

M. A. Moody



Harvard Law Record

Howe Opposes Education Oath

Civil Liberties Fighter at Bar



The Making of a Supreme Court Justice

Warsaw Convention in the Air

Chancery Club

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, October 8

Morris L. Ernst, Esq. will address the Student Bar Association at 8 p.m. in Harkness lounge. His topic will be "The Right to Counsel."

Sunday, October 11

Ford Hall Forum presents Robert Frost at 8 p.m. at 30 Gainsboro St., Boston.

Monday, October 12

Columbus Day is a holiday in the Law School.

Wednesday, October 14

Rogers and Hammersteins' new musical "The Sound of Music," starring Mary Martin opens tonight.

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Howe Opposes Education Oath

On Tuesday, September 29th, Professor Mark DeWolfe Howe gave the first address in the annual series presented by the Students' Association of the Graduate School of Education. Before a large audience in Emerson Hall, Professor Howe vigorously criticized the loyalty oaths required by the Federal Government as a prerequisite to aid under the National Defense Education Act. The oath requirements present grave problems of law and morals, Professor Howe asserted. The very title of the Act implies the new role that Congress seeks to impose on education. Education is to be primarily a new fortress of security and now "we are all chaplains and judge advocates."

Professor Howe carefully distinguished the two oaths which the Act requires. To meet the requirements of federal aid, the applicant must take the following oaths:

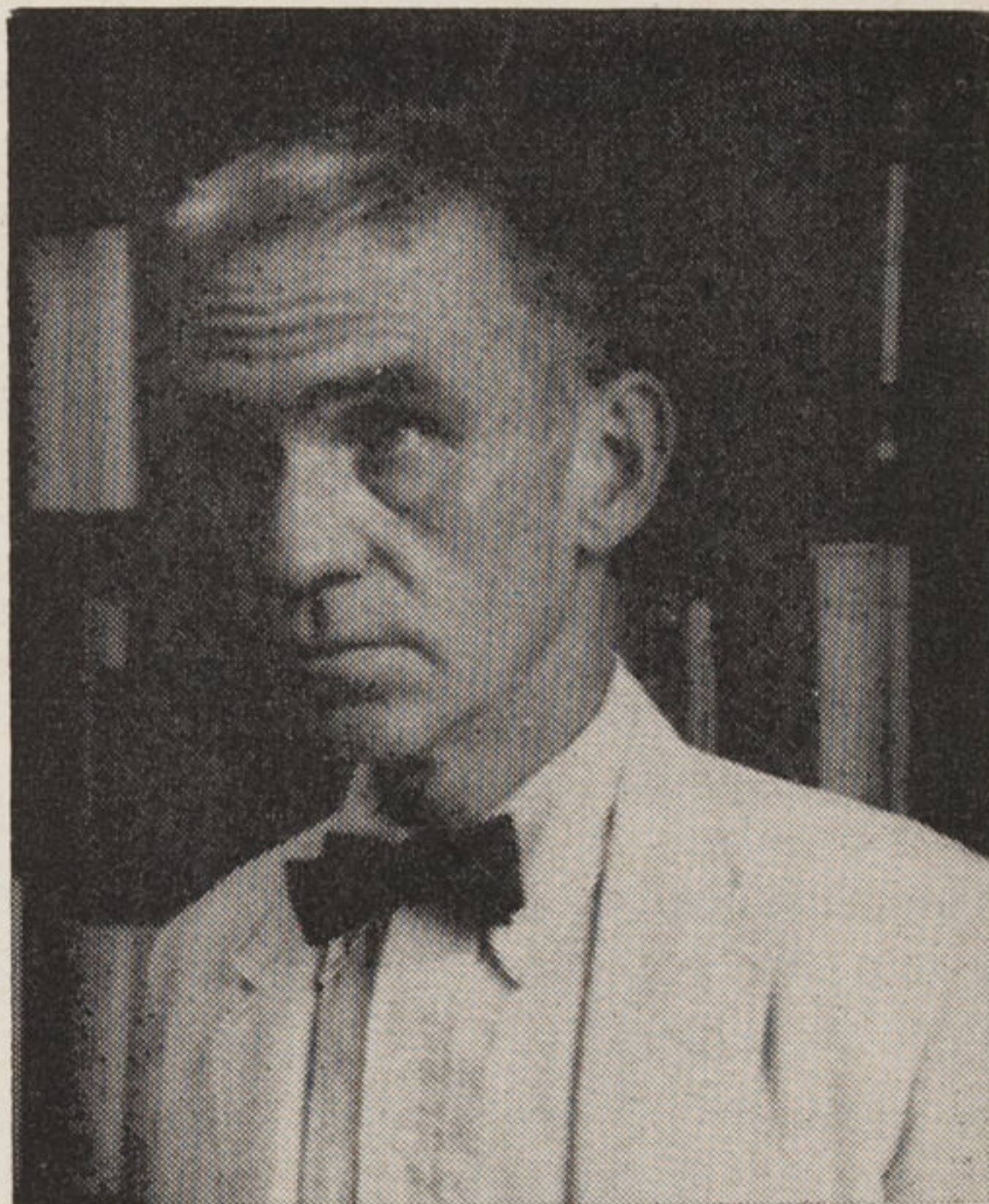
"I do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America and will support and defend the Constitution of the United States against all its enemies, foreign and domestic."

An affidavit must also be filed that the applicant:

"does not believe in, and is not a member of and does not support any organization that believes in or teaches, the overthrow of the United States Government by force or violence or by any illegal or unconstitutional methods."

Professor Howe was not too concerned with the first oath, the familiar oath of allegiance, which the Supreme Court has given a fixed and liberal meaning. It is the affidavit which raises the most serious problems and which Professor Howe considers indefensible both legally and morally.

Professor Howe noted that this vague oath, "couched in the broadest possible terms," first appeared in the Taft-Hartley Act. It attempted to control the leadership of the unions which had been plagued by Communist infiltration. An equally divided Supreme



Mark DeWolfe Howe

Court upheld the constitutionality of this provision but put great stress upon the peculiar character of the subject involved. (*Osman v. Douds*, 339 U. S. 846; *American Communications Ass'n v. Douds*, 339 U. S. 382) In enacting the National Defense Act, Congress "in a burst of happy patriotism," inserted the same oath as a prerequisite to federal aid. There was little opportunity, Professor Howe noted, for thoughtful men to assert the vital difference that exists between control of national labor unions and control of the thought in an academic community. Professor Howe expressed the opinion that if the question of the constitutionality of the present oaths ever gets to the Supreme Court, the present Court would hold the affidavit requirement unconstitutional. He bases his opinion on the belief that the Court would continue to give a special position to freedom in the academic community and the clear distinction between control of labor unions and control of educational freedom.

Yet, Professor Howe continued, we cannot assume that someone will save us from this oath. The notion of considering the Congress, the Presidential veto, or the Court, as our

final refuge is "profoundly wrong" if we neglect our responsibility to speak out against what we consider objectionable. The Senate recently refused to repeal the loyalty oath provisions in the Act and thus temporarily closed one possibility of relief.

The conditional grant of money by the Federal Government raised "serious problems of strategy in the Universities." Should they refuse the money and lose the benefit of badly needed funds or accept the money and "raise vigorous and effective words of protest" against the oath requirements? Professor Howe noted that Harvard has followed the latter course but University officials said that if a qualified person cannot conscientiously take the oath, he may borrow from University funds to the extent that they are available. In light of Congressional failure to repeal the oaths, it was reported last week that the University had "frozen" the federal funds it had received so that it might reconsider its decision.

The problem of whether to take such an oath must be decided by the individual in each case. However, Professor Howe warned, in so deciding, the individual should be aware that his decision will affect not merely himself but also those who live with him as well as the educational system of the country. Future generations, as well as our own, will be affected. In making the decision, an individual should consider the seriousness of such an oath. The least defensible excuse for taking the oath, Professor Howe said, is the position, "no one will prosecute me if I do violate it in some minor respect." Professor Howe's opinion of the affidavit requirement was that it is "seriously damaging to the individual and tends to breed timidity and fear" in a group which should be fearless and free. He compared the oath to the one which the English clergy were required to take in the 17th Century. The clergy were required to swear that they believed in certain doctrines, an enumeration of which was followed by the word, "and et cetera." What would constitute a subversive organization may mean different things to different people. A southern educator might consider the NAACP to be subversive, while in the north the American Civil Liberties Union and the Lawyers' Guild fall into this category in the opinion of some. — McGinn

Over 300 Practicing Lawyers Attend Summer School

The summer peace and quiet of empty law school dormitories was interrupted on July 17 when registrants and their families began arriving for the newly inaugurated Program of Instruction for Lawyers. Over three hundred attorneys participated. They came from thirty-seven states, the District of Columbia, and six foreign countries, and represented graduates of eighty-one law schools other than Harvard. Registration was composed predominantly of Harvard law graduates (132) with the next largest representation coming from graduates of Michigan Law School (14). The desire of the Program to attract lawyers who had been in practice at least ten years was in large part satisfied as more than two-thirds of the lawyers in attendance were in that category. It was believed that lawyers who had been in practice that long or longer would profit most from a reflective period of study.

Twelve two-week courses were offered including basic courses in specific fields such as Income Taxation and Estate Planning, general courses such as Interpretation of Statutes, perspective courses in Jurisprudence and Comparison of American and Soviet Law, and seminars for specialists in the fields of anti-trust, securities regulation, international law, and tax aspects of real estate transactions.

Many Take Estate Planning

In general, the best attended courses were the "basic" courses offering "fundamental principles" in a specific area of the law. Two-thirds of all registrants selected Estate Planning which was taught by Professor Casner and more than half took Income Taxation with Professor Brown. The next most popular courses, from point of enrollment, were the course in jurisprudence given by Professor Fuller and the seminar in real estate transactions being taught by Professor Westfall. Although it was possible to enroll in as many as four courses (21 lawyers elected to do so) the great majority of registrants enrolled in either two or three courses. The enrollment fee of \$200 was charged every registrant.

Living quarters for the visiting lawyers and their families were made available in the

law school dormitories at a cost of \$40 per person and many availed themselves of this service. Breakfast and lunch were served in Harkness Commons throughout most of the two week period. Extralegal activities included a faculty reception for the lawyers and their families, an address by the Honorable Thomas K. Finletter, former Secretary of the Air Force, and an old-fashioned New England Clambake for the faculty, registrants, and their families at Castle Hill, Ipswich, Massachusetts.

In spite of the oppressive heat and humidity of the past summer the initial response to the Program, as evidenced by oral and written communications to the Law School, has been enthusiastic. On the basis of this reaction the Program of Instruction for Lawyers looks to become a permanent part of the Law School curriculum.

— Fremont-Smith

McCormick Describes Attorney General's Office

The Student Bar Association began its fall program of speakers last Thursday, October 1, with Massachusetts' Attorney General Edward J. McCormick. Mr. McCormick told of the workings of his office and its expansion from the handling of only criminal cases to those involving civil rights and civil liberties.

Mr. McCormick, a graduate of Annapolis and Boston University Law School, stressed the fact that the Attorney General is not like the "Mr. District Attorney" of radio fame who is always in search of criminals nor the fellow who has yet to win his first case against Perry Mason. He pointed out that of the fifty lawyers in the Massachusetts Attorney General's office, only ten are in the criminal division. The duties of his office also involve the representation of the Commonwealth and all its administrative agencies, the approval of zoning changes, the responsibility for charitable trusts, and the giving of opinions interpreting legislative acts upon the request of certain administrative officials.

When asked whether the Attorney General should be elected or appointed by the Governor, he replied that an independently elected officer is more responsible to the people than one who is appointed. Such a man is more able to act as sort of a watchdog over the administration.

Mr. McCormick is in favor of four year terms for state officers rather than the present two year terms. Under the present system, the audience was told, a candidate is elected in November and starts campaigning for re-election in January.

Concerning the Sabbath law which prohibits certain types of establishments from being open on Sunday, he expressed his disapproval of a "seven day economy" but stated that he is sympathetic to religious observers.

On the question of loyalty oaths in connection with government scholarships, the Attorney General asserted that he does not favor any type of loyalty oath. He believes that such oaths are insulting to those people who are loyal and are meaningless to those who are disloyal.

In answering a query about the milk price support situation in Massachusetts, the Attorney General stated that this situation has plagued him so much that he no longer drinks milk.

— Traum

James R. Hoffa to Visit Forum

James R. Hoffa, controversial president of the Teamsters' Union, will be a featured speaker in the first-term series of the Harvard Law School Forum. In releasing tentative plans, Forum president John S. Samuels, 3L, referred to the Hoffa appearance as "one of several provocative and interesting programs we have arranged."

In contrast to the turbulent Hoffa, cartoonists Al Capp and Walt Kelly will appear in a program titled "Sketches of American Life" later in the season.

Shifting from sketches, the Forum expects to present "An Evening with Harry Golden." Sometimes called "The Will Rogers of the 'Fifties,'" Harry Golden will expound perceptive oral essays of the kind known to readers of his widely-circulated publication.

On international topics, plans are under way for a discussion of French President De Gaulle's latest proposal to end strife in Algeria.

While Mr. Samuels expects no cancellations, he stressed that "changed circum-

stances sometimes require us to omit a previously announced program." In case of change, "we will schedule other programs of equal interest," he declared.

— Seith

Civil Liberties Fighter at Student Bar

The Student Bar Association will present Morris Ernst, a noted fighter for civil liberties. The meeting will be held tonight at 8:00 p.m. in the Harkness meeting room. The subject will be "The Right to Counsel."

During his career as an attorney, Mr. Ernst has aided such famous people as: Mayor La Guardia in settling strikes; Governor Lehman in drafting legislation on insurance and



Morris Ernst

banking; President Roosevelt in various missions to England during World War II; President Truman as a member of his Civil Rights Committee and his Advisory Committee to the Post Office; and most recently General Trujillo of the Dominican Republic in his investigation of the disappearance of Dr. Galindez of Columbia University.

Mr. Ernst has represented numerous British and American authors on censorship cases and has also done some writing in books and magazines. He is a member of the Bar Association of the City of New York, the New York County Lawyers Association, and the Banking Board of the State of New York.

Republicans Multiply

A sixfold increase in Young Republican Club membership, presently about 170 strong, "reflects a dynamic upsurge of interest in political activities at the Law School" according to William C. Ives, 3L, President of the Harvard Law and Graduate School Young Republican Club. Noting that this occurred in a non-election year, Ives was especially encouraged by the response of the first year class, whose roster includes such prominent Republican names as Dewey and Taft.

This year expanded club activities will be tailored to law students with a hankering for political activity during their legal education. Headquarters-level work with the Massachusetts Republican State Committee, acquaintance with leading politicians, and opportunities to observe and participate in national Republican activities are featured parts of the program.

Club members have acquired unusual political experience during past summers through employment with elected officials, a program the club strongly promotes. Robert Barr, 3L, Vice-President, was administrative assistant to Senator Dirksen; Walter Baker, 2L, to Senator Morton; and past club president Manning Muntzing, 3L, worked on the staff of Governor Underwood of West Virginia.

Speakers this fall include Senator Keating of N. Y., Governor Del Sesto of Rhode Island, Governor Underwood of West Virginia, and several other prominent Republican politicians. Senator Morton, Republican National Committee Chairman, was a recent guest speaker.

Mrs. Griswold's Tea

Mrs. Erwin N. Griswold will be hostess at a tea on October 14 to be held in the Meeting Room in Harkness Commons from 4:30-6:30. All wives of students, faculty, and staff members, as well as women law students, are invited. Mrs. Nathan M. Pusey, wife of the President of Harvard University, and Mrs. Donald Endacott, President of the Law Wives Membership, will join Mrs. Griswold.

Erratum

William M. Watkins of the Legal Aid Bureau does not come from Salt Lake City, Utah. His home is Oak Park, Ill.

The Making of a Supreme Court Justice

William H. Rehnquist possesses B.A. and LL.B. degrees from Stanford University, and an M.A. from the Harvard Graduate School of Arts & Sciences (1949). He was a law clerk to the late Justice Robert H. Jackson of the United States Supreme Court in 1952 and 1953.

This article was written shortly before Mr. Justice Stewart was named to the Supreme Court. It was delayed by the editors, pending his confirmation by the Senate.

by
WILLIAM H. REHNQUIST

The Supreme Court of the United States is now in the midst of one of the storms of criticism which have periodically assailed it. Bills have been introduced in Congress to limit the jurisdiction of the high court, to overrule some of its controversial non-constitutional decisions, and to declare the sentiment of the Senate as to the necessity of judicial background on the part of a nominee to the Court. It has been urged that the "advice" of Senate be sought by the President before any nomination to the Court is made.

Criticism of the Supreme Court can easily become frustrating to the critics, because the individual justices are not accountable in any formal sense to even the strongest current of public opinion. Nonetheless, it ill behooves the critics of the present Court to seek imposition of new curbs on it until such controls as now exist are fully tested and found wanting. Specifically, until the Senate restores its practice of thoroughly informing itself on the judicial philosophy of a Supreme Court nominee before voting to confirm him, it will have a hard time convincing doubters that it could make effective use of any addi-



tional part in the selection process.

As of this writing, the most recent Supreme Court Justice to be confirmed by the Senate was Charles Evans Whittaker. Examination of the Congressional Record for debate relating to his confirmation reveals a startling dearth of inquiry or even concern over the views of the new Justice on constitutional interpretation. Mr. Justice Whittaker was nominated by President Eisenhower in March, 1957. *Brown v. Board of Education* (the Segregation Cases), 347 U. S. 483, had been decided three years before, and implementing decisions had been handed down in the interim. *Slochower v. Board of Higher Education*, 350 U. S. 551, where the Court held by a vote of 5-4 that the New York School Board could not fire a teacher for the reason that he had invoked the Fifth Amendment before a Congressional Committee, had been decided less than a year before. At the moment of Whittaker's nomination, the series of cases involving the rights of Communists to be admitted to practice law in a state and to refuse to answer questions put to them by legislative investigating committees was pending on the docket of the Supreme Court.¹ of antisocial activities. It then goes on to

If any interest in the views of Mr. Justice Whittaker on these cases was manifested by the members of the Senate, it was done either in the cloakroom or in the meeting of the Judiciary Committee. The discussion of the new Justice on the floor of the Senate succeeded in adducing only the following facts: (a) proceeds from skunk trapping in rural Kansas assisted him in obtaining his early education; (b) he was both fair and able in his decisions as a judge of the lower federal courts; (c) he was the first Missourian ever appointed to the Supreme Court; (d) since he had been born in Kansas but now resided in Missouri, his nomination honored two states.

Given in addition the fact that Mr. Justice Whittaker had been an eminently successful courtroom lawyer, the fact that he had been a leader in the activities of the organized bar, and the fact that he had been very highly regarded as a judge of the lower federal courts — all of which he was — the Senators could still have no indication of what Mr. Justice Whittaker thought about the Supreme Court and segregation or about the Supreme Court and Communism.

Less than thirty years before, the Senate had made no bones about its concern with the judicial philosophy of a Supreme Court nominee. Then, too, the Supreme Court was nearing the vortex of a storm — but it was a storm raised by the very groups who are claimed to be the special wards of the Warren court. State and federal laws regulating minimum wages, maximum hours, and other business practices were being struck down by the Court as violative of "freedom of contract;" a freedom which, the Court said, was embodied in the phrase "due process of law." The labor injunction, the strike as a conspiracy, and the "yellow-dog" contract were in their heyday. When, in February, 1930, President Hoover sent to the Senate the name of Circuit Judge John J. Parker to be Associate Justice of the Supreme Court, he sparked one of the most remarkable battles over a judicial nomination in the history of the upper chamber.

Objections to Parker's confirmation were at once voiced by two groups: organized labor, and the National Association for the

Advancement of Colored People. Labor's objection was based on Parker's opinion, as a judge of the Circuit Court of Appeals for the Fourth Circuit, in the so-called "Red-Jacket" case.² His opinion for that court had upheld an injunction forbidding certain union organizers from attempting to organize a mine, and thereby induce the employees of the mine to breach their "yellow-dog" contracts. The objection of the NAACP stemmed from a campaign speech made by Parker in 1920, while running for governor of North Carolina on the Republican ticket. In this speech he had said:

The Negro, as a class, does not desire to enter into politics. The Republican party of North Carolina does not desire him to do so. We recognize the fact that he has not yet reached the stage in his development where he can share in the burdens and responsibilities of government. This being true and every intelligent man in North Carolina knows that it is true . . . the participation of the Negro in politics is a source of danger to both races.

No very definite issue developed as to the campaign speech. It seemed agreed by most of the participants in the debate that the statements were understandable in the context of North Carolina politics, but that from a hindsight born with Parker's nomination for national office they would much better have been left unsaid.

As to the labor injunction, though, precise battle lines were drawn and the issue was debated in editorial columns, in masses of letters and telegrams to the Senate Judiciary Committee, and finally on the floor of the Senate. The most surprising fact about this great debate of 1930 was that none of the protagonists on either side doubted that the question should be: What were Parker's views on labor injunctions and yellow dog contracts? *The New York World*, in opposing Parker's confirmation, probably spoke for both sides when it said editorially on April 23, 1930:

. . . The Senate has every right, if it so chooses, to ask the President to maintain on the Supreme Court bench a balance between liberal and conservative opinion in the country as a whole, and every right on this premise to object that the presence of Judge Parker on the bench would increase, rather than lessen, the top heavily conservative bias of the Supreme Court as now constituted.

Most of the participants further agreed

that the result reached by the Court of Appeals in the "Red-Jacket" case was undesirable; Parker's antagonists contended that he approved the result, or at least never batted an eye in reaching it, while his defenders claimed that he was bound by controlling decisions of the Supreme Court on the question, and as a judge of an intermediate appellate court had no choice but to follow them.

A few glittering generalities were hurled by each side, but to a remarkable degree editorial writers, members of the bar, and Senators engaged in a case-by-case analysis of the law as Parker found it when he had written the "Red-Jacket" opinion three years previously. The administration stood squarely behind its nominee, and Attorney General Mitchell even prepared a legal memorandum reaching the conclusion that Parker had no choice in writing the opinion that he did. On the Senate floor, the forces in favor of confirmation were nominally led by Senator Overman from the nominee's home state of North Carolina. But though Overman did a prodigious amount of work behind the scenes, he took little part in the debate on the law. The forces opposing confirmation were led by Senator William E. Borah of Idaho.

Senator Borah's principal speech began in the afternoon of one day and concluded the following day. The first part of it, before any requests to yield were made, occupies nine of the full, closely printed pages of the *Congressional Record*. Borah spoke to a question charged with emotion and public interest, and on which most of the demagogic fireworks were in the armory of his side. Yet his speech is anything but rabble rousing. Instead it is a closely reasoned, masterful exposition of the role of the Supreme Court in our system, coupled with an analysis of the precedents in an attempt to show that Parker must have reached his "Red-Jacket" result by choice, since the controlling cases did not compel it.

Almost any reply to Borah would have been anti-climactic, yet Senator Gillett of Massachusetts gave the Idahoan no quarter. He did not quarrel with the propriety of the inquiry, but he took vigorous issue with Borah's interpretation of the state of the law as Parker found it. In what appears to be

an even closer reading of the cases than Borah's, Gillett ably defended the proposition that Parker was doing only what the Supreme Court decisions required him to do. After extended debate, the Senate refused to confirm Parker by a vote of 41-39.

Several times during this debate Senator Borah made clear his views as to the nature and scope of the Senate's inquiry into the philosophy of a Supreme Court nominee. In his principal speech, he mentioned that the case of *Hitchman Coal Co. v. Mitchell*, 245 U. S. 229, upholding the legality of "yellow-dog" contracts, had been decided thirteen years earlier by the Supreme Court. At this point he was interrupted by Senator Carter Glass of Virginia:

Glass: "And we have sat here all these years and permitted that to remain the law?"

Borah: "No; we have tried by an Act of Congress to repudiate that principle, but the Supreme Court of the United States said that our action was null and void. Mr. President, that is what makes this matter so very important. They pass upon what we do. Therefore, it is exceedingly important that we pass upon them before they decide upon these matters. I say this in great sincerity. We declare a national policy. They reject it. I feel I am well justified in inquiring of men on their way to the Supreme Court something of their views on these questions."

Again, during the debate on Parker's confirmation, Borah said:

Upon some judicial tribunals it is enough, perhaps, that there be men of integrity and of great learning in the law, but upon this tribunal something more is needed, something more is called for, here the widest, broadest, deepest questions of government and governmental politics are involved.

Surely the first part of this last quotation epitomizes the Senate's attitude, as manifested in discussion on the floor, toward the confirmation of Mr. Justice Whittaker. His integrity, his learning, his success at the bar, would be the only necessary subjects of inquiry in the case of a judge appointed to a lower court. Indeed, perhaps no further inquiry would be proper in the case of a judge of a lower court. He is not there to apply his own judicial philosophy, willy-nilly, to the litigants before him, but rather to

decide the case of those litigants by application of the principles laid down by higher courts. Such a process involves the use of the same ability to reason by analogy as lawyers call on constantly, and therefore the legal ability of an appointee to a trial court is of paramount importance.

Similarly, in the case of the judge who actually tries the case, we do not expect a decision between individual litigants strictly in terms of popular sentiment. The people through their legislative representatives enact what laws they will, subject to constitutional limitations. But once a law is written, neither the people nor their representatives are further consulted as to what was meant by it; the written words, together with relevant background material, are interpreted by a presumably impartial judge. Democracy ends at the courthouse door, and Joe Doaks is not to be imprisoned simply because a majority of the people sitting in the jury box or on the courthouse steps think he should be.

These reasons suggest that the primary concern with an appointee to an inferior federal court should be his ability to apply rules laid down by more authoritative sources, rather than his feeling as to whether this material is right or wrong. But in the case of the Supreme Court, the "something more" which Borah spoke of comes into play. I would prefer to interpret this phrase, not as meaning that it takes more ability to be a Justice of the Supreme Court than a judge of the lower federal courts, but rather that there are additional factors which come into play in the exercise of the function of a Supreme Court Justice.

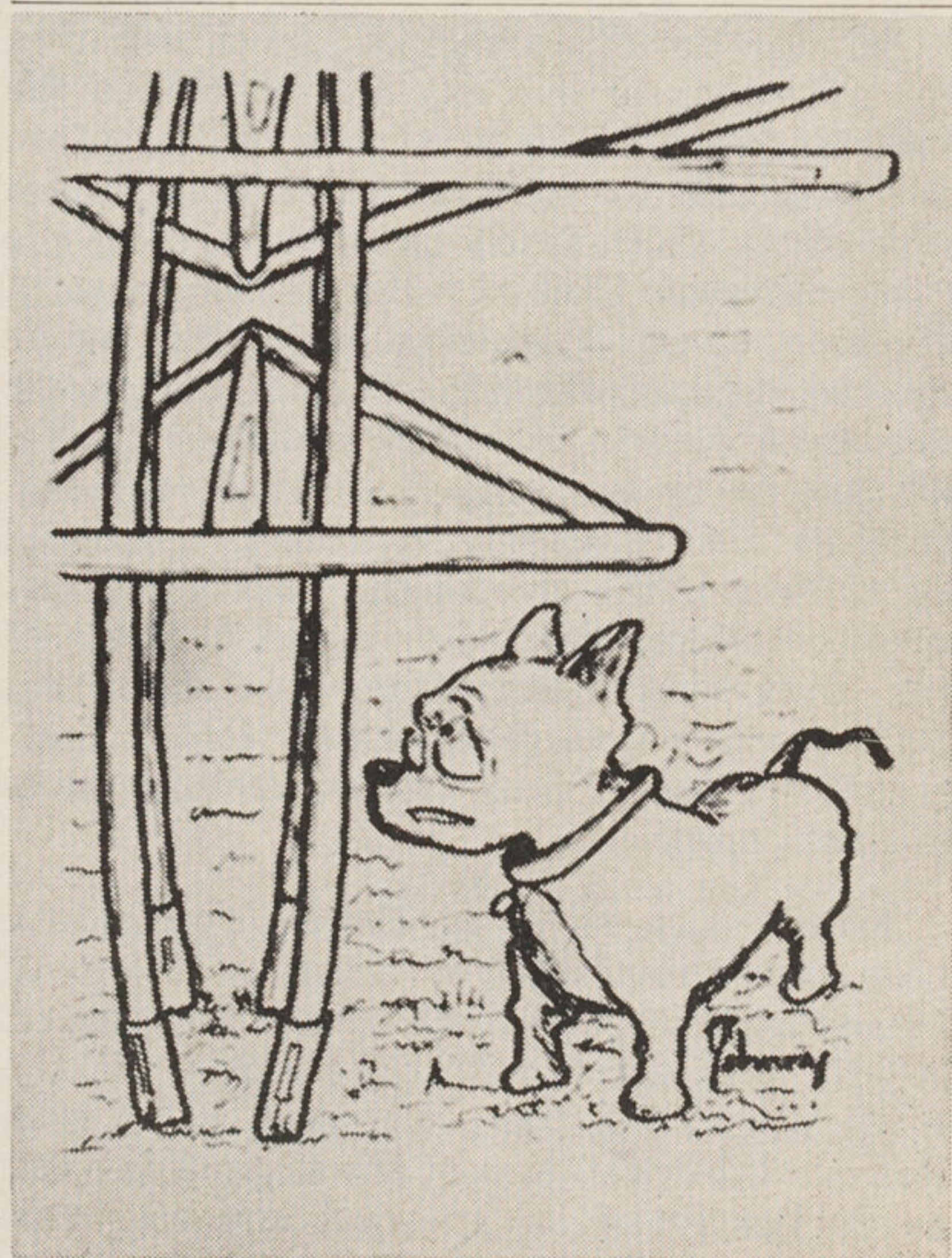
The Supreme Court, in interpreting the constitution, is the highest authority in the land. Nor is the law of the constitution just "there," waiting to be applied in the same sense that an inferior court may match precedents. There are those who bemoan the absence of *stare decisis* in constitutional law, but of its absence there can be no doubt. And it is no accident that the provisions of the constitution which have been most productive of judicial law-making — the "due process of law" and "equal protection of the laws" clauses — are about the vaguest and most general of any in the instrument. The Court in *Brown v. Board of Education*, supra, held in effect that the framers of the Four-

teenth Amendment left it to the Court to decide what "due process" and "equal protection" meant. Whether or not the framers thought this, it is sufficient for this discussion that the present Court thinks the framers thought it.

Given this state of things in March, 1957, what could have been more important to the Senate than Mr. Justice Whittaker's views on equal protection and due process? It is high time that those critical of the present Court recognize with the late Charles Evans Hughes that for one hundred seventy-five years the constitution has been what the judges say it is. If greater judicial self-restraint is desired, or a different interpretation of the phrases "due process of law" or "equal protection of the laws", then men sympathetic to such desires must sit upon the high court. The only way for the Senate to learn of these sympathies is to "inquire of men on their way to the Supreme Court something of their views on these questions."

¹ *Schwartz v. New Mexico Board of Bar Examiners*, 353 U. S. 232; *Konigsberg v. State Bar of California*, 353 U. S. 252; *Watkins v. U. S.*, 354 U. S. 178; *Sweezy v. New Hampshire*, 354 U. S. 254.

² *International Organization, United Mine Workers v. Red Jacket Consolidated Coal & Coke Co.*, 4th Cir., 18 F2d 839, decided April 18, 1927.



Chancery Club

New Building Remodeled in Club's 34th Year

Foundation, growth, receivership, rejuvenation of eating club are described. Three buildings and the Continental Hotel served as homes for students at meal time. The demise of "Charles Addams" house is shown at the left.



Sounds of hammers and saws greeted the earliest returning members of Chancery Club. A major reconstruction job was being completed to mark the opening of the Club's thirty-fourth year.

Much of the Club's history remains shrouded in mystery, but a general outline of its growth is discernible. The Club has survived Prohibition, the Depression, and World War II.

During the school year of 1925-26, seeking good fellowship, stimulating discussion and noontime repast, a group of law students met daily at the Harvard Union. This small group continued in an informal association until the spring when they discovered, that as a result of the opening of new

Be it Known that whereas

D. Howe Moffat

W. Allen Whitfield, Benjamin N. Lease,
Frank Strong Dibrell, John R. Quarles,

Olney M. Raymond and Howard H. Wickersham have associated themselves with the intention of forming a corporation under the name of The Chancery Club, Incorporated, for the purpose of the following: — To provide and maintain club facilities for its members and their friends to promote social contact and professional association, and to further the study of jurisprudence among members of Harvard Law School; with a capital stock of thirty-seven hundred and fifty dollars, common stock. Par value, twenty-five dollars. The amount of capital stock now to be issued is one hundred and fifty shares, to be paid for as follows: — In Cash: by instalments, one hundred and fifty shares; amount of instalments to be paid before commencing business, ten per cent down and the balance October 1, 1926; . . .

Business School facilities, the Staplers Club, a Business School Society, was vacating their building and their lease. Quick to seize the advantage, the group used their recently acquired knowledge and became assignees of the Staplers Club's lease of the building at 44 Follen Street, the present home of Lincoln's Inn Society.

They incorporated on June 5, 1926, as the Chancery Club, the founders buying stock at \$25 a share. The resulting capital purchased the fixtures of the Staplers Club, including the silverware, dishes, and linen. In October, Chancery Club occupied the Follen Street building, and commenced operations. The first Chancellor was D. Howe Moffat, L.L.B. '27, and the Business Manager was John R. Quarles, L.L.B. '28, who became Chancellor the following year. In these first years the Club's membership ranged between 80 and 100, including two members of the present faculty, Professors Field and Hart.

During the early thirties, the Club leased from Harvard Univer-

sity, the "Charles Addams" house at 1557 Massachusetts Avenue. The change afforded a more convenient location, and facilities to begin what is perhaps the most distinctive era in the Club's history. Sporting and recreational activities were available in the upper floors of the house, including card, ping-pong, and billiard tables, and an area devoted to a pastime called Liars Dice, which now seems to be a lost art in the lives of law school students.

The World War II marked the premature termination of the era, as the law school enrollment withered to 50 persons. Louis A. Toepfer, now vice dean, has the distinction of being Chancellor for the shortest term in the Club's history.

Within only a few days after his election in 1942, he left school to serve in the Navy. The membership soon dissolved and Professor Warren A. Seavey acted as receiver of what there was left to receive.

After the War, a nucleus of old members reopened the Club with new goals and sound financial poli-

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for Me - 11:30, 3, 6:20, 9:45

SAXON — Career - 10, 12, 2, 4,
6, 8, 10

TELEPIX — Senechal (with
Fernandal) - 11:30, 1:30,
3:30, 5:30, 7:30, 9:30

UPTOWN — Blue Denim -
11:05, 2:40, 6:15, 9:45; Affair
to Remember - 12:35, 4:05,
7:40

cies. During the reorganization period the Club had to await the running of a lease to Boston University on their house, and used the Continental Hotel for dining and meetings. When the Club re-entered "Charles Addams" house, new policies called for a conversion of the gaming rooms into living quarters, and membership was increased considerably.

Anticipating the recent addition to Langdell Hall, which necessitated the razing of its house, the Club established a sizable building fund with the help of an Alumni Advisory Committee. In May of 1957, with plans for the International Wing of Langdell Hall well formulated, and its lease from the University coming to a close, Chancery Club negotiated for and purchased a new home at 9 Chauncy Street.

In the fall of the year, the Club moved into the "showplace" of the neighborhood, as the house was jealously regarded by the surrounding residents. The cancellation of a plan for a parking lot which was to replace the arbor and rose garden adjoining the house, and some judicious consideration for the interests of near-by residents has resulted in a workable and satisfactory relationship with the initially apprehensive neighbors.

The decision to buy a house had created some financial problems, but with the aid of the alumni, the movement to the new quarters has proved successful. The Club has retained its monetary stability. It is now concentrating its efforts toward physical improvements, which include a remodeling of the basement recreation rooms and the expansion of the kitchen and dining areas.

The membership has grown to well over 200, and represents a diverse cross-section of law school students. Among the activities that the members enjoy are two formal dances a year; bands for dancing two or three week-ends a month; mixers with groups from nearby women's colleges; and squash, touch football, and basket-

ball competition, both within the Club and with other organizations.

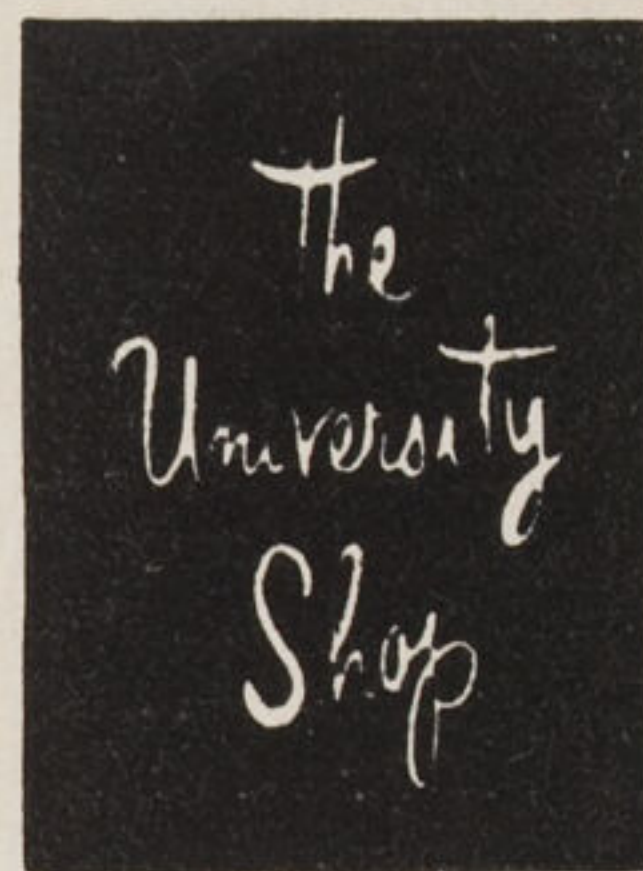
In recent years the Club has fostered an association called the Harvard Law School Yachting Society, a group devoted to initiating diversions when landlocked during non-yachting weather. Its annual receptions have been in honor of such noteworthy personages as President Pusey, Commander Whitehead, and Al Capp. These affairs have been hailed by Boston papers as top social events of the seasons.

With a home of their own, a balanced budget, and an active membership, Chancery Club's future looks secure, as it continues to fill its function as a valuable and necessary part of a legal education. In the words of John W.

Malone of Macon, Georgia, the present Chancellor, "we feel that Chancery Club makes available an opportunity for social and professional contacts for students of diverse backgrounds, in pleasant and convivial surroundings."

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Warsaw Convention and the American Lawyer

By
STUART M. SPEISER

I

The unhappy Polish city of Warsaw has been the scene of countless tragedies since it grew up around the castle of the Duke of Masovia in the 13th Century. From the 17th Century to the present time, it has been sacked and enslaved in turn by Sweden, Czarist Russia, Prussia, Napoleon, Nazi Germany and finally Communist Russia. Eighty-seven per cent of the City was destroyed in World War II, and even today its population is little more than half that of 1939. Yet, of all the black dates on the calendar of this ancient capital, none has had as devastating and enduring effect upon the lives of American citizens, as the peaceful day in 1929 when the "Warsaw Convention" was signed.

On that day, the basic legal rights of American citizens, in suits brought in their own courts, were adjudicated by a gathering of foreign diplomats, who represented in most instances the state-owned airlines of their countries. The result today is that the Warsaw Convention has shackled the victims of air disasters to foreign economic and moral standards, in their hour of greatest suffering and need, for the benefit of our prosperous overseas air carriers who were nurtured on government subsidies; and for the benefit of foreign air carriers who collect their fares in U.S. dollars!

How did this destruction of civil rights by an international treaty come about? And what can we do about it? Let us see.

Background of Convention

In fairness to those involved, the Warsaw Convention must first be viewed in the setting of its time: 1929. Commercial aviation was still in its infancy, and what little international traffic there was largely revolved around the European community. Our own international colossus, Pan American World Airways, then reached only to

Cuba. The hazards of early air transportation made difficult the raising of capital needed to run and expand an airline. Not the least of the risks was the potential liability to passengers (or, more likely, to their next of kin,) in the wake of accidents. There was no ready insurance market for unlimited liability of 1929 air carriers.

Accordingly, the Warsaw Convention of 1929 (formally called "The Convention for the Unification of Certain Rules Relating to International Transportation by Air," 49 Stat. part II, 3000), seemed to be both a necessary and appropriate step in the development of air transport. It provided for limitation of the liability of air carriers in "international transportation," to the sum of 125,000 Poincare French francs (equal to approximately \$8,300 in U.S. dollars) in cases of personal injuries and death to passengers. An exception was made in the case of "dol" (i.e. "wilful misconduct" in American law). If "dol" was proved, the damages

would be compensatory. In order to defeat recovery of up to \$8,300, the carrier would have the burden of proving that it took all necessary measures to avoid the damage, or that it was impossible to take such measures. The applicability of the Convention was made to depend upon the ticket held by each passenger, rather than upon the destination of the plane or place of accident.

The Convention thus made it possible for the early international air carriers to obtain insurance at reasonable rates, and facilitated the overall financing of their adventurous undertakings.

United States Action

Meanwhile, back in this country, the Convention was largely ignored. The United States was not even represented at Warsaw. Passenger claims arising out of international air transport were virtually unheard of. It was not until 1933 that we started to take any action on the Warsaw Convention. As might be expected, the impetus came from the airlines. In November, 1933, a letter from the Department of Commerce to Secretary of State Hull stated: "... The Aeronautics Branch has made a study of the Treaty drafted and approved at Warsaw and has contacted a number of American air transportation operators on the subject. All United States operators conducting international air transport services strongly favor adherence to the Convention by the United States. In addition to this, a number of air-

The author is a member of the New York law firm Speiser, Quinn, & O'Brien. A former military and commercial pilot, he has acted as counsel for plaintiffs in most of the major air disasters in the past ten years. He is chairman of the Aviation Law Section of N.A.C.C.A.. In addition to law review articles, he has authored Preparation Manual for Aviation Negligence Cases, Federal Legal Publications, Inc., New York, 1958.

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line executives whose lines do not carry on an international service have expressed the view it would be desirable for the United States to participate in the Convention. The Aeronautical Chamber of Commerce of America, the trade association organization representing ninety per cent of all United States transport operators and one hundred per cent of those operating internationally, strongly favors participation in the Convention. No airline operating at the present time has indicated opposition to adherence to the Convention by the United States. . ."

The State Department transmitted its approval of the treaty to President Roosevelt with a statement that "The principle of limitation of liability would lessen litigation and prove an aid in the development of international air transportation as such limitation will afford the carrier a more definite and equitable basis on which to obtain insurance rates and eventually reduce the operating expenses of the carrier" (Sen. Doc. Exec. G, 73rd Cong., 2d Sess., 1934).

Despite the apparent commercial need for the Convention, there was one organization which saw in it the creation of a Frankenstein. That far-sighted group was the Aeronautics Committee of the New York County Lawyers Association, which on February 15, 1934, drafted a resolution urging disapproval of the Warsaw Convention (2 B.A. Pam., N.Y.C.L.A., pp. 1-12). But their admonition was ignored, and on June 15, 1934, the United States Senate adhered to the Convention, without having heard any testimony from the traveling public or the organized bar.

Effects of Warsaw

In the quarter century that has passed since our adherence to Warsaw, the vice of fixing individual legal rights by international treaty has become clear. For, despite our constitutional right to trial by jury, it is not an American jury which decides what damages shall be paid for the maiming or killing of international airline passengers. That

issue was taken away from our juries in 1929, by a convention at which the United States was not even represented. It is irrelevant that our domestic flights are not governed by the Warsaw Convention, and that our domestic airlines have grown to the position of world leadership without such protection. It is immaterial that the \$8,300 limitation may apply to crashes within the United States, and that one passenger, sitting on the same plane right next to a passenger with a "Warsaw" ticket, may have the right to sue for damages limited only by his injuries. Nor can we consider the fact that the accident rate on international flights is now lower than that on domestic flights. The Warsaw Convention, as a treaty, is the supreme law of the land. If the conditions which made the Convention acceptable in 1929 no longer exist today; if the \$8,300 limitation has been found harsh and unjust, we can sit down with our co-signatories (such as General Franco, Colonel Nasser, Marshall Tito and Comrade Khrushchev,) and work out the necessary amendments. If we are unable to agree on these amendments, we can always cast our one vote, out of forty-five, for our own version of what is fair to the airline passenger; and we can hope that most of the other 44 signatories will ignore the fact that their governments, which have sent them to meet with us, own and operate their own airlines.

The injustice of the Warsaw Convention, in its application to Americans, is too patent to require itemization. It is epitomized by the tragic case of Jane Froman, the famous entertainer who left behind her lucrative engagements to embark on a USO-sponsored tour of military bases in February of 1943. The Pan American Yankee Clipper on which she was a passenger, crashed just before its scheduled

landing at Lisbon. Miss Froman suffered injuries so severe that today, some 16 years after the crash, she is recuperating from her 30th major operation. Her medical expenses have exceeded \$150,000, and she has endured pain and suffering which one would hesitate to wish upon the foulest scoundrels of history. Her loss of earnings has been astronomical. Yet, when she sought to invoke the basic legal right of every American citizen, to recompense her for the damages suffered, the Warsaw Convention was held to limit her recovery to \$8,300.

Her case was so striking a miscarriage of justice, that Congress finally voted her a substantial sum in a private bill. Thus, the burden of answering for fault was ultimately shifted from the common carrier, (who had insurance for the purpose, and was able to write off the insurance premium as an operating expense against government subsidies,) to the taxpayer. Of equal importance is the fact that there were dozens of others on the Yankee Clipper that day, who met death or disaster in the waters of the Tagus River. The lives of many patriotic entertainers, and their families, were smashed; and the compensation: \$8,300 apiece.

In 1943, this was an isolated case. In 1959, as we stand at the thresh-

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old of the air age, it is not. Already, there are considerably more passengers traveling overseas by plane than by boat. The fantastic strides being taken today by our aviation industry, hold the promise that within the next decade, overseas air travel will be commonplace. It would be unthinkable to operate these flights with 1929 fabric-and-bailing-wire airplanes; can we afford to let them operate under a 1929 treaty, at the price of our constitutional rights?

Underlying Principle

One would have to have been asleep for the last 20 years, to deny the fact that we as a nation today must take part in many international activities, through the United Nations and other groups. When we as a nation find it expedient to deal with foreign countries, we know that we can't have it all our own way; there is always a price to pay. But when foreign carriers engaged in business for profit here, under our own system, kill or maim our airline passengers, and are brought into our courts, can they then cloak themselves in a mantle of limited liability which is repugnant to the very spirit of American society? And can our own overseas carriers, created and kept alive by huge subsidies from our treasury, turn themselves into foreigners long enough to plead the same defenses?

Under the Warsaw Convention, they can and they do. Moreover, unless the United States Senate takes action, they have control of any changes in the law affecting their own liability. They are not only the judge and jury in their own litigation; they are the legislature as well.

It matters not what munificent sum is fixed by the carriers as the limit of their liability; it could be \$8,300, or \$16,000 or \$25,000. The important thing is the principle, and therein lies a grave danger to our country, which is much broader than the cheating of airline passengers. *The Wall Street Journal* stated it well in an editorial attacking the Warsaw Convention, on August 7, 1956:

"The Warsaw Convention, of course, had only to do with the re-

covery of money. But its failings are inherent in all treaties — such as the Covenants of Human Rights — which try to balance all peoples' laws and customs. The lowest common denominator must be found, and in the unequal balance that results, those people who knew what freedom was, usually find out that some they had is lost."

In the coming decades, many of our formerly domestic activities will be conducted on an international scale. If we allow the Warsaw Convention to stand, we leave the dikes open for the complete erosion of our hard-won personal civil rights, first in our courts, and eventually in our very homes.

(Continued next week)

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