conscience

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CPLR Course Offered In Spring

by Suzy Mandel

New York Civil Practice has finally been added to the Hofstra Law course offering list. The strictly experimental spring course is designed as a challenging third year offering rather than as a mere informational survey such as is offered in standard bar review courses. David Siegel, a well known expert in the field has been recruited to room 308 on Wednesdays from Albany Law. A graduate of Brooklyn College and St. John's School of Law, Professor Siegel is the author of the "Commentaries on New York Practice and Procedure" for McKinney's Consolidated Laws, as well as a draftsman of the New York City Civil Court Act. The CPLR course is a one time only offering: its continuation is subject to approval of the faculty's curriculum committee. Two separate double-hour class periods on Wednesdays are scheduled for the four credit course. The scheduled timing conflicts with Constitutional Law, thereby effectively stymieing the input of second year students in the course.

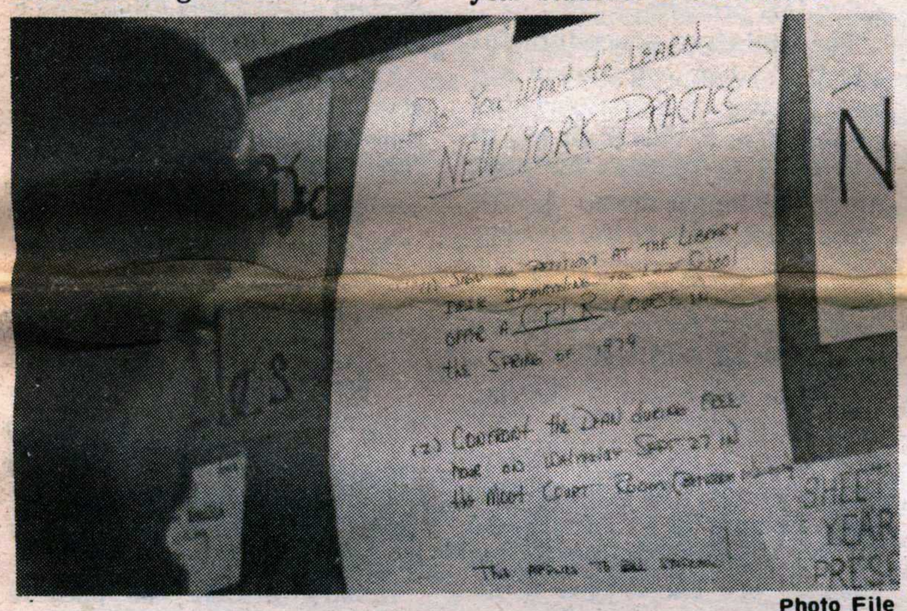


Photo File

Students petition Administration during continuing campaign. The result: Our voices have been heard.

Judicial Candidates' Membership In Racially Discriminatory Clubs

by Monroe H. Freedman

The following piece was written by the author at the request of Senator Edward Kennedy, who utilized it in a report to the Senate Sub-committee on the Judiciary then considering Presidential nominations to the Federal courts. The piece was sought as an articulation of the appropriate standards for the governance of judicial behavior as to membership in "all white" social clubs.

Footnotes (*) on page 7.

This memorandum is concerned with two questions: (a) whether the membership of a federal judicial candidate in a club known to practice racial discrimination should be a disqualifying factor, and (b) if not, whether the refusal of a candidate for a federal judgeship to resign from such a club should be a disqualifying factor.

Those questions cannot properly be considered in the abstract, without reference to relevant legal and social history of the United States.

At the time of the Declaration of Independence, black slavery existed in every state, north and south. The Constitution recognized slavery, going so far as to count slaves (as fractional people) in apportioning representatives and taxes. Under the federal Fugitive Slave Law of 1793, any white person could claim an apparently free black as runaway property by taking an oath to that effect; the putative white master would thereby receive the assistance of the federal judiciary in enforcing slavery.

The prevailing view regarding blacks was authoritatively expressed by the Chief Justice of the United States in *Dred Scott v. Sandford.* (1) Under the Constitution, blacks were to be "regarded as beings of an inferior order; and *altogether unfit to associate with the white race, either in social or political relations;* and so far inferior, that they had no rights which the white man was bound to respect."(2) That linkage of the notion of social inferiority with political subjugation is significant, of course, both psychologically and sociologically.

After Emancipation, blacks continued to suffer severe disadvantages, socially and legally, by discriminatory customs and laws. The way in which social and legal discrimination reinforced each other is illustrated by laws requiring racial segregation in courts, government offices, schools, libraries, parks, transportation, hotels, restaurants, athletic facilities, etc. Congressional efforts to combat the social segregation and political subjugation of blacks were defeated by federal judges, who invalidated civil rights legislation and who rendered useless the Thirteenth, Fourteenth, and Fifteenth Amendments as instruments of social justice. The doctrine of "separate but equal" facilities, which received the constitutional imprimatur of the Supreme Court in 1896, helped to maintain the social and political color line until 1954.

Although lawyers might be expected to have a special concern for equal justice, the legal establishment reinforced racism. Blacks were excluded from law schools and discriminated

(Continued on page 7)

Native Americans Under Siege

by Alan B. Fischler

The history of Native Americans is one through which they have suffered treaty violations, the exploitation and destruction of their lands, and the improper transfer and illegal taking of those lands. Native Americans have been the victims of genocide, fraudulent and one-sided agreements, and have had their rights relinquished by individuals who were never recognized by the traditional people, yet charged with the duty of representing the Indians' interests.

Today, opposition mounts. The American Indian Movement (A.I.M.) claims that the U.S. government's taking and holding of political prisoners is a calculated attempt to destroy the cultural, political, and legal sovereignty of the Indian people.

In recent times, because of discoveries of large deposits of precious resources such as coal and uranium on tribal lands (much of which was once considered minimally useful desert land), traditional peoples are experiencing increasing pressures from corporate and governmental interests which, often acting in unison, further deprive native Americans of their rights. The attacks extend to all areas of the United States in which Indian lands are located, i.e., New York, South Dakota, Oklahoma and New Mexico.

In New York State, Federal Courts have made a series of decisions which support Indian claims to land taken in violation of the 1790 Non-Intercourse Act. That act barred the state from entering into land transactions with Indian nations without Congressional approval. In what is considered by many to be one of the most fraudulent treaties ever made by New York state with the Indian people, some say that the Cayuga peoples received only one-one hundredth the value of their land in a 1795 deal.

The Department of the Interior has recently arranged an "agreement" which would extinguish all claims of the Cayuga forever in return for 8 million dollars and 5,481 acres of land in Seneca County. This settlement represents compensation approximated at one percent of the total Cayuga land base as originally claimed, and hundreds of millions of dollars less than the land's present value.

A similar settlement offer has been made to the "elected trustees" of the Mohawk people, which involves a claim to 14,000 acres of land in northern New York near Massena County. The traditional "Longhouse" government (an adherent to the "Great Law of Peace," operating as the governing body of the Mohawk people for hundreds of years) has only recently learned of these negotiations. Outraged, they registered protest over state negotiations with the "Tribal Council" which is a form of "elective" government for native Americans created by New York State pursuant to the Indian Law of 1892, 25 McKinney Secs. 100-113. Unfortunately, that council has never received recognition by the traditional government and its many followers. In 1948, a majority vote of the people caused the Tribal Council to be dissolved. It is claimed, however, that soon after the dissolution, New York State took steps to set up a new puppet government which failed to respect the traditional values of the people, such as refusing to accord the "Clan Mothers" the prominent position they have historically held amongst their people. It was similar state interference (or coercion), in the authorization of representatives for Native Americans in 1802 (the traditional Chiefs would not agree to the sale of lands at that time), which resulted in the great land swindles giving rise to many of the present claims of "Six Nations" people.

Hostilities Grow

On May 22, 1979, a unit known as the Young Adult Conservation Corps (Y.A.C.C.), under the command of the "elected trustees" of the Tribal Council, began cutting trees on Mohawk land to make way for construction of a new fence around Mohawk territory. This delineation would mark yet another relinquishment of land, unrecognized by the traditional people, yet agreed to by the Tribal Council. Loran Thompson, one of the traditional Chiefs, sought to halt the trespass and the cutting of trees upon his family's land by confiscating the chain saws being used by the Y.A.C.C. For this defensive measure, Thompson was dragged from his home, beaten, and charged with grand larceny and resisting arrest. On May 29, members of all the "Six Nations" (Mohawks, Cayugas, Senecas, Onondagas, Tuscarras, and Oneidas) marched on the trustees' administration offices, non-violently disarmed the Indian Police and demanded that they resign from their positions. For taking over and occupying the administration building for several hours, 23 Six Nations people were arrested.

Traditional people claim that the state has historically created "paper Indians" whenever immoral and illicit land transactions have been desired. They also say that current prosecutions by the government on the indictments handed down from the May 29 demonstration, while criminal in nature, are but a political attempt to destroy the traditional Indian governments in New York State. The traditional people fear that any settlement reached in the present negotiations between New York State and the St. Regis Tribal Council will result in the extinguishment of title to enormous land claims in return for token payments to the Indian nation. They further fear that state negotiation with the Tribal Council, created by state law but unrecognized by

(Continued on page 10)

STUDENT GROUPS

AGORA

by Terry C. Markin

Agora has planned a host of activities for the law school community during the month of November. Its weekly forums will include such subjects as occupational safety, the validity of standardized examinations, gun control, and the rights of the handicapped.

On November 7, Agora showed the movie "Working For Your Life," recently released by the University of California at Berkeley. It is the first film ever produced on the particular hazards facing women in industrial employment.

On November 15, Agora will feature Donald Kates of the California Rural Legal Assistance Foundation. He has recently published a controversial book **Restricting Handguns** on gun control and will lead a discussion on this subject at Agora's weekly forum.

Dr. Lorraine Novinski, the noted testing expert, will address an Agora forum on November 19. She will discuss the validity and applicability of such exams as the LSAT.

At the end of the month, on November 28, Samuel Levine, an attorney specializing in rights for the handicapped, will speak on the opportunities for law students to assist the handicapped in this rapidly expanding area of the law. See the notice in CONSCIENCE for further details.

Photo by Bob Rediger

TRICK OR TREAT: Those who think Hofstra is a dull school should have been here on Halloween. The Law School was visited by Saul the Sheik, Bob Capone, Long John Murray, Shopping Bag Lady Lane and Twinkle the Transvestite.

First Year Representatives Elected

by Sal Russo

The Hofstra Law School Student Council last week welcomed three new members: Johnnie Story (Section A), Larry Downes (Section B), and Philip Rogers (Section C). These students were elected student representatives from a field of nineteen candidates from the class of 1982. Voter turnout for the election and the run-off was over fifty percent of the eligible voters. All of the candidates and the first year students who participated in the election should be applauded for their interest in student governance.

The elections were conducted by the Elections Committee whose members are Earl Weprin (Chairman) Oscar Ruiz and Mike Wells. Members of the Election Committee made announcements concerning the elections to the first year class, typed up the ballots, typed up statements by the candidates, "manned" the ballot box for 10 hours, and certified the election results. The Student government owes them a debt of thanks for a job well done.

Finally, as a member of the newspaper staff, I wish the new representatives and the Class of 1982, good luck.

Student Reps Drafting Proposed Constitution

by Glen Wolther

A new constitution will be written by the Student Reps in order to reorganize the student government. "The one we have now is outdated," says Charles Walker, a third year representative.

According to the Reps, the last time anyone saw a copy of the constitution was sometime last year. Presently, the Reps have been operating under the by-laws without a constitution; this has proven to be an inadequate means of running the student government. The reps anticipate a constitution will eliminate many of the current problems.

Walker believes that a constitution will eliminate the problem of familiarizing students with the operation and function of a student government. "There should be a formalized system to avoid starting from scratch each year; we need guidelines."

Commenting on this problem, second year representative Nancy Tegtmeier said: "A constitution tells me how to operate and tells people how we operate." Sal Russo, another second year representative adds, "A constitution would give me a textual basis to rely on for my authority; to justify my power."

A constitution will also create a method by which the student government will become accountable to the students. "Presently, there is no effective means of dealing with abuses of power by Reps" says Tegtmeier.

Representative-at-large Alan Brenner, believes a new constitution will alleviate the credibility problem reps have with the administration and the faculty. "Structure is the bottom line. This will give us credibility," says Brenner.

Both Tegtmeier and Brenner agree that the new constitution should state the goals or the purpose of the student government. Brenner feels the present system "is so limited and ill defined" as to lead to problems, while Tegtmeier "wants to know why we are here."

All the Reps seem to agree that the purpose of the new government will be to act as an ombudsman — that is — to protect the interests of the students. The Reps feel that the new constitution and government will achieve this goal by stressing the need for communication among all sections of the school: students, student government, faculty and administration.

The present function of the student representatives will also be incorporated into the new constitution. These functions are 1. housekeeping duties; and 2. liaison between students and faculty or administration.

The housekeeping duties consist of budget allocations and student appointments to committees. These duties are usually handled at the beginning of the year.

The second function, acting as liaison between students and faculty or administration, is a year-round process. It primarily entails hearing student grievances and bringing these grievances to the attention of the proper person or body. The key to doing this job properly, which all Reps feel they are presently doing, is being accessible to students and being aware of their needs.

Yet, Russo and Walker feel that students do not permit the student Reps to do their jobs correctly. "We want people to go to the Student Reps. Let us have the first shot. We speak to the Dean all the time and reason with him," says Walker. Russo adds that students should come to the Reps with their problems before passing around petitions. They claim that "Reps should try to deal with him (the Dean) first. Informal resolution is more effective. We can exercise student pressure without student protests." Both Reps hope the new student government will solve this problem.

The tentative procedure for adopting a new constitution will be 1. The Reps will draft an initial constitution; 2. This draft will be submitted to students for comment and suggestions; 3. The Reps will then make the changes they deem necessary; 4. A final draft with any amendments will be submitted for a referendum before the student body.

Anyone interested in helping the Reps prepare the initial draft is welcome to attend the Student Rep meetings. The Reps usually meet Tuesday at 4 P.M. in room 227. All meetings are public and students are encouraged to attend.

FROM: Aaron D. Twerski, Chairman
TO: Students
RE: Committee on Reappointment, Promotion and Tenure

The Faculty Committee on Reappointment, Promotion and Tenure will be considering the following faculty members for either reappointment, tenure or promotion. The committee is interested in soliciting student opinion with regard to the performance of the various candidates. Students wishing to express their opinion should forward their written remarks to the chairperson of each subcommittee.

The following are the names of the candidates and the chairperson of the subcommittee responsible for the evaluation:

	Chairperson of Subcommittee
Tenure	
David Diamond	David Kadane
William Ginsberg	Burton Agata
Linda Champlin	John Gregory
Reappointment	
Mitchell Gans	Ronald Silverman
Kris Glen	Abraham Ordover
Eric Lane	Stuart Rabinowitz
Promotion to Full Professor	
Alan Resnick	Monroe Freedman

BALSA

by Charles Walker

BALSA stands for Black American Law Students Association. BALSA is a national organization formed to voice the needs and concerns of minority law students.

Hofstra BALSA has planned numerous activities for the year. BALSA has been involved in assisting Dean Sherry Friedman to recruit new applicants for Hofstra Law. BALSA has also been involved in boosting the name of Hofstra through its own involvement in recruitment programs at numerous law schools such as N.Y.U., Columbia, Rutgers, N.Y. Law, and Brooklyn. BALSA contacted several presitious individuals and invited them to come to speak at Hofstra. The speakers currently being contacted include Gerald Horn, Chairman of the Affirmative Action Coordinating Counsel, Lawrence W. Pierce, U.S. District Judge for the Southern District, Pat Harris, head of the H.E.W., Maynard Jackson, Mayor of the City of Atlanta, Percy Sutton, and Edward Culvert, Chairman of the State Labor Relations Board.

BALSA will also be participating in the Frederick Douglas Moot Court Competition which is a competition between BALSA members at Law Schools throughout the country.

Last year, BALSA placed members in the finals. This year, we plan to win it. Hofstra BALSA will be represented by James Sullivan and Patrick Watts, two third-year students.

BALSA is also working on its 4th Annual Awards Dinner and a Cultural Affairs Night.

Notices will be posted around school to keep you informed.

WOMEN IN THE LAW: *Time For Equal Consideration*

by Daphne Gronich

I've got the "being a woman in law school" blues. Believe it or not, I do want to practice law, I am not here to find a husband, and, yes, I do enjoy law school. Is that strange (or to put it another way, is that threatening)? I never thought that it was. Then again, I was always under the impression that I was living in the era of the liberated woman, in a society that was slowly educating its members — men and women — to overcome inherent sexist attitudes especially with regard to the masculine or feminine "nature" of particular occupations and fields of interest.

Imagine my surprise, when a recent graduate and newly-married acquaintance told me that the first three questions she was asked during one particular interview were: "(1) Are you married? (2) Do you have children? (3) What does your husband do?" Here is a woman who proved her qualifications and worth as an individual through years of learning and a multi-faceted working experience. She held jobs as a legal intern, part-time teacher at an undergraduate institution, summer associate, and all-around work horse. She also was graduated at the top of her class. This did not prevent her from being subjected to an age-old put-down. She was being judged by her marital status, parental expectations and her relationship to her husband's position. It is obvious that at least insofar as this particular 35+ year-old male interviewer was concerned, in considering qualifications for a job, viewing women and their "proper place" is reasonable and, further, her proper evaluation depends on the relationship with the men with which she lives, be it either her father or her husband.

Similar patterns present themselves. For example, when a woman interviewee responds to the question, "In what area of the law are you most interested?," with the answer, "I think that I would like to specialize in . . .. I would, however, prefer to work in a general practice firm such as yours, because it would give me the exposure to several areas of the law without requiring me to restrict myself to a small field of concentration," she is viewed as a flighty, indecisive female. In contrast, when a male responds in the same manner, he is seen as a mature person who considers all aspects of a profession and weighs the benefits and disadvantages carefully before committing himself to an assessment. Such a decision could govern an entire working life, so why should a woman be expected to formulate an opinion any more quickly than a man? Similarly, a woman who does each assignment, leaving no reference, article or footnote unread and no cite uncheked may be considered a "nit-picking perfectionist" whereas a man who approaches each task in a similar manner is a "thorough researcher."

I resent the fact that women frequently have to sell themselves more than males in order to find a job as an attorney. Why should I be made to feel that I will not be taken seriously unless I dress conservatively in a dark-colored suit to tone down any feminine characteristics? Then again, there is a definite inconsistency or bias insofar as women with above-average looks are concerned. They are advised to use their beauty (whether by attaching their pictures to their resumes or by dressing a la Coco Chanel) to get interviews because, at least insofar as certain interviewers are concerned, beauty can occasionally make up for the disadvantage (deficiency?) of being a woman.

In spite of the fact that women constitute a majority of the population, they are very much under-represented within the legal profession. (At last count, female lawyers comprise less than seven percent of the American legal profession.) In this respect, Hofstra Law is to be commended for the realistic female-male ratio of its classes. Yet, it is not enough to turn out increasing numbers of women graduates. Society has to accept these new professionals on an equal basis with males. To do this, we are all going to have to change our ingrained generalizations with respect to certain classes: classes of professionals and classes of men or of women.

It is important to realize that sexist attitudes are not restricted to men; women can be just as sexist and conservative in their characterization of a "woman's function" and-or place in society. Marabelle Morgan and her **Total Woman** is the personification of a sexist person. Once we recognize that these individuals and attitudes exist, and that it is not necessarily the class of men that is the enemy, we can hopefully try to remedy the situation.

Women attorneys are in essentially the same position as other graduates of a new law school. There are very few women in hiring positions and there is no tradition of an "old girls" network. Hopefully, in time, this will change, although it will be difficult, without redressing the cultural baggage which has kept women at a disadvantage—socially, economically and educationally—by funneling "the second sex" towards particular "female" social and professional goals.

I consider myself a well-balanced individual. The fact that I am a woman does not in any way detract from my confidence that my qualifications would allow me to make a positive contribution to any law firm or legal "establishment." If it becomes necessary for me to enhance or modulate my feminine qualities to be given the opportunity to prove my worth as a lawyer and expand the scope of my experience and knowledge, I will undoubtedly do whatever is necessary — within reason of course! As with any other profession, it is only by performing well on the job that one receives the recognition of one's worth. I am sure that any woman who is given the choice between being characterized as "just another pretty face" within the legal establishment or "just another lawyer" would opt for the second version. In the final analysis, however, being "just another pretty face" in the courtroom is certainly better than being "just another face" who has never had the chance to prove her worth as an individual and as someone admitted to practice before the bar. It is unfortunate that women in the legal profession today are forced to choose between sexist discrimination and the prospect of unemployment.

Cohn Speaks Despite Protest

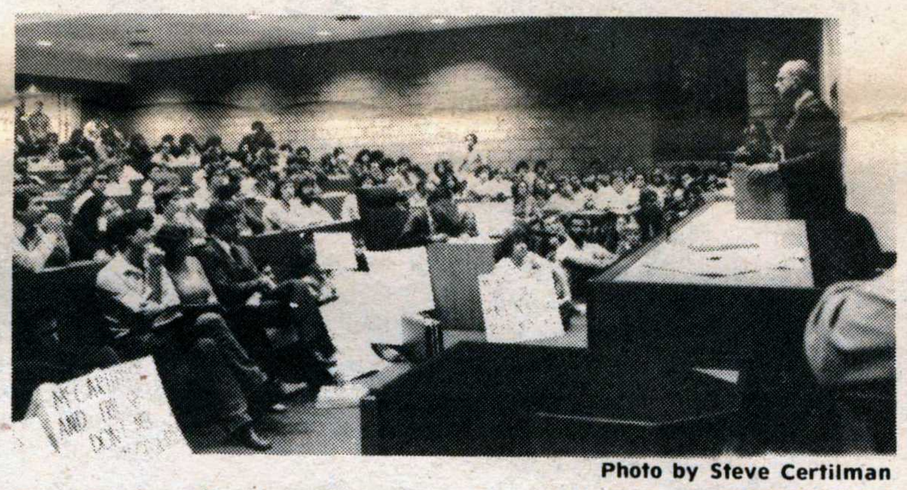


Photo by Steve Certilman

by Corey B. Bearak

Controversy came to Hofstra with the appearance of attorney Roy M. Cohn on Wednesday, October 24, 1979. He was invited by Hofstra Law School's Trial Advocacy Club to speak on trial techniques. Mr. Cohn, a well known trial lawyer, was Chief Counsel to Senator Joseph McCarthy and served as prosecutor in the trial which led to the conviction and execution of Julius and Ethel Rosenberg. Student demonstrators, carrying signs saying "Remember the Rosenbergs," "McCarthy is Dead. His Henchmen Live On," "Morality and Ethics Have A Place In the Law. Does Roy Cohn?", "McCarthyism and Free Speech Don't Mix. Roy Cohn Go Home," and "Cohn's Ethics Are Unethical," greeted Mr. Cohn as he entered the building. The student demonstrators sat on the floor near the podium in the Moot Courtroom and distributed a "Roy Cohn Fact Sheet" outlining improprieties allegedly committed by the Guest Speaker.

The Cohn controversy started as soon as his appearance was announced. "The Committee in Opposition to the Appearance of Roy Cohn" advertised in the October **CONSCIENCE** that "not all of the members of the Hofstra Law Community welcome" Cohn. The Trial Advocacy Club felt compelled to respond with an open letter defending the invitation.

The invitation was accepted and the controversial figure arrived. Posters denouncing Cohn were prominently displayed about the Law School. At the entrance to the Moot Court room, protesters congregated in the hallway. One student passerby reminded his peer on the picket line of the old adage: "I may not agree with what you are saying, but I will defend with my life your right to say it," to which the protestor replied "I'm sure he (Roy Cohn) wouldn't."

The Moot Courtroom overflowed with students as well as some members of the faculty who gathered to hear Mr. Cohn. The Guest Speaker was introduced by Brad Koozman, President of the Trial Advocacy Club, to a mixed chorus of boos and polite applause, the applause overshadowing the "Bronx cheers." Mr. Cohn, well aware of the demonstrators, stated that he recognized and respected the protestors' right to dissent. Alluding to one protestor's banner, he said that he was not going home and that he intended to stay and complete his presentation.

Mr. Cohn, invited to address the group on the subject of trial techniques, spoke for approximately forty minutes. He discussed his career as prosecutor, as counsel for Senator McCarthy, and as defense attorney for the famous and the infamous, as well as his own brushes with the law. Cohn said that he did not apologize for his views or for his right to express them.

Cohn's Presentation

In his own defense, Mr. Cohn spoke of how he, a Democrat, was chosen to serve as Counsel to Senator Joseph McCarthy's Permanent Investigations Subcommittee of the Senate Government Operations Committee because of his specialization in Internal Security matters. Mr. Cohn mentioned that the late Robert F. Kennedy was an Assistant Counsel to the same committee as if to vindicate his own role in the McCarthy business. The audience "shushed" an outburst by protestors which had been provoked by Cohn's remarks about communism and communists' made in defense of the McCarthy hearings. Cohn told his version of how both the Democratic and Republican Party leaderships had teamed up with the Eisenhower White House to discredit McCarthy during the famous McCarthy — Army hearings. A subcommittee of seven members — four Republicans and three Democrats — investigated the activities of Cohn and a subcommittee advisor on communism, G. David Schine, for their alleged pressure tactics against the army. In another attempt at eliciting sympathy, Cohn said former President, and then Eisenhower's Vice-President, Richard M. Nixon, engineered leaks to the press which were damaging to Cohn.

Trial Techniques

Cohn said he learned from Joseph Welsh, the Army Counsel in the McCarthy Hearing, to **divert from the legal and factual issue** and stress the flaws in an opponent's case in an effort to divert attention from the weaknesses in a client's case. Mr. Cohn advised that a defendant should almost never be placed on the witness stand. "Put on no case, put on a good cross examination," Cohn said, "for jurors tend to disbelieve witnesses, especially the last ones." Mr. Cohn received a warm response after he completed his presentation. He answered several questions on trial advocacy generally, as well as on his particular role in the McCarthy hearings and the Rosenbergs' trial, before time ran out. Cohn then moved to the foyer outside the Moot Court room where interested students continued to pry him for insights.

Cohn responded to a question on the ethical problems of being an advocate by stating that a lawyer "must detach himself from a client's cause and represent him well." He said the right to counsel is embodied in the **Code of Ethics** and lawyers must make personal decisions about whom to represent. (Mr. Cohn has represented reputed organized crime figures such as Carmine Galente and Carlo Gambino's sons, Joseph and Thomas). He said that he would not try cases involving hard drugs or an assault without provocation on a law enforcement officer.

Questioned about an intentional news leak in which client Steve Rubell, an owner of Studio 54, had claimed that Presidential Aide Hamilton Jordan used cocaine, Cohn said it was done without his input — he was out of the country — and that it was one of the stupidest things that anyone had ever done. Nevertheless, Cohn called his co-counsel very able lawyers.

On the issue of the McCarthy Hearings and the impact they had on innocent lives, Cohn dared anyone to "name one person hurt by the hearings. I do not think Senator McCarthy destroyed lives," he continued, "such blacklisting was inspired by the House Un-American Activities Committee." Cohn added that he believed that McCarthy was correct about the threat of communism to the free world and described the protestors as the image of McCarthy, objecting to free speech and frightening people.

Cohn proudly took responsibility for the Rosenbergs' execution.

Challenged as to the existence of a monolithic communist threat, Cohn found no significance to inter-communist conflict such as that existing between the Soviets and the Chinese and between the Chinese and the North Vietnamese. Cohn considers China's threat to Russia overrated and highly rates Soviet military capabilities. He pointed out that not one free election has taken place since 1917 in any communist nation that was taken by Soviet forces. Cohn said that he defends no dictatorships. He fears the destruction of Democracy and of self-determination. Cohn's anti-communism seems based as much on the vindication of his sojourn with Senator McCarthy as in his fears of the "Red Threat."

(Continued on page 11)

Poetry Corner

Twilight on rust — crisply pleasing autumal senses
I shuffle my way through crunchy
leaf carpets
hearing the too-sharp sound of
deadness.
I feel sinfully rejuvenated
as I
rosy-cheeked
gulp in the cool air
greedily.
Another year
another fall
and
I am still here
to revel in
the embers of
summer.

By Daphne

SUCCESS: A VIEW OF LAW SCHOOL
by Elizabeth A. Pratt

At the top of my class as a general rule,
I went through seventeen years of school.
I felt proud, but even more,
My teachers said "good career's in store."
I was bright and talented, so I thought,
At graduation time I'd be sought.

Starting law school I felt great,
Thought the law field was my fate.
I soon found, in my three years,
Some extraordinary, talented peers.

At law school life changed around,
At the top of my class? I wasn't found.
Instead I was amidst the crowd,
No longer confident and-or proud.

Knowing people brighter than me
At law school, I came to see
However hard I strived to excel,
I just could not do quite as well.

Students with sharp, perceptive minds.
It was frightening to find,
That my best was not so great,
That I might be second rate.

Yet I hope others will see
I'm a competent lawyer to be.
In the middle of my class it wasn't so bad,
I succeeded by using the talents I had.

TRIAL COMPETITION: UPDATE

The Northeast Regionals of the National Trial Advocacy Competition will be hosted by Hofstra Law School and will be held at the new Supreme Courthouse in Mineola. The competition will be held on the weekend of January 26th and 27th, 1980.

On Friday, November 10, 1979, twenty students tried out for Hofstra's team. The winners of the intramural competition were:

Dave Lazer
Joan Friedman
Dan Weiner
Vicki Lombardi
Frank Casale
Scott Glick

Any students wishing to assist in the staging of the competition as a host, hostess, witness or in any other capacity should contact Mark Kalmanowitz at 560-4588 or 560-3332 or Debra Wallerstein at 334-5298.

THE QUERYING

How do you feel about Mayor Koch's policy of announcing the

DEBBIE SCHULMAN '82— "Announcing the names of Johns may have a deterrent effect on those who are concerned with having their reputations tarnished or with the effects it may have on their families. However, it will generally not control the problem of prostitution. Prostitution has been going on for so long and is so out of control that more drastic measures are needed. Legislation may be the answer, whereas Mayor Koch's policy of humiliating these few men is not."

JIM FOSTER, '80—"The Mayor's policy is not an effective way of dealing with the problem of prostitution. Few Johns will be deterred because they know police enforcement is so lax that it takes weeks before enough arrests are made to compile a list of names to be read over the air. Johns will also have little to fear when they learn that few people will hear the announcements over N.Y. City's local radio station. In any event, if the Mayor's policy is continued, the names of any women arrested for patronizing prostitutes should be announced so as to provide unbiased enforcement of the policy.

DEBORAH SHERMAN, '81— "I believe prostitution should be legalized. However, as long as the legislature has decided otherwise, I strongly feel that it is NOT the mayor's position to place an additional punishment on the Johns. The legislature can and should provide for equality of punishment until such time as they realize the absurdity of criminalizing such activity. But, it is still NOT for the mayor to do."

Our apologies are extended to Prof. Robert A. Weiner (Artists Rights) whose given name inadvertently appeared in error in last issue of CONSCIENCE.

MONTHLY BUSINESS

by Chuck Faillace

This column is devoted to business concepts. Many persons at this school have had no business courses whatsoever and are afraid of the field. My objectives are to dispel the fears, inform, and generally de-mystify specific areas of business. I hope to make topics interesting and relevant; any reader suggestions are heartily welcomed. Future topics may include stocks and bonds, underwriting and the role of the investment banker, and the international monetary fund: what is it?

Products like pork bellies, oilseeds, copra (dried coconut meat and soybean oils), don't normally conjure up the same images of world markets and high powered finance as do the magical intonations of gold and silver. Nonetheless, they are all-important components of the same system—commodity markets. Commodities include natural resources such as wood, metals and cotton; foodstuffs like tea, orange juice, coffee, sugar, wheat, cattle and hogs; financial instrumens such as the British pound, the German mark and U.S. treasury bills; and minor items like copra, shellac, hides and skins.

Commodity markets deal with the problem of getting the commodity from the field to the producer which is, more than anything else, a distribution and transportation concern. Although the area of discussion in this article is commodity exchanges, not the distribution of commodities, as are commodity markets, one cannot exist without the other. A commodity market is called a "spot" market when goods are on hand and ready for sale to a buyer who wishes to take delivery. It is much the same as going to the store to buy a newspaper—you give the stationer the money and s-he gives you the paper; you give the cattle-raiser money and s-he gives you a cow.

Commodity exchanges deal in the future through the vehicle of a commodity futures contract. This contract is an agreement to buy and receive (or to sell and deliver) a stated quantity and quality of a specified commodity at a prearranged future date at a set price. This is the essence of commodity trading, and the key is the future price. Say, for example, that you purchase a contract now to obtain the delivery of goods in April. The price is agreed upon now; however, you are contractually bound to it in April. Meanwhile, due to market forces, the price will have changed from what it is now to what it will be then. Profit lies in correctly estimating that price movement.

Understanding that these futures are paper transactions and that no one need accept delivery of the good itself, is cardinal to the exchange. (Reasons become apparent later.) If delivery is desired, it takes place in the form of a warehouse receipt, not as the actual commodity itself. An investor need not worry about having 10,000 bushels of soybeans dumped on her or his front porch unless s-he wants it that way.

You may well wonder who cares about soybean or shellac prices. The answer lies in understanding that commodities truly reflect a world market: goods come from all corners of the globe depending on which nations have what resources. Whenever there are price differentials due to either place or time, there are persons willing to step in, assume the risk, and reap the profit. Many investors don't really care about the commodity itself; they view it as an opportunity to make money. Others, such as manufacturers who utilize the raw material, do care because the price of the raw materials affects the cost of their end product. Eventually all price effects filter down to the consumer.

Big business is not in the business of being charitable: its guiding light is net profit. While you may not care for the morality involved, this focus is determinative of who worries about prices. Everyone worries whether they realize it or not. Manufacturers pass on price increases in their costs one for one. When a consumer complains of high prices, among other things, s-he is unhappy with the prices of materials that comprise the good itself. Nevertheless, if you wanna dance you gotta pay the piper!

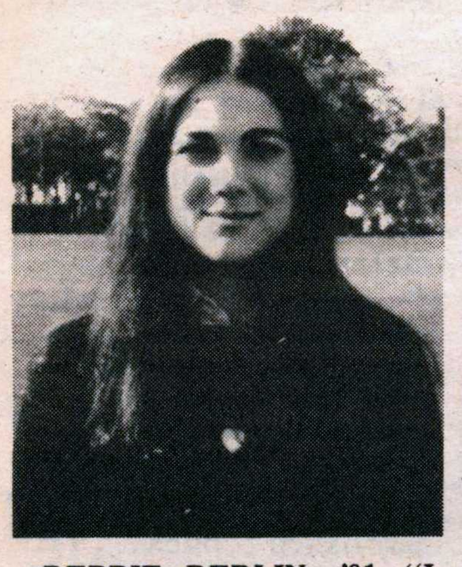
Commodity investment must be viewed within the framework of the universe of all possible investments. Comparative buying is critical to understanding the value of any particular investment and central to this is the issue of risk: i.e., what the probability is of losing your original investment. If the probability is high, the venture is risky, and if high risk is apparent, a rational investor would demand the possibility of high return. The correlation between risk and return is the major criteria upon which to decide whether the investment is worth considering in a particular financial situation. Commodity futures are an extraordinarily risky venture for speculators; consequently, rewards are also high for those who guessed right.

The mechanism of the market bears examination before we can understand who invests and for what reasons. Suppose you believe the price of corn will

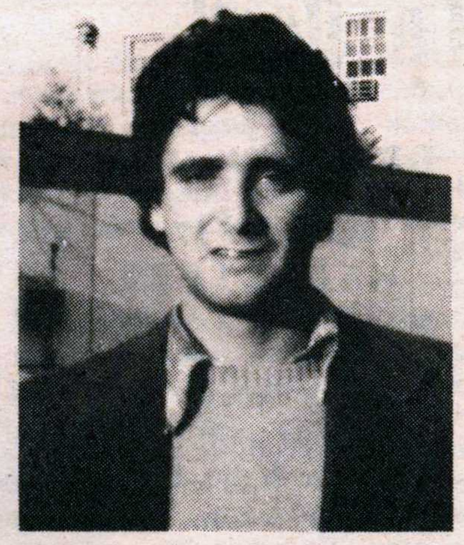
(Continued on page 5)

PHOTOGRAPHER

names of prostitutes patrons on the New York City radio station?



DEBBIE BERLIN, '81—"I think prostitution should be legalized, but as long as it is still illegal, the punishment should be made more equal than it has been in the past. The Johns have always gotten away without any sentence or with a small fine while prostitutes served short jail sentences or paid higher fines. Broadcasting the names of Johns on the radio, while it is a form of public humiliation, tends to equalize the punsihment. It's just too bad that Mayor Koch is spending time thinking up ways to punish prostitution rather than fighting for its legalization."



RUSSELL BURMAN '80—"No doubt a fine idea. Much better than fireside chats. The underlying premise of the Mayor's program is to deter clientele through fear of embarrassment or worse. It's similar to the colonial practice of dragging the guilty through the streets, subjecting them to public ridicule. Unfortunately, the Mayor is limiting the audience and the intended effect by the means that he chose. There should be daily reports in all major newspapers and "Dear John" letters sent to customers' homes. Until the program is fleshed out, it may turn out to be a waste of taxpayers' money."

LISA LEVINE, '82—"Mayor Koch's John list reminds me of the kind of punishment that the Pilgrims of the Hawthorne era would impose, i.e., a scarlet letter. In both cases social distain and scorn result, however, prostitution will not cease because it is an established institution. Instead of abandoning prostitution, customers will be more careful about their identity and find other ways to get around this "John rule." For the unfortunate who get caught, I forsee blackmail, broken marriages, and public scorn. One should also think about all the other violators of the law whose names are not announced."

Monthly Business...

(Continued from page 9)

rise in the near future (more on price movements later). Accordingly, you purchase a futures contract calling for 5,000 bushels of corn (the standard amount of one contract) to be delivered in May at $2.25 per bushel. If the price is actually $2.30 in May, you will have made $250, less transaction costs, on the deal; if the price is $2.20 per bushel, you will have lost an equal amount. This transaction would be termed a "long" position since you would have ownership. Think of a long position as a normal type of contcact of sale—one where you hope prices rise so that you can make money.

Short Position

Contrast this with a "short" position which amounts to selling what you don't own. Selling short is done with the expectation that interim prices will fall, enabling you to purchase back what you sold for less than the price at which you sold it. You would contract now to sell 5,000 bushels in May at $2.25 per bushel. Prior to May you go into the market and, hopefully, purchase a contract (to deliver to you) 5,000 bushels in May at $2.20 per bushel. Here, with similar facts, you will have made money ($250 gross) on a decline in price. The danger of a short position is unlimited liability. You are contractually bound to redeliver the contract, regardless of the cost to you. If the market goes against your expectations, you can take a severe beating. These principles operate in the same way on the stock market, the difference being that the stock market is "spot" in nature. Therefore, you need to have your broker lend you the shares you wish to sell out of his-her margin accounts with a contract specifying how and when you pay him or her back.

Margin and Leverage

Two conceptual realities enable the commodity exchanges to offer tremendous profits (and take equally tremendous losses): margin and leverage. "Leverage" is the result of margin or any other type of debt situation. "Margin" is where you are allowed to pay only a percentage of the total value of what you purchase, even though you exercise complete control over the commodity. In the commodity market the small amount paid is considered good faith money, evidence of an ability to pay, and not a down payment. Expressed as a percentage, the requirement is set by the individual brokerage house where you do business, but it must be above the minimum set by the particular exchange. Not all brokerage houses necessarily have the same margin requirement, though as a practical matter the differential is never that great.

The best way to explain margin is through an example. Suppose you wish to buy $10,000 worth of corn. Margin requirements are usually between 10 and 30 percent of value. Assuming that it is 10 percent, to control that $10,000 worth of corn you need only come up with $1000 cash. Think of this in terms of a see-saw. At one end is the weight of $10,000 worth of goods and in order to get the other end off the ground you need only $1000 worth of weight. In this manner, you are able to multiply your money's power by a factor of 10. This multiplication is the concept of leverage; it gives money muscle.

Of course this is not totally a one-way street. By utilizing margin you expose yourself to greater financial pains with market fluctuations. The reason is that the rules require you to keep your margin at the same value level. Suppose your $10,000 of corn falls to a selling price of $9,700. Most brokerage houses require that when your margin becomes "impaired" by 25 percent or more, you must put up more money. A margin is impaired when your margin minus your paper loss falls below a certain level, here a 30 percent drop. The broker doesn't want to bear the risk of your transaction so s-he puts out a margin call which tells you to put up more money, in this example, $300. That money would put your margin back to full value. The problem arises when the margin call comes at a time when you don't have the $300 needed. In that case, the broker will sell enough of your holdings to cover the loss, regardless of the loss you take on the sale. Commonly referring to stocks, the value of your margin, that which you own, is called equity. Equity applies to any position of ownership. The similarity to legal equity is totally unintentional. To appreciate the tremendous risks involved, it is important to realize that a mere 10 percent drop in the commodity price will wipe out your margin entirely. Yet, without margin you really can't control enough value to make the purchase worthwhile, unless of course you happen to be independently wealthy.

Investors: The Hedger and the Speculator

There are two distinct groups of people who invest in commodities: hedgers and speculators. Both contribute to the single most important reason for the futures market's success— to provide price insurance for producers and manufacturers, while these two couldn't be further apart in motive. Hedgers are primarily manufacturers who utilize a particular commodity. Their business is produc-

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CHEF'S BLEND

by Chef Glenn

'Tis time for me to come forward and out of the closet to reveal to you, the public, some of my favorite recipes. These are tried and true recipes which have been passed on through the ages to me, Chef Glen. Many of you are starving law school students or professors who can use the help I am about to give to you. Some of you have even had the opportunity to taste my delicious delectable delights at my various dinners and have wanted to know (and some have even asked me), "Chef Glen, how do you do it?" Well, no matter who you are, or for whatever reasons you may have, here is your opportunity to learn my secret recipes. These recipes will surely make your meals tastier. All will be simple so that your minds will not be cluttered with complicated details.

Feel free to comment on a recipe once you have tried it. Or, feel free to send me, Chef Glen, your favorite recipe and if I like it, I will use it in my column. Send all comments to me, Chef Glen via **CONSCIENCE.**

CLIP AND SAVE

FETTUCINE A LA CHEF GLEN

Ingredients:

1 16 oz. (or two 8 oz.) package medium egg noodles or fettucine noodles
2 egg yolks
3 cups milk
1 cup heavy cream
4 tablespoons butter or margarine
4 tablespoons flour
½ teaspoon salt
1 cup Ricotta cheese (or if you are tight on money, 1 cup dry fine curd cottage cheese)
½ cup grated Parmesan cheese
½ cup grated Romano cheese
2 to 3 tablespoons chopped parsley

1) Cook noodles according to package directions, drain and keep warm.

2) Beat the egg yolks; add milk and cream; mix well

3) Melt butter over low heat. Blend in flour and salt

4) Add milk mixture to butter mixture over low heat. Stir until smooth and thickened

5) Add the cheeses. Stir until melted

6) Pour sauce over noodles and mix

7) Sprinkle noodles with parsley

8) Serve.

This recipe will make 6 servings. Have fun and good luck!

Happy Thanksgiving

From

The Staff Of

Conscience

ANNOUNCEMENTS

The Bulletin Strip

Dean Regan reports . . . Progress has been made in the ongoing negotiations with the central administration over the "rake-off" problem of Law School siphoning funds to support the general Hofstra community. Follow up next month for details . . .

. . . The 2d Circuit Appellate Litigation Course has scored its first victory. A criminal conviction has been reversed. Congrats to the students who worked under Chris Glen's tutelage . . .

A Spring Legal Ethics Course to be resplendent with famous names along with our notable Monroe . . .

. . . Look to the upcoming issue of "Northwestern University Law Review" in December for the latest word on Conflicts of Law. The article written by our own Professor Aaron D. Twerski and alumnus Renee G. Mayer . . . Sure to arouse controversy within the field.

. . . And for all you law students whose relationships are either on the rocks or hopelessly down the drain due to law school, don't despair! You are not alone. A support group has recently been formed specifically for students like you. C.O.C. — Career Oriented Casualties — members can be found in the lounge sipping coffee and exchanging tales of woe. All eligible students are welcome.

Hofstra Law Update

The Agora Group at Hofstra Law School will sponsor a lecture by well known health consumer advocate, Samuel M. Levine, an Oceanside attorney, on the subject of "Protecting the Rights of the Handicapped." The lecture will be presented on November 28, 1 P.M., Hofstra Law School.

About fifty percent of the population has a direct, personal involvement with, and concern for, a family member with a serious, permanent physical, mental or developmental disability or handicap (about 20 percent of the population). Important new rights and benefits are now available to these families and persons with handicaps under many federal and state laws. These rights and benefits include: freedom from discrimination and new opportunities for jobs, housing, public accommodations, education, health, mental health and rehabilitation services, removal of architectural barriers, preventing institutionalization.

Persons with disabilities and handicaps, their parents, relatives and friends, and the general public, are urged to attend this important lecture. Ideas and information will be presented by Mr. Levine which may have an important bearing on solving some of the serious problems which people with handicaps face in the improvement of their health, well-being and life style.

For further information call Anita Lubetsky at (516) 248-0783 or Terry Markin at (516) 333-7929.

Public Sector Labor Law will be taught in the spring by a Distinguished Visiting Faculty member, Arvid Anderson. Mr. Anderson, who has just been named a neutral member of the Pay Board which monitors wage and price controls, is the chairman of the Office of Collective Bargaining of the City of New York. The 3-credit course is designed for third year students.

The new course offerings of **Patent Law** and **Accounting for Lawyers** have been added in response to student proposals and interest, demonstrated by students' signatures on lists in the Admissions Office. The professor slated to teach Accounting for Lazyers is as yet unnamed, but Special Professor Sevilly, a partner in a Long Island-based patent law firm, will be teaching Patent Law.

What's Up Doc?

On Campus

Hair, Dust, Lint, Etc....

Hair, dust, lint, powder, smoke and sand will be combined to form a five-week exhibit at Hofstra University's Emily Lowe Gallery in Hempstead.

From November 14 through December 21, **Remains — The Artist in Environment** will incorporate these materials into works of art. Artists included in the exhibit are: Banerjee, Randy Williams, Susan Fitzsimmons, David Hammons, Howardena Pindell, Cathy Billian and Senga Nengudi.

"Remains" are those materials which constitute the matter or substance left over from a primary action, explained Kevin Consey, Director of the Emily Lowe Gallery. Unlike "ready-made" and "discard" art, which are generally associated with the Dada movement, Mr. Consey said that "remains" have no particular purpose, function or definition clarifying their intent.

Special events in conjunction with this exhibition are designed to provide the public with an opportunity to meet with the artists. These events include:

—Installation and informal talk: November 11 from 3 to 5 p.m. by Senga Nangudi.

—Lectures: Nov. 20, Noon—Randy Williams; Nov. 27, Noon—Susan Fitzsimmon; Dec. 4, Noon—David Hammons; Dec. 5, Noon—Howardena Pindell; and Dec. 6, Noon—Cathy Billian.

—Performance: Nov. 29 at 7 p.m. "Duet to 2000." Banerjee (work of Fumage on canvas with sounds and music) and Dennis Cruz (music and sound composition with visual collaboration).

Hours for **"Remains—The Artist in Environment"** are Tuesday, and Wednesday, 10 a.m. to 9 p.m.; Thursday and Friday, 10 a.m. to 5 p.m.; Saturday and Sunday; 1 to 5 p.m.; closed Monday. For further information on this exhibition, contact the Emily Lowe Gallery, Hofstra University, Hempstead, New York, 11550, (516) 560-3275.

The Emily Lowe Gallery, Hofstra University, a member of the Association of Museums and the Long Island Museum Association, is a university art museum open to the public, free of charge.

November 20—THE HOFSTRA SINGERS—Kathleen Slixt-Meyhoefer, Director. A program of international folk songs for chamber chorus. Playhouse, 8:00 p.m. $1.50. ($1 to senior citizens and non-Hofstra students.)

DRAMA

November 17, 18—SIX CHARACTERS IN SEARCH OF AN AUTHOR — Award-winning play by Luigi Pirandello (part of Hofstra's Focus on Italy). Directed by Richard Mason. Provocative Italian dramatist uses the theatre to illuminate life, our superficial understanding of it and ourselves. Mr. Pirandello's most famous play. The West End Theatre. Tickets $2. All performances are at 8:30 p.m., except Sundays, November 11 and 18, which will be at 3:00 p.m. For reservations, call (516) 560-3281.

November 29—"SCENES COMIQUES DE MOLIERE A IONESCO"—In French, by Hofstra's French Drama Workshop. Directed by Gisele Kapuscinski. 10 a.m. and 7:30 p.m., Student Center Theatre, North Campus. $1 donation.

MUSIC (The Hofstra Chamber Music Series)

ART AUCTION

November 17 and 18—ON-THE-AIR AUCTION—Art, antiques and collectibles (tax deductible) will be auctioned on-the-air 1 Channel 21, noon to midnight. Professional dealers and gallery directors will conduct an auction. Benefit of WLIW/Channel 21 in cooperation with Hofstra University. Call 560-3528/9 or write Dr. Robert Myron, Art History Department, Hofstra University, Hempstead, N.Y. 11550.

November 18—THE AMERICAN CHAMBER ENSEMBLE — Blanche Abram and Naomi Drucker, co-directors. A program of works by Beethoven, Schmitt, Villa Lobos, Flanagan and Brahms, Herbert Beattie, guest artist. 3 p.m. John Cranford Adams Playhouse. Tickets $3. (Senior citizens and non-Hofstra students $1.50.)

MUSIC (The Fall Arts Festival)

FOCUS ON ITALY

November 29—LECTURE—"The Contradictions of Social Life in the Slums of Naples." First-hand report by Dr. Thomas Belmonte, Assistant Professor of Anthropology at Hofstra University. During 1974 and 1975, Dr. Belmonte lived in a Neapolitan slum to gather material for his recently published book, THE BROKEN FOUNTAIN. 3:00 and 7:00 p.m. 9th Floor, Library, North Campus. Admission free.

CONTEMPORARY AUTHORS SEMINAR

November 15—MURIEL RUKEYSER — Ms. Rukeyser speaks informally on her latest work, *Collected Poems* (1979), which brings together the work of this distinguished poet spanning four decades. Ninth floor, Library (Special Collections). Admission free. 3:45 p.m.

November 28—MORTON N. COHEN—Mr. Cohen will speak on the works of Lewis Carroll. Ninth Floor, Library. 3:45 p.m. Admission free.

Both lectures are presented by the Department of English and Hofstra Library Associates. Call Professor Arthur Gregor for further information. (516) 560-3876.

(Continued on page 13)

—S.M.

Discriminatory Clubs . . .

against in admission to the bar. Until the middle of the twentieth century, white lawyers excluded black lawyers from membership in the American Bar Association.

The Civil Rights Movement of the 1960's succeeded, however, in sensitizing large numbers of white Americans to the evil of racial injustice, and to the relationship between the degradation of social segregation and the successful imposition of an inferior economic and political status upon blacks. By the 1970's, therefore, even those who might lack an innate sense of justice can be expected to have developed sufficient sensitivity and concern to refrain from affiliation with clubs and other organizations that are known to be racist in their membership policies and practices.

In the context of that briefly summarized history of social and legal discrimination—including the essential role played by the federal judiciary in making racism a dominant social and political force—the appointment of a federal judge who has been a member of a club known to practice racism would be a shocking thing. Surely the United States Senate would be seen—and reasonably so—as condoning, if not sharing, the candidate's insensitivity to racial injustice.

I would not suggest, however, that such membership should automatically and conclusively constitute disqualification. Rather, it should create a heavy presumption against confirmation, with the weight of the presumption dependent upon the duration of membership and how long ago it was terminated. In addition, the candidate should be given the opportunity to overcome the presumption against confirmation by showing that he or she has established a record of active support for racial justice over a significant period of time.(3)

Further ground for a heavy presumption against confirmation of candidates who are members of clubs known to practice racism is found in the rules relating to disqualification of judges.

The most important area of federal jurisdiction is the resolution of federal questions. Within that jurisdiction, there are no issues more vital and controversial that a federal judge can be called upon to decide than those relating to equal protection of the laws. I believe that it would be irresponsible for the Senate to confirm as federal judge a candidate who would be unfit to sit in judgment in such important federal cases—a judge, that is, who would be disqualified under applicable law.

There are two relevant provisions under 28 U.S.C. § 455, which is the federal statute relative to the disqualification of judges. Section 455(a) requires that a judge "shall"(4) be disqualified whenever the judge's "impartiality *might* reasonably be questioned." (Emphasis added)(5) The other relevant provision is § 455(b) (1), which also required disqualification whenever the judge has "a personal bias or prejudice concerning a party." As the Supreme Court has held (apparently expressing a constitutional imperative and not just a statutory one), "any tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias."(6) Moreover, Justice Frankfurter has explained that a judge should be disqualified if there is "ground for believing" that "unconscious feelings may operate in the ultimate judgement" or "may not unfairly lead others to believe they are operating." The "guiding consideration," Justice Frankfurter held, is that "the administration of justice should reasonably appear to be disinterested," as well as be so in fact.(7)

Moreover, the judge's disqualifying bias may relate to a class of which a litigant is a member, regardless of any specific animus directed against the litigant individually.(8) The *Harvard Law Review* suggests, by way of illustration:

> " . . . Where bias against blacks is suggested by a white judge's prior expression of opposition to racial integration, he may be disqualified in a school desegregation suit . . . because of *a highly relevant bias against a class* . . . "(9)

The reference is to a white judge's "prior expression" of opposition to racial integration. Actions, of course, speak louder than words: joining a segregated club is far more significant than talking about segregation.

It seems clear, therefore, that a judge who has been a member of a club that practices racism is required by § 455(a) and 455(b) (1) to be disqualified from sitting in all cases involving allegations of racial injustice. As suggested above, the Senate should not confirm a judge whose essential functioning as a federal judge would be thus severely impaired. Indeed, there is only one more serious concern, that is, that such a judge might sit in judgment *despite* the disqualifying appearance of bias or lack of impartiality.

Imagine this case. You are a black applicant for membership in the bar of a state with a long history of social and legal racism. You believe that you have been the victim of racial discrimination in the administration of the bar examination, and you seek redress in a federal court. The judge, however, only two years previously, was president of a private bar association having a clause in its bylaws barring black lawyers from membership. The judge had made no effort to change the organization's racist policy or practice—until he became interested in federal judgeship. After reports in the press that he was being considered for the federal bench, the judge appointed a committee to review the bylaws, making no suggestion to it, however, regarding the racial exclusion clause.

The first contention is that the candidate is being held guilty by association. What we are concerned with, however, is not a case in which X is guilty of a wrong and Y is held guilty merely because of friendship or other innocent association with X. We have been assuming that the judicial candidate has chosen to join and remain a member of an organization, knowing that the organization practices racism with respect to its membership, and that the candidate has failed to make any significant effort to change those practices. Thereby, the candidate has knowingly participated in racist practices or, at least, has knowingly and voluntarily accepted racism as part of his or her own pattern of living.

A club or other organization does not practice racism as an abstract entity. It is the members, as individual participants, who are guilty if their organization, to their knowledge and with their tacit approval, practices racism.

Nor would it be correct to suggest that the candidate's freedom of association is being unconstitutionally impaired. There is, of course, a constitutional right to belong to a private organization that restricts its memberships, even on arbitrary grounds. Similarly, there is a constitutional right to refrain from civic activities, or from publishing scholarly articles, or from taking leadership responsibilities in the organized bar. For example, Congress surely could not constitutionally punish a lawyer for refusing to be an active member in the American Law Institute. Yet the Senate might well give positive weight to such membership in considering judicial candidates, and conversely, therefore, a competing candidate who had declined A.L.I. membership might be said to have been disadvantaged or "punished" thereby. That characterization, however, would be erroneous in that context.

The controlling consideration, of course, is the relevance of the activity in question as a bona fide qualification for serving on the federal bench. Thus, it is entirely appropriate for the Senate to give affirmative weight to active membership in civic and bar associations (even though such activities could not be constitutionally compelled). And it is equally appropriate to give negative weight to knowing involvement in racist activities (even though such activities could not be constitutionally proscribed), because such conduct on the part of a judicial candidate manifests a lack of essential sensitivity and constitutes a basis for disqualification to sit in judgment in an extremely important category of federal cases. (10)

Finally, assuming that a particular judicial candidate is deemed eligible for confirmation despite membership in a club known to practice racism, is the candidate's refusal to resign from such membership a basis for disqualification? In view of the foregoing discussion, it seems clear that a judge who is that deeply committed to maintaining a racist association, despite the appearance of bias thereby created, is statutorily and constitutionally unfit to adjudicate a case involving allegations of racial injustice.(11) Accordingly, it is respectfully submitted that it would be irresponsible for the Senate to confirm such a candidate for the federal judiciary.

Conclusion

Membership in a club or other organization known to practice racism in its membership policies should create a heavy presumption against confirmation of a federal judicial candidate. The weight of the presumption should depend upon the duration of the membership and when it was terminated. The candidate should be given the opportunity, however, to overcome the presumption by showing an established record of active support for racial justice. Nevertheless, the refusal of a judicial candidate to resign from a club known to practice racism should in itself be grounds for disqualification to sit on the federal bench.

Footnotes

(1) 19 How. 393 (1857).

(2) *Ibid,* 407 (emphasis added). Long before Chief Justice Taney expressed those horrendous views from the bench, his attitudes were known. See Swisher, *Roger B. Taney* 151-155 (1935).

(3) An extreme but effective illustration of how the presumption might be overcome is the case of Justice Hugo Black. Challenged with his earlier membership in the Ku Klux Klan, Justice Black was able to say, without contradiction:

> "My words and acts are a matter of public record. I believe that my record as a Senator refutes every implication of racial or religious intolerance. It shows that I was of that group of liberal senators who have consistently fought for the civil, economic and religious rights of all Americans without regard to race or creed . . . "

Frank, Mr. Justice Black 105 (1949).

(4) The parallel provision of the ABA Code of Judicial Conduct, Canon 3(c)(1), says "should" rather than "shall." Section 455 therefore manifests a clear Congressional imperative in such cases.

(5) I agree with the gloss put on the same language in Canon 3C(1) of the ABA Code of Judicial Conduct, that is, that the reference is to any conduct that would (I prefer "could") lead "a reasonable man knowing all the circumstances" to conclude that the judge's impartiality might reasonably be questioned. Thode, *Reporter's Notes to the Code of Judicial Conduct 60 (1973); accord, Rehnquist, Sense and Nonsense about Judicial Ethics* 9 (1973).

(6) *Commonwealth Coatings Corp. v. Continental Casualty Co.,* 393 U.S. 145 (1978).

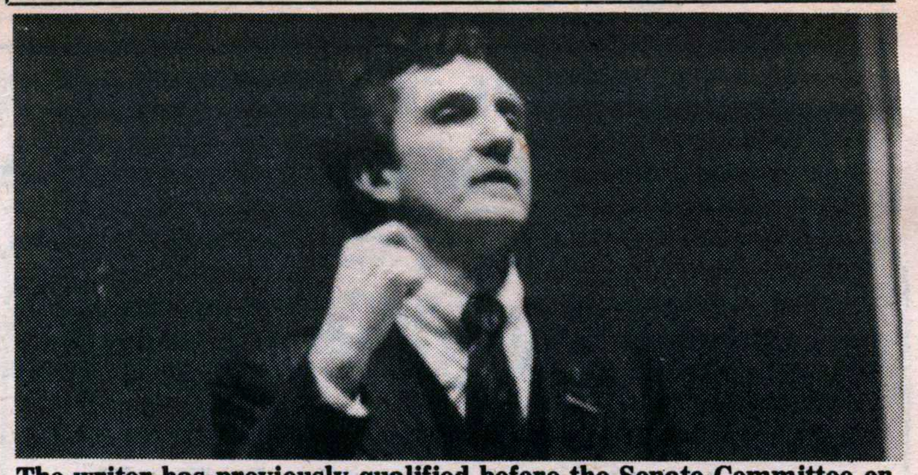
(7) *Public Utilities Commission v. Pollack,* 343 U.S. 451, 466-467 (1952) (separate opinion).

(8) See, e.g., *Berger v. United States,* 255 U.S. 22 (1921).

(9) Note, "Disqualification of Judges," 86 Harv. L. Rev. 736, 757 ( ) (emphasis added).

(10) Membership in ethnic clubs, such as the Hibernians, Sons of Italy, etc., is therefore clearly distinguishable: Such membership would not disqualify a judge from hearing a case, except in the most unusual or fanciful circumstance, because there is no history of oppression—as with racial discrimination against blacks—with which membership in such an ethnic club is necessarily associated. In addition, and for the same reason, the membership policies of an ethnic club would not constitute "invidious discrimination."

(11) In the public statement quoted earlier, Jutice Black said pointedly: "I did join the Klan. I later resigned. I never rejoined . . . I have had nothing whatever to do with it since that time." Frank *op. cit.* Thus, Justice Black did two things relevant to the present inquiry. First, he established an enviable record in the Senate as a champion of racial justice; second, he clearly and permanently severed his earlier racist associations.



The writer has previously qualified before the Senate Committee on the Judiciary as an expert witness on judicial ethics.

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, D.C. 20510

September 27, 1979

Mr. Monroe Freedman
Professor of Law
Hofstra University
Hempstead, New York 11550

Dear Professor Freedman:

I would like to extend to you my personal appreciation for your invaluable assistance to the Senate Committee on the Judiciary.

Your expertise on the issue of a judicial nominee's membership in clubs which invidiously discriminate greatly assisted the Committee in establishing a unanimous position on this most sensitive issue. I view the Committee's action as a great step forward in our efforts to appoint a judiciary which is truly responsive to the needs of all Americans.

Enclosed for your information is the Committee's entire memorandum on this issue, plus other materials which may be of interest to you. I am taking the liberty of forwarding your memorandum to the Judicial Conference, which has scheduled this issue for consideration at its January meeting.

Again, let me thank you for all your efforts and interest in this matter. I have advised my staff to keep you informed of further developments in this area.

With warmest regards.

Sincerely

Edward M. Kennedy

Viewpoint

CONSCIENCE welcomes your viewpoint on issues affecting the law school. All articles must be typed and triple spaced and include your name and phone number. They may be dropped off in our admissions office mailbox in care of Viewpoint.

by Mark Chinitz

I once went to a party attended chiefly by medical students. All they did was talk medicine, a strange language of vertebra and aneurysms; even the cadaver jokes were dull. Last year I attended a law student party. All they did was talk law, a misleading language of ordinary words twisted into obscure meanings; even the divorce tales were passe. Just recently I dropped into a party of both doctors and lawyers; all they did was commiserate about malpractice suits. The only person who looked as if he was enjoying himself was the specialist in malpractice suits; he grinned all evening.

Last year, as a first year law student, I was faced with the spectre of becoming a law-junkie. I was locked into a pattern of doing course work until the time I decided to sleep. From waking until bedtime, law was all I saw; a bleak outlook on the world to say the least. I was unsure what to do about this, but my mind was made up sometime in October, when I ran into a dangerous looking group of neurotics wandering around the second floor. They had just been to the Placement Office and they looked mean. Thinking quickly, I ducked into the lounge, sat down and feigned an anxiety attack. They seemed satisfied and passed me by, and continued down to the library. They wandered aimlessly until midnight amidst stacks of books not yet read, but fearful they might some day have to know.

I decided at that point that life as a professional neurotic was not for me: it was too much work. On my way back to Tower F, I stopped into the Undergraduate Library and searched for a library book. I was pleased to find **Bleak House** by Charles Dickens, one of my favorite authors. After I posted bond, I was allowed to borrow it, and every night before going to bed I made it a point to read at least one chapter. Anyone who knows Dickens can tell you that it took me a long time to finish the book. The effort was well worth it and the time well spent.

It was a welcome diversion from Mr. LaFave and his miserable books. And, as a tool to help me relax and enjoy the finer side of life, i.e., fiction, my reading late every night became, not only invaluable, but something I anticipated with pleasure. I felt human again, almost as if I were not a law student.

Since then, I have always kept something by my bed to read, something that had little or nothing to do with law school. A shocking revelation: sometimes I would actually sneak off to a movie and (dare I say it) enjoy myself! To compose myself after such an escapade and once more become more presentable to society (especially necessary after a particularly enjoyable movie), I would think of Administrative Law or Evidence; I've never been caught or found out.

Law School can be a depressing place, especially for first year students struggling with huge quantities of work and new concepts. But everyone is susceptible to the problems of allowing the work to get to them. A regular diversion is not only relaxing but it can actually increase work-output by keeping one in a better frame of mind. Books, movies, plays, music, or whatever, should be as much a part of anyone's life as schoolwork. Just set aside the time.

Oh yes, my reading of **Bleak House** was discovered one evening while I was lying in bed reading. An acquaintance walked into the room to say hello. When she saw the book she grew agitated. "How can you possibly read that while Wayne (LaFave) beckons from the shelf?", she asked, melodramatically. She was upset at her unfinished work and my apparent nonchalance. I reassured her: "Don't fret, much of the plot revolves around the Chancery Courts." Perturbed, she glided away into the misty night of criminal intent.

WRITE FOR THE CONSCIENCE· SUBMISSIONS MAY BE LEFT IN OUR ADMISSIONS OFFICE MAILBOX.

conscience

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CONSCIENCE is published on a monthly basis from September to May by the students of Hofstra University's School of Law, Hempstead, New York 11550.

The editorial board is committed to bringing Hofstra Law a competent, informative, lively newspaper which adheres to professional standards. Accordingly, we'll strive to meet the responsibility that derives from first amendment guarantees.

All of you—students, faculty and staff—are encouraged to make editorial suggestions, submit articles for consideration and, of course, write letters to the editor. Regarding submissions: please type (triple space) and include name and phone number. Submissions may be dropped off in our admissions office mailbox.

CONSCIENCE is distributed free of charge to members of the law school community. Funding comes from advertising revenue and the student activity fee. Subscriptions for all others: $5 per year.

An Open Letter to the Students Who Use the Library and Lounges:

As a third year student I have noticed an increasing deterioration in the condition of both the Library and the lounges.

The Library has become impossible to use. There are more volumes on tables, other flat surfaces and even in the Xerox room than there are on the shelves.

Even if the library employed double the staff, it would be impossible to keep up with the reshelving.

The problem shows a complete lack of respect by students and other library users, for fellow students, and in turn, a lack of self respect.

A similar problem exists in the lounges. It is beyond my comprehension that one who has coffee or soda, or brings lunch from the deli, can get up and leave his-her garbage on the tables or floor. Instead of providing a place to relax for a few minutes between classes, the lounges now provide a place to feel physical revulsion. The conditions are more appropriate to a subway station or Times Square, than to a Law School.

Barbara Kopman
Class of 1980

MAILBOX

It was a most gratifying sight to see young people demonstrating to inform other young people of the frightening activities with which Roy Cohn has been associated. This took courage, initiative and caring. It was important that no one go away from Mr. Cohn's highly skilled and often practiced "confrontation with the opposition" without the idea that "there was something rotten in Denmark!'' This could easily have been expected to happen in 25 years. The demonstration was also conducted with wisdom as Mr. Cohn was allowed to put on his show.

As someone who was up in the front row professionally and as a witness to the destruction of the hopes and dreams of friends and family members I cared for and respected during the whole period of McCarthyism, I was ambivalent about attending. I made the decision to go because I also admire the students who are making the heroic effort to get the Trial Advocacy Club off the ground. One of the services of such a Club is to show us first hand what lawyers are up against — people like Mr. Cohn.

My initial reaction to seeing the demonstration was one of embarrassment because I thought he was not going to be allowed to speak. Then I was embarrassed with myself because I too should have been holding a sign. The real targets of McCarthyism were not the people in the headlines of the time. The real target was people like me — silenced by fear for myself. Democracy is very fragile. I believe Sinclair Lewis was correct when he warned us that "it can happen here." I worry about this very often, but when I saw our demonstrators Wednesday, October 24, I felt that maybe I am wrong and it is less likely. I am comforted by the idea that the students who demonstrated are going to be lawyers.

I thank both sets of students — those who conducted the demonstration and those who are building the Trial Advocacy Club. It is a pleasure to be with you at Hofstra Law School.

Sincerely,
Mildred W. Abramowitz

Great Debate

It was a delight to be present on Friday, October 26, when Professors Monroe Freedman, Leon Friedman, and Linda Champlin put on a demonstration of how two of the Supreme Court Nixon cases might have been argued.

I am aware that others of our professors have also done this, but I have not had the opportunity to attend. Whenever it happens, it is an exhibition of the highest quality of professionalism — as teachers and as lawyers.

Sincerely,
Mildred W. Abramowitz

Writer's Reply

I would like to thank all those who responded or reacted to the article I wrote in the last issue of **CONSCIENCE**, entitled "Hofstra: Where's That?" The topic is one that has caused me to brood for quite some time. Since large numbers of people approached me after having read the article, it is obvious that the "Hofstra: Where's That?" syndrome is one which has affected everyone, making each of us more aware of our vulnerability as job-seekers.

I am glad that I was able to use **CONSCIENCE** as a medium by which to express something which is apparently very much on the minds of many people at Hofstra Law. I only hope that the article is a catalyst in achieving the next stage of this Law School's career, namely, "Oh, Hofstra. Isn't that the number one law school in New York?" Is that wishful thinking? I could get arthritis if I kept my fingers crossed for much longer, but then again, one never knows, do one?

Daphne Gronich

For The Record

Frequently the cases which are read in Law School, although real enough, seem to be remote or abstract. Witness little Brian Dailey surreptitiously borrowing a little old lady's chair, "knowing that she would sit where the chair was not." Witness Mr. Kitner innocently intending to shoot a wolf, later discovering to his dismay that he had shot Mr. Ranson's dog dressed in wolf's clothing.

When my name was given a bit

(Continued on page 9)

Letters to the editor shall be edited for grammar and as space requirements necessitate. In all instances special care will be taken to preserve the writer's substance and context. Any letters which the author wishes to be printed "as is" must so specify. The editors reserve the right to print submissions based on newsworthiness and fairness for opposing points of view.

—Ed.

Next Conscience

Deadline: Wednesday, November 21, 1979

OPINION

Edgy? Grumpy, lately? Is that our excuse for leaving coffee cups, deli rolls and paper bags on our school lounge tables? If so, maybe we are suffering from the institutionally created, food machine sedated, lagging at the law school blues.

While there is no justification for failing to take care of what we have, it seems that our present facilities have encouraged many of us to treat our lounges like a resting place in a mid-city bus terminal. Understandably, however, once coffee or some other in-between-class refreshment has spilled on your notes due to the perennial wobble of our typical lounge table, pent-up frustration often dictates no desire for cleaning up after oneself.

Another hypothesis offered is that "modern day university institutional orange" presented by our furniture decor in "wood framed flatter than wet-look vinyl," provokes the baser instincts. Lack of ashtrays and floors which are hard and easily swept tend to ask for cigarette butt sprinkling, while metal coated cardboard ashtrays which occasionally appear but spin away when one seeks them out, suggest, by emphatic appeal, that we supply a willing floor with its due regard. Food machines which say "eat my products if you dare" do not spur thoughts of ecology and personal hygiene. Colored candy wrappers strewn on tables almost seem to cheer up an otherwise sterile, wobble-tabled, cold hard environment.

Secretly, we long for the vacuum cleaner and the basic tweed non-vinyl couch, and of course, the something-other-than-plastic easy chair. Inwardly we know each of us **could** contain our dirt, if we really wanted to or had a reason to do so.

At some point in life, each one of us has been subjected to the ancient lecture: Respect yourself and you will be respected. Respect your property and that too will be treated with care by others. Clearly the inverse of that adage can be applied—those who are offered respect generally reciprocate.

We are all subject to our own frenzies, our own pressures—students, faculty, and administration alike. Students, however, are subject to two things which other groups are not: 1) traditional law school mania; and 2) 4200 dollars yearly tuition. These considerations dictate one minimal provision that we deserve: a decent and dignified atmosphere in which to relax and enjoy conversation during a tiring day of intermittent classes. Not only is this the base requirement to evoke good feelings, mutual respect and confidence in the dignity of our own institution, but perhaps this is also the threshold of Law School and University respect for its law students. We do deserve more.

Impressions

Food For Thought

by Kenneth Mollins

When I was a very young boy I used to like to eat Oreo cookies. Of course there were many ways to eat an Oreo. For instance, you could separate the outside cookies from each other and lick the white creamy inside. Or you may have liked to eat the cookie as a whole. My favorite way to eat an Oreo was to finish the inside cream as quickly as possible and let the hard chocolate cookie melt in my mouth. A hand full of Oreos and a huge glass of milk—I could think of nothing better.

Unfortunately my mother would always end the ecstasy by saying "Too many cookies are no good for you. Eat food, not junk." And she would take my Oreos away. Soon she even stopped buying this delicious junk.

As I aged slightly I found new joys in eating. What more could a growing child want then a box of Chuckles? Those delicious sugar coated jelly squares. They could kill a diabetic in an instant but to me, a growing boy, they were great. If I couldn't find Chuckles I would settle for Pom Poms or a Nestle's Crunch Bar. They were chocolate and just as good. Those tasty treats along with an orange drink could make addition, subtraction, penmanship and social studies almost a joy.

Unfortunately my father laid down the law. He said, "Stop eating this junk—You'll get fat like a pig." "Besides," he said, "This garbage is unhealthy." So I cut down on my Pom Poms and Chocolate Bars. Chuckles were hard to kick, so I would sneak in a package now and then.

As 5th grade became history, I took a liking to ice cream. I liked creamsicles and pops but I found more delight in an ice-cream sandwich than in any of the others. I used to begin my culinary delight by licking the four sides until the ice cream became soft. Then I would bite into the sandwich, meshing the outer crackers with the soft ice cream and swallow the soothing refreshing mixture. I did this often until one day I heard— "How much of this are you going to eat? It's no good for you." No, not my mother or my father, but my pediatrician.

As adolescence became a reality my appetite turned to desserts. Sure I liked egg salad, ham and cheese and a bagel and cream cheese but these were my appetizers. Desserts like rice pudding, chocolate pudding, Twinkies, Cheese Bitz, chocolate milk, and chocolate cake were, to me, the beginning and end of the meal. Life for me was just one big dessert. Biting into the top of a Twinkie with the expectation of getting to the cream made the meal one big. . . "You Fat Pig, Stop Eating All That Trash—It's For Your Own Good, Chubby." And they were supposed to be my friends?????

Well, adolescence passed and I became excited about going to Law School. I knew once at school I could set my life into a routine. I brought up a poster to hang on my wall. It was called A Dieters' Prayer. I was to begin a new life, a new adventure, a different experience. I walked into the building where I thought I would find some of the answers to my questions. Into the student lounge I proudly marched. . . but wait. . . I was dazed. . . look what I found . . . *Oreos, Chuckles, Pom Poms, Nestle's Crunch, Orange Drink, Creamsicles, and Pops and Ice Cream Sandwiches — And More — Egg Salad, Ham and Cheese, Bagels and Cream Cheese, Rice Pudding and Chocolate Pudding and Twinkies and Cheese Bitz and Chocolate Milk, and Chocolate Cakes . . . Was this Heaven??????* Hey Mom, Hey Dad, Hey Doc., Hey Fellas—You were wrong!!!!! I found the truth here at Hofstra.

For The Record...

(Continued from page 8)

of libelous notoriety by "The Chronicle" (Oct. 25, 1979) the remoteness of the case law became all too close. First, a bit of history.

The Supreme Court has recently held that a plaintiff in a libel action may delve into the subjective knowledge of a reporter in ascertaining the necessary intent in sustaining an allegation of libel. Subsequent to this decision, numerous newspaper editorials condemned this ruling as an unreasonable constraint on First Amendment guarantees of Freedom of Expression. The holding was perceived as destructively deterring reporters from printing stories that we the people (to recoin a phrase) had a right to know about. On the other hand, supporters of the holding claimed that it would deter only those stories which reporters could not justifiably uphold through a showing of reasonable journalistic care with regards to a private person, or absence of malice when dealing with a public person.

Gertz v. Robert Welch, Inc. 413 U.S. 313 (1974).

When the **Chronicle** stated that I had said that Roy Cohen " . . . shouldn't be here . . . he should be shot . . . " I became the victim of the type of incompetent reporting which the Court wished to prevent. Not only did I never make that remark, I was never even interviewed.

I certainly recognized the importance of a journalist's need to express and communicate the news. However, this right must be balanced against the individual's right to be free from such unfounded expressions even at the cost of reasonably safeguarding the potentially awesome power of the journalistic pen.

Michael F. Bachner

It does not seem that the newer Supreme Court inroads into the subjective knowledge of the reporter and potentially, that reporter's sources, are necessary to make your claim here. No standard has ever protected journalism which is completely irresponsible.

—Editor

Weber: A Model Of Inconsistency

by Randy Levine

The October CONSCIENCE contained an article entitled, "Weber: The Real Deal." It is my belief that, to many, the Weber decision resulted in a raw deal.

In his majority opinion, Justice William Brennan discarded both the legislative intent that gave birth to Title VII and the court's prior track record in determining employment discrimination claims.

History

The suit was brought by Brian Weber, a 32-year-old lab technician at Kaiser Aluminum and Chemical Corporation in Gramercy, Louisiana. Weber was distraught at not having been admitted into a craft training program at the Kaiser plant because of a recently implemented affirmative action plan agreed to and negotiated in a collective bargaining agreement by Kaiser and Weber's union, the United Steelworkers.

The plan originated at the urging of the office of Federal Contract Compliance, which advised Kaiser to correct the racial imbalance in the number of skilled craftsmen employed by the company. At the time the plan was to be instituted, there was a great disproportion in the ratio of black to white skilled craftworkers (5 blacks out of 273). The program sought to achieve one goal—to bring the amount of skilled black craftsmen into equal proportion with the amount of black residents living in Gramercy, Louisiana.

The affirmative action program operated as a one-to-one program. This meant that two separate, distinct pools were organized; one black and one white. Based on an individual's seniority in each distinct pool, trainees would be admitted into the training program.

Anyone admitted into the program was assured a higher ranking and a better paying craft job at the Kaiser plant.

The conflict arose since Weber, and many of his white colleagues, had more seniority than black workers, who, because of the affirmative action program were moving into the training program before them. Weber claimed that the separate induction from the two pools was in effect, reverse discrimination. He alleged that he was being penalized solely because he was white. Weber argued that both black and whites were equal employees and union members and that they should be treated as such. He claimed that entrance to the program should be determined solely on the basis of the traditional union opportunity system of seniority.

A Model of Inconsistency

The dissenting opinions by Chief Justice Burger and Justice Rhenquist represent the proper interpretation of Title VII. Justice Brennan's opinion represents a model of inconsistency.

As Chief Justice Burger explained in his dissenting opinion, there is a difference between voting as a member of Congress or expressing an opinion on social problems as a citizen and resolving a conflict as a jurist.

Blacks and other minorities have suffered grave injustices in the United States. But it is wrong to disregard a statute in order to achieve social change. In **U.S. v Rutherford,** (slip-op-at June 1979), the Supreme Court reaffirmed its duty to construe, rather than to rewrite, legislation. In **Weber,** the majority rejected this principle.

The Brennan opinion was based on the premise that, in passing Title VII, Congress intended not to prevent discrimination in employment for all citizens regardless of race, color, religion or national origin, but only to aid the black American in this fight for equality.

The Congressional Record tells a different story. Page after page of debate transcripts demonstrate that Congress intended Title VII to protect all citizens. Senator Hubert Humphrey, the champion of minorities in the Senate, stated, "The truth is this bill forbids discriminating against anyone on account of race. This is the simple and complete truth about Title VII. Nothing in the bill would permit any official or court to require any employer or labor union to give preferential treatment to any minority group."(1) Senator Harrison Williams of New Jersey, stated, "Those opposed to H.R. 7152 should realize that to hire a negro solely because he is a negro is racial discrimination, just as much as a white-only employment policy. Both forms of discrimination are prohibited by this bill." (2) Finally, Senator Moss of Utah added: "This bill does not accord to any citizen advantage or preference. It does not fix quotas of employment; it does not force personal association. What it does is to prohibit public officials and those who incite the public generally to patronize their business or to apply for employment to utilize the offensive, humiliating and cruel practice of discrimination on the basis of race. In short the bill does not accord special consideration, it establishes equality." (3)

The message of these Senators was crystal clear; protection against discrimination in employment for all citizens. In reaching its conclusion, the majority refused to recognize the plain meaning of words in the English language.

The 88th Congress even had the foresight to recognize the problem of disruption of established seniority systems. A report prepared by Senators Clark and Case, bipartisan floor managers of the bill, stated, "This bill would have no effect on established seniority rights. Its effect is prospective and not retrospective. Thus, for example, if a business has been discriminating in the past and as a result has an all-white working force, when the bill comes into effect the employer's obligation would be to fill future vacancies on a nondiscriminatory basis. He would not be obliged or indeed permitted to fire whites in order to hire negroes or to prefer negroes, or once negroes are hired, to give them special seniority rights at the expense of white workers hired. (5) Better arguments could not be made by Brian Weber's attorney.

Judicial Detour

In **Weber,** the Supreme Court has detoured from the precedent it established in earlier Title VII cases. In making this radical transition, the court has improperly provided notice to employers who believed they were in compliance with Title VII standards.

The court first addressed the potential problem of employment discrimination in **Griggs v. Duke,** 401 U.S. 414 (1971). In that case, black workers were denied employment due to a lack of a high school degree and the failure to pass certain intelligence tests. Interpreting the spirit of Title VII, the Court held that, "Congress did not intend Title VII to guarantee a job to every person regardless of qualifications. In short, the act does not command that any person be hired simply because he was formerly the subject of discrimination or because he is a member of a minority group. Discriminatory preference for any group — majority or minority — is precisely (and only) what Congress has prescribed."

Three years later in **Alexander v. Gardner Denver Co.,** 415 U.S. 34 (1974), a black worker's discharge was upheld and the Court stated, "Congress enacted Title VII to assure equality of employment opportunities by eliminating those practices and devices that discriminate on the basis of race, color, religion, sex or national origin."

MacDonald v. Santa Fe, 427 U.S. 273 (1976), forced the Court to deal directly with the question of reverse discrimination. Three employees — two white and one black — were found misappropriating company property (stealing antifreeze). All three were engaged in the same activity, but the black was retained, while the two whites were fired. The whites brought suit alleging a Title VII violation. The Court, in a decision by Justice Marshall, concurred in by Justice Brennan, held "Title VII of the Civil Rights Act prohibits the discharge of any individual because of such individual's race. Its terms are not limited to discrimination against members of any particular race. Title VII prohibits discriminatory preference for any racial group—minority or majority."

The doctrine of a colorblind Title VII was continued on **Teamsters v. U.S.** 431 U.S. 324 (1977). The focus here was a seniority system that disadvantaged blacks. It forced them to lose seniority when moving from low to high-paying positions. The Court struck down the system, stating that Congress did not intend to legalize seniority systems that perpetuate discrimination.

Finally in **Furnco Construction Co. v. Waiters,** 438 U.S. 567 (1978), decided only one year prior to **Weber,** the Court refused to allow a Title VII suit alleging employment discrimination against a company that hired no minorities solely because its hiring foreman knew none, and held that Title VII mandates that the obligation imposed by Title VII is to provide an equal opportunity for each applicant regardless of race, without proper regard to whether members are proportionately represented in the work force.

Conclusions

The **Weber** case has startling ramifications. It is now possible for the Federal Government to pressure private employers engaged in government contracts by dictating who to hire and fire. Both Kaiser and the United Steelworkers began the affirmative action program as a result of pressure from the Labor Department's Federal Office of Contract Compliance. Utilizing this pressure, the government is taking away the sacred managerial right of a private employer to run a business with whichever personnel s-he wishes. Eleanor Holmes, Executive Director of the EEOC, confirmed that in the **Weber** decision the court sanctioned the use of governmental pressure. "The **Weber** decision should result in a relaxation of EEOC affirmative action guidelines which require some proof of past discrimination before corrective programs can be required. Voluntary affirmative action is now safer than waiting to be sued by the government." (5)

The **Weber** decision threatens the rights of every American. If Justice Brennan's view is accepted, the only groups protected against job discrimination are minorities.

Today, Brian Weber and many other Americans are seriously questioning whether all citizens in the U.S. do indeed have equal protection under the law.

Footnotes

(1) 110 Cong. Rec. 5423, 1964
(2) 110 Cong. Rec. 11846, 1964
(3) 110 Cong. Rec. 14328, 1964
(4) 110 Cong. Rec. 7213, 1964
(5) **Newsday,** June 28, 1979, pg. 13.

Native Americans

(Continued from page 1)

traditional people, may ultimately mark the destruction of the Mohawk nation.

On August 28, 1979, New York state officers converged upon an encampment of the Mohawk people at the Akwesanse Territory in upstate New York and attempted to arrest the 23 persons indicted in the May 29 takeover. Some of those were Chiefs of the traditional government, Clan Mothers and other loyalists to the Longhouse government. The 12-hour siege ended, and an incident similar to the likes of Attica and Wounded Knee was diverted, when state officers withdrew after learning that followers of the traditional government were prepared to defend their leaders and their right to self-determination with their lives, if necessary.

Infringements Upon Sovereignty

As a defense, Chief Thompson contends that state jurisdiction over the Indian territories is in violation of the Treaty of Canandaigua of 1794, Art. VII. The traditional people feel deeply about their right to self-determination, and are opposed to "representation" by a tribal council which is not widely recognized, and as such, does not produce a substantial voter turnout. Native Americans also presently object to the further erosion of their sovereignty by legislation conferring state jurisdiction over criminal matters which occur solely on Indian land. Federal enactments granting New York state jurisdiction in both criminal and civil matters, 25 U.S.C. 232, has been met by objection from the Longhouse government claiming that the provision is in violation of the sovereign rights of the Six Nations set out by the Treaty of Canandaigua of 1794. The Longhouse government contends that the treaty should be upheld as a matter of international law and under the United States Constitution Art. VI Sec. 2. It is further argued that the federal statute does not sufficiently indicate a "clear and unequivocal Congressional intention to abrogate the treaty," a requirement for the validity of a statute in contradiction to a treaty, imposed by the United States Supreme Court in its holding in **Menominee Tribe v. U.S.,** 391 U.S. 404, 413 (1968). However, the position firmly maintained by the Indian nation, is that a statute is not sufficient to relieve the United States of its treaty obligations under international law. Native Americans see this act as just another in a long history throughout which the United States has ignored treaties with the Indian nations when it has been beneficial to the country to do so.

Some native Americans say that the policy of the U.S. government has always been one of colonialization of Indian land and the taking of resources for the benefit of U.S. economic interests. It is a policy of encroachment, rather than a policy adhering to the Constitutional mandate of according respect to such treaties as the "Law of the Land." There is no historical evidence they say, to support United States jurisdiction within Indian territory, just as one sovereign nation cannot unilaterally assume jurisdiction over another sovereign nation.

Lastly, it should be noted, that even should the federal statute conferring state jurisdiction—criminal and civil—over Native American territories be upheld as either not in violation of the Treaty of Canandaigua or as constitutional, New York State need not exert jurisdiction under it. While the statute is permissive in nature, and confers jurisdiction when state officials deem it proper and necessary to invoke it, the statute contains no mandatory provisions. State officials are implored to refrain from exerting such jurisdiction in deference to principles of international and domestic law, and to desist in the arrest and conviction of Mohawk people when internal domestic disputes occur solely within native American territories. At the time of this writing the state has seen it proper to follow a course of action strictly contrary to a policy of respecting sovereignty of the Indian nations. Arrests, harassments, prosecutions and attacks on their reporting newspaper, "Akwesange Notes," have made this clear. Since this is the case, the siege of the Native American continues as it has through modern history, onward towards the twenty-first century or complete extinction of the Native American culture, whichever shall come first.

Announcements...

(Continued from page 6)

November 29 and 30— NEW MUSIC ENSEMBLE IMPROVISATIONAL THEATER — Herbert Beattie, Conductor. Original multimedia and improvisational theater pieces. Little Theater. 8:30 p.m. $3. ($1 to senior citizens and non-Hofstra students.) Call Music Department at (516) 560-3371 for advance ticket reservations.

(Special subscription rates available for all concerts, except NEW MUSIC ENSEMBLE. Call Music Department for information, (516) 560-3371.)

November 16— HOFSTRA UNIVERSITY CONCERT BAND— Raymond VunKannon, Conductor. A concert featuring the Berlioz Grand Symphony Funerial and Triumphant. Also, works by Strauss, Debussy and Hindemith. John Cranford Adams Playhouse. 8:30 p.m. $1.50. ($1 to senior citizens and non-Hofstra students.)

November 14 through December 31— REMAINS—Contextures. Afro-American artists. Gallery Hours: 9 a.m. to 9 p.m., Tuesday and Wednesday; 9 a.m. to 5 p.m., Thursday and Friday; 1 p.m. to 5 p.m., Saturday and Sunday. Admission free. Closed on Mondays. (516) 560-3275.

LIBRARY

November 8 through December 31, 1979— "ALBERT EINSTEIN, SCIENTIST AND HUMANITARIAN" is a multiple exhibit, consisting of books, periodicals, manuscripts, catalogues, photographs and newspaper materials from the Hofstra collection, as well as two exhibits on loan, as follows:

1) Exhibit from the Institute for Advanced Study at Princeton;
2) The International Einstein Traveling Exhibit from the Institut Fur Auslandsbeziehungen, Stuttgart, Germany.

All three exhibits in the David Filderman Gallery, 9th Floor, Hofstra Library. Monday through Friday, 9-5 p.m. Admission free. (516) 560-3276.

NYADA
NEW YORK AMERICANS FOR DEMOCRATIC ACTION
SPONSORS
SENATE DEBATE

You are cordially invited to attend, at Hofstra, a forum on the United States Senate Race in New York of 1980.

This forum is the third of a series of head-to-head debates of the major potential candidates for the Senate.

All of the major potential candidates for the Democratic nomination will be questioned on their positions on foreign and defense policy issues.

Invited to participate in this debate are:

Bella Abzug	***Bess Myerson***
Mario Biaggi	***Manfred Ohrenstein***
Elizabeth Holtzman	***Basil A. Patterson***
John V. Lindsay	***Andrew Stein***

(A panel of three questioners to be announced.)
Hofstra University 7:30 P.M. Tuesday, November 27

This is the third of three forums dealing with the Senate Race. Each forum has dealt with a different topic.

This forum is being presented as a public service of New York Americans for Democratic Action. For further information, contact: Edwin Ortiz, Exec. Director, N.Y. Americans for Democratic Action, (212) 869-3791.

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Craft Competition

Amateur crafts workers who wish to compete in the first of two crafts exhibits to be presented by the Long Island State Park and Recreation Commission may obtain entry application forms by writing: Winter Arts Festival, Bethpage State Park, Farmingdale, New York 11735.

Section I entries are limited to needlework and fibers.

The Section I crafts exhibit, which is the first event in a seven-weekend Winter Arts Festival co-sponsored by the Long Island State Park and Recreation Commission and the National Alliance of Businessmen-Long Island Metro, will be held at the Bethpage Golf Clubhouse on November 15, 16, 17 and 18.

Craftspeople are invited to compete in any of the following ten Section I classes:

A. Crewel and Embroidery
B. Hand-knitting
C. Crocheting
D. Needlepoint
E. Hooking
F. Macrame
G. Weaving
H. Basketry, Caning, Reedwork and Rafia
I. Hand-quilting
J. Other

Entries will be judged on the basis of quality and originality of design, workmanship and suitability to category. Items made from kits will be accepted, but will lose judging points awarded for originality.

First, second, and third place in each class will receive prizes; honorable mention certificates will also be presented in each of the eight classes. All prizes have been donated by members of the National Alliance of Businessmen-Long Island Metro.

Professional craftsworkers are invited to demonstrate their skills, exhibit and offer their work for sale on a limited basis during the weekends in November and December scheduled for crafts exhibits. Advance reservations for specific blocks of time are required; call (516) 669-1000, extension 246.

Future highlights of the Winter Arts Festival include a second crafts exhibit (papercraft and rigid and plastic materials) on December 6, 7, 8 and 9, a Holiday cooking contest on December 16, and two photography and art exhibits in January, February, and March.

Additional information may be obtained by calling Bethpage State Park, (516) 249-0701.

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Wedding

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and

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HAVE AN ANNOUNCEMENT? SUBMIT BY NOVEMBER 21st.

Monthly Business

(Continued from page 12)

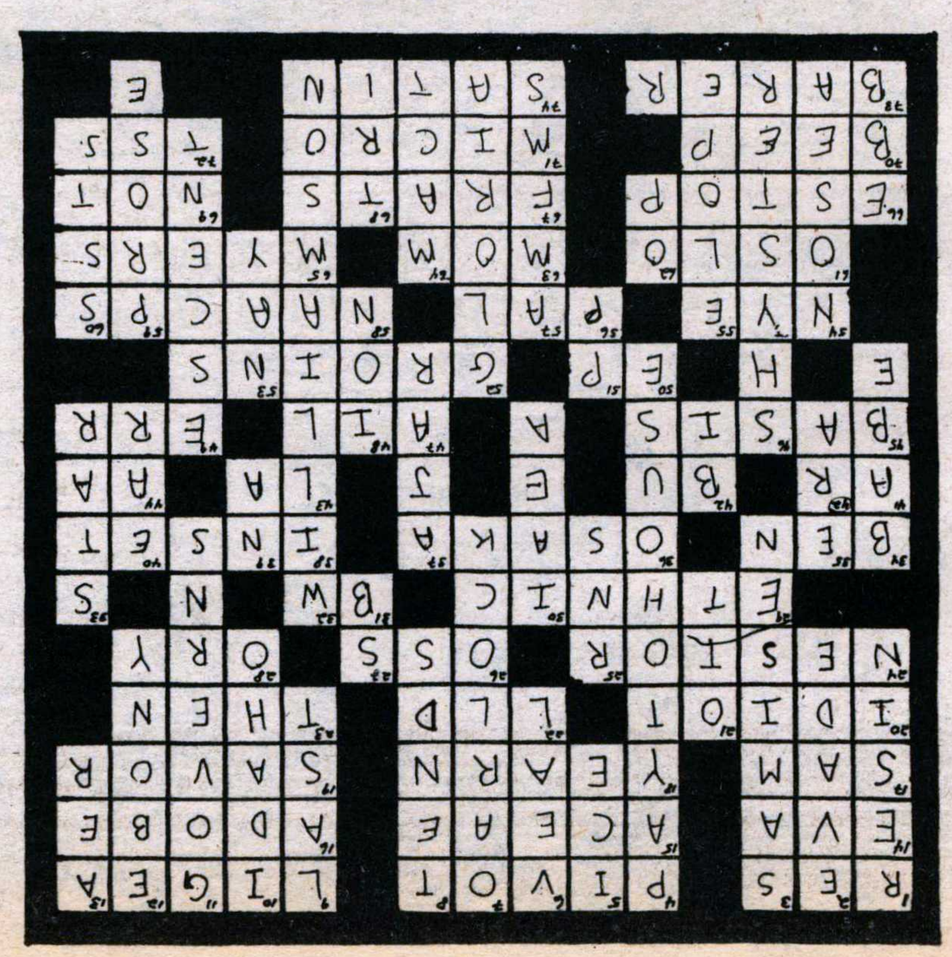
Perspective

There are 11 exchanges in the US with about 500,000 people trading (v. 25,000,000 in stocks). Recently an exchange (Comex) seat sold for $175,000; without the seat you are not allowed to trade. In 1978 over 55 million contracts were traded, with gold in August alone contributing 4 million contracts to the tune of $120 billion.

According to a **New York Times** article (10-26-79), commodities fever is hitting the legal profession in a big way. The industry has surged into a $1-trillion-plus market and the demand for experienced commodity lawyers by exchanges, brokerage houses, banks and commercial users far outstrips supply. Until ten years ago, there were few commodities lawyers at all; today the field is still in its legal infancy.

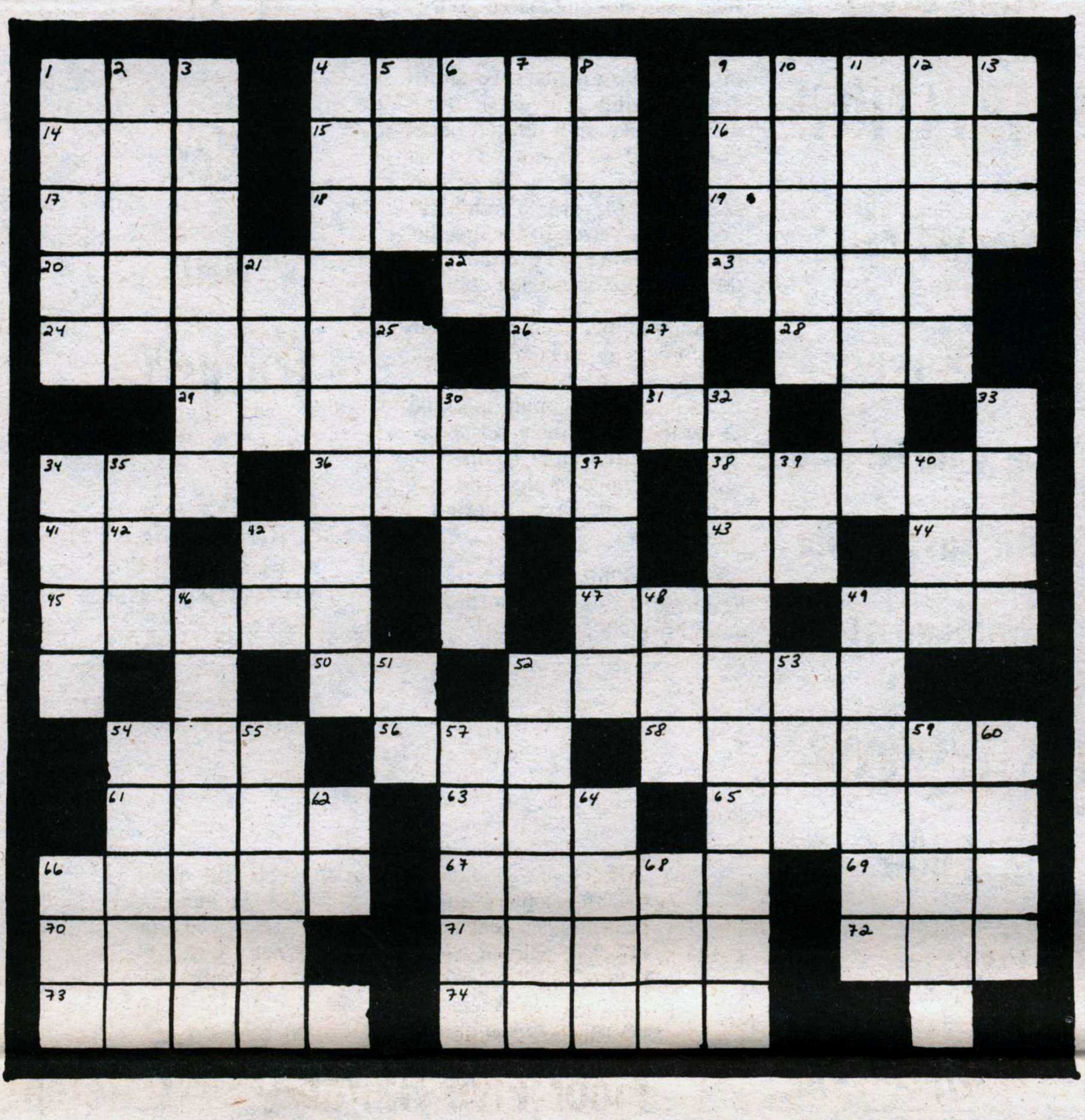
Some of the leading offices cited in the article are: Cadwader, Wickersham & Taft; Barret, Smith, Shapiro & Simon; Baer, Marks & Upham; Rein, Mound & Cotton; Milbank, Tweed, Hadley & McCloy and Lord, Day & Lord. For anyone interested, the ABA is sponsoring the first National Institute on Commodity Law Practice, December 7 and 8 at the Biltmore Hotel in New York City. Also, Hofstra Law Review, Fall 1977 (Vol. 6, No. 1) was a symposium titled "Commodity Futures Regulated" and deals at great length with legal issues involved in commodities.

Puzzle Answers



Crossword Puzzle

by David Berck



ACROSS

1. Object
4. Swivel
9. A female subject (old English law)
14. Stowe heroine
15. Families of plants (suffix)
16. Playaclay
17. Uncle . . .
18. Urge
19. Enjoy
20. Fool
22. Doctor of Laws (abbr.)
23. Besides
24. King of Pyles
26. WW II Gov't. agency
28. Relating to (adj. suffix)
29. Heathen
31. A.B.C. interviewer
34. Big . . .
36. Japanese port
38. Channel
41. Tracy-Hepburn movie (initials)
42. Mass. Institution of higher learning
43. California city (abbr.)
44. M.A.S.H. Capt. actor
45. Valuation element in tax formula
47. Trouble
49. Stray
50. Health spa female (initials)
52. Athletic pull; (plural)
54. Lowie or Carrie
56. Chum
58. Racial org. (plural)
61. City on a fjord
63. Parent (informal)
65. Bristol . . .
66. Preclude
67. Brotherhoods (slang)
69. Negative word
70. Horn sound
71. Small
72. L.I. store
73. Less clothed
74. Fabric

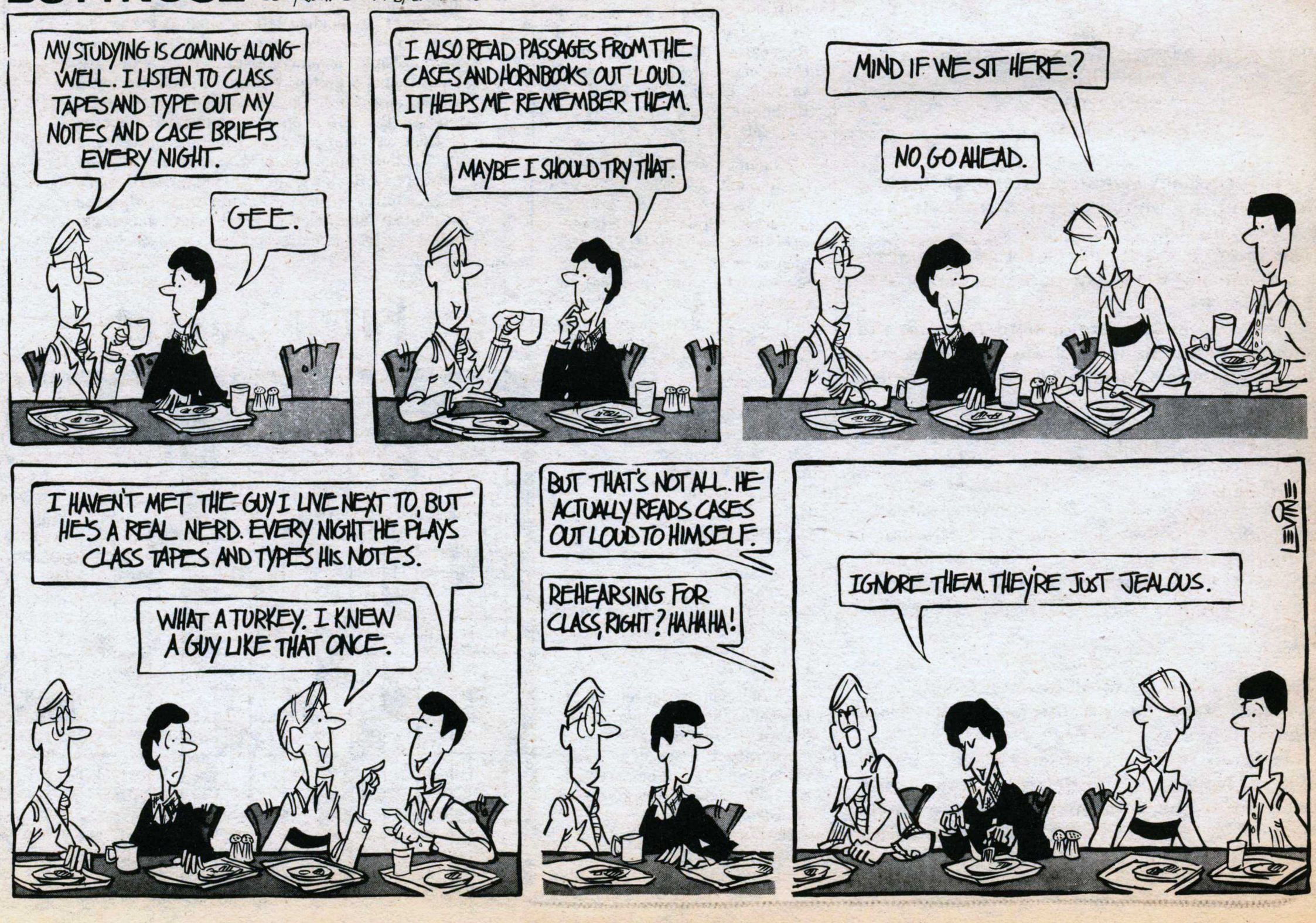
DOWN

1. Polymer
2. Elude
3. Japanese instrument
4. Black Jack loss (3 words)
5. Frozen cube
6. Calf meat
7. Row boat
8. Conduces
9. Late finisher
10. Potato
11. Rules
12. Hard wood
13. Air (comb. form)
21. Mel . . .
25. Nurses (abbr.)
27. N.L.O. professor (initials)
30. Energy group (abbr.)
32. "Super John"
33. Prima Donna
34. Home run great
35. Baseball stat.
37. Slightly open
39. Northern hemisphere continent (abbr.)
40. Corn unit
42. Baseball stat.; R-
40. Pettifogger
48. Atom
49. Beginning (suffix)
51. Presidential candidate of Smother's Brothers
52. Felix's wife (initial)
53. Negative vote
54. Desert (2 words)
55. No ceremony
57. Radio stations
59. Literary medium
60. Concordes
62. Jazz pianist (initials)
64. Master of Arts in College Teaching (abbr.)
66. Recede
68. Numerical prefix

Answers to the Crossword Puzzle are on page 13.

BUTTNOSE

BY KELLY AND LEVINE



CONSCIENCE Sports

by Corey Bearak

Flames Win 4th Straight

(North Campus, Oct. 30, 1979) Joe Brookings ran for two touchdowns and passed for another as he led the Law School Flames to a 20-13 victory over "In Search of Poo." The Flames, in first place, after winning four straight, have won five of six games while In Search of Poo, in fifth place, is even at three wins and three losses in Hofstra Independent Intramural Flag Football play.

The Flames opened the scoring on Brookings' slant behind Ken Henrie's block after he faked an inside hand-off to Russ Coniglio. Successive runs by Coniglio after Corey Bearak recovered a Poo fumble set up the seven point score. Poo came back several plays later, with a perfect scoring toss just beyond the outstretched arms of Linebacker Jeff Greenberg and in front of Brookings that made the score 7-6 Flames.

The Flames took the ensuing kickoff and drove for their second touchdown on a pass to Pete Tipograf and a pair of sweeps by Coniglio that culminated in Brookings' sweep from five yards out for the score. The Flames tenacious defense — Henrie, Bearak, Charles Walker and Rich Simon alternating at the tackles, Jeff Greenberg at Linebacker, and Brookings, Coniglio, Tipograf, Bruce Gurewitz, and Brian Tanenbaum alternating among four spots in the Secondary — shut Poo out the rest of the half. Coniglio intercepted a Poo pass in the end zone that killed their other drive. The first half ended with the Flames leading 14-6.

The Flames took the second half kickoff and moved downfield for the score. Coniglio took Brookings' handoff and ran 18 yards straight up the middle following his Center, Corey Bearak. Two plays later, Brookings' lofted a pass to Coniglio who was open in the end zone. The six points extended the Flames' lead to 20-6.

After an exchange of possession on downs, the Flames were again on the move, but Brookings' long throw intended for Pete Tipograf in the end zone was picked off at the goal line and returned to midfield. In Search of Poo scored eight plays later on a run, but the Flames still held a seven point lead.

With five minutes to play, the Flames' offense had only to maintain possession to run out the clock. Poo's defense held the Flames and forced them to punt. Regaining the ball, Poo threatened to score, but successive standout plays by Tanenbaum and Tipograf saved the game. Tanenbaum's open field tackle stopped the Poo runner at the one yard line. The disgruntled player immediately threw a punch at T-Bone, and both benches emptied. Cooler heads prevailed and play resumed after both players were thrown out for unsportsmanlike conduct. The Flames protested Tanenbaum's ejection — they claimed his hit was clean and that T-Bone acted in self-defense against the Poo runner's punch.

It was fourth and one when Peter Tipograf, who replaced T-Bone, ran the Poo Quarterback out of bounds at the ten yard line. With control of the ball, the Flames ran out the clock two plays later.

FLAMESTHROWERS . . . Veteran Ken Henrie, playing for the first time this year, bolstered the Flames defense. Henrie is possibly the best pass rusher in the league. Charles Walker arrived late but was soon inserted as Defensive Tackle. The Flames offensive line — Bearak, Henrie and Rich Simon did not allow a sack. Besides recovering a fumble, Bearak blocked a pass and registered a sack before he removed himself for Walker in the first half.

LATE SCORE:
FLAMES EXTINGUISHED
Nov. 12 7-0
In last seconds of playoff contest, upended by Floor Five.

BLIZZARDS MELTED

(Oct. 25, 1979) The Flames defeated the Blizzards 13-6 and moved into a first place tie with Floor 5, each team at 4 wins and one loss; Floor 5 earlier in the week defeated Joint Effort moving that team's record to three and two. The Flames scored once in the first half as running back Russ Coniglio burst through the line for a 35 yard jaunt, breaking several tackles along the way for the seven point score. Tight End "Reggie" Ruecker, the Bionic Flame, returning to the lineup after a two game absence, provided the key block enabling Coniglio to break free.

The Flames defense — Corey Bearak and Peter Ruecker on the line, Bruce Gurewitz at Middle linebacker, T-Bone Tanenbaum and Steve Moss at the Corners, and Coniglio and Joe Brookings at the Safeties — shut the Blizzards out in the first half. Brookings intercepted a pass to kill the best Blizzard's drive.

On the Flames' first second half series, Coniglio scored again when he took a screen pass from Quarterback Joe Brookings and followed center Corey Bearak and right guard Richard Simon down the right sideline 65 yards for the score. The Flames led 13-0. Brookings passed only twice; his second toss was dropped in the End Zone, averting a third Flames touchdown.

The Blizzards came back with a touchdown pass pulling them within seven points of the Flames, but the Flames held fast.

Another Blizzards' drive ended when Coniglio picked off a pass with under a minute left.

The Flames now had the ball with 35 seconds left and no time outs for the Blizzards, but the Referee, for some reason, wrongly stopped the clock on the Flames first offensive play. When Quarterback Brookings took the snap from Bearak and fell on the ball, the clock should have run out. The referee stopped the clock and on the second play, the snap dropped with the Blizzards regaining possession with one second left as the official failed to allow the time to expire. It was shades of the New York Giants against the Philadelphia Eagles in 1978. Bruce Gurewitz made the game-saving tackle as the clock finally ran out.

FLAMESTHROWERS . . . short on healthy players, Bearak consulted with his Assistant for Player Development, Bob Schaufeld, and decided to add Richard Simon to back up on the line. Simon had to start as George Rebecchi, Ken Henrie and Jeff Greenberg were all unable to play. Simon, who played against Bearak and Coniglio while they were teammates on Essex House, performed well on both offense and defense in his first game for the Flames.

Floor Five Handed First Defeat

(North Campus, Oct. 18, 1979) The Flames defeated the previously unbeaten Floor 5 team 13-6 in a Hofstra Intramural Independent Flag Football League Contest. The Flames entered the game in second place with a 2-1 record, one game behind the first place Floor 5 which had not allowed itself to be scored on in any of its three games.

The Flames changed that by scoring twice and handing Floor 5 their first defeat of the season.

Mixing the run with the pass, Quarterback Joe Brookings led the Flames to their first score. The Flames' passer sneaked one yard behind Center Corey Bearak's ferocious block that took out three Floor 5 defenders. The key play on the drive was Runningback Russ Coniglio's 20 yard run. Coniglio scored the second Flames Touchdown on a 25 yard pass from Brookings. On that play, Brookings faked a sweep right to Coniglio, rolled out left looking toward the left sideline for Pete Tipograf who was doublecovered, and then found Coniglio who had flared out of the backfield and was all alone at the Floor 5 five yard line. The Flames' back took Brookings' heave and ran the additional five yards for the score.

The Flames Defense shut off the Floor 5 Offense, holding them scoreless for the entire first half and most of the second half. Only two players, Corey Bearak and Charles Walker, rushed the passer, while a five man Secondary — Coniglio and Brookings at the Safeties, Jeff Greenberg at Middle linebacker, and Bruce Gurewitz, T-Bone Tanenbaum and Tipograf alternating at the two Corners — shut off the Floor 5 passing game. Floor 5's mobile Quarterback scrambled and rolled out on nearly every play making it difficult for Bearak and Walker to sack him. The Flames' opponents also utilized a "wishbone" style option play which threatened to force the Flames into a more tentative, less aggressive defense.

The Flames, however, easily adjusted. Bearak keyed the run while Walker rushed the passer. While this strategy gave Floor 5 more time to pass, it effectively contained their running game. The Flames' Defensive Backs were spectacular against the pass. Coniglio batted down several passes, including one that looked like a sure score. Brookings, for the fourth straight game, intercepted a pass.

The Flames offensive line — Guards, Jeff Greenberg, and Bruce Gurewitz, Center Corey Bearak, and Tight End Charles Walker — provided good pass protection and blocked explosively for the run. Though scoreless the second half, Flames' ball control offense ran down the clock and kept the Floor 5 offense off the field for much of the final period. Floor 5 managed to score on a "Hail Mary" pass play with under five minutes to play.

FLAMES THROWERS—This victory moved the Flames into a three way tie for first place with Joint Effort and Floor 5, each team at three wins and one loss. Bearak hurt his ankle on Brookings' one yard kepper for the Flames' first score, but the Flames Captain played on because there were no linemen available in reserve.