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The Advocate

Vol. 18 No. 2

Fordham Law School

January 1986

SBA Budget Announced

The Student Bar Association announced its annual budget late in the Fall Semester. The budget process was generally well coordinated by SBA Treasurer Pat Leonard. Each student group prepared a proposed budget and presented it to an ad hoc SBA budget committee. After a brief discussion as to the merits of the new budget as compared to past budget proposals the ad hoc committee determined a new budget allocation for each group. The process produced a fair and even-handed distribution to worthy student groups. A more detailed comparison of budget allocations is presented in the accompanying box.

The SBA Capital Account had \$46,345 in it and after the T.V. purchase of \$700.00 it had a balance of \$45,645. The checking account had \$638.00 in it. Once the Class of 1988 dues were included (\$23,400) and the appropriate deductions made: ABA Conf. (\$507.00), basketball gym rental (\$524.00) and, boatrike subsidy (\$2,758.00) and Misc. expenses (\$300.00) there was \$19,949.00 left. The boatrike lost \$2,758.00.

Boatrike Receipts-522 tkts	\$9,396.00
less printing & publicity	60.00
less circle Line charge	4,829.00
less Nathan's Famous	6,915.00
less D.J.	350.00
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SBA subsidy	2,758.00
Capital Account	5,645.00
Checking Account 9/23	19,949.00
less old SAGA bills	253.00
less copying exp.	242.00
less SAGA orientation	600.00
less Mens' Lawyers	
League Basketball	1,250.00
less 10/10 Tang DJ	250.00
+ maintenance men	
	17,354.00
less student organizations' allotment*	11,170.00
	\$6,184.00

We're Back!

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D
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- Becker's Lifestyles
- Fordham Fax
- Student Opinion
- Underground Adventures
- Play 'Fengo'

1985-1986 SBA Budget

Student Activities	1984-85	1985-86
FELC	560	500
AALSA	385	485
FLW	300	500
PAD	179	515
FOLLIES	915	1070
YBK	700	1100
ESLC	438	500
ADVOCATE	3985	4500
FDLSA	455	—
RLSA	620	—
NLG	645	500
BALSA	925	1000
ABA	—	200
LALSA	—	300
TOTAL	\$10,107	\$11,170

Blood Drive Disappoints

By JOSEPH M. ACITO

On October 15th and 16th the Greater New York Blood Drive Program held a blood drive at the law school. Recruiters were aiming for one hundred donors over the two day period. Unfortunately only sixty-five people showed up to donate.

There is no excuse for this apathetic response. The entire donating process, from registration to the end of the recovery period, normally takes only thirty minutes. The donating process is also relatively easy. After signing up in advance on the sign up sheets posted around the school, the donor reports at the appropriate time to the temporary center in the student lounge. There, he/she registers, gives his/her name and answers a few health related questions (for the donor's safety as well as the eventual blood recipient's). After registration, one lies down on one of the six available tables where the actual donation occurs. The donation itself is, in the words of the coordinator at Fordham, "relatively painless. At first you feel the small prick of the needle, like an ant bit, and then that's it."

After donating, the Blood Program provides a recovery cot that is only used in case of dizziness. Juice and cookies are also provided for several reasons, the most important of which is to replenish lost

body fluids. It is provided for public relations too, since the donor gets something in return for the donation. The refreshments also keep people in the room after donating, just in case there is a delayed adverse reaction.

The blood that is donated is sent to a blood center where it is studied for the safety of blood recipients and for categorization by blood type. At the Center it is also broken down into individual blood components. That way one pint of blood, which is the amount a person donates, can actually be used for several different people.

At the Center the donated blood lasts for approximately thirty-five days. From the Center it is sent to member hospitals in large shipments on a regular basis. If necessary, the Center can immediately get blood to a specific patient in extreme need.

Next time there is a blood drive here at the law school, GIVE. Giving blood is giving the gift of life to a fellow human being.

Joseph M. Acito is currently a third year student at Fordham, the managing editor of THE ADVOCATE, and was a blood drive coordinator at Boston University.

Advocate Exclusive: Medical Malpractice in N. Y.

By MICHAEL B. MANGINI

In 1974 the New York State Legislature, attempting to decrease the number of medical malpractice claims, passed Judiciary law 148-a. The statute requires each of the four appellate departments to set up at least one medical malpractice mediation panel in its area.

The panels are, by statute, comprised of one State Supreme Court Justice or retired Justice, one practicing attorney, and one medical doctor. The function of the panel is to determine liability. The theory is that once a determination is reached the parties will settle prior to trial. If a recommendation is unanimous it is admissible into evidence at any subsequent trial, but is subject to cross examination of the panel members and the production of adverse witnesses.

Some have questioned the constitutionality of the admissibility provision on grounds that it deprives plaintiffs of a meaningful jury trial and that it violates the substantive right to damages for medical malpractice injuries by permitting the introduction as evidence of a recommendation reached by means of a hearing less formal than a judicial proceeding.

The New York Court of Appeals, in *Treball v. Clark* (Sept. 18, 1985), rejected the latter contention stating that the statute represents a legislative response to a perceived problem of increasing malpractice rates, and serves to better equip the parties to mediate a settlement, and preserve quality health care for the residents of New York. It therefore has a fair, just, and reasonable connection with the welfare of the citizenry and does not violate due process.

The Court also dismissed the jury trial claim on the ground that the panel recommendation merely aids the jury in reaching a decision; the panel does not supplant the jury. The recommendation is not binding, and the jury may afford it any weight it chooses. The opponent of the evidence may request a jury charge to that effect. "Admission of the panel's recommendation interposes no obstacle to a full contestation of the issues, including liability, and the jury . . . remains the final arbiter of fact," says the Court.

Judge Titone also suggests that even when a panel is finally formed and the case heard, the panels are reluctant to make a finding because of the possibility of being subpoenaed at trial. "There is now a rash of no findings," he says.

To mitigate the problems some judges have imposed extra-statutory requirements on the system. Justice Boyers, former presiding Justice of Queens County, required the attorneys to go before the panel as prepared as they would have been had they been at trial. He also required that, in the event of a no finding the case be tried within as short a time as practicable after the conclusion of the panel proceeding.

The result was that the parties went before the panel well-briefed, and the

hearings were extensive. If the panel reached a conclusion, it was reconvened after about a week. This interim period afforded the parties an opportunity to consider their positions. According to Mr. Thomas a "fair number of settlements were reported."

Although these measures seemed to have enhanced the efficacy of the panel system, they were not statutory provisions. The result is that the success of the system is uneven and depends for the most part on the effect of the presiding Justice rather than on the inherent worth of the system.

Judge Titone maintains that 148-a should be either done away with completely or revised to statutorily provide for waiver upon consent of all parties. This would mitigate delay by removing from the requirement cases with little or no promise of settlement.

Mr. Lasser feels that the statute should be repealed and the panels done away with entirely. "Conceptually they were a good idea," offer Mr. Lasser, "but reality has not conformed to the concept."

Although the constitutionality of the statute is well settled, many legal professionals question 148-a's efficacy. Judge Vito J. Titone of the New York State Court of Appeals considers the panel system a "complete waste of time."

Originally the panels were meant to alleviate calendar congestion. Their success is questionable. Myron G. Lasser, a medical malpractice attorney who has served on panels feels that the process causes a "hardening of positions." A finding for one of the parties will dissuade him from settling because, if the recommendation is unanimous, it is admissible at trial.

Judge Titone states that the panels never stopped litigation because ". . . if there was a finding of liability the plaintiff wanted more money than the case was really worth. If there was no finding, it left the parties in their original positions. And if there was a finding of no liability, the plaintiff could still go to court and have his experts come in and rip apart the panel members."

Another problem with the system is that it causes delay rather than expedites litigation. Dr. Lee Goldsmith, M.D., J.D., and adjunct professor of Law And Medicine at the Fordham University School of Law, points out that in some counties it may take anywhere from three to five years for a case to go before a panel. Judge Titone elaborates "In Suffolk County there is a problem which is insurmountable. Every doctor knows every other doctor so nobody wants to sit on a panel. To get a panel together is such a problem that cases are delayed years."

Part two: The position of the medical community and the fate of Judiciary Law 148-a.

The Advocate

FORDHAM UNIVERSITY SCHOOL OF LAW

The Advocate is the official newspaper of Fordham Law School, published by the students of the school. The purpose of the Advocate is to report news concerning the Fordham Law School Community and developments in the legal profession, and to provide students with a medium for communication and expression of opinion.

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EDITORIAL

The Advocate Board of Editors wishes to extend its apologies for its lack of publication during the Fall Semester of 1985. In large measure the Editor-in-Chief is responsible for this. We expect to publish regularly throughout the Spring Semester. We thank you for your patience and understanding.

POWER PLAY AT SBA

Recent rumblings from within the SBA indicate great dissatisfaction with the President's conduct of his office. The President has been accused of unilaterally deciding to remove class representatives from their elected positions without so much as notice that he was unhappy with their SBA participation. It seems that President Mitchell was desirous of forcing the rest of the SBA representatives to his will by arbitrarily removing elected representatives which it is claimed exceeds his constitutional authority.

We at The Advocate encourage greater student awareness of the SBA. The law school experience we each take from Fordham is directly correlative to how the SBA responds to student needs and desires. If we have our elected representatives removed without our consent we might as well not even elect class representatives in the first place and allow the President to do what he wishes.

If the President desires to remove an SBA representative for cause we feel the President must inform the appropriate constituency of the dereliction of duties and then if desired hold a special election. Remember the SBA representatives are elected not appointed.

DIRECTOR

The current SBA Executive Board made a campaign promise that Student Directories would be available on October 1, 1985. As of January 6, 1986 the Student Directories were nowhere to be found and not foreseen in the near future.

COMMENCEMENT SPEAKER

As the new year begins the thoughts of the class of 1986 turn to commencement. We should not allow this important event to pass without appropriate planning. The SBA should be at the forefront in planning for a commencement speaker as well as other graduation events.

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Believe it or NOT!

WHO IS MARLIN TROPER?!

WHICH EMPLOYEE GRADUATED AT THE BOTTOM OF HIS CLASS?

WHO IS JACKIE?!

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WHO IS B?

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Jordan Becker's Lifestyles of the Poor and the Obscure

Before I get to the interesting part of this article I have two things to say. First, even though it is a little late now, I would like to thank the Mets for a great summer. Second, although I understand this paper has a movie (or is it film?) reviewer, I think everybody should go see *After Hours*. I have not laughed as much at a movie in a long time. Now on to the real column.

One of the most important things about going to school as opposed to working is that it is generally easier to drink. In fact many people believe that it is impossible to get through law school without alcoholic assistance. While I don't personally think that it is necessary to drink, I will say that it is helpful. My favorite drink is beer. Good beer, especially—not the usual junk that passes for beer in this country, although it will do in a pinch. Anyway, this article will discuss some places that serve or make good beer.

GOOD PLACES TO GET BEER

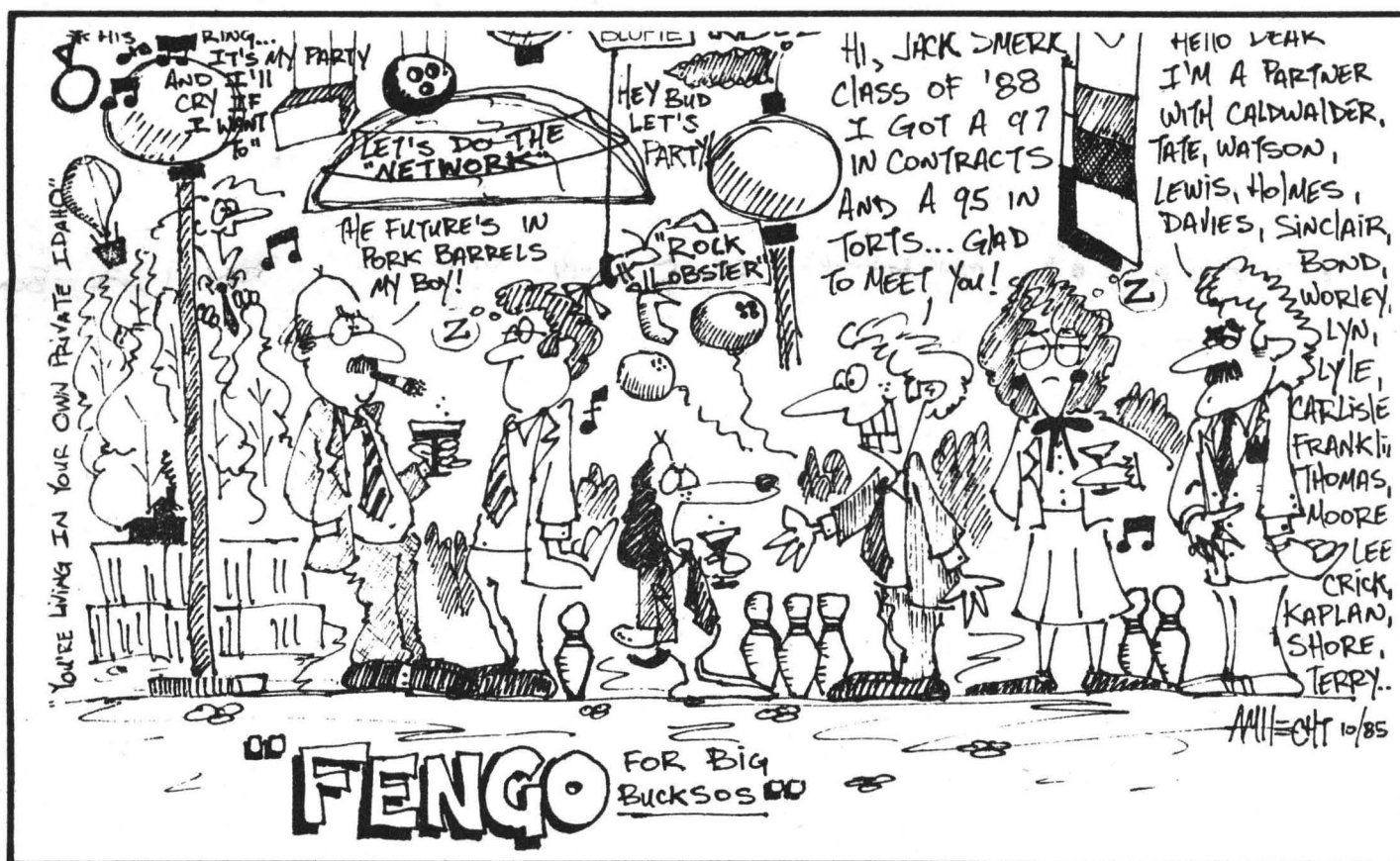
The first stop on the beer parade is the Peculier Pub. It is on West 4th Street between Sixth and Seventh Avenues in the Village. What makes the Peculier Pub a Good Place To Get Beer (GPTGB) is variety. The menu includes over 200 different beers from a whole bunch of countries ranging from obvious, like Germany or Holland, to less obvious places like Singapore and Korea. The beers range in price up to about six dollars, which is a bit steep when I am paying. I went to the Peculier Pub with three other beer mavens (a yiddish word roughly meaning "expert") who will be known as The Doctor, Jimbo and The NYU Kid. Each of us sampled three different beers and tasted all that were ordered. Some of the winners and losers were: Newcastle Brown Ale, a typical English Ale with good malty taste, but not too sweet. This is one of yours truly's favorite beers. Also, Pilsner Urquell,

which is no surprise as it is a world famous Czech beer. In a fit of pretension, The NYU Kid stated, "Sharp . . . I but has the mellowness of good . . . English beer." An excellent beer with a fine taste. On the other hand there was Quisqueya, from the Dominican Republic. This brew was "like drinking quinine water" (The NYU Kid). Or Maccabee, from Israel (or He-brew, if you'll pardon the pun). It was bland and flat, sort of like "Bud" (Jimbo).

The greatest controversy of the night concerned something called "Jimmy's Rainbow" from West Germany. The menu described it as the "very sweet malt taste of EKU 28 (the strongest beer in the world, really) with the tart flavor of Pinkus Weiss make a perfectly balance (sic) beer." Personally, I thought it tasted like low quality bourbon mixed with flat Coke. The Doctor found it too sweet for his palate, while The NYU Kid liked it. But what does he know anyway?

Some other things that make the Peculier Pub a GPTGB include a very cheap food menu, mostly of sandwiches, a pub-type atmosphere, including lots of wood and stuff, and the all-important good french fries. So even if not all of the beer was good, the experimenting was fun, making this a GPTGB. Note: it gets really crowded on weekends, so get there early, go on a weeknight (who cares—its only [fill in any morning class]), or be prepared to stand.

After finishing up at the Peculier Pub, and replacing The Doctor with The Managing Editor, we made our way across town to the legendary McSorley's Old Ale House, located on East 7th Street between Second and Third Avenues, also in the Village. Founded in the mid-1800's, McSorley's is definitely old. It also has not been cleaned since the day it opened, or so it appears. What makes McSorley's a GPTGB is the hardcore drinking atmos-



1. There are five differences
2. Fill out the Fengo card a
3. The submissions from t
4. A drawing will be held a
5. You must be present at t
6. 1st prize is \$100.00

Mass Transit Despair

By STUART MELNICK

It was an agonizing, torturing subway ride on the LL train from Brooklyn to Manhattan. The kind subway veterans have grown accustomed to.

The day started off miserably enough. It was a steamy August morning, the temperature already at 87 degrees at only 8:15 a.m. I felt hot and sticky in my suit. I bought my subway companion, the New York Post, before I stuck my token in the turnstile slit and walked onto the outdoor platform. The LL line begins and ends at Canarsie, my home since birth, so the train

is usually empty before it enters the station in the morning.

Getting a seat, however, is no easy task. A mass of Canarsieites usually stand on the edge of the platform, vying for position in the seat getting competition. Such was the case on this sweltering day. I went to a certain spot which I knew would leave me in a great seat getting position. Doors always open right in front of this spot.

But I wasn't alone. Nine or ten people also knew of this spot and had gathered around me. On my right was a short, mid-

dle aged woman, handsomely dressed in a red and white summer dress. She looked like a sweet lady. On my left was a pretty young woman in her mid-twenties wearing a tan summer suit. They were my enemies. The seat getting competition is a vicious sport which has no room for manners and courtesy. People would rather live with the guilt of being rude than stand the whole fifty minute ride into the City.

The train slowly chugged into the station and came to a stop. The doors were right in front of me. The tension mounted as the doors remained closed for what seemed like an eternity, but was probably closer to one minute. Finally they opened and hundreds of people jammed in, scratching and clawing their way in search of a seat. I was in perfect position on the edge of the platform. The swarm of people behind me carried me onto the train and I

quickly found a seat.

It was 8:20 in the morning and I had already broken into a sweat. I opened up the Post to the sports pages and began to read about the Mets' painful loss to the lowly Pirates. The train was motionless. Another train pulled in on the other track across the platform and people poured in as soon as the doors opened. My train did not move. Five minutes passed when a monotone voice came over the intercom. "Attention passengers, this train is out of service. Please board the train across the platform." Before the voice had finished its message a mass exodus of subway riders rushed across the platform to get on the other train. I hustled along with the rest of the crowd, resigned to the fact that I would have to stand the whole way. Sweat now poured down my face.

I got on the train, completely frustrat-

phere and the dark beer. Much of the atmosphere comes from the walls that apparently include any picture or sign or award that the bar has received since it opened. So there are pictures of presidents going way back, old baseball players, etc. McSorley's also is usually filled with loud, annoying fraternity types and lots of people who look remarkably young for nineteen, if you get my drift. This can, if you are in the proper mood, make for an atmosphere that is conducive to serious drinking, although at this point in my life it doesn't always work. Anyway, the beer is always good. They only have two kinds, dark and light, proving that quantity of beer types does not define a GPTGB.

The light beer is o.k., it has a slightly sour taste, but not unpleasantly so—in fact it is quite good. However the key to drinking at McSorley's is the dark. It is tasty, smooth and creamy. It may, in fact, be too easy to drink, although that thought usually doesn't appear until the next morning. One of the idiosyncracies of McSorley's is their rule against serving single beers. Their mugs are small and they insist that you order at least two, although ten to twenty is more common. The beers cost 75 cents each, so the price is certainly right.

Rumor has it that the food is good, although I have never tried it. The menu, a blackboard behind the bar, has a few sandwiches and cheese boards listed at reason-F-B, and the Three Sisters. All were im-

In sum, a GPTGB, if you are in a serious drinking mood.

The beer drinking extravaganza renewed the next week. I started off with a special Flanders beer tasting at the Princeton Club, just to get the ball rolling. Technically speaking, the Princeton Club is NOT a GPTGB, although it was on this night. Of 11 beers that I tasted only one, a cherry beer, was lousy. The other 10 ranged from good to phenomenal, and all were interesting. This digression is only to point out that if you see Flemish beer, it will probably be worth drinking. Anyway, we then went to the brand-new New Amsterdam Tap Room, located on Eleventh Avenue and 26th Street.

The Tap Room is a cavernous white room that still smells like paint. The lure of the Tap Room is the New Amsterdam Beer, available in delis and restaurants, and the Ale, which is only available at the Tap Room. New Amsterdam Beer is one of the best American beers made. It consistently wins prizes and competitions,

and it deserves to. The beer and ale are both amber colored with a rich spicy taste. The beer is a bit heavier than the ale, which has a sharper taste. The group of mavens at the Tap Room, which included The Doctor, Jimbo, The NYU Kid, The J, Ms. F-B, and the Three Sisters. All were impressed by the taste of the various beers, and the food which was moderately priced, although there were no fries.

We were treated to a tour of the brewery by the "inventor of the beer," Matthew Reich. Now, the beer is brewed in Utica, but soon it will be rescued and brought here and, we were told, brewing will begin in a couple of months. Mr. Reich was grilled mercilessly by me and The NYU Kid, as to whether the owners expected trouble luring people to a pretty deserted neighborhood. He seemed confident, and I heartily recommend a trip down to the Tap Room for excellent beer.

Finally, I would like to discuss the Manhattan Brewery, located on Thompson and Broome Streets in So Ho. Although my deadline (and new job) made it impossible for me to make a special trip down to review I have been there enough to wing it. On my first visit to the Brewery, many pints ago, I realized that it had the

right amount of sleaziness (sawdust on the floor, people yelling) to somewhat obscure the yuppiness. I guess it is kind of like a cross between McSorley's and a fern bar. Anyway, the atmosphere is pleasant, but it is the beer that makes the Brewery a GPTGB. I have tried their amber beer, which is somewhat like New Amsterdam or Grolsch, the brown ale, which is smooth and reminiscent of English brown ales, the pale ale, which is closest to American beer, the gold ale, which has a sharper taste than the pale ale, and the porter, which is dark and compares favorably with any dark beer, except for Guinness, that I have had. The beer is served in large pint mugs or in smaller glasses, for wimps.

One problem with the Brewery is the food, which is at best, mediocre, although I hear that the chicken wings are good. So if you are in the neighborhood, go to another restaurant, like Tennessee Mountain (great ribs) and drink at the Brewery.

Next month: a survey of doctors who treat cirrhosis of the liver.

Jordan Becker is a third-year student. He is a member of the Beer Pong Hall of Fame.

in this game.
d write your name on it.
his game will be collected along with
game 1.
a "tang" to be named at a future point
a winner.
e drawing to win.



ed and hating everyone in sight. I couldn't read the *Post* because I had to hold on to the metal pole which extended from the floor to the ceiling of the car. The train slowly left the station and headed for East 105th Street towards Manhattan.

The cars on the LL line are the oldest, filthiest ones in the mass transit system. The air conditioning system consists of a few open windows. I looked around and was comforted in the knowledge that everyone else was as uncomfortable as I was. Sweaty, hot, and miserable. There was little standing room.

The train crept along. After the Broadway Junction station it descended from its elevated position to the depths of underground Brooklyn with Wilson Avenue as its next stop. Then the unthinkable occurred. The train came to a stop, more people got on, and we waited for minutes as

the train stood motionless. We heard a voice about to come on the intercom. "Oh no," the crowd moaned in unison. We knew what the voice was going to say. "Attention passengers. This train is now out of service. Please step off the train, there is another one right behind us." Terrific. We all knew that the train behind us would already be jammed with riders.

Our first train left empty into the blackness. A few minutes later the train behind us arrived at Wilson Avenue, hot, steamy, and crowded as we expected. We all knew it would physically impossible for hundreds of people standing on the platform to fit into the train holding hundreds of other people. We didn't care. We all had to get to work. So like a herd of cattle, we slowly shuffled in, bumper to bumper.

"Meat," I thought to myself. "That's

all we are to the Transit Authority big wigs. Meat. Cattle. Certainly not human. We're treated like cattle but we feel like the ground after a cow defecates."

The doors slammed shut after we all squeezed in. I stood snugly in the middle, surrounded by what appeared to be tens of thousands of people. I couldn't move my arms, I was so tightly jammed in. Sweat trickled down my back. It was a claustrophobic's nightmare.

I began to think about this state of mass transit affairs as I waited for a downtown IRT. "Is it just an accident that the system is such a mess? No, it couldn't be," I thought. "There has to be some rhyme or reason to it."

Then it came to me. It was so simple. "It's merely a matter of objectives," I thought. "If the goal of the Transit Authority was to make the subway system as

efficient and comfortable as possible, it would easily be accomplished. But that's not its goal. Its goal is to make as many people as miserable as possible. Why? So every few years the Transit Authority can raise the price of tokens, using the excuse that the money is needed to fix the system. Someone, somewhere is making a lot of money from all this misery."

I was completely fatigued by the time I got to my office. I knew that there is nothing we subway cattle can do about the crummy subway system. All we can do is eat our grass, chew on our cud, swallow our pride, and move along.

Stuart Melnick is currently a third year student at Fordham Law School. He is a veteran subway traveller.

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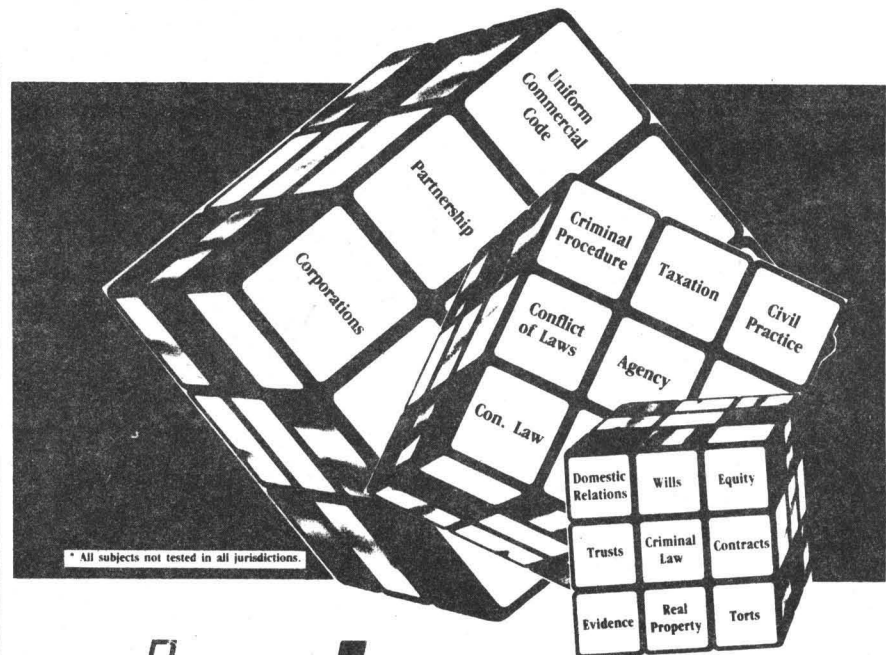
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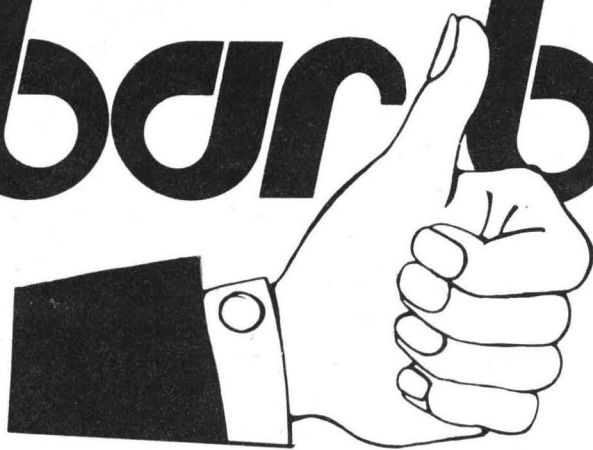
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LITTLE KNOWN TORTS

During our years of researching dusty, dank, dingy law libraries and other known (and even some unknown) niches and crannies in search of potentially bizarre bar exam questions that might be sprung on unsuspecting students, we discovered certain "little known torts" that have yet to appear on any exam. As a special student service, we thought it only fair to bring one of these unknown torts out in the open, just in case.

After a long, arduous journey across the bounding main, wracked with scurvy, beri-beri, hideous storms and sea serpents, the sailing vessel "Mayflower," complete with ship's company, landed safely at Plymouth Rock.

Unfortunately (and not at all in keeping with other historical records) mayhem broke loose in the form of Private Peter Pilgrim.

As Peter Pilgrim was disembarking from the ship, the wet gangway slipped off Plymouth Rock, propelling him over the rock, landing on (and destroying) a festive table, laden with mouth-watering goodies painstakingly prepared by Chief Chuckie Cheez and his tribe.

Chief Chuckie Cheez, after reviving Private Peter Pilgrim (and removing mass quantities of cranberry sauce from his nostrils and a drumstick from his left ear) sued Private Peter Pilgrim for damages for destruction of property.

Private Peter Pilgrim in turn sued Captain C. Way for negligence for allowing him to disembark on the wet gangway.

Captain C. Way in turn sued Far Flung Funships (owners and operators of the "Mayflower") on the grounds that the vessel was equipped with an unsafe gangway.

Far Flung Funships then sued Gangway Gratings Ltd. for product liability since the gangway was "guaranteed" to be "slip proof."

Gangway Gratings Ltd. sued Chief Chuckie Cheez for negligence for improperly using Plymouth Rock as a disembarking place since it was moss encrusted and was therefore a dangerous mooring facility.

After a long and very vocal trial, Judge N. Jury ruled and his verdict is one of the answers listed below.

So, to add a little enjoyment to the story and in "thanksgiving" of the verdict, if you send in an answer by November 29, and it matches the Judge's, we'll send you a coupon worth \$25 off a Josephson/Kluwer Bar Review Course or Josephson/Kluwer Workshop.

Oh, and that's in addition to the current fall discount of

\$ 75 NJ
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- Answers (check one)
- Private Peter Pilgrim was held liable because he was clumsy.
 - Chief Chuckie Cheez was held liable because he knowingly placed the dinner table too close to the "slippery" rock.
 - All parties were held to be partially at fault and ordered to sit down at a dinner table and to "give thanks" that no serious damage was done and to celebrate the momentous occasion at least once a year.

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