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The Justinian

Member of American Law Student Association



VOL. XXII, NO. 4

BROOKLYN LAW SCHOOL, BROOKLYN, NEW YORK

MAY, 1962

Law Day

BLS Students, Faculty Hear Fire Commissioner Thompson

The Hon. Edward Thompson, Fire Commissioner of the City of New York, spoke to the students and faculty of Brooklyn Law School at the Annual Law Day ceremony on May 1.

Commissioner Thompson was welcomed in an address by Frank Lerner, Chairman of the Law Day Committee. Dean Jerome Prince introduced the guest.

The Commissioner discussed the students' personal approach to the laws under which we live. "As lawyers," he said, "we will be faced with a serious choice. Will we be one advocating equal protection for our client, or one who truly believes he is the client's equal. The latter is the only true American choice." He continued, "There is no room for haughtiness and disloyalty in the law. Don't assume more for ourselves than for others."

By way of analogy, Commissioner Thompson said, "When there is a fire, department members must enter the building, not knowing if the walls will cave in. Their sole desire is to save lives regardless of color or creed. The fireman's duty is to bring the prostrate form of the victim to safety. Though the body may be diseased, he blows into the body all the oxygen he can, thus giving into that form whatever fuel can be fed to restore a fading life. Man becomes the greatest servant of mankind at this point."

"You can perform a mouth to



Hon. Edward Thompson

mouth operation when as a mouthpiece you attempt to give your client equal protection of the law. You can't direct the operation from afar."

Commissioner Thompson urged the students to apply themselves so that their conduct will be above reproach. He emphasized that one

should not seek more from equal protection than that to which the client is entitled.

In conclusion, the Commissioner said that in other places in the world, men put themselves at a level above others. "Our duty," he said, "is to restore mankind as a personality, an individual as all men must be recognized in a society under law."

The *Star Spangled Banner*, which initiated the program was played by Marcella Stapor, and the invocation was given by Rabbi Joseph Kurtz.

Government Jobs Pollner Talk Topic

Martin Pollner, Assistant United States Attorney for the Eastern District, lectured on the opportunities for lawyers in government service, at the Law School on May 1.

Mr. Pollner graduated from Brooklyn Law School in 1960 and was an honor appointee to the Attorney General's Office. Before assuming his current position, he served under the then Deputy Justice Byron R. White, who was recently appointed as the new Associate Justice of the United States Supreme Court.

In a most informative talk, Mr. Pollner outlined four points to be considered by the law student:

1. If seeking government employment, don't restrict your position in choice of position to your own local area.
2. The Government is primarily interested in people who are willing to stay, with a possible career in mind.
3. There are many job opportunities for lawyers in the various branches of Government. Information can be obtained by consulting a pamphlet published by the American Law Student Association, entitled, "Federal Government Job Opportunities for Young Lawyers" and available in the school library.
4. After determining what field of Government you are interested in, write to that agency and enclose a resume asking for an appointment.

—Harry Mones.

Homecoming Activities Draw Large Attendance

By Robert Malmad

Brooklyn Law School held its third annual Homecoming Day on Wednesday, March 28. The activities, presided over by John J. McClosky, Sheriff of the City of New York and President of the Brooklyn Law School Alumni Association, were attended by over 200 graduates.

In addition to the social gathering held in the Faculty Room, the alumni listened to an address by Professor Milton G. Gershenson, '33, observed a demonstration summation of a criminal case, and were given a tour of the school building, noting its modernizations and improved facilities. Dean Prince also spoke briefly on plans for the future.

Professor Gershenson's talk on recent developments in matrimonial law, given in the school auditorium, was attended by approximately two hundred persons. His particular emphasis was on changes in separation agreements. He observed that most lawsuits subsequent to legal separation would have been obviated, had the attorneys for the couple been better able to anticipate the probable future difficulties.

"What is needed," said Professor Gershenson, "is a more careful drafting of the clauses in

the original separation agreement. They should be more explicit in their meaning and should allow for all those contingencies which legal experience tells us to expect."

At the old Appellate Division courtroom in the Brooklyn Borough Hall Building, over one hundred alumni were on hand to observe the summation of a trial for murder in the first degree, conducted as part of the Graduate Division course in trial practice, taught by Colonel William W. Kleinman, '24. Professor Solomon A. Klein presided. Colonel Kleinman summed up for the defendant and Alfred De Meo, '34, of the office of the District Attorney of Kings County represented the prosecution.

4th Annual Barristers' Ball Held; Student Entertainment Featured

By Warren Cohen

The "joint was jumping" on Saturday night, April 28, in the East Ballroom of the Commodore Hotel. The occasion was the annual Brooklyn Law School Barristers' Ball, featuring the music of Al Madison's Society Orchestra.

Mr. Madison wrote a "Barristers' Twist" which was unveiled for the first time that evening. This new offshoot of the twist revolution will soon enter the market as a single record.

The dance was further high-

lighted by the singing of Jerry Korman, next year's Student Bar Association President. Charles Monblatt, the chairman of the ball, and his partner presented a special twist exhibition.

Among the guests, with their respective spouses, were Dean Jerome Prince, Dean Gerard A. Gilbride, Professors Peter W. Thornton, Samuel Hoffman, and Samuel Bader.

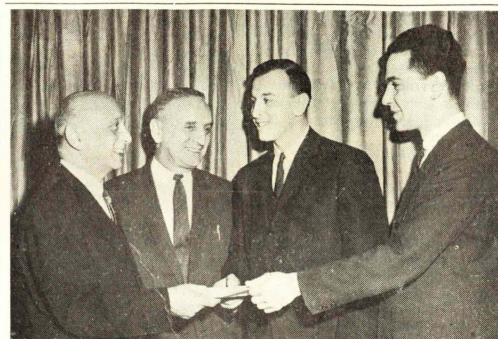
SBA President Michael Solomon would like to thank the following students for their participation: Charles Monblatt, Ed Terrell, and Bernard Dworkin.

The proceeds from the Ball will be used for the Student loan fund.

Rank BLS Third In ALSA Listing

Brooklyn Law School is the third largest school in the nation in terms of enrollment, as reported by the American Law Student Association Journal. The following partial list is based on the number of students attending law schools during the 1961-62 academic year.

Law School	Enrollment
1. New York University	1827
2. Harvard Law School	1630
3. Brooklyn Law School	1031
4. Georgetown University	997
5. University of Michigan	958



Kings County Surrogate Maxmilian Moss (left) presents winning awards of \$100 each to Shepard Scheinberg (second from right) of Brooklyn Law School and Anthony L. Tersigni of St. John's Law School. They were first prize winners in Kings County Trust Company's annual will-drafting contest. Martin Paskoff of Brooklyn Law and Donald D. Rankin of St. John's Law won second prize of \$50 each. George Gray, executive vice president, of the bank is at center.

The Justinian

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BERNARD DWORKIN	Editor-in-Chief
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HARVEY EYSMAN	Features Editor
ROBERT MALMAD	Editorial Editor
PETER MINTZ	Associate Editor
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Staff

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Sanford Scher	Fred Habacht
Herbert Zane	Wallace Leinhardt
Harry Monies	

Professor M. G. Gershenson Faculty Advisor

* Apportionment and Law

The United States Supreme Court in *Baker v. Carr*, (82 S. Ct. 691) in a 6-2 decision, held that a long failure to reapportion seats in the state legislature, although mandated by the state's constitution, is subject to the constitutional scrutiny of the Federal Courts. A path may thus have been opened for the judiciary further to look into legislative districting, where in the past, the path was blocked by the Court's reluctance to involve itself in the general area. However, only one concurring opinion, that of Justice Clark, suggested a method by which the courts may decide whether a particular apportionment has encroached on the equal protection clause of the 14th Amendment.

Thus, there still remains the problem of how far the Federal Courts will go, and understandably, much discussion has evolved from this decision from a fragmented bench. Advocates of all reasonable points of view must agree that a great deal of inequity has resulted from the past freedom which state legislatures have had.

"The pigs and cows in Moore County have better representation in the Tennessee legislature than the citizens of Nashville and Davidson County," said Nashville's Mayor Ben West. Tennessee's smallest county (pop. 3,454) has far greater voting power in the legislature than the second most populous one (pop. 399,743). There has been no redistricting in Tennessee since 1901, contrary to that state's constitution. Vermont has not had reapportionment since 1793. In California, a single state senator from Los Angeles County represents 6,038,771 people, while a colleague represents 14,294—a ratio of 422.5 to 1.

Justices Harlan and Frankfurter were the dissenters who represented the traditional view that the judiciary should not involve itself in "political questions". Frankfurter stated that this decision is a "massive repudiation of the experience of our whole past" and that it would lead judges into a "mathematical quagmire." He added, "There is not under our Constitution a judicial remedy for every political mischief. In a democratic society like ours, relief must come through an aroused popular conscience that sears the conscience of the peoples' representatives."

This position is questionable. The doctrine of the "political question" has been unnecessarily applied and never clearly defined. There is nothing in the Federal Constitution exempting "political" activities from judicial review. All governmental activities should be subject to constitutional checks, to be applied by the judiciary according to the nature of the activity. By its nature, however, a "political" activity must have a wider range in which to roam in the constitutional scope. But to allow complete freedom, might lead to dangerous consequences and therefore, in all cases, governmental movement must be reasonable under the particular circumstances and conditions surrounding the activity.

A violation of a fundamental right can't be permitted merely because the court has always allowed such a violation. Furthermore, it is obvious that the aroused populous in Tennessee, for example, was not able to "sear the conscience of the people's representatives". Even where recall and referendum is available in a state, (it

(Continued on page 4)

BLS Graduate To Be Subject Of Biography

The late Colonel David "Mickey" Marcus, Class of 1927, will be the subject of a biography to be published in August. The biography is entitled "Cast A Giant Shadow," and is written by Ted Berkman.

Marcus, a West Pointer, had a distinguished career in both civilian and military life. He had served as assistant U. S. Attorney here, had been Commissioner of Corrections, was legal aide to the American delegations at Dumbarton Oaks, Yalta, Teheran, and Potsdam, headed the War Department's War Crimes Division, helped write the Italian and German surrender instruments, and helped prepare machinery to control post-war Germany. He held the Bronze Star Medal and also the Distinguished Service Medal.

Colonel Marcus retired from the Army in 1947, and went to Palestine as an advisor to the government. He was soon appointed as Commander of the Haganah in the Jerusalem area.

It was while serving in this capacity that Colonel Marcus was killed in action while trying to get food through to Jewish families in the City. He died a few hours before a UN truce went into effect.

Job Seekers!

If one accepts a position through the services of the placement bureau, the bureau must be so informed. Failure to do so has caused complications for the placement bureau, and has resulted in unnecessary confusion as to job availability.

Student Profile

Continued Legal Trend To Liberality Seen By Law Review Editor Gutterman

By Bernard Dworkin

"The Study of economics assumes too much. Concepts such as are involved in price theory have little value if they can't be applied to a practical situation," the young man earnestly stated as he looked up from his reading of printers' galley proofs.

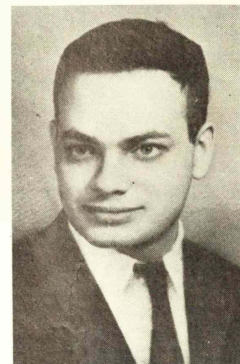
He is Melvin Gutterman, the Editor-in-Chief of the *Brooklyn Law Review*. His pragmatic statement related to his study of economics at the University of Michigan. The law, on the other hand, according to Mr. Gutterman, reflects the growth and changing social system of the sovereign.

The Editor-in-Chief feels that New York courts have recently begun to break away from the rigidity of ancient principles and have adopted more liberal attitudes by interpretation from a practical viewpoint.

"In the negligence field, for example, the *Battalla* case has destroyed the necessity for 'impact' where negligent infliction of mental disturbance is involved. We have come to realize that a victim of psychological damage should receive compensation as well as someone who has suffered physical damage.

"The criminal field (an area in which Mr. Gutterman is particularly interested) has also been liberalized, especially in the areas of illegal search and seizure and the defendant's right to counsel. These changes occur so rapidly that a student graduating in June may, three years from now, need a new legal education!"

Mr. Gutterman expects to be graduated in June himself. Await-



Melvin Gutterman

Le Droit



By Harvey A. Eysman

The earliest history of the jury system goes back before the birth of Christ. We, however, are not presently concerned with this early history for there is little evidence, if any, that the system that ultimately became the Anglo-American system of today, descended from these early forms. We are more immediately concerned with the early history of the English jury; it appears to have had its origin in Normandy in the ninth century. Today there are two different types of jury—the Grand Jury and the Petit Jury—each of which has evolved separately and, therefore, their development shall be considered separately.

Before 829, litigation was settled by a process known as "making one's law". Each litigant brought reputable witnesses before a judge to swear to his cause; he who provided the greater number prevailed. Witnesses, unfortunately, often had prejudicial interests in the litigation, and the wealth of one was often more persuasive than the honesty of another. Charlemagne's successor, Emperor Louis the Pious (814-840), recognized the inherent ineffectiveness of this system and in an attempt to protect the interests of the Crown required that in each dispute, the most reputable people in the county swear to which party was in the right.

During William I's reign (1066-87), Louis's method of jury trial was used exclusively for government disputes, and even then, only as a last resort to obtain justice from a people who were ill disposed to the Crown. This system soon gained popularity, however, as the people became more and more dissatisfied with the then existing trial methods; private litigants began to request permission from the King (or the local Duke) to have their disputes settled by an inquisition, as the jury was called at that time. But the government retained their control of the method and it was, usually, only those who were friends of the Crown, who could avail themselves of the jury.

A system for the general public was not established until the twelfth century, when Henri II enacted his assizes, which provided various procedures, each for a different type of action. One of the most important of these assizes was that of 1179, that gave the accused a choice of trial by jury instead of trial by battle. The word "assize", which originally meant an enactment, began, by the end of the twelfth century, to signify a session of council, a court, or the judgment of such a court. By the beginning of the thirteenth century, the judges who were sent out to "expediate justice" were called assizes, as were their courts. It is from the latter that we get our modern definition of the term "assize".

At the same time that the civil court was maturing, however, a

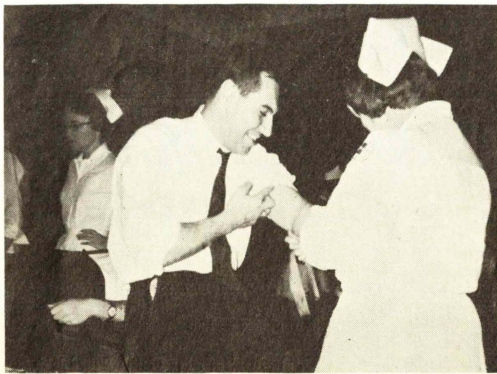
(Continued on page 3)

ing him is military service and upon its termination, he hopes to enter the criminal law field.

Law Review has been a valuable experience for Mr. Gutterman. He feels that it aids students in research and analysis of cases and enables them to become experts in the particular topic assigned. "When the job is well done, there is a great resulting satisfaction in realizing that you know as much about your particular topic as anyone else in the field."

As advice to the students which he will leave behind him at Brooklyn Law School, Mr. Gutterman urges the legal scholar not to look upon law as a field containing absolutes. "There is a tendency to place too much emphasis on the majority opinions in cases. Minority opinions are extremely valuable in giving a complete picture of the particular conflict.

"A restricted reading of a case can't portray the day-to-day drama of the litigants. A case takes on a different connotation when one realizes that a party is fighting for his personal liberty or his property rights."



Donor Frank Iopollo prepares to be relieved of a pint of his blood as Red Cross nurse tests his arm. Mr. Iopollo survived.

Mexican Labor Leader Dies; BLS Graduate

Roberto Haberman, class of 1912, a founder of the Mexican Federation of Labor, died recently at the age of 79.

Active in politics, labor and education for thirty-seven years, he had been a Counselor in Mexican Law, and in that capacity had aided in settling disputes between United States companies and Mexican Labor.

He wrote and published a book, "The Divorce Laws of Mexico," that is said to have become the basis for international recognition of legal Mexican divorces.

In New York he became interested in the Socialist and co-operative movements and in 1917 went to Yucatan, Mexico, to organize producers' and consumers' cooperatives. While political conditions were unsettled in Mexico, he wrote a state constitution for Yucatan.

Mr. Haberman later went to Mexico City, where he became chief of the department of foreign languages of the Ministry of Education and also a founder of the School for Social Studies.

When President Plutarco Calles formed Mexico's first Labor Government, he sent Mr. Haberman to the United States as a special Commissioner of the Department of Industry, Commerce and Labor. Mr. Haberman also had been a general delegate of the Mexican Federation of Labor to the United States. He then was listed as attorney for the Regional Federation for Mexican Labor. His organization later was known as the Workers Regional Confederation of Mexico.

From 1948 until his retirement, he helped to organize the social security program instituted by President Miguel Aleman Valdez.



Phi Delta Phi members at initiation ceremony are (left to right), Joseph Rinaldi, F. X. Crowley who is Province President, John McHugh, William Prinsell, and Robert Cavanaugh.

Blood Bank Gets 80 Pints

April 16 was Red Cross Day at Brooklyn Law School. There were more than 100 donors who took advantage of the blood program and eighty pints were donated.

Through the work of Professor Morris Forkosch, the Red Cross has agreed to set up a Brooklyn Law School Blood Bank. Under this plan, the donor will be able to receive as much blood as might be needed for himself and his immediate family.

The fee is only a five dollar

handling charge as compared with forty to fifty dollars per pint if bought through a hospital.

The Red Cross explained that blood could not be taken from all volunteers since some had colds and minor ailments. However, the chance to give blood is not reserved to just this one day a year, and those who were at the time ineligible or who now wish to give blood can arrange with the Red Cross representative, Wallace Lienhardt, for an appointment.

To Publish Law Review Shortly; Various Legal Areas Explored

The April, 1962 issue of the *Brooklyn Law Review* will soon be available.

Three "Leading Articles" will be published in this issue.

Dr. F. E. Colbourn has written an article entitled, "A Guide to Problems in Shopping Center Leases."

In the field of criminal law, Raymond Hagan has written an article entitled, "Interviewing Witnesses in Criminal Cases."

An informative article entitled, "Off-Street Parking Facilities For New York", was written by Jon Magnusson.

"Comments" will include a further comment on Collateral Estoppel by Professor Thornton, member of the Brooklyn Law School Faculty.

The "Notes" section will feature "Spousal Testimony," by Alan Broomer and "Aftermath of Mapp," by Lester Janoff and Philip Aaron.

In the area of "Legislation," an article entitled, "Foreign Adop-

tion," by Bruce Berry will appear.

This edition will also contain four book reviews and fourteen decisions of interest to the faculty and student body.

Law Review's Editor-in-Chief is Melvin Gutterman.

Professor Gershenson is the faculty advisor.

H. Zane

Fraternity Activities Include Elections, Initiations, Lecture

On May 14, 1962, Delta Theta Phi, under the direction of Paul Squitieri and Rick MacMurray initiated the new brothers. Tribute was also paid to the graduating seniors. They are Rick MacMurray, Anthony Caronna, Paul Squitieri, Gary Mazza, Michael Gallo, Joseph Ryan, and Louis Profeta.

DTP enlisted a 100% turnout at the Barristers' Ball.

The Fraternity also announces the extension of its library facilities and now boasts of well over 1600 volumes.

The following have been elected to office in Iota Theta for the 1962-1963 school year.

Herb Weissman.....*Praetor Premus*
Martin Caine

Vice-Praetor Premus
Wallace Leinhardt

Praetor Secundus
Gary Franklin

Vice-Praetor Secundus
Bernard Bacharach.....*Treasurer*

Martin Kaye.....*Treasurer*
Howard Hollander

Recording Secretary
Jack Lee.....*Recording Secretary*

John Butler.....*Sergeant-at-Arms*
Tom Sung.....*Sergeant-at-Arms*

Iota Theta ended its guest lecture series this year with a lecture on "The Role of Mediation and Arbitration in Labor-Management Disputes." The speaker was Mr. Bernard Lampert, class of '50, an arbitrator on the panels of the American Arbitration Association, the Federal Mediation and Conciliation Service, and the New York and New Jersey State Boards of Mediation.

Mr. Lampert defined and distinguished arbitration, mediation, and conciliation. He further illustrated the differences with practical problems, and the procedure an attorney would follow in each case.

The following have been elected to office in Phi Delta Phi for the 1962-63 school year.

Samuel Durso.....*Magister*
Darrell McGowen.....*Exchequer*

William Princell.....*Clerk*
Joseph Ranalli.....*Historian*

Phi Delta Phi held its initiation ceremony April 28. The new members are John R. Hubbell, Ki Chang Lee, Alfred L. Olsen, Eli T. Abdallah, and Jack Rosenfeld.

Le Droit...

(Continued from page 2)

different kind of jury was being developed for criminal prosecution. Since the estates of convicted criminals escheated to the Crown, it was to the government's advantage to seek a more efficient method for bringing felons to trial; the presentment jury was an effective device for raising revenue, and in 1166, the Assize of Clarendon set forth the procedure for indicting "unlawful men". The enactment provided for an "assize" of twelve men who would accuse and present a felon to the courts, the guilt of whom would be determined in either a trial by ordeal, a trial by battle, or by "making one's law", sometimes called "wager of law" (*supra*). This latter method, although seemingly the least hazardous and the most easily obtainable, often proved to be inaccessible, as the witnesses were likely to suffer the sentence with the accused if they lost their case. Consequently, a notorious felon was often unable to find even one man to swear for him. The trial by ordeal and the trial by battle were, therefore, more often employed.

The trial by ordeal was an established institution, founded upon the belief that God would protect the innocent. By the beginning of the thirteenth century, however, the Church refused to further sanction these trials and in 1215, Innocent III instituted a decree that ultimately forced Henry III to suspend the ordeal in 1219. The application of the petit jury in criminal prosecutions had its inception shortly thereafter.

The criminal trial jury was, at first, a representative body of the town and merely asserted the preconceived, and often misconceived, impressions entertained by the local citizens. The judge decided both questions of law and questions of fact, ascertaining from each member



of the jury whether he thought the accused guilty or not guilty. It was felt, as with the ordeal, that God would guide the jury in its decision. But the jury trial was not yet compulsory in criminal proceedings; it was not until 1275, when the Statute of Westminster I required that all "notorious felons" submit to "the common law of the land"—a petit jury—or be imprisoned, that the jury trial became compulsory.

The effectiveness of this jury, however, was still far from certain. Until the middle of the thirteenth century, the trial jury comprised the presentment jurors, who, in the event of an acquittal, were apt to be severely punished for having indicted the defendant; the disposition of the courts rarely favored the accused. In the latter half of the thirteenth century, however, the accused obtained the prerogative of challenging any member of the trial jury and having him removed if his unfitness could be indicated. If he felt the verdict unjust, the accused could appeal for a reversal by what was known as an "attaint". Since a juror who falsely stated a verdict at the trial was imprisoned, had his property confiscated, and was considered "in the eye of the law infamous", the attaint made it imperative that the jury render its verdict upon a more rational basis. Witnesses were brought into the courts once again and although the art of cross-examination had not yet been developed, the jury began to consider its verdict upon the evidence presented rather than upon preconceived sentiment.

With the growth of the law of evidence, which increased the effectiveness of the jury's determination and the justice thereof, the jury obtained greater independence. To see the present status of the jury, we must review history; the only indication we have of what the jury's future may be, is that which we can interpolate from history. We must follow the astute advice of Sir Edward Coke when he said: "Let us now peruse our ancient authors, for out of the old fields must come the new corn."

ALUMNI IN CURRENT NEWS

1930

HERMAN C. EMER is Chief of the Enforcement Section of the Workmen's Compensation Board, 50 Park Place, New York, N. Y. His private practice is located at 120 W. 42nd Street, New York, N. Y.

MURRAY MARROCCO is an Assistant District Attorney of Kings County.

1933

IRVING RIVKIN is the Tax Commissioner of the City of New York for the Borough of Richmond.

1935

HON. BURT LOCKWOOD has his chambers as a Supreme Court Justice in the 5th Judicial District of New York State in Utica, N. Y.

DANIEL J. REIDY, Vice President and General Counsel of The Guardian Life Insurance Company of America, is the Mayor of the Village of Ardsley. He is also the 1st Vice President of the New York State Conference of Mayors and chairman of both the State Bar Committee on Judicial Administration and the New York State Committee on Judicial Administration of the American Bar Association.

1940

EDWARD J. MCGOWAN continues to hold the position of Special Agent for the Federal Bureau of Investigation.

1954

IRA RUBIN, whose private practice is located at 160 Broadway, New York City, is the administrative Assistant to Congresswoman Edna F. Kelly of the 10th District, New York.

1957

BURTON L. LILLING, a patent attorney, is a partner with the firm of Kleinberg and Lilling, 11 W. 42nd Street, New York, N. Y.

1959

SHELDON H. GOLDENBERG is associated with the Tax Department of Touche, Ross, Bailey & Smart, 80 Pine Street, New York, N. Y.

1961

JOHN ANTHONY BONINA announces that he is a Claims Representative for State Farm Insurance, 7123—5th Avenue, Brooklyn, N. Y.

EDWARD I. COHEN's position is that of Industrial Investigator with the New York State Department of Labor, 80 Centre Street, New York, N. Y.

MILTON M. FISCHER is a title examiner for the Title Guarantee Company, 176 Broadway, New York, N. Y.

CARL GOODMAN is an attorney for the Department of Justice in Washington, D. C.

KENNETH S. KIRSCHNER is Assistant to the Vice President of the Manhattan Casualty Company, 116 John Street, New York, N. Y.

JORDAN MANDEL has his private practice at 26 Court Street, Brooklyn, N. Y.

BERT W. WASSERMAN is a Senior Accountant with Homes & Davis, 521 Fifth Avenue, New York, N. Y.

BERNARD WILANSKY is an Investigator for the U. S. Department of Labor, 290 Broadway, New York, N. Y.

1962

DAVID J. EDEN has accepted a position as Law Clerk, Grade GS-9, with the Bureau of Deceptive Practices, Division of General Practices of the Federal Trade Commission, in Washington, D. C.

Groat Gets Post In New Civil Court

Supreme Court Justice William B. Groat, class of 1920, will be the Administrative Judge of the new Civil Court of the City of New York. The court, which will replace Municipal Court and City Court effective September 1, will have 95 judges in all.

Judge Groat served in the Navy during World War I, was an assistant district attorney in Queens from 1921 to 1923, and assistant attorney general of the State from 1925 to 1930. From 1938 to 1946, Judge Groat was counsel to the New York State Joint Legislative Committee on Industrial and Labor Relations.

Later, after serving with various legislative committees and commissions, he acted as adviser and consultant to the late Sen. Irving M. Ives in the preparation of the New York State Law against discrimination in employment.

He served as a County Judge in Queens from 1951 through 1960 and was elected a Justice of the Supreme Court in the latter year. He is a member of the Judicial Conference of the State of New York, the body that sets standards and policies for all courts in the State.

Necrology

Fisher, Kenneth V., '25, member of the firm of Fisher & Scher; employed on the legal staff of the Fidelity & Casualty Company, and later was association with the firm of Kent & Kent; during World War II, served as a hearing commissioner and attorney with the Office of Price Administration in the New York State regional area; engaged in the individual practice of law until 1959; formed the firm which became Fisher & Scher, specializing in litigation matters; served as the Mayor of Allendale, N. J. from 1937 to 1941; member of the New Jersey and Vermont Bars and of the American Bar Association, New York State Association of Trial Lawyers and of the NACCA Bar Association.

Jaspan, Mathews E., '23, attorney; member of the Philadelphia and Pennsylvania Bar Associations; was also vice president of the Beth Israel Synagogue.

McCabe, Joseph V., '14, specialized in real estate law; headed the Colonial Continental Corporation and McCabe Realty Company, abstracting and mortgage work; director of the New York and Suburban Federal Savings and Loan Association; was an assistant vice president of the Home Title Guarantee Company and the New York Title and Mortgage Company; during World War II was counsel to the Serial Federal Savings and Loan Association and later was a title officer of the Home Title Guarantee Company; had been active in the Brooklyn Roman Catholic Charities; served on committees of the Emerald Association and was on the Bishop's Committee for the Laity.

Rosenberg, Herbert E., '31, engaged in the individual practice of law in Manhattan and specialized in criminal law; served in the United States Army for five years during World War II and retired as a first lieutenant.

Twitchell, Pierrepont E., '29, engaged in the individual practice of law; served as regional records officer in the office of price administration in Washington, D. C., from 1945 to 1947, and as superintendent of the contract records section of the Brookhaven National Laboratory from 1947 until his retirement in 1960; was vice president and director of the Bank of Suffolk County in Stony Brook; member of the executive finance committee of the Suffolk County Council of the Boy Scouts of America; vice president and director of the Temperance Civic League of New York; treasurer and director of the National Temperance League; chairman of the Citizens Committee for Fire Island National Park and a treasurer and director of the Suffolk County Taxpayers Associations.

Warmflash, Leo M., '38, member of the firm of Hays, Algase, Feuer, Porter & Spanier; associate in the office of Hays, Podell & Shulman, predecessor to the current firm of which he had been a partner since 1956; member of the New York County Lawyers' Association, Great Neck Education Association and of the Committee for Human Rights in Great Neck, L. I.

Apportionment . . .

(Continued from page 2)

was not available in Tennessee) it is a cumbersome and highly impractical procedure.

It is possible that the courts could get into a "mathematical quagmire" but that will depend largely on how far they go. Alexander M. Bickel, a former clerk of Mr. Justice Frankfurter and now a Professor of Law at Yale excellently stated, in *The New Republic* (April 9, 1962), the dangers of mathematical formulae in this area when he wrote, "... The manner of constructing deliberative representative institutions, responsive to the views, the interests and the aspirations of their constituencies and yet not so fragmented or finely balanced as to be incapable of decisive action, capable of decisive action yet identified with the people, and containing within themselves the people's diversities so as to be able always to generate consent or at least acquiescence—the manner of achieving such institutions is not laid down in any book of principles, moral or otherwise. It is a highly pragmatic task. Equality of representation is one goal among many, to be accommodated to others. Who, after all, remembering the Weimar Republic or the Fourth Republic of France, favors proportional representation?"

Whatever merit this argument has, and it has a great deal, the court must be able to declare when there has been a constitutional violation. The test of reasonableness can easily be applied without getting the court bogged down in numbers.

As a result of *Baker v. Carr*, voters have commenced actions in 22 states challenging their respective alleged imbalances. Undoubtedly the Tennessee Case as well as these other recent cases, will serve as an incentive to the legislatures to remedy conditions without the need of bringing suit; more than a dozen legislatures already plan to act. However this may be, the judiciary must be able to serve as a guard over this sensitive area in order to prevent an arbitrary taking of the substance from our basic democratic right—the vote.

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