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New York Law School

EQUITAS
New York Law School

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A Detailed Interview with Acting Dean Bruce...
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Volume XI, Number 2

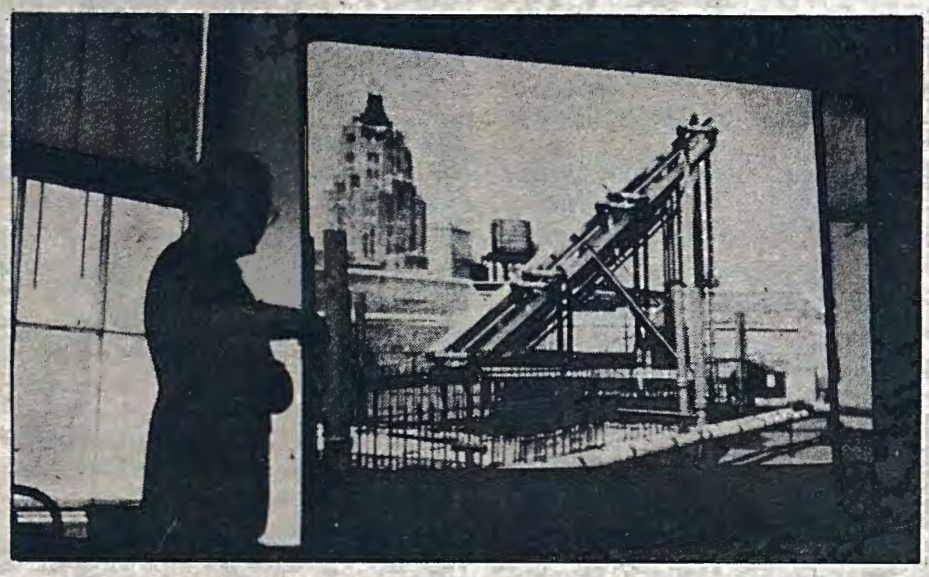
October 1979

Symposium Stresses Access To Solar Energy

by William M. Hirsch

A Symposium, entitled "Solar Energy — Legal Problems," was held recently at New York Law School under the sponsorship of the Council on the Environment. The topic primarily dealt with the public's right of access to solar energy and some legal problems involved with obtaining such access.

The subject discussed by the morning panel involved: "Land Management and Solar Access Protection." The speakers included Mr. Robert Barrett, an environmental attorney with the firm of Winer, Neuburger & Sive, and the Chairman of the Legal/Legislative Committee of the Environmental Management Council; Mr. Arthur Katz, a New York attorney with the firm Washaw, Burstein, Cohen, Schlesinger & Kuh; Mr. William A. Thomas, Research Attorney at the American Bar Foundation; Mr. Martin Jaffe, Senior Research Associate at the American Planning Association; and Mr. William T. Meyer, the Vice President of the Ehrenkrantz Group, and Chairman of the Energy and Environment Committee of the American Institute of Architects.



(photo/M. Hofer)

Solar Panel Being Displayed

Discussion began with William T. Meyer, who presented a slide show concerning the development of solar energy. Following the slide show, Meyer detailed the various types of solar collectors and the manner in which they could be used to heat a home or office building. Houses designed and equipped with solar collectors by the Ehrenkrantz Group were viewed and discussed by Meyer, who also indicated that the White House is equipped with a solar collector. The apparatus heats the water in a small bathroom behind the Oval Office. Through the use of detailed diagrams, Meyer showed how an office building may reduce its costs drastically by the installation of solar collectors on the roof or sides of the building.

William A. Thomas then spoke about the manner in which one assures a client that he would be able to acquire access to solar energy. Thomas mentioned several government organizations that will provide the consumer with the prerequisite criteria for access to solar energy. Financial incentives and lower insurance rates for people who seek to obtain some sort of solar energy collector were mentioned as a means to promote more widespread research into the merits of solar energy by the individual. Thomas illuminated the fact that, "in 1977, over 150 bills were introduced into state legislations for people to use solar energy," as proof that there is a slowly developing push by the government for people to try solar energy.

Martin Jaffe next spoke about the manner in which the collectors of solar energy should be positioned in order to obtain the maximum efficiency of solar power. The various types of collectors were discussed along with some theories regarding proper height and positioning of the collectors. Zoning regulations were also discussed at length, and how they influence

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Kheel Explains Labor Strategy

by Christine Goban

"What I did for three weeks was to get the facts in the dispute. I sat with the fellows in the press room and learned about a press room and saw how it worked," explained Theodore Kheel, a nationally known labor negotiator who related his role in the 1978 New York City newspaper strike to a full house at New York Law School recently.

Kheel, the first speaker invited here by the NYLS Labor Law Association, was officially billed, "The Lawyer as the Negotiator." He explained that the most important part of a negotiation is to solicit the facts. "The biggest mistake," according to Kheel, "is to rush to judgment. I make a point of avoiding conclusions." Kheel explained the difference between a tactic, such as shutting up to keep the opposition guessing, and a strategy or a game plan for your negotiation. "First you get a strategy. Negotiation is communicating, but you can't communicate without talking." The use of tactics, he said, without a game plan is dangerous.

To prepare for a negotiation, said Kheel, one must first understand what the client wants, then what the other side wants. "Then, you figure out what your tactics should be."

Kheel also explained a negotiation stratagem called a "crunch." A crunch is the result of conditions "where something happens when nothing happens. Because

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Bruce Details Changes and Future

by Scott Batterman

Although it is only a few weeks into the term, questions and controversies are already the order of the day at New York Law School. In an effort to learn the answers to some of the questions, and to give the public some insight into the future direction of the school *EQUITAS* interviewed Acting Dean Bruce and other members of the law school community.

(photo/D. Gegnon)

Dean Bruce

The first matter requiring clarification was the controversy surrounding posting of the exam schedule and the notice added to it at the beginning of the term that students were not permitted to register for classes whose final exam dates conflicted. The notice did not appear in the registration material handed out last spring, resulting in a great deal of confusion, and some anger, on the part of returning students. (The requirement has since been waived for students graduating in January 1980).

As to the confusion and anger, Dean Bruce apologized for any misunderstandings, stating, "I regret it, but if you will recall, the posting of the exam schedule and the requirement that students schedule courses without conflicts was the result of numerous requests by the Student Bar Association. The first time this was done, we ran into difficulties. Whenever you make a change, you have to emphasize the difference, when the change is initially put into effect. While, in my view, adequate notice was given, because theoretically, it was in response to student requests, the request was actually by student leaders. It was really not known by the general student body. They should have received more wide-spread notice. In the future, the matter will be handled differently."

Research Course Changes

There has also been some concern expressed by students over changes made in the Legal Research and Writing Course. One change has been the dividing of the course into one eight-week section during the first semester, and a second, six-week section, devoted to the writing of an appellate brief, in the second semester. Another change has been the institution of a form of grading on the first year oral argument requirement. The grade will still be pass-fail, but there will be "shadow-grading" by the panel of judges, with a minimum standard of advocacy required.

Although Dean Bruce suggested that the person to be contacted in this regard was Janet Tracy, he did volunteer the following comments: He stated that the appellate brief requirement was moved "into the second semester due to congestion in the first semester. This is a hard period for students." It is hoped that this will "relieve the schedule of the students a little. Moving to a pre-Christmas exam schedule compacted the first part of the year. The change puts the material into a part of the year when the students will get much more out of it, and it will be less disruptive." As to the minimum advocacy standard now imposed, he stated that it was to maintain "high standards. I am heartily in favor of it. I think it is a very progressive move."

Tracy echoed these sentiments. She also informed *EQUITAS* that the "Moot Court Board is anxious to participate with the instructors (in the formulation of the assignments for the appellate brief); I can't say that they'll all accept the assistance. Most will but it is up to the individual instructor." The idea behind this move is an attempt to standardize the degree of difficulty of the problems, and to ensure that they are all appropriate problems for oral advocacy.

The argument will be part of the second six weeks. "It will be judged by the instructors and their associates," Tracy remarked, "having the Moot Court Board fill in the missing places, if any, on the bench. My advice is that they (the instructors) do not judge it themselves, but rather, prepare their students."

Tracy also stated that she thinks

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NEWS IN BRIEF

How To Be A Smart Consumer

Getting What You Deserve is a book that takes a down to earth look at the pitfalls of being a consumer, and is intended to be a layman's guide for staying out of trouble. Written by NYLS Professor Stephen A. Newman, in conjunction with Nancy Kramer, it is being published by Doubleday & Company, Inc., and is expected to be available in November.

Professor Newman can be considered

(photo/D. Gagnon)

Prof. Newman

an expert in the area of Consumer Law. Before coming to NYLS, he worked for four years at the New York City Dept. of Consumer Affairs. He has been at NYLS for six years, where he teaches Civil Procedure, Consumer Law, and conducts the Consumer Protection Clinic. Mayor Edward Koch has recently appointed him to the Mayor's Consumer Advisory Panel.

Professor Newman's first book, *Caveat Venditor*, was an instructive guide to Consumer Law for the attorney. In fact, it is now mandatory reading in many federal, state, and city agencies. Together with *Caveat Venditor*, Prof. Newman hopes *Getting What You Deserve* will provide both the attorney and the layman with the tools to fight the ever increasing abuses against consumers.

Ralph Nader, endorsing the book, notes, "This book will not only help you as a consumer to fight inflation, but also help you as a citizen to prevent inflation." Bruce Ratner, Commissioner of the New York City Dept. of Consumer Affairs calls the book, " ... the first comprehensive consumer guide I have seen. Informative and exceedingly well-written, it is a real A-Z inflation fighter that exposes the frauds as they really are."

A review of *Getting What You Deserve* will appear in an upcoming issue of *EQUITAS*. **— Howard Schwartz**

Essay Winner

Robert P. Drake '80, was the New York State winner of the Association of Trial Lawyers of America's Environmental Law Essay Contest. The paper was entitled "Occupational Carcinogenesis and the Statute of Limitations — Competing Policy Goals;" it dealt with the question of allowing recovery for diseases that often take 20 years to develop.

Sheridan Albert, president of the New York State Trial Lawyer's Association, presented Mr. Drake the award at a ceremony on Oct. 2. Drake is a member of the *EQUITAS* staff which extends its congratulations to him. **—Dennis Gagnon**

(photo/D. Gagnon)

NYLS recently had the honor to host the Judges of the High Court of Italy who have been touring American legal institutions. On hand to greet the judges were Dean Shapiro, Judge Re and many of the NYLS Solomon Scholars.

Students Awarded Burkan Prizes

Lorna Veraldi, currently a third year student, and Sherri Reiss, a 1979 graduate, won first and second prizes, respectively, in the 1979 Nathan Burkan Memorial Competition at NYLS. The American Society of Composers, Authors and Publishers, sponsors of the competition, award a first prize of $500 and a second prize of $200 for the best papers submitted in the competition at each participating law school throughout the country, on topics related to copyright law. The papers are eligible for prizes in the highly competitive national competition, ranging from $500 to $3000.

Ms. Veraldi's paper is entitled "Cable Television's Compulsory License: An Idea Whose Time Has Passed?" The paper analyzes the origins of the compulsory license for cable television under the new Copyright Act, as well as problems which have arisen in its implementation. Ms. Reiss's paper, "Copyright Protection Under the New Act: Choreography," analyzes the protection of choreography under the Copyright Act. The new Act has for the first time specifically enumerated choreographic works as protectible, provided that such works are fixed in a tangible medium of expression, such as film or graphic notation.

The 1979 awards were presented at a recent reception honoring the two winners. Copies of the winning papers are on reserve in the library, under "Nathan Burkan Memorial Competition." The competition was judged by Professor Samuels, with consultation by Professors Botein and Peyser. Any students interested in the 1980 competition, for which papers must be submitted by August 15, 1980, should contact Professor Samuels well before the deadline.

Winners of Law Review Writing Competition Announced

by Joyce Meisner

The writing competition for the Law Review at New York Law School was more successful this year in terms of participants and resulting candidates than ever before. 113 people purchased the packet and 46 actually submitted papers; this compared to last year's figures of 35 purchasers and only six entrants. Many expressed surprise over the relatively large number of people chosen this year (6), as compared to last year's grand total of one.

The drastic increase in participants and, ultimately, acceptances, may be the direct result of the Law Review's decision to lessen the requirements of who can enter. This year was the first time when anyone who had finished two semesters of law school and was in good standing (meaning not on probation) could compete. Night, mid-year and third-year students, except those graduating in January of 1980, joined the competition for the first time. Of the six students selected, one was from the third year and five from the second. They include Charles Ross, Linda Crawford, Svetlana Petroff, Janet Burak, Henry Scorcia and Daniel Chavez.

Shelly Kehl, the Managing Editor, felt that, on the whole, the papers submitted were of fine quality showing good effort in writing and analysis. She stressed that the efforts made were even more considerable when one stopped to realize that the entrants were constrained by the time requirements (10 days to write the paper) and the novelty of the topic used in the competition. The topic came from a slip opinion found by research editors who looked through various publications and opinions. Finding a topic was a difficult and time consuming process. It had to be an interesting recent issue, with little written on it to make the possibility of outside research virtually impossible. The result was a recent decision to admonish a N. Y. State Supreme Court judge for surreptitious nepotism.

The procedure for choosing the candidates was also laborious. Each paper was read over three or four times by a group of twelve editors. At least six people voted every time for each paper and all evaluations were independent until a number of people had read it and then comments were exchanged and compared. Each paper underwent numerous readings before final acceptance and no single paper was eliminated before it was given careful scrutiny by a number of people.

Despite the efforts made by Law Review to ensure a fair competition a number of rumors circulated among participants. One major rumor was that the anonymity among the competitors was breached. However, Research Editor Diane Reitana emphasized that "everything was totally anonymous." Social security numbers were used as the only means of identification and if any students signed their names they would be immediately disqualified. It was also rumoured that a student used an official cite when the packet only gave the unofficial. While such a thing did occur editors were not distressed over this because it was felt that at most the student purposely took the official cite from Shepards because the packet instructions stressed that citations be done correctly. As Managing Editor Kehl reiterated, the most important element of the competition was not research but spotting and analyzing issues.

Dean Explores Kenyan Life

by Celeste Donicz Miller

Has a jungle lion ever lurked a few feet from your car when you were but eight miles from the city? And have you ever stopped your car by a roadside vendor to sip fresh coconut milk from a coconut machetted in half before your eyes?

Your answers to the questions would be "yes" and the incidents would be vividly recalled if you, like Dean William Bruce, had spent two weeks last month in Kenya, Africa.

Bruce was the house guest of Chief Justice Chuni Madan, the Chief Justice of the Court of Appeals for East Africa. It was through the Dean's friendship with Justice Madan's son, Anil Madan from Harvard Law School, that Dean and Mrs. Bruce were invited to visit Kenya.

Justice Madan afforded Bruce an opportunity to examine Kenya's justice system up close. Bruce candidly admits that even an official delegate to Kenya would not have seen as much of the life of the country, and particularly as much of the legal community, as he was able to see.

High Court Visit

The Dean spent many days attending sessions of the High Court in Nairobi, the capital of Kenya. This court has both civil and criminal jurisdiction. The judiciary system's lower courts include resident magistrate courts and district magistrate courts. The final court of appeal is the Court of Appeal for East Africa in Nairobi, the head of which is Chief Justice Madan.

The magistrate system was organized in the early 1960's after Kenya obtain independence. In 1963, Kenya established itself as a republic with Jomo Kenyatta as president. In the years before Kenya's independence, Justice Madan was a member of Parliament. He was the first Black member and was offered a salary markedly lower than that of the other members of Parliament. The hope was that he would refuse the position. Justice Madan accepted the post in spite of the salary and has remained as one of Kenya's most forward-thinking statesmen.

Court sessions with the Chief Justice occupied part of the Dean's days, yet when this writer asked Bruce what part of the trip was the most exciting and memorable, he recalled how he and his wife were entertained each evening at the homes of the friends of the Chief Justice. These friends were leaders in the business and legal community and their homes reflected the cultures of London and New Delhi. Firey hot Indian fare was offered to the Bruces by the East Indian hosts and American food by the Moslem hosts. These dishes are atypical of the kind of food consumed by most Kenyanese. One native Kenyan dish, and a staple of the country, is a corn meal mixture, not unlike Southern grits. This, as well as papayas, melons, bananas and coconuts, became part of the Dean's diet during his stay in Africa.

As far as suggestions for someone else who might consider such a trip, the Dean suggested the traveler speak with Professor Maudsley about the culture and society of the country. Then, of course, the trip would only be matched with his if the traveler were fortunate enough to be the guest of the country's Chief Justice.

Panel Guides Women On How to Be Successful

by Lisa Rubel

Recently, the New York Women's Bar Association hosted a panel on "The Politics of Success." It was attended by members of the Legal Association of Women of New York Law School, and was both informative and interesting.

The New York Women's Bar Association is a separate organization from the New York Bar Association and is open to student membership. Its purpose is to provide a forum for women involved in various aspects of law in order to exchange ideas and information that concern women. Programs planned for this year include a symposium with members of the International Federation of Women Lawyers, luncheons establishing a women's network in New York, and a conference for women in business.

"The Politics of Success" panel consisted of four prominent women who provided advice on climbing the ladder to success. The panel was moderated by two women who alone represent a modicum of the successful women in today's world. They were the Honorable Linda Lamel, who is Deputy Superintendent of New York State Department of Insurance, and Rosina Abramson, counsel to the President of the New York City Council.

First to speak was Carolyn Setlow, Vice President and Director of Corporate Planning at Newsweek, Inc. Setlow came to her position at *Newsweek* after pursuing several other careers. She sees the strategy of success within a job as a combination of hard work, imagination and flexibility. She spoke of the necessity to evaluate and understand the environment in which one works. This means knowing who is there, what they are doing and where they fit in to help one be successful at one's career. Support of peers and subordinates is essential. Setlow, and the other panelists, emphasized participation in group settings and not being afraid to ask questions. This builds confidence and shows others interest and knowledge.

Charlotte Fischman was the representative corporate attorney on the panel. A partner at Kramer, Lowenstein, Nessen, Kamin & Soll, Fischman had some interesting advice for future partners of law firms. It is vital to be a "business getter" in a firm, to develop its clientele. Women have traditionally been academically oriented in the legal field. Not being a go-getter has been a handicap for women who try to advance themselves. Some of Fischman's suggestions for attraction of business to a firm include keeping involved in community affairs, legal related groups and even alumni associations. These provide contacts for future reference. Women must also learn to plan such things as business dinners and to refer their clients to others in the field. Many women depend on their male partners to be their referral service or to go to court for them. Go to court yourself, Fischman urges.

Fischman's advice on managing a personal life was that women should put off childbearing until they reach a level of financial success. Then they should be able to afford flexibility, and both good housekeeping and child care.

Dr. Donna Shalala was the outsider on this New York-based panel. She is Assistant Secretary for Policy Development and Research at the U.S. Department of Housing and Urban Development. Shalala spoke of the importance of having a women's network. As the number of women in responsible positions in government increases, this network opens more doors than before. She encouraged women to be less worried about security in a particular job and to be more adventurous in seeking and accepting different employment opportunities.

Shalala spoke of the enormous power struggle that goes on in Washington. Many of the women in Washington were in positions unlike any they had been trained for, whereas the men in comparable positions had been groomed for many years. Therefore, the attrition rate among women was great. The saving factor for many was the togetherness fostered by the Washington Women's Network, which helps women to handle problems that were unique to their new jobs.

Karen Burstein, a former State Senator of New York, is now the Commissioner of the Public Service Commission. The influences in a woman's life can be many. Burstein's father is an attorney and her mother is a Supreme Court judge. Success was expected of the women in the family, in spite of the fact that they were women. This attitude "in spite of ...," and other reasons, led Burstein to run for a Congressional seat. She lost the election, but viewed it as a learning experience. She stresses the importance of continuing to strive for one's goals. Women should not be fearful of going into new areas. After three successful terms as a State Senator, Burstein now holds a job for which she had little practical background; however, she has met the adaptive challenge.

Phi Delta Phi Reports

by Svetlana V. Petroff

If the activities of the first weeks of the semester are any indication, this year promises to be a smashing success for Dwight Inn, the NYLS chapter of the international legal fraternity, Phi Delta Phi.

First year orientation and the SBA wine and cheese reception provided the opportunity for student organizations, including Phi Delta Phi, to apprise incoming students of the purpose of these groups and the benefits attendant to membership in them.

As the first of a series of events scheduled for the semester, the Phi Delta Phi rush party on September 20 was well attended. Members who have since graduated and are working in the vicinity dropped by to chat with old fraternity friends and to meet the prospective initiates. Faculty associates were also present, relating favorite anecdotes which contributed to the jovial atmosphere of the occasion. The outcome was the addition of over a dozen new members to the fraternity.

During the last week of September, Phi Delta Phi conducted a Survival Seminar at which upperclass members shared with the incoming students insights into methods of coping successfully with the pressures and demands of the first year law school curriculum. The relative benefits of various approaches to briefing, outling and exam-taking were discussed. On the whole, those present felt they benefited as much from the helpful hints as from the calm assurance given them by the speakers.

On Wednesday, October 10, Dwight Inn hosted a lecture by David Cunningham, Chief Assistant District Attorney for the New York County Division of Special Narcotics. Mr. Cunningham spoke on the subject of the prosecution of narcotics cases.

Those interested in knowing more about Phi Delta Phi and its activities should feel free to direct inquiries to its officers:

Martin Brandfon, Magister	Svetlana Petroff, Historian
JoAnne Celusak, Vice-Magister (Day)	Gerald Grow, Exchequer
Judith Goldenberg, Vice-Magister (Eve)	Clifford Greene, Clerk

Reeducating The Attorney

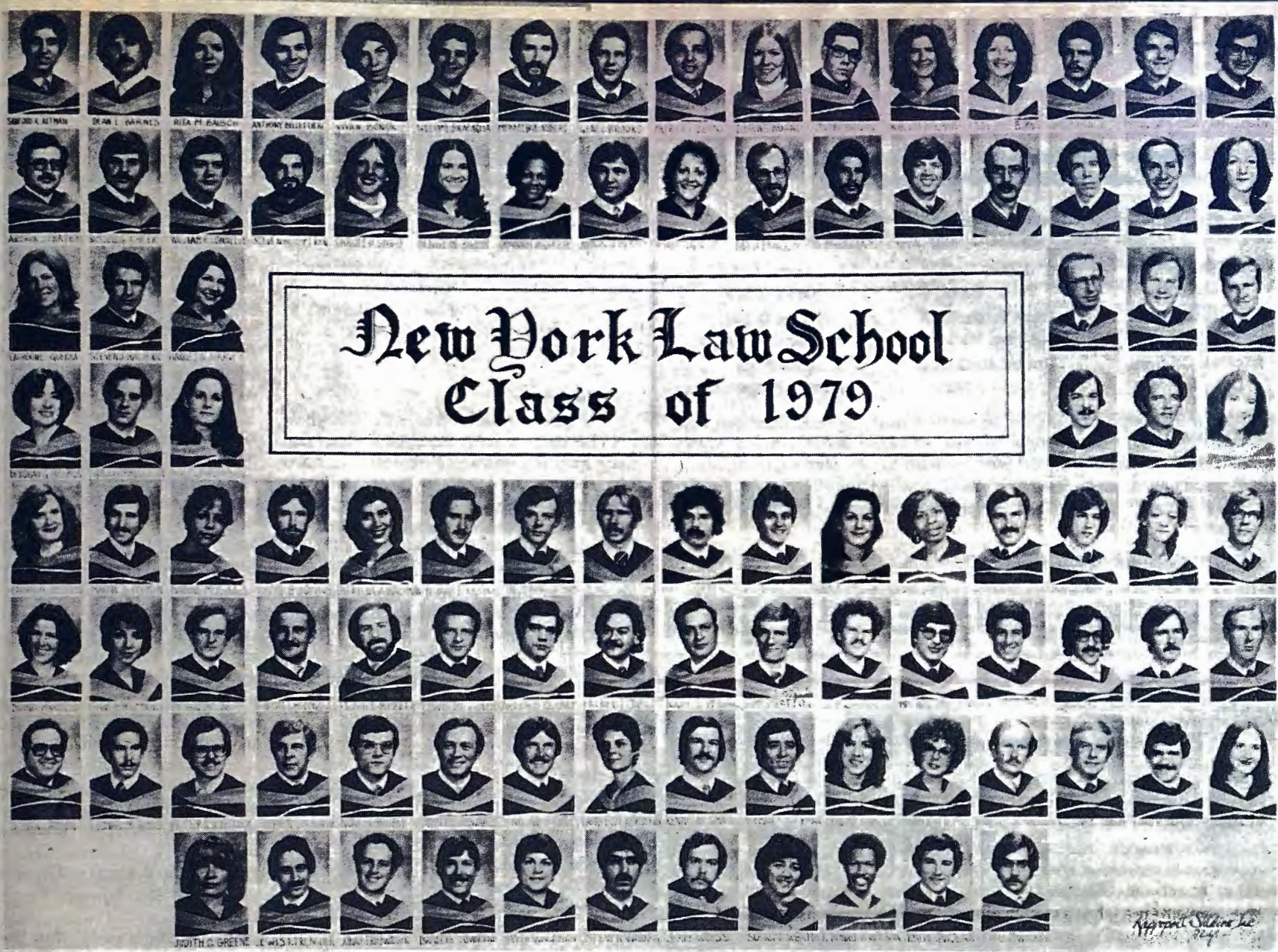
The Law School is sponsoring four Continuing Legal Education seminars in conjunction with the Continuing Legal Education Division of the American Management Associations. The seminars are as follows:

Title	Date(s)	Time	Location
Time Management for Busy Attorneys	Oct. 18/19	9:30 a.m.-4:30 p.m.	AMA Headquarters
Real Estate Actions & Proceedings	Oct. 19	9:00 a.m.-5:00 p.m.	New York Law School
Self-Improvement & Interpersonal Skills Development for Legal Secretaries	Oct. 25/26	9:30 a.m.-4:30 p.m.	AMA Headquarters
How to Try a Matrimonial Case Case	Oct. 26	9:00 a.m.-5:00 p.m.	AMA Headquarters
Profitable Law Office Management	Nov. 2	9:30 a.m.-5:00 p.m.	AMA Headquarters

*AMA Headquarters are located at 135 West 50 Street.

Of particular interest to students intending to practice on their own or with small firms is the seminar titled "Profitable Law Office Management." The seminars in the real estate and matrimonial areas are led by a panel of experts. The leaders of these two panels are members of the New York Law School faculty.

Further information regarding each of the seminars may be obtained from Dean Bruce's office. Students interested in attending one or more of these programs are invited to apply *in writing* to Dean Bruce.



Attention Members of the Class of 1980 .....

Don't be the one left out of the picture!

The school photographer will be here on:

Tuesday, Nov. 6, 1979 11A.M. to 7P.M

Wednesday, Nov. 7, 1979 11A.M. to 6P.M.

Thursday, Nov. 8, 1979 11A.M. to 7P.M.

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Editorials

Tenure Appeal

In past editorials, *EQUITAS* has often lauded the outstanding quality of the younger professors on the NYLS faculty. We have also been involved in intense efforts to keep these fine teachers on the faculty in order to build an even deeper and more prestigious academic reputation.

The Legal Association for Women, in their article in this issue, has raised the topic of tenure for Professor Nancy Erickson. The question of tenure is one of the most complex and sensitive situations to face NYLS this year, particularly after the highly controversial and political tenure "war" of last year.

The predicament, however, need not be so difficult. Professor Erickson has more than met the qualifications for tenure, and has even been approved by the Faculty Committee on Rank and Tenure. Professor Erickson is regarded by her students as highly competent and resourceful — evidence of her professional teaching capacity. There is no question as to her publication status, for she has had numerous scholarly works published since joining the NYLS faculty.

EQUITAS joins the Legal Association for Women in an appeal to the Board of Trustees to recognize the outstanding contributions Professor Erickson has made to NYLS and grant her the tenure both she and the NYLS community deserve.

A Right To Know

Some of the most important decisions affecting students at NYLS are made by the full faculty at closed meetings — the addition of a writing requirement and the policy against posting grades to name two. But do students, often the most interested parties, have any idea what goes on in those meetings? No. This must change. The cavalier attitude of the faculty in this matter is entirely unacceptable. We pay the bills. We suffer from sudden changes in the curriculum and graduation requirements. It is high time that we learned what is being said behind closed doors, how accurate it is, and who is saying it!

True, the faculty, on occasion, will invite some students to speak at the meetings. But do they pay attention to what this select group has to say? We don't know, and we won't know, until we are given the access to these discussions which we deserve. This is the only way to hold the faculty accountable for their decisions which intimately affect our lives.

Admittedly, certain decisions will require a heightened degree of confidentiality, and some concern matters of much greater import to the faculty than the student body. But these matters can be indentified, and isolated from topics of more general interest.

The bottom line is simple: We pay the bills. We are the affected parties. And we have a right to know and to be heard.

Honesty — Best Policy

EQUITAS would like to take a moment to say how much we admire Dean Bruce's candid and honest remarks concerning the registration problem of this semester (see article page one). His comments are a clear indication of his true concern for the welfare of the NYLS students and the entire school. *EQUITAS* hopes that when the matter arises again later this semester it is handled differently, as Dean Bruce suggests.

Answers & Counterclaims

To the Editor:

I am writing you this letter to thank you and your staff for the editorial I have read in the September 1979 issue of *EQUITAS*.

I am also grateful to you for the very engaging commentary relating to the Law School — University of Bologna Program.

Sincerely,
Joseph Solomon
Class of 1927

To the Editor:

I personally and on behalf of the whole NYLS community would like to congratulate Paul Hofman and Elizabeth Barnhard for their laudable efforts in creating and staging the solar symposium on September 15. The School owes Liz and Paul and the Council on the Environment many thanks for their exceedingly professional effort in presenting the legal problems of solar energy to the School community and the public at large. Again — THANKS.

Sincerely,
Christopher Kelley
Class of 1981

To the Editor:

As a participant in the 1979 Bologna Program I feel that it is my place and duty to comment upon what I consider to be deficiencies that significantly detract from the academic and social potential of that program. Although I was happy to participate in the program I believe that criticism can cause the course of study to be made intellectually honest as well as academically fulfilling.

Whatever comments I make regarding academics are germane only to the courses I took while in Bologna. I registered for European Economic Community Law and Regionalism and Federalism. The latter course was changed without notice to Philosophy of Law (sort of an Italian Jurisprudence) and the material purchased for the course was made useless. The method of teaching at Bologna was strictly lecture and, at least in the EEC course, the information delivered during class was the same that was covered in the assigned readings. The instructors seemed to read from prepared texts and there was, at best, incomplete interaction between American students and Italian professors. Interestingly enough, between and after classes or at social functions the Italian instructors were not in the least bit reticent about communicating with us. It seems to me that the Bologna Program could be structured as a series of seminars wherein the readings could provide a point of departure for discussion. Needless to say, students would have to read the materials rather than not reading them which became the norm while in Bologna. One of the most successful and enlightening periods of instruction took place on the last day of classes where a panel discussion was staged with a high-ranking official of the Common Market and a former Italian government financial minister sort of squaring off on various issues while also fielding questions from the students.

One of the requirements for receiving a passing grade and accruing four credits towards graduation was the writing of a "research paper." Besides the lack of adequate research facilities there was also the question of motivation. It became obvious that the writing of these papers was little more than a pro forma effort, a paper drill designed to show that something tangible had been produced by the students enrolled in the program. The work product was literally not worth the paper it was written on and, for myself, I was embarrassed by the whole affair. This requirement ought to be scrapped, since it is nothing more than a meaningless exercise in filling ten or more looseleaf papers with barely coherent sentences.

Bologna University offers a room and board package which New York Law School evidently accepts uncritically. For $525 a student will enjoy a private room with shower and three meals daily (except weekends) in the dormitory dining room. However, it is not at all difficult to find an inexpensive pensione and to eat in local restaurants for a total of about $300 for the entire program. The Dean of Admissions (who runs the Bologna Program) allowed me to stay in the dormitory but I wasn't forced to accept the meal plan. I found the experience of travelling throughout Bologna in search of economical meals to be of true educational value.

It is unfortunate that more is not done to make the program more accessible to students unable to pay $525 for room and board. New York Law School ought to publish a guide to inexpensive restaurants and pensiones in Bologna and, indeed, the coordinator of the Bologna Program should take a more positive interest in the welfare of the students enrolled in the program. Other law schools offering similar overseas programs publish booklets containing this sort of information as well as such vital details as the locations of laundromats and libraries. Additionally, perhaps the coordinator of the Bologna Program could do a little advance work in ascertaining less expensive modes of transportation to and from Bologna. It might be helpful to remove some of the burden from the shoulders of the Dean of Admissions if the administration of New York Law School would augment his staff with another member specifically detailed to handle this sort of information. Perhaps an alumnus of a previous Bologna Program would be willing to participate as a paid summer employee.

The Bologna Program can become more than a summer boondoggle but only if honest criticism is solicited and accepted.

Sincerely,
Andrew J. Franklin
3rd Year Day

To the Editor:

We feel compelled to respond to charges against the Bologna Study Program. It is unfortunate that such charges require the dignity of an answer, but because rumor has wings, and especially written unrebutted rumor, an explanation of the Bologna Program is entirely appropriate.

It should be noted that this letter was not written at the behest of the administration or faculty of New York Law School. Instead, it issues forth from a growing disenchantment with the level of esteem with which students perceive themselves and this academic institution. Personal lobby-

(please turn to page seven)

Answers & Counterclaims...

(continued from page six)

ing conducted under the aegis of "intellectual honesty" and ennobling criticism deserves no place at New York Law School, or, for that matter, at any reputable academic institution. It appears to us that Mr. Franklin's mordant remarks upon the Bologna Study Program are inaccurate, designed to mislead, and motivated not by "intellectual honesty" but by frustration and disappointment.

Costs of room and board were sent to all members of the Bologna Program *along with an explanation of options*. No student was forced against his or her will to accept the room and board program provided by the College of St. Thomas Aquinas. Several students were living at the College without a meal plan, and these students were quite capable of procuring meals in Bologna's numerous restaurants and cafes. Mr. Franklin was among those who eschewed the College meal plan in order to sample the various culinary delights of Bologna. That was his privilege. That does not entitle him to suggest that the cost of room and board at the College might have been reduced. In fact, one visiting Europe would be hard pressed to find suitable lodgings and meals for less than $525, the sum paid by students who lived and ate at the College, unless one were willing to suffer considerable privation in terms of the quality of food and lodging.

In response to the suggestion that future students of the Program should be given some form of subsidy or relief from such an astronomical sum as $525 (for three weeks in Europe!), all students were aware of scholarship funds made available through Mr. Joseph Solomon, a graduate of New York Law School. These scholarships were used to help defray, in whole or in part, the tuition costs of the program. Surely Mr. Franklin can not be intimating that students should pay nothing for the privilege of participating in the program.

As for charges that the program was not conducted with intellectual honesty, we would advise any person who does not possess this enviable trait from attempting to recognize its presence or absence in others. To charge the professors associated with the program with intellectual dishonesty is an outrageous defamation. Every professor who taught classes in Bologna is recognized in Italy, in European academic circles and in the international legal community.

Paper assignments were done with a sense of integrity and concern. Professors explained to each class the individual requirements of the course, in some cases prescribing an acceptable length for papers, in others offering a choice between writing a paper and taking an oral exam. Is this intellectual dishonesty? If Mr. Franklin did not feel that his personal efforts were academically acceptable, that is understandable. What escapes comprehension is the method by which Mr. Franklin feels capable of labeling other students' papers unacceptable and inferior products.

Throughout the Program, courses were taught in the lecture style; students were not subjected to the Socratic method of teaching. One who objects to such a teaching style should keep in mind two fundamental and obvious facts. First, the European method of teaching consists predominantly of lectures, with time allotted at their conclusion for students' questions. Second, the Socratic method is not religiously practiced by American law professors. Indeed, a number of professors at New York Law School eschew the Socratic method, preferring instead to lecture on cases and materials.

It becomes necessary to address more personal charges leveled against Dean Scanlon, the administrator of the Bologna Program. We feel these charges to be unjustified and motivated by some inexplicable dissatisfaction.

Dean Scanlon is the coordinator of the Bologna Program and is consequently charged with the responsibility of supervising the academic requirements of the Program, including the monitoring of class attendance, grading policy and the schedule of class offerings and special lectures.

In addition he is reponsible for housing and meal arrangements at the College. Although information on the City of Bologna was provided by the administrator of the College, Dean Scanlon was not required to provide a detailed list of every enterprise in the city, nor was he compelled to demonstrate an expertise of Italian laundromats and frugal meals.

If one feels that Dean Scanlon was not cooperative, we might remind one that he acted as an interpreter on numerous occasions in order to procure tickets, travel arrangements and other logistical necessities of the Program. He accompanied the editor of this newspaper to a hospital during the middle of the night and arranged special travel plans for this student to travel home with a cast and crutches.

The point we make is simply this: Dean Scanlon is the coordinator and administrator of the Bologna Study Program. He is not a babysitter. He assisted students whenever possible, and any portrayal of him as aloof and insensitive to the students in Bologna is categorically untrue. It is unfortunate that Mr. Franklin has allowed his personal predispositions and prejudices to overwhelm his good judgment in this regard.

In conclusion, we feel that the Bologna Study Program has been unjustly characterized by Mr. Franklin. If every student were able to attend the Bologna Program, these answers to charges of misrepresentation and mismanagement would not be necessary. Because many students have not participated in the Program, we feel that such answers are necessary in order to safeguard the future of the Bologna Study Program.

Sincerely,

Walter G. DeSocio **Palma Patti**
Jenny Williams **Linda Crawford**
Perry Cacace **Peter Noto**

Bruce Discusses School's Direction

(continued from page one)

"it will help to make it part of the classroom component. It has received short-shrift in the past. The nature of the weekend marathon (during which most of the students participate in the oral argument requirement) does not lend a great deal of importance to it. Law school is a serious commitment, and this is a skill they need to develop. I'm not certain they appreciate it."

Tracy also advised that "one of the reasons for the eight and six-week split was that the library will move in October from the ninth floor to the first. It would be difficult to write an appellate brief while the library is in motion." Moreover, if she could cause it to happen, she would like the curriculum committee to add an hour to the required courses for appellate brief writing. A full semester would allow for a draft of the brief and a rewrite. It would be "a luxury to teach writing in the first semester, and give them an opportunity to rewrite some of their assignments," but "now, there's just no time."

New Faculty

In matters of future import, Dean Bruce announced that two new faculty members would be joining the school next semester. One of them is a familiar name, Harrison J. Goldin, former Comptroller of the City of New York. He will be teaching a course that he also taught at Columbia Law School: Public Finance. The other addition to the faculty will be Arthur Best, whose new manuscript, "The Customer is Sometimes Right: Consumer Justice Roadblocks and Remedies," has recently been accepted for publication some time in 1980, by the Columbia University Press. Mr. Best, whose extensive experience in government includes the posts of Special Counsel and Deputy Commissioner of the New York City Department of Consumer Affairs, has previously taught Evidence, Torts, and Unfair Trade Practices at the Western New England College School of Law.

School's Future

In an attempt to discover the direction the school will be taking, we asked Dean Bruce what future changes he foresees, and what changes he feels are most important. He picked out three areas of prime importance.

The Physical Plant: "The physical plant is now adequate for the *present* needs of the school. But I would like to see a plant that is up to the quality of the students and faculty and library of the school, and is adequate to meet the needs of the school projected ten years in advance. So a most pressing need is to complete the building program."

Faculty Governance: "An equally, perhaps *more* pressing problem, is to complete the redrafting of the rules of governance of the school. I think that is number one. And I might add that the faculty is working on that problem, and working harmoniously. I don't see any disagreement about the objectives, within the faculty, or between the faculty and the administration. There is some disagreement in detail, but there is harmony in the spirit of discussion, unanimity of objective."

(photo/D. Gagnon)

Dean Bruce speaking with Prof. Blecker

Placement: "An ongoing objective is to increase the effectiveness of the placement office. I think a good placement office guarantees, first, that we provide the best possible service to the school community, and second, assures an excellent flow of the top students from the school. Some students selected NYLS over top Ivy League schools (a fact corroborated by Asst. Dean for Admissions Anthony J. Scanlon), and without a good placement effort, that couldn't happen and won't continue. We have the best placement team of any Law School in this area by a wide margin."

"That doesn't mean that the students will get the position of their choice in every instance. Thirty or forty students vie for each position. But if our students get their fair share of these positions, it can't help but help the school. Of course, it also increases the natural anxieties of the situation; anxieties increase as placement opportunities improve, as a matter of rising expectations. The placement office cannot perform miracles, and obtaining a position is like the winning of a hand in marriage — a highly individual effort."

Room For Discussion

There are, of course, still misunderstandings and often consternation about what is occurring in the placement area, and numerous other areas of the school, where students are not adequately informed about decisions, and the decision-making process at NYLS. When posed this problem, Dean Bruce commented that this difficulty was one of the reasons for an institution known as the "Alumni-Faculty-Student Committee. The SBA president and other students are invited to be on it. The object is to promote a discussion among students, faculty and alumni about issues of prime importance to the community. I have been discussing this very question with Vin O'Hara (President of the SBA), and the first of a series of open meetings has resulted, on placement." Mr. O'Hara further informed *EQUITAS* that the meeting was as a result of student complaints about the office. Rather than have these questions constantly handed to him, he felt it would be better to hold such a meeting, and get these out in the open. He explained that since he was really not in any position to answer these questions, those who really felt strongly about them should have the courage to step forward and pose them to the appropriate parties.

As a final question, Dean Bruce was asked how it felt to be Acting Dean of NYLS since the summer began: "Deaning is deaning. No change at all. I have been in this business since 1956." He added later that his main concern in this position is a "constant attempt to do whatever I can to improve the school. This is my prime focus." It is a job he has been in, as he said, for as many years as some of the students reading this have been alive. *EQUITAS* wishes him the best of luck in this endeavor, and asks all students, faculty and alumni to also make the improvement of the school *their* prime focus.

Scherer: 'The Great White Hope' Redefined

by Howard Jordan & Edward Lopez

The phrase, "The Great White Hope," usually connotes a racist concept of one who will salvage the image of the "superior white race." However, for some among the New York Law School population, the phrase has taken a new meaning. Professor Douglas D. Scherer represents a new hope of altering race perceptions at NYLS. Scherer is "The Great White Hope."

Scherer is an Associate Professor of Law at NYLS. His specialization is the field of Discrimination Law. He is also the director of the Discrimination Law Clinic. But Scherer's background has not only been one of the academician. His experiences in Boston with the NAACP. represent one of the most blistering histories of race relations in the North. As the Legislative Chairman of the Boston branch of the NAACP (1968-1972), he was primarily responsible for the political efforts to eliminate segregation from the Boston Public Schools.

In 1965, the Racial Balance Act was passed in Boston. The Act mandated that the schools in the city be racially equalized. The school system had refused to implement the Act, and by 1969, a southern style of *de jure* segregation had become institutionalized. This turbulent period evokes painful memories for Scherer: "The system was being segregated at the kindergarten level. It was raw *de jure* segregation. Black children were being stoned and knifed. They closed down schools in the Black areas when busing was ordered, for many of the schools were so bad that they couldn't send White children into such conditions." The ordeal proved to be a sensitizing experience for Scherer.

The Governor of Massachusetts recognized Scherer's ability to deal with problems of racial discrimination. In 1971, he was appointed governor's legal advisor on civil rights, developing civil rights policies and programs for the Executive Branch. His contributions did not stop there, however. In 1972, he became Commissioner of the Massachusetts Commission Against Discrimination. He was responsible for the overall supervision and administration of investigation, and other matters relating to enforcement of discrimination statutes. Although his personal role, in contrast to his role at the NAACP, had changed, he assisted in creating the machinery that could implement many of his ideas.

While working for the governor, Scherer began to realize the absence of any meaningful, practical writing on Discrimination Law. He shifted his efforts to that of racial preceptor and academe at New York Law School. He perceived the role to be an opportunity to expose the law student to basic discrimination theory, and to give the student the necessary skills — through discrimination clinic — to pursue litigation.

According to Professor Scherer, "There is a real vacuum in the published literature in the discrimination field. This is part of the reason that things are not moving as quickly as they should: the people who are writing about it don't have the legal background for it,"

However, the Professor's role is not limited to that of the lecturer and writer. He insists on taking an active part in the NYLS Admissions Committee. He believes that the LSAT should basically be discounted for minority students, and that the committee should rely on students' academic transcripts, personal statements, and histories of job while in school and after graduation. He feels that the utilization of these criteria will enable the minority representation to increase to 25-30% of the student body.

Scherer attributes the greater failure rate of minority students to their general isolation from the majority of the student mass. He views the Black and Latino Law Students Association (BALLSA) tutorials not as added help, but as a means to bring the

Prof. Douglas Scherer

minority pupil to a parity with his majority counterpart due to his inability to plug into the current system.

Despite Scherer's sensitivity to racial dilemmas in education, however, he does hold some views which are construed by some minority leaders as deceptively regressive. He sees the United States Supreme Court decision on *Bakke* as a positive result because it upholds the constitutionality of racial classifications to eliminate discrimination. This conflicts with the NAACP opinions on the subject. He went on to say that, "anyone who feels that *Bakke* is regressive doesn't know what he is talking about. The NAACP came out with unfortunate statements about the decision. It was unfortunate because it made them look foolish, but also fortunate for it made it more palatable for the White racists to accept the result — as though they had achieved a victory."

Scherer also regards the recent *Weber* decision from the Burger Court as demonstrative of a more progressive stance than that of the Warren Court which decided *Brown v. Board of Education of Topeka, Kansas*. He believes *Brown* was pure theory, while *Bakke* and *Weber* were direct implementations of the use of racial classifications.

Despite increasing racial tensions in the North, many attorneys remain committed to combatting discrimination. Scherer represents this new breed. It is in this sense that he will serve as the "Great White Hope," an example to White law students to challenge discrimination not only in form but in substance.

Kheel On Labor Negotiations

(continued from page one)

of the passage of time, a decision is going to be made." The threat of a strike is a crunch. Kheel explained that, during a previous newspaper strike, he attempted to create an artificial crunch by using the visit of Pope Paul VI and explaining to the parties that such an important event should not go uncovered. "The Pope came and went," Kheel remarked, "and the strike continued.

Another important facet of negotiation is "to find out who calls the shots." According to Kheel, during collective bargaining, "you rarely get the top man on management; and the union leader may be very influential, but he still has to go to the rank and file."

In a question and answer period Kheel spoke of the City's upcoming negotiations. Kheel illustrated the differences in the types of negotiations which are conducted in the public sector. "In negotiation in the public sector, there is a limitation on the right to strike," commented Kheel. He elaborated the difficulty in decision-making due to the problem a municipality has with the delegation of its authority. Kheel predicted that the most interesting of the negotiations would be between the City and the transit authority, since this negotiation would probably set the precedent for the remaining negotiations.

Fear Is The Real Problem!

By Andrew J. Franklin

It matters not at all that I care ... only that you care so very little. And soon you won't care at all. Adrift in the law school sea, treading water and conserving your strength for the long pull ahead, the numbness sinks into your limbs and your brain as you disappear from sight. Convinced that the three years of enforced desuetude of law school are merely a temporary aberration — a momentary famine of the spirit — you fail to understand that the pattern of your lives is set in the here and now. If you are frightened in law school you will be frightened forever. If you bow down to self-proclaimed totems of authority or to supposed sources of influence at this early date there is no reason to believe that you'll ever walk w..h your head held high.

I understand that a significant number of Law Review members are unhappy with Placement but are afraid to complain to any of the deans for fear of being branded as dissidents who dare rock the boat. By definition the best and the brightest, these poor students, who should have the greatest freedom of action of us all, feel the most dependent. Despite their hard work, their dedication, their undeniable merit they can't make the grade without special assistance. At least, that must be the way they feel about themselves.

There are those who cloak their apathy with cynicism or who affect extreme attitudes of skepticism. Theirs is a world of blind luck, of preordained events, of happenings beyond their control. By not acting, they guarantee the results they fear. By not acting, they confirm the helplessness of us all. Neil Young may sing that "It's better to burn out than to fade away," but for many at New York Law School that implies an unacceptable level of committment. But, naturally, passion and committment are all somewhere in the future: when the time comes and the cause is important enough these potentially dynamic lawyers will stir themselves sufficiently to change the course of events. Excuse *ME* for a moment of skepticism but I just can't buy that line of reasoning. Passion can't be turned on and off like water from a faucet; committment is developed and nurtured—not created in a flash of inspiration. Crimes ignored and wrongs obviously ignored create moral and emotional scar tissue. Failure to respond when the danger is small and the risk negligible is not a sign of conservation of resources, merely a sign of inability to rise to *any* occasion.

Failure is endemic when mediocrity is the rule rather than the exception. Not academic mediocrity but, rather, the acceptance of intellectual blandness. Acceptance is too weak a characterization. Actually, the correct term is elevation and deification. Blandness bred of fear and apprehension positively reinforced by strategic grants of largesse from a "grateful" administration. One Law Review student I know believes wholeheartedly in "marriages of convenience" with figures of alleged influence. Not any one individual in particular, just any one who happens to be around. One can suppose that such conduct is not really widespread. After all, it requires real effort to wriggle out of a fear engendered funk.

But practice makes perfect ... in leadership as in prostitution. The vicious reality is that no matter where you go and no matter what you do there will *ALWAYS* be someone you can be afraid of (and, sometimes, someone you should be afraid of) and if you can't handle this revelation you may as well punch out right now. You can, however, minimize these chance encounters of the dangerous kind by learning to act as though you had a right to be alive and breathing free air. So long as you are competent as well as confident, there is no reason why freedom of action won't belong to you. You won't starve and, perhaps best of all, you can survive with your integrity intact. For lack of a better analogy, surviving at New York Law School and beyond does not require you to undergo mental emasculation.

Which is where practice comes in. Fortunately at New York Law School there is no one who can really hurt you nor should anyone truly desire to do so; unless they're intent on cloning a new generation of boot-licking junior associates and ulcerated partners. This may be true but I am naive enough to believe otherwise. So, assert yourselves when you feel like it. And you should feel like it almost all the time because there are *that* many things going on that, at the very least, ought to cause you to raise your eyebrows.

Of course, you may be seduced by the possibility of extra help and assistance in finding a high-paying job. But once you're on your knees you may never get to your feet. And you may be bamboozled by the trappings of power into believing that a particular dean has great influence but in truth *the dean is wearing no clothes!* For now, however, at New York Law School and throughout the rest of the western world, the operative emotion is fear and the dominant color is gray. Maybe that's how it's destined to end, "not with a bang but with a whimper." ..... How boring.

L.A.W.

A Plea For Action

by Carol Schlein

It looks as though it's time for some affirmative action by students on behalf of one of our faculty members. The NYLS Board of Trustees has yet to recognize the abilities and contributions of Professor Nancy Erickson to the legal community and to NYLS in particular. Armed with an LL.M. from Yale University and author of numerous pulications, Erickson has been asked to join the faculty at a number of schools. In a recent interview, she stated that she has requested promotion and tenure. Prior to her leave of absence, Erickson was recommended for tenure by the Faculty Committee on Rank and Tenure. (See *EQUITAS*, Summer 1978 and September 1978 issues for more information.)

Although NYLS has admitted a larger number of women as law students in the past few years, the Board of Trustees has not made an effort to award qualified women permanent positions on the faculty. Several years ago, Prof. Suzzane Gottlieb was denied tenure after a recommendation by the faculty. At the present time, Prof. Kim Lang is the only woman professor with tenure. While several women will be eligible for tenure in the next few years, few people would dispute Erickson's professional qualifications to receive tenure. Few full-time faculty members, male or female, come close to the scholastic reputation of this professor. We strongly urge concerned students to write letters to the Chairman of the Board of Trustees:

Dr. John Thornton
Vice President
Consolidated Edison of New York
4 Irving Place
New York, New York 10003

We would appreciate receiving copies of all letters sent to Dr. Thornton on Professor Erickson's behalf.

Other Scheduled Programs

On a lighter note, LAW members are working on the Metropolitan Women and the Law Conference which is scheduled for February 2nd, 1980. Anyone interested in working on this should contact Lisa Rubel or Priscilla Marco. Other programs planned for this semester are being coordinated by Soledad Rupert and Novalyn Winfield. During October, a topical program on abortion is planned to coincide with Abortion Rights Action Week (Oct. 21-29th). Prior to that time, "Calls to Action" will be made available to students to send to their state and national representatives. Another program now being prepared will be entitled, "How to Get Through Your First Law School Exams." A program on the stresses of law school will be presented and the speakers will include a psychologist who gives her services to NYLS students. Susan Laufer will be supervising all fund raising efforts to send representatives to the 11th National Women and the Law Conference in February, 1980.

Two task forces have organized to deal with issues concerning women. The first looks into the needs of the law school community for day care facilities and the possible creation of such facilities to meet those needs. The other task force examines the legality of the ABA's medical insurance as offered in New York. Anyone willing to work on either of these projects should contact this columnist. To reach any of our committee chairs, please stop by the office (Rm. 309, 47 Worth) during the posted hours or leave a note in the mailbox at 57 basement.

Upcoming events:

Oct. 21-29 Abortion Rights Action Week
Program to be announced

Oct. 30 NY Women's Bar Association Membership Reception at NYU School of Law (open to non-members)

New York Law School Alumni Association Annual Dinner

(photo courtesy of J. Guberman)

Honors

The Class of 1929 on the occasion of their Fiftieth Reunion
The Class of 1939 on the occasion of their Fortieth Reunion
The Class of 1949 on the occasion of their Thirtieth Reunion
The Class of 1955 on the occasion of their Twenty-fifth Reunion
The Class of 1959 on the occasion of their Twentieth Reunion
The Class of 1964 on the occasion of their Fifteenth Reunion
The Class of 1969 on the occasion of their Tenth Reunion
The Class of 1974 on the occasion of their Fifth Reunion

Guest Speaker

The Hon. Lawrence H. Cooke

Chief Judge New York State Court of Appeals

All NYLS Graduates are welcome to attend this gala evening. Dinner fee includes open bar cocktail hour, dinner, check room and all gratuities.

NYLS Alumni:	**$30.00 per person**
Recent Grads (Classes of '74-'79):	**$25.00 per person**
Student Rate:	**$20.00 per person**

Don't Miss It! Everyone Will Be There!

Thursday, November 8, 1979
Six O'Clock
The Waldorf Astoria

For additional information call Alumni Association Office at: 212-966-3500, Ext. 735, 756, or 718

Legal Writing, Part Two:

Creativity a Virtue; Imprecision a Deadly Sin

by Elliott L. Biskind

PRECISE THINKING

It is the rare person whose first draft of a brief, will, contract or statute is good enough to be the final draft. Most of us need to edit or rewrite with a lapse of time (the longer the better) between each review of the draft. This will be discussed later.

When you are asked to draft a contract, you must have a thorough knowledge not only of the details of the transaction, that is, the rights and liabilities of each party, but you should have a reasonably good understanding of the commercial practices in the industry or business involved in the contract. These practices are called "custom and usage." For example, your client is a manufacturing concern and contracts with another to repair some of its machinery, but in the course of the repair work your client's machinery is damaged. The contract contains a clause indemnifying your client against damage "to property arising out of or in any way connected with the performance of this contract." Unless you are aware that the "custom and usage" in the machinery repair industry regards this contract as an indemnification only against damage to a third party's property, you will allow this clause to remain unchanged. But if you are acquainted with the custom and usage (and this is a classical third party indemnification clause) you would insist that the clause refer specifically to your client's property in addition to that of a third party.

Precise thinking must be accompanied by purpose to employ a specific means to achieve a wanted result. But in addition to purpose, it is important in drafting a contract to be sure that you cover every foreseeable contingency. The following case illuminates this point.

In purchasing undeveloped land the seller took back a purchase money mortgage for $390,000 and, in return, agreed to subordinate the mortgage to a bank first mortgage that would enable the buyer to develop the property. The subordination agreement read:

> Upon request of the Mortgagor the Mortgagee covenants and agrees that it will subordinate its lien... to a lien of any first Mortgage by a Bank, Trust...or Insurance company and/or to a lien of any other first Mortgage provided...the Mortgagee (the Seller)... shall have approved the identity of the first Mortgagee and the terms of said first Mortgage...the Mortgagee covenants and agrees that it will execute...an instrument...sufficient to effect such subordination...and to any and all renewals, modifications, consolidations, replacements and extensions of any such Mortgage provided the Mortgagor pays to the Mortgagee hereunder the first...($31,500) of the proceeds of any such loan.

After the seller had subordinated its mortgage to a bank loan the buyer needed another million dollars. The bank agreed but insisted upon a consolidated first mortgage that necessitated another subordination. The seller refused, claiming that only one subordination was required.

Reference in the subordination agreement to "said first mortgage," "any such mortgage," and "any such loan," all referred to the bank's original loan. This, plus the presence in the agreement of the word "instrument" and the phrase "such subordination," caused the court to regard the agreement as ambiguous. Nevertheless, the court found for the bank and required the original seller to execute a second subordination agreement in order that the bank's two loans could be consolidated into one first mortgage.

There is one more thing to be said about this subordination agreement. The seller had agreed to subordinate its lien to a lien of any designated type lending institution "and/or" to a lien of any other first mortgagee. The presence of "and" meant that the seller had agreed to subordinate to two or more separate first mortgagees. This was a blunder of the first order, a blunder that resulted from the "and/or" abomination. It bespoke a lack of precise thinking.

LITERARY ILLUSIONS

In a case involving a police officer, a no-standing ticket and a chauffeur with a low boiling point, a judge's literary allusion set the tone for the facts outlined in his opinion, He did this by quoting from Gilbert and Sullivan, "When constabulary duty's to be done, the policeman's lot is not a happy one."

The chauffeur had stopped in a no-standing zone while waiting for his employer to return when his car was ticketed. The chauffeur became enraged, but the officer, thinking he had finally placated him, walked away. The chauffeur followed, and, in an ensuing tirade reeking with "invectives and other unpleasantries" he was arrested after ignoring a warning to desist. The chauffeur then sued the officer for false arrest. The court observed:

> In these days of disregard for law and order and for discipline, perhaps it would be wiser to show greater regard for the police officer when he performs his duty as he sees it. The plaintiff (the chauffeur) obviously disagreed with the police officer's decision to ticket his car. But that is hardly a reason for carrying on in the manner in which he did. His having done so, gave the officer reasonable and probable cause to make the arrest....

The judge's literary allusion was apt; it captured the reader's interest and lent color to the narrative.

In a similar situation, the literary allusion might have been taken from Kipling, who wrote,

> Now these are the Laws of the Jungle,
> And many and mighty are they;
> But the head and the hoof of the Law
> And the haunch and the hump
> Is — obey!"

Inquiry Into Solar Energy & The Law

(continued from page one)

the manner in which the solar collectors can be used and positioned.

The afternoon panel dealt with the need for utilities and users of solar collectors to work together so that both may benefit from the use of this type of energy.

Arnold Rosenthal of Con Edison spoke about the need for all people to conserve their existing forms of energy, and the Con Edison load management program to reduce peak load (that time of day when the most power is being consumed). A slide show was presented by Rosenthal, which illustrated several integrated solar and existing hot water systems. Solar energy may be employed to heat the water during the day, especially in the hot summer months, while the existing system of hot water may be utilized through the winter.

Ted Finch, the Wind Energy Program Director of the Bronx Frontier Developing Corp., then ventured the various ways in which wind energy may be utilized by means of large windmills to convert wind energy into electrical power for private homes. Finch mentioned a system of decentralized storage batteries by which surplus energy from the windmills could be reserved until needed. In this way, people could make use of their own systems for collecting and storing energy while relying upon the utilities only for those instances when energy could not be procured elsewhere. This would result in substantial savings to the consumer and would also allow the utilities to retain a surplus of energy which could then be tapped in emergency situations.

The two final speakers of the day were Mr. Dennis Drabelle from the Federal Trade Commission and Mr. Jack Meeker of the State Energy Research Institute, both of whom spoke about the manner in which the utilities and private owners of solar collectors could and should work together in order to reduce existing costs for energy, and to insure that in the future, people will be less dependent upon public utilities for their energy, and more self-sufficient.

The entire symposium dealt very well with the description and use of solar energy, and many suggestions were made to help the consumer interested in learning more about the benefits of solar power and what right the individual has to these benefits. Several articles and handouts were made available to those in attendance, and for those who wish more information, please inquire at the *EQUITAS* office and this reporter shall pass along the information.

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