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### The Advocate

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The Advocate, Fordham Law School, "The Advocate" (1991). *The Advocate*. 96.  
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# The Advocate

-- ABA Award Winning Newspaper --

Vol. XXIV, No. 1

Fordham University School of Law © The Advocate

September 1991

## Fordham Welcomes New Faculty

by Sharyn Stein

In its continuing effort to achieve national recognition, Fordham Law School is proud to welcome five new professors this year. Keeping with its efforts to enrich the school's curriculum, thereby improving its reputation, Fordham introduces Deborah W. Denno, James E. Fleming, William M. Treanor, Eric E. Bergstein--the Bacon-Kilkenny Distinguished Visiting Professor, and Victor Brudney--the John M. Olin Visiting Professor in Law and Economics. These professors bring with them diverse perspective, innovative techniques and varied expertise.

Deborah W. Denno, who will teach criminal law classes, comes to Fordham with an impressive set of credentials. Denno has a B.A. from the University of Toronto (Criminology), and a Ph.D. from Wharton (Sociology) in addition to her J.D. from the University of Pennsylvania. She has written prolifically on the criminal justice system and on the biosocial factors related to

delinquency and crime. She is excited to bring her unique multidisciplinary perspective to her students and looks forward to teaching the "Social Science and the Law" seminar next semester.

James E. Fleming also rests his legal philosophy in a discipline other than the law. In addition to graduating Harvard Law School magna cum laude, he received his B.A. from the University of Missouri and both an M.A. and Ph.D. from Princeton University all in political science. Fleming believes that law school occupies a precarious position between being a trade school on the one hand and, on the other hand being akin to an arts and science department at a University. He feels that law schools are torn between commitments to professionalism and intellectual aspirations. He asserts, "I practiced litigation at Cravath, Swaine & Moore for several years and wrote a Ph.D. dissertation on Constitutional Theory and so I hope I can help fulfill both aspects



From left to right: Professors Denno, Brudney and Treanor.

of the law school's mission as well as contribute to the reconciliation of these conflicting pulls." Fleming, who has co-authored a casebook on constitutional law, explains, "[i]n my research in constitutional theory I'm especially interested in exploring political philosophy and the foundations of constitutional rights. Questions in constitutional law are not merely questions of doctrine but also, and more fundamentally, questions of interpretation or justification." Fleming will be teaching Constitutional Law, Constitutional Theory and Remedies.

William M. Treanor is an historical scholar. At present he is working on his Ph.D. in American history at Harvard University while teaching Property here, at Fordham. The historical work he has done has been in the evolution of property and its role in the constitutional system. He is excited to bring this element, of what might otherwise be a dry subject, into the classroom. Treanor is enthusiastic, declaring that "Fordham is a great school and it is a very exciting time to be here . . . Fordham has a very intelligent student body and a very talented faculty." Before coming to Fordham, Treanor worked for the

*Continued on page 3*

## CPC Addresses Market Conditions

An interview with Career Planning Director Kathleen Brady

by Steven A. Budin

### Q. How bad is the job market?

A. I don't think the market is as bad as people think it is. But it is not as good as it was during the boom years of the 80s. A lot of firms are cutting back. The number of schedules for on-campus interviews are down. There are a lot of ugly rumors going around, however. I've heard students saying that it is down over 50%, or only one-third of the class of '91 found jobs. These rumors are simply not true. The reality is that we are working harder to maintain our levels. Employers who have come here before are filling their needs through their summer programs and others simply have not gotten the interest from our students that brings them back. The good news is that it is only the more visible firms that are cutting back. There are plenty of opportunities in other places. The difficulty here is that people have to go looking for these opportunities because smaller firms don't have large recruiting offices. Smaller firms do not know in August what their hiring needs will be for the following year, so this also adds to student anxiety.

**Q. How would you recommend a job search given that the traditional methods have become much more difficult?**

A. Students have to realize that they cannot depend totally on the

Career Placement Office. Students need to take more responsibility. They should take advantage of everything we offer, every on-campus interview, every career dinner, panel discussion, job fairs, and any other type of networking activity. Students have to realize that not everybody can work for a big firm upon graduation. There seems to be an expectation for this.

### Q. What percent of the class of '91 has found employment?

A. As of graduation, 80 percent. In a normal year, it is around 85 percent. Only a small percent of these are non-legal. These are the night students who already had careers. This year's class tends to be in better shape, however, because everybody knew this was coming. Last year's class was hit with a big surprise. They started law school in the boom years when everybody was getting jobs in big firms. These students were very often notified in May or June that the job they were supposed to have was no longer available. This year all of the firms are more realistic of hiring needs, so there will not be any surprises.

**Q. If somebody was a member of the class of 1992 who did not receive an offer, what would you suggest they do?**

A. They should come into the office and talk with us. The reason I

say that is there is a lot of ego-bashing. People tend to take rejection personally even though hiring decisions tend to be purely economic. What we do here is tell them that everybody has something to offer. I always hear students complain that they don't have the grades, they're not on Law Review, etc. Most importantly, not receiving an offer is not the same black mark that it used to be. Five years ago, if you did not receive an offer from your Summer position, it was an exception. It's not that way anymore. What the student should do is get a letter from a partner or associate who he did work for that will be a reference as to the work quality.

### Q. Do you see any signs of improvement?

A. Yes. I think the whole approach to the job search has changed. That is a great improvement. It is not about getting the

highest paying job. It is about looking at yourself and realizing your talents and finding where you will be happiest. People are saying "maybe the big firms aren't as secure as they used to be, maybe you do not have to start there. People are now taking their career choices more seriously. People are also starting to learn how to find a job. The average lawyer changes jobs 5-7 times during his career. It is not always going to be putting a resume in a folder and showing up for an interview. This will teach the skills needed to find a job. The bad thing about this whole thing is the anxiety that is created. I wish people would relax.

### Q. When do the firms that do not come on campus normally hire?

A. Things go in waves. The big firms tend to want to do everything before the December 15th deadline.

*Continued on page 3*

So, how was your Summer Associate Job?



## The Sanitization of Clarence Thomas

The confirmation hearings of Judge Clarence Thomas serve as an example of the sanitization of a potential man for all seasons (We hesitate to use a phrase applied to St. Thomas More, for his was an example that Judge Thomas has not heeded). The Advocate supports President Bush's nomination of Judge Clarence Thomas to the Supreme Court of the United States. We have, however, found his testimony to be less than forthright and very disappointing.

Thomas has qualified his views on natural law to the point of absurdity. He has dodged his prior statements rather unartfully (to paraphrase Senator Biden) and we dare say shamelessly. He has done so for a reason.

Judge Thomas, with the memory of Robert Bork fresh in his memory, realizes that the Senate Judiciary Committee is not interested (nor are most capable of understanding) a substantive discussion of the philosophical underpinnings of constitutional adjudication. The Committee does not seek to unravel the true meaning of natural law and the role such value system would play in Judge Thomas' decision-making.

Ultimately, the hearings are about politics. Those who support Thomas, seek to canonize him as the quintessential "pull yourself up by your

bootstraps" individual. In their effort, they avoid all meaningful questioning of "their" candidate and project his opponents as "unfair" bullies who don't understand the proper scope of questioning. To an extent the Republican members of the Committee are absolutely justified in their handling of the process. They are correct in their conclusion that Judge Clarence Thomas would be a credit to the Court. They are right that his opponents do not respect the necessity that a judge remain impartial, and that such impartiality is compromised by issuing a stance on a particular issue prior to adjudication.

The entire Committee, however, and Judge Thomas himself, do the process and their nation a great disservice in allowing the important philosophical tenets at stake in his nomination to remain undiscussed and misunderstood. The integrity of the confirmation process and all those party to it (including, not insignificantly, the American people) is compromised by the sanitization of Thomas' nomination. The hearings should be the philosophical equivalent of a drag-out brawl. Thomas should have the courage to express his beliefs in a complete and honest manner, thus educating the Committee and the nation. The Committee members should be fair

and thorough. Why is this not happening on Capitol Hill?

Judge Thomas and his supporters realize that the last Supreme Court nominee to testify honestly and substantively was crucified for his efforts. Robert Bork is not serving on the Supreme Court of the United States for one simple reason: He was true to his conscience and testified honestly. The process will never be the same.

Clarence Thomas, and Justice David Souter before him, learned the lesson of Robert Bork. Placate interrogators. Dilute potentially unpopular stances. Win confirmation

at all costs. Such a simple clean equation. The problem with the Thomas/Souter equation is that both men sanitized themselves to stave off attack. In doing so they have compromised their integrity.

Of the three men: Robert Bork, Clarence Thomas, and David Souter, Bork may be the only true statesman of the lot. A statesman remains true to his beliefs in the face of adversity. A statesman remains true to his conscience. Clarence Thomas is not a man for all seasons. He will win confirmation for his pliability; yet another mediocre man leading a nation of lambs.

## A Call for Mature Dialogue

Last Spring Dan O'Toole wrote a column for *The Advocate* discussing the relative merits of affirmative action and quotas. The basic thesis of the piece was that racism, although prevalent in the United States, often serves as an excuse mechanism for minorities and prevents them from achieving their full potential. O'Toole argued that affirmative action programs and quotas are entitlements which cripple the human spirit and serve to perpetuate the notion that minorities cannot compete on an even playing field.

Also last spring, Lane Forsythe, under the heading "Facts for the non-existent debate on affirmative action" noted that a study of ten leading law schools showed that the average grade of their black students was at the 8th percentile.

The reaction to O'Toole's and Forsythe's columns has been troubling. The Fordham University Black Law Students Association (BLSA) wrote an unsubstantiated ad hominem attack, implying that O'Toole and Forsythe are "latent" racists. Acknowledging that the issue of affirmative action is complicated, BLSA pledged to respond in full in the next issue of *The Advocate*. *The Advocate* has not yet received BLSA's promised response.

Racism is defined by the Oxford American Dictionary as: "1. belief in the superiority of a particular race. 2. antagonism between people of different races. 3. the theory that human abilities are determined by race." *The Advocate* respectfully requests BLSA to clarify their implication that the views expressed in the columns of last spring were "latently racist."

Racism is a vile and contemptible belief system. To insinuate that an individual is a racist, without substantiation is irresponsible, hurtful, and unproductive. It is our goal that *The Advocate* can provide a platform for Fordham students to freely express their views on topics of interest to the law school community. It is our hope that this will be done in a thoughtful and mature manner.

## New Faculty

Continued from page 1

New York State Commission on Government Integrity for a year and then in the Iran-Contra Special Prosecutor's Office for five years.

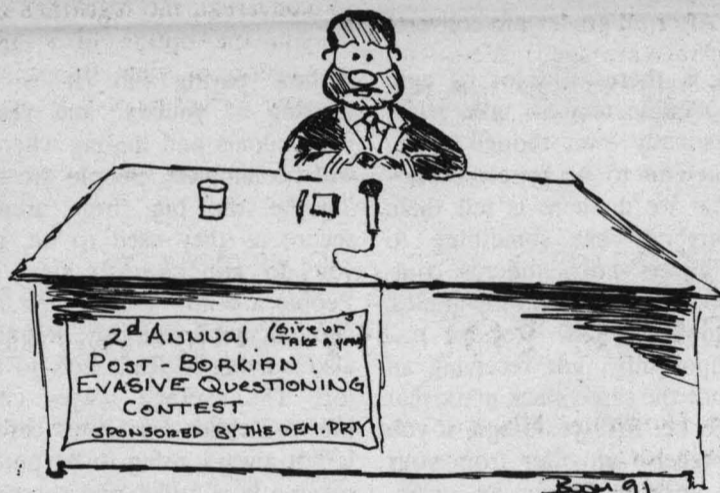
Eric E. Bergsten is the recipient of the Bacon-Kilkenny Chair of Law, only the sixth incumbent of this distinguished Visiting Professorship since the chair was inaugurated in 1980. The Chair was named for two of Fordham's most revered professors: the late George W. Bacon, an authority on the law of sales and contracts, and the late Victor E. Kilkenny, a noted proceduralist. Bergsten, another prolific author, has served on the United Nations Commission on International Trade Law (UNCITRAL) since 1975 and has acted as chief of the Office of Legal Affairs for the International Trade Law Branch since 1985. With this prestigious position comes singular experience, the benefits of which Bergsten intends to offer to his students. Bergsten, who holds a J.D. from the University of Michigan, an M.A. from Georgetown, an M.Comp.L. from the University of Chicago and a D.Comp.L. from the University of Chicago, believes his

perspective is extremely "relevant to students who are at law school in a city like New York." Bergsten will be teaching International Commercial Law.

Victor Brudney is this year's John M. Olin Visiting Professor in Law and Economics. He has been teaching law in America's most prestigious schools since 1965. A Columbia Law School graduate, Brudney has been a Harvard Law School professor since 1970 and has taught at Rutgers, Yale, Stanford, Columbia, and Boston University law schools. Brudney is an expert in Corporate Law, Corporate Finance, and Securities Regulation.



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## The Advocate

Fordham University School of Law

*The Advocate* is the official newspaper of Fordham Law School, published by the students of this school. The purpose of *The Advocate* is to report the news concerning the Fordham Law School community and developments on the legal profession, and to provide students with a medium for communication and expression of opinion. *The Advocate* does not necessarily concur with opinions expressed herein, and is not responsible for the opinions of individual authors or for factual errors in contributions received.

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- All copy must be TYPED and DOUBLE-SPACED.
- Deadlines will be approximately the FIFTEENTH of each month. Specifics will be posted.
- Submission does not guarantee publication. The editors reserve the right to reject or edit copy at their discretion.

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## Polonius Speaks . . .

by Professor Marc M. Arkin

So . . . if you have played your cards right—or to be absolutely precise, if your cards have been played right on your behalf—you have just begun a semester which will bring you into intimate acquaintances with *Pennoyer v. Neff*, *Pierson v. Post* (aka "The Fox Case") and three guys in a lifeboat who chow down on the cabin boy (this last one only if you are very lucky). Not to mention about thirty-five other people who, everyone tells you, are about to become your thirty-five closest friends; except, as far as you can tell the only thing all of you have in common is the first letter of your last names and the next three years. In fact, as far as you can tell, the only thing that your classes have in common is that all the cases were decided before your grandparents were born—in the case of *Pierson v. Post*, about a hundred years before your grandparents were born, so long ago that people are suing one another over a fox hunt that took place in the Queens.

And, you've probably spent the entire summer filling up on classics like "One L" and "The Paper Chase," neither of which look nearly as good as "L.A. Law." Come to think of it, "L.A. Law" doesn't look so good at close range either, at least not after every friend you have told you every lawyer joke he or she knows (What do you call thirty lawyers at the bottom of the sea? A good start . . .) So now you are beginning to wonder how did this happen to you . . . Or, perhaps, why

did this happen to you . . . And, not least of all, what is about to happen to you?

The answer, according to Professor Kingsfield, is that you are going to learn to think like a lawyer. Unfortunately, according to the latest wisdom, lawyers think like everybody else, except they do it about peculiarly boring stuff. But, the law professor who made that discovery in about five hundred closely set pages—and now sits on the federal bench for his troubles—used to have a different view. When he was actually in front of a classroom, he thought the purpose of legal education was to teach you to think like an economist. Hence "Law and Economics."

Other law professors appear to think that the purpose of a legal education is to teach you to think like Jacques Derrida, which is kind of sad because no one except American academics wants to think like Jacques Derrida anymore and if you ever write like Derrida in a brief you'd be out of court on your ear. As a reaction, a lot of other legal academics appear to believe that their mission in life is to teach you how to be a practicing lawyer, but unfortunately, only in the eighteenth century. If you are very lucky, maybe it will be the sixteenth . . . (Beware any law school exam question that begins "For purposes of this question, the date is before 1536 . . ." A lot of things happened in England in 1536, including the destruction of the monasteries and the Statute of Uses, but did you ever think you'd have to know that to pass the bar? You do. Trust me.)

So why are you here and what is the purpose of your legal education? It is, for most of you, the last time in your lives that you will have the leisure to be a student and to reflect on the important issues that are behind the material that you are studying. Take that time. Law school is a singular blend of theory and practice in which the student learns a skill more valuable than any other: how to teach herself or himself. Be aware of this and take pride in that accomplishment. Finally, the most important part of a legal education is something that each of us must supply ourselves; a legal education without an ethical underpinning is an empty vessel. This education is both an intellectual adventure and a powerful tool for the betterment of society. Whatever you care about, care about it passionately. If you do that, you cannot help but succeed.

## Grade Conversions for the Class of 1992

by Jerry Choe

For those third-year students who have not seen a recent printout of their transcripts, they may be in for a surprise. Towards the end of the summer, all number grades were converted by the computer into letter grades.

Many third-year students were erroneously under the impression that while the class of 1993 would receive letter grades, the class of '92 would remain in a number system. The problem, however, with maintaining dual systems was that in the 1991-92 academic year, second- and

third-year students will have classes in common. The Administration, therefore, decided it would be more prudent to convert the class of '92 to the letter system as well.

The main question the conversion raises is whether it will in any way substantively change each students' record. The computer has converted the grades based upon the conversion tables as they are posted outside the registrar's office (e.g., 87-90 = A-). After all grades are converted, a cumulative average is calculated on a four-point-three scale. The cumulative average for the class of 1992 may

be lower than that for the class of 1993, but according to Associate Dean Gorgene Vairo, that should not affect an individual's class standing. Therefore if your cumulative average appears much lower than you would expect, Dean Vairo's suggestion is not to fret. According to Vairo, a memorandum will be issued explaining the conversion, but in the meantime if you need a transcript and do not like your transcript as converted, the registrar's office gives you the option of a hand-written version of your transcript with all your former number grades.

## Market Conditions *Continued from page 1*

Things die out during the holiday season. Then in January things pick up again. Firms that did not get as many people as they expected or firms that pick up a big case will need to hire. Then in March, things get quiet again. At the end of March, firms realize that students will soon be leaving and we get many entries into the job book. I have seen people get summer jobs as late as June 15. The graduates who have yet to find jobs are never abandoned. We have a job-search support group where everybody comes in and shares their experience with the job search. Sometimes the collective brain-storming introduces new ideas. I must stress that our view of the job market is skewed. We look at ourselves and NYU and Columbia where a large number of students get their jobs before graduation, so that expectation naturally arises. The vast majority of law students do not get their jobs until after graduation. When I tell people at other law schools that over 80 percent of our students have jobs before graduation, they are amazed.

**Q. What about the students who do not want to work for a law firm?**

A. People need to use their investigative skills. The research skills you acquire as a lawyer can be

put to use in your job search. There are so many opportunities for lawyers that people tend to not know where to start. For somebody in this group, they should come in and talk to us. If we do not know how to do it, we can brainstorm and figure out who to put you in contact with. People have to realize that you do not always have to start out with a job interview, sometimes you have to start with an information interview to expand your field of knowledge. Also, students have to remember that we are affiliated with a university. We have a business school, and other graduate schools that could help students. Because law students are so busy, they tend to take the path of least resistance, which is doing what everybody else is doing, and they often end up in places where they are not happy. I would rather see students have that little extra anxiety now when they have the support system instead of getting caught in a situation that they can't get out of.

I would like to conclude with one thought. Focus on what you have. This is all about marketing and advertising. What you are selling is you. Don't focus on what you do not have. Stick to your strengths. Stress what sets you apart from others. Show the employer what you have to offer. That is the bottom line.

## DON'T LET NOVEMBER 5th TAKE YOU BY SURPRISE

On November 5th, elections will be held across New York State for:

- Mayors
- County Executives
- County Legislatures
- City Councils
- Town Boards
- Other Local Offices

Important deadlines for registration and voting:

- October 7 Last day to mail in a registration form.
- October 12 Last day to register in person.
- October 29 Last day to mail in absentee ballot application or letter of application.
- November 4 Last day to mail in absentee ballot or hand deliver absentee ballot application.
- November 5 ELECTION DAY: 6 am - 9 pm  
Also last day to hand deliver absentee ballot.

REMEMBER: If you've moved or if you haven't voted in four years, you must re-register.

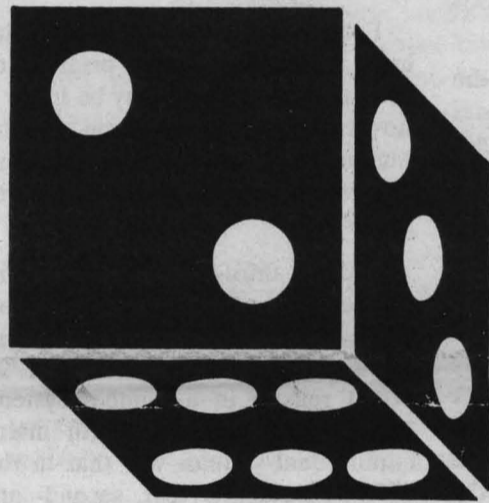
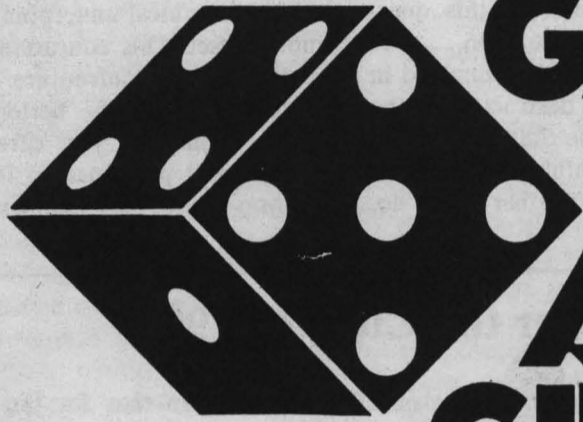


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