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THURSDAY, DECEMBER 1, 1977

NO. 4

Herrmann Loses Again; Contract Suits Dismissed

By HOWARD COHEN

Two more complaints involved in the myriad of law suits brought against Brooklyn Law School by former Prof. William Herrmann were dismissed in state court on October 24 for failing to state a cause of action. The complaints, which involved an alleged breach of contract, were brought by Herrmann after his dismissal from BLS in September, 1975.

Herrmann's first complaint charged that "the dismissal constituted a breach of his employment contract; that it was procured by the intentional, wilful and malicious acts and course of conduct of the trustees, faculty, and student defendants, designed to cause him to lose his tenure and his position as a tenured professor of law."

However, the court found that "while the final decision respecting appointment and dismissal rests with the trustees, it does not appear that they are in any way parties to the contract of employment resulting from their approval of appointments." Furthermore, there was no showing that any formal written employment contract had ever been entered into between Herrmann and the law school. The court, therefore, held that since the trustees and the Dean were not parties to

the contract, and as there was never any intention that they should be personally liable — they acted "on behalf of Brooklyn Law School — the cause of action against the individual defendants should be dismissed.

In his second complaint, Herrmann charged that the defendant trustees, faculty members, and students procured the breach by BLS of his employment contract. However, the court found that procedures regarding dismissal of faculty "were fully complied with; that the faculty committee that recommended [Herrmann's] dismissal and the trustees who approved that recommendation were acting by virtue of their positions as directors and trustees and within the scope of their authority." Under the stated law, a person so acting will not be liable for a contractual breach by his corporation "unless his activity involves separate tortious acts."

The court held that since Herrmann had not alleged any "separate tortious acts" by the defendants, his "allegation that they 'intentionally procured' the breach of his employment contract is merely the conclusion of the pleader, and, as such, is insufficient to impose personal liability upon these defendants."

SBA Delegates Approve Budget; Convention Funds Main Dispute

By ROBERT ROBINSON

On Thursday, November 3, the Delegate Assembly voted to approve the 1977-78 SBA budget proposed by the Finance Committee. The 1976-77 budget was not approved until February.

The budget contains a projected deficit of \$1,700. (Last year's budget contained a deficit of about \$500.) The Delegates were skeptical of approving a deficit budget. Treasurer Eric Brown explained to the Assembly's satisfaction that this deficit should be reduced by funds forthcoming from the Administration, an expected \$1,000 from the Book Co-op, Law Student Division funds, and those funds which go unused. If necessary, says Brown, the deficit could be further reduced by other income generating activities.

Last year, the budget went directly to the Delegate Assembly for determination. According to this year's procedure, a Finance Committee was formed to do the tedious work of examining budget requests line by line. When the Committee reached agreement on the entire budget, it was presented to the Assembly for approval. Thus, everyone requesting funds was provided an

SBA FINANCE COMMITTEE BUDGET OCT. 1977 - SEPT. 1978	
Conventions	\$ 2475
Parties	3300
Eve. Moot Court	200
Justinian	5800
Speakers/Films	2050
Moot Court	
Dues	95
Intramurals	200
Judges	80
Certificates	60
Eve. Moot Court	80
Womens Group	
Dues	70
Tea	35
Seminar	500
BALSA	
Dues	200
Conference	60
Law Day	100
Sports	
Equipment	300
National Lawyers Guild	
Dues	125
Booklet	325
SBA General Fund	
LSD	150
Orientation	450
Gratuities	160
Stationery, Printing, Postage, Misc.	1000
Award	100
Directory	225
Tape Deck	300
IALSA	25
Note	
The Italian-American and the Veterans groups and Phi Delta Phi have requested SBA support from various funds.	
Total Allocations:	\$18,450
Received from BLS	—16,000
Carryover from 1976-77	— 739
Projected Deficit	\$ 1711

opportunity to be heard at the Finance Committee, while the Assembly was freed for other business.

However, the budget proposal was not passed without opposition. Six out of a total of twenty-two Delegates voted against it. The subject of most disagreement was the allocation of con-

vention money. Four groups requested money to send representatives to various conventions: The National Lawyers Guild, The Women's Action Group, The Black American Law Students Association, and the SBA. The SBA's portion was only 5 percent of the total amount requested for conventions because the American Bar Association/Law Student Division convention will be held in New York City next summer.

The NLG, BALSA, and the Women's Action Group were allocated 95 percent of the \$2,475 allocated for conventions. This represents 15 percent of the total budget. Opponents to this allocation, including first year Delegate George Taylor, argued that this was an excessive sum of money to give to groups whose membership represents only 10 percent of the student population. Also, Delegate Ira Miller indicated, allocating only 10 per-

(Continued on Page 4)

Two BLS Profs. Argue Before Supreme Court

By ILEANE SPINNER

"It symbolizes Brooklyn Law School's status as a national law school," commented Professor Oscar Chase referring to the fact that he and another BLS professor, L. Kevin Sheridan, argued in front of the United States Supreme Court on November 2, 1977.

The case, *Monell et. al. v. Department of Social Services of the City of New York*, was an action filed in April, 1971 — by city employees against the Board of Education, the Department of Social Services, and the mayor in his official capacity — challenging rules and regulations that compelled pregnant employees to take unpaid leaves of absence before medical reasons required them to do so.

The U.S. Court of Appeals, Second Circuit, upheld a decision that an elimination of mandatory maternity leaves rendered claims for injunctive or declaratory relief moot and that back pay should not be retroactively awarded for discrimination that occurred before the 1972 amendment to the Equal Employment Opportunity Act.

It also held that neither the Department of Social Services nor the Board of Education is a "person" within the meaning of 42 U.S.C.A. 1983 and that, as municipalities are not to be subjected to damage suits under the Civil Rights Act, officials could not be sued in their official capacities for damages if money would have to come



Photo by Richard Grayson
Prof. Oscar Chase polishes his argument in Moot Court Room before going to Supreme Court.

out of the city treasury for payment.

The petitioners first contacted the Center for Constitutional Rights. Prof. Chase was familiar with that organization through his work at the Poverty Law Clinic and agreed to represent these women in what he terms "a political lawsuit," as he was concerned with sex discrimination in violation of civil rights. A personal, but not primary, consideration is that Monell is his wife, although he said, "She is just one of a group who felt strongly about the requirement that women leave jobs when they still had more to offer."

Adjunct Prof. Sheridan (who

teaches Appellate Advocacy, a practice course in brief writing and oral argument) is Chief of the Appeals Division of the Corporation Counsel. He decided to handle the case personally and has stayed with it from the Second Circuit.

In preparation for his first U.S. Supreme Court appearance, Prof. Chase delivered his oral argument in the Moot Court Room in front of a large turnout of students and a panel of judges consisting of: Professor Margaret Berger; William Caldwell, counsel to Lawyer's Commission for Civil Rights Under Law; Nancy Stearns, of the Center for Constitutional Rights; David Silberman, practitioner in

Washington, D.C., and formerly law clerk to Mr. Justice Marshall; and David Rubin, general counsel to the National Education Association.

Prof. Chase found himself more nervous before the students than during the actual High Court experience. There his initial nervousness subsided, quickly replaced by the confidence of being well-prepared.

A contingent of a dozen or so
(Continued on Page 4)

Class of '80 Profile: Applications Decrease

By MADELAINE BERG

This year's first year class is a diverse group drawn from six states and representing 94 colleges and universities. The 324 first year students come to Brooklyn Law School from Maryland, New Jersey, Pennsylvania, Virginia, and the District of Columbia, as well as from New York.

Although much of the first year class came to law school immediately after graduating from college, many of the students came with prior business and professional experience. In the class are former teachers — elementary, high school, college, and even belly-dancing (!); financial analysts; accountants; journalists; a student who worked with the State Select Committee on Crime, investigating racketeering; and some who

earned Master's and Doctorate degrees before coming into law.

Of the 2,847 applicants for admission to the 1977-78 term, 1,052 were accepted. The total number of applications has been falling in recent years, from a five-year high of 3,797 applications in 1974. There are 263 first year students in the day session, and 61 in the evening session.

Women represent 32% of this class, an increase over the 21% of the first year class in 1973, but a decline from the 40% representation in 1976. There are 10 minority students — the admissions office defines a minority student as Black, Hispanic, Asian, or American Indian.

The first year class has an average LSAT score of 618, and an average GPA of 3.2.

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Good Motive, Weak Plan

The Administration is to be commended for providing a tentative final examination schedule for the spring semester along with the registration materials. This innovation, which had been advocated for many years by the Student Bar Association, will aid upperclassmen in avoiding exam conflicts when they register for courses, as well as give them the opportunity to plan their summer job availability date.

However, the tentative schedule, as it now stands, reveals some glaring errors in planning. It seems that exams for a large portion of popular courses have been slotted for either the same day or within a day of each other. It would be unfortunate for students who work diligently throughout the semester to be confronted with the overbearing pressure of three or four examinations within a period of 72 hours.

Another example of poor planning is the fact that the exams for both Corporate Taxation and its corequisite Corporations are scheduled to be given at the same time. If both courses are intended to be taken in the same semester, it seems inconsistent that their exams should be scheduled in such a way as to preclude it. The tentative schedule is a step in the right direction, but a measure of realistic, careful planning is in order.

SBA Party An Innovation

The theme of this years SBA appears to be innovation. We refer specifically to the first Friday night disco party held at BLS in recent memory. The party was innovative in two respects.

The fact that it was held on a Friday instead of Thursday offered evening students who ordinarily have classes on Thursday nights an opportunity to attend. For these students the only alternative was to cut their Thursday night class every time there was a party. Having the party on Friday also gave the partiers a later curfew because there were no 9 AM classes to sit through with a hangover the next day. We realize that a Friday night party prevents many religious Jews from attending out of respect for the Sabbath. However, Friday will not become the standard night for parties in the future. The SBA plans to experiment with different evenings, to determine which are the best for the largest segment of the BLS population. With this we agree.

The SBA has also shown some good judgment by purchasing a tape deck to provide music instead of hiring an expensive professional disco company. The initial cost of the tape deck was similar to the cost of one evening of professional disco. What's more this cost can be amortized over the many years of service that the deck can be expected to give to the school. The money saved by this innovation can be and was used to improve other aspects of the parties, as was the case when the SBA provided Cozzoli sandwiches at the last party.

Viewpoint

By MICHAEL WEINBERGER

Query: will the federal judiciary employ the Federal Clean Air Act in the same way that Congress has used the interstate commerce clause of the Constitution? In other words, as the commerce clause has become the basis for much Congressional power, will the Federal Clean Air Act become a separate power source through which federal judicial influence is visited upon the States?

Of course, the perversions of the commerce clause are already well known and well documented. Originally intended as a proscription against undue state governmental intervention in the national economy, the clause has, in more recent times, become the basis for diverse federal incursions into the "health, welfare, safety, and morals" domain of the state governments.

In fact, the most ludicrous example of the commerce clause's "intellectual" flexibility may emerge from the bowels of our national legislature in the next several months. Recently, a bill was introduced in Congress which would make the production of "kiddie porn" films a federal offense — when, and only when, the films are involved in interstate commerce. One may reasonably assume that this prerequisite to the exercise of federal power will in the future be satisfied through a showing that the six-year-old star of such a film was conceived when a contraceptive device, manufactured in interstate commerce, failed to live up to expectations. Needless to say, if aforesaid conception occurred in a motel, as opposed to a private house, then certainly the production of the film would come under the federal umbrella.

Yet, though one may take issue with Congress' (mis)use of the clause, still, the retort to such objections is clear. To wit: there existed a problem of national scope. In response, Congress legislated. Isn't legislating the proper function of a legislature? Obviously, one must answer the above question in the affirmative — due to the recognition that, at least from a purely procedural point of view, it is the job of legislatures to legislate.

Returning more directly to the theme of this piece, is it also the job of the judiciary to legislate? And, more importantly, if the answer to that question is in the negative, would it not be correct to say that a judiciary that does legislate is acting in a wrongful fashion, both from a procedural and from a substantive point of view? Most assuredly, yes.

In which case, let us examine the specific federal judicial order here in question. (Certain provisions of the order have recently been modified by a compromise agreement entered into by representatives of the federal government and the City of New York. Notwithstanding this, the original order still bears examination. Indeed, the mere fact that a compromise was at all necessary provides all the dialectical justification required for this inquiry.)

The Federal District Court for the Southern District of New York, whose opinion was shared by the Second Circuit Court of Appeals, recently held that

Federal Air

motorists who venture into certain sections of New York County, State of New York, should be governmentally deprived of curbside parking therein. Though one might be inclined to disbelieve it, the order went further. Said appointed representatives of the federal government (acting pursuant to authority traceable to the Constitution of the United States, Article III, Section 1), in their supreme wisdom, further commanded that several of the bridges linking various counties of the State of New York be made toll bridges. And lastly, that taxis be proscribed from cruising in midtown.

For the most part, the aforementioned deprived motorists would have been New York State residents. They pay New York State taxes to maintain New York County roads. Their cars are insured subject to New York State regulations and are inspected pursuant to New York State law. Why, then, the mechanics that inspect the cars are licensed by New York State and (ostensibly) have a certain quantum of knowledge concerning auto mechanics, which quantum was delineated by the lawful representatives of the people of New York.

Furthermore, the aforesaid bridges, while admittedly associated with interstate commerce (in a superficial way), were built without federal funds. And, if one were to ask the painters, maintenance engineers and other persons whose employment concerns the bridges where their paycheck comes from, they certainly wouldn't answer Washington.

Lastly, the hacks. Who issues their licenses? Who regulates the number of medallions available? Who sets the rates? And, if a cabbie is discourteous to you, who would you complain to — Chief Judge Irving Kaufman, of the Second Circuit Court of Appeals, or the New York City Taxi Commissioner?

In sum, it can readily be seen that the objects of this particular federal governmental order are, for the most part, either creatures of, or substantially related and subject to the laws of the State of New York. And, in our federal system, that is the way it should be. Manifestly, the regulation of curbside parking is a local interest and should be accomplished by representatives of the local government.

In fact, let's take it one step further. Curbside parking is of such a provincial nature that even Albany doesn't attempt to exercise jurisdiction over the matter. Instead, Albany delegates its general jurisdictional legal authority (vested in it pursuant to the common law doctrine that the state governments have the right to legislate on matters concerning their citizens' health, welfare, safety, and morals) to more decentralized agents. *Ispo jure*, Howard Golden has more to say about parking in the BLS vicinity than Governor Carey.

In defining the phrase "Federal Government," **Black's Law Dictionary** has this to say:

(In a federal system, the states) are fully sovereign and independent, and each of (them) retains its full dignity, organization, and sovereignty,

though yielding to the central authority a controlling power for a few limited purposes . . . (Emphasis added.)

Accordingly, it is appropriate to ask: what limited purpose, what specific national interest, what devastating syllogism compelled representatives of the federal government to visit their influence on "the sidewalks of New York?" Answer: federal air, presumably cold to lukewarm. But mind you, that is a rebuttable presumption.

Indeed, will the federal judiciary employ the Federal Clean Air Act in the same way that the Congress has used the interstate commerce clause of the Constitution? This author suggests that it already has.

In fact, we may expect the federal judiciary to continue to regulate the lifestyle of the local citizenry, in the name of federal air.

Will the next pronouncement concern federally mandated bicycle transportation by all those physically capable? Surely, an appreciable reduction in air pollution would result. Hence, as the basic logic is obvious, we await only implementation.

As stated previously, this order was issued by a district court and reviewed by a circuit court. In fact, the case may yet go to the Supreme Court, sitting in Washington. Let us assume, *arguendo*, that the Supreme Court does review the instant question and affirms the lower court. In that case, we would be faced with the absolutely ludicrous and baroque situation of the highest and most centralized governmental authority in the land telling Howard the cab driver where he can and cannot cruise for fares.

Such a result is not only inconsistent with a federal system but it is also impractical and inefficient. If the meaning of words is to be stretched, let them be stretched to avoid such a result, not to encourage it.

Clean air notwithstanding, it is uncontroverted that the system of checks and balances is central to our existence as a free people. The federal system, if respected, provides us with such checks and balances. In such a system, it bears noting that all roads do not lead to Washington. The sooner this is learned, the better.

(All rights in "Federal Air" have been retained by the author, this limited publication notwithstanding.)

MONEY

Will the following people please come to the Library in order to claim their duplicating machine refunds.

Louise Hayes
Nancy Miller
Joseph Winowiecki
Ed Walker
Michael Hochberger
Joe Gottlieb
Joel Ezra
Jeff Singer
Joanne Gentile
Maureen McLeod
Jeff Goldman
Julian Schuman
Steven Rosenthal
Laura Held
Fred Pearlman
Elaine Brown
Roselyn Young
Curt Meltzer
June Knight
Richard Grayson
David Guthrie
Emily Simon
Sandy Feldman
Carolyn Wilson
S. Wiesen
Lydia Padilla
Richard Greenblatt
Suzanne Manifold
Saul Brutt
Sylvia Berger

Career Alternative:

Judicial Clerk

Editor's Note: While this article is presented as an "alternative career," we do not suggest that most BLS graduates will obtain jobs as judicial clerks upon graduation. However, the fact that Vivian Shevitz found such a job shows that qualified BLS graduates do obtain competitive employment and that BLS graduates are not always treated in a second-class fashion by prestige employers. We hope that Shevitz's experience will serve as a morale booster to those now seeking permanent employment and as an indication to employers that BLS graduates can get the job done.

The switch from bass player in an Ann Arbor rock and roll band to clerk for a Federal Court of Appeals judge is something of a strange transition, but Brooklyn Law School graduate Vivian Shevitz has made it with hardly a missed beat.

After graduating from college, Shevitz remained in Ann Arbor, working in a record store and playing bass part-time. Eventually, she grew dissatisfied with her existence in Ann Arbor and returned to school. She earned a Master's Degree in teaching and taught first grade for two years before again deciding that she had not yet found her niche.

After much thought, she decided on law, and, with some trepidation, entered BLS in 1973. From that point on, Shevitz's career has been an enviable one. During her third year, she was one of the Second Circuit Review editors on the Law Review, and, at the same time, clerked for New York Court of Appeals Judge Jacob Fuchsberg in the judicial clinic program. In addition, she graduated number one in her class.

Commenting on her achievements in law school, Shevitz said that "the time that I took off from school helped me in my outlook toward the law." She thinks that experience in life is essential in the application of legal theories to the facts encountered in cases.

Shevitz considers her educa-

tion at BLS to have been "very good" and at least equal to that of other clerks she has encountered, both in her present position and in her previous clerkship with Judge Fuchsberg. In her view, while students at some of the more nationally prestigious law schools work harder because of their greater investment in money and the necessity of living up to the school's reputation, BLS students willing to work hard can turn themselves into top-notch attorneys with the help of BLS.

Now in her first year out of BLS, Shevitz is very satisfied with her decision to clerk for Judge Leonard P. Moore of the Second Circuit. Although former BLS students have clerked in the New York Court of Appeals and for Federal district court judges, she is the first BLS graduate to work for a judge in a Federal Court of Appeals.

The program lasts for one year, and, so far, Shevitz has found the work to be quite interesting and — obviously — an excellent opportunity to learn appellate procedure from the inside. While her work consists of a large amount of research, she is also able, on occasion, to observe the oral arguments before Judge Moore.

There is, of course, a certain degree of pressure associated with the job, but Shevitz said that it is "a qualitative pressure rather than the high pressure of a large corporate firm." She is more likely to be deeply involved in one case than to have half a dozen requests for memos thrust upon her.

At the end of her year with Judge Moore, Shevitz hopes to obtain a position in which she can develop her litigation skills, perhaps with the U.S. Attorney's office.

She also considers teaching law one day. However, even though her plans for the future are indefinite, it's apparent that she has, after a ten-year search, found the right profession.

Dean Responds to Student Letter

Editor's note: In the last issue of JUSTINIAN a letter from Bernard Oster, Mariann Person, Joseph Winowiecki, Regina Feder, Neal Dodel and Kathy Dutton appeared outlining their grievances regarding Law Review selection procedures. That letter was also sent to Dean Glasser in the hope that he would take steps to rectify the alleged problems. The Dean sent the following letter in reply outlining his position.

In response to your letter to me, dated October 10, 1977, I had a conference on the issues you raised therein with Ms. Sara C. Schoenwetter of the International Law Journal, Ms. Dorsey Regal and Ms. Susan Posen of the Brooklyn Law Review and with Professors Farrell and Johnson who are the advisors to the Brooklyn Law Review and International Law Journal, respectively.

After a full discussion of the issues you raised, I am completely satisfied that there was in fact no discrimination as between day and evening students who submitted papers for law review consideration. There was agreement among the discussants that it was important to remove any appearance of a distinction between the evening and day division and steps will be taken in that direction.

More specifically, to the extent that different cases were assigned to the day and evening students, that will not be done in the future.

The privilege given to evening session students to submit their papers by September 26 rather than September 19 was, I am satisfied, extended out of a belief that the evening student would be more sorely pressed for time and would welcome the additional week. The different due dates were not calculated to identify papers submitted as being either day or evening papers. It was agreed that in the future, evening session students would be given the option to submit their papers on one date or the other or the same due date will be set for all submissions.

Day students were invited to compete after one semester or evening students after the first year in the belief that the evening students, having taken less credits than the day students in the first semester would be at a disadvantage and could compete more favorably after completing the first year. It was agreed that in the future, eligible evening students will be invited to compete at the end of the first semester so that the two divisions will be eliminated.

I am attaching a memorandum prepared for me by the Editors of the Brooklyn Law Review explaining the procedure followed in evaluating papers submitted for consideration.

I hope I have been responsive to your letter. In the event that there are any parts to which I have not responded, I will be pleased to meet with you if you would call my secretary for an appointment.

Yours sincerely,
I. Leo Glasser

LAW REVIEW MEMO

Membership in the Brooklyn Law Review is offered to students who have submitted "publishable" papers, as determined by the Editorial Board. The specific evaluation procedure may vary somewhat from year to year, depending on the policies established by each volume's Editorial Board. Those of us charged with staffing the Review for volume 44 have emphasized anonymity in the evaluation and selection process.

Of the approximately 60 comments received in September, each was evaluated by at least 4 editors. Two of the evaluations were made by editors who had read all of the comments submitted on the subject case as well as all comments on a second assigned case. A third evaluation was made by a Second Circuit Review Editor or a Comments Editor who had read 1/2 to 1/3 of all papers submitted on cases within his or her editorial jurisdiction. The fourth evaluation was made by either the Editor-in-Chief or the Managing Editor (and sometimes by both), each of whom read approximately 40 papers.

Due to the extreme delay in issuance of class ranks this summer, the Law Review was unable to begin the summer writing competition until August 15. Since it was deemed necessary to allow at least one month for the competition, the participants were required to complete their papers after the school year had begun. In an effort to allow evening students to compete on an equal basis of real time, the Law Review imposed a later deadline for evening students than that for day students. It was in express recognition of the additional demands on evening students' time of continuing with employment while attending classes and writing in the competition, that such an accommodation was made to ensure fairness — the exact opposite of prejudice Assignment of cases for the competition also, in most cases, distinguished between day and evening students. This was done to facilitate the evaluation procedure, the first stage of which required editors to read all submitted comments on a particular case.

After all individual evaluations were handed in, final decisions on publishability were made at two all-day meetings on the weekend of October 1. These meetings were attended by those editors who had been responsible for evaluating the bulk of the papers: the Comments and Second Circuit Review Editors, the Managing Editor, and the Editor-in-Chief. At least one, and usually two, of the evaluators of each paper, therefore, was physically present at the meeting where that paper was considered. All evaluations were read and considered.

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(Continued on Page 4)



DEAN I. LEO GLASSER

The "second chance" factor will be entirely eliminated or extended equally to all papers submitted.

I have been assured by all the participants in the discussion that all submissions are read and carefully evaluated. I accept that assurance. To do otherwise would be to ascribe to the editors of the Law Review an intellectual dishonesty which I would vigorously reject.

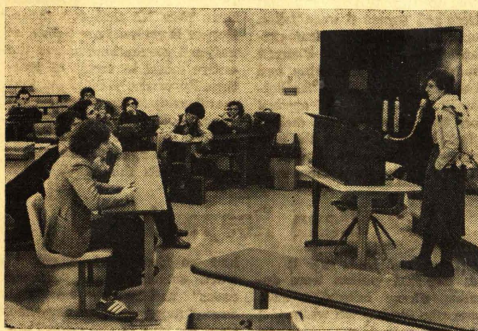
Finally, the suggestion that I appraise the worth of all case comments submitted by the evening students is an untenable one. The Law Review Board of Editors is fairly autonomous and exercises its own editorial judgment. So long as that judgment is exercised honestly and objectively, and I am satisfied that it is, I see no basis for constituting myself a supreme editorial arbiter even if that were feasible.

Sacco and Vanzetti Still Stirs Controversy

By HOWARD COHEN

"The execution of Nicola Sacco and Bartolomeo Vanzetti marked the death of the American dream of immigrants who came to the United States searching for a better life. They came to the United States and found the type of justice they thought they had left behind in their native countries." This is the opinion of Roberta Strauss Feuerlicht, author of *Justice Crucified: The Story of Sacco and Vanzetti*.

Feuerlicht, a noted authority on the case, made her remarks during a lecture sponsored by the Italian-American Law Student Association and held Tuesday, November 15. According to Feuerlicht, Sacco and Vanzetti's execution was just as much a miscarriage of justice on the part of their attorneys as it was on the part of the prosecution. She feels that while the official charges may have been murder and robbery, the real "crime" for which Sacco and Vanzetti were executed was heresy, for being avowed anarchists and having links to the



Roberta Strauss Feuerlicht speaks on Sacco and Vanzetti.

Bolshevik movement.

During her talk, Feuerlicht discussed the facts of the case, as she has come to know them, pointing out glaring injustices and inconsistencies which have been uncovered over the years. The case revolves around the 1920 robbery and murder of a payroll guard in South Braintree, Massachusetts. Although

there were five men involved in the crime, Sacco and Vanzetti were the only two alleged perpetrators ever tried. Seven years later they were executed.

According to Feuerlicht, Sacco and Vanzetti were convicted on evidence that was largely fabricated by the prosecution. Furthermore, she charges that strong exculpatory evidence was

either excluded by a biased trial judge, suppressed by a conviction-bent prosecution, or intentionally and/or negligently not introduced by a confrontation-oriented defense counsel who preferred to "win his case in the streets" rather than in the courtroom on technical grounds.

One significant suppression of evidence cited by Feuerlicht concerned the disappearance of fingerprints recovered from the getaway car used in the crime. It had been announced that the police were going to compare the recovered prints to those of Sacco and Vanzetti in order to make a positive identification. However, the results of the comparison were never revealed. The fingerprints were never offered into evidence at the trial. Feuerlicht suggests that the reason the prosecution never introduced the prints as evidence, and the reason they were removed from the files is because the prints did not match those of the defendants, and that such information, if discovered, might

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Prof. Johnson to Teach at Tulane Law School

By SANDY K. FELDMAN

Professor George W. Johnson has announced that beginning in January he will be taking a one semester leave of absence from Brooklyn Law School to assume a post as Visiting Professor at the Tulane University School of Law in New Orleans.

In a recent interview conducted in his office, Prof. Johnson discussed his background, his chief legal interest, and his experience at Brooklyn Law School.

Before coming to New York in 1972, Prof. Johnson practiced law with a medium-size firm in Orlando, Florida, the city where he was raised. Most of his legal work involved real estate and estate planning, where he began to encounter many land use problems. It was an area of the law that developed a special meaning for him. Florida was beginning "to get sensitized to raping the land. I guess I got somewhat sensitized, too," he said.

He was particularly moved by seeing land which "was pretty and in an open area where a lot of people could enjoy it," and then seeing this land after residential development with the inevitable shopping centers and other support facilities which clustered around it in random fashion. He was bothered by this unsightly use of the land, and he started wondering "how do you predict that's going to happen? And how do you prevent that from happening?"

An answer to this question

was becoming increasingly important to his law firm, which wanted to offer sound advice to its clients who were interested in developing land in a region which was becoming increasingly wary of uncontrolled growth and development. Special expertise was needed on the part of the attorney engaged in this sort of work, and, for this reason, Prof. Johnson — who was already acutely interested in the question — was sent to New York by his firm to study this problem in the New York University Law School Master's program.

While at NYU Law School, he worked with Professor John D. Johnston, Jr. on a collection of land use materials which eventually developed into a text of which Prof. Johnson is co-author. Although Prof. Johnson had intended to return to practice in Orlando after earning his Master's, the work on the text interested him in teaching law. When he was offered a faculty position at Brooklyn Law School in 1973 he accepted.

Before arriving at BLS, he "probably had the same biases that most people had looking at Brooklyn Law School. But there was something going on here, and I think that's what attracted me to Brooklyn." What was "going on" was a new Dean who was interested in getting BLS into the American Association of Law Schools; updating the curriculum; and reducing the student-faculty ratio. In connection with this last goal,

five new professors were hired in addition to Prof. Johnson. "The school was moving out of the past and into the future. And for young law teachers that was good." There was an opportunity for young professors to teach courses in which they had a special interest. And this would probably not have been possible at another law school.

For Professor Johnson, this meant an opportunity to teach Land Use, a course which had never before been offered at BLS. In addition to this course, he taught property and equity his first year. Since then he has also taught Trusts.

Professor Johnson feels that BLS is still going through the changes that began shortly before his arrival. "Brooklyn had a parochial reputation, and reputations die slowly. But, I think that's begun to happen." As evidence of this, Prof. Johnson offers the fact that whereas recent BLS graduates rarely clerked for federal judges in the past, quite a few are doing so now. Also, for the first time, a significant number of students are coming to BLS with the intention of practicing outside the state. And major firms which

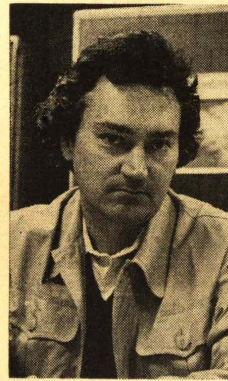


Photo by Ken Shiotani
PROF. GEORGE JOHNSON

until recently did not look with favor on the prospect of hiring BLS alumni are beginning to think differently. Prof. Johnson is confident that these former students will do well in their new positions, and that the effect will be to encourage employers to look to BLS again to see what else it has to offer.

Prof. Johnson is uncertain as to whom the credit should go

for bringing about these sweeping changes, though he claims they began with Dean Lisle's new administration. It is possible, he suggests, that Dean Lisle himself was responsible. Or that the trustees, faculty, and student body recognized that such a change was appropriate at that time. Or, it may have been a combination of all of these factors.

During his semester at Tulane Professor Johnson will be teaching Land Use and Common Law Property. (Because they're in a Civil Law jurisdiction, Tulane students have to choose between two distinct tracks — Common Law or Civil Law.)

George Johnson was born in New Castle, Pennsylvania, where he lived "for three weeks" before moving to Orlando, Florida. He received his undergraduate education at Davidson College in North Carolina and then served for two years with the armed forces. After earning his law degree at the University of Florida School of Law in Gainesville, he clerked for Chief Judge O'Connell of the Florida Supreme Court. He and his wife live in Cobble Hill.

Sacco & Vanzetti

(Continued from Page 3)

have led to either an acquittal or a successful appeal. Many other questions, too numerous to mention here, also exist.

Feuerlicht suggests that as aliens, Sacco and Vanzetti appeared to be easy targets for conviction in the WASP Massachusetts of the 1920s. The era was ripe for attacking immigrants and dissidents. The years following World War I have been noted historically for their reactionary tendencies during what has been termed the "Red Scare," when the country was permeated with the paranoia of Bolshevism.

Indeed, according to Feuerlicht, transcripts of the case indicate that the majority of the prosecution's examination dealt with the background of the defendants rather than the merits of the case. She stated that the prosecution repeatedly emphasized to the WASP jury that Sacco and Vanzetti were Italian immigrants, not American citizens; that Sacco and Vanzetti were admitted anarchists and that they had links to the Bolshevik movement. It appears that this ploy had the desired effect. After the trial, the jury foreman was reported to have stated that the defendants were

no good because, "They were Commies, they were Bolsheviks."

After conviction, Sacco and Vanzetti's case went up on appeal eight times. However, each time the case was returned to the original trial judge, who had — according to Feuerlicht — shown open bias against the defendants. Moreover, Sacco and Vanzetti were executed while their final appeal was still pending before the Supreme Court of the United States. No one was willing to grant a stay of execution so the appeal could be heard.

Over the years since the ex-

ecution, many other notable persons both within and from without the legal profession have worked to clear the name of Sacco and Vanzetti. Their efforts culminated this year, when Massachusetts Governor Michael Dukakis issued a proclamation stating, in effect, that Sacco and Vanzetti did not receive a fair trial. The proclamation is now on display in the Brooklyn Law School lobby. However, controversy and resentment still exist within Massachusetts concerning the case, and the Massachusetts State Senate has passed a resolution condemning the Governor's action.

SBA Budget Passed

(Continued from Page 1)

cent of the total budget funds would not deny representation at conventions, but merely limit the number of representatives to be sent.

The majority of the Delegates favored the 15 percent allocation. They felt that representation of Brooklyn Law School at national conventions serves the entire school in terms of prestige. It was also pointed out that membership in these groups are open to all. And lastly, as expressed by Delegate Deborah Lastly, this figure more accurately reflects the \$4,500 which

was originally requested "in good faith" by the various groups needing convention funds.

The amount allocated to conventions was the result of compromises from both sides. No one is perfectly satisfied. Some delegates feel that there is a need for consistent guidelines to determine future convention funding. The important issue's solution will not be simple, largely because particular conventions might be in New York City one year and in Los Angeles the next.

Some Delegates expressed feelings of having been, as Delegate Michael Heavey put it, "railroaded" by the Finance Committee. SBA President Joe Porcelli, for one, feels that this attitude is unwarranted. The Finance Committee meetings were open to all interested Delegates, so there was ample opportunity for input. Also, some Delegates said it should be remembered that compromises have been made by all interested parties.

The Finance Committee procedure for determining SBA budget allocations is new at BLS. The Delegates felt that the procedure is more expedient than the old procedure, and it allows the Delegate Assembly to use its time more efficiently.

Two BLS Profs. Argue Before Supreme Court

(Continued from Page 1)

BLS students followed Prof. Chase to Washington to hear his argument. He was pleased that they came, and felt it demonstrated a sense of community between the faculty and students.

When asked if he ever hoped to appear in front of the Supreme Court while he was a student at Yale Law School, Prof. Chase answered in the affirmative. "I was always interested in the public aspect of law, and those questions that are important to the public interest find their way to the Supreme Court."

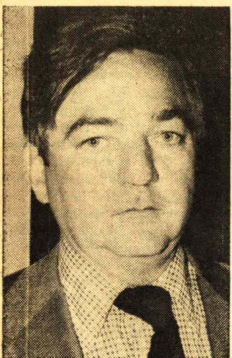


Photo by Ken Shiotani
PROF. L. KEVIN SHERIDAN

On the other hand, while at the University of Michigan Law School, Prof. Sheridan never expected to go into litigation — let alone argue before the Supreme Court.

Prof. Chase's advice to aspiring Supreme Court advocates: "Whatever you do, you must be well-prepared." Prof. Sheridan, also a first-timer in arguing at the Supreme Court, suggests visiting the Court and watching others argue first.

During the *Monell* case, all the justices were present; Justice Brennan missed part of the argument but will participate in the decision. Prof. Chase found Justice White particularly familiar with the record and thought he asked incisive questions. Justice Rehnquist, too, inquisitively probed the weaknesses on both sides of the case. A couple of the justices appeared to be somewhat unfamiliar with the record, but generally Prof. Chase found the bench to be fairly active and attentive. Prof. Sheridan felt that all the justices were reasonably familiar with the case but "no one stood out above the others."

Was there any animosity in facing a fellow professor before the Supreme Court? Prof. Chase found the situation "great" for the image of the Law School, while Prof. Sheridan commended Chase on being "an able adversary" and jokingly added, "but I don't wish him luck!"

The decision should come down within two months of the argument date. When questioned about the possible determination, Prof. Sheridan quipped, "I've stopped betting on the horses and the outcome of appeals." On a more serious note Prof. Chase concluded, "A civil rights case in front of this court will be an uphill fight."

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ed; disputed points were debated; where helpful a new, composite evaluation was made; and the actual comments, or portions thereof, were often read at the meeting.

The final decisions were made without any knowledge of who the particular authors were, all authors having been designated solely by number. There were no differentiations made between day and evening students. The sole distinguishing factor was that day and evening students had not written on the same cases. Those attending the final decision meeting, however,

had no idea which comments were submitted on "evening cases" and which on "day cases," largely because they had read the bulk of the papers not according to subject case and in such a volume as to dilute the importance of when any particular comment was submitted. Furthermore, two of the seven members of the editorial board who attended the decision meetings are themselves evening students, certainly unlikely to exhibit prejudice against evening students even were they aware of the status of any particular author.

Dean Responds