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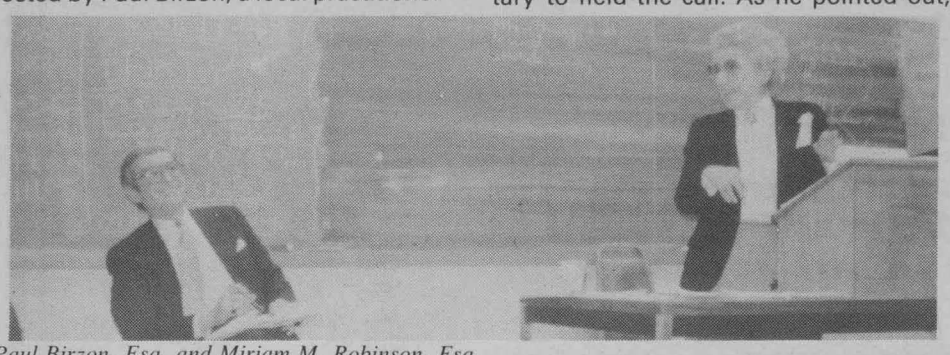
The Opinion Volume 29 Number 12 – March 15, 1989

The Opinion

Matrimonial Law Conference Gives Students Taste of Reality

On Saturday February 25, the walls of Room 108 reverberated with some rather unfamiliar sounds. Instead of the usual dosage of legal theory and caselaw, the students present were treated to a taste of reality. Indeed, the second annual matrimonial law conference entitled, "The Practice of Matrimonial Law: A Lesson in Reality," certainly lived up to its name. Hosted by Paul Birzon, a local practitioner and adjunct law professor, the conference featured presentations by matrimonial lawyers from across the state.



Paul Birzon, Esq. and Miriam M. Robinson, Esq.

by Andrew Culbertson
Features Editor

The presentations themselves covered a wide range of topics within the matrimonial law field, including pre-litigation conduct, custody issues, the use of expert witnesses, trial strategy and preparation, and the admission of certain types of evidence. Listening to the speakers, one got a good sense of the intricacies involved in the practice of matrimonial law.

Perhaps the best example of this was given by Raymond Pauley, a partner in the Rochester firm of Pauley & Barney. Pauley stated that when a prospective client calls his office, he never speaks directly to the person, allowing his secretary to field the call. As he pointed out, "The prospective client can, and often will, divulge confidential information in the first thirty seconds he or she speaks with you. Thus, you have the establishment of the attorny-client privilege. In the event that this person opts not to hire you (but has told you confidential information), you are 'knocked out of the box' if the other spouse wants to employ your services." The reason the attorney can't defend the other spouse is that to do so would represent a clear conflict of interests. According to Pauley, this scenario is not as unlikely as it might appear. Along these same lines, Pauley stated that "whenever he consults with a prospective client, he always charges a consultation fee." This way, if he is "knocked out of the box," he will at least have been paid for his legal advice.

Alvin Ashley, a partner in the New York Firm of Colton, Weissberg, Hartnick, Yamin and Sherefsky, led a provocative discussion on the use of expert witnesses to conduct financial evaluations of the "moneyed" spouse. According to Ashley, when evaluating the worth of the "moneyed" spouse's business, the best expert to employ is not an accountant, but someone who buys and sells that particular type of business. "Since every business has its own way of fooling Uncle Sam, an accountant, who will see the same things as Uncle Sam, can be fooled just as easily. On the other hand, a person who buys and sells that type of business will be able to give an accurate evaluation of what that business is worth."

Ashley did note, however, that it is imperative to have an investigative accountant, since they can detect where unreported money is coming from. "If the husband is reporting $100,000 in income, and he maintains three mansions and several Rolls Royces, this should tip you off that there is a lot of unreported income." An investigative accountant, through a variety of techniques, is often effective in determining how much unreported income there actually is.

Ashley discussed other aspects of the discovery process, placing particular emphasis on the importance of depositions. Depositions, he stated, are important "because they give the other side the opportunity to commit perjury." In the event that they do, this fact is a "bullet to be used at trial."

A theme stressed by a number of the speakers was that matrimonial litigation is something to be avoided at all costs. Not only is it very expensive, but it tends to be very messy and emotional. To this extent, a good deal of emphasis was placed on the importance of negotiating a settlement. Timothy Tippins, a solo practitioner from the Albany area, discussed the importance of pre-trial negotiations, giving what he deemed to be the "ten commandments" of negotiating. Among other things, he stated that an attorney should never play hardball, never negotiate without full disclosure, never abdicate strategy, tactics, or ethics with the client, and always know his or her adversary. With regard to this last point, Tippins related an incident in which a corporate attorney unwittingly decided to handle a client's divorce. Unbeknownst

(See Matrimonial Law, page 11)

THE OPINION

Volume 29, No. 12 STATE UNIVERSITY OF NEW YORK AT BUFFALO SCHOOL OF LAW **March 15, 1989**

Buffalo Lawyer Buckley Returns to UB as Professor

Elizabeth Buckley joined the UB Law faculty last semester as a part-time professor. She graduated cum laude from UB Law School in 1980 and her experience includes a clerkship with Judge John Curtin, an associate's position with Jaeckle, Fleischman and Mugel, and work as an attorney for Neighborhood Legal Services.

As a law student, Professor Buckley worked for Professor Spanogle as a research assistant. She earned the Lay Law Award for commercial law. She was recommended to the law faculty by Professor Spanogle to fill his position while on sabbatical.

by Alice Patterson
Staff Writer

Professor Buckley specializes in commercial law, and her primary work at Jaeckle, Fleischman was commercial litigation. Ms. Buckley enjoyed that area of practice very much. However, intellectually and emotionally, she felt she needed something more. This led her to practice with Neighborhood Legal Services. Until joining Neighborhood Legal Services, her work had centered around substantive commercial-type law cases. She felt the need to learn more about the human aspects of law. Her work as a legal services attorney more than fulfilled this need. The fulfillment, for example, of helping an elderly person receive Medicaid was more rewarding than the "traditional" type of legal practice.

Professor Buckley worked for Neighborhood Legal Services until the birth of her second child. Her position at UB Law School provides her with the best of two worlds: time to devote to her family and a chance to explore a totally new academic and intellectual setting. She describes her time here as a "wonderful and fun experience." "It's wonderful to have the time to really look at and analyze a statute in depth, time which isn't available in a law practice. In this academic setting, there is time to explore a statute's legislative history, and essentially there is time to learn more about the statute."

The statute Ms. Buckley speaks of is the Uniform Commercial Code. She finds the code courses to be the most interesting and very important as part of law students' education because students need to be cognizant of the fact that much of the law has been codified. Students will appreciate the Uniform Commercial Codes once they begin to practice. "It is one of the best written of all statutes. It is a comprehensive statute, drafted by lawyers, and is very cohesive." Other codified statutes are a hodge podge of different statutes that somewhat relate to each other but there are gaps and overlaps where there should be none. The UCC, among all statutes — probably only similar to the tax codes, is a very neat, well-integrated statute. She jokingly said, "None of my students would believe that for a minute."

Professor Elizabeth Buckley

Ms. Buckley has no definite plans for next year. She does plan to return to practice in a law firm. She recommends that all students gain experience by working as a judicial clerk before entering a practice, especially a federal clerkship because of its voluminous jurisdiction. It gives students a chance to work with everything from admiralty cases to criminal cases. She described Judge Curtin as careful and brilliant.

In her role as a professor of commercial law, Ms. Buckley hopes to accomplish something which she believes is very vital to her students' education: "Learning about substantive law has to be secondary to learning to read the statute." It is most important to read the Uniform Commercial Code and understand the transactional analysis which can then be translated to whatever area of the law that students ultimately practice. Students are intimidated by these types of courses and statutes, but there is no need to be. Once you are used to the statute, conceptually, it becomes easier. Her main goal is to help students become familiar with the statute and statutory analysis.

Professor Buckley described teaching as being more exhilirating than she had anticipated. "It's fun and the students are exhilirating. They come up with new ideas that force me to really work. Work which I enjoy tremendously."

FSEC Votes to Reimplement Law School Policy

At a meeting on March 6, 1989, the members of the Faculty Senate Executive Committee (FSEC) decided, unanimously, to support the UB Law School's policy of non-discrimination. The law school's policy, which includes, but is not limited to, employer recruitment practices which expressly discriminate against sexual orientation, age, veteran, marital or parental status, was held in abeyance in February 1989 by President Sample and Provost Greiner.

By re-implementing the law school's policy, the FSEC has taken the position of not adhering to President Sample's decision to hold the policy in abeyance. The question of jurisdiction was not discussed at the meeting.

The law school was represented by Thomas Headrick, Associate Dean, and Isabel Marcus, Associate Dean for Student Affairs. Mr. Headrick provided the FSEC with a history of the law school's policy from 1975 to the present, noting that the SUNY administration has not questioned the law school's actions up until now. He also cautioned the FSEC not to view the law school's policy as an attack on the military, which it is not. "It just so happens that the military recruiters fall under the new guidelines that have been established" stated Mr. Headrick.

Isabel Marcus, who also stressed in her discourse that the policy has never been undertaken as a banning of any particular group, drafted a motion which the FSEC voted upon thereby supporting the law school's stance.

Numerous law student groups and concerned individuals were present at the meeting in support of the law school's position. Repeated calls throughout the meeting by John Boot, Chairman of the FSEC, were made to those who oppose the law school's policy. There was no opposition from the audience nor from members of the FSEC.

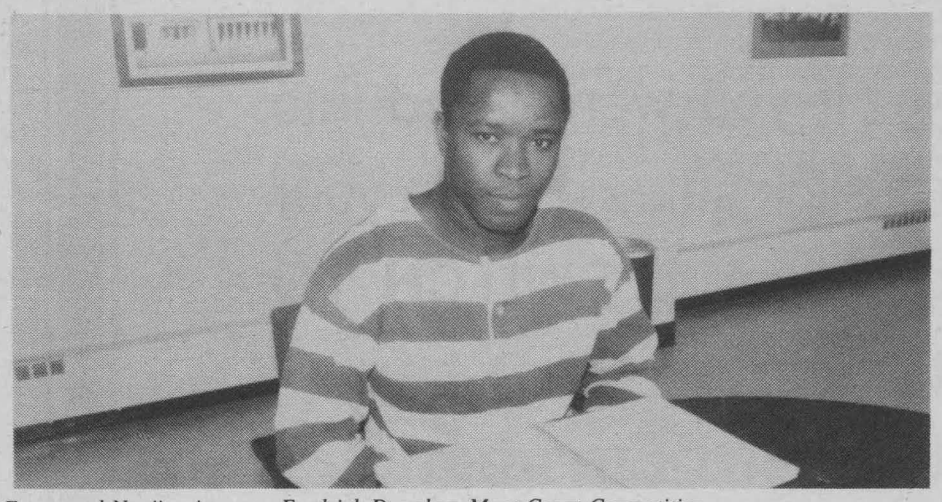
HIGHLIGHTS

Buffalo Hosts Northeast Regional BLSA Conference

The prospects for minority law students seeking employment in private practices in Buffalo are bleak. Many of the Buffalo area firms are reluctant to hire black, Asian and Hispanic law students for reasons that minority law students feel are purely racial in nature. Numerous minority law students feel that most large firms in Buffalo interview them for the sake of complying with federal regulations which in turn allows the firms to advertise that they are an "equal opportunity employer."

by Daniel Ibarrondo Cruz
Editor-In-Chief

The statistics for Buffalo and Erie County are staggering. As previously reported in the September 28, 1988 issue of *The Opinion*, of the 3,000 practicing lawyers in Erie County, less than 2 percent are minorities. In the area of private practice, of the six Erie County law firms with at least 50 lawyers, only two have minority attorneys on staff. The total number of minorities between these two firms is three. Of the twenty county law firms with at least ten lawyers, 15 have no minority attorneys at all.



Emmanuel Nneji, winner — Fredrick Douglass Moot Court Competition

In 1987, the Minority Bar Association of Western New York (MBA) and the Erie County Bar Association (ECBA) began a task force between the two bar associations to investigate the problem in Buffalo. The task force, co-chaired by Richard F. Griffin of Moot & Sprague and Oliver C. Young, senior law assistant for the Eighth Judicial District, was to conclude their report by the end of 1988. To date, no report has been made.

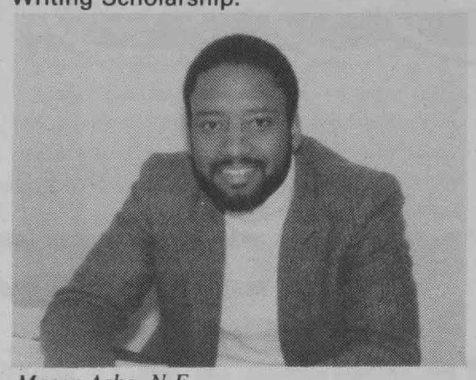
The purpose of the task force as expressed by Mr. Young was to bring minority law students and private law firms together.

In order to make able and qualified minority law students available for interviews with Buffalo area firms, the Black Law Students Association (BLSA) of UB Law School organized and held their Northeast Regional Conference in Buffalo. The event, which lasted four days, was held in downtown Buffalo at the Hyatt Regency Hotel from February 2-5, 1989. The conference was aptly entitled: "The 1990's: Bold Tactics For Liberation."

NATIONAL BLSA HISTORY

The National Black Law Students Association was founded in 1967, forming with a small group of law students who saw the need to unite on a national level with other minority law students given the small numbers of minority law students enrolled in ABA approved schools at the time. Today, the national organization boasts 200 chapters representing almost every ABA accredited law school in the country with an excess of 8,000 members in six nation-wide regions.

National BLSA's purpose is to articulate and promote the professional needs and goals of black law students, to foster and encourage professional competence and to instill a greater awareness of and commitment to the needs of the black community by coordinating programs such as job fairs, local minority recruitment efforts, the Fredrick Douglass Moot Court Competition and the Sandy Brown Memorial Writing Scholarship.



Mason Ashe, N.E., Regional Director, National BLSA

The National BLSA Northeast Region is headed by Mason P. Ashe, Regional Director and a student at SUNY Buffalo School of Law, Tanya K. Hernandez, Associate Director, from Yale Law School, Renata D. Wooden, Treasurer, from Seton Hall University School of Law and Awo Y. Sarpong, Secretary, from New York University School of Law.

NORTHEAST REGIONAL CONFERENCE

An attraction of this year's conference was the First Annual Winter Minority Job Fair. As the name suggests this was the first time that a winter job fair has been made available to minority law students. The job fair was made possible through the auspices of the UB Law School Career Development Office (CDO) with the help of Audrey Koscielniak, Director of CDO.

Mason P. Ashe, 3L, stated the organization's goal in holding their 21st Annual Northeast Regional Conference in Buffalo, "Buffalo firms are always saying that we don't apply to them for jobs, BLSA decided to make ourselves available and give them the chance to take the next step." He expressed some concern however, in the efforts, or lack thereof, of Buffalo law firms to hire minority law students.

The Fredrick Douglass Moot Court Competition was held during the four day event with awards presented by Tanya Hernandez, Northeast Regional Director, to Diana Harris, 3L, and Emmanuel Nneji, 3L, both of UB Law School. There were a total of 24 teams competing from the Northeast Region.

Numerous out-of-town guests were greeted on February 2nd by UB Law Professor Charles E. Carr who spoke to the Moot Court competitors assembling at the Hyatt Regency Hotel. On February 3rd, Julius Chambers, Director-Counsel of the NAACP Legal Defense Fund, gave an assessment of the past, present and future of civil right litigation along with UB Law Professor Muhammed Kenyatta, Honorable Rose Sconiers, City Court Judge of Buffalo, also spoke to the conference participants on February 3rd along with Omoye Cooper, Affirmative Action Officer of the New York State Division of Parole.

The schedule of events for Saturday, February 4th, included a panel discussion on career options moderated by Aundra Newell, Assistant Dean for Admission of UB Law School with panelists Todd L. Cranford, Clerk 6th Circuit, John V. Elmore, Assistant Attorney General, Buffalo, Patricia L. Irvin, Partner in Milbank, Tweed Hadley & McCloy and Judy Scales-Trent, UB Law School professor.

Tony Brown, civil rights activist, was the guest speaker for the conclusion of events on Saturday, February 4th. Mr. Brown, known as America's most famous black journalist, host of the PBS show *Tony Brown's Journal* and most recently for his film *The White Girl*, a love story with an anti-drug theme, spoke on the struggles and strides facing blacks today.

The conference served as a foundation for other events such as the officer induction ceremony of the Minority Bar Association of Western New York (MBA) and the presentation of a proclamation to Mason Ashe by David Collins, City Councilman for the Masten District of the City of Buffalo. Gail Hallerdin, President of the BLSA chapter of UB Law served as Mistress of Ceremonies for the events on Saturday, February 4th with Mr. Collins giving the welcoming address. Also included in the list of events was the installation of the 1989-1990 Regional Officers of National BLSA presented by William Mathis, National Chairman of National BLSA.

Panel Discusses Issues in Reproductive Technology

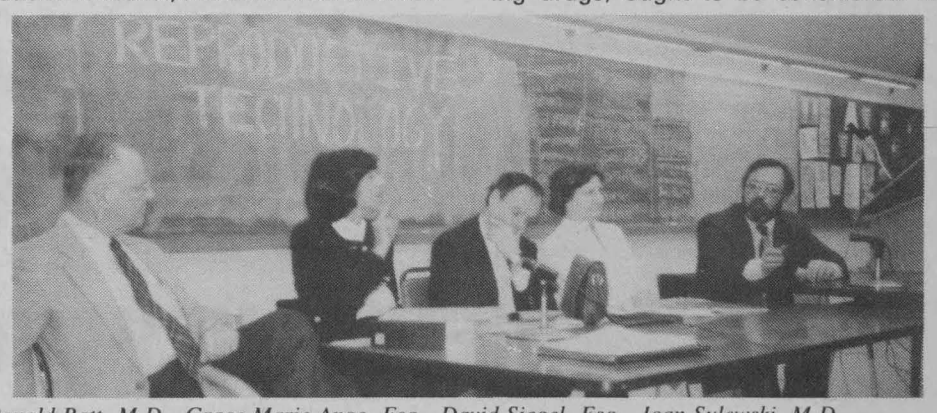
On Tuesday, February 28th, the Association of Women Law Students and the American Medical Women's Association jointly sponsored a panel discussion concerning the medical and legal aspects of reproductive technology. The panelists consisted of two physicians whose practices emphasize fertility problems and two lawyers who are members of the New York State Bar Association's Special Committee on Biotechnology and the Law. Dr. Ronald Batt, a clinical assistant professor of gynecology at SUNY-Buffalo's School of Medicine, described and illustrated by a slide presentation, new surgical techniques designed to eliminate endrometriosis, a common cause of infertility in women over 25. Dr. Joanne Sulewski, the director of the women's health clinic at the V.A. Hospital, emphasized new developments in drug therapy. They also outlined the options in reproductive technology that are available to infertile couples such as test tube babies and surrogate motherhood.

by Jennifer Latham
Staff Writer

Grace Ange and David Siegel discussed the legal aspects of current trends in reproductive research such as experimentation with fetal tissue and surrogate parenting. Ms. Ange, who is the chairwoman of the New York State Bar Association's Special Committee on Biotechnology and the Law, provided an example of the issues and questions that have arisen concerning the use of fetal tissue. She described a situation involving a woman in California whose father was suffering Alzheimer's disease. Since certain types of patients treated with applications of fetal tissue have shown improvement, this woman wanted to be artificially inseminated with her father's sperm, produce a fetus, and abort it so that the tissue could be used to treat her father. As far as Ms. Ange knows, this experimental treatment was never performed. The woman could not find a physician who was willing to perform the procedures. The proposed mode of treatment raises basic questions concerning the use of fetal tissue. Who owns fetal tissue? Who ought to say how fetal tissue should be used? Should tissue that results from abortions be used for experimental purposes? Do you need the mother's consent? Should women be paid to produce fetal tissue for use in treatment?

Ange questions who ought to have the right to determine the appropriate medical treatment for a potentially viable fetus. If medical technology is able to keep a three month old preemie alive outside a mother's body, should she be able to say that she wants an abortion and does not want the baby to live? Ange emphasized that these sorts of questions should be addressed before a test case arises. The law has dealt with questions of gestational ownership. Ange cited a French case that occurred in the 1970's. A young man, who had arranged to have sperm frozen before treatment for testicular cancer, had died. His wife and mother wanted the sperm so that his wife could be inseminated and be able to have his child. The sperm bank refused, claiming that his sperm was not property to be inherited. The bank further added that nothing in the contract he signed specified what he intended. The contract would not have indicated any intent to designate the sperm to his wife's use since he signed the contract before he married. The court eventually awarded the sperm to his wife. Unfortunately, however, she has not been able to have any of his children.

Ange and Siegel also stressed that issues concerning surrogate motherhood, like those concerning fetal tissue and gestational material, should be addressed before large numbers of test cases arise in the United States. Surrogate parenting has arisen in response to infertility. Siegel stated that over the past 10 years, at least 1,000 children have been born to surrogate mothers. Banning surrogate parenting, according to Seigel, will not prevent the practice. Approximately eight states and countries such as Israel have banned this type of parenting. There is an increasing interest in surrogate parenting, especially in the United States where the number of healthy infants available for adoption is not meeting the demand. Surrogate parenting can be done without the intervention of doctors and lawyers and can be a process amenable to exploitation. Few states have laws regulating surrogate parenting. The rights that a surrogate mother ought to have need to be clarified. Ange suggested allowing the surrogate the right to abort the child and the right to keep the baby if she changes her mind after birth. Siegel asked how a surrogate mother's misconduct (e.g. taking drugs) ought to be considered. He stated that if a surrogate mother is to be paid, she should be paid for carrying the child rather than producing a healthy baby. He described a number of problematic cases that have occurred, such as a child with AIDS born to an improperly screened surrogate mother who had a history of drug abuse. Both the surrogate mother and the contracting parents have refused custody of the baby. Who should be responsible for this child? There are many legal and ethical questions that need to be answered in relation to the new reproductive technologies that are currently available. Videotapes of the panel discussion are available in the audio-visual department of the library.



Ronald Batt, M.D., Grace Marie Ange, Esq., David Siegel, Esq., Joan Sulewski, M.D., Steven Wear Ph.D.

Common Council Holds Police Brutality Hearing

by Jim Monroe

In late January, Buffalo Common Councilman James Pitts chaired public hearings on the increasing number of police brutality accusations. Although these hearings were not well advertised, about five dozen people showed up to give public testimony concerning their personal experiences at the hands of the Buffalo Police Department.

At the outset, many in attendance seemed a bit skeptical of the second-hand stories they'd heard about minorities and students being assaulted by the police for no apparent reason. A lot of people thought that Buffalo might have one or two excitable boys on the force, but not a problem to the extent Florida has.

The first few people to testify did little to change this point of view. They were young, burly black men who professed innocence to any crime and said that the cops had been picking on them and had slapped them around a little.

Nobody seemed particulary outraged when Common Council member Norm Bakos attacked their credibility. He asked them why they'd pleaded guilty to resisting arrest, (the judge told them to in exchange for an ACD), and why they hadn't sued the city, (part of the ACD deal is a waiver holding the city faultless in its arrest and prosecution of the case).

A Common Council member asked Assistant Corporation Counsel, Russell Sciandra, if the city could do that and Mr. Sciandra replied that he couldn't answer that without writing the council member a brief.

After a few private citizens spoke, an NYCLU lawyer told of a couple of fourteen year old African Americans who were stopped in a stolen car. Witnesses at the scene claimed that, as the passenger in the stolen car got out, the cop in the passenger side of the police car ran up behind the fourteen year old and shot him in the head, killing him. Council member Bakos asked if the other boy had been found guilty of theft and seemed pleased when answered in the affirmative. He then informed the female, black NYCLU attorney that he was questioning her testimony "lovingly."

Chairman of the committee, James Pitts, requested that the NYCLU lawyer submit the remainder of her testimony in writing after she had mentioned about ten cases. Bakos then directed a show of indignation at the lawyers of this town for not taking these cases pro bono or on contingency and clearing the air.

Next, a very articulate, credible Kenyan man named Gezu testifed that he'd been arrested and brutalized three times by the same cop who insisted on calling him Zoo. These beatings occurred whenever this policeman would see Gezu driving down the street. Gezu brought in physical evidence, a bloody shirt and pictures of his face after the arrests, to illustrate his case.

Norman Bakos asked the Ass't Corporation Counsel Sciandra, (who seemed to pay little attention during the proceedings unless his name was shouted out), if any police had ever been convicted of any of these crimes. Sciandra replied that the Grand Juries had failed to indict any of the charges whenever the D.A. brought them.

Bakos asked Mr. Sciandra if the Grand Jury was a group of citizens and Mr. Sciandra answered that it was just like any other jury. Then Norman Bakos asked, "If the D.A. brought the indictment and the Grand Jury rejected it, weren't the cops innnocent?"

Mr. Sciandra confidently answered "yes."

The NYCLU lawyer tried to interject that the Grand Jury is not selected the same way a trial jury is, with both sides questioning the prospective jurors, and that it usually consists of white, middle class housewives with time on their hands.

Before she could explain what every first year Criminal Law student knows, (that a D.A. has so much control in secret Grand Jury sessions that he can bring a case to the Jury for political reasons and purposely fail to have it prosecuted), Bakos jumped up and yelled, "are you telling me that the Grand Jury system is somehow corrupt?"

The audience immediately shot back, "YES!!", and Councilman Pitts called to restore order.

Bakos seemed incredulous that a Prosecutor would not wholeheartedly pursue a case against the men in blue who provide him all his information and maintain his power.

The next witness was an upper middle class black woman whose daughter had sustained permanent injuries to her throat and kidneys and lost her Connecticut State Trooper candidacy due to a misunderstanding.

This woman and her daughter had been travelling on the subway when a white woman lost control of her senses and began swinging her purse wildly, eventually losing her balance. The daughter bent over the white woman to help her when two policemen arrived to see a young black woman stooping over a sprawled out white woman.

The cops proceeded to pummel the black woman bloody with their night sticks and when the mother attempted to intercede they smashed her in the nose. The two women were then incarcerated for resisting arrest and not taken to the hospital for eight hours. Later the daughter pleaded guilty to harrassment in order to get an ACD and get out of jail. This "conviction" ruined her job status. The mother refused to sign the ACD or the waiver and is presently suing the city.

Councilman Norman Bakos interjected and said that the city had never been sued for police brutality before. Councilman David Collins corrected him and said that the city had lost one giant lawsuit, settled two out of court, and had an unprecedented number pending. The large lawsuit was the $25 million dollar lawsuit in 1977 by the family of Richard Y. Long, who was beaten to death by two off-duty Buffalo policemen.

Many other law abiding citizens testified, including a UB student who was literally tortured and had to choke back tears recounting an episode in the police headquarter's elevator which led to immediate hospitalization.

Another man spoke of being thrown naked into an air conditioned jail cell after having been beaten bloody. A local business owner and Griffin supporter told of seeing the cops beating a mentally incompetent man and asking them to desist, resulting in his own violent arrest.

Odds are that this is just the tip of the iceberg. Many people refuse to come forward out of fear, many are obviously humiliated by their experiences, and most people don't even know about the hearings.

On February 6th Mayor Griffin, who refused to attend the hearings, asked that the investigation be closed. He stated that there is "no police brutality problem in Buffalo — you want a police problem, go to Miami."

On March 5th, the *Buffalo Magazine* ran a cover story on local attorney and UB graduate, David Jay, who said, "I've filed more brutality complaints in the last 12 months than I did in the previous 20 years. The elevator in police headquarters must be greased with vaseline, so many people are falling down and hurting themselves."

Councilman James W. Pitts' office was contacted by *The Opinion* on March 7th. He said that transcripts of the hearing are a matter of public record and can be found by calling Lenny Scolina at 851-5441. Councilman Pitts promised to keep the investigation alive despite opposition from the mayor's office and reiterated that internal police investigations are not effective.

University of Buffalo Initiates Asbestos Abatement Program

Between April 14 and October 1, 1986, three teams of inspectors from Hall-Kimbrell Environmental Services, Inc. conducted asbestos inspections of some 1,400 buildings in 37 colleges and universities in the State University of New York (SUNY) system. With studies confirming the health risks associated with the inhalation of asbestos fibers, and in order to determine the severity and potential health risks associated with asbestos used in the construction of its facilities, SUNY retained the services of Hall-Kimbrell Environmental Services, Inc. in 1985 in order to initiate a three phase program for asbestos control and abatement throughout the University system.

by Daniel Ibarrondo Cruz
Editor-In-Chief

THREE PHASE PROGRAM

The three phase program consisted of (1) conducting five regional training seminars dealing with asbestos repair and training techniques, (2) conducting a system-wide asbestos assessment study encompassing some 1,400 facilities at 37 universities and colleges and (3) the development of an asbestos abatement program.

Leonard Borzynski and Dave Lytle of the University at Buffalo Department of Environmental Health and Safety spoke to a small gathering of mainly faculty, secretaries and administrators about the asbestos level in O'Brian Hall. It had been determined from samples of air taken between February 1988 and February 1989 that a safe level of asbestos exists in the air in various locations throughout O'Brian Hall. Although the samples show the amount of asbestos fibers is below the Occupational Safety and Health Administration (OSHA) standards of 0.2 fibers/cubic centimeter (cc), second floor samples read .060 fibers/cc, fifth floor samples show a level of 0.010 fibers/cc, and seventh floor samples show .003 fibers/cc, a potential risk exists when asbestos containing materials is disturbed.

ASBESTOS USE AND RISKS

The vast majority of the SUNY's facilities were constructed during the mid-1960's and early 1970's, the period during which it was common practice to use asbestos as a fireproofing material for building structural components and for decorative/acoustical purposes. The potential of an asbestos-containing product to release fibers is dependent upon several factors, including its location and its degree of friability. The United States Environmental Protection Agency (EPA) has defined a friable material as one that can be crumbled, pulverized, or reduced to powder by hand pressure and therefore, is likely to emit fibers when disturbed. The fibrous or fluffy spray-applied asbestos materials found in many buildings for fireproofing, insulating, or decorative purposes are generally considered friable.

Leonard Borzynski, Industrial Hygenist, stated that the reason that a lot of renovation isn't done at O'Brian Hall and elswhere is because of the risk of disturbing asbestos. The Hall-Kimbrell report cautions however, that the mere presence of asbestos does not indicate that a health risk exists. Conversely, only areas that have been damaged and are in poor condition exhibit a potential health risk.

HEALTH RISKS

Friable asbestos is not a hazard unless it is disturbed. Sticking a pencil in an asbestos sprayed ceiling, for example, or removing ceiling tiles are possible ways of disturbing asbestos containing materials. This type of disturbance can create a problem because the asbestos is then freed from the asbestos containing material and allowed to enter the pulmonary system. For non-smokers, the potency of asbestos is greatly diminished. Inhaling asbestos fibers can result in asbestosis, a pulmonary fibrosis (scarring of the lungs).

Asbestosis is a different disease to confirm diagnostically, because the symptoms of the disease are virtually indistinguishable from those of other pulmonary fibrotic diseases such as emphysema, blacklung, etc. Victims usually develop symptoms approximately twenty years after their initial exposure because

(See Asbestos, page 7)

Entertainment Law Society Hosts Media Law Event

Can the practice of law be **fun** as well as challenging and interesting? Well, that's what media lawyers Jim Kane and John Robshaw claimed at the latest session of the engaging Entertainment Law Society (ELS) lecture series.

By Lenny Cooper
Staff Writer

In these times of increasingly complex and specialized practice of law, James F. Kane, Jr. of Damon and Morey, spoke of his fun-filled twenty-eight years of lawyering in the field of Communications Law. Kane has represented Channel 2 TV of Buffalo for the last twenty years. His work has ranged from petty vandalism problems to whether or not Channel 2's weatherman would be allowed to work at that station. He feels that legislation has been an aid to his work.

"The current status of the libel laws in this country and in this state make the practice of law as a media consultant a joy. The pendulum has swung to the side of the media."

Kane said that because of the libel laws it is almost impossible for a public figure, and extremely difficult for a private person, to win a libel suit.

Speaking of the newly passed Cameras in the Courtroom Act, Kane felt that a wide number of opportunities have been opened up for media lawyers. Kane pointed out a downside of televising cases in describing a case he handled where a witness was afraid to testify in a televised courtroom against local hoodlums for fear that she would suffer retribution at the hands of the defendants' cohorts. The court allowed the cameras to stay in the courtroom, but ordered that her face not be shown. In another case, a camera-shy lawyer refused to work in the spotlight and settled his case on not so favorable terms solely to avoid the cameras.

Kane went on to talk about the effects of Section 79H of the Civil Rights law, the "Newsman Shield" law. Kane handled one of the first applications of this law back in 1971 when he defended newsman Stewart Dann. Dann had been covering the Attica prison rebellion and was chosen by the officials and prisoners to bring their case to the public. In the prison, Dann witnessed a "kangaroo court" which condemned two inmates as being against the rebellion. These two inmates were later discovered dead. Dann was subpoenaed to testify concerning what he had witnessed but he refused. Taking its cue from the famous *Brandenberg* case, where the United States Supreme court ruled that a newsman has no privilege from compulsory testimony under the United States Constitution, the New York Court of Appeals ruled that only confidential communications to a reporter were protected. Kane pointed out that the New York court recently backed up this ruling but did allow another form of constitutionally protected "speech": topless dancing.

John P. Robshaw, Jr., the senior partner of Robshaw, Abramowitz, and Tobia, P.C., followed with an interesting overview of the radio and television industry.

(See Entertainment Law, page 7)

THE OPINION

STATE UNIVERSITY OF NEW YORK AT BUFFALO SCHOOL OF LAW

Volume 29, No. 11 March 15, 1989

Editorials

Lawyers Should Thrust Themselves Into The Agonies Of The Times

The great civil rights attorney Arthur Kinoy recently spoke at the law school and described in alarming detail the constitutional crisis of our times. Most poignantly he quoted Oliver Wendell Holmes as saying that if you intend to be great, you must immerse yourselves in the agonies of the times. We believe that too few law students contemplate doing this. Most are concerned principally with their own career plans and with maintaining the highest degree of respectability. More should take the other road, the road less travelled of Holmes and Kinoy. It is in the defense of the despised, the disreputable, the unlawyerly and the oppressed that one's best contribution to society can be made. It is precisely where most decent people are cautious and reluctant to become involved that the advocate's greatest service to society can be rendered. We hope that Kinoy's message has not fallen on deaf ears, and that many of us will learn to steel ourselves against the fear of disrepute that deters the majority from speaking out when necessary. Freedom is preserved only to the extent that it is jealously guarded and progressively pursued. Its greatest enemy is conformity and an eagerness to join in condemning the deviant and the underdog. We are proud of the law school's stand on gay rights, and we hope that it will continue to speak out on behalf of others who are unjustly stigmatized or scorned. It is largely by developing a legal profession capable of reacting in this way that we can hope to ease our country through the crisis that looms. Failure of people to do so could prove costly indeed.

With All Deliberate Speed

As members of the legal profession, both law students and law professors alike strive to maintain arguments of consistency and internal logic. Most students and professors thrust themselves into the task, ably applying their best efforts to the matter at hand.

Yet, a small few renege on their responsibilities. When one student does this, it impacts on him or her in the form of tacit punishment: a 'D' or 'F'. When a professor does not perform with all deliberate speed, his lack of feedback affects the fate of many students, sometimes as many as a hundred.

Perhaps these one or two who do seem not to care about the anxiety and tension caused by anticipation of a 'D' or 'F' have forgotten how they felt as law students when they waited for grades. They may have a good reason for not handing them in. All one can hope for is a good faith effort by all in the pursuit of learning the law.

The Opinion Mailbox:

Students Respond To Smith
Yes, This Is Radical

To the Editor:

This is a response to Dave Smith's editorial "And Some Say This is Radical" (*Opinion*, March 1, '89). Mr. Smith complains about so-called "liberals" in the law school who concentrate on such "frivolous" issues as "banning plastics . . . grapes . . . tuna . . . and animal rights." Unlike yourself, Mr. Smith, I do not exist in a one-issue vacuum. I do not find the issues of protecting the environment, protecting the health of exploited farm workers, protecting the endangered dolphins, and protecting animals from human cruelty to be "frivolous." I have the capacity to embrace all of these issues, and more. It's a shame that you do not.

In an obvious reference to my editorial on animal rights, you state that "the liberals in the school are placing the rights of animals before the rights of human beings." What utter garbage! It is an unfounded conclusion which only serves as a vain attempt to bolster your misguided, self-centered argument.

By your logic, Mr. Smith, any issues other than racism, like women's rights, gay rights, and torture in Latin America, are frivolous simply because they do not address your own particular concerns.

Wake up, Dave. Racism is not the only problem in this world. If you could manage to drag yourself out of your moral tunnel vision, you would see that all forms of oppression — racism, sexism, homophobia, speciesism, etc. — are interrelated. The same power structures and attitudes which subjugate people of color also treat women as objects, gays as evil, and animals as test-tubes.

You cannot address one form of oppression without examining the other, particularly in your own life. To do so is truly the sign of a "phony liberal" and perpetuates the fragmentation and ineffectiveness of the Left. To paraphrase your own article: when blacks and whites and women and men join together to fight **all** forms of oppression, then this country will learn what revolution is really about.

And by the way, Mr. Smith, I'm not a liberal. I'm a leftist radical

Sincerely,
Michael D. Gurwitz
1st year

To the Editor:

Although Dave Smith makes a good point concerning the need for an integrated approach to the multiple and diverse problems facing us as a result of racist, monopolistic economic policy, he levels an unwarranted attack on all progressive people. This is the second time *The Opinion* has published one of his rambling diatribes that rely on flat labels, unsubstantiated opinion, and cultural prejudice to attack the left.

Attacking environmentalists as racists because they do not work on the global issues the way Dave Smith wants them worked on is thoughtless and unprovoked. I'm putting myself in the category of those so labelled because I work on the NLG Grape Boycott and am a director of the Buffalo Environmental Law Society.

I guess Mr. Smith thinks the Farm Worker Grape Boycott is not a racial issue because it concerns illegal aliens and not black law students. I suppose Mr. Smith doesn't bother going to the prisons with the NLG to help educate the 60% black and hispanic population because it doesn't fit his prescription for violent change. I didn't see Dave Smith at the Buffalo Common Council police brutality hearings and I haven't heard him lobbying for any police disciplinary reforms. I've been doing all these things as well as working with the Coalition Against Bias Related Violence and the Students against Aparthied.

I presume Mr. Smith would like me to ignore the capitalist onslaught against the environmnent so I can spend my time lobbying big law firms to admit Dave Smith. No thanks.

Jim Monroe

Edit, Edit, Edit

To the Editor:

A response to Gary B. Ketcham:

Gary — there's another word that all writers seeking excellence should know — edit, edit, edit. Also a suggestion for exam taking — use smaller words — they're faster to write.

Barb Gardner

Student Looks At "JAG Corps Issues"

(This is an open letter to University President Stephen Sample).

Dear President Sample:

This letter is in response to your reinstatement and legitimization within the law school community of groups with outrageous discriminatory hiring practices.

Having been in law school for nearly two years, one thing I have learned is the difference between a smoke screen and the substantive issues involved in a case. Your purported jurisprudential concerns of 1) jurisdiction, 2) whose interest the school is serving, and 3) whether the university has the authority to ban organizations with outrageous discriminatory hiring practices (as reported in the *Spectrum* on 2/22/89) are nothing more than smoke and mirrors. The real issue in this case is whether the university has the **courage** to stand up for the principal of "equal protection under the law" — for human rights. Before I answer your jurisprudential questions, let us take a good hard look at the law nondiscrimination policy and at the first group sanctioned by its provisions — the Judge Advocate General (JAG Corps). (For the uninitiated the JAG Corps is the legal branch of the armed service.)

The JAG Corps refuses to hire **lawyers** who are either physically handicapped, over thirty five years of age, or who are homosexuals. Pyschologically you can be a powder keg or outright insane and not be preliminarily excluded from employment. If you are thirty six years old, however, forget it — you are automatically excluded even if you're ranked number one in your class. The same is true for handicapped or gay people. As a matter of constitutional analysis there is no rational relationship between the discriminatory classifications and any stated governmental objective.

Certainly, there are many poppycock justifications for the discrimination. My all time favorite is that if you let gay people serve as lawyers in the armed forces they will be susceptible to being "blackmailed" (a racist term but universally understood) which, in turn, threatens national security. In reality the exact opposite is true. If you are gay and want to be in the JAG Corps you simply don't tell them about your sexual preferences. However, then you are susceptible to blackmail because if the JAG Corps finds out you will lose your job — something no one wants to have happen to them. The whole problem would be avoided if the discriminatory classification simply did not exist. It makes me wonder how many times national security has been breached because of the **existing** discrimination. To this day I have yet to hear any justification which supports discriminating against the aged or handicapped, let alone gay people. They are hiring **lawyers** not a macho SWAT team.

Now let's take a look at your supposed jurisprudential concerns.

1. **Jurisdiction.**

You claim the law school has no right to ban an organization from com-

(See JAG Issues, page 11)

More From *The Opinion* Mailbox . . .

Students Claim that Faculty Statement Chills Conservative Speech

Dear Editor:

There is a little dirty secret here at UB Law School.

Probably many law students, in particular 2nd and 3rd years, will remember the "Faculty Statement Regarding Intellectual Freedom, Tolerance, and Prohibited Harassment" adopted by the law faculty on October 2, 1987 in response to acts of harassments against certain law students. Beyond providing severe academic sanctions for an individual committing such acts, the statement also provided that

> "racist, sexist, homophobic and anti-lesbian, ageist and ethnically derogatory statements, as well as other remarks based on prejudice and group stereotype, will generate critical responses and swift, open condemnation by the faculty, wherever and however they occur."

At the time, many students, including Thomas L. Jipping and Kenneth D. Neeves, spoke out strongly against this infringement on the freedom of speech guaranteed by the First Amendment to the U.S. Constitution. They correctly criticized the statement as "the antithesis of its title because it prohibits, rather than tolerates, speech with which it might disagree" and the "chilling effect" it would have on speech in the law school. In addition, UB Law School was the subject of national media derision (see Nat Hentoff, "A Law School Flunks the First Amendment") and scorn by then Secretary of Education William J. Bennett who promptly criticized the school as a haven for "left-wing intolerance to conservative viewpoints."

Dean David Filvaroff, who replaced Interim Dean Wade Newhouse in the Spring 1988 and thus had no hand in the statement's development, was quoted in a *Buffalo News* article on April 19, 1988 that "the policy would be clarified so that students did not have to worry about being penalized for expressing what may be unpopular ideas." As a result, Dean Filvaroff formed a committee with the responsibility to revise and clarify the faculty's statement by early Fall 1988; however, in the meantime, the statement would remain in force unchanged.

Not surprisingly, we have heard nothing from this committee. Where is this promised revision? It will be almost a year since the Dean made that promise to the students and general public but, to date, he has failed to honor that promise. He has failed to produce even a single draft revision of the statement. What is Dean Filvaroff waiting for? Perhaps (hypothetically speaking, of course), Dean Filvaroff hoped the controversy would subside and the students would forget about his promised revision, and thereby the faculty could continue using the statement to condemn students making verboten remarks. Therein lies the dirty little secret. Unfortunately for the Dean and the faculty, we have not forgotten his promise.

In response to observations made by Messrs. Jipping and Neeves about the statement's "chilling effect" upon speech, Mr. Newhouse in his April 14, 1988 article in *The Reporter* launched a venomous ad hominem attack against Mr. Jipping for even alleging such an effect. Yet the statement's "chilling effect" on speech continues to this day. For example, many of you will remember our involvement in seeking (and ultimately achieving) the rescission of the faculty's resolution barring the JAG from using "law school facilities." During the many debates, one of our colleagues asked us for our personal opinions about homosexuality. Because this statement remains in effect, we were unable to express our opinion for fear that such opinions **might** be subject to "open and swift condemnation." Yes, Mr. Newhouse, there is a "chilling effect."

As Justice Brandeis noted in his concurrence in *Whitney v. California* about our Founding Fathers and the notion of freedom of speech, he stated, "Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law — the argument of force in its worst form." We here at UB Law School still labor under a silence coerced by the faculty and Dean. Therefore, we now call upon the Dean to honor his promise made to the students and public nearly one year ago and come forth with his revision of the faculty's statement. Let's return the First Amendment back into the classroom here at UB Law School.

John S. Wiencek
1L, Section 3
Daniel P. Majchrzak, Jr.
1L, Section 3

Commentary...

Provost Greiner Unsympathetic To Concerns of Students

by Troy Oechsner

Law student leaders held a heated discussion with Provost Greiner over the administration's recent decision to overturn the law faculty's policy of prohibiting use of Career Development facilities or services by employers who discriminate on the basis of disability, age, or sexual orientation.

Students expressed dismay over the meeting. "If this first meeting is any indication of the administration's attitude, I am not a happy camper. I guess Mr. Greiner showed us that the adminstration cares as little about student input into university decision-making as they do about ending employment discrimination at the school," said Jim Monroe, student leader of the National Lawyers Guild.

"Not only did he refuse to acknowledge any of our very reasonable requests," continued Monroe, "he was patronizing and rude."

According to Lisa Morowitz, Editor-In-Chief of *In the Public Interest* law journal, the law student Employment Anti-Discrimination Coalition first requested an end to UB's support for employment discrimination by reinstating the Law School policy and adopting it on a university-wide basis.

"No way," said Greiner in response to the student request, "I'm not here to make deals."

According to Morowitz, the students had several other requests which were similarly dismissed. "We simply asked (the Provost) to clarify the administration's policy by way of a public written statement on the merits of the issue," said Morowitz, "for some reason he had problems with this."

Greiner explained, "This is only a jurisdictional question. It has nothing to do with the merits." he continued, "We'll have to see what SUNY Council says about this. But I'm not in a position to explain anything right now, on the merits."

However, claims Morowitz, students did not agree with Greiner's contention that this is just a jurisdictional issue. "There is a reasonable claim that the current UB policy of allowing employers who discriminate such as the military is legally valid under the supremacy clause. But there is an equally valid legal claim that state law prohibiting employment discrimination practiced by the military should apply," said Morowitz. "All we want to know is why the administration seems to be choosing to allow discrimination when it could be making a legally sound decision to prohibit discrimination."

Students later requested that Greiner explain what the administration is doing to arrive at a final decision. Students asked the Provost what criteria are being used to make the decision, what opportunities there will be for student input, and what will be the expected timeline for any decision.

"Again, that's up to the President (of the university). I can't give you any guarantees. We will listen to your concerns, but I'm not in a position to say anything about timelines, No." responded Greiner.

"How can you say you'll listen to our concerns?" asked Nathaniel Charny, of the NLG. "You keep interrupting and you didn't even bring a pad to write any of our concerns down," said Charny.

Greiner admonished students at several points in the meeting. In one instance he was upset at students for placing a tape recorder in the middle of the table without first asking his permission.

Students also asked if the Provost would help arrange an opportunity for students to meet with UB President Sample, but were again rejected.

"You'd be better off asking the President yourself," said Greiner.

"We plan to do just that," said Morowitz at the conclusion of the meeting. According to Morowitz, law students are linking up with undergraduate and graduate students to organize around this issue.

Apparently, the law students have made a good start. Present at the meeting with Greiner were representatives from: the National Lawyers Guild, the Lesbian and Gay Law Students Organization, the Student Bar Association, 504 (Handicapped Law Students Organization), Association of Women law Students, *Buffalo law Review*, *In the Public Interest*, Latin American Law Students Association, the Buffalo Public Interest Law Program, the Environmental Law Society, the Labor Law Society, and the Jewish Law Students Association.

Entertainment Law . . . . . *from page 5*

"It's major bucks!", said Robshaw as he described multimillion dollar transactions where investors doubled and tripled their money in less than two years. Robshaw pointed out an upside of this situation for lawyers where fees of twenty to thirty thousand dollars are not unusual.

Robshaw described the colorful on-the-air people he comes into contact with in working for radio stations.

"They're off the wall. They may sound nice on the radio, but you don't want to have them at your house for dinner! But that's the fun part."

Robshaw is currently negotiating for his radio station client WGR to try to acquire broadcast rights to the Buffalo Bills. His latest success was getting the Buffalo Bisons over to WGR for the upcoming season.

"It's fun. It's neat. It's pizazz. It's a bunch of cracko people who are on the air. The management people are generally hard-nosed people. But once you get it running well you can make a lot of money in this business."

It is also, evidently, a fast paced business. Kane told the story of a radio personality whose station lost its license on a Friday afternoon. The station he represented anticipated this action and sent a representative out to the area.

"The United States Supreme Court acted on Friday and we had [her] back here and under contract the following Monday."

The ELS lecture series will continue throughout the semester.

Asbestos . . . . . *from page 5*

of the progressive nature of the disease. The greater the exposure to asbestos, the greater the deterioration of the victim.

FIVE PART PLAN

SUNY has begun a five part plan to deal with asbestos containing materials on campus. This consists of (1) removing immediately the asbestos that poses the highest danger to the greatest amount of people, subject only to funds from the NY State Legislature, (2) removal of asbestos in areas currently being renovated, (3) training personnel in asbestos removing/precautionary measures, (4) providing additional training for anyone removing replacing or touching asbestos, and (5) providing additional information for all employees and students.

Although the asbestos level present in O'Brian Hall has been determined to exist at a safe level, precautionary measures should be taken by all faculty, personnel and students in not disturbing, puncturing or removing ceiling tiles or wall boards that may contain asbestos materials.

Faculty Student Association Tables Grape Boycott

The FSA board disappointed the progressive movement here at UB on Tuesday, February 28 by voting 5 to 4 to table a resolution to boycott grapes in support of the United Farm Workers and their struggle to protect themselves and American consumers from dangerous pesticides.

Joe Brennan, chairman of the FSA subcommittee which studied the proposal to boycott grapes and a graduate student representative on the FSA board, recommended that the board adopt the proposed resolution "to show our support and concern about the issue of pesticide poisoning of consumers and workers in our country."

by Bruce Brown
Staff Writer

Mr. Brennan then moved that the FSA approve the declaration which would have instructed food services to "refrain from purchasing and serving table grapes until the misuse of pesticides is corrected."

During the debate that followed the motion, Don Hosie, the director of food services, argued against the proposal and maintained that "there's an awful lot of whereases (that) as a member of the committee I would question the validity of . . . I think you can accomplish the same purpose by using fewer whereases and not be subject to possibly accepting some statements made that lack documentation."

Mr. Brennan then asked Mr. Hosie "which (statements in the resolution) would you propose that we strike?"

Mr. Hosie replied: "I . . . I haven't looked at it" (the resolution).

Declaring that all he had heard was "a lot of talk" committee member Dr. Howard Foster used a parliamentary procedure to delay the vote by moving to table the motion and instruct the committee to prepare a report on "the question of whether in fact these pesticides are making people sick."

The FSA recently tested some of the Chilean grapes it has been serving the students here at UB and found the presence of a known carcinogen, Captan, which has now been banned in the United States. Chile also allows its grape growers to use DDT, a pesticide banned for use in the U.S. in 1972.

California grape growers use over 8,000,000 lbs. of pesticides per year, one third of which are known carcinogens. Many of the pesticides used have an oil based and cannot be washed off by consumers.

One out of four Americans (60 million people) can expect to contract cancer during their lifetime. Most of the cancers are thought to be a result of diet and tobacco use. Pesticides on fresh and processed foods may account for an additional 1.46 million cases of cancer among Americans over the next seventy years. 80% of the cancer cases associated with pesticides involve consumption of raw foods.

The EPA is in the process of reassessing the tendency of pesticides already licensed and in use to cause tumors, abnormal growth, and cancers. However, by the EPA's own estimate they will not have accurate data on all pesticides until the year 2021.

The student chapter of the National Lawyers Guild and the Buffalo Environmental Law Society would like the FSA to endorse the United Farm Workers' call for a boycott of California table grapes. The UFW estimates that 300,000 farm workers are poisoned by pesticides each year. Their goals for the boycott include joint UFW/grower testing of grapes for pesticide residue, the publication of all test results, and a ban on the five most deadly pesticides.

Many of the farm workers exposed to pesticides have little or no understanding of the dangers of exposure. Ramona Franco worked during the first three months of her pregnancy picking grapes known to have been sprayed with pesticides that can cause birth defects. She was told by foremen and growers that the pesticides were safe, harmless "medicine" for the plants. Her son Felipe was later born without arms and legs.

A spokesperson for the CSEA, the recognized bargaining representative of the food service employees at UB, stated that the board's action on the grape issue is representative of a twenty-year hostility to the labor movement. The CSEA has officially gone on record as supporting the UFW boycott.

The movement to ban grapes from the campus began in March of '88 when Arturo Rodriquez, a United Farmworkers' representative, came to the law school and made a presentation on agricultural workers and pesticide risk. An FSA subcommittee has been looking into this issue since the beginning of this academic year.

An NLG spokesperson said that they are steadfast in their support for the boycott as a consumer, farm-worker and moral issue and that the NLG will continue to work with the subcommittee and the board until the problem is resolved. The NLG is encouraging all students to refrain from purchasing or eating grapes.

Faculty Candidate Gerber Meets Student Body

On Thursday, February 23rd, as part of the "Meet Faculty Candidate" Series, Education Law Clinic instructor Judith Gerber spoke with two groups of law students as part of her quest to gain a tenure-track faculty position here at the law school.

By Alexei Schacht
News Editor

Ms. Gerber has, since the Fall of 1987, been supervising students who are helping handicapped school children assert their rights. Her goal is to create a family law clinic "with some emphasis on women's issues." This goal, combined with her interest in "legislative reform" and "group representation," led Ms. Gerber to mention aiding women's groups representing rape victims as a possible area of clinic activity.

Ms. Gerber went to Princeton University as an undergraduate, where she majored in history and wrote her senior thesis on "Fugitive Slavery in Boston: 1851-1854." She is also a 1984 magna cum laude graduate of U.B. Law School. Having gone to school here, Ms. Gerber feels that she has a "stronger understanding of where you (U.B. Law Students) are . . ."

Faculty Candidate Judith Gerber

Ms. Gerber, who taught Legal Methods as a second year student and was a Teaching Assistant for Civil Procedure in her third year, won the Law Faculty Award for Excellence in Teaching upon graduation. Teaching Legal Methods was a "really wonderful, wonderful experience," said Gerber. She clearly has enormous enthusiasm for teaching and laments the fact that there is no place on campus more amenable to "daily interaction" between teachers and students. As such, Gerber said that "one of my priorities is to be accessible" and to "share in things that go beyond just class."

Ms. Gerber said she hopes to be able to combine research with teaching and is particularly interested in what she termed "systems of protection" as a field of study. In this vein, she asked, what happens when a traditional "oppressor," the state, becomes a protector?

But, Gerber does feel that the "fundamental mission of law school is to create lawyers . . . not scholars, not sociologists." In this regard, Gerber's own experience working as a law clerk for two years at the New York State Court of Appeals, and for a year as an associate at McNamee, Lohner, Titus & Williams in Albany, should prove helpful.

One of the good things about a family law clinic, Ms. Gerber pointed out, is that most areas of the clinic would deal with problems that can be dealt with in one semester. This, according to Gerber, is due to the fact that there is "often a sense of urgency in Family Court that you won't find in Supreme Court." That way, students will be able to see cases through to completion.

Toward the end of the day's second discussion Ms. Gerber best summed up her interest in the Law School by saying, "I enjoy teaching. That is really my priority and my love."

ACROSS THE NATION

Law School News Briefs

Western New England

In an open letter to the administration regarding on campus recruitment by various branches of the armed forces, the National Lawyer's Guild chapter of the Western New England College School of Law attacked the law school's recruitment policy. Law school administrators apparently told first year classes at the beginning of the school year that it would not tolerate homophobic behavior within the law school community. It was deemed to have been a voluntary statement.

The NLG, in their letter, challenged the law school's advocacy of a policy it will not, according to the NLG, enforce. The NLG seeks to have the law school ban any organization's recruitment if it will not sign a statement of non-discrimination against minorities, women and homosexuals. In addition, the NLG position states that the law school could require an organization, believed to discriminate, to produce evidence that it does not discriminate to the satisfaction of the law school. This latter position has drawn harsh responses from the student body.

(*Lex Brevis*, Vol. XVII, Issue 8, January 26, 1989, p. 4)

New York University

New York University law students expressed their outrage over the lack of initiative taken by Dean John Sexton to take steps to state his moral outrage at the insults perpetrated on persons of color. Last year a Women of Color brochure was defaced and most recently a Jesse Jackson poster was burned while on a resident's apartment door.

Apparently, Dean Sexton has not taken any action against these and other acts of a racial nature. A hundred law students signed a letter asking Dean Sexton to act upon these issues. On Thursday, January 26, 1989, an article written by a Latino law student appeared in *The Commentator* regarding the death of Juan Rodriguez. The article also included other incidents of racial violence. In the article, a spokesperson was quoted as saying, "Remember, yesterday was Juan Rodriguez, the day before was Eleanor Bumpers, tomorrow the next victim may be one of us." With a marker, the quote was underlined and stuffed into the author's mailbox with a commentary endorsing the racist murders as **"Good"**.

(*The Commentator*, vol. 23, no. 10,. February 23, 1989, pp. 2, 3)

University of Chicago

The University at Chicago Law School barred the world's largest law firm, Baker & McKenzie, from recruiting on campus for a year, as a result of a student's complaint of racist, sexist and anti-Semitic slurs by a partner during a job interview.

Harry O'Kane, a partner in Baker & McKenzie for over 20 years, asked Linda Golden, University of Chicago Law School student, during the inverview, how she would respond if she were called a "black bitch" or a "nigger" by a legal adversary. While discussing her activities in which she told Mr. O'Kane that she played golf, he responded, "Why don't blacks have their own country clubs?" and concluded that "the reason blacks don't have country clubs is that there aren't too many golf courses in the ghetto."

In a letter to Geoffrey R. Stone, the law school's dean, Ms. Golden stated that Mr. O'Kane went on to observe that "Jews have their own country clubs but that he never wants to belong to a Jewish country club, but at least they had their own."

Baker & McKenzie, one of the world's leading international firms with offices in 31 cities outside the United States has been barred from recruiting on campus for a year. Robert W. Cox, chairman of Baker & McKenzie explained that Mr. Harry O'Kane had been trying to determine how Ms. Golden would react as a litigator under duress in a courtroom.

Maroon, Law Student Newspaper; Reprinted in part from *The New York Times*, February 3, 1989)

Albany Law School

Albany Law School's Summer School welcomes law students who may be interested in enriching their programs or catching up on credits. The Albany area offers students exciting cultural and recreational opportunities.

Albany Law School's 1989 Summer Session courses are: Disabilities Law Clinic, Evidence I & II, Externships, Government Ethics, The Legal Profession, Negotiating, Trusts and Estates, White Collar Crimes and Women and the Law.

Many of the practical concerns of the students have been addressed. Courses begin on May 30 and end on July 24 before the New York State bar exam for graduating seniors and well before the fall term for other students. To accommodate work schedules, most classes meet in the early morning or early evening. Early applicants receive a tuition advantage: tuition is $360 a credit if payment is received by April 28; $390 thereafter. Students demonstrating financial need may be eligible for a government grant or loan. Some rooms are available in the residence hall, and a list of other housing is available.

For further information, contact Summer School Office, Albany Law School, 80 New Scotland Avenue, Albany, N.Y. 12208; telephone (518) 445-2383.

Art Dealers' Lawyer Discusses "Value" of Artworks

Gilbert S. Edelson, Administrative Vice President and Counsel for the Art Dealers Association of America, was the speaker at the second segment of the "Art and the Law Lecture Series" at the Albright-Knox Art Gallery. The title of his lecture was "Art Law and the Booming Art Market."

Over the past five years the art market has gained increasing popularity as the media and the public anxiously ask "How much is it worth?" This fact worries Mr. Edelson, who says "The emphasis is on hype which has nothing to do with the appreciation of art and the detriment of fine aesthetic values."

Although the public hears of works of art selling at auction houses for five or ten million dollars, Mr. Edelson says this is a poor representation of what is going on in the art market as a whole.

by Donna Crumlish
Managing Editor

"The substantial price inflation over the past five years is limited to important works of art by artists of established reputation . . . This is a very small but very important segment of the market."

Mr. Edelson attributes the boom in the art market to four factors. First there are a great many wealthy people around who are willing to pay the inflated prices that are attached to some pieces of art. Second, there is a heightened interest in art which is reflected in the media, and as the media reports on this heightened interest the interest grows.

Third, there is a certain social element attached to collecting art and being around those who do. In some cases art is the entry into important social circles. Fourth, people think art is a good investment. In reality only a small amount of art appreciates significantly in value and thus art is not really secure as a financial investment.

Mr. Edelson spent some time talking about the deals that occur in the primary and secondary art markets. The primary market is that market which consists of the first sale from an artist to a collector. Usually this transaction takes place through an art dealer. Unfortunately there is a shortage of dealers in contemporary art because it is a high risk business.

"Most dealers get their legal advice from their accountants," said Mr. Edelson, as a result there are very few written contracts between artists and their dealers. Often there is just an oral agreement and the few written agreements that do exist are simple and brief. There is no loyalty among artists and dealers which complicates the fact that there is a lack of structured agreements.

The secondary market is the resale market. Very few living artists have a resale market for their work; most art declines in value. This aspect of the art market gets little publicity as the inability to sell a work of art doesn't get any headlines.

One legal issue that encompasses the secondary market is that concerning royalties. In the last session of Congress Senator Kennedy was the advocate of a measure that would require the payment of royalties to the original artists or their estates (within 50 yr. of the artist's death) upon the resale of their work. This provision did not become law in the last session of Congress but it is suspected that Kennedy will introduce the measure again this session.

Proponents of royalty payments upon resale argue that this is an additional source of income for the artist, that composers and authors are paid royalties and that it is unfair that an artist should not share in the appreciated value of his art.

Opponents of royalty payments upon resale argue that the term royalty is a misnomer. Since an artist sells his or her work outright, the so-called royalties would really be a provision for compulsory profit sharing.

Mr. Edelson's last topic was that of auction houses. The selling of works of art in auction houses has been highly visible in the media in recent years but what goes on within the confines of the auction house is often unknown to the public.

Auctioneers are regulated by the Office of Consumer Affairs but apparently the Office of Consumer Affairs is on the same side as the auction house. One of the things that goes on in auction houses is called a secret reserve. The secret reserve is a dollar amount agreed on by the auction house and the artist below which a work of art will not be sold.

Often the public is left with the impression that a work of art has been sold when in reality it has not been because the top bid did not top the amount in the secret reserve. Auctioneers will often start the bidding between one half and one third of the secret reserve, so that often 75% of the bids at an auction sale are meaningless.

Another tactic used by auction houses is known as "bidding off the chandelier." This occurs when the auctioneer ups the ante by calling out bids as if they had been made when in reality they have not.

The Commissioner of Consumer Affairs investigated auction houses and decided to allow the secret reserve and bidding off the chandelier as it was felt they were integral to the nature of auction houses. However one change in the present law occurred. It now must be revealed that a work of art has not been sold if the top bid does not equal that of the dollar amount in the secret reserve.

Mr. Edelson closed his lecture by criticizing all of the attention that is focused on the dollar signs that surround the art industry. "The ultimate appeal and ultimate pleasure comes from a response which can't and shouldn't be measured in economic terms, but rather it should be known that the pleasure of looking at art is priceless."

Grade Chart For Fall 1988

Instructor	Course	date posted	H*	H	Q*	Q	D
Atleson	Collective Bargaining (2)	12/27/88		7		8	
Atleson	Collective Bargaining	1/11/89		2		10	
Avery	Labor Law	1/5/89		11		47	5
Berger	Civil Procedure I	1/19/89		13		60	8
Berger	Research and Writing	1/10/89		31		49	
Blum	Civil Procedure I	1/30/89	1	23	9	50	2
Blum	Research and Writing	2/23/89*		38	12	15	
Brown	Coastal & Marine Res. Law	1/13/89		15			
Buckley	Commercial Paper	1/17/89		10		51	1
Carr	Evidence	2/6/89		13		95	
Cascio	Legal Research/Internat'l Law	1/23/89		4		8	
DelCotto	Federal Tax I	12/27/88		23		55	11
Ewing	Criminal Law	2/13/89		19		51	
Ewing/Halpern	Criminal Law	2/13/89		16		68	
Freeman/Mensch	Antitrust Law	1/4/89		21		24	
Freeman	Con Law I	1/13/89		19		65	
Girth	Comp. Legal Traditions	1/6/89	2	6		4	4
Girth	Debtor/Creditor	1/24/89	9	17		55	15
Goldstein	Legal Rights of the Handicapped	1/17/89		3		15	3
Gresens	N.Y. Practice	1/20/89		7		32	
Hager	Clinic & Education Law	1/20/89	1	5			
Hager	Lawyering Skills	1/20/89		12			
Halpern	Criminal Law	2/13/89		15		61	
Headrick	Corporate Transactions	1/20/89		16	10	11	
Hezel	Clinic/Low Income Housing	2/16/89		4	4	1	
Hurwitz	Insurance Law	1/12/89		8		46	7
Hyman	Intro to Legal Methods	1/20/89		4		24	
Hyman	Torts	1/25/89		14		69	2
Joyce	Federal Tax I	2/8/89		20	10	55	7
Kannar	Criminal Procedure I	2/28/89		15		65	
Kaplan	Planning Law in Practice	1/31/89		10		10	
Kenyatta	Race, Racism and Law	1/17/89	4	9		4	
Konefsky	American Legal History	2/14/89		8		6	
Konefsky	Contracts	1/4/89		13		66	1
Leary	Case Study, U.S./Dispute Resolution	2/21/89		9		6	
Lindgren	Remedies	1/18/89		8		8	3
Marcus	Family Law	1/26/89		21	16	50	1
Marcus	Feminist Theory	2/9/89		1		2	
Meidinger	Property	2/21/89		21	6	54	
Mensch	Contracts	1/20/89		16	18	47	3
Mugel	Future Interests	1/11/89		12		17	
Munger	Municipal Law	1/6/89		11	8	24	1
Newhouse	School Law	1/3/89		11		22	
Olsen	Civil Procedure	2/15/89		15	17	51	
Olsen	Great Habes	12/27/88**		1			
Olsen	Judicial Clerkship	12/27/88		5			
Olsen	Research and Writing	2/10/89		40	35	6	
Pitegoff	Worker Ownership Trans.	1/6/89		3	2	6	
Reis	Property 2	2/3/89		37	43	7	
Scales-Trent	Constitutional Law 2	2/6/89		3		9	1
Schlegal	Corporations	1/17/89		13	1	57	
Seipp	Clinic/Immigration Law	1/20/89		3		1	
Seipp	Immigration Law	2/28/89	1	11	1	24	
Staff	Trial Technique	1/10/89		35		40	
Sullivan	N.Y. Practice	2/3/89		4		43	4
Swartz	Family Law	2/14/89		21	16	45	
Szczygiel	Administrative Law	12/27/88		5	2	23	2
Thuronyi	Federal Tax I	12/27/88		17		28	1
Thuronyi	Federal Tax Reform	2/3/89		1			
Zimmerman	Financing Small Business	1/13/89		10		23	
Zuffranieri	Consumer Protection	1/20/89		13	13	40	2
Totals			**18**	**798**	**213**	**1,806**	**84**

*One Section of Research and Writing is missing from these totals
**Professor Olsen also reported 4 incompletes

These Grades were not posted as of March 13, 1989:

Boyer	Administrative Law
Steinfeld	Corporations

Due to space limitations grades which seldom appeared such as F and R were not included.

Grades compiled by Bruce Brown and Eric Katz.

Miss Social Procedure

Ms. Social Procedure Thought-For-The-Day:

Love is the triumph of imagination over intelligence.

Submit letters to Miss Social Procedure, Box 59.

Dear Ms. Social Procedure:

How would you deal with a friend who is so H-crazed he/she is almost unbearable to be around?

Signed,
Enjoying the View from the Q-Train

Dear Enjoying:

Anything you say to your friend must be said with tact because you do not want to be accused of jealousy. You could point out to your friend that you are happy just to be in law school. Once we're on that employment train H's are no longer important. Or your could try the 'ol standby, "shut your caboose, you're driving me nuts."

M.S.P.

Dear Ms. Social Procedure:

What is the proper response to a fellow student who returns to school with an obviously different hairstyle, e.g. a much darker hair color or a much longer hair length?

Should one comment on this new look or pretend not to notice the difference?

Beauty School Dropout
Law School Student

Dear Dropout:

When someone makes a noticeable change in their appearance they usually appreciate some type of feedback. It's usually safe to say, "Wow, have you done something different to your hair? Where did you have it done.?" If you hate the change, you can save your money and make sure you go somewhere else.

M.S.P.

Dear Ms. Social Procedure:

I am a second year female law student who is very happily married. However, I am attracted to a man who is in two of my classes. Although I have no intention of cheating on my husband I have found that this man is my main motivation for going to these classes.

Is it wrong that a law school class should serve the peripheral purpose of satisfying my hidden lust for another student?

Lusting in Lectures

Dear Lusting:

It's nice to hear that intellectual stimulation is not your only reason to attend class. I see no problem here as long as your fidelity does not become peripheral. Many people would be thankful to have something that motivates them to go to class (rather than motivation not to go).

Hidden fantasies are okay as long as you do not reveal them. (But then they would no longer be hidden, would they?)

M.S.P.

Dear Ms. Social Procedure:

Rumor has it that the law school semi-formal will be coming up some time in April. I would just love to go with a "certain someone."

My question to you is, how do I attract this man's attention and get him to ask me to the semi-formal within the next month?

Damned to be Dateless

Dear Dateless:

It seems like you have had your nose in your casebooks too long and you have missed the last 12 issues of Cosmo. Women of the '80's (almost the '90's) do not have to "get" men to ask them out because they do the asking themselves.

Perhaps you could drop subtle hints to this lucky fellow that you are benignly interested in him. Be subtle but direct, especially if he doesn't know who you are yet. Start with friendly hellos in the hall and work your way up to idle conversations. If you establish a foundation he will be ready when you ask him if he would like to go with you to the next SBA bash. Good luck!

M.S.P.

Dear Ms. Social Procedure:

I am very angry. I have evidence that my roomate used my bed for a sexual encounter with her married boyfriend yesterday afternoon. I have not confronted her with the situation yet.

Can you suggest a polite way to let her know that I will not tolerate this type of behavior?

Sincerely,
Angered

Dear Angered:

Yuck! There is no polite way to deal with her inconsiderate behavior. Tell your roommate that if your bed is going to see any action, it's going to be by you and *not* her.

M.S.P.

Dear Ms. Social Procedure:

I have found one of the lawyers at the law firm where I clerk to be very handsome, charming, witty, etc. I am attracted to him and I think he is attracted to me.

What is the proper way to handle this situation?

Law Clerk in Love

Dear Clerk in Love:

A lawyer who is handsome, witty, charming — a serious oxymoron here. If he's generous too, have him bronzed and put on a pedestal so we can all enjoy him.

Be cool and remain professional. Office romances are very sticky (no pun intended) situations and if you two hit it off you may need to seek employment elsewhere. By the way, where can I send my resume as your replacement?

M.S.P.

Labor Law Society Off To A Great Start

by Ellen A. Burach

On Monday, March 27, at least 25 people came to hear John Donovan, a labor specialist with the Buffalo law firm of Phillips, Lytle to discuss the Employment at Will doctrine and its interrelation with current labor law in New York State. The event was sponsored by the Labor Law Society.

Mr. Donovan stated that he engages in mainly preventive law; he advises his clients to "do it right the first time" so that there is no need to end up in court. He commented on New York being an "employment at will" state, which means that without a collective bargaining agreement to the contrary, an employer does not need "just cause" to discharge an employee. Mr. Donovan stated that his firm advises clients on the "do's and don'ts" of discharge, despite the employment at will doctrine. He said that he counsels his clients to treat employees as people, and to be as fair and sensitive as possible. He stated that he tells clients to assume they will be sued — part of the preventive law that his firm advocates.

Mr. Donovan emphasized that approximately 3/4 of wrongful discharge and termination cases contain a defamation action as well, and thus once an employer comments on an employee, he opens himself up to a defamation action no matter how many rights he may have. Therefore, his firm advises clients that they must document their cases as fully as possible and that they must be consistent with prior termination decisions.

The Labor Law Society was formed last semester by a group of first year Law students and it currently has approximately 80 members. The Society wishes to make people aware of Labor Law and employment relations and their inherent importance. Other than the educational aspect, the Labor Law Society deals with many labor-related issues such as women in the workforce, international labor and humanitarian rights, and employment at will.

The Labor Law Society has sponsored other events as well. On February 3, Professor James Atleson spoke on the use of injunctions to prohibit picketing. On March 9, the Society co-sponsored Arthur Kinoy, a prominent labor and constitutional law attorney. Also on March 9 the Labor Law Society has, along with the Entertainment Law Society, sponsored *Matewan*,one of the movies in the Paper Chase Film Series.

The Labor Law Society will publish a monthly newsletter, and there is a general meeting every other Wednesday at 3:15 p.m. in the Fourth Floor Lounge. Everyone is welcome.

Matrimonial Law . . . . . *from page 1*

to the corporate attorney, the other attorney (who had come in as a replacement) was one of the area's leading matrimonial lawyers. After three hours of depositions, the corporate attorney was so overwhelmed that he was actually referring to the matrimonial lawyer as "Your Honor."

With regard to the actual trying of a matrimonial suit, Miriam Robinson, a partner with the New York City firm of Little, O'Connor, Finklestein, and Robinson, had some salient advice. Introduced by Birzon as "the busiest trial attorney in New York City," Robinson stressed the importance of preparation with regard to trial work. "The way to develop a style is through trial and error. However, you can never 'wing it.' No matter how good an attorney you might be, you have to do more than simply peruse through your notes on the night before a trial." Robinson also noted that one of the most important things an attorney has to do is believe in his or her client's credibility, it's a case you should attempt to settle and not take to trial."

The conference's final speaker was Birzon himself, who as always, made some informative points on the admission of evidence. Specifically, he discussed how the admission of evidence in divorce trials differs from its admission in other kinds of trials. For example, since matrimonial trials are presided over by a judge and no jury, "prejudicial" evidence (evidence that is damaging to one of the parties involved), generally excluded in criminal trials, is often admitted. Birzon noted, somewhat facetiously, that "judges are unlike other mortals — they are immune from bias — and they can reason without passion." The reasoning of course is that judges, unlike juries, aren't supposed to be swayed by prejudical evidence. Birzon also added that an attorney should "never overestimate a judge — in many instances the attorney may know more about the Rules of Evidence than the judge does."

Based on the quality of the presentations, as well as student turnout, Birzon appeared optimistic about maintaining the conference as an annual event. "I think there is a need for this type of program, and students have definitely shown an interest," he stated.

JAG Issues . . . . . *from page 6*

ing on campus. In fact, President Sample, the law school did not ban anyone. The policy simply states that groups which discriminate against the aged, the handicapped, and homosexuals (as well as many other classifications including sex, race, religion, etc.) are personna non grata. They do not exist in our eyes; we will not **facilitate** their activities through our Career Development Office (CDO). We will not provide them a forum to insult our fellow students. They can march up and down the halls all they want, but in our eyes they don't exist.

The law school policy was adopted in accordance with Governor's Executive Order 28 and SUNY Board of Trustee's Resolution 83-216. As I am sure you are aware, these documents prohibit state agencies, particularly SUNY schools, from participating in certain forms of discrimination. Discrimination based on sexual orientation was specifically banned. Therefore, the law school policy merely executes that which is already law.

Finally, the law school often brings and **refuses to bring** speakers and other people on campus without your approval. Why is it that when we establish a non-discrimination policy which happens to affect the military first that you raise this question of jurisdiction? If the law school prohibited the use of of our CDO for the law firm of Ku, Klux, Klan and Duke would you be interceding?

2. **Whose interest are we trying to serve: the employers or the students — individually or collectively?**

This question is a quintessential illustration of smoke and mirrors. It merely attempts to shift the issue. Nonetheless, it is easy to answer. Discrimination of the type banned by the law school serves to benefit neither the employer nor the students — individually or collectively. Discrimination not rationally related to any purpose which is based on immutable characteristics such as age, physical capacity, or homosexuality serves the interest of no one. It is a scourge on society.

3. **Does the university have the right to ban someone from campus who is not violating a law?**

More smoke and mirrors. Once again, we are not standing at Flint Circle preventing the JAG Corps from coming on campus. The law school simply refuses to facilitate their activities. You surely wouldn't be asserting that any non university group has the right to access the time, space, administration and limited resources of our school provided they are acting within the law? In a time of budget cuts? Even when what they are doing is morally reprehensible?

I am proud of the law school, Dean Filvaroff and the faculty in particular, for having the courage to stand up for what is right. Courage is what this issue is all about. Courage is a prerequisite to fighting for equality. The abolitionists were courageous. Leaders of the womens suffrage movement were courageous. Martin Luther King, Jr. and the other civil rights activists were courageous. These movements were successful because the causes were morally correct and there were people who had the courage to stand up and fight for that which is right. I do hope, President Sample, that you and the rest of the UB administration will have the sarne courage demonstated by Dean Filvaroff and the law school faculty. Justice is on our side.

I must be frank, I wonder what are the true motivating forces behind your actions. Some allege that the only reason the law school passed this policy was because of an anti-military ideology. This is not true. The policy was initiated and implemented because, as lawyers, we have a moral obligation to fight against capricious discrimination. I cannot help but wonder whether your actions were motivated by nothing more than concern over the potential loss of defense related research money. Now wouldn't that be ironic?

Sincerely yours,
John Wenzke