Dean Simon to Step Down in '92

by Ann Kenny

After serving New York Law School for over sixteen years, Dean James F. Simon has recently announced that he will leave in August of 1992 to take on a sabbatical, during which time he will write a book on the Rehnquist Court. Although he will return to New York Law School during the spring semester of the 1993-94 academic year, it will be as faculty member rather than as a dean.

Although Dean Simon is looking forward to working on his new book, he admits that he has “mixed feelings” about leaving his deanship position at New York Law School. “The nature of the job is that it never is finished. There are always things to do,” he said. Fortunately, Dean Simon has a full year in which to continue his work with the faculty on the implementation of the Lawyering Skills Program, which will include a course offered to first year students next semester. He also plans to continue his work with the faculty on the completion of the Centennial Celebration.

Dean Simon has had a long and varied legal career. He earned his law degree in 1964 at Yale Law School after receiving his undergraduate degree from Yale College. After accepting a fellowship from the Ford Foundation, Dean Simon traveled to India. From 1969 to 1974, he worked as a contributing editor for Time magazine, where he specialized in legal affairs and covered major trials across the country. During this time, he took a leave of absence to publish his first book, In His Own Image: The Supreme Court in Richard Nixon’s

A Lawyer's Judge

by Christine M. O'Connor

When John Harlan came to the United States Supreme Court, he brought with him a lineage etched in the law stemming back to his great-grandfather, his grandfather and his father. In keeping with tradition, Harlan brought to his chambers the same dark wooden furniture and gold pocket watch his grandfather, the first Justice Harlan, had used. And, just as his grandfather would be known for his dissent, so too would John Harlan be remembered.

John Marshall Harlan began his climb through the legal ranks at New York Law School in 1922 after receiving his undergraduate degree at Princeton University. While at Princeton, he served as the class president for three years and worked as an editor for The Daily Princetonian. One classmate remembers Harlan as a man who enjoyed the typical undergraduate parties, but also as a man who seemed to have the weight of the world on his shoulders.

Following Princeton, Harlan studied Jurisprudence for three years as a Rhodes Scholar at Balliol College in Oxford. Upon return to the U.S. in 1922, Harlan began working at the Wall Street firm of Root, Clark, Buckner & Howland (now known as Dewey Ballantine). He entered New York Law School’s evening division that same year and spent the next two years working toward his J.D. After he was admitted to the New York Bar in 1924, he was hired by the New York firm of Howland, Prettyman, Harlan’s clerk.

John Marshall Harlan: A Retrospective by His Clerks and Justice White

by Josh Porter

It was 1967, the year of Terry v. Ohio. Justice Harlan and clerk Louis Cohen sat in Justice Harlan’s house mulling over police stops and patdowns. Would allowing police to frisk a suspect be an invasion of individual rights? Justice Harlan wanted another opinion. He had consulted the books, consulted the clerks, now he turned to a close and trusted source. He turned to his wife.

“He was a very practical man. He did not deal so much in generalities, or in sophistry, or in theory. He was basically a corporate lawyer who used to deal with practical problems and with very practical solutions,” said E. Barrett Prettyman, Harlan’s clerk.

Harlan approached each case with an open mind, according to several of his clerks. Clerk Michael Maney told of one instance when after reading the briefs, listening to oral argument, and going to conference, Harlan came out one way. Yet after the draft opinion was circulated, he changed his mind.

Harlan’s open mind and practical approach to the law partially explains why Maney called him “a hard man to classify.” While he took a tough line on many criminal issues, illustrated in his dissent in Miranda, Harlan’s opinions, like Cohen v. California and Griswold, display an expansive view of the right of free speech and privacy.

Cohen suggested another explanation for Harlan’s different directions. He said the Justice's innate trust of people and institutions caused several of his decisions to appear to swing from the liberal to the conservative side. Harlan sought to make a system work well consistently over the long run. This could only be accomplished by making the right institutions feel responsible for themselves.

Of Harlan’s dissent in Miranda, Cohen said: “The most important thing to Harlan was good lawyerly argument, laying out the issues, and having people of good character decide the merits. Whatever it came out, it came out,” said Nimetz.

Justice Harlan’s faith in the judicial system matched his respect for his co-workers. “He was a very thoughtful and sensitive person to other people. He was very polite and he listened very well and you were always under the impression that he was really listening to you and giving you all the breaks he could possibly give you,” Justice White said last week in a telephone interview with Frolic & Detour.

The clerks had only praise for Justice Harlan. They pulled out almost every term of adulation in the English language to describe him: terrible, marvelous, a prince of a man, gentle, considerate, and well-mannered in every respect. Every clerk interviewed told a story about Justice Harlan’s kindness. Maney recalled working long and hard to produce a
From the Editors

In 1891, a group of dissatisfied Columbia Law School professors established New York Law School, pioneered by Theodore Dwight, a fierce advocate of the Socratic method. Dwight's exodus from Columbia occasioned a substantial following, including many of the school's faculty and about half of its student body. The new school at once became a model of legal education and a symbol of academic excellence.

For the next 80 or so years, periods of transition and uncertainty marked the school's development; years in which the school relocated 7 times, including a leasehold at the Young Men's Christian Association (YMCA), before finally settling at its present location. With the acquisition of the property on Worth Street, the school attained a needed stability, the means for expansion, and perhaps the best location for a law school anywhere.

In recent years, dramatic improvements have been evident in both the quality of education and the facilities of the school. The administration, together with the assistance of faculty, are working to create a better curriculum for its students, as well as a better environment in which to study.

Although the NYLS community deserves to be proud of its history and excited for its future, it should not be immune from criticism. Accordingly, a school newspaper furnishes the best available means for students to share with each other their criticisms of the school as well as suggestions for its improvement. A school newspaper, especially one that bears the school's name, is also subject to criticism because, among other reasons, it is often read as a reflection of the entire school.

With this in mind, we approached certain members of the Reporter staff to express our criticisms of the newspaper. Following their instruction, we submitted a letter to the staff for publication in the next edition. Our letter was once characterized as a personal assault on certain members of the Reporter. This, however, was clearly wrong since we knew little, if anything, of the individuals we were criticizing. Rather, we believed that the allegations we were making required at least some factual bases.

By the time our letter made it to the newspaper, buried in the lower corner of page 2 between an advertisement and the Reporter's credits, only half of it remained. The five or six paragraphs that were, in effect, censored, detailed our opinion of two articles that appeared in a recent edition of the Reporter.

Our first criticism was that the article, entitled "War," read like a diary entry in which the war was as significant an event as any other of life's mundane occurrences. The article, which suffered from severe errors in grammar and organization, seemed to have been written in an hour. It's hard to believe it was subsequently edited. Next, we stated that the article covering the appointment of Professor Stroesen to the presidency of the ACLU trivialized an important event for the school itself. Since it contained no information about the appointment, and was imbued with the author's egocentricity.

Although the abridgement of our letter was frustrating, it was the indifferent, if not hostile, attitude of one particular staff member that was truly disappointing. This individual, on various occasions, made rather harsh statements (for example, he said that the student body would think that we were sexist because the two articles that we were criticizing were written by women. I suppose we are anti-union as well since we speak disfavorably of this former union worker.) He also believed our letter to be written by a gay writer. It was comments such as these which demonstrate the confidence this individual has in the student body.

Nevertheless, we believed that it was necessary to get involved in order to improve the Reporter. Yet, it was also evident that our comments were unacceptable, and that we were not welcome to join the staff. On one occasion, the door to the Reporter office was shut on us.

Meanwhile, students were approaching us, demonstrating their concern for improving the newspaper. Since we were reluctant to then work with the Reporter staff, we decided to establish a new school newspaper.

We just hope at this point that any animosity that existed between the two groups can soon be forgotten. Although the last edition of the Reporter contained a few personal innuendos, we believe that it is improper, and unfair if not hostile, attitude of one particular staff member that was truly disappointing.

We are aware that there is only a limited amount of energy that students can devote to things unrelated to their studies; yet, the beneficial competition that will exist between the two papers will improve both. Additionally, a forum should now exist for all individuals to express their opinions, which will result in a needed diversity.

Nonetheless, this first attempt at publication was undertaken primarily by first-year, section C students with no newspaper experience. The entire process, from the initial decision to the date of publication, took only six weeks, and so recruitment of other students was difficult. We hope that more students will get involved with one of the newspapers, since concerns for the school should come from the individuals that will be the beneficiaries of any changes to the school. We should also have student publications that appropriately reflect the viewpoints and characteristics of the entire student body.

Nick Caputo and Josh Porter

Note: Please feel free to contact us through our mailboxes with any comments or inquiries. Due to time constraints, we have not engaged the process of becoming an official organization as of yet, but all of the formalities will be completed this summer, and an application will be submitted to the SBA in the fall.
Grading the Legal Writing Program

by Samuel Mizrahi

Writing a clear and concise argument is an essential skill for attorneys. Accordingly, Legal Writing is one of the most important courses a law student will take. As college graduates, all law students have written term papers while attending law school, however, few students have had the opportunity to write or even see a legal memo or brief. As a result, many students are unprepared to begin writing a balanced memo or persuasive brief.

Although the writing program at New York Law School (NYLS) is an excellent introduction to legal writing, I feel that it could be improved in several ways. In addition to offering writing samples, and then helping students improve or organize their work, many students feel that the writing program is too theoretical. Instead of just teaching students how to write, the writing program should allow professors to guide students through the writing process. For example, the writing program should make sure that students understand the legal writing process before they write. By concentrating on their writing skills distinct from their research skills and then learn and improve on their weaknesses in both areas. Law students don't want to be spoon fed; however, they do want to be taught.

Although the adjunct professors who teach writing at NYLS are quite capable, they might be part of the problem with the program. The writing program purports to teach research in five 45 minute classes every semester. However, your students cannot learn true legal research in this theoretical manner. Instead of making students do the research together, NYLS should make individual writing sections (approximately 16 students) attend a third class that is taught in the library. This could be done the first week of school before the substantive courses begin.

In addition, NYLS should put a separate emphasis on the writing and research parts of the program. Currently, students must write memos based on their own research. The professors usually don't take the time to review the students' research before the students write the memos. If a student erred in his research, he probably won't do well on his memo. For some strange reason, some professors will give 'A's to students who write grammatically perfect memos, regardless of research. Nevertheless, the program should make sure students understand the legal writing process before they write. In fact, the writing program should concentrate on their writing skills distinct from their research skills and then learn and improve on their weaknesses in both areas. Law students don't want to be spoon fed; however, they do want to be taught.

In addition, a Legal Writing book could fill the gaps on how students should write specific types of papers, but NYLS does not use a good one. The book abounds with mistakes, poor explanations, complicated examples, and contains some legalife. If I had one penny for every adjective I heard about the book, I would be set for life. Even various writing professors dislike the Legal Writing book. I agree with the students that NYLS should switch books.

A Practical Guide to Legal Writing and Method by Tom Farnsworth and John Kirkpatrick III, a far superior book, is used at other top law schools and is much more informative than the book. Currently, there are only two credits, and students feel that their time would be better spent working on other subjects where they believe they can actually improve their grades.

Although changes in the first year writing program will not help students currently in the program, I believe that students need to be given the opportunity to continue to improve. If I were the President, I would require the student to do the following:

- Read the entire book,
- Do all the writing exercises in the book,
- Keep trying to improve if they want to be good legal writers.

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Unfortunately, this doesn't happen and students are not given the opportunity to continue to improve. The writing program should not help students currently in the program. The writing program should allow the student to improve their writing skills if they want to be good legal writers.

THE ENVIRONMENT AS A WEAPON IN WAR

by Laura CasuIIi

While Iraq has withdrawn from Kuwait and Allied military personnel have secured Kuwait, the environmental problems of the recent war remain. As advances, Kuwait is defending against a new enemy which is relentlessly attacking its environment. Kuwaiti scientists estimate that approximately six hundred oil wells in Kuwait are ablaze, burning close to six million barrels of oil a day and causing severe policy that Kuwait has been pursuing over the years.

Unfortunately, Dr. Cooper is only available to do good legal research. The writing program purports to teach research in five 45 minute classes every semester. However, students cannot learn true legal research in this theoretical manner. Instead of making students do the research together, NYLS should make individual writing sections (approximately 16 students) attend a third class that is taught in the library. This could be done the first week of school before the substantive courses begin.

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Faculty Interview: Professor Michael Sinclair

On April 2, 1991, Judson Hamlin interviewed Professor Michael Sinclair for *F&D & Detour*. Professor Sinclair is known to many New York Law School students of both divisions. Professor Sinclair teaches Legal Method, Contracts and UCC classes to both day and evening students. We spoke with him in order to go beyond the classroom and find out who he is outside of school. For his students, both past and present, we hope this will humanize the teacher at the front of the classroom.

**Frolic & Detour:** You were born and raised in New Zealand. What was that like? I'm sure it was quite a bit different than growing up in this area.

**Michael Sinclair:** Completely different. New Zealand's a very, very rural country. It was more so when I was growing up, but even with the population migrating to the cities over the past twenty years, it's completely dominated by agriculture. So, for example, it was more so when I was growing up, but even with the population migrating to the cities over the past twenty years, it's completely dominated by agriculture. It was the major thing in the news. And I grew up on the outskirts of a small town... Was 10. I knew the wool prices because it was the major thing in the news. And I grew up on the outskirts of a small town...

**F&D:** You were schooled there. Did you go on to higher education?

**MS:** Papakura. That means "flat area"; it's almost a tidal swamp. It's where the Kurakura plant grows—it's a tall, reedy thing.

**F&D:** You were schooled there. Did you go on to law school?

**MS:** (Laughs) No, no. I did a degree in Economics and a Ph.D. in Philosophy. I never had any intention of being a lawyer or going to law school.

**F&D:** How come you left New Zealand?

**MS:** Followed a girl (laughs). My wife's from Brooklyn. I met her when she was in New Zealand doing research. We came back in 1972, got married and went back there. She finished her research and I finished writing my dissertation. Then we came back here, not having any intention of staying.

**F&D:** So, did you settle in New York at first?

**MS:** No, western Massachusetts. A place called Hadley, because I was a visiting lecturer in the Philosophy Department. I taught Logic, and my wife was writing her dissertation and teaching at Brown one day a week.

**F&D:** Now, you once mentioned that both your father and uncle were in the military.

**MS:** That's true, but you know, there were no English troops landed at Gallipoli. The English were too smart to send their own guys to be massacred; they were all Australians, New Zealanders and Canadians. Then, in WWI, where my father was in North Africa, New Zealand had a greater percentage commitment of manpower in Africa and Europe than any other country, including Germany. But it's funny, there isn't much commitment in New Zealand now. The British sold New Zealand from the Maori in a real ripoff treaty. The treaty was translated for the Maori and the translation doesn't match at all. They told them one thing and then they sign another. So the Maori resent the English.

**F&D:** It seems there's a great sense of duty to serve in the military down there.

**MS:** I would think, looking back, it was badly organized in more ways. The peace movement prevented Lyndon Johnson from running again; it got a president to not go for re-election. But then you get Richard Nixon; I'm not sure which.

**F&D:** Well, you come over to America about the time Vietnam was winding down, with all the heavy anti-war demonstrations. Did you get involved with that at all?

**MS:** Not here, no; no very much in New Zealand. In fact, I should have gotten involved in more of it. Of course, by the time I got here it was successful. It was enormously... You know, we look back on that and we say, you know, what did all those radicals and wannabes do? They were effective - large numbers of students, and the English too... We send people to war and you'd tell these people to go to war, and you know what? They'd all be those same people and the first one would be speaking about how bad the war was, but the second would be talking about women's rights, about gay rights - everybody get on the wagon - you got a crowd, let's talk it up. But it was effective. The peace movement prevented Lyndon Johnson from running again; it got a president to not go for re-election.

**F&D:** But then you got Richard Nixon; I'm not sure which.

**MS:** (Laughs) I don't know. You know, you look back at Nixon you would never believe that he would be looking back on as being so bad. Well, we've had in the intervening years, he was a real pro. He kept inflation down, got China back into the fold. He was looking back on his teaching, after Massachusetts, then what?

**F&D:** MS: My wife got a job in Michigan, at Eastern Michigan University. She also got a job at a law firm in Detroit. So then she went to Michigan and got a job at a big Detroit firm and worked there for three years in practice, which I wasn't very good at. But it was effective. Being a law clerk before you get admitted to the bar is great, if you're like me and you don't want to deal with people, 'cause they can't let you loose with clients until you pass the bar. Then, once you get admitted, your life goes downhill - meeting clients, arguing motions all the time. Most people in practice were the complete reverse. They'd rather go for the action and keep out of the library. So then I thought, 'to hell with this, I'm going to become an academic'!

**F&D:** So how did you wind up here?

**MS:** When I didn't get tenure, friends of mine went over and put out feelers trying to help me find jobs, and I got eight offers. But this is my wife's home. She doesn't really like the Midwest. She may still go out there, three or four days a week, but she was very happy to get the chance to move back here.

**F&D:** So she lives here and flies out every week to work. Do you find that tough on the marriage?

**MS:** It's old hat now; we've done it for years. In a way, for me it's been an advantage. Our marriage has always lived with me, and you know, most fathers don't get really close to their daughters, but we're really great friends, so it's not all bad.

**F&D:** How old is your daughter?

**MS:** Just fifteen.

**F&D:** Getting back a second. When you first came to New York in '72...?

**MS:** It was spectacular. Twenty-seven hours out of New Zealand we landed at Kennedy. Now, there was a building in Wellington that was nineteen stories tall; just completed, and the same in New Zealand. No matter what happened, there were buildings all over the place. And after you got off the airplane, never having spoken to my wife's parents, and my wife went to the boonies with pine trees all around and right up hope and went to law school.

**F&D:** Where did you go to law school?

**MS:** Well, I started at Wayne State and transferred to Michigan.

**F&D:** So how did you make the switch from Michigan to New York City?

**MS:** After I graduated Michigan, I got a job at a big...I don't know, but the Brooklyn accent is how people world 'round identify gangsters in the movies, so the...
The United States' involvement in the Vietnam War, from July 1957 to May 1975, was the longest in our nation's history. Nearly 2.7 million Americans served in the Southeast Asian war zone. Of that number, close to 60,000 men and women were killed, 300,000 wounded, and 25,000 permanently disabled. The Department of Defense and the National League of Families, the leading private group concerned with the subject, presently list 2,302 Americans as unaccounted for in the war. Of these, 1,112 are described as "killed in action, body not returned." Yet, the remaining 1,190 are still listed as possible prisoners.

Is it possible that Americans are still being held prisoner in Southeast Asia sixteen years after the United States involvement ended? According to many current and former high-ranking U.S. officials, evidence is sufficient to indicate the existence of such a situation. However, it is clear that the question is not whether there are U.S. prisoners of war held in Vietnam, but whether or not the government will ever receive the information necessary to confirm that their existence.

Reagan administration, claimed in August of 1984 that "based on the number of reports received concerning live Americans in captivity in Southeast Asia, we are proceeding under the assumption that some Americans are still being held." According to former national security adviser to President Reagan, voiced his belief, in the November, 1987 issue of Life, that there is a "very, very strong chance of American POWs still being held," and that said he spoke with Reagan about the MIA issue "at almost every daily briefing." In the same article, former North Carolina Congressman William Hendon, said that the late CIA Director William Casey told him, "the nation knows [the POWs are] there. Everybody knows they're there but, there's no ground swell of support for getting them out."

Robert McFarlane, national security advisor to President Reagan, was quoted in the Washington Times, October 16, 1985, as saying, "I think there have to be live Americans there." With even greater certainty, Rep. Gerald Solomon, after taking part in a congressional delegation to Hanoi, was quoted in the Chicago Tribune, February 1986, as saying "we determined [that] the question is not whether there are Americans alive in Southeast Asia. The question becomes: how many are there? Where are they? And for God's sake let's bring them home."

Another important question is, why would the Vietnamese still want to hold these Americans prisoners? In 1987, Vietnam's President Nguyen Van Lai responded to the question, saying, "We have a strong belief in holding people hostage." Hence, however, proves otherwise.

When France left Indochina in 1954, Vietnam denied holding French POWs; yet, more than 1,000 Frenchmen and Foreign Legionnaires, who stated that they had been held prisoner emerged from Indochina at various intervals during the next 16 years. The French prisoners were called "pearls" by the Vietnamese because they were considered to be valuable for future bargaining.

France is said to have paid a ransom of several million dollars per year, in addition to giving technical aid and political recognition to the Vietnamese, in exchange for the release of the prisoners. Today, American soldiers are also said to be held in Southeast Asia as "pearls," their value lying in their ability to operate and repair the equipment that was left behind by the American forces. These prisoners, and any remains of dead soldiers, are also considered bargaining pieces, both financially and politically.

These contentions are supported by a letter from President Nixon to Prime Minister Pham Van Dong of Vietnam which was dated February 1, 1973 and finally released to the public on May 17, 1977 by the Department of State. In the letter, President Nixon promised Vietnamese $2.25 billion for postwar reconstruction. Many say this offer was a blatant ransom offer for POWs. At any rate, the promise was never kept; this was largely because Congress, angered by reports of torture and mistreatment at the hands of the Vietnamese as told by returning prisoners of war, refused to grant any such aid to reconstruct Vietnam. Subsequent events, such as Watergate and Nixon's resignation, ended any remaining possibility that the administration's promise would ever be fulfilled.

The failure to follow through on Nixon's promise is thought by many to be the reason why the POW/MIA issue has not been resolved to date. In an attempt to find the rationale behind Vietnam's refusal to cooperate on the POW/MIA issue, the House Select Committee on Missing Persons in Southeast Asia concluded its December 1976 report, Americans Missing in Southeast Asia, with this thought-provoking statement: "...the Socialist Republic of Vietnam has called for selective implementation of the Paris Peace Agreement specifically article 21 dealing with American reconstruction aid to Vietnam in exchange for POW/MIA information under article 11b." (p. 239). Despite this conclusion, the promise remains unkept and the Americans remain unaccounted for.

For the most part, the sporadic negotiations between the U.S. government and the Vietnamese government that have taken place since war's end have met with little or no success. Nevertheless, during the Reagan administration, the remains of almost 100 soldiers were returned, although these returns were marred with controversy. The identifications made by the U.S. government forensic scientists conflicted with those of independent experts in the field assisting the families in identifying the remains as those of their loved ones.

When prisoners were originally released in early 1973, the North Vietnamese relinquished only 591 American soldiers. Equally disturbing is the fact that, of the nearly 600 soldiers MIA in Laos, not even one was returned alive. In 1975, the U.S. government declared all but one soldier presumed dead. Despite this declaration, however, the government refuses to declassify the majority of intelligence information regarding the fate of those still missing. Therefore, the question is often raised that if every POW/MIA soldier from the Vietnam War is dead, what is to be gained from withholding information about them from their families, their friends, and the many others concerned with their disappearance?

Furthermore, even if every POW/MIA is dead, the families of these soldiers deserve to know the circumstances surrounding their deaths and to have the remains of their loved ones returned. The leaders of our country are obligated to do everything in their power to provide the answers to our POW/MIA questions and work ceaselessly for the return of the soldiers still missing in Southeast Asia, dead or alive. For our part, we must express our awareness of the situation by letting the U.S. government know that even if it has forgotten the soldiers of the Vietnam War, the American people have not.

Anyone interested in learning more about the Vietnam War POW/MIA issue (because all that is to be known about it cannot possibly be said in a brief newspaper article) should read the book Kiss the Boys Goodbye by Monika Jemen Stevenson and William Stevenson, the most talked-about treatment of the subject, or any other available book or article dealing with POW/MIA.
Judicial Activism
by Kenneth Shuster

Marbury v. Madison firmly established the doctrine of judicial review in American jurisprudence. Familiar to all students of law is Chief Justice Marshall's proposition that the Justices of the Supreme Court are the final judges of what the Constitution means. One of Marshall's proofs for this proposition was the Constitution's "Supremecy" clause, Article VI, Section II: "This Constitution...shall be the supreme law of the land..." Although the clause only literally refers to the text of the Constitution, Marshall interpreted it as applying equally to the branch of government peculiarly responsible with executing the laws of the United States under Article III of the Constitution, the Judiciary.

While many have criticized Marshall's interpretation, many persuasive arguments have been offered in his defense. My favorite posits Chief Justice Field in Norton v. Shelby County, "An official is the only branch protected from the temptation to bend to public pressure, when public pressure goes against constitutional principles. Yet, once Judicial Review is established as legitimate, the question remains: how far should it extend? Is Judicial Review something that should be restricted to the facts of a particular case and kept "on the shelf" only to be used in certain areas of law? Or is Judicial Review a vehicle the Supreme Court can use broadly when confronted with undesirable governmental policies, race and gender discrimination, and questions of free speech and religion? I believe the latter position more sound, for the following reasons...

To begin with, there is what I like to call the "big picture" argument. Under this view, all members of American society have an obligation to do their best to ensure that the world is kept morally safe for all. The nine Justices of the Supreme Court are doubly encumbered by such a duty because they are the final arbiters of the Constitution. Therefore, the Supreme Court must be allowed to look at the big picture, and protect the principles of American society in the manner most consistent with constitutional principles, even if that occasionally requires that some decisions enacted through the democratic process be overturned.

Take Brown v. Board of Education, which overturned Plessy v. Ferguson, and held that segregation is inherently unequal, and so unconstitutional. Can it seriously be argued that the well-being has not been enhanced by the Court's ruling in Brown? Furthermore, is it open to debate whether society is better off as a result of Griswold v. Connecticut, and Eisenstadt v. Baird, which established a right to privacy in the use of contraception? Consider the fact that the rulings of these cases promote the reduction of unwanted pregnancies, as well as protect against the spread of AIDS and venereal disease. It was a position of judicial activism which permitted Justice Douglas to discern a legitimate right to privacy in the use of contraception from the penumbras and emanations of the First, Third, Fourth, Fifth, and Ninth Amendments.

Another reason in favor of broad judicial review is that the doctrine of judicial restraint maintains that the decision of Supreme Court Justices should be construed narrowly to only bind the parties before the Court, both immediately and subsequently. Such a position is inconsistent with the spirit of Marbury. If Marshall was correct, and history has proven him correct insofar as judicial review has become a majority of American jurisprudence, then just as the Supreme Court has the final say in deciding what is constitutional, it follows that what it says is unconstitutional should be binding on all. Although, to be sure, any decision only immediately binds the parties to the legal controversy before the Court in a technical sense, any constitutional decision should be accepted as law by all. To quote Justice Field in Norton v. Shelby County, "An unconstitutional act is not a law; it confers no rights..." If something that the Supreme Court decides is unconstitutional is not considered law, it is ludicrous to speak of a Supreme Court decision as only binding, even in the long run, the parties before the Court. Something that is unconstitutional is unconstitutional for all.

Another reason in favor of broad judicial review is the "chilling" effect judicial restraint may have on the Justices who will be reluctant to voice their opinions on important constitutional issues for fear of alienating their authority. The public will therefore be bereft of their informed, valued opinions on many potentially important constitutional topics.

Because judicial restraint is inconsistent with the spirit of Marbury, and the role of the Judiciary, a policy of broad judicial review should be preferred over one of judicial restraint.

1. A final consideration in favor of broad judicial review is that while judicial restraint would deprive the American people of the Justices' views on constitutional issues, if the Justices render an opinion that displeases a majority of the American public, it can be amended by Congress. Indeed, Congress has overturned Supreme Court decisions by amendment in the past. For example, when the Supreme Court ruled in Chimel v. Georgia that it had original jurisdiction over a monetary suit by two South Carolina citizens against the state of Georgia, Congress passed the Eleventh Amendment to the Constitution, precluding federal jurisdiction over suits by citizens of one state against another state, or by citizens of a foreign state, and Congress passed the Fourteenth Amendment to overturn Dred Scott v. Sandford, which held that Americans of African descent could not be citizens of the United States.
Review

Judicial Restraint
by Nick Caputo

I

The practice of judicial activism has been ascribed to liberal judges and scholars, allowing the debate over judicial interpretation to unnecessarily focus along ideological lines. The proclivity for active judicial review, however, has resulted more from convenience and a need for "proper" results, than any philosophical dogma; these Justices, embroiled in personally-disfavored precedent and Constitutional limitations, have no other choice than to pursue alternate means of interpretation. To discover that judicial activism exists, independent of liberalism, one need only look to the Reconstruction era, where a mostly conservative Supreme Court actively sought to sanction Congress' efforts to rebuild the nation after the Civil War. Additionally, many believe that the judiciary's most significant and politically embarrassing decisions will currently hearing on the Court will have to operate outside the text of the Constitution if they plan on abrogating the opinions of the Warren Court.

II

Irrespective of its philosophical basis, judicial activism is repugnant to the Republican form of government that the framers of the Constitution envisioned, and which "We, the People" guarantee. When the Supreme Court acts in a judicial-activist capacity, it (or a majority of its Justices) is supplanting the voice of all the people with its own. Even when the Court grants protection to legislation under a Constitution it upholds, it is nonetheless rewriting the Constitution, perhaps in response to the political favor that the legislation enjoys. For example, it was exactly this fear of political reliance that encouraged the framers to create a federal judiciary that is independent of the political branches. Ironically, it is precisely this independence that makes the judicial branch (especially the Supreme Court) so perilous to the ideals of democracy.

The federal judiciary has neither been elected by the people, nor is it answerable to them. Since the Justices possess life tenure, fear of reprisal consists solely in the impeachment process which has been summoned infrequently during the Court's history. Moreover, by its very nature, the Court does not represent the people, nor are the Justices themselves necessarily characteristic of the people. With few exceptions, the Supreme Court has been composed of upper-class, white males. Additionally, members of the Court typically are at least fifty-five years old, indicating that their values may not be consistent with a majority of Americans. Without proper restraint, the Court becomes an oligarchical body with law-making capabilities that supersede the judgement of an entire nation. Surely this is not government by the people for the people; instead, this is government by a select few who profess to know what is beneficial for the people. The Court must thus proceed with caution when imposing its social, political, and economic views upon the country.

Furthermore, because the judiciary lacks the power of the purse or sword, it must rely on the legitimacy of its decisions. Judicial decisions should, therefore, consist of an accumulated body of wisdom, expressed in precedents, which have been prudently constructed over the years. A particular Court should not be allowed to reconstruct Constitutional doctrine simply because it may be politically unfashionable or ineptical to the Justices' morality.

III

It is not the consequences of the individual cases that are necessarily harmful, but it is the opportunity for abuse which judicial activism endorses that is dangerous. Although a decision may seem beneficial to the nation as a whole, such a departure from the Constitution creates precedent for future Justices to undermine this type of legislative indifference.

To demonstrate the danger of unfettered judicial review, a hypothetical situation can be devised by changing the factual basis examined in the Roe v. Wade opinion. If, in that case, the Court was asked to decide the constitutionality of a statute legalizing abortion, it could have just as easily held that an unborn fetus has a Constitutional right to life. This decision would not only make abortion illegal (assuming a guardian of the fetus could pass standing requirements to bring the actions, but it would also establish a Constitutional mandate prohibiting future Article 1 legislative action. A decision such as this would not only abolish a woman's right to choose, but also her right to vote for representatives to secure that choice.

IV

There are also practical considerations exhibiting the Court's inability to perform legislative functions (which is precisely what the Court is doing when it engages in broad judicial review). First, the Court, unlike a legislative body, does not have the means (such as statistical data and studies) to predict the effects of a law. The legislature deals in generality, creating law for a nation. The Court, however, decides specific cases, perhaps without fully appreciating a law's farreaching implications. Second, the resolution of cases and active law making are incompatible. Although the Court is resolving an issue on a precedent set of facts, an expansive interpretation of the holding may encompass many situations that the Court was not even considering.

Finally, proponents of judicial activism argue that the Court must safeguard individual rights not expressly provided for in the body of the Constitution. Ironically, the greatest threat to our civil rights is conferring so much power to so few.

New York Is Trashed
by Gerard Mackey

"New York is picking up." Litter, they mean. There are posters in the subways these days making this claim, adding that it takes more time for us to complain about dirty streets than it does to pick up the trash. One of the local banks, Chemical, I think, has gotten into the act by passing out buttons for its employees and customers to wear. But from the looks of the streets and subways, it's impossible to tell that a city-wide campaign is under way to encourage residents to clean up after each other.

Not many of us, however, are willing to reach into the gutter to retrieve someone else's candy wrapper. And why should we? Is it unreasonable to expect fellow New Yorkers to care about their environment? Not to litter in the first place? But let's face it: a lot of people live here and a good number of them are slobs. People thoughtlessly drop their trash on the sidewalks or toss it into the streets with abandon. The other day I watched a woman empty her purse of used tissue and other flotsam onto the train tracks from a crowded platform in Brooklyn.

With the almost constant budget woe that New York experiences, it seems that sooner there will be even fewer sanitation workers to do the picking-up for us. It's time to start educating everyone who lives here about the responsibility of keeping the city clean. This process should begin early, at home and in school. Instilling a sense of pride in the appearance of the place we call home might be a place to start.

During a small party at a friend's house recently, the conversation somehow turned to the existence in New York of the sanitation police. "What exactly do they do," asked one woman. No one seemed to know. Maybe what we need is undercover sanitation cops on every street corner, hauling all the litterbugs off to the slammer. New York is a filthy place. It's an idea.
NYLS Honorary Degrees
by Lenny Cessere and Harold Rosenthal

NYLS is seeking requests for recipients of an honorary degree. Our research staff, after an exhaustive ten minute survey, have come up with some obvious and innovative suggestions. However, we didn’t like them, so we came up with some of our own.

Our first suggested recipient is posthumously bestowed upon the late, great Ayatollah Khomeni for his contribution to a compassionate interpretation and application of Islamic Law.

The second recipient is Saddam Hussein for his new approach to environmental law. This degree is made possible by a generous grant from the Exxon Corporation.

A special Mother Theresa honorary Canon Law degree goes to Madonna for her work in strengthening traditional family values.

To Norman Schwarzkopf, we confer an honorary degree in international law for proving that old legal maxim: “The biggest and best army may not always win, but that’s the way to bet.”

To Donald Trump, for pushing the envelopes of property, bankruptcy, and divorce law, all at the same time.

To George Bush, for promoting the statute of frauds. When a foreign leader encourages you to rebel against your dictator, with an implicit guarantee of military assistance, GET IT IN WRITING!

To Gorby, for his selective use of western constitutional principles. Too much democracy at once is a dangerous thing. Also, he receives an honorable mention in entertainment law for writing the hit song, “It’s my party, I can cry if I want to, cry if I want to, cry if I want to.”

And, of course, to Fluffy Boom Boom (a/k/a Bubbles) LaRue, the lead dancer at the Doll House, because we promised.

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The Frolic and Detour staff was shocked by the school administration's recent decision to remove an historic NYLS landmark. The monument, which rests in the library's first floor stairwell, has managed to perplex many members of the NYLS community, and has amused individuals curious enough to read its age-old inscriptions.

An administration official, who wishes to remain anonymous, has admitted that her colleagues were moved by greed, after learning that this NYLS treasure could fetch up to $24,88 at a Christie's auction.

In 1724, English colonists created this indescribable phenomenon to frighten away superstitious Indians who believed the object to be a god-like icon. After serving various noble purposes, including a six year stint as a cannonball packer during the Civil War, this symbol of mankind's fruitful imagination was finally laid to rest at 240 Church Street, where it still remains today.

DOWNTOWN FOOD & FUN
by Bernadette Dono

OK, so you're tired of eating the same old food and going to the same old places. Well, that's good, because there are a lot of great things to do in Downtown that will relieve your boredom without killing your budget.

For food, one of the best places is ThaiLand Restaurant (Bayard and Baxter Streets). Order the coconut curry chicken or the Pen-Thai (beef, chicken, or shrimp with a spicy peanut sauce). The portions are generous, inexpensive and delicious. The lunch menu offers over 50 dishes under $5.00, and the service is amazingly fast, so you won't be late getting back to class. Try Japanese (90 University Place) for good, inexpensive sushi.

Khan's Mongolian Bar-B-Q (273 2nd Avenue) offers all you can eat food for $6.50 or $8.95 depending on what you order. The food is very tasty and its fun to watch the chef cook it right in the dining room. If you want something a little more upscale, Planet Blossom (278 Canal) is the place for great, Chinese food 24 hours a day.

The shredded chicken and vegetables over rice is huge and comes only $3.25.

Florent (19 Nassau Street), also open 24 hours. Although not as cheap, it offers a very hip, artsy atmosphere. Go for brunch and order the goat cheese salad. Take a big bunch of friends with you to Gulf Coast (449 West Side/12th) for Cajun food in a funky, party atmosphere.

If its Mexican you want, Burrito Bar (305 Church) offers delicious, huge burritos with funny names (try Ocie From Mississippi), potent frozen margaritas and a psychedelic décor (complete with lava lamps). Happy Hour here is a breeze with 2 for $1 drinks and fantastic free appetizers. Or go to Tostada Flats (627 Washington Street) and order the Swordfish Short Stack. This place gets very crowded, but its fun and really cheap. For authentic Spanish food at unbelievably low prices try El De Leon (White and Broadway).

A huge plate of rice and beans is only $2.00! Skip the plantains; they're a little bit tough. This place shows early, so go for lunch.

Terese's (117 Maltby Street) is the place to go for Italian Food. The atmosphere is intimate and romantic; and the waiters treat you like an old friend. You get a ton of great food and its cheap. They have the best Cesar Salad ever. Even though they will be closed, go across the street to Ferrara's for cappuccino and an unbelievable chocolate ricotta cannoli.

For terrific, low-priced Indian food, try Bombay (520 East 6th). Have the spicy Chicken Vindaloo (with a huge glass of water) and the Brinjal Pattice. You'll love the barefoot, turbaned musicians softly playing in the window.

Finally, The Olive Tree Cafe (117 MacDougal) offers excellent Middle Eastern food in a friendly, frenetic atmosphere. Especially good are the Falafel and the Chicken Kabob. Plus, they're open till 3:00 A.M.

An NYLS Landmark

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The preparation and strategic planning for an air war is just as difficult as understanding the terms used to describe it. As I digested television reports and periodicals about Operation Desert Storm, I wondered how many viewers really understood the information thrust upon them. To the average viewer, the coverage of Desert Storm created a sense of pride for this nation and respect for its fighting force. Whether the viewer understood terms such as "two Mig-23's shot down over..." or "AWACS" made no difference, because the important thing was that loved ones were not killed and that this conflict ended quickly. To the military curiously, though, let me explain some terms.

An air war is an assortment of loosely defined terms banded together to label a concept whose goal is airspace superiority. The term "airspace superiority" simply means to control the airspace and use it for one's purposes. Total obliteration of all enemy air assets is not needed, but the mission is to effectively reduce the enemy's offensive and defensive capabilities in the use of its weaponry.

Initial means to bring about this end is called the enemy's flight routes according to mission. For example, targets as such war planning buildings, like the Iraqi Defense Ministry building hit by a "smart bomb" on the first day of the war, ordnance depots, telecommunications compounds and sites, and radar installations that could detect our incoming missions. A tactical target is an important target, such as a tank battalion, infantry unit, or Scud battery yet one lacking the long-term significance that a strategic target possesses.

The avation requisites for these initial bombings are planes with superior speed, maneuverability, and long range capability i.e. the F-15E (Air Force, nickname Eagle), the F-111 (Air Force, nickname Starfighter) the F/A-18, (Marines or Navy, nickname Hornet). In Desert Storm, although the mission's goal was to hit strategic targets, the pilot's personal goal was to get in, and "get the hell out," hopefully hitting the assigned target. In addition to the strike packages offensive capability (dropping bombs), other planes are sent to protect those laden with bombs from enemy interceptors. These plans fall into the category known as fighters i.e. F-15's and F-18's not fitted for the attack role (to drop bombs, special munitions are needed), F-14's (Naval nickname Tomcat) and the F-16's (Air Force, nickname Fighting Falcon). These bombing runs are designated as Offensive Air Support missions. The high efficiency of these assigned fighter aircraft are in direct support. Precise battle plans are needed for the destruction of enemy assets. However, defensive measures must also be used to prevent our planes from being shot down by our own anti-aircraft capabilities. This task is known as air control. The air control mission is to monitor the air war by splitting into three functions: 1) Surveillance, 2) Traffic, and 3) Weapons Section. The Marine Corps method of improving the defensive measures is encompassed in a Marine Air Control Squadron. This ground based unit is composed of detection radars and air control personnel. The Air Force performs this same function by using an airborne "traffic cop" known as an AWACS to monitor all aspects of the air war. The AWACS is an airborne radar platform jet that carries the best detection and acquisition radars in the world. The Surveillance section uses detection radars to identify planes and classify them as friendly or foe. The Traffic section performs the defensive function by using the traffic radars to emit a signal called IFF (identification friend or foe) that identifies planes and helps to control them. No planes will respond to the emitted signal. In Desert Storm, the allied planes (American, British, Italian, Saudi,) were identified by the AWACS as hostile (nickname Bogies, pronounced like odd Humphrey's moniker). One may question what would have happened if the Iraqi's had found out or stolen our codes. Fortunately, this was highly unlikely since there are four codes that would have to be broken, and even if all four were broken, they still have the barrier thereby limiting the extent of possible destruction. In Desert Storm, this was a moot point because the Iraqi's did not have the equipment or the time to break the codes. The second function, Traffic, is responsible for moving all aircraft through predesignated flight routes according to mission. For example, for bombers to fly a strike pattern to destroy a target in Baghdad, they would have had to fly through four or five set points in the sky. These predesignated points enhance the Traffic section's control function because all planes report back to Traffic once they reach a certain point before proceeding to the next. Besides the importance of knowing where assets are, these flight routes prevent planes from flying into one another, a likely result if no predesignated path were chosen. The Surveillance section also benefits from these flight routes because any plane not on a predesignated route flying a profile that signifies it as friendly, will probably be a fireball within a minute of detection. The Traffic section is also responsible for tanker procedures. When planes are low on fuel or require refueling, they also request fuel from friendly planes, the refueling of these planes is called "Tow." In the Traffic section, the refueling of the planes will be a point for pilots to announce to the Traffic section that their fuel is low. That usual point is when the planes are down to 3,400 pounds of fuel, fuel for aircraft is measured in pounds not gallons. The Weapons section (known as Weapons) is responsible for all of the striking force's defensive capabilities. Normally when a strike package is dispatched, fighters will escort it to its destination. Yet, the Weapons section plays no part in these offensive missions. The function of this section is to protect our own strategic areas. For example, to protect priorities such as telecommunications sites, command headquarters, and trunk routes. The Weapons section set up "Cups" (Combat air patrols). A Cup is defined as fighter planes such as F-15's and F-16's and 18's that are to remain specific areas within close proximity of strategic assets. In addition to controlling the fighter's

TOWARDS A MORE POLITE LAW SCHOOL COMMUNITY

by J. Will Cook

Recognizing that gay men and lesbians depend very much on the freedom of expression in order to seek equality, I do not intend to advocate that certain individuals in this law school should be censored for the bigoted comments they make. Nor am I concerned here with the implications regarding the fact that gay men and lesbians are made to feel that, because any plane not on a Launch Alert (SLA), SLA indicates that because any plane not on a Launch Alert (SLA), SLA indicates that

When ignorant or hateful people who I am near make gay jokes, for instance, those jokes strike negatively at my humanity and dignity, just as a "nigger" joke would, in most instances, strike negatively at the African-American's humanity and dignity. A joke is the precursor to AIDS). When so many hundreds of thousands of people have died above misconceptions and question those who insist that there is nothing w,rong with their behavior in a free society.

As comedians portray gay men as "swishy faggots" and lesbians as man-hating "dykes," which is the precursor to AIDS). When so many hundreds of thousands of people have died above misconceptions and question those who insist that there is nothing w,rong with their behavior in a free society.

As we, as students, are setting examples. We should also have compassion for those who are rarely granted it. As we, as students, are setting examples. We should also have compassion for those who are rarely granted it.

Catholic church implicitly says that gay lives are somehow not as important as heterosexual lives; when the National Endowment for the Arts places homoeroticism in the same category as child molestation - that says something to the American public, Children, especially gay children, need to be vocal because they become targets for those who believe the vile stereotypes and who act upon their beliefs.

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Simon

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