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We are very quiet there, but it is the quiet of a storm centre, as we all know.
Oliver Wendell Holmes
1921

TRAGER EVALUATES TERM IN OFFICE

In an interview with the Justinian, Dean Trager discussed present and future plans for BLS, including his views on students roles in the decision making process.

By David Howe and Adam Pollack

Students Role

'I think what (students) would want is the opportunity to learn and become fine lawyers," was how Dean Trager responded to contentions that his administration has failed to consult the student body on specific issues.

When confronted with the suggestion that general feeling exists among students that his administration ignores students concerns, Trager responded "I'm sorry if the students feel that, but every little thing that I view as a short term measure...I can't convene a committee to do it."

More specifically, as to the recent (and without student consultation) renovation of the smoking section of the library: Trager would have discussed it if there were any options..."but do you know of any options?" He forsees the removal of the prefabricated walls in the library by September.

Bork Rumor Confirmed

Trager confirmed that Judge Bork will be the speaker at the 1984 Graduaton. There is much discussion, both within the school and without, as to Bork's political orientation, and concern over his views towards the first amendment

Dean Trager suggested Judge Bork as the speaker and his choice was confirmed by the Board of Trustees and the Faculty. Neither the SBA or the student body was involved in this selection.

For Dean Trager, it is "not in the school's interest that that decision would be made by wide-spread consultation." Dean Trager noted that this was the first time within recollection that there had been consultation with the faculty.

Night Students

Preliminary responses for Prof. Berger's survey reveals concern by evening students that there are plans to drop the evening division. Dean Trager emphatically stated that there is "no basis for it (concern)." It is the "farthest thing from my mind." Reminding the *Justinian* that years ago BLS almost refused to seek membership in the ALS because of BLS's strong support for the evening division.

Dean Trager is seeking equity for the evening division. He plans to continue the new scheduling, by offering the same courses for the evening and the day division. This requires a "doubling-over of adjuncts;" that is, asking the adjuncts to teach the same course in the day and in the evening. He also experimented with alternate six to eight P.M. and eight to ten P.M. classes, so that no one bears the brunt of always taking a late class.

1984 Entering Class

The administration intends to limit admission so that the BLS community will not exceed 1000 students. The class of 1986/88 will be composed of 250 full time students and 90 part time students.

Tuition

Dean Trager indicated that the tuition will increase about 10%, with tuition for

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CUOMO SPEAKS

By Jonathan Murphy

On Friday, February 10, Governor Mario Cuomo held an open forum in Brooklyn Law School's Jerome Prince Moot Court Room to discuss his proposed 1984 State budget. There was standing room only in a room filled mostly with public interest group representatives from Brooklyn. The forum was one of many which the Governor has been holding in localities around the state in order to get feedback from the public concerning his proposed $35.4 billion budget. This year's budget was increased $1.8 billion from last year.

The Governor was introduced by Howard Golden, Brooklyn Borough President, and then listened to presentations from twenty different public interest groups, ranging from the National Congress of Working Women to a "let's bring the Brooklyn Dodgers back" committee. Representatives were given several minutes to present their respective praises or grievances over the proposed budget, and than allowed to request additional funding for their respective interests. Although most of the questions and requests were explained as impossible to fund this year, the format of the program was seen by some as a way for Cuomo to present himself to the public as a grassroots man.

Much of the hope which accompanied these interest groups to the Moot Court

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HOLZER UPDATE

By Michael S. Schreiber

Forty six students enrolled in Professor Henry Mark Holzer's fall semester '83 consititutional law class have signed a letter of protest which was delivered to Acting Associate Dean Stacy Caplow on Monday, Feb. 27. At the request of individual students, Holzer has reviewed 22 of his exams and expects to review more, but no grades have been changed and, he said, the issue of whether the administration may "tinker" with his grades in "not debateable."

The letter of protest was written by a small committee of students chosen from a group which has met on three occassions since Holzer posted his constitutional law grades. At those meetings students attempted to develop a strategy to encourage the BLS administration to review their grades. That strategy was to contain three parts, a schoolwide petition in support of the establishment of a uniform grading policy, individual letters from students to Caplow requesting review of the grades, and a letter from the class to Caplow, Holzer, and Dean Trager requesting an independent review of the results.

Though students voiced a variety of grievances at their meeting on Feb. 7, their central concern was one of applicable standards. Many asked if Holzer's standards might be unreasonable and the primary demand was that the faculty address the issue

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Moot Court Honor Society: A CHANGE OF REINS

By Bridget Asaro

In a departure from past practice, the Legal Writing Department will administer the first year mandatory moot court oral argument this year, which was previously coordinated by the Moot Court Honor Society. There are two factors which contributed to the Society's decision to make this change; said Josh Mallin, Society President. First, was the Society's lack of academic input into choosing and writing the problem. Second, was Legal Writing Director Marilyn Walter's rejection of Mallin's "offer" that Society members participate in judging first year practice rounds.

Walter rejected Mallin's first proposal because she said the writing instuctors are better able to fashion problems that students can deal with since they are more familiar with the make up os a class. A proposal similar to Malllin's was presented to the Fundamental Skills Committee a number of years ago, as part of the initial proposal to involve the Society in the first year competition. Walter said that proposal was rejected. Concerning her rejection of Mallin's second proposal, she said that since a practice round is a students' first opportunity to do an oral argument, the presence of an outsider might increase the students' anxiety. She also said the department "wanted to make sure that we were telling the students the same things as to what was significant" in oral arguments.

Who Initiated The Change?

In coordinating these mandatory oral arguments, the Moot Court Honor Society has, in the past, scheduled rounds, contacted and procured outside judges, provided student judges, and calculated the scores of the students, according to Jim Miller, Moot Court Executive Board member. Miller also coordinated the first year competition held last spring. This change "was initiated by us," said Mallin, "basically because we felt there were other programs that we wanted to develop for the spring, and we lacked academic input in the first year program. The Moot Court Honor Society as a whole would like to move into more academic directions and involve ourselves in activities which stess that. We felt that just administering a competition was not consistent with the goals of the Moot Court Honor Society."

Professor Holzer, faculty Advisor to the Moot Court Honor Society, did not remember who initiated these changes since this has been part of an "ongoing discussion," but said that "Professor Walter felt that since (oral arguments consititute a major part of) the sencond semester of the writing program, and since the students were getting academic credit for it, that it was really a writing program undertaking." Holzer said he discussed WAlter's position with the Society and they felt it had merit.

The decision to make this change was made by Mallin with the approval of the Executive Board of the Society. Although there was no formal meeting held, "before the move was contemplated I personally spoke to almost every member, if not every member on the Board," Mallin said, and since there was "unanimity in response" he "felt it unnecessary to call a formal meeting." "If there had been conflicting views," he added, then a formal meeting would have been called. Since this is "purely executive policy as far as forming the

Prof. Marilyn Walter

direction and programs of the Moot Court Honor Society," a vote of the Society's general membership was not necessary, said Mallin. He did take a "random sampling" of members, however, and from this got the sense that members agreed with the change. Executive Board member Miller said, "I think the purely ministerial task of running the first year competition was not an appropriate function for the Society. At this point it will allow us to focus more on the second year competition."

Changes

The Legal Writing department has hired student members of the Society to assist in administering the competition. These students are Jim Miller, Jim Glasser and Joe Pickard from the day Society and Aileen Fox, president of the evening Society. The student assistants are "going to be using experience gathered over the years" (ie. list of judges), and will be "using this experience as employees of the writing department and Marilyn Walter," said Miller.

As to how these students were chosen, Mallin sid "one of them was the Fall competition coordinator from last year (Miller) and was going to be our Spring competition coordinator if we were going to administer it. The other two students (Glasser and Pickard) were selected based on their interest in this kind of work." Mallin selected these students, who are paid by the Legal Writing department for their work, out of a pool of 9 applicants. No interviews were held since Mallin was familiar with all of the applicants. 'My initial determination (was) based on previous involvement, peoples' other commtiiments" and the like, Mallin said. Aileen Fox, president of the evening Society, was contacted and hired by Walter. According to Ron Kaplan, vice-president of the Society, the writing department is hiring Honor Society members because it is a "convenient pool" to draw from, but it is uncertain as to whether this will be done in the future.

Judging

"The judging of the one mandatory round will be done, hopefully, exclusively

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Justinian

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LETTERS

The following letter was sent to Dean Trager on February 28, 1984 with a copy forwarded to ***Justinian****:*

Dear Dean Trager,

We are writing to you in accordance with a motion that was made and passed at the regular February meeting of the student Bar Association. Essentially we are presenting you with a list of six deeply felt concerns of the student body. It is hoped that you will give these issues serious attention. We further request that you respond to us in writing by our March meeting (Wednesday, March 14) with a report of your plans to act on these issues. We cannot stress enough how important your reasoned response will be in the determination of our future course of action on these matters.

List of Student Concerns:

1. We are opposed to your stated plan to cut tuition significantly to the top 25% of entering students. We feel strongly that this is an inappropriate use of tuition revenue which is better spent aiding entrants who are financially disadvantaged. We understand that you have wavered on this issue so we sould appreciate your definitive response in this regard.

2. We are opposed to the usurption of library space. We students are quite fond of library personnel, and we hope that adequate office space can be found for them elsewhere. We feel strongly, however, that the study space in the library is both quantitatively and qualitatively a disaster and an insult to our aesthetic sensibilities.

3. The placement office is a student service which merits a larger share of the B.L.S. operating budget. At present this office has too few staff to meet the needs of both current students and alumni.

4. We believe that there is too great a discrepancy among the grading policies of various professors. A system which assures greater conformity to set standards is required. We also note that all too often whim and caprice have replaced the sober judgment applied by professors who do adhere to the ananoymous grading system. *All* professors should adhere to that system.

5. We repeat the request that many classes before us have made—fall exams should be held before the Christmas break and spring exams should be completed before the bar review courses begin.

6. We believe that evening students should be given preference in registering for evening classes. Third-year students should likewise be given preference in registering. If such a policy does exist, it has been applied unevenly at best.

Finally, we are distressed with your failure to consult the student body in implementing policies that affect it. Such *ex-parte* actions are not appropriate at an institiution of higher learning. We hope that we can work together in the future.

Sincerely,
The House of Delegates of
the Student Bar Association
of Brooklyn Law School

The following letter was sent to Dean Caplow with a copy to Justinian.

Dear Dean Caplow,

I was a student in Prof. Holzer's Fall 1983 Constitutional Law class. Recently, I received my grade for the course, and I do not beleive that it reflects my knowledge of the course material. Indeed, Prof. Holzer has given such a grade to more than half my class. He has accused my class of being his "stupidest in his twelve years of teaching," and the "bottom third" of all of last year's first year sections. This is *his* opinion.

Moreover, Prof. Holzer admits that he deliberately made our final examination "half as easy" as the one he gave in Fall 1982. He has stated that he did so because he disliked us, a dislike he contends stems from our failure to participate actively enough in class discussion. This comment does not surprise me, because he created a self-fulfilling prophecy: he would intimidate the class with his overbearing style of lecturing, and then embarrass us when we did respond, if our responses did not meet his expectations. Thus, he should not have been surprised that we were reticent to participate in class. This attitude toward lecturing and the preparation of our final examination indicates malice on his pa and a calculated effort to be vindictive.

Further still, Prof. Holzer taught the course by analyzing the course material from his own unique and perplexing perspective, and then followed this with a final examination, half of which was devoted to the testing of our knowledge of black-letter law. In other words, he have a black-letter law final without first making certain that we knew exactly what the black-letter law was. The other half of the [illegible] testing our

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EDITORIALS

Democratic Despotism

After three years of Reaganism, the democratic process appears headed towards a historical remembrance. Decisions that may impel this nation towards oblivion are made within the confines of a small oval office. The storming of beaches, the construction of "a presence," the destabilization of a people, are all matters undertaken by the same Administration that attempts to revive the image of "the common folk" and "Americana," only to deny its people the right to participate in that democratic process.

The autocracy of Reaganism is becoming a fashionable administrative tool. It has become vogue for administrators to make one-sided decisions which affect the many. These are made without consultation or choice given to the plebians.

The BLS Community has been visited by this phenomenon of Reaganism. At first, it was only the administration that made decisions and enacted changes without student participation. For the administration, *Brooklyn Law School,* the entity, came first; students a distance second. Some may query what a school is without students. Lest we forget, there are faculty, administrators, alumni and the endowment fund. These come first. Students are better seen than heard.

Autocracy is intoxicating and the Moot Court Honor Society's Executive Board appears to have imbibed its heady spirits. The Executive Board is joining in this surge of unilateral decision-making. First, the Board, in an October meeting, voted to change, and thereby extend, the length of its tenure. According to the Society's By-laws, the Executive Board's term in office would have ended on March 1st. The Board's vote extended its tenure to June. The Society's Constitution provides two ways to change its by-laws: by a 2/3 vote of the Board or by a 2/3 vote of its membership. It seems odd that the Board opted not to consult its membership on an issue such as this—an issue which directly affects the Board's tenure by prolonging its members' term in office. It seems odder still that no minutes were kept for a Board meeting that addressed such a vital issue.

Secondly, the Board announced that the Executive Board would no longer be elected, as required by the Society's Constitution, but would, rather, be selected by the present Board. There is dissention among Board members as to whether there can be a selection process and how this change should be implemented. A reading of the Constitution clearly shows that amending the Constitution before the end of the semester will be a difficult task, especially considering that no affirmative steps have yet been taken to accomplish this end. The suggestion by one Board member that the *amendment* provision of the Constitution does not apply to a *rewriting* is a ridiculously convenient interpretation. Once again, this seems like a move calculated to skirt confronting the Society's membership.

Finally, in deciding not to administer the first year mandatory oral arguments, Society President Josh Mallin abdicated a major function of the Society without consulting its membership and without even holding a formal meeting of the Executive Board. Again, this seems too important an issue to informally poll a small percentage of the membership and "almost every member, if not every member on the Board." This is not to say whether this charge is for the better or worse. However, this was the only Honor Society function that actively involved all of its membership. For this reason, its general membership should have been consulted. We, as students, who call for more input into the Trager administration, are now mimicking its ways.

Perhaps it is just a fashion, this Reaganism, which will go away after November. Perhaps. . .

Day Care: FULL STEAM AHEAD

Dean Trager and the faculty should be commended for supporting the implementation of a day care center at Brooklyn Law School. The passing of the day care proposal at the recent faculty meeting, and Dean Trager's presumption that a day care center will be created if at all possible, are signs that the new administration and the faculty are looking toward innovation in improving the quality and status of the school.

The rapid pace with which the interim plan was effected is commendable as well. However, the assumption that the SBA office would be the best place for a day care information service is somewhat perplexing. Was there no other alternative? Should the SBA be saddled with giving up crucial space to the day care information office? And where will the office be placed if the SBA rejects the proposal to place the information office in its office? Surely the administration must have some contingency plan which might be less disruptive, for although the plan is temporary, it may well be in effect for at least a year.

Those who have thought carefully about the proposal realize that the creation of a day care center poses severe, but not insurmountable, problems. The first and most obvious is the space problem. With hardly enough room for student offices and adequate library and class-room space, the implementation of an on-site day care center must be delayed until Brooklyn's physical plant is expanded. Licensing the center, finding qualified staff and suitable space (small-scale toilets and furniture are required) pose even greater problems. These problems should be seen as challenges rather than barriers, and creative solutions should be sought to assure that the "interim proposal" does not become the long-term plan.

CAPITAL PUNISHMENT

The following is an essay by Ursula Bentele, who teaches the Constitutional Law Seminar and Legal Writing at Brooklyn Law School, and who has been a volunteer lawyer for the NAACP Legal Defense Fund for the past seven years. She most recently wrote a successful cert. petition for death-row inmate Larry Dean Smith which ultimately resulted in a reversal of his death sentence by the Supreme Court, and dismissal of the indictment by the Oklahoma Court of Criminal Appeals.

By Professor Ursula Bentele

Capital punishment, we are assured, is reserved for those extreme crimes that are "so grievous an affront to humanity that the only adequate response may be the penalty of death."[1] The arbitrary, and possibly discrimatory, imposition of death sentences that led the Supreme Court to invalidate virtually all capital punishment statutes in 1972[2] has been replaced, we are told, by a system that ensures evenhandedness and rational selection of those few convicted murderers who are to suffer the ultimate penalty. Evidence is mounting, however, that racial prejudice still plays a critical role in the decision about whether someone will be sentenced to death[3] and that capital sentencing juries from which opponents of capital punishment are excluded for cause are not only more likely to sentence a defendant to death, but are also more likely to be biased in favor of the prosecution on the issue of guilt.[4] Such systemic flaws are powerful arguments against continuing executions in this country. My personal experience with death cases, although not scientifically based, should also give pause to those who take comfort in the "fact" that death sentences are meted out only to those most deserving of them, and only after trials which conclusively established their guilt and adhered scrupulously to due process principles.

In the fall of 1977, after eight years as a criminal defense lawyer, I volunteered to handle the case of a death row inmate for the NAACP Legal Defense Fund. I picked up the transcript of the trial of the State of Georgia against David Peek late one afternoon. It comprised only 247 pages, and I decided to read it that evening. Peek, 19 years old, had been charged with killing his brother and cousin in an early morning brawl over 15-year old Pearlie Mae Lawrence, the girlfriend of Peek's brother. The facts did not strike me as warranting a death sentence—if anything the evidence supported a reduction to manslaughter given the "crime of passion" motive and the indications that all the young people had been drinking. One juror apparently had a similar reaction—as the jury deliberated Peek's fate after midnight on the one-day trial, the foreman asked to see the judge. One juror, he reported, was getting very "nervous" and wanted to be excused. Everyone agreed, without ever speaking to the "nervous" juror, that an alternate should be substituted. At 12:42 a.m., according to the transcript, the first alternate replaced the regular juror. At 12:45 a.m. the jury reported its verdict finding Peek guilty on all counts. Then, although the judge recognized that "it's later than usually you (the jury) stay up," the jury, after argument and instructions on the sentencing phase, deliberated (for 22 minutes) before sentencing Peek to death. That decision was reported at 2:07 a.m. Surely, I thought as I finished reading the transcript at just about the same time of night, the question of whether a man should live or die should be given more thoughtful, objective consideration.[5]

The next case I handled for the Legal Defense Fund had also involved very late-night deliberations, this time after a two-day trial. The facts in State of Georgia against Eddie William Finney were, however, much more gruesome. Finney, 19 years old, and his co-defendant Westbrook, who was 44, robbed, kidnapped and sexually abused an elderly woman for whom they had done yard work; when a neighbor, also an older woman, came to the victim's aid, the men abducted them both, drove them into some woods, and killed them. The crime was horrible; the evidence was strong—why shouldn't the State put Finney to death?

Eddie Finney has an IQ of 55. When the State examined him for competency to stand trial, the tests indicated severe mental retardation, but the psychologists concluded that Finney was faking. It was not until collateral proceedings were instituted that a lawyer obtained Finney's school records: at ages 10, 14 and 16 his IQ had been reported at below 60. Evidence also showed that Westbrook, who had spent half his life in prison, exerted a strong influence over Finney. Finally, Finney's lawyer at trial all but invited the jury to sentence his client to death, saying "...of course if you considered the evidence and brought back the death penalty, I honestly don't think I could really criticize you too much for that..." and "...maybe it does make sense, maybe Eddie's life ought to be taken." When his own attorney referred to Finney as a "monstrous, monstrous human being," the jury was given no possible basis for a sentence other than death[6].

Shirley Taylor is an unusual death row inmate for at least two reasons. First, she is one of only 12 women among the nearly 1300 prisoners currently under sentence of death. Second, she is on death row for the murder of her husband—such "domestic" murders very rarely result in capital murder convictions, much less actual death sentences.

Twice during the month before his death Mr. Tyler fell ill—the first episode was diagnosed as viral gastroenteritis, the second as a cerebral hemorrhage. The evening of his death, Mr. Tyler was violently ill with stomach pains. An autopsy revealed the cause of death as parathion poisoning. A half teaspoon of Phoskil, a pesticide spread throughout the Tyler home by the victim's mother, had proven fatal. Shirley Tyler, after extensive questioning, said that she had put some of the poison in Tyler's chili and beans. She stated that her husband threatened to hurt her son (by a previous marriage) and that "I could not stand this because he hurt him once before."

The defense strategy at trial was unclear. The possibility that Tyler was harming his family was barely alluded to; other likely defenses were not developed. The case was tried rather like a poor first-round trial advocacy competition—which should perhaps not be surprising given that Mrs. Tyler's assigned attorney had passed the Georgia bar examination just four months before the trial.[7] More surprising may be the affirmance of this death sentence by the Supreme Court of Georgia, which is required to vacate death sentences "unless in similar cases throughout the state the death penalty has been imposed generally."[8] The court's conclusion that death sentences are usually imposed in situations such as Shirley Tyler's relied on a remarkably strained definition of what cases are "similar."

When Eurus Kelly Waters heard about this crime, and his wife saw a newspaper sketch of the suspect which she thought resembled her husband, Kelly became very distraught. His sister, a registered nurse, described his condition when she visited their home at Mrs. Waters' request:

He was in a shape that I have never see him in before...I guess despair is the best word I can use to describe it...He was just trembling all over and the tears were streaming down his face ... He said, "Baby sister, I think I may have hurt somebody." ... He was just in the very pits of despair, and he said, "I've got to know. I've got to know what happened."

He cried uncontrollably the rest of the evening, and said he wanted to die if he had done the killing. Waters had been diagnosed as a paranoid schizophrenic three years earlier; he had been treated with potent anti-psychotic medication, but he stopped taking the drug two weeks before the killings. He seems to have been in a "blackout period" during the week of the shootings; unlike in Finney's case, no one disputed his sincerity or the genuineness of his mental illness. Nevertheless, the jury, perhaps swayed by intense pre-trial publicity, imposed a death sentence.

The next case I became involved with is familiar to many readers of the *Justinian*. As part of a seminar on the eighth amendment, twenty-two BLS students helped to write a certiorari petition that removed Larry Dean Smith from Oklahoma's death row. The facts of this case have been described elsewhere[9]—the BLS community is rightly proud of its role in rectifying what would have been an egregious miscarriage of justice. Lest the argument be made, however, that the reversal of Smith's conviction shows that the system does work, that a conviction not supported by the evidence will not be permitted to stand, and no one will go to his or her death without thorough and conscientious review by several levels of appellate courts, we should remember a number of unsettling facts.

First, at the moment Larry Dean Smith's death sentence was affirmed by the Okla-

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KERMAN LANDS JOB AT RUTGERS

By Allan Young

After seven months of unemployment, Lewis Kerman, former BLS Assistant Dean of Student Services, has been hired by Rutgers Law School in Newark, N.J. to head up its Development Office. Kerman was fired last summer, along with Alumni Office Director Marvin Diller, during Brooklyn Law School's administrative transition.

Kerman rejoins the same school which had employed him prior to his three-year deanship at Brooklyn and, ironically, returns to the very office he occupied as Rutgers' Executive Assistant to the Dean. His new duties include coordination of fund-raising efforts, publication of a quarterly alumni bulletin and a faculty newsletter called "Peer Revue," operation of a "Phone-a-thon" program in which alumni are solicited for donations, and "party planning." One of his first tasks involves coordination of the school's upcoming 75th anniversary celebration honoring U.S. Supreme Court Justice William Brennan.

In the last half year, Kerman, who describes himself as "not tied geographically," looked for work as far away as Hawaii, concentrating on, but not limiting himself to, positions in education. With several offers imminent, he decided to accept the Rutgers position for the balance of the spring semester, reserving job options which could still be accepted this summer. Although returning to Rutgers was "like a homecoming," said Kerman, "I loved my job at Brooklyn, despite its faults. I felt tremendously fulfilled and needed because of the student contact. Counseling was such an important part of my job. I'll miss that."

To date, the administration has declined comment on Kerman's dismissal.

FACULTY VOTES TO IMPLEMENT DAY CARE

By Risa Gerson

On Wednesday, February 1, 1984, the faculty passed a resolution submitted by Professor Gary Minda which created an advisory committee to study the feasibility of opening a day care facility at Brooklyn Law School, with a target date of opening the center by January 1985. The committee will consist of three faculty members, two administrators and two students. At press time Dean Trager would not release the names of the members of the committee, because all of the members have not yet been chosen. However, Professor Maryellen Fullerton told the *Justinian* that she had agreed to serve on the committee. Trager said that the Chairman of the Committee (whose name is not yet released) will ask the president of the Student Bar Association to designate the two student members of the committee.

The proposal, which calls for a day care center to be established at Brooklyn Law School has been interpreted by most faculty members to mean that *if feasible*, a center will be established. Dean Trager said "There is a presumption that if it can be done, we will try to do it. If it turns out there are enormous problems—for example with licensing, or an enormous financial obligation required—we would not be able to do it." Neither the faculty nor the administration has the final authority on instituting a day care center; the plan must be approved by the Board of Turstees. Trager said that if the faculty and administration recommend establishment of a day care center to the Board of Trustees, he sees no reason why the Board would not go along with the proposal. He said, "The Board almost always goes along with the faculty and the Dean."

The faculty also passed an interim proposal which would create a day car information office starting March 1, 1984. Director of Administration and Student Services Robin Siskin is implementing the plan which includes assignment of an office and allocation of funds to staff the office. The office will be open Mondays, Tuesdays and Wednesdays from 8:30 AM to 12:30 PM, and Wednesdays and Thursdays from 1:00 PM to 7:00 PM The office would serve eight functions: (1) provide parents with information as to what is available to them in the realm of child care; (2) set up contacts with institutional day care centers in an effort to advise parents of openings as they become available; (3) match up parents by schedule and neighborhood who have an interest in reciprocal babysitting; (4) match up parents who would be interested in hiring one sitter for two or more children; (5) relay messages to parents in emergencies; (6) assist in collecting data nad information relevant to establishing a permanent day care facility; (7) take applications from students interested in supplementing their income by providing child care; (8) bring together people who will benefit from a future day care center so that their needs will be known.

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MOOT COURT NEWS

By Susan L. Merrill

The intermural moot court season got underway in mid-February as two Brooklyn Law School teams competed in Philadelphia and Williamsburg and a third prepared for regional rounds in Camden.

The Criminal Procedure Moot Court Team attained a new level of achievement for BLS by reaching the quarter finals of the Eastern Regional Criminal Procedure Moot Court Competiton held in Philadelphia February 16th through the 19th. Team members James Glasser, Jim Miller and Anne Ryan argued both sides of a search and seizure issue and a sixth amendment objection to the use of peremptory challenges in jury selection to exclude minorities. The team faced Temple University Law School, host of the event, and Pittsburgh University, emerging victorious from this first round in which half of the 17 schools were eliminated.

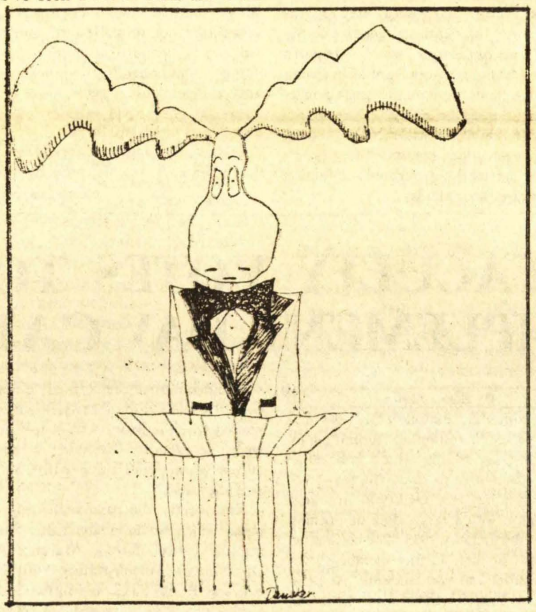
In the quarter finals, BLS advanced against Seton Hall Law School in front of a tough panel of judges who advanced only one team to the semi-finals; that team, St. John's University, was the eventual overall winner of the competiton. Speaking for the team on its performance, James Glasser said, "Jim and Anne argued beautifully. We were proud to represent Brooklyn Law School. We were very well received and the other schools thought highly of our presentation." Josh Mallin, president of the Moot Court Honor society who accompanied the Criminal Procedure team to Philadelphia, said, "I've seen a lot of teams and I felt very good about our team's performance."

Jennifer Marre, Joseph Pickard and William Touret represented BLS at the Marshall-Wythe National Moot Court Competition on Federal Jurisdiction held February 24th and 25th in Williamsburg, Virginia. In first and second round competiton against Wake Forest and Marshall-Wythe, argument centered on whether the state is a suable "person" under a federal statute holding any "person" liable for inflicting civil rights deprivation on another person while acting under color of state law; and whether a law prohibiting compensation to surrogate mothers is an unconstitutional invasion of privacy.

Although the team was eliminated after the first two rounds, the oralists felt they had argued at their best and were pleased with their performance. Joseph Pickard said that a representative of the Virginia Trial Lawyers Association critiquing the team "had very good things to say" about its performance and that the experience of arguing in a strange environment was a very valuable one.

The Jessup Team is scheduled to argue next weekend, March 2nd and 3rd, in the regional rounds of the Phillip Jessup International Moot Court Competition at the Camden campus of Rutgers University School of Law. BLS has been very successful in previous years in this competition. Last year's team finished second overall and won best memorial (best brief). The 1978 team took first place honors in this National Competition. Sarah Thomas-Gonzalez, one of four members of this year's team, attributes that consistent success to the extensive first year International Moot Court Competition from which the team is ultimately selected. "Thanks to the

Continued on page 11



You mean . . . This isn't Moose Court? ? ?

ALLAN ON THE AIR

By Maria Bloch

Professor Richard Allan enjoys working in broadcasting studios. Before going to Law School he spent twelve years as a successful televison director at CBS Studios in New York City. Last Sunday, February 17th, from 9-10 p.m., Richard Allan returned to the studio, this time to speak to the New York metropolitan area about divorce law and personal relationships. Entitled "Coping and Crumbling," the program was part of WABC-Talk Radio Ellen Goodblatt's weekly series on "Getting Together."

Professor Allan admitted being nervous prior to the show. After all, it's not every day one gets to speak to New York City, New Jersey, and Connecticut. How did he combat his jitters? "I walked up and down Sixth Avenue with a cup of coffee in my hand singing "Tea for Two" out loud," he said. An original method of calming oneself, but it seemed to work. By the time Ellen Goodblatt introduced Professor Allan his coffee was cold and he was "95% Ok."

Prof. Allan on the air at WABC.

If any of his jitters remained they were well-hidden beneath a confident yet casual speaking voice. Since he was billed as a divorce lawyer and prominent Professor of Law at Brooklyn Law School (Professor Allan insisted that the school's name be mentioned during the show) the program was very popular that night. Six listeners called with questions during the hour long show. "Divorce creates the audience," he said. "The listeners are hurting. They want to be pointed toward something or someone who will save them." Considering the debilitated state of marriage in our society, the lawyer plays a key role in the "salvation." Richard Allan's concerns about divorce and the law do not stop here. In addition to teaching Domestic Relations at BLS and handling a number of divorce cases in his own private practice, this summer Professor Allan will complete his treatise on New York family law—*New York: Divorce, Maintenance, Custody, and Support*—with a stipend granted him by Dean Trager.

Topics of conversation Sunday night included: the problems with long distance relationships, the benefits of joint custody to the children of divorced parents, the rights of grandparents after the divorce, and how to find a good divorce lawyer (Professor Allan believes one should shop around because "you get what you pay for" where legal services are concerned). One caller asked Professor Allan what the rights were of a divorced spouse who had put his/her partner through graduate school, a predicament commonly referred to as the "graduation divorce." (This sounded suspiciously like a Moot Court problem presently under consideration in Professor Hutson's Legal Writing class. Well aware that some BLS student may call in, Professor Allan evaded a direct answer by stating that the spouse definitely had rights, but that the New York court of Appeals had not yet spoken as to how to divide up a graduate degree).

The rest of the program centered on premarital live-in relationships. Spurred by a young female caller who asked his advise as to whether she should move in with her boyfriend, Professor Allan responded that it depended on the age category one fits into, whether marriage was an imminent prospect, and whether one wanted children. He felt that living with someone one cares about is healthy (at present, both of his own children live with people to whom they are not married). However, he cautioned his female listeners to be wary of their "biological clocks." He felt that a live-in relatonship at 20 or at 40 years old was fine, but that a 30 year old woman who moves in with her lover as a segue into a marriage which never materializes could be asking for trouble if she wants to have children.

When asked about the legal ramifications of a live-in relationship, Professor Allan said that the "days of naive romance are over." He said that prior to moving in with

Continued on page 13

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ON YOUR TOES

By Steven Eisenstein

Seeing *On Your Toes* was something of a personal experience for me. I first saw Galina Panova in Leningrad where she appeared with the Kirov Ballet. I had never seen such fluidity of form, such incredible grace. She moved as if Byron had used her as a model for his poetry. It was because of her presence that I was so anxious to see *On Your Toes*. Unfortunately the years take their toll and add their pounds. Galina Panova is not the dancer she once was. Her dancing in this play amounts to nothing more than a few tentative steps followed by a grateful dive into a pile of cushions, a sad reminder of former glories.

Yet I thoroughly enjoyed the play. Fortunately, Galina Panova is not the only attraction. The score by Rogers and Hart does not offer many standards but it is considerably solid. The one song which most people are probably familar with is "There's A Small Hotel" but many of the lesser known songs come as pleasant surprises, especially "Silent Night." I must confess to being a bit prejudiced where music is concerned. My tastes run to the Big Band Era and my favorite radio station is WNEW-AM, but I cannot help but feel that anyone would enjoy this score. The music is crisp and clean, the lyrics are deceptively simple, yet it is the very simplicity of the music which shows its genius.

The plot too is quite simple. Set in 1936, the year of its debut, *On Your Toes* is the story of a young man who leaves his family's vaudeville act to become a music teacher. When one of his pupils writes a jazz ballet, the teacher tries to convince a Russian ballet company to produce it. This, along with a pair of incidental love stories, is the entire plot. It is enough though to serve as a backdrop. The plot is not the most important thing in this play, nor is the music. That spot is reserved for the dancing.

The dancing throughout the show is outstanding, with the sad exception of Panova, but there is one high spot, perhaps the most exciting ten minutes of theater in the last decade. "Slaughter On Tenth Avenue" is the grand finale of the play and its focal point. It is a ballet so exciting that, had I been alone, I would have been standing on top of my seat to watch it. No other comment is necessary than that "Slaughter On Tenth Avenue" is the only ballet ever to evolve from a Broadway musical comedy to the repertoire of a major dance company, the New York City Ballet.

One note should be made of the production itself. *On Your Toes* is probably the most accurate revival of a musical comedy ever done. Great pains were taken to conform this production to the original. George Abbott, the original director, was hired to repeat that role as was George Balanchine, the guiding hand behind the original choreography. The original orchestrations of the songs have been revived and Hans Spilake who created them is once more in charge. Finally, the script is the 1936 one, not some modernized version as is so prevalent in common revivals.

On Your Toes is playing at the Virginia Theater on West 52nd Street. It stars Galina Panova, Lara Teeter, George S. Irving, Kitty Carlisle, George De La Pena and Christine Andreas. I heartily recommend it.

ANNOUNCEMENTS

Accounting Conference

A conference on Malpractice Liability of Accounting Firms will be held in the Moot Courtroom of the Hofstra University School of Law on Tuesday, March 13 at 3:30 p.m. There is no fee for the program, which is designed for lawyers, acountants, businessmen and corporate finance executives. Further information is available at (516)560-6817.

The scope of liability, and rulings by the courts under common law and securities law, will be presented by attorneys Alvin M. Stein Esq. and Joel M. Wolosky Esq., partners in the law firm of Parker Chapin Flattau & Klimpl. The accountant's view will be presented by Richard Kron, certified public accountant and attorney, Partner in charge of Touche Ross & Company, Long Island office.

Panel members will be Robert Katz, Associate Professor of Accounting Hofstra School of Business, a specialist in tax accounting; and Associate Professors of Law M. Patricia Adamski and Mitchell Gans of the Hofstra Law School, specialists in securities and tax laws. There will be a question and answer period.

Eric J. Schmertz, Dean of Hofstra University School of Law and Herman A. Berliner, Dean of the School of Business, will convene and moderate the program.

Concepts of privacy, errors in judgment, misrepresentation, reckless conduct and disclosure standards as viewed by the courts, are among topics to be discussed.

Old Friends

Is it true that 1982-83 first-year section 3 is really having a reunion party on Wednesday, April 4 at 7:30 PM in the lounge?

PERSONALS & CLASSIFIEDS

The *Justinian* will print classified ads submitted by members of the Brooklyn Law School Community. There will be a charge of $1.00 per 25 words with a maximum of 50 words per ad. Ads may be submitted for the next issue by April 4.

Clerkships

This year's Clerkship Committee activities will follow this scenario:

March 8, 1984: A symposium will be held by the Placement Office and Clerkship Committee, in the student lounge, to acquaint students with judicial clerking and with the work of the Clerkship Committee. We will have available not only committee members, but also Brooklyn Law School graduates who have clerked on state trial, appellate and high courts, federal district, circuit, bankruptcy and magistrate courts. In addition, we will invite the attendance of faculty members who have served as clerks, so that they too can answer students' questions. Application packets or Clerkship Committee "screening" will be explained and distributed. While the program is primarily for 2nd year students, 3rd year students and alumni are welcome to participate; however, please note that these post graduate clerkships commence in the Fall of 1985.

March 22, 1984: Deadline (5:00 p.m.) for filing applications in the Placement Office.

March 22-30, 1984: The Placement Office will organize all applicants' files.

March 30, 1984: Applicants' files will be sent to the interview subcommittee. A copy of the covering letter will be sent to the interviewee so that he/she can contact the interviewer to set up an appointment. A list of applicants will also be sent to each faculty member so that anyone who wishes to, may also conduct an interview(s) and make an evaluation(s) and report(s).

April 2-13, 1984: Interviews will be conducted.

April 18, 1984: All files will have been returned to the Placement Office by the interviewers with their evaluations and recommendations by this date.

April 25-27, 1984: The Clerkship Committee will meet to finalize its recommendations.

April 27-May 31, 1984: All recommendation letters will be prepared and all files assembled.

July 9, 1984: The Placement Office will mail files and recommendations to all judges who have requested screening.

Attention: STUDENT GROUPS

All student organizations are invited to contribute to *Justinian*. Please inform us of upcoming forums, meetings and other events. If we know about it, we'll write about it. Deadline for next issue is April 4.

★★★★★★★★★★★★★★★★★★★★

"I'm telling you Entertainment Law has got no future. I'm joining the staff of the Justinian."

★★★★★★★★★★★★★★★★★★★★

WHAT IS EXCESSIVE FORCE?

By Marcos Zalta

At 8:00 PM on Thurday, Feburary 16, the Brooklyn Chapter of the NY Civil Liberites Union sponsored a public forum at Brooklyn Law School in which speakers were asked to address the question, "What constitutes excessive force by police?" The speakers, which included Police Commissioner Benjamin Ward, Michael Aman-Ra (representing Rev. Herbert Daughtry for the Black United Front), Congressperson Major R. Owens and Zachary Carter of the Brooklyn District Attorney's Office, chose to address that question only tangentially and attempted to express their own theories for what "motivates" police misconduct.

Commissioner Ward initially tried to blame the controversy surrounding specific instances of police brutality on factual distortions, rumors, and hearsay. He made it clear that he was not going to debate the circumstances of any single incident. However, he did offer statistics representing the violence police officers must confront as part of their profession as a justification for the use of force in certain cases.

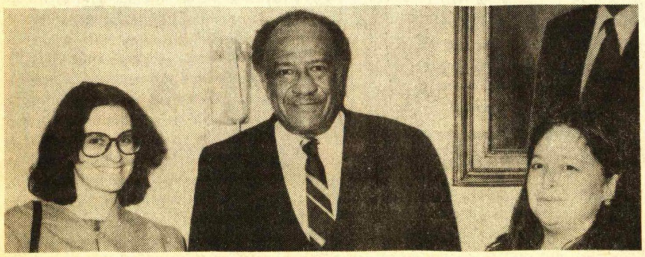
Ward went on to cite Article 35 of the Penal Law as the source delineating the circumstances under which varying degrees of force used by peace officers is legally justified. In conclusion, he blamed lack of military training and today's "do your own thing" attitude as sources for the lack of discipline in police officers that explain their use of "excessive force."

Owens asserted that the relevant issue was not excessive force in general, but racially motivated police misconduct. This misconduct includes both the physical use of force and "tongue lashings" such as his own experience of being called a "black shithead" by a police officer. He attributed police hostility towards blacks as due to a combination of racist attitudes and a "siege mentality" in that police officers often feel confronted by a hostile community. Owens considered those attitudes as the reason why police use small infractions as an opportunity to let off steam. His solution to this problem is twofold. First, he would require police to live in the city in which they work in order to reduce the "siege mentality." Secondly, he would improve training so that police would be better equipped to deal with hostile situations without the use of force. At the systemwide level, Owens claimed that governmental and police officials are given "Brownie points" for doing what they can to "cover-up" the problem of police brutality.

Speaking for the Black United Front, Michael Aman-Ra expressed his concern for the "quality of life" in N.Y.C. as a whole. He went on to cite various instances of racially motivated police brutality. His explanation for such behavior was the combination of vague guidelines concerning when officers are authorized to use firearms and a misperception on behalf of police officers that they are in imminent danger when approached by black males. Aman-Ra asserted that community residence requirements along with more specific guidelines, could help solve the problem of racially motivated police brutality.

Zachary Carter, of the Brooklyn District Attorney's Office, began by delineating the scope of the D.A.'s task: enforce the penal law as it applies to police officers. He went into more specific detail concerning the provisions of Article 35 than Commissioner Ward, and expressed the difficulty in applying those provisions in factual situations. In his view the problem to be addressed is that police officers need training in order to learn the appropriate response in these situations rather than relying on the use of force.

In response, Commissioner Ward expressed his concern for the problem of police brutality and also stated that ethnic slurs should never be tolerated. Owens and Aman-Ra expressed their concern with the problem that police brutality is tolerated to a great extent by the administration running the city of New York, and criticized Mayor Koch for not denouncing police violence. Carter claimed that shooting cases are not "anger responses" but rather related to fear and expressed his view that this climate of fear could be reduced if fewer police were on patrol by themselves.



BLS Alumni Director Gurland, Police Comm. Ward, and Student Services Director Siskin

Distinguished Alumni: CIVIL RIGHTS LAWYER MITTELMAN

By Philip Rheinstein

When Fred Mittleman applied for a job with the Justice Department in 1977, he had one thing in his favor: a solid background in public interest law, both in and out of the classroom. He also had one thing against him: he attended one of those law schools which Federal attorneys spoke of as "good for a New York State practice" but inadequate for the rigors of the Federal courtroom. Fortunately, he had had a chance to prove his skill and intelligence while working at the EEOC, and he landed the job. Most others without the same experience, would have received the standard letter of rejection. Mr. Mittleman, of course, had graduated from BLS.

On Thursday afternoon, March 1, Mittleman spoke at an informal gathering of BLS students and faculty as part of the Distinguished Alumni Lecture Series. While some students came with a specifice interest in Mr. Mittleman's role in the Justice Department, others wandered in the third floor lounge out of curiosity and stayed to partake of the excellent wine and cheese provided by the SBA. Soon after the lecture began, however, everyone in the room listened intently to Mittleman's account of his experiences: everything from protecting the rights of Iranian students, suing the city of Philadelphia, investigating segregation charges against Ohio's school system, and others and his present work, which focuses on the prevention of sex discrimination in educational institutions.

Students were especially interested in the political aspects of Mittleman's job *vis* the effects of the various administrations on his work. He expressed frustration with the present administration's "narrowing" of the enforcement of civil rights and its tendency to not "play by the rules" all the time. The Carter administration, he added, was more likely to over-enforce. He cited his own involvement in a Philadelphia case where the Justice Department did not have enough evidence but brought suit anyway under an overly broad ombudsman theory of Justice Department jusidiction, and lost.

Most immediately, Mittleman and Dean Trager both encouraged students by stating the Brooklyn Law School's reputation among the Federal government's attorneys is improving. Trager's former position as the United States Attorney for the Eastern District and Mittleman's position in the Justice Department have opened doors that "would have been closed 10 years ago."

LAW FILMS

The Legal Association of Women is presenting a Spring Film Festival. The first film, *Pink Triangles*, will be shown on Monday, Mar. 12 at 5:15 P.M. and Tues., Mar. 13 at 1:15 P.M. This film is a study of prejudice against lesbians and gay men. The second film, *Killing Us Softly*, will be shown on Tues., Mar. 27 at 5:15 P.M. and Wed., Mar. 28 at 1:15 P.M. and is a view of the image of women in advertising. The third film, *Taking Our Bodies Back*, airing Wed., Apr. 11 at 5:15 and Thur., Apr. 12 at 1:15, explores the critical areas of the women's health movement. The fourth and final film, *Rape Culture*, will be shown on Thur., Apr. 26 at 5:15 and Fri., Apr. 27 at 1:15 and is an examination of the relationship between rape and sexual fantasy in our culture.

Signs will be posted announcing the rooms where the films will be shown.

Refreshments will be served.

PARENTS IN LAW

Evening students who are interested in joining Parents in Law, please leave a note in Box 707. Please include your name, your mailbox number and your phone number. We are interested in expanding Parents In Law to include evening Dads and Moms.

2ND CIRCUS

Mark your calendars for April 26, 27 and 28 as this is when the 2nd Circus Revue comes to Brooklyn Law School.

For those nights the Moot Court Room is transformed into a theatre where this annual event takes place. There, students present a satirical view of the professors, administration and life at Brooklyn Law School.

Last year's show was very successful, evidenced by three sold-out performances.

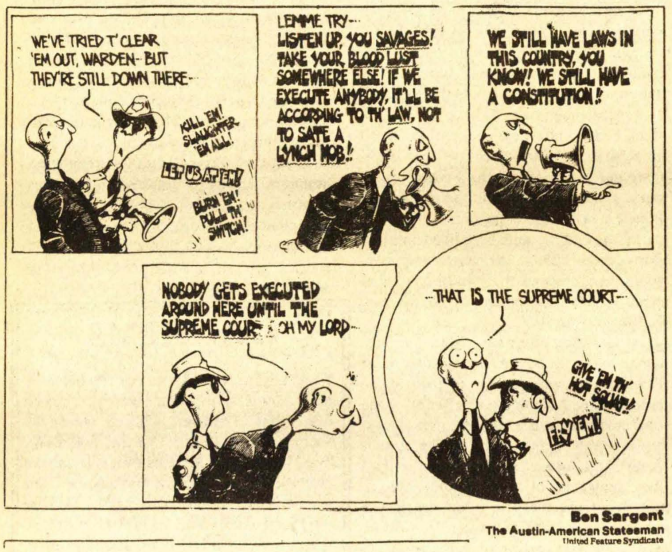
Each year the cast of 2nd Circus has the challenge of coming up with new and amusing material. All student input, whether writing or performing will be well received. If you wish to get involved, please contact Elise Greenspan, Josh Mallin or Chris Schulze through the SBA office.

NEW CLUB

WALL STREET COMES TO BROOKLYN...

Brooklyn Law's "Wall Street Elite" is having its first general interest meeting on March 19, 1984, at 5:00 pm in the student lounge

CAPITAL PUNISHMENT



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Continued from page 8

homa Court of Criminal Appeals, he had exhausted a number of rights. He no longer had a right to a state-appointed attorney as an indigent. In Smith's case, as in the cases of most death row inmates, he had to rely for further appeals on volunteer counsel. Smith was particularly lucky to secure not one lawyer, but twenty-three legal minds dedicated to vindicating his rights. Smith also no longer had a right to a virtually automatic stay of his death sentence. In addition to seeking to reverse the sentence and conviction on the merits, his lawyer, working without fee or funds, would be forced to scramble to undo execution dates set with persistent frequency despite pending legal proceedings.

Another case involved, like Finney's, a defendant with a severe mental disability. Two women were fishing on Jekyll Island. Suddenly a man approached them, threatened them with a shothun and marched them into some nearby woods. At gunpoint, he sexually molested one of the women; then he shot them both, killing one instantly and inflicting fatal wounds from which the other died five days later.

Second, assignment of Smith's case to Assistant Attorney General David W. Lee was a stroke of extraordinary good fortune. Other prosecutors had thought the conviction and death sentence perfectly appropriate despite the very same lack of evidence; Lee could have maintained that position, but didn't. Even once he decided that he personally did not agree with the death penalty for Smith, Lee could still have defended the sentence in the Supreme Court. Had he done so, it is overwhelmingly likely that the Court would have denied certiorari, as it does with alarming, almost eager frequency.

Third, even with the attorney general's concession, the Court could have refused to act to save Smith's life. In the *Autry* case, the Texas Attorney General agreed to stay the execution; the Supreme Court vacated the stay in spite of his position.

Larry Dean Smith is now off death row, and his indictment for murder has been dismissed. But for a series of fortuitous circumstances, however, he could be dead.

John Wayne Conner is still on Georgia's death row—it is too soon to tell whether the efforts of last fall's death penalty seminar students will be as successful as those made on behalf of Smith. Conner was convicted and sentenced to death in Georgia for killing J.T. White, an acquaintance with whom he had been out drinking one Saturday night. The men left a party, at which great quantities of marijuana and alcohol were consumed, to try to replenish their dwindling supply of bourbon. J.T., who had a reputation for being annoying when drunk, taunted Conner with the suggestion that he would like to go to bed with Conner's girlfriend. The men fought; Conner hit J.T. on the head with a near-empty Calvert bottle and a branch from a tree, and finally kicked him with his sneaker. Conner was arrested the next day hiding in a hay barn with his girlfriend; his speeding stolen car had been driven off the road by a state trooper.

Conner, like most of the others described here, should be punished for committing a very serious crime. There is no rational basis, however, for selecting these six defendants to be executed, while thousands of men and women who have committed equally heinous crimes are being sent to prison. These death sentences are "cruel and unusual in the same wayt that being struck by lightning is cruel and unusual...(T)he Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed."[10]

★ ★ ★

Footnotes

1. *Gregg v. Georgia*, 428 U.S. 153, 184 (1976)
2. *Furman v. Georgia*, 408 U.S. 238 (1972)
3. Studies by David Baldus and others reported in New York Times, 1/5/84, A 18.
4. *Grigsby v. Mabry*, 569 F. Supp. 1273 (E.D. Ark. 1983), appeal pending, No. 83-2113 (8th Cir., filed 8/8/83); *Avery v. Hamilton*, N. C-C-81-48 (W.D.N.C. 1/12/84).
5. Peek remains on Georgia's death row. His case was affirmed on collateral attack in the state courts and by a federal district court. It is pending in the 11th Circuit.
6. Finney's death sentence was vacated on the grounds that the trial judge had given inadequate instructions on mitigating circumstances. *Finney v. Zant*, 709, F. 2d 643 (11th Cir. 1983). At a new penalty hearing, he was again sentenced to death.
7. At Press time, a federal district court agreed that Tyler's attorney did not provide adequate assistance under the sixth amendment. Tyler's death sentence was vacated on that ground and on the ground that inadequate instructions were given on mitigating circumstances. I do not know whether the state plans to proceed with a new penalty hearing.
8. *Moore v. State*, 2339G. 861, 213 S.E.2d 829 (1979)
9. Justinian, Vol. XLIII No. 4, 11/21/83 New York Times Editorial, 2/25/84.
10. *Furman v. Georgia*, 408 U.S. at 309-10 (Stewart, J., concurring).

LETTERS CONTINUED

Continued from page 2

knowledge of his perspective, something of which he demanded of the class as intimate and thorough a knowledge as he possesses. He has stated that the fact that as many people did as badly as they did indicates that the fault for all the bad grades "lies in the pit and not at the lectern." Logically, it indicates the exact opposite.

Lest this letter be construed and dismissed as the irate ravings of a disgruntled law student, I should make clear that I respect Prof. Holzer's achievements in the academic and legal fields; this letter is not intended as a personal attack on him. However, his expectations are both unreasonable and unfair from people who do not possess his level of expertise.

Given the foregoing, I wish to have this matter reviewed. The discretion that attends "academic freedom" has been abused in this situation. Thank you.

Sincerely yours,
Philip Bauch

The following letter was sent to Dean Trager with a copy to Justinian:

Dear Dean Trager,

I am writing to you regarding the recent controversy over Professor Holzer's course in constitutional law, in an attempt to express to you my concern, and that of many of my classmates, about its affect on the Brooklyn Law School community.

As a veteran of Professor Holzer's legal process course, I was, obviously, familiar with his style of teaching. In fact, I switched into his section for that very reason, believing that Professor Holzer's less-than-neutral approach to the material would produce more heated discussion. Unfortunately, the extent of Professor Holzer's predisposition even I did not foresee, and the net result was a far from satisfying one for either teacher or student. As Professor Holzer repeatedly stressed the same anti-collectivist points, regardless of the specific area of constitutional law in question, the class quickly assumed a defensive attitude toward his "preaching," with discussion taking on a sporadic and uninspired character.

I have already heard of Professor Holzer's comment regarding the "poor quality" of our class and can easily understand why he felt there was a problem. However, the point of this letter is not to deny that this problem existed, but to call into question Professor Holzer's unprofessional handling of the situation.

I am well aware of Professor Holzer's position as a well-respected litigator with a national reputation. However, I feel it is important to recognize the difference between knowing the law and teaching it. The purpose of any teacher, whether he is at the elementary or post-graduate level, is to impart knowledge, in this case knowledge of the elements of constitutional law. If a teacher seriously believes, as Professor Holzer has said he did, that his students are generally not acquiring the necessary knowledge, it is his responsibility to find out why and if the fault lies in part with him, to correct that fault.

Whether this effort was made, obviously I have no way of knowing. But what is known by everyone in the Booklyn Law School community is the totally uncharacteristic nature of the final examination grades given out by Professor Holzer. Admittedly there are a number of possible ways to explain these grades and blindly assuming the test was unreasonable is not better than blindly assuming the opposite. The bottom line remains that Professor Holzer gave an examination on the knowledge he was responsible for conveying, and the class, as a unit, did between eight and twelve full points poorer on that examination then on any other one that I have seen at this school.

So what is the solution? There is no easy one. But there is one that, in my opinion, would be most fair to the Brooklyn Law School community as a whole. A number of concerned students, both in and out of the class in question believe that a given examination was unfair. A teacher believes that they are wrong. As I see it, it is the responsibility of the faculty to resolve this issue definitively by looking into the allegations of both parties and making a determination as to the reasonableness of the examination grades as accurate indications of the amount of knowledge gained. As a former teacher, I am not unsympathetic to the issue of academic freedom. Even a statement unequivocally backing the independence of each faculty member would be a step toward clearing the air. However, I believe that we are faced here with issues that affect students and teachers at this school very closely and instead I urge you to consider this matter seriously and resolve it as fairly and equitably as you are able.

Sincerely yours,
Michael H. Arwe

To the Collective:

Let's set the record straight. It is patently untrue that no one has come to Professor Holzer's defense. Rather, the voices of those few who did so were initially drowned out by the outcry occasioned by the posting of his grades.

Those who did rally to this unpopular cause know who they are, this writer included. I also happen to be one of those who fared rather poorly on THE FINAL. Now, let's put the blame squarely where it belongs. I screwed up and my grade reflected that. Those who performed well on the exam got what they deserved. The exams were graded objectively. yes, I succumbed and inquired about my exam—the response from Professor Holzer merely confirmed my own thoughts as to where I went wrong. As a matter of fact, quite few of those who actually went over their exams in detail with him came to very much the same conclusion.

Professor Holzer's statements that he felt that our class' performance reflected a marked lack of effort must be placed in proper perspective. There were students who, by their constant class participation, gave at least the impression that they worked long and hard throughout the semester. This is not to say that the rest of the students (and they comprised the majority of the class) did not work just as long and hard. Their in-class performance, however, did. Of course, shooting one's mouth off in class is not the only (or best) indication of one's efforts; but, outside of the final, it is the only one available to a professor. Thus, Professor Holzer's disappointment with our class cannot be said to have been wholly unwarranted.

The simple fact of the matter is that all the work you put in during a semester ain't worth a damn unless you produce on the final. The allegation that Professor Holzer did not test what he taught is nothing more than sour grapes (whining). Yes, the man has an ego, his teaching is geared towards his own personal viewpoint and his style is, at times, abrasive. However, he is also extremely competent, thorough, stimulating and interesting. And he puts his cards on the table. There were not surprises on the final, either in content or in form.

One final note. A word of warning to those whose logic and sense of reason extend only so far as to cry, "But I'm a 90 student—I can't get a — in Con Law," or "...everyone curves, so should he." I can't wait to hear their reaction when they suffer thier first legal setback (and everyone suffers at least one such setback, even top ten percenters and Law Reviews), "But your Honor..."

David Klein

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CHANGE OF REINS

Continued from page 1

by outside judges and faculty," said Miller. "If Honor Society members are interested in participating as judges as they have been in the past, we expect that it will happen again," said Walter, "I don't expect that there will be a conflict because my guess is that (despite) any...people we can get through effort to contact alumni...I'm sure that there will still be an opportunity (for Society members) to act as judges." According to Mallin, approximately 140 rounds were held in last year's competition, with three judges per round, which means that 420 judges were needed. "By any process that means we need students to judge as well as outside people," he said. Mallin intends to hold a meeting, tentatively scheduled for Thursday, March 8, wherein Society members will be given the opportunity to volunteer as judges. In past years judging has been a requirement for Society members, said Mallin. Although this will not be a requirement this year, "there will be other requirements that we're still working out on an executive board level," he said.

The Moot Court National Team will participate in a "demonstration round" for first year students as well as writing instructors and prospective student judges, said Walter. Following this round, writing instructors will meet to discuss judging standards. After this meeting, Walter said, Professor Ursula Bentele will hold a meeting with student judges to discuss judging standards. In this way it is hoped that judging standards will be consistent.

Choosing Society Members

Society members will be chosen through a Fall competition as in the past, said Miller, although the possibility of having more than two oral arguments as now required, is being discussed. However, "performance in the first year competition won't affect the liklihood of getting into the Society," he said. In past years, the Moot Court Honor Society has invited top scorers from the mandatory rounds to argue a second round. Top scorers in this second round were conferred with the status of "eligibles" for the Society. Eligibles had to meet a lower threshold score than non-eligibles in the Fall competition for admittance to the Society. "Eligible status will be eliminated," said Miller. "We found it very difficult having a two-tier kind of acceptance where we would have people who got on due to eligibility status" and non-eligibles, who scored better, who did not get on. On the other hand, said Mallin, "eligibles who didn't get on had their expectations dashed."

Miller said that having the Fall competition in this way will "give us greater control of membership selection," since the Society will write the problem and grade the briefs for the first round. In this way we can "analyze everyone in the same problem, which we feel is important," Mallin said.

Tentatively, the Society will choose its general membership in the Fall and the National Team in the Spring, said Miller. It has been "traditional that the National Team has been chosen out of the intramural competition. As far as I know there is no effort to change that," said Holzer.

Next Year's Executive Board

At the Society's first meeting this semester, Mallin said that Executive Board members for next year would be chosen by the present Board based on each member's input in the first year competition. Since this is no longer possible, Mallin said next year's Board would instead be chosen on the basis of their input in "other activities we have planned." He would not yet describe what these "other activities" included.

This policy of choosing new Board members, as stated by Mallin, is inconsistent with the Society's Constitution, which requires that elections be held. There is some controvery as to whether this year's Board can select their successors, since Article IV, S2c of the Society's constitution states that, "The Officers shall receive, to be *elected*, a plurality of the votes cast by the members of the society." According to Miller, the Executive Board will be elected as required by the Constitution, and, he said, the Constitution is difficult to change. Mallin said that the Constitution is currently being rewritten. "Ron Kaplan has begun doing preliminary work on it, " he said. However, Kaplan said, "No progress has been made at all.. Whether its going to be changed this semester or not I can't say." Kaplan explained that due to more immediate concerns regarding the Society's day-to-day functions, revision is not now viable. There are "inconsistencies" in the present Constitution, said Kaplan, which would justify a rewriting.

The Constitution does not specifically provide for a complete rewriting, although Article VI entitled "Amendment" states: "1. The Contititution shall be amended in the following manner: a petition stating the proposed amendment and signed by a majority of the members of the society, shall be presented to the Chairperson for presentation to the entire membership.

"2. To be adopted, proposed amendments should have been adequately publicized for a period of at least ten (10) academic days prior to a scheduled vote, and shall have been approved by a two-thirds (2/3) vote of the entire membership."

Mallin said the Executive Board must determine how and if Article VI applies to the rewriting, as opposed to the amending, of the Constitution.

Mallin also questioned whether the Society needs a Constitution under which to function since this is an SBA funding requirement, and the Society is not funded by the SBA but by the administration. If this is the case, Mallin said there could be a vote to kill the Constitution without proposing a new one. Law Review and the International Law Journal, which are both funded by the administration, each have a Constitution, although neither is sure whether they are required to have one.

Mallin said he is confident that the Constitution will be rewritten before the new Executive Board is chosen and this Board's term is up. Section V of the Society's By-Laws states that the present Board's tenure expires on March 1. However, according to Mallin, this portion of the By-Laws was changed in October, 1983, by a unanimous vote of the Executive Board so that the Board's term in office coincides with the academic year. (Article VII requires a two-thirds (2/3) vote of the Executive Board to change the By-Laws.) There are no written minutes to the October Board meeting, said Mallin.

Intermural Competitions

The Society will still have exclusive control over the 13 intermural moot court competitions. However, the Soceity will no longer appoint student coordinators for intermural competitions, said Mallin, but the position of vice-president, whose sole function is to coordinate these competitions, will be added as a revision to the Society's Constitution.

Third Year Members' office Hours

Third year Society members may not be required to keep office hours as in the past, said Mallin. "There's no use giving office hours just to say people were given office hours...Their funcion was primarily to do the work that was to be done for the first year competition," he said. Miller, who was not aware that the policy concerning office hours might change, said, "It would be my strong recommendation that office hours be maintained no matter what the case, to maintain the presence of Moot Court Honor Society."

The More Things Change. . . Department

Reprinted from Justinian, May 7, 1979

Faculty Denies Moot Court Credit

By Steve Berlin

The BLS faculty rejected a final proposal to award credit to Moot Court Honor Society members at their April meeting.

The proposal was submitted for a vote by a faculty committee chaired by Prof. Milton Gershenson shortly after the Honor Society failed in its efforts to elect an executive board for next year, according to Andy Engel, chairperson of the Honor Society.

The executive board posted notice of upcoming elections for two weeks, as is standard procedure, he said, but no one wanted to run for the Board.

Engel attributes the lack of interest to the fact that unlike the Law Review and Journal of International Law, Honor Society members receive no credit for the time and effort they put into serving the school.

The defeated credit proposal would have given one credit to each executive board member for each semester, one credit to each interscholastic team member for each semester of competition, and one credit to each problem leader for the semester of the Moot Court program. In addition, Engel said, Prof. Gershenson's committee added a requirement that a student must have an academic average of at least 85 and must put in at least 60 hours of time for each credit received.

The first year competition is run completely by the Honor Society members with a minimum of faculty assistance, said Engel. However, he stressed that the competition is technically an academic requirement which the faculty should be administering.

Engel and Charles Platt, vice-chairperson of the Honor Society first approached the faculty with a credit proposal in July, 1978. The faculty decided to table the proposal and assigned it to an ad-hoc committee chaired by Prof. Richard Allan. Prof. Allan's committee was conducting a reevaluation of the first year legal research and moot court programs.

"I got the impression they asked us to join because they had no idea how moot court functions," said Engel.

The faculty rejected the committee's final proposal which separated the first year program from the Honor Society. Under the proposal, first year students would prepare a legal research assignment in the fall and write a brief for oral argument on the same topic in the spring. They would be advised by faculty members and teaching assistants drawn from Honor Society who would receive credit for their participation.

Engel and Platt again approached the faculty with their initial credit proposal in March, after completion of the first year program. They were then directed to Prof. Gershenson's committee.

Prof. Bailey Kuklin, who was a member of Prof. Allan's committee, and is a member of Prof. Gershenson's committee, said he did not believe that the faculty rejection of the proposal was an objection per se to the idea of credit for Honor Society members. "There was a misunderstanding as to what the mission of the Gershenson committe was," he said. "The faculty was looking for a more in-depth evaluation of the entire program, for a ground floor proposal." According to Kuklin, the faculty felt this proposal was basically a "band-aid".

Open Letter to Faculty

To the BLS faculty: Representatives of the evening and day Moot Court Honor Societies were invited to address a portion of the April 27th faculty meeting concerning various proposals to revise the Moot Court program. These representatives waited for almost two hours until the faculty reached these items on the agenda. No students were invited into the meeting before the vote was taken. When Professor Zaretsky informed these representatives that the proposals had been rejected, he also informed them that there would be no opportunity for any of them to address the meeting.

Year after year, students at this school have singlehandedly conducted the Moot Court Competition. The task is onerous. Neither the faculty nor the administration participate to any significant degree in the competition *which is an Appellate Division requirement.* In return, the Executive Boards of the Moot Court Honor Societies are met with cavalier treatment which is beneath the standard of conduct expected of the legal profession. Insult was added to the injury by the fact that a number of the Moot Court representatives had taken time off from their jobs for the sole purpose of attending the faculty meeting.

In fairness, it must be stated that some faculty have devoted a considerable amount of time to school teams and have been seriously concerned about the lack of progress in revising the Moot Court program. However, unless the faculty as a whole learns to work with, and not against, the Moot Court Executive boards, THERE WILL NO LONGER BE STUDENT-RUN MOOT COURT COMPETITION. Already, the Day Moot Court Society has encountered difficulty in obtaining a single member who is willing to be a candidate for next year's Executive Board due to the faculty's inability to agree upon needed reforms. This is an ominous indication of what is to come.

Chief Justice Burger has repeatedly condemned the poor quality of oral advocacy in this country. The blame must be laid at the door of Brooklyn Law School (and other law schools as well) which refuses to accord the oral advocacy requirement any real dignity and leaves the bulk of the work to students who have themselves only prepared one case for oral argument.

The aforementioned crisis within the Day Moot Court Society is a serious ramification of faculty apathy and procrastinaion. But of course the faculty won't suffer. The incoming students will be the pawns if the faculty persists in making a game out of Moot Court reform.

The Executive Board of the Moot Court Honor Society — Day Division
Andrew M. Engel, Chairperson
Charles Platt
Judith Miles

The Executive Board of the Moot Court Honor Society — Evening Division
Steven Barshov, Chairperson
Kathy A. Dutton, Vice-Chairperson
Rosemary Salomone Levy, Vice-Chairperson
Bonnie Berkow, Business Manager

MOOT COURT NEWS

Continued from page 4

system at Brooklyn, we are better prepared on the law than most schools." She was overwhelmed by the amount of support here for the Jessup Team and credits Professor Sherman, "an excellent practice judge," with really whipping the team into shape for the oral argument. Coordinator Michael Elkin characterizes this year's Jessup Team as having some of the "best oralists who have ever represented the school."

If the team is successful this weekend, it will advance to the national finals in Washington later in the spring. Bruce Afran, Jeanne Naglak, Sarah Barish, and Sarah Thoams-Gonzalez will argue a complex question hypothetically brought before the International Court of Justice at the Hague. The problem concerns several issues that arise when country A tries to nationalize an industry now run by a local subsidiary of a foreign corporation and that parent corporation sues for breach of contract in its own country B, attaching the assets of both country A and the agency appointed to take over the industry. Questions of sovereign immunity, standing to sue, succession of state, and compensation have all be extensively researched in preparation for the oral argument.

Members of all these teams expressed satisfaction in their experience with the outside Moot Court program though they admitted it required a tremendous amount of work. James Glasser of the Criminal Procedure team stressed the importance of building a strong Moot Court program. "It's good for building Brooklyn's reputation and developing pride and self-confidence in our school."

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BLS HOSTS TOWN MEETING: CUOMO SPEAKS

Gov. Cuomo fields questions from a packed Moot Court Room

Continued from page 1

room was a result of Cuomo's use this year of an obscure power to change the budget. The State Constitution requires the governor to propose a budget to the legislature, but then, under Article VII, Section 3, it gives him 30 days to amend, change, or correct it in any way he sees fit. Most years go by with no attention drawn to this 30-day period with the exception of the small circle of legislative and executive officials who prepare the budget. This year, however, Cuomo and his aides have engaged in efforts to make the public aware of this constitutional provision.

Forest Rangers to Housing Police

In response to public pressure, the Governor has said he will rescind his original proposal to lay off fifty forest rangers. This was a response to considerable fire which was drawn from groups as diverse as hunters and environmentalists. Likewise, when confronted by residents in a small Catskills community concerning the proposed closing of a state-run ski center, the Governor announced that the proposal would be taken out. Legislative and budget officials say they also expect the Governor to propose more staffing for mental health services.

Not everyone who came to the forum to complain about insufficient funding for their programs went away empty handed. Michael Carter of the New York City School-based Drug and Alcohol Prevention Program expressed his regrets that drug abuse programs in the state were cut by $3.3 million this year. After Carter presented his case, the Governor assured him that substance abuse "will probably get more."

Other groups were not so lucky. Mildred Johnson, speaking on behalf of public housing concerns, explained the desperate need for more public housing police and low income housing unit inceases. Johnson said, "We are hoping you don't forget the poor." Cuomo explained that Richard Nixon impounded housing money in 1972, and that since that time the state has been having difficulties getting more federal funds. "It looks bleak," he told her. In addressing her request for more police protection, he told her that he and Mayor Koch had discussed a "Police Superfund," which would be used to finance more manpower in all the divisions of the force. "I'm waiting to hear from the mayor," he said. Someone added, "The mayor is waiting to hear from you!"

Every Penny Spent

To most observers Cuomo's responses appeared candid, honest, and straightforward. There were no politician's promises. After numerous requests for increased funding by different groups, he asked the audience, "Where do you want me to get the money from?" He explained that different concerns throughout the state had already asked for an additional $3.28 billion. He anticipated total additional requests of $4.5 billion and explained the misconception that much of the public has about balancing the state budget. Many people think that, like the federal government, the state can borrow money when creating the budget. To the contrary, the states must account for every penny it spends. If it isn't available, it cannot be spent.

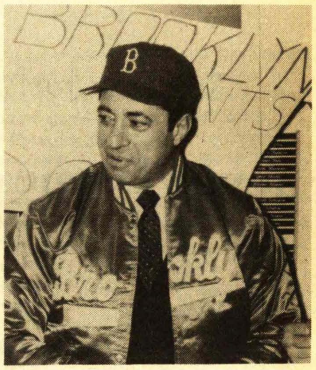
Dean Trager greets Gov. Cuomo before forum

Cuomo's proposed football lottery was one mechanism which he had hoped would provide some of that needed money. Cuomo had proposed that lottery in hopes of raising $100 million a year for education. "I wish I didn't need a sports lottery, but I need a $100 million from somewhere." The lottery proposal has since been defeated by the legislature.

Several neighborhood groups complained to Cuomo of the state's use of buildings slated for renovation being utilized to house the homeless. A representative from Community Board 2, covering downtown Brooklyn and Greenpoint, inquired as to the state's plans for 55 Hanson Place, a state-owned building used now to shelter the homeless. The people of the community there had anticipated that the building, according to past state studies, would be renovated and used as office space. They did not want to see the homelss in their neighborhood. Cuomo was adamant in his stand for the homeless. "How can you talk about economic development when peopole are freezing to death?" He explained that New York State has a $50 million homeless persons program, the best in the country, and yet still not enough.

Sense of Humor

He related a humorous story to the crowd about the problems ha has had with finding temporary housing for the homeless. After taking office, Cuomo began placing the homeless in New York State armories around the city. The people on the Upper East Side, however, put pressure on a general to keep heavy armaments in the armory there so that there would be no room for the homeless. Cuomo, as Commander in Chief of the state's National Guard, telephoned the general. He asked the general to clear out the heavy equipment so the homeless could move in. "I can't move that equipment," the general replied, "it's too heavy."



Guy goes to bat for Brooklyn baseball

"Yes," Cuomo answered, "but I'm the Commander in Chief. I can move generals." The homeless moved into the armory very soon after that conversation.

Guy Kohn, a "Brighton Beach activist," wanted to see gambling casinos on Coney Island. He said that New Jersey had used some of the proceeds from Atlantic City to subsidize medication for the elderly, and that casinos would provide just the money that Cuomo was looking for. Cuomo said that he personally was against gambling in New York, but that the matter was further complicated by the fact that every city in the state wants to be the place to gamble. Also, the state would have to determine whether the casinos should be publicly or privately run. Then a resolution by the people of the state would have to be passed.

Cuomo's tax policies show that he has not been seduced by corporate power, but at the same time, he is struggling with trying to keep back-office space from leaving the five boroughs and going to New Jersey or Connecticut. He discussed the MAC (Municipal Assistance Corporation) money that was being spent on "Metrotech," an attempt to keep this back-office space in New York. The building at 55 Hanson Place might be renovated with MAC money, and a project is under way in Staten Island to create office space there as well.

A speaker from the Business and Professional Women's club indicated the club's support of Cuomo with its message "Yes to Governor Cuomo and ERA." A CUNY student representative wanted to see more money allocated for the construction of a new campus for Medgar Evers College, and a senior citizen wanted to make it clear that she was asking for no money, only better supervision in senior citizen centers.

The forum had a comfortable atmosphere, and the Governor seemed right at home. He explained that he had practiced law right across the street from BLS for a number of years, and that his in-laws still lived in Brooklyn.

MORE LETTERS

Continued from page 10

We are writing this letter because of the implications which the "Con Law" controversy holds for Brooklyn Law School, and which we believe that, even here, reasonable people can disagree. To date there has been little heard in Professor Holzer's defense. We attribute this less to the alleged caprice of his grading than to the apparant popularity of this attack on an unpopular professor. Widespread support for a position in controversy is no guarantee of its rightness, and we believe that the vocal majority's position is untenable.

The complaint against Professor Holzer runs thus: there has to be something wrong with an exam on which 58% of the class received a grade of D or less. That something is wrong is evident—the question is, with whom? The answer offered by so many, ie., that the fault lies with Professor Holzer, is not self-evident; neither does it follow necessarily from the test results. The charge has merely been alleged, not proven. Insofar as the burden of proof rests on the complainants, the cause fails.

Further, in an academic setting there is a presumption in favor of the professor. It is rebuttable, of course, but only on a showing of egregious malfeasance on the professor's part. No such showing has been made, nor, we think, is one forthcoming.

Finally, the proposal for a uniform grading policy needs to be considered in a less emotionally charged atmosphere, inasmuch as it requires a careful balancing of such weighty concerns as academic freedom and grade inflation against the understandable student desire for competitive grades.

Kevin J. Bauer
Stacy A. Presser

Continued on page 15

WHAT IS TRUTH?

By Kevin J. Bauer

This is the first installment of a four part article on Philosophy and Law.

Prima facie, the practice of law requires little or no concern with the abstracions which occupy the philosopher. Lawyers, being a rather pragmatic lot, long ago decided that the service of one's client was a more lucrative and less frustrating vocation than the professional pursuit of the truth. Were it not for the legal profession's paradoxical attachment to Socrates, lawyers and philosophers apparently would have no subject of common interest.

Sustained reflection, however, reveals the misleading character of the seemingly apparent. Behind every legal issue stands a moral issue; beneath every judicial determination lies an ethical judgment; and founding every ethical judgment are anthropological, epistemological and ontological presuppositions. Concretely, in deciding cases concerning slavery, abortion and capital punishment, the American judiciary, especially the Supreme Court of the United States, has decided what a "person" is, as well as what members of the human race are or are not "persons." What else can the ultimate meaning of the *Antelope*, 23 U.S. (10 Wheat.) 66 (1825), *Dred Scott*, 60 U.S. (19 How.) 393 (1857), or *Roe v. Wade*, 410 U.S. 113 (1973), be but that a human being can be declared a non-person, and thus deprived of the very rights asserted by the Declaration of Independence to be unalienable? All because of an abstraction.

It is precisely because of the ubiquity and potency of such abstractions that Mortimer J. Adler has argued that philosophy is everyone's business. In this Adler is merely echoing Socrates, who said that only the examined life was worth living.

What is it that is meant by the term, "Philosophy?" This is no jejune question in an age which uses philosophy as a synonym for opinion.

At its most humble, philosophy involves the identification and criticism of those operationally potent yet unthematized presuppositions which animate and shape both public policy and private action. The instrument utilized for this task is the process of question and answer, of which Socrates was the master.

Yet the dialectical criticism of commonly held opinion is but the first step. Socrates, unlike the Sophists, revealed the contradictions inherent in his interlocutor's opinions in order to make them aware of their ignorance. For only that awareness can give birth to the desire for knowledge of the truth. The ignorant person is unaware of his poverty, and sees no need to seek, while the wise need not seek for he already posesses the truth. Only those who, like Socrates, know that they do not know, deserve the title, philosopher. Perhaps the best definition of philosophy runs thus: philosophy is learned ignorance.

To define philosophy so, however, is not to lapse into agnosticism. Neither is it to concur with the view that philosophy equals opinion. The genuine philosopher, said Plato, pursues the truth with his whole soul. He does so, not, as Marx would have it, because knowledge is power, but simply for the sake of knowing it.

Here the reader will no doubt raise a critical eyebrow and ask, "What is truth?" In doing so, he or she will be in august company, for jurisprudents from Pontius Pilate to Hans Kelsen have posed the same question, intimating of course, that there is no such thing. Granted, relativism has great currency these days. Its popularity rests on the idea that with all things being relative, toleration will reign and liberty will flourish. A modicum of reflection should suffice to indicate that with all things being *relative*, it is not *necessary* to draw such a conclusion. It is quite possible to draw the opposite conclusion. One need only recall Hitler and Mussolini to realize just how much of a live option the latter inference is. Relativism makes the path to tyranny both straight and short. Truth is the only protection of liberty. Where truth is ridiculed as a medieval curio, justice is dispensed from the barrel of a gun.

The cause of the Occident's loss of the sense of truth is to be found in the current concept of reason. The rise of modern science ushered in the instrumentalist view of reason. While the ancients held that the good of man consisted in the exercise of reason, the moderns saw reason as a means to subjugate nature to human will. Forgetting that science is essentially knowledge, and that its practical results are but a by-product, modern man overturned the classical primacy of contemplation in favor of praxis. The transformation of knowledge into the means of satisfying the will to power represents less a development than a regression. For the equation of knowledge and power harks back to the age when magicians sought to control nature through a series of rituals, symbols and incantations.

The deposition of reason in favor of will has been nothing short of catastrophic for the human race. Will is always singular, and with intellect in thrall, force replaces persuasion as the source of social and political unity. One need only consult the history of the 20th century to see the results.

The only way to curb the role of force and the constant violation of human rights that attends it, is to restore reason to its traditional primacy. The function of reason is to affirm that what is, is, and that what is not, is not: Est, Est, Non, Non! Reason is the only genuine arbiter of human disagreement because behind the judgements of reason stands being. The universality of reason is founded up on the universality of being.

It was the discovery of the intelligible absolute signified by that most common of words, "is," by Parmenides of Elea 2500 years ago that gave birth to Western civilization. What is, is, and a true philosophy is nothing other than a conceptual articulation of what is. Thus, authentic rationalism is also realism

For those who found relativism upon an idealistic theory of knowledge, this is a hard saying. Yet every idealist *acts* as a realist before he *thinks* as an idealist. Hegel himself admitted that realism is the natural attitude, and it was only by misrepresenting philosophical realism that he was able to sublate it. Indeed, the metaphysical primacy of being is evident to all who take but a moment to advert to the obvious. For the act of speaking for the purpose of communicating something to a listener is possible only because being is, is intelligible, and because reason is the faculty of being.

Western civilization is dying because it has forgotten its origin. As reason is the faculty of being, it is also the source of human dignity. Man is an individual because of his body, but by his intellect he is a person. It is as a person that man has unalienable rights. The primacy of being, together with the correlative primacy of the faculty of being, reason, demands the respect for persons which is the sine qua non of a free society.

Rationalism, realism, personalism—these are what characterize Western civilization, and it is only upon this foundation that the political system announced by the Declaration of Independence can be raised. The life of the city can be founded upon a consensus resting on the universality of being and of reason, or it can be directed by force.

Chief Justice Burger once wrote that the law proceeds on the basis of "unprovable assumptions." In such circumstances justice is dispensed in a haphazard fashion. Justice is nothing more and nothing less than rendering to each what is due him. This is possible only on the supposition that each person is a being to which certain things are due because of what it is. Thus, contrary to the opinion of the Chief Justice, a just legal system must be founded upon the evidence of being and the values of being, unity, truth, goodness and beauty.

It is imperative, then, that lawyers concern themselves with philosophy. In order to insure a just legal system, one which recognizes and protects the rights granted to men by "nature and nature's God", lawyers must take the first step on the path to wisdom—Est, Est, Non, Non!

Kevin J. Bauer did graduate work in philosophy and taught at Niagra University and at Canisius College in Buffalo before entering Brooklyn Law School in the fall of 1982.

DAY CARE

Continued on page 3

At a meeting on February 27 with Parents In Law, Siskin responded to questions and sought suggestions from parents at Brooklyn Law School who would be using the office. Members of Parents In Law expressed interest in leaving children here at BLS with another law student or college student while they were in class, but expressed reservations about bringing their children to someone else's house. most seemed to have baybsitters in their neighborhoods. Siskin said that bringing children to school before the creation of a day care center would probabley not be feasible since Brooklyn would then be functioning as a day care center, and Brooklyn is not yet licensed to provide day care.

Professor Gary Minda, who wrote the proposal for creating a day care center at Brooklyn, and who is not a parent, said that he first realized the great need for day care after reading an article in the *Harvard Law Review* entitled "The Family and the Market: A Study of Ideology and Legal Reform" by Frances E. Olsen. In the article, Olsen argues that the family and the marketplace have been dichotomized and the effect has been to keep women in "their place." Rather than continue to view family responsibilities and job responsibilities separately, Olsen argues that true equality of women can be achieved only when the market recognizes family responsibilities and combines marketplace activity with child rearing. After reading the article, Professor Minda attended a panel discussion at Brookly Law School held last spring which focused on combining law careers with raising children. He thought that it was crazy that people were just accepting the status quo; accepting the hardships involved in raising children and accepting the fact that it was an individual problem. "everyone was saying it's hard to find babysitters, but you just have to do it. No one said the obvious—why don't we have day care at Brooklyn Law School?"

Professor Minda plans to continue his involvement in trying to establish day care at Brooklyn and plans to serve on the advisory committee. He said the he is "committed to raising the issue of the need of the workplace to facilitate the needs of family obligations."

1. 96 Harvard Law Review 7 (May 1983) p. 1497

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Late breaking news:

At press time, Justinian *learned that Dean Trager has appointed Dean Haverstick as chairman of the day care center advisory committee and Professors Fullerton and Minda, and Student Affairs Director Siskin as additional members.*

The Review of Law and Social Change at New York University Law School
presents

EMPLOYMENT DISCRIMINATION IN THE 80's

A Colloquium to be held Friday, March 23 (12:30 to 6 P.M.) and Saturday March 24 (9:]] A.M. to 5:30 P.M.) at New York University Law School, 40 Washington Square South, New York, N.Y. Panel topics include: Wage Discrimination / Comparable Worth; The Future of Affirmative Action; Fetal Protection and Genetic Screening in the Workplace; and The Changing Economy. Admission is free. For more information, contact Miriam Clark or Marilyn Zelin at the Review of Law and Social Change, (212) 598-3919.

ALLAN

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one's lover one must "spell out in black and white what's yours and what's his" so that dividing the spoils, if the relationship ends, will be easier. The same holds true for prenuptual agreements which Professor Allan thinks should include everything from religion to "who does the laundry." He told his listeners that these agreements were valid in New York and that both parties should be represented by attorneys, preferably different attorneys. Professor Allan said that a non-represented party to a prenuptual agreement was either "a fool or a law student."

Professor Allan receives no monetary compensation for his efforts at WABC. What stimulates him to go on the radio and voice his opinions to the public? Besides being "the most marvelous fun in the whole world." Professor Allan feels that by answering the public's questions about divorce law and personal relationships he provides a service unavailable to many people who cannot or will not seek professional help. Although he is precluded from giving legal advice over the air, he feels he may "give someone the courage and information to take the step, to go forward and change his/her life."

Professor Allan would like to eventually have his own radio show. WABC has not made any offers as yet. Until then, we can expect that he will continue to get some air space, even if on someone else's show. Sunday night's program was such a success that Ms. Goodblatt invited Professor Allan back to do a future show. When asked if he had anything particular in mind he'd like to speak on, Professor Allan replied, "No, not really. I'll talk about almost anything the public wants to talk about."

HOLZER UPDATE

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of standards. "How far," one student asked, "does academic freedom go?"

As of this writing, Caplows has only just recieved the letter, and so was unable to comment on its contents or its possible effect. She did say that she has been receiving fewer complaints recently than in the last few weeks. The controversy has "sort of died down" she said.

Caplow said she has had informal discussions with Holzer about the subject, but these were on questions of principle and communication of complaints made by students to her.

Caplow also said that the issue of grading disparities was on the agenda for the Feb. 29 faculty meeting. But, she said, this is a continuation of a discussion that began last fall.

Whan asked if she thought anything would be done about Holzer's grades or to establish a formal grievance procedure, Caplow said that "an appeals procedure is more something that people would like to see exist than something that does exist. There is no way there's going to be an appeal in this instance on a case by case basis."

Professor Holzer, who has reviewed 22 of his students' exams since his grades were posted said he has not seen the protest letter and was unable to comment on it. But, he said, if the controversy is over whether the administration may step in and "tinker" with his grades, he does not "consider the subject debateable."

He said " I do not mean to say that people can't talk about it, I won't take part in any discussion about what is to done about my grades." Caplow said it "has certainly been talked about, it will be debated." But nothing is likely to happen. "Not because Holzer doesn't think it should be debated," but because of the issues involved.

Holzer has gone over his exams with most of the students who have requested reviews and has scheduled appointments to speak with those students he has not yet seen. So far, he said, he has found no mistakes and changed no grades.

In fact, Holzer said, the overwhelming majority of students have conceded their papers were "sorely lacking and fairly graded." Some students, he said, while admitting their papers were of "low quality" nevertheless insisted the grades be raised.

Holzer also said he has recieved a letter appealing his review. He said he is not sure what that means.

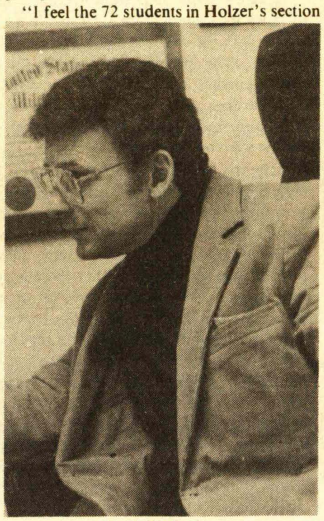
The letter of appeal was sent by Rhonda Yacker, a second year student and one of the 60% who received unsatisfactory grades in Holzer's class. She said she sent the letter to Dean Caplow and copies to Dean Trager and Holzer. She said she sent a copy to Holzer because she thought that was the proper thing to do.

"As far as I understand, there is no formal process of appeal," Yacker said, "which is pretty unbelievable since this is a law school." She said that a "great injustice" was done to this group of students. The faculty and administration are failing as educators if they refuse to take a stand on this."

Yacker is not insensitive to the issues of academic freedom involved. She is herself a former college professor, but, she said, if 60% of my students did unsatisfactory work, I would take a closer look at my teaching methods, or my standards."

Holzer's section was a good sampling of the class of '85 she said. It was "a very dynamic class, people were in tune with the issues." She said it doesn't make sense for students, such as herself, who are at the top of the class to be doing unsatisfactory work. For many students, including Yacker, Holzer's grade was an aberration. Yacker said there was no correlation between her grade in Holzer's class and her degree of preparedness or knowledge or past performance.

"I feel the 72 students in Holzer's section



Prof. Holzer

were penalized," she said, "not by the knowledge they gained, but by the grades that resulted." Grades are a "sensitive issue" at BLS according to Yacker. She said this was demonstrated last fall when only students from the top ten percent of the class received interviews in the placement office's recruitment program.

Yacker doesn't, at this point believe that an independent review of exams will be done. Which is unfortunate she said. "It seems that up until now all of our exams were graded on a curve. This test seems badly skewed. (*Holzer*) has high standards, and I admire that, but I'm certain that if any one student from his section had been sitting in another class they would have done much better."

Other students had similar feelings. Cari Collins, another Holzer veteran, said she didn't feel that either the exam or the grading were unfair. "the grievance," she said, "is the lack of a curve."

Collins said that if the majority of the class received such low grades Holzer's expectations may have been too high. "Maybe he never got across in class the point that he was looking for on the exam. The stress in class was against black letter law, she said, and that was a large part of the test. "There is nothing wrong with testing on black letter law," she said, "but there was no indication that that was what the test would be like."

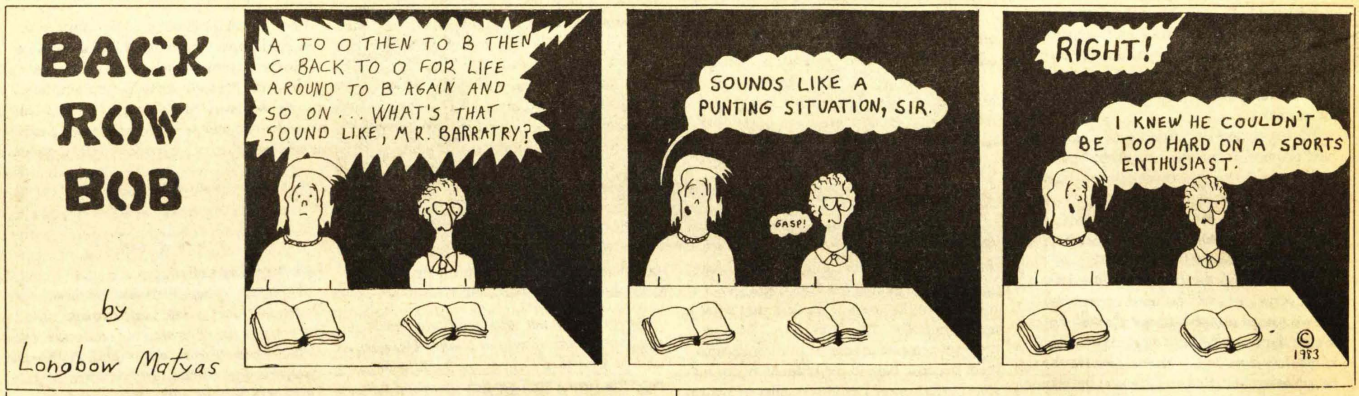
On the other side Holzer student David Klein said he feels the complaints are totally unjustified. Klein said that everyone knew what would be on the test before they walked in. "We knew from what he told us, from his hints, from students who had him in prior years. The only surprise was that there were 50 short answers instead of 100."

Klein is not opposed to the calls in favor of a uniform grading policy, but he said the current furor is mostly sour grapes. "It is a legitimate request," he said, "if there was an offical policy that would be fine, but since there is none it is not fair to ask a teacher to adhere to an unwritten code."

Holzer said that if such a policy were adopted he would refuse to abide by it. "I would consider it a matter of principle," he said, "the kind of principle one goes to the wall for."

The major question now in many students' minds is what, if anything, will be done? Many say nothing will happen, but Jim Eller pointed out at least one good thing has happened already. Students who fail courses in the future will not have to pay a fee to retake them he noted.

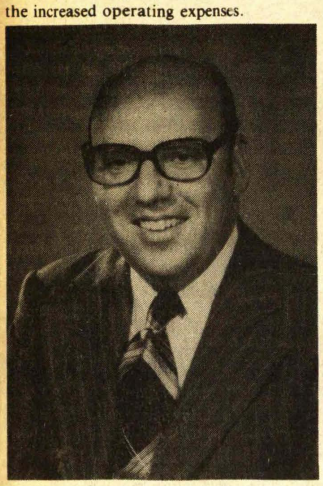
As far as Holzer's grades are concerned though, Eller says at most, "they'll throw us a bone." He said he does not believe Holzer's grades will be reviewed, but a formal procedure may be established to resolve these problems in the future. "The question is," he said "what will the faculty do at their next meeting?"



DEAN TRAGER

Continued from page 1

the class of 1986/87 and 1987/88 at $7200.00 per year. Tuition for the class of 1985/86 at $6600.00 per year. This is due to the increased operating expenses.



Merit Scholarship Program

As our readers are aware, the Dean implemented an early admission program last fall. Presently, eighteen to twenty students have already taken advantage of this program. The deadline is April first. At this point Trager candidly admits that the program may not be achieving what it was intended to do. He opined, that the students accepting this program probably would have come to BLS anyway. As it has evolved, the merit scholarship program will apparently not be substantially different from the regular scholarship program with its need/grades criteria.

Leadership

On the question of "leadership, it has to be the Board, Faculty, and the Dean." Dean Trager pointed to "meaningful attempts to get student feedback (eg. the Berger survey) and consult with them in an organized way..."I'm sorry, but I just don't believe it (consultation) has to be for every issue."

The *Justinian's* contention was that student participation in decision making should be encouraged. Dean Trager did not see this as a viable process, stating "we can't run this school by committee."

The Dean pointed to student participation in several committees..."so there is feedback...but I'm not going to convene a committee for every decision."

Holzer's Constitutional Law Grades

Query: "Why is it that Dean Trager hasn't said something in support of Professor Holzer?"

Answer: "I'm not going to make any comment one way or another."

Day Care

The first step in attempting to create a day care center is to form an information service. Dean Trager fully joined in and endorsed the need for a committee of faculty and students to study the various and necessary aspects of endeavor (eg. state laws, insurance, etc...). "If we can do it, we should do it. But room is needed."

LETTERS CONTINUED

Continued from page 12

The following excerpt is from a letter signed by 46 students in Prof. Holzer's fall con law class:

We, the undersigned students in Professor Holzer's fall 1983 Constitutional Law Class, question the disparity between the grades received in our class and those received by ourselves and all other students in other courses.

We feel that our average grade of approximately 72 is 11 points below the average generally found. We feel these low grades reflect not upon us, but instead indicate an abuse of discretion on Professor Holzer's part. Recognizing that professors have a certain area of discretion over their teaching and testing, we nonetheless feel that the great importance of our grade point averages demands that this discretion be restricted ....

In order that we may understand the position of the faculty, we ask that the faculty and administration meet, review and evaluate the results of Professor Holzer's exam. Further, we wish the results of such evaluation be made public, perhaps through the Justinian.

Thank you for your time. We await your prompt reply.

To the Collective:

Inreading your February 14, 1984 issue it was distressing to learn of the continuing mistreatment and disrespect shown to the students at Brooklyn Law School by the administration. As students and alumni feel compelled to comment.

Apparently last year's uproar over Professor Holzer's elitist and discriminatory clinical program was not enough to force him to revise his attitude toward students. His self-acclaimed good intentions aside, Holzer's policies—most recently his grading system—tend to demoralize students and set back the pursuit of their careers.

There also seems to be a general policy at BLS, overseen by Dean Trager, of implementing first and consulting the students later—if at all. This is made evident by the replacement of library space with office space. Such an act only confirms the administration's view of itself as a business more than a learning institution.

We are even more outraged by the "Merit Scholarship Program" offering tuition cuts to the top ranked incoming students. Grades are often a product of social and economic factor as well as actual scholarship. Great lawyers, indeed great human beings, have not all been born out of the top quarter of their classes. If Brooklyn Law School can afford to give away money to the few with the highest grades, maybe it should slice the pie a few more times and cut tuition across the board.

Problems of administrative arrogance, of putting profit ahead of students, are not unique to BLS. Because of our relationship to the school, however, it is disturbing ot see the students paying more and receiving less.

We applaud the efforts of the SBA to pressure the administration to adopt more constructive policies. We join that effort by calling for the following: a) cuts in tuition, b) increased financial aid, c) improved job placement services, d) open access to clinical programs regardless of class rank, e) greater emphasis on practical training rather than grades, f) expanded and improved library services, g) more respect for student input.

We invite all students to join us in our effort to observe and defend students' rights. Clip the coupon below and return it to the address listed.

In Solidarity,
Steve Richards, Bruce Feffer, Tom Gordon
BLS Students and Alumni Concerned

Name _____
Address _____
Phone _____

BLS Students & Alumni Concerned
c/oBruce Feffer
140 East 40th
N.Y., N.Y. 10016

- - - Please send me more information regarding your organization
- - - Please notify me of future meetings.

Remember to buy tickets for 2nd CIRCUS REVIEW

The *Justinian* would like to congratulate the Jessup Moot Court Team for a job well done.

Best Oralist: Jeanne Rand Naglak
First Runner-Up: Bruce Afran

BACK-ROW BOB

Longbow Matyas

La Feile Thadraig Shona Dhuit
Happy St. Patrick's Day