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THE JUSTINIAN

BROOKLYN LAW SCHOOL



VOL. XXVII, No. 2

DECEMBER 9, 1966

BROOKLYN, NEW YORK



Funding and image are prerequisites of OEA free legal service programs

by PAUL WEINER

Funding and public image are two of the many prerequisites of the new legal service which are being organized throughout the country by the Office of Economic Opportunity.

It has been my fortunate experience to work in this area, first this past summer for a newly funded program, the Bridgeport Legal Services Committee, and presently for Mr. William Greenawalt, the legal services officer for the Northeast Region of the Office of Economic Opportunity.

The funding of a legal service, the first step in program, is a long and tedious task. It commences with the filing of an application which is usually made by representatives of the overall community action program in a certain area, where need for such a program must be ascertained.

When applying, certain prerequisites have to be met. The most important of these are the make-up of the board of trustees, and the

local contribution to the program. The board of trustees must be made up of members from all segments of the community, especially the poverty area in question. It is important to note that at least 10% of the cost of the legal aid office should be contributed by the community. These contributions consist of donated time by other attorneys, free office space, law libraries, and donations from local organizations.

These requirements may seem at first glance not very important, but one must remember that they go to the basic idea behind the community action program in that it must be initiated and maintained by the people of the community. They must show they want to help themselves.

Another important element in the application for funding is the approval of the local bar association. Without this the program will not be funded because no legal aid program could function properly without the cooperation of the local bar.

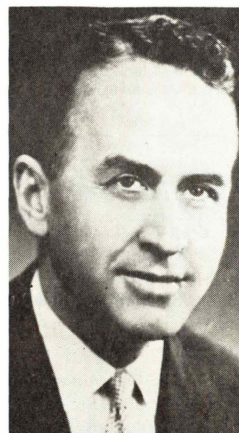
The funding application will provide: 1) Income guidelines which specifically state the maximum income the potential client can earn in order to qualify for legal services. 2) The number of legal offices that will be needed in the particular area. 3) How the program will coordinate with other agencies. 4) A referral system by which each client that earns above the maximum income, or has a contingent or statutory fee case can be referred to a private attorney listed in a special chart compiled by the local bar. 5) The cost schedule of the entire program.

After the application is completed it is sent to the regional legal officer who reviews it and makes necessary changes. If the grant is approved the program is ready to commence and the real problems begin. I became very much aware of these difficulties in the embryo program I worked in this past summer.

(Continued on page 4)

Alumni honor O'Connor at tomorrow's luncheon

by ROBERT MADDEN



Frank D. O'Connor

City Council President Frank D. O'Connor, '34 will receive the Brooklyn Law School Alumni Association's Distinguished Alumnus Award at a luncheon sponsored by the Association tomorrow, at the Waldorf Astoria Hotel.

This honor is granted annually on behalf of the Alumni Association, to the alumnus who best upholds the traditions of public service in the field of law.

Mr. O'Connor, a former State Senator and District Attorney of Queens County made an unsuccessful run for Governor last November.

The Alumni Luncheon, which attracts hundreds of graduates will, also commemorate the 40th anniversary of the class of 1926, Rose Paders and Anita Streep are coordinating this anniversary commemoration.

Last year, Brooklyn District Attorney Aaron E. Koota received the alumni award.

Beatrice Judge; call her Justice

The election of Judge Beatrice M. Judge, '20, to the New York State Supreme Court, 2d Judicial District, marks another first for this distinguished alumna. In 1964, when Miss Judge was elected to the Civil Court, she was the first woman in Kings County to hold such judicial office. In January, when she assumes her place on the Supreme Court, she will be the first woman jurist on that tribunal in the 2d District.



Judge Judge

Brooklyn Law School has been famous for firsts when it comes to women jurists. The first woman judge to ever serve in New York City was the late Jeannette Brill, who was appointed to the Magistrates Court by Mayor Walker.

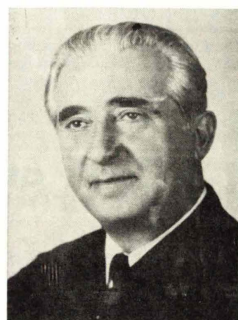
When Miss Judge is referred to in her official capacity, Judge Judge, those who are not familiar with the Brooklyn bench may think

(Continued on page 4)

Malbin directs counsel program

by FREDRIC ROTH

Former Acting Supreme Court Justice David L. Malbin, '21, who, after a 36 year judicial career, was to retire this month as a Judge of the Criminal Court, was appointed, last September, State Administrator, 2d and 11th Judicial Districts, of the newly created Bar Association sponsored program to provide counsel for indigent defendants in criminal prosecutions. Judge Malbin will be responsible



Judge Malbin

for implementing this program in Brooklyn, Queens and Staten Island.

Although the Legal Aid Society is usually called upon to represent indigents in criminal prosecutions, sometimes there are conflicts which prevent a Legal Aid attorney from taking the case. When such a situation arises, under this new plan the judge presiding will direct

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The lawyer and 'non-law'

by BARRY J. BOODMAN

"A Summary of the Duties of Attorneys

... These duties are:

... 7th. Never to reject, for any consideration personal to themselves, the cause of the defenseless and oppressed."

—Code Of Ethics, Alabama State Bar Association

The lawyer's duty is clear, it is said; He must advocate to those he serves adherence to the rules that the system of law dictates. His advice must always be *do not break the law*. This is our ethic and we must allege before we practice that this is what we will do.

We have in this manner dictated to ourselves a rather convenient morality. Can we be blamed if the law is unjust? Are we accountable for mandates of frivolities and non sequiturs? How arrogant to even think that real duty may ask that the established principle must fall because the times demand for this client a different ruling.

When the State of Alabama evolved a system of order to be the benefit of some and the detriment of others, when Mississippi gassed its children for attending the nearest school and then beat those who would tell the world of its heinous crime, when the South in general developed for justice a keen eye for color while the southern advocate remained both blind and mute, a process of erosion began and the unexported principles of non-law began to develop.

Non-law is a form of legal practice where the system is to be frustrated and its holdings ignored, usually, in the interest of a highly identifiable client. When the determination will be predictably unjust and potentially dangerous beyond a

shadow of a doubt, the ethic is shed, and the professional skill required goes far beyond repetition of the rule. The test to be applied is rather simple: Would you tell Martin Luther King, as his attorney, to surrender himself to the Deputy Sheriff who murdered Andrew Goodman? The answer must be no, and this is the practice of non-law.

Northern attorneys are asked to donate their time and risk their lives as volunteers in the South. In 1963 President Kennedy told the American Bar Association at a White House conference that legal services must be rendered for southern civil rights workers. Special laws have been passed in northern states that render a southern arrest of its citizens no blot upon their record whatsoever. These are among the precedents for non-law, because we have agreed on a national and local level that the rulings of the southern jurisdictions are to be ignored. Did the President's appeal to the legal profession ask, in effect, that the laws of the South be broken? If lawyers within a jurisdiction are not available, and lawyers of other jurisdictions are asked to fill the vacuum, then isn't illegality implicit in the request? Surely the understanding could not have been that a dutiful southern bar would be manufactured by a

(Continued on page 5)

Workshop panel studies divorce, infants & strikes

The Brooklyn Law School Honors Program under the direction of Assistant Dean Gerard A. Gilbride, Prof. Milton G. Gershenson and Prof. Thomas F. McCoy, State Judicial Conference Administrator, is again conducting the annual legislative workshop.

The 23 students participating in the program have been assigned to separate committees dealing with an in depth criticism and revision of the new divorce law, improvement of the law dealing with compensation to victims of crime, relief of first offenders from disabilities and forfeitures, revision of infants' contract legislation and modernization of the law dealing with strikes by public employees.

Last year, the Legislative Workshop devoted itself to planning a unified budget for the courts, reorganization of the traffic court and reorganization of the adolescent part of the Family Court.

The student members of the legislative workshop include: Martin A. Schwartz, Martin Siegel, Robert S. Zuckerman, Jeffrey A. Badner, Howard E. Druckman, Howard L. Bernstein, Mitchell J. Horn, Jerry DeSantis, Gary L. Handin, Gary K. Meyer, Edward S. Radzely, Kenneth J. Halpern, Arthur Okun, Mrs. Bonnie Singer, Robert Bonanno, Ronald M. Green, Edward N. Leavy, Irwin Shaw, Barry Singer, Freddie Grafstein, Arthur Miller, Martin W. Schwartz and Richard Weidman.

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A program of non-happenings

Some students thought the Freshmen Teas held in the fall of 1965 where the entering students had an opportunity to meet, informally, with the administration and faculty were a waste of time. Still, others thought the gatherings to be beneficial. This year, there can be no comment because there were no teas.

For reasons unknown, the Student Bar Association got off to a late start with its elections of class officers and has, so far, continued its tardy starting pace. The SBA has the green light from the administration to proceed with the freshmen gatherings, but so far, these happenings which were to be held in early October have yet to materialize. The *Justinian* has been informed that the SBA still plans to sponsor the gatherings this term During final exam week? We wonder.

To get away from such an historic topic as tea we come to other non-happenings, sponsored by the SBA, such as: the no December dinner dance, the no speakers' program and the no attempt to publish a year book.

The officers of the Student Bar Association must treat the duties of their offices as if they were a part of school curriculum. It is time that those who accept a position of responsibility within student government realize that they must perform. If they find that they cannot properly carry out the duties of office, they should resign. It is time that the students and administration of the school demonstrate that they expect more than mediocre performance from student leaders.

There is still time for the SBA to salvage this year and it is up to the executive and class officers to pick up the ball. It is up to these officers to realize that election to office should mean more than a guarantee of an award at graduation.

Shapers of the future

Tomorrow, the Alumni Association meets to pay tribute to a distinguished colleague. Much will be said about the man, the school and the demands of today. Many of the alumni, distinguished jurists, law enforcement officers, practitioners, teachers and legislators as Mr. O'Connor, are in the midst of shaping and defining those demands. An essential element in meeting those demands is an ever closer tie between Brooklyn Law School and its alumni. Today, the alumni must further recognize their growing responsibility to help the Law School equip the lawyers of tomorrow.

Duty to court is basis for immunity of British barrister to malpractice suit

by CLARK MARCUS

On October 20, 1966 the British Court of Appeals ruled that a barrister could not be sued for professional negligence by former clients. The case presented to the court involved Robert Rondel who, after being convicted of an assault and serving his sentence, brought suit against his chosen attorney, Michael Worsley, alleging professional negligence in Mr. Worsley's handling of his defense. While the court admitted that Rondel did make out a case for professional negligence, what troubled the court, and what it had to initially pass upon, was whether such an action does in fact lie against a barrister. Basing its decision almost entirely on public policy the court, in upholding a long established rule in England, decided that such an action was not permissible.

The old, and seemingly original rule in England on this subject, was that since a barrister could not sue for his fees, nor make a contract for them, he should not be open to suit by his clients. In 1964 the court implicitly recognized that that rule was an anomaly when it stated, "that if someone possessed of a special skill undertakes, quite irrespective of contract, to apply that skill . . . for another person who relies on such skill, a duty of care will arise." Relying on that language the court in *Rondel* was willing to concede that the contract theory was fallacious; however, rather than concede that the

rule should be changed it chose to keep it. To do this it had to find a new theory to supplant the old. It chose necessity and public policy stating first that a barrister cannot refuse a case and second, that he owes a great duty to the court which he must meet fearlessly and independently without the restraint arising from fear of prosecution by his client; he is not to be the mere "mouthpiece of his client". The court asserts these arguments in the most positive language yet it appears to be substituting confident declarations for logic. Unsupported by authoritative facts the court ignores the barrister's duty to his client and fails also to recognize that while the duty to the court is owed, the barrister might be negligent in that duty and consequently negligent in his duty to his client to present any and every remedy and defense that is authorized by law. Also, by analogy, a doctor can not refuse an emergency case and the solicitors in the lower courts owe the same degree of duty as the barrister to the courts, and both are liable for any negligence in their duty to their patient or client. The court's failure to recognize such duty makes it unclear whether the court's view of public policy coincides in fact with public interest or rather pushes against it.

Another policy argument the court made was the fear of a flood of litigation by unhappy clients

using their advocates and thus, by a backdoor method, getting a retrial of their original cause. Unfortunately, the court never goes into any exploration of the reality of this danger—of which the United States is a prime example and where this danger has not yet materialized. Both on the federal and state level the courts have long recognized the twofold duty of the attorney; one to the court, the other to his client, a breach of which opens the attorney to liability for negligence. This liability has been imposed to keep the standard of the profession high and the rights of the clients protected. It has not been abused and used for relitigation by unhappy clients but rather has served as a safety device for and in the public interest.

The court's argument, based on social need, seems only marginally more presentable than the argument that long usage automatically sanctifies, the latter appearing to be the true theory underlying the court's reasoning.

While this appeal in itself amounts to a breakthrough in imposing liability on the barrister for negligence in the handling of his case it also is apparent that the court is not yet prepared to go any further than it has already gone, thus leaving Parliament as the remaining forum in which the problem should be discussed.

Professor Maloney: I love to teach

by LOUIS R. ROSENTHAL



Prof. Maloney

"I love to teach," might be an understatement for a man who has devoted 40 years to teaching the law. Richard Joseph Maloney is not a man who lends himself to understatement or overstatement, though, communication is powerfully clear. "I signed the contract on the day I graduated," said Prof. Maloney as he explained, during an interview at his 35th floor Court Street office, how his teaching career began upon his graduation, summa cum laude, from Brooklyn Law School in 1927.

Prof. Maloney, a member of the law firm of Maloney and Doyle (Col. John C. Doyle, '26, is also a professor at BLS) was born in the Bay Ridge section of Brooklyn and has lived there ever since. Four years spent in the Navy aboard a destroyer during the World War I interrupted his studies at St. Francis College where he majored in English.

His father, a civil engineer, died while young Maloney was in the service, so upon his discharge, rather than completing college he became a construction superintendent by day and a law student by night. "From my earliest possible thoughts, I wanted to be a lawyer." He attributes this to the many attorney friends of his father and to the many works on the lives of famous jurists that he read as a lad. He owns the original and rare four volume works by Beveridge on John Marshall.

Prof. Maloney, who teaches Wills and Property, is a director of the Inter County Title Company and has been counsel to that company (formerly Brooklyn Mortgage Title and Guaranty) for the past 38 years. He is also counsel to Brooklyn Law School and a member of

the Committee on Character and Admissions, Appellate Division, 2d Department, 2d and 10th Judicial Districts and a former vice-chairman of the Grievance Committee of the Brooklyn Bar Association. The Professor and his wife, the former Mary Pramuk have three children and sixteen grand-

children. One son, an alumnus of Brooklyn Law School is president of the Union Engineering Company of New Jersey. Another son is a member of the Jesuit Order and academic vice-president of Canisius College in Buffalo. His daughter is married to Assistant Dean Gerard A. Gilbride.

Co-author of the text, *Mortgage and Mortgage Foreclosures in New York*, he is also a trustee and vice-president of the Polytechnic Preparatory County Day School and a trustee of the Brooklyn Bar Association.

He attributes the success of Brooklyn Law School to the fact that the faculty practices what it teaches in that many of the professors are authors, legislative draftsmen and noted practitioners in their fields. Prof. Maloney, who received a J.S.D. degree in 1941 from BLS, specializes in real estate and surrogates practice.

Book at the Bar

by EMILY J. NOVITZ

THE JURY RETURNS, Louis Nizer, Doubleday. \$6.95, 438 pp. Law, Liberty and Louis Nizer. These are the main themes of *The Jury Returns*.

Some question the ethics of a practicing attorney relating his professional experiences, on the grounds that it is advertising. The layman, after all, knows Louis Nizer as the author of *My Life In Court*.

There are those readers who will consider it not only ethical, but a valuable insight to look at a case with counsel's perspective.

Though it is a subject apart from this review, each reader may approach the book with his own

attitude about whether it should have been published at all.

The book covers four of Mr. Nizer's cases. They involve murder, divorce, bribery, and conspiracy to libel. Half of the book is devoted to the last cause of action, (the case which this review will cover) involving blacklisting of members of the broadcasting industry because of alleged communist sympathies.

Mr. Nizer represented John Henry Faulk, a radio personality whose career had virtually ended after the defendants published and distributed material accusing him, and others, of communist affilia-

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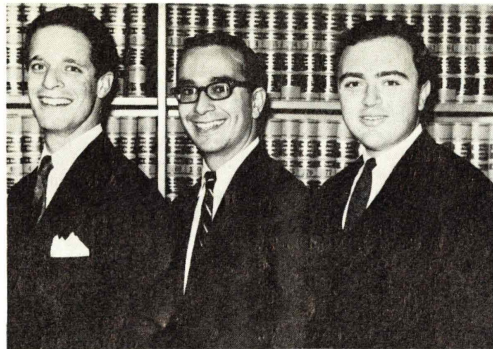
The value of moot court

by PAUL BERGMAN

The value of an effective intramural appellate moot court program should not be underestimated. True, only a relatively small percentage of the legal workload comes before the appellate bench and also the vast majority of us, through disinclination or mere circumstance, will never have the opportunity to make law before the appellate tribunals. These truths, however, ob-

the six metropolitan law schools. Today the program spans the country, comprising 16 separate regions.

Of course, the art of appellate argumentation is not a separate branch of the law and cannot be taught as such. But it does represent an area of competence. It is a necessary and much to be desired device of the law. The art com-



Left to right: Paul Bergman, Stephen E. Harmon, Arthur D. Chotin.

sure the value of the program in terms of a legal education, for today specialization has become the *sine qua non* of a successful legal career. The general practitioner of the law is today the exception.

It is no accident therefore, that appellate moot court programs have been flourishing of late. The Association of the Bar of the City of New York began its moot court program just 17 years ago. At that time the participants were

mands its own excellence and its own expertise. It represents but one more arena where a lawyer can make his mark and although Brooklyn Law School has not made the program mandatory, perhaps we as students can, by our participation, achieve the same result.

Editor's Note: Mr. Bergman has represented Brooklyn Law School in the Moot Court competition for two consecutive years.

Faculty Profile

Donald L. Block-Baraf

by ROBERT MADDEN

The wisdom of Columbia, Princeton, Harvard and N.Y.U. has been gathered together at Brooklyn Law School in the form of legal research instructor Donald L. Block-Baraf.

Mr. Baraf states the aim of his course is to provide a working familiarity with all legislative materials. He says it is a difficult course to teach since the method of deriving knowledge from example (such as case law) is not possible. Lectures become necessary and the student must learn to use these materials by going to the library and working with them.

While at Harvard Law School, Mr. Baraf participated in the activities of the Civil Liberties Research Club, the International Law Club, and the Law Students Civil Rights Research Council. As part of the LSCRR program, he spent the summer of '64 in Georgia as a civil rights intern with the Southern Christian Leaders Conference.

A member of the New York Bar, Mr. Baraf chose a teaching career because it would give him time for extensive research for committees recommending changes in the law. The work of such men has a tremendous impact on the growth and development of the law.

He has written articles on such widely diversified topics as land

compensation in a comprehensive land reform program in Colombia, and piracy of phonograph records, the latter involving the releasing of a record to which another company has exclusive rights.

He hopes to have time to research problems of government, such as "Can law lend stability to a politically unstable country?"

In addition to all these activities, Mr. Baraf is an advisor to the Law Review and the Moot Court Program, and is assisting Dean Prince in research for his projects.

Fraternity briefs

by MICHAEL MELLA

Prof. Raymond Reiser, Assembly Majority Leader Moses M. Weinstein and Supreme Court Justice — elect Louis B. Heller will be inducted as honorary members of Iota Theta Law Fraternity at the Fraternity's 52d Anniversary Dinner, Wednesday evening, December 21, 1966 at the Park Sheraton Hotel.

Edward D. Re, Chairman of the Foreign Claims Settlement Board will be the guest speaker at a dinner to be sponsored by Phi Delta Phi Law Fraternity in March, 1967.

From where shall judges be chosen?

by BERNARD B. COHEN

Those who contend that it is in the best interests of the public to transfer the judicial nominating process from the voters, who don't know the judicial qualifications of a candidate, to an informed non-partisan nominating commission, believe it is necessary for the forthcoming New York State Constitutional Convention to take short and sure steps, rather than whimsical and wishful trotting towards the adoption of a merit selection system whereby appointments to the Civil Court, Criminal Court and Family Court would be made on the recommendations of a non-partisan selection commission.

The proposals put forward by The Association of the Bar of the City of New York and agreed with by Mayor Lindsay suffer from a quixotically blind desire to shift the judicial appointment power from politicians and the people to the elite at The Association of the Bar of the City of New York.

The Bar Association, if nothing else, does not read what it writes: "We do not mean to say that previous political activity should be regarded as disqualifying anyone for judicial office. On the contrary, experience in politics may be an important asset for a judge."

The present President of the Bar Association of the City of New York, Russell Niles, at an interview with this writer on October 27, 1966, agreed that it would be best for the Bar Association to remain aloof from the actual process of judicial selection, but rather to exercise its powers in a screening or supervisory position without participating as members of a Board which would propose selections for the judiciary.

In the course of conversation with Dean Niles, his criticism of this writer's proposals *infra* for a compromise on the rigid selection process of the various plans was limited to objections against what he termed the "closed-list" proposal.

As the Mayor's press release of January 14, 1966 stated, in announcing the membership of the Committee on the Judiciary, it is being done, "... to take the appointment of judges out of politics and put it into the realm of selection by merit alone." But are their selections non-partisan? To the contrary, one recent appointment to the Civil Court for an interim term was so meritorious that the voters in this preceding November election rejected him on the basis of his lack of experience, judicial temperament and legal expertise. He was one among those

judges who Former Attorney General Herbert Brownell might refer to as the "gray mice of the judicial establishment."² The importance of improving the method of judicial selection cannot be overemphasized, but there must be those of us who humbly offer some middle of the road alternative to an either-or situation of purely political considerations or strictly non-partisan plans. The ultimate objective, to remove judges from political control, not affiliation, must be kept in sight. Therefore, there must be offered by those interested persons, alternatives to the existing "either-or" situation. Herein is one such offering.

The Plan

1) Instead of being elected by popular vote as at present, judges of the Civil Court should be appointed by the Mayor in a similar manner as judges of the Criminal Court and the Family Court.

1A) The term of office in all three courts shall continue to be ten years.

1B) The Mayor's Committee on the Judiciary should recommend not more than three names to the Mayor whenever a vacancy shall occur in the Civil, Criminal or Family Courts.

2) The Mayor shall select his designee from the names submitted to him by the Committee on the Judiciary; and, thereafter submit the name of the designee to the Bar Association's Committee on Judicial Selection and Tenure, or any other Committee appointed by the Bar Association to investigate and report on such recommended designee.

The Committee

3) The Mayor's Committee on the Judiciary should consist of nine members, non-partisan leaders of the community, five of whom being members of the Bar. Four of the nine members, two attorneys and two laymen shall be appointed by the Mayor with the consent of the City Council. Two members, one not an attorney, by each of the Presiding Justices of the Appellate Divisions of the 1st and 2nd Departments, and one member, an attorney, to be appointed by the Association of the Bar of the City of New York with the consent of the Mayor and the City Council.

3A) The Mayor's Committee on the Judiciary shall select its own chairman, who shall serve for the term of that Mayor.

4) The members of the Committee on the Judiciary, including its chairman, shall serve for a term of four years as members of the Committee.

4A) The members, including the chairman, of the Committee on the Judiciary, shall be non-salaried.

4B) The Committee on the Judiciary shall select its designees from the annual list compiled by the Committee.

4C) The Committee shall compile an annual list of 100 names from which it shall select three names to recommend to the Mayor for appointment whenever a vacancy occurs in the Civil, Criminal, or Family Courts.

The Names

5) The Mayor shall submit a list of 60 names of qualified attorneys on February 1st annually to the Committee on the Judiciary.

5A) The Bar Association of the City of New York shall submit a list of 15 names of qualified attorneys to the Committee on the Judiciary.

5B) The County Bar Associations of each submit a list of five names of qualified attorneys on February 1st annually to the Committee on the Judiciary.

5C) The Committee on the Judiciary, from the annual list of potential judges submitted to them, shall select its three recommendations for every vacancy as it arises in the Civil, Criminal, and Family Courts 196 judgeships.

Reappointment

5D) At least 30 days before the expiration of the term of a judge of the Civil, Criminal or Family Courts who will be eligible for reappointment, the Committee on the Judiciary may recommend his reappointment to the Mayor, who shall thereupon make such reappointment. If the Committee determines that the incumbent's reappointment would not be in the best interests of the community, the Committee shall proceed to fill the vacancy by recommendation to the Mayor of three possible designees in the regularly provided manner. The incumbent may thereafter be one of the three names recommended to the Mayor.

This is not a solution; it is merely an allegation thereof. However, it can be a step towards resolving that transcendental query of *from where shall the designees be chosen.*³

¹ Report of Special Committee on Judicial Selection and Tenure, as approved at the stated meeting of the Association on October 15, 1963; The Association of the Bar of the City of New York.

² Brownell, Hon. Herbert, *Too Many Judges are Political Hacks*, Saturday Evening Post, April 18, 1964.

³ 3 Wayne Law Review, 175; (1957) Elliott, "Judicial Selection and Tenure."

SBA elections

by HOWARD M. KOENIG

On Thursday, November 10, 1966, a special meeting of the SBA was held to fill two vacancies existing on the SBA Executive Board.

Richard Katz, formerly Sgt. at Arms, was elected to the post of 2nd Vice President. Howard M. Koenig was elected to the post of Recording Secretary.

The following are the results of the SBA General Elections.

Evening Room 300—President: Stan Hoelberg, Vice President: Mark Richard, Treasurer: Isaac Zisselman, Secretary: Larry Mizrock.

Evening Room 400—President: Marty Levenson, Vice President: Ted Herold, Treasurer: Douglas Barshay, Secretary: Lila Gold.

Day Room 300—President: Martin Adelman, Vice President: Allen Finklestein, Treasurer: Paul Lazarus, Secretary: Bonnie Mandina.

Day Room 404—President: Joel Pravda, Vice President: Fred Cohen, Treasurer: Michele Crown, Secretary: Marilyn Goldstein.

Day Room 503—President: Ted Stein, Vice President: Douglas Wicks, Treasurer: Fredric Roth, Secretary: Barry Boodman.

Evening Room 401—President: Phil Gottfried, Vice President: A.

Bob Arcury, Secretary: Anthony Marchesi.

Day Room 301—President: Arthur Mammario, Vice President: Paul Rudder, Treasurer: Barry Smith, Secretary: Maxine Hirschman.

Day Room 401—President: Jim Tenzer, Vice President: Arthur Frankel, Treasurer: Lenny Feldman, Secretary: Steve Silver.

Day Room 401—President: Andrew Cramer, Vice President: Martin Munitz, Treasurer: Sheldon Richman, Secretary: Alan Simon.

Day Room 505—President: Bob Bonanno, Vice President: Thalia

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BLS mourns

by MARVIN ROSENBERG

Last month saw the passing of four prominent men who were associated with Brooklyn Law School: former Staten Island Surrogate John Boylan, '21, New York City Commissioner of Public Works William C. Mattison, Criminal Court Judge Harry Serper, '26 and Professor Gustave Drews, '17. Judge Boylan was appointed to the Municipal Court by Mayor Walker in 1928. He became at 30, the youngest judge in the City. Later that year, he was elected to a full term and was elected Surrogate of Richmond County in 1937. He served as Surrogate until his retirement in 1961.

Commissioner Mattison a member of the Graduate School faculty was appointed head of the Public Works Department at the beginning of this year by Mayor Lindsay. He had been mentioned for a possible appointment as Administrator of the proposed City General Services Administration. Prior to joining the City, Mr. Mattison was associated with the Brooklyn law firm of Corner, Finn, Froeb and Charles where he had specialized in engineering and construction industry problems.

Criminal Court Judge Harry Serper was appointed a City Magistrate by Mayor Impellitteri in 1953 and was reappointed by Mayor Wagner in 1961. Prior to his appointment as a Magistrate, Judge Serper served as Deputy Commissioner of the Department of Sanitation.

Professor Drews was a member of the Graduate School faculty and taught courses in copyright, trademark, patent and anti-trust law.

Counsel program

(Continued from page 1)

a request to the Administrator of the Program for appointment of private counsel who will be selected from a rotating test of attorneys. The attorney so assigned by the Administrator is paid up to \$300 for any case involving a misdemeanor and up to \$500 for representing a person of accused felony. Prior to this plan, attorneys appointed by the court to defend an indigent party were only compensated in homicide cases.

Judge Malbin, first appointed a Magistrate by Mayor Walker in 1931, has served during the administrations of seven mayors. He became a Judge of the Criminal Court in 1962 when the Magistrates Court absorbed under court reorganization. He was an Acting Supreme Court Justice, by designation of the Appellate Division when he resigned from the bench to accept his new post.

According to the Judge, the program which he is administering offers more adequate representation to indigent defendants than was ever before available. There are, presently, more than 400 lawyers participating in this program. An attorney, whether or not he is a member of the Bar Association, may seek to participate by filing an application which will be screened by the Bar Association.

Judge Judge: call her Justice

(Continued from page 1)

someone is trying to double talk them. However, the situation will be remedied come January. As one of her campaign workers told Miss Judge the day before election day, "Soon we won't be able to call you

Legal careers in govt.

by AARON CARR

On October 29, 1966 a symposium on legal careers in the federal government, sponsored by the New York Federal Executive Board, was held at the New York University School of Law, located at Washington Square. Representatives of government agencies had opportunities to meet with students and discuss specific questions relating to the agency of their interest.

According to Samuel M. Kaynard, regional director of the National Labor Relations Board, Brooklyn office, at present there is a job freeze because of the administration's policy of cutting government spending. This means that each agency cannot hire any more people than they hired the year before.

The qualifications that the National Labor Relations Board demands, besides scholastic achievement, are indefinite and depend a great deal on the applicant's personal interviews, which are quite extensive. But one criterion is stressed with every agency: All agencies are looking for persons who intend to make government work a career, instead of using the government as a stepping stone to private practice.

The starting grade level for the various agencies is either GS7, approximately \$6,500, or GS9, approximately \$7,600 per year. Previously, to qualify for GS9 a student had to be in the top 20% of his graduating class. But now, according to Mr. Kaynard, an agency has the discretion to start applicants who are in the top 50% of their graduating class at GS9. The highest level an attorney can achieve, without entering the supervisory or management level, is GS14, approximately \$19,250 per year. If an attorney does qualify for a supervisory position he can attain the GS18 level, approximately \$25,000 per year.

As for summer jobs in the agencies, these can be applied for by second year students by writing to a specific agency in Washington D.C. However, most of these positions are in Washington, with but a few open in New York.

For more information on government employment consult, "Federal Government Job Opportunities For Young Attorneys", a pamphlet put out by the American Law Student Association. A copy of this pamphlet is in the library at the main desk.

Free legal service funding

(Continued from page 1)

We were first confronted with the public image of the program. Like any public organization the legal services office cannot exist without the approval of the public, and cannot function effectively without the proper cooperation from other non-legal programs.

The decision to take a case in most programs is made by the director, and he considers this very carefully. For example, a client is picked up for driving without a license which is local agencies. Clients are referred by both public and private agencies and in turn the legal aid office refers clients to other agencies who can help the client with his non-legal problems. The referral to other agencies occurs many times in the area of domestic relations where the clients are sent to a public marriage counselor. Without a good public image the office would find itself many times without any means to help the client with his Mr. Thomas F. Seymour, attorney-administrator kept me informed on all the problems a young legal aid office has.

Probably the most difficult and sensitive problem is the borderline case. In this case the client does not come exactly within the income guidelines set up by the program. The decision whether or not to punish by a \$100 fine. His earnings are slightly over the income maximum set by the guidelines, and he has some small debts. The client is entering the army in a month and has saved \$100 which he needs for his mother's support. If the office takes the case and gets the fine reduced to \$50.00 it is possible that the local bar association would say if he could afford

to pay a fine he could afford to pay an attorney for his services. One cannot say what the right answer is here. It depends on the local conditions, and the charter of the organization.

Handling certain types of cases may also lead to criticism. This occurs very often when the legal aid program has a great many divorce or separation matters. All the potential clients fall within the income requirements, but there are community-social considerations that must be examined.

As one can see the answers to these questions are very difficult. They are mentioned to illustrate how a seemingly simple decision to handle a certain case might lead to unexpected results. One does not always realize how a legal aid office can affect the local community, and this must always be kept in mind.

These examples are only a few of the many difficulties a new program might have. It is a long haul from the application for funding to finally having an organization that is functioning well. But once this is accomplished a legal aid office can be a great benefit to the community in helping those persons in need of legal aid they otherwise could not afford.

SBA elections

(Continued from page 3)

Ernststoff, Treasurer: Alan Altura, Secretary: Barry Danziger.

Evening Room 200—President: John Bray, Vice President: Eli Moosnick, Treasurer: George Goran, Secretary: Joyce Wang.

Day Room 200—President: Howard M. Koenig, Vice President: Louise Klein, Treasurer: Alan Moldawsky, Secretary: Joyce Krutick.

Day Room 201—President: Michael Kraft, Vice President: Stuart Weiss, Treasurer: David Berkowitz, Secretary: Harold Rosenblatt.

Day Room 400—President: Ronald Goldstein, Vice President: James Ostroff, Treasurer: Fred Feingold, Secretary: Mike Hughes.

Alumni in the news

GRADUATES of Brooklyn Law School Elected to Public Office

November 8, 1966

JUDGES:

Supreme Court 2nd Judicial District—

Benjamin Brenner '25, M. Henry Martuscello '30, Beatrice M. Judge '20.

Civil Court, Brooklyn—

Jacob Weinberg '30 or '31, Irwin Brownstein '53.

Civil Court Staten Island—

Mark A. Costantino.

Representatives in Congress—

Frank J. Brasco '57, Abraham J. Multer '22 or '23, Benjamin S. Rosenthal '49.

State Senate—

Abraham Bernstein '41, Simon J. Liebowitz '26, William C. Thompson '54, Seymour Thaler '42, Nicholas Ferraro '53, John J. Marchi '53.

State Assembly—

Jerome W. Marks '38, Daniel M. Kelly '53, Emanuel Ramos '56, Ferdinand J. Mondello '29, Samuel D. Wright '62, Bertram Podell '49, Leonard M. Simon '60, Joseph Kottler '39, Herbert Posner '54, Moses M. Weinstein '34, Kenneth N. Browne '54, Herbert J. Miller '37, Stanley J. Pryor '53.

Borough President of Manhattan—

Percy B. Sutton '50.

1938

JOSEPH T. McDONOUGH—has been appointed to the Police Review Board.

1950

HAROLD B. FONER who received his LL.M. in 1961 is chairman of the Brooklyn Bar Association's Committee on Human Rights and Fundamental Freedoms.

1952

LEON FRIEDMAN is now Deputy County Attorney for Nassau County.

1958

PETER C. BENNETT who was formerly with the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service, has become an associate of the firm of Greenberg & Glusker of Beverly Hills, California.

IRWIN GORDON who served one year as a clerk for Connecticut Supreme Court Justice James E. Murphy is presently practicing law in Bridgeport, Conn.

1966

PERRY F. GOLDBLUST is with the Corning Glass Works in Corning, New York.

JEFFREY B. BERMAN is an attorney for the Transit Authority.

MELVYN KRINSKY has accepted a position as an attorney in the New York City Welfare Department.

MYRON LEVINE is with the Security and Exchanges Commission in Washington, D.C.

ISIDORE KRONISH has been appointed by New York City as an attorney in the Welfare Department.

HUGH JANOW has joined the Peace Corps.

MARVIN ZALMAN and GRETA DURST ZALMAN have joined the Peace Corps and go to Nigeria in January.

STEPHEN H. FINKELSTEIN has been appointed administrative assistant at the Cumberland-Hospital Division of the Brooklyn-Cumberland Medical Center.

EDWARD R. KORMAN, former Editor-in-Chief of Law Review is a clerk for Court of Appeals Judge Kenneth B. Keating.

NECROLOGY

JOSEPH W. GOTTLIEB '05

GEORGE H. BOYCE '07

GUSTAVE DREWS '17, J.D.

'32: Professor Drews taught patent law in the BLS Graduate School.

HARRY SERPER '26, LL. M '27: Judge of the Criminal Court.

Plan blood bank for March, 1967

by HOWARD M. KOENIG

As part of your SBA program, this year, the Blood Bank membership drive will commence March 28, 1967. The program is open to students, faculty and alumni. With the donation of one pint of blood, the student protects his immediate family for one year, should the need for blood arise. If the student donates three pints of blood, one pint per year, he will protect his family for life. The donation need not be in consecutive years. Barry Silber is Blood Bank Committee Chairman and Prof. Morris D. Forkosch is the Faculty Advisor to the blood bank program.

No February entering class in evening session

Dean Prince has announced that there will be no February entering class for evening students. However, there will be a February entering class for day session students. The Law School will accept entering evening session students in September, 1967.

Student v. Internal Revenue

by MARTIN ADELMAN

Recently, a student at Brooklyn Law School was informed by the Internal Revenue Service that some of his deductions had been disallowed. The student phoned the local IRS Office, and from the way he explains it, the conversation went thusly:

Operator: Internal Revenue, Good morning.

Student: Good morning, I received a letter saying my deductions for 1965 have been disallowed and I would like to speak to someone about it.

Operator: I'll connect you with an examiner.

Examiner: Mr. Procrustes speaking. I have your 1965 return.

Student: What's been disallowed sir? My personal exemption for Persia? The depreciation on my Congolese Code set? My restoration of course charts? My contribution to the mother of the Unknown Soldier?

Examiner: No, they're all right. It's your educational expenses of \$700. What does that represent?

Student: Tuition for one year at Brooklyn Law School.

Examiner: HA...ha..ha.. Good try. You know you can't deduct that. Good-bye.

Student: Please, let me explain. You see, I have been employed as a law clerk by a prestigious Court.

Continued on page 6

Law Review goes to press this month D.A.'s office: from the inside

by MARVIN ROSENBERG

As the December issue of the *Law Review* goes to press, the Justinian takes this opportunity to introduce the members of the Review's Editorial Board.

Richard M. Hoffman, Editor-in-Chief, is a graduate of City College. He served as Research Editor of last semester's issue of the *Law Review* and has co-ordinated the preparation of the symposium issue on the new Estates, Powers, and Trusts Law, to be published this spring.

Robert M. Heier, Associate Editor, is a graduate of Brooklyn College where he majored in economics. He has served as a student assistant to the United States Attorney and has recently been appointed Editor-in-Chief for the Winter 1967 issue.

Alan A. Lascher, Research Editor, is a graduate of Union College where he majored in biology and chemistry. He served as Co-Declarations Editor of the April, 1966 issue of the *Review*.

Robert Koppelman, Co-Declarations Editor, is a graduate of Brooklyn College where he majored in geology. He served as Notes Editor of the April, 1966 issue of the *Review*.

Stephen F. Harmon, Co-De-



Front, left to right: Alan A. Lascher, Research Editor; Richard M. Hoffman, Editor-in-Chief; Robert M. Heier, Associate Editor; Back, left to right: Ira Leitel, Notes Editor; Robert Koppelman, Co-declarations Editor; Stephen F. Harmon, Co-declarations Editor; Barton P. Blumberg, Book Review Editor.

sions Editor, is a graduate of Queens College where he majored in Political Science. He served as Book Review Editor of the last issue of the *Review* and was a member of the BLS Moot Court Team.

Ira Leitel, Notes Editor, received his B.A. in Political Science

from the Maxwell School of Citizenship at Syracuse University. He has served as a legal assistant in the Office of the Law Guardian of the City of New York.

Barton P. Blumberg, Book Review Editor, graduated from City College where he received his B.B.A. in Accounting.

Reflections of a senior

Nearly two and a half years ago, on a very pleasant September day, I eased into a seat in our well lit auditorium. It was a good omen that the sun was shining; the gods were pleased with my decision to go to law school.

There were about 450 of us assembled on that fateful introductory day. "Uhm" I thought to myself, "not too many girls." Such thoughts were quickly banished as a man climbed the steps to the stage. He introduced himself, "Ah, so that is Dean Prince," and then proceeded to give us a short welcoming address. It didn't take him long to get down to the real business of the day, how one is to brief a case. The technique seemed simple enough. Now an illustration, "Once upon a time, there was this nephew who promised his uncle that until he was 21 years old he wouldn't gamble, drink or mess around with women." Allegedly, we all know the outcome of this tear jerker so I will not belabor the point.

Soon, we were dismissed. Up to the Bursar's Office to buy books. "Wow, what a bill!" In those days of innocence, who knew of second hand book stores. Well, in retrospect it was fitting to have a new set of books; after all, this was a new course of study in a new school.

I could hardly wait to get home that first day and start on my way to becoming a lawyer. After dinner, feeling quite impressed with myself, I gathered together my 36 pounds of reading matter and headed for my room. About 1:00 in the morning, having just about finished the first assignment in Contracts I, I started to have some second thoughts as to the

advisability of my future being in the law. (I must be doing something wrong. This can't really be an average assignment. They are just trying to scare us.)

However, by the time the first day of classes arrived, somehow I had managed to be fully prepared. Room 400 at first sight looked like something imported from Rome. Seated in the next to last row, it was like looking down into the arena where in a few short moments the Professor would arrive to wrestle with my fertile young mind. Just how many ways could I say, "Unprepared, sir"? And there he was, in an instant on the stage, checking his mike, and eyeing his black looseleaf book. The bell rang. "Good morning, ladies and gentlemen. I am Professor Miller. This is Contracts I. I believe our first case this morning is *Nebraska Seed v. Harsh*. (Boy, they sure do not waste time here.)

The time has passed quickly, though I admit that some of the homework assignments seemed at the time to take forever. I hope that in the interim I have matured as a legal scholar and as a person.

Law school has been a wonderful experience. If I had to do it all over again, I am quite sure that I would follow the same path. However, this time I think I would try to be more diligent in my work, which means no cans at least until after mid-terms.

I am truly thankful for the years spent at Brooklyn Law School. It has been more than just an education, it has become a way of life. I realize that without even being conscious of it at the time, our professors have shaped my legal thinking as well as my attitudes in general.

Spring recess comes but twice a year

Although the Brooklyn Law School Bulletin lists no Spring recess dates, vacation will come twice next term, but the periods will be separated by a month because the major religious holidays occur a month apart. Classes will be cancelled on Holy Thursday and Good Friday, March 23 and 24 and on the first two days of Passover, Tuesday and Wednesday, April 25 and 26. Classes will also be cancelled for evening students on Monday, April 24.

Non-law

(Continued from page 1)

resolution passed in Washington.

We have therefore set a scene where men of legal talent must give non-legal advice. This advice will not be adherence to technicalities of law where they themselves ignore a technicality of practice or where they know a minor infraction can become a man's death warrant. It would be delusion to think otherwise.

It would be delusion also to think that non-law will not affect us in our home jurisdictions. We have all condoned it at the very least, yet we too have our unrepresented populace. These are the poor and the advantage of legal services has been denied to them; so has the advantage of feasible law to remedy their plight. We can only say that oppression has been replaced by disconcert, yet this distinction may affect degree only; it is a prognostication I do not care to make. Nor can it be said that non-law is new. After all the founding fathers were, in their way, not lawyers, and the Declaration of Independence is one of the greatest non-legal documents ever written.

District Attorney Frank Hogan and his staff, hosted a summer orientation program which enjoyed the participation of 24 law students from eleven different law schools. I was one of the 24 participants.

The purpose of the program was to afford to us the opportunity to more thoroughly explore both substantive and procedural aspects of the criminal law and to serve as an introduction to the organization and working mechanism of the county public prosecutors office.

Each summer assistant served an apprenticeship of four weeks each in two or three of the office's eight bureaus, depending on the length of his stay with the program. The program also included a series of weekly lectures given by each of the bureau chiefs, films and a demonstration on the subject of narcotics use and addiction, tours of the New York City Police Academy, the House of Detention for Men (popularly known as the Tombs), and the Correctional Institution for Men located on Riker's Island.

The District Attorney's office, located in the Criminal Courts Building at 155 Leonard Street, is divided into eight bureaus: Supreme Court, Criminal Courts, Indictment, Homicide, Rackets, Frauds, Appeals and Complaints.

My first four week's tour of duty was spent in the Appeals Bureau, wherein the seven summer assistants assigned to the bureau had a chance to further perfect their legal research techniques, familiarize themselves with the law library and write memorandums of law for cases then pending appeal. It is here that one learns to appreciate the importance of being able to know where to find the law as well as a chance to indulge the intellect into the substantive aspects of the law—its inconsistencies and paradoxes, its developmental history and to speculate as to future judicial and legislative change.

From there I went to the Complaints Bureau, where the entire prosecution process actually begins. Under the very able guidance of the bureau chief, we would interview complainants on the phone and in person. But in order to actually register a complaint or to go on file as one who had tried to register a complaint, it was necessary for someone to come down and speak to us in person. Most of the complaints turned out to be matters which weren't in the province of the office to prosecute. However during the interview it was necessary to determine the answers to several questions. First we had to know whether the complaint was of a civil or criminal nature. If it was civil, the complainant was referred to an attorney. Then if the matter was criminal but it turned out to be a misdemeanor, the complainant was referred to 32 Chambers Street where the complainant could obtain a summons. Then following along, even if the crime in issue was a felony, the District Attorney's office would only handle it if for some reason, it was too difficult a matter for the local police precinct. If the complaint met the various requirements stated, the complaint card would be filed with other cases pending where it would either await further investigation or else go on to another bureau wherein the second phase of the prosecution process would take place.

While most of the complaints concerned bad checks, the larceny of goods on memorandum and the like, there was also a regular stream of more colorful complaints and complainants such as the sixty year old woman who complained of a machine in her apartment building, stating to us that every time the machine activated itself, it solicited her and her sister to do lewd sexual acts or the woman who complained of receiving three different color television programs through her dentures.

While in this bureau, we had an opportunity to observe the methods of fingerprint collection, the use and limited value of the polygraph or lie detector test, and a typical night at a Harlem police precinct. While there we observed arrests, bookings and the various complaints that came in throughout the evening.

After the Complaint Bureau I spent an additional two weeks assisting a permanent assistant in Part IC of the criminal courts, which is an offense part. Aside from such duties as preparing witnesses for trial and assembling various documents and case records, it was there, in court, that one actually felt the pulse of the criminal court system.

I was very much impressed with the District Attorney's office, with its efficiency and the abilities of the various permanent assistants. To any first or second year law student interested in criminal law, I can with much enthusiasm recommend this job as a possibility for next summer's employment. It was a most valuable and enjoyable experience.

Problem of the month

PROBLEM: THERE HAS BEEN A RAPE AND MURDER OF THE SAME VICTIM. THERE ARE NO SUSPECTS AND THERE HAS BEEN NO INTERROGATION. NO ALLEGED PERPETRATOR HAS COME FORWARD. WOULD A CONFESSION BE ADMISSIBLE?

RANDOM ANSWERS:

"Why not?"

"Yes, if he was in custody."

"Yes, if it was voluntary."

"It would depend on whether the arrest was made by a civilian or a law officer."

"Under *Escobedo* was the stage accusatory or investigatory?"

"Not unless he received the *Miranda* warning."

"Is this from an old exam?"

"You'd have to have a motion to dismiss on failure to show a crime."

"If you've met the Constitutional limits of *Miranda*, *Escobedo* and the others the admission of both crimes would be admissible."

"If you find voluntariness and counsel, then does it meet procedural requirements of mens rea?"

"Under the Code of Criminal Procedure there is the necessity of corroboration where you have a confession; corroboration that the crime was committed. You do have the victim, so the only question is, —did this defendant commit the crime."

"Whose confession?"

E. J. N.

PLACEMENT NOTE

All students and graduates who have left an application with the Placement Office must notify the Office as soon as they obtain a position.

Landmark designation

A taking without compensation

by RICHARD FALICK

One might expect that the designation of a person's property as a landmark would greatly increase the value of the property. If you expect that, you are wrong. Once your own parcel of real estate is declared a landmark by the New York City Landmark's Preservation Committee, your parcel of real estate is not really your own any more. For once the landmark determination is made at an administrative hearing, the building so designated may not be demolished and its exterior may not be altered without prior approval of the Landmark Preservation Commission. The owner of the landmark may sell it or alter the interior or sell the entire building, but the vendee would be subject to the same restrictions imposed by the Commission.

An owner of a building does not have to request that his property be declared a landmark. The Commission on its own instigation and investigation or on the petition of a civic minded group or individual may determine what buildings to consider for possible designation as landmarks. After that initial determination, the Commission gives notice to all interested parties of an administrative hearing to determine if landmark status will be conferred. The owner of the building so designated is not compensated by the City and may not reject a valid determination.

This procedure has been upheld by a Special Term of the New York State Supreme Court, in *The Matter of Manhattan Club v. Landmark Preservation Commission of the City of New York*.

This case is a good illustration of the consequences that an owner and a contract vendee of a building so designated may suffer.

This case involves an attempt to avoid the landmark designation of a building at 32 East 26 Street, Manhattan, formerly occupied by Jennie Jerome, mother of Winston Churchill and now owned by the Manhattan Club. The Club had been losing money and the trustees had decided to sell the building. A Contract for sale (\$600,000 purchase price, \$50,000 paid on signing) was signed on April 22, 1965. By the terms of the contract, the vendee, who had proposed to raze the building and construct a 33 story structure, was to take title on April 15, 1966. The Club was notified by the Landmarks Preservation Commission on September 2, 1965 that a hearing would be held on September 23, 1965 respecting the proposed designation of the Club's building as a landmark.

Representatives of the Club and the vendee appeared at the hearing and voiced their opposition. The designation was made on November 23, 1965.

The Club brought suit to set aside the Commission's determination and contended that the designation constituted a deprivation of property without due process of law and a taking of private property without just compensation and an impairment of a pre-existing contract to sell the property.

It is obvious that the Manhattan Club has lost something as an owner of real property. As Professor Meahan has explained in his Real Property lectures, ownership of real property is like owning a large bag filled with an infinite number of sticks, each stick representing a right appurtenant to that property. One of those rights is the right to tear down an existing structure. The Commission has removed that right. Until the designation on November 23, 1965, any owner of the fee, subject to agreed to encumbrances, at 32 East 26 Street, Manhattan, could have razed the building that stood on that plot of land. This is more apparent, as the contract vendee would not have agreed to buy the site with the purpose of tearing down the existing structure and erecting an office building unless such right was in existence. The Commission has removed this right, or at the very least, qualified it, by its determination and in upholding the Commission, Justice Marks in the above action stated, in regarding the taking of property without compensation argument, "The Club is free to do as it pleases with the interior of the building. It is guaranteed a reasonable return on its investment. And if no plan can be devised to materialize this guarantee, it may make such changes as it wishes."

According to Chapter 8A, Local Law No. 46 (1965) which establishes the Commission, "Where a building is incapable of earning a reasonable return and the Commission is unable to devise a satisfactory scheme for its preservation, provisions are made for condemnation, purchase, or permission to demolish." What the law doesn't explain is what a reasonable return is and to what ends the owner must follow plans of the Commission to achieve a profit making scheme. It also appears that if a building so designated is a reasonably profitable operation, condemnation, purchase or permission to demolish will not be

granted by the Commission. Thus, if the Club was making a reasonable profit and continued to do so, it is quite possible that it would never be permitted to raze the structure for any reason beneficial to the Club. Is this not a taking of property without just compensation?

In answering the question in the negative, the Court likens a determination of the Commission to the promulgation of an ordinary zoning ordinance and contends that it is no more a taking of property without just compensation than would be a restrictive zoning rule. The Court, however, fails to point out that a zoning ordinance is very rarely directed against a single parcel of property and usually does not bear the same restrictive consequences as does a landmark designation.

The Court also ruled that the Club's contention that the contract had been impaired was not supported by the record. "There was no showing that the vendee has refused or will refuse to take under the contract or that it has suffered or is about to suffer any loss under the contract because of the designation." A better course for the Club to take might have been to bring an action for specific performance against the vendee. But where does that leave the vendee? He has contracted to buy real estates for \$600,000. The designation was not made until he had entered the contract and made a down payment. If the resignation stands, he is thwarted in his avowed purpose to demolish the building because if he takes title, he takes subject to the landmark status of the building. If Justice Marks' decision is upheld, attorneys will have to include a protective clause against landmark determinations in contracts to purchase real property. However, this would not protect a vendee if determination takes place after title passes.

In support of the Commission's authority, the Court says "... all contracts are subject to the police power of the State and when emergency arises and the public welfare requires modification of private contractual obligations in the public interest, the question is not whether legislative action affects contracts incidentally, or directly or indirectly, but whether the legislation is addressed to a legitimate end, and the measures taken are reasonable and appropriate to that end."

The Court bases much of its ruling upholding the authority of the Commission on the United States Supreme Court case of *Berman v. Parker* 348 U.S. 26, 1954, where that high tribunal upheld the subjective determinations of a District of Columbia urban renewal board. However, here again, the Court leaves out an important distinction. The property owner in that case was fully compensated in condemnation.

Further problems exist other than the immediate removal of an implicit property right. The court supports part of its decision on the ground that the legislature has the right under the State police power to enact into legislation laws that promote public welfare, and authorization for the Commission comes under such legislation. The problem that develops is in what manner and operation is such legislation to be effected? Will the Commission have unrestricted power to decide what is and what is not a landmark, and is such designation to be made prior or subsequent to any threat of a landmark being demolished? Obviously if a building is not to be designated until a threat of its destruction occurs, many more contracts will be inequitably frustrated and eventually breached in a large and ever growing city such as New York.

The court has ruled that the Commission has complete power to designate. Speaking of the hearings held by the Commission prior to its designation, the court said, "The architectural, historical, and aesthetic values of the improvement were fully established, and the court may not substitute its judgement for that of the administrative agency." Such power in the hands of an administrative agency in a field which is entirely subjective leaves the owner of a designated piece of property with little or no legal recourse.

At best the situation as it exists now is unfair and chaotic. Unfair, because the City is able to gain control and, in effect, buy a building without paying for it. Or if forced into paying has caused a delay in allowing an owner to quickly remove himself from an unprofitable venture. Chaotic, because one administrative agency has been given a great deal of power in the subjective field of the art of architecture and historic value; and such power has allowed the taking of property rights without fast and adequate compensation, and has caused the frustration if not the impairment and breach of existing contracts.

Book at the Bar

Continued from page 2

tions. The defendants, private individuals and corporations, alleged that hundreds of performers were "Stalin's little creatures". And they cited *proof* (the defense of truth was disallowed at trial) of attendance at various functions, memberships in organizations, contributions and personal associations which were falsely labeled "communist."

The mere accusation effectively barred appearances on radio and television. This was accomplished through the networks, which—Charles Collingwood testified "didn't have very much guts," through advertising agencies, and through sponsors who feared having their products identified with communism.

Once blacklisted, stars became unemployable. Some victims were, however, given the option of buying clearance.

The Faulk case is interesting for the drama, the legal principles, and the implications. Mr. Nizer gives the layman adequate explanations as he goes through six years of pleadings, motions, examinations before trial, direct, cross and redirect examination.

However, Mr. Nizer is wearing too many hats. He is lawyer, author, philosopher, social critic and puts too much of a burden on the reader to determine which he is in any given sentence.

There are points where it appears that the author had a set of index cards with good lines that had to be placed somewhere:

"Law doesn't run any more smoothly than love."

Student v. Internal Revenue

Continued from page 4

Street lawyer, and it is only in furtherance of that noble profession, law clerk, that I entered law school.

Examiner: Humbug! The Internal Revenue Code clearly provides that educational expenses are only deductible in furtherance of one's present profession, not to achieve a new status, and that is clearly your case.

Student: But sir, I have read several cases where law school tuition deductions have been allowed.

Examiner: Well, that's different. That's because those fellows weren't going to law school to become lawyers.

Student: They weren't!?

Examiner: No, they were going to further their professions.

Student: Do you mean that those men never took the Bar Examination and were never licensed?

Examiner: No, they did that.

Student: Well then how can you say they didn't want to become lawyers?

Examiner: We carefully examine the facts of each case and then decide. For example, were you fully qualified for your job when hired? Or did going to law school qualify you? Or in simpler language, did going to law school make you more qualified or not? Or, you see you have to be fully qualified when hired and law school has to make you more qualified or it can't be allowed.

"Seeing is believing in court, though in church the reverse is probably true. There one must believe in order to see."

"It is a symbol of our complex society that institutions designed to take care of the troubled, whether they be hospitals or courts are inadequate in size to accommodate them."

While being prepared for the roadblocks in litigation, we are treated to the rhetorical questions of how many millions would be alive if Hitler had been killed in the thirties? What if Lee Harvey Oswald had been found laying in wait?

The book attacks guilt by association and by inference, polemics where they are irrelevant. Yet Mr. Nizer, courtroom champion of civil liberties, in describing an admitted former Communist offers: "I have always believed that a man's acceptance of communism... renders him unworthy of trust... Communism, despite its pretended garb of economic idealism is another form of the oldest tyranny in history, which subjects the individual, forfeits his freedom, and deprives him of self-expression. Any man who could adopt such a credo has a defect of character..."

Some of Mr. Nizer's epigrams are not only amusing but also pertinent to his book. "It is my duty to speak," said a preacher one, "and yours to listen. But if you finish before I do, please let me know."

Student: Law school is not allowed?

Examiner: No, your job is not allowed.

Student: You say I had to be fully qualified when hired and law school has got to give me additional qualifications? Isn't there a contradiction there?

Examiner: Certainly not. That's right out of the Code and what can be clearer than the Code? And if you were already attending law school when you were hired you can't say you are going to law school to better qualify you for a job you already had when you started school.

Student: Aha! I was already working for the lion of traffic court before I began school.

Examiner: Well then, that's no good because you didn't have to go to school to become more qualified.

Student: But my boss knew I would be going to law school.

Examiner: Oh! So it was a precondition of employment. That means you weren't fully qualified when you were hired. Disallowed.

Student: Suppose we didn't have an understanding about my going to law school. Would that be all right?

Examiner: Absolutely not. That means it wasn't necessary for you to go to law school. Disallowed.