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New York Law School

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FROLIC & DETOUR

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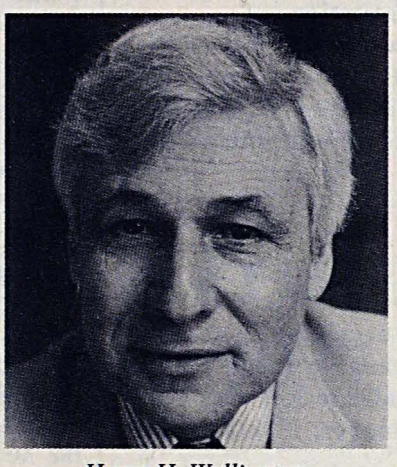
"I can really help make [NYLS] a better school"
-Harry H. Wellington

by Ann Kenny

After nearly thirty years within the ivy-covered walls of Yale University Law School, Harry H. Wellington has agreed to lead New York Law School into the next century as our fourteenth dean. Although Mr. Wellington has high aspirations for the future of NYLS, and vows to attempt to resolve our current identity crisis, he realizes that the tasks before him are considerable.

"I don't have the expectation that [New York Law School] can be a Columbia or a N.Y.U., let alone Yale," Wellington told the *New York Observer* in a recent interview, "but I would like to see it clearly regarded as an important and strong urban law center, with students who come out as first-rate lawyers and take important positions in New York City and elsewhere, with a faculty that is known for its intellectual accomplishments and its scholarly productions. And I think all of that is possible."

Born in New Haven, Connecticut, Wellington received his undergraduate degree form the University of Pennsylvania and his law degree from Harvard University. Subsequently, he clerked for two distinguished federal



Michael Marsland, Yale University

Harry H. Wellington

judges, U.S. Circuit Judge Calvert Magruder (1953-54) and Supreme Court Justice Felix Frankfurter (1955).

After teaching for a year at the Stanford School of Law, Wellington joined the faculty of Yale Law School in 1956 as an assistant professor of law. In July of 1975 he became Dean

See, **WELLINGTON,** page 5

REPORTER PACKED WITH PLAGIARISM

by Gerard Mackey

While its front cover proclaimed it to be "On the Cutting Edge of Credibility," the inside pages of the October issue of the *New York Law School Reporter* were filled with plagiarism. The newspaper contained at least five wholly or partially pirated articles, including several attributed to members of the paper's editorial staff.

The intellectual thefts included an entire article stolen from *The Economist*, and passages lifted almost word for word from *The New York Times Magazine*. Another piece was a verbatim transcription of a corporate press release, and still another was reprinted without permission from *Omni* magazine.

The editorial board of the *Reporter* was confronted with these facts a few days after the issue hit the stands, shortly after the plagiarisms were discovered by members of the editorial staff of *Frolic & Detour*. The *Reporter*'s editors made no attempt to deny the thefts; its editor-in-chief merely asserted that the paper had "no policy for checking for plagiarism." Other than admitting in a "Corrections" column in their latest (November) edition that the previous (October) edition contained several "stupid errors," the Reporter has taken no action.

Soon after the Reporter learned of the literary thefts, a faculty member, who independently discovered the plagiarism, alerted the administration. As we go to press in mid-November, however, the school has taken no formal action. A spokesperson for Dean Simon's office stated that the administration was "looking into the matter."

When the October issue of the *Reporter* was first distributed, several editors at *Frolic & Detour* noticed the unusually sophisticated and professional quality of some of the newspaper's articles. Believing that the writings were not the work of the students under whose bylines they appeared, the *F & D* staff began an investigation which led to the discovery that a number of stories were copied in whole or in part from other publications.

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School gets a boost from moot court

Charting the changes in legal writing

BRING ON THE EMPTY HORSES

Can the Democrats Get Their Act Together and Beat Bush

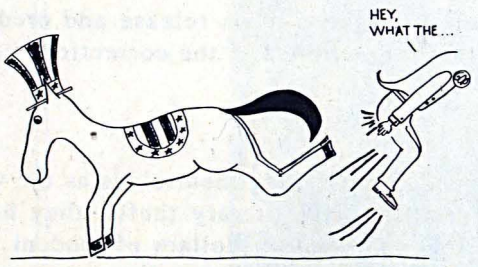
by Jason Glickman

In a little more than a year, the people of this country will tear themselves away from their homes, offices, and television sets to elect the next President of the United States. The election will be the final act of a campaign process which is now finally underway.

But if you're hoping to find a candidate who you can believe in during the next twelve months of mudslinging, hatchet-throwing and televised evisceration, then you probably won't even bother to show up at the voting booth come next November.

What's that? You say you're a Republican and that you won't have to vote because President Bush is a sure thing? Don't count on it. Bush's popularity has been dropping like a B-1 bomber for the last few months and isn't likely to improve anytime soon. Given his total lack of action on the domestic crises that have been growing steadily worse since he took office, if anything, Bush will become more vulnerable.

Unless the President can find another quick, easy war to take our minds off things at home next year, as he did in 1991, he will certainly have to deal with an electorate that has grown wise to the false promises of his 1988 campaign. And those failures may be stirred



into a veritable feeding frenzy by the individual Democratic campaigns.

If this sounds like good news for the Democrats among you, think again. In order to beat Bush, a viable Democratic candidate has to exist. Though more than seven aspirants have already officially entered the running, the chances right now that any of them will mount a successful challenge run from slim to none. This doesn't reflect so much on the candidates as individuals, as it does on their party as a whole.

Profoundly weakened by more than a decade of battling a strong and increasingly autocratic Republican White House, the Democratic Party is now generally regarded as a disorganized rabble of wishful thinkers. They are consistently outwitted and outmaneuvered by the smooth-running Republican machine.

The recent lackluster performance by Democratic Senators Howell Heflin, Howard Metzenbaum, Joe Biden, and Ted Kennedy, during the confirmation hearings of Supreme Court nominee Clarence Thomas, only reinforces this idea. The Democrats are incapable of forming a cohesive response to Bush's agenda, let alone attacking his policies affirmatively.

Although they have nominal control over the Congress, the Democratic leadership has let slip one opportunity to challenge Bush after another; the Thomas hearings, the Gates hearings, the battle over the Federal budget, even the war on Iraq, were all easy targets and gave the Democrats

See, **DEMOCRATS,** page 9

From the Editors

Reporter Hides Truth, Adding Insult To Injury

Several weeks ago, Frolic & Detour discovered that articles in the *Reporter's* October edition were plagiarized, and decided to confront the newspaper's editors. Faced with these serious charges, the *Reporter* editors refused to own up to their responsibility or dismiss the guilty parties, and continued to conduct business as usual.

A faculty member who independently discovered the plagiarism informed the administration, which is now conducting an investigation. With this shadow hanging over them, the *Reporter* staff went to press with the November edition. There, the *Reporter* made up a partial explanation under the title "Corrections and Credits." This column, which insults the reader's intelligence, should have been called, "Lies and Deceit." Here's the real story.

The Economist Article

The *Reporter* stated that this article was "pulled from a lexis search...copied to disk for later use as background material for another article, but in the process of layout was mistaken as an actual student article." If this is so, then why were the first two sentences added and dozens of words throughout the article altered? (See box, top of page 3). And if it were copied to disk, where is the information that appears on Lexis, such as author and citation.

According to the corrections column, this student writer "was not connected with the article published in his name in any way." The column also states that the Layout Editor is ultimately responsible for "what gets put down on each page." The Layout Editor is a good friend of this student writer. So why would the Layout Editor allow his friend's name to be put both on the article and in the table of contents, if the friend had nothing to do with it?

The Omni Magazine Article

The *Reporter*'s editors next apologized for the appearance in the paper of an article that was "apparently accidentally scanned in from *Omni* magazine." How does one accidentally scan an article from a professional publication into one's own? The process of scanning is not nearly as sterile as the editors claim. As the scanner reads the material, it typically makes scores of mistakes that require the user to proof-read the document for errors. Moreover, if this article was merely "scanned in," why was its title changed?

Ten Inexpensive Wines

The editors state that this article was "improperly credited." If it was improperly credited, then who wrote it? The *Reporter* fails to clue us in. Although the byline reads "Reporter Features Staff," the table of contents credits this article to a writer who told us that she did not write the piece. What student reviews a wine and calls it a "quintessenal [sic] muscadet: fresh, sharp, witty, with an almost palpable sea tang?" No law student we know.

Also, what law student would take time of out his or her busy schedule to write a wine review for the *Reporter* and not want to be given credit for it?

Clarence Thomas and *Time* Magazine

Although *Frolic & Detour* told four *Reporter* editors that we had discovered a piece pirated mostly from *Time* magazine in an earlier edition (see box, top of page 3), the corrections column failed to mention this at all. We specifically told them that it was the Clarence Thomas story that was problematic, so they have no excuse for not having addressed it. This article, which was credited to the "Reporter News Staff," implicates the entire editorial board.

David Kessler and *New York Times Magazine*

Similarly, the *Reporter* editors were informed that the article on David Kessler contained many passages which were stolen from *The New York Times Magazine*. Once again, they chose to omit this fact from the corrections column.

The S20 Notebook

This article was mostly taken from an Olivetti news release and credited to the Layout and Production Editor. These facts were not mentioned in the corrections column either. Need we say more?

* * *

What we have here are several rogues, representing themselves as the voice of New York Law School. In putting out a newspaper filled with literary thefts, they have given the school a black eye, a wound inflicted with several thousand dollars of student money.

Incredibly enough, in the same issue as the correction column, it seems that this practice at the *Reporter* continues. One article, in that issue, was credited to Amy Reynolds; a search of the mailfolders reveals no such student at NYLS. Can the *Reporter* explain this one?

These actions are bad enough in themselves, however, when they are carried out with the callous indifference exhibited by the *Reporter*'s editorial staff, they do a great deal of harm to the student body and the school's reputation. The only respectable thing for the individual plagiarists and those in charge at the newspaper to do is to step down.

REPORTER, from page 1

One story on economic development in the third world, for instance, was attributed to the Photography Staff Manager. With the exception of the two opening sentences, however, it was taken entirely from *The Economist*.

In addition, a profile of the new head of the Food and Drug Administration by the Layout and Production Editor had entire sentences, with minor changes, lifted from a similar story published in *The New York Times Magazine* last June. And a description of the new Olivetti notebook computer, credited to the same writer, was taken almost verbatim from a press release that the machine's manufacturers issued recently. In this piece, the author claims to have tested the Olivetti S20, although Olivetti reports that the machine has not yet been released to the public for sale.

One writer credited in the paper is not a student at NYLS at all. She is a free-lance reporter who works periodically for the Associated Press, and her feature on pollution in the Great Lakes originally appeared in *Omni* magazine. The *Reporter* reprinted it without authorization or attribution.

According to the paper's table of contents, a selection of ten inexpensive white wines was drafted by a staff writer. But the named reporter denies any responsibility for the piece, whose byline reads "Reporter Features Staff."

Several other articles in the 48-page issue also appear to have been taken from other sources. Two music reviews, for example, exhibit a knowledge and fluency not often found in the *Reporters*'s pages, and a handful of other stories are simply paraphrased from columns which have appeared in local newspapers, including the *New York Law Journal*.

The previous (August) edition of the *Reporter* contained at least one plagiarized article as well. Published shortly after the fall term began, the paper contained a story on the nomination of Clarence Thomas to the Supreme Court that was credited to the "Reporter News Staff." The piece was, in fact, taken largely from *Time* magazine.

To date, the *Reporter* has resisted any suggestion that the appropriate response to this grave ethical lapse is the dismissal of the blameworthy reporters and the removal of the editorial board. With the exception of the Features Editor, who resigned voluntarily due to her dismay with the flagrant plagiarism and inadequate response, all staff members are still on the job, working on the next edition.

Plagiarism in some instances constitutes copyright infringement. As an official organ of NYLS, the *Reporter* has placed the school at risk of lawsuit from the owners of copyright in the pirated articles. The individual plagiarists are of course also liable. And, because the paper is the school's mouthpiece, the small group of editors responsible for the misappropriations has exposed the entire student body to ridicule and embarrassment.

Frolic & Detour

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AUGUST, 1991 NEW YORK LAW SCHOOL REPORTER PAGE 4

Clarence Thomas

He's a black conservative, an advocate of natural rights law, and he will probably be sitting on the Supreme Court until the year 2033.

by the Reporter Staff

Following the June 27th retirement of Supreme Court Justice Thurgood Marshall, the Bush Administration quickly announced the nomination of Federal Court of Appeals Judge Clarence Thomas to take Marshall's seat on the nation's highest court.

Thomas, 43, is a black conservative who went from a home without indoor plumbing in Pin Point, Georgia to Yale Law School. While an undergraduate at Holy Cross Thomas became a founding member of the school's Black Student Union, and at one point was a Black Panther sympathizer dressed in beret and combat boots. Later on, as a member of the Reagan Administration, he opposed all racial preferences, and in the process became the darling of right-wing Republicans.

Thomas was born a Baptist, but was sent to a Catholic school run by white Irish nuns. Since moving to Washington, he has attended an Episcopal church. His first marriage, which produced one son, Jamal, ended in a bitter divorce. Thomas married Virginia Lamp, an attorney in the Labor Department who made a name in Washington for herself fighting equal pay for women

"How much allegiance does [Judge Thomas] have to the Pope?"

Douglas Wilder
(D) Governor of Virginia

legislation.

Thomas once called the Supreme Court's overthrow of segregation in Brown v. Board of Education "one of the most significant cases decided by the court during this century," but he would later criticize the ruling, arguing that it was based on the faulty assumption that any all-black school was automatically inferior to an integrated one.

To some, Thomas' nomination looks cynical, a way for the Bush Administration to appoint a black whom civil rights groups and liberal Democrats would look churlish opposing while at the same time sticking to its efforts to pull back on civil rights programs. Thomas has built his career in part on an intellectual rejection of government attempts to redress racial prejudice while benefiting from similar efforts.

In his writings and speeches, Thomas has described his inner conflicts, calling himself a child of hatred and love, of malign neglect and of compensating family attention, of painful encounters with white racism and the healing guidance of an order of white Irish Catholic nuns. The President could hardly have picked a nominee whose early life better demonstrates self-help, Horatio Alger and Booker T. Washington combined in one man's struggle.

Irish Nuns

When Thomas was two his father walked out on the family, and Thomas was sent to live with his maternal grandparents. Myers Anderson, his grandfather, sold ice and coal from the back of a pick-up truck to make a living. Anderson himself could barely read, but insisted that Thomas get the best education he could. Thomas was sent to a Catholic school run by white Irish nuns, strict disciplinarians who instilled a can-do attitude in the young man.

Thomas went on to study at the Immaculate Conception Seminary in Missouri, but left because he was confronted by overt racism there. At Yale Law, to which he was accepted under an affirmative action plan, Thomas tried to hide from professors in the classroom so they wouldn't notice his race. Thomas was adamant about not being given special treatment.

As a lawyer in Missouri Attorney General John Danforth's office in 1974, Thomas intentionally worked on corporate issues, avoiding areas like civil rights and abortion. As a lawyer for the Monsanto corporation from 1977 to 1979, Thomas helped shepherd pesticides through government registration. He returned to Danforth's staff as a legislative assistant in 1979, and in 1981 served briefly in the Department of Education's civil rights division.

In 1982, Thomas was nominated to serve as chairman of the Equal Employment Opportunity Commission. At E.E.O.C., Thomas shifted the agency away from big, statistic-based class-action suits to focus on smaller, individual cases of discrimination. During his tenure at E.E.O.C., Thomas publicly questioned the Reagan Administration's seeming reluctance to broaden the Republican Party. He insisted that his party had room for people of all colors, faiths, conditions and classes.

In 1990, President Bush nominated Thomas to the Federal Appeals Court in Washington, D.C., which has often been a spawning ground for Supreme Court Justices. On that court, however, Thomas has only ruled on 27 routine cases.

"Black organizations and individuals in positions of leadership do a tremendous disservice to our community when they use their offices to condemn Clarence Thomas for his philosophy, and essentially, for departing from liberal orthodoxy."

Rev. Buster Soaries
Coalition of Black Conservatives for Clarence Thomas

Plessy Revisited?

Thomas is passionate in his belief that he made it to the top because of who he was, not because of what he was. For Thomas, American constitutionalism is predicated on the rights of individuals, not of groups. He has been scathing in his condemnation of laws which seem to offer blacks preferential treatment over whites; that he argues, stigmatizes blacks as people who could not make the grade on their own merits. This does not mean that he is blind to racism. It is just that he thinks than an essential tool in combating that racism is self-discipline and self-motivation.

Thomas' rejection of affirmative action is based largely on a feeling that whites will never be fair to blacks, a view long espoused by black nationalists such as Marcus Garvey. Thomas is skeptical about integration as a goal because he doubts that it is attainable. Racial preferences, he says, saps African-Americans of their determination and leads whites to believe that blacks can only gain parity through reverse discrimination.

Thomas argues that no other groups have been pulled into the economic mainstream through government programs. He resents the government's "experimentation on our race," which he says makes blacks account for every break they get.

"We're going to Bork him."

Florence Kennedy
National Organization of Women

"Race played a role [in the selection of Thomas], and that is as it should be. In our society, plagued for centuries by racism ranging from the most egregious to the unconscious, only by taking race into account may we equalize opportunity for people of color. This has been a foundation of civil rights policy for more than 50 years. In 1991- as in 1967 when President Johnson appointed Thurgood Marshall- those who appoint Supreme Court Justices will never appoint a person of color (or woman) unless they set out to do so."

Marjorie A. Silver,
Associate Professor, New York Law School

(Reprint from a Sunday, July 14, 1991 letter to the Editor, New York Times)

While many in Congress may shy away from opposing Judge Thomas on the basis of his views on affirmative action, abortion may prove an ample stomping ground to do so. Their argument is that any conservative Catholic such as Mr. Thomas must automatically be counted as a vote to overturn Roe v. Wade. Others may feel that a man who says he owes so much to a group of nuns may support attempts to reintroduce prayer in school.

The Short List for the Next Time Around

President Bush is widely known for having a desire to appoint the first Hispanic to the Supreme Court. Doing so may help Republicans gain inroads into the burgeoning Hispanic-American community; note the Justice Department's vigilance in protecting hispanic districts in the reapportionment process currently going on across the country. High on the President's short list may be the following His-

Economic Analysis

Sustaining Growth and Development in the Third World

by Patrick Benn

"Choose your friends wisely," goes the old adage. It might just as well apply to central governmental macro-policy decision-making. Compared with earlier history, the developing countries have grown quickly over the past 40 years. The time it takes to double real incomes per head in the early stages of industrialization has fallen dramatically. Britain needed roughly 60 years to do it after 1780, America nearly 50 years after 1840, and Japan about 35 years after 1885. Turkey achieved the same feat in 20 years after 1957, Brazil in 18 years after 1961, South Korea in 11 years after 1966, and China in 10 years from 1977.

Despite the mood of "development pessimism" that has prevailed for much of the period since the second world war, history shows that poor countries can indeed grow- and much faster than today's rich countries did at a comparable stage of development. The main reason is the choices governments make regarding technological progress. Through trade, today's poor countries can import the means (goods, ideas, technology) to make their assets (labor and land) more productive.

But the figures also tell another story. Between 1950 and 1989 real incomes per person in Asia went up, on average, by 3.6% per annum. During the same period in Latin America, they went up only one-third as fast, at 1.2% per annum. Sub-Saharan Africa fared even worse: its real incomes went up only by 0.8% each year (and during the past two decades actually fell). Within regions, there are even bigger disparities. Asia has South Korea and Taiwan at one extreme, India and Vietnam at the other. Latin America has Chile, but it also has Argentina.

The World Bank's new World Development Report argues that these disparities are mainly caused by economic policy. To put it bluntly, developing country governments can choose whether their countries will prosper or stagnate. The past 40 years have not answered every question in development economics, but the evidence is now good enough to know which policies are likely to work and which are certain to fail.

The new report combs through a vast amount of earlier research. But some of the most striking information is new- derived from a big study of the Bank's own operations as a lender to third world countries.

The Bank's economists looked at 1,200 investment projects which had been supported by either the Bank or its sister, the International Finance Corporation. The sample is broad as well as big: it includes private projects as well as public ones, and ranges across agriculture, industry and the parts of the economy that produce "nontradables" (i.e., infrastructure, utilities, etc.).

As part of their normal process of appraisal, World Bank analysts work out the economic rate of return on completed projects. For each borrower the bank also keeps track of a variety of economic distortions in, for instance, trade (tariffs and non-tariff-barriers such as import quotas), foreign exchange (the premium on black market exchange rates), interest rates (whether positive or negative in real terms), and fiscal policies (the size of budget deficits).

The new study has put all of this information together to see, on a project-by-project basis, what difference distortions caused by policy make to projects' rates of return. On every measure of distortion, projects yielded the highest returns where distortions were low and the lowest returns were seen where the distortions were high.

Take distortions in the foreign-exchange markets. Where these were low (a black market premium of less than 20%), economic rates of return averaged 18%; where they were high (a black market premium of 200%), the average return was 8%.

Overall, projects undertaken in a relatively undistorted regime had rates of return that were 5% higher than projects undertaken in a distorted regime. If this improvement in efficiency could be achieved for all investment across an economy, incomes per person would typically rise by more than an extra percentage point each year.

That part of the report, in effect, finds new evidence for something the Bank has been telling governments for years: get your prices right, mainly by intervening less. The result will be a more competitive domestic economy with strong links to the outside world. Elsewhere, the new report takes pains to stress that government has a crucial positive role to play as well.

An efficient domestic economy needs investment in infrastructure. And if new investment opportunities are to be seized, people need to be healthy and educated, especially, in basic skills- which calls for public spending. And macroeconomic policy needs to be a stabilizing, not a destabilizing influence.

"An efficient domestic economy needs investment in infrastructure... people need to be healthy and educated, especially, in basic skills- which calls for public spending."

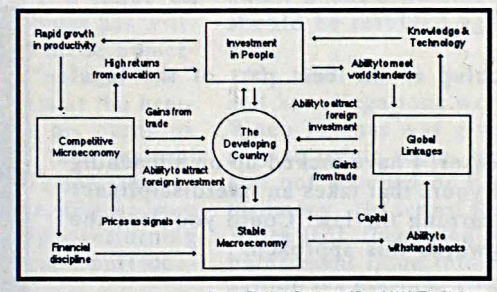
These four elements- a competitive macroeconomy, global linkages and investment in people- feed on each other. For instance, a competitive microeconomy furthers educational progress because it raises the economic returns from extra years of schooling; equally, better education makes an economy more competitive by making workers more productive. There are many more such links to be found (see chart).

Another new piece of research gives an indication of how important such links might be. The World Bank studied two different aspects of policy- price distortions (using the foreign-exchange premium as the measure) and education- then plotted the results against growth in aggregate GDP for 60 developing countries during 1965-87. The countries that scored badly on both aspects of policy grew at 3.1% per annum. The countries that did well on one aspect of policy and poorly on the other grew at an average of 3.8% per annum. The countries that scored highly on both measures of policy grew by an impressive 5.5% per annum.

So the reward for improving one aspect of policy was an extra 0.7% of growth, while the reward for improving both was an additional 2.4%. When you get different aspects of policy right, it seems, the whole is greater than the sum of the parts.

R

The Development Cycle



Source: The World Development Report 1991, "The Challenge of Development." Published by Oxford University Press.

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The Reporter's Article on Clarence Thomas (August Edition), above left, was plagiarized from a couple of publications, though largely from Time magazine. Another article (October Edition), above right, was taken from The Economist. The portions that were taken verbatim have been underlined for illustration.

Book Review

Den of Thieves

by Michael Bressler

> Steal a little and they'll throw you in jail;
> Steal a lot and they'll make you a king.
> Bob Dylan
> "Sweetheart Like You"

The mid 1980's was a memorable time on Wall Street and James B. Stewart's new book, *Den of Thieves,* which chronicles that era, shatters all illusions I had about what went on during those years. Like many, I was a Michael Milken fan.

Here was a guy who seemed to be shy and self-effacing, but who was in reality a financial genius. Milken rocked Wall Street, determining that high yield, high risk bonds were undervalued. By raising money for small and mid-sized companies, he made a fortune for himself and his firm, Drexel Burnham Lambert. Milken was a hero in the way that Donald Trump could never be: he didn't promote himself, and he lived a relatively modest life, with one house, one wife. In short, his work spoke for itself.

The Milken we see here is a Wall Street godfather, in the Francis Ford Coppola mode, minus the warmth. According to Stewart, Milken maintained a network of "captive clients" who did whatever he wanted done, usually to cover credit problems of other clients or conceal ongoing criminal enterprises. Some of the wrongdoing recorded here includes exchanges of inside information, manipulation of prices, and secret accumulation of stocks. In sum, "[b]ondholders got all the risk and very little of the upside" while the "criminals ... earned astronomical returns." (p. 430) "With benefit of hindsight, Milken's `genius' seemed his ability to make so many believe his gospel of high return at low risk." (id.)

Stewart also tells the story of the rise and fall of arbitrageur Ivan Boesky and investment bankers Dennis Levine and Martin Siegel. Boesky comes off as vain and secretive. He used his wife's family's money to build an empire, and when he couldn't get adequate returns legitimately, he became a pawn for Milken in manipulating the markets.

Dennis Levine is shown as a "man of limited talent and unlimited ambition," (back cover jacket) who seduced Marty Siegel into what they called "the game," trading on inside information through Swiss banks. After discontinuing the game with Levine, Siegel continued to scheme with Boesky and others. But he seems to be the one person who sincerely regretted what he had done.

Recently, Alan Dershowitz has made much of the fact that all four of the book's principal characters are Jewish; he accuses Stewart of anti-Semitism. Stewart does use "Jewish" to describe upbringing, looks and tastes, and Dershowitz does have a modest argument -- the description is overworked. However, it is certain that being Jewish played a role in making all four feel alienated from their colleagues, to one degree or another. And, as such, the portrayal is apt.

Stewart, however, never implies that a "Jewish conspiracy" existed, or that Jews have a disposition towards criminal behavior. Dershowitz's comments must be considered in light of the fact that he has been retained by Milken for an appeal, and has recently written a book on anti-Semitism. The Anti-Defamation League, usually vigilant in these matters, disagrees with his assessment.

The book also tells of the work of the United States Attorney's Office and the Securities and Exchange Commission (SEC). The latter comes off better than the former. Former U.S. District Attorney Rudolph Giuliani appears eager to have his name in print and is overly concerned about election to higher office. And Asst. U.S. Attorney Charles Carberry secured guilty pleas from Levine and Boesky, but overreached with very public arrests of three arbitrageurs without sufficient evidence.

Gary Lynch, the SEC's chief of enforcement, is a hero to Stewart and it was he who worked hardest to bring the Wall Streeters to justice. Later, he was attacked for settling with Boesky for only $100 million and, in effect, allowing the arbitrageur to trade before announcing his guilty plea.

Legendary attorneys Edward Bennett Williams, Arthur Liman, and Martin Flumenbaum of the Milken defense team also seem less than admirable in their refusal to accept a lenient offer from the U.S. Attorney when they had a chance to do so. In addition, these same lawyers might have violated professional ethics by insisting that either they or their friends represent all Drexel employees, ignoring possible conflicts of interest. But Stewart judges the conspirators, attorneys, and investigators with the same moral standard -- whether they be Jew or gentile.

The book contains some memorable scenes. Impeccably-dressed and nationally-known, investment banker Martin Siegel gets cash payoffs in a hotel lobby and in a telephone booth. Ivan Boesky attempts to get an admission from Milken about their stock pricing scheme, while a forewarned Milken reveals more than he should. Trader John Mulheren loads his car with weapons and sets out to kill Boesky when he learns that Boesky, his best friend, has implicated him in the scandal. Finally, Judge Wood sentences Milken to ten years; later Milken and his wife emit "bloodcurdling screams." (p. 443)

Unlike other Wall Street books, *Den of Thieves* pays little attention to gossip and concentrates on the trading, the conspiracies, and the investigations. And it is not written by a former employee with his own set of bad guys (usually former bosses) and good guys (his friends). The combination of even-handed reporting and pathos, which won Stewart a Pulitzer Prize, is fully evident here. When finals are over, I recommend you give *Den of Thieves* a try.

Faculty Interview: Professor Quintin Johnstone

Professor Quintin Johnstone has been teaching Property to law students for almost 45 years. On October 22, Rich Del Vacchio had the pleasure of interviewing him and discussing some of his philosophies, experiences, and impressions of New York Law School.

Frolic & Detour: Professor, after you graduated from the University of Chicago Law School, where did you begin your work in the legal profession?

Quintin Johnstone: "I worked for a small law firm in Chicago."

F&D: Did you enjoy working for a small firm?

QJ: "Not particularly."

F&D: Why did you leave the firm and turn to teaching law?

QJ: "Teaching is the best part of the legal profession!"

F&D: Professor, I have picked up on a teaching philosophy of yours that takes an interdisciplinary approach to learning the law. Could you describe your views towards this approach.

QJ: "I am strongly in favor of an interdisciplinary approach to the law. However, one must remember that this is a law school and the emphasis should be on how the other disciplines, (sociology, history, economics, psychology, etc.), can enrich the study of law and help us as students and scholars improve the law."

F&D: Do you think that NYLS has applied the interdisciplinary approach to law?

QJ: "The interdisciplinary approach is essential to the work of many law professors at NYLS. As you know, several professors at NYLS even have their PhDs in other disciplines which is very helpful to them and also to the rest of us. An interdisciplinary approach allows the faculty to move more effectively with the major trends in legal scholarship."

F&D: How many years did you teach at Yale Law School?

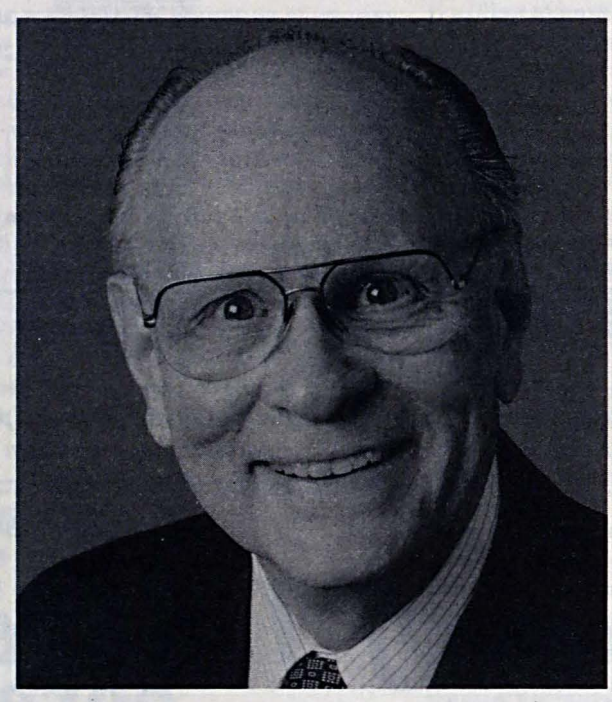
QJ: "I spent 30 years at Yale teaching property-related courses and one or two other fields, but essentially I was brought on to teach Property."

F&D: In 1967, you left Yale to teach at Haile Sellassie University, (now Addis Ababa University). Can you tell us about your experiences in Ethiopia?

QJ: "It was a very exciting time. I was on leave from Yale for two years to become the law school Dean and Professor of Law at Haile Sellassie University. When the school opened there were only something like a dozen lawyers with law degrees in a country of 35 to 40 million people. The law school faculty was mostly American, but my job in part was to integrate the faculty. When I was there, we started to bring on Ethiopian teachers and, within six or eight years, the faculty became almost entirely Ethiopian."

F&D: Where did you live?

QJ: "I lived about a half mile off campus with my wife and kids. Addis Ababa is a fascinating city with a good climate and a lot going on. When I was there, the foreign faculty was treated particularly well."



F&D: What type of law did you teach?

QJ: "The underlying law at the end of World War II became mostly French and Swiss civil codes. We were teaching the French codes in English by Americans and this irritated the French to no end. But we really had a great law school going and the school is still a healthy and viable place today."

F&D: Were the students very responsive?

QJ: "The students were excellent. It helped us Americans that English was the language of instruction back through high school. The law school drew heavily from the educated elites of the society and attracted many outstanding students."

F&D: How did you feel about the regime of Haile Sellassie?

QJ: "We saw Haile Sellassie as a benign dictator. I met with him on several occasions and he fully cooperated with everything we were trying to do at the law school. But the threat of revolution was always present."

F&D: That sounds like it was a very interesting time of your life. Is it true, Professor, that you have attended almost every Yale basketball game in recent years?

QJ: "That's right! Almost every home Yale basketball and football game in recent years. And still do."

F&D: How does Yale's team look this year? (both laugh)

QJ: "Basketball looks pretty good, but the football program has declined dramatically with all the professionals moving to a small number of colleges."

F&D: How do you feel about schools lowering academic standards for skilled athletes?

QJ: "Totally opposed. I was captain of the track team at Chicago University in their Big Ten days and athletics are important to me, but turning the colleges into semi-professional sports operations I find abhorrent."

F&D: Do you think that the Knicks will win an NBA championship with Pat Riley as their coach?

QJ: "Possibly in the year 2010." (both laugh)

F&D: How many years have you been teaching at NYLS?

QJ: "I've been teaching here for 5 years."

F&D: How would you describe the atmosphere of Yale in comparison to NYLS?

QJ: "Well, Yale has a much smaller student body and a larger faculty which makes a big difference in the teaching process. As far as the students are concerned, I find NYLS students to be surprisingly good. Motivation is high and they are really quite an able group of people. Students take law very seriously at NYLS and they are a very upward mobile lot. However, I have one problem with many of the students."

F&D: What problem is that?

QJ: "Many students are quite good orally, but they just don't write very well. It is similar to a good field/no hit ball player who spends all his time practicing fielding, but cannot hit the ball. Writing is a painful process. The hardest work a law professor does is writing. It takes a concentrated effort to write and there are no easy shortcuts. This applies to students as well."

F&D: What would you recommend as a remedy to the writing problems at NYLS?

QJ: "The writing program at NYLS, given all of its problems, is helpful and effective. But I hope that we will see more and more faculty members taking papers as a part of course requirements. However, there is an obligation on the students' part. The students must recognize their writing problems and put a tremendous amount of time and effort into improving their skills. They all can learn to write better, and to some this is absolutely necessary, if they are to become competent lawyers."

F&D: Professor, while you were at Yale, Harry Wellington was dean of the law school. What can NYLS expect from Dean Wellington?

QJ: "Harry Wellington was an excellent dean at Yale. He has high standards of legal scholarship and he will apply those standards with the cooperation of both faculty and the student body. NYLS

See, **JOHNSTONE**, next page

JOHNSTONE, from page 4

has come a long way under the leadership of Jim Simon, but now there is going to be a change, and I cannot think of a better person for the job than Harry Wellington."

F&D: Professor, is it true that while you were at Yale you had the pleasure of teaching Judge Thomas and Anita Hill?

QJ: "Yes, I had both Thomas and Hill as students. I don't remember Ms. Hill, but I do remember Thomas very well. He did a long writing piece for me and attended a small seminar of mine."

F&D: Was Judge Thomas a good student?

QJ: "He was an average student, but very serious. Thomas had an excellent undergraduate record at Holy Cross and is a person who continued to improve intellectually after he left law school. He has the potential to be a very able justice."

F&D: Do you think that the recent nomination process was handled properly?

QJ: The process obviously has problems. The court is a political institution and in a democratic order, political considerations can be appropriate in the selection of justices. But Senate hearings on recent candidates for the Supreme Court have too often focused on sensationalism and character assassination and too little on legal aptitude to perform competently as a judge. The process needs a more responsible White House and a more responsible Senate."

F&D: I agree that there needs to be more emphasis on the legal merits of the candidates to climb the judicial ladder. Speaking of climbing ladders, how do you feel about the elevator system at NYLS? (both laugh)

QJ: I admire so many of the students who are keeping themselves in shape by walking up the steps. So to them, it may be a long-time life saver. For me, who uses the elevators, it leaves a great deal to be desired.

F&D: Thank you for your time, Professor.

QJ: Thank You.

WELLINGTON, from page 1

of Yale Law School, a position he served for two five-year terms.

Wellington's accomplishments are considerable. He has served as a Ford and Guggenheim Fellow, and as a Senior Fellow of the Brookings Institute. In addition to New York Law School, he has been a visiting professor at the London School of Economics, the University of California at Berkeley, and Stanford University.

Professor Wellington has written extensively on contract and labor law, and has recently moved into the constitutional law field. Among his credits include Interpreting the Constitution: The Supreme Court and the Process of Adjudication, which was published last year by Yale University Press.

Given Wellington's extraordinary accomplishments, it appears that NYLS couldn't have made a better choice in the selection of a new dean. Welcome aboard!

How to Get an "A" the Easy Way

by Erik Jacobs

Finals. You're studying and you go to the library to look up old exams your professor has placed on file. If they haven't already been stolen, you copy them and share them with your study group. Then, you hear that the professor has yanked all the exams from the files. No problem, you and your friends already have them.

Exam day. Unbelievable! You're looking at a question that you and your study group debated just yesterday.

If you don't have a story like the one above -- - tough luck! Lots of students do. But maybe you never will because the purpose of this article is to make sure that all professors write original exams every semester --- and earn their entire salary.

The worst story of this type that I've heard is one from the class that began in January 1989. They took Property over the first summer with Professor Roth, an adjunct from Touro. One student in the class was given a stack of old exams by a student who had taken Roth before, and he shared them with his study group. Strangely, another student in the class specifically remembers Roth telling the class that there were no old exams on file and that they wouldn't need them anyway.

The day the exam was given, the four students in this study group were shocked to see an exact replica of one of the old tests; all of the questions were the same. Word of this "coincidence" spread after the test and some students went to see the Dean. Was a new exam given? Was a letter written to all professors directing them not to reuse old exams? Not.

In the fall of 1991, a Con Law II class had a similar experience. Several weeks before the exam, the professor asked the library staff to remove his exams from their files. They complied, but diligent students already had them. On exam day, some were startled to see two questions that they had been studying the day before --- one about a ban on homosexuals and another about a religious sect which spoke only on Thursdays. While the questions' wording was slightly different, the issues were the same.

In the last few years, at least eight professors have reused old exam questions. Why do professors do this? Are their old questions just so brilliant that they feel compelled to recycle them? Or are they just so lazy and unimaginative that they can't be bothered thinking up new ones?

And do students really care? Not if you had the questions beforehand and reviewed them with your friends. But what if you're one of the chumps who didn't go looking for the exams until the week before the test?

As every law student learns, "A Lawyer Should Avoid Even the Appearance of Professional Impropriety." Model Code of Professional Responsibility Canon 9. This ethical canon applies to those lawyers who teach lawyers as well as to those who practice.

Holmes and *The Path of the Law*

If you commit a tort, you are liable to pay a compensatory sum. If you commit a contract, you are liable to pay a compensatory sum unless the promised event comes to pass, and that is all the difference. But such a mode of looking at the matter stinks in the nostrils of those who think it advantageous to get as much ethics into the law as they can.

from *The Path of The Law,* 10 Harv. L.Rev. 457 (1897)

Term Limits Threaten Incumbents

by Gerard Mackey

Bucking a trend set by their western neighbors, voters in Washington state last month rejected a ballot initiative that would have limited the number of times an office holder could be re-elected. The measure was aimed at all elected representatives, including those who make up the state's Congressional delegation, and would have applied to those already in office as well as those elected in future years.

In the last two years, similar proposals have been enacted in Colorado, Oklahoma and California. Colorado's legislation resembles Washington's in that it also sets limitations on the terms of U.S. Senators and Representatives; the laws of the other two states restrict only those who serve locally.

On October 11, 1991, California's highest court upheld that state's term limitations legislation, in *Legislature of the State of California v. March Fong Eu*, 1991 WL 202618 (Cal. 1991). State lawmakers had contested the law, charging that it violated both the state and the U.S. constitutions.

The legislators put forth three objections. They first argued that the law is unconstitutional because it denies voters the opportunity to elect candidates of their choice. In interpreting Supreme Court doctrine, however, the California court wrote that term limitations are analogous to minimum age requirements in the way they restrict the field of candidates. As such, the court held, they violate neither the U.S. nor the state constitution.

Two other challenges dealt with formal matters, bearing on the wording of the proposition and alleged conflicts with the provision in the state constitution that provides for voter-backed initiatives. The court also rejected these arguments. Immediately after the decision was announced, the losers promised an appeal to the U.S. Supreme Court.

Because Colorado's law will not become effective for almost ten years, there have been no reports of a constitutional challenge to its measure. Nevertheless, because it affects members of the U.S. Congress, the law may be in conflict with Article I, which gives each house the power to determine the qualifications of its members. Consequently, it may be open to attack on those grounds.

There are some rumblings of a term limitations "movement," with the prospect of as many as 20 more states enacting such legislation. Proponents see the Washington loss as an aberration, caused by the bill's retroactive provision and the fact that it would have ended the career of House Speaker Tom Foley, depriving the state of an important political asset.

Those who hope such a movement is afoot argue that, because of the perquisites of incumbency, it is nearly impossible to unseat those in office, no matter what their legislative records may be. They also contend that the Founding Fathers envisioned citizen-legislators, not career politicians.

Those opposed on grounds other than self-interest see the Washington vote as a sign that the idea's popularity has peaked. They argue that forcing office holders to retire deprives the country of years of accumulated experience and leaves the electorate with representatives unfamiliar with the ins and outs of the legislative process and prey to the schemes of lobbyists.

Whatever the merits of these contentions, the debate in New York will remain a hypothetical one. Those states which have considered the idea have done so by means of ballot initiatives, something that this state's constitution does not allow. So, the legislature in Albany would have to pass such an act and that is deemed highly unlikely.

Play review

Curse of the Trumpet Man

by Josh Porter

Once upon a time, there was a trumpeter. He was black, and very cool. These bare essentials about the life of Miles Davis should be reserved for arty conversation at cocktail parties.

Finish reading this (the second) paragraph, glance at a few more articles and pictures, and return to your studies.

I don't mean to sound hostile, but I'm hurt because an idol of mine has died and no one seems to care. While I am not the sole proprietor of the grieving rights to Miles' death, the public and critical responses to his passing were superficial and understated, respectively.

Frenzied consumerism followed the death of Miles with record stores selling out of all of his recordings, including any sessions on which Miles may have blown a single note. You can be damn sure that Vanilla Ice's death will not awaken the buyer in many of us in the same way.

Perhaps some of the newly converted Davis fans are motivated by a sincere interest in discovering something about a man who accomplished more in jazz than anyone before him. That's right. I'm not afraid to say it: Miles was the greatest jazz musician who ever lived.

But critics have been cautious with their praise. The New York Times wrote that, barring the arrival of a musical genius in the next decade, Miles will be remembered as the best jazz musician of the second half of the twentieth century. Who could possibly come along in the next nine years and do more than Miles? Kenny G.? A critic for Rolling Stone magazine called him "one of the most ... influential trumpet players to grace the second half of our now-waning century." But as the most innovative jazz musician of all time, clearly he was the most influential as well.

"I have to change. It's like a curse," Miles once remarked. And change he did. From the 1940's to the present, Miles had a finger in each of at least five separate "revolutions" in jazz sound: bebop, cool, hard bop, modal, and fusion.

In 1944, Miles moved to New York City to play bebop with Charlie (Bird) Parker and Dizzy Gillespie. One year later, as a member of Bird's quintet, Miles took part in the earliest recordings of bebop. But it wasn't long before Miles made musical forays of his own. In a joint musical venture with arranger Gil Evans, Miles put together a nine-piece band which recorded the "Birth of the Cool." The smooth, "cerebral" style that was born of this record--cool jazz--became the rage on the West Coast.

Next came "Walkin'," and with it the sounds of hard bop. During the next few years, in the mid 50's, Miles teamed up with such luminaries as saxophonists Sonny Rollins and John Coltrane, pianists Thelonius Monk and Horace Silver, and drummer Philly Jo Jones, making some of the most brilliant music of all time.

Another Miles innovation was ushered in with the 1959 release of "Kind of Blue," whose modal sound turned the music world upside down. Built on scales, rather than chords, modal music became a model for jazz musicians throughout the 60's.

By the end of that decade, Miles, ever the musical chameleon, came forward with a new style: fusion. Miles steered what may have been the greatest jazz band ever--tenor saxophonist Wayne Shorter, pianist Herbie Hancock, bassist Ron Carter, and drummer Tony Williams--toward a novel electric sound. Together they recorded "Bitches Brew," a best-selling album.

As the world's biggest Miles fan, I have so much more to say. But the editors have decided to limit Miles and me to this tight space. Like Miles, I guess, my time is

The Good Times Are Killing Me

by Jeryl S. Brunner

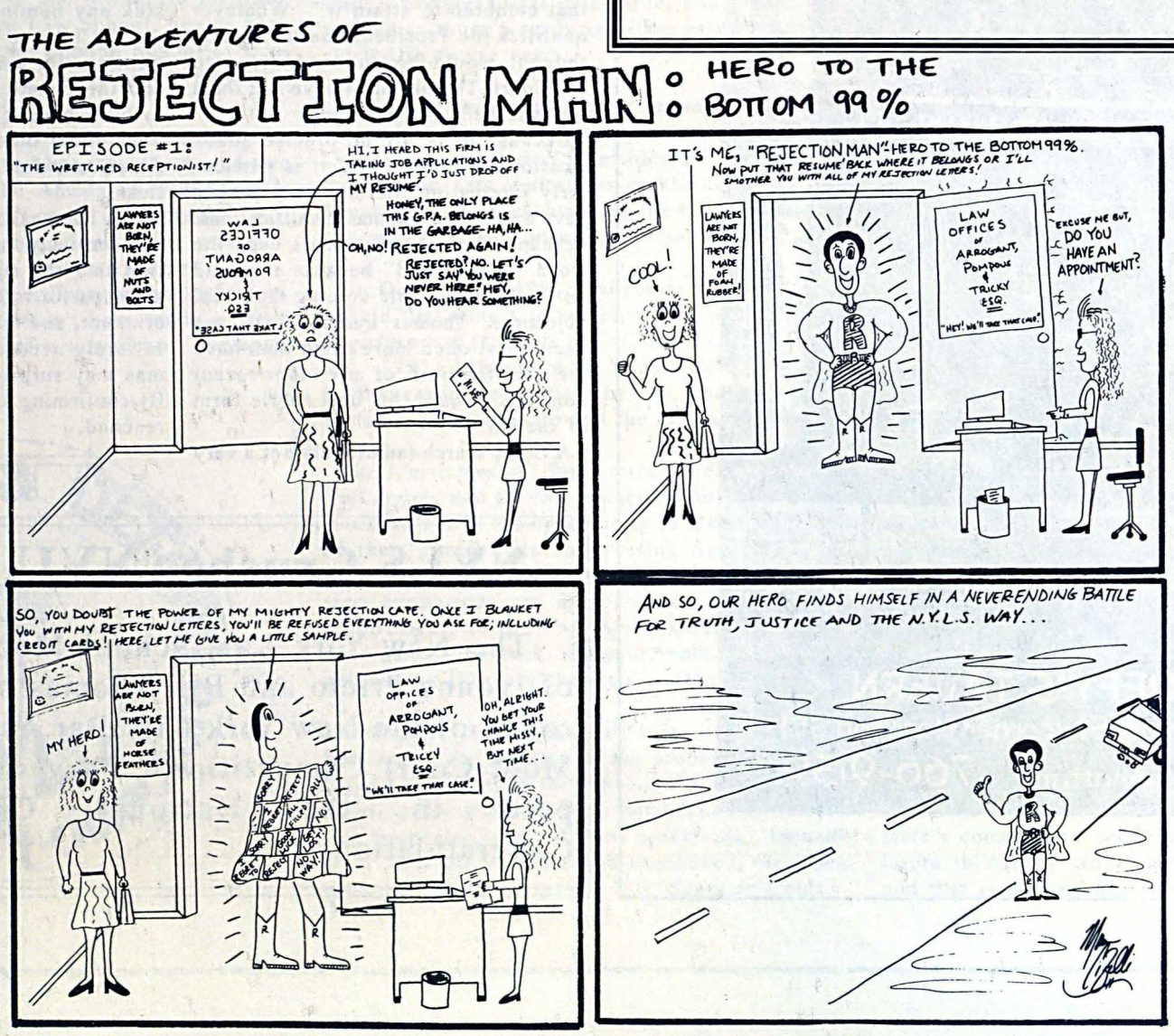
When writing about lost childhood, most writers succumb to convention. Adolescence is seldom portrayed with the sensitivity and insight of Lynda Barry's "The Good Times Are Killing Me," currently playing off Broadway at the Minetta Lane Theater.

The play is a poignant account of a young girl's life during the Sixties, as seen through the eyes of the main character, Edna Arkins. The play documents the growing affection and interdependency between her and her neighbor, Bonna Willis, the first black child she has ever really known. The playwright, a syndicated cartoonist with a sarcastic streak, comically details the young girls' lives in a series of vignettes, tied together at the final curtain.

The girls live in a working-class neighborhood in an indeterminate city during the mid to late 1960's. There is irony in the fact that, while Edna and Bonna nurture their bond, the racist adults (mostly portrayed as goons) pull them apart.

Barry succeeds in making us laugh because all of her characters are easily recognizable. There is Edna's guilt-ridden but witless Aunt Margaret, who invites the under-privileged Bonna on a family camping trip so she may experience the joys of nature. And there is the girl scout leader who embezzles the money that her charges have earned by selling cookies.

Most of Edna's memories, like our own, are rooted in music. As she reminds us, a song can make "the past rise up and stick in your brain." And so the play is defined by music -- pop, soul, and gospel. "The Good Times Are Killing Me" tells a witty yet tragic tale of childhood, and shows us just how painful growing up can be.



in your ear

Thomas is Qualified

by Joseph Brennan

From his nomination through his confirmation, opponents of Clarence Thomas stressed his lack of qualifications as their basis of opposition. Many repeatedly said that Thomas was unqualified, as if repetition proves the point. Few provided justification for that conclusion though some backed up their claim by pointing to his lack of judicial experience. Before we determine whether Thomas was qualified to be a Supreme Court Justice, we should be clear about what those qualifications are.

Basically, there are no constitutionally stipulated qualifications for Supreme Court justices. The Constitution does not stipulate that a nominee to the Supreme Court satisfy any age limitation, or that the nominee be a lawyer or have any legal background. The Constitution does not even require that the nominee be a citizen.

Furthermore, Congress has not enacted any specific qualifications in the 200 years since ratification of the Constitution. The only requirement is that a justice be nominated by the President, with the advice and consent of the Senate. The qualities which are desirable in a particular nominee are up to the President and the Senate. Given that there are no specific qualifications, it hardly seems cogent to argue that Thomas is unqualified.

> *"[I]t would be capricious to attribute acknowledged greatness in the Court's history either to the fact that a justice has had judicial experience or that he had been without it."* -Felix Frankfurter

Those who are charged with selecting justices can nominate and confirm persons with qualities which they feel are desirable on the Court. But what qualities are desirable in a justice? In the view of the American Bar Association's Standing Committee on the Judiciary, a nominee should possess integrity, professional competence, a judicial temperament, and the ability to satisfactorily perform the responsibilities of a justice. The ABA Committee rates nominees as either "well qualified," "qualified," or "not qualified."

Those who fault Thomas for his lack of judicial experience should note that Earl Warren, Felix Frankfurter, William Rehnquist, and at least 28 other Supreme Court justices had no judicial experience before sitting on the Court. It is, therefore, not surprising that Justice Frankfurter once said that "it would be capricious to attribute acknowledged greatness in the Court's history either to the fact that a justice has had judicial experience or that he had been without it."

Some argue that only the best jurist or legal scholar should be nominated to sit. However, there are three problems with such a proposition. First, how can we decide who is "the best" in any objective sense. Second, there can only be one who is "the best," yet we need nine justices; all of them cannot be the best simultaneously. Third, it may not be desirable for all nine justices to possess the same qualities.

This may be why the Constitution is silent on the qualifications of justices. Again to quote Justice Frankfurter: "Greatness in the law is not a standardized quality, nor are the elements that combine to attain it." Whatever qualities the President and the Senate thought would be good additions to the Court, Thomas must have had them because he was confirmed.

Because there are no precise qualifications for the bench, it is particularly interesting that so many people have questioned Thomas' qualifications. Perhaps Thomas' opponents used the word "unqualified" because they did not feel comfortable voicing their real objections. Thomas' qualifications have been questioned more often than have the qualifications of any other recent nominee. Could this be a subtle form of racism?

A Lexis search (admittedly not a very scientific study) of newspaper and magazine articles found 36 articles in which the question of Thomas' qualifications was raised, and 11 of these were editorials claiming he is unqualified. In contrast, searches on David Souter and Anthony Kennedy produced only three articles on each which questioned their qualifications.

Souter's nomination brings this issue into sharp focus because, like Thomas, he did not distinguish himself through legal scholarship before his nomination. In fact, Thomas has been a more prolific writer than Souter. Yet the ABA Committee unanimously rated Souter "well qualified," while Thomas received a "qualified" rating with two members of the Committee voting "not qualified." There seems to be a double standard at work here.

Enter Anita Hill and allegations of sexual harassment. Some argued that, if the allegations are true, Thomas' behavior of ten years ago should prevent him from being confirmed. However, revelations that Hugo Black had been a member of the Ku Klux Klan ten years before his nomination did not prevent his confirmation. This makes it arguable that Thomas should have been confirmed even if he did what Hill said he did.

But we do not have to reach this issue because Anita Hill did not meet the burden of proving her allegations by a preponderance of the evidence, the lowest standard of proof. Granted, the confirmation hearings were not held in court, but to allow Hill's allegations to prevent Thomas from taking his seat on the court would set a dangerous precedent whereby a single person, with unproven allegations, could sink any nomination.

Clarence Thomas met the qualifications for a Supreme Court justice, and the debate over this issue seems to have been a stand-in for a debate over some other quality of his that Americans don't want to discuss publicly.

Thomas' writings show that he has seriously considered the proposition that the rights of the individual are superior to the powers of the government, and that's one quality which is sorely needed on this Court. Thomas may surprise even George Bush. By confirming him, the right result was reached.

NYLS Crushes NYU

The New York Law School Moot Court team of Ivonne Prieto and Bill Thomas made the final round of the New York City Bar Assoc. Regional Moot Court Competition. They will soon compete in the National Championship. Congratulations!

In the Aftermath of Confirmation...

Thomas' Qualifications are Questionable

by Samuel Mizrahi

The position of Associate Justice of the United States Supreme Court is one of the highest positions an attorney can achieve in his or her career, and the nomination and confirmation process is not to be taken lightly. There are only nine justices and all are given lifetime positions. Accordingly, only the most qualified legal scholars in the country should be considered for the position, and Justice Clarence Thomas is certainly not one of them.

Although Thomas appears to have an impressive background, a look beneath the surface reveals otherwise. Thomas went to Holy Cross College, and graduated, without distinction, from Yale Law School in 1974. He has held very few legal positions since then. He was an employee in the attorney general's office in Missouri for three years, a member of the corporate legal staff of Monsanto Co. for two years, and a judge on the United States Court of Appeals for the District of Columbia for the past year. In addition, he was an Assistant Secretary for Civil Rights at the United States Department of Education, and later Chairman of the Equal Employment Opportunity Commission.

Over this seventeen year period of employment, Thomas has never argued a case in federal court and has had little experience dealing with the broad legal issues that come before the Supreme Court. And, although he had many weeks to prepare for the confirmation hearings, he did not seem to know much about the Court's recent decisions.

Thomas only succeeded in insulting our intelligence.

Moreover, he denied ever having discussed or held an opinion about *Roe v. Wade*, a highly controversial case. By asking us to credit this poor attempt to hide his personal beliefs and judicial philosophy, Thomas only succeeded in insulting our intelligence. Whether he believes in abortion or not is not so important, but his judicial philosophy and his legal reasoning abilities are. By failing to be candid, Thomas raised grave doubts about his fitness for this very prestigious position.

As an Associate Justice, Thomas is no longer bound by precedent in the same way he was while a judge on the court of appeals. Thomas has written various articles and made numerous speeches favoring "natural law," yet when asked about this at the hearings, he refused to put his cards on the table. He claimed that "natural law" would not affect his decisions as a Supreme Court justice, but he may in fact use it to justify overturning widely accepted Supreme Court doctrine.

In addition, his short tenure on the court of appeals gives us little insight into his judicial philosophy, nor does it justify his elevation to the Supreme Court. With the hundreds of great legal scholars in the United States, this position should not have gone to Clarence Thomas, whose qualifications are at best debatable.

Anita Hill's accusations that Clarence Thomas sexually harassed her while working at the EEOC only added to the many reasons why he should not have been confirmed. Although one is innocent until proven guilty, the confirmation hearings were not criminal proceedings and different standards should have applied. Since a Supreme Court position is a lifetime job, any doubt about a nominee's background should be resolved against the nominee.

Ms. Hill was a believable witness, and her allegations were very serious. When Thomas was given the opportunity to refute them, he stated that he had not watched or listened to Hill's testimony. He denied sexually harassing Anita Hill, then tried to turn a sexual harassment issue into a racial one by calling the hearings a "high tech lynching for uppity blacks." His unwillingness to face his accuser raises more doubts as to what really happened at the EEOC, and Thomas' failure to offer any motives for Hill to lie only added to these doubts.

Regardless of what actually happened between Thomas and Hill, though, Thomas' lack of experience was reason enough to reject his nomination. Moreover, after most of the country watched the televised hearings, many Americans are left with a bitterness toward the process and the Court itself. Even had he been qualified, therefore, Congress should not have confirmed him. His presence on the Court will only undermine people's opinion of the highest court in the land.

What is Justice?

by Charles Maslin

What is just is not ice cold tenets
Or, here, in different verse, the old,
illicit thinking notary public that's impartial to
what is really the hidden truth;tousy
vagrants just wanting, praying
to be trussed. Their tort fees are faith-
fully given to sometimes oh, so sadistic kings.
We pay for moor lines to assemble warship power
Irate upper sect shuns inveighed meek; Come
on hobos pour acetic wines
Just as man ages to somehow know wings
somewhere close to divine, to heaven.

But what is justice? Notice cold tenants,
or hear (*Indifferent versus The Old*).
Ill I sit thinking; "Not a republic I'm partial to."
What is really the hidden truth to see?
VAGRANTS ARE JUST WANTON, PREY.
To betrust their tortfeasors faith,
fully given to some,time oh so sad is ticking.
Weep, aye, form more lines too; assemble to worship power.
I write up here sections in vade mecum
on hobos, poor ascetic swines
Justice manages to some - how knowing
some wear clothes too divine to have on.

But fails to those who have no clothes, and know no wings and wait in line.

DEMOCRATS, from page 1

ample opportunity to question the lame-brained policy being made in the Oval Office. But each of these chances was wasted because the individual Congressmen and Party leaders were too afraid of the media, or their constituents, or each other, to pull together and act as a strong, unified political party.

The once powerful and rebellious donkey has lost its kick. The party of working class America allows the President and his minions to set the political agenda, and if given half a chance, the Republicans will surely continue to do so in the coming campaign.

What can the underdogs do to catch up? They can start by meeting Bush on his own turf. They can provide specific, well-defined alternatives to his lackadaisical policy decisions in the areas of the Three E's: Education, Economics, and the Environment. Despite the baseless promises Bush made to the American people during the '88 campaign, he has, in fact, made virtually no progress on these three crucial domestic issues to date.

The War on Drugs? Don't ask. Bush says we're winning that one, but crack cocaine addiction is on the rise, while the Administration wastes resources cracking down hard on the nation's marijuana and acid pushers. And heroin is making a comeback.

Instead of attacking the current administration on specific issues and advancing a coherent Party-backed platform, it seems that most of the Democratic contenders are preparing to fly solo, as "men of the people."

Senator Tom Harkin of Iowa is the simple son of a coal-miner father and an immigrant mother. Virginia Governor Douglas Wilder blasts the Washington elites in both parties for their failure to balance the budget. Both Governor Bill Clinton of Arkansas and Senator Bob Kerrey of Nebraska have blamed the Republican "power circle" and it's Wall Street connections for the disastrous S & L bailout.

Meanwhile former California Governor Jerry Brown announced that he would take no campaign contributions over $100, thereby distancing himself from the hated "special interests." (Although Lawton Chiles may have used this tactic to win the governorship of Florida, "Governor Moonbeam," as Mr. Brown is sometimes known, probably doesn't have a snowball's chance in Hades of becoming our next President. Not even if he promised free incense to every man, woman, and child.)

This populist strategy may well backfire on the candidates in the long run. Bush has always had an extremely powerful and largely amoral political machine working for him. That machine has been extraordinarily successful at painting the priggish, waspy, Bush as a Texas good ole boy, and will work equally as hard to undermine any strategies the Democrats might use to distance themselves from the despised Washington insiders.

Because their party has virtually ceased to exist, the Democratic candidates don't have the benefit of a similarly powerful ally working for them in this campaign. And they were never as good as the Republicans at slinging mud in the first place.

So if the candidates continue on their current course, the best, and maybe the only chance to elect a non-GOP President next year is for our own beloved Governor Mario Cuomo to run. He could enter the race and survive on the strength of his personality alone, and he already has a built-in populist appeal that is genuine. But the only one who can make that decision is Cuomo himself, and, so far, he isn't talking.

No Sir! I ain't no individual.

by Steve Antico

There is no better place to start a description of the pleasures of bootcamp than a drill instructor's first endearing sentence to his charges. "You've got five motherf***in' seconds to get your sorry asses off this bus." My recollection of those words is as vivid as the expressions on my fellow victims faces as we were welcomed to our temporary home.

Needless to say, my fellow Marines and I proceeded to follow this man's instructions, and departed the friendly confines of that bus for three months of misery. Although I have left that life behind to start another, I still hear people say that the Armed Services rob the unsuspecting enlistee of all of his or her individuality.

This much is true: Upon arrival at bootcamp, you quickly realize that your opinions and personal preferences mean nothing. As my drill instructor's next sentence revealed, we were "no good pieces of shit, who finally realized what we wanted to do with our lives." It thus became evident that we were not going to be consulted about the many issues that concerned our lives.

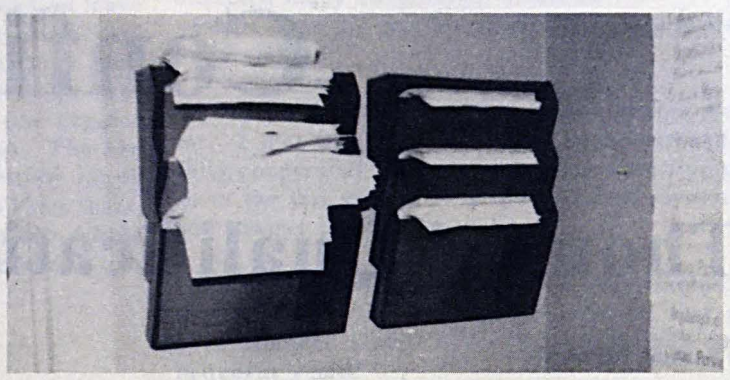
I quickly learned that if I thought only of myself, instead of my platoon, it would be a grave error that would cost me whatever dignity I was allowed. I don't think of this as a service-induced loss of individuality, though; it was more of a Marine Corps ideal that rubbed off on me. To make selfless decisions concerning others was the objective, a trait that many parents also encourage in their children. Law firms also adhere to this principle when decisions must be made for the benefit of the firm at the expense of the individual.

Yes, we wore uniforms. Yet our inner spirits embraced all those immutable qualities of personality that we humans never lose. The dress code served to enhance the pride and esprit de corps within each member of the unit.

The point I am trying to make is that what was lost was our choice of clothing and the selfish motives that, from a regimental standpoint, were best suppressed. Furthermore, uniforms were required only when on duty. What you wore on your own time was, with the exception of wearing military clothing incorrectly, up to you.

Fellow students often ask, "How could you stand everyone telling you what to do?" Since I was in charge of 40 Marines and answered primarily to a Lieutenant Colonel, however, there weren't that many people telling me what to do. But I guess I could say each of us will be able to answer that same question soon enough, when we graduate from old New York Law and join a firm. From what I hear, a private in the Marine Corps and a first year associate are mushrooms. They are both kept in the dark and fed shit all day.

Information Central



by Gerard Mackey & Josh Porter

Currently, there are three vital notices available for those willing to push their way through the hordes of unruly, information-hungry students to the oft overlooked corner of the student lounge where the communications hub of NYLS lies. For students unable to get this critical information, Frolic & Detour gladly provides it below.

Among the announcements the determined scholar will find is a timely "Thank You" from Dean Simon for the school community's cooperation during the visit "last Wednesday" from the ABA re-accreditation team. Hundreds of copies of this moving missive, dated March 5, 1991, are still available.

For those still in a bellicose mood, there's a reminder of the precautions necessary on Monday, June 10, 1991, because of the proximity to the school of the Desert Storm ticker-tape parade. The memo reminds us that the Post Office will not pick up any mail from the school that day.

A yellow flyer notifies us that Food Services will be closing the cafeteria between May 24 and August 13, 1991. It prompts us to stock up on all our favorite provisions before deprivation sets in. The staff was conducting an inventory of all kitchenware, and those who wanted to help count knives and forks were invited to join the fun.

As the accompanying exclusive photograph attests, part of the reason students throng to this corner is its natural beauty. The attractive plastic holders are available, in pairs, at Weber's. Stock up for the Holidays.

Mind Your Speak

by Mike Cifelli

Recently in class, a student asserted that men were not qualified to sit in judgment of a sexual harassment charge because they could not know how it feels to be sexually harassed. Are we then to assume that only murder victims can sit in judgment of one accused of murder? Another classmate asked for a clarification of the assertion and was met with disdain from a majority of students. Many classmates have expressed fears that objections to such comments are construed as supporting unacceptable positions.

In a recent edition of the *Village Voice*, there was an article on two District of Columbia Law School professors who took on an unpopular case. The professors were an integral part of the formation of the school, which was founded with a devotion to diversity in the classroom. Their client is a Georgetown Law student who wrote an article in the school newspaper about reverse discrimination in the admissions program. He included admissions records as proof. While politically opposed to this student's views on affirmative action, the professors vowed to defend his right to free expression. As a result, they were ostracized, not only by students, but by fellow faculty as well.

Suppression of speech is now the status quo. It would be near-sighted to declare that this is a novel concept when, in the 50s, Joseph McCarthy was claiming that *MacBeth* and *Huckleberry Finn* were communist propaganda. What is perhaps most sinister about this latest bout of thought suppression, though, is that it is invoked to preserve ideals, like affirmative action, which were originally made possible through the free exchange of ideas.

Similar attempts at thought suppression have also arisen in the form of various "hate speech" codes on campuses like Stanford University and N.Y.U. Because these schools have seen a rash of racial incidents, patrols roam the campuses correcting unacceptable word usage. These patrols are essentially thought-police. The punishment for breaching the codes can be as severe as expulsion. Social problems, however, should be dealt with in an open, non-threatening forum. A change of mind is the only way to overcome hatred and intolerance. Suppression only encourages the opposition to go underground, where a stronger bond is formed among those silenced.

Why does society accept this type of intellectual repression? One answer may lie in the nature of communication. Communication between individuals is a difficult process. Experience creates barriers to the process because it shapes perception. So each person enters the process on a different plane of understanding. Rather than breaking down these barriers, thought suppression seems to offer a simple solution.

Another possibility is that society relies on labels that simplify ideas. It's great to have an ideology, but problems should be addressed one at a time, not by blanket decisions.

When opposing views are silenced, everyone loses. Students of advocacy should want to hear from the other side, because exchanging ideas clarifies and strengthens them. Listen. Ask questions. Agree that you don't agree. But don't discard someone else's opinion just because it's not in tune with your own.

Coase gets Nobel Prize for Work Done in 1937

by Gary Axisa

Last spring, in a property class, the professor assigned his section the arduous task of reading 1,259 pages of a 1,260 page case book. The one page skipped included a discussion of Ronald Coase's "The Problem of Social Cost." Coase, Professor Emeritus at the University of Chicago, won the 1991 Nobel Prize in economics this past October 15.

In addition to citing Coase's 1960 article, "The Problem of Social Cost," Sweden's Royal Academy of Sciences said it gave the award to Coase for what it called his "breakthrough in understanding the institutional structure of the economy." This innovation, detailed in Coase's 1937 work "The Nature of the Firm," showed that traditional economic theory was incomplete because it did not take into account business transaction costs. Transaction costs are simply those associated with haggling over a deal.

In the 1930's, while still a graduate student at the London School of Economics, Coase sought to explain why some companies bought component products from outside firms and others produced them internally. He concluded that the less dickering involved in a deal, the less expensive the process is. Thus, businesses would continue to internalize production until it became cheaper to get what was needed by dealing in the marketplace. This theory was not fully understood in the 1930's. Today, noted the prize committee chairman, it can be used to explain the decline of corporate conglomerates as well as the collapse of communist states.

The overlooked page from the case book discussed a principle that was instrumental in "bringing economic theory into mainstream law schools," that is, Coase's Theorem. In "The Problem of Social Cost," Coase established a framework for analyzing the assignment of property rights and liabilities.

If Party A inflicts harm on Party B, the common question posed is how to refrain A from the harmful conduct? Coase disagreed with this approach because, he posited, the problem is of a reciprocal nature: avoiding the harm to B harms A. Coase demonstrated that regardless of which party incurred liability for an act infringing upon the rights of another, the two parties would reach an *efficient* negotiated result.

For example, suppose Party A builds a wall on her land that shades Party B's land in a manner that prevents him from growing tomato plants. Further imagine that having the wall is worth $50 to A and that B would be willing to pay $40 to be able to grow his tomatoes. If B successfully sues A, then A will pay B a price greater than $40 but less than $50 to forgo growing the tomatoes. However, if A wins the suit, B must forsake growing his tomatoes, since B would not be willing to offer A more than $40 to take down her wall. So, regardless of which party wins, the same result is reached -- no tomatoes.

The power of Coase's Theorem can be seen if applied to nuisance law. In the above example, if we substitute a polluting factory for the wall, it is obvious that, just as you would not take down the wall because it was shading the tomato plants, you would not shut down the factory because it was polluting a neighboring farm.

The intellectual force of Coase's Theorem affected not just nuisance law, but such areas as accident law and takeover regulation. In fact, his application of economic analysis to legal issues spawned the law and economics movement, and it is not surprising that this theorem contributed to his Nobel Prize. What is surprising is that it took Coase so long to win. Part of the delay, Coase suggested, is that people had not seen his theory's importance. Or perhaps the Royal Academy skipped that page in the casebook too.

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