up front

To whom it may concern,

The uninsured in the United States are not all pauperized people but in fact are mostly working class citizens who simply can't afford health care coverage. According to President Clinton, one in four Americans will not have health coverage within the next two years.

Rationing health care is deciding how to distribute limited resources to an almost unlimited demand. In the United States the rationing of health care is now a major issue that many consider a "crisis." Health care policy is a debate about rationing individual health care versus cost effectiveness. This not only raises ethical questions about rationing health care but also raises conflicts between politicians who argue for equity and economists who argue for efficiency.

The U.S. capitalist system is a mix of a free market and socialism with political liberal capitalism governing for the individual and government intervention as a last resort. The number of uninsured is embarrassing to the United States and its medical community. Government is now pushed by the embarrassment of this "crisis" to a solution. However, the "crisis" may not be a "crisis" by the plan the president has proposed. President Clinton would require most people to get a "prescribed package of benefits." His goal is to give Americans health security no matter what fate befalls them. Can this be done with the disjointed incrementalism inherent in the system? It will take years!

In the U.S. tradition to solve problems with the market model, Clinton's plan does not differ. To control costs, the plan calls for caps on Medicare and Medicaid and rewriting rules for market insurers to encourage cost-effective ways of competing.

Market competition is not effective cost control. Raemer's Law provides that as services are increased the demand for services increases. This is the opposite of classical economics. Competition doesn't strive for an equilibrium price but may actually raise costs. This is seen in the high technical elements and administrative costs in providing health care, causing costs to skyrocket. Cost is also high for the new profit making ideology of business corporate hospitals, which are looking for new ideas for making a profit in the increased competition. Specialization, while good for competition, also raises costs with new technology and expensive machines.

As a result, the Clinton plan reorganizes the medical community into a "managed care" network, i.e., Health Maintenance Organization or HMO with government interference in physician autonomy in regulating fees for service. In the end we face the "moral hazard" of a significant increase in cost resulting from the ideology— you have it you use it—provide more services to get more money—which the Clinton plan does not overcome.

Clinton's plan will require employers to pay for coverage for their employees. Small businesses, who already frown upon fringe benefits, find disfavor in this. Moreover, there is little interest in providing coverage for small businesses. Providers can keep their beds full without them. Businesses will go to second rate hospitals resulting in a gap between affordability and acceptability. As a result, as called for in Clinton's plan, government will provide subsidies for small businesses, low-wage workers and jobless. Either the money will run out or the 10-year limit for subsidies in the plan will.

Clinton's plan also provides for the setting up of insurance pools called "health alliances." In other words, the pool of risk approach to reducing cost by pooling a large number of people to help distribute payments and reduce premiums. Adverse selection results, however, where only the sick or those who need insurance will buy it, creating great risk to companies which end up paying more out and failing to make a profit. For example, HMO's try to combat adverse selection through periodic, limited times of open enrollments.

Can the health security card really accomplish health reform? Sooner or later the rationing of health care will force a change in the cultured mores of society to accepting certain realities for all—foreseeably some form of rationing based on prior consent may occur, thus solving the hard efficiency side of the dilemma based on the individual against cost effectiveness. As Paul T. Menzel pointed out in Strong Medicine, prior consent is morally right because it takes the individual will into account by the prior decision an individual made (or policy) at an earlier time, thus justifying rationing and avoiding the morally questionable goal of "welfare for the aggregate."

Very truly yours,

Amy F. Haduch

Editor-in-Chief

JURIS

On Campus

Alumni News

Recent Decisions

Commentary

At the Sidebar

on our cover

Cover art by FAITH SLAMPAK

letters to the editor

Juris encourages comments. Letters must be typewritten, double-spaced and no longer than two pages. Letters should include year and division or year of graduation. All writers should provide their address and phone number for verification. Names may be withheld on request if published. Juris reserves the right to edit letters for length. Juris cannot guarantee publication of all the letters it receives. All letters received become the property of Juris, 900 Locust St., Pittsburgh, Pennsylvania 15282 Tel. (412) 396-6305.

Juris is a student publication of the Duquesne University Law School. Views and opinions expressed herein are not necessarily those of Juris or of Duquesne University. Copyright 1994 Duquesne University.

Juris is printed on recycled paper.
A Prescription for Vitamin C? by John Fusarini

Hollow Victory: The President’s New Deals, by Faith Slampak

I JUST GOT A J.D. NOW WHAT AM I GOING TO DO: I’M GOING TO DISNEYLAND

A J.D. in a Crowd of Many, by Colleen Finnegan

Putting Your J.D. to Work, by Bob Gold

Rolling the Dice on Riverboat Gambling, by Lisa Dicerbo

Employment Discrimination: Status & Trends, by Glenn E. Camus

No Winners in this Tug of War, by Melloney Douce

Do You Hear What I Hear? by Joseph S. Kosinski

Law Students Work for Social Change, by Mike Fiorentino

Master of Your Domain? by Gerald W. Yanity
Students Volunteer to Paint, Pound, Box & Bag

Mary Winter, executive director at Mom's House, was "thrilled to have the law students' help." Though Ms. Winter has been able to obtain paint and brushes, labor has not been as easy to acquire. The law students painted several rooms in the house, which supports single parents completing school and their children.

At the Jubilee Soup Kitchen, students helped to prepare and serve the mid-day meal. Many students commented that they enjoyed the opportunity to talk with the people who came to the kitchen for lunch. A group of first-year day students traveled to McKeesport to volunteer with the Greater Pittsburgh Food Bank. There, students stuffed envelopes and enjoyed the time they spent together. The chance to help others and be with classmates "not talking about school" was terrific.

Despite the rainy day and lack of heat, hammers were pounding in Braddock as students helped to hang drywall and to renovate two houses for Habitat for Humanity.

Students also packaged health care supplies for shipment from Global Links, a local organization that gathers extra medical supplies from local hospitals for distribution to clinics in the United States and South America.

Genesis House, a residence for unwed pregnant women, benefited by students doing general clean-up and maintenance. During the weeks before and after Work-A-Day, the Law School also served as the collection point for a clothing drive. Many bags of coats, hats and other clothing items were folded and boxed for distribution at several locations in Pittsburgh.

Law students participating in Work-A-Day volunteered for a variety of reasons. Many said they wanted to give something to people not as fortunate as themselves. Others hoped volunteering would help to counter the public's negative image of attorneys. Several students said they had switched their study schedules to volunteer. Everyone enjoyed the opportunity to help and looked forward to the next Work-A-Day.

Hammers, paint brushes, soup pots, envelopes, bags, boxes, tape and cleaning supplies usually are not part of a law student's study aids. The Student Bar Association decided to add these new materials on Nov. 13, 1993, for Thanksgiving Work-A-Day, modeled after the American Bar Association Law Student Division program. Law students volunteered the day to assist six community groups in Allegheny County.

Coordinated by students Kristin Pieseski and Paul Oven, the program matched students to a work site of their choice. After their shifts, students munched on pizza at the Law School.
Environmental Law Society Hosts Panel

Nov. 17.

Jody Rosenberg of the Pennsylvania Department of Environmental Resources brought the perspective of the regulatory agency to the table. John Stephen of Conservation Resources Inc. represented the public interest field. Pamela Schmaltz of Doepken, Keevican, Weiss & Medved, P.C., and Mark Farley of Kirkpatrick & Lockhart spoke on the practice of environmental law at a large firm.

Ms. Rosenberg and Mr. Stephen each commenced their law careers at large firms but say they were dissatisfied with their ability to improve society in their view from within those firms.

Ms. Schmaltz and Mr. Farley stated that much of their work consists of advising clients on achieving or maintaining compliance with complex environmental statutes and regulations.

Mr. Farley rendered the best sound byte of advice for interested students: become knowledgeable in as many environmental statutes as possible rather than seeking to master one particular law.

Federalist Society Formed; Former Atty. Gen. Speaks

Few would argue that the academic climate in American law schools is dominated by a form of orthodox liberal ideology. Unfortunately, these views are often taught in conjunction with and indeed as though they were the law. In April 1982, in response to this pervasive liberal indoctrination, a small group of law students from Harvard, Stanford, Yale and the University of Chicago organized a symposium on “Federalism: Legal and Political Ramifications.” This was the genesis of The Federalist Society.

Subsequently, the society has grown to 130 law school chapters and has more than 4,000 national members. Lawyers division chapters are in 40 cities, including Pittsburgh.

The Federalist Society is founded on the principle that the state exists to preserve freedom, that the separation of governmental powers is central to our Constitution, and that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be. Among the goals of The Federalist Society are the reordering of priorities within the legal system to place a premium on individual liberty, traditional values and the rule of law. Such goals may best be achieved by impressing the importance of these ideals upon law students, and in doing so create a conservative intellectual network that can exist and flourish in all levels of the legal community.

The Federalist Society chapter at Duquesne was started when nearly 100 students were addressed by the 77th attorney general of the United States, the Honorable William P. Barr. Attorney General Barr was appointed by President George Bush.

Mr. Barr spoke of his experiences at the Department of Justice as the chief law enforcement officer and legal advisor to the president and U.S. government. He relayed personalized accounts of several law enforcement operations during his tenure, including a successful resolution of the prison riot and hostage taking by Marcel Cubans at the Talladega correctional facility; federal law enforcement operations to restore order in St. Croix after Hurricane Hugo; and law enforcement aspects of Operation Just Cause in Panama.

The attorney general then took questions from the audience ranging from current topical legal issues such as methods of combating violent crime to the more philosophical inquiries like how the legal profession can polish its image in the eyes of the public.

The Duquesne Federalists are devoted to creating an environment and establishing a forum where topical legal issues and philosophies can be explored and debated. For those of you who missed Attorney General Barr’s speech, look for upcoming similar Federalist Society events, and if you would like to become a member of the Duquesne Federalists, or learn more about the Society or future events planned, please drop a note into The Federalist Society mail box.

TIMOTHY M. ZIEZIULA, third year law student
New Journal Formed

The formation of what is to become known as the Business Law Journal is under way at the Duquesne University Law School. In recent months, a handful of students have conceptualized a scholarly publication dedicated to current issues impacting business law. The publication encompasses a wide range of subjects and includes specific sections on bankruptcy, labor and employment, taxation, corporations, international business and insurance. The first issue is scheduled for circulation in spring 1994; the organizers anticipate eight to 10 articles for this initial publication.

Four law students have spearheaded the movement to include the Duquesne Law School among the ranks of other law schools that publish similar journals. These students conceived the idea in early September, and within one week they took steps to make the journal a reality. Gerri Volchko assumed the position of editor-in-chief and immediately began to solicit articles for the first issue. At the same time, Marie Thomas developed a publicity campaign to gain support for the publication among the faculty, student body and the local law community. The remaining two co-founders, Chris Young and Jim Malcolm, are both certified public accountants who have been equally responsible for getting the project off the ground.

The success of the journal is rooted in two things, participation and funding. Funding has been temporarily provided by the Student Bar Association in the form of a working budget for the first year. The journal organizers then hope to obtain permanent funding directly from the Law School for subsequent issues. This desire is contingent upon the second factor of the publication's success: participation. The organizers have taken steps to ensure the publication's longevity in three ways. First, they have gained strong support from Dean John T. Rago. Secondly, the Allegheny Bar Association has been enlisted to provide consultation and focus for the journal. And lastly, Professor Mark D. Yochum and Professor Ronald J. Ricci have agreed to become advisors to the publication.

This new forum that the organizers are determined to establish has the potential to benefit both the Law School and the students. It provides the Law School with yet another means to gain national attention. More importantly, it provides students with the opportunity to use their talents in the field of business law.

Prof. Jordan Ups Standards

The Appellate Moot Court Honor Society and board members were busy this fall running the appellate advocacy class as well as competing in regional or national appellate moot court arguments. This year was especially challenging because of the effort made by both the Honor Society and Professor Martha Jordan to incorporate changes in the appellate advocacy class to make it a better learning experience for Duquesne students.

In an ongoing effort to make sure Duquesne students graduate with the minimum skills necessary in researching and arguing appellate cases, new requirements were added. Students were required to do a rewrite on their briefs and a second oral argument. To help them along in their preparations, Adjunct Professors Thomas Slowey and Paul Walsh conducted Saturday classes for students on how to research and write briefs and the do's and don'ts when presenting an oral argument before the court. The members of the board are to be commended on the time and effort they put forth in organizing local attorneys who served as panel judges as well as for the hours they spent reviewing all the briefs.

Three appellate teams will argue general appellate issues, corporate issues and tax issues. Congratulations to Michelle Shuker, Michael Zimecki and Aimee Bonadio who advanced one round in general arguments this past November in national competition sponsored by the New York Bar Association. The general division will compete again this spring in the American Bar Association competition.

The corporate division will be competing this spring in Delaware, and the tax division will compete in Clearwater, Fla.

Good luck!

7 to Compete for Advocate Honors

The intra-school trial moot court competitions were held in October and November 1993. Out of 24 original competitors, 7 students were chosen to represent Duquesne in upcoming inter-school competitions (pictured left with Faculty Advisor Professor S. Michael Streib). Stephen Del Sole, William Donovan and Marian Patchen, coached by Judge Jeffrey A. Manning, will compete regionally for the Gourley Cup. David Dilettuso, Anthony Patterson, Stephen Wirth and Michael Zimecki, coached by Professor Streib, will represent Duquesne at the American Bar Association Trial Moot Court Competition.
William R. Friedman

One of the benchmarks of a successful lawyer is the respect and confidence of colleagues and fellow professionals. For Pittsburgh attorney William R. Friedman, such recognition has come from the Duquesne Law Alumni community, as he was selected by his peers to serve as the president of the Law Alumni Association for 1993-1994.

During Mr. Friedman’s term, the Law Alumni Association has emerged as a more active organization in its service to the Law School, its students and its graduates. Mr. Friedman points to the work of last year’s Mission Statement Committee as a particularly important accomplishment insofar as it helped the association to focus on its goals and objectives.

“Our mission is to promote the educational, professional, social and other bona fide interests of alumni,” he stated. To achieve some of the social objectives, the Law Alumni Association sponsored a fall reception at the Rivers Club, a pizza social on campus for students and is hoping to have a spring event for students in addition to its annual reunion dinner in April. “Students are future alumni,” Mr. Friedman stated. “They will be the strength of our organization, and we want to get them involved with the association as soon as possible.”

Mr. Friedman graduated from the Law School in 1983. While an evening student at Duquesne, Mr. Friedman served as a feature writer for Juris, and in 1982 a series of articles he wrote earned him the A.B.A. Award for Excellence for Feature Article on Substantive Law. Mr. Friedman also distinguished himself as a trial moot court finalist and served as a member of the Student Advisory Committee of the Dean Search Committee. In addition to his law degree, Friedman holds a master of public administration degree from the University of Pittsburgh.

Having worked with the Housing Authority of the City of Pittsburgh through law school, Mr. Friedman stayed on as an attorney until 1986. He then worked as an attorney for Wheeling-Pittsburgh Steel Corp. Currently, Mr. Friedman maintains a private practice, focusing in the areas of commercial and business law, probate and estate planning and civil litigation.

“One of our strengths is our social activities,” stated Mr. Friedman, characterizing the Law Alumni Association. “Our social activities have helped us to build interest in the association and in our other projects.” He pointed to the Law Alumni Association’s Scholarship Fund as one of particular importance. The scholarship fund was started in 1984 and is maintained predominantly with contributions from alumni. The organization, while continuing to build the fund, awards scholarships annually through the trustees of the Scholarship Fund based on the student’s academic standing. This year, the association awarded one full semester scholarship and one partial scholarship.

Ernest Sharif

Ernest Sharif graduated from Duquesne University Law School in 1982. While in law school, he held an internship with the District Attorneys office which led to his first job after graduation, assistant district attorney. While employed with the D.A.’s office, he worked in the general trial unit. According to Mr. Sharif, his employment with the D.A.’s office was an excellent experience for a novice attorney.

In 1983, Wallace Muhammad, leader of the American Muslim Community (and son of the late Elijah Muhammad, former leader of the Nation of Islam), hired Mr. Sharif as general counsel for the community. In that capacity, Mr. Sharif had the opportunity to face opposing counsel from two of the largest law firms in the Chicago area, including Jenner & Block. In 1987, Mr. Sharif left the community due to reorganization and began working for the Department of Labor and Industry for the Commonwealth of Pennsylvania, where he is currently employed.

At the present time, Mr. Sharif practices in the workmen’s compensation area. As an attorney for the Department of Labor and Industry, his practice ranges from filing petitions to trying cases. He also handles appellate work. Mr. Sharif prefers working for a government agency because it allows him to balance his time between his work, family and extracurricular activities. He says that while the pay is not that of a large firm, it suits his lifestyle because of the flexibility.

Outside of work, Sharif spends most of his time with his wife, Terry, daughter, Aisha 12, and son, Ernest Jr. 10. The Sharifs are
Law Alumni Association

One of the most important skills that a successful lawyer possesses is the ability to meet and greet people. The Law Alumni Association specializes in helping Duquesne Law School alumni to stay active with each other and with the students at the Law School.

William Friedman is the president of the Law Alumni Association. Mr. Friedman points out that last year, when Andy Roman was President, the Association decided that it would be beneficial to review and re-think its overall purpose for being and see if it was achieving its goals. That process provided the board of governors, the guiding body for the Law Alumni Association, with opportunity to closely examine the current state of the association and consider future plans. The result was the development of a mission statement of goals and objectives which now guides the association. Mr. Friedman stated, “The board concluded that it should focus its attention on a few key activities rather than reducing its effectiveness with too many programs, while at the same time working to increase alumni participation in the association as well as strengthening its close relationship with the Law School and law students.”

To increase alumni participation, the board sponsored a Duquesne Law School Alumni reception at the Rivers Club. The event not only enabled Duquesne Law alumni to socialize with each other, but it allowed Dean Nicholas P. Cafardi to meet some of the alumni he will be working with in the future. As for student awareness, the board decided that the quickest way to the students was through their stomachs. A well attended pizza party at the Student Union allowed the alumni and students to chat in a casual setting. Both events were a great step toward achieving the association’s current goals.

In an effort to understand what the association wants to achieve in the next year, I contacted Bob Bernstein, president-elect for the 1994-1995 term. Mr. Bernstein believes next year’s goal for the Board is to “keep the connection between the Board, students and alumni visible.” Mr. Bernstein believes that this can be achieved by adding more valued activities to those already sponsored by the Board. The two most visible activities sponsored by the Board now are the AlumnNews, a newsletter produced and distributed twice a year to Duquesne Law Alumni, and the Annual Alumni Dinner. Mr. Bernstein wants to add more student-oriented activities that would involve alumni, such as providing alumni support to student speakers forums, helping the Law School Office of Career Services set up an alumni mentor program and sponsoring more student/alumni and alumni social events.

Is the Law Alumni Association just a social organization? So far this may seem to be the truth, but to characterize the organization as such would be to forget the Law Alumni Scholarship, the most coveted project of the Board. The Alumni Scholarship, established in 1984, distributed its first dollar in 1988 under the guidance of Jennifer Fox Rabold, the chairperson of the Scholarship Committee. The goal of the scholarship is to show alumni support to the top student in each class. Ms. Fox Rabold is pleased that 1993 was the first year two scholarships were awarded. She stated that her dream for the scholarship is for “enough financial support by the alumni to see the top student in every class, day and evening, awarded a scholarship for academic excellence.” Ms. Fox Rabold is clear to point out that, unlike many other organizations, “all of the money collected in the fund drive goes 100 percent toward the scholarship.” Any administrative support is provided by the University or the Law School. Scholarship donations are collected during a letter and telephone campaign fund drive every year in February/March.

In addition to the Scholarship Fund and other activities, Mr. Friedman is making a concerted effort to establish Law Alumni chapters in other cities. He said, “We want all law alumni to feel they are a part of the organization whether they live in the Pittsburgh area or elsewhere. The association is prepared to offer assistance to alumni who want to establish those chapters.”

Finally, in this year’s plans is the formation of an advisory panel of alumni to provide a more formal communication mechanism between the law alumni and the Law School.

If you are a student or an alumnus of the Law School and want to become involved in the Law Alumni Association, these projects and many more are a great way to stay social and philanthropic. When you are contacted by a law alumnus to attend a function, donate to the scholarship fund or be a speaker at a student forum, remember that the goal of the Law Alumni Association and its board of governors is always to maintain an active connection between the students, the alumni and the Law School.

MICHELLE M. SHUKER, fourth year evening Student Liaison to the Law Alumni Association
Three Things People Say About BAR/BRI

I Passed!  I Passed!  I Passed!

First Year Review • Multistate Professional Responsibility Exam • Bar Review in 46 States
Health food stores across the United States are warning customers that the Food and Drug Administration is attempting to ban vitamins or require a prescription for vitamins. On many morning radio talk networks, and in health & exercise magazines a clear message is being sent out, "call your congressman," "tell him to support Sen. Orrin Hatch's legislation to protect your right to purchase vitamins without a prescription." The supplement industry also is urging people to write Congress in support of the Dietary Supplement Health and Education Act, sponsored by Sen. Hatch (R-Utah) and Rep. Bill Richardson (D-N.M.). Thousands of people across the country are doing just that.1

The supplement industry has a hidden motive in alarming the public. At a July 29 hearing of the House Energy & Commerce/Health Subcommittee, the FDA released a report titled "Unsubstantiated Claims and Documented Health Hazards in the Dietary Supplement Market." The report listed 528 products including vitamins, minerals, amino acids and herbs the makers of which have made unsubstantiated health claims. The supplement industry has marketed these products as cures for a variety of illnesses or diseases, such as cancer, herpes, hypertension, diabetes and AIDS.2

The bulk of the FDA's Dietary Supplement Task Force's Report contains a proposal for regulating supplement labeling. Under the Nutrition Labeling and Education Act (NLEA), the truth-in-labeling law requires that all health claims on food be supported by "agreement within the scientific community." The FDA has adopted this same standard for food supplements. The supplement industry, however, is highly opposed to the adoption of this standard. With the possibility of the FDA severely curtailing the industry's promotional marketing claims, and the future of a business with approximately $3 billion in gross annual income at stake, the supplement industry lobbied for congressional intervention.

In response to the supplement industry's lobbying activities, Congress passed the Dietary Supplement Act which places a moratorium on the FDA by prohibiting the FDA from imposing the NLEA standard on supplements through Dec. 31, 1993. In April 1993, Sen. Hatch and Rep. Richardson introduced S. 784 and H.R. 1709, which would basically prohibit the FDA from regulating the veracity of labeling claims.

Through NLEA, Congress directed the FDA to develop regulations governing health claims made on food labels. Pursuant to this directive, Congress adopted the standard that any health-related claims made on food labels must be supported by "significant scientific agreement." Congress then directed the FDA to develop regulations that would define and enforce this standard.

The NLEA also directed the FDA to promulgate regulations covering health claims concerning dietary supplements. In complying with this directive, the FDA adopted the same standard for dietary supplements that was adopted for food labeling (that claims on labels be supported by significant scientific agreement within the scientific community).

Several pieces of legislation have been introduced in Congress that address the labeling problem. One such piece of legislation has its objective to guarantee that health related claims on food supplements are based upon agreement within the scientific community. The bill also
protects the public's freedom to consume supplements. This bill was introduced by Rep. Cardiss Collins (D-Ill.) on Aug. 6, 1993, as H.R. 2923, The Dietary Supplement Consumer Protection Act of 1993. The bill would apply the FDA's health claim labeling standard to supplements, while additionally requiring quality and good manufacturing standards. Rep. Collins' Dietary Supplement Consumer Protection Act fosters the use of beneficial supplements, protecting the public's freedom to consume supplements, while providing a sensible middle ground would be to "provide access" to dietary supplements, but "don't allow health claims that are not substantiated." For example, unfortunately that we simply don't have the resources to do anything about," and "for every dietary supplement on the market that has some value, unfortunately, there's 100 or even more out there that are worthless." There is "an issue of credibility here, and the dietary supplement industry ought to be concerned about it." Mr. Kessler suggested to Durbin that "this would be an impossible burden" could "not be supported."" Mr. Kessler called the subcommittee's attention to brochures disseminated by certain industry groups that say "Don't let FDA take your vitamins away." Using the hearing as a podium, Mr. Kessler declared: "Let me say absolutely (and) unequivocally that those statements are false. FDA is not out to deny anyone access to vitamins and minerals please tell your constituents that." Mr. Kessler also spoke out against allegations that FDA is "trying to put the health food industry out of business." The American Heart Association (AHA) has proposed that the FDA establish a scientific database for evaluating the risks of nutrient deficiency and toxicity. AHA is concerned with consumers self-prescribing multi doses of vitamins, minerals, herbs and botanicals, without the relevant information to do so safely or effectively. Both the American Heart Association and the American Cancer Society argued that both herbs and amino acids should be regulated by the FDA as drugs. The FDA's proposed dietary supplement labeling rules are based on the National Labeling and Education Act of 1990. The FDA's intent, according to Mr. Kessler is that people have access to products that are safe and that any health claims made about those products are consistent with the scientific community.

The FDA is only trying to regulate what we consume, which is the job they were created to do. Their attempt to set standards for truth in the labeling of supplements is long overdue. Most people who do not have a chemical or biological background simply do not understand the consequences of what they are consuming. In some instances they rely solely on the claims made by the advertisers of these products. Unfortunately, until the FDA proposed this legislation there was virtually no governmental requirement of veracity restricting the claims placed on supplement labeling. The FDA's regulations are a start, and although the possibility that they are too restrictive exists, at least the public has been alerted to the necessity of questioning the health claims made about these products. The bill introduced by Sen. Hatch and Rep. Richardson does not protect a consumer's right to purchase vitamins nor does it ensure that consumers are not being misled. This bill was designed to protect the supplement industry. Period.

JOHN FUSARINI, fourth year evening student

References
4. id.
5. id.
6. id.
7. id.
8. id.
9. id.
Hollow Victory: The President’s New Deals

President Clinton has developed what can only be termed as a love-hate relationship with the media and the American public. During the 1992 presidential campaign he was almost an afterthought while America’s attention focused primarily on President Bush and flamboyant Independent candidate Ross Perot. Record-breaking numbers of American voters turned out to voice their mounting dissatisfaction with current political leaders and the state of the economy and demanded change. When the smoke cleared, Mr. Clinton had won. The young, grassroots candidate from Arkansas appeared out of nowhere to overcome the odds and end 12 years of Republican rule in the White House. Like a conquering war hero emerging victorious from certain defeat, the press and the public embraced him. But the honeymoon ended quickly once President Clinton was inaugurated.

President Clinton’s first year in office was an eventful one. Looking back on the 1993 legislative session, statistically Clinton had a successful year. Congressional Quarterly recently released the statistics on the roll call votes in Congress during 1993, and according to the report, President Clinton was able to get 88.6 percent of the legislation he endorsed passed. This is the highest percentage of successes for a president’s first year in office since Dwight D. Eisenhower.1

Unfortunately, a cursory glance beneath the surface of this success tells a different tale. Many of the less successful legislative battles were fought by the president off the floor of Congress and are not reflected in the Congressional Record.2

Furthermore, President Clinton may have been successful in getting many pieces of legislation passed, but as always, quantity does not ensure quality. In the end what was passed bears little resemblance to what was introduced. Finally, many of these triumphs incurred a heavy political cost, both in the political price paid and the disillusionment of the American people as they watched.

President Clinton started out the year with the traditional State of the Union address. During his speech the president outlined a plan which if successful would implement many changes. Four major objectives of his plan were: lifting the ban on homosexuals in the military; a tax increase, which he promised would dramatically decrease the national deficit; the passage of the North American Free Trade Agreement (NAFTA); and, finally, healthcare reform. His problems began almost from the moment he concluded his speech. To date three of these policies have been passed in some form, and the fourth, healthcare reform, has been pushed back into 1994.

During his presidential campaign, President Clinton made a promise to the homosexual community to lift the ban on gays in the military. This was the first major issue the president addressed after taking office. It was also the first major battle he encountered. He was immediately attacked from all sides of the issue by Congress, the military and the homosexual community. The president quickly took the path of least resistance and offered a compromise. This compromise has become known as the “don’t ask, don’t tell” rule.3

Under the “don’t ask, don’t tell” policy, the military is not permitted to inquire into the sexual orientation of a recruit or soldier. Furthermore, a soldier or recruit is not supposed to volunteer information concerning sexual preference. This compromise policy is a far cry from the outright lifting of the ban, which would have enabled homosexuals to serve in the armed services regardless of their admitted sexual preference. In the end, the compromise appeased no one.4

In an effort to soothe strained relations with his gay supporters, President Clinton renegotiated the compromise. In present form, the official policy is taken one step further to “don’t ask, don’t tell, don’t pursue.” Under this version of the compromise, the military is forbidden to pursue the issue of the sexual orientation of those who have entered the service. If there is nothing more than a mere suspicion of homosexuality without evidence to support it. While the standards of what constitutes enough evidence to trigger an investigation have been raised, homosexuality is still grounds for discharge. The homosexual community views this compromise as nothing more than a token gesture. They have now focused their efforts on the court system in the hope that the policy will be declared unconstitutional.5

President Clinton’s budget plan and his proposed tax increases may have been the biggest fiascos of all. Although his budget finally passed, it passed the House of Representatives by a mere two votes, and the vote in the Senate was tied until Vice President Al Gore cast the deciding vote. The president chose to rely exclusively on Democrats to get the budget passed.

What the president won:
• 4.3 cents per gallon tax increase on gasoline.
• Couples with taxable income over $140,000 and single people earning in excess of $115,000 will pay an increased tax rate of 36 percent, up from 31 percent. People with taxable income in excess of $250,000 will pay the highest rate of 39.6 percent. These rate increases are retroactive to Jan. 1, 1993.
• Retirees, whose total income including one-half of their Social Security benefits exceeds limits of $34,000 for singles and $44,000 for married couples, will be required to pay income taxes on up to 85 percent of their Social Security benefits. Currently only one-half of Social Security benefits are subject to income taxes if the limits on total income are exceeded.
• Medicare spending will be cut by $56 billion.
• Corporations must pay a top income tax rate of 35 percent for taxable income in excess of $10 million. This is an increase from a current top rate of 34 percent.
• The working poor will receive 2.5 billion in tax incentives and another $1 billion in direct grants over the next five years.

What President Clinton lost:
• A middle class tax cut.
• His jobs plan. This was a $20 billion plan to create 500,000 new jobs. It was defeated in a filibuster by Senate Republicans.
• Investment tax credits. A less expensive plan was implemented that allows small businesses to write off $17,500 in spending on equipment purchases.
• BTU tax designed to raise $70 billion over five years was defeated in the Senate.
• Increased mining and grazing fees.6
Vice President Gore’s television debate with Ross Perot has been credited as the turning point for the issue. Even so, until the day of the vote, it was never certain that NAFTA would pass and the president has been accused of cutting many deals in order to secure its passage.

The importance of the passage of NAFTA for President Clinton should not be underestimated. Nor should his part in the passage of the Act be underrated. For the first time, the president has exhibited an ability to work Congress with the same level of finesse with which they have worked him in the past. He purposely scheduled the vote on NAFTA on the eve of the Asian Pacific Economic Summit and repeatedly and publicly expounded that a loss would irreparably damage his credibility in Seattle and impair America’s ability to work out a similar agreement with the Pacific Rim countries. President Clinton has described the summit in Seattle and passage of NAFTA as events comparable to the signing of the Declaration of Independence. 

One additional point should be made about President Clinton’s new found scheduling abilities. The anti-assault weapon legislation was voted on and passed the same night as NAFTA. It should be noted that due to the escalating violence America has been experiencing, there was always great public support for the anti-assault weapon bill. However, it was not an accident that the vote went almost unnoticed in the shadow of the controversy over NAFTA.

President Clinton’s biggest test, healthcare reform, still lies ahead. The president has appointed a commission to address the issue headed by the First Lady Hillary Rodham Clinton. The commission did succeed in putting together a healthcare reform package that has received mixed reviews. Currently, the debate on healthcare reform has been pushed back into 1994.

Whether the president’s recent string of successes will help him meet the challenge presented by healthcare reform is anyone’s guess. One thing is certain. The president is going to need the help of both the Democrats and the Republicans in order to work out a healthcare plan that everyone can live with. After the president unveiled his healthcare plan, he stated that all aspects of the plan were open to debate, with one exception. That exception is that regardless of the plan finally passed, every American had to have access to adequate healthcare. At this point, at least there is common ground between the president’s healthcare package and the one the Republican party is endorsing.

President Clinton’s first year in office was an educational experience for everyone. The year ended on a triumphant note, but it began badly and was a long arduous journey at best. While the president’s record was never as bad as it was portrayed in the press, he has leaped from issue to issue doing whatever he deemed was necessary at the time to survive. In the end, it was a statistically successful year, but at the cost of the president alienating himself from some of his key constituencies. If this damage is not repaired, it will haunt him going into battle on healthcare reform next year.

In 1992, the American people demanded change. In 1993, they got it. So why is no one smiling?

FAITH D. SLAMPAK, second year day

References
2. Id.
5. Van Biema, supra note 3.
7. Id.
8. Id.
When I was a senior in college a local bar ran specials where it would give a free beer for every rejection letter a graduating senior could present. I loved that bar because it was a cheap night out for me. If bars or other businesses in Pittsburgh would run similar specials for law students, I believe many of my peers at Duquesne could find some good deals.

In my early years of law school I always had the perception that being a member of law review was a student's ticket to a well-paying and challenging job. However, I do not believe that is true anymore. Even the top graduates from Duquesne are experiencing difficulty in finding a job. What has caused students to accumulate rejection letters and take jobs for lesser pay or lesser hours in a field of something other than their first choice? The economy? Duquesne? The students? The legal profession itself?

In an effort not to feel too personally rejected, I have concluded that the plight of law students graduating in the '90s is due to a combination of all of the above.

Law school administrators and students do not have a great deal of control over the economy—we'll leave that to Bill and Congress; but we do have power over our administration and ourselves.

When I started at Duquesne more than two years ago, I was more concerned with whether that little boy who pulled a chair from under the old woman, causing her to fall, had committed a battery. I was not in a position to objectively analyze the new trends in the legal field and what the callings of lawyers would be in the '90s. I did not consider how the legal world is changing and sending us in new directions (once we're hired). Nor was I able to step back and objectively examine how Duquesne was preparing us for those changes and mandates. As a third year evening student I have recently come to terms with the fact that I have yet another year of law school. But that's good! Because now I have time to analyze how Duquesne could better prepare its students in these tough and changing times.

The curriculum at Duquesne has not changed much in recent years. The majority of credits needed to graduate consist of required classes. Students do not have much flexibility in their schedules. As a result, students are not able to obtain as strong an emphasis in a particular area of the law as they might prefer.
As the general practitioner disappears and more firms begin to specialize, an education concentrated in one area may help graduating students to be recruited by such firms. Also, the curriculum at Duquesne has not maintained pace with the changes occurring in the legal field. Contemporary courses about new and expanding areas of the law may spawn interest in students and better prepare them for areas of the law with employment opportunities.

One such area is computer law. Computers are common in a vast majority of American businesses. Do you ever go through a day with out seeing one? Computers are part of every dimension of our society: space, biogenetics, markets, word processing, communications, movies, games, retailing, data compilation and organization, etc. Inevitably legal problems will follow. What do we, as educated individuals, know about the ramifications of this vast, overpowering field? New legislation has been enacted regarding computer piracy, computer property rights, fair communication and the right to privacy. Legislation will continually need to be enacted as computers perform more functions in our society and as our society becomes increasingly paperless. Duquesne needs to examine elements of our highly advanced society and offer instruction and educational opportunities that address legal issues arising in the technological arena.

Two of the most talked about, vital issues of our decade that have bombarded the airwaves and print media daily since President Clinton began his campaign two years ago are: health care and the North American Free Trade Agreement. Those issues will affect every American citizen, and new legal questions and problems will arise. Could Duquesne law graduates be the ones upon to consult on those questions and address those problems?

Even without a national health care plan, health care issues are prevalent in our society. As a law school in a city internationally known for medicine, perhaps Duquesne should look at that unique asset in our city and take advantage of it. With a new national health care plan, opportunities may develop in Pittsburgh's advanced medical community. Consequently, lawyers in our area will be called upon to be consultants. Here is a potential job market at our fingertips on which Duquesne's curriculum does not place much emphasis.

International law is becoming more prevalent in many areas of the law. Three major changes in the past decade have brought the economies and cultures of the world closer and have increased interaction and communication between countries dramatically. One such change is the trade agreements and market cooperation between countries and industries. For example, the recent passage of the North American Free Trade Agreement will create one of the largest open markets in the world. Duquesne offers only one course dealing with international law issues and that course is only alternatively offered in the day and evening every other year. Duquesne has no international study program. With trade barriers breaking via the General Agreement on Tariffs and Trade, the European Community, the North American Free Trade Agreement, and the Pacific Rim Summit, our markets will be expanding. American companies will be operating abroad more and more; and respectively, foreign companies will increase their presence in the American market. Our exports will increase with those changing global markets, especially with the privatization in Russia and other Eastern Bloc countries.

Our globe is also decreasing in size due to the vast advancements in technology. Technology has allowed us to send computer messages in seconds, build robots, maintain life support, explore space, clone humans. A student at Duquesne can walk into the Westlaw room in the library and read the London Times on-line. The only real barrier to a global economy is politics, but political issues are currently being addressed in a diplomatic manner.

Another area where our country is changing dramatically is in its population demographics. Statistics report that: more than 1 million foreigners legally enter the United States every year; from 1983 to 1992 8.7 million foreigners arrived in the United States—the highest number in any 10-year period since 1910; and a record 1.8 million were granted residence in 1991. Furthermore, estimates of illegal immigrants approximate 300,000 a year. By the year 2050, America will be 52 percent Anglo, 16 percent Black, 22 percent Latino, and 10 percent Asian. About 32 million people in the United States speak languages other than English at home. Immigration laws will need to be reviewed. Housing and welfare issues will need to be re-examined. Cooperation with other nations will be more necessary than ever before. Cultural, social and political issues will alter greatly with our new population demographics. As the legal advisors of tomorrow we must be attentive to such policy issues. Because political cooperation, technology and interwoven populations are pulling societies closer, today's legal education needs to increase its focus on international issues.

Environmental law is another potential job market Duquesne could emphasize to its students. Students have started a successful Environmental Law Society. The society's goals involve improving student awareness and education in the field of environmental affairs from ethical, legal, scientific, economic, policy and sociological perspectives. Specifically, the society's goals include addressing property rights, land use and constitutional issues. New and responsive legislation is consistently being proposed to deal with those issues. Opportunities with environmental organizations, firms and large corporations with such legitimate concerns provide a wider range of employment possibilities to be explored by students with guidance from the Career Services Office. Such a pursuit would help Duquesne students be more competitive and better prepared for issues they will inevitably face.

In addition to emphasizing changing areas of the law as well as expanding and updating our curriculum, in such tough economic times, Duquesne should expand its horizons beyond western Pennsylvania. Most Duquesne graduates stay in Pittsburgh. We have a strong network and are greatly respected in this city, but when times are tough we may have to leave. As one of the few schools in the Northeast that offers an evening program, Duquesne can be proud of the diversity and work experience that the evening
students bring to our school. However, unlike the day class, practically all evening students live, go to law school, work and die in Pittsburgh. Hence, we do not have a very nationally based alumni. In times like these, when employment opportunities in Pittsburgh are scarce, graduating students will have to search for jobs outside Western Pennsylvania. Such a search will prove that relatively few Duquesne graduates are in other major cities. Take, for example, Washington D.C.—a city that employs more lawyers per capita than any other in the world. A search on Westlaw: GEOWASHINGTON, D.C. AND ED(DUQUESNE); Result: 11. According to that search, Duquesne has a total of 11 lawyers out of more than 400,000 in Washington. What happens when times are tough at home and a resume is sent to another city? Has anyone heard of Duquesne Law School? Our alumni resources in Pittsburgh are strong. Prominent, respected, intelligent, successful Duquesne lawyers are all over Grant Street. However, those same types should be encouraged to seek opportunities on Pennsylvania Avenue and in other major cities.

Fewer than 30 firms visited Duquesne to conduct on campus interviewing this fall. All those firms are from Pittsburgh. If 30 firms from Cleveland, Philadelphia, New York, and Baltimore and 30 firms from other Pennsylvania counties were recruited to interview Duquesne students, job opportunities would multiply greatly. Why aren't firms in those areas coming to see what Duquesne students have to offer? The answer is not because Duquesne does not produce talented students. The answer is because no one knows talented students are at Duquesne. The national legal community needs to know that graduates of Duquesne are well-educated, intelligent, hard-working individuals. Duquesne must step beyond Pittsburgh to develop more educational, business and legal opportunities for its students to find rewarding, challenging and meaningful employment. Such a move will help Duquesne graduates obtain employment wherever they choose.

Another resource at our fingertips, but not taken advantage of nearly enough by students, is the clinical programs. Law school does not teach students where the prothonotary is, or methods of interacting with clients or how to conduct a real estate closing. Clinics can offer such practical experience. Also, clinics offer Duquesne a chance to put its students out in the community so that the community can see first-hand the education and talent that lies behind its doors. The program needs to be improved internally. I am currently in a clinic program from which I have learned a great deal. However, the method through which I entered the clinic was purely by chance—I was never formally told by any member of the administration about such opportunities. Not until I overheard a professor speaking about the clinics did I know or inquire about such opportunities. In the spring, I submitted the information required to the registrar. After many unproductive summer phone calls to our main office, I was informed that during the last two weeks of August my information was sent to the judge with whom I desired to do a clinic. I heard nothing. The day before drop/add forms were due I called again and inquired. Nothing. I finally called the judge and asked him if I could work for him. He said "yes." I turned in a form adding the clinic with the judge as a "class." Helpless? Unprofessional? Unorganized? Considering the clinic program can offer students many types of practical experiences and provide networking opportunities, the manner in which it currently operates is certainly not a service to students.

The clinic program is an area that Duquesne needs to develop and expand to increase its public relations and give its students more practical experience. Logically speaking, any place where a law student could work that would qualify as a clinic would welcome the student because that place will receive services for free.

Another range of employment opportunities not emphasized academically or by the Career Services Offices are non-legal jobs. Law students are not encouraged to pursue careers in related fields such as: legal editor or legal reporter, lobbyist or legislative analyst; real estate developer; arbitrator or mediator; trust officer in a bank; contract administrator in a corporation; professor, researcher or analyst for political think tanks; executive recruiter; designer of software or other technology for law firms; or positions in insurance companies, accounting firms and banks. Non-traditional avenues such as these will open new opportunities for law graduates in times when too many lawyers are causing demand to go down.

A recent survey taken by the National Association for Law Placement showed that 83.5 percent of 1992 graduates landed jobs within six months after graduation. Although that is a 2.4 percent drop from the 1991 figures, such a percentage is not as dismal as I had previously thought. However, that figure is misleading in that only 72.5 percent of those graduating in 1992 obtained full-time jobs.2 That figure leaves 27.5 percent of us out in the cold. By being more proactive, contemporary, and national, Duquesne can help all its graduates come within that 72.5 percent or increase that percentage.

I worry about my prospects for finding gainful, challenging employment. John Grisham seems to be doing well. Scott Turow isn't worrying about his next meal. Perhaps, as they did, I can create my little niche which interests me in a way that I will be driven to work hard and be successful. Maybe during my first year as an unemployed law graduate I can write a book describing the pressures and personal disappointment of having spent four years and thousands of dollars on a graduate degree, but having nothing to show for it. A good title might be One U. It'll sell millions and I'll retire at the age of 27.

COLLEEN FINNEGAN, third year evening

References
1. Bruce W. Nelan, Not Quite So Welcome Anymore, TIME, Fall 1993.

[Only] 72.5 percent of those graduating in 1992 obtained full-time jobs.
Putting Your J.D. to Work

Whether someone is a law student, recent graduate or currently employed in the legal field, their mind cannot help but explore the realm of non-legal work with the market being what it is today. Assistant Dean John T. Rago explains this phenomenon by commenting that “many years ago people came to law school so they could go to work for themselves. Then, starting about 10 to 15 years ago, the focus shifted and started centering around the big law firms and the guaranteed paycheck. The current legal market condition has forced many law graduates to explore alternative legal employment. The principle that makes this possible is that the juris doctorate is a portable degree which enhances anyone’s background.”

The principle question that arises when evaluating a non-legal profession is whether there is non-legal work available that would allow one to use their legal knowledge. However, before one can approach the principle question, one must first decide what type of work is desired.

Is there work available? In a word, yes. The director of admissions at any law school will confirm that a law degree would be helpful in whatever type of work one chooses. Law graduates can be found in a variety of non-legal fields, however, most who entered into those fields did so by design and not by accident.

According to personnel directors of medium to large companies in the Pittsburgh area, many believe that a legal education could be very beneficial to an employee in a particular area of their company. Despite these words of encouragement, it was difficult to find employees with J.D.s outside of a legal department, in these companies.

Perhaps the personnel directors were not being perfectly candid or perhaps individuals with J.D.s are not applying for non-legal positions. The overwhelming response seemed to be the latter. In almost every instance, there had not been a single applicant with a J.D. for a non-legal position.

As a practical matter, personnel directors are swayed considerably more from past experience than by legal knowledge. The J.D. in and of itself is regarded as a minimal factor at best by personnel directors. They are more concerned with an applicant’s knowledge of the position. Since education can be a short cut around experience, classes in a particular field (or actual parallel experience) may be a greater factor than a degree. However, the legal background can be used more readily in some positions than others.

Where are these jobs? For those with an interest in estate planning, the banks and accounting firms are and have been a traditional option; however, these jobs normally are regarded as traditional legal work. Leases for land and property have continued to increase over the recent years not only in the commercial sector but now also at the consumer level. A good working knowledge of property and commercial transactions law can provide an edge for employment with a company looking to use leases as a tool. Attorneys have also been used traditionally by many large natural resource companies in negotiating land leases.

Manufacturing companies will consider hiring individuals with J.D.s who also have an engineering degree. Depending on the type of engineering experience involved, companies will look to these individuals to assist with everything from patent work on new items to advising how to comply with ever-changing governmental regulations.

For someone with a medical background there are ample opportunities in hospitals. For example, someone with a familiarity of medical terms and the ability to read hospital charts commonly is needed in the area of risk management.

Many companies have completely separate taxation and finance departments. Although the work is again more traditional, CPAs or those with an accounting background have been able to combine their experience and education to find opportunities in these areas.

What about those individuals who are entering the job market for the first time, or looking toward a completely new direction? The best place to begin to look is at the law itself. Look into the areas that are evolving the fastest. Areas such as government regulations offer many opportunities for someone who understands what is happening in these areas and can help limit liability for an employer.

The opportunities in human resources and employee relations are vast.

Cases like Harris v. Forklift Systems, Inc. will continue to make employers sensitive of the need to be aware of the law and be in a position to predict the repercussions of their work environment. As early as 10 years ago, many major employers realized the importance of knowing the law to help limit their liabilities in this area.

New environmental safety standards have created the need for employees well-versed in the environmental and occupational health field. Similarly, it has been predicted that the health care industry will require personnel able to advise companies on anticipated changes to health care regulations. All of these would be areas where one could flaunt a J.D.

Recently, one company actively sought to hire legally educated people to help with “one-on-one financial planning.” The Metropolitan Insurance Company has made a concerted effort to recruit individuals with J.D.s to sell life insurance products. Metropolitan has found that these individuals are bright, articulate people who are hard-working and easily trained. These attributes are what make for successful people in their industry.

People who have earned a J.D. are successful people. As a group, they have the characteristics and basis for success. What is needed is the ability to convey this to employers. As traditional legal jobs continue to be flat or dwindle, individuals with J.D.s will be forced to consider non-legal positions. As more companies realize the positive attributes of legally trained employees, these non-legal areas of employment will become abundant.

Look to the next edition of Juris for how to enhance a resume and interview skills for a non-legal position.

BOB GOLD, third year day

References
2. (FT. NAIP apx. 1/3 of all manufacturing companies surveyed.)
Rolling the Dice on

Promoters of riverboat gambling in Pennsylvania are betting on a "win" if the Pennsylvania legislature approves riverboat gambling in the state. State Rep. Frank Gigliotti, D-Allegheny, the prime sponsor of the riverboat gambling bill, expects the House to consider legislation in early 1994. He claims riverboat gambling will give Pennsylvania a much needed economic boost by pumping millions into the state economy. Furthermore, riverboat gambling in Pennsylvania could redirect millions in wagering that leave this state every day and go to Atlantic City, Las Vegas and other gambling centers.

Gigliotti, D-Allegheny, is reported as the world's largest casino and opening halls on the water. Observers predict that nearly 100 floating casinos will be operating across the nation by 1995. If gambling proponents have their way, riverboat casinos may soon operate from Boston Harbor to the Texas coast, "creating a flotilla of slot machines and blackjack tables on America's lakes, rivers and bays." Riverboat gambling has proven profitable and crimefree, according to Gigliotti. Iowa was the first state to legalize riverboat gambling and, since 1991, riverboat gambling has generated $24.3 million for that state and $1.5 million for its municipalities. The city of Biloxi, Miss., grossed $217 million in gaming revenues in its first year of legalized gambling operation.

It was reported that gamblers bet a record $33 billion in 1992, an 8.4 percent jump over 1991. Half of the 1992 total ($165.6 billion) was bet in Nevada, 72 billion was bet in New Jersey and approximately $15 billion was bet on cruise ships, riverboats and other non-casino locations around the country.

With the stakes so high, Pennsylvania officials are considering the potential draw for this state and its municipalities. The House Finance Committee has been meeting with Philadelphia Mayor Edward G. Rendell, who, along with officials from Pittsburgh and Erie, are proposing changes to the Pennsylvania legislation. Officials from all three cities want to participate in developing the bill properly. In May 1993, Mayor Rendell named 16 business leaders to a gambling commission to research the expected results of riverboat gambling in Philadelphia. The mayor's office estimates that the city could collect from $20 million to $50 million in fees up-front per riverboat for zoning approval and $25 million in gambling-tax revenues, and that 8,000 new jobs could be created. A single boat could employ 1,200 people. An increase in tourism and another form of entertainment to attract conventioners are expected. Philadelphia has the fortune of being well-situated along the New York-Washington corridor where 18 million people can arrive within three hours. Casino-industry estimates for Philadelphia are $1 billion in revenues from riverboat gambling.

Key provisions of the legislation that would legalize riverboat gambling in Pennsylvania are the following:

have been seeking ways to increase revenues without raising taxes and are accomplishing that by legalizing gambling.

Riverboat gambling offers a new source of revenue for states and municipalities on the water. Observers predict that nearly 100 floating casinos will be operating across the nation by 1995. If gambling proponents have their way, riverboat casinos may soon operate from Boston Harbor to the Texas coast, "creating a flotilla of slot machines and blackjack tables on America's lakes, rivers and bays." Riverboat gambling has proven profitable and crimefree, according to Gigliotti. Iowa was the first state to legalize riverboat gambling and, since 1991, riverboat gambling has generated $24.3 million for that state and $1.5 million for its municipalities. The city of Biloxi, Miss., grossed $217 million in gaming revenues in its first year of legalized gambling operation.

It was reported that gamblers bet a record $33 billion in 1992, an 8.4 percent jump over 1991. Half of the 1992 total ($165.6 billion) was bet in Nevada, 72 billion was bet in New Jersey and approximately $15 billion was bet on cruise ships, riverboats and other non-casino locations around the country.

With the stakes so high, Pennsylvania officials are considering the potential draw for this state and its municipalities. The House Finance Committee has been meeting with Philadelphia Mayor Edward G. Rendell, who, along with officials from Pittsburgh and Erie, are proposing changes to the Pennsylvania legislation. Officials from all three cities want to participate in developing the bill properly. In May 1993, Mayor Rendell named 16 business leaders to a gambling commission to

Promoters of riverboat gambling in Pennsylvania are betting on a "win" if the Pennsylvania legislature approves riverboat gambling in the state. State Rep. Frank Gigliotti, D-Allegheny, the prime sponsor of the riverboat gambling bill, expects the House to consider legislation in early 1994. He claims riverboat gambling will give Pennsylvania a much needed economic boost by pumping millions into the state economy. Furthermore, riverboat gambling in Pennsylvania could redirect millions of dollars in wagering that leave this state every day and go to Atlantic City, Las Vegas and other gambling centers. Gaming experts estimate that one-third of Atlantic City's gamblers are from Pennsylvania. If the estimates are accurate and legislation passes, a boosted state economy and redirected dollars from riverboat gambling could be especially important to the economic future of western Pennsylvania.

Recently the nation has been experiencing a gambling boom. Casino-industry analyst Marvin Roffman calls this gambling fever "an epidemic." It is reported as the nation's fastest-growing industry. Casino gambling is now legal in some form in 20 states, up from two—Nevada and New Jersey—in 1989. Seventy Indian reservations have, or are building, casinos. Since 1990, forms of legalized gambling have been approved in some of the most conservative states in the Midwest and the South, including Illinois, Iowa, Mississippi and Missouri. Except for Louisiana, the "Southern gambling rush" is the most surprising. In some states, cotton fields—the most indelible symbol of Southern culture—have been cleared to make room for casinos. New Orleans is about to introduce legalized gambling by building the world's largest casino and opening 15 dockside gaming halls and gambling boats. Alabama and Texas are expected to legalize gambling in 1994. In recent years, more and more states
Riverboat Gambling

- Casino-style gambling would be permitted on boats holding 1,500 or more people on navigable waters of rivers, streams or other bodies of water that form a continued highway suitable to sustain commerce with other states or countries.
- Voters in counties or local governments with waters suitable for interstate commerce would have to approve riverboat gambling in a referendum. Voter referendums would be allowed every two years.
- Games would include, but not be limited to, blackjack, poker, keno layout, craps, slot machines, video games of chance or roulette wheels. No limits would be set on the amount that could be wagered per hand or per excursion.
- The issue of riverboat gambling could be placed on local ballots by the governing body of a city, borough, township or county, or by a petition of voters. A petition would need to be signed by 25 percent of the highest vote cast for any office in that municipality during the preceding general election.
- It's not clear, based on the legislation, what would happen if a municipality approved riverboat gambling and a county did not.
- A state commission would be established to regulate gambling and approve license applicants (no more than five per county).
- Criminal history and financial backgrounds of operators would be investigated by the commission and the state police.
- A wagering tax of 15 percent would be levied on adjusted gross receipts (total take by operators less winnings). The tax would be paid to the state Department of Revenue, which in turn would distribute a portion to municipalities. Fifty percent of the overall wagering tax would go to college scholarship grants. The grants would be administered by the Pennsylvania Higher Education Assistance Agency (PHEAA) for students who qualify as financially needy and meet academic criteria, as an incentive to keep marginal high school students from dropping out.
- Twenty-five percent of the wagering tax would go to each county with a port.
- Twenty-five percent of the wagering tax would go to municipalities with a port.
- Local governments generally would not be restricted in how they could use the money. It could be used for property tax relief, fixing government facilities or whatever else they choose.
- Allegheny County and the city of Pittsburgh would earmark 20 percent of their revenues for the Greater Pittsburgh Conservatory Commission, a board run by the county and city, which would make annual allocations to the Pittsburgh Zoo, the Pittsburgh Conservatory and the Pittsburgh Aviary.
- People boarding the boats will pay a $2 admission fee to the state that would fund the state commission overseeing the industry. Municipalities and counties where boats are docked could each charge a $2 admission fee.
- No one would be licensed unless they agree to develop the area where the boat would be docked. Certain standards must be met for parking facilities and docking structures.
- License filing fees for operators would be $25,000; for manufacturers and distributors of gaming equipment, $2,500.
- Annual fees for operators would be $50,000. Annual fees for manufacturers and distributors would be $10,000. The fees go toward running the state commission.
- Passengers who cheat with devices for card counting or determining probabilities would be ejected and barred for life.
- It's not clear, based on current versions of the bill, whether riverboats could stop at other ports to take on more passengers. 

Winter • 1994
Proponents gearing up for the vote on the Pennsylvania legislation had a temporary setback in October when Lt. Governor Mark S. Singel, the acting governor, announced he would not sign into law any riverboat gambling legislation presented, despite the fact that he supports such legislation. Gov. Robert P. Casey, recovering from a June 14 heart-liver transplant, is opposed to the legislation, and Singel expressed his intention to carry out Gov. Casey's position. Singel, who is running for office, although unannounced as of yet, indicated he would study the issue if he were elected governor. Gov. Casey will serve the final year of his second term as governor in 1994.

Meanwhile, many around the state are setting plans for riverboat gambling. Agents for casinos in Atlantic City and Las Vegas have been in Pittsburgh this fall scouting for potential sites for the development of riverboat casinos. Under consideration are sites near Station Square, in the Strip District and along the North Shore of the Allegheny River. Casino representatives want to be ready in case the pending legislation is approved.

Recently in the U.S. Bankruptcy Court in Pittsburgh, a bidding war for a 12.3-acre site on the North Side resulted in the riverfront property being sold for $26.5 million — five times its fair market value of $5.27 million. The property, located just west of Three Rivers Stadium and the Carnegie Science Center, was formerly owned by the bankrupt U.S. Metalsource Co. The site has several obvious selling points: easy accessibility by river, highway and rail. At this location, railroad tracks do not impede access to the waterfront, as is the case at the Station Square and Strip District sites. The whole 12 acres are flat and able to be built upon. The two real estate developers who waged the bidding war refused to reveal who they represented.

Pittsburgh Mayor-elect Tom Murphy supports riverboat gambling but is concerned that the proposed legislation would allow the Excursion Boat Gambling Commission to ignore local zoning ordinances when determining the site of dock and other facilities for riverboats. He plans to introduce an amendment to the bill that requires riverboat gambling operations to meet local zoning ordinances.

Pittsburgh City Councilman Jim Ferlo, a supporter of legalized riverboat gambling, introduced a bill in November to give City Council control over where riverboat gambling casinos could be docked along Pittsburgh's three rivers. He hopes to have his bill passed before the current City Council left office on Dec. 31.

Pittsburgh businessman John Connelly, who currently owns the Gateway Clipper Fleet dinner cruise line, has been a strong force behind the legislation to legalize riverboat gambling. Rep. Gigliotti explains that "Mr. Connelly owns [riverboat casinos] in several states," including Iowa, Mississippi, Missouri and Louisiana. "Why wouldn't he want them in his own state?"

A Pittsburgh riverboat gambling fleet could attract tourists from a three-state area. As gambling moves to these nontraditional locales and the numbers of tourists increase, nearby businesses and restaurants would enjoy the ripple effect on the local economy. If the riverboat gambling legislation is passed in 1994 and the riverboat casinos open as planned, we'll see you "on the North Shore".

LISA DICERBO, fourth year evening

References
2. Id.
5. Id.
6. Id.
9. Id.
11. Lehren, supra note 7, at 1.
12. Rohde, supra note 2, at 3.
14. Rohde, supra note 2, at 3.
Employment Discrimination: Status & Trends

With the recent passage of the North American Free Trade Agreement (NAFTA), new claims of employment discrimination may arise.¹ Most projections are that NAFTA will generate about 200,000 new jobs within the first two years.² And that could mean an equal number of chances to discriminate in the labor market.

Lawyers and economists alike have attempted to explain employment discrimination and its effects over the years. Not only are there legal issues involved but discrimination also has a tremendous impact on the costs of doing business. Unfortunately, in many cases, antidiscrimination laws designed to protect the American worker often have the opposite effect in such instances as quota hiring.

Congress has attempted to deter discrimination practices in American labor over the years through various legislation such as Title VII of the Civil Rights Act. Enacted in 1964, the fundamental antidiscrimination principle embedded in the Act is that an individual is to be evaluated for employment opportunities on his or her own merit and not based on race, color, religion, sex, national origin or age.³ Courts expanded the realm of Title VII to include the illegality of facially neutral employment practices that disadvantaged protected groups in any way. In 1971, in the landmark case of Griggs v. Duke Power Co., the Supreme Court held that where blacks had been disproportionately disadvantaged prior to the enactment of Title VII, the use of discriminatory criteria was prima facie violative of Title VII unless the employer could demonstrate the practice to be a “business necessity” (disparate or adverse impact theory).⁴ Chief Justice Warren Burger pointed out that the intent of Title VII was not to guarantee employment to every person regardless of his or her qualifications, past discrimination or because he or she is a member of a minority group, but rather to remove “artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification.”⁵

This idea was not always easy to apply. In Espinoza v. Farah Mfg. Co. the Court held that an employer’s practice of not hiring aliens was not discrimination on the basis of national origin even though the practice had an adverse impact on persons with a non-American national origin.⁶ More than 96 percent of the company’s employees were actually U.S. citizens of Mexican ancestry, and the facts in that case did not tend to prove any wider scheme of unlawful national-origin discrimination on the part of the employer.⁷

During the 1989 term, several decisions of the Supreme Court put a significant limit on employees seeking protection under Title VII. In Wards Cove Packing Co. v. Atonio, the Court made it more difficult for a plaintiff to prove a disparate impact claim and made it somewhat easier for an employer to defend such a claim.⁸ Concerned that a broad interpretation of the disparate impact doctrine might lead to the use of quota-filling, the Wards Cove Court required that a plaintiff must first identify the specific employment practice challenged and then show that this practice was the specific cause of the adverse impact.⁹ The Court made it clear that it was no longer sufficient to only show statistical underrepresentation as proof of discrimination.

Recent Trends in Litigation

Because of the criticisms surrounding the Wards Cove case and the uncertainties of applying Title VII, Congress passed the Civil Rights Act of 1991. One of the stated purposes of the Act was to overturn the principles effectuated in Wards Cove.¹⁰ The Act wrote into law the adverse impact theory first stated in Griggs v. Duke Power Co. Second, the Act codified the Wards Cove requirement that an aggrieved plaintiff demonstrate that a

---

Discrimination Cases Filed

EEOC Charges Filed

Source: Abram, cited at note 10.
specific practice caused disparate discriminatory impact. Third, the Act reinforced the requirement that an employer has the burden of persuasion to justify a practice shown to have adverse impact as a "business necessity." Plaintiffs can still prevail by showing that an employer has refused to adopt an equally effective practice having less discriminatory impact.7

Antidiscrimination laws affect employer behavior by making alleged discriminatory practices more costly through litigation costs and damage awards. Whether the law has effectively controlled discrimination in the labor market depends on the perceived level of discrimination in the market, the efficacy of litigation in eliminating discrimination, the costs associated with the litigation and the resulting losses in productivity.

The number of discrimination-related lawsuits has exploded from fewer than 350 cases filed in 1970 to more than 7,600 cases in 1989.12 The growth in Equal Employment Opportunity Commission (EEOC) charges has likewise grown from 35,275 filed in 1979 to 70,339 in 1992.13 Much of this increase is the result of new EEO laws and expanded EEOC jurisdiction into public-sector employers, and newer theories of liability such as sexual and age-related harassment in the workplace.

The increase in trade and changes in foreign-owned companies on U.S. soil and U.S. companies on foreign land during the NAFTA years may bring about an increased focus on antidiscrimination efforts. Whatever new theories of employment discrimination arise over the next several years, the consequences of NAFTA in the labor market, both good and bad, will surely have an effect.

GLEN E. CAMUS, third year evening

References
5. Id. at 431.
7. Id. at 93.
9. Id. at 655.
12. Abram, supra note 10, at 64.
13. Id.

No Winners in This Tug of War

For decades psychologists have argued about what factors create a person. Some say it's the genes inherited from the parents, while others say the child is formed by his/her environment. Now this debate has reached the court in what is called a best interest analysis. In the best interest analysis the court determines what is best for the psychological and emotional well-being of the child.1 If there is a conflict between the child's best interests and the interest of the adoptive or biological parents, the rights of the parents must yield to allow the best interest of the child to prevail.2 When dealing with adoption some courts look at the natural parents' rights first, and absent evidence of abuse or neglect they do not perform a best interest of the child analysis, while other courts look at the interests of the child. The lack of uniformity among the different state courts has left us with one question: What do we do with children who are put up for adoption?

One of the most celebrated adoption cases was the case of Baby Girl Jessica. In Iowa the biological mother Cara Clausen (Mother) gave the child up for adoption without the consent of the biological father. Before Jessica was adopted a man named Daniel Schmidt (Father) came forward to say he was the biological father of the child. Father claimed he did not know of the existence of the child until after she was given up for adoption. Father and Mother had reunited and wanted to regain custody of Jessica. The prospective adoptive parents, the DeBoers, refused to give the child up and the two families fought for custody of the child for two and one-half years. The case ended with a court order that Jessica be returned to her biological parents. The court said that since Father did not sign the release he did not give up his rights to custody of the child.3

One month later in Illinois the Supreme Court of Illinois reached a different conclusion in a factually similar case. In that instance Baby Boy Robert’s father (Okatar) knew that the mother was pregnant, but he was told by her uncle that the baby had died three days after birth. Before and after the birth of the child the father tried to contact the mother, and he made numerous efforts to find out if the child was really dead. The court relinquished the rights of the father on the grounds that it was in Robert’s best interests to stay with his adoptive parents since he had been with them for two and one-half years. The court did not consider the rights of the mother because she had signed a valid release of custody form.4

In both cases the consent of both biological parents was lacking. Both cases involved the biological parents wishing to regain custody of their child by stating that the adoption should be halted because the father had not given up custody of the child. However, the results of the cases were different. Unlike Jessica, Robert stayed with his adoptive parents, even though his father did not consent to his being given up for adoption. According to Judge Cynthia Baldwin of the Family Court Division in Pittsburgh, the result of Baby Robert’s case may have been a policy decision. The court needed to put an end to the litigation and the decision was to leave

... if you protect the rights of the biological parents, you should not protect the rights of the adoptive parents.
him with the only parents he knew. The crux of this policy is based on the fact that the Illinois courts perform a best interest analysis in all custody cases. The Iowa courts perform a best interest of the child analysis only if they find evidence of neglect or abuse by the biological parents.

Joan Shoemaker, a lawyer in Pittsburgh, states that if you protect the rights of the biological parents you protect the rights of the adoptive parents. The lawyer must inform the adoptive parents of all the risks involved, but the biological parents should also realize what rights they are giving up.

The law in Pennsylvania protects the rights of the natural parents. The parents may relinquish their rights by either petitioning the court for the relinquishment of rights or they could sign confirmed consent forms. If the parents petition the court they appear before the court and request that their child be given up for adoption. If the parents sign confirmed consent forms then they have 40 days in which to petition the court to relinquish their rights. If the parents fail to do so then, the lawyer for the adoptive parents petitions the court to relinquish the biological parents' rights in the case of a private adoption, or in the case of an agency adoption the agency petitions the court. In a case where the biological parents do not petition the court for termination of their parental rights, they do not have to appear in court. The witnesses to the release appear before the court to testify that the biological parents signed the release voluntarily.

In cases like Baby Robert, where the biological father is unknown, the law in Pennsylvania requires that notice be given to the father. Notice is given by a publication in a legal journal and a newspaper of general circulation for three consecutive weeks. The last publication must be 10 days before the date the court is hearing the petition to terminate the rights of both biological parents. The notice requirement in Pennsylvania could prevent a case like Baby Robert from occurring in this state.

Another method of avoiding the adoption tangle is to go through an agency. In Pittsburgh the agency will place the child in foster care until the parental rights are terminated. However, there are pitfalls to this method. According to Ms. Shoemaker the child could be left in foster care for years, and in the case of Children's Youth Services there are children who, years after they are placed in foster homes, are still waiting for a permanent home. If the biological parents change their minds the child is usually returned to them. The major problem with foster homes is that in cases where they are in foster care for a long time, if the children are placed for adoption they will lose the security and comfort of the foster family, and they may experience difficulties adjusting to a new home because they view the foster family as their true family. However, if the process of adoption is speedy, foster placement may be useful.

One of the worst problems in adoption is that it could turn into a lengthy process. In the cases of Baby Robert and Baby Jessica the cases dragged on for too long. The courts need to employ a speedier method of determining with whom the child should live. For the sake of all the parties involved it is the only way to ensure that unnecessary suffering does not occur. The courts could speed up the appeal procedure and make it a more limited process. The children in these cases must be made to feel they will have a home soon, or else these cases could become catastrophic.

The last question is what happens to adoption now. Well, the best method for adoption would be the following: 1) inform all the parties involved about the risks and their rights; 2) try to get the biological parents to relinquish their rights in court; 3) put the children in foster care until the adoption is final, but ensure that the child is not in there for years before the child has a permanent home; 4) make the termination of parental rights and the adoption proceeding shorter. This method would be the ideal for adoption.

On the bright side Baby Jessica may have done the process of adoption a favor. Now potential adoptive parents are seeking legal advice at an earlier stage in the proceeding, and the public is aware that the adoption process needs to be changed.

MELLONEY DOUCE, second year day

References
2. Ibid.
Millions of hard-core radio junkies have crowned commentator and talk show host Rush Limbaugh an oracle of conservative political wisdom and the unofficial spokesman for the masses who love to hate President Bill Clinton, Democrats and anything liberal. Mr. Limbaugh's daily diatribes against the Democrats in Congress, the Democrats in the White House and Democratic interest groups have prompted gleeful giggles among Conservatives and a great deal of political angst among his targets.

And now, just as the rotund radio ranger has reached the pinnacle of his popularity, Limbaugh and his listeners see a growing effort in Congress to codify the Federal Communications Commission's now-defunct Fairness Doctrine as a means to muzzle his popular show.

Nearly identical bills have been introduced by Rep. W.G. Hefner (D-N.C.) and Sen. Ernest Hollings (D-S.C.) to codify the Fairness Doctrine. And observers say that because the Democrats control both houses of Congress and the White House, the current legislative effort to turn the Fairness Doctrine into law could succeed.

In essence, the Fairness Doctrine was an FCC regulation that required radio and television stations to use a reasonable amount of air time to broadcast coverage of "controversial issues of public importance" and to allow listeners access to the airwaves to give opposing opinions about those issues. The Fairness Doctrine also required broadcasters to provide free access to listeners who wished to respond to statements about an issue but could not afford to purchase air time.

Now imagine Rush Limbaugh being forced to give Bill Clinton air time on his show to respond to the commentator's outspoken attacks on the president and strident support of Republican political candidates. That unlikely scenario would have been possible under two other requirements of the Fairness Doctrine. Under the so-called "personal attack rule," any broadcaster who impinged the truthfulness and character of a person or group was required to provide time for a response on demand. And under the "political editorial" branch of the doctrine, a station had to honor the request of a political party or candidate seeking to counter the broadcaster's endorsement of a candidate.

Saying stations should act as stewards of scarce broadcasting resources for the public, the U.S. Supreme Court in 1969 rejected a challenge to the Fairness Doctrine in Red Lion Broadcasting Co. v. Federal Communications Commission. Examining a Pennsylvania radio station's refusal to permit an author rebuttal time after a broadcast had attacked the writer, the Court stated that because stations had only the privilege of using and not the ownership of scarce frequencies, broadcasters were subject to the FCC's fairness regulation.

The report was simply a forecast of things to come. Using the same rationales stated in the 1985 report, the commission repudiated the doctrine in In re Complaint of Syracuse Peace Council against Television Station WTVH Syracuse, New York. In Syracuse Peace Council, a television station was accused of failing to provide adequate community rebuttal to the airing of advertisements in support of a nuclear power plant. The FCC held that the Fairness Doctrine requirements, rather than promoting free speech, curbed the broadcasters' First Amendment rights. In addition, the commission stated that broadcast outlets should enjoy the same freedom from government interference in their content as did newspapers. Finally, the commission rejected the notion that the Fairness Doctrine protected against the imposition of the views of wealthy media moguls who controlled the scarce broadcasting outlets, saying new technology made broadcast outlets more accessible to the public.

Hearing the static over this regulatory frequency, Congress' efforts to codify the Fairness Doctrine began even before the FCC eliminated the broadcast regulation in 1987. Approximately two months before the Syracuse Peace Council decision was announced, Congress passed and sent to President Reagan legis-
What I Hear?

islation that would have codified the Fairness Doctrine, and the president promptly vetoed the legislation.14

The proposed Fairness in Broadcasting Act of 1993 would restore the Fairness Doctrine as it stood immediately before the FCC abandoned it in 1987. In introducing his bill, Sen. Hollings attacked the rationale of Syracuse Peace Council and stated that re-enacting the Fairness Doctrine was necessary to promote fair discussions of ballot issues and because the FCC has eased restrictions on the number of stations one person or company may own.15 Maintaining the doctrine would promote rather than inhibit the exercise of First Amendment rights, the senator said the regulation "was the only vehicle through which members of the public could respond effectively to one-sided presentations of controversial issues by station owners. Of course, now, without the Fairness Doctrine, they can still get air-time but only if they can afford to purchase it and the station is willing to sell it to them, or if they can get on alternative media — if any exists — that genuinely reaches a significant audience."16

One commentator reduced Sen. Hollings' concerns to the barest level by stating in support of the Fairness Doctrine, "[T]he FCC's current goal is to maximize industry profits, rather than to serve the listeners, exercising their free-market right to choose their hosts and programs, choose me than the vast majority of liberal hosts." He added, "The Fairness Doctrine is simply today's application of political correctness to the talk radio business."17

But Limbaugh isn't the only one lamenting the possible return of the Fairness Doctrine. Ironically, one of Limbaugh's frequent targets, Gov. Mario Cuomo (D-N.Y.), recently spoke out against the codification of the doctrine. "I don't think you can get at bad taste and destructive communication through regulation," Cuomo stated. "That's just substituting one evil for another."18 Not surprisingly, broadcast outlets accustomed to the freedom of operating without the constraints of the doctrine are fighting congressional efforts to restore it, and they have found an ally in religious broadcasters who fear the doctrine as a tool to stifle conservatism.19

Nevertheless, some powerful forces have lined up in favor of re-establishing the Fairness Doctrine. Among them are the AFL-CIO, the NAACP and another of the most influential broadcasters on the airwaves today, Larry King, who questioned, "Why should anyone be upset about being fair?"20 The Fairness Doctrine also has gained a key congressional ally in the chairman of the House Telecommunications Subcommittee, Rep. Edward Markey (D-Mass.), who predicted the doctrine will be written into law despite the current session of Congress.21

JOSEPH S. KOSCINSKI, second year day

References
4. Id. at 164.
5. Id.
6. Id.
12. Id. at *77.
13. Id. at *95.
16. Id. at S1434.
17. Mark A. Conrad, supra note 3, at 163.
18. Id. at 191-92.
Harris v. Forklift & Sex Discrimination

On Nov. 9, 1993, a unanimous U.S. Supreme Court announced in *Harris v. Forklift Systems, Inc.* that serious psychological harm was not an essential element of proof necessary to find a hostile or abusive work environment in sexual harassment cases. This long awaited decision removed one legal hurdle that victims must overcome before establishing a prima facie case under Title VII of the Civil Rights Act of 1964, which makes it unlawful for any employer to discharge an individual, or to otherwise discriminate with respect to their compensation, terms, conditions or privileges of employment because of their sex.

_Harris_ was the Supreme Court's first look at the subject of sexual harassment since its 1986 decision, *Meritor Savings Bank v. Vinson.* The *Meritor* Court ruled that a claim of "hostile environment" is a form of sex discrimination within the scope of Title VII. The Court also held that the phrase "terms, conditions or privileges of employment" was not limited to economic or tangible discrimination. The contributing factors used by the Court to identify actionable sexual harassment were: (1) that the employee belongs to a protected group; (2) that the employee was subjected to unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature that is unsolicited or uninvited; (3) that the harassment/discrimination complained of was based on sex; and (4) that the conduct was sufficiently severe or pervasive to alter conditions of the victim's employment and create an abusive working environment. Although *Meritor* explicitly placed victims of sexual harassment within the protection of Title VII, the generality of the Court's language lead to inconsistent application of the ruling. As a result, there was a split among the circuits as to the evidence necessary to prove unlawful sex discrimination based on an "abusive working environment."

To resolve this conflict, the Supreme Court granted certiorari to consider the definition of a discriminatorily "abusive work environment." The specific question at issue was whether the challenged offensive conduct must cause serious psychological injury before an "abusive work environment" results in liability under Title VII.

The *Harris* case gave the Court an opportunity to review and clarify *Meritor.* Teresa Harris brought an action against Forklift Systems, Inc. claiming that the conduct of Forklift's president, Charles Hardy, amounted to sex discrimination in violation of Title VII. She further contended that his actions resulted in a constructive discharge of her by Forklift because its president had created and condoned a sexually offensive hostile work environment. Ms. Harris worked two years for Forklift Systems, a Nashville truck leasing company, as an equipment rental manager. During her employment, Mr. Hardy often insulted Ms. Harris in front of others and made her the target of sexual jokes and innuendos. Mr. Hardy made statements such as "you're a dumb ass woman, what do you know" and would ask Ms. Harris and other female employees to retrieve coins from his front pants pockets. He had even suggested that the "two of them go to the Holiday Inn and negotiate [Harris'] raise." When Ms. Harris complained to Mr. Hardy about his behavior, he said he was only joking and promised he would stop. This promise, however, was short lived and soon Mr. Hardy was back to his old pattern of steering sexually offensive remarks toward Ms. Harris. She resigned in 1987, when Mr. Hardy, upon being informed that Ms. Harris had obtained a lucrative contract from a customer, asked her in the presence of others "What did you do, promise the guy...some [sex] Saturday night?" Subsequently, she sued Forklift alleging gender discrimination.

The magistrate found that although Mr. Hardy's comments would have offended a reasonable woman in her position, they were not sufficient to interfere with her work performance nor were they so severe as to seriously affect her psychological well-being. Upon review, the U.S. District Court for the Middle District of Tennessee adopted the magistrate's report and dismissed the action. The U.S. Court of Appeals for the Sixth Circuit summarily affirmed the District Court's decision. The Supreme Court reversed the judgment and remanded *Harris* based on erroneous application of the legal standards set forth in *Meritor.* The error stemmed from a misconception in certain circuits that *Meritor* required a showing of psychological harm.

To put this contention to rest, the Supreme Court in _Harris_ expressly stated that the ruling reaffirmed the standard in *Meritor,* which took "... a middle path between making actionable any conduct that is merely offensive and requiring the conduct to cause a tangible psychological injury." Justice Sandra Day O'Connor wrote that "Title VII comes into play before the harassing conduct leads to a nervous breakdown." The Court further resolved the issue by explaining that the appalling conduct in *Meritor* merely presented "... some especially egregious examples of harassment. They do not mark the boundary of what is actionable." Even if the employees' psychological well-being is not seriously affected, an abusive environment "... can and often will detract from employees' job performance, discourage employees from remaining on the job, or keep them from advancing in their careers." "So long as the environment would reasonably be perceived, and is perceived, as hostile or abusive, there is no need for it also to be psychologically injurious." The Court concluded that although psychological harm is a relevant factor to consider, it is not an essential element to find an "abusive work environment."

Although the issue of psychological harm was resolved, the question still remained as to the degree of misconduct required to satisfy the ever elusive "abusive work environment" standard. This requires an examination of all the facts and circumstances presented. The factors identified by the Court that were influential in finding an "abusive work environment" were: (1) the frequency of the
discriminatory conduct; (2) its severity; (3) whether conduct was physically threatening or humiliating, or a mere offensive utterance; and (4) whether it unreasonably interferes with an employee's work performance.\textsuperscript{15}

In his concurring opinion, Justice Anthony Scalia found “abusive” to be a vague standard. He stated that although the majority added an objective standard and listed a number of factors, a measurable test was still lacking as no single factor was determinative. Further, no guidance was given as to the number of named factors necessary to find a violation. He wrote that the decision “…lets virtually unguided juries decide whether sex-related conduct engaged in (or permitted by) an employer is egregious enough to warrant an award of damages.”\textsuperscript{16} Justice Scalia suggested that a test that required conduct to unreasonably interfere with an employee's work performance might provide greater guidance. However, he could not find a basis for such a standard in the language of Title VII. As a result, he joined in the opinion of the Court because he knew of “… no test more faithful to the inherently vague statutory language than the one the Court adopts today.”

Writing for the first time as a Supreme Court justice, Justice Ruth Bader Ginsburg also recommended that the attention be focused on whether the discriminatory conduct had unreasonably interfered with the plaintiff's work performance.\textsuperscript{18} To prove the conduct “unreasonably interfered with work performance,” she proposed that the harassment must only alter working conditions so as to make it “… more difficult to do the job.”\textsuperscript{19}

However, establishment of an “abusive work environment”\textsuperscript{20} is only a small part of the determinative standard. For the alleged offensive conduct to rise to the level of unlawful sex discrimination, the conduct must be severe or pervasive enough to create an objectively hostile or abusive work environment—one that a reasonable person would find hostile—and also, the victim must subjectively perceive the environment to be abusive or else the conduct has not actually altered the conditions of the victim's employment.\textsuperscript{21} (emphasis added) Therefore, sexual harassment victims, besides showing that they subjectively perceived the environment as abusive, must also show that a reasonable person would have found the work environment abusive.\textsuperscript{22} Because the Court expressly added an objective standard to the factors first set out in \textit{Meritor}, it remains to be seen how courts and juries will apply the “reasonable person” standard.\textsuperscript{23}

Sexual harassment has become a serious problem that employers have to face. This is evidenced by the 10,532 sexual harassment complaints filed with the Equal Employment Opportunity Commission in 1992.\textsuperscript{24} 90 percent of the Fortune 500 companies have dealt with sexual harassment complaints and more than one-third of them have been sued.\textsuperscript{25} Although many employers were putting forth their best efforts to stamp out this form of discrimination, they complained that confusion existed as to what conduct fell outside lawful limits. Because of increasing litigation in this area, a ruling that set forth somewhat more specific criteria was waited for by employers. It is hoped that some of the legal uncertainty will now be eliminated since the Supreme Court has detailed standards that employers can follow when they formulate sexual harassment policies.\textsuperscript{26} Written policies, as well as management training and employee education are important in avoiding costly and time consuming litigation.

Victim advocates see this as a positive decision because it will enable employees to succeed in sex discrimination cases without having to go to the extreme of proving serious psychological harm. As a result, victims of sexual harassment may be less reluctant to come forward and complain of offensive conduct.

While the search for the “middle path” between quid pro quo conduct and the occasional or careless remark continues, \textit{Harris} sends a clear message to employers that sexual harassment will no longer be tolerated. Sexual harassment is a serious violation of Title VII.

SUSAN M. FIX, third year evening

---

### Finding an “Abusive Work Environment”

#### The Influential Factors

<table>
<thead>
<tr>
<th>Whether discriminatory conduct was physically threatening or humiliating, or a mere utterance</th>
<th>Whether discriminatory conduct unreasonably interferes with employee's work performance</th>
<th>Frequency and Severity of discriminatory conduct</th>
</tr>
</thead>
</table>

---

**References**

4. Id. at 67.
6. Id. (quoting App. to Pet. for Cert. at A-17).
7. Id. at 370 (quoting App. to Pet. for Cert. at A-33).
8. Id. at 370.
9. Id.
11. Id. at 370.
12. Id. at 371.
13. Id.
14. Id.
15. Id.
17. Id.
19. Id.
21. Another area of disagreement in lower courts was whether a subjective or objective test should be applied when determining whether a hostile work environment existed. The Supreme Court in \textit{Harris} explicitly applied both tests, thereby resolving any future debates on the matter.
22. There has been considerable debate as to whether the applied objective test in sexual harassment cases should be the “reasonable woman,” the “reasonable victim” or the “reasonable person” standard. The Supreme Court in \textit{Harris} used the “reasonable person” standard without any discussion as to why this standard was adopted.
24. Id.
25. Some critics of the \textit{Harris} decision complain that uncertainty will continue to exist because the Supreme Court fell short of providing precisely defined guidelines for employers to follow.
As to the count of attempted murder, we the jury find the defendant, Damian Monroe Williams not guilty. As to the count of simple mayhem, guilty. As to the four counts of misdemeanor assault, guilty. As to the count of attempted murder, we the jury find the defendant Henry Keith Watson not guilty. As to the count of misdemeanor assault, guilty.

These verdicts marked an anticlimactic conclusion to the Rodney King and Reginald Denny trials, which serve as a historical footnote to the potentially deadly racial tension in the United States that continues to divide its citizens. But an additional element of controversy that went unnoticed in the Denny trial was the circumstances surrounding the state of California's removal, over defense objection, of juror #373, a middle-age African-American female after two days of deliberation because, "she was failing to deliberate as the law defines it." This reason for removal stood notwithstanding the success of juror #373 in reaching a verdict on two of the 15 counts before the jury prior to her removal. Because the manner of interference is an anomaly to case and statutory law, at both the state and national levels, the resolution to this issue is not clear. What is clear is that the extent and manner of judicial interference raises a question as to whether the defendants' constitutional right to a fair and impartial jury was violated by deterring one of its most critical functions in a democratic society—the jury's decision to be hung.

Given the aftermath of the Rodney King trial, there was an undeniable tension felt by the community before a jury for the Denny trial was even selected. Perhaps more so than any other case in national history was a jury torn between the idea of social responsibility and personal fear from a community that they must face after verdict. Therefore, the confusion of the circumstances surrounding deliberation were not surprising. A total of five jurors were replaced, with only one alternate remaining. When the jury was sworn in on Aug. 12, 1993, they consisted of five Anglos, three African-Americans, three Hispanics and one Asian-American. By the date of deliberation a series of replacements had altered that status significantly, and by Oct. 1, 1993 when deliberation began, the jury was composed of four African-Americans, four Hispanics, two Anglos and two Asian-Americans. Prior to Sept. 30, 1993, when the case was handed to the jury, two jurors were excused by the court for illness and one was removed for alleged misconduct. On Oct. 12, after eight days of deliberation, another juror was excused for unspecified personal hardship. All four of these are legally valid reasons for replacement of jurors by the court before and after the commencement of deliberation.

The safeguard of voir dire is...to spot potential jurors' lack of logic or comprehension.

The removal that raises a constitutional issue came in regard to juror #373, a middle-aged African-American female, who was removed by California Superior Court Judge John W. Ouderkirk on Oct. 11, 1993, because in his words, "she was failing to deliberate as the law defines it." This reason for removal stood, over defense objection, despite the fact that #373 had already successfully reached a verdict on two counts for deliberation with the other members of the jury prior to her removal. Due to the fact that juror #373 was removed after a closed hearing, evidence supporting her removal has yet to be disclosed. However, the facts that are known discredit Judge Ouderkirks' reasoning. First, as to the issue of "incompetency," the inability to deliberate is an unorthodox and uncommonly used reason for removal. Removal for the inability to deliberate, after seven days of deliberation with verdicts already reached, is an anomaly to case law of the 50 states. The consensus of case law is that reasons for removal generally include misconduct (substance abuse, contact with extrinsic influences or information affecting the ability to be impartial), illness, personal hardship and moral turpitude. Judicial discretion for removal lies specifically within these parameters.

The safeguard of voir dire is in place to enable attorneys to spot potential jurors' lack of logic or comprehension. In the instant case, the removed juror completed detailed questionnaires, answered psycho-social questions presented by the court and satisfied attorneys on both sides of the issue prior to her selection and approval. Furthermore, the jury applied for #373's removal not after the first day of deliberating with her, but after seven days of deliberation and reaching verdicts on at least two counts. That is, if in fact such a juror "slips through the cracks" of voir dire, the jury should have been able to detect such a problem after one or two days of deliberation. Instead, the jury was prepared to return verdicts on two counts after deliberating with her for seven days. That fact alone discredits the court's contention that she was incapable of deliberation.

Even if the allegations of the jury were true, their lack of timeliness in bringing the matter forward suggests suspect motivation in asking the court for her removal. The jury was able to successfully reach a verdict on two counts with juror #373. Then, in deliberation of subsequent counts, they objected to the same deliberating skills formerly employed because as they indicated to Judge Ouderkirk, "she could not comprehend anything we are trying to accomplish."
Judge Ouderkirk's decision to remove the juror suggests an improper interference and deterrence of jurors who do not agree with the majority or interpret the evidence in a different matter. In a democratic society, which underlies the law and court systems, one of the most vital traditions of a jury is its prerogative to end in disagreement, thus constituting a hung jury. When the jury is deprived of this option, the defendant's Sixth Amendment right to a fair and impartial trial is perhaps more critical to society and the law than the verdicts reached at its conclusion. It is well settled that questions of law are left to the judge, while factual issues are to be resolved by the jury. The Denny case suggests a precedent whereby a judge is given license to intrude into the fact-finding process and alter it to accommodate the social climate, which in this case was the necessity to avoid a mistrial. Even on hearing of the final notice from the jury that they had resolved all but two of the 15 counts and were ready to return to the courtroom, Ouderkirk made a final appeal: "I'm not forcing you to do anything, but what I am going to do is order you back for further deliberations tomorrow in the hopes that while looking at things in the light of a new day and perhaps with a good night's rest . . . you'll be able to reach a verdict on one or both counts. Don't let your pride get in the way of anything."*  

SUSAN GAETANO and M.J. CHARBONNIER,  
third year day  

---
A judge is given license to intrude into the fact-finding process.

---

Was Justice Served?

On March 3, 1991, Rodney Glen King led police officers on a high speed chase that resulted in a chain of events that would never leave the city of Los Angeles the same again. After being pulled over, Mr. King was viciously beaten by officers of the Los Angeles Police Department. This beating was no different than those that occur frequently in the inner-city, except this time someone caught it on tape. The next day the country was stunned by the 81-second video. For some it was shocking because they didn't know that type of thing still happened in America. For others, it was nothing more than what they've already seen, but this time it was on television for the world to see. Many thought that the officers would be convicted, and why wouldn't they? The beating was on tape. Obviously, everyone overestimated the American legal justice system. The verdicts of the state trial shocked the country. Not guilty on all but one count (which resulted in a hung jury). No one thought that the officers would be set free with the video as evidence. It was clear, the video spoke for itself—at least that's what everyone thought, everyone except those 12 jurors from Simi Valley. Every one of those officers were free, taking no responsibility for their actions. Was justice served? After the verdicts, many questioned the legal system. Was the first trial nothing more than a front to passify an angry black community? Was the presence of an African-American district attorney a mere ploy to create a sense of security in the community that this case would be handled fairly because a black man was in charge? Was it fair to move the trial to a white suburb, where a large portion of its residents were retired police officers? The answers to these questions lie within the structure of our legal system.

The officers were again brought to trial in federal court. Those who previously praised the legal system in the state trial no longer believed the system was fair. The term "double jeopardy" began to be used by citizens who really had no idea of what it meant. The second trial was a federal civil case accusing the officers of violating Mr. King's civil rights. Citizens believed that bringing the officers to trial again was done only to keep peace in the "hood," not to assure that justice was served. The verdicts returned: two guilty, two not guilty. Again, was justice served? It all depends on who you ask. Some will say no, the officers should have never been taken to trial again. Others will answer yes, because any conviction is better than none. Then there are others who say no, because they believe that all of the officers should have been convicted. Which view do you agree with?
After the first verdict, the riots began. Southcentral Los Angeles was destroyed by arson, violence and looting. Why would police burn down their own neighborhoods? I guess poverty, oppression and hopelessness are hard to imagine if you've never experienced it. When police brutality is the norm in your neighborhood, and the one time it's captured on tape you still can't get justice, it becomes frustrating. When your community is saturated with businesses owned by people who were embraced by a country that shuns you, and your ancestors built that same country against their will, it becomes unbearable.

These are just a few of the many reasons why the riots occurred. But don't be fooled by the media, who would have you believe that African-Americans were the only perpetrators of this civil unrest. Reports show that in L.A. alone, of the 7,066 people arrested during the week following the verdict, 853 were White, 3,517 were Hispanic and 2,564 were Black. I'm quite sure you didn't see one White face on television (or in the newspaper) looting. In Hollywood, many so-called "middle class citizens" couldn't resist the temptation to loot—especially when they knew they would not be blamed for it. This was equal opportunity looting, and everyone took advantage of it. Everyone.

Then there was the gang truce. The Bloods and Crips decided to bury a rival that had lasted more than two decades. They must have realized who the real enemy was. The police began to squirm. Perhaps if gang-banging ceased, many members of the LAPD would become unemployed. The gangs are their livelihood. The police also realized that a community is much stronger when it's united than when it's divided.

During the riots, truck driver Reginald Denny suffered a savage beating at the hands of four Black males. This beating was an example of the blatant disregard for human life in this country. Ironically, this beating was also captured on videotape. From the start, the defendants in this trial were treated differently than the police officers. Their bail was set high enough to keep them in jail until trial. The African-American judge set to hear the case removed. During deliberations the problems with the jury sparked national attention. Were these men going to get away with this just to save the city from turmoil again? When the verdicts came in, the defendants received what some would call "a slap on the wrist." Was justice served or were the verdicts just another attempt to keep the peace?

To answer the questions above, no, justice was not served in either case. Mr. King and Mr. Denny were victims of the foundation of this country, racism and hate. Until we cure this social ill, justice cannot be served. Many focus on whether there was a violation of a civil right. The violation was not of a civil right but of a human right. No one, regardless of their race, should suffer the savage beatings that these two men did. While everyone is arguing over whether legal justice has been served, these two human beings' lives have been involuntarily altered forever. This is something that cannot be changed in the courts.

*Kimberly Pharr, third year day*

---

**Law Students Work For Social Change**

The 1980s are over. That was the resounding message sent by more than 500 law students eager to work for new national priorities of social change in the 1990s as they gathered in Washington, D.C.

Among them were eight Duquesne University law students who made the journey to participate in the Ninth Annual National Association for Public Interest Law Career Fair and Conference on Oct. 29-31 at George Washington University National Law Center.

The conference proved a great opportunity for Duquesne's Public Interest Law Association to learn about the field. The Law School's Career Services Office sponsored Duquesne's delegation and had extended the invitation to the rest of the student body as well.

The schedule of events included an afternoon of open interviewing conducted by more than 60 employers, a plenitude of panel discussions and workshops, two inspiring speeches and an impressive awards dinner.

Public interest law includes civil rights, consumer protection, environmental advocacy and preservation, government and corporate accountability and indigent defense. The National Association for Public Interest Law (NAPIL) was formed in 1986 to develop avenues and inspiration for students to devote their professional careers to equal justice and legal access for all. Students who have been a part of this coalition have succeeded in raising nearly $8 million for the creation of internships and fellowships.

A workshop on Loan Repayment Assistance Programs for students who choose to work in public interest law provided information on innovative structures and persuasive methods for gaining the approval and cooperation of law school administrators. Several panelists stressed the hard work involved in establishing loan assistance.

Some schools, such as New York University, distribute assistance directly through the general operating budget. Others create an endowment and distribute the interest. Students at the University of Iowa started their program through class gifts supplemented with fundraisers and appeals to alumni and to foundations.

The panel's moderator, Karen Comstock of Brooklyn Law School, underscored the need for such programs by noting that while the cost of living in the 1980s rose by 60 percent, law school tuition rose by an average of 200 percent.

The poverty law panel traced federally-funded legal services programs back to 1965 when the Johnson administration began to campaign for indigent defense as a part of the Great Society. Those efforts culminated in passage of the Legal Services Corporations Act in 1974. The Act provided grants to agencies involved in representing the poor. According to one speaker on the poverty law panel, the goals of public interest law are to provide indigent defense and otherwise act as a social agency as well as to promote equal justice.

Peggy Santos, a client of legal services as described in the Act, demonstrated gratitude for legal services available to her. When asked what clients such as herself expect from public interest lawyers, Ms. Santos replied, "Help us to help ourselves."

The criminal justice plenary session that followed addressed racial discrimination in sentencing, specifically with regard to the death penalty. Bryan Stevenson, executive director of the Alabama Capital Representation Resource Center, made an
impassioned and persuasive case that justice is not blind but is affected by race, ethnicity and socio-economic status. One astounding figure, Mr. Stevenson offered was that 87 percent of all death penalties issued between 1930-68 were to black males who raped white females.

According to Mr. Stevenson, Alabama does not have state-funded public defender offices; consequently, indigent defendants receive court-appointed counsel. A maximum fee of $1,000 is paid to the counsel. This, added Mr. Stevenson, means very little effort is expended for an accused's defense.

Mr. Stevenson also noted his anguish in 1987 as he first read McClesky v. Kemp, which reopened the door to execution. The 5-4 majority found that a certain amount of racial bias in the imposition of the death penalty is inevitable. Mr. Stevenson rejects that claim and argues that those who believe in a brighter future for justice must not tolerate hopelessness in children, nor a resignation to the McClesky ruling by lawyers. He is motivated by the stamina and conviction of an old woman who, during the eighth month of the year-long Montgomery bus boycott, stated: "[m]y feet are tired but my soul is rested."

In the corporate accountability panel, speakers emphasized the need for corporate crime to be viewed as the same kind of menace to society as street crime. In fact, Russell Mokhiber of the Corporate Crime Reporter made the case that corporate crime is more devastating to our nation than crime in the streets. Mr. Mokhiber cited FBI statistics reporting $3.4 billion in losses from burglaries in 1989. Mr. Mokhiber then noted that many financial analysts have placed the price tag of the savings & loan scandal above $300 billion.

Pamela Gilbert of the Public Citizen's Congress Watch said prosecutors don't pursue vigorously corporate crime, and large corporations have been using the media to swing public opinion against lawyers and litigation. If corporations can succeed in neutralizing lawyers, Ms. Gilbert said, there will be no one to call corporations to account for their wrongdoing through the citizen suit provisions present in many federal statutes.

In addition, Ms. Gilbert claimed, large campaign contributions by corporations have elicited calls in Congress for jury award caps and limitation on joint and several liability. The advertising and marketing efforts of many corporations have been effective, Ms. Gilbert said, as evidenced by a recent decrease in the size of the awards given by juries as well as a decrease in the percentage of convictions in corporate crime cases.

David Stern, a NAPIL director and experienced litigator in this field, stated that this kind of lawyering is very taxing on an individual. Despite the many sacrifices required, Mr. Stern feels the effort is all worthwhile because with persistence most of the cases can be won. Mr. Stern claims to have won 85 percent.

Following the workshops, a number of students were recognized for great achievements in their organizations and communities at the awards dinner. Peter Edelman and Marian Wright Edelman received the NAPIL Outstanding Public Interest Advocate of the Year Award.

On a side note, the Duquesne table had a brush with jurisprudential greatness when Justice Ruth Bader Ginsburg passed by at the dinner's end.

The NAPIL conference's organizers saved the best for last. On Sunday morning at 9:30 we were back in our seats at George Washington University's National Law Center for the closing address by Attorney General Janet Reno.

 Casting today's challenges as the greatest lawyers have faced since the birth of the nation, Attorney General Reno called upon the bar to "reweave a fabric of society" by helping shift our approach from crisis-response to one of prevention. Ms. Reno criticized the tendency to build more prisons rather than investing in children's programs to keep disadvantaged youth from becoming criminals. Similarly, according to Attorney General Reno, reallocation of some funds from interdiction to drug treatment is necessary.

The spread of poverty concerns the attorney general as well. "The gap between have-haves and have-nots in this society has increased dramatically in the last 20 years," she said. Eighty percent of the poor and working poor have no access to legal services, and Ms. Reno advocates simplifying the law so that people can defend themselves in some areas.

Ms. Reno also suggested the need for a new four-year undergraduate degree such as community advocacy. Such a program would produce well-trained individuals who would handle landlord and tenant, medicare, Social Security, Aid to Families With Dependent Children and other problems the disenfranchised confront.

Following her speech, Ms. Reno fielded questions about Haitian refugees' due process, gun control, mandatory minimum sentencing for minor drug offenses, corporate crime and other issues.

The Public Interest Law Association extends its gratitude to Dean John T. Rago and Dean Nicholas P. Cafardi for making the inspirational trip possible.

MICHAEL FIORENTINO, third year day

References

Duquesne students at NAPIL Conference in D.C. From top left: Alan Hader, Paul Oven, Bill Witte, Brian McShea, Lexi Fulton, and Erin Larabee. Not pictured: Renee Eisenberg and Michael Fiorentino.
CARDOZO: Common law judge in New York whose career peaked in the 1920s. He single-handedly spit in the face of stare decisis; finding tort liability everywhere when the ancient rules found none. He is revered by legal scholars, law professors, and personal injury lawyers; some of whom have little statues of him in their front lawns. He is dead now.

CASE: An actual dispute carried to litigation. For law school purposes, it is taken to an appellate court, reported, then selected by law professors to appear in casebooks. For a case to make it into a casebook, it must meet the following requirements: It must (a) be old law; (b) be written unintelligibly; (c) be at least thirty pages brief; and (d) lend itself to obfuscatory editing by aforementioned professors.

CLINTON'S HEALTH CARE PROPOSAL: Aren't you lucky to be starting your legal career just as two lawyers finish their "redesign" of the nation's health care system?

CONTRACT: The agreement between two innocent parties after a lawyer is involved.

JAMES M. RARICK, third year evening

Top Ten Reasons I'm Glad I Passed the Bar Exam

10 Dr. Kevorkian doesn't take VISA.

9 It'd be a shame to've wasted that "B" I worked so hard for in U.C.C.

8 I really enjoy being lumped in the same group with Patrick Henry, Dan'l Webster, and Professor Streib.

7 Girlfriend has replaced salutation "Hey, Bonehead!" with "Hey, Bonehead, Esquire, Sir!"

6 Word is that next year you won't be able to use your blue book to play "Hangman" with the guy next to you, as the Examiners are actually going to read the essays.

5 Already spent the five bucks Grandma sent for Graduation.

4 My LSAT scores were too low to get me into culinary school.

3 I heard tell that Prof. Murphy will be teaching BAR/BRI next year.

2 Only alternative employment law school prepared me for would be a starring role in "Beavis & Butthead--The Movie."

AND 1... I just can't wait to get you the money YOU DESERVE!

MORE BAD NEWS for people who believe that a positive attitude and sober effort are required to get ahead in the world: Everyone who contributed to the Tortfeasor graduated in '92 and '93, all passed the Bar Exam and all are now "lawfully" employed. Now, ain't you glad you made Law Review?

Alumnus '93
When asked for advice about growing older, baseball great Satchel Page told a reporter, "Don't look back. Something might be gaining on you." Certainly, growing older has never been easy, but as the number of senior citizens has increased, there has been a growing need for reforms that remove some of the legal pitfalls of aging. Responding to pressure from various senior citizens organizations, Florida, Indiana, Michigan, North Dakota, Ohio, Oklahoma, Washington and New York have passed major reforms of their guardianship laws. Sen. John Glenn, in 1989, introduced legislation that would have required that states enact guardianship laws containing broad reforms to continue to qualify for certain federal benefits for the aging. The Pennsylvania legislature, responding to the reform movement, passed significant changes, known collectively as Act 24, to its guardianship law during the 1992 legislative session.

Fortunately for older Pennsylvanians, Act 24's reforms were geared toward helping the elderly retain as much independence as practical. Act 24 altered the measure by which an adult person is deemed to need a legal guardian from an "incompetency" standard to an "incapacity" standard. While this distinction appears to be merely one of semantics, in reality it minimizes the legal rigidity associated with having a guardian appointed for an older person.

The 1974 reforms of Pennsylvania guardianship law defined an incompetent person as one who was no longer able to conserve and manage his or her property, or one who lacks the capacity to make responsible decisions concerning his or her own physical well-being. The 1992 reforms sought to make this standard more flexible; an incapacitated person is now defined as an adult whose ability to conserve and manage his or her property, or who lacks the capacity to make responsible decisions concerning his or her own physical well-being, has diminished. The new standard is an attempt to recognize the unique needs and differing abilities of the aging. Those who can no longer make sound financial decisions may remain perfectly capable of making health and safety decisions and vice versa.

Section 5511(e), as amended by Act 24, requires that guardianship petitions contain more information regarding the alleged incapacitated person's specific limitations. A guardian, if appointed, would assume the legal decision-making power only in those areas in which the individual is impaired. Courts will no longer simply choose between declaring a person competent or incompetent; the judge will now have the option of choosing either a limited or a plenary guardianship over an individual's person, estate or both. In effect, the legislature has created four categories of guardianship where only one existed before.

These changes are advantageous to Pennsylvania's aged for two reasons. First, the stigma of incompetency has been eliminated. Except in a few extreme cases of total disability, an incapacitated individual will retain all of his or her customary legal rights. Only those rights that directly relate to the person's specific limitations will be affected. Thus, the elderly are not deprived of decision-making power in other areas of their lives. These individuals will no longer bear the social burden of being declared incompetent. Limited only by their incapacity as to certain matters, they remain masters of their own affairs. Second, the new law transforms the guardian from someone with powerful legal rights over another to one who merely provides a helping hand for those whose abilities have diminished. Because the statute requires courts to grant limited guardianships whenever possible, a less apprehensive attitude toward guardianship is fostered in the elderly.

Just as the legal standards of guardianship have changed in Pennsylvania to benefit the elderly, so too have the notice requirements. Under the old Act, notice could be served upon an alleged incompetent in any "such manner as the Court shall direct." Act 24 now demands that notices be served personally upon alleged incapacitated individuals in large type and simple language. The new law also requires the serving officer to address the purpose and seriousness of the proceeding, as well as to describe the legal rights that may be lost if the alleged incapacitated person chooses not to defend the action. The server must explain the process to the maximum extent possible.

The new law also protects the rights of the elderly by placing a significant burden upon the petitioner in a guardianship proceeding. The petitioner now must notify the court seven days before the hearing as to whether counsel has been retained by the alleged incapacitated person. Act 24 further requires the court to appoint counsel for the respondent "in appropriate cases." It remains to be determined what circumstances will trigger such an action.

Further, Act 24 has eliminated the perceived permanency of a guardianship placed upon an individual. After its initial determination of incapacity, Section 5512.2 requires the court to conduct a review hearing if the incapacitated person, guardian or any interested party petitions the court for such a hearing. In addition, courts are no longer permitted to raise the presumption of incapacity from evidence of a person's institutionalization. Rather the court is required to order an independent evaluation of the alleged incapacitated person. This is a departure from the common practice of permitting the petitioner's physician to conduct the evaluation.

No act of the legislature can ever eliminate all the legal dangers associated with growing older. By enacting Act 24, however, Pennsylvania has taken a significant step toward allaying some of the fears of older citizens regarding their legal right to make fundamental decisions concerning their property, health and continued well-being.

GERALD W. YANITY, second year day

References
9. Id.
C Cream 100 percent cotton crew-neck sweater with embroidered logo on left chest. Middle weight with lower body popcorn stitched Embroidery Colors: Red or Blue.

G Color block golf shirt with embroidered logo on left chest. Colors: Hunter green body, navy collar, burgundy placket & embroidery or fuschia body, jade collar, royal placket & embroidery.

H White baseball hat adjustable with two color embroidered logo.
A Heavy gray cotton sweatshirt with two color embroidered logo on left chest

B 50/50 Sweatshirt with white silkscreened logo on center chest
Colors: Red or Blue

D White 100 percent cotton crewneck sweater with embroidered logo on left chest. Light weight plain stitched
Embroidery colors: Red or Blue

E Adult roll-up T-shirt with silkscreen logo
on left chest
Light gray body with matching trim, roll-up and silkscreen
Trim colors: Red or Blue

F Youth roll-up T-shirt with silkscreen logo
on left chest
Light gray body with matching trim, roll-up and silkscreen
Trim colors: Red or Blue

Juris Threads
Order Now!

Juris Threads

DUQUESNE UNIVERSITY/JURIS

Mail Order to
JURIS SWEATSHIRTS
Duquesne University
The Law School
900 Locust Street
Pittsburgh, PA 15282

Make Check Payable to
DUQUESNE UNIVERSITY/JURIS

Order Deadline: March 11, 1994 (Please allow 8-10 weeks for delivery)
If you need quality legal work done on a piecemeal basis, students at Duquesne University School of Law will help you:

- research legal issues
- write briefs
- draft memoranda, complaints or interrogatories
- file court documents
- perform any task you may need done on short notice

Hourly rate is negotiable between yourself and student.

Sponsored by The Student Bar Association

Contact: ALICE STEWART — 396-6299