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The Hofstra University School of Law Newspaper

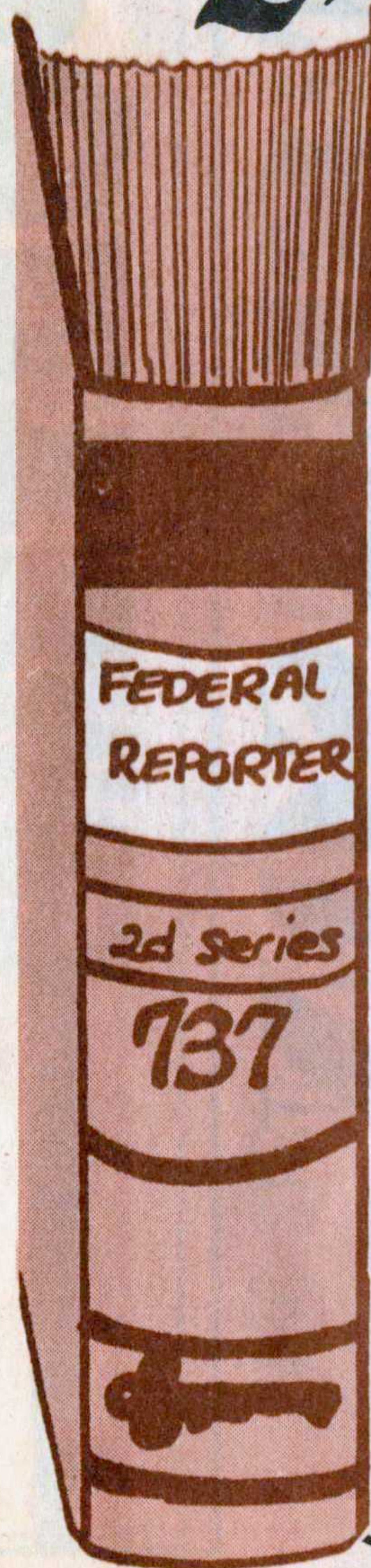
Volume 15 No. 4

Newspaper of Hofstra School of Law

November, 1987

Happy Thanksgiving

GOOD LUCK, ON FINALS!

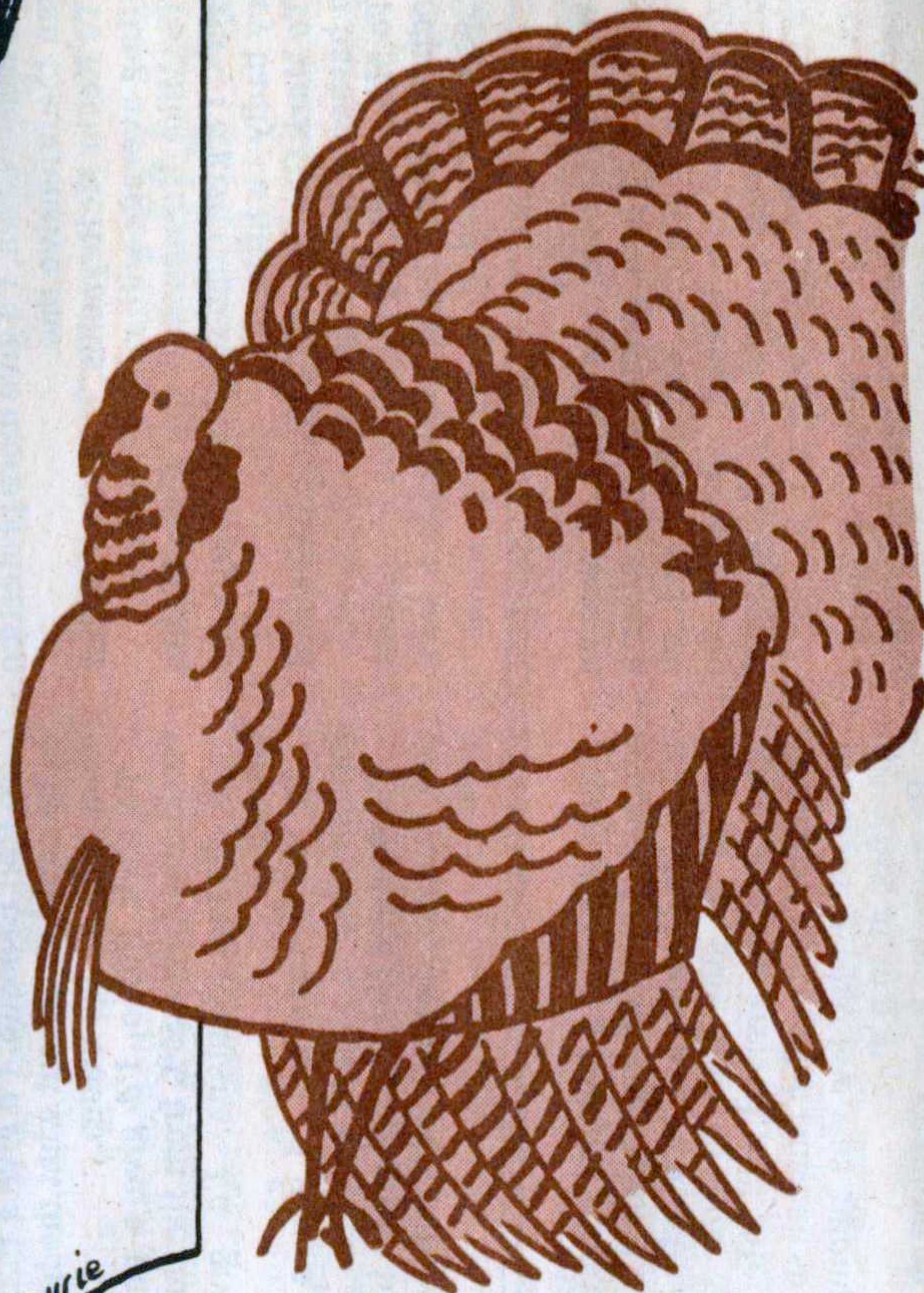


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"READY FOR TRIAL, YOUR HONOR" Farewell And Good Luck Debbie . . .

by Harriet Kolber
Douglas M. Scheinman

Have you ever conceived of being a "real lawyer" during your third year in law school? Of actually arguing a 5-day trial in front of a "real judge?" Or even having to apply what you've learned in Civ Pro, Evidence, and Family Law on behalf of "real clients?"

Have you ever given any serious thought to what it would be like to make an opening, raise an objection, or cross examine witnesses? This semester the NLO Clinical Program provided us with this unique and rewarding experience.

The issue of the case was whether a natural parent could be denied visitation with their children, where that parent had been incarcerated for the past six years, where there were allegations of past physical, verbal, and sexual abuse on the family by this parent, and where the teenage children do not wish to see this parent. We had five weeks to prepare for trial. Our first step was to develop a trial strategy to better advocate on behalf of our client, because although we believed in our clients' position, belief is not enough. We quickly learned that some witnesses don't come to court willingly. We also learned that this is the purpose of a judicial subpoena and boy did we write them! We learned that the Rules of Evidence apply to our case as well as those in our textbooks. All of a sudden, whether a document was an original or a photocopy, or whether an expert witness had a post-graduate degree from the University of Grenada became of utmost concern (We had a living, breathing, client). Finally, after a video-taped full dressed rehearsal (which we can only compare to three hours of Moot Court Argument before your least favorite professor it was "showtime").

Filled with trepidation, we drove to the Courthouse in Hauppauge, arriving at least one-half hour early. A two hour delay at Kennedy Airport is expected, but, at your first trial, it's painful. Getting "trial nervous" is not routine, but a prerequisite.

After our opening statement, it was just a minute before we learned who our opponents first witness would be. When the expected witnesses are called, trial preparation really does work. But when the unexpected witness is called, the one

who was not even listed in the pocket part of your revised trial program, it's anyone's guess as to where the testimony is headed. The most essential thing to do on direct is to listen to the question and the answer. By listening carefully, we were soon on our feet shouting "Objection" (like they do on LA Law) to many of our adversary's questions. After the judge had sustained our first five objections, the nerves were replaced by a measure of confidence.

Cross examination of your opponent's witness can be crucial to the ultimate outcome of the case. During the cross exam, we were able to force the witness' hand with the standard "Isn't it a fact" and "Isn't it also true" questions.

When the petitioner rested, it was our turn to present our case. Direct examination of your own witness is basically easy. You prepare your questions and generally know how your witness will respond. But generally doesn't mean always and when your witness says something unexpected, you try mental telepathy because you can't coach your witness. Then you sit down, take a deep breath, and immediately sweat though your opponents counterattack. While opposing counsel crosses your witness, you must once again listen to the questions, listen to the answers (making notes for re-direct), and simultaneously object at every opportunity.

Visitation trials can have the added wrinkle of a third advocate. In this case, the children's interest were represented by a law guardian who also crosses the cross exam, objects to the objections, and can call his own witnesses. As law students, we found this somewhat confusing. Evidently those feelings must have been shared by at least one other because of the fourth day of trial, there was a new court stenographer.

After meeting with the children and all attorneys in his Chambers, the Judge informed us that it would be a week before he made his decision. It was at this point that the "Monday Morning Quarterbacking" began.

For those of you who are interested in getting real practical experience before you graduate, and for those who have never had to get the senior partners lunch as part of your summer job, the NLO Clinical Program comes recommended. P.S. WE WON!

Debbie Cinque, one of our friendly librarians, is leaving the Law School after ten years in order to work in the library of Weil, Gotshal & Manges.

Debbie came to work as an Acquisitions Librarian in 1977. Her responsibilities included ordering all new titles, getting books checked in and processed, handling continuations, advance sheets, pocket parts, and the periodicals collection. In addition, she was responsible for the microforms collection.

The part of Debbie's job which she enjoyed the most was buying new books. Many requests for ordering new books came from faculty members, Professor Wypyski had preferences, and the other librarians usually had suggestions. Debbie also made choices from book reviews and word of mouth.

Debbie has mixed feelings about the library being a circulating library where students can take novel and non-fiction books home. After the trouble of acquiring books, checking them in and getting them on the shelves, it is frustrating when books turn up missing. Sometimes she feels she would like to take all the books and lock them up. On the other hand, she fully understands the frustration of the student who tracks down a book he or she is interested in reading, and is prohibited from checking it out overnight. Debbie hopes that when the school gets the automated circulations system, Hofstra Law will have better control over the library collection.

It is not easy to leave any job after a decade. Debbie feels very close to Hofstra - her co-workers, the faculty and the students. She especially enjoys interacting with the students when supervising the reference desk.



Debbie Cinque is going to miss Hofstra

Debbie is grateful to Professor Wypyski for all the assistance and training he has given her. She is also grateful to the circle of faculty members who have always shown concern for the development of the library collection.

The decision to leave Hofstra was a difficult one to make, but Debbie feels that the opportunity offered for professional growth was too great to turn down. She is looking forward to a challenge of working in a law firm and applying her extensive experience technical services to the library of a major New York City firm.

Many law firms have grown enormously in the past decade, their libraries along with them. Emphasis in the library was always placed on reference and research services. Law firm librarians are now beginning to recognize their weaknesses in technical services and the need for greater organization and control of their collections.

Debbie will be meeting with Hofstra alumni who are working for Weil, Gotshal & Manges. However, this means she has to leave Hofstra Law and she will be missed. Good Luck Debbie!

BLACK MONDAY

by Debra Genetin

Crash! Panic! Meltdown, Plunge, Collapse, Economic Heart Attack, Black Monday. Whatever you call it, the events that occurred on October 19, 1987 have left confusion in the minds of many. How did it happen? Why? Was there any warning? And what will it mean to us as individuals, or as future lawyers? And what will it mean for society in general? Many of us in law school lead a very insulated existence, filled with classes, research and studying, communicating mainly with other law students. So who has time to try and make sense of what's been happening with the stock market during the past month? Well, there are hundreds of stock analysts and economists out there attempting to do it for us. Maybe we can make sense out of the various theories and predictions.

First, what is the Dow Jones industrial average? It's an index of 30 publicly traded blue chip stocks, used as an indicator of

the general health and well-being of the stock market. On Oct. 19th, the Dow fell 508 points, losing 22.6 percent of its value and causing panic among investors and brokerage houses alike. Some began predicting depression and many envision a recession at the very least. But, President Reagan declares "the economic fundamentals in this country remain sound." Comforting, isn't it? So, why the dire predictions? Possibly because during the worst crash in history, in 1929, the market lost only 12.8 percent of its total value -- only about half as much as it just had.

Where did all the money go? About \$500 billion was lost that Monday and \$1 trillion since the market's peak. Physically, these dollars did not exist as real money. Rather, they existed as unrealized gain. Deprived of the prospect of one day cashing in on those gains is where the loss figures come from.

(Continued on Page 8)

Happy Holidays To All!

COMMUNITY FORUM

NBC STRIKE NEGOTIATED AT HOFSTRA

by Linda Nicholson

Hofstra law students were asked to solve the NABET Strike against NBC! Through the direction of Senior Assistant Dean Douglas in the course Dispute Settlement, students were negotiating, the NABET/NBC collective bargaining agreement in an effort to solve the strike.

The National Association of Broadcast Employees and Technicians union representing 2,800 technicians, producers, newswriters and editors, went on strike June 29. The strike stemmed from NBC imposing new contract terms that could threaten the job security of current members by increasing the number of daily or temporary employees.

Dean Douglas saw this as an opportunity to incorporate the Strike into his course. He contacted both NBC and NABET, receiving the NABET/NBC Agreement along with the 1987 proposals. The students served as advocates for respective sides and attempted to negotiate the current contract. This will develop the necessary mediation techniques and the negotiation skills involved in resolving a collective bargaining agreement dispute. Dean Douglas is attempting to have representatives from the Union and/or NBC speak with his students.

And if only at Hofstra . . . by the end of the term the NABET/NBC contract should be resolved.

CONSCIENCE STAFF WISHES ALL GOOD LUCK ON EXAMS!!!

NIXON CONFERENCE

The next event in Hofstra's Presidential Conference Series, "Richard M. Nixon: A Retrospective on His Presidency" was Thursday-Saturday, November 19-21, 1987 under the sponsorship of the Hofstra Cultural Center.

According to Dr. William Levantrosser, of the Political Science Department, who was co-directing the Conference along with Law Professor Leon Friedman, "The central idea was to cover the Nixon Administration in a comprehensive fashion. We were trying to bring together a mix of scholars writing papers, practitioners from the Nixon Administration discussing them, and, occasionally, journalists, serving as discussants. This format was followed in all of the approximately 25 panels scheduled.

Using that formula, the opening ceremonies featured talks by Nixon biographer Stephen Ambrose, former U.S. Attorney General Elliot Richardson, and Time-Life reporter Hugh Sidney, an

observer of an commentator on the American Presidency since 1950.

Conference coordinators made an open call for papers which was submitted about any relevant topics. These papers were evaluated by a committee of faculty and administrators to determine which would be presented at the conference.

Conference Panels

The topics covered by the Conference panels included "Reorganization of the Executive Branch," "Welfare, Housing, Transportation Reform, and Education," "Environmental Policy," "The Opening to China," "The Foreign Policy Process," "Politics and the Governmental Process," "Defense Policy and Military Manpower," "Economics and Monetary Policy," "The Protest Movement," "Watergate Reexamined," "The Ending of the Vietnam War," and "Appointments to the Supreme Court."

(Continued on Page 15)

HOFSTRA REPUBLICAN LAW STUDENTS

On Wednesday, October 28th, the Hofstra Republican Law Students Association (HRLSA) sponsored its Fifth Annual Candidates Forum and Luncheon.

Honored guests included Nassau County Executive Thomas Gulotta, Nassau County District Court Judges, Ira Wexner, Ira Warshawsky, Sandra Feuerstein and Joanna Seybert, and Nassau County District Court candidate Thomas Adams.

The candidates had an opportunity to address the students present in the Second Floor Lounge, and afterwards, mingled with the students over sandwiches and soda.

The afternoon provided an excellent opportunity for local public officials and judges to become better familiar with Hofstra Law School, and also allowed Hofstra Law students easy access to influential people whom they very well may meet in their future legal careers.

The HRLSA is proud to announce that all of the candidates in attendance were successful in their respective races.

The HRLSA would like to take this opportunity to thank the candidates for attending, the Hofstra Law administration and the SGA for allowing the event to be a continued success, and all those who attended.

HRLSA looks forward to sponsoring its Fifth Annual Awards Luncheon in the spring, and is eagerly awaiting the Young Republican Leadership Conference, in Washington D.C., in April 1988. All those interested in joining the group should look for these events next semester.

POCKET PART

We are pleased to inform you that there once again will be a Law School yearbook called "Pocket Part". The yearbook symbolizes the conclusion of what has hopefully been many years of hard work and learning for your relatives or friends. It attempts to capture all the memories, the good times as well as the trying times that made up their law school experiences.

We, therefore, hope that you will share our excitement and enthusiasm by placing an ad in our yearbook. The ad not only conveys congratulations to the graduates but also recognizes the special people who have supported us through our law school career.

The choice of ads and prices range from a full page at \$150.00, one-half at \$85.00, a quarter page at \$60.00, an eighth page at \$35.00 and a sixteenth page at \$25.00. There

will also be a "Donor Page" where names will be listed for a cost of \$10.00 per name.

If you would like to wish a future "attorney" good luck in this manner, please contact me at (516) 791-2199, Stanley M. Winderman at (516) 486-0331, or Pamela Faison at (516) 481-5960. Additional yearbooks will be available at a cost of \$20 per book. Ads and checks are due by December 1, 1987.

Leslie S. Sobel
Business Manager
POCKET PART '88

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c/o Admissions Office
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CONSCIENCE
The Hofstra University School of Law Newspaper

CONSCIENCE is published monthly from August to May by the students of Hofstra University School of Law.

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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Memories From The Nixon Conference



Professor Linda K. Champlin moderates the panel on Separation of Powers; Issues and Problems



Banquet Address given by Keynote Speaker Tom Wicker who is a Political Columnist for the New York Times.



Conscience Editors have a good time at the banquet, and meet dignitaries.



Dean Eric J. Schmertz moderates panel on the Silent Majority; Support for the President.



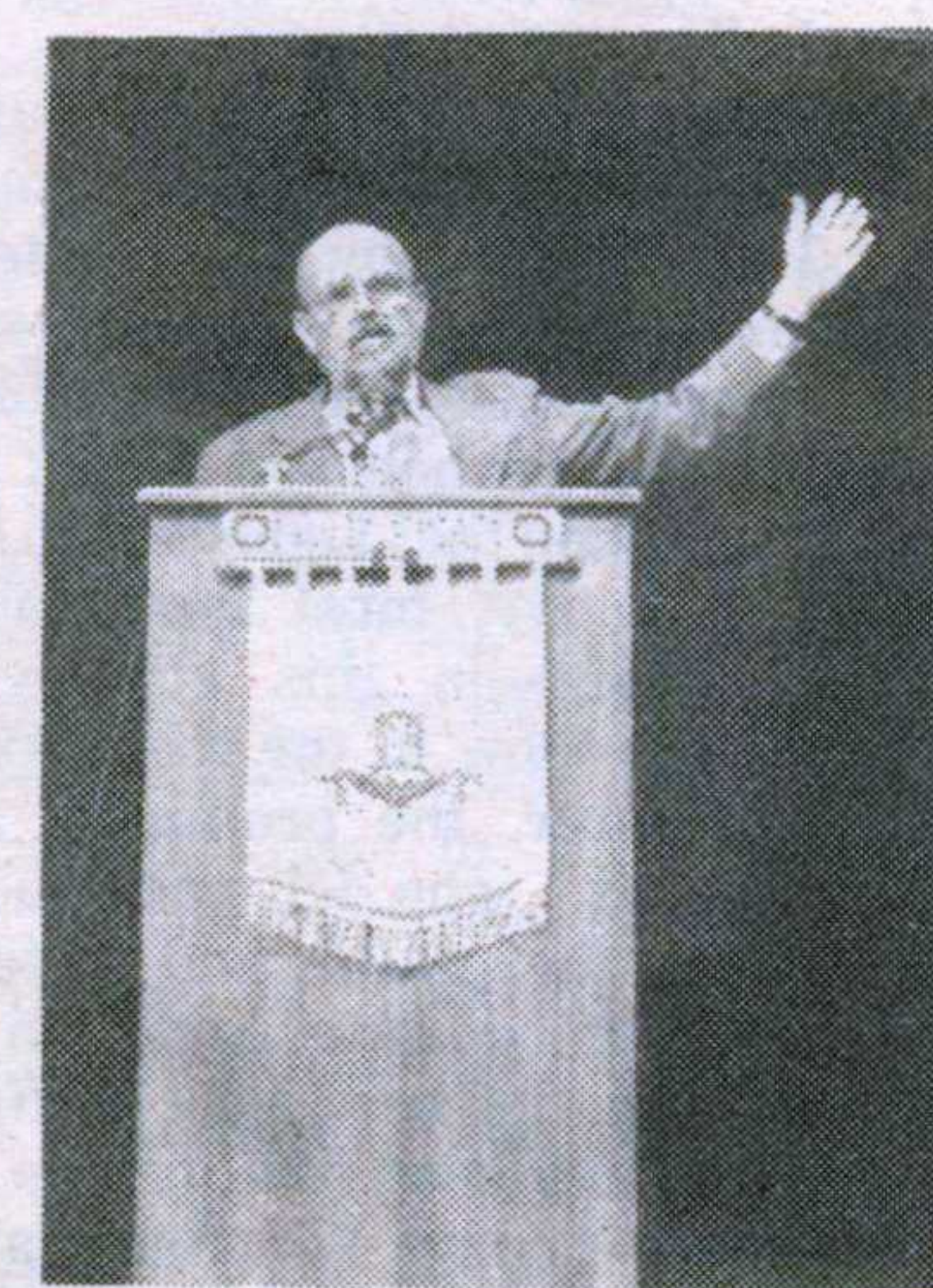
Tom Brokaw, from NBC news, speaking on Secrecy, the Government and the Media.



Henry Kissinger, former Secretary of State, evaluates foreign policy of the Nixon years.



H.R. Haldeman describes Nixon, the man, and his presidency as "complex."



John Ehrlichman, domestic affairs advisor in the Nixon Administration regrets that Nixon did not act quickly in firing those involved in the watergate burglary.



University President, James M. Shuart (on left) and Conference Co-Director and Professor of Law, Leon Friedman (on right). Speaking at the Richard Nixon Presidential Conference.

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DEAN'S CORNER:



Dean Eric J. Schmertz

HONORABLE FRANK A. GULOTTA
LECTURE -- NASSAU COUNTY
BAR ASSOCIATION
JANUARY 28, 1987

Dean Eric Schmertz delivered this speech at the Second Annual Frank A. Gulotta Lecture on the subject of drug abuse and drug use.

Justice Gulotta, Distinguished members of the Judiciary, President-Elect Hoffman, Dean Simon, Chairperson Zalayet, members and friends of the Nassau County Bar Association and its Academy of Law, ladies and gentlemen.

For at least four reasons, I am immensely honored by the invitation to make this talk. I am honored by my resultant identification with such an eminent, respected, and beloved jurist -- the Honorable Frank A. Gulotta. I am honored to talk before a Bar Association that I consider to be one of the most active, most imaginative and most collegial in this country. I am honored to follow in the footsteps of last year's lecturer, the prominent attorney Milton Gould -- who delivered such an informative, thoughtful and entertaining talk on the Sharon case. And I am honored by your invitation because it is affirmation to me of a very good relationship between the Nassau County Bar Association and the Hofstra Law School.

Last week I saw a new performance of Gilbert and Sullivan's *Makado*. The Lord High Executioner's list of those "who can't be missed" (due process notwithstanding) was updated, to the delight of the audience, to include the "John Elway of the Denver Broncos" (prophetic) and certain former officials of the New York City parking Violations Bureau. Let me start with two new items that update mandatory testing for drugs in the work place, in dramatic juxtaposition. Following the discovery of 96 nanograms of marijuana acid in the systems of some members of the crew of the Amtrak train involved in the accident in Baltimore, the Pennsylvania Transportation Authority announced that it would start random urine testing if its train motormen and bus drivers -- and Elizabeth Dole, Secretary of Transportation announced a plan to random test air controllers and air line pilots. At the same time, and on the other hand, pending in the legislature of the State of Maine is a proposal to prohibit all testing for drugs in that State on the grounds of invasion of privacy, lack of confidentiality, inaccuracy of test results, and resultant damage to reputation and employability.

These divergent positions on the issue of mandatory drug testing should not surprise lawyers. The history of our democratic society is one of delicate balance between absolute freedom and societal regulation. I suggest that the present debate over the propriety and methods of mandatory drug testing is the most recent dilemma requiring that delicate balance. After all -- to cite only a few -- this sophisticated audience well knows that a vendor is not free to sell a contaminated or defective product; a merchant is not free to sell a cut-throat price; a conglomerate is not free to gain a monopoly control; one cannot marry without a Wasserman test; tortious acts are proscribed -- as are criminal acts; an employer is not free to discriminate in hiring or retention because of race, religion, sex, age, and of course freedom of speech does not extend to falsely shouting "fire" in a theatre -- and on and on. Involuntary blood tests to determine use and quantity of alcohol are common in the employment setting -- both private and public -- and is a legitimate ground for discipline. What is different about the testing of urine to discover the use of controlled substances -- is in part just that. The search is not just

for discovery of drugs, but discovery of what in many jurisdictions constitutes a criminal offense. Even in those states where the drug of marijuana has been "decriminalized," its possession and use -- even its personal use -- is still an "offense" and in that sense anti-social. Consequently the stigma of a crime -- or even an offense heightens the controversy and the debate. But of greater difference, in my view, is the privacy of the body function involved -- the act of urination -- and the taking of a urine specimen. It is that private body function -- that becomes exposed and disclosed when urine testing is required -- that triggers emotional responses -- and intensifies attention to "private rights," the constitutional protection against "search and seizure," the issues of confidentiality, test accuracy and fundamental due process. At the risk of oversimplification, I suggest that absent emotional component, urine testing for drug use and abuse -- may not be that different from many other restraints on absolute freedom that society has properly and understandably imposed on us.

As lawyers, I think we would agree that the government as an employer, and private employers have the right to discover, and to bar or remove from their employment, drug users and abusers. And if urine testing is the most accurate method presently available, that procedure should not be prohibited. Safety, product quality, commercial reputation, and employee moral are and have been the defensible grounds.

However, as lawyers, I think we would also agree that affected employees are entitled to essential due process. Their jobs and reputations should not be jeopardized or stigmatized by urine testing that is inaccurate, that lacks confidentiality, that is undertaken without justifiable reason or is utilized discriminatorily.

And therein lies the critical -- indeed essential role of the lawyer. It is the lawyer who understands due process, probative evidence, fair play, the inestimable value of reputation. I would not leave a mandatory drug testing program to the doctors, or the bureaucrats, to government officials or to the business community. The drafting or at least review of substance abuse programs, their implementation, their results, and actions taken call for a lawyer's role. And as the cases begin to develop, it will be clear that what is at issue is not whether there should be mandatory testing of urine to discover drug use and abuse, but how it is to be done -- within the frame of the delicate balance between its legitimate need and the freedom and privacy rights of affected employees.

The use and abuse of drugs -- marijuana, cocaine, heroin, crack, amphetamines, etc. is probably the most serious domestic affliction that has faced our nation in its entire history, with the gravest of consequences to the health, welfare and productivity of our society.

In his excellent article in the *New York Times Magazine* of October 19, 1986, Judge Irving R. Kaufman stated that "drug testing is shaping up as the premier issue in labor relations for the next decade." It has been reported that 20 million Americans use marijuana at least once a month. Six million use cocaine at least once a month. 65% of today's entering work force has used some illegal or controlled drug. Close to one half of youths recruited for military service are disqualified because of drug use. It drains 60 billion dollars each year from the economy. It is the life blood of organized crime -- and is the proximate cause of a high percentage of crimes. The depth of the problem cannot be exaggerated.

The response has been to test -- or to attempt to test urine (subject to legal and arbitral challenges). The roll call of those testing or trying to test included: Federal employees; municipal police, fire, transportation and hospital employees; major league baseball players; National Football League players; National Basketball Association players; New York Marathon, Exxon, IBM, Lockheed, Shearson-Lehman Brothers, Federal Express, United Airlines, DuPont, Hoffman La Roche, AT&T, New York Times, Kidder-Peabody, Smith Barney, Harris Upham.

All of this is not without some humor. There is the *Newsweek* cartoon following President Reagan's announcement of a plan to test federal employees -- of the doctor stating to the President "The results of your urine test show a high concentration of Grecian Formula" or the suggestion, in response to urine testing of baseball players and the debate over the use of a designated hitter in the American League -- that what baseball needs is not a designated hitter -- but "a designated urinator." Just a few days ago TV reported on some "free enterpriser" in Texas, who is selling sterile, drug free urine samples -- for obvious use.

One of the reasons this topic was selected is because, by chance, I was the arbitrator in what turned out to be a leading arbitration case on drug testing between Bath Iron Works (in Maine) and Local 6 and 7 of the Marine and Ship Builders Union AFL-CIO which I decided in June of last year. As that case was widely reported in the reporting services, in newspaper articles and editorials in *New England*, and widely discussed and cited in government circles in Washington, D.C., it is proper for me to discuss it with you. The issues raised in that case are all the issues generally considered by the courts in both public and private employment. I think, respectfully, that my decision in response to those issues was consistent with the present majority view of the courts. The Bath Iron Works is the country's leading builder of fighting ships for the U.S. Navy. Its employees are represented by two unions -- the clerical force by one local and the production employees by the other. The latter employees are skilled metal workers, welders, electricians, carpenters, draftsmen, marine designers, and heavy equipment operators.

In the spring of 1986 the Secretary of the Navy and several admirals inspected the Bath Shipyard. They reported that they saw some shipyard employees smoking marijuana, and that some employees told them that marijuana was being used on the job. The Secretary of the Navy and the Chief of Naval Operations wrote the President of Bath informing him of their findings, reminding him that the law prohibited the placing of Navy contracts with a contractor employing personnel using drugs, and expressing confidence that Bath would take remedial steps. Bath did. It unilaterally promulgated, without Union participation, a comprehensive Substance Abuse policy. Its principal provisions were:

- (1) Random urine testing of all employees. Tests were to be conducted by the Company's medical department, by technicians -- not necessarily by a physician.
- (2) Testing of employees thought by any member of management to be using drugs or "under the influence of drugs" -- in other words, testing on basis of "reasonable or probable cause."
- (3) Testing of urine by a process called EMIT (short for Enzyme Multiplied Immunoassay Technique System). If the result was positive the employee was suspended, pending confirmation of the EMIT test by a laboratory in South Carolina by the process of gas chromatography/mass spectrometry. If positive is confirmed the employee remains suspended for 30 days. If still positive at the end of 30 days -- he is discharged. If no longer positive, he is returned to work without back pay and

subject to spot testing thereafter. If the EMIT test not confirmed, the employee is reinstated.

- (4) A positive test is not the presence of any drug quantity, but a quantity deemed to be at an "impairment level" or "under the influence." For marijuana it is 100 nanograms of marijuana acid.

The Company defended its actions on the following grounds:

- (1) It had the right to protect the safety of its employees and the safety of its production methods.
- (2) It had the right to protect the quality of its product and insure against defects.
- (3) It had the right to take steps to protect its contracts with the Navy.
- (4) It had the right, as a managerial prerogative, to promulgate reasonable work rules -- including discipline for offenses.
- (5) It had the right to protect its reputation as a supplier of naval vessels, and generally.
- (6) As a matter of policy -- it had the right and responsibility to strike a blow against drug use and abuse -- for societal reasons.

The Union objected and grieved on the following grounds:

- (1) Random testing violated basic 4th Amendment rights -- and as codified in the privacy laws of Maine. (Union urged the application of the concepts of the 4th Amendment -- even though it technically applies to government employees -- and the Bath employees were private).
- (2) The Company's policy breached basic safeguards of confidentiality -- medical technicians were not qualified to take and test urine -- the process was an indignity and reputations were damaged regardless of the outcome.
- (3) The EMIT test is notoriously inaccurate -- and there are significant inaccuracies in the GC/MS confirmation test.
- (4) The definition of "impairment" or "under the influence" is inaccurate and not supported by medical authority.
- (5) "Probable cause" or "reasonable basis" for testing not adequately defined and subject to discriminatory application by supervisors.
- (6) The unilateral Substance Abuse Policy was an unfair labor practice -- because as a "condition of employment" it had to be bilaterally bargained with the Unions -- under the NLRA.

At the outset of the arbitration hearings, the Company announced that it would not engage in random testing. This decision was consistent with the application of 4th Amendment concepts -- or laws of privacy covering private employees of the type employed at Bath, namely employees who do not have a clear, immediate and direct responsibility for the safety and welfare of the public. Technically, the 4th Amendment prohibiting illegal search and seizure applies only to employees of the government. But its concept -- and its codification into State privacy laws -- seem to prohibit random, indiscriminate urine testing in the absence of some reasonable suspicion that the affected employee is using drugs. This is consistent with the ruling of the Federal District Court of New Jersey, enjoining "mass, round-up urinalysis testing of firemen and policemen in Plainfield, New Jersey" as an intrusion on "reasonable expectations" of privacy and a violation of the 4th and 14th amendments of the constitution.

Of course, it can be sensibly argued that police and firemen fall within a class that has a special duty for the safety and welfare of the public -- warranting random testing as well as testing when "probable cause" exists. But the matter is by no means yet well settled.

For example -- in *National Treasury Employees Union v. Van Raab*, a Federal District court in 1986 enjoined the U.S. Customs Service from random testing. It stated "The Court will not allow the defendants to condition receipt of Federal employment upon waiver of 4th Amend-

(Continued on Page 5)

(Continued from Page 4)

ment and other constitutional rights. The public interest is best served by putting an immediate and permanent end to the Customs' plan."

In *Penny v. City of Chattanooga*, in 1986, the District Court in Tennessee enjoined the administration of urine tests to all members of the police and fire departments of the City of Chattanooga as an "unbridled violation of the 4th Amendment."

In *Jones v. McKenzie*, the Federal District Court District of Columbia found that subjecting a discharged school bus attendant to a urinalysis violated her 4th Amendment rights. It stated that she was not subject to a standard more stringent than those required of local police and bus drivers -- and they were subject to "urinalysis only upon reasonable suspicion of use of drugs..."

In *McDowell v. Hunter*, a District Court in Iowa in 1985 held that in a correctional facility "prisoners, visitors and employees do not lose all their 4th Amendment rights at the prison gates" and that "strip searches and production of urine and blood specimens was beyond constitutional reasonableness."

In *IBEW Local 1900 v. Potomac Electrical Power Company*, in 1986, the D.C. District Court temporarily enjoined random urine testing in the absence of an industry practice -- because "the Union was likely to prevail in arbitration and a lawsuit -- while employees subject to testing would be harmed without possibility of repair."

In *Patchogue-Medford Congress of Teachers v. Board of Education*, 1986, the New York State Supreme Court, 2nd Department, found that compelling a urine specimen was a search under the 4th Amendment. It stated "Absent any basis for suspicion that a probationary teacher eligible for tenure was illegally using a controlled substance, it would be unconstitutional to demand urine."

Extremely controversial, generally and at Bath, is the question of the accuracy of the EMIT test even with confirmation. More particularly, the controversy centers on the amounts of drugs, especially the most prevalent -- marijuana, that creates "impairment" or "under the influence." Permit me to read to you the following portions of my decision.

"I consider it proper and appropriate for the Company to take steps to protect its work contracts, to protect the quality of its products; to protect the safety of its employees; and to protect its productive integrity and general reputation by having a policy and program designed to eliminate or reduce the possession and use of illegal drugs in the work place, and the off-property use when such use adversely affects the employee's job performance.

That only a relative handful of employees may be using drugs, in-

cluding marijuana, does not mean that there is not legitimate reason for a substance abuse policy and program. One purpose of the instance Policy is prophylactic, designed to stop and discourage what use presently obtains, and to prevent its proliferation. That is a legitimate objective. I am not persuaded that a condition must become extensive or chronic before management may make a response and seek a remedy. An employer may have policies and regulations which for example, prohibit excessive absenteeism, theft, insubordination, falsification of records and fighting, without first showing a prevalence of those activities. So too with regard to substance abuse."

The EMIT test has been discussed in many scholarly articles including *Who's Hired and Who's Fired: That Decision May Rest on Laboratory Tests First -- Are Genetic Screening Tests Next?* by Engle, in *Student Lawyer*, April 1986; *Your Urine or Your Job: Is Private Employee Drug Analysis Constitutional in California?* 19 *Loyola of LA Law Review*; *Drug Testing: The Scene is Set for Dramatic Legal Collision between the Rights of Employers and Worker*, *National Law Journal*, April 7, 1986. The conclusions are that the EMIT Test is not fully accurate in measuring how much of a certain drug is present. It cannot tell how long ago the drug was used. A variety of factors, physical and psychological bear on the effect of the drug from individual to individual, and that there are "a legion of reasons for false positive results."

In *National Federation of Federal Employees v. Weinberger* the Federal District Court of the District of Columbia stated, however, that the EMIT test followed by the gas chromatography mass spectrometry confirmation (GC/MS) test "has been accepted by the scientific community as being the most reliable and acceptable method for drug and drug metabolite identification."

In the District of Columbia school bus attendant case, *Jones v. McKenzie*, (D.C. 1986), a single, unconfirmed EMIT test was relied on by the school system. District Judge Oberdorfer found the termination "arbitrary and capricious" and imposed the condition that "before defendants can terminate plaintiff again on the grounds of drug abuse, they must confirm a positive EMIT test result by an alternative process such as the two suggested by the manufacturer."

In *Miciotta v. McMickens*, decided by New York State Supreme Court (1st Dep't 1986), a correction officer was dismissed after urinalysis was positive for cocaine. The court found that a factual issue was raised by the officer who stated that the urine testing was some other person's and not his. The question of whether or not the urine test was properly administered had to be tried.

However, where the employee has a direct responsibility for the safety of the public -- or where the industry is "regulated in the public interest," courts are less likely to find 4th Amendment or privacy restrictions on random testing. Apparently Bath Iron Works did not think it or its employees fell into that category. Hence, in *Northwest Airlines Inc. v. Air Line Pilots Association*, the District court found that an Arbitration Board exceeded its authority in reinstating a pilot who had violated the 24 hour rule against drinking alcohol -- stating that public policy favored the safest air transportation possible over arbitration of labor disputes. No doubt in my judgment it would apply the same rule to random urine testing of airline pilots.

In *Shoemaker v. Handel* the Federal District Court of New Jersey upheld the New Jersey Racing Commission rules requiring random testing of jockeys. The Court balanced the privacy expectations of the jockeys with "their participation in" a special class of relatively unique industries which have been subject to pervasive and continuous regulation by the State ... and which temper the protection jockeys may anticipate from the 4th Amendment.

In *Allen v. City of Marietta* (District Court Georgia 1985); and in *Murray v. Brooklyn Union Gas Company*, New York State Supreme Court in 1986, the Court upheld random urine testing of those employees engaged in dangerous work close to high voltage wires. In *Amalgamated Transit Union v. Suscy*, the 7th Circuit, 1986, upheld random testing of bus drivers because of a "profound duty to provide safe transportation to the citizenry."

In sum, I think we can conclude that in public and private employment random urine testing may run afoul of the 4th and 14th Amendments and state privacy laws, unless the nature of the employment has, as a direct responsibility or consequence, the public safety or obvious work-related dangers or is a regulated industry.

Hence, the probability of the validity of random testing of airline pilots, air controllers, bus drivers, train motormen, atomic energy plant workers, military personnel and explains the present ban on random testing of baseball players, NFL players and all federal employees. The foregoing cases make clear, I think, if only by dicta, that urine testing when there is a "probable or reasonable suspicion" of drug use is permitted. I so ruled in the Bath Case -- leaving to litigation or arbitration on a case by case basis whether there was in fact probable cause or a reasonable basis to require the test. I also expressly provided for arbitral or judicial review of any employee or union allegation that supervision arbitrarily decided probable cause for discriminatory reasons.

The petitioner in *Curry v. New York City Transit Authority*, New York State Supreme Court (2nd Dep't 1982) was not so fortunate. The railroad clerk was dismissed after quinine and morphine were discovered in her urine. She argued that the substances were the result of ingesting prescription medication and tonic water.

The dismissal was upheld, but Justice Weinstein in his dissent stated that there was no substantial evidence to show that the chemicals were in the petitioner's urine for other than valid reasons.

Of course, probable cause or a reasonable basis (which I held were synonymous terms), mean an employee exhibiting strange, abhorrent behavior, suspicious physical and demeanor symptoms, personality changes, marked attendance or work deficiencies, as well as direct evidence of drug use.

Hence, in *Texas Utilities Generating Co.* 1983 an arbitrator reinstated an employee who resigned rather than undergo urinalysis. The employee was not on duty at the time and was only briefly on the Company's grounds while driving fellow workers to "clay pits" where they sighted their rifles in preparation for the imminent squirrel hunting season. He said the supervisor lacked any "substantial reason" to suppose to rule violation. There was no objective evidence of drug use, and supervision lacked authority over the employee at the time of the confrontation." The arbitrator said "in matters carrying the stigma of criminal conduct or even general social disapproval -- a high degree of fairness supported by proof ... must be applied." In *Everett v. Nappen* (1986), the District Court in Georgia held that a report that a fire fighter had sold marijuana to others warranted requiring him to take a urine test. The Court said that the urine test was a rational protection of the public welfare and property and there was sufficient rational justification for the test."

This is not to say that an employer cannot control drug use off his premises and outside of working hours. He can -- if that use carries over to and affects the employee's job performance such as "being impaired or under the influence" on the job from off the job use of drugs. I so upheld that part of the Bath Substance Abuse Policy.

In *Kane v. Fair*, decided by Mass. Sup. Ct. 1983, Judge Hiller Zobel ordered the Massachusetts prison system to cease using the EMIT test as a basis for inmate discipline without a confirming analysis.

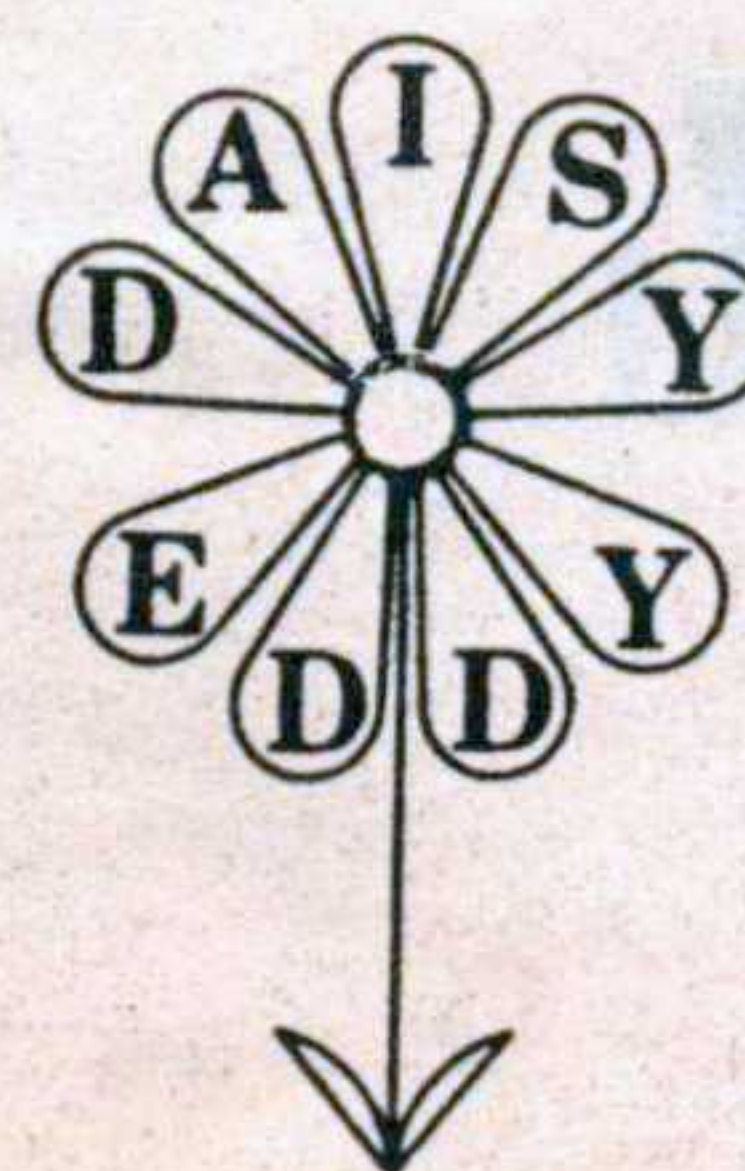
In the Bath decision, I wrote:

"The Unions have offered considerable testimony, evidence and argument designed to show that the EMIT test, even with GC/MS confirmation can, in a certain percentage of cases, produce results that are inaccurate, misleading or wrong. I accept the proposition that these types of tests are not fully accurate and that errors can and will be made. But my authority in this case is to decide whether the Policy and Procedures, which include these tests is reasonable enough for Company-wide implementation. I do not include that the probability of some errors is enough to void these tests as part of the Policy and Procedures. Indeed, a percentage of error is probable for any type of test utilized. I am satisfied that the EMIT test, with confirmation by GC/MS are sufficiently accurate and reliable to warrant sustaining their reasonableness as a general part of the Policy and Procedures. Whether or not the EMIT Test and the GC/MS confirmation is accurate for a particular affected employee and whether there are other acceptable explanations for any positive findings in any particular case are matters which may be contested and adjudicated on a case-by-case basis as individual cases arise from the implementation of the Policy and Procedure."

(Continued on Page 9)



I Just Love This Place - Ronnie



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Editorials

Bork Controversy Lingers On . . .

by Rich Montague:

Although President Reagan is up to his third appointment, comments are in order from a recent debate at Hofstra Law.

We cannot sit still to hear one more denial of the charge that opponents of Judge Robert Bork have distorted his record and have excessively politicized the nominating proceedings. For proof one need look no further than the presentation of Professor Rhonda Copeland at the Law School public forum on October 14.

For example, does Professor Copeland really believe that Robert Bork's idea of constitutional adjudication in accord with original intent really means setting the clock back to a time where the only people who mattered were white males who owned property as she had argued? The proof of her distortion can be found when her definition of Bork's ideas are counterpoised against the professor's own stated philosophy of constitutional interpretation: That we can adapt the fundamental principles of the constitution to contemporary problems. What Professor Copeland did not tell the audience is that Bork himself defines original intent as applying original, and therefore basic principles to new problems such as applying the 4th amendment law of search and seizure to electronic eavesdropping (Bork's example). The Professor's misrepresentation of Bork's philosophy coupled with her appropriation of his ideas is distortion bordering on deceit.

Yet another example: Copeland says that Bork "uses the language of violence." She cites the words "pernicious", "outrageous", and "unsurpassed ugliness", all words Bork has used in his writings. Professor Copeland calls Bork's attacks on decisions with which he disagrees "vicious". What is so violent about "pernicious", etc.? If anything connotes violence, it is Copeland's own phrase "viscious attack".

Bork writes rhetorically, just as Copeland spoke rhetorically. Her point about Bork's language is ill-taken, distortive, and in light of her own hyperbole, silly.

Copeland ridicules the Administration's claim that Bork is not far from the judicial mainstream on the basis that Reagan has appointed nearly half of the federal judiciary and that they all think like Bork. This ignores a study by the Columbia University Law Review that found that the majority of Reagan appointees do not even vote "conservatively" but rather consistent with "Republican mainstream" views. Not content to rest with a distortion of Bork's ideas, she distorts the record of the federal bench. We hope this brief analysis of Copeland's fairly standard anti-Bork rhetoric might shed some light where Professor Copeland left only air. So I submit Professor Copeland: Robert Bork is a conservative judge, not a reactionary ogre as yourself and others have portrayed him.

I've Been Thinking
by Keith J. Singer

Hi everybody! Another month has come and gone, and I've still got a few things on my mind. First off, I think the people who park over the lines in the parking lot (thereby taking two spots), should be tarred and feathered. Maybe having to take Civil Procedure for three years running would be a more suitable punishment. Also, 'small car parking only' means just that - small cars only. It does not mean 'large cars park here when there are no other spots.' I don't know about you, but Thanksgiving is my favorite holiday. Turkey, stuffing, and football: what a combination. When are they going to get bigger bags in the deli? Chips, sandwich, and a soda just doesn't fit in the bags they have now. I wonder why it is always so smoky in the first and second floor lounges? Since there is "no smoking" in the lounges, I know it couldn't be from cigarettes. Maybe it's from the Forest Fires down south. Why would anyone want to be a guest on the "Morton Downey Jr." television show? He abuses everyone! If Judge Kennedy isn't confirmed for the Supreme Court, maybe they can nominate Judge Reinhold. I wonder if Judge Ginsburg was high when he taught classes at Harvard Law School? For that matter, how did they come up with a right-wing conservative who smokes pot and is Jewish? I can't wait for Scotty Baldwin to return to 'General Hospital.' He was always my favorite character. Just think, only a few more weeks until Christmas vacation. Can't wait. I know I still have a s-t load of work to do, and after three issues, I'm running out of things to put into this column. Oh well, Good luck everyone on your exams, and have a great vacation. We deserve it! Take care Folks.

Author: E.D.S. (Eric David Sohall)

To be recited to "T'was the Night Before Christmas"

Alas I've come like many before,
To question the word, to question the Law.
For be it so noble, and humbling a thing,
That fits into nature and blossoms like spring.
Yet deep within the caverns long,
Behind the volumes of rights and wrongs.
Sits a lone figure, gaunt and pale,
Reciting the prose of Blackstone and Hale.
I approached him ever so cautiously to query,
About Justice and Truth, and questions just merely.
To ascertain meaning beyond what I read,
To show me the road, to follow his lead.
When all of a sudden, with no warning at all,
He pushed out his chair, and walked out from his stall.
And spouted out clearly with musical tone.
The fruits of the questionable seeds I had sown.
He shouted these words to me ever so clear,
"Res Ipsa, Injunction, Estoppel my dear.
Take thirty percent, use Latin, and Implead whomever you may,
And believe me my son you'll be a lawyer someday."
He turned with a jar, and looked toward the sky,
Tugged on his beard, and with a wink of his eye.
Rose in the air from where he did stand,
Into a book entitled **The Journal of Land**.
'Til this day every time I come to pass by,
That mysterious aisle, where I met that strange guy.
I hear murmurs of laughter, which ring out with a roar,
The volumes they call me, and ask what's the Law.
Befuddled I listen and attempt to answer back,
But the proper jurisdiction, I just seem to lack.
But some day they'll call me, and I will be ready,
To give the right answers, when there really aren't any.



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Now that we have gone through the semi-annual ritual of filling out those professor evaluations, I have just one question, WHY! Why bother with something so meaningless whose only benefit is that it makes the class 20 minutes shorter. I seriously doubt that any of the professors who should take notice of them actually read them. I'm sure some professors do read the evaluations; the ones who know they do a good job and read them just to reassure themselves and give themselves a pat on the back for a job well done. But the professors who should take a look at them probably just file them under "I" for ignore them. Students never look at them. So, I'd like to know why waste our time with these evaluations?

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L. REVIEWLESS V. PLACEMENT OFFICE

by John Skipowitz

L. Reviewless v. Placement Office¹ (1 Cons. 16, 1987) Court of Last Resort, Hofstra v. Circuit.

Judge R. Hand delivered the opinion of the Court.

Plaintiff, L. Reviewless, attends a slightly known Law School in the New York area. He is suing the defendant, the Placement Office of that school, for emotional distress, fraudulent misrepresentation, and breach of contract.

Plaintiff (Reviewless) worked hard his first year in law school, and did rather well, finishing just out of the top 10% of his class, and was even asked to join a journal, though not the "seminal" journal. Not realizing that the world of Wall Street was crawling with Ivy-covered degrees and the staffs of Law Reviews from across the country, Reviewless went to the Placement Office (hereinafter P. Off.), for guidance. He was enthralled by tales of the On-Campus Recruiting and Placement System [O. CRAP]. Reviewless dutifully put his name in time for the ungodly early (Aug. 24) deadline. Then he calmly sat back and waited for his name to appear on the sheets outside of the P. Off. and waited... Seeing the same 15 or 20 names that kept recurring, Reviewless began to get concerned. He approached a staff member at P. Off., who, though very eager to help, informed him that there was little hope that his name would appear because, alas, he was not Top 10% and Law Review.

Somewhat downcast, Reviewless went to Dean Dolittle and asked him for some advice. "Don't you know anybody?" Dolittle asked. Thinking that, for \$9,000 tuition a year, he "damn well [did] know somebody, Dolittle!" [complaint at 5], Reviewless kept his mouth shut and began a bulk mailing to any and all law firms. Unfortunately, the responses were less than enthusiastic about having presence at an initial interview. In fact, the mailman began bringing his Jeep directly to Reviewless' door to drop off the day's responses. All were impressed with Reviewless' resume, "but", "however", at this time", "we have been inundated with requests" and further consideration is not possible.

Reviewless claims that the P. Off. has negligently inflicted him with emotional distress, made him feel like a second class citizen, as well as fraudulently misrepresenting the benefits it offered,

and in fact was of no real value to him. In the alternative he asserts breach of contract on the theory that the P. Off. has failed him by not bringing medium or small firms to campus, and by failing to even acknowledge the fact that some firms, in fact, wanted to see some students not Top 10% and Law Review but were instead given only these students in the "Top ten and law review" category.

While the Court sees some merit in the P. Off.'s argument that it is the firms (some of who send videotapes instead of partners to campus) who determine who is interviewed, we find that plaintiff's claims are well-founded. We also take judicial notice of the fact that P. Off.'s very high statistics for those with jobs 6 months after graduation do not indicate pay scales, and is completely irrelevant to plaintiffs complaint.

As to the question of damages, how can we, a court, repair lost self-esteem, erase the bitterness, and compensate for the lost opportunities Reviewless suffered? It is not in our power to grant specific performance, or to order that medium-sized firms be entitled on campus, or even to award monetary damages. Therefore, we hereby decree that the P. Off. have its name unofficially changed to the **PLACEMENT OFFICE FOR TOP 10 AND LAW REVIEW ONLY**. We feel this will prevent further misrepresentation and harm to plaintiff's such as Reviewless.

Judgment for plaintiff

Pork and Sinsburg, J.J., concur with Hand, J. Carbozo, Ch. J., concurring specially.

I concur with the Court's reasoning, but not the measure of damages. I would make them sit through eight morning sessions of Professor Ugita without the benefit of Caffeine or Emanuel's.

¹Although this commentary was done in a joking fashion, the point has become all too serious. There must be a solution to this dire problem, such as, having the Placement Office increase the number of small to medium size firms in the recruiting process. Thereby increasing the chances that those in the bottom 90% of the class will be able to participate in their futures. As opposed to enlarging first year classes as nauseam in hopes that possibly a few will get the powerful positions to help the "next" Hofstra class.

AUTHOR: Reviewless, 1987

[John J. Skipowitz]

(Continued from Page 1)

What went wrong and why? It is important to mention at this point that for the past five years the market had been moving steadily up toward its peak on August 25, 1987, creating hundreds of jobs in New York, fattening paychecks and tax payments, and driving up the value of housing. It seemed too good to be true. And it was. Because that's when the market began its descent. With everyone on such a high, nobody seemed to notice this gradual slippage. Even when, on Oct. 14th, the market dropped 93 points and then another 108 points two days later, many attributed it to a normal correction in a "bull market." (a bull market concerns increasing stocks, while a bear market signifies declining stocks). Thus begins the "inevitable correction" theory. Simply stated, the market had been rising too quickly and too high. This, coupled with overspeculation and an "I'll sell when prices begin to drop" mentality, forced stock prices down to where they should have been at this time. Unfortunately, a bit too quickly for investor's peace of mind. Future predictions hope the market will now stabilize at a lower level and all will be well. Realistic? Probably not.

More likely, the market's dramatic decline was caused by a combination of economic and political doubts. First, the 235 point loss of the week before, followed by threats from treasury secretary Baker to drop the value of the dollar in a spiteful gesture; rising interest rates; a breakdown of international cooperation on economic problems and uncertainty in the Persian Gulf. Finally, serious doubt as to the capability of an Administration being weakened by the Iran-contra affair, failing Bork nomination, Mrs. Reagan's cancer surgery and, of course, the ever increasing national deficit. With all this out of control and no solution in sight, investors began dumping stocks. Seems logical, doesn't it?

What about the now infamous "program trades"? Although this might not have been the cause of the market decline, the debate over whether this worsened the catastrophe still rages. Program trading exists where computers enable the user to execute trades of huge blocks of stock, instantaneously. It all works on the concept of "futures": the option to buy (or sell) a particular stock, on a later date, at a price fixed now. Sort of like gambling. It costs a certain amount to make a bet on what the actual cash price will be later. If you win, you profit. If you lose, all it cost was the price of the stock. When the computer sees a larger than normal gap, it orders a trade. Now imagine the frenzy created when prices began to fall and futures fell behind. Computers started selling like crazy to cut their losses, magnifying the market swings and driving prices down even further. Unquestionably, computers play an important role in the stock market these days. Left alone, they may have helped accelerate the market slide, but as for responsibility, the burden must fall on human beings.

What do we do now? At last glance, the market swings were ranging anywhere from 0 to 60 points in one day. Even if prices do stabilize soon, the fear aroused in those who buy and sell stocks has left them very wary. The most cautious sold quickly and took their remaining dollars elsewhere. Many investors sought money-market mutual funds, government insured bonds and CD's. If you have available cash, you may be wondering whether it's time to buy stock while the price is low. Not yet. History tells us that another decline is possible, creating greater opportunity for bargains. If you do buy during a depressed market, plan to hang on to the investment for at least two to four years and possibly as long as 10-15 before realizing any significant gain. If you haven't sold your stock yet and you don't need im-

mediate cash, hang on if you can. Stocks should be sold when the market rises in a buying frenzy, not after a crash. It's impractical to bail out at the bottom.

Should we expect a return of the Great Depression? Probably not. After the '29 crash, people ran from the independent banks, causing the system to collapse from an inability to pay on demand. Today, the banking system is much more sound. Because of federal deposit insurance, banks are among the safest havens around. The Federal Reserve Board seems to have learned from its mistakes. This time, instead of letting the U.S. money supply shrink, the very next day the Federal Reserve announced that it "would make as much money available as might be needed by the banks." Once this money became available, the prime rate (the interest rate major U.S. banks charge their corporate customers) began to drop. A situation such as the '29 depression now seems implausible.

Are we headed for a recession? The opinions are split about evenly, be the prevailing view predicts at least an economic slowdown. Essentially, because of lost money in the stock market, consumers probably won't go out and make any significantly large purchases. This falloff creates less demand for certain items. As a result, salespeople lose their jobs. In addition, retailers may withhold orders because of fewer sales, forcing manufacturers to close down their plants, thereby, causing more unemployment. Now there's even less money in the system. It works as a downward spiral resulting in economic stagnation. Of course, this is a highly simplified model and nothing is inevitable. Proper government intervention, greater consumer awareness and spending, and a positive outlook will help. The actions by the Federal Reserve and the recent decrease in the deficit are both excellent indicators.

So who is going to be hurt? An immediate impact will be felt by retailers of so called "yuppie" items like furs, boats, expensive N.Y. restaurants and other high priced luxuries including BMWs and Porsches. The real estate market may also be hard hit. Many investors were relying on their stock portfolios to come up with down payments on homes or even as collateral for loans. The uncertainty is causing prospective buyers to back out of deals or put their plans on hold. Many predict a deadline in real estate value as fewer people look for new homes. Right now, buyers are hoping prices will go down and sellers are reluctant to lower prices. Only time will tell. Finally, Universities and Charities owning stock may also suffer because of the market slide, as may the elderly who could not resist the urge to risk their nest eggs in the stock market.

What does all this mean to us as future lawyers? Well, there seems to be a new interest in bankruptcy classes this semester. But seriously, lawyers will be called upon now more than ever to be proficient in areas such as investment banking and SEC litigation, corporate takeovers, mergers and acquisitions and white collar defense. Also, most lawyers insist they're insulated from the market swings, and that only very extreme situations would cause them to cut the numbers of associates they hire. A very bright outlook, to be sure, but I wonder how the wall street firms can continue expanding at the same fast pace experienced during the five year market boom.

Fundamentally, the stock market crash will affect us all at some point, be it at home, at school, as consumers or as lawyers. Ignoring the issues only worsens the problem. The risk to the average business or individual is too great to be unacquainted with.

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Dean's Column

(Continued from Page 5)

But I went on to say, the definition of "under the influence" in the Policy did not meet the test of reasonableness. I said:

"Under this provision, an employee whose urine discloses the presence of 100 ng of Delta 9-THC acid metabolites following an EMIT test is presumptively "under the influence" of marijuana, and is deemed conclusively "under the influence" if the presence of Delta 9-THC is confirmed by the laboratory GC/MS test. The Company uses the 100 ng threshold level for the EMIT test to "eliminate questionable test results based on minute or trace amounts of illegal drugs . . ." and "to eliminate the possibility that a positive test might result only from indirect drug use (i.e., passive inhalation; e.g. smoke filled room, car pools, etc.)." I have no quarrel with the use of a threshold quantity for referral of the EMIT test for laboratory confirmation and I have no quarrel with the 100 ng threshold level. My quarrel is with the Company's conclusion that a level of 100 ng in the urine in the EMIT test, if confirmed by the laboratory GC/MS test, means that the employee is "under the influence." The expert testimony and evidence in this record is extensive and scholarly. But it is sharply conflicting and off setting. From the evidence, I cannot conclude that a level of 100 ng of Delta 9-THC

acid in the urine, if confirmed, produces impairment, mental or physical changes or other symptoms associated with being under the influence. In short, in this case as in others I have heard involving the same question, the experts are in wide disagreement over what quantity of marijuana produces impairment, how quickly, and for what period of time. The evidence in this case does not conclusively show that a recording of 100 ng in the urine, if confirmed, is synonymous with any mental or physical impairment. Unfortunately medical and pharmacological experts have not been able to establish the quantity of marijuana in the urine, the blood, or the system generally, that produces impairment or constitutes "under the influence" as they have been able to do with alcohol.

So if the Policy is left to stand unmodified in this regard, employees with confirmed positive tests at or above the 100 ng level will be absolutely determined to be "impaired" or "under the influence" regardless of their objective mental and physical conditions, and stigmatized with the "under the influence" diagnosis, when the medical evidence remains equivocal and disputed. I think this is arbitrary and unfair in a most sensitive and critical area. This is not to say that use of marijuana does not impair the faculties. I am convinced it does. Rather it is to say

that the experts disagree on the quantity required for impairment or for being "under the influence" and for how long impairment lasts from any given quantity.

On the other hand, for the Company to have an effective policy, as it is entitled to have, some unacceptable or prohibited level of marijuana or other drugs must and may be fixed. While I consider it unreasonable for the Company to deem 100 ng synonymous with impairment or being under the influence of marijuana, with the social stigma that attaches to any such finding, I do not consider it unreasonable for the Company to deem an EMIT test of 100 ng of Delta 9-THC acid, if confirmed, to be a prohibited or an unacceptable level of the drug, and to conclude that such a level may cause impairment or may result in being under the influence."

In addition, regarding the testing procedures, I wrote in the Bath decision: When an employee's urine is taken for the purpose of initially testing for drugs, a physician shall be present and shall supervise the process. If a Company physician is not on duty at the time, the local hospital facilities shall be used, and a physician at the hospital shall supervise the process. The supervising physician shall also examine the affected employee physically for the presence or lack of presence of other

symptoms of drug use. By example, that examination should include a test of reflexes, examination of eyes, gait, general demeanor, breath and condition of speech. The results of the physical examination shall be included by the physician in a report to the Company and shall be made part of the official record of any disciplinary action imposed, and shall be available if the matter is grieved, arbitrated or litigated.

And on confidentiality I said: The Policy's statement in Section E of Article VII is critical to the administration of the entire Substance Abuse Policy and Procedures. The statement is worth repeating and emphasizing in this Decision. It says:

"BIW is committed to implementing this policy in a fair and equitable manner which respects the dignity and privacy of the individual."

The Company's failure to do so would not only subvert the purpose and objective of the Policy, but would constitute a grievable and arbitrable breach of the Policy.

A major issue in the Bath case, and one that I am surprised has not yet reached the National Labor Relations Board or the Circuit Courts on appeal from a Board ruling -- probably because of "deferral" -- is the question of whether a substance abuse policy is a "condition of employment" (Continued on Page 10)

Personals

To all those who failed the bar -- sorry! (Next time take Bar Bri).

JD: Merry Christmas to you!!! LW

JC: I love you, let's get married! It's about time. FC

Cuz: thanks for the job, gret to "work" with you. your cuz

Mr. & Mrs. W: Thanks for being so nice. SD

Gr. J.: Hope you're still reading this fine piece of journalism. H

Marilyn: I love you. me

Prof. M.: Enjoyed my visit to your office --One question -- Why were there 2 pairs of your underwear on the coat rack.

Luv ya anyway

MJW: Thanks for the bear, luv ya FSW

lil Patti: Just called to see if you are OK. I luv you! Big Fran

Aud: You are the best in the whole world --I love you -- Secret Admirer

Ron: Go Home. It's already 10 p.m. & Law School starts at 9 a.m. F

Who in Law School is totally not sick of it?

Take finals and shove em. One Happy IL

Mom & Dad: I'm sorry I don't get home that often, but you know I love you both very much. your schnooky

Scott: I miss my baby brother. When are you coming over again? your little sister Meryl

Franny: I can't wait to go to Disneyworld with you and baby Patti! Meryl

Hey Mook: Will I ever see you? Mook

Marnie: Finals are coming up -- time for a vacation. L&A

Marty: How about Boston again? This time no troubles with the police ILS

Gary: I never thought this would happen! Meryl

J.F.D.J.: Congrats on being a lawyer -- it's about time. Me

M.C. & A.Z.: Help! Should I buy black or off white? Please don't get mad at me -- I promise I'll decide before feeding time. L.

J.D.: What is known, townen, unshownen, untownen? And while you're at it -- shave your legs.

D.B.: It's still evidence M&L

M: We wouldn't want to wear white anyway -- So there. L&A

Amy: We know you're not wearing any underwear.

Gary: Four is a better number than three anytime!

Meryl: It's nice to know that someone cares.

Maria: Let's hope the "G" & "J" men always keep us happy.

Gary K.: Law school wouldn't be the same without you -- Love, the one who dresses like a girl.

David G.: You better pick good teams w/your friend, so I can get my ring.

Nancy Aizch: You'll always be a good friend, regardless of how much time we spend together. Love, Laurie

Jay: I'm so glad you are back in my life. I hope it's forever. Deli

David K.: Any girl would be lucky to have you.

Meryl, Laurie & Maria: Thanx for taking me in for the winter. Purr, Purr.

Love, Precious

S.R.: How about getting together soon. H.T.

W.W.: I bet you're in love again!!! H.T.

B.B.: How bout a back massage. S.D.

M.M.: Maybe yes -- I learned in your class. Maybe no -- My grade didn't reflect anything. Probably no -- I learned nothing.

Laurie & Maria: You two are the best housemates a girl can have Meryl

Francois: Where are we going this weekend? Florida, Puerto Rico? St. Maarten?

Laurie and Jay: I'm so glad you guys are back together. You two were meant for each other. Meryl

Mookie: I hope Daddy is keeping you warm at night. Mommy

Keith: How's Randi doing this week? ?

Gary: I'm looking forward to sharing my Visa bill with you. M.W.

P.F.: I miss my little P.F.. your P.F.

Michelle: If your nails don't get you a job, your sexy bod will. ?

Meryl: Are you going to show up for finals ???

M. Doo: I love you Scooby

R.R.: Have a nice day in the bath. A.W.

Leon: The Nixon Conference was great. A Law Student

Pete S. (alumni): Thanks for the stories and advice. It was great meeting with you. EIC

A: On the road again? Will be in Jan. H

T.S.: A.Z. & M.C. & L.A. would love to meet you. M.S.

T.O.: Beware ... Your books will never be safe. I'm behind every corner! A.Z.

T.O.: I thought you were joining the paper -- How's the judge.

C.P. (J.S.): You're a wimp for not putting your name on your article.

A.Z. & L.A.: You probably wouldn't have looked good in white gowns anyway! MC

M.C.: Thanx for a birthday I'll never forget. M.C.

A.Z.: I bet you'd like fries with those wings. MC

L.A.: A spelling handicap does come in handy sometimes. M.C.

M.C.: You can adjust me anytime, Doc. M.C.

M.M.: Fine, be that way. Go to California. M.C.

M.F.: You are great friends & a lot of fun! OLM

M.D.: Florida - Florida - Florida! S.D.

Heath: Watch those slits at the LIRR! A.Z.

M.C.: M.C. is much too good for you.

M.C. & M.C.: When will you rid yourselves of that blobbing beast. A&L

Quiet Please ... Any Qeshons??

Jackie & Heather ... What happened to Aerobics??

M, D, & T ... Want me to do any more greek cooking? A.

SR ... Harvard ... Nah ... Yale ... Nah ... Stanford ... Nah ... Columbia ... Yea!!! A.Z.

Legal Writing Instructors Are Out of their Mind.

I love my fellow IL friends S.S.

D.H.: The Bills aren't as good as you think they are.

Congratulations D.H. and L.S. on your engagement!

Did you know that cow's have no upper teeth?

D.B.: One more time ... Lord, Day, Lord ... Hofstra Law School -- the Harvard of Hempstead.

Hey Judith: great hat selection.

M.C.: How's Luke? Bit off your arm yet. L.A.

M.C.: Spend much time at the C.M.I. lately L.A., A.Z.

Dean's Column

(Continued from Page 9)

within the meaning of the National Labor Relations Act, requiring bilateral bargaining under Sec. 8(a) (5), 8(d) or 9(a). Those sections read:

Sec. 8(a) (5). To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a).

Sec. 8(d). For the purposes of this section, to bargain collectively is the performance of the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising hereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

My answer in the Bath case was made simple by the existence of two Company rules which were dispositive of the question and which made unnecessary an answer to the basic issue of whether the Policy, standing alone was a mandatory subject of collective bargaining. I wrote:

"Absent random testing for drugs, and against the backdrop of the pre-existing and continuing Company Rules and Regulations Nos. 18 and 19, I do not find that the Revised Policy and Procedures require bilateral bargaining under Sections 8(a)(5), 8(d) or 9(a) of the Act.

I so conclude because, contrary to the Union's assertion, I do not find the Policy to be a substantial or significant departure from Rules 18 and 19. Rules 18 and 19 read:

18. Use, possession, distribution, sale, or offering for sale, of narcotics, dangerous drugs including marijuana or alcoholic beverages on Company premises at any time.

19. Being on Company premises under the influence of alcohol, narcotics, or dangerous drugs including marijuana, or refusing to submit to a test administered by the Medical Department to determine if under such influence.

First Offense: 5 days off.

Second Offense: DISCHARGE

Those rules were not bilaterally bargained but rather unilaterally legislated by the Company, and actively enforced, over a period of time. The Unions have not and do not in this proceeding challenge the propriety, effectiveness or validity of those Rules. Indeed, there is no question that those two Rules have been accepted by the Unions.

As I see it, the Revised Policy makes explicit, provides particularization and methodological implementation of managerial authority, that was and is implicit in Rules 18 and 19 standing alone.

Under Rules 18 and 19 the Company had the implicit right, under proper, relevant and reasonable circumstances to utilize methods to determine if and when an employee did the proscribed acts of either or both Rules. To do so, I have little doubt that the Company may conduct investigations and use medical tests. The Policy, delineates the means, methods, procedures and standards that the Company will (and must) follow, and in some specific respects may be more protective of the due process rights and privacy considerations of the employees than rules 18 and 19 standing alone.

As Rules 18 and 19 were validly promulgated by the Company on a unilateral basis, those more precise, delineated methods and procedures for the administration and enforcement of the rules are not significant variations from those Rules nor are they new con-

ditions of employment requiring bilateral bargaining under the Act.

In *Brotherhood of Maintenance of Way Employees Lodge 16 v. Burlington Northern Railroad Co.* -- a 1986 decision by the 8th Circuit, the Court held that the railroad was permitted to administer drug tests to employees involved in accidents and those returning to work after furlough or a long absence without negotiating the matter with the unions.

Yet in *Brotherhood of Locomotive Engineers v. Burlington Northern Railroad Co.*, the District Court prohibited a unilateral plan of the carrier to use specially trained dogs to detect illicit substances on employees. This "surveillance-search" program was held to be a change in working conditions within the Railway Labor Act -- requiring bilateral bargaining.

Frankly, had there not been Rules 18 and 19 in the Bath case, I am reasonably certain that I would have found the Company's Substance Abuse Policy, with its many controversial and disputable provisions to be a new "condition of employment" within the meaning of the NLRA -- and, I would have enjoined its unilateral implementation. I should note that the parties gave me the express power to decide the unfair labor practice question as if I was the NLRB.

An interesting remaining issue is whether an employer may test for drugs as part of a pre-employment assessment of qualifications and eligibility. There is a general view that an employer-private or public has wide ranging authority to test in a whole variety of fields as a condition of hiring. It is well settled that he may test for physical ability and condition, for aptitude, for emotional stability, for promotability. But a closer look at those situations will reveal that each pre-employment test had a reasonable relation and is relevant to the job in question. Hence an intelligence or aptitude test unrelated to the job duties involved or unrelated to a potential promotional track, will be rejected by arbitrators and by the courts. A test of physical ability for a sedentary assignment is likewise impermissible. Therefore, I am persuaded that testing for drugs -- where there is no probable cause or suspicion to do so, and where the jobs are not of the public safety type or inherently dangerous, will be actionable and subject to judicial rejection.

I conclude with a checklist of what I think will be litigable or arbitrable as drug testing continues and increases. Employers should be prepared for these challenges on a case by case basis:

- (1) The facts do not constitute "probable cause or reasonable basis" or that no special public interest or hazard or regulated industry exist for random testing.
- (2) Testing was carried out improperly with unqualified personnel. The chain of custody and analysis of the urine was not maintained properly.
- (3) The test results or the scientific methodology of the tests were faulty as to the employee involved. A false positive result was obtained.
- (4) That any substance abuse policy was not uniformly and consistently applied to employees similarly situated.
- (5) That a reasonable effort at confidentiality was not maintained.
- (6) That in a collective bargaining situation the plan or policy was not bilaterally bargained or at least bargained to impasse.

With that I conclude with the hope that this has been informative. Again my thanks for inviting me and listening to me.

Twilight Musings of a 1L

by Tom Solomon

"Nobody asked you to stop thinking when you came into this classroom." In one form or another, we are often told this when apologizing for jumping ahead or asking an irrelevant question, or not apologizing for asking a truly stupid question which a moment of thought could have avoided. The latter situation happens all too often. After all, we 1Ls panic when we can't find an issue and sometimes, in our hysteria, we grope blindly for the elusive point of it all. While they try to discourage this, our professors have great tolerance for our panic. They (rightly) lose their tolerance when our anxiety turns into close-minded, stubborn, argumentative stupidity. I am constantly amazed by their forbearance and their patience in bringing lost sheep into the fold. But is it true that nobody asks us to stop thinking when we walk into the classroom?

I can only conclude that it is not. When we ask "why" something is a certain way, we are presented with an authority as an answer. Anybody who has read Plato's *Euthyphro* cannot be satisfied with this answer. The more philosophically-minded of our teachers go a step further and describe for us the policy when a given authority benefits. When further pressed, these teachers point to social goals and underlying consensus values. Thus, our "why" question is met with the answer: "Because so-and-so held . . ." Why? Because it is an line with such-and-such policy." Why have the policy? "Because most people seem to think that it's a good idea. This is shown by . . ." Why do they think that? What reasons do they offer? These last two questions are generally greeted by a change of topic, yet another mini-lecture on the Norman Conquest, a barrage of questions which obfuscate the original, or an obscure reference to some distant upper-division course named "jurisprudence."

This is, I suppose, as it should be. One reason is that after a certain point, these issues are not longer the proper subject matter of law. They belong to philosophy or something. Another reason is that they are hard for the beginner to separate from

even more irrelevant interrogatories such as: Am I now thinking like a lawyer or is that merely a nervous breakdown approaching? What am I doing in law school? Why am I on Long Island when my girlfriend/boyfriend is so far away?

So it is expedient to eschew these questions because they are off the point, or because the answer won't help anyway, or because they degenerate to the point where a psychologist's office would be a more appropriate setting than a classroom to search for the answer.

But some of these questions are pertinent. Is justice the goal of law? If so, is justice a thing or a direction? If the latter, which direction is it? Can we walk in a direction without at least a general idea of which direction it is? What is the overall effect of the law? Does it (as one science fiction writer constantly implies) strengthen the class of people who participate in what it prohibits the way predators strengthen their prey species? Is the rule of law an end in itself?

Even these questions which would make the law make sense must remain unanswered. Some of them may not yet have answers. Some of them may never have answers. Often, rather than running after some abstract notion of justice, our law attempts to reasonably balance injustices or competing political interests or both. Therefore, many of its solutions are counter-intuitive and any attempt to make them "make sense" would be pointless. We must first learn the law and to live with our discomfort with parts of it. Maybe after we pass the bar we can do something about the ones which truly don't make sense if we haven't yet lost the hot blood of our youth.

Yes, dammit, they do ask me to stop thinking when I enter the classroom. The fact that I understand why does not stop me from feeling that I am less than I could be if I had some of the answers. But they can't give them to me and I don't have the time to find them on my own. I thought I needed the answers. Maybe I still do. Maybe I no longer do. Maybe I've gotten old in the last seven weeks. Maybe it is merely a breakdown on the horizon.

Judge Mollen Speaks At Hofstra

by Andrew Nadler

Justice Milton Mollen attributed the new concern of state courts for personal rights a direct result of the disintegration of activism under the Rhinquest Supreme Court.

Mollen, presiding justice, appellate division, second judicial department, State of New York, in remarks delivered for the Max Schertz Distinguished Professor Lecture on November 18, explained that state constitutions have always been the great protectors of human rights. Mollen said, "The colonies distrusted the federal constitution resulting in each individual colony guaranteeing rights to its citizens. These rights were found in the state charters which later became codified in the Bill of Rights. The Civil War era resulted in Congress passing the fourteenth amendment forbidding any state from denying a person the legal protection of the law."

The New York State Court of Appeals revived individual rights under the state constitution in the areas of freedom of expression, right to council and substantive due process.

Freedom of expression was upheld in the overturning of a statute banning topless dancing. It was applied in a second instance to an adult bookstore where sexually explicit movies were sold and illegal sexual acts were being performed. The bookstore was ordered closed but the order was invalidated by the Court of Appeals because it was not demonstrated that closing the bookstore was the most efficient

way to deal with the problem of illegal sexual acts. The court further explained that New York has a long history of supporting freedom of expression and the state's direct intervention was not necessary.

The New York court upheld the state constitution on search and seizure in a case where a policeman entered a car to find out a vehicle identification number and discovered a pistol. They determined this was an illegal search and seizure even though the Supreme Court would permit such action.

The right to Council has developed independent of a federal counterpart in New York State. It was found by the highest court in the State, that once an attorney enters a case, a defendant may not be questioned in absence of Council.

Substantive due process is given a high priority by the New York Court of Appeals. This was demonstrated when they decided that individual liberties should take precedence over the Uniform Commercial Code. The Court had the choice of relying on the text of the Code or their perceived deviation away from the preservation of that individual rights were being sacrificed.

Mollen concluded, "Uniformity is desirable and protection of personal and property rights of the individual is important." He stressed that lawyers and state jurists have a responsibility to examine the state statutes and constitution to ensure that individual rights are being properly protected within the state, even if it goes beyond federal standards.

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Extraordinary Students at Hofstra Law

by Linda Nicholson

Everyone can relate to the frustration of the first year of law studies. Imagine doing it over again and not being able to hear. Such is the case of first year law student Russ Kane who was born deaf. Through the help of his interpreter and fellow student Jim Cusack, Russ has "survived" the first two months.

Russ and Jim go back a few years. When Russ entered Hofstra University as an undergraduate, he was introduced to Jim through Hofstra's program for the deaf. Jim became Russ's interpreter and in 1986 Russ graduated Phi Beta Kappa with a B.A. degree in Political Science.

Russ was born and raised in Bayport. He attended the public school system and read lips for those twelve years. He did not learn sign language until the age of sixteen when he decided to attend college. Immediately after high school Russ attended the National Technical Institute for the Deaf, a division of the Rochester Institute of Technology, as a Criminal Justice major. There for the first time he was with 1500 other deaf students. He made new friends and found the communication process easier. Although this was a wonderful experience, Russ knew that his home was Long Island and he chose to return here to complete his studies. Hofstra had a strong support staff and the perfect learning environment.

Russ took a year off between his undergraduate studies and law school. During that time he worked for the I.R.S. and most recently a Suffolk county attorney. This also gave Jim, his interpreter, an opportunity to prepare for the coming years.

Jim Cusack has worked in the deaf community for many years. During a childhood disease Jim suffered nerve damage and lost hearing in his left ear. Born and raised in Garden City, Jim received his B.A. as a theatre major from Adelphi University. After graduation he did everything from voice-over work, to acting, to being a stage manager. He needed something more to fill a gap in his life and returned to Adelphi for one more year

interpreter training program.

At this point Jim decided to become immersed in his studies. He moved to Washington D.C. to attend Gallaudet College as a graduate student in the department of linguistics. Gallaudet was established in 1863 as a college for the deaf. He also studied Japanese theatre at the University of Hawaii before returning to New York to work with the deaf students at Hofstra.

Both Russ and Jim are attending law school in order to help other deaf people. With Jim's interest in theatre he might consider entertainment law, while Russ says he has an interest in tax law.

In the United States there are only 20 deaf lawyers, yet there are over 20 million hearing impaired people. Russ and Jim both feel they can contribute to the deaf community by understanding their needs and knowing how to relate to them.

We wish the best of luck to Russ and Jim in their law school years and know they will be an asset to the profession.

Back at his office, Chris found a message to call another client, who told the secretary she couldn't remember her own phone number. At that moment, my son says, he envied a female acquaintance who took a job like the one he had turned down. It wasn't the work she described; she hates it. And it wasn't the money; he says he gets along just fine on \$2,749. But he figured that her clients probably sign the leases they have agreed to and know their own phone numbers. That flash of regret passed and he looked up his new client's phone number.

Chris's grandfather was a good New Deal Democrat and a great admirer of the law and lawyers. I'm an independent who voted for Reagan and I'm cynical about how lawyers operate today. But as his grandfather would be, I am very proud of my son. I have always admired the dedication of people who stand at the edge, where society's fabric is in constant danger of unraveling. I understood them to be big-city policemen. I now know them to be Legal Aid Attorneys as well.

\$1500 PRIZE Statutory Drafting Competition

in conjunction with the Conference on

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Keynote Speaker: **ELIE WIESEL**
1986 Nobel Peace Prize Laureate

LAW STUDENTS ARE INVITED TO PARTICIPATE in a competition to draft a model statute outlawing group defamation in a state in the United States; the statute should be accompanied by an appropriate legislative report.

The winning submission will be used as the basis for a moot court argument that will take place as part of the Conference on Group Defamation.

The moot appeal will be argued before a bench of distinguished jurists, by Harvard Law Professor Alan Dershowitz and Columbia Law Professor Jack Greenberg. It will be videotaped and made available to law schools throughout the country.

Students may enter as individuals or as a team of two or three. A certificate and the \$1500 prize will be awarded at the Conference for the winning submission.

The deadline for submission is December 1, 1987.

The Conference will address issues dealing with group defamation from legal, philosophical, psychological and historical perspectives.

Topics to be considered include:

- Group defamation under the First Amendment
- Experience with legislation in other countries, including Canada, Denmark, France, Great Britain, Israel, Italy and the Federal Republic of Germany
- The Genocide Convention
- Group defamation as a causal factor in particular episodes of violence or oppression
- Problems of drafting and enforcement
- Pornography and group defamation

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- 4oz. Lean Broiled Chicken Breast
- 1 Cup Steamed Spinach
- 1 Cup Herb Tea
- 1 Oreo Cookie

MIDAFTERNOON SNACK

- Rest of the Oreos in the Package
- 2 Pints Rocky Road Ice Cream
- 1 Jar Hot Fudge Sauce
- Nuts, Cherries, Whipped Cream

DINNER

- 2 Loaves Garlic Bread with Cheese
- Large Sausage, Mushroom & Cheese Pizza
- 4 Cans or 1 Large Pitcher of Beer
- 3 Milky Way or Snickers Candy Bars

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Entire Frozen Cheesecake Eaten Directly from Freezer

RULES FOR THIS DIET

1. If you eat something and no one sees you eat it, it has no calories.
2. If you drink a diet soda with a candy bar,

the calories in the candy bar are cancelled out by the diet soda.

3. When you eat with someone else, calories don't count if you don't eat more than they do.

4. Food used for medicinal purposes NEVER count, such as hot chocolate, brandy, toast and Sara Lee Cheesecake.

5. If you fatten up everyone else around you, than look thinner.

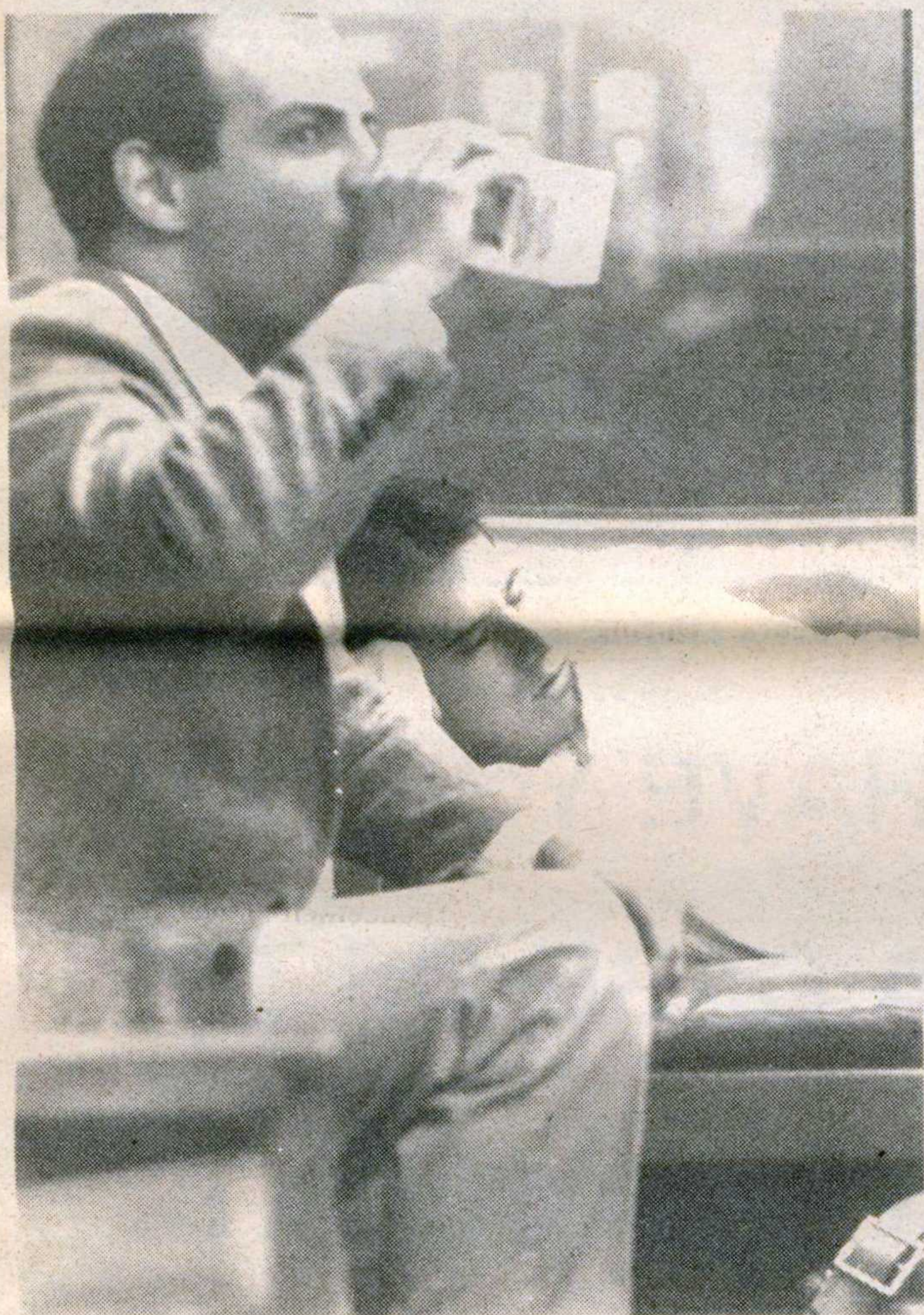
6. Movie related foods do not have additional calories because they are part of the entire entertainment package and not part of one's personal fuel, such as Milk Duds, Buttered Popcorn, Junior Mints, Red Hots, and Tootsie Rolls.

7. Cookie pieces contain no calories. The process of breaking causes calorie leakage.

8. Things liked off of knives and spoons have no calories if you are in the process of preparing something. Examples: peanut butter on a knife making a sandwich and ice cream on a spoon making a sundae.

Foods that have the same color have the same number of calories. Examples are spinach and pistachio ice cream, mushrooms a white chocolate. NOTE: Chocolate is a universal color and may be substituted for any other color.

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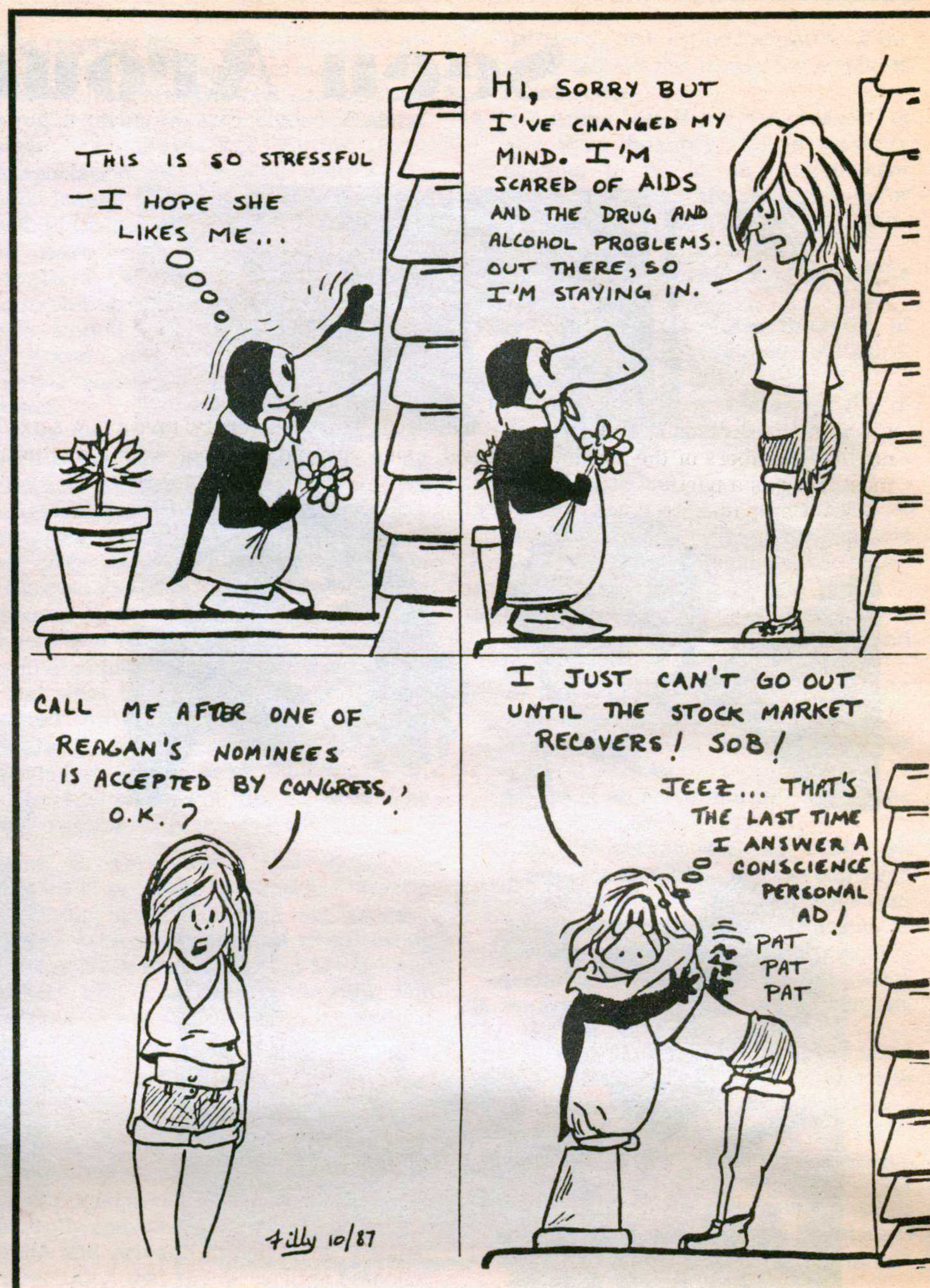
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DEADLINE APPROACHES FOR ABA LAW STUDENT DIVISION COMPETITIONS

CHICAGO -- Registrations for two national law student competitions will close on November 30. Sponsored by the Law Student Division of the American Bar Association, the National Appellate Advocacy Competition is open to students at ABA-approved law schools in the United States; the Client Counseling Competition is open to students at ABA-approved law schools in the United States and Canada.

The Client Counseling Competition simulates a law office consultation in which law students, acting as attorneys, are presented with a client problem considered representative of those encountered in a private general practice. The competition challenges law students to apply academic knowledge to a situation that they might confront in practice. "Freedom of speech and expression" is the subject of this year's competition.

The competition also highlights the importance of preventive law and the need for informed, sensitive counseling of clients. Each law school may enter one team of two students and an optional alternate in regional competitions that are held in twelve locations across the country in late February. The twelve regional winners, who must be Law Student Division members, then compete in national finals held in late March.

Oral advocacy is the focus of the National Appellate Advocacy Competition. This competition is jointly sponsored by the ABA Law Student Division, the Section of Litigation and the Appellate Judges' Conference of the ABA's Judicial Administration Division. The subject of the 1988 competition is "the liability of social hosts."

Each ABA-approved law school may enter a maximum of two teams. Each team consists of two students and an optional alternate. Regional competitions are held in ten locations across the country between February 15 and April 15. Regional winners advance to national finals held in conjunction with the ABA Annual Meeting in August.

Students who wish to compete may register by telephone with Sherry Gouwens at the American Bar Association, 750 North Lake Shore Drive, Chicago, Illinois 60611, telephone 312/988-5621.

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SPORTS

'TIS THE SEASON . . .

Since there's only about a month till Christmas, I decided to make up a Gift list of what members of the sportsworld need most. Here is a partial list:

To Al Campanis, I'd give some cosmetic surgery to have his foot surgically removed from his mouth.

To Billy Martin, I'd give a sparring partner so he doesn't have to go out to a bar to look for someone to punch.

To Dave Winfield, I'd give a set of ear plugs so he could block out the noise from all his unjustified critics.

To Dave Johnson, I'd give a contract extension and a lifetime supply of Roloids.

To Don Mattingly, I'd give the only thing he doesn't possess - speed.

To Eric Dickerson, I'd give a pacifier so I don't have to hear him cry anymore

about how underpaid he is.

To Gary Garter, I'd give a new set of feet since the old pair took such a beating last season.

To Greg Jeffries, I'd give a starting sport in next season's line-up.

To George Steinbrenner, I'd give a one way ticket to Antarctica.

To Jack Donlan and Gene Upshaw, I'd give them tuition so they could take a class in labor negotiations at Hofstra.

To Joe Klecko, I'd give two new knees so he could again become the best nose guard in Pro Football.

To Jesse Orosco, I'd give him his wish for a trade since the Mets Could get anyone to blow the amount of saves he did last year.

To Joe Walton, I'd give a creative

playbook to use when the Jets take the lead in a game.

To John McEnroe, I'd give charm lessons.

To Joe Niekro and Kevin Gross, I'd give lessons from Mike Scott on how to hide the incriminating evidence.

To Ken O'Brien, I'd give more protection from the offensive line.

To Kevin McReynolds, I'd give a higher batting average with runners on base.

To Mike Keenan and the Philadelphia Flyers, I'd give them something they need very badly - a little class.

To Mark Gastineau, I'd give a haircut at the barber of his choice.

To Mike Scott, I'd give a box of coarser sandpaper since the old stuff didn't work as well as it used to.

To the Mets, I'd give a fourth starting spot in the outfield to keep Mookie and Lenny both happy.

* To Mark Salas, I'd give 10 catching lessons from Johnny Bench.

To Nolan Ryan, I'd give some offensive support to go along with his great pitching.

To Phil Esposito, I'd give a master plan so he could figure out what the heck he is doing with all his trades.

To Rick Pitino, I'd give a guard who could shoot over 50% from the floor.

To Rafael Santana, I'd give some respect.

To Sid Fernandez, I'd give a lifetime membership to weight watcher.

To Whitney Herzog, I'd give a bag full of new excuses because he's run out of old ones.

My Son, the Do-Gooder



I despaired when he turned down a high-paying job with a Wall Street law firm to work for Legal Aid

BY JAMES R. LAMB Jr.

On March 13 my son won his first case in federal court. He was 26 years old, and I was damn proud of him, but by then he'd changed my point of view. Frankly, I despaired when he turned down a \$66,000 job with a Wall Street law firm — that's what they were paying highly ranked law-school graduates in June of 1986. Chris chose instead to work for the Legal Aid Society's Office for the Aging in Brooklyn, N.Y.

It shouldn't have been a surprise. One summer I got him a job with the firm of Cravath, Swaine & Moore, where he worked on the massive IBM antitrust case. He was unimpressed. Despite the modest stipend, he preferred working for the Center for Constitutional Rights, with the likes of William Kunstler. Or for the NOW Legal Defense and Education Fund. Or for Connecticut Legal Services — for nothing.

I suppose other fathers of sons who have chosen to do good instead of well can understand my concern. I paid \$80,000 for his undergraduate and graduate education (he still has \$10,000 in student loans to repay). And the rejection of a high-salaried job seemed to me, a man born in the Depression year of 1934, an affront to common sense. Add to that my dislike of the idea of government helping community groups sue the government. All in all, I was troubled about my son's future.

But there was another lesson to be learned from the 1930s — indeed from some 1,900 years before that. If I was so down on do-gooders, Chris asked, where did this Christianity stuff that I am William F. Buckley profess fit in?

The case my son won in federal district court was one of those Simon Legree situations regularly created by the U.S. Department of Health and Human Services. Chris represented an 86-year-old man who had been refused a much-needed supplement to his social security because he owned a house. But the house was uninhabitable. Vandals reduced it to a pile of junk after its owner was hospitalized. Even so, a social-security administrative judge said, it was a house. Had not Chris and his colleagues brought the suit, that ruling would have prevailed.

Chris spends an enormous amount of his time in Brooklyn's housing court, a place a reporter once described as seething with anger, potential violence and marginally ill people. He thinks the reporter underplayed the chaos. He says the courtroom makes the station house in "Hill Street Blues" look orderly. It is hardly a place where his clients would stand a chance without a smart, dedicated and well-trained advocate.

These are some of the people I'm talking about:

■ A 70-year-old widow whose landlord presented her with a lump-sum bill for \$4,000 after he discovered that for seven years he had been charging her less than he could have under New York City's complicated rent-control program. When she couldn't pay it, he brought eviction proceedings against her, even though she had always paid the monthly rent she was charged.

■ A 64-year-old terminally ill woman received a 72-hour eviction notice after a proceeding against her. She had no knowledge of the lawsuit; therefore she had not opposed it, and a default judgment had been entered against her.

In this last case, the issue was nonpayment of rent, and Chris's client didn't have the money to pay it. His job was not only to represent her in court but to go to the city's welfare department for an emergency grant that would keep her from becoming homeless. Often, just a few hundred dollars can save the city the cost of a welfare hotel where the charges can be \$20,000 a room or more a year.

Chris's work week frequently begins on Sunday. One recent Sunday he went to the office to write a brief for an elderly Russian woman. Despite the fact that she rented her apartment from a relative, she

was eligible for a housing benefit, but the statute of limitations required a Tuesday filing. On Monday a sympathetic secretary agreed to stay late to type the brief. Chris's client arrived still later and the document was read in Russian so she could understand what she was signing. He left his office at 10 p.m.

He made his filing deadline on Tuesday. He also stopped off in Brooklyn's housing court where he met with a client who refused to sign a lease that Legal Aid had painstakingly negotiated for him. The man had agreed to it, thus ending a dispute with his landlord that threatened him with homelessness. But Chris couldn't get him to sign. Only Chris's supervisor, who had worked on the man's legal problems for four years, was able to overcome his suspicion.

NOTE: A public-relations executive, Lamb lives in Connecticut.

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NIXON

(Continued from Page 2)

The final session, on Saturday afternoon, was devoted to "The Evolution of the Nixon Legacy" and featured as discussants H.R. Haldemen and John Ehrlichman. These former White House aids and prominent Watergate figures participated in all three days of the gathering.

Former Secretary of State Henry Kissinger delivered a major address on Thursday evening. Han Xu, currently the Chinese Ambassador to the United States and the man who arranged Mr. Nixon's first visit to the People's Republic of China, also spoke. Ambassador Alexander M. Belonogov, Permanent Representative of the USSR to the United Nations participated in the discussion of Detente.

Professor Howard Ball, a former member of Hofstra's Political Science Department, who is now on the faculty of the University of Utah, was commissioned to prepare a paper for the "Separation of Powers" panel.

The panel on "Researching the Nixon Presidency" has special significance. Mr. James Hastings of the United States Archives presented a paper on the litigation over the Nixon papers and tapes. Mr. Harry J. Middleton, Director of the Lyndon B. Johnson Library, offered some comparisons on how things are handled when a Presidential library exists.

Among the approximately 70 paper sub-

mitted are contributions from Pakistan and Malaysia. International leaders who were in power during the Nixon years attended.

NEW DORMS

With resident population more than doubled since 1981, Hofstra University has broken ground for its new \$10.5 million, six story dormitory.

A unique departure for the University, the new residence hall will not reflect either the two-story buildings built in the early 1980's or the six residential towers built in the 1960's.

Unlike the high rise dormitories, the new dormitory will be built apartment house style. The entire dormitory is made of suites, a design chosen for its efficiently spacious use of the 122,000 square-foot building. Suite-style living has proven to be popular with students because they can live together comfortably in adjoining rooms sharing an additional common area.

The suite form is a take off of the Netherlands, a popular group of Hofstra suite dormitories. Each hall will contain a lounge, laundry rooms and a pantry kitchen on the first floor.

The number of dormitories have increased from six in 1981 to 36 today.

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