The New York Law School
REPORTER

Volume IX, Issue 3
"On the Cutting Edge of Credibility"
November 18, 1991

Hon. Nicholas Tsoucalas, New York Law School, '51
Hon. Yorka Linakis, New York Law School, '43
Hon. Stanley Ostrau, New York Law School, '51
Professor Zuhayr Moghrabi, New York Law School, '67
At the Alumni Association's reception honoring
"Alumni Serving in the Judiciary"
In This Issue...

1. **The Media Law Project Newsletter**
   - Media Piracy in Queens
   - Media Coverage of the Thomas Hearings

2. Forward
   - An Interview with Professor Boten
   - An Interview with Professor Feig

3. Sexual Harassment: What can students, faculty or staff do when confronted by harassment?

4. Students Fight for Constitutional Rights on Campus
   - 5: A Proposal to Restore Student Financial Aid
   - 6: A New Clinic at NYLS:
     - The Portable Lawyer
     - L.A. W. Symposium

5. Centennial Gala Honors "Hank" Greenberg, NYLS '50
   - NYLS-Public Interest Campaign
   - Using Class Notes to study

6. A Proposal to Restore Student Financial Aid
   - NC 17...Another way to spell X?
   - Public Interest and Local Programming

7. Tom Smith takes Aim at Ted Kennedy
   - NYLS graduate Randolph Iannacone looks at Medical Malpractice

8. Most Court teams gather experience, respect, trophies
   - 10: The Law according to television

9. A Guest Editorial
   - Thank You, Anita Hill!

10. SBA Minutes
    - Jack Frechot on Drug Testing

11. A New Clinic at NYLS?
    - The Portable Lawyer
    - L.A. W. Symposium

12. Due Process and the media
    - 13: A New York Law School student recounts HIV test experiences
    - 14: Television in Politics:
     - Access, Form, Substance

15. The Portable Lawyer
    - SBA News
    - Reporter Advertisers offer discounts

---

The New York Law School Reporter

---

The REPORTER

November 18, 1991
Issue 2, Volume 20

Corrections and Credits

Often when one aims for greatness, greatness is achieved. Yet more often, the runner may stumble. The Reporter stumbled in its last issue on several occasions. We at The Reporter takes full responsibility for these stupid errors.

First, the article on Third World economic growth that was attributed to Patrick Benn was not his own work. In actuality, it was an article pulled from a Lexis search. The piece is originally from The Economist magazine. That article was copied to disk for later use as background material for another article, but in the process of layout was mistaken as an actual student article.

Mr. Benn did not perform the Lexis search, nor did he submit the article that was published in The Reporter. Indeed, The Reporter states categorically that he was not connected with the article published in his name in any way. The Reporter layout staff assumes total responsibility for this mistake. Layout Editor Joe Conway, who has ultimate responsibility for what gets put down on each page, has apologized foolishly to Mr. Benn for the ridicule he has been subjected to by several of our fellow students over this matter.

A similar problem occurred with the Great Lakes article which appeared in the Environment Section. That article was apparently inadvertently scanned in from Omni magazine. Luckily, we credited its real author, Ms. Justine Kaplan, but the magazine itself was not given credit.

Also, Ellie Benz was not given byline credit for her article "Visiting with Visiting Professor Jeffrey O'Connell" that appeared on page 10.

Another improperly credited article that was accepted for publication was the one on inexpensive wine. The Reporter will no longer accept articles written without being able to give attribution to a specific author. (Although the author's name may be withheld at request, our editors must know who wrote each article).

Other articles and photos/drawings were not given proper credit as well. Scott Star took the photo on the front cover, the three photos on page 4, and the photo of Monica Coen on page 24. Reporter Photo Editor Darlene Miloski took the photo of NYLS students playing football which appeared on page 24. Michael Wood and Alecia Albanese took the other photos on pages 24-25. Michael Wood and Alesia Albanese took the other photos on pages 24-25. In the future, The Reporter will make a concerted effort to credit every piece of work that goes into each edition—we will never go to print again before we are able to verify and credit each source that deserves publication credit. This includes making an all-out effort to properly credit each quotation used, as well as each and every source used.

We are instituting new guidelines over the use of CALR and are revamping the editorial process to make it multi-layered.

Yes, we at The Reporter made mistakes in the process of putting out the paper. There are typos, grammatical errors, layout errors, mangled stories and missing pages. But this is the nature of a law school newspaper. The mistakes we make can be called silly, sloppy, unprofessional, infantile, or many other things, but they were not intentional.

The time and academic pressures on a law student are incredible. Extracurricular activities by their nature must give way to the demands of a full academic agenda. The students who work on The Reporter recognize this, but have nevertheless made a commitment to our school and its newspaper. We will stand by that commitment, and will continue to work on this worthy project.

We know The Reporter isn't perfect. But we are all trying to create a school paper of which we can all be proud. With each issue try we try to do a little better. To be successful, we need your help.

We need your assistance in writing articles, your patience when we are slow to type, press, and your understanding when we make mistakes.
Sexual Harassment On Campus?

by Michael Wood

The recent Senate confirmation hearings for Supreme Court Justice Clarence Thomas have brought an increased awareness of sexual harassment to the entire nation. A besieged Anita Hill, upon returning to her duties as a law professor at the University of Oklahoma, had these words for those whose victims of harassment; "I am hopeful that others who may have suffered sexual harassment will not become discouraged by my experience, but instead, will find the strength to do what others who may have suffered sexual harassment...sexual harassment is prohibited. But just what constitutes sexual harassment?

WHAT IS SEXUAL HARASSMENT?

Within the context of the school code, sexual harassment occurs when one person uses his or her position of power to coerce another person into a sexual relationship or subjects another person to a hostile or academic work environment. This may include both verbal and nonverbal behavior, written or oral expression, or physical violence between any members of the law school community. However, the staff and faculty of the school are adults, as are (presumably) students. Sexuality, of course, is one of the more enjoyable aspects of life. When does a free expression of interest or attraction become harassment?

According to the Code, "Sexual advances, requests for sexual favors, and other conduct of a sexual nature constitute sexual harassment when:

1. Such proposals are made under circumstances implying that a person's response might result in negative academic or work decisions; or
2. Such conduct is so aggrieved as to contribute to an inopportune academic or work environment, or to interfere with required tasks, career opportunities, or education; or
3. Such conduct is abusive of others and creates or implies a discriminatory hostile towards their personal or professional interests."

The Code prohibits sexual relationships between a student and a faculty member who has academic responsibilities regarding the student. Students are prohibited from taking classes or accepting a recommendation from any teacher with whom they have a sexual relationship.

Any student, staff or faculty member who is the victim of sexual harassment, may at his or her option, utilize the procedures of the Code in an attempt to eliminate the problem. The Administration will recommend qualified psychological counseling for anyone who complains of sexual harassment. A victim of sexual harassment may utilize either an informal or a formal procedure in dealing with the problem.

The informal procedure includes the presentation of a complaint to a mediator, chosen by the Administration from a panel of mediators (teachers, students, or staff). A confidentiality agreement is executed between the mediator and the complainant. The information disclosed to the mediator is not admissible by the mediator in any subsequent formal proceeding. The mediator, as is often the case, serves several roles. The mediator may refer the complainant to someone more appropriate, provide general counseling, advise the complainant of his or her rights under the Code, suggest steps to take in resolving the dispute. The mediator may, if both parties are willing, work with both the complainant and respondent to resolve the dispute. A report may be drawn up and filed with the appropriate Associate Dean.

A complaint may make use of formal proceeding by filing a complaint with the Human Rights Review Board, even after utilizing the informal procedure. The Board consists of four members: one chosen by faculty; one elected by staff; one student chosen by the Student Bar Association; one chosen by the Administration, serving ex officio. The proceeding is initiated by filing a complaint form. The Board, in its own discretion, may decide to hold a hearing on the complaint. It is so does, it is required to schedule a hearing within 7 days of the filing of the complaint. Both the complainant and the respondent may appear accompanied by counsel or others. Each may present witnesses to the Board, and each may cross examine witnesses, file motion or make pleadings before the Board. The Board may utilize sanctions to ensure the harassment does not apply to the hearing. A decision is due within 7 days after the close of a hearing.

The Board is recommended that the Administration a sanction if it finds a violation of the Code, Sanctions for students may include: a warning, suspension for a time; prohibition with conditions; removal from j or other student organization; revocation or non-renewal of postgraduate participation in a journal; expulsion, and with or without terms and conditions regarding re-admission. Sanctions for employees may include: a warning; suspension without or without pay; probation; denial or limitation of future raises in salary; reduction in grade or position; termination of employment; Sanctions for tenure-track and tenured faculty may include: a warning; suspension, with or without pay; probation; denial or limitation of future raises in salary; reduction in grade or position; termination of employment; or, if a faculty member has recommended a student with whom the faculty member has previously had a sexual relationship, notification to all persons receiving such recommendations.

The Sexual Harassment Code is designed to protect students, faculty and staff from unwanted advances or harassment. However, it remains to be seen if the enforcement of the Code lives up to the promise. The Board members and mediators operate under a condition of confidentiality, there will be no popular review of decisions. It is inevitable that only failures will become public knowledge.

Professor Sanford Schlesinger led a series of seminars on "Planning Alternatives for the Aging" at Temple Emanu-El in October. Both Professor Richard Marsico and third year student Glenn Bruno were featured in the November 11 issue of The Student Lawyer. The article dealt with law school clinics.

Professor Arthur S. Leonard was quoted in an article in the November 6 issue of The Nation. The article dealt with the availability of employment-related health insurance for people with AIDS.

Professor Richard Siegler's article on changes in Rule 216 of the Internal Revenue Code, and its effect on pass-through interest expenses and cooperative housing corporation, was published in the New York Law Journal on November 6, 1991.

Professor Sanford Schlesinger is quoted in an article on "The Diminishing of the First Amendment." It appeared in the fall, 1991 Human Rights, published by the section of Individual Rights and Responsibilities of the ABA. She was also quoted in a November 6 article about the Comprehensive Crime Control Act of 1984's civil real estate forfeiture provisions. Professor Strossen is the subject of a cover story in the November National Jurist. Professor Stuart Schlesinger's article on standards and pitfalls for expert testimony appeared in the New York Law Journal on October 16.

Who's Doing What at New York Law School

by William Meredith III

Professor Richard Marsico and third year student Glenn Bruno were featured in an article in the September issue of the ABA Student Lawyer. The article dealt with law school clinics.

Professor Sanford Schlesinger led a series of seminars on "Planning Alternatives for the Aging" at Temple Emanu-El in Westfield, New Jersey during September.

Professor Donald Shapira was quoted in an article in Time magazine's November 11 issue. The article dealt with privacy in the information age.
Students Fight Judicial Boards for Constitutional Rights

by Amy Reynolds

The system strikes that the school sacrifices fairness for expediency, ignores constitutional rights of due process by giving one person the power to prosecute, judge, jury and appeals judge, and ignores the constitutional protection against self-incrimination.

"To me, (these violations) sound like a good argument against having the university handle anything that isn't academic," says Jack Stecher, an economics graduate student serving on the committee.

Stecher isn't alone in his thinking. For years, students, faculty, administrators and other scholars have butted heads on the issue of a university's right and power to prosecute criminal cases in the campus courts.

University "determination to enforce this...rests on the premise that colleges and universities have a jurisdiction over the lives of their students that is independent of the law of the land," writes John Roche, a former member of the Johnson administration, in a recent article in National Review.

"The notion that an aggrieved person believing himself the victim of a crime must keep the matter in the family" is a jurisprudential absurdity.

Frequently on the opposite side of the argument is campus judicial administration. University of Minnesota students Jack Stecher (front) and Mike Taylor are trying to change the school's judicial system.

"We're trying to change the system from the ground up," Stecher says.

"We want the university to get out of executioner, judge, jury and appealsjudge," says Randy Bezanson, dean of the Washington and Lee School of Law and a national expert on constitutional law.

"The larger universities have more elaborate processes. The smaller liberal arts schools are less elaborate and their systems are more widely varying because the whole process reflects traditions.

"The systems that contract most harshly are public and private, because public institutions must adhere to state and federal laws. In September, Liberty University expelled three seniors for worshipping at the United Pentecostal Church, a violation of school policy. Although the school held a hearing on the matter and granted the students appeals based on the school's rules, the students' First Amendment freedoms of religion rights were ignored. Because Liberty is a private school, it is not bound by the Constitution. So the freedom of religion element of the case wasn't relevant.

But, in Minnesota's case, the allegations against the system, including lack of due process, right to a trial by an impartial judge and jury, are worthy of investigation because the school is bound by the Constitution. The students' systematic is that virtually all systems are more widely varying because the whole process reflects traditions.

"The students' systematic is that virtually all systems are more widely varying because the whole process reflects traditions. At the University of Minnesota, says Bracewell, "the system is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...is...i...
Use Your Class Notes to Unlock a Greater Understanding of Your Course Material

by Fernando Cruz

Well, it finally time to "batten down the hatches, to "get serious," and for some, to "get motivated" about law school finals. It means one thing: welcome to the end of the semester—papers are due and there are finals to be taken.

For some students, finals are a period of self-determination ("I can rise to the challenge") and for many others it is a time of panic ("I don't care how much I think I know, I really don't know anything and I don't have time to learn it all"). Somehow, it seems like it was only a few short weeks ago that you sat in a new classroom with a new professor. Now, however, you may be thinking, "Whoa, it's almost the end and I don't yet have the big picture." Not to sound an alarm but... have you started your outlines yet?

Don't despair. You are not doomed to failure simply because you haven't begun an outline. Honestly, I have yet to determine whether outlining truly contributes to answering that all-important question on the final exam: what material will make its way into the class as a whole. There are many students who dismiss creating an outline as a whole—do they just find it personal. I make an outline if only to earn the side of caution. However, even if you do outline, your class notes deserve more than just cursory review—they can help you to improve your chances of getting a better grade. Here is how:

Reread and organize your notes.

There is a good reason for expending so many hours in a classroom: it allows you to connect what you have read to a greater understanding of the course material. Listening and taking notes in class has enabled you to embed knowledge into your subconscious. Your notes can assist you to recall the logic (or lack thereof) of classroom discussion. They also can help you to synthesize external facts into a framework that reflects the current status of the law. But you really have to sort out the essentials from what you've written in your notebook.

Reflect on why you chose to write down the information.

Students often miss crucial insights into gaps of understanding when they are creating their notes. They should reflect upon what they initially understood when they first read the assignment. Students need to rework initial understanding to what the professor said the case really emphasized. This way, they can then ferret out a concise understanding of the material. Additionally, notes can help place the articulated principle of law illustrated by a case into a framework that incorporates the relevance of time, place and evolution of the principle. That is, a little note may help you to place a case in the proper context when you study for exams. Remember that law is not static. Law professors seek to test not only whether you know what the law is and how to apply it, but also why it exists the way it does and where it may go.

Seek clarification of fuzzy areas from your professors.

Once you've worked through your notes and have recognized any fuzzy areas, consult your professor during his or her office hours. Don't wait for the review class, do it now. Before going to see the professor, review the area of law covered by the fuzzy notes and acquaint yourself with the cases discussed in class. Don't forget, bring the notes in question with you.

Incorporate your notes into your study aid.

Once you've gotten a grasp of the material in your notes, incorporate this new knowledge into your study materials. If you outline from all course materials, use a special symbol to denote your class note insertions. If you concentrate they can make your notes more organized and help you to better place them into a condensed set. Use mnemonics when possible.

There are only a few suggestions on how to use your notes more effectively. You should use these along with any other techniques that may work for you. Ultimately, you need to work with your notes and improve your chances of getting a better grade.

New York Law School Public Interest Coalition

Special to the Reporter

"Although we are probably the newest member in attendance, I think we've come a long way in our short tenure and I hope we're able to build our school's Public Interest Coalition into something great," Jeff Slate told a recent board meeting of the National Association of Public Interest Law Schools. Slate, a second year student and chair of the New York Law School Public Interest Coalition, was accepting the nomination to a national at-large seat on NAPIL's executive board on behalf of the school. Although NYLS-PIC did not win a seat on the board, Slate is optimistic about the future of PIC.

"Things are really coming together," Slate said recently in an interview. "Since PIC's founding in 1990 we have been able to raise thousands of dollars. With the support of the students, the administration and the school, we were able to give out three grants last year totaling almost $9,000. This year, we're planning to increase the number of grants and have more exciting, in my opinion, than law students who take non-paying summer jobs in the public sector, were received by Christine O'Connor, who worked for the Brooklyn Bar Association Pro Bono Project, Rita Proctor, who worked for the Philadelphia Public Defenders Association, and Danielle Mies, who interned for the New York Environmental Lawyer Matthew Davis.

In its first full academic year as a nationally recognized public interest support group, PIC has set three goals for itself. "We want to expand membership, raise more money and give out more grants," said Slate. He added that the workshops he attended at the national conference, held October 26 and 27 in Washington, D.C., were "very helpful in forming the strategies and ideas they provided."

"I met some great people who are doing great things," said Slate. "There is nothing more exciting, in my opinion, than law students doing something a little selfless in an effort to aid their communities."

In an effort to build support on campus PIC will be sponsoring several events. "We're going to be raffling off an anatomy of a law exam gift certificate during the exam respite periods," said Slate. "We're also hoping to have two panels. One will be a follow-up on our panel last year on the new civil rights legislation; the other will be a forum with the students who received grants last year."

NYLS-PIC will hold its next meeting on Tuesday, November 19 at 5 PM. All interested students are urged to attend. For additional information, contact Jeff Slate through his mailbox or call 430-1750, or write Jeff Slate in the Office of Student Services, 5th Floor A Building, X18.

by Jason Oshins, NYLS '92

On Thursday, November 7th, at precisely 6:30 PM, we welcome New York Law School alumni, faculty, administrators, students, family and friends gathered at the Grand Hyatt for the full-school celebration of the Centennial Gala. The gathering honored Maurice "Hank" Greenberg, NYLS '50, chairman and founder of AIG and the Alvin Betz Auxiliary to the Economic. The dinner-dance committee, headed by Harris Gordon Miller, NYLS '82 and Linda Cassano, NYLS '73 produced a pleasant, well-organized evening. Black tie was the attire of choice. Everyone was dressed to the very nines. "Hank" Greenberg was honored for his outstanding leadership in the American insurance industry. He is truly a man worthy of New York Law School's most prestigious award. The evening was filled with celebration of the Arty Quentzel Orchestra. The party ended at about 11:30 with everyone commenting on what a great time they had. We all look forward to next year's gala. On a personal note, I'd like to thank my dancing partner, Cindy Freeman her nimble moves on the dance floor. Hope to see you all again next year.

Students Fight for Constitutional Rights

continued from last page

by Elizabeth Scher

"Things are really coming together," Slate said recently in an interview. "Since PIC's founding in 1990 we have been able to raise hundreds of dollars with the support of the students, the administration and the school, we were able to give out three grants last year totaling almost $6,000.

The grants, given to reimburse qualifying students who take non-paying summer jobs in the public sector, were received by Christine O'Connor, who worked for the Brooklyn Bar Association Pro Bono Project, Rita Proctor, who worked for the Philadelphia Public Defenders Association, and Danielle Mies, who interned for the New York Environmental Lawyer Matthew Davis.

In its first full academic year as a national public interest support group, PIC has set three goals for itself. "We want to expand membership, raise more money and give out more grants," said Slate. He added that the workshops he attended at the national conference, held October 26 and 27 in Washington, D.C., were "very helpful in forming the strategies and ideas they provided."

"I met some great people who are doing great things," said Slate. "There is nothing more exciting, in my opinion, than law students doing something a little selfless in an effort to aid their communities."

In an effort to build support on campus PIC will be sponsoring several events. "We're going to be raffling off an anatomy of a law exam gift certificate during the exam respite periods," said Slate. "We're also hoping to have two panels. One will be a follow-up on our panel last year on the new civil rights legislation; the other will be a forum with the students who received grants last year."

NYLS-PIC will hold its next meeting on Tuesday, November 19 at 5 PM. All interested students are urged to attend. For additional information, contact Jeff Slate through his mailbox or call 430-1750, or write Jeff Slate in the Office of Student Services, 5th Floor A Building, X18.

Students Fight for Constitutional Rights

continued from last page

by Elizabeth Scher

Minnesota students say that the school's director of the Office of Judicial Affairs, Betty Hackett, has unilateral power over a student's fate. "Say you get a letter accussing you of a crime," Scher says. "You go see a counselor, who is Betty Hackett. You talk to her, and she makes a recommendation. She then becomes the prosecutor of your case, which goes into a closed door hearing. She is not obligated to tell you during counseling that she will be prosecuting you. Hackett, who did not return telephone calls to her office, did tell the Minneapolis daily that, "I wouldn't be here if I didn't think it was a fair system."

Currently, the committee reviewing the judicial system is writing two proposals for changing the system, one submitted by the students and faculty members, the other from the administration's members.

The privacy of campus judicial hearings is at issue at the University of Georgia. A student newspaper editor has filed a complaint in Fulton County court against the university, saying two incidents in which the school denied the newspaper access to hearings violated their First Amendment rights and the state's open records laws.

Red and Black editor Jennifer Squillante says the two hearings involved charges of hazing and underage drinking against two fraternal organizations.

"Our contention is that educational records are not brought into play," Squillante says. "We're starting with (these cases) because the workshops he attended at the national conference, held October 26 and 27 in Washington, D.C., were "very helpful in forming the strategies and ideas they provided."

"I met some great people who are doing great things," said Slate. "There is nothing more exciting, in my opinion, than law students doing something a little selfless in an effort to aid their communities."

In an effort to build support on campus PIC will be sponsoring several events. "We're going to be raffling off an anatomy of a law exam gift certificate during the exam respite periods," said Slate. "We're also hoping to have two panels. One will be a follow-up on our panel last year on the new civil rights legislation; the other will be a forum with the students who received grants last year."

NYLS-PIC will hold its next meeting on Tuesday, November 19 at 5 PM. All interested students are urged to attend. For additional information, contact Jeff Slate through his mailbox or call 430-1750, or write Jeff Slate in the Office of Student Services, 5th Floor A Building, X18.

November 18, 1991

New York Law School Reporter
Elisa Vasquez, 3L
"Woody Allen... because for the first time in the history of the Court there would be someone on it who had some insight into human nature."

Kenny Schuster, 3L
"Norman Maller... because he's a well-reasoned and thoughtful maniac. He would be in good company on the Court."

Marcia Thomas, 1L
"Mr. Spock... logic might be a nice change."

Kevin Walsh, 2L
"Madonna... because she wouldn't be intimidated by Long Dong Silver."

Teri Roberts, 1L
"Norman Lear... because he's a maverick on social issues."

DS Miloski

Mike Simone, 2L
"Shirley McClaine... because she's a liberal who would live forever."

Brian Schwartz, 2L
"Pee-Wee Herman... because Pee-Wee and a recently appointed Justice probably have the same views on the scope of the First Amendment."

Charles Maslin, 1L
"Under Dog... because he would represent the rights of all underdogs."

Q: If you could appoint one celebrity to the U.S. Supreme Court, who would it be, and why?

"Woody Allen... because for the first time in the history of the Court there would be someone on it who had some insight into human nature."
The Right At Night

by Thomas Smith

WOMYN’S RIGHT TO CHOOSE - VICTORIA’S SECRET OR CARTERS?
(SHAME, SHAME, SHAME ON YOU FOR ASKING!)

Recently, true to our Night School schedule, my wife and I latched onto to catch Ted Koppel’s Nightline. Topic for the evening - Sen. Ted Kennedy’s recent speech at Harvard, in which he was to take responsibility for the “faults in the conduct of my private life.”

Andras and the time needed to enumerate them equals the play time of the audio cassette version of’War Peace’. We drifted off to sleep as Teddy dropped on. Resumed, from our slumber by a too-smiling morning show host, we are left wondering at the fact that Teddy wasn’t on the screen. Sipping morning coffee we discussed the bravery of his speech and concluded Ted’s confession was the start of a mini-series and we’d catch it on video during the semester break.

Until now I was able to avoid being lured into the “he said, she said” controversy emanating from the Easter weekend Palm Beach party. But recent event: Sen. Kennedy’s attempt to recapture his credibility in a transparent confession using Harvard’s Kennedy School of Government as a backdrop; his performance during the Thomas hearings; his “Shame, Shame, Shame,” sermon on the morrow of the Thomas vote; his lame and belated attempt at chivalry to the heroine of Anita Hill; and the offering by the defense of the Palm Beach alleged rape victim’s undergarments into evidence was just too much ignore.

Teddy’s depth of sincerity equals that of Joe Izuzu. I’m convinced, despite the lack of tears, he must have conferred with the writers of Jimmy Swaggart’s “I’ve sinned” speech. The recent ruling to admit the alleged victim’s underwear into evidence, the recently revealed, is just too much ignore.

“Now It Can Be Told” testimony of three witnesses for, at least of what he can recall, their testimony; his “Shame, Shame, Shame,” selection of them equal to the play time of the morning show host; his “I had her near the ocean, near the pool.” We soon find out just how important undergarment selection can be to get a rape complaint?

Selecting Teddy’s lawyers, possessing the expertise, has been easy. Starting with descendents of Salem Witch trial prosecutors... those of us who are the product of ill-informed “Euro-centric Education” remember those girls - if you sank in the way you were telling the truth, if you floated you were lying and therefore a witch. But after careful thought Teddy urged them to look elsewhere. Who could blame him? The last time a Massachusetts town tried to start with a (“C”) observed a “sink or float” trial someone didn’t come up and the other wasn’t burned at the stake - just re-elected.

Remember, you read it here first, when Teddy’s lawyers get finished cross-examining witnesses they’ll make Senators Specter and Hatch look as tough as Captain Kangaroo and Mister Rogers. And when it all over we may have to recommend to our future clients, “Play is safe. Stick to Carters, at least when you’re in Florida or Massachusetts.”

Save Money with Reporter Advertisers’ Special Discounts for NYLS Students

Times are tough, the holidays are almost upon us, but many REPORTER advertisers have come together to help New York Law School students stretch those little green Washingtons. Following are the students at NYLS by purchasing advertising in the student newspaper and by offering a discount. Petition 56, do us all a favor, including yourself, and stop by the following stores and restaurants:

• Fancy Deli on Thomas, at 58 Thomas Street, under the yellow awning, offers NYLS students a 10% discount. Special: Raimo Pizzaria, at 137 Duane Street, offers NYLS Students a 10% discount. The Square Diner, at 33 Leonard Street, a long time advertiser in the REPORTER, offers NYLS students a 15% discount between 600 and 11:00 AM and again between 2:00 and 9:00 PM. The Franklin Cafe, at 222 West Broadway, offers a 10% discount at lunch for NYLS students. They also offer 1/2 off the second dinner entrée with our ad. Cafe Society, 915 Broadway at 21 Street, offers free admission and 1/2 off drink prices to law students on Thursday nights. Mega Fitness, at 611 Broadway, 2nd floor, offers a NYLS special discount of $175 off a year long membership. Tony’s of Worth Street, at 33 Worth Street, a long time advertiser in the REPORTER, offers its very low prices-low enough for a weekly trim-tell them you saw them first in the REPORTER. LeRoy’s Restaurant, at the corner of West Broadway and Avenue of the Americas, offers a $4 off lunch, between 11:00 and 12:30. The Burrito Bar, 303 Church Street, offers a complimentary Margarita with dinner—just show them the ad. Most discounts while working with the new master schedule. Students have been doing a great job representing their respective sections and divisions. We would like to remind everyone, to feel free to speak with your representative regarding any concerns that you may have and that S.B.A. meetings are open to the entire student body. We encourage your interest and participation. The next Senate meeting is scheduled for November 18 at 5:00. The location will be posted on the door of the S.B.A. office (C-101) on the day of the meeting. If you can not attend a meeting, but are interested in what transpired, please feel free to stop by to review the minutes posted on our door. Look for the S.B.A. minutes in upcoming issues of the REPORTER. So far, the Senate has allocated approximately $12,000 to the various student organizations. Thus, $7,000 remains available for the Fall semester to handle additional requests from student organizations. Be sure to check the calendar in the student lounge for upcoming events! Also, the Budget Commission is considering various proposals for making a contribution of sorts to NYLS in the event that we have a remainder of funds at the end of the school year. We encourage your input. Please submit any ideas as soon as possible, since we need time to plan the implementation of these ideas.

We hope that the reminder of your semester continues smoothly into exams. As always, we remain sincerely yours,
Elizabeth, Kathy, Jack, Doug, David, Vail and Glenn.

New York Law School Student Bar Association News

You get the most for your money with New York Law School Reporter Advertisers.
Hospital Liability for

by: Randolph Frank Iannacone, Esq.

INTRODUCTION

The law of medical malpractice is constantly evolving as scientific and social conditions change. This may be because of changing societal needs and continuously developing concepts of justice. Whenever the law is in a state of flux, there is no easy way to exhaust the treatment of the subject, as attempts to clarify some of the concepts in this area of the law.

The discussion starts by giving some reasons for holding a hospital liable for negligent rendering of medical care. It covers some standards of care that courts frequently apply along with the role of the Joint Commission on Accreditation of Hospitals in creating those standards.

The analysis then covers the issues involving vicarious liability or respondent superior. The inquiry then turns to material on the doctrine of agency by estoppel and the use of this doctrine to further the rules on vicarious liability of hospitals for the acts of independent contractors. Material on corporate negligence is also presented. Finally, hospital liability for the improper care in selection, maintenance and use of hospital equipment is discussed. The discussion concludes by suggesting legislative reform as a possible solution for the problems that our health care facilities will face in the coming century.

THE EXPANSION OF HOSPITAL LIABILITY FOR NEGLIGENCE IN THE DELIVERY OF SERVICES

Until the 1950's most hospitals were protected from liability for medical malpractice by charitable status, imputed negligence, or in some states by a doctrine of sovereign immunity. In recent years, these immunities have been modified or abrogated permitting hospitals to be held liable under some theories for injuries to patients due to medical malpractice. This expanded liability was brought about by the increased importance of hospitals in the delivery of health care.

Recent trends have implications for further expansion of hospital liability. These trends include: (a) The importance of high technology hospital procedures, including computerization and corporatization of health care, and the accompanying loss of professional autonomy; (b) the employer-employee concept in both the public and private sectors; (c) competition among health care providers and marketing strategies aimed directly at consumers; (d) diversification and vertical integration of health care delivery systems; and, (e) heightened consumer expectations.

STANDARDS OF CARE: THE ROLE OF THE JOINT COMMISSION ON ACCREDITATION OF HOSPITALS

Many courts apply a national standard to hospitals in malpractice actions. This standard is often phrased as that of the "average prudent hospital operator under similar circumstances."

The Joint Commission on the Accreditation of Hospitals ("JCAH") establishes national standards that hospitals must meet. The standards are periodically reviewed and are intended to keep hospitals on a "reasonable course of conducting operations similar to those of other institutions of the same type and size."

A review of JCAH standards dispels the notion that hospitals are merely places where physicians and surgeons provide care and fortifies the public's perception of the modern hospital as a highly multifaceted health care facility. The Joint Commission is responsible for the quality of medical care and treatment rendered. Under JCAH standards, every hospital must have written policies and procedures which is responsible for "establishing policy, maintaining quality patient care, and providing institutional management and planning."

The JCAH standards emphasize the predominant role of the medical staff in supervising the delivery of health care in the hospital. The standards are designed to promote high quality care, reduce errors, and increase the quality and appropriateness of patient care.

In addition to general standards, specific JCAH standards apply virtually every hospital service area. In each instance there are standards relating to staffing, equipment, record keeping, and recognition of patient problems. Courts have utilized the standards to establish a "reasonable course of conducting operations similar to those of other institutions of the same type and size."

This standard of care may be stated as follows: "A hospital has a duty to maintain an ongoing quality assurance program, to systematically monitor... the quality and appropriateness of patient care."

The Joint Commission on Accreditation of Hospitals ("JCAH") has established standards for most aspects. Accreditation by JCAH reflects both the existence of a master-servant relationship which takes into account the hospital size and resources. The Accreditation Manual for Hospitals published annually by the JCAH, has become the prime resource of minimum national standards for hospitals. The content of a hospital bylaws in its internal organization structure are to a large extent dictated by JCAH standards.

Vicarious Liability

Vicarious liability or imputed negligence refers to the legal liability of one actor for the torts of another. Liability is predicated on some relationship between the parties, such as any other employer. The traditional test for determining the existence of a master-servant relationship is the right of control test. Although most courts have imposed a finding, under ordinary rules of negligence, that the defendant is answerable for that which the defendant control over the employee's acts.

Historically, the hospital has been held vicariously liable for the tortious actions of a physician who is an independent contractor. In New York, the liability of the hospital under the doctrine of respondent superior or vicarious liability for the malpractice of a physician was recognized in the landmark case of Bing v. Thunig.

In Bing the plaintiff was severely burned during surgery when aseptic, which had been spilled by nurses, was touched by a heated electric cautery wielded by a surgeon. Here, the Court of Appeals held that even though the distinction between certain types of "arm's length" relationships was "highly elusive," hospitals should be subject to liability under respondent superior on the same basis as any other employer. The traditional test for determining the existence of a master-servant relationship is the right of control test.

The traditional test for determining the existence of a master-servant relationship is the right of control test. Although most courts have imposed a finding, under ordinary rules of negligence, that the defendant is answerable for that which the defendant control over the employee's acts.

Other factor relied on by courts in finding a relationship hospital at no cost; (e) exclusivity of contract; (f) receipt of some form of consideration; (g) coordination of payment; (h) pathology laboratory service; (i) pharmaceutical services; (j) quality assurance; (k) utilization review; (l) radiation oncology services; (m) respiratory care services; (n) special care units; (o) surgical and anesthesiology services.

JCAH Standards, however, are evidence of custom, and not necessarily binding on the courts.

Other factor relied on by courts in finding a relationship is the existence of an ongoing quality assurance program reflecting the existence of a master-servant relationship. For instance, a physician's liability for the acts of his or her hospital employees is the same as any other employer. The traditional test for determining the existence of a master-servant relationship is the right of control test.

The traditional test for determining the existence of a master-servant relationship is the right of control test. Although most courts have imposed a finding, under ordinary rules of negligence, that the defendant is answerable for that which the defendant control over the employee's acts.

Other factor relied on by courts in finding a relationship is the existence of an ongoing quality assurance program reflecting the existence of a master-servant relationship. For instance, a physician's liability for the acts of his or her hospital employees is the same as any other employer. The traditional test for determining the existence of a master-servant relationship is the right of control test.

Other factor relied on by courts in finding a relationship is the existence of an ongoing quality assurance program reflecting the existence of a master-servant relationship. For instance, a physician's liability for the acts of his or her hospital employees is the same as any other employer. The traditional test for determining the existence of a master-servant relationship is the right of control test.
CABLE PIRACY IN QUEENS: How Much Can You Pay?

by Michael E. Morrah '94

You are sitting at home in front of the TV, furiously flicking through several channels during a commercial break. Several seconds later your screen turns black. Your cable converter box is broken. You go to your cable distributor to have it replaced, and when you arrive, you are told that you are illegally using your cable company's services and that you will be served with a $1,000 fine if you do not comply with the company's wishes.

This practice, the work of American Cablevision of Queens located in Astoria, Queens, is the newest method of combating cable theft. Fed up with the rising ingenuity and sophistication of people who wish to see Pay programs without paying for them, ACQ decided to launch a "electronic bullet", through the ACQ system to short circuit illegally installed microchips. And if you return your box to ACQ to have it repaired or replaced, you will be served with a fine.

However, it turns out that the microchips or "pirate chips", were installed by ACQ service men who solicited viewers by offering a "lifetime subscription" to such premium Pay channels like HBO, SportsChannel, foreign-language programming, Playboy Channel, and Bravo for a one time fee of $300, cash. Upon installation, each subscriber was given a business card with a beeper number if there were any problems with the pirate chip. Unsuspecting viewers like Joan M. of Flushng, Queens thought they were getting a good deal when offered the pirate chips by ra... cont'd on page 7

MEDIA COVERAGE OF THE THOMAS HEARINGS: SETTING A NATIONAL AGENDA

By Fredrik Cederqvist '94

The accusations of sexual harassment leveled by Professor Hill against newly confirmed Supreme Court Justice Clarence Thomas gripped the attention of the nation. Staying in on a weekend evening to watch television gained a new found respectability. Aware of its power, the media took full advantage of the situation. While viewers watched endlessly for answers they would not receive, the media helped to shape a national agenda against sexual harassment.

The contradictions to which the right was referred to in our courts. Leaking the FBI report to the public was illegal, after all. Some worry that the right of newspapers and the media to report such information will open an avenue for interest groups to unfairly attack future nominees seeking what is designed to be a nonpolitical post. However, by showing anger only towards the government who leaked the information and not the media which reported it, the American people gave credence to the notion of the public's right to know such information if it is made available.

The contradictory standards to which the public held the government and the media... Continued on Page 4
An Interview with Prof. Botein

By Gail Johnston '94

Prof. Michael Botein where the jobs for lawyers will be in the next few years, and he'll tell you that you won't like the answer: "Students are thinking too much about the sexy areas of law such as broadcast and cable television law. "In 20 years broadcast will be a third of its current size."

So many students want to enter entertainment or sports or broadcast and cable law, but the jobs there are limited, and in broadcast and cable the number of jobs is sliding," says the 1961 graduate of Cornell University Law School.

Botein has been a professor at New York Law School since 1977, serving from 1977-91 as the director of the NYLS Communications Media Center. He is also co-author of the West casebook "Cases and Materials on Regulation of the Electronic Media" with D.H. Ginsburg and M.D. Director.

If the traditional areas of communications law are losing their import, then what's left? Botein's answer is two-pronged: telecommunications and international law, and ideally international telecommunications.

Telecommunications includes any form of point-to-point transmission of video, voice or data. "It's much more than just telephones," he said.

"With the European unification on Jan. 1, 1993 that market and the way Americans deal with it will be the trend of the future. "The new European Community will be a bigger market than North America."

"That's where the business will be in the next 10 to 20 years," he insists.

He also practices what he preaches.

Botein recently returned from a stint teaching at the University of Poitiers, about 200 miles south of Paris. The course ran from mid-April to mid-July and was supposed to be an international look at communications, intellectual property and entertainment regulations.

"But the students didn't have the background. They knew nothing of French regulations. The class was supposed to be in English, but they only had textbook English. They read perfectly well, but they couldn't understand me because they had been taught by British teachers. It meant I had to know whatever French vocabulary I would come up in class. It was kind of nuts at times."

In addition to the language barriers, Botein - or more precisely the students faced another challenge.

"They were used to the lecture method, not the Socratic method. Intellectually they could deal, but emotionally they couldn't deal with being called on in class.

"After overcoming that obstacle, "I gave them a U.S. final exam, a fact pattern." In France a final exam would be more of a developmental history of a doctrine, but Botein said he wanted them to understand where American lawyers were coming from, what they had been through. "There was literally hand holding." But in the end they asked him back, and he intends to return at the end of next year.

In the meantime it's back to the University of Melbourne in Australia in January for two months. At the end of April, it's off once again this time to Hebrew University in Jerusalem for another two months.

Although he says his planned globe-trotting is just the result of good luck, it ties in perfectly with his emphasis on the future growth of law and international telecommunications.

"The way to get ahead is to figure out what's on the cutting edge and stay on it."
In the past two years, the Motion Picture Association of America (MPAA) has undergone fierce scrutiny. Founded in 1968, the association never intended the X to be equated with sex films. In fact, X was traditionally supposed to imply that the material was unsuitable for children. The X-rating was first given to mainstream films such as "A Clockwork Orange" and "Midnight Cowboy." However, the association never registered the X as a trademark and as a result, it was used by pornographers who affixed the symbol to their films.

Does the NC-17 take the pornographic stigma out of the "adults only" rating or is it simply another name for X? Earlier this year Blockbuster Video, the largest video store chain in the United States, pulled all NC-17 rated films from their shelves.

One of the consequences upon which the NC-17 rating is based is the assumption that the makers will be happy to continue using the X, and will not submit their films to the ratings board. The MPAA believes that serious film makers will pay to have their movies rated NC-17, while porn merchants will happily remain with the old fashioned X. However, soon after the NC-17 was announced, Parliament Films submitted a toned-down version of the 1978 hardcore sex film "Disco Dolls in Hot Skin in 3-D" to the MPAA and received an NC-17 MPAA and received an NC-17.

Similar to the X-rating, NC-17 can economically damage a film. Last month, the producers of the Ken Russell film "Whores" appealed the picture's NC-rating. The association found that the movie's sensuality, language and violence warranted the controversial rating. The rating was opposed because it would undeniably harm the film's release. Most newspapers are reluctant to run display advertising for the picture.

It is clear that the MPAA has failed to distinguish adult films from x-rated pornography and the NC-17 is merely an X with a sanitized title.

The Need to Reimpose Public Interest and Local Programming Standards on Broadcasters

By Steven Hsiang Orme '93

The Fairness Doctrine, which existed from 1929-1987, was the basis for the requirement that broadcasters provide their audience with a share of programming that addressed important social and controversial issues.

The Communications Act of 1934 mandated that broadcasters served the community's public interest, convenience and necessity in the operation of the broadcast station and its choice of programming. Cognitive of the power and influence of the medium, Congress created the Federal Communications Commission to regulate broadcasters and enforce its mandate.

Instead it is consumed by its obligation to protect the interest of the population. The Commission fails its congressional mandate, because it fails to serve the needs of the community's needs are blocked or stonewalled by the station management. The reasons for this are painfully obvious. Asian Americans have not cultivated a political presence and they have not made themselves known as a market force. Perpetuating the problem, the Federal Communications Commission has failed to enforce the need for public interest and local programming. The Commission fails its congressional mandate, because it fails to serve and protect the interest of the population.

It is time for the FCC to reimpose public interest and local programming standards on broadcasters and force the broadcasters to respond to the needs of the communities they are supposed to serve.

Media Law Project, Page 3
By Todd V. Lamb '94

The role of television in our society has changed drastically over the last thirty years. Once a medium purely for entertainment, television has developed into a hard hitting advocate for social, political, and legal change. Nowhere is this more prevalent than in legal entertainment programming.

Thirty years ago, legal entertainment came in the form of shows like Perry Mason. From episode to episode the stories were similar: Mr. Mason's client would be vindicated. The program became a forum for discussion on the topic of the law.

Recent episodes of Law and Order have taken on more contemporary legal issues. In one episode a murder occurred on the streets of New York City. The investigation led the police to a homeless person living in Central Park. The police searched the homeless person's property and found the murder weapon. They did not have a search warrant. Not so coincidentally, several days after the show aired, the United States Supreme Court affirmed a Connecticut Supreme Court decision holding that police must get a search warrant to search the personal property of a homeless person even if that person lives on public property.

In a different episode, parents of a sick child refused medical treatment for the child because of religious convictions. The child died. The People brought manslaughter charges against the parents. The jury found the parents guilty. During the trial it became clear that if convicted, the judge might not let the parents see any jail time. In the episode the prosecutor was asked why he pushed for a conviction when he knew the parents would not go to jail. He said that with this case on the books, parents with strong religious convictions might think twice before refusing medical treatment for their children.

L.A. Law has also put a lot of effort into addressing contemporary legal issues. On an episode about a year ago a white police officer killed an Afro-American teenager while responding to a call. After an investigation, the police found that the officer had done nothing wrong. However, a community activist got involved as counsel for the deceased's family. Through the media he managed to have the case brought to trial. At the end of the trial the officer was acquitted.

The program suggested that crimes in poor and minority neighborhoods are not always investigated and prosecuted with the same effort as crimes in other areas. However, the program went on to suggest that people like the Rev. Al Sharpton can help bridge the gap between police service in the various neighborhoods.

An average group of people who watched an episode of Perry Mason would be aware of the legal outcome of the program. The same would not be true for a group of people watching L.A. Law or Law and Order. That is one of the biggest changes in television in the last thirty years, and a good one.

Recent episodes of Law and Order have taken on more contemporary legal issues. In one episode a murder occurred on the streets of New York City. The investigation led the police to a homeless person living in Central Park. The police searched the homeless person's property and found the murder weapon. They did not have a search warrant. Not so coincidentally, several days after the show aired, the United States Supreme Court affirmed a Connecticut Supreme Court decision holding that police must get a search warrant to search the personal property of a homeless person even if that person lives on public property.

In a different episode, parents of a sick child refused medical treatment for the child because of religious convictions. The child died. The People brought manslaughter charges against the parents. The jury found the parents guilty. During the trial it became clear that if convicted, the judge might not let the parents see any jail time. In the episode the prosecutor was asked why he pushed for a conviction when he knew the parents would not go to jail. He said that with this case on the books, parents with strong religious convictions might think twice before refusing medical treatment for their children.

L.A. Law has also put a lot of effort into addressing contemporary legal issues. On an episode about a year ago a white police officer killed an Afro-American teenager while responding to a call. After an investigation, the police found that the officer had done nothing wrong. However, a community activist got involved as counsel for the deceased's family. Through the media he managed to have the case brought to trial. At the end of the trial the officer was acquitted.

The program suggested that crimes in poor and minority neighborhoods are not always investigated and prosecuted with the same effort as crimes in other areas. However, the program went on to suggest that people like the Rev. Al Sharpton can help bridge the gap between police service in the various neighborhoods.

Political and legal issues are being brought into the home on television. Programs like L.A. Law and Law and Order are heightening public awareness of what is going on in our nations' courtrooms and how our courts make law. Whether you agree with the issues presented is not the point. Neither is whether you agree with the way lawyers are portrayed on television. Television can be a tool to make people think rather than something they get lost in. Today, these programs are trying to make people think.

Median Law Project, Page 4

Obtrusive Filming

By David Taplitz '94

One of the great things about living in New York is that you can see one of your favorite movie stars being filmed on the same street that you walk home on each day. In fact, you may be forced to walk quite a bit out of your way to get around your favorite movie star. On many summer days in SoHo, you can't walk two blocks without seeing a film crew blocking the street and taking up all of the parking spaces. Luckily for most people, the thrill of seeing a major motion picture being filmed makes up for the hassles. This is not true for many of the building owners who get talked into letting the film company use their property. For a few hundred dollars, and promises of dates with the stars and having your kids put in the movie, the film company gets the building owner to sign an agreement in which the film company can make a complete mess of the property for as long as is specified in the agreement. Of course you don't get the date with the star, or your kids in the film. What you do get is your building in a movie, depicted in any way the film maker chooses. It is not always pretty, even if it is defamatory towards you, untrue, or censurable in nature. It would be wise for building owners to read the agreement carefully before having their property immortalized on film.
DUE PROCESS AND THE MEDIA

By Rich Ballerini '94

The ground work for our legal system suggests many terms that are used in an attempt to compensate a damaged party fairly while not being too generous. Some of these terms include: reasonable, foreseeable, fairness, public policy, economic efficiency, etc. Refined as it is, there are areas of our legal system which most of us do not agree with. Some disagreements are widely supported by members and non-members of the legal community alike. When conflict arises, there is always the possibility that the courts will correct a ruling that has fallen out of favor or is behind the times.

The courts can correct themselves, but what of an outside influence such as the media? What of the influence of the media on the United State's legal system? What power does it have over our legal system? How are participants within the system influenced? What of potential participants? Is the influence a more positive one? Or could it be a more negative influence? These are just a few questions to think about. I am sure there are many more.

I cannot say that I have been a party to a legal proceeding. Yet, I suppose that being an adversary in a court case is a very personal matter. Would it be fair to say that if a party's case is reported through the media that the party many think twice about bringing the case to court? I think so. A party may avoid adjudicating a claim that may result in their very personal "matters" being exposed to a large audience. The resulting issue is a distressing one. Many valid claims would be kept out of court due to this type of fear.

Similarly, this type of fear can affect the party who is the object of a claim. A company who is on the receiving end of a claim may be intimidated by the bad press that a publicized court action may bring. Yet, here the claim may or may not be a valid one. Besides the expense of the trial, the bad press coming out of the trial proceeding may cause a financially substantial amount of harm. Years of public relations and advertising can be diminished if not destroyed because it does not matter whether the claim was valid or not. So, an innocent party may have to settle a claim that lacked any basis whatsoever.

Finally, what effect does the media have on sentencing procedure? How does media affect the final ruling in a case? I am sure many would say that it is a small one. Yet, the media exposure that a trial receives must put some kind of pressure on the proceeding. The most publicized trials seem to allow for a "campaigning" for an appropriate sentence. When Michael Milken was convicted, we saw a deluge of letters to the presiding judge trying to persuade her on the severity of his sentence. Some said Milken would rot in jail and a great mind would go to waste. Others stated that he was a criminal of the worst kind who swindled innocent people all in the name of greed. I do not know if the judge was swayed by the pleas from either side. Still, I do know that the exposure through the media caused that atmosphere. Is such exposure dangerous? Sometimes I think it is.

Perhaps I have left out the good points of the media's effect on our legal system. That is another story though. I do not have a clean concise conclusion on the few points I have brought up. It is a little ironic how our highly evolved legal system is subject to the possibility of manipulation through the media. It seems that the legal system is just another casualty of the media stream.
DAMAGES AND THE ARTS

By Monica Ashton '92
Vice President/Eve
Media Law Project

In Contracts I, having been subjected to the wonderful world of "damages," I was immensely disappointed to discover that an author at one time could only collect nominal damages when his manuscript was rejected by a publisher, according to Freund v. Washington Square Press, Inc., 34 N.Y.2d 379 (1974). In that case, the court held that it was too speculative to determine what damages were suffered by the author, since "a stable foundation for a reasonable estimate of royalties" had not been shown. Ibid, at 385. Being a composer myself, I remember being upset by this, and I vowed to look into it at a later date.

So, this semester, I decided to take Publishing Law (I highly recommend the course) whereupon I was happy to find that over the years, the Freund case has been overturned. Today, an author in the same position may recover reliance damages, and in some cases, expectancy damages can be awarded to artists and authors who show a reasonable estimate of their losses.1

The landmark case which changed the standard came in 1982 with Harcourt Brace Jovanovich, Inc. v. Goldwater, 532 F.Supp. 619 (S.D.N.Y. 1982) where the court held that a publisher had a duty to edit a manuscript and the publisher had to act in good faith. Since Senator Goldwater had written an outline for the book, which the publisher received no response, the court determined that HBJ had not acted in good faith. The outline, incidently, helped to establish a more objective standard for a publisher's acceptance of a manuscript, and Senator Goldwater was able to keep his advance.

In 1984, in Dell Publishing Co. v. Whedon, 577 F.Supp. 1459 (S.D.N.Y. 1984), a court awarded reliance damages to an author who had written a 12-page outline and more than one half of a manuscript which had been approved by the publisher, but was told the manuscript was unsatisfactory upon completion. The court there held that a publisher owes the author a good faith opportunity to revise the manuscript and he must give the author a detailed explanation of the problems before rejecting it. The author in this case not only was able to keep her advance money, but she was also not obligated to give the publisher first proceeds from the subsequent sale of the book, since the contract was terminated.

Moving away from publishing contracts, the courts are beginning to use a more objective test in determining what damages should be awarded to artists in other similar situations. For instance, in 1977, a court awarded damages to a group of priests who wrote a hit song and were denied profits due to lack of promotion on the part of a new company which had taken over their original publisher. Contemporary Mission, Inc. v. Famous Music Corporation, 557 F.2d 918 (1977). In determining the amount of damages to be assessed, the court quoted Williston on Contracts, stating that "if the plaintiff has given valuable consideration for the promise of performance which would have given him a chance to make a profit, the defendant should not be allowed to deprive him of that performance without compensation unless the difficulty of determining its value is extreme." The Court then determined a "reasonable estimate of royalties?" by computing percentages of the likelihood of the song reaching the top of the charts based on similar songs reaching the same status on the charts in the same year. The court found the analysis was sufficient to award damages.

Of course, some other courts have turned the other way, limiting Contempo­rary Mission, but at least today, authors and artists are able to recover damages if they can show a reasonable basis for determining those damages.

4 see, Zilg v. Prentice Hall, 717 F.2d 671 (2d Cir. 1983) (publisher must make "minimum" efforts to satisfy obligation to publish in good faith).
Pirate Cable, Cont’d from page 1

supposedly reputable agent, but found otherwise when informed of the $110,000 fine.

Out of 90,000 subscribers within their viewership, ACQ ferreted out 317 potential pirates with the bullet technique. ACQ filed suit against all 317 in Queens County on April 25. Some viewers readily chose to settle, but it is not clear whether all of these people actually acted to steal these special services. It is important to note that some people like Paula M., who forced people to prove the existence of owning a pirate chip and cannot prove the supposedly reputable agent, but found otherwise like Paula M., also from Flushing deny the existence of their case because ACQ possesses the evidence to control the legal framework of its case. ACQ wins the boxes, so they own the evidence of the pirate chip which was installed by their own employees. ACQ is aware that most people cannot afford to fight a company with deep pockets, so settlement is the only option for most, regardless of guilt or innocence. And it can be had for more than $500. Seeing that this would be the way out for most people, ACQ then instigated an amnesty program for all potential violators in May of this year. At present, more than 40% of claims have been settled through the amnesty program. The others claim innocence.

Make no mistake, cable is big business now. By the end of this year, over two-thirds of the homes in the United States will have cable television running into their homes. This endless stream of pictures where HBO, Showtime, Sports Channel and the emerging Pay-Per-View compete means profit and problems to the companies involved with intellectual property. There are many fascinating avenues to explore the advent of new technology will create a real need for lawyers versed in television. We cannot have service disrupted without having a pirate chip installed and second, it has the potential to target closed-captioned viewers, whose special chip might be burned out.

The distributor controls every facet of the viewing process and in doing so, makes the consumer obliged to cable companies to a higher degree than government regulated services like telephone services. With phones, once the consumer enters your home, you can add connections in any room, use your choice of phone, and choose from a number of long distance services, all in competition with one another. Cable does not afford such an option, and this is because of a lack of regulation in the cable industry.

Barry Rowenham feels that “ACQ has sent out a message loud and clear” for pirates to stop illegal reception of signals, but according to a 1985 study of cable pirates' habits in the journal Criminology, distributors needn't speak so loud to lower their rates of theft. Gary Green, of the University of Evansville claims that cable theft can be curtailed drastically by making the viewer who steals pay services from the distributor aware of the illegal nature of cable piracy through public notice advisories transmitted through the cable service. The people who steal cable signals are not criminal types. As we have seen, they might not enter such actions are illegal. This way ample notice to pirates is given informing them of the risk and consequences of their actions, and leaves the distributors a cross-country survey, the notice technique has cut down on illegal behavior once viewers understand what they are doing is illegal, and is taken very seriously by the cable distributors.

What is needed is a balance between the pirates who are constantly pushing for new techniques to provide pirate services and those using heavy-handed methods of safeguarding against pirates and consumers themselves. For example, in the middle, Joan McCoy ended up settling for $1500, the pirate chip servicemen have been fired, and ACQ can still fire other bullets at will. It leaves our property. It originates in a building set apart from a number of long distance distribution companies involved with intellectual property. It is our view the signal never enters your home, you can add connections in any room, use your choice of phone, and choose from a number of long distance services, all in competition with one another. Cable does not afford such an option, and this is because of a lack of regulation in the cable industry.

Television in Politics:
Access, Form and Substance

by Scott Mackoff

How has television affected America? Some will say it has brought us closer together, instantly allowing people from different parts of the country to see the same events at the same time. Some say that it has added to our culture, allowing us to experience many of those things, while others say it has turned us into a bunch of couch potatoes, that lack initiative and creativity. At its best television is a great communicator, bringing historic events into your home as they happen, with a personal and timely touch that no other medium can equal. At its worst it is mere fluff.

One of the biggest effects on America that television has had is in the way we select our leaders. John F. Kennedy became president because of how he looked on television. And Lyndon Johnson remained president in large part through the positive portrayal of himself in a television ad. Moreover, Johnson lost the presidency as America viewed it first T.V. ad. Ronald Reagan was known as the television president and probably won election because he was a recognizable name (a T.V. and movie star) rather than a great leader. Television has created the fluff without substance politician, which ultimately affects the country in a negative way. Could Franklin Roosevelt be elected once, twice, three times if he had to campaign on television? How familiar are you with cable laws? How do you think a cable company would regulate how much money they spent in your area? Do you think a cable company would change its service if they had to compete with another company for viewers? These are some questions that need to be answered when looking at the future of cable television. The answer to these questions is that we cannot have service disrupted without having a pirate chip installed and second, it has the potential to target closed-captioned viewers, whose special chip might be burned out.

Television in Politics:
Access, Form and Substance
For information see your Pieper Reps or contact:

PIEPER NEW YORK-MULTISTATE BAR REVIEW, LTD.
90 Willis Avenue, Mineola, New York 11501 • Telephone: (516) 747-4311

PIEPER REPS: Ellen Cavolina, Michelle Gleason, David Kritzer, Vucky Woody, Kerri Lechtrecker, Andrew Shipper & Deborah Shull
supervise and operate the emergency room "on a contract basis, and not as an employee." 53 The judgment of the trial court, which dis­missed the complaint on the ground that the doctor was an independent contractor, was reversed by the Appellate Division, Third Department. 54

The Appellate Division stated that the test for finding the hospital negligent in the exercise of control in respect to the manner in which the doctor operated the emergency room. Because the doctor was controlled by the hospital as to the means and manner of rendering emergency care, the court found that the doctor was not an independent contractor but an employee of the hospital. 55 The court found further factors that mandated this conclusion as a matter of law. The doctor was guaranteed an annual salary, clerical help provided by the hospital did the billing, and the doctor's fees were based on rates set in the contract. 56

The Mduba court found that even if the doctor were an independent contractor, the hospital would be responsible for his negligence. The hospital had held itself out to the public as an institution furnished with doctors and facilities for emergency treatment, was under a duty to properly screen the services and was therefore liable for the performance of those services by the doctors and staff if hired and furnished. 57 Accordingly, the court held that the physician bore or herself of hospital facilities has a right to expect satisfactory treatment from any personnel furnished by the hospital. 58

CORPORATE NEGLIGENCE

Another relatively recent development in the law of medical malpractice is the doctrine of corporate negligence.

Established in the case of Darling v. Charleston Community Memorial Hospital, 59 this doctrine recognizes that a hospital owes a duty of care to the patient. Thus, a hospital may be liable for its own negligence when it fails to properly screen applicants for staff privileges or allows an incompetent physician to remain on staff despite knowledge or reason to know of the physician's incompetence. 60

In Darling, the court upheld a jury verdict against a hospital for injuries resulting from the care provided by a non-employee physician on its medical staff. 60 The plaintiff had received treatment at the hospital's emergency room from a physician on call for a broken leg. As a result of construction encroachment caused by swelling against the cast constructed by the physician with the assistance of members of the hospital staff, the plaintiff's leg had to be amputated. 61 The hospital argued that its only duty, as established by medical custom, was to use reasonable care in selecting its medical staff. 62

In rejecting this argument and holding the hospital liable, the Darling court noted it was "both desirable and feasible that a hospital assume certain responsibilities for the care of the patient." 63 The findings of negligence on the two issues submitted to the jury were, in the Darling court's view, insufficient to support the jury verdict against the hospital. The first basis for liability was the hospital's failure to provide sufficient nurses to monitor the plaintiff's condition and alert hospital authority to the dangerous condition of the plaintiff's leg. The second basis was the hospital's failure to review the physician's work or require a consultation of the plaintiff's case. 64

Acceptance of this theory reflects the modern perception that a hospital owes more than mere supervision for the use of private physicians in the treatment of their patients. 65

In quoting the New York Court of Appeals, the Darling court recognized:

"the perception that the hospital does not undertake to treat the patient, does not undertake to act through its doctors and nurses, but undertakes simply to procure them to act upon their own responsibility no longer reflects the facts. Present-day hospital policy and their manner of operation plainly demonstrates, dollar more than figure, that the hospital treatment is for treatment. They regularly employ on a salary basis a large staff of physicians, nurses and interns, as well as administrative and maintenance personnel. They charge patients for medical care and treatment, collecting for such services, if necessary, by legal action. Certainly, the person who avails himself of hospital facilities has a right to expect satisfactory treatment from any personnel furnished by the hospital."

The doctrine of corporate negligence has been widely adopted, particularly in states that follow the "apparent agency" theory. 65

HOSPITAL LIABILITY FOR INCOMPETENT PRIVATE ATTENDING PHYSICIANS

An example of the previously discussed doctrine of corporate negligence involves decisions recognizing that a hospital has a duty to exercise reasonable care in selecting its medical staff and granting its privileges. 66

The New York Appellate, Division Fourth Department has stated:

"While a hospital is not responsible for the medical treatment of a patient by a private physician with staff privileges, the faculty of a hospital in approving an application for staff privileges is negligence. This is not to say that hospitals are liable for the acts of their medical staff and the delivery of surgical and anesthesia services. The Director of Anesthesia Services is responsible for assuring that anesthesiast services are consistent with patient needs and with current anesthesia practices."

INADEQUATE EQUIPMENT

These standards establish specific requirements for each level of hospital emergency room is to be "classified according to the level of the services provided" ranging from "comprehensive to a first-aid / referral function. These standards established specific requirements for each level of care."

Now, hospitals may be held liable for refusal to render treatment in their emergency rooms, even though the patient is uninsured and unable to pay for the necessary treatment. In the past, hospitals could subside charity care by billing the uninsured. The advent of cost containment, however, has made this cost-subsidy approach more difficult. 72 Hospitals may be held liable for failure to properly screen applicants for staff privileges or allow an incompetent physician to remain on staff despite knowledge or reason to know of the physician's incompetence. 73

In reaction to these concerns, federal law now requires hospitals with emergency room which receive Medicare reimbursement to provide an "appropriate medical screening examination to "any individual" whether or not covered by Medicare and "who comes to the emergency department. Under the corporate negligence concept, hospitals may be held liable for failure to properly monitor the performance of their professional staff and the delivery of surgical and anesthesia services."

CONCLUSION

"It has been noted that the failure to provide a wheelchair is simple negligence, since a hospital's duty to provide a working wheelchair is administrative in nature."

An equipment failure may be the cause of a patient's injury or death for which the hospital may be held liable. If the wheelchair was not defective and the hospital was not otherwise negligent, the failure to regularly examine the wheelchair constitutes actionable negligence. 77 It has been noted that the failure to provide a wheelchair is simple negligence, since a hospital's duty to provide a working wheelchair is administrative in nature. 78

An equipment failure may be the cause of a patient's injury or death for which the hospital may be held liable. If the wheelchair was not defective and the hospital was not otherwise negligent, the failure to regularly examine the wheelchair constitutes actionable negligence. 77 It has been noted that the failure to provide a wheelchair is simple negligence, since a hospital's duty to provide a working wheelchair is administrative in nature. 78

An equipment failure may be the cause of a patient's injury or death for which the hospital may be held liable. If the wheelchair was not defective and the hospital was not otherwise negligent, the failure to regularly examine the wheelchair constitutes actionable negligence. 77 It has been noted that the failure to provide a wheelchair is simple negligence, since a hospital's duty to provide a working wheelchair is administrative in nature. 78

The hospital may be found liable for the improper care in the selection, maintenance and use of equipment and facilities. If a hospital against the hospital has been allowed where a failure to adequately maintain a wheelchair has been held liable where the wheelchair was defective and the hospital was not otherwise negligent. 79 Failure to regularly examine the wheelchair constitutes actionable negligence. 80

It has been noted that the failure to provide a wheelchair is simple negligence, since a hospital's duty to provide a working wheelchair is administrative in nature. 81

An equipment failure may be the cause of a patient's injury or death for which the hospital may be held liable. If the wheelchair was not defective and the hospital was not otherwise negligent, the failure to regularly examine the wheelchair constitutes actionable negligence. 77 It has been noted that the failure to provide a wheelchair is simple negligence, since a hospital's duty to provide a working wheelchair is administrative in nature. 78

An equipment failure may be the cause of a patient's injury or death for which the hospital may be held liable. If the wheelchair was not defective and the hospital was not otherwise negligent, the failure to regularly examine the wheelchair constitutes actionable negligence. 77 It has been noted that the failure to provide a wheelchair is simple negligence, since a hospital's duty to provide a working wheelchair is administrative in nature. 78

An equipment failure may be the cause of a patient's injury or death for which the hospital may be held liable. If the wheelchair was not defective and the hospital was not otherwise negligent, the failure to regularly examine the wheelchair constitutes actionable negligence. 77 It has been noted that the failure to provide a wheelchair is simple negligence, since a hospital's duty to provide a working wheelchair is administrative in nature. 78

An equipment failure may be the cause of a patient's injury or death for which the hospital may be held liable. If the wheelchair was not defective and the hospital was not otherwise negligent, the failure to regularly examine the wheelchair constitutes actionable negligence. 77 It has been noted that the failure to provide a wheelchair is simple negligence, since a hospital's duty to provide a working wheelchair is administrative in nature. 78

An equipment failure may be the cause of a patient's injury or death for which the hospital may be held liable. If the wheelchair was not defective and the hospital was not otherwise negligent, the failure to regularly examine the wheelchair constitutes actionable negligence. 77 It has been noted that the failure to provide a wheelchair is simple negligence, since a hospital's duty to provide a working wheelchair is administrative in nature. 78

An equipment failure may be the cause of a patient's injury or death for which the hospital may be held liable. If the wheelchair was not defective and the hospital was not otherwise negligent, the failure to regularly examine the wheelchair constitutes actionable negligence. 77 It has been noted that the failure to provide a wheelchair is simple negligence, since a hospital's duty to provide a working wheelchair is administrative in nature. 78

An equipment failure may be the cause of a patient's injury or death for which the hospital may be held liable. If the wheelchair was not defective and the hospital was not otherwise negligent, the failure to regularly examine the wheelchair constitutes actionable negligence. 77 It has been noted that the failure to provide a wheelchair is simple negligence, since a hospital's duty to provide a working wheelchair is administrative in nature. 78

An equipment failure may be the cause of a patient's injury or death for which the hospital may be held liable. If the wheelchair was not defective and the hospital was not otherwise negligent, the failure to regularly examine the wheelchair constitutes actionable negligence. 77 It has been noted that the failure to provide a wheelchair is simple negligence, since a hospital's duty to provide a working wheelchair is administrative in nature. 78

An equipment failure may be the cause of a patient's injury or death for which the hospital may be held liable. If the wheelchair was not defective and the hospital was not otherwise negligent, the failure to regularly examine the wheelchair constitutes actionable negligence. 77 It has been noted that the failure to provide a wheelchair is simple negligence, since a hospital's duty to provide a working wheelchair is administrative in nature. 78

An equipment failure may be the cause of a patient's injury or death for which the hospital may be held liable. If the wheelchair was not defective and the hospital was not otherwise negligent, the failure to regularly examine the wheelchair constitutes actionable negligence. 77 It has been noted that the failure to provide a wheelchair is simple negligence, since a hospital's duty to provide a working wheelchair is administrative in nature. 78

An equipment failure may be the cause of a patient's injury or death for which the hospital may be held liable. If the wheelchair was not defective and the hospital was not otherwise negligent, the failure to regularly examine the wheelchair constitutes actionable negligence. 77 It has been noted that the failure to provide a wheelchair is simple negligence, since a hospital's duty to provide a working wheelchair is administrative in nature. 78

An equipment failure may be the cause of a patient's injury or death for which the hospital may be held liable. If the wheelchair was not defective and the hospital was not otherwise negligent, the failure to regularly examine the wheelchair constitutes actionable negligence. 77 It has been noted that the failure to provide a wheelchair is simple negligence, since a hospital's duty to provide a working wheelchair is administrative in nature. 78

An equipment failure may be the cause of a patient's injury or death for which the hospital may be held liable. If the wheelchair was not defective and the hospital was not otherwise negligent, the failure to regularly examine the wheelchair constitutes actionable negligence. 77 It has been noted that the failure to provide a wheelchair is simple negligence, since a hospital's duty to provide a working wheelchair is administrative in nature. 78
Moot Court Wins in National Competitions, Gains National Respect

by Patrick Benn

Sometimes considered the unwanted step-child of the eight floor, the Moot Court Association has been gaining recognition nationally. Guided by the inspirational coaching of Debra Robb, the Dowell-Larsen Medical Student Safety Faculty and Equipment where a physician would be liable to patients for injuries sustained through their negligence of hospital employees acting within the scope of their employment (to be discussed in detail in the malpractice and the doctor-patient relationship). See Comment, The Vicarious Liability of Hospitals for Medical Malpractice, 8 Wash. L. Rev. 233 (1963) (hospital's liability are no longer workable.


At see if the doctrine of res ipsa loquitur applies.

In so far as Holtforth found no basis for the application of res ipsa loquitur in the case of an allegedly unskilled emergency room situation, the courts in thirty years after Holtforth was decided, the appellate court has denied staff privileges.

Holtforth v. Rochester General Hospital, 304 N.Y.S.2d 237, 105 N.E.2d 610 (1954). The signification of "liability" is that a hospital that provides medical care will be liable in a similar circumstance through the negligence of its paid staff members.

Id.


For see Comment supra note 21.


411 N.Y.S.2d 901 (2d Dep't. 1978) (Hospital may be liable to patient for negligence of hospital employees acting within the scope of their employment). See Comment supra note 21.

Holtforth v. Rochester General Hospital, 304 N.Y.S.2d 237, 105 N.E.2d 610 (1954). The signification of "liability" is that a hospital that provides medical care will be liable in a similar circumstance through the negligence of its paid staff members.

Id.


Holtforth v. Rochester General Hospital, 304 N.Y.S.2d 237, 105 N.E.2d 610 (1954). The signification of "liability" is that a hospital that provides medical care will be liable in a similar circumstance through the negligence of its paid staff members.

Id.


Holtforth v. Rochester General Hospital, 304 N.Y.S.2d 237, 105 N.E.2d 610 (1954). The signification of "liability" is that a hospital that provides medical care will be liable in a similar circumstance through the negligence of its paid staff members.
A New Clinic at NYLS?

By Danielle Deillo

While substantive law classes provide requisite background knowledge and develop analytical thinking, most law students yearn for "real life" experiences faced by lawyers. Under the supervision of a practicing lawyer and/or a faculty member, clinical programs in a variety of fields offer opportunity for involvement with "real life" clients. Clinics also provide valuable legal services to clients in communities which continue to underserve

Currently, Legal Association for Women (L.A.W.) members and other interested students are working to establish a Domestic Violence Clinic at NYLS. Although discussions are still in the preliminary stages, the possibilities are optimistic.

October 24, Kristian Miccio, an adjunct professor at NYLS, and Susan Herman of Victim Services Agency, spoke to a group of students about domestic violence and the surrounding legal issues at "Victims Rights," an event sponsored by L.A.W. The audience members also expressed strong interest in establishing the clinic.

Women who attended Antioch, a clinically oriented law school, strongly encouraged establishing a domestic violence clinic and spoke of the need for and advantages to both clients and law students. Ms. Miccio, who is also the Director of the Center for Battered Women's Legal Services, suggested that the Center, which was established in 1988 and is part of Sanctuary For Families, merge with NYLS and therefore provide an institution through which to run the proposed clinic.

Following additional discussions, a formal proposal will be drafted and submitted to the Faculty Skills Committee and to Professor Larry Grossberg, Director of the Lawyering Skills Center. If implemented, a domestic violence clinic would add to the curriculum at NYLS by providing more opportunities for students to receive practical "hands-on" training and at the same time provide much needed legal services to clients in the NYLS community.

For further information, ideas or inquiries, please contact Danielle Deillo or Liz Ames.

L.A.W.
Symposium
on
Domestic Violence

by Alesia Albanese

On October 24, 1991 The Legal Association of Women hosted a timely and intriguing symposium addressing domestic violence and the rights of its victims. Two speakers, Susan Herman and Professor Kristian Miccio, addressed the audience and then led a question and answer period. This symposium laid the groundwork for a proposed Battered Women's Project to be coordinated by L.A.W. Susan Herman, Attorney for Social Services, is director of the Domestic Violence Division of the Victim Services Agency. Ms. Herman began the discussion with some eye-opening statistics. According to Ms. Herman, crimes against women are the leading cause of injury and death to women in our country. Annually, four thousand women are beaten to death and six million are physically abused. Fifty percent of all women in the United States will be victims of domestic violence within their lifetime.

Professor Miccio is an adjunct professor at New York Law School and is the former director and Attorney for the Center for Battered Women in New York. Professor Miccio addressed the concern regarding the Right to Privacy (which is granted, she stated, to a group to which women have historically been excluded), and the historical lack of identity suffered by women who have been "subsumed by fathers and husbands," and the legal struggles of r ape victims. Professor Miccio informed the attentive audience that it was not until 1962 that violence in the home was considered a crime worthy of criminal prosecution in New York State. She stated that the Common Law rule that a man could beat his wife with a stick that was thicker than his thumb. This was known as "subtle chastising." On the accusation that Anita Hill fantasized her alleged sexual harassment, Professor Miccio emphatically said, "No one can, anyone push themselves into your body any more than you fantasize having them push themselves into your mouth!"

Bottom Photograph, Susan Herman and Professor Kristian Miccio

Photos by Darlene Miloski

The Portable Lawyer:

The Toshiba T2200

by Joseph Conway

Toshiba has done it again. It's new T2200 notebook computer is state-of-the-art, portable computing that easily compares with some of the best DOS machines on the market today.

At a street price of around $3800, this putty-colored notebook comes standard with 2MB RAM, and can be expanded to hold up to a maximum 10MB with the addition of memory cards. A 2MB upgrade, which you will need if you plan to run Windows, costs around $450. A 4MB RAM upgrade lists at $799 (which you will need if you want to do multitasking (that is, run a word processing program and spreadsheet simultaneously) and 8MB will set you back about $1700. You can install these cards yourself by sliding open a side panel and popping one in.

Toshiba has equipped the T2200 with a 10" diagonal LCD screen, the largest they have ever used. The contrast and brightness are better than average, and the machine is capable of displaying up to 16 shades of grey. Overall it is one of the better screens on the market today, although the Compaq 386 notebook and the AT&T Safarillo by far can claim to have the best DOS-based screens around.

Where the T2200 can't beat it is with its battery. Toshiba uses a nickel hydride battery that gives the T2200 about 3-4 hours of uninterrupted use per charge. That's not bad compared to the 2-3 hours that you get from standard Ni-Cad batteries (the type used in most other major notebook brands today). What's even better, is that you can charge the batteries while you are using the machine, which you cannot do with most Ni-Cad based systems.

Also, the nickel hydride battery doesn't suffer from the "memory effect" that plagues Ni-Cad batteries. With the memory effect in a notebook, "You don't have to recharge a Ni-Cad battery before it wears down completely, or else the charge-life of the battery shortens."

The T2200 also comes standard with power management and auto resume capabilities. Auto resume allows the notebook user to close the lid, walk away and come back several days later, and jump right back in at the point where the user left off. What it does in the meantime is slow the central processor down to almost the point of stopping. This cut back on the power being drawn from the battery, and dramatically extends its life.

The T2200, at 5.5 pounds, is also the lightest notebook currently on the market carrying a standard internal hard drive. In comparison both the Compaq and the AT&T weigh in at over 7 pounds. This may not seem like much of a difference on paper, but after an entire day of carrying the Compaq around, you will appreciate the T2200.

Toshiba has accomplished this reduction in weight without compromising any of the notebook's features. Rather, the company has developed a new carbon filament casting which is substantially lighter than the standard plastic housing used. The keyboard remains at the usual acceptable standard size, with keys that are springy and responsive (most keyboards have a short return travel length that makes them uncomfortable to use over extended periods of time).

As The Reporter goes to press the optional 2400 baud internal modem should be available for the T2200. It costs about $300, and must be installed by an authorized dealer. Toshiba also plans a docking station for the T2200, a machine that will connect the T2200 to your home computer or any other notebook (such as a CD-ROM drive or a scanner).

Overall, the T2200 ranks as one of the best DOS-based notebooks around. If you're looking for the best screen on the market, the hands-down choice is still the Macintosh PowerBook. But if it's battery life and unbeatably low weight that you are looking for in a notebook computer, the T2200 may be the just the machine for you.
Companies that promote their business by distributing advertising materials widely throughout the Cardozo building rob from the student body. This advertisements poison the school and violate existing school policy. Unfortunately, goods and services to us typically provide beneficial products, such as first-year, bar and exam review courses, resume, and word processing services and social events. Even as these vendors profit, those who pay for their products typically receive their money's worth. There are no problems even if they do not, for those are the rules of our informed consumer capitalist market system. What we oppose is the current practice of double dipping. Free advertising might be appealing to those who profit from it, but it ought to be recognized as utterly unspeakable from the perspective of the student who is twice relieved of her money.

It should be noted that this editorial is not a two-faced attempt by the Forum to increase its advertising revenues by assuring itself a monopolist's hold on access to the student market. In fact, it is an attempt to prevent the over-depreciation of the Cardozo building, which is one of the most inspiring lessons in the Cardozo building. These advertisers will be forced to channel their advertising efforts into more efficient and environmentally sound means which will not create the kind of mess which Cardozo hosts now.

The experience of one Forum editor demonstrates the wide scope of the outside advertising problem. The editor contracted the proprietor of a law school exam writing course to purchase advertising space in the Forum. The editor suggested that an advertisement in the Forum would be a meaningful investment toward earning good will, since students would be happy to do business with a company which supports one of their student organizations. The editor told him the "obviously did not have what it takes to make it in America", because he was "far too pink".

We do not oppose the commercial exploitation of the Cardozo community. Those who seek to sell their goods and services to us typically provide beneficial products, such as first-year, bar and exam review courses, resume, and word processing services and social events. Even as these vendors profit, those who pay for their products typically receive their money's worth. There are no problems even if they do not, for those are the rules of our informed consumer capitalist market system. What we oppose is the current practice of double dipping. Free advertising might be appealing to those who profit from it, but it ought to be recognized as utterly unspeakable from the perspective of the student who is twice relieved of her money.

We call upon the Dean's office to prepare a form letter which will be sent to all commercial advertisers whose advertising materials are found within Cardozo and which will explain the policy against outside advertising. Further, we call upon all students, staff, and faculty of Cardozo to pick up and throw out all copies of commercial advertising material and to report the offending advertiser to the dean's office. In this way, the interests of the Cardozo community will be well served.

The experience of the Cardozo editor is similar to experiences of several Student Bar Association staff members. Recently, mailbox folders were stolen from an outside advertising vendor who distributed folders to students last year, and who charges each student $75 for his course. He refused to purchase advertising space in the Forum, and explained that he succeeds in capturing a sufficiently large market by distributing flyers at Cardozo. The editor suggested that an advertisement in the Forum would be a meaningful investment toward earning good will, since students would be happy to do business with a company which supports one of their student organizations. The editor told him he obviously did not have what it takes to make it in America", because he was "far too pink".

We do not oppose the commercial exploitation of the Cardozo community. Those who seek to sell their goods and services to us typically provide beneficial products, such as first-year, bar and exam review courses, resume, and word processing services and social events. Even as these vendors profit, those who pay for their products typically receive their money's worth. There are no problems even if they do not, for those are the rules of our informed consumer capitalist market system. What we oppose is the current practice of double dipping. Free advertising might be appealing to those who profit from it, but it ought to be recognized as utterly unspeakable from the perspective of the student who is twice relieved of her money.

It should be noted that this editorial is not a two-faced attempt by the Forum to increase its advertising revenues by assuring itself a monopolist's hold on access to the student market. In fact, it is an attempt to prevent the over-depreciation of the Cardozo building, which is one of the most inspiring lessons in the Cardozo building. These advertisers will be forced to channel their advertising efforts into more efficient and environmentally sound means which will not create the kind of mess which Cardozo hosts now.

The experience of one Forum editor demonstrates the wide scope of the outside advertising problem. The editor contracted the proprietor of a law school exam writing course to purchase advertising space in the Forum. The editor suggested that an advertisement in the Forum would be a meaningful investment toward earning good will, since students would be happy to do business with a company which supports one of their student organizations. The editor told him the "obviously did not have what it takes to make it in America", because he was "far too pink".

We do not oppose the commercial exploitation of the Cardozo community. Those who seek to sell their goods and services to us typically provide beneficial products, such as first-year, bar and exam review courses, resume, and word processing services and social events. Even as these vendors profit, those who pay for their products typically receive their money's worth. There are no problems even if they do not, for those are the rules of our informed consumer capitalist market system. What we oppose is the current practice of double dipping. Free advertising might be appealing to those who profit from it, but it ought to be recognized as utterly unspeakable from the perspective of the student who is twice relieved of her money.

We call upon the Dean's office to prepare a form letter which will be sent to all commercial advertisers whose advertising materials are found within Cardozo and which will explain the policy against outside advertising. Further, we call upon all students, staff, and faculty of Cardozo to pick up and throw out all copies of commercial advertising material and to report the offending advertiser to the dean's office. In this way, the interests of the Cardozo community will be well served.

The experience of the Cardozo editor is similar to experiences of several Student Bar Association staff members. Recently, mailbox folders were stolen from an outside advertising vendor who distributed folders to students last year, and who charges each student $75 for his course. He refused to purchase advertising space in the Forum, and explained that he succeeds in capturing a sufficiently large market by distributing flyers at Cardozo. The editor suggested that an advertisement in the Forum would be a meaningful investment toward earning good will, since students would be happy to do business with a company which supports one of their student organizations. The editor told him he obviously did not have what it takes to make it in America", because he was "far too pink".

We do not oppose the commercial exploitation of the Cardozo community. Those who seek to sell their goods and services to us typically provide beneficial products, such as first-year, bar and exam review courses, resume, and word processing services and social events. Even as these vendors profit, those who pay for their products typically receive their money's worth. There are no problems even if they do not, for those are the rules of our informed consumer capitalist market system. What we oppose is the current practice of double dipping. Free advertising might be appealing to those who profit from it, but it ought to be recognized as utterly unspeakable from the perspective of the student who is twice relieved of her money.

We call upon the Dean's office to prepare a form letter which will be sent to all commercial advertisers whose advertising materials are found within Cardozo and which will explain the policy against outside advertising. Further, we call upon all students, staff, and faculty of Cardozo to pick up and throw out all copies of commercial advertising material and to report the offending advertiser to the dean's office. In this way, the interests of the Cardozo community will be well served.
Student Bar Association
Minutes
October 30

Liz began the meeting by discussing the Halloween party which will be held on October 31st from 5:30 till 10:30. Liz suggested that we use a food truck and a clothing drive to tie in with our new SBA party which falls around holiday season. Liz also asked the Senate to think about some sort of substantial event the SBA could run next semester.

Old Business: Joan Sutton quickly ran through the proposed legislation on an honorary pardon. The Senators were instructed to read through the legislation so that the Senate could take formal action at the next meeting. The next meeting is scheduled for November 13th.

New Business: Attorney General Doug Stern discussed Frolic & Detour's new constitution. He noted that the new constitution is identical to The Reporter's existing constitution, which was ratified 10 years ago. After discussing their initial reaction to the new constitution, Liz noted that the new constitution is not a novel idea. Doug stated that he did not want to discuss the constitution, but that he wanted to discuss the issue more fully.

Motion to adjourn was made and seconded. The motion to adjourn ended the meeting.
HIV Testing: A Personal Experience

by a New York Law School Student

When "Magic" Johnson announced that he had tested positive for HIV, the media proclaimed that heterosexuastics would finally concede the truth. Anyone Can Get It. With luck and wisdom, that concession will lead to safer sex, less promiscuity and more compassion. Just maybe, those results will

reduce the number of people who acquire the virus in the future.

Mr. Johnson's brave revelation should help both those who do not have HIV (to stay that way), and those who do by enlightening the unknowledged. In a narrow zone between those two classes, however, are a few frightened souls who don't know if they have the virus in their bodies, but have reason to think they do. For each of them, a terrible decision, perhaps the first of many, presses to be made: Should I get tested? The latter applies when no identification is required. Law students should not need to worry about test results being given to any other body. If you do not know if you have AIDS, the testing process remains unknown, and people often fear what they don't know. My fear stopped me from getting tested. Then I got the news last summer, which propelled me into a world of uncertainty.

In 1990, for the first time, I learned that I might have AIDS. I decided to test, perhaps the first of many, presses to be made: Should I get tested? The latter applies when no identification is required. I won't recount the information they gave me, about life expectancy and so forth, to be used when I appeared to be giving up. They gave me a number seen on subway posters, 800 HIV INFO (448-4636). They asked me to make up a three digit number over the phone, to be used when I appeared to be giving up. They gave me a number to be used when I appeared to be giving up. I didn't know. My fear stopped me from getting tested.

Laurie gave me a short lecture on risk-avoidance, and more data on AIDS and its effects (yes, this was inconsistent, too). She then produced a dental dam (a small green sheet of soft rubber), and explained its use. She told me where I could buy them, and offered to give me one free. I sat there and stared at it for about fifteen seconds, thinking I would never use such a thing. She had been very nice to me, so I took it out of courtesy. I still have it, unused.

Laurie told me to forget my three-digit number and assigned me a new six-digit one. She gave me a card with my new number and her name on it. The result would take three weeks to get (I had been told two weeks over the phone). If anxiety overwhelmed me during that time, she said, I could call her. That actually made me feel good. Then the time came to provide a blood sample. A technician showed me an unopened package containing a disposable syringe and needle. I nodded, thinking it was a bit like approving a wine selection. The technician (called a phlebotomist) then took a blood sample, and asked me if I would like a paper for specific results. I accepted, and was prepared to take a deep breath. She then disposed of the needle in a bucket with a slotted lid, and the syringe in a separate container. Then it was time to leave, and I remembered thinking that at least I now knew the last job I would ever want to take.

At this point, I actually felt pretty good. No further action was needed on my part, except to come back for the result. In a way, I thought, the hardest part is over, because the rest is beyond my control. The three weeks were not as hard to endure as had been the two months before the test.

On the date set, I reappeared. Laurie wasn't there that day, and it seemed for a moment that I would be asked to come back the following week. Without a doubt, I would have spontaneously combusted, if so asked. Instead, a different counselor, Joseph, invited me into the room reserved for the result revelation. He closed the door, and then explained that my file had initially been misplaced, but now had been found. He explained that the test had been run twice, and that it was considered extremely reliable. Joseph explained the probability of false results, and gave me a document explaining everything in detail.

We talked a bit more, and then I left. There was no one else waiting, so I did not make a circle or get thumbs-up. I just went home, in my usual state of honesty, and said, "You have been told you are HIV antibody negative."

I might have gone the other way, of course. But up until the moment the result is learned, all tests are the same. And, although it was difficult to believe, it was easier, in a way, to think, that was then (what is like).
**THE PERILS OF REGISTRATION, PLACED AND MISPLACED HUMOR, AND THE DEATH OF A LEGEND**

**Spring Registration**

Once again, the students of NYLS are being subjected to registration, and with it comes the inevitable memorandum from John Farago, Associate Dean for Academic Affairs. Some of you may wonder what I could find to complain about in a Dean Farago registration memo? To begin with, I don't consider myself a cog, esteemed or otherwise, in anyone's wheel. Certainly, Dean Farago displays a high level of creativity and, perhaps, within his memos can be found the musings of a frustrated artist. I even admit that some of what he says is quite funny, but some of the humor may be misplaced and unappreciated when found in registration materials.

When facing the task of successfully completing registration, a student needs information, easily ascertained and understood. At times, it can be frustrating sifting through whimsical ramblings on "food chains," while trying to find a needed clarification. All in all, this semester's Farago memo seemed an improvement over the last semester's. I found myself sifting through a less superficially than I did last spring. Hopefully this is a trend of improvement which shall continue.

Rumors have it that Dean Farago also had a hand in the decision to begin classes at 9 AM instead of 9:30 AM. Having experienced this for the first time this semester, I think it suits NYLS. It is a commuter school, with many students traveling daily from Long Island, Westchester, and New Jersey. I even knew one student, last year, who traveled to school from Connecticut everyday. When students have to arrive at school for 9 AM classes, they are forced to add their numbers to the already overburdened New York City transportation system, competing with floods of workers who have to be at their jobs by 9 AM. After all, the congestion in the New York City transportation system begins to fall off sharply, making it a lot easier to get to school for a 9:30 AM class. This semester, I see a lot more lateness in 9 AM classes than I saw in 9:30 AM classes last semester. Not only are 9 AM classes unnecessarily hard on students, they are socially irresponsible. There is no need for the NYLS administration to add to the congestion of the morning rush hour.

Administration sources say that some administrators are less than sympathetic with the plight of students suffering under the burden of 9 AM classes. I wonder if that is because they live in Manhattan? Perhaps, if those administrators had to experience the 2 hour commute from Nassau County which I have every morning, their sympathies might be heightened.

Some students have complained that the Spring course offerings for night students duplicate too much of this semester's offerings. Other complaints registrations which have reached my ears are basically logistical. Students have complained of a shortage of registration materials and a clogged registration lounge seems a poor substitute for the Prosser Room. Based on my experiences at two under-graduate and two graduate institutions, NYLS does a better job than many in handling registration. However, there's always room for improvement.

**Libertarians Have A Sense Of Humor Too.**

Anyone who has ever seen the nominating process of one of our nation's political conventions is familiar with the practice of the various state delegations announcing their first ballot vote results with a little style. For example: New York, the Empire State, casts so many votes for so and so ... Well, I thought I would share with you some of the delegations announcements made at the 91 Libertarian Convention, which I think are a good example of Libertarian humor.

"Michigan, whose senior senator, Don Riegle, was a major player in the S & L ripoff... we look forward to putting a Libertarian in the White House and Mr. Riegle in jail..."

"North Carolina, the first state to declare for freedom, but we wonder where it went..."

"The pretty great state of Utah: well, it's okay if you like that sort of place, I guess. The bear state, symbol of collectivism, home of Republicans for higher taxes and bigger government, home of Democrats for censorship and drug testing, the state with the nation's lowest per capita consumption of alcohol and tobacco, and the highest per capita consumption of ice cream and jello..."

"The delegation of the state of Washington - the other Washington... the GOOD Washington, where we all wish we'd been named Jefferson..."

"The state of Alabama, where we have every conceivable tax, and where out new Republican governor, the first since the War of Northern Aggression, just outdid all previous Democrats at raising taxes..."

"Connecticut, the home of Lowell Weicker and numerous other socialist parasites..."

A Tribute To Gene Roddenberry

On October 24, 1991, entertainment legend Gene Roddenberry, creator of "Star Trek," died. Although no time is a good time, it was no time like the present. For example: Science fiction is a popular genre among libertarians and many Sci-fi books and movies helped lay the foundation for my acceptance of libertarian philosophy. In "Star Trek," Gene Roddenberry presented a practical application of at least one significant libertarian principle: non-intervention. Through the Prime Directive, the Federation (the government in "Star Trek") is prohibited from interfering in the internal politics and development of any society which it encounters. Libertarians hope that, one day, the United States government will adopt a similar policy. I salute Gene Roddenberry, in recognition of his substantial contributions to our culture and I wish him well on his journey beyond the final frontier.

"Libertarians believe in two things which are absolutely different and perhaps even contradictory: freedom and organization." - Elie Hazan.

"Is it just or reasonable, that most voices against the mainsprings of government should enslave the less number that would be free? More just it is, doubtless, if it come to force that a lesser number compel a greater to retain, which can be no wrong to them, their liberty, than that a greater number, for the pleasure of their baseness, compel a less most injuriously to be their fellow slaves. They who seek nothing but their own just liberty, have always the right to win it, whenever they have the power, be the voices never so numerous that oppose it..." - John Milton.

If you have any questions you would like to have answered, you can contact a libertarian point of view, or any comments you would like to make, correspondence is welcomed and should be directed to:

**BRENNAN'S JUSTICE**
c/o The Reporter
New York Law School
57 Worth Street
New York, NY 10013

Correspondence may also be left in person at the Reporter office. Any responses that I may have will appear in future editions of this column.

---

**November's Events**

**Nov 05 -** Sports and Entertainment Law Society will sponsor a panel on professional sports figures in the bar exam in the student lounge at 5pm.

**Nov 06 -** Black Law Student Society will sponsor a presentation on the criminal law society will sponsor a debate on the death penalty in the faculty dining room at 6pm. The speakers will include Henry Schwartzchild of the A.C.L.U. and Ernst Van Den Haag, formerly a professor at Fordham University School of Law.

Nov 12 - Office of Career Services orientation for first year day students, Room A-400 beginning at 6pm.

Nov 14 - Office of Career Services orientation for first year evening students, Room A-400 beginning at 5:30pm.

Nov 18 - The Trial Lawyers Association will sponsor a workshop on domestic violence and litigation at 5pm in the faculty dining room. Speakers will include Michael Dowd, chair of the governor's task force on domestic violence; Sara Bennett, Legal Aid Society expert on battered women; Elizabeth Lowey, head of the Manhattan district attorney's domestic violence division.

Nov 19 - This year's Otto Walter Fellow, Ambassador Thomas Pickering, the united states permanent representative to the united nations, will speak on "U.S. at the U.N.: Challenges for the 90's at 4pm in the moot court room.

Nov 20 - National Lawyers Guild will host "Legal observer mass defense session" in faculty dining room at 6pm

Nov 21 - SBA Party beginning at 5:30pm

Nov 26 - Legal Association of women will sponsor a discussion concerning issues of prostitution. The speaker will be Barbara Downs from prostitution anonymous.
New York Bar Review Course
Summer 1991
Enrollments

<table>
<thead>
<tr>
<th>Course</th>
<th>Enrollments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pieper</td>
<td>2,200+</td>
</tr>
<tr>
<td>All other courses combined</td>
<td>250+</td>
</tr>
</tbody>
</table>

Again this summer, BAR/BRI prepared more law school graduates for the New York Bar Exam than did all other bar review courses combined.

New York's Largest and Most Successful Bar Review Course