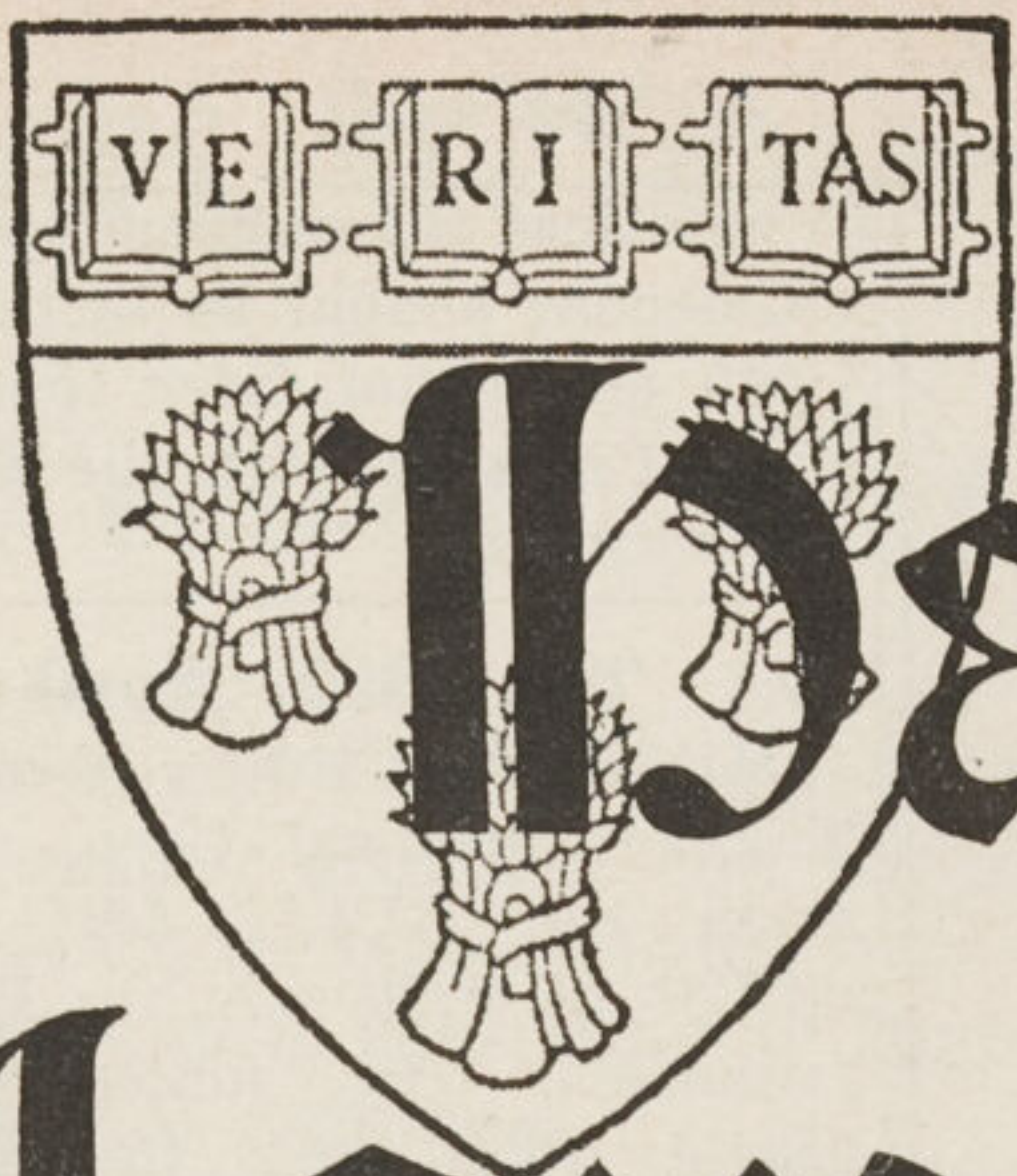




MAN

Harvard Law Record

Wechsler Criticizes High Court

Sacks Club Wins Finals

DeSapio Speaks Tomorrow



Hawaiian Legal System

50 Years of Scott

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, April 9

Mr. J. W. Crosby, president of Thiokol Chemical Corp., will address the BULL AND BEAR CLUB at 8:30 p.m. in Harkness Commons. His subject will be "Solid Fuel and the National Defense."

Friday, April 10

The HARVARD LAW SCHOOL FORUM will present an address by the Honorable Carmine DeSapio, "Policies of the Democratic Party," followed by a panel discussion, at 8 p.m. in the New Lecture Hall, Kirkland and Oxford Streets, Cambridge.

Monday, April 13

The REPUBLICAN CLUB will hold a meeting at 1:40 p.m. in the Harkness Commons Meeting Room. Mr. George H. Roderick, Assistant Secretary of the Army, will speak on "The Panama Canal and National Defense."

Tuesday, April 14

CARLOS CHAVEZ will speak on "Composer and Public" in his lecture series, on "Musical Thought", at Sanders Theater, 8 p.m.

Wednesday, April 15

The ST. THOMAS MORE SOCIETY banquet will be held at the Harvard Club of Boston at 6:00 p.m. Dom Aelred Graham, prior of the Portsmouth Priory will be the guest speaker.

Jack Welcomes You to

Mike's Club

WHERE YOU CAN ENJOY
THE LARGEST
ROAST BEEF SANDWICH
IN THE SQUARE
OPEN EVERY SUN. — THURS.
'TILL ONE A.M.
FRI. SAT. 'TIL 2 A.M.
Orders to Take Out

Wechsler Criticizes High Court Opinions

Herbert Wechsler, Harlan Fiske Stone Professor of Constitutional Law at Columbia University, attacked the United States Supreme Court last Tuesday evening for a lack of principled reasoning in many recent and important opinions.

Professor Wechsler, in a speech entitled "Toward Neutral Principles of Constitutional Law," delivered as the annual Oliver Wendell Holmes Lecture in the James Barr Ames Courtroom, condemned, in particular, the opinion, not the decision, in *Brown v. Board of Education*, for its inadequate reasoning, and following cases for their lack of opinions altogether.

"... Courts in constitutional determinations", he stated, "face issues that are inescapably 'political' — political in the ... sense that ... they involve a choice among competing values or desires, a choice reflected in the legislative or executive action in question, which the court must either condemn or condone ... What is crucial, I submit, is not the nature of the question but the nature of the answer that may validly be given by the courts."

"Does not," Professor Wechsler asked, "the special duty of the courts to judge by neutral principles addressed to all the issues make it inapposite to contend, as Judge Learned Hand does, that no court can review the legislative choice — by any standard other than a fixed 'historical meaning' of constitutional provisions ... without becoming 'a third legislative chamber'? Is there not, in short, a vital difference between legislative freedom to appraise the gains and losses in projected measures and the kind of principled appraisal, in respect of values that can reasonably be asserted to have constitutional dimensions, that alone is in the province of the courts?"

Reasons

"The courts have both the title and the duty when a case is properly before them", he continued, "to review the actions of the other branches in the light of constitutional provisions, even though the action involves

value choices, as invariably action does. In doing so, however, they are bound to function otherwise than as a naked power organ; they participate as courts of law. This calls for facing how determinations of this kind can be asserted to have any legal quality. The answer, I suggest, inheres primarily in that they are — or are obliged to be — entirely principled. A principled decision, in the sense I have in mind, is one that rests on reasons with respect to all the issues in the case, reasons that in their generality and their neutrality transcend any immediate result that is involved. When no sufficient reasons of this kind can be assigned for overturning value choices of the other branches of the government or of a state, those choices must, of course, survive."

"The virtue or demerit of a judgment turns, therefore, entirely on the reasons that support it and their adequacy to maintain any choice of values it decrees, or ... to maintain the rejection of a claim that any given choice should be decreed. The critics role, as T. R. Powell showed throughout so many fruitful years, is the sustained, disinterested, merciless examination of the reasons that the courts advance ..."

Professor Wechsler noted "two important fields of present interest in which the Court has been decreeing value choices in a way that makes it quite impossible to speak of principled determinations or the statement and evaluation of judicial reasons, since the Court has not disclosed the grounds on which its judgments rest."

He pointed out that in five cases decided after the decision in *Burstyn v. Williams*, 343 U.S. 495, which held that motion pictures are entitled to the "free speech" and "free press" safeguards of the First Amendment, as incorporated in the Fourteenth Amendment, the Supreme Court has reversed state courts decisions which sustained censorship of particular films. But the decisions were *per curiam*. "Given the subtlety and difficulty of the problem, the need and opportunity for clarifying explanation," he asked,

"are such unexplained decisions in a new domain of constitutional interpretation consonant with standards of judicial action that the Court or we can possibly defend?"

Professor Wechsler deplored the fact that the Supreme Court "has written on the merits of the constitutional issue posed by state segregation only once (*Brown v. Board of Education*, 347 U. S. 483)," but in succeeding cases has extended the ruling to other public facilities, such as public transportation, parks, golf courses, bath houses and beaches which no one is obliged to use — all by *per curiam* decisions. "Is this 'process of law?'" he asked.

"The phase of our modern constitutional development that I conceive we can most confidently deem successful," Professor Wechsler declared, "inheres in the broad reading of the commerce, taxing and related powers of the Congress, achieved with so much difficulty more than twenty years ago — against restrictions in the name of state autonomy to which the Court had for a time turned such a sympathetic ear." But much harm was caused, he asserted, by the "poverty of principled articulation of the limits put on Congress as against the States before the doctrinal reversal of the Thirties . . ." This was also true, he added, in the area of "the relationship between the individual and government, which invoked due process to maintain *laissez-faire*."

Taking direct issue with the report approved by the State Chief Justices last August in Pasadena, Professor Wechsler declared that "it misconceives the problem of the Court to state it as the question of the proper measure of judicial self-restraint, . . ." with the resulting issue whether such restraint is only proper in relation to protection of a purely economic interest or also in relation to an interest like freedom of speech or of religion, privacy or discrimination (at least if it is based on race, origin or creed). . . . The real test inheres . . . in the force of the analysis.

"In this view, the 'preferred position' controversy hardly has a point . . ."

In regard to the school segregation decision: "The problem inheres strictly in the reasoning of the opinion, an opinion which is often read with less fidelity by those who

praise it than by those by whom it is condemned. . . .

"I find it hard to think the judgment really turned upon the facts. Rather, it seems to me, it must have rested in the view that racial segregation is, in principle, a denial of equality to the minority against whom it is directed, that is the group that is not dominant politically and, therefore does not make the choice involved. But this position also presents problems. For one thing, it involves an inquiry into the motive of the legislature which is generally foreclosed to the courts. For another, is it defensible in general to make the measure of validity of legislation the way it is interpreted by those who are affected? . . . Does enforced separation of the sexes discriminate against the female if it is imposed by judgments predominantly male? Is a prohibition of miscegeation a descrimination against the colored member of the couple who would like to marry?"

"For me, the question posed by state enforced segregation is not one of discrimination at all . . . Does not the problem of miscegenation show most clearly that it is the freedom of association that at bottom is involved, the only case I may add, where it is implicit in the situation that association is desired by the only individuals involved? I take no pride in knowing that in 1956 the Supreme Court dismissed an appeal in a case in which Virginia nullified a marriage on this ground, a case in which the statute had been squarely challenged by the defendant and the Court dismissed *per curiam* on grounds that I make bold to say are wholly without basis in the law . . .

"But if the freedom of association is denied by segregation, integration forces an association upon those for whom it is unpleasant or repugnant . . . Given a situation where the State must practically choose between denying the association to those individuals who wish it or imposing it on those who avoid it, is there a basis in neutral principle for holding that the Constitution demands that the claims of association should prevail? I should like to think there is, but I confess that I have not yet written the opinion. To write it is for me the challenge the school segregation cases pose."

— Binder

Sacks Drops Holmes in Final Round; Justice Burton Hails Both Sides

The Sacks Club defeated the Holmes Club in the Ames Final Argument last Thursday night, March 26th, in the James Barr Ames Courtroom. The three-judge court was presided over by the Honorable Harold Hitz Burton, United States Supreme Court, Retired. The associate justices were the Honorable Stanley H. Fuld of the New York Court of Appeals and the Honorable Albert B. Maris of the United States Court of Appeals for the Third Circuit.

The case, *Davis v. Wind, Inc.*, was a suit for defamation originating in a Pennsylvania District Court. The plaintiff, a citizen of Virginia, sought \$100,000 damages as a result of statements made over the defendant's radio and television network during a political broadcast. The program originated in Pennsylvania, but was also carried in Virginia, West Virginia, and Maryland.

The issues on appeal included:

(1) Whether a cause of action was stated in the complaint which alleged that certain statements were made on defendant's broadcast to the effect that the plaintiff was a supporter or member of the N.A.A.C.P. and a believer in the immediate desegregation of public schools.

(2) Whether the District Court properly characterized the alleged wrong under the Pennsylvania "single-publication" rule as a single tort governed by the internal law of Virginia.

(3) Whether the Virginia statute granting complete immunity to broadcasters in certain circumstances was constitutional and applicable to the case.

The court handed down a two-to-one decision in favor of the defendant represented by the Sacks Club. The oralists for the Club were Ansel Chaplin, 3L of Truro, Mass., and Joseph L. Steinberg 3L of Passaic, N. J. Counsel for the brief were: John H. Demmler, 3L of Pittsburg, 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 Bayhead, N. J.; and Walter M. Noel, Jr., 3L of Nashville, Tenn.

Mr. Justice Burton, speaking for the court, commended both Clubs for their "fine presentation of a difficult case." While noting the general excellence of both briefs, the Justice had some recommendations for future Ames brief writers. He said that "a brief is not like a law review note" and that "some portions should be highlighted more than others." Key arguments should be emphasized remembering that "the job of a brief is to convince the court, not to outline an area of the law." Mr. Justice Burton suggested that when a brief is over twenty pages long, "a summary of the arguments is helpful to the court."

Legal Education Committee To Seek Information From Graduating Seniors

A questionnaire seeking an evaluation of their three years at the Law School will be circulated among the members of the present graduating class about the first week of May



A. James Casner

by the Committee on Legal Education. Professor A. James Casner, chairman of the committee, made the announcement this week. The committee has been formed by President Nathan Pusey to review the broad field of legal education at the Law School. Professor Casner explained that "it fits in well at this exploratory stage to get ideas from the students who are about to complete the educational process."

The questionnaire will be divided into two

parts. The first will involve questions as to specific courses year by year. The second will ask for a student evaluation of various theories of legal education.

The committee hopes that as many third year students as possible will respond to the inquiry. The larger the percentage of replies, the better the chances will be to get the all-round view that the committee is looking for, according to Professor Casner.

While the present questionnaire is geared to third year students only, other groups of students, as well as graduates of the School, may be canvassed later on. Shortly after the Second World War, when a committee was organized to revamp the Law School curriculum, separate questionnaires were sent to students, to judges, and to graduates who were and who were not practising law.

— Barnitt

Controversial Democrat Leader Addresses Harvard Law Session



Carmine DeSapio

The Harvard Law School Forum will present an address by the Honorable Carmine DeSapio, "Policies of the Democratic Party," followed by a panel discussion, Friday, April 10, at 8 p.m. in New Lecture Hall, Kirkland and Oxford Streets, Cambridge.

Mr. DeSapio has been a leader of the New York County Democratic organization since the early '50's and became New York Secretary of State after W. Averell Harriman's successful gubernatorial bid in 1954. He is now Democratic National Committeeman from New York State.

Mr. DeSapio has been a center of controversy in New York State politics since Governor Harriman's defeat by Nelson A. Rockefeller, last November. The New York GOP charged Mr. DeSapio with "bossism" after District Attorney Frank Hogan received the Democratic Senatorial nomination with Mr. DeSapio's backing, reportedly over the objections of Governor Harriman and Mayor Wagner, who allegedly preferred either former Secretary of the Air Force Thomas K. Finletter or former Atomic Energy Commissioner Thomas E. Murray for the job.

As a consequence of the November defeat of almost the whole Democratic ticket in New York, the so-called "liberal" wing of the party, led by Mrs. Eleanor Roosevelt, former United States Senator Herbert Lehman, and Mr. Finletter, has placed itself in opposition to the continuance of Mr. DeSapio's Tammany leadership. He is currently engaged in mustering support for re-election to his party post in the New York primary, now scheduled for September.

Admission will be by season ticket, or by individual tickets to be purchased at 23 Everett St., the Coop, or at the door for 95 cents.

Bull & Bear Elects New Officers; Thiokol Prexy Talks on Defense

The Bull and Bear Club will meet at 8:30 p.m. this evening in Harkness Commons to present next year's officers to the Club and to announce the results of the stock market contest. The group will be addressed by Mr. J. W. Crosby, president of Thiokol Chemical Corporation, on "Solid Fuel and National Defense."

The officers, who were elected at a meeting before the spring recess, include: John C. Kelsh, 2L of Oshkosh, Wis., president; John E. Hoffman, Jr., 2L of Arlington, Mass., vice-president — Ticker Tape; John R. Stahr, 2L of Reno, Nev., vice-president and contest manager; Bevis Longstreth, Jr., 1L of Princeton, N. J. vice-president — luncheon speakers; Frederic M. Cassidy, 1L of Madison Wis., secretary; Allen R. Smart, 1L of Highland Park, Ill., treasurer; E. MacIntosh Cover, 2L of Garrison, Md. and Charles R.

Kinnaird, 1L of Indianapolis, Ind., members at large.

Thiokol Chemical Corp., of which tonight's speaker is president, is a maker of solid fuels

Bohemians Beware!

'It's Like Going to . . .'

"... It's like going to the bathroom." Thus, Allen Ginsberg, appearing with Gregory Corso and Peter Orlovsky under the auspices of the Harvard Law School Forum and the Harvard Poetry Forum, concluded his discussion of their modern "spontaneous" poetry. Mr. Ginsberg read his poetry and wept. Mr.



Ginsberg — More Paranoiac All the Time

Corso read his poetry and laughed. Mr. Orlovsky also read.

Both Mr. Ginsberg and Mr. Corso demonstrated a deep feeling of pessimism ("The universe is a graveyard."). But Mr. Corso, in particular, displayed an ability to see the humor in what the "beat" poets believe is mankind's helplessness ("A man crosses the street./ I stand on the corner applauding him./ He made it.").

The poets, both by word and dress, re-

which are being used in the expanding field of U. S. missile weapons.

Cocktails will be served for the members, their wives, and their guests at the close of the meeting. — Smart

Beatniks Are Here!

nounced institutionalized conventions and derogated conventional institutions. In a poem entitled "Marriage", Mr. Corso specifically eliminated himself as a serious participant ("When she introduces me to her parents,/ Shall I sit on their third-degree sofa/ And not ask 'where is the bathroom?' ").

If the poets were less than modest ("Now is the time for prophecy without death as a consequence"), they, at least, appeared to appreciate the difficulties before them in their attempt to revitalize American poetry. As Mr. Ginsberg admitted, "To fight world wars of poetry was never easy." — Levinson

Enthralling Evening With the Artists

The speakers had not yet arrived, but the New Lecture Hall was full.

Two lads sat across the aisle in levis, sneakers, and fatigue jackets. They chomped on their dentyne and fingered their dark sunglasses. Up in the balcony, a bunch in peppermint-striped sweatshirts guzzled their beer impatiently. A young woman with a shock of platinum hair and her own book of poems slid into her seat. There were more tieless spectators than are usual for a Forum function. Even among the more conservative elements, there seemed to be a tendency to make the guests feel at home. (Several seemed to have gone unshaven that morning just for the occasion.) There was a constant buzz as people called out to one another, looking for seats.

The three speakers arrived. The buzz grew to a din. It was an expansive assemblage. "Giddy," said Mr. Ginsberg. Cheers were followed by a rousing round of "Happy Birthday to You" when the group was informed it was Mr. Corso's 29th.

The poetry reading began. As if by cue, the continual trickle of parties getting up and leaving the auditorium started.

"The Ignu!" — Mr. Ginsberg cleared his

throat and went on. The silence was broken occasionally by nervous titters and knowing guffaws. "Phantasmagoria!" — Corso read on about his friends "all scroungy and bearded and waiting to get at the food." In the balcony, there was a commotion as a cascade of beer cans tumbled to the floor and the undergraduates headed for the exit and Harvard Provisions.

"There is a lion in my living room!" There was a greater rush for the door. Some clomped out defiantly as if they wished to be noticed leaving. Other hissed those departing.

The reading went on. Mr. Corso praised the power of laughter, Mr. Ginsberg cried for his Aunt Rose, Mr. Orlovsky offered the Christus a raspberry egg cream.

When the questions were over, it was noted that the eight blue-coated policemen had done a fine job of enforcing the smoking regulations.

— Skeezix

California Lawyer Appointed New School Lecturer on Law

Dean Livingston Hall today announced the appointment of Leonard G. Ratner as Lecturer on Law at the Law School for two years from July 1, 1959.

Mr. Ratner received the A.B. degree at the University of California in Los Angeles, and the LL.B. degree from the University of California at Berkeley. He was an Associate Editor of the California Law Review.

After graduating from law school, Mr. Ratner served as law clerk to Justice Roger Traynor of the Supreme Court of California for two years. After four years' service in the Navy, he returned to California to practice law. He also taught part time at the University of Southern California Law School from 1953 to 1958. Mr. Ratner is now a graduate student at the Harvard Law School, and will complete his residence requirements for the S.J.D. degree in June of this year.

Mr. Ratner was born in Brooklyn, New York. He is married and has three children.

New Code Progress

The Uniform Commercial Code, enacted in Pennsylvania, Massachusetts, and Kentucky, and approved by one House in Indiana, has not been introduced in the legislatures of any other state, according to William A. Schnader, Chairman of the Commercial Code Committee of the National Conference of Commissioners on Uniform State Laws.

However, State Bar Associations in Ohio,



"Underlying purposes and policies of this Act are . . . (c) to make uniform the law among the various jurisdictions." — Uniform Commercial Code, §1-102 (2).

Washington, New Hampshire, Maine and North Dakota are reported to have endorsed the Code, along with State Bankers Associations in Washington and New Hampshire.

Bar and Banker Association support preceded enactment of the Code in the three states where it was adopted. In Pennsylvania, Mr. Schnader reports, "the endorsement of the State Bankers Association was not by formal resolution but the Association's Legislative Committee worked hard in support of the Code when it was in the legislature."

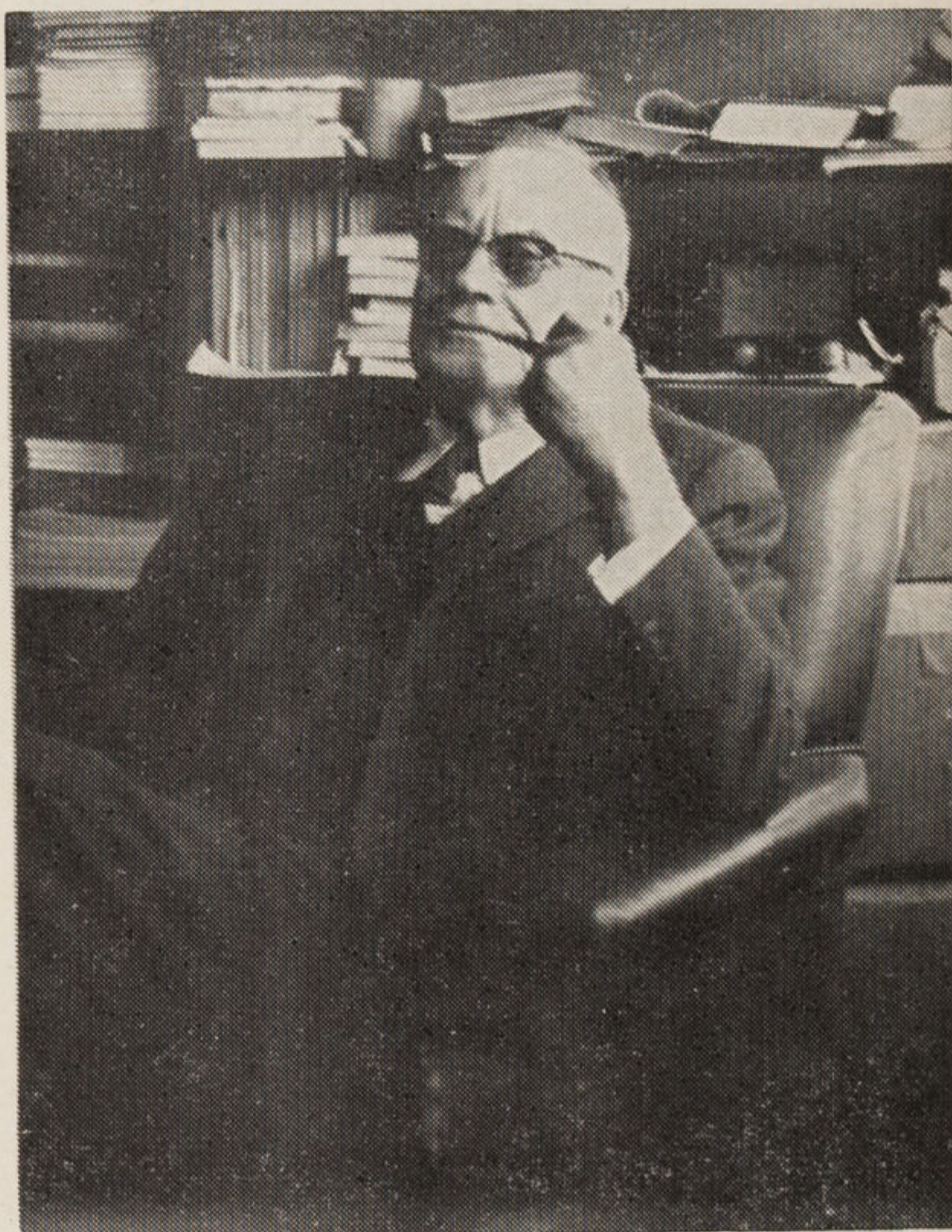
Both Pennsylvania and Kentucky enacted the Code without a dissenting vote.

50 Years of Scott

"You're not writing this because you think I'm going to retire just yet, are you?" He was assured that such was not the case. For Professor Austin W. Scott, Dane Professor of Law, now in his fiftieth year of teaching at the Law School, is obviously rolling along stronger than ever.

Born on August 31, 1884, Professor Scott was graduated in 1903 from Rutgers College, of which his father was president. Though he was much interested in history, and found time to learn Latin, Greek, French and German as well, he had progressed in mathematics to the point where the only available text was in German, and the only available student was Austin W. Scott. His teacher, who was devoted to his own independent research, merely assigned the next few chapters whenever his lone student appeared for instruction. Professor Scott can still discuss the subject with experts. Professor George Birkhoff, past head of the Mathematics Department at Harvard College, was discussing certain problems in this field one day at a meeting of the Shop Club, a group of Harvard professors who gathered periodically to "talk shop" in their respective fields. At one point Scott asked if it was not true that a certain result followed from what Birkhoff had been saying. The latter then inquired if Scott had ever heard of a certain mathematical law. Scott said that he had not. Replied Birkhoff, "Well, you have just discovered it independently."

Professor Scott's interest in the law developed while he was teaching mathematics at Rutgers Preparatory School. It was during this three year period that he read all of Blackstone's *Commentaries*, a feat known to every law student here as a familiar part of the Scott legend. Not only Blackstone, but also *Cooley on Torts*, *Stephen on Pleading* and *Austin on Jurisprudence*. "I didn't have much to do, so I began reading Blackstone during my leisure time. I found it fascinating and read it cover to cover," says he. "Consequently, my legal vocabulary was better than



Austin W. Scott

that of the other students when I came to law school."

"Reading Blackstone almost convinced me that I should study the law. But I wanted to be sure, so I worked one summer with the firm of Lindabury, Depue, and Faulks, in Newark to see what the real practice of law was like." In the fall of the year 1906 he entered the Law School.

The faculty at that time boasted such names as Ames, Gray, Williston, Beale and the noted "Bull" Warren. Professor Scott relished the work from the start. "The easiest, pleasantest work I ever did was while I was at the Law School. It seemed to me a natural, sensible way of dealing with human life."

Dean Ames apparently liked young Scott's work too, for he gave him a grade of 93 in Trusts. Both Dean Pound and Professor Baker assure us that he was Dean Ames' favorite student. It is said that when Ames

read Scott's examination paper in Trusts he commented that it read more like a textbook than an examination written by a student. But Professor Scott also shared some of the problems of law students everywhere. "I was always a little nervous when I spoke up in class, though I did so fairly often. It's much easier when you are teaching a class — much less to worry about."

Works for Winthrop & Stimson

After he was graduated from the Law School in 1909 Professor Scott practiced in New York with Henry Stimson's firm, Winthrop and Stimson. Dean Ames became ill in December of that year and Professor Scott was asked to take over the Dean's teaching duties. He was ten years younger than any of the nine other members of the faculty. A member of the first class he taught, now a prominent trust man, has described Scott's advent as a teacher in the following words.

"I first saw Austin Scott when he marched down an aisle in the Law School in the first year course on *Pleadings* to take over the work interrupted by the death of Dean Ames. Austin had finished the Law School the spring before with high accomplishments. It was no small thing to be asked back so promptly to take over the teaching duties of the Dean, but he seemed not in the least perturbed. I still have a vision of him approaching the professor's desk with determined chin, surmounted as always by a benign, perhaps a bit tolerant, and perpetual smile. He was a success from the beginning and, of course, has remained to be one of the great teachers of all times."

During that first year of teaching, Professor Scott commuted between Boston and New York. By the fall of 1910 he had moved to Cambridge and been appointed Assistant Professor of Law. Four years later he became Story Professor of Law, and in 1938 was made Dane Professor of Law.

There were some, though, whose first contact with Professor Scott was not in the lecture hall. "He was my first C.O.," allows W. Barton Leach, now a Brig. Gen. in the Air Force Reserve. At the start of the First World War Scott was a major in the Har-

vard ROTC, commanding an infantry battalion whose ranks were swelled, in the summer of 1918, by the addition of a tall, gangling sub-freshman at the college. Under the watchful eye of Major Scott, Private W. Barton Leach, USA, received his first training in infantry tactics on the present site of Fort Devens. As to the state of training of his subordinate Professor Scott recalls, "I don't remember much about him then except that he was very tall and, of course, very intelligent. But I must say we little thought that he would be the general among us."

To the legal world, of course, Professor Scott is the authority on trusts. His scholarly accomplishments are too well known to need any elaboration. In addition to being the American Law Institute Reporter for Trusts, he is Co-Reporter for Restitution and Judgments; author of *Fundamentals of Procedure in Actions at Law* (1922), *The Law of Trusts* (1956) and numerous articles; editor of *Cases on Civil Procedure* (1914) and *Cases on Trusts* (1951); and joint-editor of *Cases on Civil Procedure* (1950).

Dean of Iowa Law School

Professor Scott has also done a good deal of administrative work, though it seems that this is little known. In 1911, at twenty-seven years of age, he took a year's leave of absence to become Dean of the College of Law at the state University of Iowa. In 1915-1916 he was Acting Dean of the Law School. When Dean Pound retired, Scott was pressed to take over his duties (though Scott will mutter a dissent, this is the way it was) but refused in order to devote his full time to teaching and study. It was during the second World War that the Law School owed its very existence to Professor Scott. When practically all of the faculty had gone into military or government service, and the student body had dwindled to sixty or seventy students, it was largely through the efforts of Professor Scott that it was able to stay open at all. During this period he taught some four different courses including Property, which he had never taught before. Those connected with the Law School speak with gratitude of the burden Scott took upon himself during those difficult years in order to preserve the continuity of the institution.

Students at the Law School are fortunate to know Professor Scott primarily as a teacher — and one without equal. Here on his home grounds he is “Scotty”. His polished mind, his wit, and his always pleasant manner account in large part for his being the most popular and respected teacher at the Law School. His classes are jammed with auditors and often resound with laughter. But Scotty is always firmly in control. The unwary student who is caught unprepared will be made to squirm under some of the most masterful — and witty — verbal artillery yet devised by man. Such is the spell of Scotty, though, that he can almost make you like it.

The faculty members’ great admiration and personal regard for Scotty are apparent the moment his name is mentioned. Most are former students of his. All of them enjoy talking about him (the word “Scotty” is a guaranteed conversation opener) and often will gleefully volunteer a story or two, a few of which are here set down.

The Scott household has always been noted for its good nature and high spirits. Though both the Scott boys have become law professors like their father (Gordon at Stanford and Austin at the University of Colorado), when they were younger their tastes ran to different fields. One day they were happily engaged in splashing each other with wet paint. When the elder Scott discovered what they were doing he addressed himself first to Gordon, then three years old. “You are much too old a boy to be doing such childish things. You should be ashamed of yourself.” Turning then to five year old Austin he continued, “And as for you, Austin, *a fortiori*.”

“There’s a Lion in My Bed”

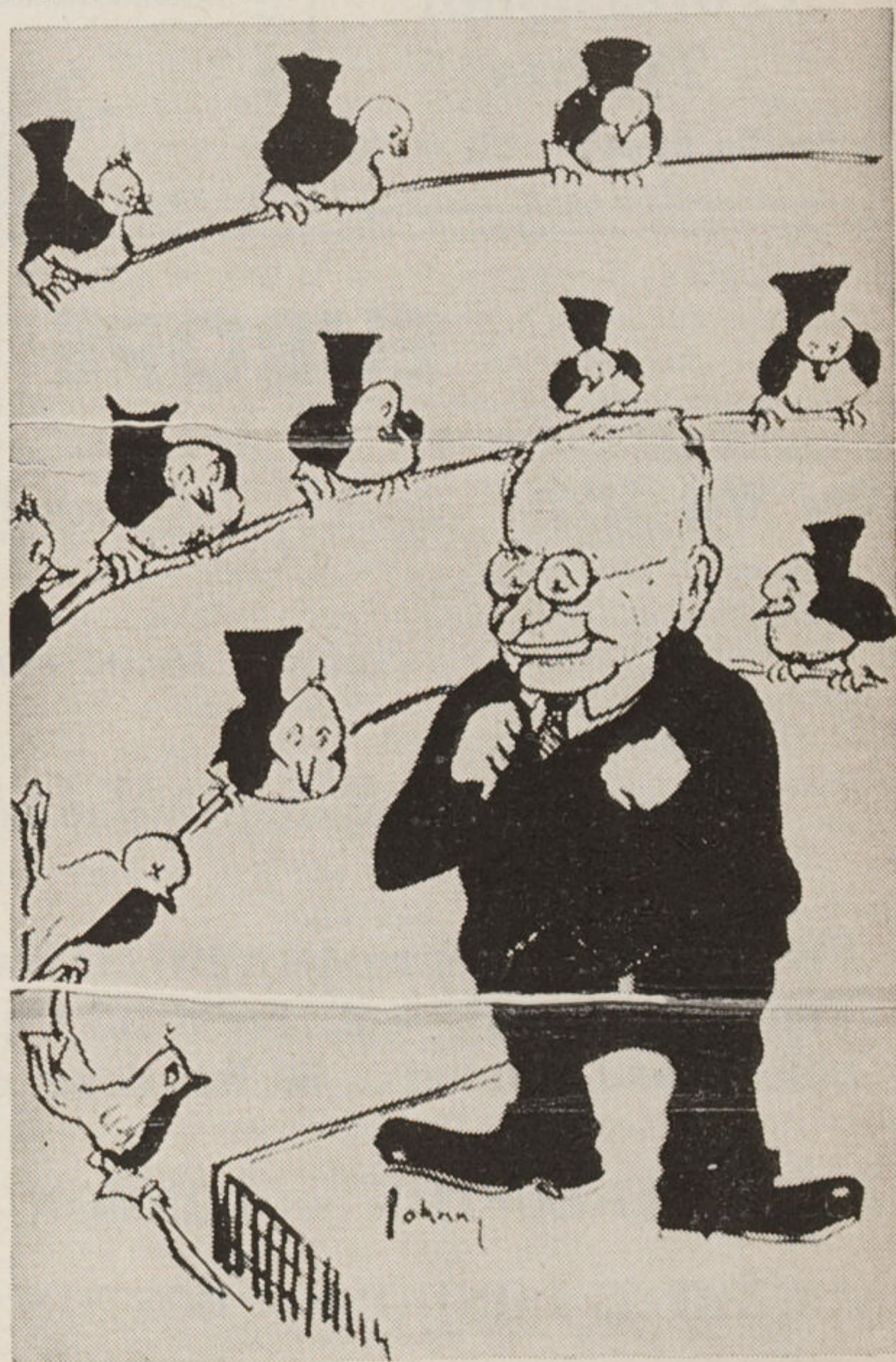
One night, after Gordon had been put to bed, he called for his father to come into the dark bedroom. Said Gordon, “I’m afraid — there is a lion in my bed.” His father sympathized for a short time before pointing out that it was extremely unlikely that there was in fact a lion in the bed. By way of consolation, though, Scotty added, “But I would certainly agree with your conclusion if your premise were correct.”

The “discovery” of the ancient pronunciation of Latin, using the hard “C”, is the basis for another story. Scotty learned this

pronunciation, and his father changed to the new method, but his mother refused to accept it and continued to use the conventional pronunciation. She was constantly teased about it within the family. “As a result,” says Scotty, tongue-in-cheek, “I always found it easier to communicate with my father than with my mother.”

The famous scholarly dispute between Professor Scott and Thurman Arnold (see 31 Col. L. Rev. 805, 1266), which touched upon Scott’s use in the Restatement of Trusts of the illustration of a trust of a moose not yet shot, was the source of this one. During a public meeting of the Association of American Law Schools, Arnold complained, “Moosees are not generally the subject of trusts.” Scott responded by chiding Arnold for using the incorrect plural form of moose. “It’s ‘meese’,” corrected Scott with a straight face. In explanation he says, “I figured that since he attacked me on this level, I might well reply in kind.”

“Don’t you birds know anything about that?” Scotty’s occasional exasperation with



“You Birds . . .”

his modern "birds" (Scott for "law student") and their lack of familiarity with classical and biblical learning has provoked this classroom exchange, unmatched for beauty of execution. "What is the third in this series: Abraham, Isaac and" The befuddled modern is unaware he is being set up for the kill as Scotty, poker-faced, continues, "Jacob of course. But perhaps that was too hard. Let's try you on this one: Hart, Schaffner, and?"

Scotty's monumental legal contributions are well known, as are many of the stories about him. But at the Law School his reputation as a teacher towers above everything.

"Professor Scott is certainly one of the greatest teachers the Law School has ever had," says Dean Pound. The Law School students for the past half century enthusiastically agree. Best of all, from the standpoint of the current crop of students, is the opportunity to hear Scotty in class. It is certainly one of the most rewarding experiences the Law School has to offer. This is not news, of course, since the word has been out for some fifty years. But you still have to come early to get a seat. The large classes, which he always has liked, must have a good effect. For there is no doubt about it — Scotty keeps getting better, year after year.

— Kaiser

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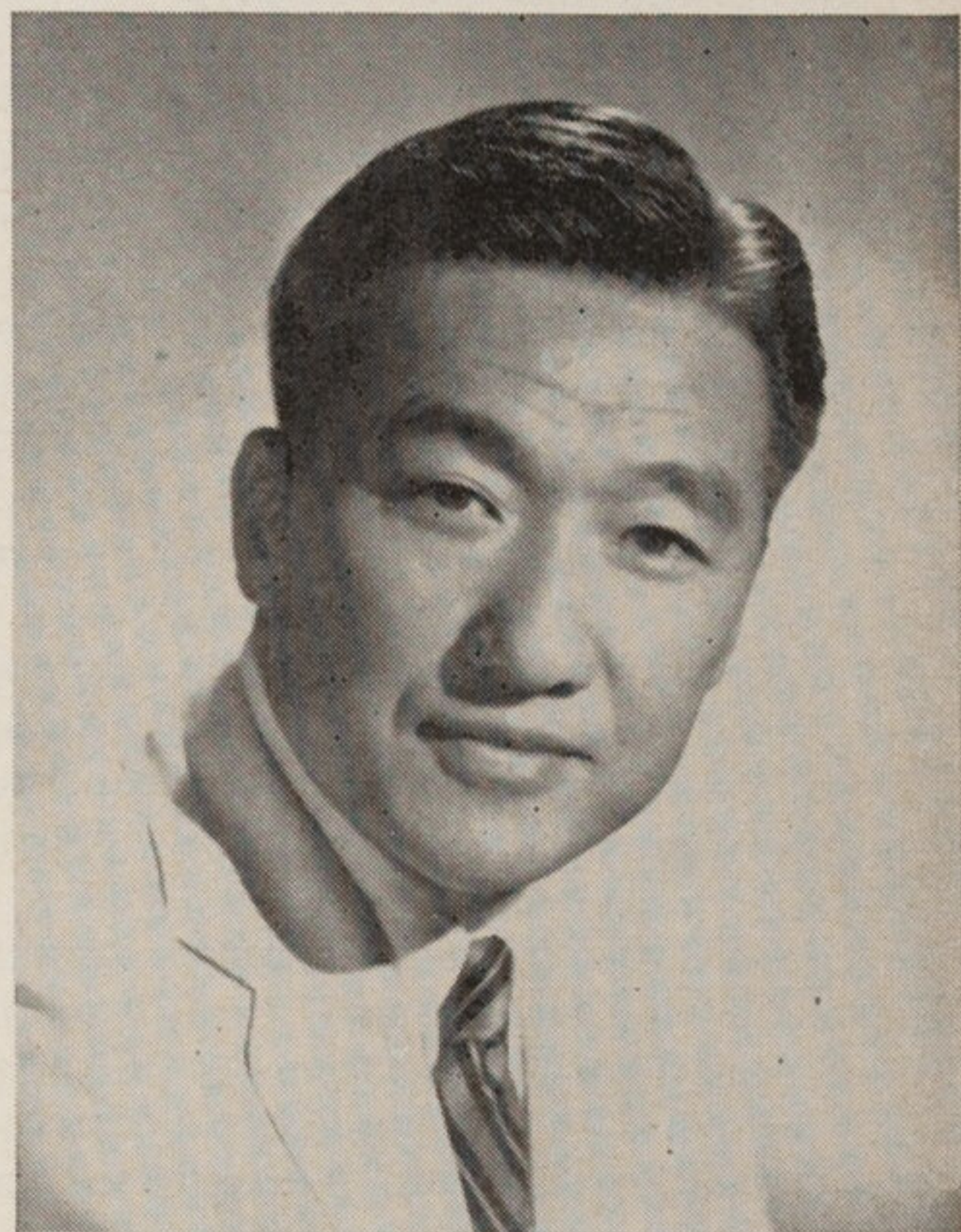
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Hawaii's Legal System: A Brief Survey

The statehood of Hawaii approaches final confirmation. In this article, Mr. Choy sketches the territory's history from a feudal kingdom to the present constitutional system. He also tells of the two Americans, one from the Law School, who were influential in the early development of Hawaii.

by

Herbert Y. C. Choy



The brethren of the bench and bar on the mainland of the United States would be comfortably "at home" in the courts and law offices of Hawaii. With minor differences such as one encounters in any other State than his own, the laws (common law and statutory) and procedures (civil and criminal) extant in this last incorporated territory¹ and soon-to-be 50th state of the Union are comparable to those of any other American common law jurisdiction.

Prior to 1840, a feudal system of government prevailed in these islands under which the King was absolute lord and sole proprietor of the soil. He apportioned land among his chiefs, who in turn divided portions among their respective followers all holding as

Until recently territorial Attorney-General, and now practising with Fong, Miho, Choy, and Robinson, of Honolulu, Mr. Choy, LL.B. '41, served on the Compilation Commission which produced the Revised Laws of Hawaii 1955 (1957). He received his A.B. from the University of Hawaii in 1938.

tenants at will. In the King was vested overall legislative, judicial, and executive powers. However, each chief exercised similar power over the commoners domiciled on his lands. Ancient customs which had come to have the force of law and edicts of the King, all unwritten as the Hawaiians had no written language,² regulated the conduct of the people. There was no distinct judiciary. Persons committing crimes such as assault, murder, and theft were punished by private retaliation of the injured parties or their friends. Where the wrongdoer was of higher rank than the injured party, the latter appealed to the king or to the chief of the former for redress.

The arrival in Hawaii of the first company of American missionaries from Boston on March 31, 1820 (the year of the Missouri Compromise) foreshadowed the foundation of the legal system of these fair islands on Anglo-American jurisprudence. With the admission of missionaries such as Hiram Bingham, Gerrit P. Judd, and William Richards into the

councils of Hawaiian royalty, it was inevitable that the King would one day forswear his absolute sovereignty and power over life and death. First, by the Declaration of Rights of June 7, 1839, known as the Magna Charta of Hawaiian freedom, Kamehameha III proclaimed, among other things: "All men of every religion shall be protected in worshipping Jehovah and serving Him according to their own understanding;" and "Protection is hereby assured to the persons of all the people; together with their building lots, and all their property." Then, a year later on Oct. 8, 1840, a constitutional monarchy was established by the King with the proclamation of the first constitution. This constitution, created a legislative body of fifteen hereditary nobles and seven representatives elected by the people, who were empowered to appoint four judges. These judges together with the King and the premier formed the supreme court of the land. All this was accomplished without benefit of persons trained in the law, there then being no lawyer in the entire kingdom.

Early Judiciary

From 1840 till the judiciary was reorganized in 1848, proceedings in the lower courts were conducted by judges, who also acted as prosecutors, examined witnesses, and rendered judgments. There was no distinction between torts and crimes for one Hawaiian word "hewa", meaning "wrong", covered both. A monetary judgment was divided between the kingdom and the plaintiff in certain proportions as a fine and damages.

To two remarkable Americans, the first two lawyers of Hawaii, John Ricord, originally of Bellville, New Jersey, and William Little Lee of Sandy Hill, Washington County, New York, belong great credit for alignment of Hawaii's modern legal system in the proper direction at its inception.

John Ricord, who had been Secretary of State of the Republic of Texas under Sam Houston, arrived in Hawaii via Oregon on February 27, 1844. The kingdom's desperate need of legal knowledge is reflected in the appointment of Ricord as Attorney General only ten days after his arrival. In his report of May 21, 1845 to the King and the legislature, Ricord advised: "There is an almost total deficiency of laws suited to the Hawaiian Islands as a recognized nation in reciprocity with others so mighty,

so enlightened, and so well organized as Great Britain, France, the United States of America, and Belgium. These Powers having received His Majesty into fraternity, it will become your duty to prepare his Government to concert in some measure with them." He thus recommended the passage of three organic acts to modernize the government because the divisions of government set up by the Constitution of 1840 "were so engrafted on the ancient form of government that there seemed to be a blending of their separate functions, requiring the aid of organic acts, limiting their usual spheres, in order to secure the civil liberties intended to be conferred upon the people."³ The first, "to organize the Executive Ministry" was passed on October 29, 1845. The second, "to Organize the Executive Departments" was enacted on April 27, 1846. The third "To Organize the Judiciary Department" was promulgated on September 7, 1847 and took effect January 10, 1848. Besides drafting these organic acts, he authored acts 4th and 5th of Kamehameha III

which "embody full digests of civil and criminal principles, expressed in concise and comprehensive terms, and adopting, as nearly as is thought necessary and practicable, the conclusions, doctrines, principles, definitions and applications of the common law of England, that code being most prevalent, and the commerce of nations governed by it being most extensive in His Majesty's dominions."⁴ Ricord served as Attorney General 3 years and returned to the United States the fall of 1847 leaving behind him most noteworthy accomplishments as the first lawyer and first Attorney General of Hawaii.

A Harvard Lawyer

William L. Lee, who left the Harvard Law School in 1844, being afflicted with a lung ailment, was lured West by reports of the healthful climate and opportunities

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of the Oregon Territory. With his friend Charles R. Bishop⁵ of Glen Falls, New York, Lee embarked for Oregon via Hawaii on February 23, 1846. On October 12, 1846, the brig bearing these young adventurers put in to Honolulu harbor in need of considerable repairs after almost eight months at sea. It apparently did not require much persuasion on the part of Attorney General Ricord to convince Lee he should stay in balmy Hawaii and accept royal appointment as a "Judge of Original and Appellate Jurisdiction for the Island of Oahu." At the age of 26, he became first Chief Justice and Chancellor of the Kingdom under the new Act to Organize the Judiciary Department, which he had assisted Ricord in drafting. Despite Lee's frail health, during the ten and one-half years of his residence in Hawaii which was terminated by death on May 28, 1857, Lee served his adopted country faithfully and well, besides as judge, in many other capacities such as president of the Board of Commissioners to Quiet Land Titles, member of the Privy Council, president of the Royal Hawaiian Agricultural Society, author of the Criminal Code of 1850 and the Constitution of 1852, Speaker of the House of Representatives, member of the School Committee of Honolulu, president of the Hawaiian Bible Society, a trustee of Oahu College, and Envoy Extraordinary and Minister Plenipotentiary to the United States. Of Lee's death, King Kamehameha IV said, "No one could have more fully possessed

my entire confidence, and he proved himself eminently worthy of it in every relation. He was a counselor of great resources, and his loss is severely felt by myself and my kingdom."

In June, 1857, (4 years before the war between the States began) volume 1 of the Hawaii reports of cases decided from January 1847 to December 1856 was published and dedicated to the memory of Chief Justice Lee.

No Common Law Crimes

Since the enactment of a penal code in 1850 there have been no common law crimes in Hawaii and to this day no person is subject to criminal proceedings except as provided by statute.⁶

Comprehensive legislation enacted in 1852 and 1892 resulted in progressive modernization of the judiciary and separation of the judicial from the executive and legislative functions. A statute passed in 1892⁷ provided that in civil matters the "common law of England, as ascertained by English and American decisions, is hereby declared to be the common law of the Hawaiian Islands in all cases except as otherwise expressly provided by the Hawaiian Constitution or laws or fixed by Hawaiian judicial precedent, or established by Hawaiian national usage . . ."

This statute in almost identical language was carried over from the constitutional monarchy to the Republic of Hawaii which succeeded it, and is today part of section 1-1 Revised Laws of Hawaii 1955.

While generally adhering to the common law of England, the Hawaiian judiciary has not been chary about rejecting it when satisfied of its unreasonableness or obsolescence. Thus, in 1847 a seal was held unnecessary to the validity of a mortgage, deed, or other instrument affecting land in the kingdom of Hawaii;⁸ in 1860 an action for damages by a widow for wrongful death of her husband was sustained;⁹ in 1882 a deed creating an estate to vest in futuro was declared valid and livery of seisin held unnecessary;¹⁰ in 1886 a conveyance to two persons and their heirs was held to have created a tenancy-in-common rather than a joint tenancy;¹¹ in 1892 the Rule in Shelley's case was repudiated and a conveyance to A for life and after his death to his heirs held to give A only a life estate;¹² in 1900 estates tail were rejected;¹³ and in

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1920 common law marriages in Hawaii were held to be invalid.¹⁴

Annexation

When Hawaii was annexed to the United States on August 12, 1898 pursuant to a joint resolution of Congress¹⁵, the laws of the Republic of Hawaii remained generally in force and the Constitution and laws of the United States in general did not extend to Hawaii except in the few respects provided by the resolution. However, when the Territory of Hawaii was established on June 14, 1900 under the Hawaiian Organic Act,¹⁶ the Constitution, and all laws of the United States generally were extended to the territory with the same force and effect as elsewhere in the United States.¹⁷ The laws of Hawaii not inconsistent with the Constitution or laws of the United States or the Organic Act were continued in force,¹⁸ an indication of the general compatibility of Hawaii's laws with those of the United States.

The judiciary of the Territory of Hawaii consists of a supreme court of three justices, 4 circuit courts with a total of 10 circuit judges, and 14 district magistrates including 2 substitute magistrates. The justices of the supreme court and judges of the circuit courts are appointees of the President of the United States with confirma-

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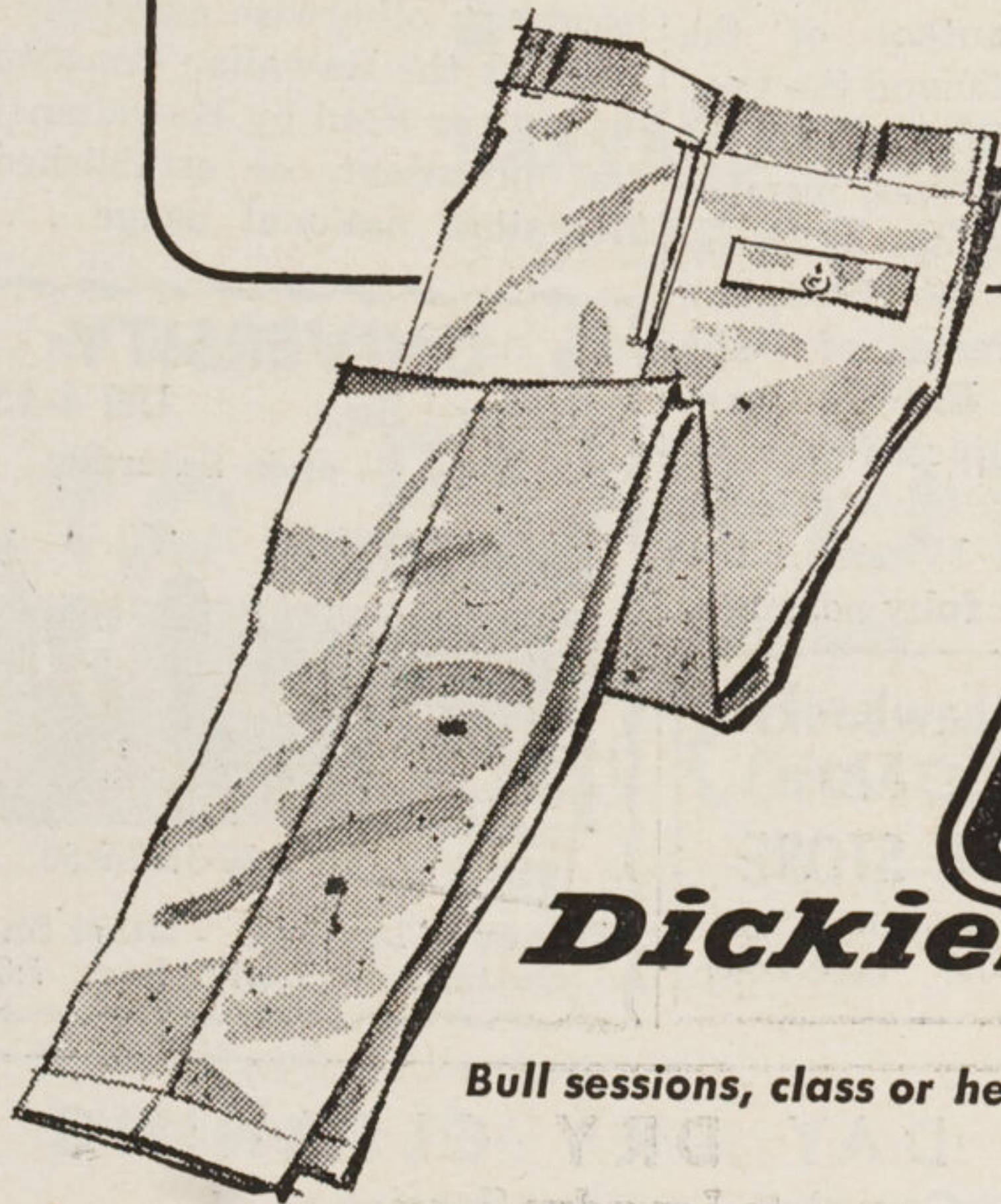
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tion by the Senate of the United States. The district magistrates are appointed by the Chief Justice of Hawaii's supreme court. The Federal judiciary in Hawaii consists of one United States District Court of two district judges, which is within the appellate jurisdiction of the 9th Circuit Court of Appeals at San Francisco, California.

The Judicial power of the State of Hawaii will be vested in a supreme court of 5 justices, and in such circuit courts and inferior courts as the legislature may from time to time establish.¹⁹ Under the Constitution of Hawaii which will take effect when Hawaii is finally proclaimed a state by the President after its state elections this summer, the justices of the supreme and the judges of the circuit courts will be appointees of the governor subject to confirmation of the state senate. To the half million people of Hawaii and especially to its 434 lawyers, the return to local control of judicial selections for the first time since 1900, as well as the attainment of other priceless rights and privileges of full-fledged citizens, is eagerly anticipated.

¹ See *Downes v. Bidwell*, 182 US, 244, 305 re "Incorporated Territory"

² The American missionaries learned Hawaiian shortly after their arrival in 1820, created a written Hawaiian language, translated the Bible and text books into Hawaiian, and on January 22, 1822 printed a pamphlet of the Hawaiian alphabet and simple lessons in spelling and reading.

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³ From Compiler's Preface (John Ricard's) to I Statute Laws of His Majesty Kamehameha III, 1845 and 1846.

⁴ *ibid*

⁵ Mr. Bishop became a prominent businessman of Hawaii and married Princess Bernice Pauahi.

⁶ *The King v. Kalailoa*, 4 Haw. 39, 40 See sec. 1-1 Revised Laws of Hawaii 1955.

⁷ Laws 1892, Ch. 57, Sec. 5

⁸ *Wood v. Ladd*, 1 Haw. 23

⁹ *Kake v. Horton*, 2 Haw. 209

¹⁰ *Kuuku v. Hawainui*, 4 Haw. 515; see also *Puukaiakea v. Hiaa*, 5 Haw. 484 (1885)

¹¹ *Awa v. Horner*, 5 Haw. 543.

¹² *Thurston v. Allen*, 8 Haw. 392

¹³ *Rooke v. Queen's Hospital*, 12 Haw. 375

¹⁴ *Parke v. Parke*, 25 Haw. 397

¹⁵ Resolution No. 55, the "Newlands Resolution" of July 7, 1898; 30 Stat. 750

¹⁶ 31 Stat. 141, 48 USCA 493

¹⁷ Sec. 5, Hawaiian Org. Act.

¹⁸ Sec. 6, *ibid*.

¹⁹ Art. V, Constitution of the State of Hawaii, Jul. 22, 1950.

LETTERS

The following letter was written by Professor Clark Byse to the editor of the New York Times.

To the Editor of the
New York Times:

The action of the House of Delegates of the American Bar Association in adopting the resolutions recommended by the Association's Special Committee on Communist Tactics, Strategy, and Objectives is a melancholy event in the recent

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history of freedom in the United States.

There was reason to believe that the censure by the Senate of the late Senator from Wisconsin marked the end of a period of frenzy and repression and the beginning of a new era of rationality and moderation in the nation's efforts to deal with the problem of internal security. And evidence was soon forthcoming that the organized bar was conscious of its particular responsibility to bring reason and the mind to bear in reconciling the competing interests of individual freedom and national security. The Report of the Special Committee on the Federal Loyalty-Security Program of the Association of the Bar of the City of New York is especially noteworthy in this respect.

But the resolutions of the Committee on Communist Tactics, Strategy, and Objectives and the action of the House of Delegates are a retrograde movement and, in my opinion, an abdication of the special responsibility of lawyers to educate the public concerning the importance of individual freedom. Freedom of speech, press, and association are indispensable to the working of a free society. Before freedom is curtailed because of an alleged security interest, care must be taken that a security need actually exists, that the proposed measure has a realistic relation to the ascertained security objective, and that there are not other and better means to meet the need.

It is because these recommendations of a group of lawyers show so little evidence of a concern for individual liberty or of a "rational, cool endeavor" to strike a balance between security and freedom that the action of the Committee and the House of Delegates is so depressing.

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Some measure of the Committee's bias and its insensitivity to the importance of individual liberty is found in its statement that the record of the House Committee on Un-American Activities is one of "accomplishment and great service to the Nation." This sweeping assertion is in sharp contrast to the sober conclusions expressed in the two foremost studies of the work of the Un-American Activities Committee and its predecessor. Brother August Raymond Ogden, *The Dies Committee*: "The Special House Committee for the Investigation of Un-American Activities . . . stands in the history of the House of Representatives as an example of what an investigating committee should not be." Professor Robert K. Carr, *The House Committee on Un-American Activities*: "All things considered, it appears that the record of the Un-American Activities Committee between 1945 and 1950 (and of the predecessor Dies Committee) is such that the wisest policy to follow would be the complete abolition of the committee."

Neither the public nor the Congress should take seriously the recommendations of a group so biased as the Committee on Communist Tactics, Strategy, and Objectives has shown itself to be. Unfortunately, however, in a period of cold war, there often is a reluctance to cast a vote or make an argument which an opponent might later misrepresent as being "pro-Communist." The unhappy consequence is that an irresponsible but aggressive minority sometimes can force action against the better judgment of the majority. In weighing the significance of the Bar Association's action, it is important to keep this qualification in mind. More specifically, it should be emphasized that, fortunately, or unfortunately, the Bar Association is not properly organized to speak as the authentic voice of American lawyerdom on issues of this kind.

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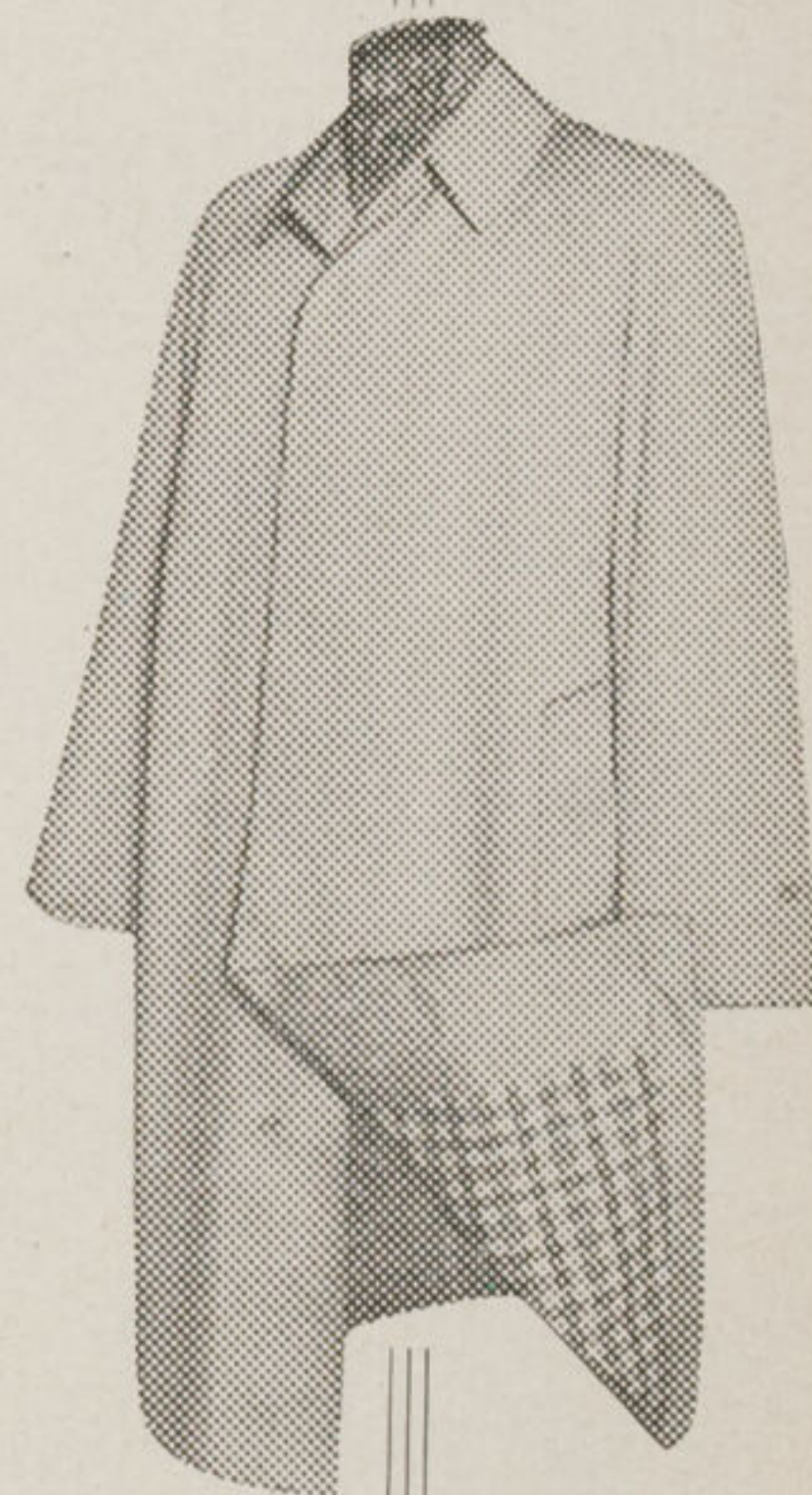
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