own Law Firm?

Dear Job Goddess,

I am currently clerking at a large personal injury firm in Washington, DC. I want to be a trial lawyer, but if I start my career here, I will just be shuffling hundreds of worker's comp files. I don't really want to hang out my own shingle. Instead, I've been thinking that I would like to find a job with a senior lawyer who wants to slowly wind down his or her practice, and wants to handle big cases but is looking for a "mentee" to try the smaller cases. What do you think is the best way to accomplish this seemingly impossible task? I feel like I am trying to locate a needle in a haystack.

DH, Maryland

Dear DH,

Impossible? Needles? Haystacks? Why, this is exactly the kind of quagmire in which the Job Goddess loves to wallow. Your goal is actually very much easier to attain than you think, DH. And on top of that, the Job Goddess applauds you for seeking a job which is likely to bring you a great deal of happiness.

There are several methods for finding the retiring lawyers you seek. There are two direct routes which are likely to bear fruit most quickly. One is to go to local bar association meetings, make a point of introducing yourself to people, and tell everyone whose ear you can bend exactly what it is that you want. Make a special effort to meet the head of the litigation section of your local bar, since it's trial work that you want to do. Along the same lines, go to the local courthouse whenever you can, taking a morning or afternoon off work, if need be. Introduce yourself to the court clerk, bailiffs, judges, and tell them what you're looking for. After all, they're going to know every trial attorney, and will certainly be able to identify the ones who are golf course bound. On top of that, they'll be a great source for weeding out the good eggs from the bad ones, since they've seen local trial lawyers operate first hand!

With either of these direct methods, DH, be sure that you impress every person you meet, even though they will not be your ultimate employer. Smile. Seem enthusiastic. Stress your willingness to work hard in return for soaking up knowledge from an experienced lawyer. Your first impression on the people you meet

will have a dramatic effect on their willingness to help you – and what they’ll tell the senior lawyers they know!

A somewhat less direct route, but one not to be overlooked, is to go to the career services office at your law school, talk to the director, and explain your goal. Most law students do not appreciate what a gold mine of information their career services directors really are – they do so much more than organize oncampus interviews! So it may be that you need go no further than your own law school. Or your own law firm, for that matter – if you don’t mind the people you work with knowing that you’re looking elsewhere, tell your colleagues about your goal. The benefit here is that because the lawyers at your firm are familiar with your work and know what it’s like to work with you, they’ll tend to think of people for whom you’d be a good work and personality fit.

If you insist on taking an initial step that doesn’t involve talking with people, there are a couple of fertile resources you can use. One is to let your fingers do the walking – check the yellow pages! Look up the names of sole practitioners who are litigators (the yellow pages will mention their specialties), and then look them up in MartindaleHubbell. (You can find MarHub online, at <http://lawyers.martindale.com/marhub>). Look at their graduation dates, and when you find ones that are about thirty years ago, you’ve got a potential target audience for your letters. The Job Goddess would tell you what to say in those letters, DH, except that this simple column would become fifty pages long. Instead, she encourages you to borrow – or, dare she suggest it, buy – a copy of her runaway bestseller, “Guerrilla Tactics For Getting The Legal Job Of Your Dreams,” and read the chapter entitled “Correspondence – Making Your Letters Sing.”

You might also consider getting online. You can go to a chat room or enroll in a list serve for your state and/or local bar association; more and more state bar associations have such facilities, and the Job Goddess knows of enterprising students who have gone to these chat rooms and list serves, waited for an opportune moment, and pitched their services to the members – with glorious results. To find out the web addresses for these resources, call the relevant bar association.

You may even want to consider doing a reverse job ad. That is, run an ad looking for a practice. What you’ll want to do is to put an ad in the classifieds section of a publication that goes to your target audience, like your local or state bar journal or even a newspaper. In your ad, don’t just state what you’re looking for; emphasize your willingness and desire to work hard.

No matter which route you choose, DH, remember the nature of your quarry. When a sole practitioner hires someone on, the relationship resembles a marriage more than a traditional partner/associate connection. The personal relationship you develop is of paramount importance. So be sure to look for someone who is on your wavelength, and don’t be discouraged if you and any one lawyer don’t “click” – if you do as the Job Goddess advises, there will be plenty of fish in your ocean.

Eternally yours,
The Job Goddess

All submissions are welcome.
Please bring them to room 610
or
put them in our mailbox on the fifth floor
or call *The Justinian*
at (718) 780-7986.

GOOD LUCK ON FINALS!

GOOD LUCK ON THE BAR!

HAVE A GREAT SUMMER!

Cooking Span
Shivs Thopter

SPRING 1998 DATES

from



MPRE INFORMATION

FRIDAY, FEBRUARY 13 FILING DEADLINE
FRIDAY, MARCH 13 IS THE EXAM

BAR/BRI *LIVE* MPRE COURSES IN NYC

SUNDAY, FEBRUARY 22

SATURDAY, MARCH 7

SUNDAY, MARCH 8

Stop by the BAR/BRI table for video location information.

BAR/BRI *LIVE* CPLR COURSES IN NYC

SATURDAY, MARCH 28

SUNDAY, MARCH 29

Stop by the BAR/BRI table for video location information.

BAR/BRI TABLE DATES FOR SPRING 1998

BROOKLYN

MON.	TUES.	WED.	THURS.
1/26	2/3	2/11	2/19
2/23	3/3	3/11	3/26
3/30		4/15	4/23

Bar review books will be distributed
to graduating students on this day!

The filing
deadline for the
NEW YORK
BAR EXAM is
MAY 15th