



Harvard Law Record

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Harvard Law Record

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Published weekly on Thursday for twelve weeks of each term by THE HARVARD LAW SCHOOL RECORD CORPORATION, 23 Everett St., Cambridge 38, Massachusetts. Subscription price: \$2.00 per term, \$4.00 per year (24 issues) mailed; student subscription \$1.50 per term mailed, \$1.00 per term distributed at the Law School. Individual copies 10c each at the Law School, 20c each mailed. Business and editorial offices, 23 Everett St., Cambridge 38, Massachusetts. Telephone UNIVERSITY 8-7600, extensions 418 and 419.

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CALENDAR

Thursday, December 3

The INTERNATIONAL LAW CLUB will present a talk by Ivan L. Head, LL.B. '52, University of Alberta, in the Wheeler Room at 4 p.m. Mr. Head will discuss aspects of the North American contiguous air space regulations.

DR. RAYMOND R. GILBERT, Deputy Commissioner of Correction, Massachusetts, will speak on "The Psychology of the Criminal Offender and His Institutional Treatment" in the Peabody Room of Phillips Brooks House at 7 p.m.

Friday, December 4

The BULL AND BEAR CLUB will hold its annual cocktail party at 8 p.m. in the Harkness Meeting Room.

The HARVARD LAW SCHOOL FORUM will present Governor Edmund G. Brown of California at the Lowell Lecture Hall at 8 p.m. Admission by member's card or \$.95.

Saturday, December 5

DUPLICATE BRIDGE TOURNAMENT continues in the Wheeler Room of Harkness Commons at 5 p.m.

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BOSTON

EXETER — The Mouse that Roared — 2:25, 4:10, 6:00, 7:45, 9:35

KENMORE — Last Angry Man — 1:35, 3:35, 5:35, 7:35, 9:35

TELEPIX — Stella — 11:30, 1:30, 3:30, 5:30, 7:30, 9:30

UPTOWN — Look Back in Anger — 11, 3:10, 7:30; The FBI Story — 12:45, 4:55, 9:15

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"SOME LIKE IT HOT"

Harkness Commons in a Quandary

"Institution of our 'New Deal' in Harkness Commons has proved to be a notable success in some respects and a disappointing failure in others." This is the gist of the message that Vice Dean Louis A. Toepfer gets from a reading of the cash register rolls and sampling of student reaction over the past two months at Harkness since the Commons effected its dining changes. (RECORD, October 1, 1959). "We have been surprisingly successful in making an efficient changeover to the new system, but the changes have not been met with the favorable student response that had been hoped for."

The Vice Dean is pleased with the fact that all the planned changes have been installed with a minimum of expense and trouble and are functioning as envisioned. He feels that the great variety in the menu compares favorably with that offered in most Cambridge cafeterias, and is almost unparalleled among University-affiliated dining halls. The increase in variety has been accompanied by no appreciable increase in price, and the speed of the service is at least as good as it was before the change-over. Answering the frequent student complaints about the length of the lines, Mr. Toepfer states that the lines are no longer than they were last year and that, despite the lines, a student gets served his meal as soon as he would if he were to go to "one of the Mass. Ave. restaurants." He added that the crowding problem is created by the school's scheduling policy, which leaves the majority of students to take lunch between 12 noon and 2 p.m., and, therefore, cannot be corrected by the Harkness administration.

Despite the success in effecting the improvements, the volume of business has not increased, and the overall result is that the dining hall is losing even more money than before because the changes have introduced new overhead and unit expenses. Since Harkness is a branch of the University Dining Department which, like all Harvard departments, must break even, some means will have to be found to increase volume or tighten

up expenses. The alternatives are more subsidies by the Dining Department or going out of business.

The Vice Dean hopes that the students will take note of the handwriting on the beige Harkness walls and make known to him whatever suggestions they might have. In the meantime the administration is considering all possibilities, even that of going back to the Old System!

— Baron

Law Review Issues Its Second Number

The second issue of volume 73 of the *Harvard Law Review* will appear December 10. Featured in the issue will be two articles and two comments as well as four student-written notes.

The lead article, "Zoning of Planned Residential Developments", is by Eli Goldston and James H. Scheuer, attorneys in Cleveland. The authors examine traditional zoning techniques and conclude that they are inadequate to deal with large residential developments. They offer the reader a model zoning provision and use it as a point of departure for a consideration of the drafting of such zoning provisions.

The second installment of Professor Brainerd Currie's "The Constitution and the 'Transitory' Cause of Action" discusses situations in the conflict of laws to which the full-faith-and-credit clause of the Constitution applies. He sets forth the boundaries of a state's obligation to provide a forum for claims created by the laws of another state. Professor Currie teaches Conflict of Laws, Admiralty, and Civil Procedure at the University of Chicago Law School.

The first of the comments, "Academic Freedom, Tenure, and the Law. A Comment on *Worzella v. Board of Regents*," is by Professor Clark Byse. Professor Byse calls attention to the lawyer's role in the formulation and enforcement of workable teacher-tenure plans, a subject seldom discussed in

legal literature. Besides analyzing and criticizing a recent tenure case in detail, the article includes the tenure plan under which the case arose. Professor Byse hopes that a reading of the plan will serve as an introduction to this new area of legal drafting.

The final comment, "Accounting for Treasury Shares under the Model Business Corporation Act," argues that the act's provisions governing accounting for treasury shares could allow capital impairment. The author, E. George Rudolph, is a Professor of Law at the University of Wyoming Law School.

The note department material will cover a broad range of topics. A note dealing with interlocutory injunctions and the injunction bond will be followed by others examining procedures for trying contempts in the federal courts, prior art in the patent law, and state regulation of radio and television.

The issue will conclude with a number of recent cases plus book reviews of *Crime and Insanity*, edited by Richard W. Nice, *The Papers of Thomas Jefferson*, edited by Julian P. Boyd, and *Introduction to the Law of Property* by F. H. Lawson.

Alumni Notes

L.L.B. '29 — Jack N. Berkman, A.B. University of Michigan, '26, and Robert J. Anglin, members of the firm of Berkman, Weinman & Anglin, Steubenville, Ohio, together with Charles W. Edwards and Augustus H. Evans, Jr., will now be known as Berkman, Anglin, Edwards & Evans, following the recent appointment and induction of Carl A. Weinman as Federal Judge of the Southern District, Eastern Division of Ohio. Mr. Berkman is President of WSTV, Inc., operating the "Friendly Group" television and radio stations. He is also Vice-Chairman and a Director of the Board of United Printers and Publishers, Incorporated, which includes the Rust Craft Greeting Card Division at Dedham, Massachusetts, and is an officer and director of Follansbee Steel Corporation and Parkersburg Steel Company, both in West Virginia.

LL.B. '31 — Charles Merrill recently became Judge of the Ninth Circuit Court of Appeals. He formerly was a Justice of the Nevada Supreme Court.

LL.B. '51 — Allen Klein has been appointed Resident Counsel for Desilu Productions Inc., Hollywood, California.

Law School Committee Of PBH Launches Drive

The Law School Committee of Phillips Brooks House has announced that the annual Combined Charities Drive will run from December 8th to December 12th. The purpose of this drive is to consolidate the various appeals that might be made throughout the course of the year to the individual student. PBH thus hopes to reduce the interference with the student's work to an absolute minimum.

During the Drive, each law student will be contacted, either personally or by mail, and asked to make a contribution. A booth, staffed by the ladies of Wyeth Hall, will operate in Harkness each noon for those who wish to make their gift in person.

This year the committee hopes to realize a gift of \$3 per donor. The goal was set after considering what a total contribution to a number of fund drives over the course of the year might be. The committee will channel all contributions to the United Fund unless a contrary intention is manifested. The United Fund, as is evidenced by the brochure enclosed in letters to be sent to each student, coordinates gifts to 288 separate agencies across the nation. Among the charities not covered by the United Fund but for whom the committee will solicit are UNESCO, CARE, the NAACP, the American Heart Association, The National Council of Christians and Jews, The Medical Mission Sisters, The World Health Organization, and The National Scholarship Service and Fund for Negro Students.

The Drive Committee is headed by Charles C. Collins 2L, Ridgewood, N. J. and Thomas F. Field 2L, Cambridge, Mass. The Harkness Booth is to be managed by Jacqueline Crawford 2L, Ridgewood, N.J. Wendell Davis 2L, Brookfield Center, Mass. and Anthony Kennedy 2L, Sacramento, Cal. will contact second-year students who live off campus. Walter Strine 1L, Media, Pa. and John O'Meara 1L, Hillsdale, Mich. have undertaken similar duties.

Checks should be made payable to the Harvard Law School Combined Charities Drive.

DECEMBER 3, 1959

Favorite Son at Forum Friday

Governor Edmund "Pat" Brown, California's evermore-hopeful presidential aspirant, will edge closer to the candidates' circle with his speech before the Law School Forum tomorrow at 8 p.m. in Sanders Theater. Until now he has avoided an active role in presidential politics by declining speaking invitations outside California.



Governor Brown

Although the governor's aides say his speech will be "nonpolitical," it is thought by some Democrats that he will seek to stir pro-Brown sentiment with a view perhaps to becoming Massachusetts' next choice should the nomination drive of Senator Kennedy fail.

Significantly, Massachusetts is Governor Brown's only stop on his cross-country trip.

The Harvard Democratic Leadership Forum will fete Gov. Brown at a reception from 3:45 to 5:15 on Friday in Harkness. This group is a joint speakers bureau for the Democratic clubs in the College, Graduate School, and Law School. Democratic club members will be admitted free to the evening program.

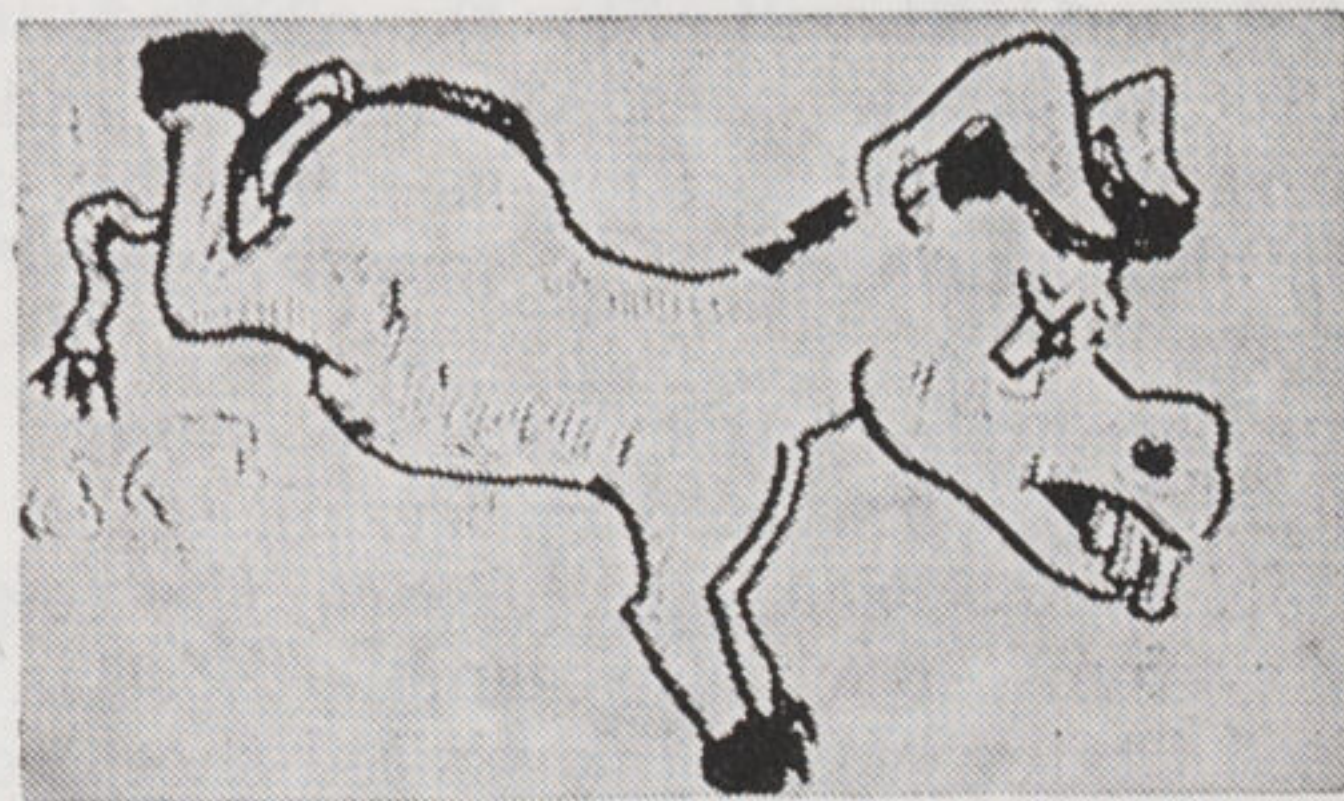
Friday afternoon he plans a press conference, a tea with Harvard student Democrats and a private session with Democratic leaders before his Forum speech culminates a busy, nonpolitical day.

Governor Brown's press secretary would not announce a topic for the Forum talk. But he indicated the governor will no longer confine his remarks to California affairs, as he has done in the past. The Forum plans to allow unrestricted questions by persons in the audience.

Governor Brown's acceptance of the Forum invitation followed closely the recent California tour of Nelson Rockefeller. With Governor Rockefeller a prominent Presidential contender after less than a year in office, Mr. Brown's backers feel his ten months as governor qualify him to enter the race.

The 54-year-old governor is a second generation Californian who was admitted to the Bar in 1927 after graduation from the San Francisco College of Law. He joined the office of a celebrated blind lawyer, Milton L. Schmitt of San Francisco, and took over the practice on the death of his senior.

His political career began in 1939 when he was defeated in his attempt to be elected San Francisco District Attorney. In 1943 he ran again, was elected, and served seven years.



It also took him two attempts to reach the post of California Attorney General, losing in 1946, but defeating incumbent Frederick N. Howser in 1950, being re-elected upon nomination by both the Republican and Democratic parties in 1954.

His margin of 1,029,000 votes over U. S. Senator William F. Knowland in the 1958 gubernatorial race plunged him on to the national political scene.

New Book by Cavers:

Possible Solutions to Latin Power Problems

Electric Power Regulation in Latin America is a new volume by David F. Cavers, Fessenden Professor of Law at Harvard, and James R. Nelson, Merrill Professor of Economics at Amherst College. It is the end product of a study undertaken in 1954 and 1955 for the Harvard Law School by Marvin S. Fink, LL.B. '39, and staff. The study was requested by the International Bank for Reconstruction and Development. The secretariat of the United Nations Economic Commission for Latin America has joined with the Bank in sponsoring the book's publication.

Following World War II, the problems of economic development in capital-deficit nations were manifold. To attain more balanced economies a greater degree of industrialization was required. More capital and more electric power were needed, yet electric power requires enormous capital in proportion to its output.

Healthy Economy

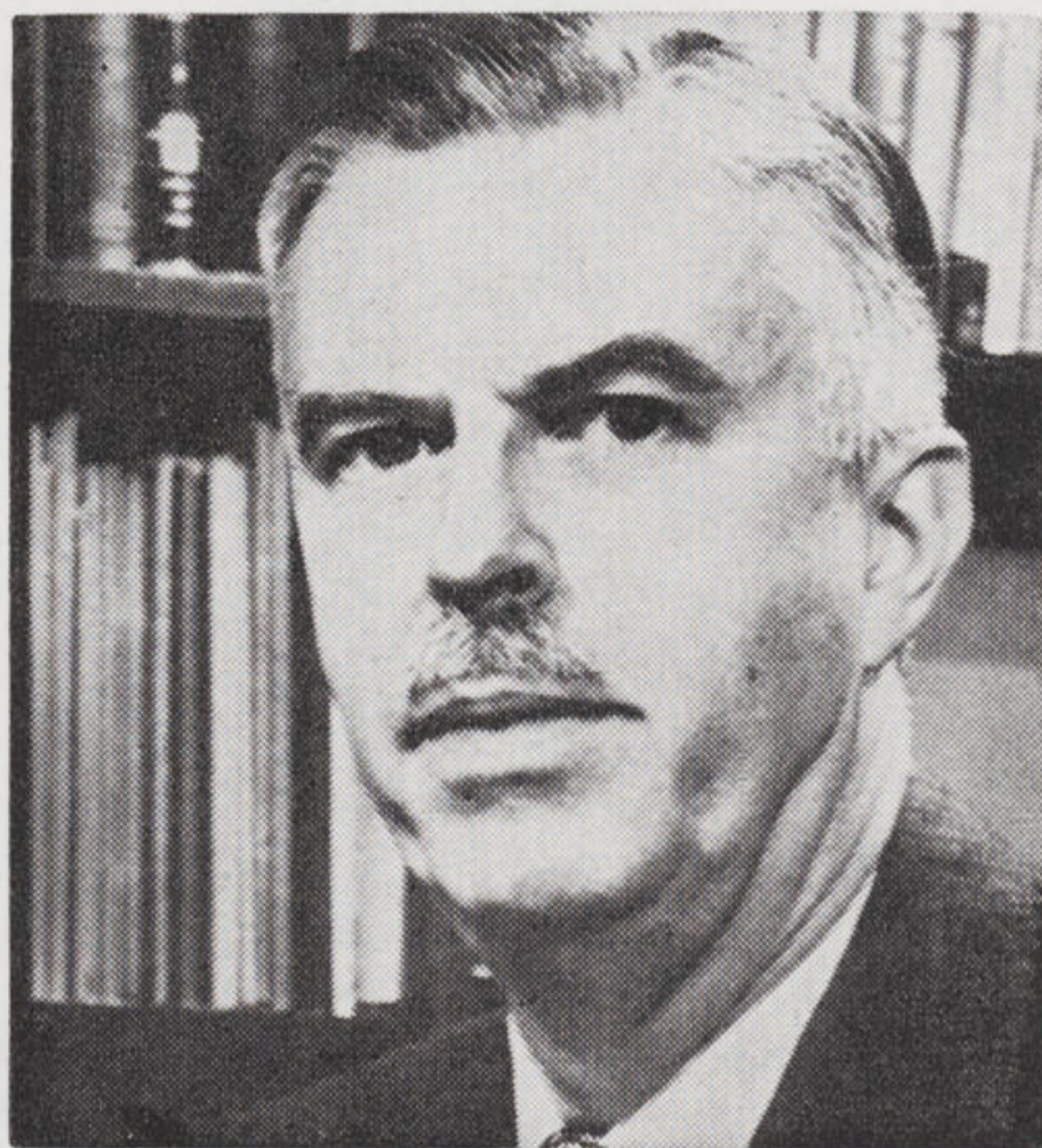
The co-authors, after noting that "the industry's difficulties have been compounded in some of the countries studied by serious and progressive inflation," state the question that they undertook to answer as follows: "Can an objective system of regulation under law be designed that will allow the electric industry to overcome these handicaps and to achieve its useful position as a healthy, self-sustaining segment of a growing national economy?"

An adequate basis for the study was thought to be provided by Brazil, Chile, Columbia, Costa Rica, and Mexico, the regulatory systems of which resemble those in the United States. Mr. Fink visited these countries with members of his staff. There they uncovered a wealth of material and received excellent co-operation from officials of government power agencies and executives of the investor-owned power companies.

The book presents in its concluding part a series of suggestions for the regulation and financing of the electric industry in Latin America:

Translated into law and practice, . . . these would enable that industry not only

to become self-sustaining but also to accumulate and attract the capital it needs for expansion. If the Latin American electric power industry were free to assess the real costs of its service against the industries and the people whom it serves, it would cease from competing for limited government funds with other public services that have no income-producing potentialities.



Professor Cavers

It is contemplated that the United Nations Economic Commission for Latin America will publish a Spanish edition of the book. Reports of the underlying factual studies conducted by Mr. Fink and staff for each of the five countries are to be published in multilithed form about the first of the year.

— McGinn

Steps Toward World Rule

"A world law for world relations is attainable," is the assurance that Roscoe Pound, University Professor Emeritus and former Dean of the Law School, has repeatedly given to members of the Bar in addresses around the country. In one such address, delivered before the Brooklyn Bar Association two years ago, he urged that "There is today a quest of a universal regime of justice . . . of law as transcending and putting limits to organized force." He added, "The complex,

crowded, economically unified, and mechanically operated world of today increasingly makes for a world law with local regimes of laws made for and adapted to local special conditions and needs."

The latest step taken by the American Bar Association to follow Dean Pound's exhortation comes in the appointment of two new men to the ABA Special Committee on World Peace Through Law. Carl McFarland, of Charlottesville, Va., former Assistant Attorney General of the United States, and J. Wesley McWilliams of Philadelphia, a former president of the Pennsylvania Bar Association, have joined the committee.

The appointments were announced by John D. Randall, ABA president. The peace through law committee is seeking to extend the "rule of law" in international affairs, and has taken preliminary steps looking toward

a world conference of lawyers toward that end. The proposed world conference would be preceded by regional international conferences during the next two years.

Mr. McFarland was Assistant Attorney General from 1933 to 1937 and held several other governmental posts, including membership on the Hoover Commission task force on legal services and procedures. He was President of the Montana State University from 1951 to 1958, and since then has served as a visiting professor of law at the University of Virginia Law School.

Mr. McWilliams is a practicing lawyer, who served as chairman of the Board of Governors of the Philadelphia Bar Association in addition to being a past president of the Pennsylvania state bar. At the present time he is chairman of the ABA Section on International and Comparative Law.



Perplexed, partly prepared, panicky — the law student again faces the court in the Ames Competition.

Frankfurter v. Story Law

The Frankfurter Club meets the Story Law Club in the concluding semifinal argument of the Ames Competition Wednesday, December 9, at 8 p.m. in the Ames Courtroom.

Oralists for the Frankfurter Club are Burton A. Schwalb, Hyde Park, Mass., and Arthur I. Settles, Sunnyside, Calif., arguing for plaintiff-appellant. Counsel on the brief are Michael P. Arra, Mt. Kisco, N. Y.; Charles S. Blankstein, Greensboro, N. C.; Stephen I. Hochhauser, Ossining, N. Y.; Herbert J. Korbel, New York City; David A. Rakov, Newton, Mass.; and Richard T. Watson, Maple Heights, Ohio.

Oralists for the Story Law Club are Ronald H. Marcks, New Providence, N. J., and Craig F. Swoboda, Norfolk, Nebr., arguing for defendants-appellees. Counsel on the brief are Morris M. Goldings, Brighton, Mass.; Chester L. Gray, Jr., Atlanta, Ga.; Frederick S. Hird, Jr., South Minneapolis, Minn.; Edward C. McLean, Jr., Darien, Conn.; Hugo M. Pfaltz, Jr., Short Hills, N. J.; and Richard H. Thomas, III, Covent, N. J.

In this case, *Bernard J. Lee v. Jenkins Brothers and Farnham Yardley*, an ex-employee claims pension payments allegedly due under a 1920 oral agreement made by a corporation president on behalf of the corporation and for his own account. Among

the questions presented are the proper application of the Statute of Frauds and the authority of the president to make such an agreement.



Judge Woodbury

Judging the appeal will be the Honorable Peter Woodbury of the United States Court of Appeals for the First Circuit, the Honorable John Hamilton King of the Connecticut Supreme Court of Errors, and George F. Lowman, Esquire, of the Connecticut Bar. The winner meets the Root Equity Club, winner of the first semifinal argument, in the Spring final contest.

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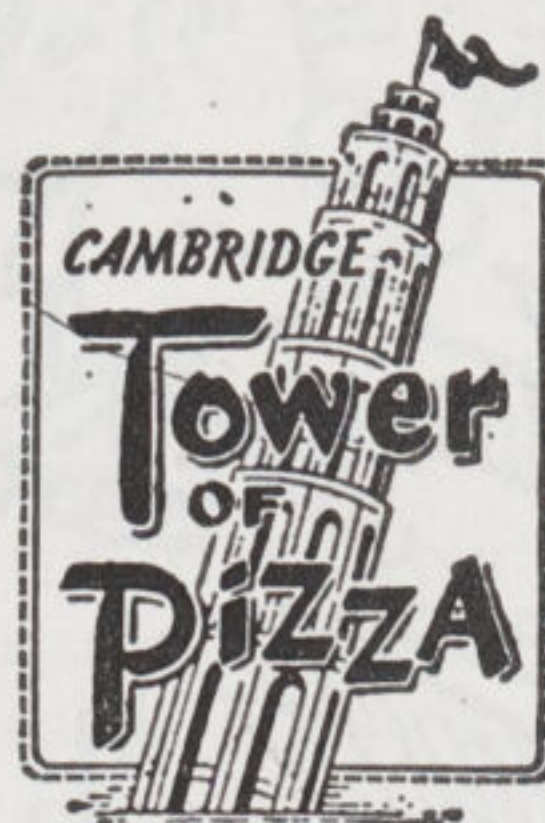
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Fitzmaurice Discusses World Court

The second general meeting of the International Law Club took place last Friday evening in the Pound Room and featured a talk by Sir Gerald Fitzmaurice, K.C.M.G., Q.C. Professor Richard R. Baxter introduced the speaker who is Legal Advisor to the British Foreign Office, Deputy Under-Secretary of State, and President of the International Law Commission of the United Nations. During the introduction the audience was informed that Professor Louis B. Sohn had invited Sir Gerald to speak to the club in Geneva this past summer.

After commenting on the fine reputation enjoyed by the Law School throughout the world in the field of international law, Sir Gerald launched into his topic, "The Development of Justice by the International Court of Justice." Presenting his subject matter in an extremely lucid and organized manner, the distinguished speaker presented, as an introduction, a number of questions which were to be developed in the course of the talk. Among those posed were:

Why do we attach importance to the role of the I.C.J. in developing international law? What do we mean by the *development* of international law—and what relation is there between development and change; between development and legislation? Should the I.C.J. change the law and in effect legislate? What are the techniques which the court can legitimately use? Sir Gerald characterized these queries as ones which "involve jurisprudential and philosophical questions of the greatest importance."

Institutions

Sir Gerald pointed out that as societies change and develop so must law. We look for the institutions through which law can be developed and changed. In the domestic field there is no difficulty in finding these institutions. In any fully developed national society we can always find a legislature in some shape or form. However, in the international field there exists a different situation. There is nothing performing the function of a legislature. Moreover, we are unlikely to have one in the "foreseeable future." It is unlikely that an international

community will be willing to subordinate itself to anything like a legislature in the domestic field. Instead we must look to other institutions for the development of law and for making desirable changes.

There are four agencies which are particularly concerned with the development of international law:

1 — Private ventures in the field of codification. These undertakings, though unofficial, may exercise considerable influence. As an example we have the past findings of the Harvard Research Projects.

2 — The International Law Commission, a subsidiary organ of the General Assembly which submits drafts and reports.

3 — International arbitral tribunals and commissions. The I.C.J. is found under this heading.

4 — International conferences. In drawing up general multilateral conventions, these bodies approach actual legislation in the international field. However, changes in the law are only effected if the principles inscribed in the convention acquire a range of acceptance going beyond the convention and find general acceptance by non-ratifying nations.

Development

Of the foregoing, Sir Gerald designated the International Law Commission and the I.C.J. as the two main institutions today. He asserted that there were distinct differences between the roles played by each. The commission "tends to *develop* the law but it does not ever itself *change* the law." Its drafts, though having a certain authority, have no direct effect. On the other hand the decisions and opinions of the I.C.J. can have a "quasi-legislative effect." Furthermore, the commission can frankly address itself to the task of development by codification and definite progressive development while the court cannot consciously procure a change in the law.

Sir Gerald maintained that the I.C.J. suffers from a number of serious disabilities:

1 — It can only address itself to a particular case and must work within the limits of the facts and legal issues the case raises.

2 — There is no inherent compulsory jurisdiction. Since the court must depend upon the consent of the parties there has been a comparatively small number of cases that have come before it. Only one-third of the nations of the world have become parties to the court's compulsory jurisdiction — many of them, including the U.S., with reservations. This has led to one-half of all the cases decided by the court centering around issues of pure jurisdiction.

3 — The *non ultra petita* rule inhibits the court from ranging beyond actual issues brought up by the parties. This does not mean that the court cannot consider other relevant legal considerations in order to arrive at a correct decision. But in doing so, the court must tread carefully. As Sir Gerald put it, "From the political angle nothing would so quickly undermine the confidence in the court than a tendency by the court to decide points not really submitted to it."

Difficulties

In a description of some of the internal difficulties that beset the I.C.J. it was revealed that while agreeing on a particular result, the fifteen justices, representing varying legal systems, might not be able to agree on the supporting reasoning. Following the dictate of Article 59 of the statute governing the court's activities, a decision can only be binding in respect to a particular case and parties. This ban on the use of precedent is mitigated somewhat by Article 38(d) which would allow the consideration of prior decisions. There is a general attitude of judicial caution which follows from the prevailing view that the court must not legislate. "Given these difficulties," Sir Gerald declared, "it is remarkable the extent to which the I.C.J. has been able to do real work in the develop-

ment of the field of international law."

In the concluding portion of his talk Sir Gerald outlined the processes by which the I.C.J. can be said to have developed international law. For purposes of classification they were divided into two groups — those introducing actual novelty into the law and those which lend an element of certainty to it. Among the former grouping are included:

1 — The formulation of new principles of law within certain limits.

2 — The application of existing principles to a new situation or set of facts.

3 — A process of elucidation, classification, or interpretation of existing rules so that they are presented in a new guise.

In the second category we find:

1 — Affirmation or denial of previous obscure or doubtful principles.

2 — Rejection of supposed rules.

3 — Decisions with a systemizing effect.

About this latter grouping Sir Gerald commented that "the process of making law more certain is just as much a part of development as introducing new principles." To clarify this classification numerous examples and cases were cited including the Corfo and Anglo-Iranian Oil cases.

— Amitay

Opinion Writing Contest

The Board of Student Advisers this year will hold a competition to determine the best written opinion submitted by a judge of any first-year argument. The only requirement as to form is that entries be typewritten. The competition will be under the auspices of the First Year Facts Committee whose chairman is Nahum L. Gordon, 3L of Brooklyn, N. Y. Entries must be submitted not later than Monday January 11, 1960. There will be a prize for the best entry.

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Wrenn On Balanced Budget

Mr. Paul Wrenn, formerly Assistant to the Secretary of the Treasury and presently Executive Vice President of the Old Colony Trust Co., spoke to the Bull & Bear Club at their Friday, November 20th, meeting. His subject was "Managing the Federal Debt."

Mr. Wrenn spoke particularly on the Treasury's financing of our \$291 billion debt. At the end of 1957 when Mr. Wrenn left the Treasury, 60% of the "marketable" portion of the debt had matured within a year, with maturity on another 34% due in less than 5 years. At present the average maturity of the whole debt is only 4½ years. Mr. Wrenn explained how the refusal of Congress to raise the allowable interest on long-term bonds has prevented the Treasury from extending the debt and thus has forced it into the inflationary field of short-term financing through sales to commercial banks.

Mr. Wrenn also commented on the Treasury's recent issue of "Magic Fives" which have raised such widespread interest in government obligations, and pointed out the way these notes differ from the more familiar Savings Bonds.

He made two significant predictions: first, that the interest rate would not go over the current 5% figure for any appreciable period of time; and second, that the next session of Congress would see a fierce political battle over the interest rate ceiling.

Space Advisor to Moderate

President Eisenhower's chief space advisor, Dr. G. B. Kistiakowsky, will moderate the Law School Forum's "Symposium on Outer Space" to be held December 11 in Lowell Lecture Hall. Dr. Kistiakowsky was Professor of Chemistry at Harvard before becoming a White House consultant.

Panel speakers include: John A. Johnson, General Counsel of the National Aeronautics and Space Administration; George J. Feldman, member of the U. S. delegation to the United Nations General Assembly; and Dr. Bruno Rossi, M.I.T. physics professor and member of the Space Board of the National Academy of Sciences.

The panel will discuss a broad range of problems — legal, administrative and physical — connected with space exploration.

Ticket sales begin December 7 in the Forum office, 23 Everett St.

Suspicion Not Enough

Before the United States Supreme Court recessed last week to allow the justices to prepare their written opinions on the many cases pending before them, it handed down a decision limiting the F. B. I.'s power to arrest persons suspected of having committed federal crimes. The Court said, in a 7-2 vote, that suspicion is not enough to permit F. B. I. agents to arrest a citizen. This decision reversed the conviction of John Patrick Henry, of Chicago, on the ground that the Federal agents did not have "probable cause." The agents, while on the lookout for the thief of whiskey from a freight line, saw Henry and a companion coming out of a cocktail lounge and arrested them after a period of observation. Instead of stolen liquor, three cartons of stolen radios were found in their car.

The Federal court in Chicago convicted the two, refusing to throw out the evidence. Henry alone appealed to the higher court. Justice William O. Douglas, speaking for the majority, reversed the lower court. He said that a seizure of evidence must be based on a valid arrest. He did not believe that "prudent men in the shoes of these officers" would have observed enough to assume a violation of the law.

"Under our system suspicion is not enough for an officer to lay hands on a citizen," Douglas said. "It is better, so the fourth amendment teaches, that the guilty sometimes go free than that citizens be subject to easy arrest."

"The fact that packages have been stolen does not make every man who carries a package subject to arrest nor the package subject to seizure," he added.

Chief Justice Earl Warren joined in a dissent with Justice Tom C. Clark. They said the arrest did not necessarily take place at the moment the car was stopped. They thought that the subsequent sight of the cartons with interstate labels gave the agents grounds to believe a felony was being committed.

Why Can't Johnny Write?

The Harvard Law School was notably absent from the pages of *U. S. News & World Report* (Nov. 23, 1959) where the deans of four other law schools reported that many of their students are remarkably poor writers. It may be that the Law School's policy of high standards at the time of admission isolates it from the problem complained of by the deans of the law schools of the universities of Pennsylvania, Michigan, Stanford, and Columbia. But if the experience of the *RECORD* editors is worth anything, it would indicate that no such protective veil has been thrown around Harvard. The prose used in the *RECORD* is written to meet frequent deadlines. This necessarily means that it must be written in a hasty journalistic style, which demands little more than a respectable vocabulary and the ability to construct simple sentences and paragraphs. None the less, some of the copy that comes to our copy desk indicates that the deans of Harvard's four great sister law schools hold a prevailing brief.

When a student submits an unacceptable story, it is a small matter for a copy editor to rewrite it. But students are not the only ones at fault, for sometimes men who have been out of school for years submit manuscripts which contain fine ideas and valuable facts, but are either technically beyond repair or, if technically correct, none the less incomprehensible. Unfortunately, in these cases it is often necessary to scrap the manuscript.

It must not be thought that these plights of a copy editor in the Law School represent the normal occurrence. They are the exception. But the exception occurs with sufficient frequency during any academic year to allow a reasonable man to infer that the legal profession has more than a tolerable number of members, both in school and out, who are strangers to their own language.

This points to a vacancy in the Harvard Law School curriculum. It is possible for a student to complete the first two years of his

legal education before he is expected to write anything, except exams, to be presented to a member of the faculty. Exam papers hardly represent a fair test of writing ability, because of the unnatural haste imposed by them, although they may uncover the exceptionally skilled writer. Setting exams aside, in the first year, the student writes two short Ames briefs, neither of which is exposed to the faculty. Last year the Group Work program for beginning students introduced an opinion writing problem under the direction of teaching fellows. This is perhaps the first and the last chance to catch the poor writer before he hands in his third-year paper.

A second-year student can avoid writing anything if he stays out of the Ames competition and if he is not one of the astoundingly small number of students who participate in the other activities that require the use of written language. It is true, however, that two or three of the professors who teach second-year elective courses have been experimenting with the use of a somewhat leisurely paper in place of the traditional examination race.

But these facts notwithstanding, it is not till the end of the third year that a student is expected to write and to submit acceptable written work. A student can come to the Law School with poor writing ability and escape discovery and correction till the end of his third year when a horrified professor is forced to decide what to do about the man who has passed all of his courses, has written a paper with tolerable ideas and valuable facts, but who demonstrates genuine weakness "in grammar, syntax, spelling, and the organization of ideas." At the same time, the student who came to the Law School skilled in the arts of expression may find that his third-year paper is needlessly more difficult to write because he has spent all of his three years reading and pulling things apart, which has made his synthesizing skills rusty from lack of use in periodic written projects.

FEATURES SECTION

War in the Treasure Room

"If God were a soldier He would be a plunderer." So a general during the Hundred Years' War expressed the attitude of the medieval fighter toward the rules of conduct in wartime. The evolution of these rules from that period to the present is the subject of the current display in the Treasure Room in Langdell Library. This exhibition runs until the Christmas recess. The research and translations for this display are the work of Miss Edith Guild Henderson, Librarian-In-Charge, Treasure Room.

In practice, ancient and medieval struggles were little restrained. "Cry havoc and let slip the dogs of war," the signal to begin pillage, was the usual rule of the day. Both sides supplied themselves by plundering the civilian population, a practice which always included the possibility of civilian massacre.

The justification for war at that time was accomplished by the notion of a "just war," a doctrine whose consequences resulted in many of the medieval wartime practices. The legitimate prince was in the position of a judge. The actions that followed his decision were the enforcement of a judgment. And his decision was always *a priori* a just one. From this it was reasoned that the unjust side was responsible for all damages and that he who fights a "just war" has no duty to his enemies. This removed all restraints from the conduct of war. Finally, it was argued that the victor's cause must be just or he could not win and thus the victor had no duty toward the vanquished, a principle reinforced by the Roman law.

During the sixteenth and seventeenth centuries some efforts were made by the scholars of the time to move away from the destructive results of the "just war" doctrine. It was pointed out that a war could be just on both sides, at least in the eyes of the combatants who ignorantly followed the commands of their princes, and, in most cases, even in the eyes of the princes since each theoretically sought justice. Further, and even more important, it was stated that the question of which side had the just cause was irrelevant to the question of the conduct of the war. Even the waging of a "just war" should impose certain restraints on the manner of waging it. In practice, however, these thoughts went unheeded and the fiendish acts of the medieval war, flamed by the religious fanaticism of the period, continued.

Religious Wars

Following the termination of the religious wars, and with the establishment of professional armies the practice of warfare became more humane. Ransom and large scale exchange of prisoners became systematized and care for the wounded became organized. About the time of the Revolutionary War, the care of enemy prisoners was being formulated in treaties, if not in practice.

The growth of international agreements in the nineteenth and twentieth centuries enabled a more precise statement of the rights and duties of governments in the field of wartime conduct. The first of these was the International Red Cross Convention, or Geneva Convention, in 1864. This resulted in the



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formulation of the International Red Cross and led to the creation of similar national societies. The general principles of this Convention have not been changed to the present day but have been extended and utilized in many subsequent agreements.

Law of War

The first comprehensive code of the law of war to be adopted by any country was General Orders No. 100 issued by the U. S. War Department during the Civil War. Written by a Columbia professor, Francis Lieber, it remained in force throughout the nineteenth century and served as the basis for the present Army regulations. It has also been utilized in several international agreements.

The Brussels Convention, called by Russia in 1874, was the first international conference to consider the total conspectus of the law of war. The result of this meeting was a draft treaty which, though never signed by the attending governments, was much utilized in the Hague Conventions of 1899 and 1907. These two conventions provided for the recognition of relief societies for prisoners, and for information offices to answer inquiries about individual prisoners.

The Convention on Prisoners of War held in Geneva in 1929 recognized the status of Neutral Protecting Powers who were charged, *inter alia*, with safeguarding the interests of prisoners of war. It dealt more specifically with the rights of prisoners during their detention, the discipline to be maintained in the camps, and the work chores to be performed.

Although, generally, the Nazis lived up to their agreements under the Geneva Conventions as regards soldiers captured from the Western Allies, there were numerous exceptions. The indictment at the Nuremberg trials included a section on the murder and ill-

treatment of prisoners of war. Further, the Soviet Union was not a party to these agreements and the Nazis made no attempt to apply them to Russian prisoners of war. A new Geneva conference held in 1949 spelled out the law of war in respect to prisoners of war based on these World War II experiences.

A provision in the 1929 Convention became the center of a major controversy following the Korean War. This involved the repatriation of prisoners. According to a literal reading, the provision did not solve the problems of forced captivity or of those POW's who did not want to be repatriated. The Neutral Nations Repatriation Commission in 1953 was an attempt to enable Korean POW's to freely express their preferences.

Prisoner of War

In addition to framing rules in regard to prisoners of war, the wounded and sick, and casualties of maritime warfare, the 1949 Geneva conference drew up a Convention of Rights of Civilians which was an entirely new document based on the experiences of World War II. The question of distinguishing combatants from civilians, who are protected if they are not fighting or engaged in unorganized hostile activity against an occupying power, was one which caused considerable discussion at the Hague Conventions both in 1899 and 1907. At that time, the smaller powers desired a greater range of protected activity allowed the civilian population in resisting invaders than did the larger powers who were content to rely on regular armed forces. The provisions at Hague defining the rights of civilians were wholly ignored by the Nazis in World War II when the wholesale slaughter of millions of innocent people occurred. The 1949 Convention sought to prevent the recurrence of such atrocities.

— Murstein

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Gallery

From Cambridge, England to Cambridge, Massachusetts has come Frederick James Odgers who is Visiting Professor this year on the faculty of the Law School. Professor Odgers is Director of Legal Studies and Tutor, equivalent to Vice Dean, at Emmanuel College at Cambridge University in England. He is also University Lecturer in Contracts, Torts, and Criminal Law at Cambridge.

Criminal Law

This year he is a visiting professor at the Harvard Law School teaching a first-year section in Criminal Law and a third-year seminar in Tort Liability in Special Relationships. He is the tenth participant in a program which brings each year to the Law School a leading legal scholar from the British Commonwealth.

Legal education being quite different in the United States from what it is in England, Professor Odgers was unwilling to pass judgement on either system. While in the United States, the study of law is a speciality undertaken at the graduate level, in England it is a college subject studied by any who may be interested. Thus Professor Odgers finds students at Harvard are older and "work much harder and with much greater competitive spirit." They are never passively receptive and arrive "conditioned to argument." Professor Odgers remarked, "I've never had any difficulty finding people ready to argue."

Professor Odgers said he would not be against the use of the case-book system, "at any rate, to some extent, in England." Due to the Federal system, he explained, there can be no "law of the United States" while in England it is possible to say, "this is the law of England." It would be impossible to teach law in the United States by the lecture method, he concluded. This is fortunate from the view of our law faculty for as he says, "In England the professor does all the work."

Professor Odgers was born on Jan. 19, 1910 near Wrexham, North Wales but is of Cornish extraction. He was educated at Worcester and at the age of eighteen became an articled clerk in a law office in preparation for a career as a solicitor. While clerking, Mr.

Odgers attended classes at the University of Wales. At the termination of his clerkship he took his exams and had the honor of finishing first among all who took the exam that year in England. He received the Clement's Inn Prize for this achievement and also the Clabon Gold Medal for Equity and the Maurice Nordon Prize for Common Law.



Visiting Professor Odgers

He then became a member of the London firm of Gibson and Weldon, which was both a law office and a law school. Professor Odgers was a teacher in the law school portion of the firm.

From 1939 to 1945 Professor Odgers was in the Royal Artillery starting as a gunner and advancing to the rank of major.

In 1946 he changed from the solicitor's branch to the Bar. In 1947, he went to Downings College at Cambridge. He taught common law subjects while studying for an LL.B. in legal history. He has been associated with the legal teaching staff of Cambridge University ever since.

He is married and his wife Betty has just arrived in this country. They have no children.

— Rosenstein

Ten Cures for Congestion

A new pamphlet, "Ten Cures for Court Congestion," is available to those who request it from the Special Committee on Court Congestion, American Bar Association, American Bar Center, Chicago, Illinois. The Committee's ten-point program to cure delays in court, as summarized in the pamphlet, are set forth below:

1. Pre-Trial

Pre-trial is a device that reduces both trial time and the number of trials. It can be established without legislation or court rule and results have been astounding where it is used.

2. Availability of Counsel

By planning and diligence the trial bar could do much to prevent delays caused by unpreparedness and other conflicting trial commitments. This is a problem peculiarly within the legal profession and serious ethical as well as public relation problems exist as long as the Bar fails to solve the problems involved.

3. Jury Waivers

Judges can make jury waivers more attractive by giving preference or establishing special panels. Attorneys can do their share by reviewing their case to determine whether a bench trial would be contrary to their client's interest before demanding a jury.

4. Judicial Performance

There is room for considerable improvement in the actual hours spent in trial per day and days per year. More summer sessions and more efficient calendar handling will also result in more judge time. The Bar is in the best position and has the duty to maintain the quality of the Bench.

5. Transfer of Cases to Lower Courts

In a metropolitan area most cases seeking monetary damages could be brought to lower municipal courts rather than the court of general jurisdiction. Adequate appraisal of a case by counsel before filing and by the court during pre-trial can do much to insure trial in the less congested lower court.

6. Calendar and Trial Aids

Such aids as the certificate of readiness, individual or pool assignment systems, special settlement calendars, impartial medical testimony or administrative commissions are helpful under particular circumstances.

7. Disposition of Cases by Quasi-Judicial Personnel

More courts should consider the use of referees, commissioners, auditors or arbitrators. These quasi-judicial personnel can dispose of a great number of routine cases that would otherwise add to an already clogged docket.

8. Judicial Statistics

No reform can be initiated without first identifying the problems involved. Judicial statistics are necessary for proper court administration.

9. Court Administration

More efficiency in the handling of court problems would result in better use of judicial manpower. Centralization of authority clarifies the entire picture of court congestion and this, in itself, will suggest remedies.

10. Court Reorganization

Court reorganization starts at the very foundation and builds upward to create a modern court system capable of disposing of the business at hand. Partial reforms have, in the past, been hit-or-miss and resulted in a helter-skelter grouping of overlapping courts and duplicated or wasted effort.

LETTERS TO THE EDITOR

Gentlemen:

I would like to amplify your account of my talk on the McCarran-Walter Immigration Act. You report my criticism of the national quota system which adopted a pattern of immigration favoring the northwestern European countries. That system "creates all kinds of foreign embarrassment, because it is insulting to those foreign countries with low quotas." (The quotes are yours.) You neglect to mention that I coupled this observation with the argument that whatever the position one might hold concerning the appropriate racial make-up of our population, the insult was gratuitous. Once the initial decision was taken to limit total immigration to 150,000 per annum, a few more or less of any particular race could have little effect on the make-up of a population of 150,000,000. This would very clearly be so if, as I suggested, no more than 10% of the total, e.g. 15,000 could come from any one country.

Very truly yours,
Louis L. Jaffe, LL.B. '28
Byrne Professor of
Administrative Law

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will be paid by the Cambridge Tower of Pizza for any information leading to the capture of the unknown gunman who, on Nov. 23, 1959, did wilfully and maliciously shoot and thereby rapidly deflate a helium balloon, which had been flying at 200 feet above the Tower of Pizza. Said balloon was displaying the score of the recent Harvard-Yale game as well as the banners of the Tower of Pizza. A Yale man is suspected.

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