

# The Justinian

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Volume 1976  
Issue 8 *December*

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Article 1

1976

## The Justinian

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### Recommended Citation

(1976) "The Justinian," *The Justinian*: Vol. 1976 : Iss. 8 , Article 1.  
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# Justinian

VOL. XXXVII

222

TUESDAY, DECEMBER 14, 1976

NO. 5

## Civil Court decision

### Herrmann v. Crea

Ed. Note: In our issues of December 1, 1975, and February 11, 1976, the Justinian published lengthy articles detailing the legal relationships between William Shakespeare Herrmann, a former professor at BLS, and the law school. Herrmann was a tenured professor when he was fired on September 17, 1975. As a result of that firing, several suits were filed by Herrmann against the school and individual faculty members. On October 8, 1976, a Kings County Civil Court decision was handed down by Judge Salvatore T. DeMatteo in Prof. Joseph Crea's counterclaim against Herrmann, which arose from the slander case of Herrmann v. Crea. The Justinian reprints the entire decision to bring the BLS community up to date on one aspect of the litigation and to focus attention on the court's description of the phrase "Court Street Lawyer." This phrase usually has a pejorative connotation, but the Court's opinion might uplift the use of the term. Next semester, the Justinian will print an updated summary of the Herrmann-BLS litigation.

CIVIL COURT OF THE  
CITY OF NEW YORK  
COUNTY OF KINGS  
SPECIAL TERM, PART I  
WILLIAM S. HERRMANN, Jr.,  
Plaintiff.

JOSEPH CREA,  
Defendant.

JUDGE SALVATORE T.  
DeMATTEO  
OCTOBER 8, 1976

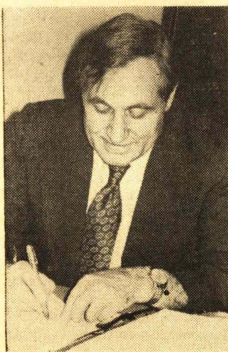
This is an action in slander brought by a professor of law against his colleague. The defendant counterclaims also for slander on the basis of the allegations that the plaintiff, although not mentioning defendant by name, referred to him before a student body, as "one of the fools whose offices are on the eighth and ninth floors" and a "Court Street Lawyer." No special damages are alleged.

Plaintiff now moves for summary judgment dismissing the counterclaim on the grounds that it fails to state a cause of action. Defendant cross-moves for similar relief.

Because both parties are learned in the law it would be condescending and may seem somewhat presumptuous for the court to dwell at length on the elementaries of the law of torts. Nevertheless, because of the nature of the complaint, it seems proper and indeed necessary at this time to outline the basic elements of a cause of action for slander.

The general rule is that slander "is not actionable unless actual damage is proved. To this the courts very early established certain specific exceptions — the imputation of crime, of a loathsome disease, and those affecting the plaintiff in his business, trade, profession or calling — which required no proof of damage." (Prosser, Torts, 3rd Edition, p. 712).

The question before the court, therefore, is whether as a matter of law the words spoken of the defendant in this action were defamatory when spoken of an attorney or professor of law.



(Photo by Marcia Knigin)  
Prof. Joseph Crea, defendant

Although, as Seelman says, "the determination of when words are spoken of one in regard to his business is often difficult," (2 Seelman, Law of Libel and Slander, 925) this court believes that the statements which form the subject of this counterclaim do not come within the ambit of the *per se* exceptions.

That the appellation "fool" is not slanderous *per se* seems to be clear. Even the word "faker" (Shankroff v. LaGuardia, 247 App. Div. 785, appeal to the Court of Appeals denied, 272 N.Y. 679) or the words "bum in a gin mill" spoken of an attorney, were once held to be non-slanderous (Weidberg v. LaGuardia, 170 Misc. 374). Although one naturally frowns at the use of vituperative and abusive language, restrictions on common and commonplace name calling would so restrict free speech that many of us would be required to walk with our mouths tethered. In any event, defendant argues that the term "Court Street Lawyer" was intended to be and was in fact understood to be derogatory and pejorative of the defendant in his profession.

The court is aware of the connotations of the term "Court Street Lawyer" and, more importantly, of the general reputation of what is termed "Court Street Lawyer." The court is therefore in agreement with the defendant that the term, as allegedly applied by the plaintiff, refers to other than mere geographical location. Words must be taken in their ordinary meaning and the court cannot strain itself to interpret them in the most inoffensive sense. (November v. Time, Inc., 13 N.Y. 2d 175, 244 NYS 2d 309).

Nevertheless, to constitute slander *per se* the words must be such as to impute dishonesty or

(Continued on Page 4)

## Faculty KO's Equal Student Committee Vote

By RICHARD GRAYSON

A student-faculty committee to study the legal research, writing and moot court programs at BLS will not receive the cooperation of the SBA because of unequal representation between the two groups.

The faculty created the committee of four faculty members and three students in response to student complaints last year, particularly against the moot court program. These complaints were sent by the Student-Faculty Curriculum Committee to the entire faculty. Professors Richard Allan, Stacy Caplow, Bailey Kuklin and David Rice were then named to the committee to investigate the legal research programs. According to Allan, the committee will look into the moot court program first and then into the legal research/method program of the first year students.

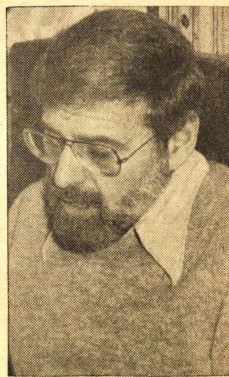
In response to this inequality of representation (all other student-faculty committees have been set up with an equal number of members from both groups), the SBA Executive Board sent a memo to the faculty. The memo, which was on the agenda for the December 3 faculty meeting, commended the faculty for setting up the com-

mittee and reported that the SBA Executive Board was ready to nominate students in accordance with Article 6, Section 3, of the SBA Constitution. That section provides, "The SBA may not participate in any faculty/student committee of which the number of faculty positions and the number of student positions is not equal . . ." The memo was not discussed at the December 3 meeting, but Prof. Brian Comerford, faculty secretary, said that it would be placed on the agenda for the next faculty meeting.

SBA President Howard Peltz noted that the SBA Executive Board was "excited" about the establishment of this committee, but that the seeming reluctance of the faculty to equalize the number of positions between students and faculty had put a damper on the student input. "[The faculty decision] is a step backward which we can't understand," says Peltz. "We look for students and faculty to work together to make improvements and not to form vetoing blocks. A 4 to 3 situation looks like the faculty wants to outvote the students."

Evening Vice-President Jayne Robinson had stronger words for the faculty. "I am concerned

because I see this as part of a continuing trend. Student input was cut back from the Decanal Search Committee, and now this. I think that concessions toward student equality were



(Photo by Marcia Knigin)  
Prof. Richard Allan, a member of the supposed student-faculty committee.

made when students were militant, and students aren't so militant today, and therefore the faculty is taking advantage."

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## SBA 'Non-Meeting' and S/F Comm. Face Curriculum Comm. Problem

By MIGGIE WARMS

At the non-meeting of the SBA delegate assembly on November 29 (there was no quorum), those delegates present heard several committee reports, a speaker on NORML's (National Organization for Reform of Marijuana Laws) budget request of \$425 and a discussion of the current status of the recently bereft Student/Faculty Curriculum Committee.

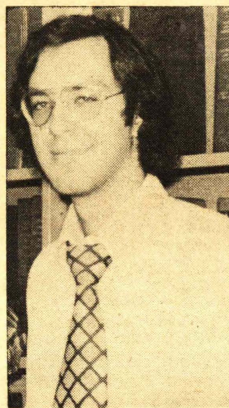
The Constitutional Revision and Procedure Committee has done some preliminary work and is working against a March deadline for presentation of a proposed revised SBA Constitution to the delegate assembly.

The Cultural Affairs Committee is expanding its sphere to include sports and the Entertainment Committee recently "pulled off" a highly successful student/faculty tea.

The Library Committee is hoping to have the smoking room kept open during some hours when the library is normally closed, to arrange for longer library hours on holidays, and to solve copy machine and carpeting problems.

A delegate brought up the matter of the Curriculum Committee during the reports. SBA President Howard Peltz, in an attempt to make discussion less official than the rest of the non-meeting, said that the matter

might be discussed on a "voluntary" basis after adjournment (can a non-meeting be adjourned?) and, after the completion of the committee reports, announced that "the meeting for all intents and purposes" was adjourned.



(Photo by Marcia Knigin)  
SBA President Howard Peltz

When nobody left the meeting, the following explanations of the difficulties experienced by the Curriculum Committee, including the resignation of all six faculty members, were offered by Jayne Robinson, Evening Vice President, and Peltz.

1. The SBA Executive Board had not maintained communication with faculty members of the Curriculum Committee during the development of the student chairperson controversy. 2. The faculty members "heard stories" from "the other side" (student members of committee) but were never exposed to the Executive Board's position or the reasons for Executive Board and Delegate Assembly action on the appointment of Diane Fernandez to the Committee and then to the student Chair. 3. The faculty members felt that the curriculum had gone through enough changes for the time being, and that it was time "to sit back and take a breather."

The Executive Board feels that the student members on the "committee revolted . . . for personality reasons" and that committee chairs are "not power positions" but liaisons whose major function is to report to the SBA Executive Board.

A meeting of the Student/Faculty Relations Committee to discuss the problem of the Curriculum Committee was held on December 2. Faculty members who resigned from the Curriculum Committee and the SBA Executive Board were invited to the meeting, which was open to all

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## Justinian

Published under the auspices of the Student Bar Association

BROOKLYN LAW SCHOOL

250 Joralemon Street, Brooklyn, N. Y. 11201

Telephone (212) 625-2200 Ext. 50

Editor-in-Chief ..... Richard Grayson  
 Managing Editor ..... John Rashak  
 Associate Editor ..... Marcia Knigin  
 Copy Editor ..... Linda Riley  
 Arts Editor ..... Paul Harris Forman

### STAFF

Marc Aronson, Howard Cohen, Joyce Balaban David, Randall S. Ferguson, Lillian Gewirtz, Stephen Jackel, Kim Steven Juhase, David Leibman, Martin Lerner, Joel Mitofsky, Howard Peltz, Dale Mark Ross, Ken Shiotani, David Sloan, Rochelle Strahl, Manuel Taitz, Miggie Warms, Michael Weinberger, Debra Wolin.

(Editorials express the opinion of the Editorial Board)

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## Who Was Who

This semester the student body has faced the sorry picture of the SBA Delegate Assembly spending its entire fall calendar haggling over such portentous issues as chairmanships of committees and rules of order. This ugly picture was softened somewhat by the expectation of what often seems to be the SBA's only useful function — the annual directory of student addresses.

But an inspection of this year's directory shows that the SBA cannot even do this correctly. The directory still contains the names of students who withdrew from this school as long as one year ago. It is a painful thought that a student who takes the courageous step of leaving the madness of this institution will have his name forever immortalized within these hallowed walls.

## There Are No Stupid Questions

*Noivies (we admitted it)  
 were ardently solicited  
 that we restrain, self-limited  
 to interrogate (with our less-  
 than-lawyerly finesse)  
 the presiding profess  
 to reap his/her largesse  
 of judicial worldliness  
 about what could not be inhibited.*

*We stored up our ammo;  
 delved, strived, and banno!  
 Shot mental debris out  
 ad damno:*

*Can a fetus sue for false imprisonment  
 if the deliverer is overly hesitant?*

*Does my mistreating your leashed best friend  
 mean that I, upon you, did serious mental distress intend?*

*When one tries to kill oneself, and the goal gleefully arises,  
 is the sentence much longer than for an attempt?  
 Is it life in the Assizes?*

*If you sold a diamond that appeared to be trash,  
 and so lost all your rights to the stone;  
 is it any more just to deserve increased cash  
 where the sold barren cow's mother-prone?*

*If a chose in action is only existent  
 when I bring up a suit about it;  
 do I truly own nothing, deplete of content,  
 unless I've a rumble to rout it?*

*When an elephant lost is found  
 half on my walkway, but half on your ground;  
 is my property that which I happened to get?  
 Can we flip a coin? I may win the head yet.*

*Does Solomon answer and solve the profound?  
 Or is the poor beast trekking, homeward-bound?  
 Need I point him the right way so he won't be upset,  
 and then claim I converted bailed Baruum's pet?*

— LILLIAN GEWIRTZ

## The Docket

**RECYCLE** — Your aluminum, tin/steel cans, and all colors of glass at the local recycling center at 96 Atlantic Ave. It's open Saturdays from 10 am to 2 pm. Not open Dec. 25 and Jan. 1. No newspapers are accepted for recycling.

**CLINIC** — Students interested in developing or participating in an environmental law clinic should leave their names in the Clinical Committee's mailbox in the SBA Office or should call Curt Meltzer (458-7483) or Gary Brown (522-0593).

Connie Raffa ('76), "Instrumental"

## Students on National Committee

By RICHARD GRAYSON

As a direct result of the efforts of Connie Raffa, a 1976 BLS graduate and last year's governor of the ABA Law Student Division's Second Circuit, law students have been named for the first time to a Judicial Conference committee.

On November 19, a decision was made to include three law students on the committee, whose official name is "A Committee of the Judicial Conference of the United States to Consider Standards for Admission to Practice in the Federal Courts." The Judicial Conference is a research arm of the federal judiciary, according to Steve Charen, one of the three students on the committee.

The three students on the committee are Steve Charen, LSD delegate to the ABA House of Delegates; Andy Goodman, who was chairman of the LSD Second Circuit committee which made the recommendations; and David Stoup, president of the LSD.

The committee includes 12 federal judges, six legal educators and six distinguished practitioners, in addition to the students. The latter are called "consultants," although in reality, they are non-voting student representatives with all other full rights of participation. Charen feels that since Judicial Conference committees act on a con-

sensus basis, the lack of a student vote will not have a harmful effect.

The Judicial Conference committee is partly the result of the actions of the LSD's Second Circuit. Last year, the Clare Report on standards for admission to practice in the Second Circuit became the main topic of conversation at the LSD's Second Circuit Roundtable. Following that meeting, Connie Raffa named a student committee from the Second Circuit to study the Clare Report. The recommendations of that study committee, headed by Andy Goodman, currently the Second Circuit governor and a third-year student at NYU School of Law, were:

1) there is a need for such rules for admission on a national, and not just on a circuit or district-wide basis, and

2) a committee with student members should be named by Chief Justice Warren Burger to study this need.

Steve Charen, also a third-year student at NYU, and the LSD delegate to the ABA House of Delegates, noted in an interview how the Goodman Committee recommendations made their way to the Supreme Court. "The recommendations were presented to the LSD Board of Governors in April of this year and were approved. Then they were sent on to the LSD As-

sembly and were adopted in August. At that point it was my responsibility to implement them with the ABA. When I learned that Chief Justice Burger was already moving on the proposal, I went to the Supreme Court." Charen had previously worked at the Court in the area of judicial administration, so he was already familiar with the Supreme Court's inner workings.

Charen negotiated with the Court and learned that the inclusion of one student on the committee had been agreed to by Chief Justice Burger. Later, two other students were named to the committee.

The first meeting of the Judicial Conference Committee was held December 9 and 10 in San Antonio, Texas. A second meeting has been scheduled for April 18 and 19 in Carmel, California. Charen expects that the final report will be completed sometime around the end of next semester.

Prominent local members of the committee are Judge Morris Lasker of the Southern District of New York; Robert Clare, Jr., partner at Sherman and Sterling and chairman of the original Second Circuit committee, which precipitated the LSD action; Dean Joseph McLaughlin of Fordham University School of Law; and Dean Donald Shapiro of New York Law School.

## Letter:

To the Editor:

As past and resigned student chairperson of the Student-Faculty Curriculum Committee, I would like to comment on the situation which exists concerning this committee. At present, the Curriculum Committee is not functioning. The faculty have resigned and the committee remains with six student members awaiting the appointment of new faculty members.

At the beginning of this school year, the Executive Board asked me to be the student chairperson of the Committee. I then requested that each student member be personally canvassed with regard to whether they had personal aspirations to be chairperson and second, whether they would accept me in that position. The Executive Board did not follow this procedure and this lack of tact gave the student members an issue with which they could begin a power struggle with the Executive Board. At this point, I resigned on November 8th in what I felt was the best interests of the students and the school in general. I regret that the *Justinian* has reported the issue in such a vague manner that the situation is not clear to the student body. In addition, the four student members are behaving in a way which is disruptive, and they have a duty to either function as a committee or to leave it alone. I can only conclude by saying that this is a disappointing way to end two years of service at BLS.

Sincerely,  
Diane Fernandez

**JUSTINIAN** — Our annual April Fool's issue will be accepting submissions of all types from members of the BLS community. Anonymity is guaranteed, if desired. Deadline for submissions will be March 10.

## Israeli Justice at BLS

By HOWARD COHEN

On Wednesday afternoon, December 1, Mr. Justice Meir Shamgar, of the Supreme Court of Israel, spoke on the legal aspects of the Middle East conflict. The lecture, sponsored by the SBA, filled the Moot Court Room with well over a hundred people, including many faculty members and alumni. After Justice Shamgar's remarks, there was a brief question and answer period.

In his discussion, Justice Shamgar stated that "Israel bases its legal existence on the declaration of the United Nations in 1947," despite Arab claims to the contrary. He further stated that although, at present, there are no violent hostilities between Israel and her Arab neighbors, legally a state of war or belligerency still exists. The reason for this situation is that the armistice which ended the Yom Kippur War merely ended active warfare, but did not, by its terms, declare peace. "During a general armistice, the belligerents must abstain from acts or omissions specified in the agreement." However, since a state of war continues, "those acts or omissions not specified are permissible." Therefore, if not strictly prohibited, tactics such as propaganda and economic embargoes

are permissible. This position has been upheld in French and American legal decisions.

In trying to solve this situation, Justice Shamgar stated that Israel is "willing to take any opportunity to negotiate; to leave the state of armistice to create a permanent peace." He



(Photo by Marcia Knigin)

Justice Meir Shamgar

further urges that a "bona fide approach towards negotiations" be taken. He hopes that the Arabs will adopt the same approach.

Mr. Justice Shamgar is well qualified to lecture on this topic. Before becoming a Justice of the Israeli Supreme Court in 1975, he served as the Legal Advisor to the Ministry of Defense of Israel and is presently a Council Member of the International Society of Military Law and the Laws of War. Justice Shamgar studied history and philosophy at Hebrew University in Jerusalem and studied law at the Government Law School in Israel and London University.

**LIBRARY COMMITTEE** — A committee of SBA delegates has been formed to work with Prof. Dusan Dionovich to improve the library. Written suggestions and complaints brought to the SBA office will be referred to this committee.

**PARTY** — SBA pre-finals holiday party will be held on Thursday, December 23, in the student lounge starting at 4:30. Music, food and drinks will be provided.



By ROCHELLE STRAHL

The borough of Brooklyn can be proud of what many consider a first-rate cultural institution. The Brooklyn Academy of Music (BAM), located at 30 Lafayette Avenue, a 15-minute walk from BLS, and one short block from Flatbush Avenue, sponsors a philharmonic orchestra, a choral society, a "Fabulous 59¢ Flicks Festival," free schooltime concerts for children and a Saturday afternoon puppet show series. It houses the Chelsea Theater, which staged the inventive new productions of "Candide" and "The Beggar's Opera" and Isaac Bashevis Singer's "Yentl," all of which eventually found their way to Broadway. It is the New York home of the Pennsylvania Ballet. It has hosted New York engagements of the Royal Shakespeare Company and Young Vic and this year was the exclusive host of the first American tour of Ireland's Abbey Theater since 1938.

The Brooklyn Academy of Music was founded in 1861, when the surrounding Brooklyn Heights neighborhood housed the elite of Brooklyn society. At that time, BAM was located on Montague Street. It was there that President Chester Arthur celebrated the opening of the Brooklyn Bridge in 1883 and Stanley first told of his historic meeting with Dr. Livingston. Edwin Booth performed his

# BAM: Outshines Manhattan?

farewell Hamlet and Sarah Bernhardt wept upon its stage. In 1903 a fire completely destroyed the building.

Immediately, the community rallied, raised \$1 million by subscription and commissioned the

architectural team of Herts and Tallant to design and build the present light-colored brick and polychromed terra cotta Italian Renaissance structure on Lafayette Avenue.

Over the years, BAM has pre-

sented such performers as Maude Adams, Arturo Toscanini and Vaslav Nijinsky and such lecturers as Winston Churchill, Helen Keller and Admirals Perry and Byrd. But as the once fashionable Fort Greene area deteriorated, the audiences dwindled and the programming was severely reduced. By the 1960's, BAM was nearly extinct.

The rebirth of BAM began in 1967, when Harvey Lichtenstein was lured away from Lincoln Center to become the executive director of BAM. Lichtenstein instituted a massive program of fund-raising from municipal, state, foundation, corporate and individual sources to pay for the renaissance of dance, music, and theater at BAM. BAM's patrons include the Rockefeller and Andrew W. Mellon Foundations. In addition, BAM receives contributions from nearby department stores and banks. Some of these are Abraham and Straus, I. J. May Co., Brooklyn Union Gas Co., Banker's Trust Co., Chase Manhattan Bank and First National City Bank.

In order to create a loyal following, the BAM staff is offering low price subscriptions. The number of subscriptions has increased from about 6,000 to

more than 40,000. While Manhattan residents comprised most of the subscribers in 1973, most of the subscribers are now Brooklyn residents.

The BAM building itself has undergone some major renovations since Lichtenstein became director. These changes have enabled BAM to add to the amount and variety of events that it is able to offer. BAM audiences now enjoy four performance halls, differing in size and shape to permit maximum flexibility in programming.

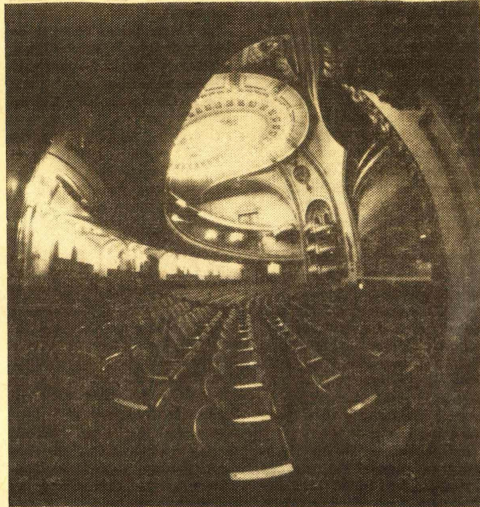
The most often used of the four halls is the gilt and white Opera House, which seats 2,200 and acoustically is reputed to be one of the finest concert halls in the country. The Playhouse is a middle-sized performance space used to accommodate dance, theater and film. The Lepercq Space is a multi-purpose experimental performance facility named for BAM's Board Chairman, Paul Lepercq, situated in an area of the building once occupied by a ballroom. It is used primarily for experimental theater, music, banquets, receptions and dance. A director or choreographer can choose the size and shape of the performance area for each event. The fourth floor houses the 180-seat Chelsea Theater, used primarily for performances by the Chelsea Theater Center.

Like most cultural institutions today, BAM faces money problems. New York City owns the building in which the Academy is located and leases it to BAM Inc., which operates the institution as a non-profit center for the arts. Box office receipts pay for less than half of the production costs. The reason for this is BAM's policy of inexpensive tickets. Cutbacks in city and New York State Council on the Arts funding means a more intense fund-raising effort. However, BAM staff members are not pessimistic. They foresee no reduction in either the amount or quality of presentations.

## Plays to 85% of Capacity

Last year BAM averaged 85% audience capacity at all performances; this year BAM hopes to continue the momentum and raise it to 90%. The BAM staff is also optimistic that in the future the Academy will have more resident companies encompassing the major areas of the performing arts. As Kate MacIntyre of BAM put it, "BAM has been primarily a presenting company. This is beneficial to some groups because BAM has a built-in clientele. However, we would like to build from the ground up." BAM has a resident orchestra, the Brooklyn Philharmonic, under the direction of Lukas Foss, but it has neither a resident dance company nor a theatrical group. In the past, fledgling dance groups used the Academy as their resident homes before moving into new homes in Manhattan. These groups included The Merce Cunningham Dance Company, the Alvin Ailey American Dance Theater, and Eliot Feld's American Ballet Company. The Chelsea Theater uses BAM as a home base and for support facilities, but is a separate entity with its own board of directors and budget.

BAM staffers do not see Lincoln Center as a threat. "There is such a glut of talent," remarked Kate MacIntyre. "The competition keeps us on our toes. . . . What is important to remember is that BAM has proved that it can function as a viable institution for the arts."



The BAM Opera House

## Ode to Law School Exams

Classes are over,  
Your time is your own.  
Your friends call to party  
But you sit alone.  
Christmas means nothing, for THEY loom ahead  
Those final exams to which future is wed.

You shut off the music, need quiet to think  
Close down the bar for there's no time to drink.  
The sun's out there shining, you take one last look  
Then pull down the shades and pick up your book.

Criminal law is the first exam pending  
So pen in hand you attempt comprehending  
Mens rea you find, means the guy was intending  
And though he used force, he was only befriending,  
Defending

A guy from some harsh blows descending.  
But such simple facts need some further appending  
The guy was a crook  
Two cops apprehending  
And though in your heart, this man you're commending  
Guilty-assault, is the just legal ending.

Property, personal.  
Next on the list.  
So movies and TV you staunchly resist.  
Title, possession means property owned  
To do with as wanted, to give or to loan,  
But then if they keep it, it's rightfully yours,  
And on to the courts, for you have a cause.  
Parking the car and leaving the key  
The garage is your agent,  
To wit, a bailee.

Now take Mr. Jones, as Smith he's marauding  
You think he's Smith, unaware he's defrauding  
Voidable title you can get the goods back  
But only if timely and  
Alas, alack,  
Bona fide Brown buys, no notice of flaw  
Good title to Brown,  
UCC, common law.

You're biting your nails  
You're pulling your hair  
You're oral and anal  
And don't even care  
You feel like your mind is on overflow  
But there's only two down and three more to go.

Contracts — oh — contracts  
I'm in such a fright  
There's so many rules  
Let me try and recite. . . .  
Offer, acceptance, express and implied  
Silence and use of the goods as supplied.  
Offer, not a mere quotation.  
Change in terms — a revocation.  
Mistake in bid from calculation.  
Perform mistake, there's reformation.  
Formal contract contemplation,

Terms must need elucidation.  
No defense, intoxication  
Unless in state of obfuscation.  
Consideration  
Limitation  
Compensation  
Imitation  
Affirmation  
Violation  
GOD — I need a long vacation.

Next there is torture  
Dearly called tort.  
And dear reasonable man,  
A myth of some sort.  
You never will see him, he's never around  
But on the strength of his conduct, a judgment is found,  
While shooting at A, you miss and hit B.  
To B you are liable for battery.  
And though you claim you don't know the gent.  
You're liable still, through transferred intent.  
Negligence comes, when your intent was nil.  
But a duty to someone you did not fulfill.  
Be you blind, be you short, be you thin, be you fat  
You'll find that the reasonable man looks like that  
And whatever the jurors feel he would have done,  
If you didn't do that  
The plaintiff has won.

It's anti-climactic with one more to face  
You feel like you can't even read one more case  
But you turn to your notes  
And hope it will flow.  
Just one more . . .  
Just one more . . .  
Civil Pro.

Pennoyer-Neff we all construe  
Back then you needed presence true  
But Corporate problems did ensue  
Now minimal contacts, International Shos.  
There's police power — a lo Hess.  
Just driving through — no more, no less.  
If valid service you address  
Your client will obtain redress  
Attach some land  
Garnish a debt  
Anything, anything you can get  
For a claim you want to satisfy  
Whether in personam,  
Rem or quasi.

At last it's all over,  
At last I can rest  
So hyper, so antsy, from five little tests.  
Fatigued and depleted  
I breathe a deep sigh  
It's really over  
I didn't die  
Relief sweeps over,  
Tensions fade  
And I swear that I'm not gonna think about grades.



## Herrmann v. Crea

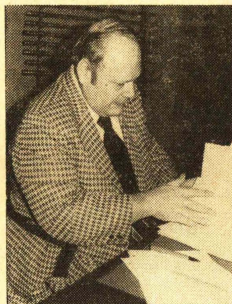
(Continued from Page 1)  
incompetency [sic] in plaintiff's, or in this case, defendant's profession as an attorney. (2 Seelman, id. chap. 3, pars. 14,18).

The court has given considerable thought and deliberation to those factors that distinguish what the parties term "Wall Street Lawyers" as opposed to the "Court Street Lawyer" referred to in the complaint. As a general rule the court notes that the latter group, and now the court refers to these practitioners purely in the geographical sense, conduct few, if any, of the major anti-trust or SEC actions for our national and international corporations. Fewer major corporate mergers are negotiated on or in the Court Street vicinity than on Wall Street or Madison Avenue.

On the other hand, local practitioners have excelled and been responsible for innovations and growth of the law in the important fields of personal injury litigation, criminal and constitutional law and in the real estate area. The distinguishing characteristics between legal practitioners in the Court Street neighborhood and their colleagues on Wall Street is not in the quality of the work produced, for indeed Court Street has produced a considerable number of eminent members of both the bench and bar, but in the areas or field of practice.

The appellation "Court Street Lawyer," while it may not have the positive social stature (with possible financial remunerations) associated with membership in the Wall Street firms, by no means betokens incompetence.

It simply connotes a field of endeavor for which this neighborhood is popular and, indeed, famous. To hold otherwise would be to ignore major contributions to the law and the criminal and civil justice systems of the Brooklyn bar.



(Photo by Marcia Knigin)  
**Ex-BLS Prof. W. S. Herrmann, plaintiff**

The court recognizes that its obligation, on a motion for summary judgment, is "issue finding rather than issue determination." (Esteve v. Abad, 271 A.D. 725, 69 N.Y.S. 2d 322; Sillman v. Twentieth Century Fox, 3 N.Y. 2d 395, 165 N.Y.S. 2d 498.)

Nevertheless, "the Court shirks its duty if it creates an issue, when none exists, solely to foist decision upon a jury." (Crane v. New York World-Telegram Corp., 303 N.Y. 470 at 479.)

Accordingly, plaintiff's motion for summary judgment dismissing the counterclaim is granted. Defendant's cross-motion is denied.

## Curriculum Committee Problem

(Continued from Page 1)  
interested students, as are all student-faculty committee meetings.

### Relations Meeting

In individual and, except for former faculty chairperson John Meehan, identical memos, all recently resigned members of the Student / Faculty Curriculum Committee declined an invitation extended by the Student / Faculty Relations Committee to attend the December 2 meeting. At the meeting, members of the SBA Executive Board attempted to explain the events leading up to the resignation of two out of four student members of the Curriculum Committee.

"There has been no misunderstanding of the facts..." stated Meehan in his memo. "Our concern was the impact of those facts upon the Committee's functioning, and not the details of how or why those came about."

"It's my opinion that the faculty resigned due to a misinterpretation of what the SBA Exec Board had done," asserted Jayne Robinson at the meeting. She contended that the decision to appoint Fernandez had been made "on the merits."

But Professor George Johnson, a member of the Relations Committee, had heard that Diane Fernandez had been appointed "to shake up the committee and to get it to do more work. If that is true, it's not likely that any faculty members will want to serve on the Committee."

"I am not yet thoroughly convinced that I know the reason why six professors resigned en masse," offered fellow committee member Jerome Leitner, "and I would be reluctant to put my nose into a buzz saw" by accepting appointment after such a mass resignation.

"Pursuant to local custom," said Prof. Leitner, "service on

a committee... is largely voluntary.... My suspicion is... if the Dean requested any professor on the faculty to serve on that Committee, that person would refuse."

The SBA Executive Board has sent a letter to the Dean, asking him to appoint new faculty members to the Curriculum Committee.

"If I were asked to serve on this committee," agreed Prof. Johnson, "I would decline until I knew something more about why previous members had resigned."

Underlying reasons for the resignations could not be ascertained at the meeting except by hearsay, since none of the resigning members attended.

### Appropriate Forum?

"There is no dispute here which is sought to be mediated..." maintained Meehan in his memo. "Further, speaking as an individual faculty member, I do not regard your Committee (Relations) as the appropriate forum in which to review any action of mine taken in an official capacity."

Professor Deborah Schenk, faculty chairperson of the Student / Faculty Relations Committee, felt her Committee was an appropriate place to "air grievances" of this nature, but insisted that the Relations Committee had no power to require explanations from either faculty or students.

"What is it that you (the Executive Board) want us to do?" queried Schenk.

"My own view regarding curriculum," suggested Leitner, "is that now... is a good time to give curriculum a rest... I'd like some calm and tranquility to let things cool out."

Professor Philip Yonge suggested that curriculum activity

be limited to ad hoc committees formed for specific purposes, until the appointment of a new dean. This would be "a good opportunity to investigate what went wrong," said Yonge, "and to correct it, including the selection process for student members, ... their academic credentials, etc."

"The Committee has not been abolished; it is simply quiescent..." said Leitner. "The faculty thinks the Committee has done its work."

Prof. Johnson felt that the Committee's work was not complete, and expressed fears for the future of other student-faculty committees. He challenged the SBA Executive Board's explanation of its motives in the Fernandez appointment: "Why did the SBA Executive Board pursue this, if the position of chairperson is not so important?"

Prof. Schenk thinks that the SBA action was politically motivated, but that it is none of the faculty's business.

"If someone has been on the committee for three years, why pick someone else as chair?" asked Johnson. "What was... I think the hardest working committee in this law school is out of commission."

Arlene Robinson, student member of the Relations Committee, feels that "we're losing a right" in the loss of the Curriculum Committee.

"This was no right," countered Schenk. "This is a faculty committee which student members attend by invitation. If you students want a curriculum committee, there's no reason why you can't form one."

"If the Dean does not appoint new [faculty] members, we want a letter stating the reasons why not," said SBA President Howard Peltz.

Leitner: "I'm not at all sure you'll get such a letter."

## Commentary

## Waiting for Jimmy

By MICHAEL WEINBERGER

The oil ministers of the OPEC countries were supposed to meet this year sometime in December. However, the date of that conference may be changed. It seems that one of the ministers has suggested that the conference be held after Jimmy Carter takes office. Everywhere you turn, people are putting off important and even not so important decisions while they "wait and see" what the new president will do.

For instance, in my neighborhood the other day we had a small fire. Nothing too important — dumb Fred's television set exploded, and his living room furniture rapidly started to oxidize. One member of the crowd gathered in front of his house suggested calling the fire department. He was quickly informed of the foolishness of this suggestion.

"Don't call the fire department now. It's better to wait a little while," a second person told him. The latter continued, "Listen, Jimmy Carter pledged to help the cities if he got elected President, right? So, helping the cities also means helping the fire departments, right? So why don't we wait for Jimmy Carter to take office, and then we'll be able to call a first class fire department to dumb Fred's house?"

"But by then the fire will be over," came the reply.

"Listen, what do you want, fast work or quality service?" That seemed to settle it.

Meanwhile, on the avenue Mr. Quiggs, the owner of the fruit store, got on top of an orange

crate and started to yell at the customers.

"Listen, I'm sick and tired of all of you complaining about the price of my fruit going up and up and up, so I've decided to do something about it. Jimmy Carter promised to hold down inflation if he got elected President, so I'm not going to sell any more fruit till January 20th. Then we'll all have nice low prices, and everyone will be happy."

This created quite a stir among the customers. Mrs. Petrillo shouted to Mr. Quiggs, "That's a fine idea, Mr. Quiggs — almost as good as waiting for Jimmy before we call the fire department to put out dumb Fred's fire. But listen, I've got company coming tonight, and I planned on serving baked apples for dessert. I just have to have those apples!"

Mr. Quiggs answered, "Oh yea? What's it worth to you?" To which Mrs. Petrillo replied, "I'll give you twice your regular price if you sell me the apples now. I just can't wait till January 20th."

"Sold!" said Mr. Quiggs. And so it went on, all the shoppers bidding for fruit at high prices, so that they could wait for Jimmy to become President and then pay low prices. It was a wonderful public display of communal patience.

And then there's my friend Smarts. Smarts is a brilliant guy. He's got a Ph.D. and a doctorate, a magna cum kappa and a phi beta laude. You'd figure he's got to be one happy guy, right? Well, the other day he got laid off his job with the

taxi company. He told me that they told him that they didn't need his services as an automobile controller engineer — a hack — any longer.

I asked him, "Smarts, are you looking for a job?"

"No," he said. "I'm waiting to play my trump card — Jimmy Carter. Look, I could get a job right now for about ten thousand a year, but if I wait till January 20th, when the unemployment rate goes down to 4%, there will be such a demand for people like me that I could probably hold out for twenty or thirty thousand."

"Gee, Smarts," I said, "No wonder you have a magna cum kappa — you're a genius!"

"That's right!" he said, trying to feign modesty. "And how many times do I have to sell you, that's a *summa cum kappa*, not a *magna cum kappa*. And if I wait till January 20th, I can probably trade it in for a *supa dupa cum kappa*. It's just a question of waiting for Jimmy."

## Practice Court

Special to The Justinian

**NEW COURSE** — A new course called "Practice Court" will be offered next semester. Signs will be posted in late January with the details. According to William Holzman, assistant to the dean, the no-credit course will meet several times a week. The course is the resumption of the practice court which was an institution at BLS for many years. The rebirth was the idea of Judge Abraham Multer, president of the BLS Alumni Association.

## Dean Search Nearing an End

By RICHARD GRAYSON

Two candidates to replace retiring Dean Raymond Lisle were interviewed by the Student Decanal Search Committee (SDSC) last month.

Professor Clifford Davis of the University of Connecticut School of Law visited BLS on November 16. The SDSC was not impressed by Prof. Davis' administrative abilities. According to an exclusive memo supplied to the *Justinian*, the Committee felt that Prof. Davis took neither the Committee nor his decanal candidacy very seriously. The SDSC wrote, "While the Committee found that his candor and sense of humor might be amusing in the classroom, he lacked the qualities the Committee is looking for in a dean."

On November 23, Professor Charles Ehren, Jr., visiting scholar at the Columbia University School of Law, was interviewed by the Committee. The exclusive memo to the *Justinian* dealing with Prof. Ehren took special note of his "impressive administrative background as well as substantial teaching experience, and research and writing credentials."

Prof. Richard Farrell, a member of the Decanal Search Committee (DSC) chaired by Dean Emeritus Jerome Prince, said that he hopes his Committee will complete its interviewing process by the end of the se-

master. He expects the DSC's report to be sent to the Board of Trustees in early January.

Although there are three more candidates who are seriously being considered for the position of dean — Judge I. Leo Glasser, adjunct professor at BLS and a Family Court judge; Judge Edward Thompson, a member of the BLS Board of Trustees and Administrative Judge of the New York City Civil Court; and another member of the local community who wishes anonymity until later this month — the DSC will interview, at most, two of the remaining candidates sometime this month.

## Students KO'ed

(Continued from Page 1)

Interviews with three faculty members — Professors Richard Allan, Stacy Caplow and Jerome Leitner — failed to turn up any reason why the faculty voted in favor of unbalanced representation.

Howard Peltz asked four other faculty members — Professors Deborah Schenk, David Rice, John Meehan and Brian Comerford — why this imbalanced committee was passed by the faculty. He did not learn much from them. "It was done purposely, but I didn't really get answers from anyone."

But Prof. Allan did say, "The lack of students [on the committee] won't stop the faculty. Why can't the faculty do self-analysis without student participation?"