



ASKING YOU TO ASK YOURSELVES

Conscience

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Kahane Lecture Sparks Controversy

by Ron Klempner

It was business as usual for Rabbi Meir Kahane, whose lecture at the Law School last Monday sparked spirited audience reaction, harsh denouncement of the group that invited him, and a great deal of talk about the plight of the Jewish people and the state of Israel.

The Jewish Law Students Association sponsored the visit by Kahane, who organized the militant Jewish Defense League 18 years ago and now is the most controversial member of Israel's parliament, the Knesset. Kahane, speaking on "Theocracy Under Israeli and International Law," delivered the same provocative message that has caused his arrest more than a dozen times and that has forced Israeli television and radio to ban him from the airwaves.

"I want the Arabs out," Kahane said. "I wish the Arabs well - may they live well and prosper in their 22 countries. Jews have only one country, and I'm not about to lose it."

Declaring that Israel must be "a Jewish state, not a state of Jews," Kahane proposed a transfer of populations between Israel and the Arab countries. Kahane's main concern is an Arab population growth that threatens the Jews' majority status.

"The Arabs are not going away," Kahane said. "They're having babies. I'm not prepared to see my state go under either

through Arab bullets or Arab babies. After 2000 years of being a minority, after crusades, inquisitions and Auschwitz's, we turn and say 'no more.'"

Kahane's party, Kach, has gained sizeable support in Israel. According to published reports, if a vote was taken today for Prime Minister, Kahane would receive 10% of the vote, making his party the third largest in Israel. Kahane condemned current Jewish leaders as hypocrites, claiming they cling to Zionist values while idly watching the Arab problem escalate.

"The Jewish leaders won't debate me," Kahane said, "because they can't answer one question: Do the Arabs have a right to sit quietly and have enough babies to have a majority and vote Israel out of existence as a Jewish state? If they say yes, they're anti-Zionists. If they say no, they're Meir Kahane."

Kahane also expressed discontent with the behavior of Jewish people in America. Not only are more Jews leaving Israel than are coming in, Kahane said, but Jewish people here are fighting for every other cause but their own.

"The same liberal Jews who understand violence done on behalf of South Africa or on behalf of [Nelson] Mandela are not doing anything for Jews," Kahane said. "The violence in Cuba, Honduras, El Salvador -

they call those people freedom fighters. Liberal Jews can stand up for others, but let them stand up for their own first."

Kahane induced a mixed reaction from the capacity audience in the Moot Court Room. Although he was faced with mostly hostile questions, the audience supported Kahane in various alterations.

Kahane scolded a black man who had asked for clarification of a Kahane reference to Nigeria, when the man called Kahane a racist.

"Don't throw words around," Kahane said. "A racist is against someone because of his race. I'm talking about a religious difference - Jew and not Jew. The same Arab who would convert to Judaism tomorrow is as good a Jew as I am."

In asking how Kahane planned to expel the Arabs, law student Mitchell Ellman sarcastically suggested "weekend bus trips."

"Do you think I'm playing a game?" Kahane responded. "I'm talking about people's lives. And don't worry about how the Arabs will get out. As soon as word comes over the radio that Kahane has been elected Prime Minister, you won't have any problem asking them to leave."

Kahane engaged in a spirited colloquy with Professor Doug Colbert, who insisted on prefacing his question with an introduction. "Ask the question," Kahane repeatedly

shouted. When Colbert asked if Kahane was proposing an apartheid state for Israel, Kahane, calling Colbert an "extremist," answered with a question: "Would Theodore Herzl [the founder of Zionism] feel the same way?"

The Jewish Law Students Association sponsored Kahane's visit, and before the lecture, the group's president Abe Rychik disclaimed any association with Kahane. Kahane, in turn, disclaimed any association with the ULSA. Others, though, didn't find the issue of endorsements or disclaimers very funny.

"I am offended by the auspices under which [Kahane] came," said Professor Burton Agata. "When they invite him, it suggests endorsement of his views."

Rychik said that Professor Agata's comment was "misinformed." According to Rychik, the group invited Kahane, a graduate of New York University Law School, in order to gain notoriety for the JLSA and to present an interesting view on Jewish issues.

"[Kahane] is a very influential leader who is gaining sizeable support in Israel," Rychik said. "You don't often get a chance to have someone of that prestige in the Law School."

Rychik said that the group informed the

continued on page 9

Bush Receives Tenure

by Harry Dennis Harmon, Jr.

In September 1986, Robert Bush, Associate Professor of Law, was granted tenure by the Board of Trustees of Hofstra University. The Board of Trustees based its decision on recommendations from the President and Provost of Hofstra University, and the Dean and tenured faculty of Hofstra Law School. Professor Bush's tenure will take effect officially on September 1, 1987. Presently, he is known as a tenure designate.

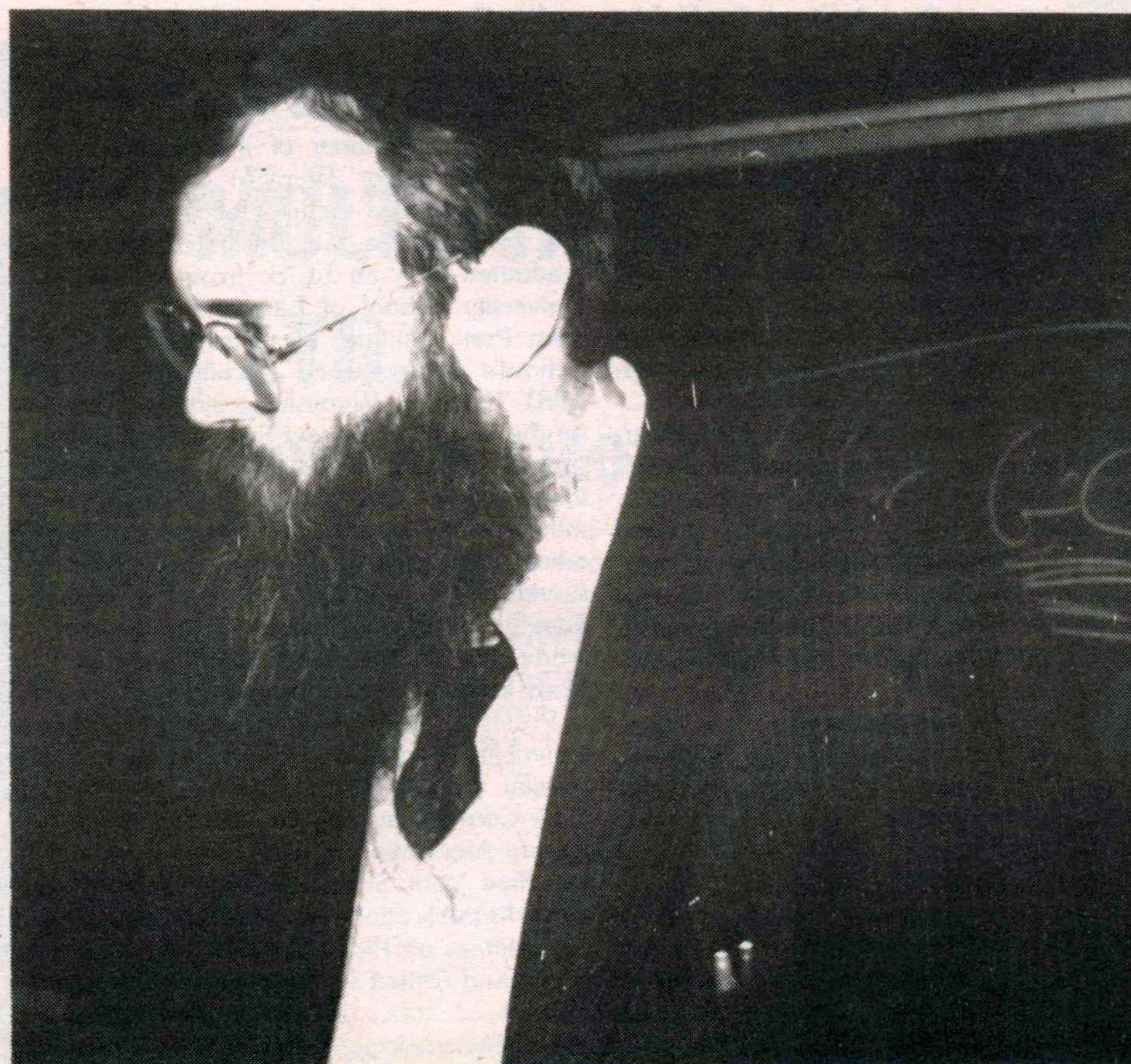
When asked how he felt about the University's decision, Professor Bush replied, "It's a great source of satisfaction. It is a statement on the part of my colleagues and the University ... that of recognition of my work, ... and it also means that I will be retained here on a permanent basis as a member of the Hofstra Law faculty."

Professor Bush plans to continue teaching Torts, Law and Economics, Alternatives to Litigation and the Alternative Dispute Resolution Clinic as he has done for the past several years. He hopes to contribute to the development of tort law and the Alternative dispute resolution field by researching and

publishing legal scholarship in those areas. Finally, he hopes to be able to work and contribute to the strength of the Law School as a community.

Later this year, the UCLA Law Review will publish an article by Professor Bush entitled "New Concepts of Causation in Tort Law." Early next year, Professor Bush hopes to have published by the Cornell Law School an article discussing some of the unique features of the Alternatives to Litigation course and, in addition, is planning another article for the future. "There has been a growing controversy over the last couple of years about the values underlying litigation and other alternative dispute processes, and the conflict between those values and the values underlying the judicial process. There are, I think, a number of important things to be said in that area and hopefully I will have a few of them to say," he said.

Professor Bush is a hard working, dedicated scholar. The Hofstra Law School stands to benefit immeasurably by the addition of Professor Bush to its tenured faculty.



Legal Corner

by Matthew Weiss

Judge Peter K. Leisure of the Federal District Court for the Southern District recently granted summary judgment to Columbia Pictures dismissing Harvey Publications' complaint. **Harvey Cartoons v. Columbia Pictures Industries**, 84-8274. Harvey had contended that Columbia's use of a ghost in its logo for the film "Ghostbusters" was an infringement upon their copyright. Harvey, who was a comic book publisher until the 1950's, owns the copyright for the ghosts from Casper the Friendly Ghost. Judge Leisure found that there were insubstantial similarities between the two ghosts and that the two ghosts did not have the same type of feel. Thus, there was no triable issue of fact. Harvey was attempting to haunt Columbia with this suit because of the latter's successful merchandising campaign involving the logo from Ghostbusters.

Papers for an important case were recently filed in the Federal District Court in Fort Lauderdale, Florida. **Shuttleworth v. Broward County**, 86-xxxx. Next month, Jose A. Gonzalez will be deciding whether AIDS qualifies under the federal definition of handicap. If it does then the plaintiff, Todd Shuttleworth, will be entitled to the full protections afforded by the Vocational Rehabilitation Act of 1973.

This case is important because it has advanced farther than any other on this issue. Shuttleworth was a budget analyst for Broward County. He was fired four months after his supervisors learnt of Shuttleworth's condition. His superiors admit their motiva-

tion was based on a fear that Shuttleworth would infect others through casual contact, citing medical experts' opinions that the communicability of AIDS is still uncertain. However, Shuttleworth counters that Broward County's firing is illegal because he was competent and physically able to work.

If Shuttleworth is victorious then the impact on the federal government as an employer and employers receiving federal funds will be great. Roughly 27,000 people have been afflicted with AIDS and 270,000 are expected to contract the deadly disease in the next five years. Moreover, although the decision will not be binding on them, state legislators and state courts will have to reassess their definitions of handicap within their jurisdictions. For example, in New York, it appears that AIDS would be considered a handicap because last year the Court of Appeals ruled that its definition should be liberally construed. **McDermitt v. Xerox Corp.**, No. 179 (holding that obesity is a handicap under the right circumstances).

Another case relating to AIDS was recently filed in Ramsey County District Court in St. Paul, Minnesota. A woman is suing her former fiancé, alleging that she contracted AIDS from her boyfriend and that he negligently failed to disclose this fact to her. The plaintiff, in seeking \$50,000 in damages, alleged that her boyfriend knew he had the deadly virus, yet he still repeatedly engaged in sex with her. If the plaintiff is victorious, then, in Minnesota, consenting adults will have a duty to disclose some aspects of their medical conditions.

Wypyski Receives Boas/Cluster Distinguished Professorship

Eugene M. Wypyski, Professor of Law and Director of the Library at the Hofstra University School of Law, has been named to the Andrew M. Boas/Mark L. Cluster Distinguished Professorship in Law Library Administration. This is the tenth professorship created at the Hofstra School of Law in less than five years.

The investiture of Professor Wypyski took place at 5 p.m., Friday, November 21, in the library lounge of the School of Law. An address was given by the Hon. Edward D. Re, Chief Judge, United States Court of International Trade.

Andrew M. Boas and Mark L. Cluster, who are Hofstra Law alumni, are investment bankers with the firm of Carl Marks & Co., Inc., New York City. This is the second Hofstra Law School professorship to be endowed by Hofstra alumni. The first was the Maurice A. Deane Distinguished Professorship in Constitutional Law, held by Professor Linda K. Champlin.

Since 1968—two years prior to the opening of the Hofstra Law School in 1970—Mr. Wypyski has guided the development of the collection of its current 262,000 volumes. The Law Library is part of the more than 1.1 million-volume Hofstra Libraries.

"The development and maintenance of a law library is a professional art, and the quality of a law library is critical to the success of the academic program at any law school," Dean Schmertz said. "The development of this Library has been a superb effort by Pro-

fessor Wypyski, who began with no volumes and built one of the best collections in this area." In addition to being a resource for law students, the library is a depository for federal documents.

A charter member of the Hofstra Law faculty, Professor Wypyski teaches legal research and is a member of the faculty of the Hofstra Pre-Law Institute. He was graduated with an LL.B. from St. John's University School of Law and an M.L.S. from Pratt Institute. He received the Law School's Distinguished Faculty Award in 1981. Professor Wypyski continues to serve on the University Senate Special Committee on the Library, the Law Library Planning Committee and the University Library Committee on Automation. He has been faculty advisor to the Hofstra Law Review and has served on the Advisory Committee on the Family Court for Suffolk County and has attended the Judicial Conference of the U.S. Court of International Trade.

Professor Wypyski is a member of the American Association of Law Libraries, the Nassau County Bar Association, the New York County Lawyers Association, the Law Library Association of Greater New York and the New York State Law Library Association. His publications include *Opinions of the Committees on Professional Ethics*, 5 vols., 1985; and *United States International Trade Reports*, 7 vols., 1986. He has also co-edited *The Bankruptcy Reform Act of 1978: A Legislative History* with Professor Resnick

Let's Stop Ignoring The Problem: A Look At Israel's Frightful Dilemma

by Richard A. Blum

Although I am not an ardent supporter of Rabbi Meir Kahane, his speech on Monday, November 11, 1986, at the Hofstra University Law School was both illuminating and thought provoking. Rabbi Kahane's speech focused on the major impending problem which threatens the survival of the State of Israel. According to Rabbi Kahane, the main problem Israel will face in the near future will be: How to remain a Jewish state in light of the trend of rising Arab birth rates precipitating an Arab majority in Israel? Rabbi Kahane's proposition, that Israel, due to national security reasons, will not make any major concessions of land to the Arabs, is accepted for the purpose of the following discussion.

Barring any major surprises, the above mentioned problem will most likely be solved by Israel ultimately choosing between Zionism and democracy as the dominant tenet of her society. Zionism is defined as a movement or political theory that reestablished, and now supports, the State of Israel as a Jewish state, and democracy, for the purpose of this discussion, will be defined as a form of government which requires equality of rights (including the right to vote). If Israel remains a democracy and continues to grant its Arab citizens, who will in the near future comprise a majority of Israel's population, equal rights, including the right to vote, the Israeli Arabs will be in a position to wrest political control away from the Jews. In order to remain a Jewish state, Israel may soon be forced to decide whether or not to deny Arabs the right to vote or expel them from the country altogether.

Although a painful issue which Jews would rather not ponder (even the current leadership of Israel will not publicly discuss it), this problem will present a major threat to the survival of the State of Israel in the near future and therefore it must be addressed immediately. If current Jewish political leaders and fellow Jews continue to shy away from it, Israel will someday face the same frightful dilemma presently being faced by the white South African government—how can a minority maintain its rule over a hostile majority? Jews may differ from the solution to this problem and they may vehemently disagree with Rabbi Kahane's proposals, but

at least Rabbi Kahane has shown the courage to openly address this problem, just as he had the courage in the 1970s to publicly address the then "unfashionable" issue of Soviet Jewry.

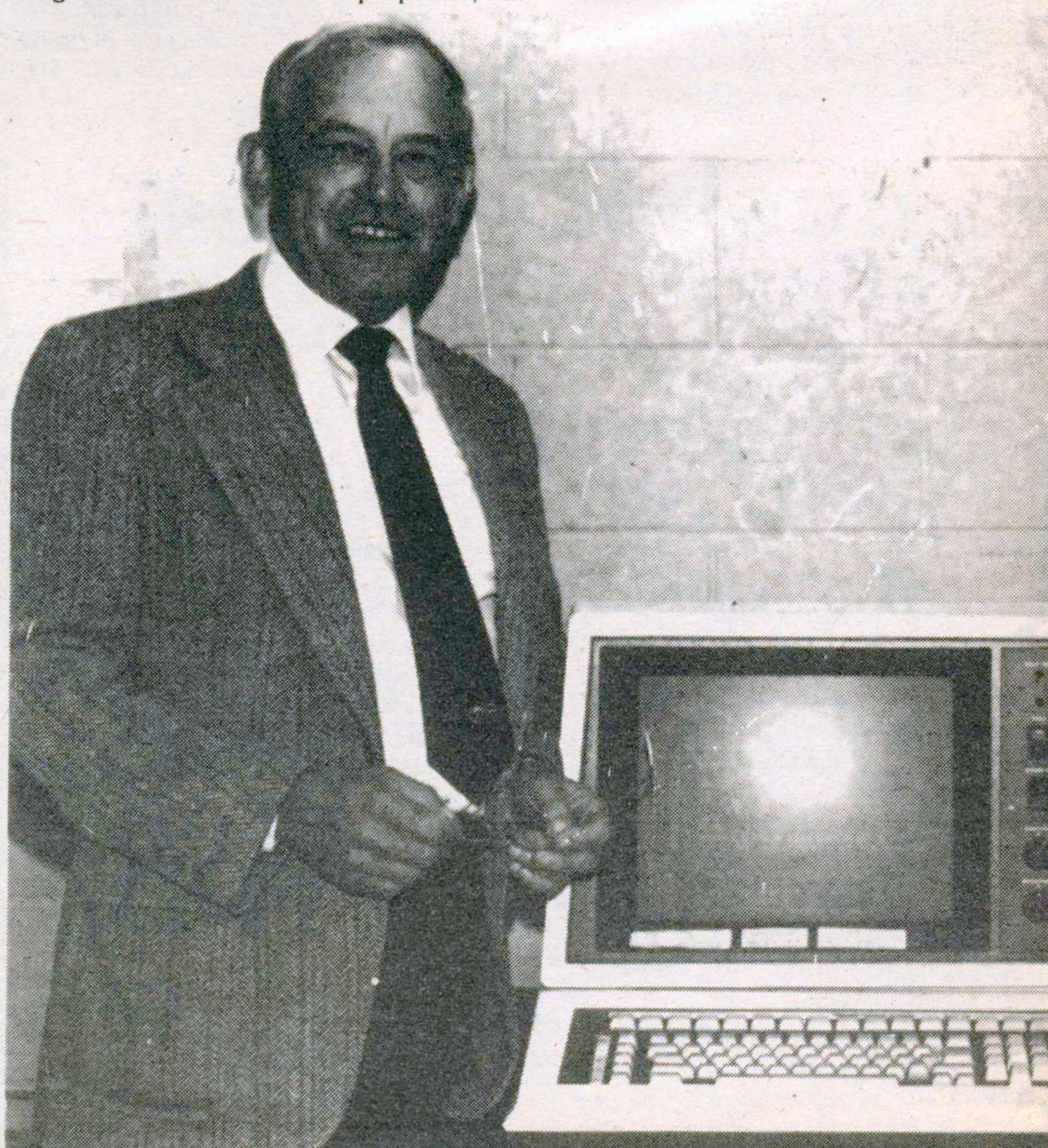
Unfortunately, the American-Jewish community is plagued by well-intentioned liberals who, in their idealistic ways, continue to deceive themselves and others in their analysis of this problem. These liberal "intellectuals" would like to see Israel ultimately choose either:

1. Democracy over Zionism—whereby Israel would continue to grant Israeli Arabs the right to vote, even if free elections result in Israel ceasing to be a Jewish state, or

2. Zionism over democracy, while continuing to grant Israeli Arabs equal rights, including the right to vote.

The latter choice is not only dishonest, but it is inconsistent, irresponsible and dangerous as well. When one advocates a solution that denies the reality that Israel will not be able to retain its democratic character if it wishes to remain a Jewish state, one is advocating a nonsensical solution that will not work. Once these individuals realize that Israel may not have the luxury of both remaining a Jewish state and continuing to grant Israeli Arabs the right to vote, they will be more inclined to search for a realistic, workable solution to the problem. Hopefully, Jews will unite in searching and finding a solution to this dilemma, thereby averting the potential disaster of the self-destruction of the world's only Jewish state.

In conclusion, Monday, November 11, 1986, was a sad day for this Hofstra law student. I was shocked by some of my colleagues' clear lack of understanding of the problem, as well as their failure to grasp the degree of its importance to the very survival of the State of Israel. Similarly, I was disappointed by the sentiments echoed by some Hofstra Law School professors concerning the event, especially considering the fact that they didn't have the courage to confront Rabbi Kahane on the issues, let alone even show up to hear what he had to say. Hopefully, someday the entire Hofstra Law School student body and faculty will open their minds and address issues other than South Africa and the horrendous parking situation.



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COMMUNITY FORUM

EDITORIALS:

Get A Job!

Law school is more than an academic exercise. It is a professional course of study. Upon completion we all expect to be paid professionals. Finding a job is hard work.

In all honesty, we must accept the fact that Hofstra is not as well-respected in the legal community as we might like. Our lower standing is not really a reflection of our contribution to the legal community. Rather, it stems from the comparative nature in which we are viewed with the many well-established New York City law schools. Schools like Columbia, NYU, Fordham and St. John's have firm footholds in the New York City legal community that stretch back a hundred years or so. In Hofstra's fifteen short years it has risen to be considered roughly among the top 15% of law schools in the country. Rather than feeling sorry for ourselves, what we need to do is go out into the job market and tell as many people as possible about Hofstra's good name. The best way to do this is by working.

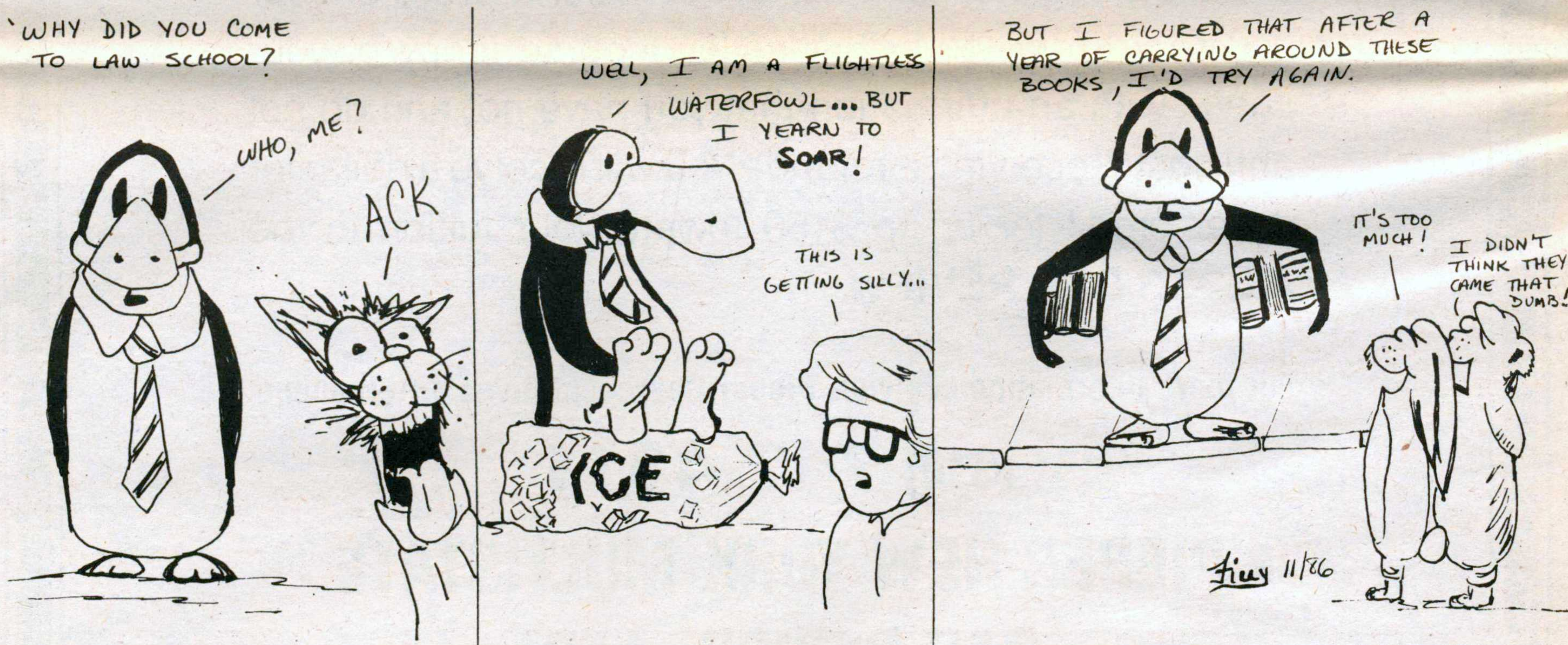
A vital link between our academic careers and our professional careers is the law school's Placement Office. Last year's issue of "Guilty Conscience" poked fun at the Placement Office with a picture of a Placement announcement that read, "Bottom 90%-Find Your Own Damn Jobs!". Many students don't even see any humor in this. They view the Placement Office as a wasted resource that caters only to those students at the very top of the class. Those who are upset about the lack of service they get from Placement misunderstand the function of the Placement Office. Placement is intended to direct you and provide resources that will enable

you to find yourself a job.

On-campus recruiting is, indeed, geared towards the highest academic achievers in the class, but this is the choice of the recruiters, not the Placement Office. Placement provides many other valuable services for the entire student body.

For starters, Mr. Christensen and Ms. Schwartzberg are always available for consultation on anything from shaping up your resume to finding attorneys who practice in a particular field. Then, there are various general listings and resource books available in the Placement Office. The Placement Office maintains job orders for full-time, part-time and summer jobs. (These are extremely helpful because you know that the employer is ready to hire.) Announcements of clerkships and fellowships are also available. Occasionally, the Placement Office will announce a job fair or symposium, like NYU's annual Public Interest Employment Symposium. Recently, Placement has been instrumental in assisting the Environmental Law Society in organizing an Alumni Dinner, which will lead to job contacts. So, the resources are there for the taking.

The problem, if there really is one, is not a lack of assistance on Placement's part, but rather a lack of drive on the students' part in seeking employment. With about 800 students in the law school it would seem rather unreasonable to expect the Placement staff to match each student with a job. Students must sell themselves to their perspective employers. So, wake up and get a job!



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The editorial board is committed to bringing Hofstra Law a competent, informative, lively newspaper of professional quality. We encourage everyone to write letters and articles. All submissions should be typed, triple spaced, with name, phone number and year of graduation. Submissions may be dropped off in our box in the library.

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COMMUNITY FORUM

DEAN'S CORNER:

Dean Eric J. Schmertz

From time to time I shall use the Dean's Corner to call attention to the scholarly or professional activity of the faculty. Set forth below is an edited version of A Worker's Compensation Decision of the Supreme Court of Oregon, in which the scholarly writings of Professor Lawrence Joseph are impressively cited:

In the Matter of the Compensation of
Henry McGarrah, Claimant
Henry McGARRAH, Respondent
on review

STATE ACCIDENT INSURANCE FUND
CORPORATION, Petitioner on review
Supreme Court of Oregon
675 P.2d 159 (Or. 1983)

JONES, Justice.

The claimant seeks workers' compensation for a mental disorder allegedly arising out of and in the scope of his employment. The Court of Appeals reversed the Workers' Compensation Board and allowed an award of benefits. We allowed review in this case to consider these claims for stress-related occupational disease.

We quote the facts and testimony as related by the Court of Appeals:

"Claimant, 40 years old at the time of the hearing, was a deputy sheriff in Jackson County from the fall of 1975 through December 4, 1978. He had worked previously as a deputy from 1969 to 1973, when his back was injured in a job-related automobile accident. After a period of recuperation, he was rehired in 1975. Sometime thereafter, claimant wrote a memorandum to his superiors requesting an investigation into the low morale within the department and apparently suggesting that a certain officer known as 'B.J.' not participate in the investigation. Subsequently, B.J. became a captain and claimant's superior.

"A series of events ensued that convinced claimant that he was being subjected to a personal vendetta by Captain B.J. to encourage him to resign or quit. Those events included the removal of claimant one month early from a public relations job, which he enjoyed, in order to transfer him back to patrol, where it appeared to claimant and to a chief deputy that he was not really needed; his transfer from the day shift to the night shift (which claimant considered a rookie shift), despite his high seniority in the department failure to promote him to senior deputy status, despite his seniority and his achievement of advanced officer status, when others eligible at that time for the promotion were granted it; frequent oral reprimands in the presence of others by the captain or his subordinates about claimant's appearance, which claimant felt was satisfactory; reprimands for not writing enough traffic tickets; oral reprimands in public for having left his post without authorization when his son was injured at school, although claimant had unsuccessfully attempted to reach his supervisor, a reprimand for abandoning his vehicle, which was stuck in a snowdrift in an area where radio communications were blacked out; and a memorandum inquiring into the possibility that claimant had allowed narcotics to go aboard an airplane while he was supervising security personnel at the airport, although no investigation was ever conducted to permit claimant to exonerate himself. The reprimands, standing alone, were not as upsetting to claimant as was the fact that they were usually made in the presence of others.

"Claimant did not initiate a union grievance concerning any of the above incidents, although he did write a letter invoking

the union contract in response to his early transfer back to patrol. By the same token, the reprimands were unofficial disciplinary actions. That Captain B.J. was the source of low morale in the department was corroborated at the hearing by a former colleague of claimant. Another former officer confirmed that Captain B.J. exhibited a pattern of putting pressure on individual officers through manipulation of shift scheduling and excessive criticism of the quantity and quality of the individuals' work. These pressures evidently reached a critical point for claimant on the day he learned of his shift change. He went home in a state of acute depression with violent feelings of hostility about Captain B.J. That condition persisted for some time. Claimant did not return to work as a deputy sheriff. Eventually, he turned to selling real estate, which he had done earlier in his career.

"A psychiatrist testified at the hearing that claimant suffered from anxiety and depressive neurosis directly related to his job as deputy sheriff, as a result of the perceived vendetta and the natural stresses of the job. No psychiatrist consulted found otherwise, and there was no evidence of stress outside the job that was a contributing cause of claimant's condition." *McGarrah v. SAIF*, 59 Or. App. 448, 450-51, 651 P.2d 153 (1982). The Court of Appeals found it to be "clear that the events about which claimant complains did, in fact, occur," and that:

"... [claimant did prove] that supervisory action and criticism relating to his performance on the job, to which he was not ordinarily subjected or exposed other than during a period of regular employment was the major source of stress triggering his psychological disability.

"... Both the medical and other evidence establish that job-related stress caused claimant's mental disorder." *Id.* at 457-58, 651 P.2d 153.

It seems that no problem in recent years has given courts and commissions administering workers' compensation more difficulty than on-the-job mental stress which results in either emotional or physical illness.¹ The causal relationship between employment stress and a resulting mental or emotional disorder presents one of the most complex issues in workers' compensation law.²

It is not our task to rely on supposed economic disasters that might befall this state in deciding to adopt one rule versus another. If a legislature chooses to open the door of its workers' compensation law for all mental stress cases it is free to do so. If it chooses to eliminate all mental stress claims for workers' compensation, it may do so. A legislature may wish to consider the scholarly work and suggestion for a "worker's disease protection system" which would substantially and structurally reform the present methods of compensation for mental disorders and resulting disabilities.³

Workers' compensation systems are founded on political compromise. For decades, labor, management and the insurance industry in this state have waged fierce political wars over who receives what and when. Legislatures first enacted workers' compensation laws early in this century in response to an increase in industrial accidents and because of the inadequate recovery provided employees under common law doctrines and procedures.⁴

[1.2] Workers' compensation laws provide a form of strict liability requiring employers, regardless of fault, to compensate employees for injuries arising out of and

in the course of employment.⁵ In exchange for that relief under this no-fault recovery system, employees are limited to a fixed schedule of recovery and must abandon any common law right of action against their employers. The theory underlying workers' compensation acts is that the financial burden of losses due to injuries occurring in business should be treated as business expenses or production costs to be borne, not by the employee (sic), but by the employer, who can transfer the burden to the consumer. Our current occupational disease law is based on the same social and economic concerns.⁶

Those ultimate social and economic decisions are for the legislature and not for the courts. The courts must decide whether an occupational disease is compensable based on legislative directives.

The intention of the Oregon legislature was manifested when it enacted Oregon's occupational disease law. The law was designed to provide protection only for any disease or infection which arises out of and in the scope of employment and "to which an employee is not ordinarily subjected or exposed other than during a period of regular actual employment." ORS 656.802(1) defines an occupational disease as follows:

"As used in ORS 656.802 to 656.824, 'occupational disease' means:

(a) Any disease or infection which arises out of and in the scope of the employment, and to which an employee is not ordinarily subjected or exposed other than during a period of regular actual employment therein.

(b) Death, disability or impairment of health of fire fighters of any political division who have completed five or more years of employment as fire fighters, caused by any disease of the lungs or respiratory tract, hypertension or cardiovascular-renal disease, and resulting from their employment as fire fighters." (Emphasis added.)

Professor Larson comments about statutory definitions which are common in occupational disease cases. He states in his treatise on workers' compensation law:

"A number of statutes contain detailed definitions of the term 'occupational disease,' and these statutory definitions give the clue to the distinction which is controlling for present purposes. The common element running through all is that of the distinctive relation of the particular disease to the nature of the employment, as contrasted with diseases which might just as readily be contracted in other occupations or in everyday life apart from employment. ..." 1B Larson, *Workmen's Compensation Law* § 41.32, p. 7-361 (1979).

The vast majority of workers, if not all, face and deal with job stress on a daily basis. The Oregon occupational disease statute speaks of diseases the worker is exposed to on the job, but not ordinarily exposed to off the job. On-the-job stress is not a disease. On-the-job events and conditions produce stress which in turn can cause mental disorders. We recognize that if we conclude the occupational disease law allows compensation for mental diseases and disorders caused by on-the-job stressful events or conditions, that interpretation of the statute may open a floodgate of claims from workers who simply cannot mentally cope with usual working conditions.⁸ Researchers tell us that people who suffer from psychological problems occupy more hospital beds in the United States than those who have a physical illness or injury. It is estimated that at any given time between 15 and 30 percent of the general population have diminished efficiency as a result of some type of mental or emotional dysfunction.⁹ The legislature must have been aware of the shift in costs from general welfare or general insurance to workers' compensation that would occur if workers' compensation provided coverage for mental and physical disorders caused by job stress. We find no legislative words nor

any evidence of legislative intent to indicate that the legislature either intended or did not intend to place that burden on the workers' compensation system.

If the legislature wants employers and compensation carriers to be relieved from the burden of such claims and wishes to change the occupational disease law to exclude mental disorders, such as exhaustively set forth in the American Psychiatric Association's Diagnostic and Statistical Manual of mental Disorders (3rd Ed. 1981),¹⁰ then the legislature can amend the statute to exclude specifically compensation for mental or physical disorders arising from job stress events and conditions. As we have said, this is a judicial body, not a legislative body, and we refuse to make, by judicial intervention, such a major conversion of our legislature's workers' compensation occupational disease act.

[3] We agree with the Hawaii Supreme Court's analysis in *Royal State Nat'l Ins. v. Labor Bd.*, 53 Hawaii 32, 487 P.2d 278 (1971), that stress-caused claims for benefits arising out of mental and physical disorders are compensable if they flow from the conditions of the worker's employment, provided causation, as hereinafter discussed, has been proven. We all know that stress may flow from work conditions. However, the on-the-job stress conditions causing the disorders must be real. That is, the events and conditions producing the stress must, from an objective standpoint, exist in reality. A worker's inability to keep up the pace of the job, *Carter v. General Motors Corp.*, 361 Mich. 577, 106 N.W.2d 105 (1960), is real stress. Pressures, dangers and general conditions of a fire fighter's work are real stress, *Baker v. Workmen's Compensation Appeals Board*, 18 Cal.App.3d 852, 853, 96 Cal.Rptr. 279 (1971). The pressure of an executive or management position is real stress. *Royal State Nat. Ins. Co., supra*. The day-after-day intricate matching of threads in a garment factory is real stress, *Yocom v. Pierce*, 534 S.W.2d 796 (Ky. 1976). However, concern that cars might not be safe, emanating from a worker's long-standing personality defect, when there is no objective evidence to substantiate such a fear, is not real stress, *Deziel v. Difco Laboratories, Inc.*, 403 Mich. 1, 268 N.W.2d 1 (1978). A worker's misperception of reality does not flow from any factual work condition. We disagree with the Michigan Supreme Court standard set forth in *Deziel* that all that is needed for compensation for stress-induced physical disease or mental disorders is a strictly subjective causal nexus based upon a worker's honest perception. A worker may honestly believe that the employer plans to kill him and as a result of that fear cannot work, but if that belief emanates only from the worker's own paranoia and there was no evidence the employer had any such plan, no stress condition factually existed on the job and the resulting impairment would not be compensable. On the other hand, a worker with a non-disabling paranoid personality may lapse into a totally disabling psychotic paranoia if managers pile too heavy a workload on such a susceptible employee. Honest perception exists in both cases, but workers' compensation would be properly denied in the first case and properly allowed in the second.

Under a "strictly subjective causal nexus" standard, a claimant is entitled to compensation if it is factually established that claimant honestly perceives some event occurred during the ordinary work of his employment which "caused" his disease. This standard applies where the claimant alleges a disease resulting from mental stimulus and honestly, even though mistakenly, believes that he is disabled or impaired due to that work-related event and therefore cannot resume his normal employment.

[4] This standard is no standard at all in

continued on page 6

COMMUNITY FORUM

DEAN'S CORNER:

Dean Eric J. Schmertz

Continued from page 5

the reality of application. In cases where the disability or impairment is established, the subjective test for causal nexus would result in an award of compensation for virtually all, if not all, claims based on mental disorders. If the claimant perceived that the job conditions caused the mental disorders, even if this were not true, the employer would be liable. The subjective formulation ignores the fundamental statutory requirement that diseases or disorders arise out of and in the scope of employment. An honest perception of that which does not factually exist is an insufficient causal nexus for an occupational disease claim.

The stressful conditions must actually exist on the job.¹¹ That is, they must be real, not imaginary. The views of an average worker or average person or the perceptions by the claimant may be relevant, but are not determinative. The existence of legal cause of stress-related occupational disease must be determined objectively.¹²

In the present case, the Court of Appeals found that there were actual stress conditions at work, not simply conditions perceived by the claimant in his own subjective view.¹³ The worker proved stressful conditions, viewed objectively; existed on the job.

[5] In addition to proving that stressful conditions objectively existed on the job, the worker must also prove that employment conditions, when compared to non-employment conditions, were the "major contributing cause" of the mental disorder. In *Dethiefs v. Hyster Co.*, 295 Or. 298, 310, 667 P.2d 487 (1983), we said:

"... [I]f a causative agent at the work place and a causative agent away from the work place are different in kind and concur to cause an indivisible disease which requires medical services or causes disability, a claim therefor is compensable if the causative agent at the work place is the major cause of the disease."

We agree that ORS 656.802(1)(a) does not require that the occupational disease be caused or aggravated solely by the work conditions. If the at-work conditions, when compared to non-employment exposure, are the major contributing cause of the claimant's disease or disorder, then the claimant is eligible for compensation. The Court of Appeals found this claimant suffers a greater and different degree of stress when he is at work. That court further found no evidence this claimant suffered from any particular stress from non-employment sources.

[6] Applying the facts as found by the Court of Appeals to the standards set forth in this case, we hold that this occupational disease is compensable. Claimant was subjected to actual stress conditions at work when viewed objectively. Furthermore, the at-work conditions, when compared to non-employment exposure, were the major contributing cause of claimant's mental disorder.

The Court of Appeals is affirmed.

Footnotes

1. See Note, *Emotional Stress—Now a Cause of Compensable Injury?*, 34 La.L.Rev. 846 (1974).

2. See Joseph, *The Causation Issue in Workers' Compensation Mental Disability Cases: An Analysis, Solutions, and a Perspective*, 36 Vanderbilt L.Rev. 263, 289 (1983).

5. This interesting proposal is set forth by attorney Lawrence Joseph of the New York Bar in his challenging law review article: *The Causation Issue in Workers' Compensation Mental Disability Cases: An Analysis, Solutions, and a Perspective*. 36 VAnd.L.Rev. 263 (1983).

6. In upholding the constitutionality of Oregon's original workers' compensation law, this court recognized that trade off in *Evanhoff v. State Industrial Acc. Com.*, 78 Or. 503, 523-24, 154 P. 106 (1915):

"... Before its enactment one workman out of three received a large compensation for his injuries by an action at law, while the remaining two were defeated and got nothing. Now every workman accepting its provisions receives some compensation if injured; and, taken as a whole, it will be found that more oney in the way of compensation is received by the whole body of injured workmen than by the inadequate remedies afforded in the courts. It has been a boon to the employers, the employed, and the community, which later could formerly only offer to the injured laborer the charity of the almshouse instead of that just compensation which he may now receive without the humiliation of pauperism or the loss of self-respect."

7. ORS 656.012(2) provides in pertinent part that:

"... the objectives of the Workers' Compensation Law are declared to be as follows:

(a) To provide, regardless of fault, sure, prompt and complete medical treatment for injured workers and fair, adequate and reasonable income benefits to injured workers and their dependents; ..."

8. Some commentators and courts assume the reason to exclude disorders resulting from on-the-job stress conditions is to avoid fraudulent claims, but we do not agree with that assumption. On the contrary, we presume most mental stress claims are made in good faith. See 1B Larson, *Workmen's Compensation Law* § 42.23(b); Joseph, 36 Vand.L.Rev. at 291 n. 113, *supra* at nn. 2 and 5; Comment, *Workers' Compensation for Mental Disabilities Resulting from Protracted Stress*, 17 Will.L.Rev. 693, 702 n. 65 (1981).

9. See P. Carone, S. Kieffer, L. Krinsky and S. Yolles, *The Emotionally Troubled Employee: A Challenge to Industry* 57 (1976), cited in Note, *When Stress Becomes Distress: Mental Disabilities Under Workers' Compensation in Massachusetts*, 15 New Eng.L.Rev. 287,304 (1980).

10. This 494-page work was compiled by many prominent psychotherapists. One group was called the "Task Force on Nomenclature and Statistics." The term "disease" is not used as an accurate diagnostic assessment. However, the term "mental disorders" is the constant classification reference. The Diagnostic and Statistic Manual-III (DSM-III) attempts to describe comprehensively what the manifestations of the mental disorders are, and only rarely attempts to account for how the disturbances came about. DSM-III contains a glossary of terms. The words "mental disease" are not defined.

The World Health Organization developed a separate chapter for mental disorders in its Ninth Revision of the International Classification of Diseases (ICD-9),

thereby distinguishing Mental Disorders from Infectious Diseases, Diseases of the Blood, Diseases of the Nervous System, and the like.

If the legislature chooses to include mental disorders within the definition of occupational diseases, it might observe that DSM-III defines, among hundreds of other mental disorders, the following:

Attention deficit disorders—hyperactivity
Conduct disorder—unsocialized, aggressive

Stuttering
Alcoholism
Cocaine intoxication
Amphetamine intoxication
Cannibis intoxication
Tobacco withdrawal
Caffeine intoxication
Paranoid disorders
Neurotic disorders, including anxiety
Affective disorders, including depression
Somatoform disorders, including hypochondriasis

Psychogenic amnesia
Psychosexual dysfunctions, including inhibited sexual desire.

The manual also includes codes not attributable to a mental disorder. Listed are V.62.20 Occupational problems and V.65.20 Malingering.

11. See Dr. Colbach's comments as set out in *Leary v. Pacific Northwest Bell*, 296 Or. 139,—, 675 P.2d 157 (1983).

"It doesn't appear that his work has forced

him into any particularly stressful situations. But his selective perceptions of what is going on at work do cause him distress ..." (675 P.2d 157.)

It was most helpful to this court in the present case that the Court of Appeals made specific findings of fact rather than merely referring to the testimony of the witnesses. It was most difficult in *Leary v. Pacific Northwest Bell*, 60 Or.App. 459, 653 P.2d 1293 (1982), to distinguish a finding of fact from a mere recitation of testimony.

12. We hasten to point out that this objective test for stress does not inject an element of fault into the Workers' Compensation Law. The evidence in cases of this kind has nothing to do with legal blame or fault. The appropriate findings should address whether the circumstances are in fact stressful, irrespective of fault. The fact that a worker is mentally ill usually is due to no fault of his own. Also, the fact that a worker misconceives reality is usually due to no fault of his own. If an employer hires stress-causing supervisors, that situation can be avoided, just as safety measures can be installed to prevent accidents, but that does not convert stress problems into "who is at fault" problems, which as mentioned have no place in the Workers' Compensation law.

13. The objective test is criticized by Joseph, 36 VAnd.L.Rev. at 311, *supra* at nn. 2 and 5.

To all members of the editorial board,
staff and contributors:
THANK YOU

for your effort and dedication this semester!
I have received many compliments;
the praise belongs to you!

Ursula

It is Conscience's policy not to print unattributed articles or letters to the editor. If you wish to express ideas or opinions in the paper and remain anonymous to the Law School community, please arrange to submit your article personally to the Editor-in-Chief. We will withhold names upon request.

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Letters To The Editor

Professor Speaks Out

To the Editor:

I cannot comment fairly on the details of Meir Kahane's recent appearance at the Law School, because I did not attend that lecture. I did not attend because my view was and is that Meir Kahane should never have been invited to speak at the Law School in the first place. Inviting him served no important purpose and, on the other hand, was certain to cause offense to many members of our Law School community and result in feelings of bitterness and division. For these reasons, as Faculty Advisor I advised the Jewish Law Students' Association against inviting Kahane, although it was always clear that the final decision lay with them. They made their decision—although there were many dissenting votes, I understand—and from the comments I have heard since the lecture, the foreseeable result has in fact occurred. This is extremely unfortunate. It was a bad decision, with predictable unhappy consequences. But perhaps we can at least learn something from this mistake.

We often speak of the "Law School community"; and with all our differences of background, circumstances and outlook, we are a community. We live and work together on a daily basis, intensely and intimately. We share in varying degrees in a common enterprise, and we affect and are affected by each other in our individual undertakings. Of course, we retain our separate identities—and our "rights." The JLSA had the right to invite Kahane, or anyone else to speak. No one every questioned that. But in a community, insisting on one's rights is not always the right thing or the best thing to do. Equally important, sometimes more important, is showing recognition of and respect for the views and feelings of other members of the community. Meir Kahane's extremist ideas and confrontational attitudes—which, to my knowledge, are not supported by any more than a tiny minority of Jews, orthodox or otherwise—were bound to offend deeply some, perhaps many, in our Law School community. Of course, any speaker with a definite point of view will offend someone. But when the issue is one where all of us are extremely sensitive, such as race, religion and the like, the potential for hurt is particularly great. Especially in a pluralistic community such as ours, to risk causing such offense and engendering feelings of bitterness and division, makes no sense—whatever one's "rights"—unless some very important value would be served by having the speaker in question. In the present case, no such value weighed in favor of the invitation. While I did not attend this program, my past experience tells me that Kahane has little or nothing of special value to present to a Law School audience. In sum, while JLSA had a right to invite Kahane, there was no good reason to do so, and every good reason not to.

Let me conclude by saying that, despite the wrongheadedness of JLSA's decision, there was absolutely no ill will in it toward anyone. Of this I am convinced. In my view, the decision resulted primarily from the students' determination not to give in to "outside pressure." Such determination to stand up for one's rights can be a virtue. But this is a matter requiring careful judgment. Needless to say, we all make errors of judgment in this kind of situation—I have made more than a few myself. The error in this case was in falling prey to the kind of immaturity that focuses exclusively on "rights" and overlooks the importance of human relationships. True, we are a school of Law, and law speaks of rights, but we are also a community, and community rests on mutual

recognition, respect and relationship. If JLSA's action and its aftermath remind us of this and encourage us to rediscover each other as real persons with real connections to one another, some good can still come of it. That depends on what happens next.

Robert A. Baruch Bush
Associate Professor of Law

Editorial Praised

To the Editor:

BRAVO! I praise your piece in the October issue entitled "In the Public Interest."

The article focused on the public interest law courses and the clinical programs offered here at Hofstra Law School. The editorial was not only accurate, but it was kind. I believe it's about time that the clinical professors here be given the well deserved recognition and support from the administration for the extraordinarily valuable learning experiences that they give to all student participants in the program, instead of the continued lip service that they usually receive.

The lip service to which I refer was described to some degree in the editorial, but allow me to elaborate a bit further. The article referred to a statement in the law school catalogue which says that the various clinical programs, "...give Hofstra one of the most ambitious faculty-supervised clinical programs in the U.S." As we duly noted in the piece, if "ambitious" refers to the spirit of the clinical instructors, then indeed it is an accurate statement. If, however, "ambitious" refers to the amount of support that clinical professors and education receives from the school administration, then the statement is a misrepresentation.

The article mentioned that at the advisement meeting for the class of '87 there was no mention of clinical coursework. However, at the advisement meeting for the class of '88, the administration went a step further by suggesting that students should not register for courses whose title began with "Law and..." It seems to me that this statement was directly tied into the very problem between the administration's stand on "core curriculum" vis-a-vis public interest courses. After all, as previously noted, not all students at Hofstra have the opportunity to serve on a journal. Furthermore, not all Hofstra graduates wish to pursue careers in big private firms, concentrating on taxation, securities, corporations law, etc. As odd as it may seem to some, there are many students who desire to pursue careers in public interest areas, such as the District Attorney's office, Attorney General's office, Legal Aid, A.C.L.U., Legal Services and the like.

For students fitting into that particular mold, the clinics offer the only real practical experience in these areas. Especially since the public interest curriculum here at Hofstra is so limited. In view of the fact that there is such a limited variety of public interest courses available, I cannot help but question the real reasons why despite students opposition, the course, "Law and Racism," last year was not included in the 1986-87 curriculum. When in response to this opposition the administration, of course, provided us with a variety of reasons behind the course's exclusion ("lack of funds," etc.). Not once were the students made to feel that any real consideration was given to the facts that (1) there was a strong appeal from students for this course, (2) that the professor, Douglas Colbert, had twice before taught the course without pay, and (3) that because of Pro-

fessor Colbert's dedication to his students, and in turn to the University, he once again offered to teach the course without pay. Despite these factors and more, which are too lengthy to enumerate, the administration still did not change its decision and offer the course.

In conclusion, I would like to add that as a minority woman, I believe public interest courses put me in touch with the extent of the law in regards to injustices in our society, be it professionally, educationally or personally. Growing up in various areas of New York City has provided me with a wealth of knowledge and insight into the pervasive inequalities and blatant discrimination that minorities, women and handicapped people are burdened with. If I am unable to leave the confines of this law school equipped with the legal knowledge necessary to work in public interest areas of the law, then I ask, "whom can I expect will represent the poor, the elderly and the discriminated?...the graduates of Harvard!"

Sallie Manzanet
Class of '88
BALSA 2nd Year Rep
Hispanic Committee Chairperson

Kahane Criticized

Dear President of the Jewish Law Students Organization:

I would like to thank you and your organization for bringing Rabbi Meir Kahane to speak on November 19, 1986, because it is only through exposure to such radical concepts can the masses unite to oppose his movement.

I believe some constructive criticism is in order and would be appreciated by you and other organization leaders so that similar errors are not repeated. First, it is an extreme contradiction for a sponsoring organization to on the one hand immediately announce a disclaimer from the University and the Organization, and on the other, sit on either side of the controversial speaker with nodding approval and enthusiastic applause. By this latter statement I am not saying that the officers seated on the dais aren't entitled to their own personal opinions, we all know they are so entitled. However, in light of the circumstances, I don't feel it is proper for the representatives of the organization to sit on the dais where their reactions are in plain view of the audience. Second, during the forum there were times when members of the audience were treated rudely and personal attacks were launched against them: Namely, that disgusting display when Professor Douglas Colbert attempted to ask a question and address the speaker who up to that point had not answered with any satisfaction, any of the questions given at that point. It was bad enough that Rabbi Kahane was allowed to call Professor Colbert a liar, a demigod, and a coward, but for you to insist, as Kahane was, that he ask his question or shut up was outrageous. I thought it was a severe lack of respect to your audience and the entire faculty and the university that will soon graduate you. In addition, it did not go unnoticed that when the next person in the audience stood up, he was allowed to speak instead of ask a question immediately, simply because his statement was furthering and giving support for the hatred of Arabs.

Furthermore, I would like to just share some of the feelings and observations that many of the students were discussing after the forum. We all agreed that Kahane did

Continued on page 12

Evaluations: Are They Worth It?

Recently, every class at Hofstra Law School began 20 minutes late. This was not due to the abhorrent parking provisions, but was because it was EVALUATION DAY. Students are provided 20 minutes to fill out one of those forms because, in addition to the standard scale ratings, there are intricate questions asked which require thought and explanation. I threw all of my forms into the garbage and went to the deli for coffee, soda, and gum. What would cause me to act so uncharacteristically careless and uninterested? Well, I figured I would streamline the process so that the secretary would not have to lug yet another paper, with her pile of papers, to whoever it is that closes his or her office door and puts them through the paper shredder and, ultimately, into the garbage.

Student evaluations, as utilized in our school, are merely to provide the students with the appearance of having some input into the educational process. I stress the word "appearance." If anyone in the administration really read them there certainly would have been more changes than have taken place from my first year to my third year. Without naming names, I know of at least two professors who are completely untalented and downright awful at teaching, and who received unanimously bad ratings, yet, who are still here. Likewise, there are administration (as demonstrated by refusal of tenure). If anyone, besides the garbage collector, had set eyes on the student evaluations surely something would have been done to rectify this nonsensical situation.

During my first year at Hofstra Law School there was a debate about making the evaluations available to the student body. The notion was that they could then be used by students to figure out what classes and what professors to take by a consensus of their predecessors. However, the administration refused such a proposal and have not been challenged about it since. I wish to challenge that policy and to ask the administration why they want to keep student evaluations such a well kept secret.

Although, at first blush, it seems like a ridiculous thing for a third year student with one foot out of the door of our stately institution to be worrying about, it is a suggestion which can only serve to benefit everyone connected with the Law School. Students will be afforded the opportunity to choose classes which will benefit them, yet more importantly, the quality of education at Hofstra Law will be raised. By a free market theory students will sign up for the better classes; demand for poor classes will be low. Either the subject matter can be changed or the teaching method can be revamped to make the class marketable. If the class is effective, demand will increase; if it still is bad, then get rid of it and bring in something else. In the long run it will serve as an indicator of the quality of the classes and will facilitate improved quality of education.

The administration is working diligently to secure a positive reputation for Hofstra Law School. I applaud their efforts and will do my best to further them. After all, it is in the best interest of us all to see Hofstra's reputation enhanced. Raising the quality of education, more so than print and radio ads, will serve to boost Hofstra's reputation in the legal community. I urge Hofstra Law Students to firmly and relentlessly pursue this matter until it becomes a reality.

Dina Epstein

COMMUNITY FORUM

Third World Perspective

A Message from Nelson Mandela

These excerpts are from a message released in the Spring of 1980 by the African National Congress. Smuggled out of Robben Island under extremely difficult conditions, it took nearly two years to reach the ANC:

"Apartheid is the rule of the gun and the hangman. The Hippo, the FN rifle and the gallows are its true symbols. These remain the easiest resort, the very ready solution of the race-mad rulers of South Africa.

"In the midst of the present crisis, while our people count the dead and nurse the injured, they ask themselves: What lies ahead?

"From our rulers we can expect nothing. They are the ones who give orders to the soldier crouching over his rifle: theirs is the spirit that moves the finger that caresses the trigger.

"Vague promises, tinkering with the machinery of apartheid, constitution juggling, massive arrests and detentions side by side with renewed overtures aimed at eakening and forestalling the unity of us Blacks and dividing the forces of change—these are the fixed paths along which they will move.

"For they are neither capable nor willing to heed the verdict of the masses of our people.

"That verdict is loud and clear: Apartheid

has failed. Our people remain unequivocal in its rejection. The young and the old, parent and child, all reject it.

"At the forefront of the 1976-77 wave of unrest were our students and youth. They come from the universities, high schools and even primary schools. ...

But after more than 20 years of Bantu education the circle is closed and nothing demonstrates the utter bankruptcy of apartheid as the revolt of our youth. The evils, the cruelty and the inhumanity of apartheid have been there from its inception.

"And all Blacks—Africans, Coloreds and Indians—have opposed it all along the line.

"What is now unmistakable, what the current wave of unrest has sharply highlighted is this: that despite all the window-dressing and smooth talk, apartheid has become intolerable.

"This awareness reaches over and beyond the particulars of our enslavement. The measure of this truth is the recognition by our

people that under apartheid our lives, individually and collectively, count for nothing.

"We face an enemy that is deep-rooted, an enemy entrenched and determined not to yield. Our march to freedom is long and difficult.

"But both within and beyond our borders the prospects of victory grow bright. ...

"Our people—African, Indian, Colored and democratic Whites—must be united into a single massive and solid wall of resistance, of united mass action. Our struggle is growing sharper. This is not the time for the luxury of division and disunity. At all levels and in every walk of life we must close ranks.

"Within the ranks of the people differences must be submerged to the achievement of a single goal—the complete overthrow of apartheid and race domination. ...

"The soil of our country is destined to be the scene of the fiercest fight and the sharpest battle to rid out continent of the last vestiges of white minority rule.

"The world is on our side. The Organization of African Unity (OAU), the United Nations and the Anti-Apartheid Movement continue to put pressure on the racist struggle. At all levels of our struggle, within and outside the country, much has been achieved and much remains to be done.

"But victory is certain.

"We who are confined within the grey walls of the Pretoria regime's prisons reach out to our people. With you we count those who have published by means of the gun and the hangman's rope. ...

"We face the future with confidence. For the guns that serve apartheid cannot render it unconquerable. Those who live by the gun shall perish by the gun.

"Unite, mobilize, fight on. Between the anvil of united mass action and the hammer of the armed struggle we shall crush apartheid and white minority racist rule."

William Prolaska's October 20, 1986, New Voice article about Blacks and the African Peoples Organization tells me that he is very ignorant about Black life and/or political organizations.

Most of this society has white controlled or dominated organizations - I would not find the uproar in the Black community over what Prolaska expects should occur if a Hofstra Wasp club was formed. Further, the A.P.O. rightfully makes race amissive since Whites like Prolaska would love for Blacks to live to forget the racism and discrimination in this country. As long as racist ideas like Prolaska's exist organizations like A.P.O. are necessary to turn around such belief.

If Prolaska thinks I'm just an American he's crazy. I don't consider myself without a culture and heritage just like any ethnic group in this country. Calling A.P.O. the "American Peoples Organization," as Prolaska suggests, not only denies that Blacks have an African cultural and ancestral heritage, but absurdly implies that Black people are no different ethnically from any other group. America is a land of diverse backgrounds. Why should Blacks lose their culture in order to appease Whites? Our culture is as unique, if not more than the European example.

Responding to Prolaska's view on Hispanics, he'll be happy to discover that civilization began in Africa, so a Hispanic is in reality linked to that source of origin.

Prolaska's desire to support Black issues is no problem with one. He is free to join A.P.O., but if he believes he can change the goals of that organization with some bleeding heart liberal course he has envisioned for Blacks he is naive. Increasing members in A.P.O. won't stop apathy. Political awareness and action does the trick. When the University wanted input on whether to divest from South Africa where were you Prolaska?

Jeffery C. Taylor
Hofstra University School of Law

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Chief Judge Duberstein Gives Wientraub Lecture

Honorable Conrad B. Duberstein, the Chief Bankruptcy Judge of the U.S. District Court, Eastern District of New York, delivered the Benjamin Weintraub Distinguished Professorship Lecture on November 12 during Dean's Hour. The following is the introduction made by Professor Resnick and portions of Judge Duberstein's speech.

Introduction of Chief Judge Conrad B. Duberstein at the Benjamin Weintraub Distinguished Professorship Lecture—November 12, 1986, Delivered by Professor Alan N. Resnick

Welcome to the Second Annual Benjamin Weintraub Distinguished Professorship Lecture.

This Professorship was established two years ago to honor an outstanding bankruptcy lawyer, author and teacher—Benjamin Weintraub. I am delighted that Mr. Weintraub is here today and it is a pleasure to acknowledge his presence.

When this professorship was established, Ben and I discussed how we would try to use it as a vehicle for bringing to Hofstra the most talented and experienced bankruptcy lawyers and judges (the very best) to share their insights with our students. Last year we had Michael Crammes, one of the most innovative bankruptcy practitioners in the United States, the lawyer representing the Manville Corp., LTV, Braniff Airways, and many other corporations in the leading cases in modern bankruptcy law.

Ben, I'm happy to say that we are still battling 1,000, because we have with us the Honorable Conrad B. Duberstein, Chief

Bankruptcy Judge for the Eastern District of New York, who is widely recognized as an outstanding bankruptcy jurist.

Chief Judge Duberstein is known for his vast knowledge and experience in the bankruptcy field, his thoughtful and well-written opinions, his great sense of justice, and—most appropriate for this field—his compassion for the poor but honest individual who is in need of a financial "fresh start," and his compassion for the business entity struggling to survive and rehabilitate, to save jobs, protect investments, and eventually pay creditors out of future income.

Chief Judge Duberstein is an active judge—active in various bar associations and professional organizations. He is in great demand on the lecture circuit—often speaking to audiences of students, credit and financial managers, and bar association groups. He lectures at Practising Law Institute seminars, and has written articles on bankruptcy practice. He represents the Second Circuit on the Board of Governors of the National Conference of Bankruptcy Judges.

Before his appointment to the bench, Chief Judge Duberstein had national recognition as an exceptional bankruptcy practitioner.

He was a member of the prestigious law firm of Otterbourg, Steindler, Houston & Rosen, where he was in charge of its insolvency department.

Chief Judge Duberstein even has a heritage of bankruptcy law in his genes—his uncle, the late Bankruptcy Judge Samuel C. Duberstein, was also a renowned bankruptcy lawyer and jurist.

It is especially fitting for Chief Judge Duberstein to be here as the Benjamin

Weintraub Lecturer—for he and Ben have been dear friends ever since the days when they were both practicing before the bankruptcy courts in New York City, more than 40 years ago.

It is an extreme pleasure to introduce the Honorable Conrad B. Duberstein.

Dean Schmertz, Professor Weintraub, Professor Resnick and Guests of Hofstra University School of Law:

It is a great privilege, honor and pleasure for me to have been called upon to deliver **The Benjamin Weintraub Distinguished Professorship Lecture** today. As many of you recall, the first lecture was given last year by Professor Weintraub's partner and son-in-law, Michael Crammes. Although I am not his partner, my closest claim to being a relative of Professor Weintraub is that ever since I've known him going back to about 1952, he's been like a big brother to me. As a bankruptcy judge it is always comforting to me when his firm appears in my court because under his tutelage and guidance, they have established the remarkable reputation of knowing how to successfully handle the most complex of any bankruptcy case. Those of you who are students bent on practicing bankruptcy should study their methods and techniques and try to do what they do so well. That's **your** choice. Let us turn now to a **debtor's** choice in the context of bankruptcy law.

Aside from many cases where the debtor cannot afford an attorney and appears **pro se** as usually happens in the Chapter 7 straight bankruptcy case or the Chapter 13 individual debt adjustment case, the bankruptcy remedy which a debtor will choose, whether it be Chapter 7, 11 or 13, will generally be recommended by the debtor's lawyer.

An attorney's responsibility to a client in a bankruptcy case begins with the basic requirement that the attorney have a working knowledge of bankruptcy law and procedure, certainly at least in the areas of the law in which the client is involved. An excellent source is "The Bankruptcy Law Manual," written by our Professors here today, Weintraub and Resnick. Misinformation, or the lack of information may lead to dire consequences not only for the debtor, but also for the attorney who fails to perform properly...

The initial decision to be made by the debtor in need of the benefits provided for by the Bankruptcy Code is to choose among the various forms of relief. Should it be Chapter 7 with a simple liquidation of the debtor's assets, if any, as well as the granting of the discharge of those debts which the law says are dischargeable? Should it be Chapter 13 with its great advantages of staying a foreclosure of the debtor's home or dispossession from his residence as well as a liberal policy regarding discharge of even those debts that may not be discharged in Chapter 7? Or should it be Chapter 11 which can provide for the important injunction against the interference with the debtor's

Kahane, continued from page 1

Dean's office and the faculty in advance. Only Professor Monroe Freedman responded, mentioning to the JLSA and to Hofstra's Director of Safety that he would demonstrate outside the lecture. Professor Freedman did not attend or demonstrate at the lecture.

Vice Dean John Gregory said the administration took no formal position on Kahane's visit. Dean Gregory added, however, that he was personally offended by the invitation, which he called "insulting, obnoxious and insensitive." Neither Professor Agata nor Dean Gregory attended the lecture.

property, permit the rejection of onerous and burdensome executory contracts including leases, as well as union agreements, stay costly and protracted tort litigation and conclude with a plan which can substantially alter major lending obligations, effect a merger or consolidation with another entity, and work out a meaningful settlement with creditors with the ultimate reorganization or rehabilitation of the debtor's affairs?

Since the choice of remedy is for the most part dictated by the gravity of the debtor's financial condition, its past conduct in dealing with its creditors, the disposition of its assets, its ability to effect an adjustment of its debts and a reorganization or rehabilitation of its affairs or the need to discharge its obligations so as to avail itself of the opportunity for a fresh start, it is of utmost importance to analyze the advantages and disadvantages of the three Chapters depending upon the needs and eligibility of the debtors to avail themselves of the different types of relief provided for by the Code.

Generally, eligibility for relief under Chapters 7, 11 and 13 are specified in Bankruptcy Code Section 109 which provides that only a person who resides, has a domicile or place of business or property in the United States is eligible to be a debtor under those Chapters. Section 101(33) defines the term "person" to include an individual partnership as well as a corporation. The Bankruptcy Amendments of 1984 amended Section 109 to limit the eligibility of an individual to become a debtor under the Code...

Partnerships are eligible, including a limited partnership or other form of partnership recognized by a non-bankruptcy law.

The term corporation is broadly defined to include virtually all kinds of limited liability organizations other than limited partnerships. These can include cooperatives, real estate investment trusts and other business trusts. Labor unions are included within the Code's definition of a corporation.

The Code provides for specific eligibility requirements for each of the Chapters.

Certain types of debtors are disqualified from choosing relief under Chapter 7. Expressly made ineligible are domestic insurance companies and most types of banks and savings and loan associations which are subject to state regulatory bodies. Similarly, a foreign insurance company or bank engaged in business in the United States is ineligible, but if it merely has assets here and is not engaged in business, it is eligible.

Probate or decedent estates are excluded. Railroads are also ineligible to file a Chapter 7 petition. Finally, stockbrokers and commodity brokers are permitted to be debtors under Chapter 7.

The advantages of choosing a Chapter 7 for the debtor are many. Sometimes referred to as "Straight Bankruptcy," Chapter 7 results in a fair distribution to creditors of whatever non-exempt property the debtor has. In return the debtor receives a fresh start through a discharge of indebtedness with the exception of certain types of obligations specifically excepted from discharge by Code Section 523. These generally consist of certain taxes of governmental agencies, debts arising out of false representations or actual fraud or by way of a materially false financial statement in writing, consumer debts owed to a creditor aggregating more than \$500 for luxury goods or services incurred within 40 days before the order for relief or for cash advances aggregating more than \$1,000 obtained by an individual debtor within 20 days before the order for relief, debts which were neither listed nor scheduled known to the debtor under certain conditions, obligations of a fiduciary for fraud or defalcation, embezzlement or larceny, debts for marital or

Continued on page 10

Reagan Approves Financial Aid Amendments

On Friday, October 17, President Reagan signed the Reauthorization of the Higher Education Amendments. This has resulted in several changes in the procedure for obtaining and repaying student loans, many of which became effective on October 17, the date the Amendments were signed. We have highlighted some important changes below.

The Department of Education defines the date the application is filed as the date the student signs the application. Institutions may not refuse to certify applications of any eligible lender. Institutions may not certify applications which permit students to borrow in excess of their maximum eligibility. Financial Aid offices will be checking for multiple or alternate lenders to eliminate possible overaward situations.

Insurance premiums limited to 3% of principal will be deducted proportionately from each installment. Currently, insurance premium is deducted from the first disbursement check. This change is effective July 1, 1987. Five new Deferment categories have been added. You should check with the Financial Aid department, which has the text of the HEA Amendments to see if you qualify.

With reference to ALAS loans, the limit has been increased to \$4,000 per year and will be distributed in a single disbursement. ALAS loans will now be capitalized quarterly, not annually. ALAS interest rates will be variable equal to the 91 day T-bill plus 3.75% with a cap of 12% beginning January 1, 1987. By January 1, students will be notified by the holder of their refinancing options for previous and current ALAS loans. ALAS and private loans (LAL) may be used to offset an expected family contribution for the year.

The limit on Guaranteed Student Loans has been increased to \$7,500 per year

beginning on January 1, 1987. The GSL interest rate for new borrowers will be 8% per year through the fourth year of repayment and 10% for the balance of repayment. The effective date of this change is scheduled for July 1988; however, the House and Senate will re-examine the GSL program for 1987-88 in an effort to meet the Gramm-Rudman deficit reduction requirements. Therefore, this change may not be implemented.

For the GSL, need must be established by the **uniform methodology**. This is true for **all** applicants. Assets will now be considered for students in the under \$30,000 category. This may result in students who currently receive GSL's to be disqualified in the future. Two groups especially affected by this change are the dependent student with parents who have substantial assets, and the under \$30,000 independent student who did not have to complete a needs test before, and who, with a spouse's income, summer earnings or other assets may be disqualified. An independent student is redefined as an applicant who is 24 or older by December 31st of the award year unless exempted by specified criteria beginning on January 1, 1987. Schools may certify GSL applications before completing "verification" but not release checks until verification is completed. All students must have a Financial Aid Form (FAF) on file in the main campus Financial Aid office to qualify for GSL loans.

The Amendments require students and parents to complete separate applications and submit them directly to lenders. Note: LSAS is considered an agent for Norwest; therefore, all applications should continue to be submitted to LSAS, Box 2500, Newtown, PA 18940. If you have any questions regarding these changes please contact the Financial Aid Office.

Duberstein, continued from page 9

child support, debts for willful or malicious injury, certain types of fines, certain educational loans made or guaranteed by a governmental unit or by a non-profit institution, judgments against the debtor wherein liability was incurred as a result of the debtor's operation of a motor vehicle while legally intoxicated, and debts which could have been listed or scheduled by the debtor in a prior case in which the debtor waived its discharge or was denied a discharge. The procedure in the Bankruptcy Court enables the debtor to obtain a discharge quickly and easily. It is a one-time proceeding; no plan need be proposed nor confirmed as in Chapters 11 and 13. There is a stay which arises automatically and protects the debtor and its property virtually from all actions to collect pre-petition claims. One of the most important aspects of Chapter 7 is that it frees up future earnings which the debtor may retain. The income post-petition does not become property of the estate and is not distributed to creditors. All garnishees are stayed and the garnishment itself is vacated when the discharge is granted. Section 722, applicable only to Chapter 7, permits the individual debtor to redeem personal property from a lien by making one lump sum payment to the secured creditor amounting to the actual value of the collateral as fixed by the Court under Section 506(a).

Chapter 7 is the appropriate Chapter for the debtor that does not seek reorganization or rehabilitation. Section 522 protects the debtor's exemptions and enables it to leave the bankruptcy scene with funds made available to it by Federal statute or by state law if the state opted out, so that the discharged debtor may go on its way to a fresh start. The same Section, 522, protects the debtor's exemptions and discharge by permitting it to avoid certain liens to the extent that they impair an exemption to which the debtor would be entitled, in-

cluding judicial liens or non-possessory, non-purchase-money security interests in certain types of consumer goods, tools of the trade, professional books or certain prescribed health aids.

Among the disadvantages of the Chapter 7 is, of course, the debtor's inability to obtain a discharge from those debts excepted by Section 523. Furthermore, all of the debtor's legal or equitable interest in property passes to the trustee under Section 541, whereas in a Chapter 13 case, the debtor retains the property of the estate. Such property not exempted by the Chapter 7 debtor will pass to the trustee for liquidation and distribution among the creditors.

The Chapter 7 debtor further finds itself at the mercy of the Bankruptcy Judge who, *sua sponte*, may dismiss a case filed by an individual debtor whose debts are primarily consumer debts if the Judge finds that the granting of relief would be a substantial abuse under Section 707(b). A recent technical amendment now authorizes the United States trustee to raise with the Court the issue of whether the filing constitutes an abuse of Chapter 7. If the debtor has received a discharge from his Chapter 7 in case commenced within six years before the date of filing the present petition, then he may not receive a discharge in the second Chapter 7 case. However, he may file a Chapter 13 anytime from the moment his Chapter 7 is closed. The Chapter 7 debtor also runs the risk of having its discharge denied on the grounds set forth in Section 727(a) of the Code. If it chose Chapter 11 it likewise would not be discharged on the confirmation of a liquidating plan if the debtor would have been denied a discharge in a Chapter 7 case under Section 727.

Another disadvantage to the debtor in choosing the Chapter 7 straight bankruptcy proceeding is the stigma that may attach to it rather than reorganization under Chapter 11 or an adjustment of debts under Chapter 13.

The debtor's choice of relief under Chapter 13 is tempered by certain eligibility

requirements in addition to those previously stated and which govern all three chapters.

Section 109(e) specifically requires that only a debtor with regular income is eligible to file a Chapter 13 petition. Thus, it is not necessary that the debtor be a wage earner. For example, social security payments, pension installments, and welfare benefits constitute regular income. The section further provides that only an individual, or an individual with a spouse, who owes on the date of the filing of the petition non-contingent, liquidated, unsecured debts of less than \$100,000 and non-contingent, liquidated, secured debts of less than \$350,000 may file a Chapter 13 petition. Debtors engaged in business and who are self-employed and incurred trade debt in producing income are included as possible petitioners.

The advantages of Chapter 13 are of great importance, particularly to the homeowner whose residence is about to be foreclosed or the tenant who is about to be dispossessed by his landlord. Upon filing, the automatic stay under Section 362 becomes effective and prohibits litigation and collection efforts against the debtor and his property. The automatic stay is self-executing and no order is needed. In addition, Chapter 13 limits credit action against a co-debtor for payment of consumer debts to permit the debtor an opportunity to pay the claim over time without the creditor resorting to the co-debtor, under certain circumstances pursuant to Section 1301.

The debtor is permitted to retain its properties pending performance of its plan. Unlike Chapter 7, Chapter 13 is not a liquidation proceeding. The trustee does not normally take title or possession of the debtor's property and the debtor may retain non-exempt property...

The Chapter 13 has less stigma attached to it than Chapter 7 and a successful plan may aid the debtor in obtaining credit in the future...

Chapter 13 provides for a more com-

prehensive discharge protection than Chapter 7 or 11 which appears from the provisions of Section 1328(a). The exceptions to a discharge in a Chapter 7 are not applicable in a Chapter 13 case, except for child support, maintenance and alimony obligations, long-term debts specified in the plan and priority debts due to the taxing agencies. A hardship discharge is also available under Section 1328(b)...

The Chapter 13 debtor has the right to provide for the secured claims of creditors by paying only the value of the collateral, except a claim that is secured only by a security interest in real property that is the debtor's principal residence, as provided for by Section 506 and 1322(b)(2). Finally, the debtor may convert or dismiss its case as a matter of right at any time in accordance with Section 1307.

Although the debtor which chooses Chapter 13 as the panacea of its financial ills has many advantages, it also may not be the type of remedy which is best suited for the debtor depending upon its circumstances as compared to the other chapters. The Chapter 13 debtor sacrifices future income to retain present assets. Earnings from future services performed by the debtor after commencement of the case but before it is closed, dismissed or converted become property of the estate under Section 1306. If either the trustee or any creditor objects to confirmation of the plan, the debtor must pay the dissenting creditors in full or pay all of its creditors the equivalent projected disposable income as provided for by the recent amendment to Section 1325(b). It is noted that there is no such requirement in Chapter 11 which merely requires under Section 1129(a)(7)(A)(iii) that creditors receive at least as much as they would have received if the debtor were liquidated under Chapter 7. Furthermore, unlike Chapter 11, the Chapter 13 debtor cannot deal with all forms of mortgage debt since Section 1322(b)(2) prohibits a Chapter 13 plan from modifying

continued on page 12

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ORGANIZATIONS

Women's Center You Asked For It

by Connie Borkenhagen

In the following exchange, a hold-up victim is asked questions similar to those asked of a rape victim. The testimony — indeed, the whole line of questioning — would be inadmissible. In the case of the rape victim, it would be quite allowable and quite standard.

Mr. Smith, you were held up at gun-point on the corner of First and Main?"

"Yes."

"Did you struggle with the robber?"

"No."

"Why not?"

"He was armed."

"Then you made a conscious decision to comply with his demands rather than resist?"

"Yes."

"Did you scream? Cry out?"

"No, I was afraid."

"I see. Have you ever been held up before?"

"No."

"Have you ever given money away?"

"Yes, of course..."

"And, you did so willingly."

"What are you getting at?"

"Well, let's put it this way, Mr. Smith. You've given money away in the past, in fact you've quite a reputation for philanthropy. How can we be sure that you weren't contributing to have your money taken from you by force?"

"Listen, if I wanted..."

"Never mind. What time did this hold-up take place?"

"About 11 p.m."

"You were out walking on the street at 11 p.m. Doing what?"

"Just walking."

"Just walking. You know it's quite dangerous being out on the street that late at night. Weren't you aware that you could have been held up?"

"I hadn't thought about it."

"What were you wearing at the time, Mr. Smith?"

"Let's see...a suit. Yes, a suit."

"An expensive suit?"

"Well...yes. I'm a successful lawyer, you know."

"In other words, Mr. Smith, you were walking around the street late at night in a suit that practically advertised the fact that you might be a good target for some easy money, isn't that so? I mean, if we didn't know better, Mr. Smith, we might even think

Hofstra Property Law Journal

by Matthew Weiss

The International Property Investment Journal was recently reorganized into the Hofstra Property Law Journal (HPLJ) by a unanimous vote of the faculty. In addition to the title change, the journal will also alter its scope and orientation. The HPLJ will no longer limit its scope to solely international property issues, rather it will concentrate on all issues relating to real property (environmental law, preservation law, etc.). Additionally, Lena A. Uljanov, the journal's Editor-in-Chief, has tightened the ship considerably. Only 20 students from the class of 1986 were asked onto the journal and only two issues, instead of four, will be published yearly. Disciplinary procedures have been strictly implemented. Uljanov believes these measures will bolster the journal's image among the faculty and strengthen its base.

Professor Twerski found problems with IPIJ. Dean Gregory asked Uljanov to "justify the journal's existence." A long and arduous campaign ensued for the journal's survival. Through substantive changes in how the staff is to be supervised and a heavy public relations campaign, Uljanov managed to win unanimous support for her compromise solution.

Winning the battle for survival is not the end of the war however. IPIJ's business affairs still need to be unwound. For example, the journal is contractually obligated to give its printer one year's notice to terminate its contract. These matters are in the process of being resolved. It is hoped that this unwinding process will be completed some time between the spring of 1987 and the fall of 1987. Uljanov greatly appreciates the vote of confidence that the faculty has given her as well as the dedication and hard work of her coworkers.

you were asking for this to happen, mightn't we?"

Connie Borkenhagen is a graduate of the University of New Mexico Law School and was a delegate to the American Bar Association House of Delegates for the Law Student Division. Her article appeared in the September 1975 issue of *Student Lawyer*.

Environmental Law Society

by Richard Horowitz

It has been a busy month for environmental affairs both inside and outside the law school. While the Environmental Law Society (ELS) members have been busy attending meetings and public hearings and finalizing the upcoming issue of the *Environmental Law Digest*, the Congress and the New York State electorate have pushed through some monumental funding proposals to help restore and preserve our environment.

The big news has to be the renewal of the federal Superfund legislation. After failing to renew the Superfund for over a year the 99th Congress managed to push through a fund which will raise over \$9 billion, despite the objections of President Reagan. Hopefully, this new infusion of cash will allow the cleanup of many extremely hazardous waste sites to begin. Proper administration on the part of the Environmental Protection Agency will be the key to the Superfund's success.

Even closer to home, the New York State voters overwhelmingly passed Proposition 1, the Environmental Quality Bond Act (EQBA), on the November 4th ballot. It was the first time that in fourteen years that an environmental bond act has been on the ballot. The EQBA, by issuance of bonds will raise \$1.45 billion for hazardous waste cleanup, shutdown of municipal landfills, as well as preservation of environmentally sensitive lands and historic properties. The \$1.45 billion for New York State is really a tremendous amount of money when viewed against the \$9 billion the federal government has slated for all fifty states.

On the homefront, we are anxiously anticipating the upcoming issue of the *Environmental Law Digest* (ELD) (Vol. 3, No. 2). Copies will be available for all students as soon as it rolls off the presses. ELS encourages everyone to read the ELD and if you are interested in writing for next semester's issue please leave a note in the

ELS box in the Admissions Office.

Some recent ELS events have included guest speakers from the Suffolk D.A.'s office, the Citizens to Replace LILCO and the law firm of White & Case. On November 21, ELS held an Alumni Dinner at the Nassau County Bar Association for students and Hofstra graduates with an interest in environmental affairs. Keep your eye out for signs announcing upcoming ELS events.

Finally, Professor Ginsberg will be teaching a course in Environmental Law this coming semester. It is an interesting and useful course and we encourage anyone concerned with their environment to take it. It is only offered once a year, so get it while you can.

Snow Emergency

December 1 through March 30 are potential snow months. Parking fields and roadways must be cleared and the task can be accomplished quickly and easily if vehicles are not scattered throughout campus. For this reason, Parking Field #1 has been designated as a snow emergency parking area. For faculty, administration, staff, and commuting students, this area is located east of California Avenue at the Life Science Complex.

Resident students (towers, Twin Oaks, Netherlands, Freshman Center, and Colonial Square occupants) are requested to restrict their parking to Parking Field #7, east of Oak Street and west of the towers.

Abandoned vehicles parked in other than designated snow emergency parking areas will be towed away at owners' expense and risk.

Your cooperation in complying with this request will be of great assistance to the Physical Plant Department and will help in increasing the efficiency of snow removal.

Hofstra Property Law Journal

by Matthew Weiss

Papers for an important case were recently filed in the Federal District Court in Fort Lauderdale, Florida. **Shuttleworth v. Broward County**, 86-xxxx. Next month, Jose A. Gonzalez will be deciding whether AIDS qualifies under the federal definition of handicap. If it does then the plaintiff, Todd Shuttleworth, will be entitled to the full protections afforded by the Vocational Rehabilitation Act of 1973.

This case is important because it has advanced farther than any other on this issue. Shuttleworth was a budget analyst for Broward County. He was fired four months after his supervisors learnt of Shuttleworth's condition. His superiors admit their motivation was based on a fear that Shuttleworth would infect others through casual contact, citing medical experts' opinions that the communicability of AIDS is still uncertain. However, Shuttleworth counters that Broward County's firing is illegal because he was competent and physically able to work.

If Shuttleworth is victorious then the impact on the federal government as an employer and employers receiving federal funds will be great. Roughly 27,000 people have been afflicted with AIDS and 270,000 are expected to contract the deadly disease in the next five years. Moreover, although the decision will not be binding on them, their jurisdictions. For example, in New York, it appears that AIDS would be considered a handicap because last year the Court of Appeals ruled that its definition should be liberally construed. **McDermitt**

v. Xerox Corp., No. 179 (holding that obesity is a handicap under the right circumstances).

Another case relating to AIDS was recently filed in Ramsey County District Court in St. Paul, Minnesota. A woman is suing her former fiancé, alleging that she contracted AIDS from her boyfriend and that he negligently failed to disclose this fact to her. The plaintiff, in seeking \$50,000 in damages, alleged that her boyfriend knew he had the deadly virus, yet he still repeatedly engaged in sex with her. If the plaintiff is victorious, then, in Minnesota, consenting adults will have a duty to disclose some aspects of their medical conditions.

Judge Peter K. Leisure of the Federal District Court for the Southern District recently granted summary judgment to Columbia Pictures dismissing Harvey Publications' complaint. **Harvey Cartoons v. Columbia Pictures Industries**, 84-8274.

Harvey had contended that Columbia's use of a ghost in its logo for the film "Ghostbusters" was an infringement upon their copyright. Harvey, who was a comic book publisher until the 1950s, owns the copyright for the ghosts from Casper the Friendly Ghost. Judge Leisure found that there were only insubstantial similarities between the two ghosts and that the two ghosts did not have the same type of feel. Thus, there was no triable issue of fact. Harvey was attempting to haunt Columbia with this suing campaign involving the logo from Ghostbusters.

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Duberstein continued from page 10

the rights of holders of claims secured only by real estate mortgages on the debtor's principal residence.

If the debtor is not an individual with regular income and if its debts exceed the monetary eligibility requirements, it is disqualified from seeking relief under Chapter 13...

The debtor seeking to obtain the benefits of a Chapter 11 case must meet the general eligibility requirements that are applicable in all three chapters as earlier indicated. However, only a person that may be a debtor under Chapter 7, except a stockbroker or commodity broker, both of whom are permitted to be debtors under Chapter 7, and railroads, which are excluded from Chapter 7, may be debtors under Chapter 11.

The Code does not expressly require that a Chapter 11 debtor be engaged in business operations. While a Chapter 11 is primarily aimed at business debtors and is more expensive than Chapter 7 or 13, several recent cases have illustrated that consumer debtors might find Chapter 11 appropriate under certain circumstances...

The primary policy behind Chapter 11 is to rehabilitate a debtor and provide for its reorganization, although a liquidating plan may be proposed as set forth in Section 1123(b)(4). The debtor can be an individual, partnership or corporation, and receives a fresh start when the plan of reorganization is confirmed although confirmation does not discharge an individual debtor from any debt excepted under Section 523.

The Chapter 11 debtor will have selected the most popular type of relief by reason of its many advantages. The debtor may retain control and possession of its property as debtor-in-possession although a trustee may be appointed who will displace it for reasons of fraud, ineptitude or for cause shown, as provided for by Section 1104. The most important reason for filing the Chapter 11, of course, is the automatic stay as contained in Section 361 which protects the debtor and its property from virtually all actions to collect or enforce pre-petition claims and liens...

Unlike the Chapter 13 debtor, the Chapter 11 debtor has great flexibility in formulating a plan of reorganization and may also deal with all forms of mortgage debt.

The debtor who is unable to utilize the benefits of Chapter 13 because of the size of its debts has a possible alternative in Chapter

11 which has no monetary eligibility requirements. The Chapter 11 debtor has the right to provide for the secured claims of the creditors by paying only the value of the collateral as established by Section 506 although the secured creditor may elect to have its entire claim treated as secured thereby preventing the debtor from cashing it out for less than the full amount of the claim, all as set forth in Section 1111(b).

Where the Chapter 11 debtor had worked out a settlement with its creditors prior to the filing of its petition, it may utilize the acceptances in confirming its plan proposed in the Chapter 11 case. Inasmuch as the Chapter 11 plan must be approved by two-thirds in amount and more than one-half in number of the allowed claims of every class of claims, it is thus apparent that the Chapter 11 debtor does not have to satisfy every creditor. Cram-down provisions of Section 1129(b) enable the debtor to confirm a plan notwithstanding its inability to obtain the necessary acceptances...

Debtors will choose the Chapter 11 form of relief for a host of reasons. Aside from the benefits of the stay provision of Section 362 which are employed to enjoin foreclosures of liens, executions against assets, and to avoid prolonged costs of litigation, the debtor will look to the Chapter 11 reorganization type of case for many other advantages it offers. It may restructure its debt in order to accommodate income availability, obtain financing where lenders prefer the safeguard offered by the Bankruptcy Laws, or utilize the benefits of Section 365 which allow for the assumption and assignment of leases which may be the source of funds necessary to carry out the monetary part of the plan. The debtor-in-possession, standing in the shoes of a trustee appointed under Section 1104, may also exercise the power of avoiding preferences which can also lead to the accumulation of funds necessary to the plan...

In Chapter 11 the debtor runs the risk of having someone other than itself propose a plan. Although the debtor is given an exclusive period of 120 days to file a plan subject to further extension by the court, if the debtor fails to propose a plan within that time, or if a trustee under Section 1104 is appointed to operate the business, the exclusivity period will terminate. Thus the debtor may not be certain that it will be the sole entity to formulate a plan. By obtaining the appointment of a trustee, creditors may be able to have competing plans considered in addition to the plan proposed by the debtor.

Lack of working capital or inability to obtain sufficient financing or the permission to use cash collateral which is subject to the lender's lien may be the death knell of the debtor. In addition, its failure to cooperate with the creditors' committee or its accountants may give the committee reason to move to terminate the reorganization case.

Even after spending a considerable amount of time in working out a plan, the debtor may be unable to confirm as a result of its failure to obtain the consent of at least one class of claims that is impaired, if any, as required by Section 1129(a)(10). Another stumbling block may lie in its inability to prove that confirmation of the plan will not likely be followed by liquidation or the need for further financial reorganization. The additional requirement that the plan provide the creditors with no less than what they would receive under a Chapter 7 liquidation of the debtor is also a necessary factor which must be established.

Although the cram-down provisions of Section 1129(b) were intended to enable the debtor to confirm a plan absent the necessary acceptances, it is often extremely difficult to meet the criteria required. The debtor may also find itself in the unenviable position of proposing a plan which cannot meet the absolute priority rule required of a

cram-down with the result that equity holders and those in control of the company may be wiped out. It is only where the debtor has received the requisite acceptances and cram-down is not called for, that the principals may retain their stock and continue to control the company notwithstanding the fact that the absolute priority rule has not been fulfilled.

While we have recognized the numerous disadvantages of the Chapter 11 case, it is readily apparent that from the sizeable number of confirmed Chapter 11s, the successful debtor which has selected that form of relief has clearly shown that it has made a wide choice...

In conclusion, I'd like to tell you that this is not the first time I've spoken on bankruptcy at Hofstra. In 1975 when dean Schmertz was the moderator of a seminar on labor-management relations, I was also on a panel of lecturers dealing with bankruptcy and insolvency. I remember the law school then. It was beginning to develop as a great seat of learning in the law. Today, it is one of the finest law schools in the country. Its fame has spread nationwide. It is no wonder that Judges and major law firms seek its graduates. I am proud of its accomplishments and honored to have been with you today.

Kahane Letter, continued from page 7

not answer most of the questions asked. For instance, he never addressed whether the implementation of his plans to oust the Arabs from Israel would take on "an Apartheid like system." Nor did he ever say how the Arabs would be made to leave the country if they resisted. Nor did he convincingly reply to the inquiry of how Jews would be treated if they were not "good Jews—not practicing Jews."

However, credit must be given where it is due, therefore I must commend Rabbi Kahane for his crafty ability to speak. He was able to dominate the course of the forum, he answered the questions by asking questions or attacking the person asking. He stood by his view, which in a nut shell is

"What I believe is true, if you disagree you are wrong. If you are not Jewish, then you disagree because you can't possibly understand since you're not Jewish. And if you are Jewish, and you don't agree, then you have a serious problem with Zionism."

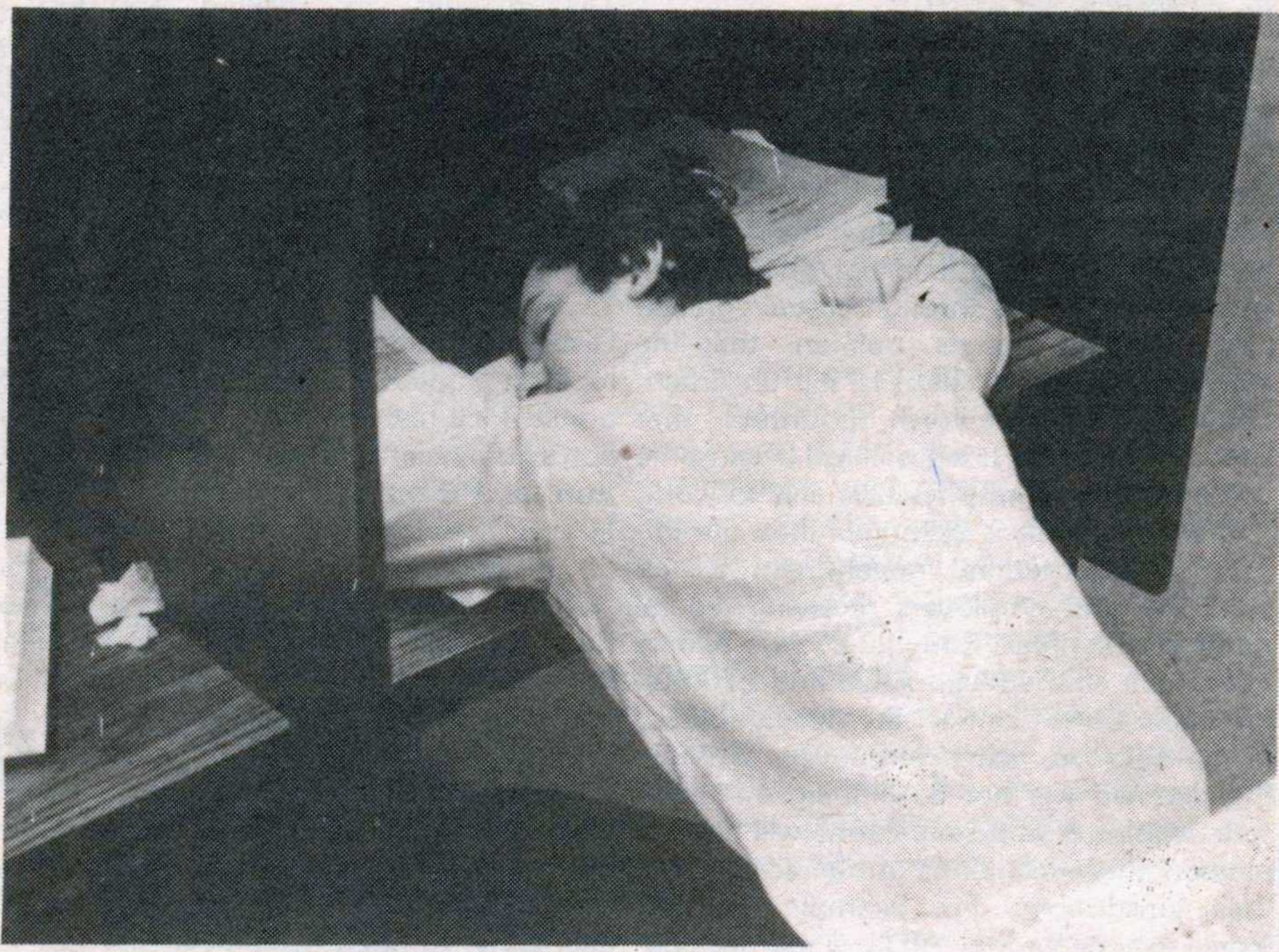
It really is amazing how Rabbi Kahane has

been allowed to hide behind this curtain of "this is a religious issue—this is about Zionism," without being forced to deal with the underlying racial aspects of his movement. Am I also to believe then that the apartheid system in South Africa is as they claim "an economic and power struggle," rather than a racial atrocity?

Finally, I can only hope that people in attendance that day were looking beyond his orator skills and were listening to substance. If this man is ever successful in becoming Prime Minister, God Help Us!! Peace in the Middle East will never be achieved with the concepts he professed. His plan will fill the streets of Israel and the neighboring territories with the blood of Arabs and Jews.

For those interested in a good article giving the opposing view, see Sprinzak, E. "Kach and Meir Kahane: The Emergence of Jewish Quasi-Fascism," *Patterns of Prejudice* (Vol. 19, No. 3, No. 4, 1985). *Patterns of Prejudice* is an international quarterly journal on prejudice and discrimination, published by the Institute of Jewish Affairs.

Sallie Manzanet
Class of '88



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LEISURE

The Top Ten Ways To Make The Top Ten Percent

by John Gentile

The beginning of the law school year (and not to mention exams) brings to the forefront all the aspirations of law school students. At the top of the list of aspirations is the elusive, magical, mystical goal: making the top ten percent of the class. And so, without further introduction, from the home office in Milwaukee, here are the top ten ways to make the top ten percent of the class. (Note: results were taken from a very, very, very informal poll.)

10. **STUDY VERY HARD** This made the top ten because students were given only ten alternatives to choose from.

9. **BRIBE YOUR PROFESSORS** An old standby which the students like, but we feel shows a lack of imagination.

8. **BRIBE SCHOOL LIBRARIANS** We doubt the effectiveness of this alternative; however, students say its cheaper than bribing professors.

7. **LIE ON YOUR RESUME** If the firms who interview you catch on, swear it was a typographical error. If they don't catch it, you're in!

6. **HIRE A VERY BRIGHT LAWYER WHO LOOKS JUST LIKE YOU TO TAKE ALL EXAMS** This needs no ex-

planation.

5. **HAVE A BRAIN TRANSPLANT WITH TOM SHEEHAN** This is a novel approach.

4. **CHEAT OFF THE NUMBER ONE STUDENT IN THE CLASS** This is for those who can't bear the thought of having Tom Sheehan's brain for eternity.

3. **SLEEP WITH THE NUMBER ONE STUDENT IN THE CLASS** For those who are too moral to cheat off number one without consent.

2. **GET A GOOD SET OF KNEE PADS AND PERSONALLY VISIT EACH PROFESSOR** While the home office has only begging in mind, students have come up with some interesting uses.

1. **KILL NINETY PERCENT OF YOUR CLASS** We suspect that students have been saturated with too many Rambo-like movies.

There you have it Hofstra students. Armed with this knowledge, we wish you good luck in your pursuit of the top ten percent. However, we strongly recommend that you avoid using any of the aforementioned methods of achieving your goals. Well, at least avoid number 1!!!

by Matthew Weiss

The New York area has much to offer in the way of radio concerts and programs. WLIR (92.7) has the longest running radio concert series in the country. Every Tuesday night at 9:00 p.m., this station broadcasts a different show uninterrupted by commercials. The average show is sixty minutes. On WXRK (92.3), the King Biscuit Flower Hour is aired every Sunday night between 10:00 and 11:00 p.m. When commercials are edited out, the program is around 50 minutes long. Friday evenings on 195 (95.1), various concerts are broadcast. WNEW (102.7) also airs shows worth taping but without any regular schedule. Persons interested must listen carefully to WNEW's DJ's for clues on future shows.

For those of you who like Jazz, WBAB (102.3) airs Long Island's only jazz shows on Thursdays at midnight. It is called Moontrane Jazz. Gerry Maitre is the host and he provides insight into the pieces he plays. One can hear old as well as new material. Other programs worth tuning in on are WXRK's Virgin Vinyl (Sundays at 9:00 p.m.), WLIR's Rock Over London (Sundays at 10:00 a.m.), and WBAB's The Sampler hosted by Ralph Titora (Wednesday at 12:00 p.m.). All four play the newest releases.

One last show is Mixed Bag on WNEW (Sundays at 9:00 a.m.). The show features folk and jazz artists. Other special broadcasts are aired but without much advertising. Thus, interested parties must simply listen carefully to the area's radio stations.

New albums by the following artists will be released shortly: Aretha Franklin, Colin Hay, Crusaders, Commodores, Howard Jones, Paul Young, Grace Jones, A-Ha and Prince's Trust. The latter is a 14 track compilation of the favorite songs of Prince Charles and Princess Di. The proceeds will go to aid unemployed and disadvantaged youth. Artists include Phil Collins, Dire Straits, Sade, Robert Plant, Eric Clapton, Spandau Ballet, Duran Duran, Jethro Tull, Steve Winwood, Genesis and Procol Harum ... Mick Jagger and Keith Richards are in the studio but not together. They are both working on solo efforts ... The Pretenders will be in town December 17 and 18 in the Nassau Coliseum and Meadowlands Arena respectively. Misfortune has once again plagued this band. Their long-time sound man recently died in a tragic car accident ... Bruce Hornsby's new song "That's how it is" will be a huge hit! If you have not heard it yet, buy the single. Songs like this one come around infrequently.

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The *International Property Investment Journal* is pleased to announce its reformation into the *Hofstra Property Law Journal*.

The editors and staff would like to express their appreciation to their Editor-in-Chief whose hard work and dedication was largely responsible for the journal's new direction:

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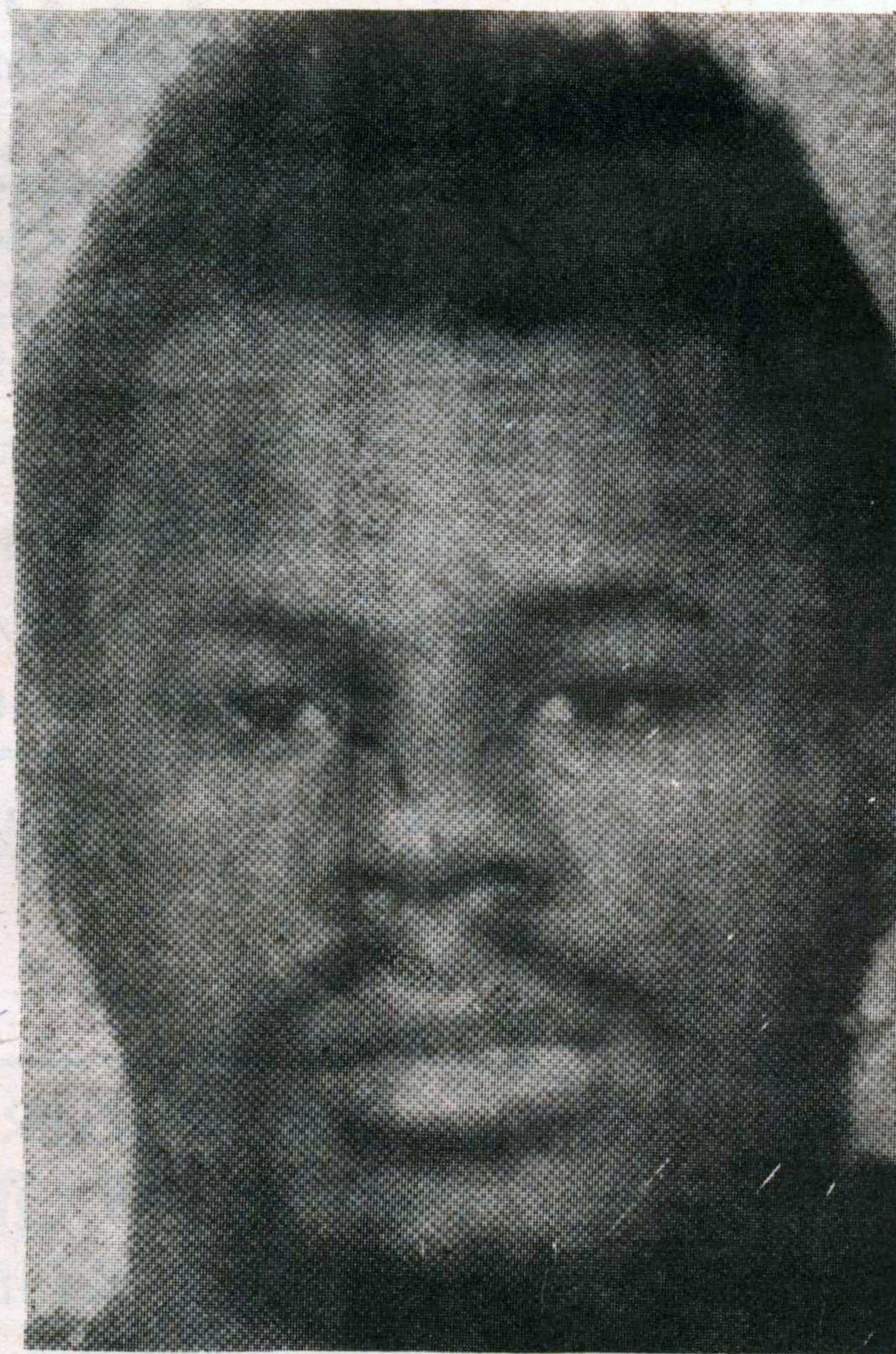
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Madonna's new video depicts a little boy attempting to gain entrance to a peep show in which she stars. Once again this fine, young songstress has demonstrated her undying dedication to higher education.



**Terrorist
Of the Month**

SPORTS

The Big East Conference: Still The Beast

by Mitchell Elman

Just two years after the Big East dominated the NCAA Tournament and the Final Four, the talk around the hallways and corridors is that the Big East is going nowhere this year. The charisma brought by Ewing, Mullin, Berry, Pinckney and the Pearl may be gone, but the talent keeps pouring into the Big East. Other than **maybe** the Big Ten and the ACC, there is no better conference. Look for a very competitive year with parity being the major issue confronting the conference. Below is a brief summary of each team and their predicted finish.

1. Syracuse Orangemen

The Pearl, Addison and Alexis left for the green NBA pasture and so a new era dawns on Syracuse basketball. As of press time, Rony Seikaly, the most dominant center in the conference may not be able to suit up till mid-January because of a stress fracture injury. The Orange had a blue chip recruiting year with the addition of Derrick Coleman and Steve Thompson. When Seikaly comes back he'll have outstanding up-front help from Coleman and Rodney Walker. Howard Triche and Greg Monroe are solid, if unspectacular shooters and Matt Roe, a new recruit, should add some outside scoring. Sherman Douglas at this point could create the right chemistry. The Orangemen will be young and talented and could make a severe dent in NCAA competition if Boeheim does some coaching.

2. Pittsburgh Panthers

New coach Paul Evans inherits a team with vast potential. Demetreus Gore and Jerome Lane are talents and Curtis Aikin should be one of the top three point shooters in the country. Charles Smith has player of the year ability. Tico Cooper may help out at center. With some discipline, the Panthers could have very good post-season chances.

3. Villanova Wildcats

A solid recruiting year by Rollie Mossamino. The backcourt chemistry should be outstanding with the quick penetrating Kenny Wilson dishing off to soft shooters Harold Jensen and blue chip recruit Eric Leslie. Doug West and Gary Massey form a big offensive-defensive platoon and Mark Plansky improved some last year. New recruits Barry Bekkerdan and Rodney Taylor will add some ability up front while Wyatt Maker may finally wake up this year. Could be very dangerous by NCAA time.

4. St. John's Redmen

Where's Walter? Louie C. keeps asking. With three returning starters, the Redmen may not need to ask this question at the end of the season. With Mark Jackson, the quarterback guard who can score, finding Shelton Jones and Willie Glass the Redmen will be extremely tough. John Hempel could shoot from long range, while Marcus Broadnax and Elander Lewis are an exceptional pair of rookie guards. The underrated Terry Bros fills the center spot adequately, but where is Marco Baldi? NCAA for sure, but Final Four is very unlikely.

5. Georgetown Hoyas

Fifth Place? What's going on John Thompson? The Hoyas don't seem to be getting the top blue chip recruits any more. Reggie Williams is the only super-star left. The team is filled with a lot of question marks. The point will be manned by frosh Dwayne Bryant. Ron Highsmith and Johnathon Edwards must gain consistency inside. Jaren Jackson, Perry McDonald, and Texas Player of the Year Anthony Allen will

contribute, but the Hoya press has a lot of holes without a man in the middle. Thompson will have them ready for the NCAA's, although don't expect them to go too far.

6. Providence Friars

Three transfers plus Rick Pitino's first real recruiting year added size (Abdul Shamsid Deen, Marty Conlon and Dave Snedeke) and athletic ability (Delray Brooks, Quinton Burton, James Best) make the Friars one of the most improved teams in the country. I like this team a lot and look for them to be competitive in the conference all season. A definite NIT bid with a long, outside shot for the NCAA's.

7. Seton Hall Pirates

P.J. Carlesimo must be wondering what's going on here. Three excellent recruiting years in a row and the Pirates still lack a single consistent threat. Mark Bryant will improve and will receive aid from new recruit Frantz Volcy, sophomore Ramon Ramos and Darryl Walker. James Major, Gerald Greene, and John Morton are all good athletes but need to find the hoop more. Junior college transfer Junior Curtis should help backcourt. The Hall finally has some talent and should make the NIT.

8. Boston College Eagles

Gary Williams is gone. Welcome Jim O'Brien. The Eagles have seven players 6-7 or better. Dana Barros at guard is sole proven Big East talent. Troy Bowers and Tyrone Scott should add some help. So must Skip Barry, a uniquely sound 6-7 shooter. O'Brien would like to have an up tempo full court pressing style but might have to adjust this year. The future is bright—but it's definitely not now.

9. Connecticut Huskies

New coach Jim Calhoun has a long season ahead. With no returning starters, the Huskies will be looking to Cliff Robinson with a strong assist from likely point starter Tate George and Robert Ursery. Robinson, Jeff King and Gerry Besselink will form the conference's tallest front line but that's about it. This team has no post-season chances.



**What?
My Ronnie
Made A
Mistake?**

Congratulations New York Mets-1986 World Series Champs

The N.Y. Mets ended an Amazin' season by winning the world series vs. the Boston Red Sox. Although the series was not a very well played series, it was a very, very exciting series. The drama and tension that the Mets provided for its fans could only be duplicated in a well-written play or movie. From the ground ball that went through Tim Lincecum's legs in game one to Jesse Orosco's striking out Marty Barret in game seven, the Mets showed guts, character and determination. The play of MVP Ray Knight was typical of the series for the Mets. He didn't hit the ball hard in the first game and was benched for the second game, but he then came on to get clutch hits and play a steady third base, thereby earning the MVP award. First baseman Keith Hernandez, Gary Carter, and Len Dykstra also played brilliantly and were crucial to the Mets success. The above statement leads me to my commentary.

If I can put aside the Mets championship for a minute and take a look into the future of the Mets, more championships may be on the way. The Mets have an excellent young ball club with just enough veterans to provide the requisite leadership. The single most amazing fact about the 1986 Mets was that no individual Met had a career year. Other facts that make the Mets appear to be dynasty bound are the following: Dwight Gooden

had a bad year and was still one of the better pitchers in the league. One has to believe that Dwight will be a 20 game winner again next season. Ron Darling and Bob Ojeda are very good and very consistent and can be counted on for at least 15 wins each. Sid Fernandez has showed hints of greatness and with a little work he too will become a quality starter in case of injury. Daryl Strawberry, Len Dykstra and Kevin Mitchell are all youth on the move and have their careers ahead of themselves. Carter, Hernandez and veteran reliever Orosco provide the backbone of what's in store for baseball.

The Mets management should not be so anxious to trade players and bring in new faces. The Mets should not fall into the Dodger syndrome and trade away a winning product. Management appears to be anxious to make player moves because previous pennant and series winners have had trouble the year after. The Mets however, shouldn't have this problem. The members of the team all have room for growth and improvement, and their pitching is young and strong. The Mets are also in the comfortable position of being able to withstand injuries to any individual player. Based on the above facts, the new theme should be "We've only just begun."

Personals

Dear Prof. Silverman, What a tacky orange cardigan!

Dear Charlotte Hoffer, Spring schedule sucks! We can tell you don't have to go to this law school. Furthermore, I'm really sick of going in there and facing your staff's apathetic attitude. The next time I go in there, I want someone to jump to attention and come running to help me. Merry Christmas!

Dear Rich, I love you, I miss you, come home.

To Al Maguire, Eat your heart out. **Weeb Eubank**

Ari, Layout wasn't so bad, was it? See you next time!

Wot? No Plug? Yes! And it worked, it really worked!

Beth R., I am crazy about you. **An Unrequited Lover.**

Mr. Gentile, Erotics, M and W 1:00 sharp Guaranteed to make a man out of you. **-Your instructor**

Highly motivated, attractive SJF seeks tall, reasonably handsome intellectual with beard, moustache, and umph. **All inquiries to Labor Law box.**

Dear John S., I'll make you dinner? Give you a bath. **Love, Grandma.**

Dear Lustworthy, You are the most desirable! Those big beautiful eyes, and wella balsom hair! **What is one to do!**

You can't always get what you want. **But you sure can try!**

Dutch Girl, Love your golden locks. **Madly, Lustworthy.**

Che boludo, como estas?

Dear Jean and Ursula, much luck on finals. I know you'll need it because, well, I really didn't mean to do it, but I edited your notes. Sorry, **the Phantom Note Editor.**

Claudia, What notes?

Dear X, You are a wreck. I'm going to call you a cab!

To the Conscience Staff: We really like the *Conscience*. **Love, the Conscience Editors.**

To Hubie, It's been nice having you in New York. Signed **Red Holtzman**

Reagan, There was no mistake made.

Dear Dex, I love you! **Alexis**

Larry Davis, Where are you? We need some crack. **Mary Davis**

Dear Susy, The best Christmas present I could get would be your hand (in marriage). **Love Frap**

To Ivan Boesky: Your arbitrage theories do not work without inside information. **John Shad**

To N.Y. Jets, Your defense is like butter. **Lorenzo who?**

To Charles Martin, Nice cheap shot. Guys likeyou should be suspended from life.

To the Placement Office: HELP!--**The Conscience Staff**

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