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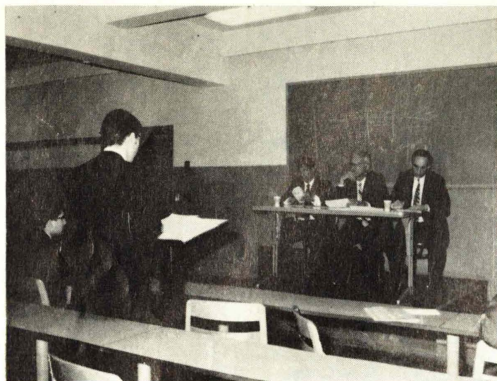
THE JUSTINIAN

BROOKLYN LAW SCHOOL

Vol. 28, No. 4

MAY 21, 1968

BROOKLYN, NEW YORK



Finals of second year Moot Court.

Student-Run Moot Court Draws To Successful Close

The highly successful Moot Court program which for the first time was organized and run by the students came to a close on April 24. The hope that the running of the program by the students themselves would generate greater student participation proved to be true. The school and the student body should give their congratulations to Prof. Farrell and his committee for an outstanding job.

(Continued on page 6)

Judge Sidney Squire Not A Typical Judge

by Roger Adler

If one reads the New York Red Book about Judge Sidney Squire of the New York State Court of Claims, he comes away impressed if not awed at the accomplishments and activities of the Judge.

One sees that he was born in



Judge Sidney Squire

Manhattan in 1906, and that he began to work in a law office when he was fifteen. He was graduated from Brooklyn Law School in 1928, and was admitted to the Bar that same year. The record goes on to tell of religious organizations he heads and those in which he participates actively, of his chairmanship in 1953, 1954, and 1955 of the Democratic Judicial Convention for the Second Depart-

ment, and of his service as Executive Deputy Secretary of State during the term of Averell Harriman. The record then relates that on April 30, 1956 he was appointed to the New York Court of Claims to fill the term of retired Judge George Sylvester, and that he was reappointed to a full nine year term in 1958 by Governor Harriman.

In 1967 he was reappointed to another nine year term by Governor Nelson Rockefeller. This followed the recommendation of the Committee on Judiciary of the New York State Bar Association. The group noted that of the Judge's 1,100 trial dispositions there were only six modifications of judgments. Judge Squire's reappointment raised some political eyebrows insofar as it was a case of a Republican Governor reappointing a powerful State Democratic leader. Here was an example of personal merit conquering tawdry political connivances. But numbers grow cold, and long lists of accomplishments soon boggle the mind, and men are judged by what they do for others, not for personal aggrandizement.

I have been acquainted with the Judge ever since I went to elementary school with his son, Walter. In all these many years, I cannot remember anything resembling a boast or a playing up of reputation. When we would be called on in school to tell what our father did

(Continued on page 4)

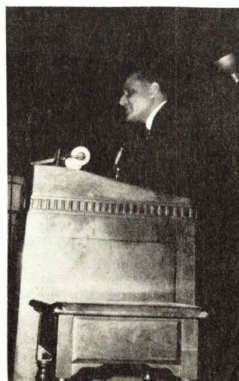
Law Day Speaker Percy Sutton Ask's For A Legal Peace Corps

by Roger Adler

Percy Sutton returned to his alma mater on April 26, to share in Brooklyn Law School's observance of Law Day. Perhaps his greatest service was his reminder to the overwhelmingly white middle class audience was that just as law and order must prevail, "we must have justice".

Mr. Sutton, now Borough President of Manhattan, reminisced about his own days at Brooklyn Law School in the Evening Division. One had to come away impressed with his steadfast devotion as he told us he worked eight hour shifts with the Post Office Dept. and the N.Y.C. Transit Authority to support himself and his family while attending law school.

The speaker made his remarks relevant to today with departures from his prepared speech in regards to the approval by the Board of Estimate of a proposed sewage treatment plant which is to be constructed at the northern boundary of Harlem "This merely serves as a monument of the powerlessness of Harlem." Mr. Sutton also made references to the tumult and confusion on the campus of Columbia University. He pointed out that the current upheaval had gotten beyond the single protest of a university encroaching upon a public park to construct a gymnasium complex. He showed that the powerlessness of the black community was again demonstrated by the design of the gymnasium. The main entrance is designed to face Columbia, while a "back door", reminiscent of a service entrance, will face Harlem.



Hon. Percy Sutton Addressing B.L.S. Students



Percy Sutton congratulating Law Day Chairman R. Jackson.

He went on to warn that it takes more from white politicians such as Mayor John Lindsay, than walks through Harlem when trouble flares, to maintain law and order, and justice. Sutton pointed out

that Lindsay voted for placing the sewage disposal plant on the northern boundary of Harlem. Thus, affirming the belief that when upheaval and redevelopment are necessary, the black community can still be "dumped on".

In a step, obviously coming in the wake of the assassination of Dr. Martin Luther King, Dean Prince announced that the Board of Trustees had approved a full tuition and books scholarship for a selected Negro student in honor of Dr. King. There are many other ways that Brooklyn Law School can be brought, kicking and screaming, into the movement towards equal rights for all.

The Law School must go beyond the areas from which it now draws its student body, and actively encourage and seek out students from minority groups. Those who now lunch at Gage and Tollner's must go into the nearby ghettos of Fort Greene and Gedford-Stuyvesant and bring law and Brooklyn Law School to the people who need us most. We must, as Percy Sutton, pleaded for, formulate a "legal peace corps" to aid these people. When men such as Attorney General of New York Louis Lefkowitz or Borough President Percy Sutton speak at Brooklyn Law School, the aforementioned communities should be informed, encouraged, and invited to attend.

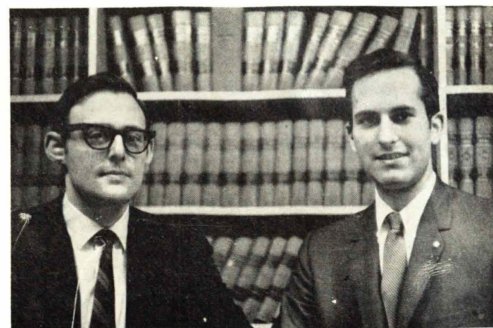
For if we do not, we will have only ourselves to blame for the consequences.

New Justinian Editors Appointed

Donald S. Hecht and Louis Pepper have been appointed Co-Editors in Chief of the Justinian. The appointments are effective June 20, 1968.

Mr. Pepper, a first year student is a graduate of Brooklyn College and has been active in the first year Moot Court program and SBA activities.

Mr. Hecht, a second year student has served as Managing Editor of the Justinian this past year. Mr. Hecht, graduate of Hofstra College, has been an active member of the school's honors program. Mr. Hecht and Mr. Pepper, have stated that it is their desire to see the Justinian expand to six issues per year, and are now looking for first and second year students who wish to join the staff.



Justinian Co-Editors, l-r. Donald S. Hecht, Louis Pepper.

THE JUSTINIAN

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Vol. 28, No. 4

MAY 21, 1968

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Professor Milton G. Gershenson

Faculty Advisor

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Louis Pepper, Myron Schonfeld, Henry Jorisch, Michael
Wolin, Roy Liberman, Roger Adler, Bernard Kobroff.

Speaking Out

One year ago, when the present editors assumed leadership of the Justinian, we announced our intention to offer our readers a newspaper which would be provocative as well as informative, written in a style having imagination and flair and which would justify the trust placed in our hands. With the publication of Vol. XXVIII No. 4, operation passes to a new and eager group of leaders. It remains for the Law School community to judge whether the accomplishments of the retiring editors have fulfilled the goals established last spring.

We wish to voice particular appreciation to the faculty and administration for their assistance and interest. While the Justinian has a faculty advisor, neither he nor the administration exercised a pre-censorship function. This has allowed the Justinian to exercise complete freedom of selection of material and statement of opinion. But this freedom has not resulted in a loss of rapport. We have never found a professor's door closed when we sought information or advice. For this we are grateful and express our sincere appreciation.

However, in all truth, we cannot voice the same appreciation to the alumni and to the student body as a whole. Once again, the all too familiar pattern of indifference prevailed. All too often the student motto, "think not what I can do for the school, but only what the school can do for me", raised an insurmountable barrier.

It is a barrier which must come down if this school is to gain the recognition and respect that everyone wishes it had, but unfortunately does not.

In all fairness, all groups must share the blame for this attitude which hangs over the school like the early morning smog hangs over the N.Y. skyline. As stated no one group can be singled out for the blame, but upon the student body as a whole (which includes the Justinian and the SBA) and the administration, the largest share must fall.

There is a great need for the development of a better relationship and understanding between these two bodies. The barrier that exists between them must come down, and a development of greater respect and pride in the school must come about.

It is the hope of the Justinian, that with the new building serving as the needed incentive, this understanding, respect and pride will develop, and with it greater achievements for Brooklyn Law School as an institution of legal studies and for the graduates of the school.

It is the hope of this paper that never again will this school be insulted as was recently done in a N.Y. newspaper and more important never will such an insult go unanswered by the administration and most important the student body.

The Justinian wishes to add, that any failing we may have had, will not be laid at the feet of our successors, and that they will begin their task with full reader support.

The retiring editors wish to extend to the new Board congratulations and best wishes for a high measure of future success, and to all the graduating seniors may your careers be as successful as you make them.

Professor Gershenson

"I felt a responsibility towards the school"

by Louis Pepper

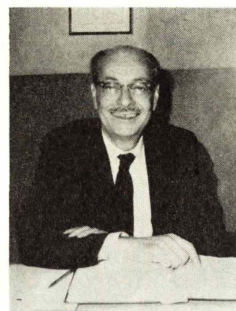
While some men pass through a lifetime serving none, there are some men who make one lifetime seem as seven and serve all men while serving none. Servant of all and yet of none is Professor Milton G. Gershenson.

A graduate of CCNY and the Brooklyn Law School (LL.B., S.J.D.), Professor Gershenson did not always aspire to the legal profession. Had it not been for the Depression and his innate intellectual curiosity, the Professor might very well have been an alumnus not of Brooklyn Law School, but of the Juilliard School of Music—a concert pianist rather than a pedagogue.

His years since joining the faculty in 1935 have been distinguished and were interrupted for a tour of duty during the Second World War. A graduate of Army R.O.T.C., the then Lt. Gershenson was called from his assignment with the Selective Service System to do duty in the Coast Artillery, followed by a tour in Civil Affairs and highlighted by his long association with the Judge Advocate General's Corps.

As a Civil Affairs officer, Capt. Gershenson was sent to Europe and was given the task of creating order and stability where the holocaust of the war had left only desolation. In the first phase, Capt. Gershenson was assigned as a military assistant officer in France and was responsible for the prevention of conflict between the citizenry and the military. In the second phase of his assignment, he was charged with the repatriation of displaced persons in Europe. There was an overwhelming absence of any rolling stock, an absence too well evidenced by the millions of persons who lined the battered highways. It was not uncommon for Capt. Gershenson to be called upon to provide a whole hospital or a complete telephone system, items not readily available even upon requisition by a Captain. It was among those displaced masses that Capt. Gershenson met and married Mrs. Gershenson. For his efforts in the performance of his assignment, Capt. Gershenson was decorated by the Governments of the United States, Belgium, France and Italy.

From Civil Affairs, Capt. Gershenson was assigned to work strictly for the J.A.G.C. participating in the creation of the 1951 Revised Code of Military Justice. From 1949 to 1959, Major Gershenson served as Director of the Reserve Judge Advocate Training



Professor Milton G. Gershenson

Program for the N.Y. Metropolitan Area, his last assignment being in the Field Judiciary Branch. Lt. Col. Gershenson was retired from the JAGC in 1963, receiving a Department of the Army award for distinguished service.

As a civilian, Professor Gershenson's professional contributions have been substantial. He has served for over 10 years as a consultant to the Matrimonial Law Committee of the N.Y. State Legislature; as a lecturer on Criminal Law and Domestic Relations at the Practising Law Institute since 1950; as a Special Hearing Officer of the U.S. Attorney General for conscientious objectors from 1956 to 1967; as assigned counsel for indigent criminal appeals; as a panelist at the Annual N.Y. Judges Conference (with Professor Thornton and Dean Prince); and has been paid the tribute of having an article on "Collateral Estoppel in Criminal Law" 24 Brooklyn L.Rev. (1957), cited by the U.S. Supreme Court, the lower courts and text writers. He is a member of the ABA and the Association of the Bar of the City of New York.

The extra-curricular program at the law school has been under the supervision to a great extent by

Professor Gershenson. He serves as faculty adviser to the Law Review, Justinian and Moot Court programs. The Professor is also one of the oldest living members Iota Theta Law Fraternity.

The Professor emphasized one particular quality of the law school which is a continuing source of pride to him. No applicant has ever been denied admission on the basis of discriminatory practices nor has any one been denied an education at the law school for lack of funds.

In commenting on the function of the law school, the Professor looks to the dynamic ethos of our society and sees in it a widening divergence between theory and practice. This divergence illuminates clearly the challenge to legal education—the need for parallel apprentice programs and expanded clinical programs. The lawyer is a specialist by training as well as by necessity. To be an effective adviser however, the law student should not be permitted to elect himself out of the basic courses. Electives are an important part of a legal education but are at best an adjunct and cannot take the place of the broad exposure provided by a thorough core or required basic courses.

The student today, observed Professor Gershenson, is more complex, more worldly. Legal education since W.W. II is no longer restricted to the sons of the wealthy. To better provide for the task of equipping the law student for his role as a societal adviser, the Professor looks to the promise which the new home of the law school holds for the future. He envisions the law school as the center of operations for numerous community legal programs.

The measure of a man is perhaps best to be found in the motives behind his actions. Thus Professor Gershenson's reason for devoting virtually his entire adult life to the Brooklyn Law School is expressive of a deep humility and of a simple nobility. "I have remained at Brooklyn Law School because I am a career teacher and I feel a responsibility and a pride in its continued growth."

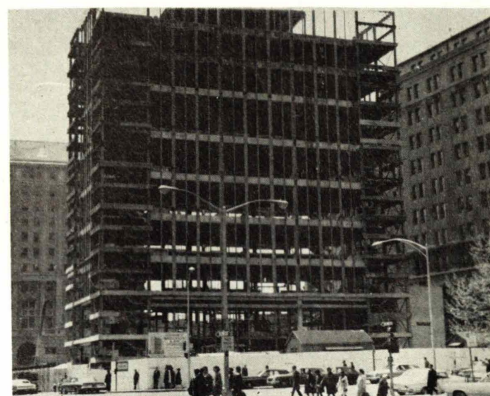
A Memo To Brooklyn Law School

WHEREAS:

We the class of 1968
having survived three years
having been put through law
school

by our parents, wives, professors
having married
having started families
having lost our hair
are still obsessed with the draft
never got into the new building
are known by the grades we kept
remember our first term study
groups

fondly recall the classes unex-
plainably cut en masse
Do hereby pay tribute to ourselves,
without whom there would be no
CLASS OF '68.



The Law School we hope to see.

Book at the Bar

by Michael Wolin

PRIVACY AND FREEDOM. By Alan F. Westin, Atheneum, New York, 1967, \$10.00.

At the present juncture in the history of our democratic society, more than at any other time, its fundamental commitment to the sanctity of the individual is threatened. This threat comes not, as might be expected, from the external force of communism, but rather from forces within our own society. As a result of our ever-increasing technological advancement coupled with a rapidly accelerating centralization in both the public and private sectors, the individual is faced with a direct challenge to his basic right of privacy.

Alan Westin analyzes this crucial problem in a comprehensive and creative manner. He examines the concept of privacy, and why its preservation is so basic to the development of the individual in a free society. He discusses the various means of privacy invasion, including wiretapping, electronic eavesdropping, psychological testing, and the increasing use of computerized personal data storing. The author clearly shows that the privacy of the individual is today comprised of both public and private persons who invade the thoughts, feelings and attitudes of the individual.

The real worth of this book lies primarily in its perceptive presentation of each facet of privacy invasion—the way it is accomplished, the controversy surrounding it, and the present means of controlling it, and the author's proposed remedies.

Alan Westin defines privacy as the claim of an individual to determine for himself when, how and to what extent information about him is communicated to others. All methods of privacy invasion are pernicious in that they circumvent this voluntary quality, and hence usurp individuality. The author states that the very survival of our democratic society depends on preserving this individuality. That which sets apart one individual from another is his independent thought, creativity and non-conformity. These traits can only be developed when his privacy is respected. In that state he is free to think, experiment, and test his ideas free from ridicule and fear of penalty which might arise from premature or unwarranted disclosure.

As with all rights in a free society, however, privacy is not an absolute. In order for society to function there is a need for surveillance so that society can enforce its norms and protect its citizens against the dangers of criminal ac-

tivity. It is the attempt to balance the legitimate demands of privacy against the need for crime control that is the genesis for much of the current controversy over privacy invasion. A causal factor in heightening this conflict has come from the vastly expanded use of eavesdropping devices which are so technologically advanced that they would make Agent 007 envious.

The most common method of eavesdropping is through the use of microphones. Although this is not a new device, recent technology has reduced the microphone to ultra-miniature sizes so that its potential for "snooping" has become almost limitless. Microphones can be hidden in all types of places, from telephones to flower pots. New devices, such as the laser microphone, more clearly reveal the amazing application of science to this area. This device emits from its source (which can be many miles from the target) an infra-red laser beam, a mere quarter of an inch in thickness. At the target, a two inch mirrored modulator, secretly planted there, functions to send the beam back to its source. When the beam is returned from the target it has been changed by the sound waves produced at the target under the surveillance so that the conversation can be reproduced. There is a great diversity of these eavesdropping devices which are inexpensive, readily available and easy to use and install. Their use is widespread among the police, government agents not directly involved in crime detection, and by private persons for purposes of snooping illegally unrelated to crime control.

Although there is a legitimate area for use of these devices in combating certain types of crimes, Westin finds that there has been a dismal failure on the part of state legislatures and Congress to pass workable legislation defining the legitimate boundaries between lawful surveillance and privacy invasion. As of 1967 fewer than a dozen states had drawn effective statutes to control eavesdropping. Congress has taken no action, but rather has allowed a legislative void to come into existence, a void which has been filled, thus far unsuccessfully, by the Supreme Court.

The author feels that the entire problem of privacy invasion is soluble. The primary responsibility for the solution lies with the legislatures. Time is growing short. Unless action is taken soon the fundamental structures of a great free society will be undermined. Alan Westin's book shows that this need not be the case.

Teachers Critical Profession

A recent decision by the Selective Service for New York City to classify teaching as a critical profession may have a dramatic effect on deferments for those who will graduate law school this year.

It should first be noted that the teaching profession as a profession is being classified as critical and not per se the individual teachers. The deferment of the individual who is teaching or will be teaching will still be left up to the local

draft board who will judge each case on its individual merits. However the classification of teaching in New York City as critical cannot but help raise the odds in favor of those who will be seeking a deferment for teaching.

It is important to note that a letter is needed from the Director of Education stating that you are teaching and that your appointment as a teacher is necessary and vital

(Continued on page 4)



A Case of Libel

The author of this article served as Editor-in-Chief of The Justinian from June, 1965 to June, 1967, by LOUIS R. ROSENTHAL, '67

A few weeks ago—about the same time my school was libelled by the *New York Post*, I met one of my former classmates who is now employed by the City. In an apologetic tone, he explained why he did not have a better job. As he put it: He was from Brooklyn Law School. He had lousy marks. He was Jewish. After repressing a sudden urge to ask him if he was sorry that he was not also Segro, thereby establishing a complete defense at uncommon law, I wished him—appropriately—luck.

I would not even relate this stupid incident if I did not believe that many of my alumni brothers are afflicted with the same sickness, and not without some reason. I will say that if I had been in the mood at the time my former colleague at BLS had complained the story of his professional life, I would have told him a thing or two. Instead, I'll tell it here.

After dismissing, for the purpose of this essay, the issue of anti-Semitism, we will direct ourselves to the remaining barriers: to a good job: (1) Lousy marks (2) Brooklyn Law School.

(1) Lousy marks are no help in getting a good job!

(2) Merely stating that you are a Brooklyn Law School man as opposed to a Harvard man or a Marlboro man or an Acqua-Velva man, won't, by itself, be much help either.

(Continued on page 4)

LSD Meets In Washington

On March 22, students from BLS attended the annual regional conference of the Law Student Division of the American Bar Association in Washington, D.C. Sheila Feldman, Arthur Chotin and Michael Hughes represented the Law School, and Andrew Cramer attended as the retiring National Vice President of the Second Circuit, which includes New York and Connecticut. In attendance were student delegates from law schools of the eastern part of the country.

Among the activities in which the students participated was a briefing on the Middle Eastern situation by a State department Official, a tour of the Supreme Court and luncheon at the Senate.

The 2nd Circuit passed a resolution calling for speedy passage of the pending Congressional Bill on Open Housing. Resolutions were offered both opposed and favoring the Johnson Administration's conduct of the war in Viet Nam, but after hours of bitter floor fighting, neither was adopted.

One of the main themes running throughout the conference was how the LSD of the ABA could be

A New Approach For The Brooklyn Law Review

by Robert S. Markfield

The purpose of a law review is to provide a literary forum for scholarly works on legal subjects, which are of interest to the legal community. The worth of any article in a particular review or the general demeanor of an entire review will be dependent on the quality and intellectual expressiveness of the author's writing and research ability. When the law review selects and publishes the best writing available the respect given it that law review is enhanced and with it the reputation of the law school.

The basis of selecting students at Brooklyn Law School to write for the Brooklyn Law Review is initially based on the students grades as opposed to his legal writing ability. While the articles submitted by these select students are then judged on their literary quality, this method of selecting, limits the selection of articles to that of a very limited group of students. As such, the caliber of each students endeavor can only be compared with those of this group. The result of this limiting classification is that students of possibly equal or superior research and creative writing ability are precluded from contributing to the Brooklyn Law Review.

This is not to say that those students whose articles are accepted are not competent. Rather, that the system deprives students of equal or superior skill from submitting articles for Law Review consideration and thus depriving these gifted students of a forum of expression and recognition, is the loss by the Law Review of possible superior articles and of additional merit to the Review itself.

To rectify this present situation the following suggestions are made:

1. That at the beginning of each semester, and at the beginning of the summer vacation a general meeting be held for those students who are interested in submitting articles for consideration and possible publication by the Law Review. That at that time, areas of interest which the editorial board has decided to pursue will be presented and those students who wish to research and write in the areas may do so. That whether these articles will be accepted for publication will be decided in the same manner that is currently being used.

2. That any student be allowed to submit for consideration an article, covering any legal area, but that such article must meet the standards imposed for all other Law Review publications.

These methods of selecting Law Review articles should supplement the present system of selection. As such these proposals could in no possible way detract from the present quality of the Brooklyn Law Review, but could only tend to improve it.

Michael Hughes SBA President

The following students were elected to head the SBA for 1968-69.

President: Michael Hughes

First Vice President: Joyce Leslie

Krutick

Second Vice President: Sheila Feldman

Treasurer: Joseph Silver

Rec. Secretary: Patricia Thompson

Corres. Secretary: Alexander Singer

Student Aid Co-Chairman (Day): Richard Schneyer

Student Aid Co-Chairman (nite): Randolph Jackson



B. Lr. Arthur Chotin, Sheila Feldman, SBA Pres-elect Michael Hughes and Andrew Cramer.

more responsive to the needs of the individual law student. To this end, seminars were held on moot court programs, school newspapers, school placement services, freshman orientation, student bar financing and the institution of an ABA student loan program.

Since Sheila Feldman and Michael Hughes will again represent the school at the national conference this summer, anyone wishing

additional information or interested in actively participating in the organization should contact them.

Student members are urged to make use of the vast resources of the organization by requesting the helpful materials listed in the Law Student Journal, the monthly publication that all members receive. Applications are available in the Student Bar office for students who are not yet members.

ALUMNI IN THE N-E-W-S Application of Schwartz

1964

JOHN L. BUTLER was appointed attorney in charge of the Brooklyn Legal Services Program Fort Greene office.

1965

JACK WEINBERG was appointed law clerk to Hon. Thomas F. Croake, District Judge Southern District of N.Y.

LOUIS FRANK is assistant and counsel to the Hon. Percy E. Sutton, President, Borough of Manhattan.

1966

MICHAEL H. SHANAHAN, after having worked for Xerox in Rochester, has taken a position as patent attorney with Seed & Barry in Seattle.

ANDREW E. GOODALE is now an attorney in the Civil Branch of the Legal Aid Society.

1967

IRA LEITEL is now law clerk to Hon. Charles H. Tenney, Dis-

trict Judge Southern District of N.Y.

STANLEY J. HOCHBERG was sworn in as Asst. District Attorney in Kings County.

1968

JULIUS S. MOSKOWITZ, '27, N.Y.G. councilman sponsored the recently passed "truth in advertising" law. New York is probably the first city in the United States with such an advertising law. The law which becomes effective July 1, is aimed at "deceptive advertising practices" in the area of pricing and covers just about every printed pitch from newspaper ads to throwaways. Under the new statute an advertiser is forbidden to make any claim in newspapers, magazines, circulars, pamphlets, catalogues, store displays, letters or handbills that the advertisers cannot prove are true. Credit should be given to Prof. Morris D. Forkosh of Brooklyn Law School who served as constitutional consultant to the bill.

DANIEL L. MEYERS '66 was the chosen recipient of the Reginald Heber Smith Community Lawyer Fellowship. This fellowship program is sponsored by the Pennsylvania Law School, University of Michigan Law School, and the U.S. Office of Economic Opportunity. The Community Lawyer Fellows will spend one year in a neighborhood law office rendering legal service to the poor. The fellowship year will begin August 1968 with a month long training seminar at the University of Pennsylvania or University of Michigan Law Schools, studying developing areas of law affecting the poor and the community lawyers role as advocate for the poor. The salary for this one year fellowship is \$8,000-11,000.

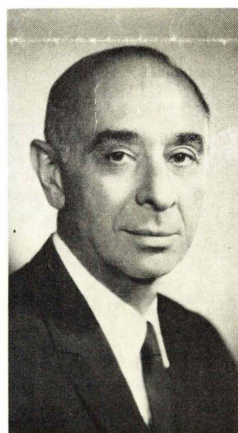
CONO R. NAMORATO '68, has been accepted by the Attorney General's Tax Division in Washington.

ROBERT ZUCKERMAN '68, has been accepted by the Attorney General's Office, Anti Trust Division.

MARTIN L. SCHMUKLER, '68, has become an asst. District Attorney for the N.Y. county office.

DANIEL BERGSTEIN '68, has been appointed law clerk for Judge E. Dimock, Southern District Court, N.Y.

Attorney General Louis Lefkowitz Speaks At BLS



Attorney General Louis Lefkowitz

Attorney General Louis Lefkowitz and two of his department heads gave a short talk on March 29, and answered questions concerning the workings of his office.

The talk and questions centered around the regulatory functions of financing of real estate ventures, and "Broadway" shows, and the regulation of charitable trusts.

Attorney General Lefkowitz also spoke of the Attorney General's summer office program for law students. The program is open to both male and female students and no political recommendation is needed. Although the salary is low, the legal experience gained from the program more than makes up for it, and the time spent will serve as a strong consideration for a post graduate position.

Teaching, Critical Profession

(Continued from page 3)

for the N.Y. educational program and for the national welfare. The individual should note that this letter will have No Effect until you are actually On The Job and teaching. Thus in the majority of cases it will be impossible to get such a letter until Sept. and thus you will still have the summer months to worry about. It is advisable however, that those persons who get appointments during the

summer and even though will not start work until Sept. to get a letter from the principal stating that you will begin teaching in Sept. While this will not have the effect of the letter of the Dean of Education that has to be sent to your board in Sept. it will inform your board of your position and thus aid you in any appeal that you might have to make during the summer months.

Attention Students

IV-10 Military Service Credit

a. If a student registered in an approved law school has been in regular attendance upon lectures and recitations during at least one-half of any semester, session or quarter, and before the completion thereof enters the armed services of the United States, the school may, in its discretion, and upon proof that the student has taken reasonable steps to defer his entrance until the end of the aforesaid semester, session or quarter, waive attendance upon lectures and recitations during the remainder of such semester, session or quarter, and grant full credit therefor, without examination, if the student is in

good standing at the time of his withdrawal; provided that such waiver of attendance shall in no event exceed eight weeks.

The Justinian has been informed by the administration that the above section of the RULES OF THE COURT OF APPEALS FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS AT LAW will be enforced for any student who finds himself coming under the above section. If a student does find himself in a position where he might need the aid of the above rule please get in contact with the school administration.

Never A Typical Judge

(Continued from page 1)

for a living, Walter would say "lawyer" or "works for New York", and that would be all. For if there are words which characterize the Judge, they must be modesty and hard work.

I asked the Judge why he chose to enlist as a private during World War II. When a man is 35 years old, married, and has poor eyesight he has a potentially "good thing going" if he wants to sit out the war. Yet he left a prosperous law practice, because he was "an American, an observant Hebrew, and felt he had to serve".

This merely points to a man who has striven to do what one could call "the right thing". As strong as his religious convictions have been, and he has served as director of the Jewish Education Committee of New York, he has always been

a strong advocate of individual freedom and brotherhood. In implementing such beliefs he has functioned as Chairman for the National Conference of Christians and Jews. A man who, by invitation has lectured on "Trial Techniques" at the law schools of Harvard, Cornell, New York University, and Columbia University, and on programs of the Practising Law Institute, still he finds the time to take out the college son of a member of his synagogue for a "good meal", while presiding upstate.

The Judge lives in the Flatbush section of Brooklyn with his wife, the former Helen Friedman. He has two sons Walter who is married and enrolled at Columbia University Law School, and Jason who is completing his third year at Syracuse University.

Application of Schwartz

Application of Marie Antoinette SCHWARTZ, Petitioner, for an order pursuant to Article 78, CPLR, directing the Commissioner of Education to reinstate the petitioner as a student in good standing at a State-supported Educational Institution v. Barnard E. DONEVEN, as Commissioner of Education, Respondent.

Court of Appeals of New York

April 1, 1969

Proceeding under CPLR 7801 et seq. in which petitioner seeks reinstatement upon her dismissal from the State University at Stoned Creek. From an order of the Appellate Division Fifth Department denying relief, petitioner appeals.

Schools and School Districts 2260(45)

Where evidence supported finding that student's behavior was ideologically consistent and motivated at least in part by a sincere desire to renovate ancient concepts of morality, determination of state commissioner of education would be subjected to severe scrutiny and student was entitled to every reasonable inference flowing therefrom.

Constitutional Law 1(23)

Four score and seven years ago our fathers brought forth upon this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal.

Constitutional Law 58

Ours is a government of laws not men.

Administrative Law 500

All roads lead to Scope.

Municipal Monopolies 1(15)

Do not pass GO. Do not collect \$200.

Criminal Law 35

Go directly to jail.

William F. Buckley, Sr., of New York City, of counsel (Laurel, Hardy, Abbott & Costello of New York City, attorney) for petitioner, Barnard E. Doneven, *pro se*.

Before Blood, C.J., Angina, Pectoris, Jeffries, Bean, Bag and Budge J.J. (Ed. Note—Footnotes are by the Court and should be read simultaneously with the text for complete enlightenment.)

APPLICATION OF SCHWARTZ

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BUDGE, Judge

The State University at Stoned Creek is a rural retreat nestled at the foot of the Great Grey Mountain in Chipamonga County (just west of Oswaldville).¹ The events here delineated occurred on or about April 1, 1968. The university, shrouded in clouds of sweetish smelling blue smoke, awoke to have its academic "cool"² shattered by the revelation that appellant Marie Antoinette Schwartz had been discovered living in the boiler room of the main Administration Building with seven dwarfs and forty thieves.³ Miss Schwartz, a noted campus "activist" admits to membership in the following student organizations: SDS,⁴ TDM,⁵ WHAM,⁶ and the Glee Club. The appellant maintained herself by writing, producing, directing and starring in 16mm amateur movies which enjoyed great popularity among fraternity groups, and were distributed statewide through appellant's subsidiary corporation, Spartan Educational Films, Ltd. Appellant's residence in the boiler room was discovered when a janitor, hearing noises in the basement, entered to find appellant and twenty-eight of her fellow lodgers, *en deshabille*, filming the last of two 18 minute reels depicting the Rise and Fall of the Roman Empire.⁷

Miss Schwartz was suspended from classes and was charged with divers infractions of school regulations:

- 1) Living With Members of Opposite Sex Unmarried To Livor While in Attendance at Stoned Creek (S.C. Regs. 35:62).

¹You go up route 31, past Chimney Corners, past Turkey Town Restaurant, up over the hill, down 31 to Wilcox Garage, take a left on Wilson road, proceed half a mile or so and you can't miss it.

²Contemporary jargon meaning, roughly, "aplomb", "imperturbability" etc.

³For a total of 47 thieves and/or dwarfs. The university contends that in view of fire regulations restricting occupancy of the boiler room to 45 persons Miss Schwartz was in violation of valid regulations and merited dismissal. Appellant maintains a) that seven dwarfs equal 3½ "persons" within the meaning of fire regulations and thus occupancy of the boiler room was only 44½ (40 thieves, 3½ dwarf-persons, and appellant) well within the legal maximum and b) that in any event she is not liable for the others' presence. We do not pass on either of these contentions in view of the fact that appellant was not charged with this violation in the original hearing.

^{4,5,6}—Students for a Decadent Society, Talk Dirty Movement, We Hate All Minorities.

⁷It is of interest to note that of 36 minutes of film, only 28 seconds was devoted to the Rise while the remaining 35 minutes and 32 seconds was devoted to the Fall. Of these, 22 seconds was devoted to the sack of Rome by the Visigoths and the remainder to a festivity alleged to have been conducted the weekend before in a villa located just south of the city.

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- 2) Having Unauthorized Sex (S.C. Regs. 1:1).
- 3) Producing Unauthorized Films Without Approval of the Dean of Students, the Student Activities Committee, the Joint Student-Faculty Committee on Authorized Extra-Curricular Activities, and the President (S.C. Regs. 28:15(1)).
- 4) Littering.

Miss Schwartz was found guilty of violating the first three and was expelled from school. An appeal was taken to the Commissioner of Education who upheld the school's action. This proceeding was then initiated by permission of the Court. Special Term dismissed, the Appellate Division affirmed and this appeal followed.

We shall deal first with charge 3) and then with charges 1) & 2).

(Continued on page 5)

(Continued from page 4)

I

Large and disquieting issues are raised in this case and have been forcefully and ably argued by counsel on both sides. Basically we are called upon to decide whether a student at a state-supported university has the right to shack up in the basement of the main building while making dirty pictures so long as she maintains good academic standing. This is a case of first impression.

Much expert testimony was developed below concerning the worth of Miss Schwartz' cinematic endeavors.⁸ It is of course not our province to sit as a board of artistic censors⁹ but we must confine ourselves to only the legal question at issue.

The history of the obscenity rules is well known to every second-year law student. The leading case in the area is *Thompson's Appeal*, 1 All Eng. Rep. 217 (1492) wherein Lord Elgin said "Lette an yonge sonne enfeiffe an baronet an be raisen hys voyce, debit non assumpt for an evill thoughte be an abomination before Godde and manne . . ." This inspired a vigorous dissent from Lord Baylor: "If it were not Assize tyme I'd run you through." *Thompson's Appeal*, supra at 221.

⁸ Professor Maxwell Smart (Philo.) testified that her work was "great". Mormon Nailer called it "superb". CUE said "most shattering underground film I've seen in years." LIFE said "go see it." On the other hand, 44 members of the Daughters of the American Revolution said it was "trash". Richard Whats of the N.Y. Post said "disgusting" and the Little Old Lady from Pasadena called it "pure, unadulterated filth".

⁹ Off the record, I thought it stank but Roy Bean thought it was a riot. Of course, his taste is abysmal. He didn't even like Mary Poppins or Sound of Music!

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Despite this inauspicious beginning, more and more liberality began creeping into English decisions as the power of the Commons expanded and that of the aristocracy contracted. When the colonies rebelled sometime in the latter part of the Eighteenth Century, the founders of the new republic encaised these views in their fundamental law. It was tacitly assumed, however, that this freedom extended only to political discussion and stopped short of "the bedroom door." However the post-Korean War Supreme Court revolutionized Constitutional thinking by extending the protection of the Constitution to ecological observations of homo sapiens during mating ritualia, even when couched in terms of the most startling vulgarity. In words too clear to be misunderstood the Court postulated a simple yet sophisticated test for judges in every state to apply whenever a work of art was challenged as obscene. It was only necessary to determine if the work was 1) utterly without redeeming social value and 2) went substantially beyond contemporary community standards in candor and explicitness 3) when taken as a whole, provided the theme of the material appealed primarily to prurient interest. *Roth v. United States*, 354 U.S. 476 (1957); *A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts*, 383 U.S. 413 (1966). The Court then added an interesting twist. Even if the work was not obscene within the definition, it might be converted into obscenity by advertising it as obscenity. Hence, the Court outlawed "pandering". *Ginzburg v. United States*, 383 U.S. 463 (1966).

But, as usual, confusion crept in to muddy the Constitutional waters. There were those who found it difficult to understand how a work, unobscene by itself, became obscene by publication of advertisements, extrinsic to the work itself, and unobscene by themselves standing alone. In other words, the publication of two unobscene entities together produced a unified obscenity. (See, *Kootie, Reflections of an Up-tight Prosecutor*, 325 B'klyn L. Rev. 100 (1966); *Grove, Obscenity in a Nutshell*, 89 Harv. L. Rev. 477 (1967); *Grove, Cracks in the Nutshell*, 90 Harv. L. Rev. 710 (1968).)

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Thus the Court found it necessary to reopen the matter and dispose of it once again. In early 1969 the Court handed down a 187 page opinion in the now famous case of *Deviate v. Oregon*, 479 U.S. 800 (1969). The crux of that decision is found in the majority opinion: "The thrust of those decisions was to permit the widest possible latitude for genuine artistic advancement unshackled by the (dead hand) of oppressive and restricting moral concepts inherited from a Puritan past and photosynthesized into a living cancer of the artistic lungs; a hardening of the moral arteries; a twisted and unrealistic subordination to the ghosts of a past long dead clanking their encrusted medieval chains and moaning 'stop, and go ye no further'. We thus declare it to be the law of the land that henceforth one simple test shall prevail: the stuff must be BAD, to be bad." *Deviate v. Oregon*, 479 U.S. 810 at 845-6 (1969). (See, *Kaddilehopper, What the Supreme Court Means When It Says That Stuff Has To Be BAD To Be Bad*, 102 B'klyn L. Rev. 816 (1969).)

On the record before us it is crystal clear that Miss Schwartz' work wasn't that bad. Oh it was bad. But not BAD within the *Deviate* rule. Hence it follows, as the night the day, that if it wasn't BAD but was only bad then the fact it was made without authorization cannot stand as justification for expulsion from a state-supported university.

This leaves us with charges 1) and 2). Appellant calls into question the validity of the "anti-shacking-up regulation", S.C. Regs. 35:62, and the "antisex regulation" S.C. Regs. 1:1.

The appellant claims that she has the right to live with whomsoever she pleases while on or off campus and that is the university's job to educate her and otherwise to mind its own business.

The university contends on the other hand that she has no right to live with whomsoever she pleases while on or off campus and that

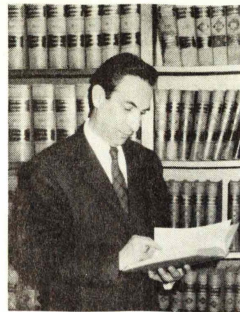
(Continued on page 6)

Professor Glasser

two lives in being plus twenty-one years

by Donald S. Hecht

Among the students of Brooklyn Law School there are few things more readily agreed upon than their esteem for the professional competence of Professor Israel Leo Glasser. It is presumptuous for students to try to evaluate their teachers and any attempt will necessarily contain a built in error that cannot be avoided. Despite the awareness of this burden, it is still the contention of the students that



Professor Israel Leo Glasser

it would take at least "two lives plus twenty-one years" to distill the knowledge of the law that is exhibited by Professor Glasser.

Professor Glasser entered Brooklyn Law School in February 1943. His initial encounter with the school lasted only a semester, for in June of that year he entered the Army. He was assigned to a self-propelled anti-aircraft unit and saw combat in the European theatre. For his heroic deeds in the Battle of the Bulge, he was awarded the Bronze Star. After the conflict in Europe was over, he took advantage of a special program which enabled him to enroll in the law school of the University of Birmingham in

England. After completing a semester there, he was discharged from the Army and returned to Brooklyn Law School.

As a student, Professor Glasser became the Editor-in-Chief of the first post-war Law Review. He graduated *magna cum laude* in 1948 and was the valedictorian at his graduation. Professor Glasser was also the recipient of the Class of 1911 Award and the Matheson Prize.

Upon graduation, Professor Glasser had planned to make his mark as a trial lawyer. "Teaching was the farthest thing from my mind," he said. However, when offered a one year teaching fellowship at Brooklyn Law School, he accepted and that one year has now become twenty.

Professor Glasser's first teaching assignment was Conflict of Laws. Since then he has taught Taxation, Torts, Real Property I and II, Trust and Wills in addition to seminars on Land Use Planning and Estate Planning. When asked what course he most enjoyed teaching, he replied that he enjoyed them all but felt most at home in the courses in Property. He stated that the discipline inherent in the study of the law of Property was intellectually appealing to him. He also enjoys teaching and studying the Law of Torts because it gives him the opportunity to explore more concretely the relationship between the individual and society.

Professor Glasser was a Research Counsel to the Commission on Estates whose work culminated in the enactment of the Estates, Powers and Trusts Law and the Surrogate's Court Procedure Act. He prepared the commentaries for articles six and ten of the EPTL for McKinney's. He was the con-

sultant on legal words for Funk and Wagnall's Standard College Dictionary. He has authored the Annual Survey of Trusts and Torts for the Syracuse Law Institute on Real Property, Mortgages, Trusts, Wills and Torts. He has lectured frequently to Bar Associations throughout the state and conducted a seminar for Surrogates under the auspices of the Judicial Conference.

Professor Glasser is married and lives with his wife and four children aged twelve, ten, eight and five, in Neponsit, N.Y.

When asked to make a general comment on the student body, he replied that he was saddened by the lack of opportunity for more intimate relationships and dialogues with the students which is attributable in great measure to the unavoidable size of the classes. He felt that closer inter-personal relationships would make possible the exchange of ideas which is so essential for growth and would afford him greater opportunity to touch the mind of the student which he regards as his greatest responsibility. Professor Glasser commented too that he hoped he was mistaken in his belief that in the main, the full-time student did not reflect enough about the function of law or about the operation of legal principles in a modern setting but spent too much time reading law mechanically. He also hoped that he was mistaken in his belief that not enough time was spent in reading collaterally in the literature of the law and in good literature generally, which he regards as vital to the development of the truly good lawyer. "In the final analysis," he said, "the man who is educated at all, is to a large extent self-educated".

— Donald S. Hecht

A CASE OF LIBEL

lieve what they hear about it.

Who knows how many of our alumni believed what they read about the School in a recent *New York Post* article? After all, it was left unanswered and unchallenged by the Administration and

the "Alumni Association." Speaking as an alumnus, I can't really blame anyone for forgetting a great institution which refuses to make known its contribution to the profession or every cast off mud unjustly slung.



(Continued from page 5)

it is the university's job to educate her, true, but her business is its business.

The issue is thus clearly framed. Whose business is it?

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The answer is deceptively simple. It is commonplace now that a mature jurisprudence, and criminal jurisprudence is no exception, does not rely on fixed rules but on broad discretions controlled by flexible standards. Overall, it would seem that a sound discretion exercised in cases on an individual basis is best rather than to mandate a uniform procedure which, like as not, would become merely a ritualistic device. The court is not completely in accord with this contention as it is predicted upon a misinterpretation of the meaning and purpose of the legislative enactments involved. Moreover, the rationale of the holding herein is in accord with the general principle that a valuable covenant is not to be destroyed lightly or arbitrarily. The court is thus immediately confronted with striking a balance between one citizen's right of privacy, as against other citizens' rights of freedom of speech, dissemination of ideas, freedom of press, equal protection of the laws, and also the right of a recipient to receive all information. Clearly the case of *Pioneer Jewelry Corp. v. All Continent Corp. et al.*, 24 A.D.2d 436, 260 N.Y.S.2d 700 is not here in point.

But the decision need not rest on that point alone for if that were not enough it would only be necessary to observe that is clear beyond dispute that any rights appellant may have flow from a basic conception of the ratio decidendi of those cases. As Justinian used to say, *A non posse ad non esse sequitur argumentum necessarie negative, licet non affirmative* (From impossibility to non-existence the inference necessarily follow in the negative, though not in the affirmative).

An arbitrary and capricious determination cannot and will not stand. Ours is a government of laws not of men.

It is likewise a principle, a basic principle, of Administrative Law that an administrative determination must be based upon substantial evidence on the record takes as a whole. (Forkosch, Administrative Law.). Since there is not one whit of evidence on this record that there is anything such as sex, let alone "unauthorized sex" it indisputably follows that we cannot sustain the finding that appellant engaged in it nor are we called upon to pass on the validity of S.C. Regs. 1:1 (Having Unauthorized Sex) since any such determination would be mere dicta in view of our disposition of the case herein.

Reversed and remanded for proceedings not inconsistent herewith.

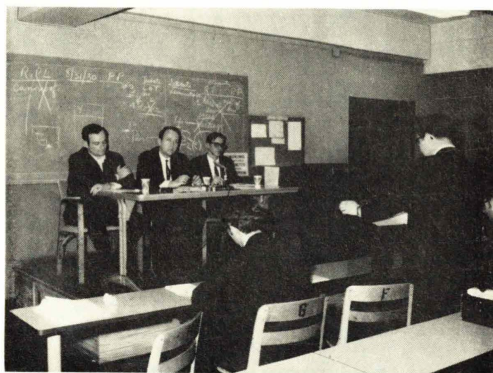
by Stuart A. Shaw

Moot Court Winners

The following persons were the declared winners in the Moot Court program and are now in line to qualify to participate in the National Moot Court Program.

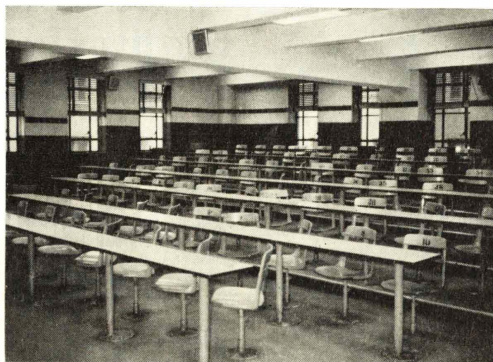
AWARDS

First year—best oral argument:	Mr. Peter H. Abelow
First year finalists:	Mr. Jeffrey Margolis Mr. Richard E. Aibel Mr. Arthur R. Sisser
Best brief:	Mr. Peter H. Abelow and Mr. Jeffrey A. Margolis
Second year—best oral argument—a tie between	Mr. Frank A. Silverstein and Mr. John M. Wilson, II
Second year finalists:	Mr. David C. Birdoff Mr. Michael J. Hughes
Best brief—a tie:	Mr. John M. Wilson, II Mr. Gerald A. Novaack Mr. Fred Feingold Mr. Frank A. Silverstein



Finals of Second Year Moot Court.

Class of '71?



Necrology

MORTEMER H. COLEMAN '16, DAVID PLOTKIN '22 Mr. Plotkin was a widely known poet and writer under the name David George Kin. Mr. Plotkin was the author of "The Plot Against America," "Ghetto Gutters," verse published in 1927 and "Rage in Singapore" an account of the Japanese Malay invasion. He also edited "Dictionary of American Proverbs" and "Dictionary of American Maxims."

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a chance
to say
yes