



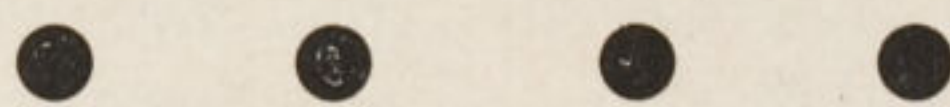
# Harvard Law Record

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**Ames Finals Tonight**

**Wechsler Is Holmes Lecturer**

**Forum Presents 'Beat' Poets**



**Community Traditions Fail City Planners**

**Should Evidence Be Required?**

# Harvard Law Record

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## This Week

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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, March 26

The Holmes Club will compete against the Sacks Club in the AMES FINAL ARGUMENT at 8 p.m. in the Ames Courtroom.

Dr. John Brennan, vice-president, Electronics Corporation of America, will address the BULL & BEAR CLUB in the Wheeler Room, Holmes Hall at 1:40 p.m. Officer elections will also be held at this time.

### Saturday, March 28

The Law School RECESS commences after classes. Monday morning, April 6, class resumes.

### Tuesday, April 7

Herbert Wechsler, Professor of Law at Columbia University, will deliver the Oliver Wendell HOLMES LECTURE in the Ames Courtroom at 8 p.m. His subject is "Towards Neutral Principles of Constitutional Law."

### Wednesday, April 8

The Harvard Freshman Glee Club will sing for the Law Wives. At 8:00 P.M. they will elect new officers at Harkness Commons.

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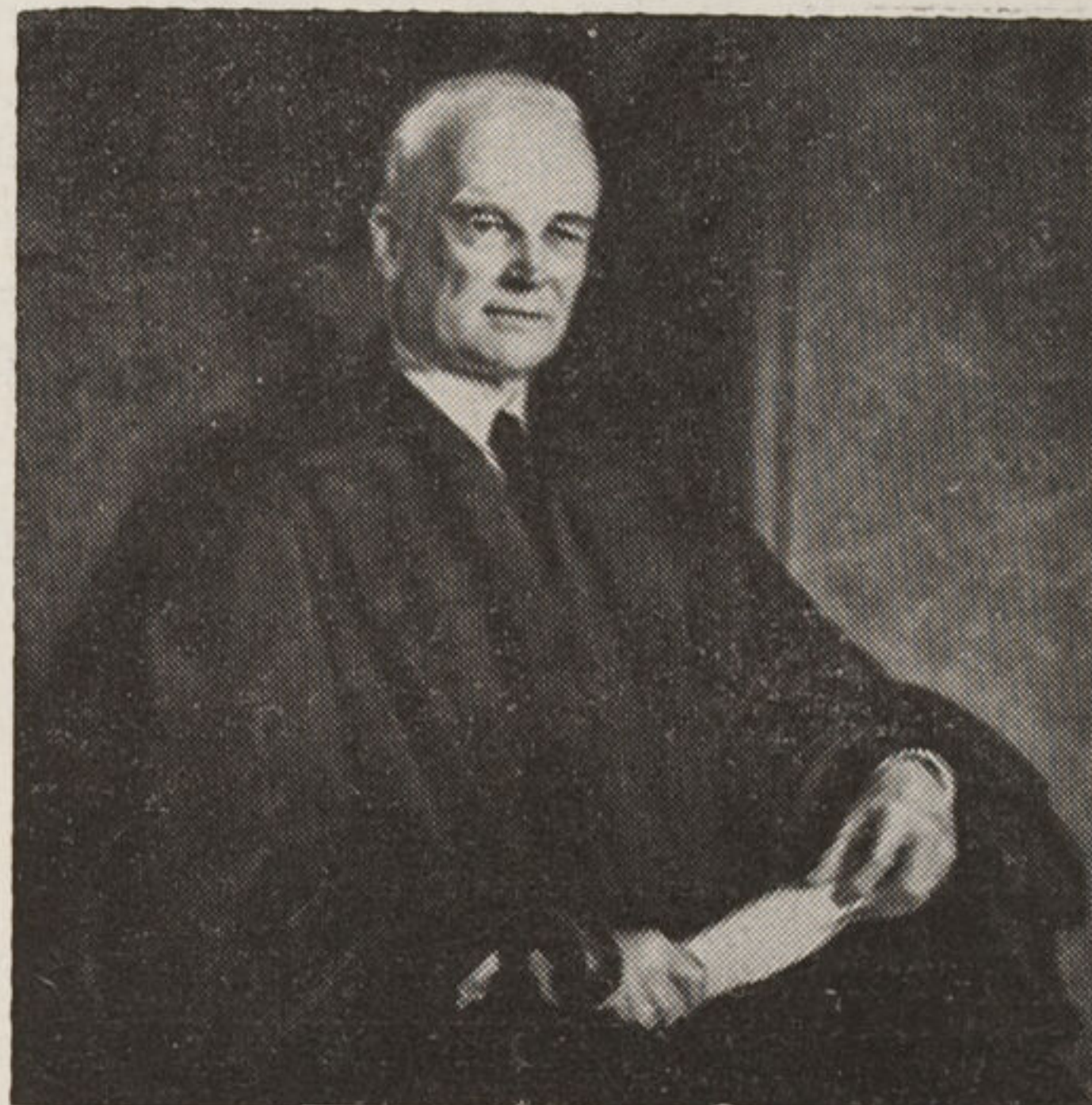
## Holmes, Sacks Clubs Argue Finals

The Ames Final Argument, *Davis v. Wind, Inc.*, will be argued tonight in the James Barr Ames Courtroom by the Holmes and the Sacks Clubs before the Honorable Harold Hitz Burton, United States Supreme Court, Retired. The Honorable Albert B. Maris of the United States Court of Appeals for the Third Circuit and the Honorable Stanley H. Fuld of the New York Court of Appeals will be the associate justices. The Holmes Club, arguing for the plaintiff-appellant Davis, will be represented by oralists Joseph H. Head, Jr., 3L of Cincinnati, and J. Wallace Hopkins, Jr., 3L of Cambridge, Mass. The Sacks Club, arguing for the defendant-appellee Wind, Inc., will be represented by oralists Ansel Chaplin, 3L of Truro, Mass. and Joseph L. Steinberg, 3L of Passaic, N. J.

The case arises from a political broadcast by the defendant radio station which asserted that one Sam Bass, a candidate for office in Virginia, was controlled by the plaintiff, Sherman Davis. The broadcast alleged that Davis was a supporter, and possibly a member, of the N.A.A.C.P.

The program originated in Pennsylvania but was also received in Virginia, West Virginia and Maryland. Plaintiff brought suit in the District Court of the United States, Middle District of Pennsylvania, for defamation, seeking \$100,000 damages. The District Court granted the defendant's motion for judgment on the pleadings and dismissed the plaintiff's complaint.

Grounds for the dismissal were stated to be: (a) the Pennsylvania rule is controlling that defamation by broadcast constitutes a single publication in which the magnitude of dissemination goes only to the question of damages, thereby characterizing the broadcast as a single tort; (b) Although this broadcast had an impact in four states, Virginia is the state with the dominant interest, and its law on the question of liability is controlling. Therefore Section 8-632.1 of the Code of Virginia, which provides absolute immunity to broadcasters for defamatory



Mr. Justice Burton

remarks made by candidates for political office, provides an affirmative defense to the complaint. The Court expressly refused to consider the whole law of Virginia, i.e. including Virginia conflict rules, under the doctrine of *renvoi*.

The issues on appeal include:

(1) Whether a cause of action is stated in a complaint which alleges that the defendant broadcast certain statements to the effect that the plaintiff, a citizen of Virginia, was a supporter or member of the N.A.A.C.P. and a believer in immediate desegregation in public schools.

(2) Whether it was proper for the District Court to characterize the alleged tort under the Pennsylvania "single-publication rule" as a single tort, governed by the internal law of Virginia, although the broadcast was heard and seen in four states.

(3) Whether the Virginia statute which grants complete immunity to a broadcaster in certain circumstances is constitutional, and whether it may be applied in this case to relieve the broadcaster of liability.

Counsel on the brief for the Sacks Club are: John H. Demmler, 3L of Pittsburgh, Pa.; E. H. Geoffrey Gowen, 3L of Port Blakely, Wash.; Richard R. G. Hobson, 3L of

Alexandria, Va.; John C. Keene, 3L of Wynnewood, Pa.; Gordon A. Millspaugh, Jr., 3L of Bay Head, New Jersey; Walter M. Noel, Jr., 3L of Nashville, Tenn.

Counsel on the brief for the Holmes Club are: Decatur H. Miller, III, 3L of Baltimore, Md.; Jeremiah D. Newbury, 3L of Cambridge, Mass.; Peter Parker, 3L of Cambridge, Mass.; F. Herbert Prem, Jr., 3L of Larchmont, N. Y.; A. Reading Van Doren, Jr., 3L of Stamford, Conn.; John E. Young, 3L of Denver, Colo.

— Milano

## Ambassador Chagla Says 'Law Must Lead Society'

The Honorable Mahomedali C. Chagla, the Ambassador of India to the United States, visited the Law School on Monday, March 16th, and spoke to a large group in the Harkness Lounge during the Coffee Hour. Ambassador Chagla, described by Mr. Justice Frankfurter as "one of the most distinguished judges in the English-speaking world," has led a long and varied legal career, culminating in his present diplomatic appointment. Called to the Bar from the Inner Temple, Ambassador Chagla practiced before the Bombay High Court from 1922 to 1941, served as a Puisne Judge until 1947, and from 1947 until recently he presided as Chief Justice. He taught Constitutional Law at the Government Law College from 1927 to 1930, and has served as a member of the Indian delegation to the United Nations. In 1947, Ambassador Chagla served as Vice-Chancellor of Bombay University.

Ambassador Chagla discussed the role of the judiciary and gave a brief sketch of the Indian Constitution. He centered his discussion of the judicial position around Holmes' statement "[The] judge must be conscious of the felt necessities of the time. Because law must lead society, the judge must mold the law in the shape in which it may lead." Although wary of judicial legislation, Mr. Chagla said that there were many situations, especially in a dynamic, changing country such as India, where a judge is faced with a situation in which the scales of justice are so

nearly balanced that he must tip them one way or the other. His motto must be that law should stay ahead of this fast-changing society, and his intellectual process should be guided by what Holmes called the "inarticulate major premise." Mr. Chagla, quoting Cardozo, said that "in the ultimate analysis justice depends on the personality of the judge," and carefully pointed out that this referred not to social charm or public demeanor, but rather to the basic premise of conservatism or liberalism which must lie beneath all judicial pronouncements. A judge, said Ambassador Chagla, would only be ignoring his responsibilities were he to respect *stare decisis* over and above the obvious "felt necessities of the time." Closing this part of his talk, Ambassador Chagla referred to Chief Justice Marshall as the one man who put "flesh and blood into the American Constitution," and concluded that to a large extent, in these times of sudden change, the progress of a country will necessarily be determined by the stature of its judiciary.

Turning then to the Indian Constitution, Mr. Chagla told his audience that one of the most exciting judicial tasks he could imagine was the interpretation of a new constitution. He and his colleagues, he said, had been construing theirs for the last eight years; this experience only reaffirmed his belief in the power and the obligation of the judiciary to use the inarticulate major premise, to keep the progress of the growing nation constantly in view. Although, he said, there were some striking similarities between the Indian and the United States Constitutions, the Indian Courts' interpretations have been largely guided by English case law; more and more, however, the judges find themselves citing decisions of American constitutional law as a matter of course.

The Indian Constitution also provides for a system of judicial review modelled on the United States Constitution. Until 1950, he said, Indian judicial review was modelled on the British system, but on the enactment of their Constitution, its laws were made supreme, and not those of Parliament; the courts as interpreters of the overriding constitutional statement then assumed a different posture from the British court system.

Ambassador Chagla pointed up the fact that India is formally a Union, and not a Federation, but that the Federal principle is paramount. The states have the power of taxation, but their federal government does not have the difficulty encountered in the United States of getting the states to surrender their powers. There are in India three "lists" of legislation, he said. The first contains those subjects on which only the Federal may legislate; the second lists those subjects reserved to the states, and the third is the "concurrent list", which gives both federal and state legislatures power to act, in a spirit of "adjustment." Finally Ambassador Chagla informed us that there was a Chapter of Directives to State Governments which were advisory and not binding, which did not carry the force of law, but which issue from New Delhi with persuasive force.

"A constitution," said the Ambassador, "must be judged by what it can achieve." He added that the progress of democracy is slower than the totalitarian system. With this practical conclusion Mr. Chagla prepared himself to answer questions from the floor. His answers were various: all Indian judges are appointed, and none elected; India is reviving a system of village courts to dispense justice at the lowest levels; it is questionable whether the courts would have read the power of judicial review into the Constitution, in the absence of an express provision. Hindu religious law and common law, said the Ambassador, are being reconciled by legislative reforms. "When a judge is overruling a precedent he says he is merely interpreting it," he quipped, and also informed us that there was but one system of courts despite federalism, that there is complete adult suffrage without education or property requirement. He told the audience that he felt that the best protection to defendants in criminal proceedings is to be afforded by trial without a jury by a lower court, with complete scope of review of the facts by higher courts. He said that the jury system had experienced an unhappy history in his country, giving rise to some "very perverse verdicts." Ambassador Chagla concluded by explaining one possibly crucial difference. "Instead of using the mystical phrase 'due process of law', the Indian framers had seen fit in this constitution to say 'in accordance

with procedure established according to law.'"

— Keith Highet

## Herbert Wechsler Delivers Holmes Lecture After Recess

The Oliver Wendell Holmes Lecture will be given by Herbert Wechsler, Professor of Law at Columbia University, on April 7, 1959, at 8 p.m. in the James Barr Ames Courtroom. The subject of Professor Wechsler's address will be "Towards Neutral Principles of Constitutional Law."

Professor Wechsler was a Visiting Profes-



Herbert Wechsler

sor of Law at the Law School in the academic year 1956-57. He received his B.A. degree from College of the City of New York in 1928 and his LL.B. from Columbia Law School in 1931. He was an editor of the Law Review at Columbia Law School.

He was admitted to practice in New York in 1933. Professor Wechsler served as secretary to Mr. Justice Harlan F. Stone, Associate Justice of the Supreme Court of the United States.

He is the author of *Criminal Law and Its Administration* with Jerome Michael and of *The Federal Courts and The Federal System* with Henry M. Hart, Jr. Professor Wechsler is the reporter of the American Law Institute, *Model Code of Criminal Law*.

## Crazy Daisy Delivers Beatnik Poetry Tonight

Allen ("I'm crazy as a daisy") Ginsberg, Peter ("I'm very fine and happy and crazy as a wildflower") Orlovsky, and Gregory ("I'm not crazy at all") Corso will invade New Lecture Hall, Kirkland and Oxford Streets, Cambridge, this evening at 8 p.m. under the auspices of the Harvard Law School Forum and the Harvard Poetry Forum. The session, entitled "Howl and Other Poetry", will be devoted to poetry readings followed by questions from the audience. It will be moderated by a member of the Harvard Faculty.

The three panelists are modern generation poets, dubbed "Beatniks" by the popular press. Mr. Ginsberg is the author of *Howl*, a recently published collection of poetry. Mr. Orlovsky is a mental-hospital attendant. Mr. Corso is "hollyhocks."

Tickets are 95 cents (at 23 Everett Street, the Coop, or the door); and it should be "fried shoes."

— Levinson

## Story Overcomes Chayes In Second Ames Quarterfinals

The Story Law Club defeated the Chayes Club last Thursday evening in the second round of the Ames Competition Quarterfinals. The case, which involved an N.L.R.B. order, was decided before a court made up of the Honorable Allan K. Grim of the U. S. District Court for the Eastern District of Pennsylvania, Robert M. Segal, and Richard J. Walsh, Boston attorneys.

Oralists for the Story Law Club were Ronald H. Marcks, 2L of New Providence, N. J. and Craig F. Swoboda, 2L of Norfolk, Nebr. The other members of the team were Morris M. Goldings, 2L of Brighton, Mass.; Chester L. Gray, Jr., 2L of Atlanta, Ga.; Frederick S. Hird, Jr., 2L of Minneapolis, Minn.; Edward C. McLean, Jr., 2L of Darien, Conn.; Hugo M. Pfaltz, Jr., 2L of Short Hills, N. J.; and Richard H. Thomas III, 2L of Convent, N. J.

In the quarter-final argument last Tuesday evening, the Root Equity Club defeated the

Story Equity Club. The Honorable Edward L. Palmieri of the U. S. District Court for the Southern District of New York, Charles W. Blood and Walter D. Malcolm, Boston attorneys, decided the case which involved review of a deportation order and the denial of a petition for naturalization.

The oralists for the Root Equity Club were Arthur J. Morburger, 2L of Owenboro, Ky., and John R. Stahr, 2L of Reno, Nevada. The team also included Myron D. Cohen, 2L of Brighton, Mass.; Louis F. Haeberle III, 2L of Minneapolis, Minn.; John G. Milano, 2L of Irvington, N. J.; Robert E. Shapiro, 2L of Newton Centre, Mass.; Richard L. Slater, 2L of Athens, Ohio; and John G. Van Dusen, 2L of New York, N. Y.

— Murstein

## Gray Presides Over Marriage of the Rails



John B. Gray

"Mergers are easy," reported James B. Gray, General Counsel of the New York Central Railroad, in an address before the Student Bar Association, in the Harkness Meeting Room on Friday, March 20, 1959.

"It is easier to get through a complex railroad merger than a complex corporate reorganization; contrary to popular opinion, strengthened by newspaper reports, mergers and consolidations are not fraught with legal

obstacles." Congress, in passing section 5 of the Interstate Commerce Act has removed virtually all legal obstacles including those imposed by corporate charters, state and federal prohibitions and restraints, and the anti-trust laws. "The only requirement is approval of the ICC. The standards imposed by the Commission are those of 'public interest' and the judicial requirement of 'just and reasonable.' These requirements are met when it is shown that better service at less cost will be the result."

"The time is ripe," said Mr. Gray, "for railroad consolidations and mergers, for the first time since the turn of the century. The statutory climate is right, and railroads are in financial doldrums." Mr. Gray pointed out that members of the ICC have made speeches advocating increased mergers.

In response to a question on the reason for breaking off the New York Central-Pennsylvania consolidation negotiations, Mr. Gray

answered "If you're gonna' marry a girl, you ought'a look around and see if you can find a pretty one."

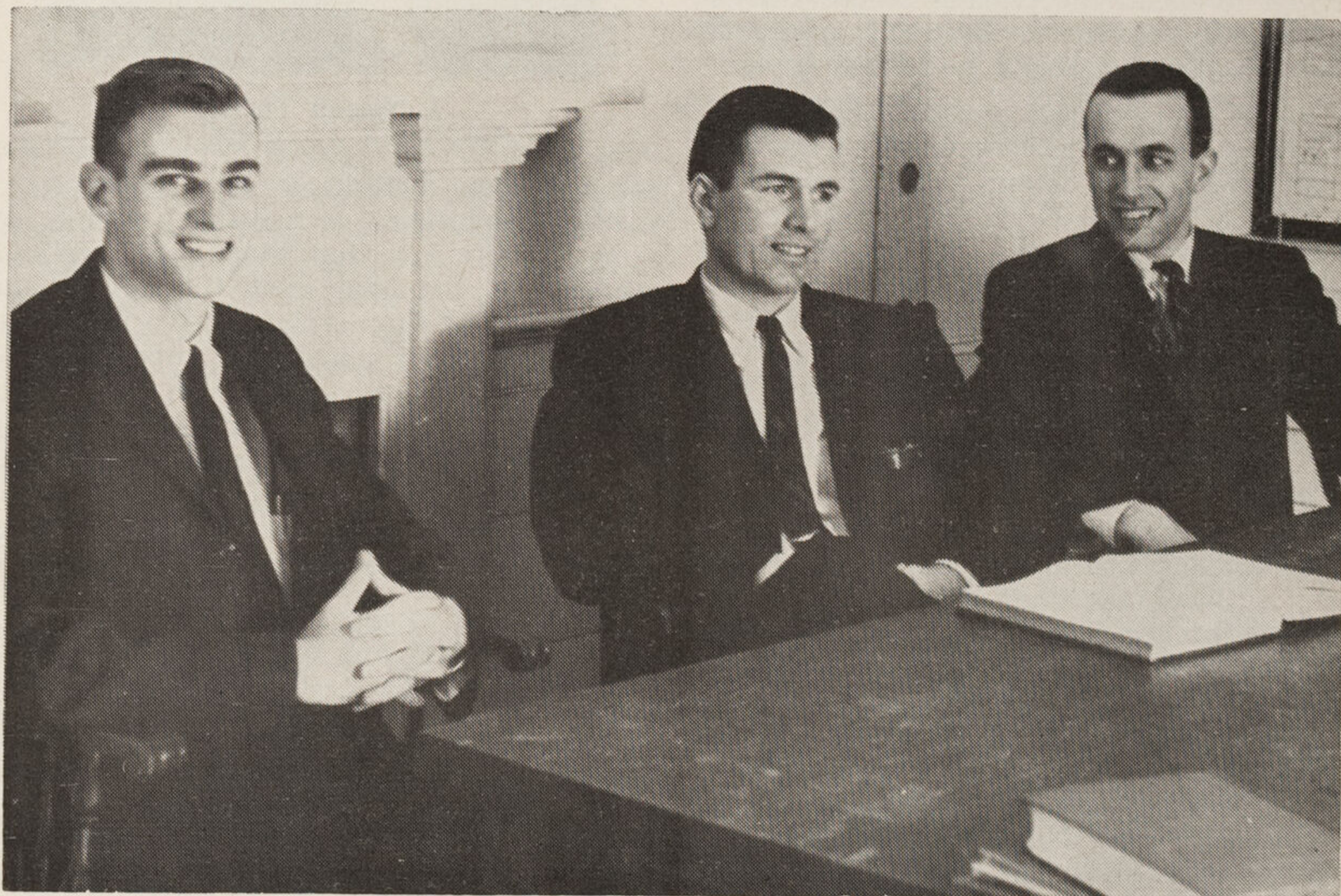
— Silver

## Legal Aid Elects

Ronald L. Boorstein, 2L of Grand Rapids, Mich., has been elected president of the Harvard Legal Aid Bureau for the coming school year.

The elections were held on Wednesday evening, March 18, 1959. Other newly elected officers are Burton A. Schwalb, 2L of Hyde Park, Mass., vice president; William G. Buss, Jr., 2L of Cuyahoga Falls, Ohio, secretary; David P. Bruton, 2L of Wayne Pa., treasurer; Cordell J. Overgaard, 2L of Chicago, Ill., senior director; Herbert D. Simons, 2L of Houston, Texas, junior director I; and Michael A. Cooper, 2L of Tenafly, N. J., junior director II.

## VOLUNTARY DEFENDERS CHOOSE NEW LEADERS



The new officers of the Harvard Voluntary Defenders, elected at the March meeting, are shown above. They are, left to right: Roy A. Hammer, 2L of Windermere, Fla., vice president

(research and appeals); Francis X. Meaney, 2L of Braintree, Mass. and Santa Barbara, Cal., president; Stanley R. Loeb, 2L of Forest Hills, N. Y., vice president (operations).

# FEATURE SECTION

## Gallery

Students in two sections of Taxation and in the seminar in State and Local Taxation have the advantage this year of getting a thoroughly midwestern viewpoint injected into their academic fodder. One wonders if there is such a thing as a particularly midwestern viewpoint on tax matters, but if there is, there are few at Harvard more qualified to espouse it than Visiting Professor J. Nelson Young. A lifelong resident of the Land of Lincoln, Professor Young received his B.S. degree at the University of Illinois in 1938 and the LL.B. degree there with honors in 1942. He is a member of the Illinois Bar and is also a C.P.A. After a tour of duty in the Navy and brief service with a Chicago law firm, he returned to his alma mater, where he is now Professor of Law. He was invited to spend the current school year at Harvard to assist with the taxation courses during Dean Griswold's sabbatical leave.

One of the sharpest contrasts with which Professor Young was confronted at Harvard was the size of his classes. The 325 students enrolled in his two sections of Taxation is a greater number than the total enrollment at the University of Illinois College of Law, where his classes seldom exceed 50 or 60 in number. "The size of the classes at Harvard doesn't permit the same breadth of daily student participation as at Illinois, but otherwise, the classes proceed about the same," he notes.

"I am favorably impressed with the caliber of the students at Harvard and the fine tradition of the Ames Competition which adds an important ingredient to the educational program of the first year." He observed that the moot court work at Illinois begins during the second semester of the first year, and is part of a course known as "Introduction to Law". The student's performance is graded and becomes part of his academic record, a fact which a first year student here could conceivably find somewhat dismaying.

Professor Young noted that one of the advantages of a larger school, at least for the top students, is the opportunity for indepen-



J. Nelson Young

dent operation of the *Law Review* and other select student activities. At Illinois, more faculty supervision is necessary simply by virtue of the fact that there aren't enough students to completely staff the *Review* and perform all of the administrative functions. When questioned about the importance of the law of the local jurisdiction in the curriculum of a state school, Professor Young pointed out that particular local rules are considered by way of supplementation of the regular casebook with the emphasis being placed upon the broader policy considerations.

As with many Professors of Law, Professor Young found it hard to pinpoint the reasons for his decision to teach. He observed that even though he had never previously contemplated the prospect of teaching, the decision was not a difficult one. He suggested that the way one evaluates his educational experience while a law student may have a lot to do with it, and added that there was a substantial degree of freedom in the teaching field to pursue one's special interests, which might not be so readily avail-

able in practice. He remarked that the challenges in the field of teaching are greatly rewarding.

In his field of Taxation, Professor Young has worked on projects for both the A.B.A. and the Illinois State Bar Association. He was chairman of an A.B.A. sub-committee preparing a draft of a model state tax court act, which was subsequently adopted by the Commissioners on Uniform State Laws. In recent years he has also been Chairman of the Section on Federal Taxation of the Illi-

nois State Bar Association, and has written numerous articles for legal periodicals. He is currently engaged in the preparation of a revision of Professor Maguire's casebook materials on State and Local Taxation.

Professor Young observed that the cultural offerings of the Boston and Cambridge community provided the backdrop for a wonderful year away from home, but noted that "I'm not looking forward to grading those 325 examination papers in June."

— Skornia

## Book Review

### PLANNING AND COMMUNITY APPEARANCE

Report of the Joint Committee  
on Design Control

of the New York Chapter,  
American Institute of Architects  
and the New York Regional Chapter  
American Institute of Planners  
*Henry Fagin and Robert C. Weinberg,*  
*Editors Regional Plan Association, 1958.*

by  
**BERNARD J. FRIEDEN**

During the present period of rapid community development, the character of our urban environment has become a matter of increasing public concern. In spite of the widespread adoption of zoning laws, buildings codes, and subdivision regulations, the new growth in our cities and suburbs is almost uniformly lacking in visual interest and aesthetic character.

A distinguished committee of architects and city planners, disturbed by the environment that is emerging, have conducted a thoughtful inquiry into ways in which governmental controls can bring about more satisfying results. In *Planning and Community Appearance*, they present their analysis and their conclusions, as well as some useful principles of urban design and a compendium of legal and administrative devices currently in use as aesthetic controls.

Much of this study will win general approval among the professions most closely concerned with urban development. A number of suggestions are both ingenious and im-

portant, while the underlying philosophy provides a sound basis for action. The major recommendation, however, which calls for a public body to exercise architectural review of proposed new buildings, raises doubts that are not answered in this book.

The main problem, as the authors see it, is that conditions are no longer ripe for community traditions of good design to guide the siting, appearance, and workmanship of new buildings. In the eighteenth and nineteenth centuries, a different social milieu could produce a more satisfying environment: witness the growth of numerous charming colonial towns, and even an occasional attractive city as large as New Orleans. Homes were intended to serve a family for generations; growth was leisurely enough to provide the builder with a guiding sense of the surroundings of each new structure.

Not only has the pace of change accelerated in our times, but changing attitudes have resulted in greater indifference to good design. With increased residential mobility, many of the families for whom new houses are built regard them as only temporary quarters. The builders have no lasting interest in their products; their method of operation is to sell new homes as quickly as possible to retrieve their capital, and to build again. Surroundings change too quickly and too haphazardly for the builder to concern himself deeply over the visual relationship of new homes to their setting. Since neither the purchaser nor the builder generally has more than a temporary interest in the design of new construction, the community has at-

tempted to substitute public regulations as a means of insisting upon adherence to certain basic design standards.

In the authors' view, typical public regulations are too general; they prescribe standards for classes of property, but do not compel careful attention to individual site characteristics. Present zoning practice, with its emphasis on setbacks, yard, and height requirements for all properties in a particular district does not necessarily produce results of a high aesthetic order. Good urban design depends more upon the relationship of buildings to their setting than it does upon equal adherence to fixed requirements throughout a zoning district, when the zone boundaries are not established primarily for aesthetic purposes.

The proposed solution is a legal means of compelling close attention to the siting and design of individual buildings. First the authors recommend giving the planning agency of each community responsibility for preparing a design plan and a program of effectuation. This design plan is then to be adopted officially and given legal force as the basis for a system of architectural control. It might call for minimum as well as maximum building heights in an effort to create landmarks at certain locations; presumably it could specify colors or building materials for particular areas. Before building permits are issued, an architectural review board would determine whether proposed structures are consistent with the design plan and with the character of each site and its surroundings.

Preparing a design plan is surely worthwhile — as much so as preparing the highway plan or any other part of the usual city master plan. Giving the plan legal status, rather than using it merely as a guide, however, raises some important questions. First, what is gained by the review procedure for new construction? On the positive side, review procedures could have the effect of making good design a public issue. In some instances, city planning directors have been able to influence the course of major building projects favorably by arousing public interest in their design: architectural review proceedings could conceivably provide an easy means of interesting newspapers and the public in the appearance of new buildings.

Whether architectural review would encourage builders to hire imaginative architects is uncertain, but builders would probably engage competent architects who could comply with the regulations. To the extent that much new building now is not designed by architects, any move in this direction would represent some gain.

The shortcomings of architectural review, however, overshadow its advantages. A basic premise of this procedure is open to question: can a board of architects, city planners, real estate developers, artists, and civil engineers (a suggested roster of members) reach agreement on good siting and design of new buildings? In the typical situation of a traditional building proposed for relatively homogeneous surroundings, agreement would surely be possible. When an imaginative building is proposed, particularly one unconventional in form, experts are likely to disagree. What architectural review board could render a wise decision in the case of Frank Lloyd Wright's Guggenheim Museum in its setting among conventional New York buildings? Is it consistent with its surroundings and the character of its own site?

Merely posing the problem of how a review board treats original forms suggests that architectural review would encourage conservatism in design. Developers are anxious to move quickly, and few would risk delays in the review process for the sake of unusual design. The results are likely to be superficial conformity to the appearance of

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**Bernard J. Frieden** is an instructor in the Department of City and Regional Planning at M. I. T. He possesses a B.A. from Cornell University (1953), an M.A. from Penn State University (English, 1953), and a Master in City Planning, M. I. T. (1957).

Mr. Frieden is an Associate Consultant (with Roland B. Greeley) preparing a long-range plan for Concord, Mass. He recently left for Europe to take a position with the Office of Town Planning Rotterdam, Holland.

A "Report on Metropolitan Problems" (co-authored with Melvin F. Levine) was published by the Mass. chapter of the Americans for Democratic Action (1957).

surrounding buildings rather than the creation of new designs. To resolve this issue, we need to know more about the workings of architectural review in those areas where it now operates. The present study has little to say on this subject, even though it proposes a major extension of the review principle.

The authors of *Planning and Community Appearance* propose several devices other than architectural review to implement design plans. Most of these devices differ from present zoning controls chiefly in that they apply to a limited number of individual properties and locations that happen to offer opportunities for special aesthetic effects. Properties at key points could be allowed to exceed surrounding height limits or compelled to observe lower height limits than neighboring areas if the design plan establishes grounds for these regulations. In effect, special discontinuous zoning districts could be established; spot zoning would become legal if based upon a design plan.

Legal implications of this proposal are interesting. To guard against political abuses or arbitrary property regulations in cities that use special urban design zones, the courts would have to insist upon a reasonable design plan as one basis for zoning. Given proper safeguards in court, however, the proposed discontinuous zones could become a useful tool for improving the urban scene.

Long-range solutions to the problems posed at the start of this study must necessarily run along broader lines than local regulations

alone. One possible approach would be to stimulate public demands for good design; another would be to raise design standards in the housing industry. For the former approach, enlightened cities can probably accomplish more by direct action than by imposing cumbersome new regulations upon potential builders. Cities have many opportunities for demonstrating aesthetic possibilities to the public: by the layout and design of streets and roadways, parks, public buildings and publicly subsidized urban renewal projects — all of which are either built directly by the city or built according to plans subject to city approval. Major elements in the urban landscape are thus well within the control of a city design plan without recourse to architectural review.

In the opinion of a number of architects and planners who have recently studied the housing industry (see the forthcoming book by Burnham Kelly and associates, *Design and the Production of Houses*), significant opportunities for improving housing design may accompany the increasing industrialization of housing production. The designs best suited to technological advances in housing production, however, are likely to take on new and striking forms, using new materials and new finishing techniques. Architectural review, instead of helping to raise the level of new designs, is likely to inhibit innovation by making compatibility with surroundings the legal basis for important building regulations.

## Letters to the Editor

### Injustice

#### To the Editor:

W. Bernard Richland, in his interesting "A Dissenting View of the British Bench and Bar" (HARVARD LAW RECORD, February 19, 1959), unfortunately does an injustice in his reference to the *Seddon* case to Sir Edward Marshall Hall, a brilliant, if at times erratic advocate.

To be sure, the cross examination by Sir Rufus Isaacs (later Lord Reading) of Seddon, who had been charged with the poisoning of an elderly pensioner in his home, has seldom been surpassed and Seddon ought not to have taken the stand. It is not fair, however, to place the blame for Seddon's testifying on his counsel, Marshall Hall, or to suggest

that Marshall Hall had not consulted with Seddon before trial.

Marshall Hall, as did other members of the bar at the time, viewed the passage of the Criminal Evidence Act, 1898, which permitted the accused to testify in his own behalf, as a mixed blessing to the defendant. On the one hand, it was thought that it was a serious inroad on the doctrine that it was incumbent on the prosecution to prove the charge without any assistance from the accused; on the other, it confronted the accused with the choice of submitting to cross examination or suffering the court's comment on his failure to testify in his own defense. Marshall Hall, accordingly decided that the choice ought not to be made by counsel and insisted on written instruction from the defendant

after he had been advised of his right and warned of the dangers of cross examination. (A photostatic copy of George Joseph Smith's instruction that he did not wish to testify in the famous "brides in the bath" case will be found in Majorbanks, *For the Defence: The Life of Sir Edward Marshall Hall* (1931), at p. 330.)

Every account of Seddon's trial which I have ever seen reports that Seddon took the stand after repeated warnings by Marshall Hall against his doing so. There appears to be no question that Hall, who had interviewed him prior to trial, was strongly opposed to Seddon's testifying and that it was Seddon's confidence in himself and in his ability to score against Rufus Isaacs that produced the disaster (to Seddon) which followed. Apparently, Seddon's decision was in writing, in accordance with Hall's practice, Bowker, *Behind the Bar* (1959) at p. 137.

The British practice is, as I understand it, for counsel to consult with client and any expert witnesses to be produced by him; he refrains only from interviewing disinterested witnesses called by either side. In this connection, Sir Patrick Hastings' rule which he adopted from Sir Edward Carson, of never interviewing the accused before trial appears less curious when his reasons are stated. He writes in his *Autobiography* (1948) at p. 103, "It is an inflexible rule of the Bar that no advocate shall call a witness, even a prisoner to prove something that

the advocate knows of his own knowledge to be false. The only legitimate purpose of such an interview is to enquire deeply into facts; in the case of crime enquiry must be fraught with danger. The prisoner in his natural anxiety will very likely say something that will embarrass his counsel beyond measure, and further enquiry will only deepen the embarrassment." Elsewhere (*Cases in Court* (1949), p. 268) he puts it "Human nature being what it is, it is almost inevitable that a person, feeling him or herself in such an awful position as that of an accused murderer, should clutch at any straw to save themselves, and as a consequence defences are invented which bear no relation to the truth, and which so far from achieving their design very often end in complete disaster. It is for that reason that I have always made an inflexible rule never to see an accused person in his prison, lest I should find myself hampered in the conduct of the defence either by something the defendant may have said or by something he may have thought his counsel may have wished that he would say." This may be a head-in-the-sands attitude, but is it not also an acceptable reconciliation of counsel's duty as an officer of the court with his duty to represent his client without judging him?

Very truly yours,  
Donald R. Anderson  
LL.B. '55

## From England

### To the Editor:

I have just received your issue of 19th February in which appears an article by Mr. W. Bernard Richland comparing the English Bench and Bar with the American. I have no quarrel — indeed I am on record as holding the same opinion. But Mr. Richland does a disservice to our cause by seeking to support it by an account of the English position which is a grotesque travesty. Since he quotes two articles of mine as his sole authority for his statements I must ask that you allow me to disclaim any responsibility for, or support of, the picture which he paints. In my opinion it is exaggerated, misleading and in many respects factually wrong.

It would be charitable to assume that Mr. Richland has been misled by ignorance. Unhappily his method of dealing with his sources of information scarcely supports this interpretation. To avoid taking up too much of your space I will content myself with but one illustration

(out of many) of his technique. In the first of my two articles which he quotes, and which appeared in 1950, I stated that a solicitor's articulated clerk "will normally have to pay a premium to his principal, possibly of as much as 500 guineas", and that after admission he "is unlikely to earn more than about £400 per annum for a good many years". In the second article, published in 1957, I pointed out that things had improved somewhat, that premiums were virtually a thing of the past, that many, perhaps most, articulated clerks were paid small salaries, and that after admission his starting salary would be about £600 per annum and more in London. This later account might be thought to be a sufficiently grim contrast with the position in

the States. But apparently it is not grim enough for Mr. Richland. He cites the later article in a footnote but ignores its contents. Instead he repeats the statements in the earlier article as representing the present position. Indeed he is not content with accurate repetition. My "will normally have to pay a premium . . . possibly of as much as 500 guineas" becomes "has to pay a premium of about 500 guineas". And he inserts, for good measure, the ludicrous statement

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that "theoretically he [the articulated clerk] is supposed to be gaining experience while studying, but such is seldom the case". This, presumably, is a perversion of a comment by me that "the value of the practical experience gained . . . varies greatly but even at its best cannot cover everything that the student ought to know".

If Mr. Richland's methods are an example of the standards of American advocacy that he extols I can only say that I am unimpressed. And if any of your readers have assumed that his description of the English Bench and Bar bears much relation to the facts I hope that they will accept my assurance that it does not.

Yours truly,

L. C. B. Gower

Professor, London School of Economics

## Conflicts

### To the Editor:

In reporting the 1959-60 teaching schedule, the RECORD stated that the section of Conflict of Laws which I shall offer in the spring semester is "designed for students interested in doing additional work in the field." This apparent appeal to an unnatural appetite may make the limitation of the section to not more than fifty students seem a singularly idle gesture. Some explanation is in order.

I taught over-size sections of Conflicts in '57 and '58 and I expect to teach a section of normal dimensions next fall. What I should most enjoy doing, however, is to teach a small section comprised of students who would really like to wrestle with some of the basic Conflicts controversies that are continuing to be waged in the law reviews. This I believe could be rewarding for the participants only if they are willing to read outside the casebook. That is the "additional work" I have in mind. If, undeterred by this prospect, more than fifty students were to apply for this section, selection among them would be by lot.

David F. Cavers



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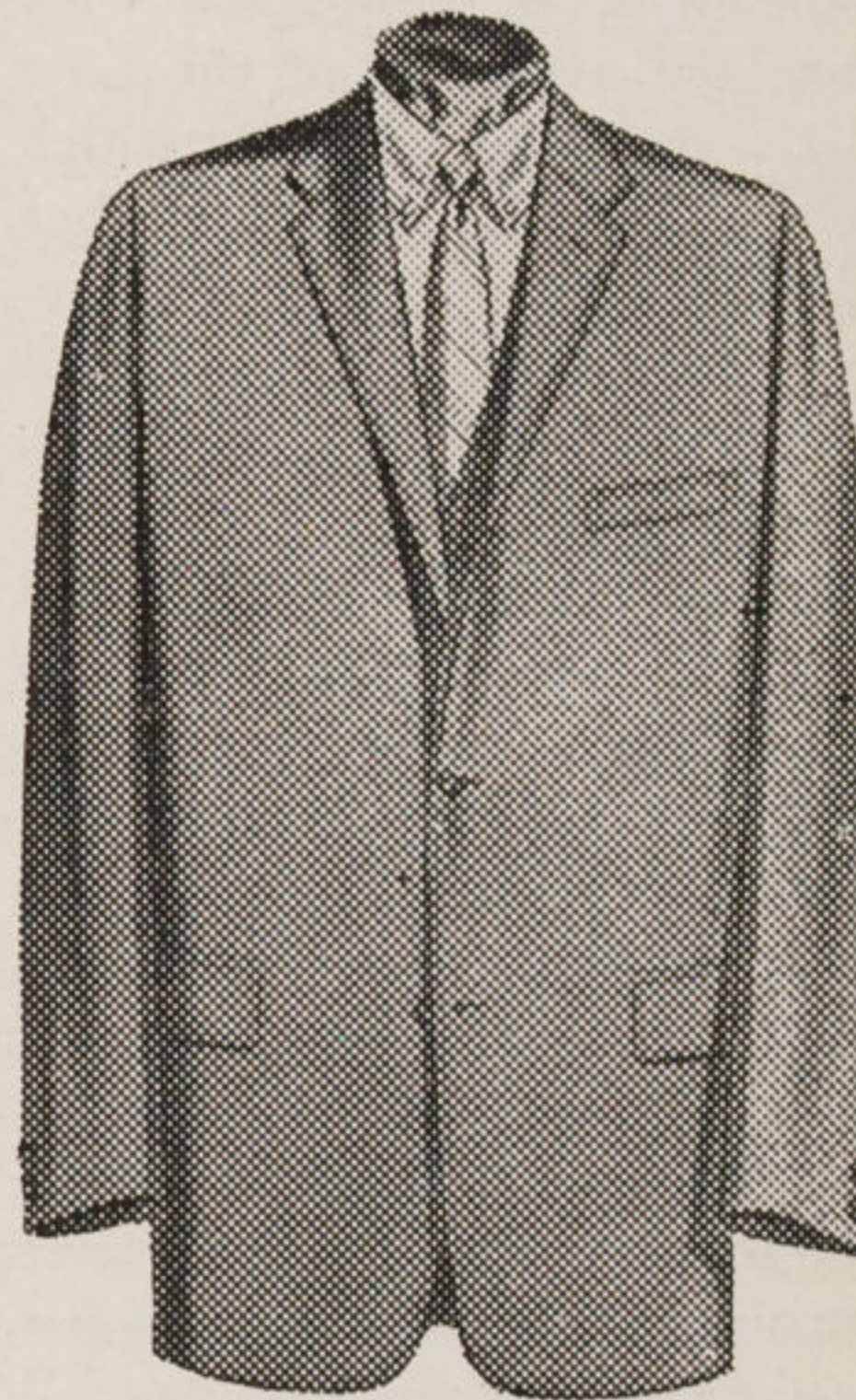
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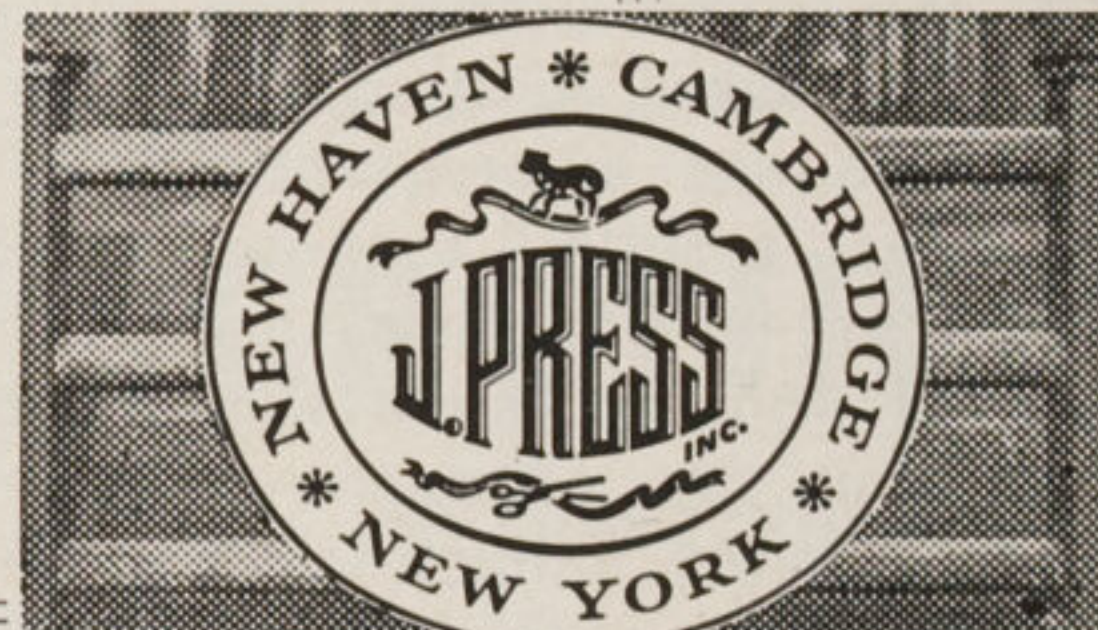
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## Good Trend

### To the Editor:

At least three members of the faculty have adopted the idea of making the final examination somewhat more of a learning device than it normally is. I feel that this is an encouraging trend, and wish to call to the attention of the Law School the different methods which are being used, in the hope that perhaps other members of the faculty will decide to follow the lead of Professors Dawson, Herwitz, and MacLachlan.

Professor Dawson graded the answers which his section wrote to the Contracts question on the Teaching Fellows mid-year practice exam, and then held an hour-long afternoon session in February to discuss the question. He had mimeographed copies of his answer to the question, as well as two "A" student answers and a couple that were poorly written. Mr. Dawson discussed these five answers as well as examination technique in general, and the students, about 75% of the section, asked questions. In April Mr. Dawson mimeographed two half-hour "practice" examination questions in Contracts, and the students who so desired were given an hour one afternoon to write their answers, similar to the practice examination held in January. Three weeks later Mr. Dawson, having graded all of the answers, handed them back and discussed them in a manner similar to his February discussion. As a member of that Contracts section, I can say that a large number of the students felt that the experiment was most helpful in easing some of the pressures and tensions of the first year.

Professor Herwitz uses a somewhat similar technique. It involves the final examination itself. In

March, after the Accounting examinations have been graded and the marks returned, he holds a similar voluntary hour-session in the afternoon to discuss the correct answers to the final examination. Students are allowed to obtain their exams from his office, and thus can compare what they said with what was the correct answer, and learn where they went off the track.

Professor MacLachlan's method is similar to Mr. Herwitz', in that it involves the final examination, but similar to Mr. Dawson's in that the professor writes out his own answer to the questions. Mr. MacLachlan files in the library his answers to all of his examinations (Property I, Creditors Rights, and, last year, Agency), and a student can compare his own exam (in Professor MacLachlan's office) with the answers in the library.

I feel that the benefit of these practices is that a student is able to correct the mistakes which have crept into his thinking. This has more practical value in preparing for the bar exam, but it should also make the student a better lawyer. I note that between one-third and two-thirds of the students who are given a chance do take advantage of these opportunities. Whatever method is chosen, I think that these experiments do a great deal of good, and they merit consideration by faculty and students alike. I have discussed only techniques used by professors whose courses I have taken, and there may be other professors who follow the same or similar ideas.

C. W. Torrance, 2L

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## Favorable

### To the Editor:

As you know, back in 1946 I had the privilege of being one of the founders of the RECORD, as Circulation Manager and then as Business Manager. One of our first problems was to determine the size of the paper, and, after considerable discussion, we selected a size similar to daily newspapers. I must frankly admit that I now prefer the present format.

Sincerely,  
Ronald A. Capone,  
LL.B. '47  
Washington, D. C.

## Unfavorable

### To the Editor:

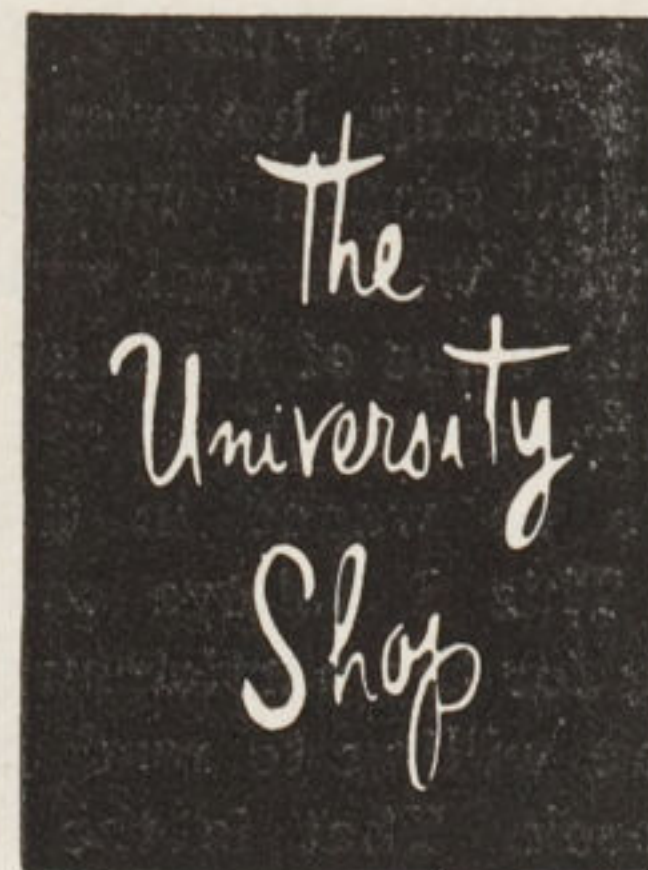
I have been a loyal reader of the RECORD since its inception.

I cannot help but noting that in my opinion your new format is not an improvement, but instead, represents an undesirable change.

I think the RECORD prior to the recent change was much better.

Sincerely,  
Jerome D. Goodman,  
LL.B. '37  
Boston, Mass.

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## Should Evidence Be Required?

*Student suggestions for curriculum changes, reflected in recent letters to the RECORD range from requiring Legal Process and Evidence, to switching Constitutional Law from the second to the first year. Implicit in most of the letters is a feeling that basically the curriculum is sound, but that certain improvements are needed, mainly in the way of centralizing the business courses and requiring a course in the Legal Process-Jurisprudence field. Two student letters expressing some of these ideas follow.*

### Tax and More Tax

Here are the answers to your questions:

My seminar is Current Tax Problems, with Prof. Surrey. I chose this seminar because I think that Taxation is one of the hardest fields to become competent in, and thus merits some special work. I have an Economics background, and would not object if my practice involved some special tax work.

I chose my electives more on the basis of who was the professor, rather than the subject matter, although I stayed within fields covered by my Economics — litigation interests. I think that Prof. Cheatham's Conflicts course is very valuable, and might be required, although I express no opinion about a Conflicts course taught by any other professor. I don't have any electives that I didn't think were worth the time I spent on them.

I think the second year classes are a bit too large. It has always seemed to me that 125, the first year size, was about the limit for effective student participation. And,

of course, it is very hard to hear up in the back rows.

### Four Years

The proposal has merit in that it would allow presenting much more material to the students, but I am against it because I don't think that is the purpose of the law school. It seems to me that the law school should teach students how to analyze legal questions, how to find the state of the law on any question and how to look for the special situations, the new questions, and changed conditions that make our law advance. My experience last summer was that I didn't remember much of the actual subject matter of the courses I took, and I think that after three years the best thing to do is put us out in practice.

(name withheld)

### Bread and Butter

This is in reply to your letter concerning the prospective re-evaluation of the Law School curriculum which you sent to me recently. In your answer to your questions:

I took Mr. Chayes' section of the seminar in Planning and Counseling for the Closed Corporation. The reasons dictating my choice were simply that I plan to practice in New Jersey with a firm that handles a great deal of small corporate work and felt that this seminar would be extremely helpful

to me in its announced purpose. It was. (Parenthetically, however, my second choice was Administration of Criminal Justice, even though the firm for which I will work handles only those criminal cases assigned to it by the courts for indigent defendants. This was a choice of less practical and more general interest.)

### Creditor's Rights

Of my electives, I believe that Creditors' Rights and Equitable Remedies were the most valuable. I would be hard put to choose a "least valuable" one and so will not try. If any courses now electives were to be required, I think that they should be chosen from the field of what I will term, more or less arbitrarily, the "jurisprudential," that is, a requirement of one course from a group that includes Jurisprudence, Legal Process, Equitable Remedies (which

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does fit into this area), etc. I think it would be quite profitable to assure that every student had at least one course dealing with the basis of the Law rather than the basis of the laws.

With all due respect to Prof. Scott, I feel that Trusts can be, at least, cut down to one term . . . He has made its "mysteries" too fathomable to need a full term's inquiry in all likelihood. Aspects of Trusts are dealt with in other courses now required. And I feel that Agency should meet a similar, though surer, fate. It is as fully dealt with in Property I and II and in Contracts as is necessary. Perhaps whatever Agency principles are felt necessary to be communicated to the first year man directly might be turned over to the Teaching Fellows, but a required course is really not feasible any longer.

#### Constitutional Law In First Year

While I am on the subject of Required Courses, I should like to suggest that Constitutional Law be shifted from a required Second Year course to a required First Year course. It is extremely important, is excellent "introductory" material, and is certainly not beyond the first year students' comprehension. If Trusts were eliminated or cut down, and Constitutional Law were shifted to the first year, one additional full year's electives could be given to the second year student.

One of the chief "complaints" of practicing lawyers in regard to recent graduates is that they know

too little about "legal writing", the preparation and drafting of documents from complaints to briefs to contracts and agreements of all sorts. I suggest, therefore, that among new courses to be considered might be one in "legal writing."

In the overall administration of Harvard Law School and presentation of the material, I feel that the size of the sections is adequate and suitable.

#### Four Years

One hears every now and then of the suggestion that the Law School become a four-year instead of a three-year course. I feel that such a plan would be feasible only in a very limited manner. Two things are (theoretically) accomplished at the Law School. One, and I think actually the less important one, is that basic principles, rules, background, leading cases — certain "memory" material — is presented to and assimilated by the students. But even a thorough knowledge of this is not enough to make a man a good lawyer. Harvard Law School is so continually outstanding because, in the three

years here, a very large proportion of the students are taught to, what I shall term, "think like a lawyer." In short, one learns to approach a problem, and its solution, in terms of the basic, underlying, real principles of the matter. Three years are sufficient for achieving this in the academic arena. Thereafter, one must go out and practise the law as he has hopefully learned it. Another year at the Law School, I firmly believe, would not add measureably to either of these areas. Yet, it's well known that one upon graduation from law school is not yet completely fit to undertake practise all by himself. A period of internship, often called in many states "clerkship", is still necessary. Therefore, if the Law School considered a program whereby one year of such "internship" could be inserted into the curriculum, then, and only then, do I think that an added year might profitably aid the student.

I hope the above provides adequate answers to some of your questions.

(name withheld)

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