The Justinian

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Article 1

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THE JUSTINIAN
BROOKLYN LAW SCHOOL

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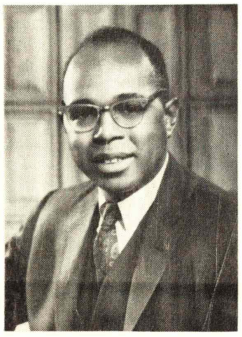
CALS Deals With Law of Poverty

By FREDERICK H. AHRENS, JR.

Being poor is more than merely lacking funds, it is a way of life which breeds its own institutions and rejects others. Institutions perceived by the economically well-off as being essential to a just society, are often seen by the "Other America" as negative forces perpetuating their plight. One such institution is the law. This week I spoke with John DeWitt Gregory, General Counsel of Community Action for Legal Services (CALS). CALS is responsible for providing legal service to the poor under the Economic Opportunity Act, and is funded by the Office of Economic Opportunity.



John DeWitt Gregory

CALS operation is restricted to civil cases and to indigent clients (those earning less than $3000 per year plus $500 for each dependent). The program has 10 legal service corporations in various poverty areas throughout greater New York City.

The tools of the law are now being applied to those in poverty, and this application has brought about a new field of law. Not only are legal services available to the indigent, but in addition, a body of separate and distinct legal principles is being generated, setting the law of poverty apart from other fields of law. Mr. Gregory stated that that his organization and others like it, are seeking a "change in the law by presenting problems to the courts, educating the poor as to their rights, sensitizing the well-off and seeking needed legislation." In addition, he pointed out the need for "making government agencies aware of legal problems" and bringing a greater element of "fairness and due process" in cases of poverty. An illustration of effectiveness of legal service organizations was cited by Mr. Gregory in a speech given to the Queens County Bar Association. The case involved an eviction of a tenant in retaliation for complaining about housing code violations. The Washington, D.C. court held this as violative of the tenant's rights under the First Amendment. Perhaps a more sensational example involves Gov. Reagan's unceremonious reduction of medical-aid services. The cut-back was so sudden that some clients were left half healed. A legal service organization was successful in obtaining a temporary restraining order and ultimately a permanent injunction against the Health and Welfare Agency. Of course it's too early to make absolute predictions as to the eventual consequence of service organizations but it is a fact that the poor of our country are obtaining a greater quantity and superior quality of legal aid than ever before.

In part the past failure of the legal community to respond to those on the poverty level lies with the law schools themselves. Mr. Gregory was quick to point out these inadequacies and suggested that law schools in general "take a hard look at their curriculum." His objection is that not enough, if any, law courses are geared toward the realistic problems confronting the practicing attorney in the field of poverty law. For example, of what benefit to people on a subsistence level are bankruptcy proceedings, or estates in expectancy? The law student can obtain additional knowledge and much needed experience by participating in the year-round and special summer programs. Mr. Gregory feels that there is "a group of students who really do have a commitment to dealing with human problems."

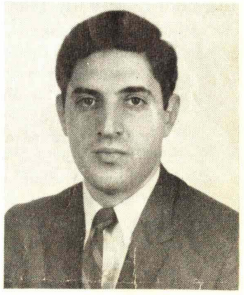
The programs available at CALS, Legal Aid Society, and similar organizations are excellent avenues for expressing that commitment.

ON THE INSIDE

BLS to Justice Department Federal Prosecutor Excels

(The following article is reprinted from New York Magazine, edition of February 17, 1969, Copyright © 1969 by the New York Magazine Co., from the article "Balky Justice," by Peter Maas; by permission—Ed.)

Whenever the talk gets around to organized crime—now that it has at last become a serious topic of public concern—it usually winds up with a figurative throwing up of hands and a resigned "What can anybody do about it anyway?" Well, something has just been done about it, happily in this city, simply because a 26-year-old Justice Department attorney named Bob Ornstein cared enough. Almost single-handedly, he managed to bloody the Cosa Nostra's nose in a very special way and as a result has earned himself a prestigious niche in the history of U.S. criminal law.



Robert Ornstein

Slight, black-haired and intense, Ornstein is all Brooklyn—Abraham Lincoln High, Brooklyn College and Brooklyn Law School. In 1966 he went to work for the Justice Department in Washington and was assigned, at his request, to the Organized Crime and Racketeering Section because "that's where all the action was." Except that under Attorneys General Nicholas Katzenbach and Ramsey Clark, following the departure of Robert Kennedy, there wasn't all that much action anymore. Things finally began to pick up for him last winter when he was sent back to Brooklyn as part of the prosecution team in what at first glance was merely an ordinary truck hijacking case.

Considerably more, however, was involved. The chief defendant was Carmine Persico Jr., a reputed, as they say, Mafia figure, known to his Cosa Nostra brothers as "Junior" and to those unfortunates who have otherwise crossed his path as "Snake." Persico was considered to be one of the fastest-rising young mobsters in Brooklyn, a particular favorite of an aging Cosa Nostra leadership there which was bent on grooming him for bigger and better things and willing to overlook his role in the hijacking as a boyish escapade. What this meant was that Persico, if he wasn't put away now, would be so insulated by his growing underworld power that his chances of ever seeing the inside of a cell again were as likely as a population explosion among whooping cranes.

(Continued on page 7)

Appellate Competition Commences

By BARRY HOROWITZ

This year's voluntary Appellate Moot Court competition, operating under a totally new, student controlled system is about to begin its final phase. The oral competition designed to select next year's National Moot Court team will begin on or about March 21.

A five man committee consisting of third year students Barry Horowitz, Michael Hughes, Cye Ross, Gerald Salzman, and Frank Silverstein has born the responsibility of organizing a Moot Court Society as an honor program to administer the Moot Court programs for the future. The society will draw new members from first and second year students who display excellence in Moot Court competition.

The new administration of the program is designed to generate greater interest in Moot Court by allowing students who are not fortunate enough to be selected for law review to demonstrate their ability in other areas of their legal training.

As was the case in prior years, the competition is open to all first and second year students who wish to participate. Teams of two students each prepare a single brief on a hypothetical case, prepared by the Moot Court Committee (Now by the Moot Court Society). A series of competitive arguments is then held to choose the team which will represent the school in national competition next year.

The first and second year students compete against other students of their own class only. However, the finalists of both years will prepare arguments on next year's national Moot Court topic, and the team will be selected on the basis of these arguments to be held next September in our Moot Courtroom in the new building.

This year's second year problem deals with a divorce. The arguments will concern an interpretation of some sections of the Domestic Relations Law, and question the validity of another section of that law. The first year problem, prepared on a smaller scale, is a tort-negligence case dealing with some questions of law never before decided by New York Courts.

Judging of the arguments will be conducted by members of the Moot Court Society, Law Review, Faculty, and practicing attorneys.

All members of the student body are invited and indeed urged to attend all rounds of the competition. It is one of the few chances a student has in this school to view the law in a context other than casebook preparation for class.

The entire program is conducted under the general supervision of Professor Richard Farrell as faculty advisor.

L.-R.: Frank Silverman, Gerald Salzman, Michael J. Hughes, Barry Horowitz, Cye E. Ross.

EDITORIAL:

'Truth Fears Nothing But To Be Hid'

Coke

Nearly two-thirds of the academic year has lapsed without any tangible accomplishment of general import by the Student Bar Association. The Committee on Curriculum Review was neither conceived nor organized under the direction of the SBA. The Faculty Grievance Committee was established by the Dean upon his own initiative. The Speakers Program has not materialized. There has been but one Student-Faculty Tea, as part of the Freshman Orientation Program. It now appears that the Blood Bank is to be removed from the aegis of the SBA. The Intramural Moot Court Committee has as its chairman the President of the SBA, who can ill afford the extra duty.

Indeed, there have been some concrete results. Seniors will be pleased to know that arrangements for their graduation photographs have been made. In addition, there will be a Barrister's Ball for Graduating Seniors in May. That these events are of enjoyment to senior students is not disputed. However, are these the accomplishments by which the SBA wishes to have its effectiveness evaluated? In truth, these activities are properly within the domain of a Senior Class Committee.

As concerned citizens of the BLS community we therefore respectfully submit the following petitions:

— Upon the Dean:
  —to direct the creation of a permanent Moot Court Advisory Board composed of students;
  —to revise the Freshman Orientation Program;
  —to create a Faculty Conference Program for the review of a student's academic progress;
  —to authorize a Committee for the Senior Class (to cooperate with the Placement Office and to coordinate senior class activities);

— Upon the Alumni Association:
  —to finance the creation of an audio-visual library consisting of 16mm projection equipment, audio-tape recorders, video-tape facilities and for the acquisition of specialized source material including microfilm editions of the New York Times and New York Law Journal, and taped programs such as the recently released audio-taped BarChris Institute conducted by the A.B.A.;

— Upon the Faculty:
  —to imbue their courses with a greater vision by inviting experts to address their classes, i.e., a U.S. Attorney, a Family Court Judge, a Legal Aid attorney, a member of the S.E.C., a trial attorney, a psychiatrist, a real estate broker, an insurance broker;

— Upon the Students:
  —to cease their compliant disinterest; to determine what they believe to be in their best interest and to voice those beliefs affirmatively and constructively.

No longer can BLS and its citizens tolerate the role of second rate members of the legal profession, from the "other side of the legal tracks." Our school, its Dean and its commitment to the training of gentleman of the law is second to none. Let those who would claim what is rightly due to them not answer "Why" when confronted with proposals for change, but project their vision beyond the trees of an often static forest of inertia and bring forth a vigorous "Why not."

Just as Socrates in 399 B.C. was confronted with a choice between Truth and Athens, so must each citizen of BLS now choose between self-interest and self-sacrifice for the realization of a higher vision—for the recognition of the proper stature for Brooklyn Law School in the legal community.

As members of the most honored profession the choice is clear. Henry David Thoreau most aptly observed:

> "If one advances confidently in the direction of his dreams and endeavors to live the life which he has imagined he will meet with a success unexpected in common hours."

Professor Hauptman

'The student's first obligation is to himself'

By STEVE SILVERBERG

"In 27 months of Law School a student must prepare for a lifetime of work. The student's first obligation to himself is to do as well as possible in law school." Such is the advice of Professor Morse to which Prof. Hauptman would fully subscribe. This means that he should work to his fullest capacity and with diligence to attain a high grade and thereby derive maximum substance from the course. Realizing his own capacity, the student should devote as much time as he personally needs to his studies until he fully understands the subject matter.

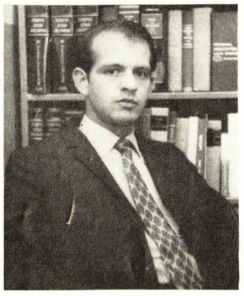
This good advice is not new to many students. However, listening to and acting in accordance with the advice, being two distinctly different things, this suggestion could be used by many more students. Professor Hauptman was one person who followed his own suggestions and his rise in status within the Brooklyn Law School structure, from student to Teaching Fellow to Assistant Professor reflects the merits of his advice.

Professor Hauptman majored in accounting at Hofstra University. He was graduated from Hofstra top student with Honors in Accounting.

As a student at Brooklyn Law School he was an editor of the Brooklyn Law Review. After final examinations in 1965, and before graduation, Professor Hauptman was offered a Teaching Fellowship which entailed teaching at BLS and doing research for Dean Prince. In his first semester of the Fellowship he taught two sections of legal research and did research on the then recent confession case of *Jackson v. Denno*. The offer to teach has been renewed annually since then and now he is an Assistant Professor and teaches *Legal Research, Appellate Brief Writing, Equity, Accounting for Lawyers, Taxation and Corporations.*

Some of us have always had ambitions of being attorneys and some of us have been led into our choice by unexpected situations. As part of its undergraduate program, Hofstra University offered an internship program of practical experience for its accounting majors. Professor Hauptman realized after this opportunity that accounting did not appeal to him as much as it seemed prior to his exposure to actual practice. Having always been interested in law, the latent possibility ripened into an attractive alternative.

Expressing his opinion on student requests for changes and reforms in curriculum and procedures, Professor Hauptman feels that the



Professor Martin R. Hauptman

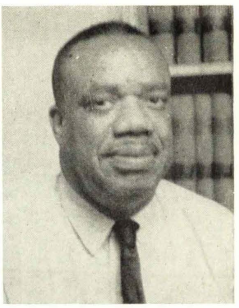
needs of the student body have to some degree been and will eventually be fully realized if there are persistent and proper requests through the already established Joint Faculty and Student Curriculum Committee. The Professor sees change and working together possible to bring about positive results, piece by piece, in an orderly manner, but at the same time emphasizes the difference between this orderly procedure and the entering of students into a functioning institution bent upon the ripping apart of its curriculum and practices.

On the subject of the improvement of curriculum, Professor Hauptman recognizes the natural hope for more courses in each area of the law, concurs in this, and expresses the belief that this will come in the future as faculty and facilities expand in the new Law School building. However, he feels that the general curriculum offers a broad background in the field of law so as to prepare the student for any job that arises upon his graduation. After having this preparation, the student should then, if he so desires, specialize in his graduate studies towards a master of Laws degree.

Brooklyn Law School began a new program of electives last year, giving the undergraduate law student an opportunity in his undergraduate studies to choose from available electives those additional courses which most appeal to him. Professor Hauptman is especially enthusiastic about the opportunity given to the law student to take, as part of the new program, the course in Accounting for Lawyers. He expressed the thought that the lawyer, upon graduation from his law school, should have some background in accounting, either through his college courses or through a course offered in law school. Because of the degree to which accounting permeates the entire field of law, this accounting background is essential and is today offered in many law schools.

Students taking the course at Brooklyn Law School benefit from a fortunate combination of circum-

(*Continued on page 8*)



Wade Bowman

Brooklyn Law School extends its best wishes for a speedy recovery to Wade, long-time member of the BLS operational staff, who recently suffered a serious illness.

THE JUSTINIAN

PUBLISHED QUARTERLY DURING THE SCHOOL YEAR UNDER THE AUSPICES OF THE STUDENT BAR ASSOCIATION OF

BROOKLYN LAW SCHOOL

375 PEARL STREET, BROOKLYN, NEW YORK 11201

Vol. XXIX, No. 3 March 31, 1969

Professor Robert H. Habl

Habl On Jurisprudence

By PROESSOR ROBERT H. HABL

"In a system of law which lives by stare decisis the precise identification and delimitation of the decision is the deepest secret of juristic life."

(Justice Stone)

(What is it in a judicial decision that binds future courts in most cases not yet arisen. Inasmuch as Professor Habl regularly thrusts this rather loaded question at his legal research classes, among others, he admits it is only fair that he himself make some attempt at an answer to it.)

At the heart of every course in legal research is the question of why a court should base its judgment in a case on the judgments of other courts in other cases.

What is said in this connection cannot, however, proceed without presupposing the fallaciousness of the claim that "talk of rules is a myth." What follows therefore does so upon the premise that while legal rule statements are neither logically true nor false, they are not "meaningless nonsense". In this connection the view is taken that "logic" in the law transcends the analytical ideal and that the criteria for the rationality of arguments are truly field oriented... being inextricably intertwined with the concepts of the discipline under consideration.

Assuming, without further questioning, that pursuant to our announced doctrine of stare decisis our legal system is on the whole prepared and willing to be guided we come to the question: what is it then, in a judicial precedent, that binds a future court?

The question itself raises at least two basic objections: (Bad questions are thus not confined to law school examinations)

I Is it to be inferred therefrom that but one 'ratio' exists to be considered in connection within a given judicial precedent?

II May the 'ratio' be determined from what is in fact *"in"* a judicial precedent?

The notion of the singular ratio may be derived, perhaps, from such statements as the following:

"A precedent, therefore, is a judical decision which contains in itself a principle. THE underlying principle which thus forms its authoritative element is often termed the ratio decidendi." (Salmond)

Professor Goodhart agrees that it is necessary to find THE ratio decidendi of a case and undertakes to devise a "method" whereby IT may be determined. In concluding his thesis Goodhart suggests THE principle of a case is found by:

"(a) taking account of the facts treated by the judge as his material, and

(b) his decision based upon them."

In Goodhart's view the judicially expressed opinion or reasoning process is important chiefly as a guide in determining which of the facts involved were deemed by the court to have been material.

In his scathing attack upon the Goodhart "method" Stone suggests:

"The question — What single principle does a particular case establish? . . . (is) . . . strictly nonsensical, that is, inherently incapable of being answered."

Are we thus led to conclude that a given judicial precedent involves multiple rationes?

Consider:

"There is no one single ratio decidendi which is necessary to explain a single decision and is deliverable from that decision." (Stone)

The potential uncertainty into which one is thus led becomes less real than apparent when one considers that even the most cursory examination of the workings of our legal system yields abundant proof that "our style of legal argument" (Llewellyn) has developed a variety of approaches ("ways of selective observation" Ibid.) for determining the ratio of a given judicial precedent. Each of these is itself predicated upon some legitimate element of the prior decision.

Whether that element be the purpose underlying the precedent decision, the rule statement pronounced therein (Classical Theory), the material facts (Goodhart), or prior precedent (the "grandfather theory" of the English theorists), or a combination of any of these, the subsequent court necessarily becomes involved in a choice-making process between these oft times competing approaches ("directives" Toulmin).

Viewed thus one finds imbedded in the process of later decision-making based upon choices from among such guidance devices. It is offered, therefore, that what the ratio *is* cannot adequately be determined from what is in fact *"in"* a judicial precedent.

Goodhart, the English Theorists and others who proffer theories advancing the singular ratio thus work a dis-service where they lead us from other avenues to an understanding of the ratio of the ratio decidendi.

(Continued on page 8)

Conflict of Interest?

By ROGER ADLER

The assignment of Professor Solomon A. Klein as instructor for the three credit Criminal Law course, and the two credit Federal Practice course has caused a degree of unrest in Group B of the Second Year Class. While no complaints have been heard as to the competency of Professor Klein, on the contrary comments have been favorable as to both content and style, the dissident rumblings center around the question of ethics.

To what extent can a professor isolate his impressions of a student, in order to maintain the independence of the grade in Criminal Law from that of Federal Practice? How much of a carryover effect, and this can be either good or bad, will there be? In theory none, but we deal with fallible and very human beings.

Assistant Dean Gerard A. Gilbride explained that the departure of Professor Thornton, and inability of Visiting Professor Oliver Morse to teach more than one section necessitated placing the additional burden on the able Professor Klein. "Postponing Federal Practice until the senior year would have only created additional scheduling difficulties," Dean Gilbride stated.

It is unfortunate that the administration of Brooklyn Law School did not initiate the explanation, and by its inaction and silence caused the start of ugly rumblings which brought only discredit to the speakers.

If a faculty spokesman had merely explained that it was administrative difficulties and not whim or caprice that necessitated the dual assignment the matter would not have developed. Most students are reasonable people, and are willing to accept reasonable explanations when difficulties arise. When information is lacking and made unavailable, the sounds of discontent, bordering on paranoia, begin. Far better to inform in advance than to be forced to explain after the damage has been done.

There is a failure to communicate at Brooklyn Law School, and this is but another unfortunate instance of it. The administration is in the private sector, and so is under no legal obligation to justify its actions to the student body. However, the moral duty still remains, and every feasible effort to open up lines of communication and increase student participation should be made. A school as conscious of its public image to strangers, certainly owes this much to those who attend and fund the Law School.

HOME COMING DAY

April 30, 1969

Does Acceptance Justify Reform?

By BERNARD KOBROFF

The area of drug abuse in the last few years has literally exploded with "criminal activity." To help cut the crime rate I propose that we legalize the use of marijuana.

This solution is in fact so simple, logical, and necessary and is gaining such great currency that I feel redundant in going into it, but for those of our readers who either don't read newspapers or magazines or shun topics that could be considered controversial, a quick explanation is offered.

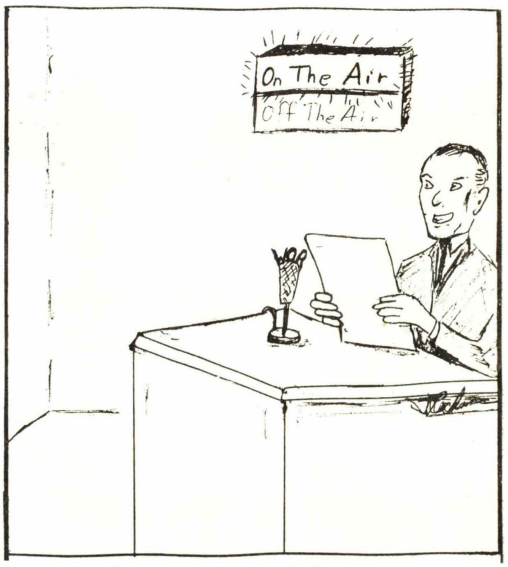
Marijuana although illegal is gaining rapid acceptance not only among the youth of this country, who will soon be in the majority, but also among the "white collar middle class".

The studies that are finally being conducted on this much maligned mild hallucinogenic show it, as its proponents have always claimed, to be safer than tobacco or alcohol (admittedly no hard trick). The drug gives its users a mildly pleasant relaxing feeling. (This feeling though doesn't appear to be as much fun as sex.) The drug in other words is used for much the same reason as alcohol — a social relaxant.

It would seem therefore that this drug, legally considered a narcotic, should at least be reclassified and its penalties if not entirely eliminated, reduced to fit the "crime." In any case the crime of possessing marijuana is a very artificial one and should be repealed. The possessor injures no one other than, at most, himself and in a state that doesn't make it a crime to attempt (and succeed at) suicide it certainly seems ridiculous that the former should be punishable.

The fact, however, is that this law as it is now enforced is not used to prevent drug abuse or to get the prisoner to a rehabilitation center, but to suppress a very vocal minority of our population. This minority, made up primarily of the young, are being punished for their life style. A life style which questions the stupidity of such laws and the lies that are circulated to legitimatize them.

It is our profession to question the stupidity and lies of this society, especially when they are turned into law, and not instead aid in their propagation. It is one thing to be duty bound to obey these suppressive statutes, it is quite another to remain silent and acquiese in their enforcement.



". . . . and despite the tidal wave that inundated the entire Borough of Brooklyn, B.L.S. has announced that it will hold classes as usual."

ABA Considers Proposed New Code of Professional Responsibility

(The original 32 Canons of Professional Ethics were adopted by the American Bar Association in 1908. They were based largely on the Code of Ethics adopted by the Alabama State Bar Association in 1887, which in turn had been borrowed largely from the lectures of Judge George Sharswood, published in 1854 under the title of Professional Ethics. *Since then a limited number of amendments have been adopted, raising the existing Canons to 47. The content of the existing canons may be found in one or more of the three parts of the proposed* Code of Professional Responsibility: *Canons, Ethical Considerations, and Disciplinary Rules. Only the Preamble and the proposed Canons are set forth below.—Ed.)*

Preamble

The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and his capacity through reason for enlightened self-government. Lawyers, as guardians of the law, play a vital role in the preservation of that society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

In fulfilling his professional responsibilities, a lawyer necessarily assumes many roles that require the performance of various difficult tasks. Not every situation which he may encounter can be foreseen, but fundamental ethical principles are always present to guide him. Within this framework the lawyer must with courage and foresight be able and ready to shape the body of the law to the ever-changing relationships of society.

To this end, the American Bar Association has promulgated this Code of Professional Responsibility, consisting of three separate but interrelated parts: Canons, Ethical Considerations, and Disciplinary Rules. The Code is intended to be adopted by appropriate agencies both as an inspirational guide to the members of the profession and as a basis for disciplinary action when the conduct of a lawyer falls below the required minimum standards in the Disciplinary Rules.

The Canons are concise axiomatic statements of the obligations of lawyers to the public, to the legal system, and to the legal profession. They embody general concepts from which the Ethical Considerations and the Disciplinary Rules are derived.

The Ethical Considerations are aspirational in character and represent the objectives toward which every member of the profession should strive. They constitute a body of principles upon which the lawyer can rely for guidance in many specific situations.

The Disciplinary Rules, unlike the Ethical Considerations, are mandatory in character and state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Within the framework of fair trial, the Disciplinary Rules should be uniformly applied to all lawyers, regardless of the nature of their professional activities. The Code makes no attempt to prescribe either disciplinary procedures or penalties for violation of a Disciplinary Rule. The severity of judgment against one found guilty of violating a Disciplinary Rule should be determined by the character of the offense and the attendant circumstances. In applying the Disciplinary Rules the enforcing agency may find interpretive guidance in the basic principles embodied in the Canons and in the objectives reflected in the Ethical Considerations.

Neither the Canons, the Ethical Considerations, nor the Disciplinary Rules are intended to suggest or define standards of liability in civil actions against lawyers involving their professional conduct.

Obviously the Canons, Ethical Considerations, and Disciplinary Rules cannot apply to non-lawyers; however, they do define the type of ethical conduct which the public has a right to expect not only of lawyers but also of their non-professional employees and associates in all matters pertaining to professional employment. A lawyer must ultimately be responsible for the conduct of his employees and associates in the course of the professional representation of the client.

This Code points the way to the aspiring and provides a standard by which to judge the transgressor. Each lawyer must find within his own conscience the touchstone against which to test the extent to which his actions should rise above the minimum standards set forth in the Disciplinary Rules. But in the last analysis it is the respect and confidence of the members of his profession and of the society which he serves that should provide to a lawyer the incentive for the highest possible degree of ethical conduct and the loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.

Canon 1. A lawyer should assist in maintaining the integrity and competence of the legal profession.

Canon 2. A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available.

Canon 3. A lawyer should assist in preventing the unauthorized practice of law.

Canon 4. A lawyer should act competently and use proper care in representing clients.

Canon 5. A lawyer should preserve the confidences and secrets of clients.

Canon 6. A lawyer should exercise independent professional judgment on behalf of clients.

Canon 7. A lawyer has a duty to represent his client with zeal limited only by his duty to act within the bounds of law.

Canon 8. A lawyer should assist in improving the legal system.

Canon 9. A lawyer should avoid even the appearance of professional impropriety.

The proposed *Code of Professional Responsibility* will be formally considered at the ABA Annual Meeting to be held in August, 1969, at Dallas, Texas. Copies of the entire proposed *Code* are available upon request to members of the Law Student Division of the ABA, 1155 East 60th Street, Chicago, Illinois 60637—Ed.

Necrology

Meyer Boskey '07 was counsel to the Industrial Diamond Association.

Joseph J. Kozim '11 was a Democratic leader in the Bronx, tax counsel to New York State Tax Commission and Justice of Court of Special Sessions.

Maurice Janklow '23.

Austin Lionel Gould '27 was Professor of Law at St. Johns for 21 years.

Arthur A. Gogel LL.B. 1936, S.J.D. 1937. Mr. Gogel served as an adjudicator with the Veterans Administration from 1942 to 1947 when he thereafter engaged in private practice.

Howard Shakin '48

Francis M. Verrilli, '19, former president of Brooklyn Bar Association and Catholic Lawyers Guild.

That Others May Live

Second year student Justine Tzall was among the 110 donors to the Blood Bank.

SBA REPORT

By MICHAEL J. HUGHES

The Student Bar Association is presently renewing a long abandoned tradition of providing a senior composite and has engaged Apeda Studios for that purpose. The representative from Apeda is a "former student" at Brooklyn Law School who unaccountably withdrew from school a number of moons ago. According to a letter addressed to me, "Michael Jacobs, President of SBA," Apeda Studios is presenting a rather unique offer. Each senior is entitled to six different poses and does not obligate himself to purchase anything by merely having his picture taken. If after observing himself he decides to include his bad self in the composite, it is available for $3.50. Apparently the "anything free, tickles me" doctrine is responsible for the near unanimous response from the senior class which will have been photographed during the week of March 3. If the entire senior class honors its commitment it is difficult to conceive of 351 pusses occupying a 16" by 20" composite. The photographer suggested that technicolor wallboards might be a reasonable alternative.

The Student Bar Association is also presenting a Senior Farewell Dinner-Dance at the Palms Shore Club in Brooklyn. Sheila Feldman and Joyce Krutick have worked diligently on the project and have received moral support from Dean Prince. It was ultimately decided to sacrifice a Manhattan location in favor of a reasonable price in order to attract a greater attendance. The bid of $18.00 per couple includes a dinner, one drink and entertainment to be provided by the club.

The First and Second Year Intramural Moot Court Competition commenced March 17 at which time briefs were due. Nineteen members of the Second Year and approximately forty members of the First Year have entered the competition. The aggregate of competitors, however is grossly disproportionate to the number of problems which were distributed prior to the Christmas Recess. The First Year Class has apparently succumbed to that rare tropical disease, Laches, which has traditionally afflicted Brooklyn Law School students. The minimal response from the Second Year Class may be attributed to the great number of students in the evening division who have suddenly realized a latent interest in the teaching profession. Whatever the reasons, the poor showing was a disappointment to the members of the Moot Court Committee who prepared two interesting problems susceptible of fairly easy research.

Gershenson on Law of Travel

Much to the surprise and delight of the students and faculty of B.L.S., and in fact, much to the surprise and delight of Prof. Milton Gershenson himself, we have all discovered that Prof. Gershenson has become a leading authority on a new area of law.

When asked to write an article on the "law of travel" for the Travel Editors Association to be published in the *New York Times*, Prof. Gershenson compiled much of the existing law as it pertains to travel related matters. In this article, topics such as innkeeper's liens, credit cards, and death of the traveler, to name a few, were discussed.

While no part of the subject is new and the substantive elements are borrowed from other areas of the law such as insurance, bailments and conflict of laws, etc., Prof. Gershenson has been one of the first, if not the first, to conceptualize and correlate these facets into one interrelated subject.

Offers Received

Since Prof. Gershenson's article has appeared he has received numerous offers to lecture and write on the subject. The obvious need for work in this area coupled with Prof. Gershenson's efforts may give rise to a new recognized area of the law. Perhaps in the near future, entering students at BLS will be saddled with the additional problem of finding "cans" for their Travel Course.

Homecoming Day Program Set

Justice Conroy '17 To Address Alumni

BLS will hold its Annual Homecoming on Wednesday, April 30, 1969. The Honorable Joseph M. Conroy, '17, Administrative Justice of the Eleventh Judicial District of the Supreme Court of the State of New York, will deliver the keynote address, entitled "Reminiscences of a Trial Judge."

All alumni are urged to attend the Homecoming Ceremonies which will commence at 4:30 p.m. in the Law School Auditorium.

The ceremonies will be followed by a Cocktail Party in the Faculty Lounge.

Book at the Bar

By ROGER ADLER

Frontiers of Civil Liberties, by Norman Dorsen. 1968, 406 *pages, Pantheon Books,* $8.95.

In *Frontiers of Civil Liberties,* author Norman Dorsen presents a panoramic view of contemporary issues in civil liberties. The book is both analytic and historic, including the successful appellate briefs in the United States Supreme Court of such landmark cases as *Gideon* (right to counsel), and *Gault* (due process for juveniles). The book is divided into four sections, the first devoted to general civil liberties issues, while the other three take up specific aspects: First Amendment rights, due process, and discrimination.

I have always been wary of compilations of diverse materials which are too often bound together and passed off as a work. For too often such efforts are heterogeneous rather than homogeneous, and merely serve as a financial payoff for voluminous unpublished law review material. But Professor Dorsen has been successful and provides the reader with a *potpourri* of materials to ponder.

In the chapter dealing with "The United States Supreme Court and Civil Liberties," Charles Reich tells us: "It takes a little knowledge and thought to understand why we should let a man remain silent because he says that he may incriminate himself. The natural thing to think is, 'Well, if he is innocent, he ought to tell us, and if he is guilty, why should we bother with him?' Civil Liberties involve quite a bit of sophistication in many, many areas. The thought that we should exclude from evidence a valid confession is also very difficult for many people to understand. When we become sophisticated we understand that what seems to be a true confession may not be . . ."

In his chapter "McCarthy and the Army," Dorsen probes into the "how could it happen" aspect and states, "It was not Senator McCarthy who damaged Monmouth employees and Army draftees so much as their Pentagon superiors. McCarthyism could injure individuals only to the extent that those in power cooperate with it. Thus, destroying Senator McCarthy was not alone what the country needed. It also needed public officials who had the instinct, intelligence, and courage to do the right thing when the issue arose — not two or three years later, when shelving McCarthy would no longer create a storm . . ."

In treating the problem of segregation, the questions are initially posed:

1) Must the law be color blind, as suggested by Justice Harlan in his dissent in *Plessy* v. *Ferguson* even if used for the beneficial purpose of promoting integration?

2) Are segregated schools legal under the Fourteenth Amendment and *Brown* v. *Board of Education of Topeka* 347 U.S. 483 (1954) in the absence of affirmative state action to separate the races?

Professor Dorsen feels that racial integration is entitled to a preferred position in the hierarchy of constitutional values. He feels that school boards and courts must act to desegregate schools "whether or not the pattern was innocently or maliciously established . . ."

It is pointed out that southern courts have most frequently interpreted the Fourteenth Amendment as not commanding integration, but merely forbidding discrimination. A contrasting view was taken by the Appellate Division of the New York State Supreme Court in *Balaban* v. *Rubin* 248 N.Y.S. 2d 573 (1963), In *Balaban,* "the New York Board of Education considered the racial composition of a neighborhood in drawing district lines for a new school. The board admitted it, it took pride in the fact that it had done so. But the board had done so for the purpose of reducing the racial imbalance. The Court upheld the board."

Stanley H. Lowell, former Chairman of the New York City Commission on Human Rights, enunciates the modern northern approach. "Now let me move to another subject — that of color consciousness versus color blindness. . . . I argued the point over many years that color blindness was truly the only basis on which the American society could proceed. I say that this is no longer so. The argument is specious. . . . What we say is simply this: Whether it is in jobs or in housing, or in school segregation, you must take color into account in order to remedy the evils in the society."

The chapter on "Racial Discrimination in Private Schools" is potent for the arguments it makes in taking an expansive view on what is public and private as far as the problems it raises.

"Suppose that a parochial school discriminates on the grounds of race and does this because of some religious belief associated with the religion. Black Muslims might so exclude white children from their school, and there might be white religious groups that exclude Negroes on doctrinal grounds. Should this be forbidden by the state, and, if so, is it an interference with religious freedom?"

For all the academic prowess and prodigious work, Professor Dorsen is no greenhorn to the ways of the world. He sees that unless court victories are followed up by rigorous enforcement, there is often bureaucratic resistance to a change in established policies. The point was brought home most tellingly to this reviewer when as a graduate student in Washington, D.C., I read of a study conducted by the Georgetown University Law Center which indicated that the Washington D.C. police department was conducting its operations as if *Gideon* v. *Wainright* 372 U.S. 335 (1963) had never been decided.

The importance of *Frontiers of Civil Liberties* and other works similar to it, is that too often we take our civil liberties for granted, and look upon those who are at the ramparts defending them as strangely obsessed people. But . . . "civil liberties are never secure, there is always someone trying 'to push people around'." It is a book for those who ask themselves who are we, where are we going, and what will be left of us when we finally arrive.

Placement Opportunities

Brooklyn Law School has a full time Placement Office at your service. It is available to you while you are in law school and after you graduate. It is located in the office of Professor John A. Ronayne in Room 406. Mrs. Natalie Cheeseman has been assigned as the full time Placement Secretary by Dean Jerome Prince. Professor Ronayne is the Faculty Director of Placement. The Placement Office is open every school day from 9:00 A.M. to 5:00 P.M. In addition, special appointments may be made for interviews and placement counseling at night for evening students who can not be present during the day.

The placement service is available to both the undergraduates and to alumni of the law school. Although most of the effort of the Placement Office is directed toward the placement of members of the graduating class, you must concern yourself with placement in your first year of law school. The marks you obtain in your first year may determine your opportunities for placement. Many large firms now interview students in the top of the class in October of their second year in law school in order to select students to work in their law firms as summer associates during the summer vacation between the second and third year of law school. Offers for permanent positions in the law firms are made after this summer period.

Summer Employment

First and second year students who are interested in summer employment should start writing to and visiting law firms now in searching for employment. The Placement Office has announced and posted on the Placement bulletin board on the fourth floor, all of the openings for summer employment which have come in so far. However, the number of summer jobs which are listed with the Placement Office constitute only a tiny percentage of the jobs available.

Unfortunately the legal profession, except for the large "Wall Street" type firms has no organized hiring program. Medium and small sized firms hire by word of mouth, usually asking other lawyers they know if they know any young students looking for summer jobs. We have advised all of our alumni of the availability of the Placement Office but usually only received several dozen openings from our alumni. These jobs are posted or announced as soon as they come in but obviously will not take care of the large numbers in our school looking for summer jobs.

Part of the services of the Placement Office consists in preparing up-to-date lists of medium-sized law firms in the metropolitan area, giving the names, addresses, telephone numbers, the number of partners and associates, and the names of Brooklyn Law School graduates who are partners in the firms. Of course, the size of this list is limited compared to the number of firms listed in more detail in the Martindale-Hubbel directory of lawyers in the library.

The Placement Office also has sample forms of resumes to be used as a guide in preparing personal resumes to mail to firms or to submit to them during a personal interview. Students interested in summer employment should start writing to and visiting every lawyer with whom they are personally acquainted, advising them of their interest and asking them for information about openings in other firms if there are none in their own office. In addition a resume, with a covering letter should be sent to firms selected from Martindale-Hubbel or from the list obtained from the Placement Office. Requests from law firms for summer jobs will be posted on the Bulletin Boards in classrooms and on the Placement bulletin board in the fourth floor hall.

A personal visit to law firms, if you have the time and the opportunity, is still the best way to find a job.

Brooklyn Law School participates in the federal work-study program in the New York City Urban Corps Summer programs. Pay for about 20 summer positions at about $90.00 per week is available through this program. Eligibility for these positions is determined in order of financial need. The federal government requires the school to make the determination of financial need subject to later audit. In order to comply with the federal regulations, some proof of financial need is required. In order to make this determination the government recommends the use of the Parents Confidential Statement offered by the College Scholarship Service.

Students in the first and second year of school who are interested in applying for the Summer Urban Corps program must have their parents fill out and submit the Parents' Confidential Financial Statement even if they are married and living apart from the family domicile.

Information from the parents must be on file even if no financial support is given by the family to the student. The final determination of need for financial assistance must be made based upon all possible sources of financial aid. Generally students with a gross family income of over $12,000 per year will not be eligible for financial aid under this program. Copies of the forms for the Parents' Financial Statement are available in the Placement Office. When applications are received from the New York City Urban Corps later in March, or April, applications will be distributed to those who have documented their need for financial assistance.

Senior Dinner Dance Set

The Class of 1969, contrary to its apathetic predecessors, has arranged an end term function for the senior class and faculty members. The Farewell Dinner dance is set for May 27, at 8:00 P.M. at the Palms Shore Club. The evening will include a full course Roast Beef or Lobster Tail dinner (your choice), preceded by cocktails, a complete show, and dancing to an excellent band. All taxes and gratuities are included in the low cost of $18.00 per couple. Valet Parking available. (It is guaranteed there will be *no* speeches.)

For those unfamiliar with the Palms Shore Club, it has been serving the social needs of the Brooklyn Community for the past few years. In that short time it has gained for itself an excellent reputation. Easily accessible, from Manhattan, Queens or Long Island, it is located in the Sheepshead Bay area, right off the Knapp Street exit of the Belt Parkway.

Formal invitations have been mailed, and the response cards should be returned promptly so that we may inform the club of the final total of people attending.

The Student Bar Association would like to thank Dean Prince for his help and encouragement in planning the evening, and we sincerely hope that the Senior Class will make this function a success so that it may be continued in future years.

Honors Program Considers Jury Reform Proposals

By GARY BAKER

Unbeknownst to many B.L.S. students there is, in addition to those writing for the law review, moot court arguments or legal research briefs, a fourth group of students actively engaged in researching topical legal questions. This group is the B.L.S. honors program. Working under the tutelage and direction of Professor Fabian Palomino these second and third year students are given the opportunity to become involved in a significant legal project apart from their daily studies.

Professor Palomino, now in his second year with the program, explained that the projects with which the group is currently working represent a departure from the programs of previous years. Whereas the group formerly drew up short pieces of legislation which were actually introduced in the legislature, the emphasis for this year has been altered. The legislative workshop has become involved in two long-range and very time-consuming projects.

The reason for the deviation from past practice is due to the request of the Honorable Thomas F. McCoy, New York State Administrator of the Judicial Conference. At the suggestion of Mr. McCoy, the workshop has undertaken an exhaustive analysis of the statutes relating to jurors, juror selection, and juror's qualifications throughout the state. In the final stages of the project the workshop will attempt to compile one uniform statute for jury selection that could be adopted on a state-wide basis, and one that would also assure that juries would be a more representative cross-section of the members of the community.

To anyone who is even vaguely familiar with the present selection system it is obviously patently inequitable. There are far too many exemptions and even these exemptions are unfairly exploited out of proportion. The juries are made up predominantly of elderly people, postal service employees, and other civil service employees. There are rarely any doctors, accountants, or other professional people on N. Y. juries. In addition, juries are frequently unbalanced racially, there existing a severe paucity of Negro and Puerto Rican jurors. Thus, the need for reform in this area, which is one of the cornerstones of our legal system is apparent. The workshop is optimistic about being able to suggest some viable and curative changes in the present system.

The second project the honors group is tackling, though totally unrelated to jury reform, is equally noteworthy. The workshop is dissecting all federal, state, and local legislation relating to the various types of assistance which is authorized to be given to handicapped children and their parents.

One aspect of the project is to examine the specific agencies administering these legislative programs and make a determination as to whether or not the legislative mandate is being properly implemented. The programs are appraised with regard for what they are offering as compared to what they are authorized to offer.

The ultimate goal of this aid to handicapped children evaluation is to publish an easy to read pamphlet explaining to parents exactly what is available and how they can obtain it. In addition, they intend to point out those instances where suits could be brought to compel programs and aid where they are authorized by legislative fiat yet not made available by the agency.

In connection with this, the group is also analyzing the degree of overlap in the various programs to see if a separate governmental agency should be developed on the state level to oversee all of these programs and to prepare reasonable working budgets for them.

Professor Palomino commented that at this stage it appears that money is not being appropriated in accordance with need to these programs, but rather in accordance with pressure that can be generated. This is not the optimum way to administer these programs, and toward a solution of the problem the workshop is diligently at work.

The group expects to complete work on both projects by June of 1969. In each area, jury reform and aid to handicapped children, the work being done by the legislative workshop is unique, being the first project of its nature to be undertaken in this manner in the state.

Justinian Editorial Board

Seated L.-R.: Joel Deckler, Bernard Kobroff, Steve Silverberg. Standing L.-R.: Roger Adler, Ed. Louis Pepper, Ed. Don Hecht, Jack Cohn.

Court Proposes Bar Admission Revisions

By STEVE KLINE

The New York Court of Appeals held a public hearing on March 3, 1969, in Albany at the Court of Appeals Hall, to consider the following proposals the text of which is reprinted below:

"1. That the Bar examination be dispensed with as to law graduates whose law study was interrupted, after completion of two-thirds of the requirements for graduation, by active military service of twelve months' duration and as to law graduates who have been prevented from participation in two Bar examinations next after graduation because of active military service of twelve months' duration upon compliance with the usual residence and other requirements.

2. That professors, associate professors and assistant professors, who have been employed full time for five full years as teachers in any law schools approved by the American Bar Association, may be admitted to the New York Bar on motion if they are graduates of law schools approved by the State Education Department and have been admitted to practice in the highest law court in any other State, Territory, the District of Columbia or in a country whose jurisprudence is based on the principles of the English Common Law, provided they comply with residence and other usual requirements.

3. That persons who have been employed full time for five years as attorneys and counsellors in the service of the United States Government or in military service with Judge Advocate offices or by business firms or corporations may be admitted to the New York Bar on motion if they are graduates of law schools approved by the State Education Department and have been admitted to practice in the highest law court in any other State, Territory, the District of Columbia, or in a country whose jurisprudence is based on principles of the English Common Law, provided they comply with residence and other usual requirements.

4. Whether the present requirement of residence in New York State as an essential condition for taking the Bar examination, or for admission to the Bar, or for practicing law in this state, should be abolished, relaxed or otherwise changed."

Justinian requests that students with extra copies of Vol. XXIX No. 1, Oct., 1968, bring them to the main desk on the 3rd floor.

Professor Yonge

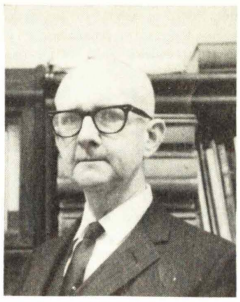
Noblesse Oblige

By ROGER ADLER

Professor Philip Yonge gives the impression of being a throwback from another era.

In the midst of a city bent on polarization along racial lines, and after a political campaign which appealed to man's hates and fears, here is a man of grace and intellect, a man of the law who has dedicated himself to the teaching of his fellow man.

Professor Yonge was born in 1917 in Florida and received a B.A. degree from Washington and Lee University, in Lexington,



Prof. Philip K. Yonge

Virginia. Washington and Lee is one of those old fashioned liberal arts schools that has turned out many men in the mold of the Virginia gentleman, and has followed the creed of *noblesse oblige*. Graduating from such a school, one normally became a doctor, lawyer or military officer. And so he returned to the University of Florida and received a law degree from their School of Law in 1942, and was admitted to the Florida bar that same year.

With World War II in progress, Professor Yonge served as an attorney for the O.P.A. in Atlanta, and then entered the service. A post war stint in private law practice was followed by his introduction to law school teaching, when he accepted an assistant professorship at the University of Florida.

Professor Yonge spent a year as a Sterling Fellow at Yale University, and then returned to the University of Florida as a full professor until 1958.

Between 1958 and 1963 Professor Yonge was Visiting Professor of Law at George Washington University ("Washington D.C. is a real good city"), Western Reserve University ("Cleveland is really very disappointing; just a lot of small towns"), and Washington and Lee University.

In 1963 he journeyed, under a Fulbright fellowship to the University of Rajasthan in India. The professor related that India's legal system is very similar to Great Britain's, and so a common law brethren of ours.

In 1964, Professor Yonge returned to the United States to accept the position of Professor of Law at Brooklyn Law School, and has enjoyed BLS and New York City ever since.

Professor Yonge feels that BLS is a comparatively young school, going through its period of change. He points out that the standards have increasingly risen, and that the new building will help spread the fine reputation BLS has, in the profession, to the man in the street.

The Professor intends to continue teaching as long as he is able. Because he holds teaching as a public trust, and because of his keen mind and sense of commitment, he is a vital member of the Brooklyn Law School faculty, and a valued friend of the student.

Character Committee Upheld In Federal Court Test

In a 2-to-1 decision, the U.S. Court of Appeals for the Second Circuit, ruled that the New York State law governing character and fitness requisites for applicants to the New York bar was not so vague as to support a claim of unconstitutionality, and that the requirement to furnish evidence of loyalty to the United States was not in violation of any constitutionally guaranteed rights.

The plaintiffs, among whom were three Columbia Law School graduates who had passed the bar examination, contended that the law was too vague and indefinite; that it had a "chilling effect" on First Amendment rights and that it required disclosure of acts and associations beyond the scope of proper inquiry.

The majority's 28-page opinion was written by Judge Henry J. Friendly, and was concurred in by Judge Dudley Bonsal. Judge Constance Baker Motley dissented in a 50-page opinion.

Judge Motley found the character and general fitness statute constitutional but found that its "interpretation, implementation and application by the defendant courts and their respective character committees are unconstitutional."

Speaking for the majority, Judge Friendly said, "We need not tarry long over the claim that the requirement of the Judiciary Law that entrance to the bar shall be allowed only to a person who possesses the character and general fitness requisite for an attorney and counselor at law, is impermissibly vague."

Judge Friendly noted that there was little distinction from the law of other states, among them California, on the subject, and said "New York's requirement is somewhat more definite in specifying that the character traits required are those directly related to suitability for the practice of law."

As to the requirement that proof be furnished of loyalty to the Government, Judge Friendly found no reason for the state not to impose such a burden on the applicant when "the applicant has detailed knowledge but the committee would be required to make extensive investigation."

National Moot Court Team

By MICHAEL J. HUGHES

This year's National Moot Court Team composed of David C. Birdoff, Michael J. Hughes and Frank Silverstein lost an extremely close oral argument to Fordham Law School in the second round of the Regional Competition.

The team was assigned to represent the Petitioner in a suit against the United States which challenged the constitutionality of the Vietnam conflict without a Congressional Declaration of War and the order issued to Petitioner to participate in this conflict which he contends is immoral, illegal and unconstitutional.

Individually the team members offer unique backgrounds. David C. Birdoff is a graduate of Brooklyn College where he majored in Political Science and obtained a Bachelor of Arts Degree. His success at Brooklyn Law School includes membership in Law Review and Finalist in the Intramural Moot Court Competition. At the present time he is Notes Editor for Law Review and is ranked seventh in his class. This past summer he was employed in the U.S. Attorney's Office and upon graduation he intends to become a Trial Attorney.

SBA President Michael J. Hughes is a graduate of New York University where he secured a Bachelor of Arts Degree with a Major in Language. In addition to playing Varsity Golf and Baseball, Mike established a World Record Ping Pong Marathon of 80 hours in 1965. He appeared six times on the Pressman-Ryan Report and was also a guest on "I've Got a Secret." Aside from his SBA activities at Brooklyn Law School, Mike participated in the First Year Moot Court and the Second Year Moot Court where he was a Finalist. Currently in the upper third of his class Mike contemplates either a career in politics or trial work with a Government Agency.

Frank Silverstein served four years in the US Navy prior to obtaining his Bachelor of Arts Degree at New York University. At Brooklyn Law School, Frank participated in the First Year Moot Court which was organized on a non-competitve basis. In the Second Year Program Frank was a Finalist and received awards for Best Brief and Best Oral Argument. A Summer Intern with the Kings County District Attorney, Frank intends to become involved in litigation or trial work.

ANONYMOUS

He was a very cautious man
Who never romped or played.
He never smoked, he never drank,
Nor even kissed a maid.
And when he upped and passed away
His insurance was denied . . .
For, since he hadn't ever lived,
They claimed he never died.

— Anonymous

(from Student Lawyer Journal, Feb., 1969)

Ornstein . . .

(*Continued from page* 1)

One of the best criminal lawyers in the city, Maurice Edelbaum, was retained to see that Persico didn't get convicted, and Edelbaums don't come cheap. Persico's first trial, in 1961, ended in a hung jury. His second resulted in a conviction, but this was reversed on appeal because of trial errors. His third time around was aborted by a mistrial. His fourth brought another conviction, but it was later thrown out because of errors in the judge's charge to the jury. Now this fifth attempt to convict him would be the last.

Then the trial took on even greater significance. In researching the case, Ornstein discovered that the Justice Department's prize Cosa Nostra informer, Joseph Valachi, had briefly touched upon a conversation with Persico in which Persico told him about the hijacking. So he went to see Valachi where he was being kept at the time, a federal penitentiary in Michigan. He found Valachi to be persuasively matter-of-fact about his encounter with Persico and decided Valachi could make all the difference. Ornstein, however, had to confront a delicate problem. After having agreed to the publication of Valachi's memoirs of life in the Cosa Nostra, the Johnson Administration had buckled under to enormous political pressure and had gone into court to suppress the book. The last thing it wanted now was to have Valachi in a witness chair. Ornstein solved the problem by keeping his plans away from the Justice Department's top echelon until it became too awkward for anything to be done about them.

Ornstein still was taking quite a gamble. While Valachi had provided the government with its first inside look into Cosa Nostra operations, he had never been used in court before and there was no telling how he would perform in front of a jury. As it turned out, he was a perfect witness. His direct testimony took about 10 minutes. Then while defense counsel hammered away at him for the better part of a week, trying to portray him, among other things, as a nut, a drunk and a molester of little girls, Valachi remained unshakable. As one courtroom observer noted, "The longer they kept him on the stand, the better he looked." The jury was out only a couple of hours before it came back with a verdict of guilty for Persico and his three co-defendants.

Verdict Ignored

Ornstein's satisfaction did not last very long. The presiding federal judge, John F. Dooling Jr., chose to ignore the verdict and dismissed the case. As Ornstein listened in disbelief, Dooling explained that although there was nothing to suggest that the verdict would be any different if there were still another trial, he based his decision on the fact that there had been too many trials. "It is held," he said, "that the aggregate here has reached the point at which to enter judgments of conviction against the defendants would be to deny them due process."

That night Ornstein got mad. "After my second Martini," he says, "it hit me that Dooling just couldn't do what he had done. It just wasn't right." So he decided to try for a writ of mandamus. It literally means "we command." It goes back to English common law and it's there to force a reluctant public official or lower court to perform a specific act on orders of a higher court. In the latter instance, it is also something that hardly ever happens. A mandamus writ involves fairly esoteric law, and when Ornstein requested expert help from Washington, he was told, in effect, "Lots of luck, kid."

Ornstein went into a law library for a week, tracing the history of mandamus back to the 17th century, and found that Dooling's action had no precedent in criminal law. "No trial judge," he says, "had ever thrown out a case after the jury said guilty because there had been a transgression of due process. That's something he was to rule on before the jury goes out."

To get a mandamus writ from a federal court of appeals, Ornstein needed the blessings of the Solicitor General. He worked up a 23-page memo supporting his findings and, considering what was at stake, you could be excused for thinking that everyone in the Justice Department would be delighted. But while he got the full backing of the Organized Crime Section, he met one roadblock after another up the line as he nursed his request through channels. "You're all wet on this," he was told, "you don't have a chance." Finally when the number two man in the Solicitor General's office turned him down, even Ornstein was ready to give up. Then a strategically-placed pal slipped his memo on the Solicitor General's desk anyway, and at last he got an okay to go ahead.

The other day Ornstein learned that it was worth all the effort. The U.S. Court of Appeals in New York slapped down Judge Dooling pretty hard and ordered that Persico, et al. be sentenced forthwith. "We are convinced," the court said, "that it is . . . highly improper and undesirable for a district judge to take the action of Judge Dooling," adding that "This dismissal after a five-week trial during which no right of the defendants is found to have been violated, would result in a shocking waste of jury and court effort."

—oOo—

Mr. Robert Ornstein received his LL.B. from BLS in 1966. He served on the Law Review and was a member of the National Moot Court Team. Mr. Ornstein observed that his experiences of the past few years have instilled in him a special sense of pride in BLS. In his associations with other lawyers he found primarily a difference in approach to problems presented. He emphasized that in the final analysis, the intelligence and ability of the individual attorney was the prime determinant of success and that attendance at some well-known law school worked no magical advantage to his colleagues. Mr. Ornstein pointed out that BLS is both known and respected in other areas of the United States. In the Department of Justice, BLS enjoys a respected position primarily as a result of the high competency demonstrated by its graduates who have worked in the Department. Mr. Ornstein emphasized the importance of law review and moot court experience in the development of legal abilities. He noted that the primary obstacle facing the BLS graduate was his own unwillingness to establish challenging professional goals. Mr. Ornstein urged the BLS graduate to explore the opportunities available in the Federal Government. Such opportunities provide for the establishment of credentials for future positions. As evidence of this, Ornstein referred to Mr. Ed Korman, formerly Editor-in-Chief of the Brooklyn Law Review. Mr. Korman served for two years as clerk to Judge Kenneth Keating of the N.Y. Court of Appeals, and is currently associated with one of the most prestigious law firms in New York, of which Arthur Goldberg is a partner. In summation, Mr. Ornstein insisted that "there is no need to apologize for BLS, but there is a need to develop a positive perspective about the law school." In short, there is a need for the BLS student to exercise a very important quality—initiative.—Ed.

QUOTES

BY STUDENTS

1. Would you mind repeating that fourth assignment, a *little* bit slower Professor!
2. Marks were sent out today . . . . Yeh I'm sure?
3. Did they fix the water fountain yet?
4. If I only had one more day — twenty-four more hours — I know that I'd know this course *Cold*.
5. Did you get the chart right?
6. Pardon me Professor, but what does the "J." before all the names stand for?
7. "Unprepared, sir ! ! ! "

BY PROFESSORS

1. All I want from you are the facts — just give me the facts — please . . . . . please.
2. The jurisdiction of the Federal Courts is *what*, is *what?*
3. How many of you dummies are Business Administration majors — how many?
4. No . . . . but I can tell you this — There will be very little stress on the Personal Property Law on the final exam.
5. BUT, there is ONE case in the Oregon Appellate Division . . .
6. Oh, by the way, all the materials covered last hour will *not* be covered on the final.

ALUMNI IN THE N-E-W-S

1924

Judge Peter Maynard Horn, Judge of the Queen's Term of Juvenile Court, has retired at the age of 70. Judge Horn helped organize the 1939 World's Fair; helped define the concept of social courts and organized the first Women's Term, devoted to delinquent females; upheld for the first time in a court the use of skid marks to determine the speed of a car and the use of the Drunkometer as evidence of intoxication; and ran for the office of President of the City Council in 1942 as running mate of Newbold Morris. And despite his retirement, Judge Horn expects to add to the list.

1926

Hon. Simon J. Liebowitz, Justice to the New York Supreme Court, graduated from Brooklyn Law School in 1926, Cum Laude. Justice Liebowitz is active in philanthropic and fraternal groups in East York.

1935

Hon. Isidore Levine. We are happy to announce that contrary to our previous report upon erroneous information Justice Levine is alive and well. Justice Levine has given much to his community by his activities in Queens County politics and as a valuable contributor to Family Circle.

1940

Norman P. Schatton has been promoted to senior vice president of Alexander Summer Company of Teaneck, N.J.

1949

Frank Bielevicz has been appointed to the newly created position—manager United States and Canada of Celanese Corporation.

1951

William J. Prescott has been appointed the Assistant Secretary of The Crum & Foster Insurance Companies. Mr. Prescott has been responsible for national supervision of Workmen's and Maritime Exposure claims.

1963

Marvin Gersten is Commissioner of Purchases of New York City. At age 28, he is the youngest commissioner appointed by Mayor Lindsay.

1965

Lieutenant Benjamin Ward has been appointed to the post of executive director of the Civilian Complaint Review Board.

1967

Peter M. Rubin has been appointed Assistant District Attorney, Nassau County.

1968

Mark M. Grossman, a recent graduate of a Vista training program, will spend one year working with Xavier University of Louisiana in New Orleans, Louisiona. His activities will include development of local leadership, tutoring and adult education, recreation programs, and home visitations.

Robert M. Rosenblith is now an Assistant District Attorney in Kings County.

Ira D. Pergament has been appointed Dutchess County's new public defender.

Barry P. Smith is presently employed as an electronics examiner at the U.S. Patent Office and is expected to receive an LL.M. degree in Patent and Trade Regulation Law from George Washington University in June 1970.

Among the recent judicial appointments of Mayor Lindsay are Judge Allen Beldock '48, Judge Charles T. Drago '37, and Judge Robert S. Kreindler were named to seats on the Criminal Court bench and Judge Gilbert Ramirez was named to the Family Court bench. Judge Ramirez is perhaps the first sightless judge in New York City history.

Hauptman . . .

Emphasis On Theory Stressed

(*Continued from page 2*)

stances to receive a course in taxation much improved over that offered in many other undergraduate law schools. First, because the course naturally lends itself to the use of the problem method, and second, because Professor Hauptman has the interest to do the necessary research in the course to bring together statute, case law and regulations, a student is given the opportunity to research practical problems throughout the term and to see for himself how the material fits together into a unified, coherent course.

Evaluating the debate between the use of the case method as opposed to other methods of law study, Professor Hauptman believes that the case method is the most valid method available. Compared with the reading of principles in a textbook, the case method affords an opportunity to see how these principles are actually applied in litgation. When a case is assigned it is intended that since all of the case is relevant as an explanation of the rules of law, that rather than concentrating on whether the holding of the case is still the law today, the student should study the reasoning of the court and the application of the rules to the facts presented. Thereby, the case serves as a source of the rules of law, the application of rules to fact, a source for the uncovering of the court's underlying theory of the case, in addition to a final holding on the case.

Professor Hauptman perceives the role of the law school as the place in which the student learns the theory of the laws that he will apply for the entire length of his career. He recognizes the practical difference between theory and practice, but sees the need for an emhasis on theory for the major part of the student's time in school. He points out though, that the school offers seniors courses in Pleadings Clinic and Evidence Clinic with the addition of opportunities for participation in Trial and Appellate Moot Court Competition for all students. These courses do give the student valuable practical experience in the use of acquired theory.

Extracurricular Activities

As to other extra-curricular activities available to the law student, Professor Hauptman believes that the student should concentrate on getting as much as possible out of each course before contemplating outside work in a law office or elsewhere.

Commenting on the question of law specialization, Professor Hauptman observed that it must be recognized that a lawyer can't be expected to be an expert in all fields of law. That is certainly not to say that he cannot be competent in these same fields. As to proposals for certification of attorneys as specialists in selected fields, he recognizes the yet outstanding question of what would constitute the requirements of "expertise," what would be the maximum number of fields in which a lawyer can be considered an expert are still to be answered.

As to problems in the public eye at the present time, the problems of the tax exempt foundations, and the use of tax loopholes to escape tax liabilities on huge incomes, are rapidly moving to a hopefully more equitable solution, according to the Professor.

Professor Hauptman also expressed interest in another problem that has recently come into the foreground. This is the general area of conflict of interest, as applied to the field of corporate law, which manifests itself in the problem of the measure of duty owed by corporate "insiders." Should one in a position of confidence be legally allowed to use information obtained, because of his position, for his own gain, excluding from the benefits of such knowledge the other shareholders of the corporation? Should such a person be restricted in his purchase or use of options on his corporation's stock? These are just two questions raised by the recent *Texas Gulf Sulfur* decision.

The Professor sees the new building as potentially having a significantly beneficial effect on the student body. He sees the new quarters as a stimulus to the student's intellectual interests, increasing his desire to spend more time in the library and the school's general academic atmosphere. There will be more space available than now, more seminar rooms, and better classroom layouts. In addition, a floor will be equipped with portable doors that will enable an entire one half of that floor containing the Moot Court room to become a single classroom for use as a large court room or for regular classroom work.

Poignant Observation

Professor Hauptman has made the poignant observation that, to the student's detriment, "the student is ignorant of what he does not know." This unfortunate fact is extremely damaging in a profession that depends on the lawyer's ability to recognize a problem when he is presented with given facts. This ignorance is most obvious on final examinations where essay answers do not respond to the issues involved, and instead, concentrate on collateral matters. When this is done, Professor Hauptman noted, the student has missed the essence of the question, and the course. To reinforce this observation, the Professor stated that there is a definite correlation between short answer and essay grades.

Devotes Time To Review

Professor Hauptman spends 60 hours a week at the law school, devoting his time to many activities. He keeps up to date by reading supplements, newsletters, and advance sheets. He uses a filing system to determine if a new case should be assigned or commented upon in class. In addition to time devoted to daily preparation for class, Professor Hauptman, as a member of the Faculty Committee—Moot Court, is responsible for administering the Senior Trial Moot Court held in the Spring. He is also on the Faculty Committee on Scholastic Standing, the Faculty Committee on Law Review, and the Committee to Select Furnishings for the New Building. Professor Hauptman's door is opened for unlimited office hours, and invites all students to discuss any matters with him.

Habl . . .

Stare Decisis

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". . . it was not merely what was ruled nor merely what was said in explaination of the ruling, but at one time the ruling and at another time the explaination, that has the vitalizing capacity to shape the form of the law thereafter." (Cardozo)

It will do to conclude herefrom that the availability of choice reduces the resulting judicial decision to being a product of arbitrariness. Stone as expressed the point as follows:

". . . unlike that of the parliamentary legislator, the judicial choice is usually between alternative decisions and modes of reaching them presented to the judge by the authoritative materials of the law. These materials present . . . guideposts to alternative solutions . . . In this sense the required judicial choice making . . . creative as it is, is still . . . confined from molar to molecular motions, and is "interstitial" in character. (Cardozo)

Just how judges can or ought to exercise choice among these "guide posts to alternative solutions" is a question on which there is much debate. Suffice it to say that Mr. Justice Black's thesis of deferring to prior evidence of choicemaking (i.e. balancing) where such indeed exists, seems sound in principle and generally workable in application.

Surely no one will suggest the fact that the doctrine of stare decisis has not been lacking its antagonists . . . challenging both the validity and desirability of the process Wasserstrom). Such attacks (ably criticized elsewhere) are all too often founded upon such observations as the following:

"Ostensibly, the consistent operation of a precedential decision procedure is so patently incompatible with all conceptions of progress, enlightenment, and self-correction that one may indeed wonder whether it even merits careful consideration." (Wasserstrom)

It is precisely this "misimage that Llewellyn relates in his *The Common Law Tradition*:

"I know of no phase of our law so misunderstood as our system of precedent. The basic false conception is that a precedent . . . will in fact (and in a 'precedent system' ought to) simply dictate the decision in the current case — not sometimes, nor often . . . but instead always and everywhere . . ."

The resolution of the misunderstanding must, then, if at all, lie in the recognition that the precedential decision contains within it not a single rule forever binding, but a "range of meaning" (Llewellyn) from which the ratio for the resolution of a subsequent controversy may be derived.

R.E.