The Justinian

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"A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves."
SUTHERLAND, George in Grojean v. American Press Co., 297 U.S. 233, 250 (1963)

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Herrmann v. BLS Dismissed, Court Allows Defendants' Motion

State Aid Not Sufficient to Make BLS 'Arm of State'

Editor's Note: The following is a reprint of Judge Pratt's decision dismissing former Professor William S. Herrmann's suit against BLS, brought in the U.S. District Court-Eastern District of N.Y. The opinion, which dismissed for failure to state a cause of action, was handed down on October 20. There are two suits brought by Herrmann still pending. One involves breach of contract, the other a conspiracy to deprive Herrmann of his status as a Professor of Law. The facts of this case are set out in the opinion.

UNITED STATES
DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

WILLIAM S. HERRMANN,
Plaintiff,
— against —
LEONARD P. MOORE, et al.,
Defendants.

PRATT, J:

Plaintiff William S. Herrmann was a tenured professor of law until his discharge by Brooklyn Law School on September 17, 1975. In early 1973, the dean and the faculty of the law school negotiated a revised salary schedule for faculty members. Meetings were held at which the performances of various faculty members were examined for the purpose of adjusting salaries. Many of these meetings became heated, and a variety of personal exchanges occurred. On April 2, 1973 plaintiff sued a fellow faculty member in state court for alleged defamatory remarks made during one such meeting. On April 4, 1973 the faculty requested that plaintiff discontinue the proceedings and settle his differences "with dignity".

In an attempt to settle this dispute, the dean offered his services and those of other faculty members and alumni to act as mediators. Plaintiff ignored this request, however, and subpoenaed a law student to testify at a deposition. After the student was deposed, plaintiff addressed a letter concerning the student to the Committee on Character and Fitness for Admission to the Bar of the Second Department accusing the student of perjuring himself in the deposition. The student was finally admitted to practice, but only after extended delay caused by plaintiff's letter.

Plaintiff also took the depositions of the dean and other faculty members in connection with his defamation action. He then filed another suit on January 28, 1975, this time in federal court against several faculty members and the dean. That action alleged counts of defamation and conspiracy to deprive plaintiff of employment. At that time, plaintiff was still employed by the law school.

The law school board of trustees, disturbed by the effects of these suits on the operations of the school, met to consider whether proceedings should be commenced regarding the propriety of plaintiff's actions. The board decided, however, that bringing the federal suit was an insufficient ground to warrant institution of proceedings against the plaintiff. When it was discovered that plaintiff had contacted the Character and Fitness Committee regarding the moral character of the witness student, however, the faculty met and adopted a resolution addressed to the board of trustees requesting the board to reconsider their prior refusal to commence proceedings against plaintiff.

Photo by Ken Shiotani
Former BLS Prof. William S. Herrmann

On May 19, 1975, the board met, considered the faculty resolution, and resolved "to have the entire faculty of the law school conduct a hearing on whether or not the federal litigation begun by plaintiff was instituted to intimidate and coerce other members of the faculty." The faculty then met and considered nine pages of charges against the plaintiff; the plaintiff was served with notice of the charges and the hearing date, and was provided time to prepare his responses. Plaintiff's response was the filing of another lawsuit, this time in state court, against the dean, the school, and other members of the faculty.

On September 17, 1975, the board of trustees concurred in the faculty's ultimate findings that several of the charges lodged against plaintiff had been proven, and that plaintiff's appointment should be revoked. Plaintiff was then dismissed. On December 29, 1975, plaintiff filed still another suit in federal court seeking review of the faculty proceedings. Judge Mishler dismissed that complaint for lack of subject matter jurisdiction on June 30, 1976.

Plaintiff then filed the instant complaint on December 16, 1976, and defendants have moved to dismiss pursuant to FRCP 12(b). For the reasons set forth below, the motion is granted.

THE COMPLAINT

The complaint alleges that defendants conspired to deter plaintiff from conducting his lawsuit for defamation "freely, fully, and truthfully" and to injure him for pursuing that cause; that defendants conspired to interfere with plaintiff's constitutional rights and privileges of free speech and access to the courts and courts' processes; that defendants conspired to deter plaintiff from his work advancing the rights of minority groups; and that defendants conspired to deprive plaintiff of equal protection of the laws. Plaintiff alleges that these acts were done "under color of state law" and deprived him of his rights under the first, fifth, and fourteenth amendments to the constitution. In addition, he alleges violations of the Civil Rights Act, 42 USC § § 1983 & 1985, and, curiously, Article 2 of the Constitution of the State of New York.*

DEFENDANTS' MOTION

Defendants correctly contend that to make out the §1983 claim and the first, fifth, and fourteenth amendment claims, some "state action" must be shown. Since none of defendants' activities were conducted "under color of state law", defendants continue, these claims must be dismissed.

Plaintiff presents two theories upon which state action might be premised. First, plaintiff suggests that Brooklyn Law School

* Article 2 of the New York Constitution is entitled "Suffrage" and since no connection has been drawn between "Suffrage" and the activities alleged in the complaint, that allegation is, therefore, disregarded.

(Continued on Page 4)

Glasser Awarded Degree, Library Grant Announced

By HOWARD COHEN

Dean I. Leo Glasser was awarded the degree of Doctor of Laws, **honoris caua**, by the Brooklyn Law School Board of Trustees and the Alumni Association on Wednesday, October 12. At the ceremony, it was announced that BLS has received a $25,000 matching grant to be used in improving the library. To kick off the fund raising drive, Alumni Association President Abraham J. Multer presented a $10,000 check to the Board of Trustees on behalf of the Alumni Association.

The honorary degree was presented to Dean Glasser by Board of Trustees President Judge Leonard P. Moore of the Second Circuit, who was assisted by Dean Gilbride. In his presentation, Judge Moore remarked that usually honorary degrees are conferred upon retirement, in recognition of past achievements. However, the Board of Trustees feels that Dean Glasser should be awarded his degree now, in recognition not only of his previous achievements, but also of his future accomplishments as well.

In his acceptance speech, the new Dean discussed what he feels are BLS's strong points as well as the areas which he believes need improvement. Noting that "the complexity of the law makes demands on a law school," Dean Glasser said that BLS "meets that obligation effectively." He cited the fact that there are many BLS graduates in major firms across the country as well as in government and the judiciary. Dean Glasser also took note of the many national awards BLS teams and organizations have been winning, suggesting that creation of a trophy room might be a good idea.

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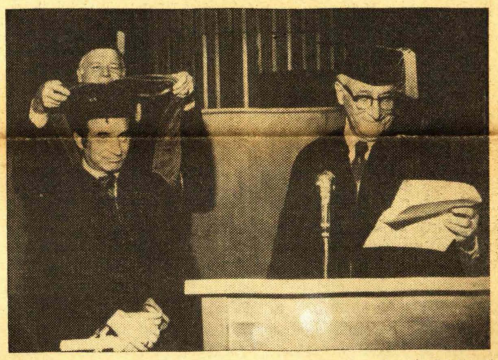

Photo by Ken Shiotani
Dean I. Leo Glasser cooperates as Assistant Dean Gerard Gilbride places the hood of Doctor of Laws on his shoulders while Judge Leonard P. Moore reads the citation.

High Court Judge Speaks at BLS

By ROCHELLE STRAHL

Mixing humorous experiences with serious talk about the problems that face the criminal justice system, Associate Judge Sol Wachtler of the New York Court of Appeals addressed a gathering of Brooklyn Law School faculty and students on the "Crisis in the Courts."

After stating that "there is no greater crisis than that which confronts us in the justice system," Justice Wachtler proceeded to guide the audience through the steps of the system via the use of a hypothetical situation of a car thief. Once the suspect is apprehended, those on the bench and in the area of law enforcement are often faced with a delicate balancing act. On the one hand, a grievous wrong has been committed against society. On the other hand, an individual's constitutional rights must be protected, and, in fact, such a protection is mandated through various preliminary procedures, including the Huntley, Wade, and Suppression hearings.

Judge Wachtler noted that plea-bargaining has become essential in order to unencumber a system that cannot possibly — as it now exists — bear the time burden of trying all these cases. As a result of this plea-bargaining process, over indicting is now occurring.

Photo by Ken Shiotani
Court of Appeals Judge Sol Wachtler

Judge Wachtler felt that the Governor and the Legislature talk about court reform "in a most superficial sense," and compared what politicians are doing by pledging to increase the number of police on the street in order to make more arrests as "increasing the mouth of the funnel without increasing the neck."

"Lawyers must think in terms of making innovations or gut changes," the Judge suggested. "The gut problems exist in our substantive law . . . [with] things in criminal court that don't belong in criminal courts."

Turning to the civil area of the justice system, Judge Wachtler noted that in recent years there has been a new influx of cases to the civil courts. "Civil parts are now being encumbered by matters which never before appeared in courts — environmental protection, discrimination, student protests, consumer protection — all of which enlarge standing to sue."

As a starting point from which to unencumber the system, Judge Wachtler suggested that

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(Editorials express the opinion of the Editorial Board)

Library Funds Needed!

BLS has received a $25,000 matching grant to be used to improve and expand the library. The money can be put to good use. Our library, extensive as it may be, is quickly running out of room to store the various materials it receives daily. Furthermore, anyone who has ever tried to study to the tune of squeaky shoes, the clip-clop of clogs or the scrapping of chairs across the floor, knows that carpeting throughout the library would make it a more comfortable place in which to study.

The grant is contingent upon BLS's raising $75,000 on its own. We hope all the successful BLS alumni out there are listening. If it were not for what BLS has given them they would not be where they are today. There are a few alumni who if they wanted to, could solve the fund raising problem with a stroke of the pen. We urge the BLS alumni to reach into their pockets and pay back what they have gotten from BLS so that future students will have the opportunity to reap the full benefits of a BLS education.

Where Was Everyone?

Many at BLS bemoan the fact that they do not attend a school with the national reputation of Columbia or NYU. They cry for national recognition and cite the attraction of national speakers and functions to BLS as one method of achieving it. It therefore makes us wonder then, why when BLS hosts the fall meeting of the Second Circuit of the American Bar Association / Law Student Division, only a handful of BLS students (and most of them members of the student government at that!) show up.

A large turnout of BLS students would have gone a long way towards improving the BLS image among other law school contingents. However, the only time our student body showed any interest in attending any of the LSD activities that day, was when the cry went up in the library that there were free Cozzoli sandwiches at the buffet luncheon. After the free food was gone though, the meeting resumed its ghost-town appearance.

The SBA really went all-out to make this function a success. This time the blame for a poor BLS image does not fall on the SBA or the Administration but on the apathetic student body that wants everything handed to it.

The Docket

Moot Court — The Moot Court Honor Society invites all students, faculty and alumni to attend the final rounds of the Second-year Moot Court Competition to be held in the Moot Court Room, on November 14, at 4 PM. All first-year students are advised to attend so that they may become acquainted with appellate advocacy in preparation for their spring moot court competition.

Blood Drive sponsored by the SBA will be held Wednesday, November 9, from 1-6 PM in the third floor lounge. Help make this worthy project a success by donating.

Needed: writers for the "Second Circus Revue," the annual spring show. Anyone interested please contact Toby Pilsner, 852-6259, or Todd Silverblatt, 852-6621.

Letters to the Editor

Night Students Air Grievances

Dear Dean Glasser:

The undersigned members of the evening division of the class of 1980 respectfully request administrative review of the September 1977 selection of new members to the Brooklyn Law Review.

In August, 1977 invitations were extended to the top-ranked second year students (day and evening) to participate in a writing competition. Membership in the society would be extended to those students who submitted "publishable" case comments. Each of the undersigned was invited to and did submit the requisite case comment: none was accepted for membership. In fact, no student presently enrolled as an evening student was accepted for membership. We submit that such a result is not only improbable but suggests a possible prejudice against evening students.

The submissions by evening students were distinguishable from day student submissions. Evening students were assigned cases that were not assigned to day students. Judges were assigned to read and evaluate case comments on a particular case or cases. Thus, there were day and evening judges, since the case assignments had distinguished between day and evening invitees.

A further distinguishing factor was the date the articles were to be submitted. Day student papers were to be submitted by September 19, evening papers were due September 26. Evaluation of the papers was commenced upon receipt of the case comments.

Even though the case comments were submitted anonymously, there can be little doubt that evening papers were distinguishable. Not only were the comments written on distinguishable cases, they were also submitted a week later and were assigned to judges who were to evaluate comments on particular cases. Inasmuch as the papers were not submitted until September 26, the judges most certainly were aware that they were evaluating case comments written by evening students.

The improbability that no case comment submitted by an evening student was "publishable" coupled with the patent distinguishability of evening papers, intimates prejudice. Moreover, the final selection of new members was made by a committee of Law Review members who, in effect, evaluated the evaluations, and selected new members without having read the article on the basis of which membership was to be extended.

Irrespective of whether there is an actual prejudice against evening students, day students are given preferential treatment. In the spring semester, invitations are extended to top-ranked day students who have completed one semester of law school. Evening students are not invited to compete in the spring competition. Moreover, those case comments submitted in the spring competition and rejected (ostensibly because they were not "publishable") are reconsidered with the case comments submitted in September. An "unpublishable" case comment cannot become "publishable" merely with the passage of six months. Nevertheless, papers which were not "publishable" last spring earned Law Review membership for two day students this September. Evening students, at the very least, should be given the opportunity to see whether "aging" has the same beneficial effect on their case comments.

In the interest of fair-play and justice, the preferential treatment extended to day students and the distinguishability of evening student submissions should be eliminated. The undersigned, therefore, request the following:

1. That "second chances" be either eliminated or extended equally to all competitors;

2. That all distinctions between day and evening submissions be eliminated;

3. That proof be made available that evening papers were read and given due consideration, especially since the articles were rejected without comment; and

4. That the administration, preferably you personally, review both the Law Review selection procedures and the "publishability" of case comments submitted this fall by evening students.

An opportunity, at your earliest convenience, to discuss these points and your response thereto with you and any or all of the recipients of a copy of this letter as indicated below would be greatly appreciated.

Respectfully,
Bernard Oster
Mariann Perseo
Joseph J. Winowiecki
Regina Feder
Neal Dodell
Kathy A. Dutton

Correction

The story in the October 6 issue entitled "Improve Orientation" should have read "Improved Orientation."

Praise for Habl, Not for BLS Grading System

To The Editor:

As one of last year's freshmen who was fortunate enough to be in Prof. Habl's Contracts class, I can personally verify that he is, indeed, one of BLS's finest teachers. Many of us will be sorry to see him go, if even for a brief period.

The very quality of Prof. Habl's work, however, underscores the irony of his support for the unfair grading system at our school. Prof. Habl's grading system is well thought out, well articulated, and efficiently applied — perfectly equitable from his point of view. If Prof. Habl graded all students in the school, the system would be a fair one.

As he explained it to us, Prof. Habl gives an 80 to a basically competent exam, and adds one point for each increment of worthiness beyond that level. Grades of 90 and above are only awarded to exams which are truly exceptional, or tell him something he didn't know.

Fine. No problem. The system makes sense. Unfortunately, each professor has his or her own standards. Students' averages are thus warped, and their ultimate rank in class standings unfairly reflects differences in professorial methods.

Contrast, for example, Prof. Habl's views with those of Prof. Crea, who has said that 85 properly rewards a competent exam, and who gives many grades in the 90's.

Is either Prof. Habl or Prof. Crea being unfair, individually? Certainly not. Is the overall ranking system unfair? Certainly. The students who have been graded by Prof. Habl's standards are at a five point disadvantage to those who have been graded by a system like Prof. Crea's.

Employers, Law Review, the International Journal, and the Dean, when he compiles his List, are all concerned with class standing, which is solely determined by numerical grade averages.

Now, to a certain extent, the damage caused by disparate standards is mitigated by random assignment of professors to first year sections. It is also true that the future O. W. Holmes and the budding Cardozos among us will show their mettle, regardless. Still, it is irrational to rely on the equalizing effect of random selection when the total number of choices is so limited, and it is silly to defend an unfair grading system on the grounds that a few students may be able to overcome its effects.

Beyond the first year of course, the present system rewards students who choose the easy graders. Before hurling a moralistic stone in their direction, however, the prospective thrower would do well to ask himself or herself whether it is preferable to be in the top half of the class with an acceptable education, or in the bottom half with a somewhat better one.

An elementary understanding of statistics reveals that the class standings themselves transcribe a normal curve, by definition. Since the Registrar unwittingly serves that necessary statistical function anyway, wouldn't it be better to have the curve transcribed by the grading professor?

In a light moment. Prof. Crea remarked, "How do I determine what grade to give an exam? I throw ketchup all over it and if it turns blue, it's a 90!"

I don't believe the professors at BLS employ capricious standards, and I don't believe many of them exploit the obvious vulnerability of the current system by awarding grades on a policy basis. Nonetheless, some improvement is necessary to make grading fair. I think it should be anonymous, mandatory curve grading, but there may be other ways.

Academic freedom is the hallmark of a good institution, but freedom without rules is arnachy.

Eric Brown
Treasurer, SBA

Crimmins Lawyer at BLS Speaks on Juries, Ethics

By HOWARD COHEN

Herbert Lyon, defense attorney for convicted child murderer Alice Crimmins, guest lectured before Prof. Albert DeMeo's Trial Advocacy class on October 5. The lecture, which was open to everyone, was at the invitation of Prof. DeMeo, a personal friend and former opposing counsel to Lyon.

Lyon began by contrasting jury selection procedures in both state and federal courts. From his point of view as a defense counsel, he feels that the federal system is far more restrictive. In picking a jury, Lyon attempts to establish a dialogue with potential jurors. Hearing the jurors speak, watching their reactions to questions, and listening to the jurors' own questions gives a lawyer a valuable insight into their personalities.

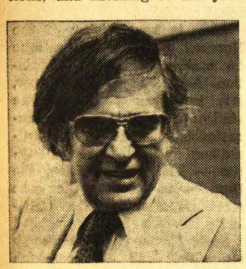


Photo by Ken Shiotani
HERBERT LYON

Unfortunately, Lyon says, in federal court most of the dialogue is between judge and jury, with very little input by the attorneys. Lyon prefers to pick a jury in state court, which, he feels, allows a broader examination of potential jurors.

While the result of this is that federal procedures are quicker — without an extended dialogue between counsel and juror, a jury is chosen faster — Lyons thinks this is detrimental in the end. He believes that the purpose of the courts is to "punish and rehabilitate, not to protect the public from crime." Therefore, Lyon believes that a fair opportunity to examine "the people who are going to decide the defendant's fate" should not be sacrified merely for the sake of expediency.

Lyon next discussed the ethical and moral problem of defending a person who is obviously guilty of a heinous crime. As one alternative, Lyon gave what he says is the pro forma answer. "There has to be a system. Everyone is entitled to a defense. If you allow all sides to fight with each other, there is a chance of the truth coming out. A defense lawyer has a role to play and should not take on the role of prosecutor."

However, Lyon stated that he has developed — in addition to the pro forma answer — his own philosophy on the subject. He feels that defending someone believed guilty is a "good, humbling experience" for an attorney. The exercise of developing a positive argument in the face of what appears to be obvious guilt "teaches (a lawyer) not to be so arrogant about the things (he thinks he knows)." Very often Lyon has felt pity for the people he has defended, recognizing that "this person is obviously miserable that his life is the way it is."

What Lyon dislikes more than defending a person he believes is guilty, is having to plea-bargain a defendant whom he believes is innocent, rather than run the risk that the evidence, as presented to a jury, will lead to a conviction on a higher charge. Although he does not like such situations, after many years Lyon has become realistic. "The law is not perfect on both sides," he said.

Mr. Lyon is a 1944 graduate of Brooklyn Law School. He is presently senior partner in the firm of **Lyon and Erlbaum.**

SBA Assembly Shifts Into Gear

By ROBERT ROBINSON

SBA President Joe Porcelli welcomed the newly elected delegates as the Delegate Assembly began this year's business on September 29. He advised all of the Delegates to remember that they are responsible to the student body which has elected them. Delegates need to be sensitive to the students' needs if they are to adequately represent the student body.

The SBA is going to publish a Student Directory, a project which was very successful last year. The Directory will list the name, address and phone number of each student enrolled at BLS. The directory will be given only to BLS students, and is not intended for commercial institutions. Those students who do not wish their names to be included in the Directory should contact their Delegate Assembly Representative.

On October 13, the Assembly authorized an ad hoc committee to explore the feasibility of a student Ethics Committee. Such a committee might serve a continuing educational function to supplement the one credit course on the Legal Profession, in addition to dealing with ethical problems which might arise in student government. The most important function, however, would be to advance ethical conduct while in law school. Each year, students are reminded to behave properly in the library. Failing to replace books, tearing out pages from books, and talking loudly are examples of conduct unbefitting law students. A Student Ethics Committee could help find solutions to some of these problems.

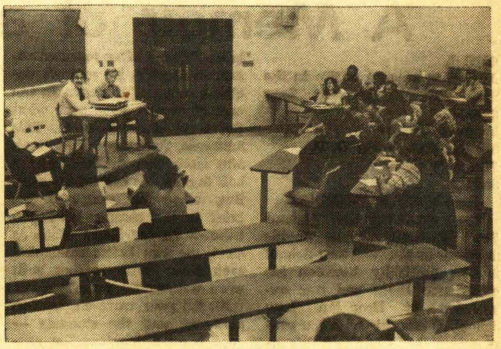


Photo by Ken Shiotani
SBA President Joe Porcelli presides over Delegate Assembly meeting.

The Finance Committee has been busy on the SBA budget. The committee is considering the purchase of a tape player to eliminate the need to hire a disco person for parties.

Also instead of allocating money for speakers and parties to each student organization, there will be a common fund for each of these purposes this year. The policy by which money will be provided from these common funds is yet to be determined. Joe Porcelli says there has been no problem in the past with groups not getting what they need. What is being sought, then, is a fair and workable system of getting it to them.

Other items under consideration:

— More student-faculty teas are a possibility. They are inexpensive, and to many, a welcome change from disco parties.

— Copying machines. That's a problem Professor Djonovich could do without. He has asked to meet with Delegates to help him solve that problem.

— The Assembly has approved a reorganization of the committee which nominates students to serve on the various Student Faculty Committees. The six-person committee will consist of only one Executive Board member, four Delegates, and one current member of the particular committee involved.

— An Affirmative Action Committee was approved by the Delegate Assembly to present both sides of the Bakke issue to the student body. However, as the name of the committee suggests, its impartiality on the issue is questionable.

— The SBA is exploring the possibility of having student course evaluations, which could benefit both the Administration and the student body.

The LSD: What's in it for You?

By ROBIN GARFINKLE
BLS/LSD Representative

LSD may be a hallucinogen, but it is also the abbreviation for the Law Student Division of the American Bar Association. For only $5 per year membership dues you can join the largest national law student association, with a membership of approximately thirty thousand. Membership is open to students of all accredited law schools.

LSD is composed of thirteen circuits, each with its own elected officers. The "governors" of the thirteen circuits, together with the five national officers, comprise the Board of Governors, which enforces the by-laws and makes policy decisions. Through the two division delegates, the LSD has a voice in the ABA's House of Delegates.

Included in the dues is a subscription to **Student Lawyer,** the LSD magazine. Also available to members are low-cost health and life insurance plans, and reduced rates on ABA Journal subscriptions ($1.50 per year), and various other publications. Third-year students, upon graduation, receive a free, one-year membership in the ABA.

LSD sponsors several student competitions, such as the National Appellate Advocacy Competition and the Client Counseling Competition. In past years, BLS has been the regional winner in both contests.

Through the Law School Service Fund (LSSF), up to $1000 per project is available in matching grants for various SBA sponsored projects. The law school, however, must have at least twenty percent LSD membership in order to qualify. In the past, projects have ranged from minority recruitment to community legal services. Innovative programs are encouraged.

As an LSD member, you have the opportunity to build an expertise in a particular area of the law by joining one of the 24 ABA sections at a reduced rate. These sections encompass virtually every branch of the law, and, as a member, you can receive special publications as well as have the chance to serve as a liaison to the section or one of its committees, and actually work with some of the leading attorneys in that field. This is a unique opportunity for law students to receive professional exposure.

Membership in the LSD will also allow you to expand your social horizons. It offers the opportunity to meet and exchange ideas with law students from our own second circuit at various local conferences, as well as with other students and attorneys from throughout the country at the national convention The 1978 convention will be held right here in New York next August.

Through the LSD, you can have input into national policies as well as be of service to the community. With programs such as BLS' prison book drop and Hofstra's legal education program for high school students, law students can positively contribute to their neighborhoods.

Membership applications and further information on all of these programs are available in the SBA office.

LSD Meets at BLS

By ROBIN GARFINKLE
(BLS-LSD rep.)
and ROBERT ROBINSON

On Saturday, October 22, 1977 Brooklyn Law School hosted the annual American Bar Association/Law Student Division Second Circuit Fall Roundtable. Students from law schools throughout the New York City area gathered together here to discuss mutual concerns and learn about current issues in the legal field.

The morning program centered on Euthanasia — The Right to Die, and featured a film produced by the Euthanasia Educational Council, and speakers representing the legal, medical and nursing professions.

The film focused on the question of whether a person should determine for himself whether to live or die under such special circumstances. The medical profession takes the view that a patient is incapable of such a decision, and must be kept alive. The right of patients to know and take part in decisions made by doctors and hospital staffs is as yet a developing concept. That these rights be represented is of special interest to legal professionals.

After a Second Circuit sponsored luncheon, LSD President Michael Hollis addressed the meeting. He was followed by Tom Mattingly who discussed lawyer advertising, and the ramifications of the **Bates** decision and the recently enacted ABA Guidelines.

The growing field of pre-paid legal services was discussed by Ira Raub, a BLS graduate, who related his experiences in setting up such a program in Nassau County.

The afternoon's activities concluded with roundtable discussions for LSD reps., and a cocktail party sponsored by the BLS Student Bar Association.

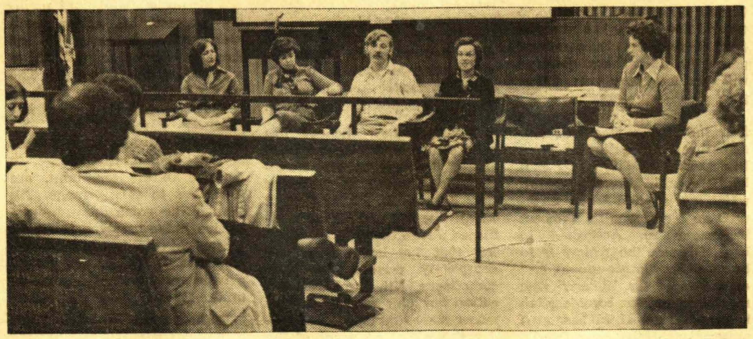


Photo by Ken Shiotani
A Panel Discussion followed a film on euthanasia at the LSD/2nd Circuit Fall Roundtable.

Book Review

A Memoir of a First Year Law Student

ONE L
An inside account of life in the first year at Harvard Law School
by Scott Turow
300 pp. New York: G. P. Putnam's Sons
$8.95

By SANDY K. FELDMAN

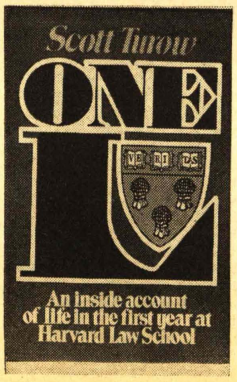
The most striking thing about Scott Turow's memoir of his first year at Harvard Law School is the similarity between his experience there and our experience at Brooklyn Law School. (I say this with the presumption that I am able to generalize about the first year experience at BLS based upon my own experience and that of my acquaintances.)

First there is the familiar apprehension. What will it be like? Will I be able to manage? And there is that first day when one looks about and compares oneself to one's classmates.

First-year Harvard Law students, "One-L's" in the official nomenclature, study the same basic courses that we study during the first year: contracts, torts, property, criminal law, and civil procedure. And the courses are generally taught by the case and Socratic methods, first developed as a means of teaching the law by Harvard Dean Christopher Columbus Langdell in the 1870s.

But, the similarities do not end there. Turow offers the familiar description of the first time he attempted to read a case. "It was something like stirring concrete with my eyelashes." Even after repeated resort to **Black's**, he couldn't decipher much of the case. In the end, he wasn't even sure what the court decided to do. This first case, four pages long, took him more than an hour and a half to read. He briefed the case. But, when he compared his brief to the sample brief distributed in his Legal Methods class, the two briefs resembled each other "only in that both were written on paper."

As the year wore on, tension mounted, and the students — once banded together for mutual protection — began to become increasingly hostile toward one another. There was competition, often cutthroat, for grades and for the Law Review. There was suspicion and distrust. Small study groups were formed, and much of their energy was spent protecting their outlines and solutions to problems from other groups and students.



Fits of severe depression and doubts about the advisability of continuing their ordeal seemed universal. And the constant demands of studying the law took their toll on old friendships and not-so-old marriages. The obsession with the law was evident in all conversation and thought.

But, there are also differences between the Harvard and Brooklyn experiences. First of all, Harvard is Harvard, with all the prestige and grandeur which, rightly or wrongly, attracts 800 employers a year to its on-campus interview program. Everyone at Harvard gets a good job, and many, if not most, get the best.

First-year Harvard students take only two exams at the end of their first semester, an exam in each of their half-year courses — torts and criminal. In addition, Harvard teaches from a national perspective; there is no emphasis on the law of any one particular state. And many of the courses appear to be taught with much more of a philosophical, public policy orientation than is usually the case at BLS. For instance, in civil procedure, a course which at first blush appears to be the least amenable to philosophical discourse, students are advised not to ignore the values which produced the rules that comprise the bulk of that subject.

The Harvard Law Faculty, often referred to as the best law faculty in the world, teaches to sections of 140 students, most of whom remain unknown to their professors except as names, numbers, and sometimes photographs on seating charts. Most faculty members are generally inaccessible to students, a failure on the part of the Harvard faculty which is nowhere in evidence at Brooklyn.

This book contains a good deal of criticism of many aspects of American legal education. Mr. Turow feels that classes are too large and that the Socratic method is an anxiety-producing inquisition which is brutal and counterproductive. And although he began to enjoy his studies and even began to "learn to love the law," he recented the changes it wrought within him. He began to scrutinize everything which came before him. He became cynical and distrustful. He stopped taking things at face value. He began to think like a lawyer. And he was not certain that that was always such a good thing. He found that he was being trained to ignore human emotion in favor of a reliance on what was rational and exact. And he became convinced that this was an inappropriate trait to be bred into the men and women upon whom society would rely for the making and doing of justice.

Throughout his book, Mr. Turow offers what, I suppose, can be described as social and political comment. And this is good. But, I cannot resist the temptation to take exception to at least two of the points he raises. First of all, in applauding the increase in the number of women admitted to HLS (his designation) in recent years, he says that perhaps women "can make the legal world a fairer one, a place less distorted by some of the hard things men alone have tended to do to each other in the past." Perhaps this is a hope which could be expressed with regard to the contemporary law student of either sex. However, Turow appears to be subscribing to the quaint notion that women are somewhat "fairer" than men — different from them in their capacity for aggression and personal ambition.

Also, in his criticism of the Harvard power-elite mystique he makes an absurd association. According to Mr. Turow, this mystique produces "the kind of advocate who is uncommitted to ultimate personal values and who will represent anyone — ITT, Hitler, Attila the Hun — as long as the case seems important." ITT and Hitler?

Scott Turow has written a compelling book — one which is even suspenseful. Will he get good grades? Will he make Law Review? (I won't tell!) It's a must read for anyone who was, is, or is thinking about becoming a first-year law student — and for anyone else who has ever wondered why law students are the way they are.

Library Grant Announced

(Continued from Page 1)

One of the main reasons for the success of BLS graduates, according to Dean Glasser, is the fine quality of the faculty. He recognizes though, that because of the great demand that will be placed on BLS in the future, faculty size must be increased. Also cited as a factor of success is the job that the Placement Office has done in finding jobs for BLS alumni.

Dean Glasser also discussed the ongoing problem of "theory" versus "practice," in legal education. He feels that BLS has struck a balance between the two ideologies as evidenced by the nine clinical course offerings, stating, "clinics are an important factor in the equation of legal education." Of special interest to the Dean is the recently established clinic dealing with problems of the elderly. As a former Family Court judge, he recognizes the tremendous value such a clinic has to aged people. To improve the operation of this clinic, Dean Glasser says that he would like to increase the amount of BLS's library materials dealing with the elderly.

Discussing the problems of the library in general, Dean Glasser stated that "the need to expand the library is a pressing one." He feels that the matching grant the school has received will go a long way toward that goal.

The $25,000 matching grant is from the Charles Hayden Foundation and is contingent upon BLS raising $75,000 on its own by October 1, 1978. The grant, which was applied for by former Dean Lisle, was received on September 20. According to Dean Glasser, the money is to be used for "improvement and expansion of the library." One specific idea under consideration is expanded use of the basement area adjacent to the cafeteria. Carpeting the library is also a possibility.

Wachtler

(Continued from Page 1)

those cases which can be removed from the civil part be removed, thus allowing judges to be assigned to cases with more pressing issues. Uncontested matrimonials and uncontested annulments are two areas in which the Judge felt that proof could be taken before a "master," and the transcript of the proceeding taken before a judge merely for signature.

In response to questions about judicial quality and conduct, Judge Wachtler conceded that there is a tendency of judges to be overprotective of one another, but attacked most of the "thousands of complaints" received by the Court in Albany as "not filled with merit." The Judge felt that "the Commission on Judicial Conduct is a step in the right direction." The Commission, which is involved with disciplining judges, would be composed of nonjudicial persons. Judge Wachtler also expressed the opinion that the merit appointment of judges is "good." "Media can be used so well . . . to the point that a person could — without any experience or ability, but with a lot of money — actually buy a seat on the Court of Appeals.... We have reached the stage where the merit system is better."

Herrmann v. BLS Dismissed

(Continued from Page 1)

acts for certain purposes as an arm of the state. The issue here, however, is whether there exists a sufficient state nexus with the activities of the law school here to render its acts "state action". In **Taylor v. Consolidated Edison Co.,** No. 76-7374 (CA2, February 24, 1977), the Second Circuit stressed the need, even where substantial state involvement is shown, to demonstrate a nexus between the state and the particular activity challenged. The court there asked "whether there is a sufficiently close nexus between the state and the challenged action of the regulated entity so that the action of the latter may be fairly related as that of the state itself." **Id.** slip op at 1936-37, quoting **Jackson v. Metropolitan Edison Co.,** 419 US 345, 351 (1974). The court ultimately found that the state's involvement, no matter how extensive, was not responsible for the allegedly wrongful act. See also, discussion at Note, **Sex Discrimination in Private Universities as State Action,** 50 St. John's L Rev 316, 324 n41 (1975).

Brooklyn Law School has been similarly challenged as an arm of the state in other litigation. In **Grafton v. Brooklyn Law School,** 478 F2d 1137 (CA2 1973), the Second Circuit affirmed Judge Orrin Judd's finding that the law school was completely private, and that compliance with the state education law plus receipt of some minor state grants did not render the school an agent of the state. As in **Taylor** and **Grafton,** the involvement of the state in this instant case was negligible. And even if the involvement were enough to render **some** of the law school's activities state action, dismissal of plaintiff would not be one such activity. Brooklyn Law School remains a predominately private law school.

Plaintiff alternatively contends that a state administrative judge conspired with the defendants to violate plaintiff's rights. The "state action" of the judge acting in his official capacity should, plaintiff argues, render the defendants' activities cognizable under §1983.

It is conceivable that the alleged activities of the state judge here might be considered to be "under color of state law", since the judge allegedly pressured plaintiff to discontinue his defamation action in state court. However, since any attempts on the part of the judge were wholly unsuccessful, and plaintiff pursued his action with even greater determination, no damage accrued to plaintiff as a result of those attempts. The crux of plaintiff's lawsuit here is that he was unjustly and improperly dismissed from his teaching position. The actions of the administrative judge, as detailed in the complaint, are unrelated to this damage. Although the particular administrative judge involved is also a trustee of the law school, his activities as trustee are purely private and thus not cognizable under §1983.

With regard to the §1985 claim, defendants have argued that the plaintiff has failed to state a cognizable claim because there is no "class-based invidiously discriminatative animus", **Griffin v. Breckenridge,** 403 US 88 (1971). In response, plaintiff cites **Brawer v. Horowitz,** 535 F2d 830, 840 (CA3 1976), to demonstrate that the federal nexus of §1985(2) need not be class-based, but may be merely "the connection of the proscribed activities [deterring by intimidation or threat and injuring a party on account of his attending and testifying in a court of the United States] to a federal court." This reliance is misplaced, however, since the original cause of action here was initiated in state court. See **Herrmann v. Crea,** filed April 2, 1973 (NY Civil Court).

Alternatively, plaintiff attempts to show membership in a class to make out "invidious class - based discrimination". Plaintiff proposes that because he is a champion of minority groups, the law school sought to remove him from his professorship. This appears to be more a "class contrived for litigation" than a readily cognizable and traditionally protected class. **See McClellan v. Mississippi Power and Light Co.,** 526 F2d 870 (CA5 1976). At best, these facts seem to present a conspiracy to interfere with freedom of expression rather than racial discrimination, see **Murphy v. Mount Carmel High School,** 543 F2d 1189 (CA7 1976); and, again, absent state action or a class based discrimination, such a claim is not cognizable under 42 USC §1985(2).

Accordingly, defendants' motion is granted and the complaint is dismissed.