



Mr. Borgeson

(20)

Harvard Law Record

Democrats Fight Loyalty Oath

Attlee Seeks Disarmament



Cuban Trial Procedure

By David F. Binder

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, February 26

The annual Harvard Legal Aid Bureau Banquet will be held at the Signet Society commencing at 6 p.m. The speaker will be R. Ammi Cutter, Associate Justice of the Supreme Judicial Court of Massachusetts.

Professor Norman J. Padelford of M. I. T. will speak to the International Law Club at 8 p.m. in the Harkness Meeting Room. His topic will be "International Law in the Atlantic Community, Scandinavian Precedents."

Friday, February 27

The St. Thomas More Society Annual Retreat will take place at the Trappist Monastery, Spencer, Mass. from Friday, 5 p.m. through Sunday, March 1. It will be conducted by Bishop Wright of Worcester.

Frederick G. Fisher Esq., senior partner, Hale & Dorr, will speak on "An Economic Survey of the Legal Profession" at 1:40 p.m. in Harkness Commons before the Student Bar Association.

Dr. D. M. Robinson, president of High Voltage Engineering Corporation, manufacturer of atom smashers, will address the Bull and Bear Club at a luncheon meeting in the Mallory Smith Room, 1 p.m. High Voltage sales have increased from \$230,000 in 1948 to an estimated 5.7 million in 1958. General Georges Doriot of the Business School is a director of High Voltage.

Saturday, February 28

There will be a square dance at Harkness Commons from 8-12 p.m. Theodore Bikel will sing at Jordan Hall, 8:30 p.m.

Sunday, March 1

The Board of Student Advisers Faculty Cocktail Party will be held in the Wheeler Room from 5-7 p.m.

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Law Democrats Protest Loyalty Oath

The Law-Graduate School Democratic Club is protesting Harvard's agreement to scholarship aid on a student's willingness to take a loyalty oath, under the terms of the 1958 Defense Education Act.

In a letter signed by Charles L. Edson, 3L of University City, Mo., the club's executive committee expressed opposition to the University's decision to accept the federal grant of funds for student loans. The letter advised Nathan Marsh Pusey, President, that "The advantages of receiving \$26,807 does not overcome the disadvantages which spring from the conditions attached to the use of money."

In addition to an oath to support the United States Constitution and to defend the United States against its enemies, the grant also requires each recipient to sign an affidavit that he "does not believe in, and is not a member of and does not support any organization that believes in or teaches, the overthrow of the United States Government by force or violence or by any illegal or unconstitutional methods."

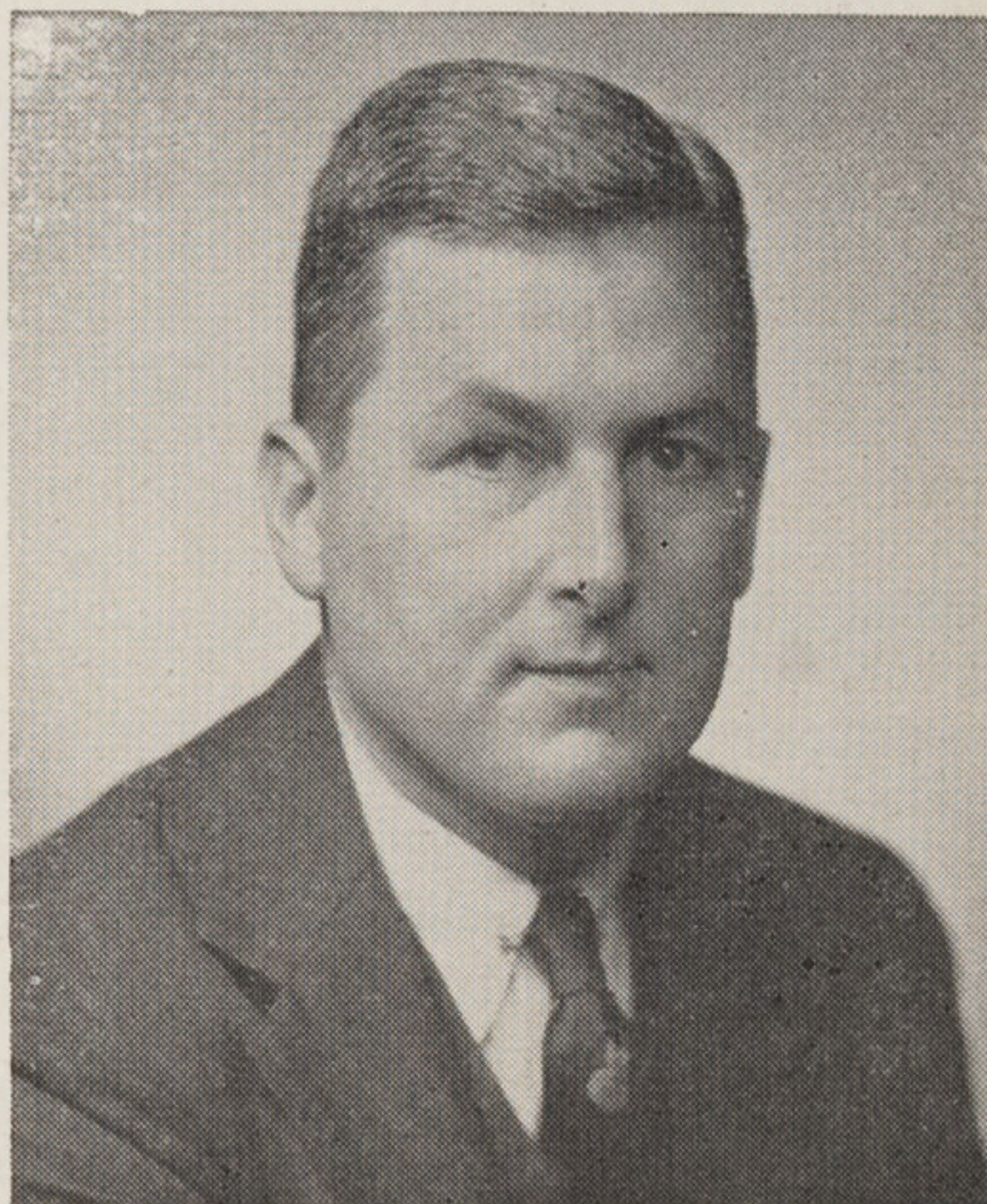
The letter found the fact that Harvard is required to add to the fund, thereby subjecting Harvard funds to the same conditions, particularly objectionable.

These conditions, the letter continues, will tend "to engender an atmosphere of intellectual conformity, where students fear to associate freely with others and to follow where knowledge and truth lead." After noting that other colleges have turned down the grants the letter concluded by urging reconsideration of the acceptance of the funds. "The price of receiving them is too high — the University . . . would lose a portion of its heritage worth more than \$26,807."

President Pusey had not replied to the Democratic Club by presstime.

(See page 14 for the text of the letter.)

— Murstein



Nathan Marsh Pusey

Law Students' Weekend Enterprise Mixes Jazz and Booze to Order

Boston's Mahogany Hall combines the flavor of its famous New Orleans' predecessor with a casual sophistication rarely found in a Dixieland night club. Since its successful opening early in January, this unusual night spot has been directed by two resourceful Law School students, John Hancock 2L of Atherton, Calif. and Dick Plotka 3L of Utica, N. Y.

Neither John nor Dick had any previous experience in this type of business.

Dick remembers, "The opportunity presented itself suddenly, but we immediately did some careful investigation and calculation, and decided to take a chance. We're both glad that we did."

John added that "it takes up a minimum of time because the Hall is only open Friday and Saturday evenings. At first it was a little tough learning the ropes but now it's like old stuff. We've made it a week-end project."

Mahogany Hall is located in the lower lobby of the Copley Square Hotel, in the same building with the more expensive counterpart, Storyville.

The problem of dividing the managerial tasks has been amazingly simple for the young entrepreneurs. Dick had previously played in other Dixieland groups and is leader of the newly-formed band, "The Mahogany Hall Stompers". He proudly appraises them as "the best jazz musicians in Boston."

John commented that "Mahogany Hall and the Stompers have been mentioned in *DOWN-BEAT*, the national jazz magazine, and have been hailed by the entertainment columnists of the Boston papers. We've had the band make some tapes and negotiations are now being concluded to cut a record in the spring."

John greets the entering patrons and oversees the business operations while Dick is on the bandstand. He added, "We're very proud about the type of clientele we have in Mahogany Hall. Our policy is no minimum and no cover charge, plus moderately priced drinks. This appeals to the graduate students in the area. Most of the people are in their twenties or thirties. Some of our steadiest

customers are the young married couples from outlying areas who come in for an evening of music or stop by after a show."

Dick mentioned that one of the unusual aspects of Mahogany Hall is that it not only serves "beer in a mug," but specializes in "rare and interesting liqueurs."

"The experience has not only been a lot of fun for both of us," John commented, "but it's been an exercise in careful thinking. From the reaction of our customers, we feel, that our basic policy should remain the same. They seem to like good happy music."

Dick concluded that "the future is tentative but bright. I plan to practice in Boston and John is returning for his third year. This summer we'll be closed while I'm in Europe and John is working in a law office. From there, we'll just have to wait and see."

Whether the walls of Mahogany Hall will be resounding with the notes of "That's a Plenty", come September, is uncertain, but it is clear that two resourceful Law Students have created a stimulating adventure for themselves.

— Gillis

Real Estate Developer Describes Industrial Parks

Gerald W. Blakely, Jr., president of the Boston real estate development and management firm of Cabot, Cabot & Forbes described recent developments in real estate development and financing at the Bull and Bear Club meeting last Friday. The Bowdoin-trained financial expert told of the problems his firm encountered in pioneering industrial parks in the Boston area and throughout the East. He then discussed recent trends in the financing of large real estate projects.

Starting shortly after World War II, Cabot, Cabot & Forbes Co. invested in land in outlying areas which according to surveys were due for growth. Then the firm gradually expanded into the field of "manufacturing appreciation" in the value of the land. First it helped prospective buyers to design, finance, and construct improvements, and later developed an organization equipped to offer a package of services. Today the firm can acquire land and use its own organization to design and build plants suited to the needs of prospective buyers. The company ar-

ranges financing with insurance companies and other large investors in land projects.

An example of this kind of enterprise cited by Mr. Blakely is the industrial park at King of Prussia, Pennsylvania. This project, situated near the eastern terminus of the Pennsylvania Turnpike, was described in a recent article in *Fortune* magazine as indicative of the move of industry away from the railroads to new sites along the expanding system of interstate highways. Mr. Blakely commented that industry sees advantages in public relations as well as transportation in the bright new factories with trim lawns alongside the highways.

Turning to recent financing of real estate projects, the speaker emphasized the importance of obtaining high "leverage" for profitable investment in real estate. Relatively low risk office buildings can be financed at debt-equity ratios of seven or eight to one, he said, and the availability of funds from insurance companies and savings banks makes possible debt financing of much of the cost of even

such relatively large and uncertain ventures as the industrial parks. Although opportunities are not now available for the average individual investor to put his money into projects such as these, Mr. Blakely foresees possible expansion into this field by investment banking houses.

Mr. Blakely concluded his remarks by reference to investment opportunities in real estate. He said that careful investment in real estate by analysis of values and growth potential offered the average intelligent investor an opportunity for capital appreciation without the difficulty of attempting to estimate such factors as personality and management skill, which significantly affect the long term potential of any particular common stock.

— Smart

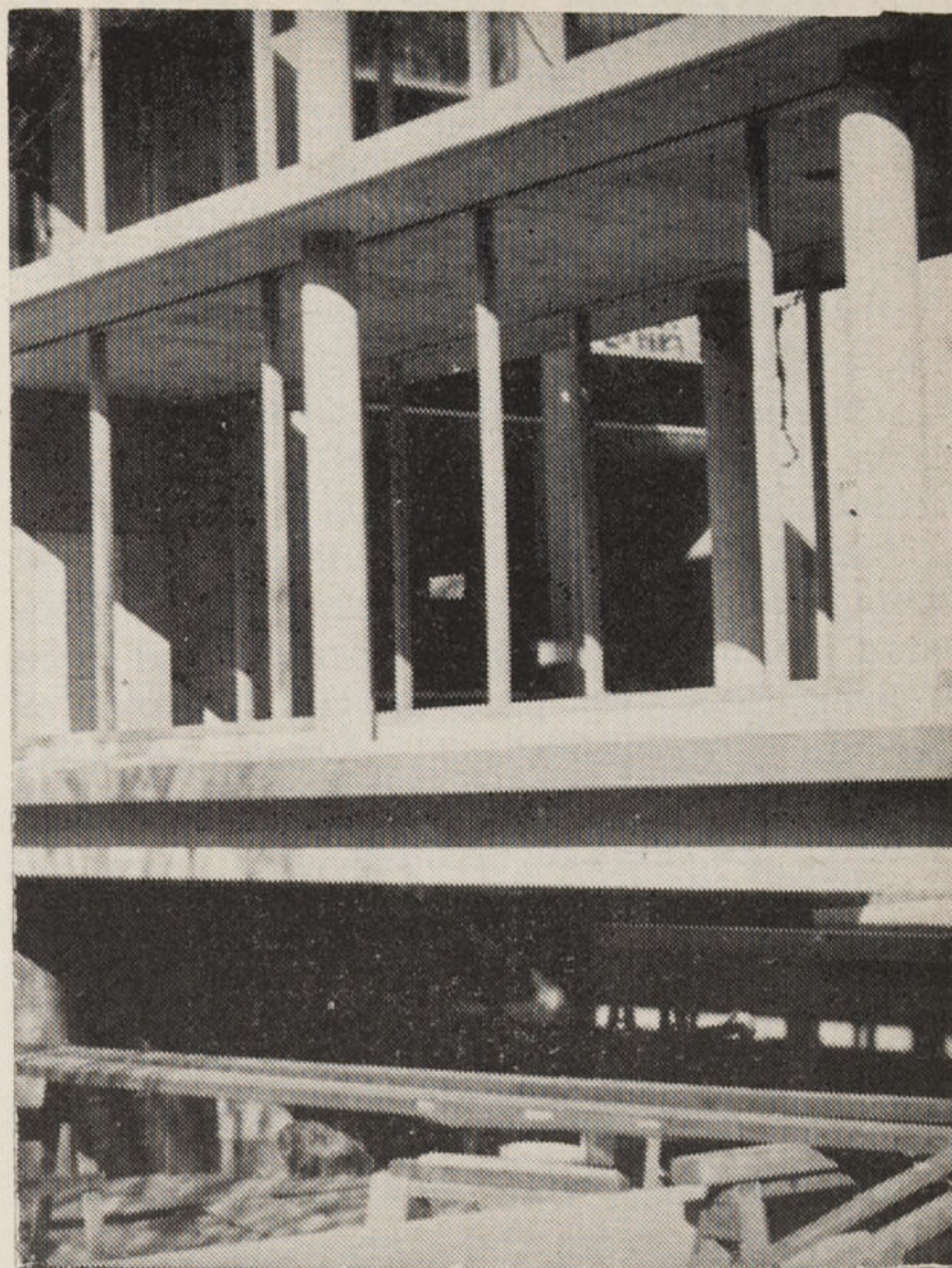
Attlee Calls for Disarmament; Lambasts Western Complacency

Clement Attlee asked for the abolition of all national armaments, the creation of a federal world government, and the establishment of an international police force in an address at Boston College last Thursday.

Citing today as "the most dangerous period in the world's history" where sovereign states have weapons destructive enough to end civilization, the former British Labour Prime Minister attributed the complacency of the western nations to their acceptance of the concept of the sovereign independence of states, a concept he regards as an anachronism in an age that has only lately discarded isolationism. Isolation no longer being possible, the Wright brothers and the atom splitters having taken care of that matter, Lord Attlee argued by historical analogy that as people had to give up their individual sovereignty when they began to live in towns, so must the nations do in the shrinking world community.

Both the League of Nations and the United Nations have as their foundations absolute sovereignty of the independent states, with no power recognized as superior by the whole world. In the resulting lawless international society where independent nations have the power of destroying civilization, agreements in the nature of Marquis of Queensberry rules for warfare, banning one class of

INTERNATIONAL JUNCTURE



This bridge connects the West Wing of Langdell Hall with the new International Legal Studies Building. Soon, 150,000 books will be moved into the new building.

weapons, were weighed and found wanting by Attlee. He found that, in desperation, few fighting peoples are gentlemen.

For the problem, Attlee offered his solution, a rule of law in the world, backed with proper sanctions. In calling for the abolition of all national armaments, the speaker also said an international police force, its size to vary with the size of the dangers facing the world, was needed. He did not favor the present system of representation in the United Nations as a means of launching a world government and relied on studies disclosing possible means of representation in a world assembly without any political block having a majority.

The statesman classified his approach as practical, grim politics. Though the proposal may sound like a dream, said Attlee, the alternative is a nightmare.

The speech inaugurated the Maurice J. Tobin International Affairs Lecture at Boston College.

— White

German Judge Joins Harvard Research Project

Wolfgang Zeidler, Judge of the Amtsgericht Court in Hamburg, Germany has recently arrived at the Law School for a year of research on the history of German Civil Procedure. He is working with Professor Benjamin Kaplan and Professor Arthur T. von Mehren, in this extension of their study of the comparison of German and United States civil procedure.

One of Judge Zeidler's colleagues at the Amtsgericht, Rudolf Schaefer collaborated with Professors Kaplan and von Mehren in a two part article, "Phases of German Procedure," 71 *Harv. L. Rev.* 1193-1268, 1443-1472 (1958) after a year of research at the Law School.

Prior to his departure for Harvard, Judge Zeidler was temporarily delegated as an assistant to the Federal Constitutional Court, a body of twenty judges that decides questions of federal-state relations in Germany.

Judge Zeidler, who was awarded a doctorate in law from the University of Hamburg in 1951, has been on the bench since 1953. His court is a state trial court. He explains that appeals are taken from his court to an intermediate state court where both questions of fact and questions of law are decided. From there appeal is taken to the

Federal Supreme Court which decides only questions of law. There are five court systems in Germany, each of which is organized with these same channels of appeal. They are courts of ordinary jurisdiction, administrative courts, labor courts, social insurance courts, and tax courts.

The Federal Constitutional Court, to which Judge Zeidler was recently attached, sits only in regard to constitutional questions and normally is not involved in the questions litigated between private citizens, but rather with disputes between state governments and the federal government that arise over the application of the federal constitution.

Students Adopt Socratic Method; Turn Tables on Kronenberger

Louis Kronenberger, drama critic for *Time* magazine, reversed the Socratic method and allowed himself to be interrogated by the students at the most recent Coffee Hour last Tuesday. Commenting on the so-called power of theater critics, Kronenberger noted it is a play's producer himself who magnifies whatever power exists by pinning two sentences from the critic's article to a full page ad in the "Times" theater section, and proclaiming "rave review." Kronenberger said the playgoer's only respite from this sort of ballyhoo is to read one critic regularly; "it will reveal what the fellow's standards as well as his blind spots are." Agreeing that the necessary haste of daily reviewing can breed mistakes, Kronenberger suggested that it is offset by the spontaneity which one hour deadlines demand. He cited the recent "Majority of One" as the sort of play that would suffer by a reviewer's prolonged meditation. He compared the recent growth of off-broadway theater to the rise of paperback books and the longplaying record in America.

When a disgruntled law student asked how one might prepare himself to be a reviewer, Kronenberger chuckled and said "generally it's the sort of thing you drift into." As a matter of fact, Kronenberger stated that when he got the *Time* job, it was rumored that he hadn't seen a play in three years. He declined to answer to the veracity of the allegation.

— Nelson



Wolfgang Zeidler

Student Bar to Hear Attorney On Professional Economics

Frederick G. Fisher, Esq., LL.B. '48, a senior partner of Hale and Dorr, Boston attorneys, will speak on "An Economic Survey of the Legal Profession" Friday at 1:40 p.m. at Harkness Commons before the Student Bar Association.

Using the American Bar Association surveys on the economic conditions of the legal profession, Mr. Fisher will attempt to answer some of those questions that every law student puzzles over at one time or other: Is the bar overcrowded? If not, which are the "saturated" areas? Which offer the most promising opportunities for the young lawyer? Is the bar underpaid? How does the average fee schedule compare with those of earlier years in relation to the cost of living? How does it compare with other professions? What financial disparities exist between practice in large and small firms, large and small cities?



Mr. Fisher's name will be immediately familiar to those who followed the Army-McCarthy hearings. He himself became a controversial figure in one of the many disputes between Senator Joseph McCarthy and Mr. Joseph Welch.

Mr. Fisher graduated from Bowdoin College in 1942 and the Law School in 1948. He served in the Army during World War II.
— Silver

Major Modification, But the Game's the Same

Simplicities of life soon are destroyed after one enters law school. This week's example legal complication comes from a group of jaded young men all of whom reside in Story Hall: Gabriel Bentata, Grad. of Caracas, Venezuela; Jerome Breslow, 3L of Bloomfield, N. J.; Paul Brontas, 2L of Bangor, Maine; William Cottrell, 3L of Chicago, Ill.; William Heichel, 2L of Canton, Ohio; and Marvin Miller, 3L of Los Angeles, Calif. Judging by what they have wrought, they are men of discrimination and experience. They obviously have found the usual modes of entertainment pallid and so in their quest for new means to while away the time that hangs heavy on their hands, they have turned to the game of Monopoly. But theirs is no ordinary game of Monopoly; it would be unthinkable for any competent law student to play by the vapid rules supplied by the originator. Clearly, these rules must be modified to conform with the exacting requirements of the legal expert. This they have admirably accomplished and they are now about to sally forth to spring their new creation on the world. Their first victim is

to be Professor David Westfall, no mean expert on property rights himself. Below are excerpts of the "Story Hall Monopoly Rules Amendments" to which Professor Westfall will have been exposed by the time this story goes to press. — Ed.

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- I. SAVING CLAUSE AND REPEALER
 1. All original Parker Bros. rules unless not inconsistent with these rules, or with decisions, shall remain in effect; but these rules and any decisions under these rules shall supersede any inconsistent provisions of the original rules.
 2. The following sections of the original rules are hereby repealed:
 - A. These entitled "Building Shortage", "Selling Property" (except the half-price rule), "Bankruptcy", and "Miscellaneous", and
 - B. Those provisions referring to interest, and
 - C. The auction provisions of "Landing on Unowned Property".

III. LUXURY TAX AND RULE AGAINST ACCUMULATIONS

1. The Luxury Tax as presently constituted is repealed.
2. However, after the last player has passed GO for the third time (and going to Jail is not considered a passing of GO? any player landing on luxury tax must sell all single pieces of realty to the bank. In compensation he shall receive double the face value for unmortgaged realty and one half the face value of mortgaged realty.
3. Also, subject to the provisions of subsection 2, there shall be imposed on the landor a tax of
 - A. One fourth of the highest rent currently payable on each monopoly owned by landor, and
 - B. Any royalty holder on the subject monopoly is liable in the same proportion as his royalty, and
 - C. This tax shall be paid to the bank, not Free Parking.

V. INCOME TAX

1. No income tax is payable until the player has passed GO for the first time.
2. The income tax is \$200 and the 10% rule is repealed.

VI. EASEMENTS (Free Rides)

1. A Free Ride is a right granted by the owner, for such consideration as he may in his discretion choose, allowing a player to land on specified property or properties without paying rent.
2. Free Rides run with the land and are binding on any subsequent fee owner except the bank.
3. However, as to the grantee they are personal and non-transferable.
4. Partial free rides may be granted by a joint venturer to the extent of his interest in the property.
5. RULE AGAINST PERPETUITIES. No player may hold more than three free rides in any given color or realty, or in any group of Railroads or Utilities owned by a single person, at any one time.
6. Subject to subsection 7, free rides shall be discharged, one on each successive time after the making of the grant that the grantee lands on the property, re-

gardless of whether there are any buildings on the property.

7. Free rides are not discharged by landing if the owner is incapacitated from collecting rent, as by being in Jail, or if the property is mortgaged.
8. SPRINGING INTERESTS. Free rides granted on an if-and-when basis or held in abeyance contingent on the happening of a specified condition are void *ab initio*.

VII. JOINT VENTURES

1. Any two or more players may combine their interests on a given color of realty to form a monopoly. They shall be partners for the purposes of this venture only and for no other. They may make



David Westfall

financial arrangements for the sharing of profits and costs, and in the absence of specific provisions profits shall be shared equally, and costs shall be borne in the same proportion that profits are shared. Neither shall pay the other rent for landing on the joint venture property, and if one is in jail, none shall collect rent from other players on the property.

2. Joint ventures are revocable at will by any venturer or by agreement, the buildings being sold to the bank, and the specific realty being returned to the prior owner. However, no venturer may act so as to harm his co-venturer, and

in the event of a unilateral dissolution, the revoking party must compensate his co-venturers for the loss sustained by selling the buildings to the bank at half price, but shall bear no further liability.

VIII. ANTI-TRUST PROVISIONS. No player may be in more than one joint venture at a time. Further, no joint venture may be formed until at least one player has fee simple ownership of a monopoly, but it need not be built upon. Further, no joint venture of Boardwalk-Park Place shall be formed until at least one joint venture on some other property has been formed.

IX. OPTIONS

Options of any kind whatsoever, and future interests other than those explicitly allowed in these rules, are forbidden.

X. CREDITOR'S RIGHTS & FRAUDULENT CONVEYANCES

1. All security interests are forbidden except mortgages to the bank.
2. Creditor's shall have equal preferences and be entitled to pro-rate distribution for their claims, except that a rent creditor shall have preference over all other creditors for rent immediately due and payable, and except that the bank shall have preference over all players.
3. No conveyance in the nature of a sale with an option to repurchase or in the nature of a wash sale, or with a view to insolvency or bankruptcy and with the purpose of defrauding possible future creditors, shall be made.
4. No sale of monopolies or free rides shall be made for less than adequate consideration.
 - A. Adequate consideration for monopolies is defined as double the face value of the property and the full value of buildings thereon.
 - B. Adequate consideration for free rides is, for each free ride: 1) \$100 on the first side of the board from GO; 2) \$200 on the second side; 3) \$300 on the third side; 4) \$400 on the fourth side; EXCEPT that no adequate consideration need be paid for free rides obtained as part of an

exchange of property or through a deal creating joint ventures or royalty interests.

C. An exchange of property shall be considered a sale.

5. No monopoly, and no two pieces of the same color may be exchanged in full or partial consideration of a debt.
6. No player may obtain a royalty in a monopoly which he has previously owned but sold to pay debts, unless he retains enough cash to one pay the highest rent then collectible on the board.

XI. MERGERS

Players may not merge or combine in any way any or all of their property except by use of the devices explicitly provided for in these rules.

XII. BANKRUPTCY

1. In the event a player's liabilities exceed his assets, he shall be deemed bankrupt.
2. Before any other transaction may take place, so much of a bankrupt's property as is necessary to pay his current rent debts must immediately be sold to the bank and the proceeds used to pay such debt.
3. For the purposes of this section, free rides and royalties are not to be considered assets. Assets shall be valued at face value.

Dormitory Council

Warren H. Greene, Jr., 2L of Bronxville, New York; Rudolph V. Lutter, 2L of Philadelphia, Pennsylvania; Walter M. Strine, Jr., 1L of Media, Pennsylvania; and Sidney S. Traum, 1L of Belle Harbor, New York, were unanimously elected President, Vice President, Secretary, and Treasurer of the Dormitory Council, respectively, at its meeting in the Gray Room of Holmes Hall Wednesday Evening, February 11th.

Mr. Greene had formerly served as Treasurer, Mr. Lutter as Vice President, and Mr. Traum as Acting Secretary.

Third Year men whose terms as officers ended included James W. Jackson, of Winnetka, Illinois, ex-President; and John J. Moss, of New York City, ex-Secretary.

Field Favors Court-Made Rules In Speech before Maine Bar

Richard H. Field, Professor of Law urged that state legislatures give "the highest court of the state the power to make rules of practice and procedure which will override existing statutes." He said that this "should be the first order of business on the part of those interested in improving the administration of justice," in a speech before the regional meeting of the American Bar Association in Portland, Maine, which was published in the *Journal of the American Judicature Society*, December, 1958.



Richard H. Field

In support of his position, Professor Field, asserted that the judges are "full-time specialists" in procedural problems; whereas, legislatures have "a multitude of other important duties and simply cannot find the time to give constant and comprehensive scrutiny to the way courts are functioning." He said that the courts must be given "full rule making power" that will enable them to disregard prior statutes on procedure.

"Even if your judges are now satisfied with things as they are, such an enabling act as I have mentioned is still a wise precaution against the day when changes will be needed." Professor Field said that judges can be trusted to use this power wisely; that they will not use it if they think the "existing situation is satisfactory"; that they will "not cling to outworn tradition."

Maine and Rhode Island are the only New England states that have given these broad powers to their courts. In Maine, where Professor Field is advisor to the Committee on Rules of Civil Procedure, the revision started with a study of the Federal Rules of Civil Procedure. Professor Field said there are three reasons for this approach. (1) They are "good rules" that have been tested for twenty years in the courts. (2) "There is a real advantage in a general uniformity of pattern, so that the lawyer shifting between his state court and his federal district court will not have to master two greatly different procedures." (3) The national law schools no longer offer common law pleading, but "tend to focus on the federal rules and will doubtless do so increasingly as more and more states adopt them."

The Maine Committee appraised each rule in the light of different local considerations. State procedure has several problems that do not arise in federal courts. For example, federal courts have a \$10,000 minimum limit on suits; whereas, state courts often deal in small claims and at times a lawsuit is "merely a collection device."

Because of the differences that confront Maine courts and federal courts, there were departures from the federal rules in the new Maine rules drafted by Professor Field's Committee. In general, Professor Field says that the federal rules are suitable for adoption in a state that seeks procedural reform:

True though it is that the federal rules can be improved upon and true though it is that a state might serve a useful role as a testing laboratory for new procedural devices, the committee believes, sensibly I think, that the comprehensive overhaul of its procedure ought, at least at the outset, to be content to make its stopping point the tested federal model save in the very few instances where a federal rule has demonstrably worked badly in federal courts.

In some cases, the committee reworded the federal rules to conform more closely with the interpretations given them by the courts. Under the new Maine rules, Professor Field predicts that "fewer cases will be won or lost on technical procedural points and that more often than in the past the litigant with the facts and the law on his side will be the winner."

Consultants Weigh Sandwiches To Study Harkness Loss

Two of the local eateries who advertise in the pages of the RECORD make bold claims for their roast beef sandwiches. Mike's Club, to which "Jack welcomes you," promises that "you can enjoy the largest roast beef sandwich in the Square." At the same time, Elsie's advertises the "best sandwiches," with emphasis on its "famous Special Roast Beef Sandwich."

According to Louis A. Toepfer, Vice Dean, the Law School does not take these advertisements at their face value. The New York consulting firm, Harris, Kerr, Forster & Co., which has been retained to study Harkness Commons, purchased a roast beef sandwich at each of these shops. Each sandwich was weighed, tasted, and compared in a manner that is known only to outside consulting experts. According to Dean Toepfer, Mike's Club has the larger sandwich, although he expressed no opinion as to which shop has the better sandwich.

The full report of the consulting firm is expected to be returned soon, though Acting

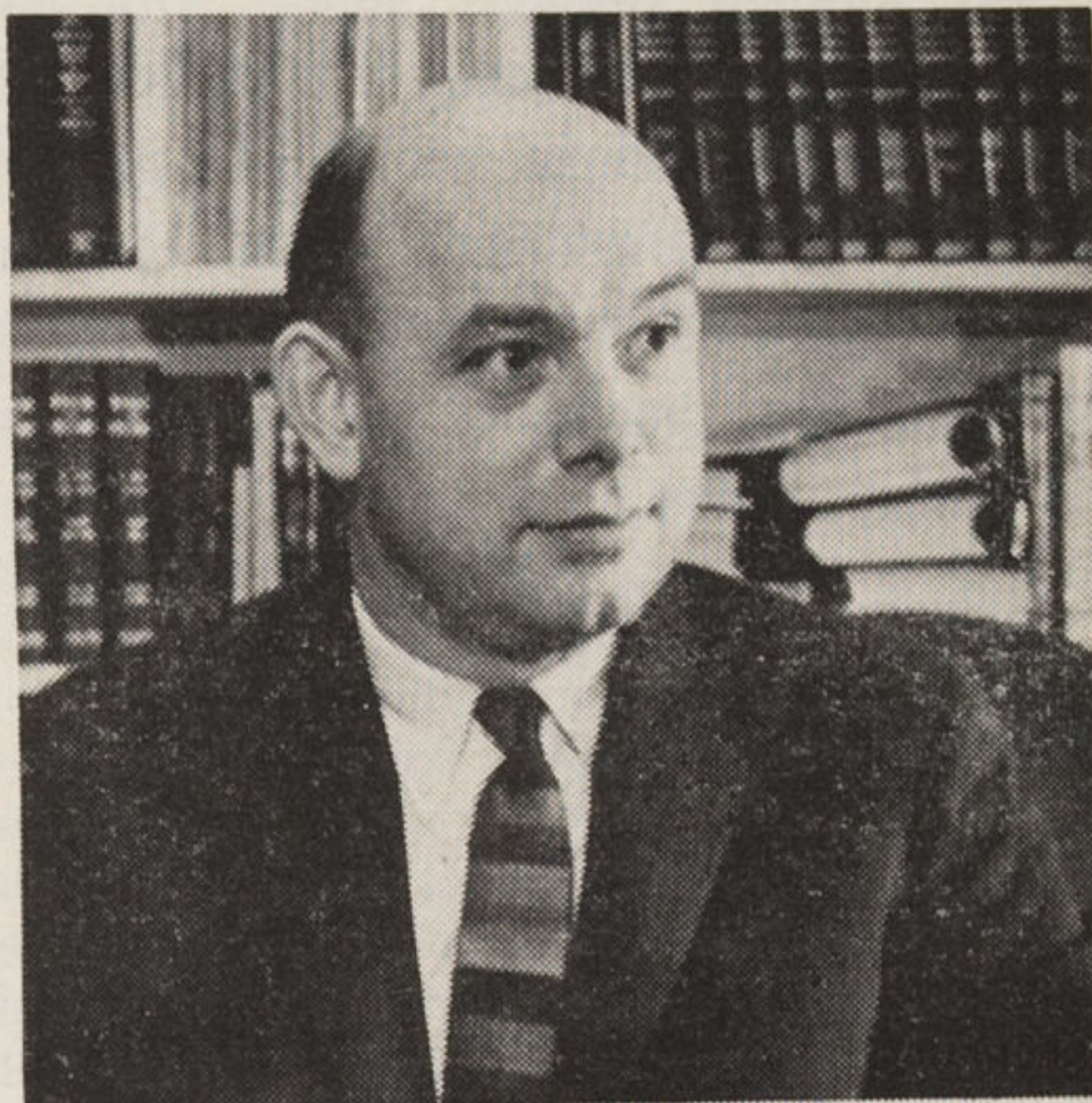
Lost Chords

The grand piano in Harkness Commons that has offered so much recreation to disconcerted Law and Graduate School students has sounded its last chords. It was the gift of Mrs. Robert Taylor Swaine in memory of her late husband Robert Taylor Swaine, LL.B. '10, of the firm of Cravath, Swaine, and Moore of New York City. The piano has given faithful service for nine years, according to Dean Livingston Hall, but is no longer serviceable. It will be removed as soon as a new one can be found to replace it.

British Visitor

Frederick James Odgers, University Lecturer at the University of Cambridge, Fellow and Director of Legal Studies and Tutor at Emmanuel College, will be a Visiting Professor at the Law School in the 1959-60 academic years. He will teach one of the first year sections in Criminal Law and the Private Law seminar. From 1950 to 1954, he was Assistant Director of Research in the Department of Criminal Science at the British university.

Dean Livingston Hall has stated that its contents will not be made public, because it involves the internal business operation of the University. The consultants are studying the Harkness Commons, as well as the dining facilities at the Business School and at the Medical School.



Louis A. Toepfer

Who has the larger sandwich?

Chancery Treasurer

The newly-elected Treasurer of the Chancery Club is William Heichel, 2L of Canton, Ohio. The club at a meeting held February 3rd also amended its by-laws to prescribe a fiscal year which would coincide with the academic year.

Law Speaks

The Harvard Law Wives listened attentively last Wednesday evening, to a lecture on the "Stock Market", delivered by Professor Warren Law, Lecturer at the Business School. Professor Law described the complex structure and the industrious atmosphere of the New York Stock Exchange. He also outlined the steps involved in the execution of an ordinary purchase order.

Seavey Returns

Warren A. Seavey, Bussey Professor of Law *Emeritus*, is returning to Boston College Law School to teach Agency and Restitution in the spring term.

During the fall term he was teaching at New York University.

Professor Seavey, now 78, was retired from teaching at Harvard in 1955. He taught at Boston College last year also.

FEATURES SECTION

Cuban Trial Procedure Is Fair

The Cuban war crimes trials, held in special military tribunals, are conducted under the principles of the civil law, not English common law. The major differences are that no jury is utilized, the rules for the admission of evidence are strikingly more liberal, and the role of the judges is more prominent. But the entire judicial procedure, from arraignment to final ruling upon appeal is well adapted to the special circumstances now existent in post-revolutionary Cuba.

by

David F. Binder

Procedure in Cuba's war crimes trials differs substantially from procedure in the ordinary civil courts of the United States. It is less technical, more informal, more rough-and-ready. But the impression this observer receives is that it is fair.

The Cuban judicial system is founded upon the civil law, rather than the English common law. No jury is utilized.

The war crimes trials are held before three judges in military tribunals. At least one of the judges of each tribunal is required to be a lawyer. The verdict of the judges need not be unanimous; two out of three votes is enough to convict. Once a man is convicted, his sentence is within the discretion of the judges.

No formal requirement of "proof of guilt beyond a reasonable doubt" exists. It is unlikely that the adoption of such a burden of proof would

have any effect upon the results, however. No judge is likely to vote for conviction if he has a reasonable doubt as to the defendant's guilt.

A striking difference to the American observer is that the rules for the admission of evidence in the trials are much more liberal. In the United States the ordinary lawyer is not competent satisfactorily to try a case in court because of the complex and burdensome technical rules of evidence with which he must contend. In Cuba the process is much smoother; witnesses are called and simply tell their stories to the court, with rare interruptions by counsel.

When a man is arrested now in Cuba, a charge must be filed against him within seventy two hours. The charge is made when someone signs a written accusation imputing to the prisoner the commission of a specific crime.

Upon being detained, a man has the right immediately to call a lawyer or friends. He may hire his own defense counsel. If he does not, counsel is appointed by the court. Usually the defense counsel is a man in the military.

Civilian lawyers, members of the bar in Havana and other cities, have, on occasion, acted as attorneys for the defense, but few are willing to undertake the job. The reason, as a number of attorneys have stated, is that the lawyers "know these men to be guilty and cannot in conscience defend them."

Witnesses against an accused come forth voluntarily and sign

written statements charging him with specific crimes. These are given to the prosecutor. The statements, however, cannot be used in the trials themselves. The witnesses must appear in person and relate their stories to the judges. Both the prosecutor and the attorney for the defense then have the right to cross-examine.

The judges take a much more active part in the trial itself than is the case in the United States. It is the judges who initially question the witness and elicit his full story.

No trials *in absentia*, such as the trial of Martin Bormann at Nuremberg following World War II, have been or will be held. The defendant must be present in the courtroom. But only the defendant's counsel need be present at an appeal.

Minors (persons under 21 years of age) are not tried, although the minimum voting age in Cuba is 18. No charge of murder can be sustained without a *corpus delicti*.

The war crimes trials have sometimes been attacked on the ground that retroactive law is being applied. However, the charges against the accused have been murder, assassination, torture, arson, mutilation, extortion, robbery, etc., acts which have been and are crimes under Cuban law and, indeed under the law of all civilized countries.

Many crimes are listed in what is known as the "Law of the Sierra

LETTERS

To The Editor

Congratulations on the new format for the RECORD. It makes the publication much more readable, lends itself to a single folding permitting it to be carried in the inside coat pocket, and hence is much more utilitarian in this hurried world.

Sincerely,

Louis C. Wyman, L.L.B. '41

Attorney General

The State of New Hampshire

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Maestra," a short code of criminal statutory law promulgated by Fidel Castro in February of 1958. Most of the accused are charged with violations of specific provisions of this law.

The matter of proof has not been difficult in most of the cases. The Batista regime in its last years was as cruel and as bloody a dictatorship as Latin America has ever seen. Only the most notorious members of that regime are being placed on trial to account for their deeds.

When most of the crimes were committed, no attempt at secrecy was made. Atrocities were committed in the open to impress fear upon the populace and to deter aid to the rebels. A steady stream of witnesses appears to testify against almost every prisoner placed on trial.

No witness is permitted to hear the testimony of any other witness before testifying himself. After he has testified, however, he is allowed to remain in the courtroom and to hear the testimony of witnesses who follow.

The military courts have often seemed to lean over backwards to insure the defendant a fair trial. It is quite possible that Alan Robert Nye, the American accused of accepting an offer of \$100,000 to murder Fidel Castro, will be tried before a tribunal composed entirely of Americans who participated in the revolution.

Many prisoners have been acquitted and others have been given light sentences. Many more have been released when sufficient evidence was not forthcoming to justify holding them for trial. The military commanders in both the provinces of Las Villas and Pino del Rio have attacked the tribunals for being "soft" on the accused.

If the defense shows that a murder, for example, was committed to

carry out an order issued by a superior officer and there was no practical way to avoid execution of the order, then no death sentence will be passed upon the offender. The commanding officer, instead, will be held to account for it.

Approximately 300 persons have now been executed throughout Cuba. In all probability not more than another 100 will be sentenced to death.

Many special circumstances are considered in mitigation of offenses. A man who is married with a family, for example, is not held so readily accountable for his actions as a single man who had opportunities to desert and no family against whom government reprisals could have been taken.

The proceedings of each trial are recorded by a clerk in shorthand. Each defendant has absolute right to appeal within 24 hours after conviction to a supreme court of military justice. This court consists of 5 judges, at least one of whom must be a lawyer. A number of such courts exist and their membership changes.

Some early criticism of the war crimes trials focused on the fact that the courts are special military, not ordinary civil, tribunals. But in Cuba these are special times. A comparison with ordinary civil process in a peaceful United States is unrealistic.

A glance back at the Nuremberg trials following World War II, however, shows that the Allies at that

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time set up special courts to try "war criminals." And they firmly rejected pleas to appoint judges from neutral powers, such as Switzerland, Sweden or Portugal in order to insure fairness.

An important fact that is seldom mentioned in reports from Cuba is that a number of the rebels' own soldiers have been convicted and sentenced to death for criminal acts committed during the revolution. No such thing as this happened at Nuremberg, although it is well known that all the "crimes against humanity" committed during World War II cannot be attributed to the Axis powers.

No matter what procedure is used in a criminal trial, no matter how technical and lengthy and formalized it may be, the possibility of an innocent man being convicted

can never be wholly eliminated. The procedure now being followed in the Cuban military tribunals is well tailored to the circumstances and lends itself ably to a just determination of the cases being adjudicated.

Democrats Letter

The following is the text of the letter written by the Law-Graduate School Democratic Club to President Nathan Marsh Pusey to protest the acceptance of government funds for scholarships which condition grants upon recipient's acceptance of loyalty oaths.

Dear Dr. Pusey,

After a lengthy discussion the Executive Committee of the Harvard Law-Graduate School Democratic Club has decided to express the Club's disagreement with the decision of the University to accept the grant for student loans from the Federal Government.

The advantage of receiving \$26,807 does not overcome the disadvantages which spring from the conditions attached to the use of the money. Each student who seeks a loan from a Harvard fund made up of that money must sign the following loyalty oath:

I do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of Ameri-

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ca and. will support and defend the Constitution and laws of the United States against all its enemies, foreign and domestic.

Also, an affidavit must be executed to the Commissioner stating that the applicant "does not believe in, and is not a member of and does not support any organization that believes in or teaches, the overthrow of the United States Government by force or violence or by any illegal or unconstitutional methods". (The penalty for swearing falsely is a fine of not more than \$10,000 or imprisonment of not more than 5 years or both)

And it is not only federal money which is subjected to a proclamation of loyalty, for by accepting the grant Harvard is required to increase the fund by approximately 11%. The problem thus is more complex than whether or not to accept money with an onerous condition attached — the additional price of acceptance is the requirement that some funds in Harvard's possession previously usable without asking the lender to swear to his loyalty will now be usable only under the same troublesome condition.

We are aware of the fact that Harvard has stated its opposition to the oath and that in deciding to accept the money the value to be obtained was no doubt weighed against the principle to be sacrificed, hopefully temporarily. Our point is that the decision weighed the \$26,807 too heavily and the principle too lightly.

THIS WEEK-END

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Harvard is an academic community marked by free thought and expression. It prides itself on its reputation as a center of intellectual independence and vigour. It is dedicated to the idea that a group of good minds given the condition of freedom will thrive and mature with both personal and social benefits. These ideals are weakened by the presence of a loyalty oath such as some members of our community will now sign. The oath tends to engender an atmosphere of intellectual conformity, where students fear to associate freely with others and to follow where knowledge and truth lead. It degrades the freedom we want to protect.

Many other colleges, including Swarthmore, Bryn Mawr, Antioch, Princeton, Reed, and Haverford

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have turned down the grants on the grounds that to accept them would be to unduly sacrifice the atmosphere of academic freedom. Most of them are in greater need of the aid than is Harvard. The President of Swarthmore called the requirement of a commitment of belief from students "contrary to American principles and to the principles of sound education procedure".

The action of Congress in this case shows that some fear and hysteria remains from an era thought to have substantially passed from the American scene. Harvard should back its disagreement with the loyalty oath with a position denying to itself the fruits of that Congressional action.

Therefore, we respectfully urge that Harvard reconsider its acceptance of these funds. The price of receiving them is much too high — the university will have failed to uphold its position of leadership in the struggle to maintain and strengthen the independence of the academic world and would lose a portion of its heritage worth more than \$26,807.

Sincerely,
Charles L. Edson
President

Calendar

Continued from page 2

Ashley Montagu will speak at the Ford Hall Forum, Jordan Hall at 8:30 p.m. His topic will be "A Scientist Looks at Love."

Tuesday, March 3

General election of officers of the Chancery Club will take place at 7:30 p.m. in the Harkness Meeting Room.

Roger M. Blough, chairman of the board of United States Steel Corporation will speak to the Bull and Bear Club at 1:40 p.m. in Harkness Commons.

Wednesday, March 4

The Hasty Pudding Club will stage a dress rehearsal of scenes from "Busy Bodies" for the Harvard Law Wives at 8 p.m. in the Harkness Meeting Room.

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