



THE COMMENTATOR

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The Student Newspaper of the New York University School of Law

January 31, 2008

New Registration Bidding System Causes Turmoil

By MADELINE ZAMOYSKI '08

The rolling out of a brand new registration system for NYU Law has been accompanied by little fanfare and met with perhaps even less resistance. Last year the 2L class raised a veritable ruckus upon hearing the news that a new “Dutch auction” system would replace the old and familiar lottery system – enough of a ruckus to convince the administration to postpone implementing the system. But this year, the administration held a Town Hall Meeting on January 17 to discuss the system and fewer than 15 people attended. Although informational meetings discussing the mechanics of the system the following week were better attended, much of the student body still seems to be in the dark about its operational specifics.

We all know the steps to the old system: Select subgroup of law, search for course times, professors and numbers. Rinse. Repeat, until you have a potential schedule. Type in your preferences and enjoy your 3L (or LLM) status or curse your 2L status. Await lottery results and prepare yourself for the longing pleas that will litter Coase’s List come Add/Drop. Repeat for next semester.

The new system shakes things up a bit: Search for courses using a new, nifty system. These search results can include the entire list of classes offered for the year. Scanning through the list, students can then select classes

they are interested in and “bookmark” them. This action creates a separate page of “bookmarked” classes – your potential schedule. One major change here: students will register for fall and spring at the same time.

Now, here’s where things get a little tricky and the numbers come in. Each student has an allocated number of points for the year. 2Ls and part-timers get 1000, while 3Ls get 1250 and LLMs cap out at 1500. As students admire their bookmarked potential schedule for the year, they are asked to place a numeric value on their desire to be enrolled in a given class. Students cannot bid the same amount for two different courses, the theory being that there must be an incremental difference in preference that should be expressed. After the student does some soul searching and number crunching, she’ll fill in the boxes with the points she has. Round 1 bids are tabulated and the results are posted.

If you get into a class that doesn’t close, you are charged nothing and you get all of your points back. If you get into a class that does close, you are not charged your bid price, but rather the “clearing price,” the highest bid made by someone who *did not* get into the class. The difference in points returns to you. And, as so many of us have experienced, if you don’t get into the class at all, you are charged nothing. But, you

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NYU Purchases \$5.2m Apartment to Entice Ex-Columbia Professor



A foundation associated with New York University has purchased a \$5.2 million dollar apartment at 455 Central Park West, located in the midst of Columbia territory at West 106th Street. The apartment was reportedly purchased for use by Professor Catherine Sharkey, newly recruited from Columbia Law School.

PILC Auction on the Horizon

By JOHN LEO '10

The 14th Annual Public Service Auction – the social and philanthropic event of the law school year – is fast approaching. Under the direction of Lars Johnson '09 and Carly Leinheiser '09, the Public Service Auction Committee is entering the final weeks of preparation for this year’s event. This year’s auction will be held at 6 p.m. on Thursday, February 28 in Vanderbilt Hall and will be conducted by both students and professors.

In the fall, students traveled throughout New York City soliciting donations of auction items from area businesses. They brought in a number of exciting items, including gift certificates to a broad range of area restaurants, free theater admission and an exclusive, locally grown tasting menu for two.

At the same time, the Alumni Committee was contacting graduates of the law school to request further donations and financial support. They have already received a number of incredible items: NASCAR tickets, an official FDNY leather helmet, and tickets to *The Daily Show with John Stewart*. Meanwhile, the Corporate Donations and Law Firms Committee has brought in major sponsors, including Bar/Bri and the law firms of Chadbourne & Parke, Clifford Chance, Davis Polk, Kramer Levin, Paul Weiss and Skadden Arps.

Exciting donations from the NYU Law community are continually rolling in and are still being accepted. NYU’s own students have offered a cornucopia of baked goods, language lessons, private cooking instruction, private LSAT tutoring for aspiring law students, and the “worst date ever” with Section 3’s Brian Abrams. Those attending the auction will also have the opportunity to bid on items donated by our esteemed faculty such as dinner with NYPD Com-

missioner Raymond Kelly, brunch with Dean Revesz and Professor Been at their home and a weekend at a Connecticut farm.

Items suitable for all price ranges will be available at the auction. The event features both a silent auction in Greenburg Lounge and a live auction across the hall in Tishman Auditorium. Student tickets are \$5 and regular admission is \$15. Ticket sales begin in mid-February and will take place in Golding Lounge.

The 14th Annual Public Service Auction is the largest student-run event at the Law School. Proceeds from the auction support NYU’s commitment to guarantee summer funding for public interest work. Students who participate in the funding program will receive \$4,500 financial support that enables them to engage in public interest work throughout the world. Through the generous contributions of local and national businesses, law firms, alumni and other members of the NYU community, over \$170,000 was raised during last year’s auction. This year the Auction Committee hopes to top that achievement, setting a goal of \$200,000. The committee believes that the funds raised through this event create benefits exponentially greater than their numerical value; the work done by NYU Law students really does make a difference in the world.

Bodies Unearthed in Washington Square Park



Andrew Gehring

Human remains have been discovered buried in Washington Square Park during ongoing renovations. Mostly intact skeletons from at least four individuals were found while tests for possible placement of utility lines were being conducted. While the bodies could be mob- or gang-related, experts indicate that the more likely explanation is that the area was a potter’s field in the early part of the nineteenth century.

Infra

Have no opinion on the new registration system? We’ve got one for you. **page 2**

The writers’ strike hasn’t stopped our writers from writing about it. Is that meta? **page 3**

Tarek's Fudge's Corner

BY FUDGE LEVAVI '08

Hey, folks. El Presidente Tarek Khanachet has, in his infinite wisdom and magnificence, requested that I draft this week's Student Bar Association (SBA) message to you, loyal and hardworking student body. As such, the SBA has passed a resolution (note: not a real resolution) naming me the new SBA Minister of Information. I'm kinda like a less slick Ari Fleischer, a less sweaty Scott McKlellan, or a less shady Tony Snow.

But enough about me. The SBA is currently working with the administration to hammer out any student concerns with the new registration system. As I understand it, the new system will be very much like a fantasy football league draft, with Arthur Miller having a great QB rating and Helen Scott rushing for over 1200 yards last season. If you have any questions or concerns regarding the administration's new registration system, or about how QB ratings are calculated, please contact your SBA representative.

Additionally, the SBA is working on increasing the available study space on campus during weekends. However, we highly encourage students not to come to campus on weekends. It's bad for the soul.

Instead, why don't you come to our weekly SBA parties? This past Thursday evening, the SBA was proud to assist the Alternative Spring Break program with their Mardi Gras celebration. Together, we helped raise over \$3 billion (estimated figure) for spring break trips focusing on placing students in week-long public interest internships over their spring break vacations. We also discovered that my sister is awesome at flip-cup.

Our SBA social chairs have been working diligently so that you don't have to, trying to find fun venues and interesting ways for the student body to bond. If you have any suggestions for Thursday night events, contact Amy Willey or Kelly Giddens. They especially like to be contacted via phone calls between 3:00 and 6:00 in the morning, Monday through Friday.

As always, we encourage students to take an active role in their educational experience. Come up with a good idea for a party, create a new student group, attend a Dean's Town Hall meeting to engage the administration in constructive dialogue, or just send a Coase's email expressing your undying admiration and respect for your SBA. See ya next time.

The New Registration System: Stop Complaining, It's Not That Bad

BY ANDREW GEHRING '09

Recent weeks have found the 2Ls griping about more than grades that have yet to be turned in and the distress of no longer being able to attend free firm-sponsored lunches: the revamped registration system is supposed to put my class at a severe – and unwarranted – disadvantage in obtaining the courses we want. Having previously indicted the current registration system (the “lottery” system), I feel somewhat beholden to defend the new one (the “bidding” system).

The main complaint with regard to the bidding system appears to be that rising 3Ls are no longer given priority in choosing classes. Rather than letting the 3Ls establish their schedules in their entirety before the 2Ls even begin to pick classes, as was the case with the lottery system, everyone goes through the process simultaneously. The determination of who gets into what class doesn't occur by class year; the comparison of bids runs in parallel for all years. (Under the bidding system, a student will allocate a certain number of points from her limited pool of points to a class she wants to take – her “bid.” The students that bid the highest – regardless of class year – are allowed into the course until capacity has been reached.) The result is that for any given class, 2Ls have a better chance of getting into it than they would have under the lottery system. Currently, classes could – and often would – fill entirely before 2Ls had a chance to get into them. The bidding system avoids that difficulty, which is a clear boon for the 2Ls, but – as with most things in life – a benefit for one typically comes with a detriment to another. That is, the easier it becomes for 2Ls to

get into popular classes, it becomes correspondingly more difficult (or perhaps less easy) for 3Ls to get into them.

I'll take it for granted that most of this opinion's readers come equipped with an economics-in-the-law perspective nearly hardwired at this point, so the benefits of the bidding system should be obvious. Market systems as a general rule efficiently allocate scarce resources to their highest valued uses. In the case of the bidding system, the result should be that students that value a particular class relatively more highly get to take that class, while students that value it relatively less don't. In short, we're looking at a paradigm of market efficiency. Short of allowing students to actually buy and sell classes amongst themselves, the basic premise of the system is probably the best we're going to be able to do if we're trying to achieve maximum valuation of classes. (I could talk about Pareto efficiency here, but if you know what that is, I don't need to explain it, and if you don't know what it is, you probably don't care.)

The first thing to recognize, then, is that bidding system naysayers are (as a general rule; I don't want to make any categorical statements here) valuing their self-interest over the long-term benefit to be garnered by the law school community. I make no normative claim here; perhaps we should prize our own interests over those of as-of-yet unknown third-parties. But it seems like the mentality that propels environmental awareness – sacrifice now for a better tomorrow – should quell the complaints of at least some.

The second thing to consider is that, because of the way the bidding system is currently structured, 3Ls should still get their pick of course selections more often than 2Ls. Certainly it won't be the case that no 2L ever prevents a 3L from getting

into a seminar, but consider the following scenario: a 3L and a 2L each desire to take the same four classes, and each values the classes the same as the other. So if the 3L would be willing to allocate 50% of her points to class A, the 2L would be willing to make the same distribution to that class. While each student weights the classes the same, they assign different point values to them; 3Ls get more points than 2Ls. So the 3L would be 625 points toward class A, while the 2L would only give it 500. Because 3Ls are given this absolute point advantage over 2Ls, our hypothetical 3L's class selections will dominate the hypothetical 2L's. There will be no class that the 2L gets into that the 3L doesn't also get into, and there might be some classes that the 3L gets into that the 2L doesn't. Seems to me the 3Ls still have an advantage.

Are 2Ls at less of a disadvantage under the bidding system than they were under the lottery system? Yes. Are there still problems to be worked out of the new system? Yes. Is the bidding system perfect? No. (Lord, no. Can we please discuss this whole idea of choosing fall and spring classes simultaneously? Ridiculous. Doesn't almost everyone make their spring class choices contingent upon what they get into in the fall semester? I certainly don't want to waste a round of bidding getting into Advanced Trademarks or something in the spring semester, only to discover that I failed to get into regular Trademarks in the fall. But that's another article.) But is the relatively minor detriment experienced by the rising 3Ls offset by the significant gain to future law students? I, for one, say yes.

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The Fundamentals of the Writers' Strike: More Than Meets the Eye



The Writers Guild of America has been on strike and picketing studios like Paramount Pictures since November 5, 2007.

By STEPHEN ILG '10

I was recently asked, "How do you think the writer's strike should turn out?" and I gave the response that is now ingrained after only one semester of law school: "It depends on which side I'm representing." However, after learning more about developments in the negotiations between the Writers Guild of America (WGA) and the Alliance of Motion Picture and Television Producers (AMPTP), my answer has certainly changed.

WGA is actually comprised of two labor unions: Writers Guild of America, West and Writers Guild of America, East. AMPTP is a trade organization representing the interests of hundreds of film and television producers. While there are three main issues halting agreement – DVD residuals, new media residuals and jurisdiction over reality and animated show writers – Craig Mazin of *Scary Movie 3* commented that new media residuals is the "one issue" that matters. "Residuals" refers to shares of gross revenues made off of TV and movie airings after their initial release. "New media" includes forms of distribution such as internet purchases through, for example, iTunes and Amazon Unbox, and also streamed content on NBC.com, CBS.com, etc. Because emerging digital technologies have become more and more pervasive in recent years, new media's importance has grown exponentially. Currently, writers' income from new media is based off of a formula determined for home video residuals in the late eighties when consumers had a choice between VHS, Betamax and Laserdisc.

The last writers' strike in 1988 was over the home video market. It lasted 21 weeks and cost what would be \$870 million today. According to the *Los Angeles Times* article "Guild votes overwhelmingly to authorize a strike," entertainment companies in the late eighties argued that the home video market was "unproven" in order to drive down the agreed percentage for home video residuals. The final agreement left writers with

0.3% of reportable gross income for the first million dollars and 0.36% thereafter. When DVDs appeared in 1997, the same formula was applied and the entertainment companies now seek to apply that formula to new media.

WGA had been fighting to include writers for animated programs and reality shows to their ranks but the issue was recently dropped. Luckily, it was disputed long enough to highlight one of the more comedic paradoxes in this dispute: writers for reality shows. Many of us love-hate the reality show boom but nearly all of us love to hate at least some aspects. For me, it's the fact that some people believe that the *Real World* is just that, real. Thanks to this strike, insiders have once and for all ended the debate between die-hard reality show junkies and the rest of us. If you're reading this article, Jenna, you can stop writing hate-mail to Stephen of Seattle's *Real World* and forward it to the writers who thought it would boost ratings.

Writers for animated programs are usually under another union's jurisdiction, the International Alliance of Theatrical Stage Employees, a.k.a. The Animation Guild, which traces back to Walt Disney and his method of writing by storyboard artists through storyboards. More recently, animated pictures have been written by screenwriters and then storyboarded by artists. WGA seeks jurisdiction over all animation in TV and film unless already covered by another union.

DVD residuals is also contested which is not surprising since revenue from DVDs often far exceeds that from the box office. *New York Times* reported that entertainment companies made \$4.8 billion in home video sales versus only \$1.78 billion at the box office during 2004's first quarter. According to preliminary analyses from Forbes.com, DVD sales have increased every year until 2007. The DVD format debuted in 1997 and registered double digit growth every year for about a decade. A market that the entertainment industry termed "unproven" has become more and more important – that is, profitable – every year

for a decade. Only now has the industry seen a drop in consumer spending on DVDs and only at a time when another format for viewing has appeared: so-called new media.

The negotiations between WGA and AMPTP have been so dramatic they could be a reality show of their own, but would WGA have rights to the contracts? AMPTP has walked out on talks multiple times. Both sides initially blamed the other for the soured negotiations. WGA began negotiating with individual production companies and has since reached a formal agreement with some, including Lions Gate, Spyglass Entertainment, United Artists and The Weinstein Company, among others. The parties re-entered negotiations again on January 19th but are refusing to release any information of further progress. Some say the end is within sight. Given the dramatic loss of revenue, I expect that will prove true. According to an *NBC Nightly News* report in mid-January, the strike had already cost the industry \$1 billion.

WGA seeks a doubling of the percentage received for DVD residuals (0.6% instead of 0.3%) and 2.5% of gross for new media residuals. The entertainment companies have refused both requests and maintain that the 0.3% formula should also apply to new media. In an attempt to avert a strike, WGA was willing to drop the DVD residuals issue from the negotiating table. While DVD sales have dropped, they are still enormous (\$15.7 billion in 2007 according to Forbes.com). The fact that WGA would surrender the fight over DVD income evinces the importance of new media.

NYU's Intellectual Property and Entertainment Law Society (IPELS) recently brought NYU alumnus Kevin Morris, an entertainment lawyer, back to campus. He negotiated a new media contract for the creators of *South Park*, Matt Stone and Trey Parker. They received a 50% stake in new media which is estimated to be worth \$75 million. Given the undeni

See **STRIKE** page 4

Who Cares Who Named the Knife?

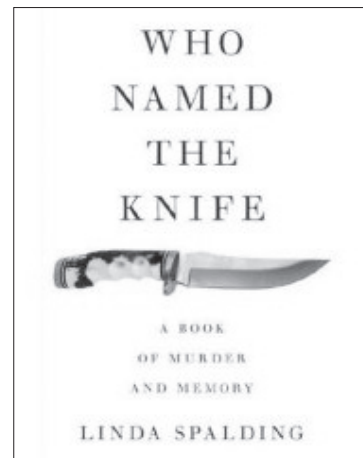
By DEREK TOKAZ '08

Who Named the Knife by Linda Spalding (McClelland & Stewart 2006) left me thoroughly disappointed. When you put "knife" in the title and "murder" in the tagline ("A book of murder and memory"), you should probably include somewhere in the book a little bit of excitement. But not with this book. Sorry. Honestly, the most thrilling part of reading *Who Named the Knife* was remembering that I still had to do my Wills, Trusts and Estates reading, which has far more interesting stories of murder. I'm exaggerating of course. The stories from the Trusts and Estates case law are only slightly more interesting.

Without spoiling anything, here's what the book is about: there's this woman on trial for murder, her husband (and accomplice) is testifying against her, and there's this other woman who's an alternate juror and long after the trial is over she starts up a friendship with the first woman, and they talk about being (and not being) a Mormon and filing a *habeas* petition.

And also, it's a true story. Somehow, that didn't make it any more interesting. Perhaps this is because Spalding makes herself the protagonist. When the options for a main character are a woman accused of murder and (allegedly) wrongfully imprisoned, or an alternate juror who doesn't really play any interesting role in either the murder or the trial, you should probably go with the murder suspect. This would have been tough for Spalding though, since she is actually a player in the real life story. But that's why there's that whole fiction genre to play around with.

What left me most disappointed is that there wasn't



really anything horrible about the book to rail against so that I could at least have a bit of fun in reviewing it. It's not like the book had *The Devil Wears Prada*'s annoying parenthetical exclamations or *Jane Eyre*'s conversation about whether the girls should be allowed butter because it was awfully cold this morning (or was it cheese!). *Who Named the Knife* was just forgettable, especially if you compare it to the many quality stories along the same lines.

If you want a story about murder and memory, I'd suggest *The Lovely Bones* by Alice Sebold. If you want a story about a real life murder and the things that can really go wrong sending an innocent person to prison, read *The Innocent Man* by John Grisham or *The Dreams of Ada* by Robert Mayer (both tell the same true story, but they focus on different defendants). Or if you want a story that's related to law just enough that you can justify to yourself reading it instead of whatever's on the syllabus for [pick your most boring class] go with *To Kill a Mockingbird* by Harper Lee or *Rita Hayworth and the Shawshank Redemption* by Stephen King (published in *Different Seasons*).

There might be some people who will really love *Who Named the Knife*, but with so many other great books out there, I wouldn't recommend finding out if you're one of them.

ARTHUR GARFIELD HAYS FELLOWSHIPS

Second year students with demonstrated commitment to work in civil liberties and civil rights and strong skills are invited to apply for 2008-2009 Fellowships in the Arthur Garfield Hays Program. Materials describing the Program and the selection process are available in VH room 308. **APPLICATIONS ARE DUE BY NOON ON WEDNESDAY, FEBRUARY 6 IN VH ROOM 308.**

Norman Dorsen
Sylvia A. Law
Helen Hershkoff

BIDDING: Class Selection System Trusts in Invisible Hand of Market

Continued from page 1

But, you have incurred an opportunity cost since it is expected that most of the high-demand classes will either be closed or cost more points in Rounds 2 and 3 of bidding.

While many consider the impetus for rethinking the registration system to have been students' desire for class waitlists, the bidding system hasn't incorporated them. Instead, the current plan includes dynamic "weight lists" (despite the differences in the two structures, the administration is calling what will be implemented "waitlists"). After bidding Rounds 1, 2, and 3 have finished, the add/drop period begins. But this isn't the Add/Drop the upperclassmen are familiar with, with manic refreshing and 4 a.m. course swapping. Instead, bidding continues on a daily cycle and students can bid on courses that are closed. If someone happens to drop the course, the student with the highest bid on that day will be awarded a spot in the course. Students don't have any idea where they stand on the weight list, as they cannot see what other people are bidding. Moreover, they can't turn to Coase's for help because it's unclear how trading classes could be accomplished.

A major student concern is that this system still only exists in theory. Students using the system in its inaugural years will have no market data on how many points actually translate to a viable preference. Will clearing prices increase across the board in Round 2? Will a class close in Round 1 but end up being open after Round 3? Will scheduling for the entire year at one time effect overall preferences negatively, positively, or at all? How much should you bid for

a class that you're only somewhat interested in, but that you know is otherwise in high demand? Is it better to focus your bidding in Round 1 or conserve your points for the potentially more demanding weight lists? The fear that has surrounded this system is mostly one of the unknown. The unavailability of information will prevent students, at least initially, from maximizing what they can get out of the system. Academic Services will be keeping track of the market data in the upcoming years, but the transitioning students of the next few years are the ones that will have to wade through it to find the equilibrium.

The new registration system will require a lot of calculation, consideration and attention, especially for those students cutting their teeth on it in the first few years. But eventually, the bidding system will pay off. Once students have expressed a consensus on what, for example, Art Law with Amy Adler is worth to them over the various bidding rounds and the daily fluctuations in the weight list during Add/Drop, students will have the information they need to make scheduling a fairly predictable process that may actually reflect preferences.

Within all of the complexity of the new registration system are a number of features that take student requirements into account. If you have blocks on your registration (e.g. unpaid tuition, etc.), you will actually be blocked from registering. If you need to fulfill your writing requirement, you can click a box that will give you super-preference for one class that offers the writing credit. 2Ls who click the box may get into a seminar even if a 3L bid more, if the 3L has already fulfilled the requirement. The handful of 2Ls

who attended the Town Hall meeting seemed to recognize what this meant, namely that they could be just as easily denied interesting seminars next year as they were this year. Suggestions of reserving some spaces for 3Ls and 2Ls in each seminar may be incorporated into the registration plan.

One of the most intriguing things about the system is the response it has generated from various 1Ls and 2Ls. Many 2Ls have expressed concern over the loss of their seniority preference. One student of the class of '09 stated, "I've never heard of a school that doesn't permit students to register by seniority." Other 2Ls have protested the allotment of only 250 bidding points to replace such seniority. One 2L suggested giving 3Ls a larger point bonus that would be scaled down over time, so that the transition from outright seniority to slight advantage wouldn't be so abrupt.

When asked for comment, one 1L took a strong stance in support of the system, chastising rising 3Ls who are opposed to the system just because their lottery seniority will be replaced with 250 points. This particular 1L is completely on board with the new system and believes it will be a far better system for all students who attend the law school in the long run. He provides a stunning contrast to the candid response given by another 1L: "I would be happy to comment. The system doesn't make any sense. If it goes into effect, I will seriously consider transferring."

STRIKE: Tiny Percentages Obscure Real Issues at Stake

Continued from page 3

able importance of new media forms, one has to wonder how negotiators for the entertainment industry can use the same "not-yet-proven" argument for new media as they used for DVD sales back in 1988 and keep a straight face.

"How should the writer's strike turn out?" is indeed a difficult question, and like most difficult queries it must be broken down into more manageable questions. Many of these questions could not possibly be answered without vast knowledge of the industry. Before you scoff at the tiny percentage

received by writers, you must remember that it's a percentage of gross revenue and not of profit. I wouldn't speculate on the appropriateness of the figure without knowing more about costs borne by the industry. But determining what proportion of revenue writers deserve for new media and for DVD sales today, based on a formula agreed on when people were buying (or at least could have bought) Laserdiscs and Beta seems completely anachronistic. Then again, I was sure that Transformers, Flava Flav, American Gladiators and Scott Baio were too, so I could be wrong.

Each semester the Office for Student Affairs organizes community service projects. We invite you to make time for one or more of the projects listed below this spring semester. (Please send an e-mail to Jennie.Dorn@nyu.edu to sign up for any of these projects.)

MAKE A HEART: Thursday, February 14 from Noon to 2:00 What better way to spend a few hours on St. Valentine's Day than to gather in the Faculty Club within D'Agostino Hall to make soft cloth hearts that will then be given to people in hospitals with heart conditions. These soft hearts seem to comfort the people who receive them. We will supply the materials and instructions and a light lunch.

RIVINGTON HOUSE: Dates and times are flexible Spend time with residents of Rivington House on the Lower Eastside of Manhattan talking, listening, and reading. Engage in one-on-one activities, including letter writing and playing cards and other games. Rivington House is a 206-bed AIDS-specific residential and day treatment facility.

Jennie Dorn, Associate Director for Student Affairs

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The Annual Public Service Auction is looking for donations of items and services – particularly silent auction items donated by law school students or their family and friends. We have already received some great student donations, including language, dance and cooking lessons, private LSAT tutorials for an aspiring law student, baked goods, special dinners, an evening out with a law student, and handmade soaps from Nepal. Particularly creative items or services are especially welcome. Your donation can make a vital contribution to the Public Service Auction.

To make a donation please contact:
Suzanna Publicker at shp292@nyu.edu or
Anna Purinton at anna.purinton@nyu.edu

The Annual Public Service Auction will be held at 6 p.m. on Thursday, February 28th in Vanderbilt Hall.



Visit our website at www.law.nyu.edu/studentorgs/psa for a list of exciting items to bid on!