

The Justinian

Volume 2004
Issue 3 *October*

Article 1

2004

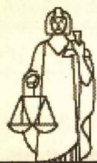
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Absentee Voters May Choose Pres

By Valentina Shaknes, '08

We all know what happened during the last presidential election. The recounts, public outcries, the controversy surrounding the Florida results, and the notorious Supreme Court decision — all have already become a part of history.

It is increasingly likely that this election will be as close. The polls from the weeks preceding the Republican Convention showed Senator Kerry leading slightly on most issues important in this election. The latest polls, however, are showing the Senator trailing on these same issues. While not unexpected, given the fact that President Bush is still benefiting from the post-convention "bounce," the sways in the polls indicate just how closely divided the Nation is.

Most of the voters seem to have already made their decisions. More than that, judging by the polls, it appears that most of the decisions are made along the party lines. The "red" states will likely remain "red," and the "blue" ones are unlikely to change. And since most states are already determinedly "red" or "blue," under the electoral college system the votes of the residents of these states (most of us) will not really count, and are therefore of little interest to either candidate.

The real battle now on the way is for the so-called "swing" states. Swing states are neither predominantly democratic nor predominantly republican, may go to either candidate, and have previously voted republican as well as democratic.

The undisputed swing states in this election, in the order of the number of electoral votes, are: Florida, Pennsylvania, Ohio, Minnesota, Wisconsin, Iowa, Nevada, New Mexico, West Virginia and New Hampshire.

The victories in these swing states will almost certainly be extremely narrow. In these states every vote will count, and each vote can make a decisive difference.

If YOU are a resident of one of these states, YOUR VOTE may decide this election. If, as I suspect, you plan to be at BLS on the Election Day, it is crucially important that you cast your vote through an absentee ballot.

Absentee voting is very easy. Simply go to your state's home page, download the Absentee Ballot Application Form, follow the website's instructions as to how to fill it out and send it in. (For example, go to www.ohio.gov, click on the link to "Forms," and click on the link to Absentee Ballot Application Form.)

The one-page form is extremely basic and will not take longer than three minutes to fill out. It is, however, critical that you mail the Request Form as soon as possible. Your state's electoral

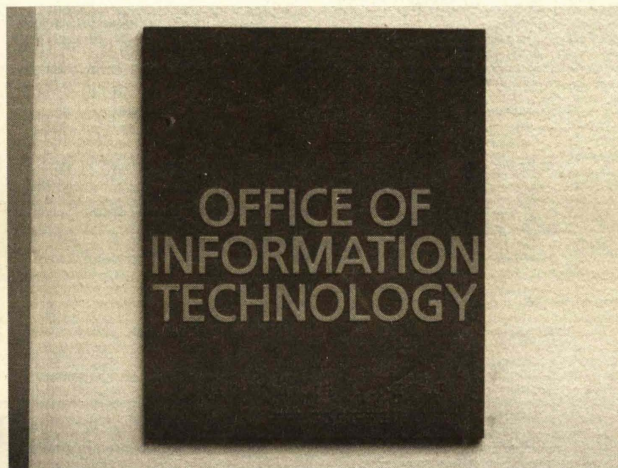
Special 155 Brooklyn Works, 2004
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Changes Underway to the BLS Network

By Ben Battles, '07

Deep within the bowels of the Brooklyn Law School library in an air conditioned basement lies the machinery that keeps the law school community connected with each other and the world. This is the center of operations for the school's internet network. Often taken for granted when running smoothly, the network can easily become a major thorn in the side of the internet savvy law student when any one of a number of factors cause it to operate at a less than optimal level. There are a number of significant changes that have been made and are going to continue to be made throughout the year to the network and its various servers. These changes will ultimately result in the improvement and creation of a variety of internet services that will benefit the law school, its students, faculty, staff, and alumni. On the road to that ultimate goal, however, there have been and will doubtlessly continue to be some unpleasant bumps.

The major change this year has been the acquisition of Cogent Communications as the new internet service provider (ISP) and the fiber optic connection to the network that they provide. This new fiber connection has a capacity of 100 megabits per second, roughly thirty times that of our previous T1 cable connection provided by Verizon. Phil Allred, the Chief Information Officer for the school's Information Technology department explained that this connection has taken a while to finalize because Cogent's net-



All the changes to the BLS Network start here.

Photo by Greg Brown, '05

work terminates in lower Manhattan. To link the school up with Cogent's network, another contract had to be signed with KeySpan, who had a fiber link from 60 Hudson Street in Manhattan to MetroTech Center in downtown Brooklyn. A brand new fiber link had to be constructed from MetroTech to the law school to bring KeySpan's service to 250 Joralemon.

Cogent Communications claims to be one of the most reliable internet providers in the nation. Apparently on September 11, 2001 they were the only ISP to maintain service in lower Manhattan. This reliability is due to the physical construction of their network, and the built in back up mechanisms therein. Mr. Allred explained that unfortunately, Brooklyn Law School will not

have the benefits of Cogent's built-in safety mechanisms since their network doesn't extend into Brooklyn. However, the school maintains a backup connection through Time Warner Cable so that should something happen that interrupts the connection to Cogent, the law school will still be able to access the network.

Despite this backup connection, as many students have surely noticed throughout the first few weeks of the semester, there have been a number of outages of both the network as a whole, and of the various servers. These outages have resulted from a number of factors, mostly related to the changes

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A Profile of the Equal Justice Works Program at BLS

By David Ries, '06

Brooklyn Law School is a sponsor of Equal Justice Works, a membership organization for law schools with a commitment to developing the next generation of public interest lawyers. All students who are considering careers in public interest, or even just a summer, should familiarize themselves with the offerings of this organization.

Equal Justice Works was formed as a network of student-led public service organizations at law schools but it recently changed its organizational structure. Now its membership is comprised of law schools, so that student groups no longer have the administrative and financial burdens that they had in the past. With its membership of entire schools the organization has become a leader in its field, able to reach and provide services to public interest-minded students who are not affiliated with any particular group.

Equal Justice Works offers: an annual public service job fair; public interest law fellowships; original research, publications and consulting on issues such as law schools' and public interest employers' loan repayment assistance programs and public interest

employers' average salaries; awards recognition; summer corps;

Fellowships

In recent years, Equal Justice Works has helped Brooklyn Law students find public interest jobs and has even funded post-graduate work. Former Sparer fellow Laurie Parisse ('04) received an Equal Justice Works Fellowship to work at the Legal Action Center in New York where she is focusing on the unique employment barriers faced by youth emerging from the criminal or juvenile justice systems. "The Legal Action Center did not have funding to support this initiative so the Equal Justice fellowship was what enabled me to pursue this project," Laurie explains. "The fellowship has given me the opportunity to explore civil rights within the juvenile system."

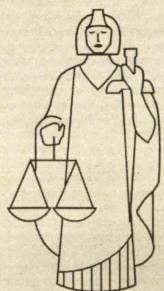
Equal Justice Works Fellowships fund projects that propose innovative legal services, support and delivery mechanisms to under-served populations in the United States. The work of the Fellows is designed to have a substantial impact on the communities they serve, whether through community education, legislative or administrative advocacy, community economic development, direct services, or precedent-

setting litigation. Equal Justice Works provides generous loan repayment assistance to Fellows who qualify through its Loan Repayment Assistance Program (LRAP).

This year, Brooklyn Law hopes to have more graduating third-year students receive fellowships. It is a tribute to Brooklyn Law's commitment to public interest work to have such strong applications coming out of the school. Rekha Eanni ('05) is a current applicant whose proposal is to help restaurant workers in New York City receive better working conditions. She says, "There are so few project-sponsored fellowships available, the Equal Justice Works program is absolutely necessary."

Many Equal Justice Works Fellows use their fellowship as a launching pad for a long-term public interest career. Another applicant this year, Allison Lewis ('05), explains that "the prestige of the fellowship and the unique leadership experience it offers make the fellowship preferred over filling an open position in an established public interest endeavor."

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Professor Profile

Brooklyn Law Professor George Johnson

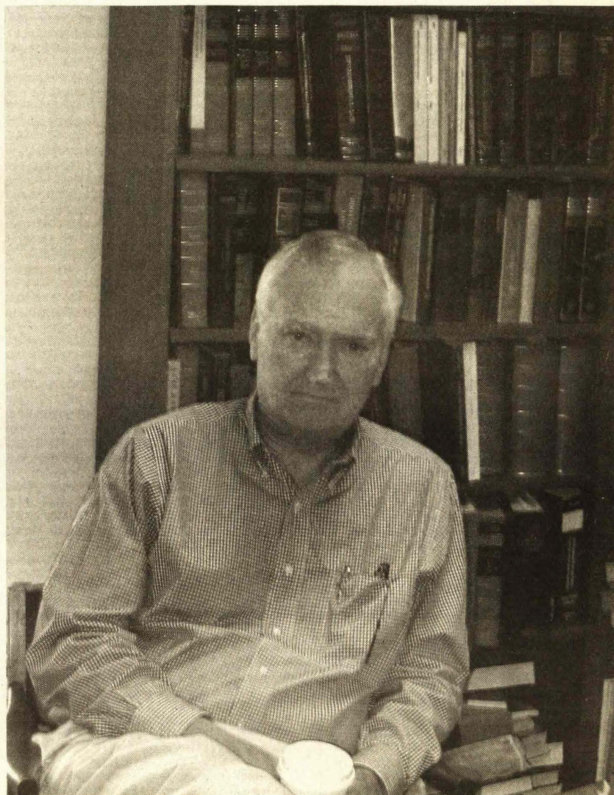
By Brian Pleban, '05

Professor George Johnson came to BLS in 1973 – and since that time has played a key hand in making your law school into the place that it is today. Not only has he taught various courses at the law school (from Property and Land Use classes in his early years to Environmental Law and the Environmental Law Topics Seminar that he teaches now), but he has also held positions of Acting Dean, Dean of Students, and Associate Dean for Academic Affairs.

Professor Johnson didn't waste much time getting into teaching law. After Law School at the University of Florida and getting his LL.M. at NYU, Professor Johnson worked for a judge for a short time and in private practice for a short time, before making his way to Brooklyn Law. And he's been here ever since.

Students of Professor Johnson will easily be able to gush about his excitable and dedicated teaching style, which makes sure that you'll get the point, even though there might be some interesting detours along the way. "Every class has a different personality and the pathways to get the material to these different personalities always changes," says Professor Johnson "and that is the challenge for me." During class, it is clear that he is always searching for new and interesting ways to get the material into his students minds – even those students who he thinks might have "shut down" and given up on the material ("those are the ones that can be a challenge" he says).

The current professional interest for Professor Johnson, outside of the classroom, is a long essay on something that haunts all first year students: the history and nature of estates, also known as the Rule against Perpetuities. He has also written a text book on Land Use



Professor George Johnson
Photo by Brian Pleban, '05

and has done research into why exactly our system of justice looks the way that it does, from a psycho-analytic viewpoint.

Professor Johnson feels that the student body has changed a little bit in the past decade or so, with students thinking that Brooklyn Law is somehow lesser than some other, higher-ranked law schools. Students need to have more respect for how great a law school this is and how gifted they must be to be here says Professor Johnson. With a new dorm to open soon, a great loca-

tion and students who are as smart as any, Brooklyn Law School is a place to be proud of.

Not surprisingly, Professor Johnson is a big fan of the outdoors and enjoys his weekends and time off up in northern Westchester with his young son who keeps him busy as a bee, although "being that busy with him is the fun part of having a 10-year old" he says.

Next semester Professor Johnson will be teaching Environmental Law Topics Seminar and Land Use.

Absentee Voters May Decide Presidential Election

ABSENTEES

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authorities will have to mail you an Absentee Ballot in response to your request, which you will then use to cast your vote. Your Ballot must be received

from you by your state no later than on the Election Day.

If you have any further questions concerning voter registration, please contact either Julia Cervantes or Tony Burns of the BLS Democrats.

The votes of most of us cannot

make a difference in this election. Yours can. Don't throw it away!

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Brooklyn Law School News

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Equal Justice Works Program at BLS Helps Students Find Jobs

EQUAL JUSTICE
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Job Fair

Brooklyn Law School students have also had great success making connections through the annual Equal Justice Works Career Fair & Conference. Last year, one BLS student left the fair with offers from five different employers. This year's fair will be held at the Washington Hilton Hotel in Washington, DC on October 28-29, 2004. One-on-one interviews with public service employers are offered, and participating organizations and agencies are available at information tables as well. In addition, Equal Justice Works offers in-depth plenary panels and workshops aimed at educating and equipping students for a public interest

law career.

Awards

Brooklyn Law also hopes to have Equal Justice Works honor its students' public interest work honored through the organization's Martindale-Hubbell Awards for Exemplary Public Service. Those awards are given to law students or public service projects conducted at Equal Justice Works member schools. The awards honor law students who performed a unique public interest summer internship, clinical work, or pro bono work as well as student group projects that advance the public service ethic of their campus and peers.

And More

There are other opportunities available for law students to develop

connections in the field of public interest law through Equal Justice Works. One is the Summer Corps, which supports law students in expanding legal services delivery to those who need it most. This AmeriCorps-funded program provides 200 law students with the opportunity to earn an education award voucher for spending the summer at a non-profit, public interest organization. Another opportunity is membership on the organization's Board of Directors, which has law students serving with judges, corporate counsel, law firm partners, and public interest advocates. Equal Justice Works also recently created a National Advisory Committee (NAC) to guide and advance the organization's goal of having students develop a lifelong commitment to working on behalf of

under-represented individuals, communities and causes. The NAC is composed of 10 law students and 10 law school professionals (administration, faculty and staff), serving two-year terms.

With all of these offerings, Equal Justice Works is an important resource for Brooklyn Law students to learn more about. Attending the Equal Justice Works Career Fair is the best way to find out about the organization and students should also visit the organization's website. Brooklyn Law School is proud of its sponsorship of this organization. For BLS students pursuing a public interest law career, taking advantage of Equal Justice Works' programs will get them started.

Information Technology at BLS: Changes are on the Way

NETWORK
Continued from p. 1

that have been made and the growth of the network. There was a network outage on the weekend of September 12 that resulted from a mechanical problem with a new router that had been installed as part of the new connection. This problem caused the network to go down for a significant part of the weekend, but technicians came in and were able to get the problem remedied by Monday morning. Additionally, as individual servers are moved from the old connection to the new connection, there are unavoidable periods in which the server being moved will be inaccessible. As things are arranged and rearranged there will continue to be glitches that may create unexpected problems, although the staff of the IT department will be working hard to keep these problems to a minimum. Mr. Allred stressed that even if students and faculty are unable to access their web-mail accounts for a period of time, it is nearly impossible that any pieces of mail would actually be lost during this period. As it stands right now, all of the e-mail servers have been switched over to the new connection. All of the web servers and the connections to Westlaw and Lexis-Nexis are still on the old connection and will be switched over in the upcoming weeks.

Individual students may be also

experiencing problems accessing the network due to problems with their laptops. Over one hundred laptops have been blocked so far this semester because of viruses, worms, and spyware. This problem has been frustrating for students and time consuming for the IT staff, as it often takes up to three hours to clean a single laptop. Despite the frustration, it is necessary to do this in order to protect the other students and to keep the network performing up to its potential. Mr. Allred hopes that in the future more sophisticated tactics may be developed to monitor and notify users who have something potentially dangerous on their computer rather than just blocking their access to the network without notification. Although viruses continue to threaten and harm internet users, Brooklyn Law students not excepted, the new problem looming on the horizon for the computer industry is spyware. Spyware has become increasingly devious to the point where it can capture passwords and credit card numbers and send them off to sites around the world in seconds. Mr. Allred said that the industry has not as of yet been able to come up with entirely effective defenses against this problem. Despite this, he advised that students' best defense would be to quit using the Internet Explorer browser and instead use a browser called Firefox by Mozilla. Apparently Firefox's security measures are significantly more effective against

the dangers posed by spyware. Additionally, programs like Ad-Aware can be installed to detect and eliminate certain types of spyware.

Another problem that students have been experiencing this year is that while trying to access the network through a wireless connection, their computer will crash and display a blue screen. This is apparently being caused by an interaction between the school's brand of wireless access points and a defective software component of the wireless cards that are being sold with many new Dell and IBM computers. This problem is far more likely to happen in areas of the school where there is a lot of wireless traffic, like the library, for example. A patch is available to remedy this problem and is obtainable through the computer manufacturers' websites. The IT department can help students install these patches if needed.

In addition to ironing out all the wrinkles of the new network connection, there are several more internet related developments in store for the rest of the year. The biggest single new development will be the implementation of web-based course registration. This system was previously tested by entering in a sizeable minority of upperclass students' paper registrations for this semester. Mr. Allred said that the Registrar's office is hoping to have the inaugural run of the web based registration system next semester. Plans are also in the

works to develop a networked printing system for the library so that students can easily print from their laptops. The way that this system would function would be that a student would send a document to print from his or her laptop and then go to one of several printing stations in the library and punch in their user id and password, select their document and release it to be printed. In addition to these developments benefiting today's students, a contract has been signed for a program that will benefit the students of yesteryear. This contract is for the creation of a detailed alumni directory that would provide an easy way for alumni to stay in touch with, and keep tabs on, their former classmates.

Mr. Allred expressed satisfaction with the connection provided by Cogent thus far and plans to retain their services for the foreseeable future. While there is still a good deal of work before all of the school's servers are up and running on the new connection, great strides have been made towards this goal. As changes continue to be made, there will most likely be a few more frustrating instances when students, faculty, and staff are unable to access the servers they want to. But hopefully the worst of it has passed and we can now enjoy the speed of the new connection and the services provided by the IT department, all aimed to ease the business of being a law student.

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Opinions & Editorials

Letter From the Editors: New Opinions and Editorials Policy

After extensive deliberation by the editors of the *Brooklyn Law School News*, we have decided to implement a new policy regarding the Opinions and Editorials section of the paper. From this issue forward, op-eds will be limited to one comment and one response per topic. All submissions on a given topic in excess of this limitation will be edited for brevity and clarity to between 100-200 words and published as

"Letters to the Editor." Finally, all op-eds that are submitted must be less than 1500 words. The editors of the BLS News believe this new policy will give students an opportunity to continue to express their views while providing for a more diverse range of topics for publication. Thank you for your understanding and continued submissions.

Presidential Politics 2004: The Right Side of Things

By David Schlachter, '07

Welcome back everyone to another wonderful year of arena sports. I am referring, of course, to the political arena. After a very hectic summer that featured conventions, 'documentaries,' and ads for 'truth,' it's time to sort all the information out. The goal is to walk away from this with a clear understanding of the issues, and not find yourself in a jumble like Sandy Burger with information coming out of the wha-zoo, socks, and pants. On one hand we have our incumbent, President Bush, who *everyone* hates. On the other hand we have John Kerry who has great support and backing by the 'everyday Americans,' that hard working middle-class in Hollywood. Let's start untangling all the issues and find out who would be the better president.

There is no question that John Kerry will be a great president. President of France or Chechnya. However, what about president of the United States? Sure, we could just ask all those protestors who showed up in New York City for the Republican National Convention. However, since we are in law school I thought I should break down the argument with reason, and not by taking off my clothes.

Putting the war on terror aside for a moment, I will compare issues between our incumbent, President George Walker Bush, and our challenger, John Forbes "Who is No JFK" Kerry. Starting with education, President Bush initiated the Leave No Child Behind bill that passed through Congress, and raised student education level and success tremendously. The bill will continue to create progress in children's education across the country. John Kerry, of course, voted against this bill. He sided with the teacher's union. Give them more money while allowing them not to be accountable for students' progress.

Healthcare is usually better managed by the Democrats. Not anymore. President Bush proposes, instead of increasing the size of government, to allow small businesses to join together so they can afford the great healthcare benefits that big businesses enjoy. Kerry also wants to make it affordable to everyone. He will simply raise taxes.

And don't be fooled into thinking he will only raise the taxes of the rich. In twenty years in the Senate, Kerry has repeatedly voted to increase taxes on small businesses and the upper middle class. When you leave law school, do you plan on making less than \$50,000 for the rest of your life? If not, do you want to pay half of it to the government?

Speaking of taxes, President Bush

debate out of his acceptance speech at the Democratic National Convention. President Bush, on the other hand, in his acceptance speech in New York declared that the Palestinians will learn they too can achieve a life of peace "with our good friend Israel." For those of you who care about civil liberties, there is a tiny state on the other side of the Atlantic that is the only established democracy in the Middle East, and has

Islamic Terrorism, specifically the Taliban and Al Qaeda. He sent the clear, unwavering message, that anyone who kills unarmed American Civilians will have no safe haven.

President Bush knows what it means to be a commander in chief. In clear contrast, Kerry has voted against every weapons system the past twenty years. He voted against the technology and intelligence that won the Cold War, against the first Gulf War, and then against this War on Terror. To quote the challenger, "I did vote for the war, but only after I voted against it." He argued that Saddam had weapons of mass destruction, but voted against funding the war to liberate Iraq. He claimed that he wanted to send more troops into Iraq, but now he wants to withdraw all of them. He even claimed that the thousand soldiers that have died in Iraq did so while fighting the War on Terror.

President Bush has proven himself the last four years. Truthful, steadfast, unwavering. He keeps us safe. He inherited a recession from Bubba Clinton and he has shocked life into the economy. He also defied the effects of terrorism on our soil and still the job market is growing, and unemployment is down. He is better on issues of education, healthcare, taxes, and foreign affairs. He is a true commander in chief, steadfast and valiant in the war on terror.

Kerry, in stark contrast, has a twenty year senate voting record on being on the wrong side intelligence, the armed forces, and taxes. While he wavers and changes his opinion for political gain, our president stays true to form. When our president asked Kerry to join him in decrying the illegal 527 ads—like from the Swiftboat Veterans for Truth and Moveon.org—Kerry, as per usual, kept quiet and said nothing. You may not agree with President Bush on every issue but you can rely on him to keep you safe, keep the economy going, have a strong domestic policy, and a stronger foreign policy. You cannot rely on Kerry and his ever changing opinions. While Kerry is a great slimy politician, George W. Bush is a great president. To borrow the words from another George—Governor Pataki—this November "win won for the Gipper and not the Flipper." The choice is that clear.



Kerry and Bush at the first Presidential Debate in Coral Gables, Florida.
Photo Courtesy of Kerry-Edwards 2004, Inc. from Sharon Farmer

gave a huge tax cut to everyone and vows to make it permanent. He also wants to reform the tax code so there will be less government spending. Kerry, intends to raise everyone's taxes, everyone except the lower middle class. This includes the rich, but also the poor and the upper middle class.

Democrats love to preach how they are 'for the people.' President Bush doesn't need to preach it, he has shown it. He has placed more minorities in top level positions than any other president in history, and many more than John Kerry has working for his staff. From Secretary of State, to Defense, to Education and a myriad of other positions, President Bush stands for diversity in the United States by placing minorities in high level positions in the government. Kerry claims he is in touch with the people. He and his Vice President John 'Babyface' Edwards, both rich and overflowing in money, seek support from Hollywood and musicians while doing nothing for minorities. How exactly are they 'for the people'?

In world politics, Kerry very cunningly left Israel and that Middle East

to contend every day with suicide terrorist bombers targeting civilians. Civilians, like you and I, have to deal with bus bombings, bombings in malls, and people blowing themselves up in other crowded places in the name of religion. Kerry has kept quiet on Israel.

In fact Kerry is a big proponent of keeping quiet and doing nothing. He has consistently voted against every bill that passed him by to support the army and intelligence. Yet, he claims he to want to keep us safe. To borrow the great line from Democrat Senator Zell Miller, "armed with what, spitballs?"

Let's turn to the war on terror. Just after terrorist cowards hijacked four planes and crashed two of them into the Twin Towers—killing thousands of unsuspecting and unarmed civilians who did nothing wrong except happened to live in a country that is free—President Bush stood on top of the rubble at Ground Zero and proclaimed on a loudspeaker to all Americans, "I hear you, and soon they [the terrorists and all responsible for mercilessly killing thousands of Americans] will hear you." He then gathered the troops and struck a vital and fatal blow into the heart of

Opinions & Editorials

Judicial Activism: Helping or Hurting Social Reform

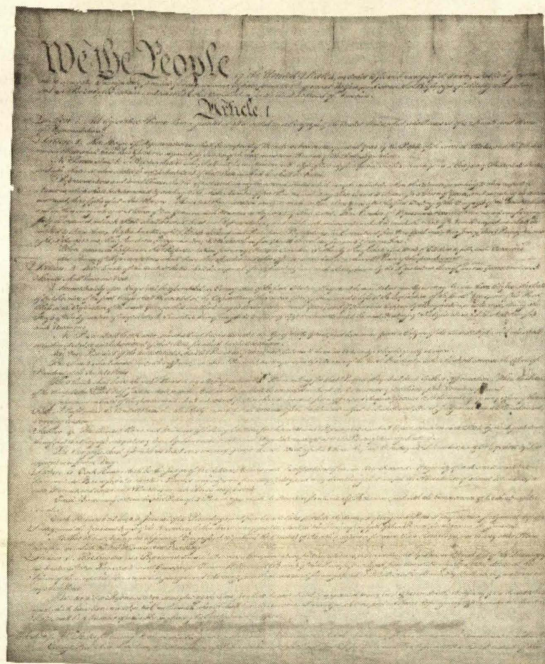
By Lawrence Hansen, '06

In *Brown v. Board of Education*, the court found that "separate but equal" has no place in public education. This decision by the Court defied *stare decisis* by overruling *Plessy v. Ferguson*. However, it is cited as the most prolific case of its time because the Court overlooked such formalisms to recognize a violation of an individual fundamental right. Scholars disagree as to whether *Brown* was a necessary step in the race relations revolution. Opponents declare it as judicial activism and, dubiously, cite its disregard of the interpretation of the Fourteenth Amendment as the source of their resentment to the newly desegregated schools. Regardless of the necessity of *Brown* or the veracity of opponents' claims, judicial activism does instill resentment in the citizenry due to the disregard of the political process.

Glossing over the fifty years since *Brown*, numerous examples of similar actions by the Court highlight the potential harm of such judicial activism. Even though activist judges act in a manner they perceive to be morally correct, they fail to obey the law. They act as a legislative body in deciding what the law should be. Supporters of judicial activism extol decisions of the court that unilaterally change the social paradigm by recognizing a new fundamental right, thus ignoring or overruling existing law. They take pride in such rights that were not developed through the democratic process. How does one argue against *Loving v. Va* or *Ollie's BBQ* as a bad decision? Is it wrong to support the outcome without accepting the process through which a judge got there? Both cases are examples of poor legal doctrine that promote social reform. Is intellectual dishonesty worse than social harms? It depends.

"Ours is a nation of laws, not of men." Actually, ours is a nation of men who make laws. The nation itself is bound by a set of laws, the Constitution. And those laws, made by man, are subject to mistakes and moral indignities. One need only look at the 3/5 compromise to understand the fallibility of man. Constitutional does not mean "morally right." Nor does "moral right" mean "legally acceptable." And

"legally acceptable" does not ensure transcendence in the eyes of organized religion. Constitutional, however, does mean legally acceptable. This is the failure of judicial activism. The judiciary is not to define what is morally right. They are to define what is legally acceptable, and too often these concepts are confused. While they are really arguing which morals to impose, liberals and conservatives cloud this reality in ongoing debate of the difference between moral imposition and legal restrictions.



It may seem to follow that the more behavior deemed legally unacceptable results directly in fewer personal freedoms. That is a half truth. The debate between authoritarians and libertarians exemplifies this issue. Since the doctrine of permissive governance became the dominant vision in the 17th century, people have acknowledged that they must rescind certain rights to obtain others. To obtain security one must rescind the right to use force on all others. This rescission of a natural law right results in greater freedom to all who abide by this social agreement.

However, an authoritarian state may create laws that restrict rights with no tangible benefit to the entire population.

The libertarians and authoritarians then proceed to debate the actual purpose of the restriction and speculate as to the purported societal benefit. See *Lawrence v. Texas*. The authoritarian and libertarian point-of-views debate the restriction on the right to sodomy versus the personal freedom associated with privacy. Do the possible societal harms from sodomy justify the restric-

tion regarding that in which they have property interest (including contract to sodomy, prostitution, etc...). What would be debated is whether the state must recognize and enforce such contracts (i.e. gay marriage). In fact, this argument as a measure of states' rights carries more validity.

The issue of states' rights is tied to judicial activism in this sense. The Constitution bestows the federal government with a limited role, permitting states to decide specific matters. For example, contract disputes are traditionally relegated to the states. Whether behavior is innocuous or harmful is best determined by individual states. The Supreme Court, in making those judgments, undermines the social development process and creates a negative reaction against homosexuality focused largely on the gay marriage debate. In fact, it resulted in a proposed amendment to the constitution to ban gay marriage. An amendment that would add bigotry to such a pristine document is morally wrong. But it would be legally acceptable.

This is the prime example of the harms of judicial activism. It circumvents the Constitution and the political process to remedy perceived individual wrongs. As a society we can commit to furthering the social dynamic by equalizing rights, enhancing personal freedoms and challenging archaic dogma without disrupting the Constitutional process. Changing the Constitution is difficult, but in order to achieve change in our society one must not only change what is legally acceptable, but also what this country perceives as morally right. That is a difficult objective, but taking a cue from the women's rights movement, it is not impossible.

The counterpoint is that people should not have to wait to obtain personal freedoms; that the court has the ability to affect change now. Judicial activism includes the possibility that it will be used to counter social evolution as well. The Court giveth, the Court taketh away. Any right the court can create, it can destroy. But that which is established properly is subject to erosion by one thing; judicial activism.

Contact the author at Lawrence.Hansen@brooklaw.edu with any comments or questions.

Letters to the Editor

A Response to Affirmative Action: The Debate Continues

By Duane Frankson, '04

The following is in response to the article submitted by Donato Guadagnoli appearing in the May 2004 issue of the BLS News. The article was titled "Affirmative Action: The Debate Continues" and appeared in the Opinions and Editorials section beginning on page 4. Past issues of the BLS news are available online at the Brooklyn Law School Website. This letter to the editor has been edited for clarity and brevity.

Critics find the result in *Grutter v. Bollinger* and the common understanding of strict scrutiny at odds. The detractors
Published by BrooklynWorks, 2004

argue there is no compelling state interest in diversity and question the usefulness of diversity in law schools. The proponents recognize diversity is a compelling state interest and institutions of higher education recognize diversity plays a significant role in education. Different views lead to different feelings.

Mr. Guadagnoli makes no attempt to validate the claim that affirmative action lowers standards; rather he argues any attempt to support affirmative action is intellectually dishonest. I don't condone looking at race alone in determining a candidate's acceptance; but can

we achieve diversity by ignoring race? I don't believe so. The fact is the number of qualified white applicants outpaces the number of qualified non-white applicants and based on this disparity, higher education must use race if diversity is the goal. I believe education is the arena where diversity should be expected and demanded. How fulfilling can education be without multiple perspectives and how can perspectives be obtained without diversity?

Mr. Guadagnoli's assumption that all schools in the urban public school system are inept, and that all, or the majority of minority students, are prod-

ucts of inept public schools. These assumptions are unsupported, unwarranted and patently based in stereotypes. The urban school system has a number of excellent schools and it's flat out wrong to assume the urban school system is incapable of producing well-educated students.

"Race" can be used to attain a well-rounded social, political, and educational experience or "Race" can be used to divide and oppress. I believe the former is the goal of current admission policies and the court's decision in *Grutter v. Bollinger*.

Opinions & Editorials

What's Up With That? A Status Report for the First Semester

By David Schlachter, '07

The fall semester is well under way in good ole' BLS. Yeah, Brooklyn Law School is old, as we are reminded every day by the wonderfully anachronistic banners that hang right outside of the main building at 250 Joralemon. How do you ever pronounce that? Is it jar-olemons, like some faculty members?

The signs may be old, as are the bulletins hanging outside the registrar's office, but some things, however, are new. Take the carpeting put in the library. Sure, we will excuse your appearance. We will also excuse the fact that the carpeting could have been put in during the summer when most students are away. Another new thing is the ID check when entering a school building. What is that about? The administration passed word that it is not about security risks, it is just procedure that is long in coming. If not for security is it so the guards can see what is everyone's wallet as they come into the building? It may be hard juggling your class schedule, but it is harder to balance three books, a laptop, briefcase, and try to fish for that ID in the pocket you could have sworn you put it in last night.

Another thing new that returning students must have noticed by now is the new instillation of wires hanging down from the classroom's ceilings. Walk into the classroom and see these wires just dangling down with little microphones at the ends. There is great speculation about why the devices are there. First round of blame goes to the professors, Professor Susan Herman in particular, who just could not hear students in the back. Instead of dragging around a microphone all class and giv-

ing it to the student that is talking, like a talk show host, the devices in the ceiling are waiting and eager to aid in the acoustics. Waiting and eager they may be, but they clearly do not work. Try as

they might, professors could not get the devices to work. No wonder they are teaching law and not technology.

This leads to the next popular theory. They really do work, just not in the classrooms. They are meant to relay the loose talk

about the school and are heard in the offices of the upper faculty. Big Brother is listening. This is only absurd if you think the upper faculty does not care about its students. If they do care, they want to listen. If you follow the logic we have a little quagmire. If the faculty is interested in what students say they have the devices. That means they are listening in, breaching privacy and trust. If the faculty does not care, then they

obviously will not listen in. This means, however, that the faculty does not care about us the students. Either way, the faculty is not looked on kindly by the students. This was just an example of

how lawyers can really toy with reputation if they just word theories correctly. This conspiracy is as reliable as a government cover up of aliens landing at Roswell. There are, of course, no aliens on Earth. Or are there?

The most reliable theory is that the school

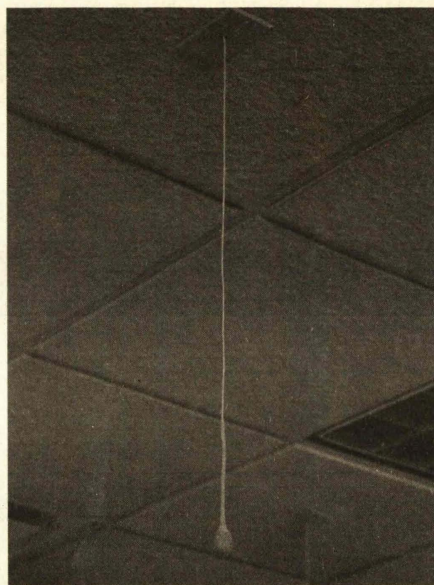
those nice little e-mails from IT that the system is down. Nice thought, but not helpful in the end.

I do concede that the school does try. The school went out of its way to tape all classes for the week of the RNC, just in case there were traffic problems. Many professors, though, forgot to tape or only taped part of the class. Then there was the problem of getting them all online. In the end, only some of the classes were taped, and only some made it online. To note, the rest are still waiting by the library's reference desk for students to check them out. No, the librarians are not waiting to be checked out, the tapes are.

As hard as the school tries it does not compare to trying to remove some paper towels from the dispensers. It is almost impossible to remove a full, non torn piece of paper towel. It is almost amusing watching students try as they can, and only get left with a bunch of torn pieces. It tears me up.

The school planned a beautiful 11L annual party and weeks of planning and preparing went fine. Except the weather was at fault. The school cannot catch a break. Er, break in the weather. The party did go off without a hitch the following day, and it was great. Good food, good music, good people, good fun. So in the end things worked out.

In the end we got used to pulling out our ID to security guards that recognize us anyway. In the end we learned to ignore the dangling wires and the thoughts of Big Brother. In the end the carpet smell went away, and the Internet started working more often. Sorry, Professor Herman, you are going to have to keep playing talk show host.



What's the deal with those microphones, anyway?
Photo by Greg Brown, '05

had good intentions in installing new technology to help the student body but it seemed to only go half the distance. This is not unlike the new 'thirty times faster Internet connection.' Sure it is thirty times faster when it works. Since the connection only works a third of the time, we are left with the same speed, on average. Good idea, but the system is always down. Additionally, since the system is down, we don't end up getting

In Racing, Smarty Jones or Birdstone? The Jury is Still Out

By Ross Bogatch, '06

If you've been around horse racing long enough, you know how often a touted star turns out to be a dull lump of space dust. Fusaichi Pegasus, thought by the racing world to have sprouted wings, was retired after winning nothing more than the Kentucky Derby. Empire Maker, outrun down the stretch by local hero Funny Cide in the 2003 rendition of the Derby, retired later that summer after ducking all sorts of competition. Well, add to the list that loser from Philadelphia – no, not Terrell Owens, no not Donovan McNabb – yup, you got it, Smarty Jones.

I'll be honest, I was a big fan, one of the only athletes I applauded from the City of Brotherly Love. Smarty Jones' rousing victory over a wet track in the Kentucky Derby crowned him the first undefeated winner since Seattle Slew in 1977. And no one will soon forget his dominating victory in the Preakness, winning by a record 11 1/2 lengths under jockey Stewart Elliott's gentle hand ride.

The Belmont Stakes was to be the young colt's immortal moment. Racing was to honor its 12th Triple Crown

done in 26 years. But Smarty Jones ran the last half-mile in 27 1/5 seconds (an eternally slow time for a derby-winning colt) and was caught in the final strides by a small thoroughbred named Birdstone. The loss was a disappointment to all but Philadelphians, who are accustomed to their sports heroes losing when it matters most.

That was June. The summer came. Smarty Jones was the talk of the track. No one much anticipated a rematch with Birdstone, but if it came, they would meet at Saratoga in the summer's biggest race, the Travers. However, Smarty Jones stubbed a toe, and retired from racing to pursue a more lucrative breeding career. As racing fans are often left to do, we could only speculate, over beer and bourbon, as to Smarty's place in history.

But then something funny happened. On a late August afternoon, in the humid calm before a storm, Birdstone, returning to the track for the first time since the Belmont Stakes, won the Travers. The victory surprised the heck out of me. In fact it surprised a lot of people, though not his trainer Nick Zito, who before the race said Birdstone was 110%. But most of all his victory made Smarty Jones look like a chump. I mean, who is the

best horse of their generation?

As the rain fell in buckets after the Travers, talk as to who should be 3-year-old champion rang with the intensity of partisan debate. There are those in the Smarty camp who believe the honor is his, regardless of Birdstone's success; and then there are those who see Smarty as the latest in a long line of frauds. The arguments go like this:

Smarty Jones won the Kentucky Derby and Preakness, two of the three most important races for three year olds. He won eight races in nine tries, finishing second in his attempt for the Triple Crown. He beat Birdstone in the Derby. He was dominating in all but one of his races. He did everything asked of him. But most importantly, the racing loyal and non-loyal alike loved him. The defense rests.

Sure, admit the plaintiffs, but Birdstone beat Smarty Jones in the Belmont Stakes, a grueling race also known as the Test of Champions. Birdstone then crushed the best of the rest of the three year olds in the Travers. You see, since the Derby, Birdstone has gotten better. If you thought the Belmont win was a fluke, the Travers proved it wasn't. He's won five races in eight tries. He's won back to back Grade I's. He turned the tables on Smarty

Jones, and Smarty Jones, now retired, can never turn the tables back. Smarty opted to rest on his laurels, but those laurels are less impressive with each finish line Birdstone crosses first. Other than in the Derby, Smarty Jones didn't race against horses that were very good. His victories were visually impressive, but who did he beat? Nothing in logic and reason says Smarty Jones is a better race horse than Birdstone.

As things stand, it's nearly a dead heat. With the prestige of the Kentucky Derby behind Smarty Jones, it's likely that if the championship was awarded tomorrow, Smarty would probably take the trophy. But the season's not over.

While Smarty Jones is busy impregnating fillies on some farm in Kentucky, Birdstone is quietly training for the October 30th Breeders' Cup Classic (for those of you who don't know, it's the Super Bowl of horseracing). There he will meet older horses for the first time, including the likes of Pleasantly Perfect, Ghostzapper, and perhaps the great mare Azeri. Older horses are more developed, therefore stronger and faster than their three year old rivals.

See RACING
Continued on p. 7

Get Out! The Best of the Cheap Eats Near Brooklyn Law

Story and Photos by
Christine Creamer, '06

The word is that Williamsburg has nothing on Bococa right now. What? Where's that and why should you care? Bococa is the area surrounding Brooklyn Law School, made of the three areas known as Boerum Hill, Cobble Hill and Carroll Gardens (the neighborhoods you walk through on Smith or Court Streets). Within the past few years the area has exploded with new restaurants, labels and even galleries. In the spirit of being out of Manhattan, many of the newer eateries are still affordable for a law student. With due respect for the guidelines of the financial aid office: here are some of the cheapest places to go.

Blue Star is quickly becoming a Cobble Hill favorite, but not just for its seafood or its bright aquatic theme. Located on Court Street at Kane St., this is one of the only restaurants in Cobble Hill which is heavy on its drink specials.

(PBR) all night. On Wednesdays all of their bottles of wine are half price. Blue star is also the place to go if you want to hear live Blue Grass music. Astrograss, a local Brooklyn band, plays there every Tuesday night.

For law students on a budget, forget the seafood entrees and order the pulled pork sandwich which comes with home cut fries for \$8.00 or one of their other cheaper bites, such as the \$8.00 bayou wrappers. A whole seafood menu is also at your fingertips if you feel the need to splurge. *Blue Star (254 Court St. between Kane and DeGraw streets in Cobble Hill) accepts cash only. Entrees: \$8-\$22. The restaurant serves lunch Wednesday through Friday; dinner is served seven nights a week. On Saturday and Sunday, brunch is served from 11 am to 3 pm. For information, call (718) 858-5806.*

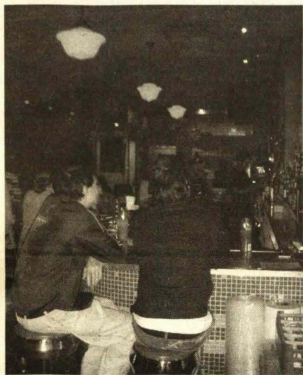
Village 247 Pub & Wine Cellar a surprisingly good find on Smith Street if you are looking for cheap American food, with an entire dinner menu ranging from \$8 to \$10 entrees. The best time to visit is during happy hour from

can still get food), called the Village Underground. On Wednesdays, the 15 ft. screen shows 'yesterdays' films on the patio. There is also a large screen in the Pub downstairs which shows, among other things, every game of the UEFA Euro 2004 Tournament. Check it out on October 16th, for the Oktoberfest party, which will be complete with poker, beer pong and possibly the *Becker* beer girls. 247 Smith St., **Phone:** (718) 855-2848. Open for dinner and brunch, Pub is open regular bar hours.

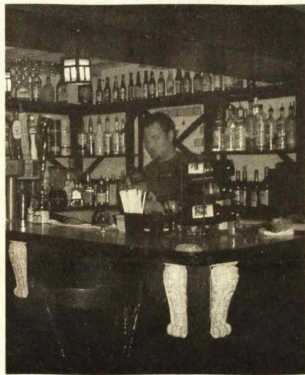
Pacifico is another great find for a law student on a budget, where according to one waitress, "Happy hour is all the time." Don't be fooled though, you should go to Pacifico for the authentic but hip Mexican food as well. The entire menu is topped out at with a salmon tortilla stack which costs \$13, but you can walk away very satisfied from a choice of Burrito, Taco or Enchilada with various fillings (carnitas, pulled beef, shredded yard bird or veggies), for only \$6. In the summer and into fall it's great to sit on their patio deck, but as it

is also worth visiting, regular margaritas are only \$5, specials, including watermelon, are \$7. 269 Pacific St. at Smith Street, (718) 935-9090 (Cash only) Entrees: \$5-\$13.

The Gowanus Yacht Club can be summed up by its outside chalk board, "Like camp, but with beer." In other words, it's an outside Beer Garden with a slightly ruckus feeling to it. It's also closing come Halloween, so you should go before you forget about it next spring. GWC's specials are also heavy on beer, with \$1 cans of Pabst Blue Ribbon (PBR) and other cheap beers. You can get an import, but that might be like trying to order a glass of wine at GWC...you just wouldn't want to do it. Since beer makes people hungry, GWC also serves a menu of food you would find in a backyard barbecue: hotdogs, hamburgers, sausage and veggie-dogs, among a few other choices all for around \$2 to \$3. It's definitely a great place to go on a night or afternoon when you're not feeling like being in New York. 323 Smith St. at President



Their half priced happy hour at the bar is every weekday, from 4 p.m. to 7 p.m., which includes all top shelf liquor. Tuesdays and Thursdays are for beer lovers, with \$1 Pabst Blue Ribbon



5 p.m. to 7 p.m. every day, when all of their drinks are on special and their appetizers are half price. Although the atmosphere is not as hip as some of the places on Smith Street, it has a heated patio and a pub downstairs (where you



gets cooler, the inside is complete with working fireplace to warm its visitors up. On a whole, you don't get a better deal than Pacifico if you're looking for cheap food with atmosphere. Their bar



Street. No phone. Open Memorial Day through Halloween (weather permitting). Hours: Monday through Friday, from 4 pm to midnight; Saturday and Sunday, from 2 pm to midnight. Cash only.

Smarty Jones or Birdstone?

RACING
Continued from p. 6

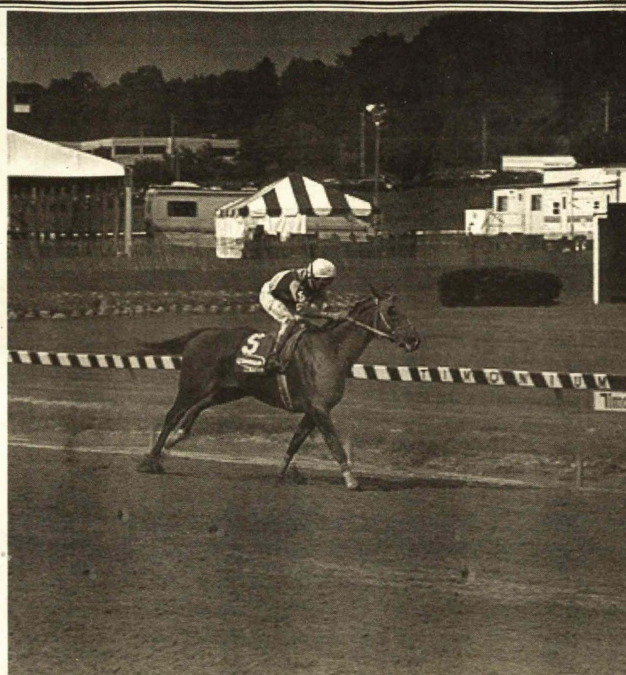
Consequently, it is more difficult for a three year old to defeat older horses than it is to defeat horses of its own generation.

In this observer's opinion, a good showing by Birdstone in the Classic seals the Eclipse Award for 3-year-old male. His victory over Smarty Jones, his back to back Grade I wins in the Belmont and Travers, and a strong showing against older horses in October supports a greater achievement than does the success Smarty Jones met at the beginning of the year.

A Birdstone victory in the Classic, however, and the debate is moot. Not only would Birdstone clearly be 3-year-old male champion, he would become Horse of the Year, an honor no three year old has achieved since the indomitable Point Given in 2001. It will be no easy task for sure, despite the thinning of the Classic's field due to recent injuries. But Birdstone loves

the distance, and the horse runs fresh off the bench. And he keeps getting better with each race.

Don't be fooled by Smarty's overblown and inflated image. Granted, the horse's potential was limitless, but his achievements on the track fell short of greatness. Retiring prematurely should mean Smarty Jones will be judged by what he did, and not what he could have done or been. Birdstone is still on the track and answering the challenges before him. Smarty Jones, fearing he had nothing financial to gain by running again, is noticeably absent from the competition. Philadelphia's Smarty Jones should not be rewarded for the cowardice his owner's showed in ducking New York's Birdstone throughout the second half of the racing season.



Thoroughbred coming down the home stretch at the Maryland State Fair.
Photo by Bill Tarpenning, US Department of Agriculture

Dating in Law School: Anatomy of a Law School Couple

The Justinian, Vol. 2004 (2004), Iss. 3, Art. 1

By Yael Utt, '05

In the past month, hundreds of new 1Ls matriculated at Brooklyn Law School, and a significant percentage of these students are below the age of thirty. Basic physics ensures that at least some couples will emerge, with a few even making it past graduation. And even the "unavailable" may find their plans change – graduate schools are for many the last time in life that one is surrounded by so many single people the same age. Office romance is so 1999 and this opportunity should not be wasted. Although the pickings may not be nearly as fruitful for the gay and lesbian population, match.com has nothing on 250 Joralemon's twenty-something opinionated, heterosexual, New Yorker-type.

The courting-dating-mating-and-beyond dance that evolves for a law school couple is as unique as the experience of Socratic method, study groups, and case briefing. We have all seen them – the quiet couples in the courtyard on a warm day, holding hands and smiling, seemingly unaware that school is not supposed to be so much fun. And then there is the look of the embattled couple, months or years later, regretting that they registered for their twenty-fifth class together and that the seating chart was cemented so early on. Anyone who has worked at a law firm knows that lawyers, like the Amish, often like to marry their own kind. Of course, some question the decision to double one's life-long debt. But "those in the know" could teach us all a thing or two about communication with a significant other – imagine an argument over duty dishes framed in perfectly logical IRAC

form.

Finally, based on the stories of real BLS students who have experienced law school romance, the rest of us now have a chance to learn about life in this fishbowl.

* * *

Girlfriend: We met in our small section, although I wasn't looking to meet someone romantically at school. Seeing that person every day, it could be either really great or really horrible.

Boyfriend: I always noticed her in our small section and thought she was cute – we just ended up hitting it off one night at a bar. I definitely had reservations dating someone at school, what if it ended poorly and she turned out to be a psycho? I'd have to see her all year and we had a lot of mutual friends. Fortunately, she's not a psycho, and we're still together.

G: Because during the "honeymoon phase" you want to be around the person constantly, first year is a great time to meet someone because you can be.

B: I don't know if the "honeymoon phase" is shorter in law school, but you definitely see all aspects of the other person pretty early on because we're all in this high stress environment.

And everybody loves having those "finals dates" which consist of you saying "hi" at 2 a.m. when you're "cracked out from studying and sorta losing it" – good times.

G: The best thing about dating someone in law school is understanding the other person's limited time, limited funds, and laughing about the weirdness around you. Oh and being able to take vacations at the same time!

B: The shared misery is the best



An Anonymous Couple gets a handle on what it takes to make a relationship work.

Photo by Yael Utt, '05

thing...she knows I'm broke, busy, and stressed because she is too.

G: We NEVER discuss grades, EVER – that would be too weird, especially classes we've both taken. Luckily we're interested in two different areas of law so we don't really compete for jobs.

B: I don't want to be competitive with her, she's not trying to weasel me out of a job...she's my girlfriend.

G: Studying all night and day during finals with a boyfriend means I can look like hell and nobody cares.

B: I like studying at home with her, it's more chill than the library.

G: I think law school can either make or break your relationship. I've seen couples succeed and other couples fail in school. I think like any relationship you have to have a similar mindset,

but if there is one party that is super-intense about school and the other one is way more relaxed, I could see it causing problems. We're both pretty relaxed about the whole thing so it works...

B: Did I mention we like making fun of all the weirdos?

M: Maybe I can officiate your wedding? I spend a lot of time on the internet so it would be easy to get licensed...

G and B: You're strange. And stop trying to write about people all the time for the newspaper.

M: Noted.



HAPPY HALLOWEEN!

Celebrate Halloween on Saturday October 30th with all of the NYC law schools @ Club Discotheque, if you dare, located behind the gates at 17 West 19th Street between 5th & 6th Avenues

Come to the Citysearch rated #1 Dance Club in NYC for the Halloween Party of the year.

Take 4,5,6,N,R,Q to 14th St. Union Square or F & V train to 23rd Street

Party opens @ 10 PM and costume dress is encouraged. Drink Specials and open bar info will be found at www.discothequenyc.com under upcoming events.

See you all there and Happy Halloween.

Sponsored by the Spooky Bar Association (SBA)