



Mr. Borgeson

Harvard Law Record

JAPAN ADOPTS GLUECK METHOD



COX AIDS LAW REVISION

Clerks Start Magruder Scholarship

Harvard Law Record

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CALENDAR

Notices for publication in the Calendar should be in the RECORD offices not later than noon the Friday before the date of publication.

Thursday

"Ballets Africains" will be at the Colonial Theatre through Feb. 14. Shirley Booth and Melvyn Douglas appear in "Juno," new musical at the Shubert Theatre.

Friday

The California Club will meet in Mallory Smith Room at 1 p.m. Mr. Bernard Greenberg, Teaching Fellow, will discuss the California bar examination.

Daniel Tapia, graduate student from Nicaragua will address the International Law Club in the Wheeler Room at 4 p.m. He will talk on Latin American Legal Education.

Sunday

The St. Thomas More Society will hold a Communion Breakfast at Harkness Commons at 10:00 a.m. Mass will be celebrated at St. Paul's Church at 9:00 a.m. Very Rev. Francis J. Lally, editor of *The Pilot* will be guest speaker at breakfast.

Nathan Milstein will appear with Boston Symphony Orchestra at Symphony Hall, 3:30 p.m.

Tuesday

Louis Kronenberger, drama critic for Time and Visiting Professor in the Harvard College, will speak at the Coffee Hour in Harkness Commons Meeting Room at 1:30 p.m.

Repetition in Music will be the lecture topic in the series "The Musical Thought" by Carlos Chavez at the Sanders Theatre, 8 p.m.

The Student Legislative Research Bureau is meeting in the Associated Harvard Clubs Room, Holmes Hall at 2 p.m.

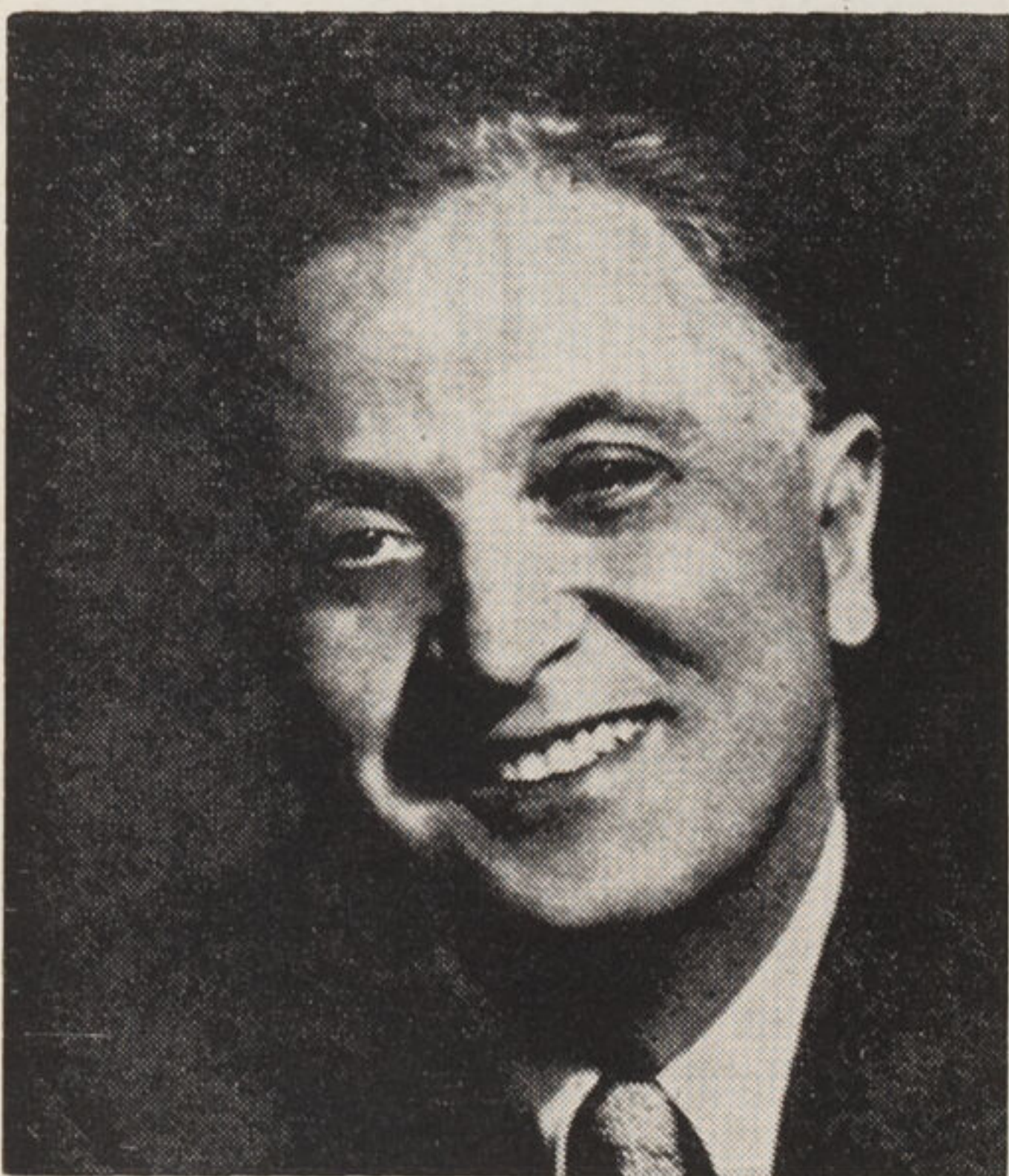
Wednesday

The Harvard Law Wives will present a lecture by Professor Warren A. Law, Professor at the Harvard Business School, on the "Stock Market" at 8 p.m. in Harkness Commons.

Japan Adopts Glueck Method

Japan's Ministry of Justice has established a new study center as part of its National Research Institute of Criminology. The prime purpose of the new department is to study problems of juvenile delinquency. The Institute's inquiry will make use of the Glueck Prediction Scale, a system for identifying delinquents developed by Professor Sheldon Glueck and Doctor Eleanor Glueck of the Law School.

This scale is one of a series that appears in their book, *Unraveling Juvenile Delinquency*, The Commonwealth Fund, New York, 1950. Based on five interpersonal family factors which tend to differentiate delinquent children from non-delinquent children who were subjected to the tests, the Prediction Table demonstrates a high correlation between the



Sheldon Glueck

five factors and the likelihood of delinquency. Retrospective follow-ups have confirmed the statistical accuracy of the testing device. This method makes it possible to spot potential juvenile delinquents at a stage in life when proper preventive steps may obviate the development of a criminal career.

The studies by Professor and Doctor Glueck have aroused world-wide interest.

Their influence, directly or in translation has reached Germany, France, Holland, Belgium, Sweden, Mexico, Spain, China, Israel, and Egypt. The Supreme Court of Japan has ordered the publication of *Unraveling Juvenile Delinquency* in Japanese.

Mr. Haruo Abe, LL.M. '55, Public Prosecutor for the Ministry of Justice, and Mr. Kokichi Higuchi, Medical Chief of Nakano Prison in Tokyo, have just written a two-hundred page *Introduction to the Glueck Prediction Method* which describes the use of the prediction tables as applied to the phenomenon of juvenile delinquency in Japan.

The value of their findings is that it shows the five social prediction factors to be applicable to children of other cultures and societies as well as our own.

The Honorable Kiichi Aiichi, Minister of Justice, has extended an invitation to Professor and Doctor Glueck to visit Japan to stimulate the work of the new center.

Morgan Cites Silence of Attorneys In Coffee Hour Segregation Talk

Neimann Fellow Perry Morgan spoke of the South's race problem at Coffee Hour Tuesday, February 3. The Associate Editor of the *Charlotte News* cited three "realities" which are "too little discussed in the South itself."

That the Supreme Court does hand down the law of the land is the first unaccepted reality. Morgan said Southern editors, notably Ralph McGill have tried to establish this proposition but have had little support from the bar. Southern attorneys know the place of the Court in our system and they have seen "sociological" decisions before, yet they remain silent. The very group possessed of compelling clarity, knowledge and vigor needed to persuade the South of reality has thus cooperated with the politicians who tell the people what they want to hear. The clergy in assembly have partially atoned for their silence in the pulpit. But the bar is still unheard.

The second reality is that there is not one South but many. The South has been changing with an economic prosperity which antedates the *Brown* decision. Improved relations with minority groups are keyed to the continuance of this prosperity. At this point, Morgan came down hard on Senator Paul Douglas of Illinois for his "fighting liberalism in the name of morality". Admitting personal affection for the Senator, Morgan strongly objected to the belief that salvation was being brought to a mean, cruel and ignorant people. This failure to recognize that the South has its liberals too is resulting in a deep animus toward Northern liberals and their racial program.

The third reality is that democracy in the South is a factor operating against carrying out the decision of the Court. Alabama and Mississippi will be the last to accept it because they know greater political democracy than other states in the area. The people will let their schools be closed rather than be told what to do.

Morgan cited Harry Golden for the correct answer to intergration critics who employ statistics of Negro crime and disease. Golden has denounced James Jackson Kilpatrick and others for using statistical arguments. The real problem is people, people who are not criminal and are not diseased.

In closing the newspaperman urged that Northerners should understand race as a national problem. Prejudice linked to economic fear of aspiring minorities, and segregation based on a love of sameness are Northern facts as well. Race tension in the North will rise with the migration of Negroes from the South.

— Hotvedt

What's 'Cooking?' Lawyers Ask As GSAS Chafes Under Ban

Dormitory cooking, the art of economy-minded students, created quite a stir in the Graduate Center when member of the Graduate School of Arts and Sciences rose to protest an ultimatum issued by Mrs. Mary Tillman, Secretary of Housing for the Graduate School.

Her complaint was that offensive odors, improper sanitation, and inadequate garbage disposal facilities were making cooking a menace to the health and comfort of stu-

dents. She issued a notice that any student who cooked would be evicted but would still be held liable for the rent. This declaration brought forth protestations from graduate students who had been stretching the former rule that meals could be prepared as long as offensive odors were not emitted, beyond what Mrs. Tillman considers to be reasonable limits.

They claimed that their budgets were not sufficiently pecunious to permit them to use



Wesley E. Bevins, Jr.

the restaurant facilities in Cambridge. Others attributed their cooking to dissatisfaction with Harkness Commons.

Mrs. Tillman withdrew her ultimatum and took the matter under reconsideration. But she reiterated her insistence that meals prepared in rooms must be odorless.

In the meantime, life at the Law School went on without any disruption of the post-Blackstonian case method. According to Dean Wesley E. Bevins, Jr., the rule in the Law School dormitories of the Graduate Center is more strict than that of the Graduate School dormitories, but is left to "leisurely, comfortable enforcement." No cooking in the sense of the preparation of meals is permitted in the Law School dormitories. But hot plates and refrigerators are found undisturbed in many of the drab, gray and brown chambers in which law students learn about Mrs. Sibbach's modesty.

Nonetheless, only one complaint has reached the desk of Dean Bevins. Of course, he carefully avoids tours of inspection that might disclose violations of his rigid rule, under the assumption that if objectionable cooking is attempted it will be soon halted by incipient advocates who reside in neighboring rooms.

He recalled that a few years ago a student from India was cooking the fine delicacies of his native land. Unfortunately the diet-conscious student's menu was one that produced strange and unknown exhalations. The student had a diet problem, but his neighbors had a smelling problem. The lawyer-like solution was for the student to move to quarters where cooking facilities were available.

While the Bevins rule at first blush appears strict, it has been interpreted broadly. Much elasticity has been found in the crucial word *cooking*. What is *cooking*? Certainly, to boil an egg to take out on a picnic is not *cooking*. But to fry bacon with which to make B. L. T. sandwiches for use on a picnic would be considered *cooking*. The ground for distinction in these cases is *odor*.

Another aspect of the problem is that the dormitories are not equipped with sufficient facilities to wash pots and pans, without interfering with the normal life of other — presumably non-cooking — students. This, of course, gives the legal mind an opportunity to develop many further distinctions as to what is *cooking* and what is not *cooking*. For example, to make a sandwich is not *cooking*, because it requires that only a knife be washed. But to fry a can of corn beef hash is *cooking*, because it requires that a pan be washed. Similarly, a distinction can be made between the washing of a coffee cup and the washing of a plate. Coffee, tea, or hot chocolate seem to be recognized legal aids; hence, their preparation is not *cooking*.

Wyeth Hall which houses female law students is exempt from prohibition on cooking, because it is equipped with a kitchen for every 17 or 18 residents.

Dean Bevins expressed the desire that similar facilities could be offered to male students in the Graduate Center.

Clerks Start Magruder Scholarship

Twenty-one former law clerks who have served under Judge Calvert Magruder during his twenty years on the bench of the First Circuit Court of Appeals have established a Law School loan fund in his name. The fund was set up to honor Judge Magruder's approaching retirement from his Court and from his position as a Lecturer on Law here at the Law School.

The establishment of the Calvert Magruder Loan Fund was announced at a dinner given by Judge and Mrs. Magruder for his past clerks several weeks ago.

To date the clerks have contributed or pledged \$2,225 to fund the new Fund, according to Frank E. A. Sander, LL.B. '52 *m.c.l.*, of Boston, one of the Judge's former clerks.

The clerks' goal over a period of time is an expansion of the Loan Fund into a full scholarship which will bear Judge Magruder's name.

At the Law School Judge Magruder was a member of the *Law Review* and graduated sixth in his class. He was one of Justice

Brandeis' law clerks, and joined the faculty of the Law School in 1920, progressing to the vice deanhood in 1930. Judge Magruder was appointed to the federal bench in 1939 where he has served with some measure of distinction ever since.



Calvert Magruder

Senators Appoint Cox to Group; Aids Taft-Hartley Revision

Professor Archibald Cox of the Law School will be among nine non-government experts commissioned by the Senate Labor and Public Welfare Committee to recommend an overhauling of the Taft-Hartley Law. In addition to Professor Cox, the committee will consist of four other "public" members, two representatives of labor and two of management.

Sponsored by Senator John F. Kennedy of Massachusetts, chairman of the Labor subcommittee, this will be the first study made of the Taft-Hartley Law by a non-govern-



Archibald Cox

ment body with official status. Members of the group are expected to be appointed in the near future by Senator Lister Hill of Alabama, chairman of the full committee.

Two principal problems expected to be faced by the group are the assembling of the members, scattered over the country, for a sustained duration, and the difficulty of achieving unanimity in group recommendations in view of the diverse outlook of the members. However, it has been reported that Senator Kennedy and his advisors "feel that the help of experts working on both sides of of the problem would be essential to those in the middle."

According to Professor Cox, no definite plans as to meetings have been formulated.

The proposed members of the group are:
Public members: Professor Cox; David L. Cole, former director of the Federal Mediation and Conciliation Service; Charles O. Gregory, Professor of Law at the University of Virginia; Russel Smith, Professor of Law at the University of Michigan and member of the atomic energy labor panel; W. Willard Wirtz of Chicago, head of wage stabilization boards in two periods of emergency control.

Management members: Gerard Reilly and Guy Farmer of Washington, who have both served on the National Labor Relations Board.

Labor Members: Arthur J. Goldberg, special counsel for the AFL-CIO, and Louis Sherman, general counsel for the International Brotherhood of Electrical Workers.

Insurance Companies Seek Income, Shun Business Cycle Investment

For the institutional investor it is not a question of "either or" in regard to investments in fixed income or equities, but rather a question of "more or less". This was the conclusion which Mr. Byron K. Elliott, president of the John Hancock Mutual Life Insurance Company, arrived at in his address to the Bull and Bear Club on Friday, January 30th. Ably assisted by the vice-president and head economist of the company, Mr. Bishop Carlton Hunt, Mr. Elliott conveyed to his audience the mode of thinking which governs the John Hancock Mutual in its approach to the ever-increasing pressures of inflation.

Despite the fact that last year equities comprised only 31½% of the total pool of money invested by life insurance companies, the rest being securely placed in mortgages, government and corporate bonds, Mr. Elliott stated that he did not consider the economy's inflationary influence to be a substantial factor in policy planning. In life insurance policies the premiums paid each year are for that year's insurance. The coverage one gets is the coverage he pays for in that particular year. Consequently long term inflation does not affect the policy holder to any great degree. The insurance company is not an investment device but as Mr. Elliott termed it, "a pool of funds to share various risks". Thus, he concluded, the inflationary pres-

ures must not be the deciding criterion upon which to base their decisions on where to invest their pool of funds. The importance of having the lion's share of the company's funds in fixed-value investments in order to adequately provide for fixed obligations owed to policy holders, outweighs the effect of so-called creeping inflation.

Mr. Elliott pointed out that this pool of money — 100 billion dollars — held by life insurance companies to guarantee the payment of their policies, has been available through the years for the most needed areas of investment at any given time. In the development era of the railroads, much of it was used to facilitate this industry's maturity. There followed a switch to the utilities industry as it grew, and of course, with the outbreak of the war, government bonds took the largest proportion of the pool, claiming more than 47% at one time. It is interesting to note that in 1958 corporate bonds represent 40% of the pool while government bonds can only claim 6.7% of it. Longstreth

Board Woos Second Year Men, Seeks More Willistonians

The Board of Student Advisers has launched a recruiting campaign to induce second year students to participate in the Williston Competition.

Albert Sacks, Professor of Law who teaches two second year sections, urged his students to enter the competition in order to acquire some experience in legal draftsmanship.

Martin Louis, chairman of the Williston Competition, in a letter to all eligible second year students wrote:

The terms of the competition are not onerous. Since the stress of drafting is on writing and on anticipating possible controversies, the amount of research involved is much less than that involved in the preparation of an advanced Ames brief; and since the Qualifying Round runs from March 4th until March 18th, the burden of work should not be particularly heavy.

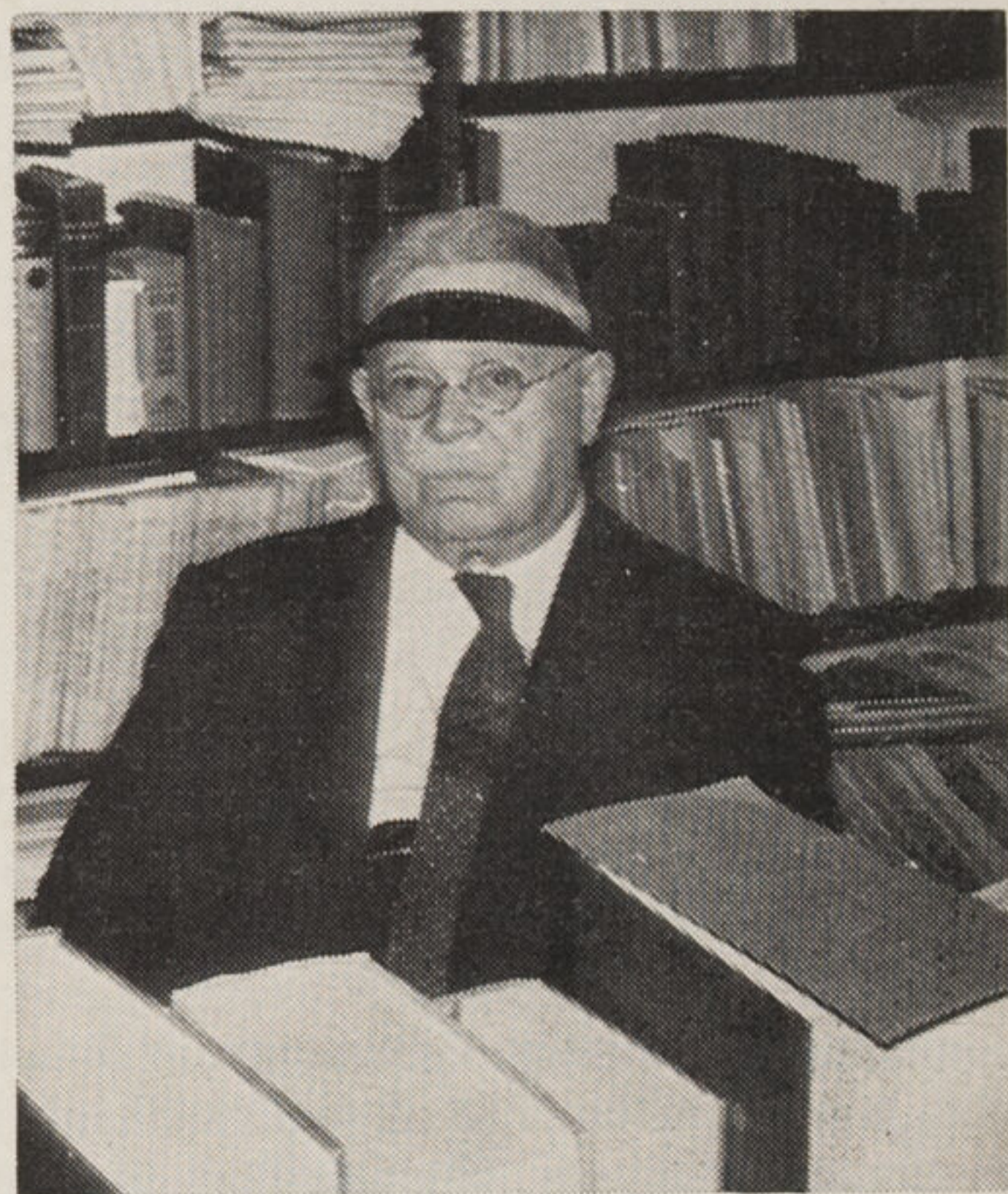
The competition was started in 1951 by the Board of Students Advisers upon recommendation of the Faculty. In 1956 it was named in honor of Samuel L. Williston, Dane Professor of Law, Emeritus.

The contest requires student four-man teams to draft a legal document and to submit a legal memorandum in support of the document. The qualifying round takes place in the second term of the second year of law study and the semifinal and final rounds are held in the third year.

Last year 76 members of the second year class participated in the Williston Competition.

Story Equity Club Awarded Pound Prize in Ames Games

The Roscoe Pound Prize for the highest ranking club in the 1958 Qualifying Round of the Ames Competition will be awarded to the Story Equity Club. The members of the winning club are: Anthony Atwell of Dallas, Texas; Holland C. Capper of Manis-



tee, Mich.; James A. Churchill of Kingsport, Tenn.; Gilbert E. Gove of Birmingham, Mich.; L. Lister Hill of Montgomery, Ala.; Robert A. Johnson of Concord, N. H.; Gordon Lang Jr. of Lake Forest, Ill.; and Robert F. Sullivan of Lebanon, Conn.

The remaining seven clubs to qualify for the Quarterfinal Round are Chayes, Frankfurter, Bruce Law, Story Law, Root Equity, Magruder Equity and Holmes clubs.

The winner of the prize for the best oral argument is Michael A. Cooper, Sacks Club, of Tenafly, New Jersey.

The prize for the best brief will be awarded to Holland C. Capper and Robert F. Sullivan of the Story Equity Club.

Landlords Reported Cooperating; PBH Fights Discrimination

The student housing office in Phillips Brooks House is receiving cooperation from most landlords who list their accommodations with the agency, Paul S. Sarbanes, 2L of Salisbury, Md., reports.

As a result of complaints that students had been refused housing on racial grounds, the office decided to require that landlords sign a card indicating that they would not discriminate on the grounds of race, creed, color, or nationality.

The decision was made by the Faculty Committee of P. B. H., of which Sarbanes is graduate secretary.

The new system is not foolproof, according to Sarbanes, since people can sign the card, even though they intend to practice a subtle form of discrimination. Future complaints will be referred to the Massachusetts Commission Against Discrimination.

First Year Grading Grinds On; Teaching Fellows Glad It's in Fun

Half of the grading process is completed and the first-year students are learning the correct answers to part of their practice examination in Group Work meetings this week. After the rest of the exam is corrected, it will be discussed by each student with his teaching fellow in a private conference.

According to Donald Trautman, Professor of Law, who is in charge of the teaching fellow program this year, the answers lend support to the proposition that it is too early to give an exam for credit. He said that this was especially true in the case of the procedure question.

An innovation in the Group Work program early in the year was an opinion writing project. Like last year, entering students worked with a few cases in Group Work. But then they were given a copy of the record on appeal and appellate briefs and given a week in which to write an opinion. This introduced the new men to legal writing at the start of their first year. After the opinions were turned in, they were read by and discussed with the teaching fellows.

Ames Prizes

Prize winners in the First Year Fall Series Ames Competition have been announced by Ky Ewing 3L, Chairman of the Board of Student Advisers.

James V. Springer 1L of Babylon, New York, Langdell Club, is the winner of the Best Brief Prize. Henry M. diSuvero 1L of San Francisco, California, McNaughton Club presented the best oral of the Fall Series.

Sheldon R. Shapiro 1L of Malden, Massachusetts, Magruder Equity Club, is the winner of the Second Place Brief Prize. Jonathan Mallamud 1L of New York, New York, McNaughton Club, received the second highest oral score.

The first prize winners receive certificates entitling them to order books from the West Publishing Company. The second prize winners receive a copy of *The Lion and the Throne* by Catherine Drinker Bowen.

BRIEF JUDGING CONTEST

Martin A. Kramer 2L of Tulsa, Oklahoma is the winner of the Judging Competition Prize, announced the Board of Student Advisers. Mr. Kramer submitted the best opinion on a first year fall series Ames case. He will receive *Democracy in America* by Alexis de Tocqueville as his prize.

The Opinion Judging Contest will be held again this spring. Although it was not held last year, it was revived this fall by popular demand. Since interest in it was high this fall, it will be held again in the spring.

For Busy Readers

Busy law students have found the new RECORD easier to read in its new format. Members of the Law School have been seen reading it on subways, in restaurants and at bars.

A survey indicates that it can be read conveniently under cover of the casebooks used in courses in agency, criminal law, administrative law, constitutional law, torts accounting, and contracts.

Polio

The Law School Medical Office in Austin Hall is scheduling appointments for booster shots for those who have received polio vaccine. It has been suggested by the U. S. Public Health Service that the booster shots be given before the summer season.

Gallery

Newly appointed Assistant Professor of Law John H. Mansfield brings to his teaching career a background that includes a deep interest in history and the unique experience gained through connection with the Supreme Court of California and the Supreme Court of the United States. Mr. Mansfield currently teaches a section of the first year course in Torts and a section of the second year course in Trusts.

At Harvard College, which he entered after a tour of military duty in Japan, Mr. Mansfield concentrated on medieval history,



and upon his graduation was awarded the Shaw Travelling Fellowship in History for the year 1952-53. Upon return from his travel and studies in Europe and the Middle East, he entered the Harvard Law School. He was an editor of the *Law Review* and, during his third year, Book Review Editor. Following graduation he took a position as law clerk to Mr. Justice Traynor of the Supreme of California. The next year, 1957-58, he was law clerk to Mr. Justice Frankfurter.

Mr. Mansfield's interest in History, cultivated in his undergraduate days, has remained very much with him. "Even a very little historical training makes one look for origins in things, including legal things, as the only reliable way to grasp them. It gives one a sense of what is and is not possible in human affairs; and an awareness of when the breaking point has come in the past

makes one particularly cautious in insisting on rules that any one with a memory can tell will not work. Of course, most of all, it is training in skepticism, and that, properly understood, is the lawyer's stock in trade." He observed that perhaps there is too little emphasis on legal history in the School. Not that there should be additional courses on the subject, but that there might be more stress on it in those regular courses in the curriculum that are naturally amenable to its inclusion. Mr. Mansfield observed that, from a practical point of view, a sense of history seems to be an absolute necessity for a judge or one serving any governmental institution if he is to lift himself above a purely personal evaluation of the power he wields.

As to his own choice of law as a field, Mr. Mansfield notes that here is an opportunity to study and share in "applied history" as recorded in the legal process, to be something more than either a man of action or a man of thought. Asked about the reasons for his decision to teach, he remarked that they were not altogether clear. "There are those who know what they are about from the age of five, and then there are the rest of us. Often why one does something becomes clear only as one does it. The choice seemed an adventurous if demanding one."

Being probably one of few men who at an early age have had experience working with the judiciary at the top level in both elements of the federal system, Mr. Mansfield was asked to evaluate his experience. He commented that he thought there was an extraordinary educational value in observing the attitudes of federal and state judges toward their respective functions in the federal system. "This includes the difficulty of the state judge, who owes his job and so many of his fundamental interests and allegiances to his state, rising above instinctive parochialism to take a reasoned and dispassionate view of the requirements of national law; and on the other hand of the federal judge, who derives his authority from the United States, taking a balanced approach toward the states as autonomous sources of political life and energy. Seeing at first hand the responses of judges and courts to these challenges to objectivity was, I am quite sure, a most valuable thing."

Having graduated so recently, Mr. Mansfield was asked to contrast his teaching experience with that in his role as a student. He observed succinctly, "I learn a lot more teaching than I did as a student." He noted that as a member of the faculty one naturally becomes more tolerant of the defects that any going institution is bound to have. "You are deprived of the pleasure of criticism without responsibility." The comment was offered in response to a suggestion that a presumption occasionally arises in the student mind that there is something wrong with whatever is currently being done by a university administration.

Mr. Mansfield is from California, and his favored relaxation is "to pack into the Sierras whenever I get a chance."

— Skornia

Book Review

PSYCHIATRY AND THE CRIMINAL

By John MacDonald, M.D.

Charles C. Thomas, Pub., 1958. 227 pp.

by

WILLIAM J. CURRAN

George Bernard Shaw in the Preface to *The Doctor's Dilemma* suggests what is to me the theme of the play. He asserts that the public, aided and abetted by its physician members, has created a false front of omniscience about the medical practitioner, supposedly to provide needed emotional well-being for patients. Then, when something goes wrong, the physician is in the dilemma of either accepting the public judgment that he was at fault or of shaking the false facade by admitting the continued empirical and experimental nature of "the healing arts."

This book, written by a psychiatrist to serve as a "practical guide to the psychiatric examination of the suspected criminal" (Preface), may well weaken other comforting assumptions.

The author, Dr. John MacDonald, writes with a background of extensive experience in examining criminals before the courts in Colorado. He is also Assistant Medical Director of the Colorado Psychopathic Hospital and is an Assistant Professor of Psychiatry at the University of Colorado School of Medicine.

Relying on the psychiatry background of his readers, Dr. MacDonald does not expand valuable pages on such subjects as the major mental disorders but launches quickly into the special problems of examining suspected

criminals. He has an excellent chapter on the origins of criminal behavior. Written from the viewpoint of modern dynamic psychiatry, it emphasizes the psychological factors in the development of the superego (conscience).

One of the assumptions that lawyers make about this field is that the biggest problem psychiatrists have in examining suspected criminals is the "legal issue" of responsibility. (This, of course, goes hand in hand with their assumption that psychiatrists have no special problems on the "psychiatric issue" involved. But more of that later.)

Dr. MacDonald's treatment of the responsibility issue does not indicate he shares this assumption. He allocates only eleven pages in his two-hundred page book to a formal discussion of the legal tests and even these seem largely an appendix to his central theme, the examination and diagnosis of mental illness. In the substantive discussion of examination methods, he devotes only two pages to responsibility testing. He recommends the use of indirect questioning to answer the issue. He asserts that the criminal will almost always reveal the answer in his description of the act itself by relating the precautions taken to prevent detection before or during the crime or to secrete it afterward.

This indirect questioning method is also suggested in regard to determining the existence of an irresistible impulse. In a rather puzzling manner, however, Dr. MacDonald cautions "One should be careful to distinguish between an irresistible impulse and an impulse that was simply not resisted." (p. 48) The subject is dropped at this point without an indication of the methods for drawing this distinction. The various legal definitions of irresistible impulse used in the states are not examined in the text.

The heart of Dr. MacDonald's book concerns the psychiatric examination and the diagnosis of mental illness which affects criminal responsibility. Again assuming the psychiatry background of his readers, the author concentrates on the special problems of his subject, particularly the recognition of simulated mental illness, the diagnosis of epilepsy, and the evaluation of amnesia.

Lawyer readers, even those experienced in the field, may come away from a reading of these pages with an uneasy feeling. We may think ourselves sophisticated enough to realize that the distinction between psychosis (severe mental illness) and lesser mental disorders is cloudy at times, but we like to suppose that psychiatrists can successfully distinguish genuine mental illness and a criminal suspect's attempted simulation of



William J. Curran
Lecturer on Legal Medicine

such a condition. This book will shake another of our hypotheses.

For example, Dr. MacDonald discusses in a full chapter something called the Ganser Syndrome. It does not follow the pattern of other more well-known mental illnesses. In fact, it seems to contain a hodgepodge of symptoms with no pattern in individual cases. The chief symptom is the answering of simple questions incorrectly, but with the answer quite close to the correct one, suggesting that the suspect understood the question and "is aware of the correct answer." (p. 52) He may also lack insight and have amnesia for the period of the illness. He may do bizarre things such as wearing his clothes inside out or eating the skin of a banana while throwing the fruit away. Most of the persons who have had this syndrome are suspected criminals awaiting trial, but not all of them, says Dr. MacDonald. He asserts that "in the case of prisoners awaiting trial, the unconscious motivation is to avoid responsibility for the crime by appearing insane." (p. 52) He offers as a differential diagnosis between this and simple malingering that the malingerer may evidence the same symptoms, but his motivation is *conscious*! (p. 62) What does Dr. MacDonald use to tell which is which?

In another area, Dr. MacDonald offers us a list of factors which some other psychiatrists use to distinguish genuine mental illness and malingering, but before listing them Dr. MacDonald says that they are applicable "only in the more crude cases of malingering."

(p. 62) And what will be used in the cases which are *not* crude?

Some of the examples given in the book of discovered malingerers and the way in which they were "discovered" are most revealing. The author asserts that some subjects will maintain their symptoms in a mental hospital when there are doctors around, but when only other patients and nurses are present, they will "revert to a more natural appearance" and give themselves away. (p. 62) In these cases, who makes the diagnosis, the psychiatrist or the nurses? Are the psychiatrists so easily fooled? Are the nurses so competent as to be relied on in this manner?

The author also asserts that suspects who seem insane may inadvertently drop their disguises. In one case, the prisoner had feigned depression. When being brought from the jail in a police car for an interview one day, he changed his usual blank expression to a very bright observation when he spied a girl adjusting her stocking in an alley! As Dr. MacDonald says "in an unguarded moment, he had given himself away." (p. 67)

As a final blow, the author says in his summary of malingering: "The subject who feigns insanity may in fact be insane. . . . The detection of simulation should, therefore, lead to an energetic search for signs of psychosis. The criminal suspect who malingers insanity is usually a psychologically sick person and frequently suffers from a severe character disorder or mental defect." (p. 69)

The chapters on amnesia and epilepsy are only somewhat less disturbing to anyone looking for solid criteria to identify genuine illness or to detect simulation. Some pet theories are severely shaken in the book. For example, Dr. MacDonald discusses narcoanalysis, the use of drugs during interviews. He asserts that they are frequently successful in resolving hysterical amnesia, but "less likely to be of value and should not be employed in cases of malingered amnesia." (p. 91) But how does one tell the difference *before* using narcoanalysis? Isn't that one of the problems before us?

In the epilepsy cases, Dr. MacDonald first severely weakens the diagnostic significance of electroencephalography. He asserts that clinical evidence is still the most important criteria in diagnosis and the objective test of electroencephalography is basically an aid to accurate classification and localization of the disease. And yet, this "clinical evidence" is open to attack by the malingerer with again not very clear criteria to guide the examiner in distinguishing genuine from feigned symptoms. And then, the author tells us that even

when we are sure that the suspect is epileptic this does *not* mean that (1) his crime was the result of his illness (in fact, he says that research studies indicate this is very rare) and (2) such an association can be malingered!

The above commentaries should not be taken as a criticism of the technical quality of Dr. MacDonald's book. If, however, we may take it as representative of psychiatric practice in the field, I recommend a study of it along the lines I have indicated in my review.

Dr. MacDonald shows us most graphically the very great problems psychiatrists face in attempting to answer the kinds of questions we ask of them in the criminal courts. It seems to me that lawyers have perhaps given too much attention to the responsibility tests and not enough to the perhaps more basic problem of asking psychiatrists to make a *clinical diagnosis* of mental illness (which we leave undefined) under extremely unfavorable conditions.

In medical practice, diagnosis is basically a first step in the treatment of the patient. The patient describes his symptoms as truthfully and clearly as he can in order to obtain beneficial treatment. After recording the symptoms and obtaining a complete medical history, the physician can usually conduct a physical examination and may add certain diagnostic tests such as x-ray, blood analysis, etc. However, most physicians say that the description of symptoms is by far the most important element in arriving at the diagnosis. As one famous professor used to tell his students, "Listen to the patient. He's telling you his diagnosis." In psychiatry, the examiner has very little other than the interview with the patient, the observation of his actions, his mood, his speech, etc., to aid him

in drawing his diagnostic impressions. The scope for the malingerer is, therefore, quite broad. The malingerer is also aided by the fact that he is not involved in any medical treatment at the time, as the personal injury plaintiff is, where he *must* expose himself to more normal methods of clinical diagnosis. The psychiatric examination for a court on an insanity plea stands isolated from all contact with a normal medical environment.

Also, the kind of "diagnosis" the psychiatrist is asked to make is not the same as he would make for a patient. In dealing with patients, the psychiatrist is seeking the answer to the question "Can I help this person with his psychological problems?" The person's behavior — or mood, or thoughts — is his problem. In court, the psychiatrist is expected to merely *define* the person's behavior as "mental illness" or not with the overlay of a responsibility test. And yet, the fact that a person *commits* a crime, particularly the very serious crimes concerning which insanity pleas are employed, is evidence to a psychiatrist that the person may well be "ill" and in need of help. Certainly Dr. MacDonald indicates this in his concluding comments on the malingerer and on the Ganser Syndrome.

Please do not draw a further false impression on reading this review. Please do not assume that I have a solution for all this. Further conclusions await a sober look at just what we want to do with behavioral problems in our society. Some say we are merely making progress, rational progress, by changing earlier labels: in our religious societies of the Middle Ages, we called it sin; in our secular years, we are calling it crime; and in our progressive years we will call it all *mental illness*.

Alumni Notes

LL.B. '22 — *Charles A. Coolidge*, Boston lawyer, is the senior member of the Harvard Corporation, the seven-man body which directs the affairs of the University. He was Assistant Secretary of Defense in 1951-52, and served as Special Assistant to the Secretary of Defense, Charles E. Wilson, in 1955 and again in 1956. Mr. Coolidge has practised law in the Boston firm of Ropes, Gray, Best, Coolidge & Rugg.

LL.B. '34 — *Frank Simpson*, 49, died on October 6, 1958. Mr. Simpson maintained offices in Chillicothe, Ohio, in association with Frederick K. Spetnagel. From 1949 to 1953, he was city solicitor of Chillicothe.

LL.B. '38 — *Robert Leland* has moved his offices and is now associated with LL.B. '40 — *William*

J. Cashill in the general practice of law. They are located at the First National Bank Building, 206 North Virginia Street, Reno, Nevada.

He is the co-author of the book, *Sale-Leasebacks and Leasing in Real Estate and Equipment Transactions*, which was published by the McGraw-Hill Book Company on November 10, 1958.

LL.B. '48 — *Carl L. Shipley* has formed a new partnership under the firm name of Shipley, Ackerman & Pickett. They are now located at 1366 National Press Building, Washington 4, D. C.

LL.B. '51 — *Jerome Reiss*, former assistant corporation counsel of the City of New York has become associated with the law firm of Max E. Greenberg. They are located at 141 Broadway, New York 6, N. Y.

Letters to the Editor

To the Editor:

In November I received a copy of the article entitled "Do Third Parties Have A Chance" By Messrs. Nader and Jacobs from you and I want to commend the RECORD for publishing this fine piece. I would point out two errors in the article for your benefit. Under the heading "Small Party Motivations" the Prohibition Party is listed as one which has no definite platform of specific issues. This is a wide spread misconception brought about largely by our name. I enclose our 1952 platform for your consideration.

In giving the requirements for each state the article states that Missouri requires 2% of the total vote or about 36,000 in signatures. This is incorrect since the law requires 1% in each congressional district or 2% in half of the congressional districts. These both are minor errors but I thought you might like to have these facts.

Earl F. Dodge
Executive Secretary
The National Prohibitionist

To the Editor:

I read with great interest "The Case for Comparative Negligence" by Mr. Thomas F. Lambert, Jr., in the December 11th issue of the RECORD. While I was basically in agreement with his position that a plaintiff who is slightly negligent should not lose all, that is that the "all or nothing" rule is harsh and unjust; I would like to take issue with what seems to be one of his tacit assumptions and basic premises.

From his example of the plaintiff who is 40% negligent and the defendant who is 60% negligent it seems that he assumes that a plaintiff should recover an amount which is proportionate to the defendant's negligence, and which is not reduced by the plaintiff's negligence, that is the plaintiff recovers a full 60%.

I would suggest that the basic premise from which a doctrine of

comparative negligence is formulated should be that where both plaintiff and defendant are equally at fault, that is each 50% negligent, then neither should recover. Starting with this premise, I would suggest that where the plaintiff is 49% negligent and the defendant is 51% negligent the amount of recovery should be 2% of the plaintiff's damages, rather than the 51% which Mr. Lambert seems to advocate; and likewise, in Mr. Lambert's example the 40% negligent lady who walks out into the street in the path of a bus should recover 20% of her damages.

I realize, however, that the defendant in Mr. Lambert's example might be allowed to collect 40% of his damages and that this might be said to even out the 60% which the plaintiff was allowed to recover. It is here that we must determine to what the comparative negligence doctrine applies. Does it apply to the total damage of plaintiff and defendant, or does it

apply to the damage for which the plaintiff is bringing suit? It is my position that it should apply only to the particular plaintiff, and that only his damages are the ones to which a percentage formula should apply. Furthermore, the name itself suggests that the comparison is a comparison of negligence and not of damage. To illustrate my position consider the case where plaintiff and defendant are involved in a motor vehicle accident at an intersection and both are equally at fault (50% negligent). It would seem anomalous to allow plaintiff who owns a new Cadillac to recover \$125 for a broken windshield and to limit defendant's recovery to \$25 for the broken windshield on his old Ford. This type of formula will not, at least in my opinion, produce a just result. It is the amount of fault which should determine which party recovers and not the amount of damage. Where there is equal fault neither should recover. Where

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there is unequal fault, the less negligent person should recover the part of his damages equal to the percentage of the defendant's fault multiplied by plaintiff's damage diminished by the percentage of the plaintiff's fault, multiplied by the plaintiff's damages. It is true that the amount of damage is not always commensurate with the amount of fault, but this formula at least avoids the case of the 60% negligent Cadillac owner recovering more than the 40% negligent owner of the old Ford.

Alan S. Novick

LL.B. '58

Fall River, Mass.

To the Editor:

In recent years, it seems that the RECORD has become more forceful in advocating a move toward "softness" at the Law School. One cannot help but recall the cartoon of last Fall depicting Dean Griswold as a demon-educator. And the apparently serious article attacking the institution of Saturday morning classes as an infringement of student rights also comes to mind. And now in one of the most recent issues, the Case Method is attacked as inadequate for modern needs and inefficient and uncomfortable for students. . . .

The overall tenor of the article is the same as the previously mentioned cartoon and the complaint against Saturday classes: the writer with his colleagues, seems to feel imposed upon — as if he has some inherent right to attend the best law school in the United States, and perhaps in the world, and is doing the law school a favor by such attendance.

The danger in this attitude is that it may become widespread and eventually take effect to weaken the hitherto steadfast faculty.

The case method is admittedly inefficient for purposes of placing a sum of knowledge in the memories of students. And the law school faculty has recognized this defect to a certain extent by greatly diminishing the use of the pure case-Socratic method in second and

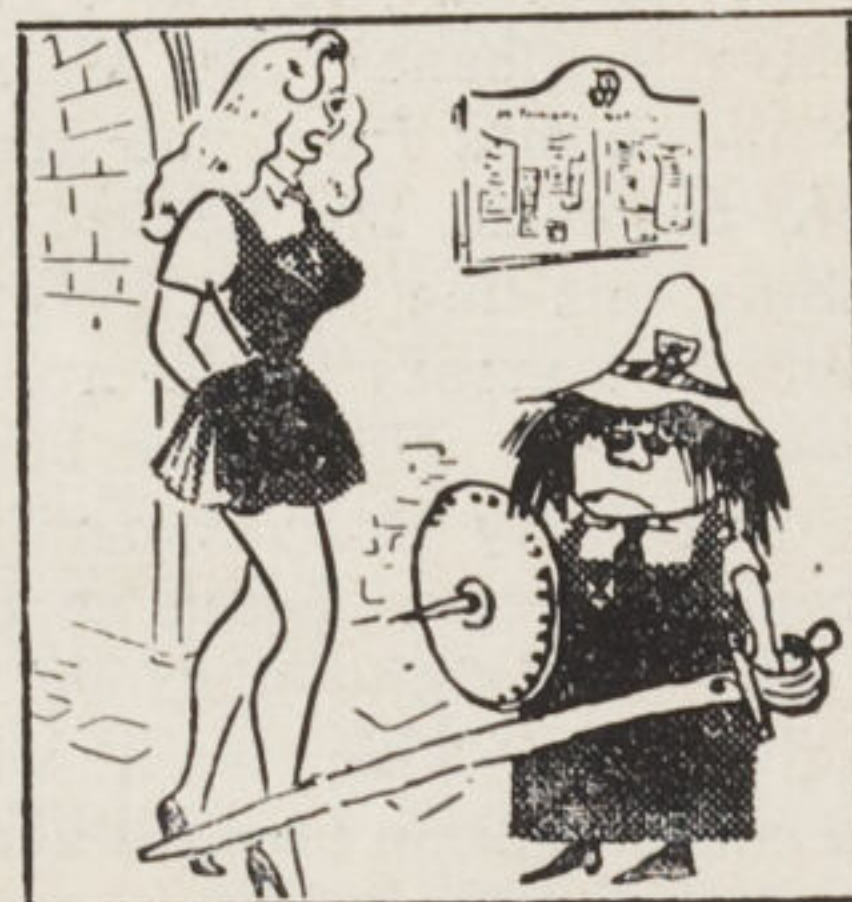
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third year courses as well as the latter part of the first year courses. But the faculty, rightly I believe, feels that the case method is the best available method for orienting a laymen in the study of law and for teaching him the techniques of the legal system; i. e. in making a lawyer out of him. It is this initial exposure to the study of law which is the foundation for a lifetime of legal work. The case-Socratic method trains a lawyer to cope with novel problems and to come to grips with them despite the lack of memorized principles. Any lawyer, one year out of law school, will be quick to admit that he has rarely used the memorized knowledge obtained in law school.

The writer of the article quotes a portion from one of Professor Yntema's articles containing a statement to the effect that development of the law in modern times has become too complex to teach by the case method. This is true. The complex and multitudinous principles cannot be conveyed efficiently by the case method. But this criticism assumes that the sole object of legal education is the transmission of knowledge. I submit that this is only one of the objects and that a far more important object is the development of skills which enable a lawyer to cope with novel problems which could not be solved even after several years of attending law school classes taught by texts. It is the case method which establishes "instinct" in a lawyer — which enables him to discern the controlling principles in even the most novel situation.

It will be an unfortunate day for legal education when the case-Socratic method is subordinated to the text method of teaching.

Very truly yours,
Ted J. Fiffis, LL.B. '57
Chicago

(The item on Saturday classes was a Letter to the Editor, published November 28, 1958. — Ed.)

To the Editor:

Mr. Blanshard in his recent review (RECORD, Dec. 11, 1958) of Father Gardiner's book, *Catholic Viewpoint on Censorship* (Hanover House, 1958), complimented Father Gardiner for stating well the Catholic case against the American Civil Liberties Union, the Author's League, the National Book Committee and John Fischer of Harper's.

I wish the reviewer had also pointed to the most significant feature of the book — its positive aspect.

Referring to Walter Lippmann's plea for "the confrontation in debate" as the essential preservative of our freedom of speech, Fr. Gardiner asks (p. 151 ff), "what might the results be if, say, once or twice a year a representative of the American Civil Liberties Union, of the Legion of Decency, of the American Booksellers Council, of the National Office for Decent Literature, of the Authors League, of the American Library Association, and so on, sat around a table for a

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day's or a three-day conference, discussing mutual concerns and amicably trying to reach 'integration' of their problems?

" . . . And the fact of such a meeting need not — indeed, could not — entail on either side a retreat from principle. The philosophy and law and freedom which underlies the Catholic position need not be endorsed by the non-Catholic participants; the Catholics present would not abandon their adherence to those bases. But certainly both share the mutual American concern of the betterment of our cultural and moral life under the protection of our constitutional freedom. If a group of intelligent and devoted American citizens cannot discuss with benefit such a mutual concern, then we are indeed leagues away from the 'confrontation' that Mr. Lippman considers so essential for the preservation of our democratic way of life."

It is my understanding that conversations along the lines called for by Father Gardiner are now underway.

Sincerely,

(Rev.) Charles Palms,
C. S. P. LL.B. '52
St. Paul's College
Washington, D. C

To the Editor:

I understand that as the result of a mistaken reading of the plans, the new tunnels have been erroneously constructed between Harkness, Langdell and Austin, rather than under Massachusetts Avenue, where they were obviously intended. This is rather disappointing to those of us who daily risk our lives going to and from the Law School area, but I suppose there is some consolation in the fact that we will be spared those treacherous hundred-foot walks in the rain.

— Perplexed

To the Editor:

A copy of the December 11 issue of "Harvard Law Record" was passed along to us by Mr. Bauer

E. Kramer, Oakland attorney and a vice-president of our Chapter.

The article entitled, "The American Automobile Designed for Death?" impressed us as being one of the finest accounts of a serious traffic safety problem we have ever read.

Yours very truly,
Thomas F. Holler
National Safety Council
Oakland, Calif,

To the Editor:

I have read with interest the article in your December 11, 1958, issue entitled "The Case for Comparative Negligence" and congratulate you upon your enterprise in presenting this timely piece.

You might care to know that the "Robert N. Filmore, Jr., Assistant Counsel," etc. referred to in the last column on page 4 is in real life Robert N. Gilmore Jr., General Counsel, etc.

Very truly yours,
Maurice Rosenberg
Professor of Law
Columbia University

Dear Bob:

Will send you a story that should reach you on Monday. We are staying at the Havana Hilton as guests of the government. . . . That's all we could get, and it was a helluva job getting that. We got here Wednesday afternoon and have spent most of our time traveling, talking to people, watching the trials but mostly waiting, either to see somebody or for the trials. Castro has already canceled two press conferences at the last minute since we have been here.

We have got some conflicting information and I want to check things out before it is published, but you will get a story on Monday for sure. A bigger and better one will come next week.

Good luck with the RECORD.

Sincerely yours,
Dave & Ralph

P.S. — The only food that you can be sure is fit to eat costs a fortune here. I've already had a case of food poisoning.

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