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The Advocate

The Advocate, Fordham Law School

The Advocate

The Student Newspaper of Fordham University School of Law

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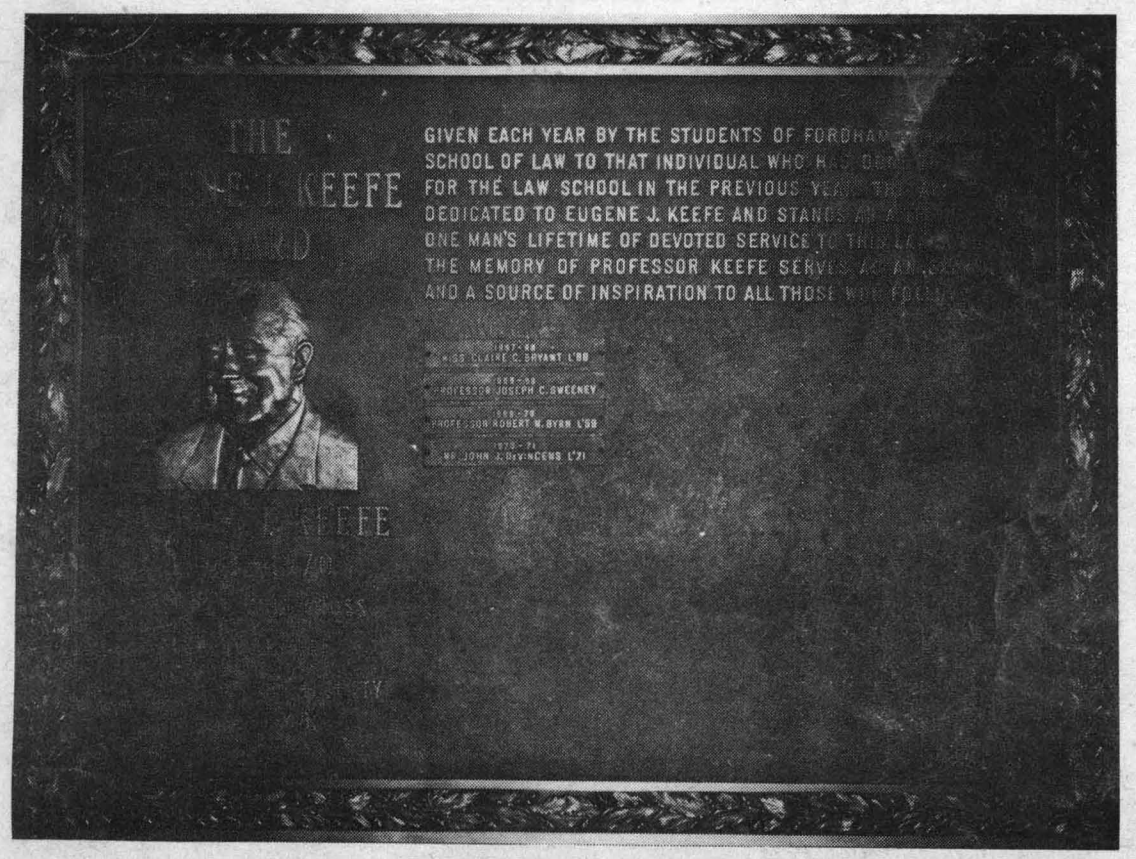
Birnbaum Wins Keefe Award



The Return of the Death Penalty

by Kenneth Uva

The Federal Criminal Code Reform Bill was recently passed by the Senate 54-33 vote and is now being considered by the House. There are several important aspects of this bill but we are especially concerned with the provisions designed to restore the death penalty in certain federal cases.

Furman v. Georgia, decided last year invalidated most capital punishment statutes because they were applied in an arbitrary manner in a fashion that could differ among various jurisdictions. On the day Furman was decided, the Supreme Court invalidated death sentences based on seven types of statutes according to L. Harold Levinson of the Law Center of the University of Florida. These included situations where: 1) the defendant was sentenced to death by a jury which had a choice between death and prison confinement; 2) the death penalty was mandatory unless the jury recommended mercy; 3) the sentence was life unless the jury recommended death; 4) the defendant was sentenced to death following a plea of guilty; 5) the defendant waived jury trial, and was tried and sentenced to death by a judge; 6) the jury could make a binding recommendation of death, but a recommendation of mercy could be overridden by a judge and 7) the jury could make a binding recommendation of mercy but a recommendation of death could be overidden by a judge.

This bill is an attempt to circumvent Furman by providing for the death penalty with a minimum of discretion on the part of the judge or jury. It provides the penalty for the causation of death resulting from treason, espionage, hijacking, escape from custody and blowing up of buildings. Also, for murders committed in an "especially heinous, cruel or depraved manner" and for the killing of the President, Vice President, President-elect, heads of foreign governments, etc.

The statute contains a specification of mitigating circumstances which are designed to be definite enough to remove the discretionary power from the judge and jury and ensure the law's constitutionality. For example, there can be no execution if the defendant is under 18 years of age at the time of the crime, if his ability to appreciate wrong and right was "significantly impaired" or if he was under unusual and substantial duress. While there appears to be an element of discretion here also, the determination that mitigating circumstances exist would be in the form of findings of law, which are reviewable, rather than an arbitrary imposition of any sentence.

The scope of this article makes it an inappropriate place to deal with all the aspects of capital punishment in general and this bill in particular. Although most studies on the subject tend to refute the argument that the death penalty is a deterrent to crime, perhaps a good representation of the pro-death-penalty philosophy is contained in a statement of the President of the Philadelphia Police Wives at a Senate hearing last year:

Capital punishment is not cruel. The convicted man has ample opportunity to make peace with his Maker—the victim had not such opportunity. I cannot quote you statistics relating to the pros and cons of capital punishment being a deterrent. I could only state this fact—If a man is executed for killing one human being, there is absolutely no chance this same man will ever kill again—that... would be a statistic.

The Senate proponents of this bill, notably Hruska (R-Neb.) and McClellan (D.-Ark.) also claim its deterrent effect. Yet, the Senate voted 81-10 to kill an amendment by Sen. Hughes (D.-Iowa) which would make all executions public—a vivid "deterrent" to any future Lee Harvey Oswald. Tom Wicker, in a March 15 column in the N.Y. Times stated that this action revealed the deterrent argument as a sham and that Sen. McClellan came closest to the actual rationale when he stated: "We're going pretty overboard toward accomodating the worst criminals we can find in this country."

After all the studies and attempts at reform of our criminal justice system, the supposed attempts to make it a rational response to the crime, to the criminal and to the society, there are those who find the Senate's action distressing. It appears that the Senate acted out of a sense of vengeance which unfortunately is still an important motivating force behind our criminal laws (see the Advocate, Oct. 9, 1973). It is especially indicative that with Sen. Hughes amendment, the Senate also defeated a gun control amendment. Thus while voting to severly punish a past crime it rejected a measure designed to prevent future crimes, yet the advocates of capital punishment never cease to claim concern for the victim.

Favors Moot Court Board

ADVOCATE: Would you please describe what it was like coming to Fordham Law School and in particular being its only woman professor?

BIRNBAUM: Coming to Fordham was a really great experience. Teaching is an incredible experience. Teaching is similar to litigation: ...it is another form of communicating... instead of communicating to a jury or a judge you're communicating to students. In some ways it's even more rewarding because you can reach so many more people than you can possibly reach in litigation. From my own point of view,.....I never felt any prejudice as a woman at Fordham. I felt the faculty, the administration, and the students treated me like any other professor... the courses I teach were not the "traditional" women's courses... they were important substantive courses.

ADVOCATE: What was your experience in litigation in regard to chauvinism?

BIRNBAUM: Initially, when I started litigating... when there were very few women in the courts... there was a feeling of disbelief that women could actually be litigators. As more women were admitted to law schools and appeared in the courts there was a growing acceptance of them.... the courts and lawyers became aware of the fact that they were dealing with women who were qualified lawyers and in the long run that was the only thing that was important... there are some exceptions who find it difficult to deal with women lawyers but again this is only a small minority of the lawyers or judges you have to deal with. Actually, the real problem was initially getting a job at a time when litigation firms just were not hiring women lawyers.

ADVOCATE: What changes would you like to see made at Fordham in terms of curriculum or other areas?

BIRMBAUM: I'd like to see more emphasis on clinical programs... this is a developing area and Fordham has made great strides in increasing its clinical programs but there still is a need for greater participation in quality programs that deal with the problems of the law outside the classroom. I think Judge Burger's comments have a great deal of validity and that law school would be more meaningful in the senior year if there would be more emphasis on advocacy or other specialties as it actually exists in the legal world and more clinical work.

I would like to see a stronger Moot Court Program. I feel that the experience of Moot Court is a vital one in law school. It creates an opportunity for a student to research, write a brief and argue.

In an attempt to strengthen our moot court program we are creating a Moot Court Board to administer all the school's moot court programs. For its first year in existence the Board will consist of nine students, six of whom will be selected from this year's first year class on the basis of scholarship. I am hopeful that this Board will give the Moot Court program continuity, increased scholarship and enthusiasm.

ADVOCATE: Did you feel any pressure in that you were put in a situation where you had to teach New York Practice while another section of Practice was taught by the Dean?

BIRNBAUM: I never felt that we were in competition... all I did was try to teach the best course I could... No one could teach New York Practice without relying on Dean McLaughlin's commentaries. I am certainly in debt to him for his succinct analysis of the law in this area.

ADVOCATE: What are your feelings about winning the Keefe Award?

BIRNBAUM: It's very satisfying. It's rewarding to be recognized for what you do....and when this is coupled with the fact that you enjoy what you are doing... well, there's no better feeling.

ADVOCATE: What are your feelings about the admissions situation at Fordham with respect to women and blacks?

BIRNBAUM: I think there have been significant changes, as far as the admissions of women are concerned, and this is reflected in the fact that this year's freshman class has over 20% women. As far as recruitment of minorities, our admissions policies are in line with those of most other schools... the problem lies in competing with these other law schools for qualified black students. Overall the admissions policies have improved to a very great extent and every effort is being made to get a balanced student body.

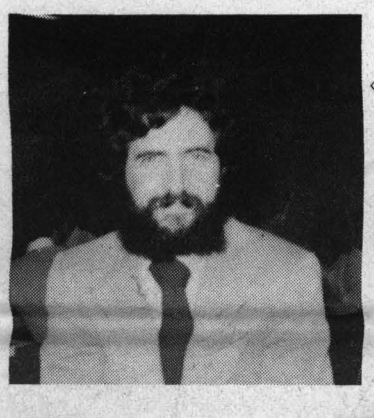
A Trade School

Is Fordham Law School a trade school? Many people actively claim that it is and countless others, while silent, act as though it was. We feel that law school ought to be much more than a trade school. We have tried, to a small extent, to focus on issues that we believe an active student body and an active law school should be aware of. A school that teaches the procedures leading to incarceration should be cognizant of the state of affairs in prisons. Likewise, in a place where one might learn of constitutional guarantees against discrimination, a minority population of less than 2% of the student body is almost hypocritical. We hope that the Advocate has had some effect in moving Fordham towards a position of greater social consciousness. In any case, since the entire editorial board of the Advocate is being graduated, it will be up to the succeeding classes to make reality out of what are now barely issues...and to decide the question of whether or not law school should be a trade school.

A Dedication

This issue is dedicated to the graduating class of 1974. We have compiled a four page pictorial salute to the Class of 1974...We wish every senior the best of luck and it is our hope that each of us, will, in our own way, apply what we have learned into the making of a more just society.

The Editorial Board of The Advocate



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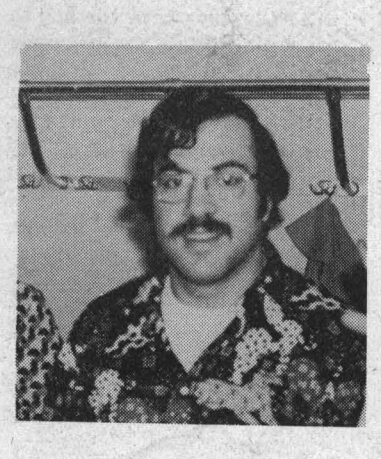

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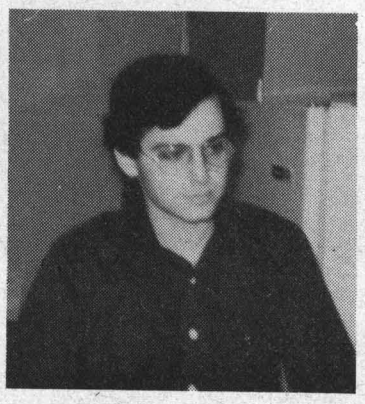

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The Way We Were

by Edward Spieran

When first we entered Fordham Law three years ago, one of our professors, famed for the breadth of his knowledge on the problems of closed corporations, asked: "Why did you come to Fordham?" One hundred-twenty students squirmed embarrassedly in their seats; one or two attempted socially responsible responses; finally, the agony ceased when one student replied: "Because Columbia and NYU rejected me." Needless to say, this was not the response that was being sought, for the professor rather dishearteningly requested if any of us were here to learn the law. Yet it was one of those moments which seems to set the tone for things to come.

Now, it is unquestionably arguable that rejection elsewhere is the most fruitful way of approaching any experience, but then it is to Fordham's credit that we, as attorneys, shall be capable of arguing any question from any side. While we hopefully shall have something more than the courage of our retainers when we approach a case, and while we shall be hopefully somewhat less whorish than the above proposition indicates, there comes a time when one must question the process of lawyerly training. One will be overjoyed to discover that this is not the time. Instead, it is more appropriate at this time and place to treat fragments, perhaps remnants, of that process. It is only a bits and pieces approach, but it is indicative of the whole.

It is unfortunate that our generation came to experience the benefits of visual aids only towards the end of our educational span. But who can forget the "football field" approach to motions for directed verdict so artistically outlined on the blackboard by our Civil Procedure professor. With what smiles will we contemplate in future years that the man who successfully defended an ex-Attorney-General of the United States taught **us** how to get across the 10-yard line? I, for one, do not recall that at that time we were informed that this pigskin analogy should be credited to a famous Yale law article of the mid-60's, but it is to benign moments like these that one looks as compensation for the anguishing months of pain, terror, confusion, fatigue, frustration and otherwise generally malignant suffering that constitutes first year.

But it is not to be thought that such suffering goes unrewarded. Not all are aware of the following incident, since only those few remaining students who had not completed the exam at the end of 2½ hours (I believe it was just the contracts one) were present when a student presented his exam paper to the proctor, at whic point it was promptly torn up. His strangled cry: "What are you doing to me!" is demonstrative of the personal affront that one can sense at having one's contracts final shredded. I am happy to report that that student went back to his chair, rewrote the exam, and subsequently made Law Review. (Brings a tear to your eye, doesn't it!)

Ah, but one could go on and on outlining *ad infinitum* those moments of happiness and gaiety that have brightened our lives, (the constitutional, if somewhat martinied, right to travel, for example), but there have been disappointments. I, for one, could never conceive of anyone "informing" Dean McLaughlin of anything. Yet, when I read the notice of the tuition increase to take effect next year, and therefore blessedly unaffecting me, I was still taken somewhat aback by the text to the effect that the Dean had been "informed" of such increase by the Board of Trustees. I feel a commemorative poem is in order. They apparently work quite well in the Harvard Law Review, so why not in this publication:

What fools we student mortals be
Who do not realize that he
Though Dean, must nonetheless bend knee
To those who own Fordham in fee
Our semi-jesuitical, and thusly godlike
Potent Board of Trustees.

Yes, Fordham has been interesting to the end. Milton's **Paradise Lost**, an epic dealing with nothing less than the war between Heaven and Hell, God and Satan, Good and Evil, is just slightly more significant than any outline of the battle between Day and Evening Division. Of course, Milton was concerned with who would prevail on earth. This latter battle was only concerned with who would prevail at graduation. But all wounds have been healed, and I am empowered to announce the absolutely final schedule of the Commencement. It is as follows:

Saturday, June 1, at 1:00 and 6:00---*Graduation Ceremony*, live session 10:00---taped session

Sunday, June 2, at 12:00---taped session

Proposal to Increase Minority Enrollment

Several students have worked hard this year to increase minority enrollment. The Black American Law Student Association organized a law day; the Minority Enrollment Committee through funds granted by the SBA ran recruitment ads in college newspapers; the committee also had most local radio stations broadcast recruitment announcements, and SBA president Mike Charde had recruitment letters sent to pre-law advisors in colleges throughout the state. Even so, these efforts barely scratch the surface. Fordham needs a comprehensive recruitment program if it seriously seeks to increase minority enrollment.

Students volunteering their free time have contributed much to that result. Students, however, have other responsibilities—exams, jobs and families. To develop a comprehensive program, the law school must do more. Specifically the administration should run its own recruitment program and solicit funds for minority fellowships. This could be done very cheaply. The administration could give a work-study grant plus supplemental income to two or three students for employment as professional minority enrollment coordinators. Grants amounting to $1,000 would be available from the Law Student Division of the ABA. The university or the SBA or both would just have to match that grant to provide working capital. (We were denied this year's grant because we only had 10% of the studentry enrolled in LSD as opposed to 20% now required. Students will have to work on this next year.)

The minority coordinators would each work 15 hours a week during the school year. They should be held strictly to this weekly work requirement. Among their possibile duties could be the following:

—speak to minority students at metropolitan area colleges,

—represent Fordham at preprofessional conferences,

—work closely with minority organizations such as NAACP and ASPIRA,

—coordinate advertizing in college newspapers and on the radio,

—act as public relations officers regarding minority affairs with the press, radio and television,

—solicit alumni contributions for minority fellowships,

—solicit foundations for grants for minority fellowships,

—review prospective minority students' admission applications, if the applicant gives his permission to such student review, and have some voice in the admission decision,

—act as ombudsman for minorities regarding administration policy.

There are probably many other roles the minority coordinators could play; these are just a few.

In any event it is imperative that Fordham establish a definitive, stable, adequately funded program to increase minority enrollment at the school.

The effects of past societal discrimination run deep. Fordham Law School, however, has the ability to meet this challenge...the only remaining question is whether it will choose to.

Day and Evening Disagree in Poll

Students responding to an ADVOCATE poll split almost evenly by division on the question of exams before Christmas.

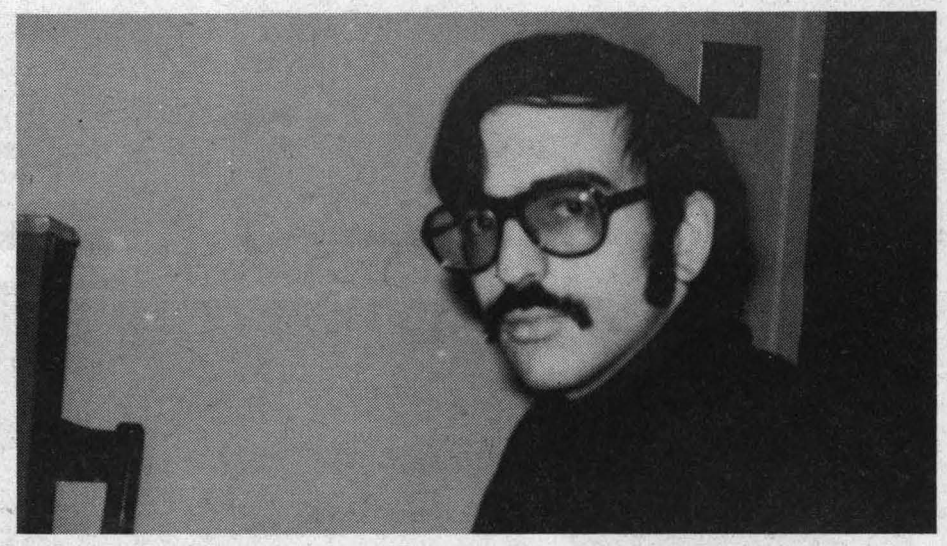
From the day division, 100% of the votes favored exams before the holiday season. Almost 97% of those evening students voting were on the other side of the question. Over six times as many evening students responded negatively than did day students positively.

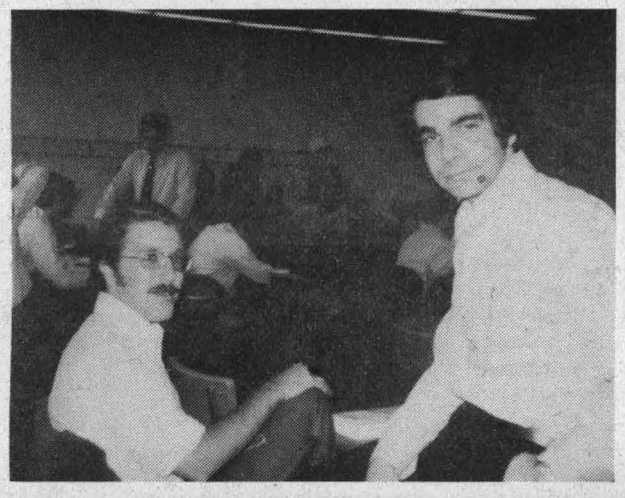
Any ambiguities involved in the negative pregnant of a NO vote (does NO mean "no exams ever" or "Yes, exams; but not before Christmas) were resolved by comments like those of one evening student who wrote:

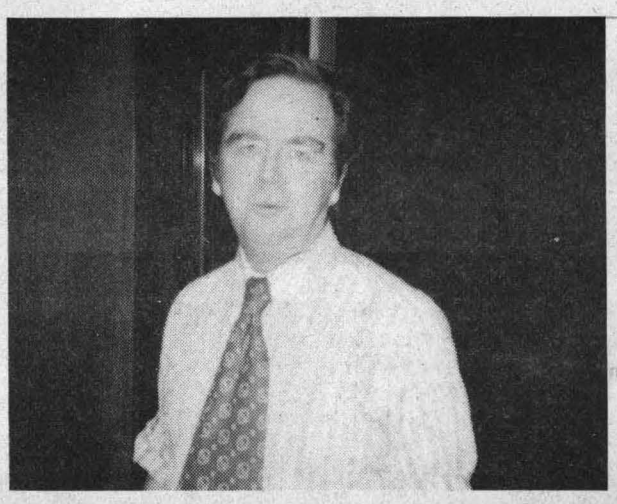
Jingle bells, trusts and wills,
Property and tort,
If I can't study on my break,
I'll never plead the court.

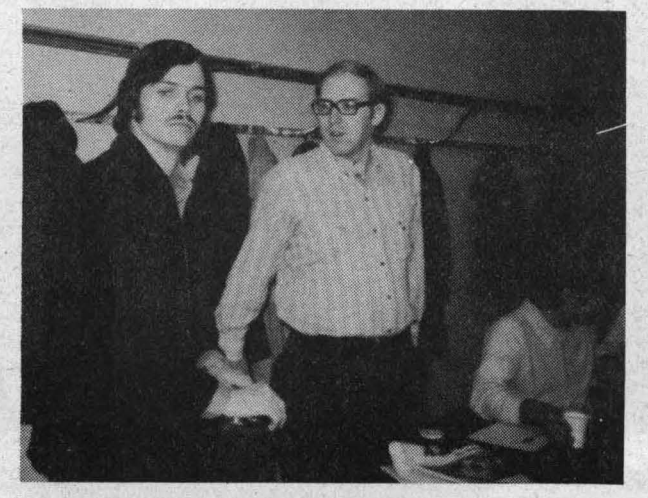
Of the two evening YES votes, one was conditioned on the commencement of classes in August.

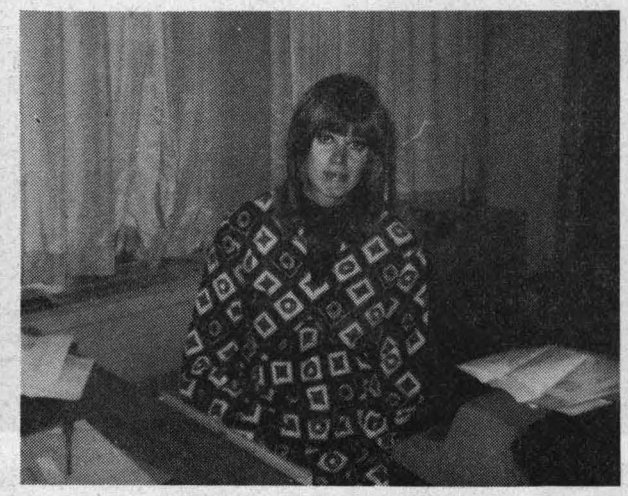
A Pictorial Salute to the Class of 1974

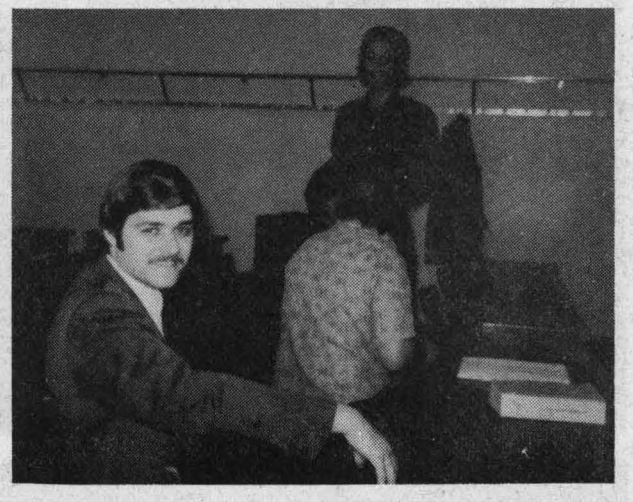


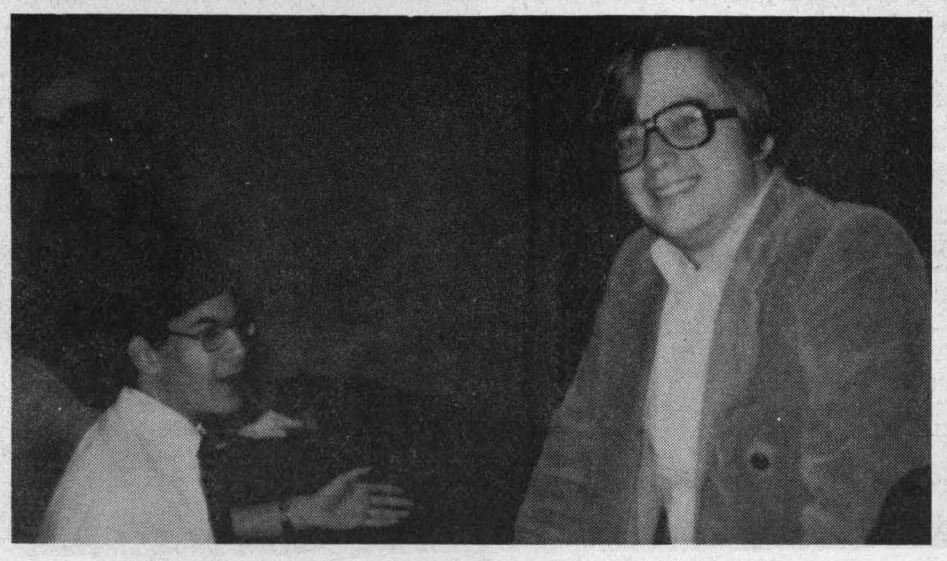


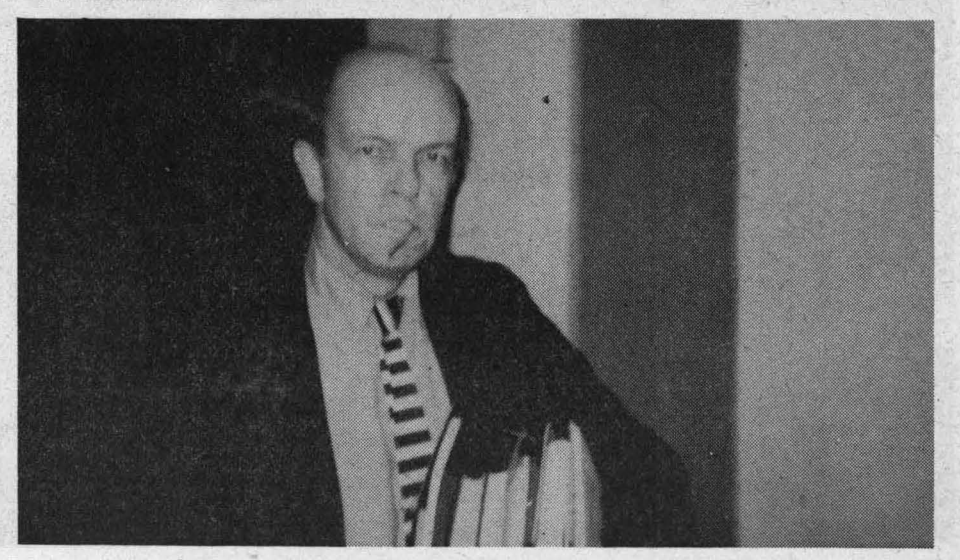


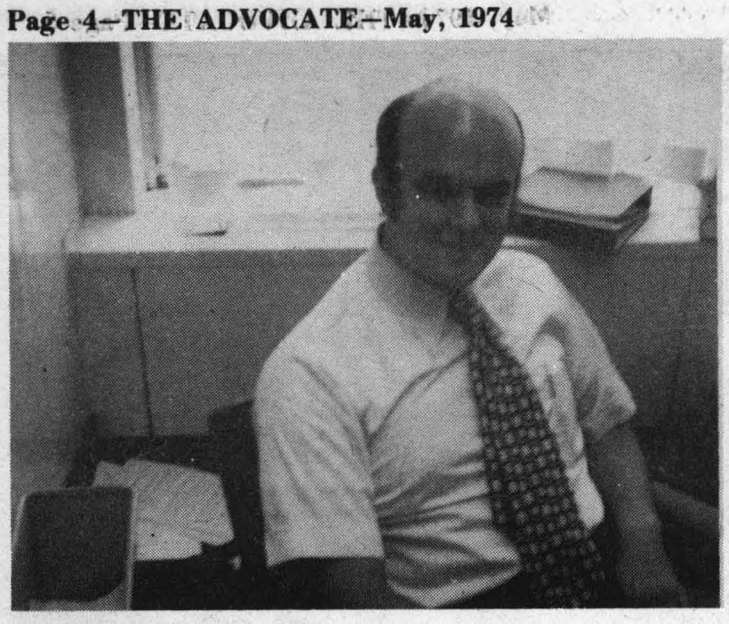


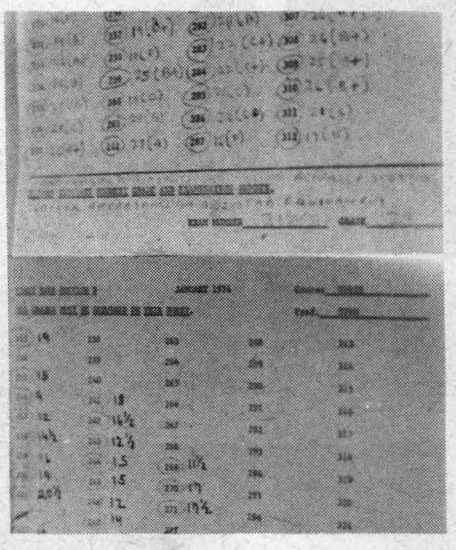


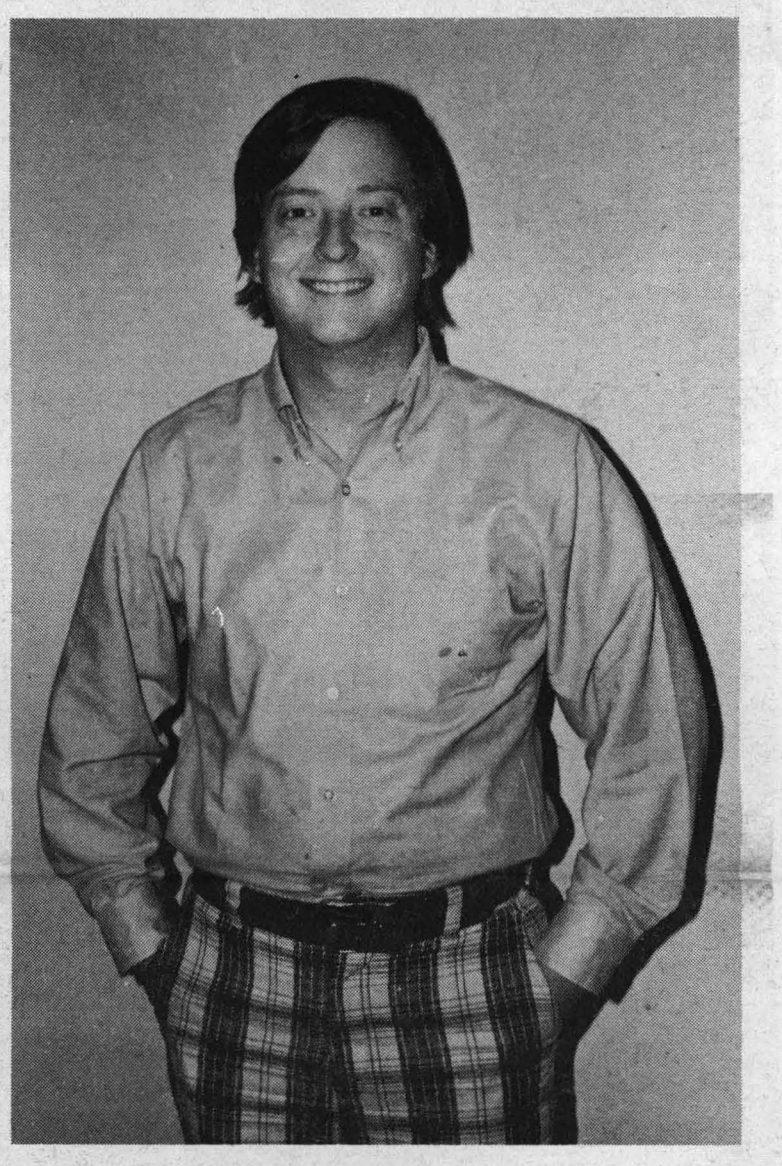


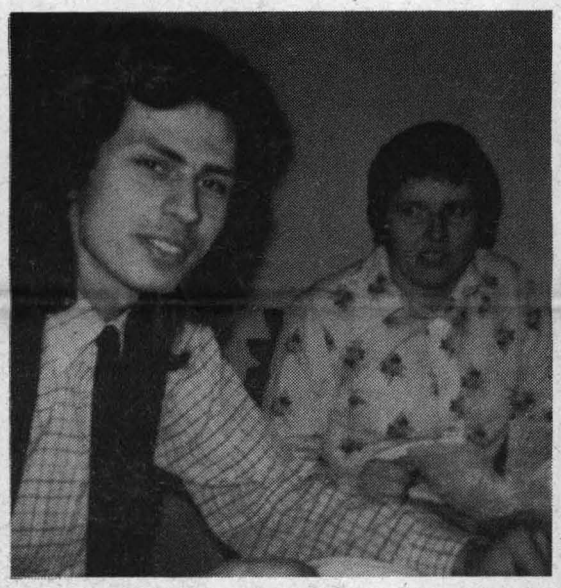


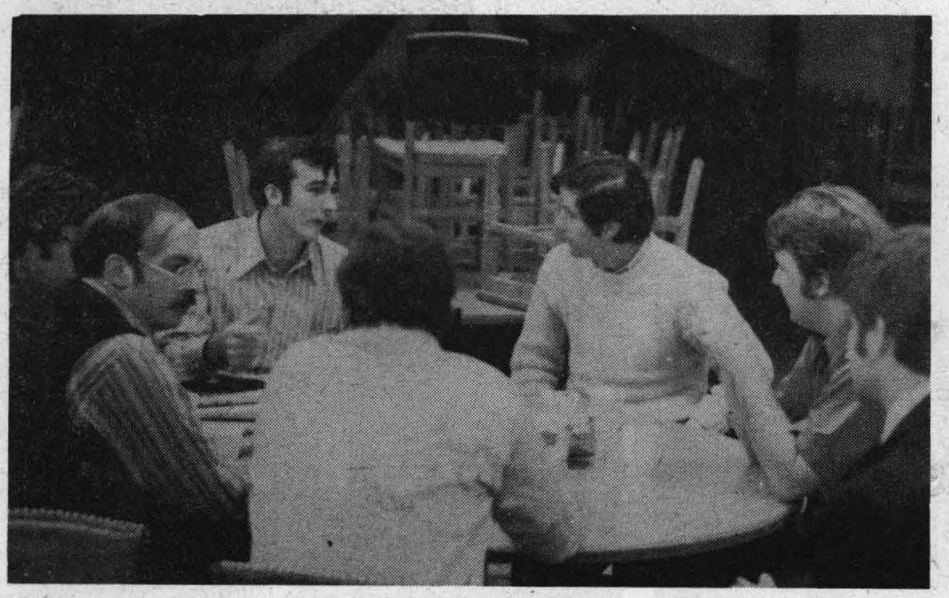


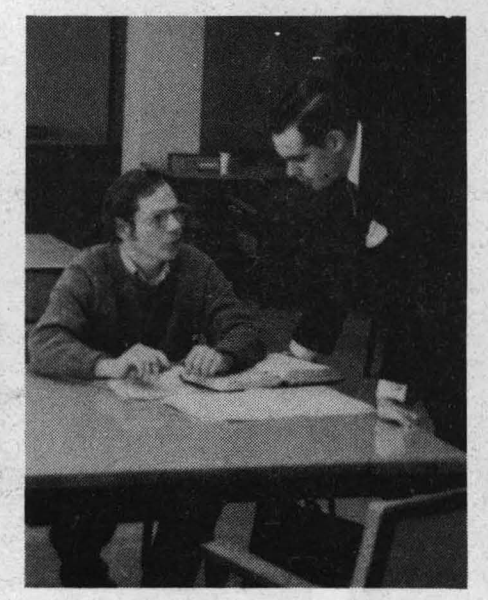


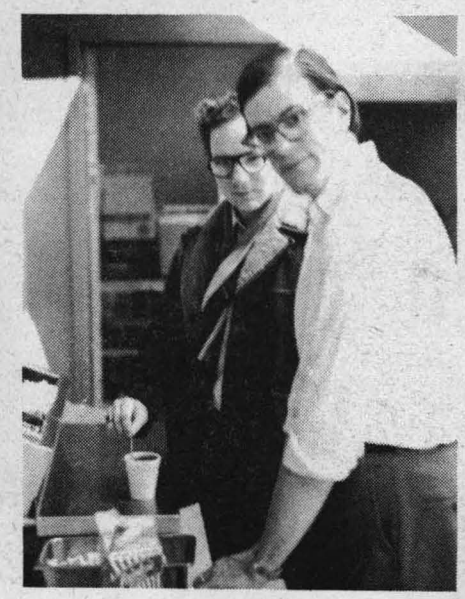










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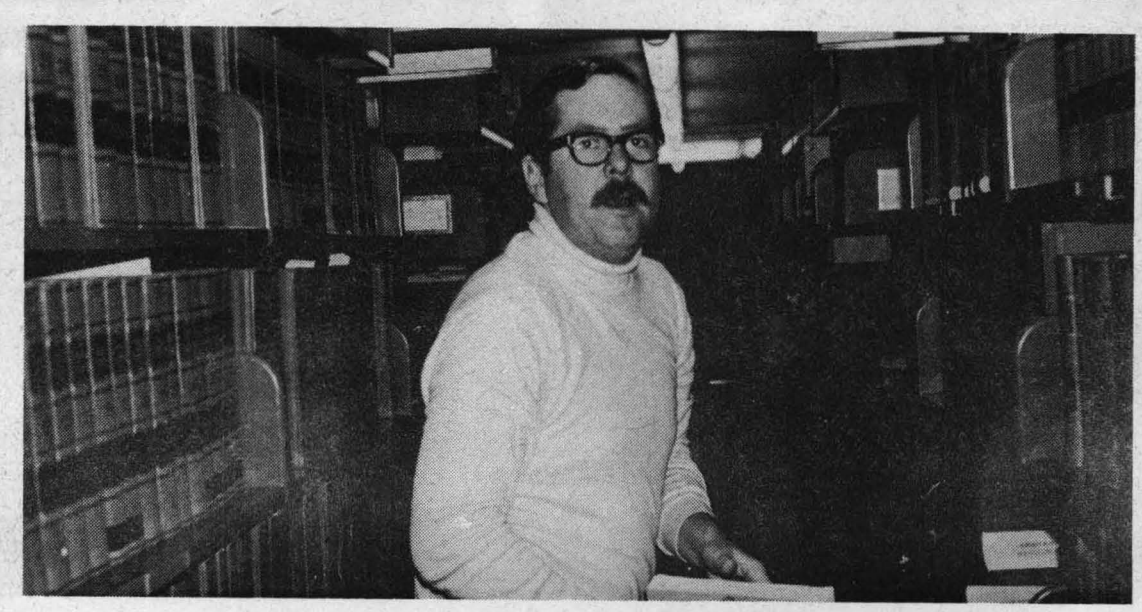

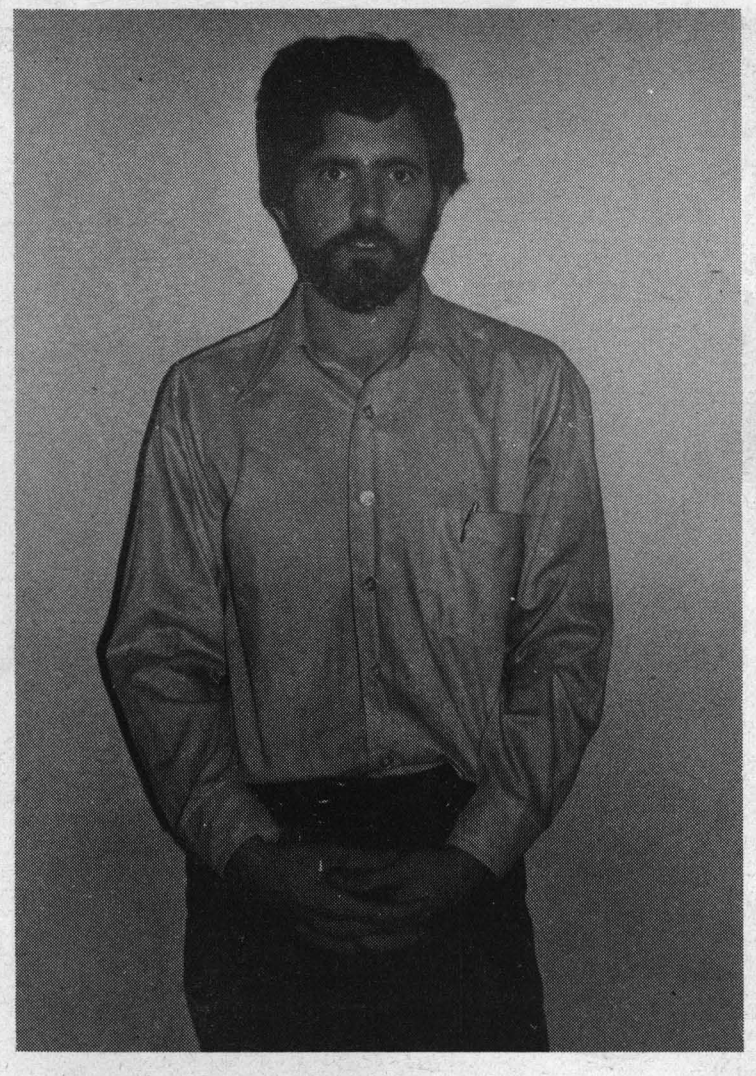

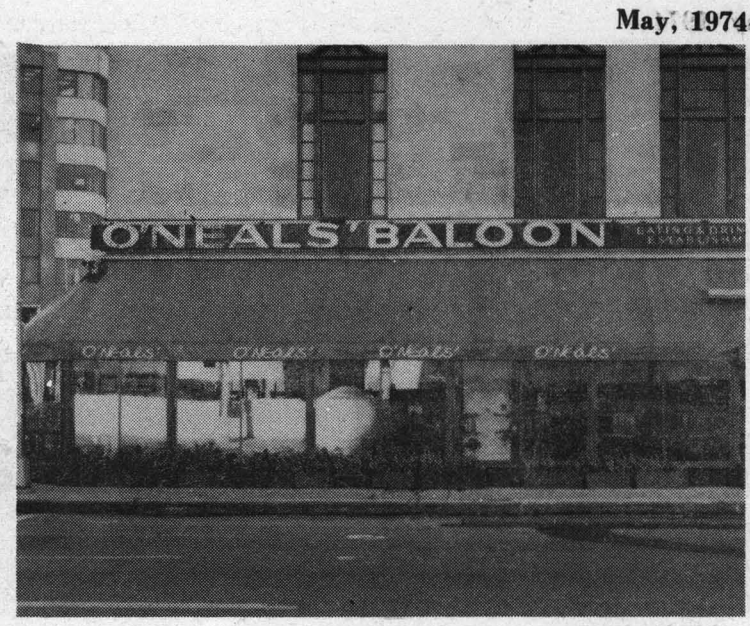
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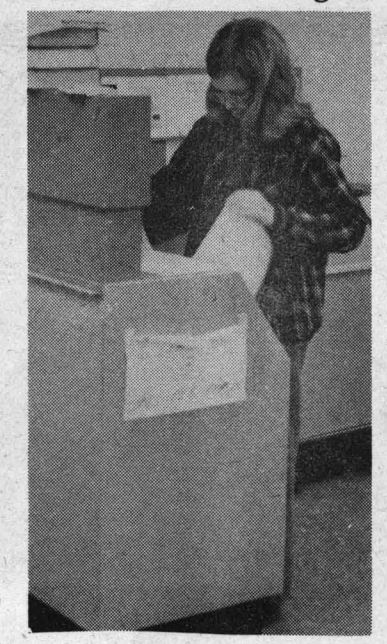

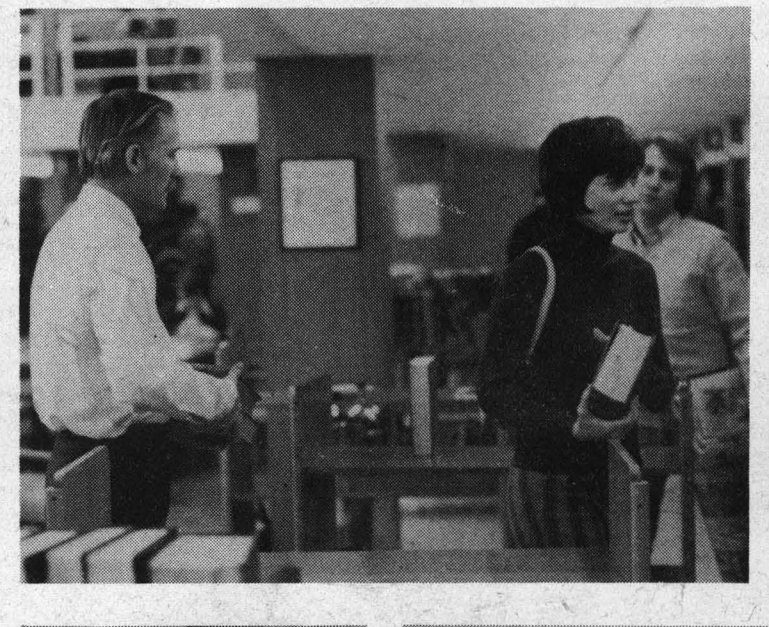

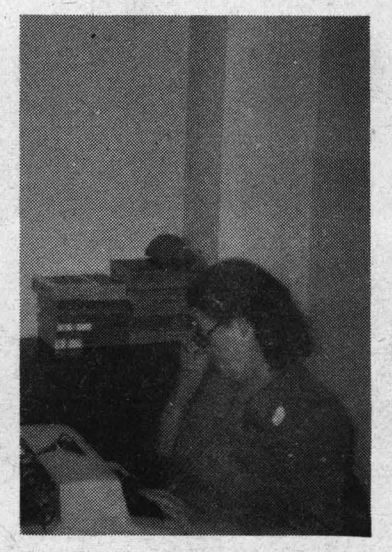

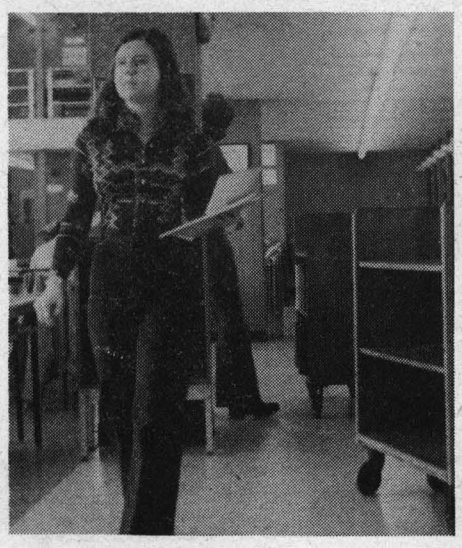


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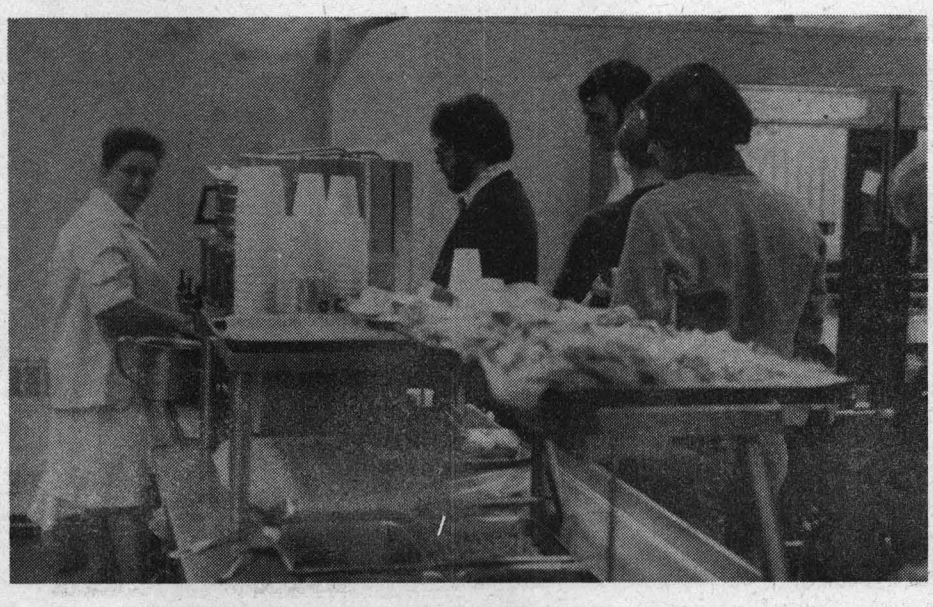
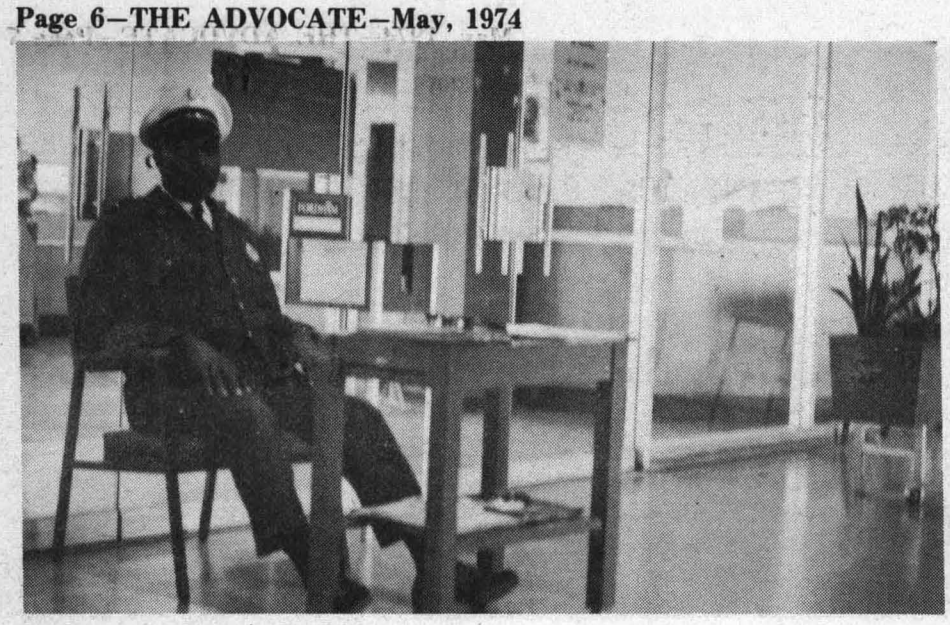
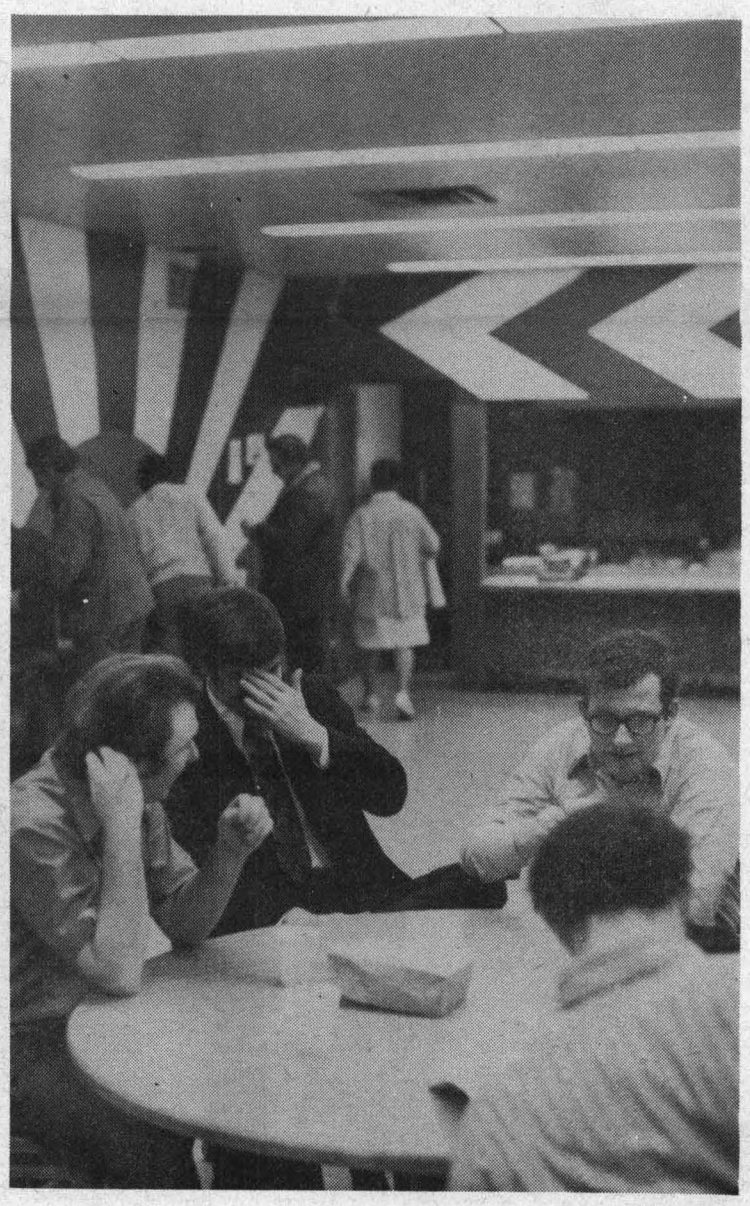
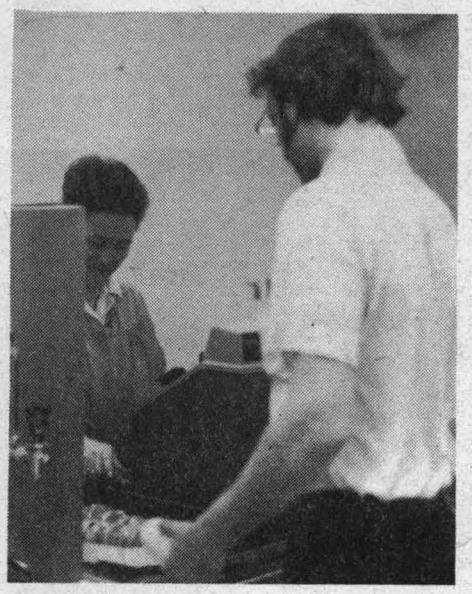
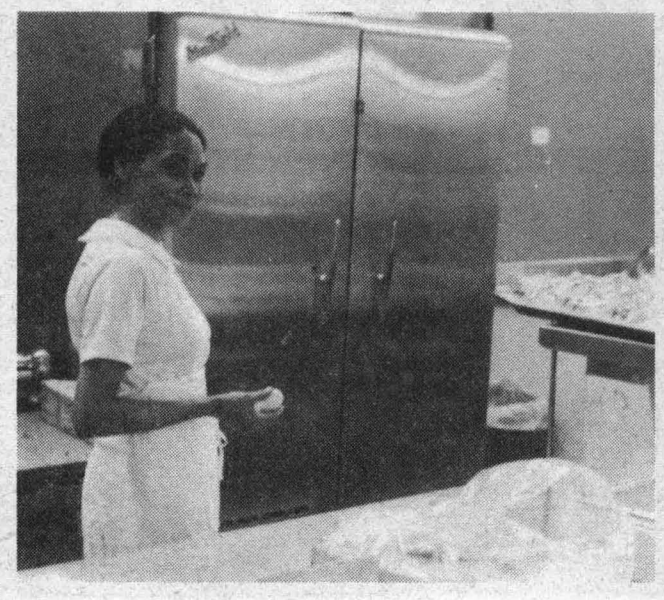
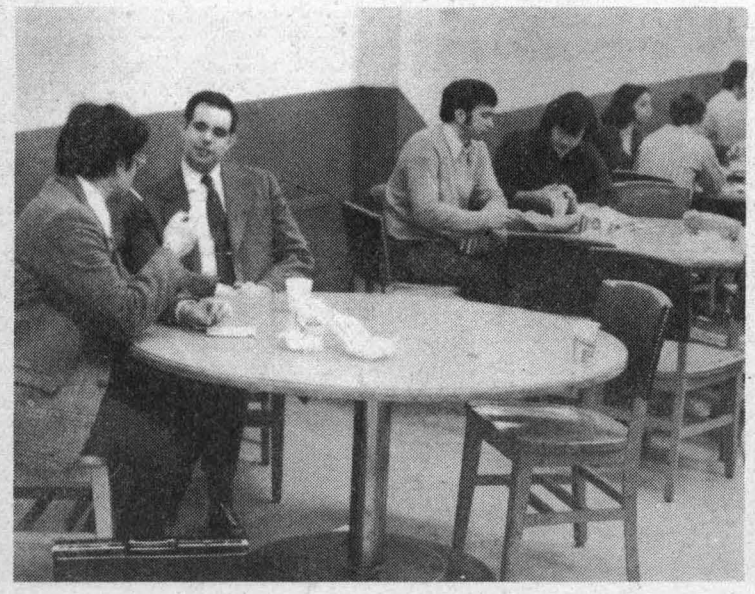


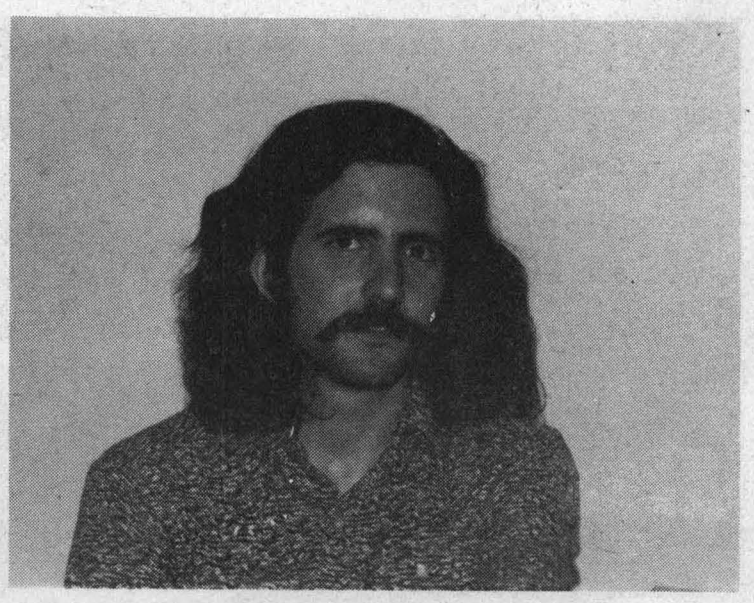












Is There Life Beyond Law School

by George Brammer

Incredible but persistent rumours have reached our ears which assert that something other than Primal Chaos exists beyond the doors of the Law School. Of course, the editors of the **Advocate** are far too astute to put any credence in such nonsense, but in order to give the lie to these baseless tales, they have decided to expose these apocrypha to the full glare of publicity.

Although there are many and conflicting versions of these fantasies, they may be reduced to a fairly coherent recension. Basically, then, the story goes that there are outside the Law School intelligent beings like unto ourselves in all respects save that they are not students or teachers of Law. The absurdity of this is self-evident, for what activity is possible to human beings other than the study of law? To continue, these remarkable creatures have been known to smile and laugh, and to attend events called concerts, plays, and movies, though what these things may be we have been unable to determine. Every Fordham Law student knows that there is nothing to smile, much less laugh, about here. Indeed, we know of one student who claimed to have seen people smiling and laughing from the windows of the Reading Room one night during Midyear Exams; the poor devil had clearly cracked under the strain. Furthermore, these Outsiders have no concept of modesty and decency, unashamedly walking abroad in full view of the world without briefcases!

But there is more. Outside, so the story goes, there are publishing companies not called West and books about subjects other than Law. Fortunately, we are able to state categorically that this report is utterly and completely false; we asked every professor, and all stated that Law was the only subject that could be written about, and that they had certainly never read a book that was not a law book.

What is to be gained by continuing this recital? What could be clearer than that all these rumors are the products of a fevered imagination? How comforting it is that we may rest secure in the knowledge that we need never seek to look beyond the ambit of the legal profession!

CORRECTIONS

In the last issue, The Advocate regrets that the 4th Amendment was mistakenly identified as the 44th Amendment and credit for a page two article entitled *The Student Faculty Committee was given to John Ingraham when, in fact, B. J. Santangelo was its talented author.*

The Advocate Defended

by James Martorano

It has been suggested by some that the Advocate does not print just the news. These "critics" would have you believe that we waste a lot of space on filler, that we are redundant, that we do not publish a "tight" newspaper.

The Editorial Staff is, needless to say, very taken back by such baseless charges. There are several reasons for our chagrin: (1) there is absolutely no basis for saying we use print fillers. Often we have rejected newsworthy items...because we frankly have too much news already. I just can't see how any article printed could be accused of using these so-called fillers or of not being news that is of the most urgent nature, (2) how many times do we have to tell people that we are **not** redundant...that we, in fact, never run a repetitious story nor do we have any plans to do so in the future, (3) the notion that we run a sloppy newspaper, that we really don't know what we are doing...is the one that really gets our goat...while it's true that occassionally a major headline will be flawed or that names under an article will not appear with the proper first and last name...still to hold that against the total effect of the paper is at best petty and at worst a sin. We e work hard at coming out within two months after every deadline and although the news might be somewhat stale...we are frankly all you have (unless you count that rag appropriately called the Avocado—what fool thought that name up anyway?). Finally then, in closing, we repeat that the only conclusion that can be drawn is that we are, in fact, neither repetitious nor redundant...and even if we were...who are they to criticize?!

THE ADVOCATE presents a new approach to the study of the Law!

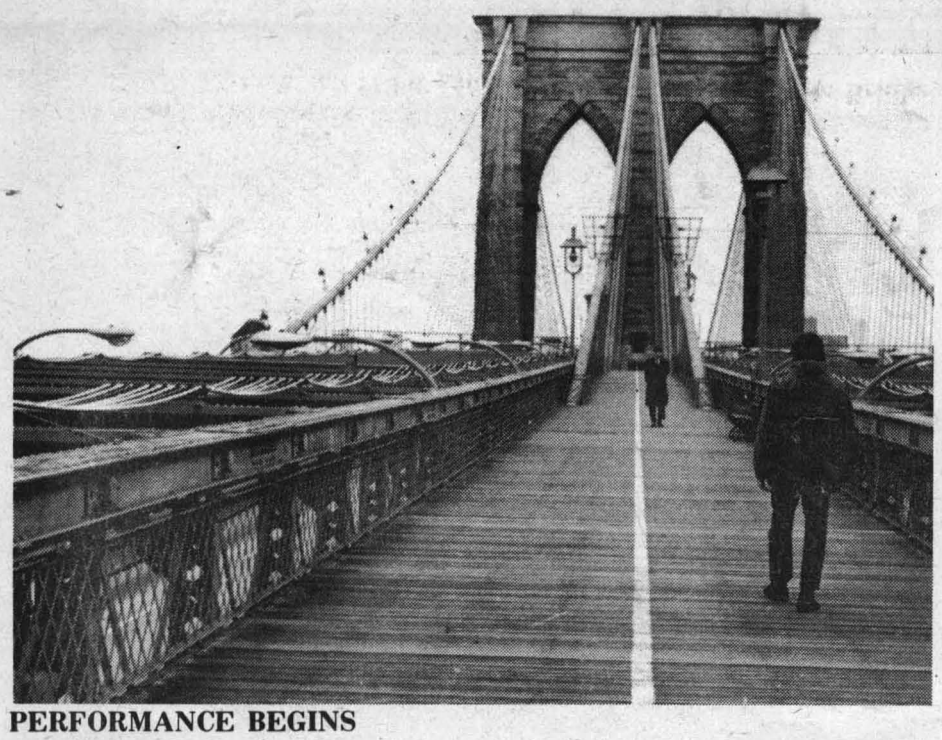
A series of illustrated digests designed to give you a "feel" for legal problems.

BOOK I CONTRACTS

Illustrated by Martorano and Sawaya

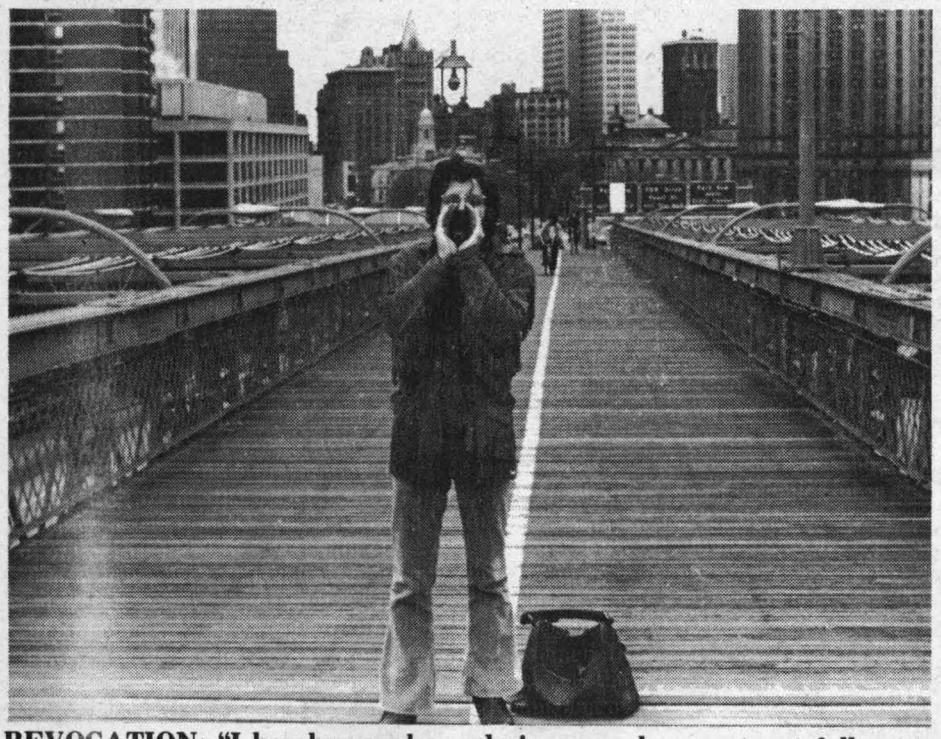
THE OFFER: I'll give you $10 if you'll walk across the Brooklyn Bridge!

THE ACCEPTANCE: I accept your strange but lucrative offer.

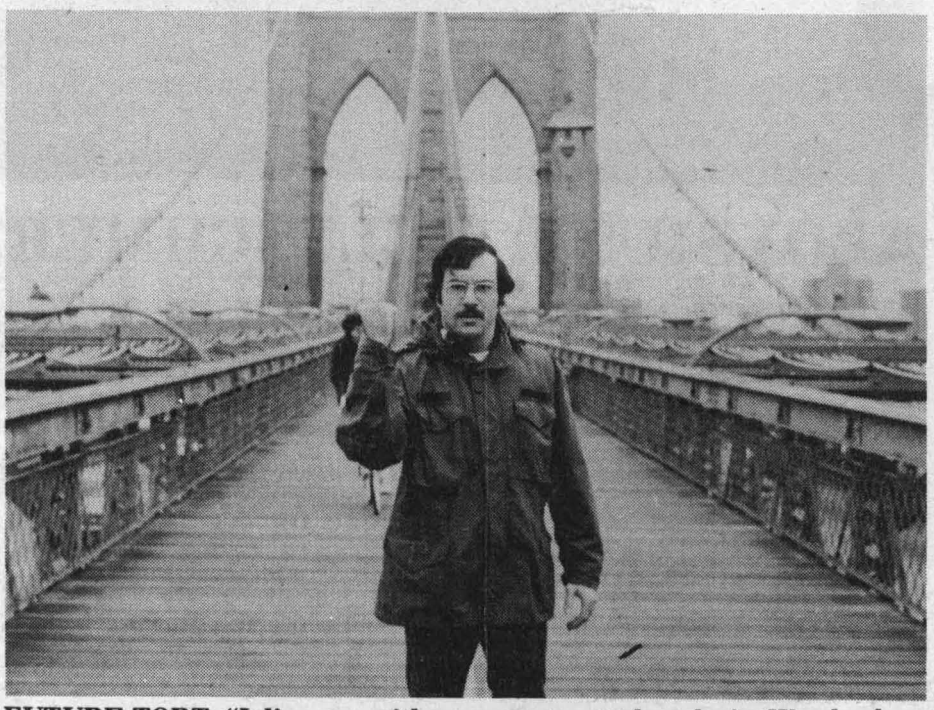


PERFORMANCE BEGINS

PERFORMANCE CONTINUED



REVOCATION: "I hereby revoke and since you have not yet fully performed, I owe you nothing."



FUTURE TORT: "I disagree with your contractual analysis. We shook on our agreement and that is good enough for me...Besides when we meet again I'm going to...