The New York Law School REPORTER

THE REMODELED READING ROOM...

Photos by Darlene Miloski
Reporter Photography Editor
NEW YORK LAW SCHOOL

WHO'S DOING WHAT AT NYLS

By William Meredith

Joseph D Brennan, NYLS '93 announced that he is seeking the Libertarian Party's nomination for the United States Senate seat currently held by Alfonse D'Amato. Brennan is enrolled in the New York Law School-Baruch College joint JD-MBA program. He writes a regular column "Brennan's Justice" for the NYLS Reporter.

Risa B. Proctor, NYLS '92 will receive the second annual Legal Aid Society fellowship from New York Law School. Proctor is co-chair of the Legal Association of Women at New York Law School. Proctor is co-chair of the

Elizabeth Schenkel, NYLS '97 and Patrick T. McGahn, Jr., NYLS '98 received the New York Law School Alumni Association's Distinguished Alumna-Alumnus Awards at a luncheon sponsored by the Alumni Association.

Professor Nadine Strossen, president of the American Civil Liberties Union, spoke to an audience of over three hundred people at the University of California, Davis, on Tuesday, January 14. She discussed free speech on college campuses. An account of her speech was published in the January 16 edition of the Aggie.

Professor Randolph Jonakait's article, Stories, Forensic Science and Improved Verdicts, which was part of a symposium, "Decision and Inference in Litigation," has been published at 13 Cardozo Law Review 343 (1991).

Professor Martin Minkowitz, who is also a partner in the New York law firm of Stroock & Stroock & Lavan, was quoted in the November 14 issue of the Journal of Commerce. He pointed out that mental stress claims as the result of sexual harassment have "become a major cost factor in workers' compensation throughout the country today".

SUPREME COURT SAYS HARASSSED STUDENTS CAN SUED SCHOOL FOR DAMAGES

By Karen Neustadl and Amy Reynolds


The February 26 ruling cleared the way for sexually harassed students to sue schools for monetary damages under Title IX of the Education Amendments of 1972 (20 U.S.C. ss 1681-1688), a decision hailed as "a stunning victory for women" by the National Women's Law Center.

"With this decision, girls and women finally have a powerful weapon to fight sexual discrimination in education," said Marcia Greenberger, co-president of the law center. "Education institutions will receive the message loud and clear that they have to seriously address the discriminatory policies still too frequently found."

The court ruling likely will force schools to reassess existing policies or write new ones. "I do think it will cause schools to (review) their policies to make sure they have teeth, and at procedures that will assure that we can do a thorough investigation when we respond to a complaint," said Paul Pitts, affirmative action director at Louisiana State University.

A lot of schools already have strong programs dealing with sexual harassment, but they need to make sure students know how to file complaints, Pitts said. "We all have a responsibility to respond to the students, and to let them know the affirmative action office is available for counseling," Pitts said. "If the policies are working, the work and study environment should be as open and free as possible...the way men and women should interact, in a pleasant environment, not fearful of what we are going to say or do."

Many schools have adopted policies that forbid "unwanted and unsolicited sexual advances, requests for sexual favors and other deliberate physical or pictorial." The Supreme Court's ruling came in the case of a former high school student who sued over her alleged sexual encounters with a teacher. Although the full implications of the ruling remain unclear, legal experts say that the worst thing a university can do is to ignore complaints of sexual harassment. Charlie Shanor, a law professor at Emory University, noted that the ruling fell under Title IX, which forbids sexual bias in all educational programs that receive federal funding, including grants, so private as well as public schools would be affected. An employer can be held liable for damages in sexual harassment cases if supervisors request sexual favors of employees in return for something. It also says that employers may be held liable if the sexual harassment involves the creation of a "hostile environment" (sexually explicit comments, nude photographs on a wall, etc.), but in such cases the employer must have had knowledge of the incident and ignored it.

A professor who pressures a student for sex in return for a higher grade might present a clear-cut case of harassment. But what would the university's responsibility be if students harass other students? "If it is sexual harassment, then it would be something the university would legally need to address," Shanor said. "My understanding is that EEOC charges of sexual harassment are up to 250 percent, mostly because of the visibility of the problem from the Anita Hill case," he said. "Even though the (high school) case isn't as visible, I think it's definitely something that will have an impact.

A recent study by the Association of American University Women noted an increase in sexual harassment of girls by boys, starting as early as the 8th grade. Pitts, who is a former AAUW policy director, said there was a 35 percent increase in the past year in the percentage of female vocational education students in the study reported harassment by male classmates and some teachers.

"Schools have an obligation to protect girls from harassment by teachers or other students," said Anne Bryant, executive director of one of the recommendations for action in the AAUW report is that strong policies against sexual harassment be developed and enforced by school personnel."

Another study showed that at Harvard University, 32 percent of tenured female professors, 49 percent without tenure, and 22 percent of graduate students, and 34 percent of undergraduate women, reported that they encountered some form of sexual harassment from a person in authority at least once while they were at the university.

The Supreme Court's ruling in the Georgia case "unanimously reversed lower court rulings that had thrown out Christine Franklin's lawsuit against the Gwinnett County public school system. The lower court said Title IX enabled alleged victims of intentional sexual discrimination to seek only "injunctive relief" to halt an illegal practice. The U.S. Supreme Court rejected the decision and said victims could sue for monetary damages as well. In Justice White's decision, the court rejected the interpretation that Title IX required students to be limited to back pay and prospective relief, noting that back pay was not available to a student, and prospective relief was not applicable to a student who has since left the school.

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New York Law School Reporter March 1992
NEW READING ROOM OPENS IN "A" BUILDING

By Caroline Gargione '93

The former Frossel Room recently reopened its doors after undergoing extensive restorations and renovations which totalled $330,000. Although the project took longer than originally planned, the result was well worth the wait.

The new reading room is no longer the Frossel Room. According to the endowment, the Frossel Room is designated as a reading room on the first floor of the library. Dean Helm explained that extra time was spent on details and finishing touches to truly "keep the feel of the room while improving it." For example, the drapes were custom made by a seamstress who did her work on top one of the contractor's scaffolds. Dean Helm said the entire room was practically "hand done."

The room is furnished with tables and chairs to serve as a reading room for students. It provides another option for students who may not want to study in the library or the lounge. In addition, the room serves as a lecture/conference room, providing NYLS faculty, students and guests with an alternative to the LeFrak Moot Court Room and the Faculty Dining Room. For these occasions, the "study" furniture is replaced with up to one hundred stacking chairs, which are stored in the closet at one end of the room. The tables and chairs are conveniently placed in the closet while a lecture or conference is taking place.

Students are asked not to bring food or beverages into the new reading room so that its splendid appearance can be maintained.

The inaugural event in the new reading room was the fourth annual Stiefel Symposium on March 3, 1992. This year's topic was "The Privatization of Eastern Europe: Reinventing the Wheel." Future events will be held in the room depending on the size of the group and the type of event.

The room enhances the overall look and ambiance of the school. Prospective students will be more interested and attracted to a school that, to put it simply, looks good! The upgrading of NYLS' facilities will further enhance its reputation.

The next project, with a Board approved budget of one million dollars, entails remodelling the lounge and creating an actual student center. Stay tuned for more details in the near future.

CANDIDATES ANNOUNCE FOR SBA PRES

Jack T. Frohlich and Douglas K. Stern have announced to The Reporter that they intend to run for Student Bar Association President in the upcoming spring election. Although the official petitions for elections have not been distributed, Frohlich and Stern have already made the early decision to run.

Frohlich is currently the Evening Vice President of the SBA. Jack authors the column, Purely Personal Prejudices, that appears regularly in The Reporter.

Stern is presently Attorney General of the SBA. Doug is the advertising manager for the reporter.

The elections should be scheduled for early April.
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The Lesbian and Gay Law Students Association has had a busy month, hosting two panel discussions here at NYLS and a party off campus. On February 22, the Lesbian and Gay Law Association of Greater New York (LeGaL), originally founded by NYLS Professor Arthur Leonard, co-sponsored "Coming Out in a Mainstream Law Firm Setting." (Readers of the "NYLS in the News" bulletin board will already have noticed the front page coverage of this event in the New York Law Journal.) The panel addressed issues of concern to Gay attorneys and law students from different perspectives within the New York Legal community. The panelists were Alexander Forger, Chairman of Milbank, Tweed, Hadley & McCloy and past board chair of NYLS; Michael Hickman, Associate at Cleary, Gottlieb, and Laurie Linton, Assistant Attorney General; Michael Ryan, partner at Gibson, Dunn & Crutcher; and Nicholas Varchaver, journalist with the Manhattan Lawyer. Arthur Leonard and LeGaL Membership Coordinator Eric Bell introduced the speakers and directed the event. After each panelist had spoken, there were questions and answers and then "breakout" groups for further discussion of specific topics. Among the themes of the panel were the progress that has been made in recent years, the dramatic variations of experience among firms and even among departments within firms, and the possibility of recognition of Gay families in benefits programs such as health insurance.

On March 6, LGLSA hosted a scaled-down version of the Fall membership party, providing students, faculty, and guests a welcome respite from the winter law school routine. On March 10, LGLSA hosted "Lesbian and Gay Co-Parenting," a panel discussion featuring Paula Ettelbrick, Acting Executive Director of Lambda Legal Defense and Education Fund (America's oldest and largest law firm dedicated to securing the rights of Lesbians, Gay men and people with HIV) and adjunct professor at NYLS; Betty Levinson, partner of Levinson & Kaplan and the attorney who successfully argued New York State's first two-parent adoption by a same-sex couple; and Wayne Steinman, founder of Center Kids (a New York organization that provides services to Gay families and their children). The co-parenting panel addressed the legal issues confronting Gay people who want to have children and was very helpful to everyone who expects either to pursue this experience personally or help clients who will. Students turned for imminent LGLSA events. On March 28, LGLSA and Professor Arthur Leonard will host this year's regional law schools party, a social event that brings together LGLSA members and our counterparts from schools throughout the area. Last year's party drew students from schools as far away as Rutgers and Yale, in addition to attorneys and guests. This year's event promises to be even more successful. Other future events will include LGLSA's representation of NYLS at this year's summer Pride Parade on June 28. As always, for information about future LGLSA events, or to be included on the LGLSA mailing/list, please leave a note in our mailbox or contact our new and esteemed coordinators, Scott Salzman and Jennifer Green.

Otis Damslet is a second year student and media coordinator for the New York Law School Lesbian and Gay Law Students Association.
"MICHELANGELO" VIRUS DOES NO DAMAGE TO NEW YORK LAW SCHOOL COMPUTERS

By Michael Wood

Last year, students stared in horror as keyboards locked up and data disappeared when the "stoned" virus spread through New York Law School computers. Hundreds of hours of research and writing were lost. The virus, which replicated through the exchange of disks with infected machines, struck in February, 1991, as first year students faced imminent Legal Writing deadlines. New York Law School began to install virus protection programs on the IBM compatible computers.

This year, the much publicized and dreaded "Michelangelo" virus did no reported damage to the same computers. Contradictory information about the "Michelangelo" virus filled the popular press: "It would cause permanent damage to the hard drive ... shares this mode of operation with a virus, the Gibraltar Revenge which was designed to commemorate the deaths of Irish Republican Army soldiers who have fallen in the struggle for freedom from Great Britain. The IRA virus hides in the memory and appears after exit from a program. The message reads "On this date, the name of a person who was killed on that date), died for Ireland. It is a quiet virus which does not otherwise upset the computer operations.

Other types of viruses act after a certain number of operations. A particularly cute virus adds nasty comments whenever the names "Reagan" or "Thatcher" are typed in.

In spite of the contradictory "information" offered by all the computer experts, there are several points of agreement:

1. Copying programs to or from friends or office computers is the primary vector of infection.
2. The use of undocumented software and swapping discs increases the likelihood of infection.
3. Each personal computer should be protected by a virus protection program.
4. Anti-virus protection must be updated periodically to protect against new virus threats.

Several anti-virus programs have earned wide-spread acceptance: Carmel Software Engineering's Turbo Anti-virus is utilized within the New York Law School; Central Point Software's "Anti-Virus 1.1" sells for $89.95 at nearby J & R Computers, $81.00 by mail from Computacles or $79.00 from Software Unlimited.

THE HIGH COST OF SOFTWARE

The high cost of software acts as an economic incentive for program copying and piracy. An alternative to high priced programs is available in "shareware" programs. "Shareware" houses offer public domain and shareware software at a small cost plus the cost of reproduction. This cost is usually between $1.99 and $10.00 per disk. Customers are expected to remit the license fee directly to the author. The shareware route is often the only way for start-up companies or programs to distribute their programs. Anti-virus programs are offered in shareware as well. Some of the better know shareware houses are: Pendragon Software Library and NOTE: students, faculty and schools are often eligible for discounts on software. Wordperfect 5.1 is available at J & R for about $119.00 and by mail from Peripherals Plus for $135 plus $7 for shipping. They also offer Microsoft Word for $135 plus handling and Aldus Pagemaker for $199 plus handling.

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As we reach the mid-semester mark, I would like to update the student body on what the SBA has been doing so far this semester, and on what is coming up before the year comes to a close.

The SBA began this semester with a general budget of approximately $29,000. To date, the senate has approximately $10,000 remaining for allocation. A number of interesting events are forthcoming in April—please check the SBA calendar for topics, times and room assignments.

In addition to the student organization activities, the SBA has a number of events coming up in the next few weeks. On March 19, we will be sponsoring a St. Patrick's Day Party in the Student Lounge from 6 to 11 PM. We will, of course, be providing refreshments, snacks and music for your dancing pleasure. We hope that you "wear your green" to get into the spirit of the occasion! This may be the last party of the semester, so we hope to see you stop in for some fun!

On March 23, 1992, I will be distributing information and petitions regarding the 1992-93 SBA Executive Board Elections. If you are interested in running, please pick up a memo in the student mailfile area, and feel free to stop by the SBA Office with any questions regarding the election. Also, on March 23, I will be distributing information to all GRADUATING STUDENTS regarding the 1992 graduate speaker elections. Please check your mail folder for information. Any questions regarding the graduating speaker elections can be directed to myself or Helena Frigel in Student Services (5th Floor A Building). I encourage student participation in both elections, which will be held concurrently on April 6th and 7th in the Student Lounge.

On April 4th and 5th, the SBA is sponsoring the NYLS softball team's participation in the University of Virginia National Softball Tournament. All are welcome to participate. Please see Doug Stern (Attorney General) in C-101 if you are interested.

The SBA is sponsoring the Second Annual Barrister's Ball on Friday, April 3, in the Pack Building's Grand Ballroom. Discounted tickets are still available, but going fast. Tickets can be purchased in the Student Lounge the week before the event and in Student Services. We look forward to seeing you there!

If you have not yet joined the American Bar Association—Law Student Division, please see Glenn Miller in C-101 for an application and information regarding benefits. (For all graduating students taking the bar this summer, ABA-LSD membership allows FMBR enrollment at the low cost of $80.)

The last two SBA membership meetings for the semester will be on Monday, March 23, and Wednesday, April 8. Both meetings will be held at 5 PM. Please check the SBA door for a room announcement on the day of the meeting. All are welcome.

I wish everyone the best of luck throughout the rest of the semester and a relaxing and enjoyable Spring Break! SBA News

SUMMER JOB HELP FROM NYLS CAREER SERVICES

By Steve Rosenbaum, '94

It's clear to most first-year students that there are limited job opportunities available for this summer. The majority of us do not have experience, and the economy is experiencing setbacks. Therefore, we must work even harder in order to get an offer. But, the hardest thing is getting started. It's best to go to Career Services and just browse around to see what they have to offer. They can point you in right direction by showing you where and how to look for a job or career.

Career Services has several valuable programs. For instance, the Pro Bono Student Program matches students with positions in their area of interest. While most of these openings are for public-interest, there are a few with large law firms. These positions, however, are for immediate employment. You may choose to start working on a part-time basis during this semester and continue through the summer on a full-time basis. If you don't have the time to work now, then you can simply look into the Pro Bono Student Program later in the spring. Jobs are constantly opening up in this program and many first-year students also do not find summer work until this time.

If you cannot afford to work full-time without pay over the summer, you may wish to get a part-time, paying job in addition. Deborah Howard, the director of Career Services, explains that the most important aspect of your job search is networking, and the Pro Bono Student Program is an excellent way to 'meet people and make a good impression with lawyers in your area of interest.'

Another program which Career Services offers that allows first-years to network is the Mentor-Network Program. This program enables students to talk with alumni who work in their field of interest. Students actually perform the interviews. This type of informational interview is an exceptional way to get information about a certain type of law while marketing yourself. Career Services can also help you market your strengths by helping you construct resumes and cover letters. Danielle Aptekar helps students to create more powerful resumes and cover letters.

Other services which are available to students are the Summer Legal Employment Packet and the Job Board. The Employment Packet lists law firms of all sizes according to geographic area. In addition, the firms are listed alphabetically and note the type of firm, the hiring partner, and NYLS alumni working for the firm. The Job Board does not accurately depict summer employment opportunities for first-years so don't get discouraged. Many of the smaller firms don't know their needs now and list openings later in the spring.

Several upcoming programs which Career Services has arranged include the "Asian Americans in the Law" Panel, the Small and Medium Law Firm Breakfast, and the Interview Skills Workshop. The Panel, which will meet on March 11, is not limited to Asian American students, and it serves as a good networking opportunity. On March 12, students can mingle with alumni in small and medium law firms. Although no date has yet been set for the Interview Skills Workshop, it will allow students to sharpen their interviewing skills. Students interview each other on video and Career Services counselors critique their methods.

If you have any questions stop by Career Services or check out the bulletin boards and newsletters for information. Deborah Howard reminds you "not to take the job market personally" and that Career Services is available to help if you think you are doing something wrong.

(L. to R.) Deborah Howard and Danielle Aptekar
Photo: Darlene Miloski

New York Law School Reporter

NEWS AT NEW YORK LAW SCHOOL

STUDENT BAR ASSOCIATION NEWS

by Liz Colontonio, SBA President
In perhaps no other area of law has the Rehnquist-Scalia Court sought to accomplish its own agenda as in death penalty jurisprudence. In so doing, the Court has seemingly abandoned its own pledge of judicial restraint. This article, which is the first of two parts, will discuss the state of the death penalty under the Rehnquist-Scalia Court. There are many factors that must necessarily figure into any determination whether or not to support the death penalty, as implemented today. This article provides some information on the Constitutional requirements, as developed by the Supreme Court, for imposing the death penalty, and perhaps more importantly, its reasoning in making those determinations.

Who can be executed?

Age limitations

In Thompson v. Oklahoma, 487 U.S. 815 (1988), a plurality of the Supreme Court held that executing persons who were 15-years-old when they committed murder, violates the Eighth and Fourteenth Amendments. The plurality concluded that executing 15-year-olds (has not made, and) could not make "any measurable contribution to the goals that capital punishment is intended to achieve [retribution and deterrence]." The Court stated that executing 15-year-olds constituted "nothing more than the purposeless and needless imposition of pain and suffering..." and thus an unconstitutional punishment.

The plurality, in an opinion by Justice Stevens, found that "given the lesser culpability of the juvenile offender, the teenager's capacity for growth, and society's fiduciary obligations to its children," the retribution rationale is "simply inapplicable to the execution of a 15-year-old offender." The deterrence rationale was found inapplicable for two reasons. First, "[t]he likelihood that the teen-age offender has made the type of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually nonexistent" and; Second, even if a 15-year-old did engage in such a "cold-blooded calculation" it is unlikely that such a person "would be deterred by the knowledge that a small number of persons his age have been executed during the 20th century."

However, in a concurring opinion, Justice O'Connor employed far different reasoning. Justice O'Connor believed that "[t]he most salient statutory factor that bears on this case is that every single American legislature that expressly set a minimum age for capital punishment has set that age at 16 or above." Justice Scalia wrote a concurring opinion in which he was joined by Chief Justice Rehnquist and Justice White. This dissent became the basis for a plurality decision written by Justice Scalia in Stanford v. Kentucky, 109 S. Ct. 2969 (1989).

In Stanford, the plurality held that the execution of 16-year-olds does not violate the Eighth and Fourteenth Amendments. What is most striking about the plurality opinion, is not the conclusion that the Constitution does not prohibit the execution of 16- and 17-year-olds, but the analysis employed by Justice Scalia in reaching that conclusion.

The plurality in Stanford decided that because there is not a "national consensus" that 16- and 17-year-olds should never be subject to the death penalty, such sentences do not violate the Eighth and Fourteenth Amendments. Justice Scalia pointed out that the "national consensus" question by first counting the death penalty states that expressly prohibited the execution of 16- and 17-year-olds. He then compared that number to the number of death penalty states that did not have explicitly prohibit, and thus implicitly permit the execution of 16- and 17-year-olds. He found that of the 37 states that permit capital punishment, only 15 prohibit the execution of 16- and 17-year-olds. To reach this conclusion, Justice Scalia ignored 13 of the 50 states and the District of Columbia. In this way, Stanford gave birth to a new and strange school of Constitutional interpretation, one where the Eighth Amendment means what the death penalty states alone dictate the meaning of the Eighth Amendment. In all fairness to Justice Scalia, it makes some sense to examine matters of law to determine which states make a distinction between persons under 18 years-old and persons 18-years-old and above for purposes of imposing capital punishment. But can such an analysis fairly be said to be an assessment of "national consensus"?

Justice O'Connor, in a concurring opinion, provided the crucial fifth vote in Stanford. Justice Kennedy, who took no part in the consideration of Thompson, joined the plurality in Stanford. Hence, the Stanford decision may be considered to be among those cases decided by the Court's suggestion in Payne v. Tennessee, 111 S. Ct. 2597 (1991), of its eagerness to reconsider recent 5-4 decisions reached over spirited dissent.

Although Thompson was not a 5-4 decision, this court most likely attributed to, particularly in light of Stanford, the non-participation of Justice Kennedy. Justice O'Connor concurring in the Thompson judgement only, resulting in there being no majority in agreement on the reasoning. Compare this with the fact that three of the four justices decided that the Thompson plurality have since retired from the Court, Thompson most probably falls within the ambit of the 3-4 cases referred to in Payne. The dissent in Thompson will most assuredly be characterized as spirited because Justices Scalia and Rehnquist made up two-thirds of the dissenters.

Mental deficiency

In Ford v. Wainwright, 477 U.S. 399 (1986), the Supreme Court held that "the Eighth Amendment prohibits a State from carrying out a sentence of death upon a prisoner who is insane." In so holding, Justice Marshall, writing for a majority, relied heavily on the common law's prohibition against executing the insane, as well as the fact that when Ford was tried and convicted under the Florida statute (Utah in fact) permitted the execution of the insane.

At common law, various rationales were given for the prohibition against executing the insane. The states, although in agreement as to the prohibition, were not in accord as to the reasons for that prohibition. The Court concluded that its aim be to protect the condemned from fear and pain without comfort of understanding, or to protect the dignity of the condemned from the barbarity of exacting mindless vengeance, the retribution finds enforcement in the Eighth Amendment.

This holding also be in jeopardy as a result of the Court's suggestion in Payne. In Ford, four justices, three of whom are still on the Court (Rehnquist, O'Connor, and White), refused to join the Court's holding that the Eighth Amendment bars executing the insane. On the other hand, only two of the five justices in the majority on that point are still on the Court (Stevens and Blackmun).

Given the Stanford plurality's mode of analysis, things could get interesting if some states were to suddenly permit the execution of an insane prisoner. I think, however, that if Justice Scalia is to agree with the Ford majority, its thinking is flawed from the barbarity of enforcing the Eighth Amendment proscribes executing a condemned prisoner who is insane.

In Penry v. Lynaugh, 492 U.S. 302 (1989), the Court, this time in a majority opinion by Justice O'Connor, again looked to the State legislatures to determine the meaning of the Eighth Amendment. In Penry, the Court found that "at present, there is insufficient evidence of a national consensus or the necessary state action to make an ability to conduct an adequate penalty hearing required by the Eighth Amendment."
sons 15-years-old were not capable of acting with the degree of culpability required for imposition of the death penalty, in Perry the Court held that persons who have the mental capacity of a 12- or 13-year-old, and capable of acting with the requisite culpability.

The Court's decision in In re Grendy was consistent with Coker and with the majority in Thompson. However, the Court reached its conclusion in the In re Grendy case by discounting the aggravating circumstances and death sentences that were the basis for the decision in Thompson. Thus, the Court held in the In re Grendy case that imposition of the death penalty was not a proportionate punishment for a minor who did not intend to kill. Therefore, there are no proportionate death sentences for minors because minors do not understand the serious consequences of their actions.

In 1982, the Supreme Court ruled in Thompson v. Oklahoma that the death penalty is not a proportionate punishment for a minor who did not intend to kill. Therefore, there are no proportionate death sentences for minors because minors do not understand the serious consequences of their actions.

Therefore, by insisting on using its judicial discretion to judge the inherent inconsistency in the States' legislation, this Court fails to rectify the inconsistencies in the States' legislation. This can be added to the other flaws of the Coker plurality in the reasoning in death penalty cases. For example, the inherent inconsistency in the States' legislation makes it more difficult for the Court to reach a determination that death is a disproportionate punishment for someone who, although convicted of a "serious crime deserving serious punishment", did not himself take a life.

In Tison v. Arizona, the Rehnquist-ScaIi Court, in an opinion by Justice O'Connor, concluded that major participation in the felony committed, with reckless indifference to human life, is sufficient to satisfy the Constitution's requirement. The Court held in Tison that the Arizona statute permitting imposition of the death penalty to a defendant who, although not having an intent to kill, was responsible for the death of a person he or she knew was engaged in the commission of the felony, was constitutional. The Court held that the Arizona statute did not violate the Eighth Amendment because it was not disproportionate to the culpability and moral blameworthiness of the actor.

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by Joseph Conway, '93

This is a good time to buy a notebook computer. By 1994, close to 50 million notebooks and compact computers will be in use throughout the US. While most people who use laptops and notebooks today are traveling salespeople or college students, these compact computers will soon become commonplace throughout the legal profession.

Too technical for me, you say? Unfortunately, although many of us were attracted to the law precisely because we do not feel too comfortable with math or the sciences, every recent industry forecast promises that computers will be as commonplace among lawyers as the yellow legal pad is today. Actually, if you look around you, they already are.

Over the past two years, the size, weight and price of the average notebook computer has fallen dramatically. No longer a luxury item with a limited practical range, a good notebook can rival a mainstream desktop system in quality, usability and performance. Best of all, you can choose from a virtually unlimited variety of models, with the price tag on many well under $2,000. Notebooks really are portable. Have a 30 minute commute to work or school? Maybe you can use that time to update an outline or finish a brief. Need to shepherdize several cases by tomorrow morning? Do it at home. Having a notebook with a modem gives you the ability to access Lexis or Westlaw just about anywhere you can find a telephone line. This means you aren’t forced to stay at the library late just to get to a Lexis or Westlaw terminal. Computers are meant to make our lives easier, and a notebook can give you the flexibility you need to get along with your family and friends and get your studying done.

There are, however, several things to consider before rushing out and dropping money down on the first one you see. First and foremost, do not let a salesperson pressure you into a commitment you really cannot or do not want to make. Second, do not rely on them for any valuable information. Most of them do not know the first thing about computers, and are more interested in making a sale than in making sure you have the right equipment for your needs. Plan on learning a little about yourself the different kinds of notebooks out there, so you can make an informed decision. Set a schedule for yourself to learn and make your decision, one of about four or six weeks.

Spend the first three weeks just browsing through a few magazines or articles on notebook computing. They can be a rich source of information, and can save you from making costly mistakes. Next, find a few people that own or use notebook computers, and ask them if you can try theirs for a few minutes (don’t be shy, most of these people are dying for the chance to show them off).

Still a little confused about what you should be looking for? With all of the different types of notebook computers around, how do you know what you really need? First, ask yourself what you plan to do with a notebook computer when you get one. Will you use it mainly to type memos, papers and outlines for school and work? If that’s so, then ask yourself if you want to run Windows-type programs, or if you’re comfortable with MS-DOS programs. Many easy-to-use word processors and spreadsheets.

However, if you are comfortable with DOS programs, then the most you will really need is a 12 or 16MHz 80286 notebook. Some people will even say that you could probably get away with an 8MHz notebook, which is a lot less money, but be careful to check two things before you buy one of these: First, will it be compatible with the programs you plan to run on it? Second, will you be comfortable with the slower speed of these machines? A notebook computer isn’t any good if the person who bought it hates using it because it seems too slow.

80386 machines come in two versions. The 80386SL is similar to the 386SX, but it is a next-generation chip that has “power management” programming built right onto it. This means that a notebook that uses the 386SL chip knows how to conserve its battery life. The key to check is what you need an internal drive, because using floppy disks takes too long and is unreliable. A 20MB drive is as small as you should go, because applications today take up a lot of space. A 40 or 60 MB drive would be even better. Some models even have 80MB drives, and 120MB versions are coming soon.

How does the keyboard feel when you type on it? Because of the size and weight requirements of notebook computers, many designers skimp on the construction of the keyboard. This means that you often get a mushy feel when you type, or the notebook has a short key return (how far down the key has to go before it registers) which makes extended typing sessions annoying.

This may sound silly, but try typing on an uncomfortable keyboard for an extended period of time. A notebook is supposed to be easy to use, and a poor keyboard is a real detractor. On some designs, such as the Dell 320N, the keys are even made smaller than you would normally find, and that makes it hard for many users to adjust, especially touch-typists.

To check the RAM upgrade. Don’t pay list for any RAM upgrade.

And don’t forget to check the price of RAM addition cards. If you want to add RAM after you buy your notebook, Most manufacturers use what is known as the proprietary memory system, which means that you have to buy their model RAM upgrades, and sometimes the notebook has to be sent back to the reseller to do the upgrade. The prices vary greatly from model to model, so make sure you check them out too.

What you expect to get out of your notebook, and the price you can afford will determine which kind you should look for. Today’s notebooks are available with a variety of processors. There are 8808, 8086, 80286 and 80386 chips that can be used in the CPU, and the one used in your notebook will determine that model’s speed, price, and flexibility, as well as the variety of programs that can run on it. If you are planning to run Windows programs, the notebook you buy will have to meet certain minimum speed and CPU processor (the “brains” of the computer) requirements.

8086 machines are not being made anymore, but you can still find them in most stores for bargain-basement prices. The 8086’s are fine for running older DOS-based word processors and simple spreadsheets. If that is all you need, then one of these laptops should suit you fine.

The 80286 notebooks are still good, all-purpose DOS machines. They will not be fast enough to run Windows, no matter what the salesperson tells you. On the other hand, 80386 machines are cutting edge, and will let you run Windows programs with no problems at all.

Many people, including this author, hate DOS because it is so difficult to use. Windows is a graphical “shell” program that lets you move between applications using a mouse. There are a great number of programs that run under Windows, including the one used in your notebook, Most manufacturers use what is known as the proprietary memory system, which means that you have to buy their model RAM upgrades, and sometimes the notebook has to be sent back to the reseller to do the upgrade. The prices vary greatly from model to model, so make sure you check them out too.

Does the notebook have a hard disk drive?

Do not buy a notebook PC unless it has an internal hard drive. Most models built in the last two years have an internal hard drive, but be careful to check that the older models selling at a discount have one. You really need an internal drive, because using floppy disks takes too long and is unreliable. A 20MB drive is as small as you should go, because applications today take up a lot of space. A 40 or 60 MB drive would be even better.

Some models even have 80MB drives, and 120MB versions are coming soon.

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between contrasts, allowing you to black background, or black lettering shades of gray often runs Windows shades are better defined and sharper.

choose between white lettering on a contrast can often be a big help.

32 or 64 shades of gray, claiming that areas with poor lighting, reversing the on a white background. This function runs just 16 well-defined and sharp screen. Don't get anything with a screen smaller than 8.5", especially if you plan to run graphics programs (like Windows).

Many notebook manufacturers say that their notebook screens show 32 or 64 shades of gray, claiming that such a high number is useful for running Windows on a monochrome notebook. Actually a notebook that runs just 16 well-defined and sharp shades of gray often runs Windows better, because the smaller number of shades are better defined and sharper.

Does the screen have a reverse video function?

Reverse video lets you toggle between contrasts, allowing you to choose between white lettering on a black background, or black lettering on a white background. This function may not seem that important, but in areas with poor lighting, reversing the contrast can often be a big help. Plus, using white lettering on a black back-

ground saves battery power (the CPU and screen will use less power because there are less pixels to manipu-

late).

Does the notebook have the in-

dustry-standard ports in the back of the machine for connecting to things like printers, scanners and extra drives?

Check to see that there is at least one parallel and one serial port, an external keyboard port and a mouse port. Also, look to see if your notebook has an extra video port, so you can hook it up to a color monitor.

Check to see if the notebook keeps these ports protected with covers or doors. That will keep dust out of your machine and prolong its life.

Check how sturdy they are.

What kind of battery does this notebook use?

Nickel Cadmium? Ni-Cad batteries are the type most commonly found in today's notebook comput-

ers. No matter what manufacturers say, these batteries typically last only 2-3 hours. These batteries can be recharged about 500 times. Also, they suffer from the "memory effect," which means that you have to drain them completely before recharging or they lose their effectiveness.

Nickel Hydride? Currently, only two major notebook manufacturers use nickel hydride batteries: Toshiba and Dell (but only on its 320N+ model). Nickel hydride is a new technology, offering an average of 1-2 hours more battery life than Ni-Cad batteries. Nickel hydride doesn't suffer from the ghosting or memory ef-

fect of Ni-Cad batteries.

Lead Acid? This one is only used in the Apple PowerBook 100. But it is really toxic, so be careful.

How easy is it to change the batteries in mid-use?

Do you have to loosen any screws or hinges, or remove a plate? Forget these machines. If changing the battery means anything more than sliding back a cover and popping a battery in, forget it. Ask if the batter-

ies can be recharged while you are using the notebook?

Extra batteries?

See if the notebook comes with an extra battery? If not, see if the salesperson will throw one in as part of the package. Ask how much extra batteries cost. Do not forget to ask how big the battery recharger is, and how much it weighs.

Does the notebook have a power-management system?

A good power management sys-

tem can prolong the life of your bat-

teries by one or two hours. Ask if your computer has a deep-sleep, auto resume or standby mode. These will power-down the CPU and other parts of the machine to a lower clock speed to save energy. (If you buy a notebook with an internal modem, make sure it powers down when not in use).

Another must is a "low battery" warning feature. An LED indicator or an audio alarm that lets you know when you are about to run out of battery power is a must if you do not want to accidentally loose information.

Does this notebook come with a carrying case?

If it does, check it out. Look to see how well-constructed it is. Is it waterproof? Is it conspicuous? You do not want to walk down the street with a case hanging over your shoulder that screams out "I've got an ex-
pensive, and easily pawnable, toy inside." If a case does not come with the notebook, ask if the dealer will throw one in.

Does this notebook come with an internal modem?

Don't pay more than $200 above the stated price to add an internal modem.

(Cont. On Page 20)
By Nat Barber '92

On January 30, 1992, the Association of the Bar of the City of New York hosted a forum addressing environmental economic and other issues surrounding Hydro-Quebec's Great Whale hydroelectric project in the James Bay and Hudson Bay region of northern Quebec. While some of the audience members of the vocally partisan, most were conservatively dressed, reserved and without their partisanship pinned to their sleeves. Accentuating one corner of the Meeting Hall was the glowing lapel pin of media scrutiny — the lights and cameras of the press. All that extra wattage did little to illuminate the hall's dim interior and, ironically, the notatable wattage of the New York Times cast little light on the evening's proceedings in an article appearing in the February 1 issue. I say "ironic" because the entire forum was about extra wattage. Does New York need it? What procedures will shape the decisionmaking? Should those extra watts come from Hydro-Quebec and if so, ultimately, at what cost to the James Bay region flora and fauna, human and otherwise?

For those just tuning in to this issue, the speakers gave a concise synopsis of the positions of the major players in Quebec, New York and the United States. This article puts more meat on the Times' bone coverage by restating the salient points of each of the five speeches. I have relied for some additional information on the materials several parties made available to the public at the forum. Any information from these handouts that illuminates a particular speech appears in footnotes.

The Cast of Characters
Stephen Blank, Director of Canadian Affairs, Americas Society, and Dr. Jan Beyea, Chief Scientist, National Audubon Society, spoke first and last, respectively. The remaining parties interpreted the controversy in light of Canada's current constitutional and cultural crisis, on the one hand, and environmental science and ethics on the other.

Sandwiched between Blank and Beyea were the three speakers representing the major parties: Richard M. Flynn, Chairman and CEO of the New York State Power Authority; Richard Drouin, Chairman and CEO of Hydro-Quebec; and Matthew Concone, Grand Chief of the Quebec Cree-hydro was perceived as cleaner and less controversial than purchasing OPEC oil to fire our own generators. Hydro was perceived as cleaner and safer for users of the environment. But the NIMBY ("Not In My Back Yard") syndrome arose in the context of hydro as well because, while protecting the users of the environment from fossil-fuel pollution is important, so is protecting the source environment.

The Environmental Review Process in New York
Mr. Flynn argues that, for New York, the criteria for deciding whether or not to purchase electricity from Quebec should be:

1. Is it needed? Is it environmentally safe to produce?
2. NYPA and Quebec are now assessing New York's new 1992 energy realities with the support of Governor Cuomo. Cuomo told the NY Department of Environmental Conservation (DEC) to prepare an environmental impact statement. On January 15, 1992, the DEC released the text of the scope of the study to be conducted.5 Cuomo also ordered a study of the economics of the contract with Hydro-Quebec as compared with all other.

Because there are now sophisticated forums and procedures in place in the United States and Canada for considering such issues, the results of this review process should be good. If the procedures are flawed and if fairness is not satisfied, Mr. Flynn will not sign the contract with Hydro-Quebec. If fairness is not satisfied, Mr. Flynn calls for basic fairness in managing change and exorts us to "let the sophisticated procedures work."
The Options for Meeting Future Energy Demand

Both New York and Quebec are concerned about the effect of future development on native peoples. Hydro-Quebec's design focuses on meeting domestic needs, but Hydro-Quebec will develop only after completion of an environmental impact analysis with public hearings by the Canadian Federal and Provincial governments.

Conservation

New York and Canada also share a commitment to conservation as an energy policy. Conservation will save Canada $7.4 billion by not building new facilities. However, conservation will not save enough to meet the growing demand, and some facilities need replacement. Because the demand for electricity will exceed the supply in ten years despite the best conservation measures yet known, it is not too early to plan now for meeting future demand.

Traditional and Alternative Sources

After conservation, traditional and alternative sources can be used to meet demand. Traditional sources include coal, oil, nuclear and natural gas. From Canada's point of view, there are problems with most of these. Natural gas is available. Nuclear power plants cost 50% more to operate than hydroelectric plants. Coal is a cause of concern by itself, and the United States' Clean Air Act makes using coal even more problematic. Natural gas is available. Nuclear power plants cost 50% more to operate than hydroelectric plants. Coal is a cause of concern by itself, and the United States' Clean Air Act makes using coal even more problematic. Natural gas is available. Nuclear power plants cost 50% more to operate than hydroelectric plants. Coal is a cause of concern by itself, and the United States' Clean Air Act makes using coal even more problematic.

Hydro-Quebec is now reviewing the contract with NYP in response to the changes in New York's needs. Matthew Coon-Come - Grand Chief of the Cree

Cree values have changed from the time when they were hunters. But the Cree have not had time to change and heal, and now the decisions of outsiders will once again dictate the future of the Cree. The Cree have already paid dearly in social disruption: suicide, family violence, alcohol and drug abuse. Two thousand people have been relocated from traditional hunting grounds because Quebec plans to build.

There are three issues today in Quebec: (1) The Constitution, (2) the separation of Quebec and (3) the Great Whale Project. When the Cree signed the agreement, they agreed to one project, while recognizing the possibility of future projects without consulting them then. Hydro-Quebec says the Cree have received compensation. But no amount of money can take the place of the land. James Bay 1 has been built, but not Great Whale. The 1975 Agreement was to protect traditional Cree rights on the land. The Cree thought that they would finally be able to control their future. But the Cree are always the ones asked to pay, to give up land and move over. Whites only talk to the Cree when they want something and when they get it they forget the Cree and break the treaties.

Mr. Coon-Come points out that if a better alternative to Great Whale is found, will Great Whale be dropped?

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REGIONAL CHANGES IN CIRCULATION OF WATER WITH UNKNOWN RESULTS.

JAMES BAY IS OF GREAT CONCERN TO ALL ENVIRONMENTAL ORGANIZATIONS. DR. BEEYEA CLAIMED TO PRESENT, IN THIS SPEECH, THE MOST CONSERVATIVE SCIENTIFIC VIEWPOINT. THE ENTIRE ENVIRONMENTAL COMMUNITY SEES THE JAMES BAY PROJECTS AS A MAJOR PROBLEM.

WILDLIFE, WILDERNESS, NATIVE CULTURES, ENERGY ALTERNATIVES.

There is one energy alternative that is good for Quebec and New York, and it requires vision and cooperation to make it work. While on one side there is the assumption that hydro-electric power on any scale is benign, and the best alternative, on the other side is the sure knowledge that this is an erroneous assumption. Habitat and wilderness are scarce and becoming scarcer. Quebec has no long-term wilderness plan. The United States' demand driven economy compounds Quebec's lack of planning for the future and will cause Canada to make the same mistakes the U.S. has made with its shrinking wilderness and habitats.

Rivers are the lifeblood of ecosystems. Interference with river systems greatly reduces biological diversity. Many of those who think that hydroelectric is benign are in New York State agencies. A river is the heart of an ecosystem even though it represents a small percentage of the geographic area. A hydroelectric station will ruin the ecology of the system because it blocks nutrients and sediment flow, flattens the variability in the river that occurs naturally with the seasons, and also flattens the river's height. Hydroelectric is only good on a moderate scale. But engineers do not understand the concept of moderation; they were never trained in moderation. Engineers are trained to design the possible, to accomplish maximization, to achieve the massive. And the scale of what Hydro-Quebec has in mind is massive because Hydro-Quebec has great engineers.

Canada is planning dams all over the country. The entire north end of the eastern migratory bird flyway is at risk. It is easy to see that fresh water flow drives hydrology in the region, and an ecological disaster of regional proportions could occur from the cumulative impacts of the dams comprising the Great Whale Project and other dams in other provinces. Hydro-Quebec's response is that there are "no problems" associated with its projects. But Hydro-Quebec focuses only on incremental impacts and is afflicted with the myopia typical of conservatives. Hydro-Quebec, which is in the business of building dams, has decided that hydroelectric is the best alternative. Hydro-Quebec therefore focuses only on mitigation of the effects of dam construction, and it sees construction as preordained; not building a dam is inconceivable to Hydro-Quebec. Are there new conditions under which Hydro-Quebec would not go forward with Great Whale? Chairman Drouin, Dr. Beyea points out, talks only about the impact of building Great Whale.

ALTERNATIVES

Fossil fuels

Environmental organizations strongly favor using building dams, has decided that hydroelectric is the best alternative. Hydro-Quebec focuses only on incremental impacts and is afflicted with the myopia typical of conservatives. Hydro-Quebec, which is in the business of building dams, has decided that hydroelectric is the best alternative. Hydro-Quebec therefore focuses only on mitigation of the effects of dam construction, and it sees construction as preordained; not building a dam is inconceivable to Hydro-Quebec. Are there new conditions under which Hydro-Quebec would not go forward with Great Whale? Chairman Drouin, Dr. Beyea points out, talks only about the impact of building Great Whale.

Solar

Solar energy could be viable by 2001. But unless individual citizens act it will not be viable even then. Dr. Beyea encourages citizens to participate in a campaign in which each person will enclose a note to their utility demanding that ten percent of the utility's energy come from solar power within ten years.

Conservation Transfers 10

For environmentalists, the problem with hydroelectric imports from Canada is demand-side management. This focus on demand and allowing demand to drive energy policy makes conservation transfers with Quebec problematic. Recently, however, a judge in Vermont reasoned that permits that may potentially contract with Quebec for power should explore a contract that has conservation transfers. In the minds of environmentalists there is the risk of sham transfers. Environmentalists call, rather, for a new philosophy of development that is non-divisive and that will yield new partnerships.

Squaring Off

This is an even fight. Public opinion on hydro and the environment is changing in Quebec, and the economics of hydro are not as attractive as they once appeared. In addition, a strong point of the argument for restraint in developments that would destroy habitat is the expectation that mankind will destroy 20-50% of the planet's remaining species within fifty years.

ETHICAL ISSUES

Ethical issues are at the core of this controversy. Moral crises do not always occur elsewhere, to other people while sparing us. When we are faced with a moral issue, however, it is often not a question of separating the good people from the bad, separating "us" from "them." Instead, dealing with moral issues often means separating the good and the bad within ourselves. It is possible to separate them, to reevaluate and choose our porate values of moderation. It is possible for all of us to make a moral decision about James Bay and the region's ecology. Everyone involved needs to take to heart these ethical issues here. If the James Bay 2 project goes forward it will be a "moral crime and everlasting shame upon us."

Endnotes

1 This identity of criteria means that Quebec's hydroelectric industry is demand-side driven.

2 "Source environment" in the context of hydroelectric power translates as that area of land, up to which a hydro project has an environmental impact. The Great Whale project would flood of a total of 673 square miles, an area approximately the size of Lake Erie. However, the source environment is far larger: the James Bay Task Force, which opposes the project, states that Great Whale would affect the ecology of an area three times the size of New York State.

3 The Hydro-Quebec/NYPA power export contract was linked to the timing of the Canadian review process, so that at the same time that growth and infrastructure were under review, determining the contract would also be on people's minds. Only later, once the project was approved, would environmental impacts be assessed, if at all.

4 In a letter to Hydro-Quebec dated April 3, 1991, NYPA expressed its opposition to any decision on a review process and expressed its support for "a thorough environmental analysis, including the assessment of impacts before the projects are approved and built." The Hydro-Quebec Economic Systems Study will be: Regional Electric System Context; Capacity Need Analysis; Comparison of Hydro Quebec Contract with Yardsticks; Technology Assessment of Supply- and Demand-Side Alternatives; Conservation Transfers; Electric System Analysis; Transmission System Impacts; Natural Gas Deliverability and Price; Price Assessment; Job, Earnings and Tax Impacts; and Value of Emissions Reductions. The major headings of the "Proposed Scope of the Economics Systems Study" in the context "Proposed Action; Environmental Setting (New York State); Impacts; Alternatives (Retain the Contract, Cancel the Contract).

6 The basic elements of the "Hydro Quebec Economics Study" will be: Regional Electric System Context; Capacity Need Analysis; Comparison of Hydro Quebec Contract with Yardsticks; Technology Assessment of Supply- and Demand-Side Alternatives; Conservation Transfers; Electric System Analysis; Transmission System Impacts; Natural Gas Deliverability and Price; Price Assessment; Job, Earnings and Tax Impacts; and Value of Emissions Reductions.

7 Pursuant to the January 25, 1992 "Memorandum of Understanding" between the parties and a letter of the same date, two funds have been established to assist the participation of the Cree, the Inuit, the Makivik Corporation and the Kivatik Regional Government in the review process. The funds total $5,000,000 (Canadian).

8 The agreement Mr. Coo-Come refers to is the James Bay and Northern Quebec Agreement. According to printed information provided by Hydro-Quebec at the forum, it was entered into in 1975 by the Province of Quebec, the Grand Council of the Crees of Quebec, the Northern Quebec Inuit Association and Hydro-Quebec. Under the Agreement HQ claims the right to complete the Great Whale Project. The Cree do not agree on this point.


10 In a conservation transfer electricity saved by conservation in Canada, for example, is sold to New York as excess power.
THE ENVIRONMENT

ENVIRONMENTAL EXTRA HELP

By Peter Wagner '93

Primarily, my goal is to increase the awareness and practice of recycling and conservation at New York Law School and at your homes.

At the end of last semester you probably noticed that there were large blue bins near the mailboxes and copy machines. If you didn't, I hope that all the studying was worthwhile.

Anyway, the New York Law School paper recycling program is fully operational! I would like to thank all of you who have used the blue bins to recycle your old notes, meaningless bulletins and screwed up Xerox copies. However, the greatest thanks must go to Eliza Ryder '93, Facilities Manager George Hayes and the Environmental Law Society who have together finally brought this long-awaited program to NYLS. We are currently trying to get a few more bins for the LEXIS and WESTLAW rooms.

The bins accept almost any paper product, except magazines and other glossy-type materials. Colored paper and looseleaf paper is OK! Please use the bins and don't throw your paper into the garbage.

The rest of this article will be the usual: facts, data and other envirom-stuff. Additionally, I will try to recommend books or a scheduled environmental seminar.

The first of these books is The New York Environment Book, by Eric Goldstein and Mark Irazen. This is a Natural Resources Defense Council (NRDC) Urban Environment Program publication which describes the vast environmental problems at NYC and the outlying areas. Professor Schoenbrod helped form the Urban Environment Program when he was with the NRDC. This book describes in frightening detail the pressing dangers of the Fresh Kills landfill, air pollution and water pollution in NYC. It also covers the existing recycling program in NYC (HAHI), as well as proposed alternative means of conservation such as incinerators and composting.

The book is an excellent overview of the environmental melee and uses statistics, charts and photos to illustrate the most important areas of concern. It's $14.95 and available at Terra Verde, Spring Street (West of Broadway).

The next book is the Consumer Guide to Home Energy Savings by the American Council for an Energy Efficient Economy. This is a "must buy" before you purchase any appliance (water heater, stove, air conditioner, light bulb, washing machine, etc.). This book lists the most energy efficient models and their list price and their operating costs. It also gives conservation tips and advice. Send $8.95 ppd. to ACEE, 2140 Shattuck Ave., Suite 202 Berkeley, CA 94704.

The next bit of information relates to the Environmental Law Society meeting. Meeting dates will be posted at least three days prior to any meeting. We need your input and advice for programs and events for this semester. Last semester we held a very successful discussion on "Careers in Environmental Law" and helped initiate the paper recycling program. Additionally, we worked pro bono for the Staten Island Citizens for Clean Air (SICCA) in their struggle against the proposed incinerator ashfill at the Fresh Kills Landfill. Students from all years helped to conduct research on the viability of seeking National Wetlands Protection for the site, helped research and draft memoranda of law, and sought statistical information from the residents near the proposed site. This work will continue throughout Spring semester. For more information, go to the next Environmental Law Society meeting.

I would like your input, questions, and comments regarding this column. If you have specific questions and would like them answered personally, drop a note in my mailbox or in my Environmental Law Society mailbox.

WHICH SPECIES IS ENDANGERED, ANYWAY?

By Christopher Luongo '93

January of this year, the United States Forest Service set aside 7 million acres of forest in Washington for the preservation of the spotted owl. As a direct result, 33,000 well paid logging jobs have been lost.

The Wall Street Journal reported last month that the loss of these jobs has virtually destroyed dozens of communities. Families have broken up. Alcoholism and drug usage have skyrocketed. Depression and domestic violence have become the norm. Even the murder rate has jumped.

Yet the furry little owl sleeps soundly.

THE HOAX

Now as it turns out, the spotted owl may not be as endangered as previously thought. According to the Jack Ward Thomas Committee, comprised of owl experts from the United States Forest Service and other government agencies) the spotted owl is less distinct and vulnerable than believed.

Originally it was thought that after logging a forest, the owl's habitat was destroyed. This, it was believed, would in turn kill the owl. The new evidence, brought forth by the Committee in last month's National Review, suggest this assumption is false. It now appears that after logging a forest, the spotted owl sets up residence in "second growth forests." These second growth forests are post-logging forests.

While hardly conclusive, it appears the furry little spotted owl never needed the protection of the furry little environmentalist.

Classic environmental overreaction.

Thousands of jobs lost. Thousands of lives ruined. The environmental evidence was weak. And a tiny animal has been protected that didn't need protecting.

The people of Washington would have been better off if they were lizards.

At least then they would have qualified as an endangered species.

When will this movement come to its collective senses?

THE ENVIRONMENT AND THE CONSTITUTION

Yet the environmental movement may have run into an unexpected opponent. The Constitution.

The Fifth Amendment prevents the "taking of private property for public purposes without just compensation." The Takings Clause, as it is commonly known, basically prevents the government from taking private property without paying for it.

In the past, the liberal Supreme Court has held that only the physical taking of property qualified under the Takings Clause.

But as the Court became smarter, and not coincidentally, more conservative, it has realized there is little difference between the government "physically" taking property and the government passing a thousand laws and/or regulations that diminish the value of property.

And so the Court may declare unconstitutional every environmental law that deprives a citizen of the use of property.

Are my claims scientifically valid? Is the Constitution upheld? Hopefully, then if environmental regulations are needed (and some are), society will distribute the cost more equitably.

BALANCING THE NEED FOR JOBS

This is especially relevant during a time when jobs are scarce to start. Adding mindless and repetitive environmental regulations makes the cost of doing business more costly compared to our trading partners. Which in turn slows down our economy.

Which is directly relevant to all, for the recession has thrown thousands of lawyers out of work.

In the future, if an environmentalist wants to pass a law or a regulation, they should ask: Does it cost jobs? Are my claims scientifically valid? Is the Constitution upheld? Hopefully, then if environmental regulations are needed (and some are), society will distribute the cost more equitably.

Not just on one segment of the population, like the poor people of Washington.

New York Law School Reporter

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In Focus . . . Darlene Miloski

Richard Klass, 3L

A: It's important that the school give off for all religious holidays, so that students don't have unnecessarily miss classes.

Janice Tyson, 1L (Right)

A: Please!!! The Christmas break is my time to go out and enjoy myself.

Angela Davila, 1L

A: The Christmas holiday is a time for us to see all the family we didn't get to see during the semester. Having to study during Christmas takes all of the joy out of the holiday.

Michael Maxson, 2L

A: Exams must be kept before Christmas break. Nothing else matters.

by DS Miloski

Jonathan P. Ibsen, 1L

A: I don't think the semester schedule should be changed. There is ample time for students to work over the summer. Additionally, the holidays during the semester provide a needed break from the hectic pace of the semester.
music review

HARRY CONNICK, JR.
HE'S PERFECT AND PROGRESSIVELY RETRO

By Michael Simone '93

There are some people who are just too popular, good looking, and talented. You probably went to high school with one of them. They were the fastest people on the track team, they had the highest G.P.A., and there was a waiting list to go out on a date with them. I hated these people, because, besides being perfect, one of them usually lived next door to me. This would cause my mother to wonder out loud, "why can't you be more like (fill in the perfect person of your choice)?"

Harry Con-nick, JR. is one of those people. He sings like Frank Sinatra, plays a great jazz piano, and women all over America drool over his pictures. To top it all off, he is only 24 years old. He is perfect. Thankfully, I don't have to hate him because my mother is unaware of his existence.

Blue Light, Red Light

Blue Light, Red Light is Harry Connick JR.'s third album with a swing band. For the first time he has written or co-written all the songs, although you probably wouldn't know it by listening to the album, because it sounds like it was recorded 40 years ago. His music is World War II Top-40. There are no synthesizers, no drum machines, and no computers controlling any portion of the music. However, some comforts of technology have not been overlooked, the album is completely digital, and the CD sounds crystal clear.

Harry is backed by a big band. It is huge by modern standards, consisting of 18 musicians playing Saxophones, Clarinets, Trombones, and Trumpets. A section of each song is set aside for the musicians to demonstrate their talent.

The multi-talented Harry sings and plays piano on each song. His voice is natural and expressive. His best numbers are those that are up-tempo and have fun, catchy lyrics. "Blue Light, Red Light (Someone's There)," "A Blessing And A Curse," and "You Didn't Know Me When," are these types of songs. "Blue Light, Red Light" opens the album with Harry and his love living poor but happy in New York City, dreaming about moving up ("One day we'll move uptown/ Or even out to the countryside/ and for every leaf on a tree/ We'll add one cub to the pride"). In "A Blessing And A Curse" he complains that he can't get a girl off his mind ("I forget what happens on the Fourth of July/ Or when the rent is due/ Dates and deadlines just float"

(Continued on Page 19)

AND THE WINNER IS...

THE "EXCITING" (NOT!) GRAMMY AWARDS

By Michael Popkin '93

The so-called most prestigious music award show, the 34th annual Grammy Awards was recently held in Radio City Music Hall. Just on question: How many of us are sick of award shows? There is the American Music Awards, the MTV Music Awards, the Billboard Music Awards, etc. (and that is just in the art of music. The other arts have a multitude as well. Well, this is the Grammys, one of the biggest, so it has to be good, right? Wrong!

Another year has gone by that I have anxiously anticipated the Grammys and again I have found myself sorely disappointed. I do not put the blame on any one thing because I don't believe that you could possibly entertain people with a show like this for over three hours. The show was way too long. Even myself, an avid music fan, almost didn't make it through the whole show. You can only listen to artists thanking people who you don't know for so long without becoming bored. It would probably not have been that bad if we didn't have to hear the same speech by the same artist at least three times. Not only are the songs we get to hear played out, but they have been performed on at least two music award shows previous to this one.

But let me get to this particular show in general. Previous host Billy Crystal (Who has moved up to hosting the Academy Awards), was replaced by another comic, Whoopi Goldberg (thank heavens it wasn't Arsenio Hall). Has worn a beautiful dress (NOT!) and while funny at times, all to often it seemed like she was trying to save a sinking ship. Her one highlight and indeed a highlight of the show, was the poetry reading she did accompanied by the amazing Bobby McFerrin, to promote AIDS awareness.

As far as the awards go, there were basically no surprises. It seems as if the voters have a general idea of who they like, or perhaps, who they have heard of, is a better phrase, and that is who generally gets the award. Big winners included Natalie Cole and Bonnie Ratt. Marc Cohn's Best New Artist Award did restore a little bit of my faith in the show, but just a little. As far as the Best Rap Song Duo or Group Award going to DJ Jazzy Jeff and the Fresh Prince, I don't know how, personally I'm down with O.P.P. If it wasn't too obvious that the voters are still trying to make up to Metallica for giving the award for Best Metal Performance in 1989 to Jethro Tull, Lars Ulrich of Metallica it out in his acceptance speech as Metallica accepted their third Grammy in three years.

On to performances. Both Mariah Carey (wearing a dynamite dress) and Michael Bolton turned in their usual up to par performances, as did L.L. Cool J, and Metallica. Unfortunately I found them all to be boring as I have seen them perform on three previous award shows. This being the biggest of the music award shows, I believe that the performing artists should be allowed to perform any song they want and that it should be done even better than usual. I would have really liked to have heard Marc (Continued on Page 20)
The Major League Baseball season opens in early April, and Met fans must be waiting with eager anticipation. The team and management were tremendously revamped after last year's disappointing, losing season. The Mets are now the highest paid team in baseball, having bought, rather than developing it's talent.

Conservative General manager Frank Cashen was replaced by Al Harazin, who was given the green light by owners to make radical moves and spend lots of cash to make the Mets winners again. The first move Harazin made was within management, replacing manager Bud Torborg with former manager of the year with the White Sox, is a take charge manager who relates to his players with honesty and stresses the importance of family and community. A needed change after Davey Johnson, who angered players, and Harrelson who showed indifference.

In the free agent market, the Mets outbid several teams for the most attractive of the pool, Bobby Bonilla. The desperate Mets agreed to pay Bonilla $5.8 million a year for five years. A pitance in retrospect after the subsequent re-signing of Ryne Sandberg by the Cubs for over $7 million a year. Sandberg however is a career Cub with a gold glove, while Bonilla is average in the field. At 29, Bonilla brings proven power and ability to knock in over 100 RBIs. A shot in the arm of the Mets anemic offense. His constant wide smile will sell many tickets and improve the team's attitude.

The Mets also picked up two future hall of famer veterans in the free agent market, Eddie Murray and Willie Randolph. Murray, at 36, is out of his prime, but still capable of 90 RBIs. Randolph, 38 in July, has not indicated much decline either. Hopefully the pressures of playing in New York will not age them. In most professional sports, each year after 35 is like a decade.

In the winter trade meetings, the Mets pulled off a major deal, sending Gregg Jefferies, Kevin McReynolds, and Keith Miller to the Royals in exchange for prime Cy Young Award winner Brett Saberhagen and infielder Bill Pecota. The Mets gave more than they received, but are an improved team as a result.

Jefferies and McReynolds couldn't produce consistently under the pressure of the New York fans and Media, and Keith Miller was never really given a chance to play much. They will all flourish in Kansas City. Brett Saberhagen is a top rate pitcher who will solidify the pitching rotation. He's under 30 years old, but has a lot of miles on his arm and a history of occasional tendinitis. Pecota is a decent hitter who can play any position the even pitched a couple of innings of relief last season.

The Mets should now have one of the best pitching rotations in the league. Saberhagen's two Cy Young awards speak for themselves. David Cone led the league in strikeouts last season. Dwight Gooden's surgically repaired shoulder is healing quickly. Sid Fernandez shed about 40 pounds in the off-season and exercised everyday. Maybe he'll throw more consistently late in the game now that he's in the best shape of his career. The fifth spot in the rotation will be earned during spring training. Too bad Frank Viola was stubborn and signed with the Twins.

The Bullpen is decent with closer John Franco, but still lacks a power strikeout pitcher. Perhaps the Mets will bring up a young pitcher from the farm system.

The Mets offense is now potentially explosive. Leading off is Vince Coleman, who was out 30 games last season with a torn hamstring. The switch-hitting, base-stealing specialist is followed by Randolph, a patient contact hitter. The heart of the order, Howard Johnson, Bonilla, and Murray are all power switch hitters capable of power. Randolph, 38 in July, has not indicated much decline either. Hopefully the pressures of playing in New York will not age them. In most professional sports, each year after 35 is like a decade.

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By Phillip Spyropoulos '92

Conspiracy theories have been a staple of the Left's often convoluted exegeses of how the Establishment managed to bring things to the present miserable state of affairs. This somehow seems to justify the use of similarly pedestrian machinations by Left-bashing critics. Yet before such an ineptive is launched a clarification of terminology is in order; the multitude of incongruous impressions inherited with conspiratorial terms, such as 'liberal' or 'conspiracy,' can be as effortless as simply imbuing that ideology with those characteristics which are the locus of an attack.

It also seems that Liberalism is even more susceptible to creative interpretation than other dogmas. Possible reasons for this are many. That yesterday's liberalism is today's conservatism, perpetually necessitating the Left's intelligentsia to tread undiscovered and thus not easily definable territory, while always assuming ample time for digestion and acceptance by the Right, may be one reason. This consideration consequently requires that one maintain as honest an approach as possible when critiquing the Left and its endeavors.

Using that patently Progressive of all de-legitimizing constructs - the conspiracy theory - the argument becomes a simple one, namely, that Liberalism further strengthened an already empowered Federal Government in order to have a more effective and wide-reaching mechanism to institute its ideology. Although liberals certainly have accomplished a great deal of social, economic, and political change, some for the better - much for the worse - the more insightful and intellectually honest of their ranks are beginning to realize just what a blunder they have effected.

After spending so much time and effort in building this Trojan Horse of an all-American central government filled with soldiers crusading an aggressive liberal ideology, the Right has now taken hold of it and has brought it right under their noses, filled with at least a generation-long stock of conservatives. If indeed this strategy of a strong central government was, at least on some level, a conscious one by the Left (conscious and concerted action is a must for any conspiracy theory worth its apocalypse-ness) then that this clearly is the short-sighted variety.

Liberalism, by virtue of its apparent incompatibility with Conservatism, can be readily characterized as an invariably counter-majoritarian phenomenon. Under our more or less democratic procedure of government, the majority was bound to awaken the Left's paternalistic hypnosis and once again seize the reins of government, making the excessive imposition of conservative policies through a newly empowered government inevitable. Now the Left's Master Plan not only has sustained serious and enduring setbacks, but the rest of us and our posterity must endure an ever-expanding and ever-encompassing central government, regardless of the particular ideology that it happens to be shoving down our throats at any given time.

Liberalism's apparently chronic disorder, of the foot-shooting variety, is not limited to short-sighted estimates concerning the efficacy of its strategies but further seems to characterize the confusion and incongruity within its own dogma. A case in point is the controversy surrounding all-black male primary schools. Several black activists have decided to do something about the holocaust their community is enduring by establishing schools which they believe would address at least some of their concerns. Whether their approach will succeed is irrelevant (yet I suspect that whenever you have a group of people in an educational setting who are highly motivated to make things happen, regardless of the actual merit of a particular educational program, things will happen). Although many liberals have come out in favor of these schools, the Left generally come out against them, in part because they feel they are segregating, elitist, and sexist.

Arguably, the social programs implemented by the Left during and after the Civil Rights Era have included black Americans to focus exclusively on government for any efforts towards their improvement. These programs, such as integrative busing, Head Start etc. (with the exception of affirmative action) have primarily been unilateral and implicitly paternalistic. Some have argued that a large segment of black America in dire straits will remain there due to its acquired dependence on government. Consequently, it is very well may be that the only effective mechanism that blacks have at their disposal to help themselves in any significant way remains with the government. Despite the fact that the Left was quite willing to use government to implement its own programs, unwittingly nurturing a dependency by minorities upon government, it is now denying this same resource from being utilized by black communities who have taken the initiative to help themselves.

Arguments addressing issues of segregation and gender-bias are certainly relevant, but placing too much emphasis on sacrosanct canons of Liberalism, such as integration and feminism equality, at the cost of some of Liberalism's ultimate aspirations, such as the substantive betterment of minorities, seems self-defeating and monumentally absurd. Liberalism's gift, the ability to see where society should be going, is perpetually brought to a disastrous impasse by its cure, the inability to know how to get there.

My parting message is that if we are to approach any semblance of an enlightened society we must avoid shackle ourselves to this particular ideology, despite the seductiveness of its appeal of a particular ideology, and start thinking for ourselves.

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New York Law School
Criminal Law Society
Trip to Riker's Island

At 10:00AM, Friday, March 20

We will tour either:
- the Men's Maximum Security Facility
- Women's Correctional Centers

We will meet at 9:00AM at the Q-101 Bus Stop at the Queens side of the 59th Street Bridge—on the south side of the plaza, below the El. The bus goes directly to Riker's Island. Tour starts at 10:00 AM and will last less than two hours.

New York Law School Reporter
The Editors and Staff of the Reporter Would Like to Congratulate Robin Sherak for Winning Best OraList at the 1992 Benjamin N. Cardozo Entertainment Law Moot Court Competition.
By Michael Simone

This time the MTA had me fooled. The subway fare had to be raised to $1.40. Public meetings took place around the city. The MTA's executives showed up in chauffeur driven limousines. They waited impatiently for subway riders to show up and vent their anger. The purpose of the meetings was to fool the public into believing it could make a difference. The well-fed executives are not required to take the public's suggestions. They are not even required to listen, which is good for them, since many of them didn't. They chose instead to snooze through these hearings. The MTA's real purpose is to save our elected officials from having to make hard choices.

The circumstantial evidence convinced me that the fare would increase to $1.40. The legislature did not want to allocate additional subsidies; Governor Cuomo complained (again) that the state is broke and pointed his finger at Washington; and Mayor Dinkins said it was not his responsibility. As the year closed the MTA announced that it was minting a new token, ten packs disappeared from token booths, and turnstiles were taken out of service. A $0.25 fare hike seemed inevitable. Hoarding tokens would be useless, because I would not be able to use them.

How could I have been such a schmuck? Only two years ago they threatened to raise the fare to $1.25 before finally settling for $1.15. But still I was deceived and I did not make the large investment in tokens that I did two years ago.

On Jan. 1 the fare went up, and I began buying the same old tokens for a new and improved $1.25. I wanted to jump the turnstiles periodically to show my defiance. However, my fiancee reminded me that it would be difficult to get admitted to the bar with a record. Is jumping turnstiles rationally related to practicing law? Probably not, but I think I can find better causes to get arrested for.

MORNING RUSH HOUR SUBWAY PERFORMANCE

The Office of the Inspector General of the Metropolitan Transportation Authority recently completed a report on the subway's morning rush hour performance. Between 7:00 a.m. and 9:00 a.m. the subway had an 85% on-time record. This is a 9% improvement over subway performance in 1988. The most consistent services were the J/Z, the uptown B, D, M, Q, and R, and the downtown N and R.

As the Inspector General points out, these statistics are objective measures of the quality of subway service. In other words, these statistics and this report is completely meaningless to the average commuter. The report analyzes "on-time performance" without stating what type of schedule the subway is trying to meet. Also, the Inspector General admits to not trying to measure customer satisfaction, because it is not easy to measure.

"Little things carry a lot of weight with subway passengers: having a train keep its doors open so he or she can transfer, hearing a clear and useful announcement so he or she can decide on an alternate route, not feeling that trains are skipping his or her stop without good reason, etc." In the Inspector General's opinion, these factors are subjective and not worth measuring.

The only factor that this report analyzes is the MTA's ability to meet its own standards. The report does not measure whether it takes longer for the average commuter to travel today than two years ago, and it does not measure whether the average commuter must wait longer between trains than two years ago. Commuter satisfaction, as usual, is not the MTA's concern. The MTA is concerned only with meeting the standards it sets for itself without reference to the commuters it is supposed to serve. The Inspector General even admits that fewer riders means more reliable service. When the richer subway commuters abandon the subway due to the higher fare, or the poorer commuters drop out, you may have a better chance of getting a seat in the morning.

This article's information comes from two sources. First, The author attended the MTA's public meeting on the fare hike held on November 24, 1991 (The author's birthday). Second, the report referred to in the second half of the article is entitled Commuting to Work by Subway: Morning Rush Hour Subway Performance.
BOOK DISTRIBUTION BEGINS:

WEDNESDAY, APRIL 8TH


CLASS OF 1992 PLEASE NOTE: