

# The Justinian

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## The Justinian

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# Justinian

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Page One

"The only security of all is a free press. The force of public opinion cannot be resisted, when permitted freely to be expressed. The agitation it produces must be submitted to. It is necessary to keep the waters pure."

THOMAS JEFFERSON, 1823

## Professor Fired from BLS; Trustees Change Rules

On September 17, 1975, Professor William Shakespeare Herrmann was fired from Brooklyn Law School. The *Justinian* will attempt to summarize the highlights of a long period of conflict between Prof. Herrmann and other members of the BLS community.

In a two-part story we will report the events leading up to the summer hearings at which the faculty finally voted in favor of dismissing Prof. Herrmann, and will recapitulate the events of the hearing itself.

### Controversial Professor

Prof. Herrmann does not view himself as being overly popular with the faculty of BLS. In an interview with the *Justinian* he explained that, in his opinion, many fellow teachers were envious of what he refers to as his substantial material wealth. He drives a Cadillac with DPL license plates from the state of Connecticut and holds public office in that state.

Prof. Herrmann is known around BLS for the sarcastic comments he geared toward other faculty members. He allegedly "knocks" some of his colleagues in public and makes jokes at their expense.

### Salary Dispute

On February 5, 1973, a chapter of the American Association of University Professors (AAUP) was formed at BLS. One of their first acts was to submit a salary proposal to Dean Lisle.

Under their proposal, there was a formula for fixing salary increases. A minimum salary rate at each level of professorship (i.e. assistant prof., full prof., etc.) was stipulated.

As a full professor, Prof. Herrmann would then have been entitled to a large raise to meet the minimum level. Prof. Trager testified at the summer hearings that Dean Lisle was opposed to giving Prof. Herrmann such an increase. He said Dean Lisle refused to approve the faculty's proposal for this reason. Prof. Trager testified that he and Prof. Crea, who were representing the faculty in the salary negotiations, came up with a compromise proposal. This proposal would allow a maximum increase of \$3,000 whether or not that amount brought an individual to the minimum of his salary level. This would have cut Prof. Herrmann's increase considerably.

On March 30, the faculty met to discuss this proposal. Prof. Herrmann voiced strong objections in the belief that he was being denied what was rightfully his. It was during this exchange that Prof. Crea allegedly uttered the statements that are the basis of Prof. Herrmann's action against him in Civil Court.

### Herrmann v. Crea

On April 2, 1973, Prof. Herrmann filed a complaint against Prof. Crea in Kings County Civil Court alleging that he "has suf-



Professor William Shakespeare Herrmann

fered great pain and mental anguish to his damage in the sum of \$10,000." Prof. Herrmann alleged, in the complaint, that Prof. Crea, "maliciously" uttered the famous words: "You bought your public office. I cannot afford to buy public office like you can. You bought your public office and you bought it with other people's money."

Prof. Crea counterclaimed for \$100,000 plus \$100,000 punitive damages, saying that Prof. Herrmann slandered him. According to his counterclaim, Prof. Herrmann made an allegedly defamatory statement which referred to "the other fools whose offices are on the eighth and ninth floors of the Brooklyn Law School building." Prof. Crea also alleged, in his complaint, that Prof. Herrmann defamed him by saying to a group of students: "You are being taught by 'Court Street lawyers.'"

The first allegedly defamatory statements to which Prof. Crea refers in his counterclaim were attributed to Prof. Herrmann in a letter written by a student who we will refer to as Mark Jaystein (It is not his real name). Mr. Jaystein was in his second year at BLS when he wrote a letter to Dean Lisle following an encounter with Prof. Herrmann. Mr. Jaystein at that time was in Prof. Herrmann's Creditor's Rights class. He claimed that one day he asked a question in class that Prof. Herrmann apparently did not like because, Jaystein alleged, he made degrading remarks to him. The

letter also detailed other remarks allegedly made by Prof. Herrmann, including the substance of Prof. Crea's counterclaim.

Jaystein's letter to the Dean states that Prof. Herrmann "declared that he would organize what I (Jaystein) recall to be the 'Nitpicker's Society of America' and that I would be suggested for membership together with the other 'fools' whose offices are on the eighth and ninth floors of the BLS building."

### Attempted Settlement

The case of *Herrmann v. Crea* came before Judge Bernard Kleiger in the Civil Court. He brought

it to the attention of Judge Edward Thompson, the Administrative Judge of the Civil Court of N.Y.C. who is also a member of the Board of Trustees at BLS.

During the Herrmann hearings, Judge Thompson testified that he "asked him [Judge Kleiger] to send a file over to take a look at the complaint for \$10,000 and then I sent for both parties, because I was interested in it, not having the name of the school defamed."

A meeting was set for October 4, 1973. On the day of the meeting, Prof. Herrmann called Judge Thompson to say he did not feel up to the meeting. The conference was held without Prof. Herrmann or his counsel. Present at the meeting was Judge Thompson, Judge Kleiger, Prof. Crea and his counsel, Jesse Falzone.

At the meeting, according to Prof. Crea's testimony at the summer hearings, Judge Thompson presented a so-called "Freedom of speech" proposal. What the proposal was isn't clear but Prof. Crea testified at the hearings, "I took it with me, and I looked it over, and I was suppose to sign that I'd keep my mouth shut, in essence. I refused to sign it. I made a counterproposal."

Prof. Crea testified that those present, including Judge Kleiger, discussed the proposals but the meeting ended because Prof. Herrmann wasn't present.

### Student Subpoenaed

On April 22, 1974, Prof. Herrmann's attorney subpoenaed Mark Jaystein who was now a third year student at BLS, to testify at an examination before trial in the *Herrmann v. Crea* lawsuit, in regard to Prof. Crea's counterclaim. Seven days later, Mr. Jaystein approached Michael Schumaecker, an attorney with Winthrop, Stimson, Putnam and Roberts, and a member of the Board of Trustees. Mr. Jaystein, it appears, was worried about the upcoming EBT and, according to a memo written by Dean Lyle, asked Mr. Schumaecker to arrange a spe-



Prof. Joseph Crea

cial meeting of the Board of Trustees to authorize the employment of counsel for Mr. Jaystein. The memo relates that Mr. Schumaecker agreed and later relayed the conversation to Dean Lisle. On the same day, April 29, Dean Lisle relates that Judge Thompson called him on another matter and that he told Judge Thompson of Jaystein's problem. According to Dean Lisle, Judge Thompson told him that if it was ultimately necessary he could arrange for an attorney to appear with Jaystein for the EBT.

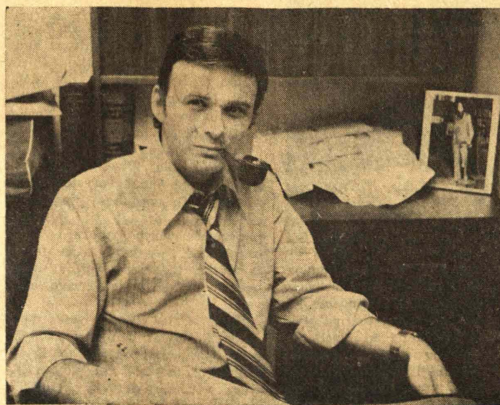
The memo goes on to state that on May 1, 1974, Dean Lisle called Judge Thompson and the Judge told him that Mr. Boyer, the Chief Assistant to the Administrative Judge of the Civil Court would accompany Mr. Jaystein when he testified in the Civil Court proceedings.

On May 6, 1974, Jaystein did testify. He was not represented by counsel. The following December, Herrmann wrote a letter to the Character Committee for the Second Department claiming that Mr. Jaystein had lied under oath during the EBT. As a result Jaystein's admission to the Bar was held up for a period of time. He has since been admitted.

### Herrmann v. Lisle et al.

The new year of 1975 greeted members of BLS's faculty with another lawsuit by Prof. Herrmann. This one was filed in the Eastern District of N.Y. on January 28 naming Dean Lisle, Prof. Crea, Prof. Yonge, and Prof. Trager. Herrmann, in his complaint, contended among other things that the defendants "and others, conspired . . . to deprive plaintiff of his proper emolument as a professor of law and to deprive plaintiff of rights arising from his seniority

(Continued on Page 4)



Prof. Henry Holzer - The Prosecutor

## Justinian

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Editor-in-Chief ..... Kim Steven Juhase  
Managing Editor .....  
Photography Editor .....

Staff: Susan Alexander, Victor Davich, Joyce David, Randall S. Ferguson, Diane Fernandez, Lillian Gewirtz, Dick Grayson, Steve Hartman, Robert Heinemann, Anne Hunter, Elyse Lehman, Joel Mitofsky, Howard Peltz, John Rashak, David C. Sprafkin, Ed Steen, David Stein, Joseph Supp, Manuel Taitz, Debra Wolin.

## Clean Lounge

Now that the student lounge has received most of its furnishings, this is an appropriate time to reflect on what the lounge is, and what it should be used for.

The lounge is the one area in the building where students can talk, read, sleep, study, listen to music, play cards — in short, it's the place at BLS where students can be themselves. We must bear in mind that our living room is not ours alone. It belongs to the unadmitted class of 1979, as well as to the class of 1999. Whether or not the lounge, and its thousands of dollars worth of good looking and comfortable furniture will last long is a decision that rests solely in the hands of the students.

It has never been proved beyond a reasonable doubt that cleanliness is next to godliness, and of course it's harder being a Felix Unger than an Oscar Madison. But a little effort to clean up your own crumbs, or cigarette butts, or newspapers, will go a long way to developing consideration that is due, or should be due, to fellow students.

## Dissenting Opinion

November 19, 1975

Dear Editor-in-Chief:

Upon reading the latest revision of the Herrmann article we are of the opinion that while the motivations for writing same reflect the greatest integrity, the article is in fact too one-sided. As we have not been allowed to express revisions which we feel would make the article a fair one, we feel we cannot, as editors, endorse this article.

We are of the opinion that this article has been written in great haste to the detriment of its ability to treat this matter in an even-handed way.

For the above reasons we respectfully request that our names as editors be removed from the issue or issues containing the Herrmann story.

Respectfully,

Matthew J. Trachtenberg  
Marcia S. Knigin

(Ed. note: Mr. Trachtenberg is Managing Editor and Miss Knigin is Photography Editor of the Justinian.)

P.S.—We, of course, will make ourselves available for any technical or production help you may need.

## Beware!



Photo by Marcia Knigin

Man on right is Barry Mansfield, Vice President of Executive Planning Associates and Life Insurance salesman. Mr. Mansfield has somehow received a listing of the name and phone numbers of BLS students. He has for the past few months been calling students, representing himself as being affiliated with the SBA. SBA President Al Tivoli has threatened to report Mr. Mansfield to the State Insurance Commission if he calls students without a direct referral and if he continues to give the impression that he is connected to the SBA. Pres. Tivoli requests that any student called by Mr. Mansfield after Nov. 14, to contact him.

# The Warlock Shop

By Lillian Gewirtz

Bothered, it being Bloom's birthday and my bounty having previously been besieged by big brother, I sought baubles or busy beads to, if not beautify, at least pacify my buddy.

In my driven state I ransacked A&S' basement displays and was asked by the management to remove their chains from my over-enthusiastic person. Alienated and red-necked, I plodded along until I recalled the haven for those who stir in a different cauldron.

There it was, between the Master Charge and Inter-bank Card placards, the sign at 300 Henry Street reading "The Warlock Shop." As per usual, I window-watched to acquire a sensory relationship with the premises, my nose pressed hard against the glass. I was confronted by a tarantula, symbol of good fortune for believers in witchcraft. Remembering how my friend paled at even hearing Miss Muffet's tale, I went right into the shop.

The store's mystical atmosphere drew this Odysseus into its clutches, and I suddenly perceived my future reflected back at me from the womb of an \$80-crystal ball. I could predict, then and there, that I wasn't going to purchase it anytime hence.

My disappointment at not owning the sphere was mitigated when I learned that colored candles serve a purpose aside from transforming meatballs and spaghetti into filet mignon. Combined with positive thinking, lighting green candles adds weight to your money belt and kindling red ones improves your amorous endeavor.

The establishment's rear harbored hooded robes and among them glittered a gold gown, spangled in red and silver stars, purported to have belonged to an elephant trainer in Barnum and Bailey's. I bypassed it, yet determined to find an unconventional oblation for the birthday god.

Native curiosity prompted queries about the human and cow skulls on display. "They're for the tourists." Yes, I could certainly comprehend why a wide-eyed New Jerseyite would find these crania fragments of genuine newyorkana. Questions about the shop's origins rendered information that it is the only one of its kind on the east coast which has met with success. Herman Slater, the store's owner, was originally a Manpower executive who, in 1969, was stricken with an illness which doctors said would leave him unable to walk. While hospitalized, he read extensively on witchcraft, adopting the positive thinking advocated by the religion and, after his almost complete recovery, opened the store.

Today Mr. Slater is High Priest in four witchcraft traditions and has received notice as the "Chief Witch of Brooklyn" by the N.Y. Post. He explained that the religion, having originated in Neanderthal times, involves an ecological celebration of life. Wica, or "Craft of the Wise," followers worship the female mysteries of fertility. The witches' "powers" are derived through the ecstatic experience which occurs at the bacchanals they have after their Sabbaths, the eight animal husbandry festivals which arrive each year.

Some of the witches tales that made for great campfire stories have perfectly logical explanations. For example, the notion of flying witches is derived from the attempts of aged witches to astral-project to the Sabbaths by coat-



Photo by Ed Steen

"Can I have a spell to make everything go my way?"

ing their bodies with lard and bel-lachite, and inhaling wolf-bane. In fact, their nasty habit of whisking by windows on brooms is merely a take-off of their ancient tradition of dancing with riding poles in a field to show plants how to grow.

After our talk, I realized the subconscious drive which had steered me into the shop. The fervent desire to acquire the power to radically alter my existence compelled my making further unhesitating inquiries, "Can I have a spell to make everything go my way?"

"It's not as simple as that . . ." I stopped listening to the warlock behind the counter after those six words, stifled every supernatural impulse I'd ever had. Having

swum through twenty-one years of ambitions drowning in those seven syllables: I lost my propensity for dripping dry Chinese-style and was resigned to leaving the divining to . . .

Wica philosophizes that one must live with perfect love and trust; harm none and do what one will, whatever one does returns to him three times over; and man is reincarnated until he reaches perfection on this plane. I am acquainted with one or two men who believe that this last event would be superfluous for them.

Robbed of my paranoid and romantic notions, I finally settled on a pointy black hat to satanify Bloom's expectations, and as a lingering reminder of the good old days when witches were wicked.

## Law Reviews



Composite by Marcia Knigin and Howie Peltz

International Law Review Editors — Rear: Dean Lisle; Bill Austin and Jim Maslow, Articles Editor; Ellen Schulman, Editor-in-Chief; Henry Jasny, Notes Editor; Bob Novick, Case Comment Editor; Norm Gersman. Front: Noah Hanft, Executive Editor; Susan Alexander, Managing Editor.

So as to end any rumors regarding who made what, the Justinian, as a public service, lists those students who have "made it".

**Law Review** — Special congratulations should go to those students who were accepted to the law review this semester. For the first time in memory they had to write their research papers while classes were in session.

Those accepted were Mary Cheasty, Stephen Geller, Elinor Hoffman, Phillip Keuper, Iris Kruler, Myra Saul, David Schuller, and Vivian Shevitz.

Also, Lenore Liberman, Marlene

Malamy, Audrey Peltz, Dale Ross, Bonnie Siegal, Miriam Siroky, Doug Stahl, Bonnie Stein, and Jayne Russell.

Also, Robert Stephenson, Jane Stevens, Joyce Swerdlin, Dorothy Symons, Peter Weinstein, Rachel Wonsver, and Judy Zerden.

**International Law Journal** — Those accepted by the new publication include Jacalyn Fischer Barnett, Jay Bondell, Diane Fernandez, Anne Flannery, and Gary Jay Levy.

Also, Susan Metzger, Kathleen Paolo, Jonathan Plasse, Howard Rubin, and Martha Salper.



Photo by Marcia Knigin  
Brooklyn Bar Association volunteer referring client to an attorney.

## Lawyer Referral

By Dick Grayson

Many people nowadays are faced with the problem of finding a lawyer they can afford. The Brooklyn Bar Association has a lawyer referral panel designed to deal with this problem.

According to Mr. Solon Hanft chairman of the B.B.A.'s Committee on Referral Plan, the panel was modeled after similar plans in other cities. "The need to help people obtain legal assistance is an ongoing one and the B.B.A., realizing this, set up our referral panel more than 20 years ago."

A Brooklyn resident in need of assistance can take advantage of this service by visiting the B.B.A.'s offices at 123 Remsen St., or phoning MA 4-0675. Lawyers are available from 10:30 a.m. to 12:30 p.m. and again from 1:30 to 3:30 p.m.

The lawyer determines the nature of the client's problem, and then refers to a list of approximately 250 members of the B.B.A., indexed by specialties, trying to coordinate the problem with a specialist in that area. A phone call is then made to one of the lawyers on the list and a meeting arranged for the client with that attorney.

The B.B.A. does not charge these clients, but they are required to sign a statement that they have not consulted another lawyer on this problem, that they will pay \$10.00 for a 30 minute consultation with the specialized attorney, and that they will arrange to pay

the attorney's fee if he decides to take the case.

The purpose of the 30 minute meeting is to determine if the client has a case, and if so, what advice the lawyer has to offer. If the attorney decides to handle the case, they agree on a fee. If the lawyer doesn't want to take the case, he refers the client back to the B.B.A. But Hanft emphasizes, "If a client has a case, the lawyer should handle it." If the client and attorney can't agree on a fee, the client can return to the referral panel and ask for a lower priced lawyer. If a client is dissatisfied with the treatment he receives during the 30 minute conference, he can complain in a letter to the B.B.A. Committee on Referral Plan. The committee will meet to determine what action should be taken.

The lawyers who handle the desk work at the B.B.A. on Remsen St. are volunteers, but those who wish to be included in the referral listings must pay \$25.00 a year for each of up to two categories.

The number of clients using this assistance program has grown over the years and now, according to Hanft, "cases are referred to us by Legal Aid and by Community Legal Services. On the average, we handle more than 20 cases daily, and on some days, 40 clients use our services."

## Clinic Problems

The "lawyering" process can and should be taught. Just as medical students are required to train in a supervised program dealing with real patients before they are licensed, law students need training in the realities of legal practice.

On Wednesday, November 13, about 80 Brooklyn Law School students met at a Forum on Clinical Education which was organized by a committee of the National Lawyers Guild. To begin the program, current participants in the school's clinics talked about their individual experiences.

Professor John Hyman, who has been associated with clinical programs at Northwestern University and is currently at Rutgers University, Newark, spoke about the in-house clinic concept. An in-house clinic is one in which the

entire "law-firm" operation is conducted under the school's auspices. Students deal with non-hypothetical problems with the advantage of having immediate, substantial supervisory feedback.

Some of the general questions raised, regarding the clinical program at Brooklyn were these: (1) In the future, will there be enough places for all the students who wish to participate in clinical programs? (2) What are the criteria for selection? (3) Can the student-supervisor ratio be improved? (4) Are the students in all clinical placements given ample opportunity to participate, or do some only observe.

The Guild committee will continue to meet weekly to discuss these issues and try to develop solutions. All interested persons were urged to attend the meetings.

By Dick Grayson

"If the students like it, then it's OK with me." That's how Dean Raymond Lisle feels about the refurbished student lounge. But before the lounge reached the state of visual and hedonistic delight it now is, Dean Lisle reportedly tried to torpedo the effort.

According to John DiBella, SBA president in 1974-75, sometime in early 1974 the SBA decided to improve the lounge, which was not as comfortable and inviting as it could have been. The SBA worked out a decorating proposal for the renovation but Dean Lisle didn't want to submit it to the Board of Trustees because he felt it would pose a financial strain on BLS. However, the SBA, after an investigation, discovered that the refurbishing would not pose a financial problem to the school. So the proposal was submitted to the Board in the autumn of 1974 and the trustees appropriated \$23,000 on the condition that the SBA add another \$2,000.

A committee was formed that included three students and Dean Gerard Gilbride and Professor Jerome Leitner. According to Prof. Leitner, "the committee was to make aesthetic choices." DiBella, also a member of that committee, recalls that the committee had a larger role in the matter of the lounge. "The Alumni Association helped the SBA with the plans and Miriam Kamen, treasurer of the alumni, and a former interior decorator, made a proposal regarding the furnishing. She said that she would do the interior decorating to save money."

Cecily Selby, a member of the Board of Trustees, and at that time, national executive director of the Girl Scouts of the USA, recommended PJM Design, Inc. of Hicksville, L.I., a firm that had done interior decorating for the Girl Scouts. Dean Gilbride says this recommendation was discussed with the committee and no member objected to signing a contract with PJM Design, Inc. But DiBella, now a practicing lawyer in Manhattan, says he was "quite upset" that the school had to pay a fee for the interior decorator. The decision not to use Kamen is laid, by DiBella, on the trustees' doorstep.

Dean Gilbride concurs and states that there was no pressure on the committee to agree on the choice of interior decorator and that "this job was let to him [PJM Design, Inc.] because he was highly recommended and was competent. He submitted a professional plan and it was agreed to by us [the committee]."

The interior decorator promised, according to DiBella, that the furniture would be delivered by April or May, at the latest. But DiBella was irritated that, when June and the graduation for the student members of the committee rolled around, the lounge was still bare of the new furniture. Prof. Leitner, who is knowledgeable about the field, notes that late delivery is standard in the decorating trade.

The carpet arrived in the spring and Prof. Leitner is still angered by the fact that three days after it was laid, a leaky coffee pot at a student reception caused coffee to stain the carpet. He notes, though, that shampooing will put the carpet in better shape. Robert Hudson, Superintendent of Building and Grounds, agreed and said "After the shampooing, we'll know the real quality of the

carpet." But a shampoo date isn't set as of yet.

In July of this year, PJM Design, Inc., made an assignment for creditors, which is a form of bankruptcy. This financial move raised the final cost of the lounge by at least \$1,000 and resulted in the school not receiving a number of items—such as plants and room dividers—for which it had already paid. The end result of this was that BLS had to pay the extra money to get the furniture, that was already paid for, out of a warehouse.

While Dean Gilbride acknowledges that the situation was unfortunate, he emphasizes the positive aspects. "We [BLS administration] thought the most important thing was to salvage what we could and we got what we thought was a pretty good deal for the school."

Dean Gilbride, Prof. Leitner and SBA President Alan Tivoli all feel that any undue emphasis on the unfortunate aspects of the

decorating job will be "crying over spilled milk," as Tivoli phrased it, and that students should now get involved in maintaining the lounge. In addition, Tivoli says he "knows" that the SBA got at least its \$2,000 worth of furniture.

Although Prof. Leitner abhors the sloppiness that is sometimes manifested in the lounge, he implies that human nature is human nature by pointing out that the faculty lounge doesn't have carpet because "professors can be just as sloppy as students."

Prof. Leitner has issued a call to students to take good care of the lounge. He stated: "The furniture is the best that money can buy. It's either wasted or well spent, depending on how students use it. This is the school's living room and students must get a sense of possession about the lounge. The future of the lounge is up to the students. If you treat it like a gym, it'll be a gym."

## BLS Football

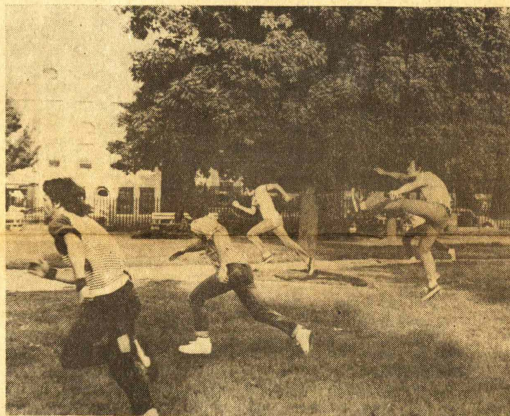


Photo by Marcia Knigin

BLS students build up sweat — "school can use a shower."

By Howard Peltz

It is very easy to complain about the lack of facilities at BLS but quite another thing to do something about it. Ken Nagin and Bruce Leder are two students with the imagination and initiative to expand the BLS campus far beyond Joralemon Street. Last year Bruce and Kenny organized popular football and co-ed softball leagues and this year they're back with a bigger and better football league.

The league started with 11 teams, including an official alumni team. (The alumni team has since dropped out of the league, presumably due to old age or unexpected employment.) Teams check out footballs in the SBA office and arrange their own game times. Standings are kept and playoffs will be held at William Rehnquist Memorial Field.

The main value of the league is that it serves as an escape from the daily pressures of classes, studying and cafeteria gossip. In the daily law school rut the only opportunity students get to build up a sweat is when they're called on in class. It's a great feeling to switch from torts to sports out on the gridiron, where penalties are only assessed in yards, and referee's decisions can never be appealed. Reaction from first year students has been very positive.

Dick Grayson of the "DB's" thinks half his team will be signed by the Jets. John Rashak loves the league but feels "the school can use a shower."

Though it's all for fun, the league is often taken very seriously. Last year's Super Bowl champs the "Entrails," led by Dave "Mad Dog" Kintzer, surprised everyone by avoiding the college draft and directly signing top first year prospect Tom Dollinger. An incensed Brian Davis of the Gaels threatens a full league investigation and injunction. (Did Davis forget that last year the Gaels questionably signed Notre Dame star Bill Kelly with a year of college eligibility left?) The "Larries" pulled a coup of their own by signing veteran quarterback Joel Weisblatt to throw to sure handed receivers Mike "Spider" Levine and Joe "Moose" Maceda. It was not easy though; Weisblatt brought his labor law professor to the contract negotiations.

Commissioners Nagin and Leder will definitely organize co-ed softball in the spring and hope to get SBA funding for intramural basketball. "Sports provide a great opportunity for students to get to know each other outside the classroom," Nagin feels, and both Bruce and Kenny look forward to wide participation in the up and coming events.

# Herrmann Fired

(Continued from Page 1)

on the faculty of the school and ultimately to deprive plaintiff of his employment at the school and to injure the plaintiff's earning capacity as an attorney at law and a public servant."

## The Machinery Starts

Brooklyn Law School Regulations on Appointment, Reappointment, Tenure, Promotion, Leave, Suspension and Dismissal authorize the dean to make informal disposition of any matter "questioning the propriety of retaining any faculty member on the grounds that he or she is unfit or lacks the capacity to carry on his or her duties." In the event such informal disposition cannot be made, the dean may formally petition the Faculty Hearing Committee to decide whether commencement of proceedings is warranted.

Since Dean Lisle was a party defendant to Prof. Herrmann's action, the Board of Trustees took jurisdiction of the question. They established a subcommittee soon after the second lawsuit, "to call upon Prof. Herrmann . . . to offer substantial support for the allegations made in his complaint" [in Herrmann v. Lisle et al.] Their resolution explained that "if these allegations were true they raise serious question as to whether the defendants are fit to serve as members of the administration and/or faculty of Brooklyn Law School and, if there is no basis for such claims they indicate that Prof. Herrmann had brought in bad faith and with reckless disregard of the rights, interests and reputation of the school, its student body, its alumni and the defendants, a vexatious and scandalous lawsuit seeking collateral ends, namely, to stifle the free expression of faculty opinion and sound functioning of the administration in order to achieve personal financial gain by unwarranted increases in compensation."

The subcommittee members were Paul Windels Jr., chairman, Wilbur A. Levin and Michael P. Schumaecker. The subcommittee gave the parties to the action a chance to give their views and on March 13, 1975 petitioned the Faculty Hearing Committee to decide whether formal proceedings against Prof. Herrmann were warranted.

The Committee, according to the regulations, is composed of seven tenured faculty members. The Committee's function is to review petitions referred to them and determine whether formal proceedings against a faculty member is warranted. The Faculty Hearing Committee is then to hold the hearing and determine what

actions shall be taken. Members of the Faculty Hearing Committee last year were Professors Holzer (chairman), De Meo, Hahl, Leitner, Meehan, Nightingale and Ronayne.

On March 25, 1975, the committee decided not to take any further action on the petition.

Prof. Holzer, when he received the petition of the Board's subcommittee requiring that all matters dealing with the Faculty Hearing Committee be kept confidential, told the other members of the committee, in a memo, to keep the whole matter secret.

Prof. Herrmann, however, acquired a copy of Prof. Holzer's memorandum calling the Faculty Committee meeting and the petition of the Subcommittee of the Board of Trustees. These documents were made part of Prof. Herrmann's district court case and therefore became public knowledge before the March 25 meeting.

At a faculty meeting on April 18, Prof. Crea brought up this fact, contending that there was a breach of confidentiality. On a motion by Prof. Schenk, the faculty present voted 16 to 0 to establish a committee to investigate the alleged breach of confidentiality of the Faculty Hearing Committee. Professors Hoffman, Farrell, and Berger were elected to this committee.

## The Faculty Takes Action

On April 17 and again on April 23 the committee wrote to Prof. Herrmann requesting that he reveal who had given him the confidential document. Herrmann failed to respond. Herrmann contends that his lawyer responded, in that he told defendants he would not comply with the confidentiality committee's request.

At the May 14th faculty meeting a resolution was adopted requesting the Board of Trustees subcommittee to take an appeal of the Faculty Hearing Committee's decision not to proceed against Herrmann. The Faculty resolution also requested that the Board's petition be amended to include Prof. Herrmann's "contumacious refusal to reply to a duly constituted faculty committee," and Prof. Herrmann's letter to the Committee on Character and Fitness concerning Jaystein.

Under the BLS regulations such appeal may be made by the Dean for failure of the Hearing Committee to recommend official proceedings. Under such appeal, the Board may direct the Hearing Committee to act.

The Board met on May 19, and resolved "that the faculty of BLS is requested to conduct a hearing" on the following matters:

1. The good faith of Prof. Herrmann's lawsuit against Lisle, Trager, Yonge and Crea.
2. The circumstances of Herrmann obtaining the confidential memo of Prof. Holzer and the Board subcommittee's petition.
3. Whether Prof. Herrmann had refused to cooperate with a duly constituted faculty committee.
4. Whether Prof. Herrmann's letter to the character committee was written in good faith in fulfillment of his obligations to that committee or whether it was written for a wrongful purpose.
5. Any and all conduct of Prof. Herrmann which, in the opinion of the faculty, reflects upon his fitness to remain a member of the BLS faculty.

## The Ground Rules

At a special meeting of the faculty on June 5, 1975 the ground rules of the faculty hearings were established. Prof. Gershenson was elected hearing officer and Prof. Holzer was selected counsel to the faculty, to act as prosecutor. Pursuant to BLS regulations the faculty agreed that the hearing was to be held in private unless Prof. Herrmann requested a public hearing. They also agreed that any challenges to any faculty member sitting at the hearing, because of bias or prejudice, must be made at least one week before the hearing is scheduled to commence. The faculty also voted not to have any quorum requirements and it was decided that the civil rules of evidence would be followed "insofar as practicable."

A question arose at the faculty meeting as to what should be the burden of proof. The minutes of the faculty meetings relates that "Professor Holzer stated that, while any hearing should be conducted with a view towards fundamental fairness and efficiency, it was his view that such a hearing was not an administrative proceeding, and he would for this reason oppose formalizing the burden of proof. The amount of evidence . . . should be," he stated, "a matter of the individual faculty member's conscience and judgment." Four professors expressed agreement with Prof. Holzer and there was then no further discussion of this issue.

Toward the end of the meeting, Prof. Schwartz suggested that a possible solution would be to refer the entire matter to the American Arbitration Association. The suggestion was not put to a vote.

## The Preliminaries

Formal charges against Prof. Herrmann were drawn up by Prof. Holzer and served on July 10. They were in essence:

1. That Herrmann v. Lisle et al. was brought in bad faith.
2. That the federal action was used to spread on the public record confidential memoranda.
3. That Prof. Herrmann refused to cooperate with a duly constituted faculty committee charged with investigating breach of confidentiality of the Faculty Hearing Committee.
4. That the letter written by Prof. Herrmann to the Character Committee concerning Jaystein was not written in good faith.
5. That Prof. Herrmann has substantially failed to discharge important obligations owed by him to BLS and the faculty thereof, to wit:
  - a) That prior to filing the complaint against Mr. Jaystein, Prof. Herrmann had caused to be made, and/or acquiesced in making various threats against Mr. Jaystein;
  - b) That Prof. Herrmann brought his lawsuit against Prof. Crea to silence Prof. Crea and to force a salary increase from BLS. Prof.



Matthew J. Trachtenberg

Ingmar Bergman's latest film, "The Magic Flute," is an absolutely delightful film presentation of Mozart's comic fairy tale opera. Bergman has created a film of rare beauty which at once combines a sense of seeing a performance in a rural festival house with the expansive visual potentialities of the film medium. We are, from time to time, reminded of our presence in the theater by shots of the wings, falling backdrops, the audience and the proscenium arch. We are also made aware of the fact that opera is stagecraft and that this film is an attempt to highlight the magic of a live performance. At one moment you are part of the audience watching the performance while at another you are intimately involved in an "opening up" of the action. Bergman does this so cleverly that you don't even realize that it is happening at times.

Bergman most effectively focuses our attention on the characters with numerous close-ups that reveal facial expressions often lost in the opera house to those further back than the tenth row. These close-ups are made more effective by Bergman's use of

opera singers who not only express the drama but show the physical stresses of the singing. When the Queen of the Night sings her vengeance aria we do not see billowing smoke or lightning and thunder, but instead we see the enraged fury of one seeking to impose her will. The vengeance aria reflected the anger as well as its difficult tessitura (there are a number of high F's here).

Musically speaking the performances were of a high order with both singers and orchestra exhibiting a clarity and attention to detail often missing from live performances. The conducting of Eric Ericson was a bit brisk for this reviewer's taste but that could have been Bergman's influence in insisting upon a more buoyant overview.

This is a most successful film version of an opera which succeeds in conveying all of the joys of this delightful comic masterpiece. It is a film which will surely delight the non-opera loving public as well as the devotees. It is a great family film and offers a wonderful way of exposing older children to opera for the first time.

Herrmann was also charged with examining Dean Lisle and Mr. Jaystein in connection with Herrmann v. Crea and using such information obtained in Herrmann v. Lisle, et al. and in his letter to the Character Committee about Mr. Jaystein;

c) That Prof. Herrmann threatened Prof. Yonge with unspecified harm;

d) That Prof. Herrmann made a false and misleading audit report on Prof. Schenk's class;

e) That Prof. Herrmann twice knowingly responded falsely to official requests for information concerning the extent of his outside legal practice, asked in connection with A.A.L.S. membership;

f) That while testifying before the Character Committee in reference to Mr. Jaystein, Prof. Herrmann "falsely" denied allegations that Mr. Jaystein had made in his letter of complaint to Dean Lisle;

g) That Prof. Herrmann had substantially failed to perform certain duties, to wit:
 

- 1) Prof. Herrmann during classes intimidated students. On one occasion outside of class, "he made it apparent to [a] student in a menacing manner that he was then armed with a pistol.
- 2) He shortened the hours of certain of his classes.
- 3) He publically made fun of members of the faculty and administration.
- 4) He has substantially abdicated administrative duties to which he has been assigned.

August 18 was set the date of the hearing.

On July 18, Herrmann filed suit against BLS, and against Dean Lisle, Professors Gershenson and Holzer individually, in Kings County Supreme Court. By this action Herrmann sought a permanent injunction of the hear-

ing to be held the following month and money damages in the amount of one million dollars. Prof. Herrmann's complaint, in essence, stated that BLS did not follow its own regulations concerning procedures by which to bring charges and violated Prof. Herrmann's rights under both the U.S. and N.Y. Constitutions.

On that day Justice Schwartz issued a temporary restraining order. On July 21, summons was served on Dean Lisle with the complaint.

Then on July 30, motions for preliminary injunction were denied by Justice Charles Beckinella.

On August 8, Richard H. Wels, Prof. Herrmann's attorney, requested adjournment of the hearing, stating that he had a prior commitment to attend the ABA annual convention in Montreal and wanted more time to prepare his case. The ABA convention ended on August 14th. The hearing was scheduled to begin on August 18th.

Prof. Gershenson as hearing officer denied Mr. Wels' request because Prof. Herrmann had notice of the date of the hearing on June 16. He stated that the faculty had arranged their summer schedules to allow them to attend the hearing. Prof. Gershenson said it was specifically scheduled before the fall semester because once the semester begins "simultaneous attendance by the entire faculty for extended periods is wholly impracticable due to complex scheduling of classes and other faculty obligations."

The hearings were held from August 18 through August 21 without Prof. Herrmann or his attorney being present.

(To be continued)

# The Docket

**CONTEST** — The New York Workmen's Compensation Bar Association is offering a \$500 award for the best treatises in the field of Workmen's Compensation by a member of the Senior Class. Entries should be postmarked no later than May 15, 1976 and submitted to Jerome B. Lee, 401 Broadway, New York, New York 10013.

**ANOTHER CONTEST** — The Association of Trial Lawyers of America is running its Sixth Annual Environmental Law Essay Contest. The theme this year is

"Energy Alternatives and the Law." The winner from BLS will receive \$100 and have a chance to be one of three national winners who will receive \$500 and a free trip to Atlanta, Georgia. Entries must be submitted by April 15, 1976. A copy of the rules can be obtained from Ms. Barbara Stein, National Coordinator, Environmental Law Essay Contest, Association of Trial Lawyers of America, 20 Garden Street, Cambridge Mass. 02138. A copy of the rules will be posted in the Justinian office, room 304.