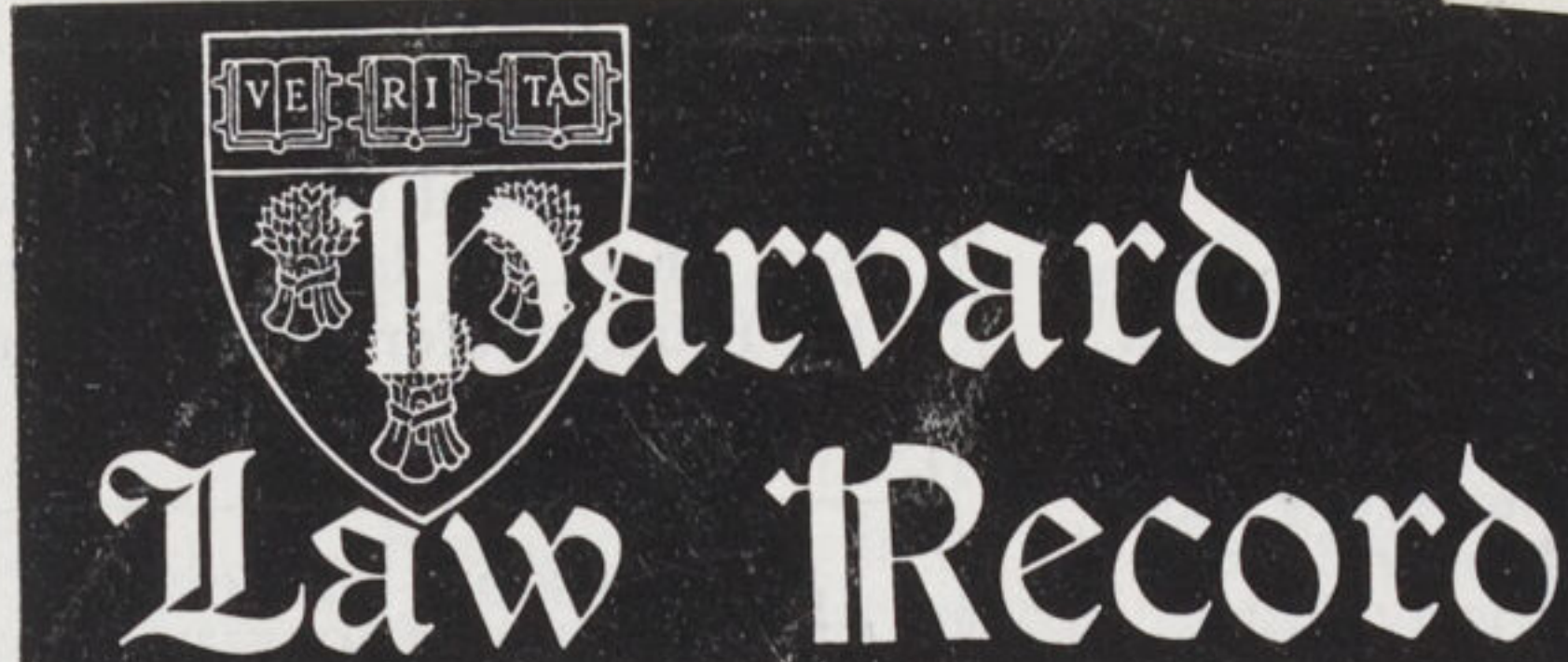




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NO. 5

Forum Debates China Policy

Congressman Charles O. Porter (Democrat, Oregon), will attack President Eisenhower's China policy tomorrow night at Lowell Hall at 8 p. m. under the auspices of the Harvard Law School Forum.

An advocate of recognition of Red China ("Chiang Kai-Shek should be sent to an old

cy will be Dr. Walter H. Judd, perennial Republican Congressman from Minnesota and a one-time medical missionary in China. A member of the House Committee on Foreign Affairs, Dr. Judd has served as a delegate to the General Assembly of the United Nations (1957) and to the World Health Organization Assembly (1950 and 1958). Dr. Judd relies on his ten years in China as a missionary (1925-31, 1934-38) and five Congressional trips to the Far East in billing himself as "one of the few members of Con-

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Congressman Porter

soldiers' home, preferably one with barbed wire around it"), Congressman Porter will draw on information gathered during his November trip to Formosa in debating the affirmative of the proposition: Eisenhower's policy toward China is a failure.

Congressman Judd

Defending the administration's China poli-

Leach Decries B-70 Loss, Denounces Obsolete Experts

"Belief in Ike" is not a sufficient answer to criticism of this country's defense effort, asserted Professor W. Barton Leach at a luncheon meeting of the Law-Graduate Republican Club last Wednesday. Professor Leach, a Brigadier General in the United States Air Force Reserve, also pointed out that even military experts become obsolescent in periods of great technological progress, citing as an example Admiral Leahy's assertion during World War II that the atomic bomb would never work.

Professor Leach criticized the present tendency to confine defense expenditures within predetermined budgetary limits. He recommended, instead, that the budget be determined by defense needs and that annual defense expenditures be increased to 55 billion dollars from the current 41 billion.

Several examples of how budgetary considerations are hampering the defense pro-

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Harvard Law Record

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Hearsay

One of the great lessons one learns in the Law School is the importance of small pleasures. For example, the Tax Code is usually a great encouragement for students to read poetry. Indeed, last Friday, after the Oliver Wendell Holmes Lecture, about 60 law students retired to the cellar of the Chancery Club to read poetry aloud for a couple of hours.

Because of this appreciation of simple pleasures, law students can accept with a shrug of the shoulder the great stone and glass box called the International Legal Studies Building. This structure cost at least a million dollars and is well appointed with a fine library and many seminar rooms. Its elevator not only elevates, but also descends. The fine lights not only light, but turn off. But that mystical hot and cold system that is supposed to cool the air in the summer and warm it in the winter has resisted the wishes of the law students who would like the simple pleasure of a comfortable seminar room.

In the fall, there was a room where one side was heated so much that students baked, but the other side of the room was as cold as the inside of a meat box. The hot and cold machine blew hot on one side and cold on the other. However, this same room is now uniformly cold, because the hot part of the hot and cold machine has ceased to function and it blows cold all over the place. The result is that students come into the room and put on their overcoats.

All this means that students will have to read more poetry to compensate for the loss of the simple pleasure of a comfortable seminar room.

CALENDAR

Notices for publication in the Calendar should be in the RECORD offices not later than noon the Friday before the date of publication.

Thursday, March 3

The SOUTHERN CLUB will hold a luncheon meeting in the Mallory-Smith Room of Harkness Commons at 1 p.m. Professor Archibald Cox will speak.

The HARVARD DRAMATIC CLUB will present Voltaire's "Candide" in Agassiz Theater at 8:30 p.m. on March 3, 4 and 5. Tickets can be obtained at the Coop.

Menotti's "The Old Maid and the Thief" and Pergolesi's "La Serva Padrona" will be presented at the Lowell House Dining Hall from March 3-6. Tickets can be obtained at the Coop or by calling KI 7-5948.

Friday, March 4

The LAW SCHOOL FORUM will present Congressmen Walter H. Judd and Charles O. Porter in a discussion entitled "Change in our China Policy?" in Lowell Lecture Hall at 8 p.m. Professor Allan Cole of the Fletcher School of Law and Diplomacy, Tufts University will be the moderator.

The LAW-GRADUATE DEMOCRATIC CLUB will have their annual election of officers in the Wheeler Room of Holmes Hall.

Sunday, March 6

The FORD HALL FORUM will present Dr. Harold Taylor, former president of Sarah Lawrence College, speaking on "Education in a New Age" at 8 p.m. in Jordan Hall.

Monday, March 7

The oral arguments for the first year class in the AMES COMPETITION will begin.

Tuesday, March 8

The solutions to the problems in the Qualifying Round of the WILLISTON COMPETITION will be due.

The BOSTON SYMPHONY ORCHESTRA will present a concert at Sanders Theater at 8:30 p.m. Tickets are available at Symphony

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Dean Barnes Involved

Feud Develops on School Committee

"GESTAPO CHARGED IN TEACHER QUIZ" blared the headline in the February 25 edition of the *Boston American*, and underneath this unfolded a story in which Cambridge School Committeeman Daniel J. Hayes accused Dr. William S. Barnes, Assistant Dean of the Law School and newly-elected member of the School Committee, of using "Gestapo methods" in interviewing a female department head in the Cambridge School System.

Hayes hotly stated that Barnes had tape-recorded an hour-long interview with the woman while Superintendent of Schools John M. Tobin was out of the city, that the recording "has raised fears among the city's 550 teachers that they may be subjected to such interviews," that the manner of obtaining the interview "at the least consists of the infringement of the personal rights of the teacher while under duress," and that he will demand that Dean Barnes be "disciplined" at the next Committee meeting.

In order to get to the bottom of the improbable accusation that a Harvard Law School Dean would use "Gestapo methods" outside of the Harvard Law School, the RECORD conducted a series of unrecorded interviews with the principals involved, from which the following story evolved.

For Note-Taking

Dean Barnes explained that the interview was one in a long series of Wednesday morning appointments arranged by Superintendent Tobin to acquaint him with the workings of the School System. Dean Barnes had, in fact, taken a dictaphone into the interview with him because the woman was the head of a rather complex department, and "since this is the 20th Century," he was going to use the machine for note-taking. The woman had been told beforehand that use was going to be made of the machine and had said nothing. In fact, Dean Barnes explained, no recording was ever made because an outline brought by the woman of the department served the Dean's mnemonic needs amply.

Dean Barnes said that the thing that disturbed him most about the affair was the fact that he was not consulted before the matter

went before the public by way of the press. He felt that this manifestation of lack of desire to get the facts straight and to settle the matter amicably, plus the unwarranted strong language used in the article, showed a great fear of investigation and a desire to discredit him before the public. "What are they afraid of? What are they trying to cover up? That's what I'd like to find out," he said.

School Superintendent Tobin was less helpful. He had been away at a Superintendent's convention in New Jersey at the time of the



Dean William Barnes and friend

interview. He had had nothing to do with the newspaper article. He had "no comment for the press."

Willing to Talk

Mr. Hayes was more than willing to make clear how he stood in the matter. He had heard from several Cambridge school teachers on the afternoon of Thursday, February 18, of the recorded interview of the previous day. When Superintendent Tobin returned on Friday, Hayes mentioned the matter to him and was told that the Superintendent had received the same information. It was then that Hayes resolved to bring the matter before the Committee at its next meeting.

He had not planned to release the story to the press. However, the Tuesday after he had received the information, he had gone to the Election Commissioner's office to pick up the

just-released tally sheets from the November election. The Cambridge office of the *Record-American* was in the same building. He stopped in to see a reporter friend while he was in the neighborhood; and, when the reporter asked him what was new with the School Committee, he told him.

No Regrets

Mr. Hayes expressed no regret that he had released the story without checking the facts with Dean Barnes first, even after he was told the facts as told the RECORD by the Assistant Dean.

Hayes knows that Dean Barnes is a member of an ever-growing contingent on the School Committee that would like to see some radical changes in the school administration and he feels that, with his "trained legal mind" and his recorder, Dean Barnes was trying to "break" a witness. He thinks the Assistant Dean's plan to record an interview, containing possibly "classified" information, while the Superintendent was out of town, was a flagrant abuse of his Committeeman's authority. He also feels that the fact that the issue has become public will be helpful when the Committee deals with the problem.

The RECORD will report the results of the March 1 meeting of the Cambridge School Committee next week.

— Baron

Leach Decries

Continued from page 1

gram were cited by Professor Leach. One such case involved an Air Force base in Wisconsin, designed to protect the Milwaukee-Chicago area. A location had been selected, the land purchased, and the topsoil removed. Just as construction was about to begin, a cutback in Air Force funds necessitated the elimination of four air wings. The purpose of the base was then altered to make it a dispersal base for the Strategic Air Command. After nine months there was a new budget cycle; this time S. A. C. was affected. Fewer B-58's were to be built, and there was to be a fade-out of three B-47 wings two to three years earlier than programmed. Thus it would have been necessary to deactivate the base shortly after it became operational. Plans for the base were therefore abandoned. In the meantime, twelve million dollars had been spent, and the land had been stripped of topsoil.

A far more serious example is the aban-

donment of the B-70 program. Professor Leach claimed the B-70 would have enormous strategic importance because of its speed, altitude and range. Designed to fly at 2000 miles per hour, the B-70 would be capable of maintaining that speed at all times. Thus it would be able to approach the enemy's radar line at top speed. This would force the Soviet Union into a set of defensive measures utterly different from anything it has now.

It was just such a situation in World War II that caused the German blitz of England to cease so abruptly, Professor Leach pointed out. Germany was being bombed so heavily that all its resources had to be devoted to defensive measures. Similarly, the B-70, by presenting such an immense threat to the enemy, would also strengthen our defense. Moreover, the B-70 would offer an alternative to missiles, which have certain inherent inaccuracies. Its useful life would be about seven years, beginning in 1964. Professor Leach suggested that the enemy then might be Communist China, rather than the Soviet Union. In that case, the B-70 would be essential, since missiles would be useless against Communist China because of the complete lack of geodetic information about that country.

Two Budget Ceilings

There are actually two budget ceilings, Professor Leach explained, one on appropriations and another on expenditures. Funds for the development of the B-70 were appropriated in various segments four years ago. Already, 450 million dollars has been spent in solving various aerodynamic problems and in developing three separate instrument systems for each B-70.

The development program was proceeding rapidly until the fiscal 1961 budget reached the phase where it had to have the approval of the Defense Department. Because the Air Force budget was over the limit set by the Defense Department, the Secretary of the Air Force was told to reduce the planned expenditures. The B-70 and the F-108 had to be cut, since they were the most expensive single items.

Present plans call for two prototypes of the B-70 to be developed, but without any of the special equipment which was to make it so valuable.

— Matia

Amid Past Abuses

Shift in Civil Liberties Seen

Joseph L. Rauh, Jr., a prominent Washington, D. C. attorney and an active participant in Democratic politics, spoke on developments in the civil liberties field to the Student Bar Association last week in the Harkness Commons Meeting Room.

Mr. Rauh characterized clients in civil liberties cases as "martyrs," and stated that the civil liberties lawyer should be familiar with the psychology of martyrdom. He suggested that the lawyer is often not certain whether his client wants him to win a case and thereby establish a judicial principle, or lose and earn his client the right to go to jail.

There has been a healthy shift, said Mr. Rauh, in the attitude towards civil liberties within the last three years. This has followed the excesses of what he termed the McCarthy and "bad decade" era, which began shortly after the end of World War II. In his analysis, three factors have accounted for this shift: 1) the fact that abuses in any democracy will eventually set up reactions; 2) recent opinions of the Supreme Court have focused attention on the need to curb interferences with civil liberties; 3) and most significantly, the relaxation of tension with the Soviet Union has done away with much of the "scare" tactics and excesses.

Hangover Still Remains

Mr. Rauh commented, however, that the nation still shows the effects of having a hangover from the "bad decade." There is still a general anti-civil liberties atmosphere which is fostered by apathy. He noted that activities on college campuses reflect this hangover.

However, the problem does not end there. Some of the procedures of the "bad decade" have now been institutionalized by the United States. He referred to the fact that the government still maintains subversive lists; and, in the security area, the government still accepts the theory that a man can lose his job without having an opportunity to confront his accuser. He maintained that a recent executive order issued by the President and directed at this problem will not alter the practice of non-confrontation. Still

another abuse is the continued practice of Congressional committees in exposing solely for the purpose of exposure.

Mr. Rauh attacked, as the "most dangerously institutionalized procedure," the intimidating tactics employed by the F. B. I. The F. B. I., he said, should concentrate on counter intelligence work. In fact, Mr. Rauh asserted, the F. B. I. has emerged from the



Mr. Rauh

"bad decade" as an agency which is unresponsive to public criticism.

Civil Rights Progress

On the other hand, Mr. Rauh spoke favorably of progress since World War II in the civil rights field. Most progress in this specific area, he said, is attributable to the fact that minority groups exert organized political pressure. But progress has been too slow. There is restlessness in the Negro community which should be met by legislative action. It is unfair to place all the responsibility for implementing equality in the civil rights area on the Supreme Court and the N. A. A. C. P. Up to now, Mr. Rauh

said, Congress has acted irresponsibly by not effectively legislating in the field of school desegregation and voting rights. He noted that some Congressional action would probably be taken in the near future in the voting area, but he questioned the wisdom of concentrating most legislation in this area.

Concluding his formal remarks, Mr. Rauh suggested that, upon graduation, lawyers should involve themselves in civil liberties work. Once a lawyer makes known his willingness to accept civil liberties cases, he can expect references from the court and from civil liberty organizations. "No other area of law," he said, "can be more fun."

— Bloom

Ex-McCarthy Foe Here

The Hon. John W. Reynolds, Attorney General of Wisconsin, will speak on "Progressivism, McCarthyism, and the Democratic Party" next Monday, March 7, at 1:45 p.m. in Langdell North. He will appear under the sponsorship of the Harvard Law Graduate Democratic Club.

Mr. Reynolds was an unsuccessful candidate for Congress in 1950, running in Senator McCarthy's home district in Wisconsin. Even so, stressing McCarthyism as a major issue in his campaign, he ran 35 per cent ahead of his Democratic Party ticket in the election, although losing to the McCarthy-endorsed candidate, John W. Byrnes, who is now the Chairman of the Republican Policy Committee of the U. S. House of Representatives.

New Bureau Member

The Legal Aid Bureau has announced that Charles A. Goldstein, 2L, Perth Amboy, N. J., has been elected to the Bureau.

Forum Debates China Policy

Continued from page 1

gress who can speak with personal knowledge and unimpeachable authority of the sinister significance of what is now happening in Asia."

It has been reported that Congressman Porter thinks that Congressman Judd's authority on our China policy is something less than unimpeachable.

Among his many achievements in the field of foreign affairs, Congressman Judd campaigned for an international organization for peace until the U.N. was founded,

authored the World Health Organization and the International Children's Emergency Fund legislation, fathered the United States-Philippine Mutual Security Pact, and introduced legislation, in 1949, for a Pacific Pact (now S. E. A. T. O.). He is the founder of "Aid Refugee Chinese Intellectuals, Inc."

Congressman Porter

Charles O. Porter is a graduate of Harvard College (where he started the "Committee for Militant Aid to Britain" in 1940)



Congressman Judd

and the Harvard Law School (where he was the first President of the RECORD). He first came into national prominence during his much publicized search for one of his constituents, Gerald Lester Murphy, who disappeared after piloting the plane which carried Professor Jesus de Galindez to his appointment with death in the Dominican Republic.

Since his election to Congress in 1956, Congressman Porter has opposed nuclear testing, has visited several Latin American and European nations, and has been a delegate to the meeting of the World Parliament Association.

Referee for the program will be Professor Allan B. Cole, of East Asian Affairs at the Fletcher School of Law and Diplomacy, Tufts University.

— Levinson

Fashion Show: Fair and Warmer

The Harvard Law Wives Annual Fashion Show, "Forecast: Fair and Warmer," will be held Wednesday, March 9, at 8 p. m. in the large meeting room in Harkness Commons.

The show will feature faculty and student wives modeling fashions, including maternity clothes, from the Gertrude Singer Fashion Studio, 54 Church Street, Cambridge. Tickets are \$1.50, obtainable at the Coop, Langdell receptionist, Gertrude Singer's, and Law Wives' meetings. They will also be available for \$1.75 at the door.

Last year, 241 people attended the event, which is the Law Wives' principal fund-raising venture. Funds raised through ticket sales help to finance the Faculty Cocktail Party, the Childrens' Christmas Party, the Barristers' Ball, and other activities.



These are the "big wheels" behind the Law Wives Fashion Show. Shown (l. to r.) are: Mrs. Frederic M. Cassidy (Arlene), Chairman of Models Committee; Mrs. Peter Wolf (Frances), General Chairman of the Fashion Show; and Mrs. Paul Lunde (Barbara), Chairman of Publicity Committee.

Mrs. Peter Wolf, Ridgewood, New Jersey, is serving as Chairman of the show. Committee chairmen include: Mrs. Frederic Cassidy, Madison, Wisconsin, Models' Committee; Mrs. Paul Lunde, Ames, Iowa, Publicity Committee; Mrs. Donald L. Morgan, Irvington, New York, Favors Committee; Mrs. Albert Graves, Hope, Arkansas, Refreshment Committee; Mrs. Anthony Atwell, Dallas, Texas, Programs Committee; and Mrs. Rob-

ert Ketchum, Birmingham, Michigan, Decorations Committee.

Merchants from the Harvard Square area have donated door prizes, which include such diverse items as a crystal bowl, a leather wallet, and a "surprise package" from Sage's.

Heading the list of models will be Mrs. Derek Bok, wife of Professor Bok, and Mrs. Abram Chayes, wife of Professor Chayes. Student wives who will model include Mrs. Gerald A. Lewis and her three-year old daughter Patty, Mrs. Fletcher Yarborough, Mrs. William Ives, Mrs. Paul McDaniel, Mrs. Albert Graves, Mrs. John Culver, Mrs. Philip Chapman, Mrs. Jack Levin, Mrs. Charles Stafford, Mrs. Stuart Pollack, Mrs. Lawrence Silberman, and Mrs. Thomas Lewis and daughter.

Election Rules Formulated For Class of 1960

The following rules have been formulated by the *Ad Hoc* Committee concerning the election of officers for the Class of 1960:

1. Any candidate for a degree from the Harvard Law School in 1960 or any special student leaving Harvard Law School in 1960 may vote and hold class positions; provided, such candidate or special student has not voted (nor held a class position) in a previous Harvard Law School Class election.

2. Any member of the class shall be considered a candidate if, by 5 p. m. on Wednesday, March 9, 1960, a nominating petition is submitted bearing the nominee's own signature and the signatures of 20 members of the class. Each candidate may run for only one post. On the above date, the candidate shall submit two posters, with a photograph of the candidate and typewritten information about his home town, his academic career, and his Law School activities on each. The posters shall be five (5) inches by eight (8) inches in size. They will be displayed by the *Ad Hoc* Committee in Langdell Hall and in Harkness Commons. No candidate may display any other poster or employ any printed material promoting his candidacy. Nominating petitions will be available at and must be returned to the receptionist's desk in Langdell Hall.

3. Voting will be held during Property II classes on Tuesday, March 15, 1960.

4. Elections for Class Marshal and Class Secretary shall be determined by simple plurality.

5. Election of the three members of the Class Committee shall be determined by a modified proportional representation method. Each voter may indicate his first, second, and third choices among the candidates. A first preference shall count as three votes regardless of the rest of the ballot. A second preference shall count two votes and a third preference one vote, regardless of the rest of the ballot. The three candidates receiving the highest total number of votes shall be elected.

6. In case of a tie, it shall be resolved by lot, to be drawn by the Chairman of the *Ad Hoc* Committee.

7. The *Ad Hoc* Committee will count the ballots. All questions concerning the interpretation of or compliance with these rules or the validity of a ballot shall be determined by the Committee. The Committee may disqualify a candidate for any violation of these rules. Appeal from an *Ad Hoc* Committee ruling may be taken to Vice-Dean Toepfer. These rules shall apply only to the 1960 election.

8. Members of the *Ad Hoc* Committee shall not be eligible for election by the Class in the 1960 election.

Law School Committee Visits Here Saturday

This Saturday, March 5, is the date of this year's visitation by the Law School Committee of the Board of Overseers of Harvard College.

The Visiting Committee, which comprises 27 distinguished alumni of the Law School and is chaired by Frederick A. O. Schwarz, LL.B. '27 *m.c.l.*, will attend classes during an inspection tour of the School on Saturday morning. At noon, they will have lunch with about half the faculty at Harkness Commons; in the afternoon, they will attend a full faculty meeting in the Root Room, where Dean Erwin N. Griswold and Professor A. James Casner will talk about the Law School. After this general meeting, the committee will meet privately in executive session. In the evening, the members of the committee will dine with those members of the faculty not present at the luncheon meeting. The dinner will be held at the Club of Odd Volumes, Boston.

The Committee serves as a liaison between the Law School and the Board of Overseers. They will be expected to inform the Board as to the School's current activities and to present any constructive criticisms to the School's administration.

Dorm Council Elections; Walter Strine, President

The Dormitory Council elections last week returned four of the officers from this past year to serve in the same or other top positions for the coming year. Re-elected to the presidency was Walter M. Strine, Jr., 2L, from Media, Pa.

A new man was elected to the vice-presidency. He is John M. Arnold, 1L, Nowata, Okla. The offices of secretary and treasurer remained the same, with Marvin J. Garbis, 2L, Baltimore, Md., and Sydney S. Traum, 2L, Belle Harbor, N. Y., continuing in those positions, respectively.

Raud E. Johnson, 1L, Greenwich, Conn., was elected to serve the remainder of John Arnold's term as member-at-large. William K. Hoskins, 1L, Bellaire, Michigan is the other member-at-large.

Patent Misuse May Be Costly

Addressing the Patent Law Club last week, Donald Brown, Chief Patent Counsel for Polaroid, took note of recent extensions of the doctrine of patent misuse in anti-trust cases.

A finding of patent misuse renders a patent structure unenforceable against any infringement, at least until the patentee is "purged" of the misuse. This causes a far more deleterious consequence than treble damages under the Sherman Act. Moreover, in a recent case in the 10th Circuit, although the court found that plaintiff's patents were valid and had been infringed, nevertheless, the defendant's counter allegations were held to constitute both a patent misuse by the plaintiff, rendering the patent unenforceable, and an anti-trust violation, subjecting the patentee to treble damages.

Mr. Brown cited the tendency of the courts to presume a patentee to be monopolistic, irrespective of the actual competitive position of the potential product, and to consider package licensing, or other arrangements which may be anti-trust violations, as *per se* patent misuses.

Insufficient Manpower in the Courts

Insufficient judicial manpower as a principal cause of delay in federal courts was the subject of a recent address by John D. Randall, president of the American Bar Association, before the Midwinter Trust Conference of the American Bankers Association.

Basing many of his comments on the studies and recommendations of the Judicial Conference for the creation of 43 additional judgeships, Mr. Randall urged support for passage this session of the omnibus judgeship bill that has languished in committee since 1956.

He added the hope that passage of such legislation would prompt similar reform needed on the state level, much as the federal rules' beneficial impact on state procedural advances in the past two decades.

Slow Rate of Expansion

Stressing the need for an expansion of Judicial facilities in Federal courts, Mr. Randall called attention to their considerably slower rate of expansion than other services of our government, including the growth of legislation and administrative agencies. He said that since 1900 "the business of the Federal courts has almost quadrupled, while the number of Federal judges has little more than doubled. During the past 16 years, the number of civil cases filed has increased more than 50 per cent and the number still pending at the end of the year has mounted by 117 per cent."

The result is delay which works a financial hardship on at least one of the parties and which ages the evidence expressed through witnesses' recollections and renders less likely even their very presence.

He gave two examples, not in the least extraordinary. The U.S. District Court for Connecticut added its second and last judgeship in the twenties. On June 30, 1951, there were 355 civil cases marked undisposed. By September 30, 1959, cases pending had reached 783, despite emergency assistance in 1958 by four outside judges for a total of 79 days. In the fiscal year ending June 30, 1959, the median time between issue and trial in civil cases was 19.9 months, or about 14 months over the figure established by the

Judicial Conference as the maximum permissible delay.

The eastern district of Louisiana, for fiscal year 1959, saw a total of 1,616 cases filed in a court consisting of two judges. By July 1, 1959, there were a total of 2,789 cases pending before this court.

Ever-Increasing Backlogs

Summarizing the national situation, Mr. Randall stated: "The same story can be told in many other districts throughout our Nation. Hardworking judges, using the most efficient methods of disposing of cases, are facing ever-increasing backlogs. The U.S. District Courts are currently faced with a backlog of 66,000 civil cases and 8,500 criminal cases."

He concluded with three additional areas for corrective action:

(1) mandatory retirement of all judges over 70 years old, though still being qualified for temporary assignment;

(2) relieving the judge of those administrative matters not requiring his attention; and

(3) in his words, "We think of air conditioning as being a modern American convenience readily available to industry and to many home owners. Yet, many of our courts continue to be unbearably hot during the summer months. This leads to the general feeling that summer sessions should be avoided at all costs. Now, certainly, the tradition of holding court terms only during the fall, winter, and spring months should not be permitted to prevail in a period when the reasons for the practice have disappeared. Some technical improvements have a place in the court as well as in industry."

— Nader

Government Opportunities

An anticipated fifteen per cent turnover among United States Government-employed attorneys will create job opportunities for approximately 1800 law graduates during 1960, according to a survey report recently published by the American Law Student Association.

Aspects of Canadian Constitutionalism

Partial text of the Oliver Wendell Holmes Lecture, delivered at the Law School by Ivan C. Rand, former Justice of the Supreme Court of Canada, on Friday evening, February 26.

The scope of residual powers presents a fertile field for judicial cultivation. It was early conceded that matters of local concern might grow to dimensions affecting the Dominion (of Canada) as a whole and become subjects for Parliamentary legislation.

Such a conception seems to be behind a ruling which upheld a Temperance Act of Parliament prohibiting local sale of liquor in such countries throughout the provinces as might adopt it. Although not strictly criminal law, it partook in some degree of its nature; and, designed to curtail the evils of intemperance generally, undoubtedly a Dominion interest, it was found not to be within exclusive provincial powers. After a shuttling of conflicting reasons to support the judgment which reached to a constructive assumption of a national emergency in intemperance, a re-affirmation in 1946 of its original basis was again discountenanced as late as 1950. These divergencies evidence a fluid area where judgment has not crystallized and presents an opportunity for fresh consideration of residual resources.

No Stare Decisis

The Supreme Court has not, since 1949, faced directly the question of *stare decisis*. The Judicial Committee which set the law for Canada was not bound by that rule; and, as the Supreme Court has succeeded in substance to the role and position *vis-a-vis* Canada of its predecessor, that Court would seem to be equally free from such a constraint. Absoluteness in the rule is not, in any case, present; exceptions exist, even in the House of Lords as the highest court of law for the United Kingdom, though they are specific and few. But English conditions do not face the Supreme Court.

The interpretation of a written constitution limiting jurisdictions within a federal union, with more or less elaborate formalities for amendment, does not permit of the perpetuation of unsound judgments; constitutional amendments are of a different order from statutory amendments; as related to individual determinations, that is, whether specific matter is within the one or other jurisdiction, they are inappropriate and impracticable.

In matters of private or ordinary public law, the question is somewhat different; but however desirable certainty and uniformity undoubtedly are, the occasional resort to subtleties of distinction or bland disregard, in one form or other, of incompatible rulings, does not add to the stature of judicial process.

Absence of Limitations

The absence of express constitutional limitations to legislative action has not remitted the individual to the sometimes precarious and sluggish security of public opinion and legislation.

The matrix of legislation in a common law parliamentary sovereignty is instinct, with the paramount purpose of sustaining democratic institutions, toward which the judicial process of interpretation should be both responsive and resourceful. The urgency for their effective assertion comes into play in times of stress and danger; it is then, in the confusion of fear, distrust and fanaticism, that voices uttering the deep postulates of free men should be heard and felt. Reason and judgment in the popular mind may be overwhelmed by passion, but their stronghold, the courts should be their last entrenchment.

Notwithstanding the means for subversion in the differentiated and massive interdependent functions of today, the integrity of men seems to be relatively maintained; and in the present stage at least, it is loyalty to these profound ideas upon which modern democratic societies must rely for their cohesion and security.

Future Alone Knows

Whether free appetites, passions, minds and wills may ultimately prove incompatible with sustained order, and modern democracy in stress be found to be inherently unstable, can be revealed only by the future. The present period is one of heterogeneous society in adjustment. We must believe that the resources of men under intelligent leadership are adequate to the demands now being made upon them; but their employment must, I think, be in the direction of a consolidation of a society that senses, in humility, generosity, freedom and responsibility the conditions of peace and stability.

But the preservation of these values cannot be confined to the courts. In this, the duty of educational institutions becomes of the highest importance.

May I be permitted to recall several incidents in the modern history of this University which have given it an added lustre: the academic attitude that enabled two members of the faculty of law — in opposition to the public finding of the then president as a member of an investigating commission — to protest a failure of justice in the courts of this Commonwealth; the refusal of the University to participate in the Nazi commemoration of the founding of one of Germany's historic seats of learn-

ing; and the answer of President Conant to the proposal of battering academic independence for financial assistance from alumni.

Must Not Lessen

This stronghold of Truth cannot afford to lessen in the slightest degree the intensity of its light that serves as a beacon not only to North America but to the entire world. Dangers that threaten freedom of expression abound in all directions; that ideas and their utterance should not be boundless is an affront to the intellectual grandeur which has brought man to his present powers, and an offence to his innate self-respect; and if a guest, as well as one who claims this university as *alma mater*, may presume to say so, it is Harvard's special obligation as a trustee of Western civilization to abate not a jot of its loyalty to such standards.

To speak freely on any subject has been assailed from many quarters; institutional, community and group pressures operating through social and economic sanctions are producing a miasma of apprehension and distrust, and men are seek-

ing safety in silence. Radical, critical speech is a sign of intellectual vitality which saves us from a suffocating mediocrity; and low-spoken satirical exchanges between scholars within the shelter of cloisters are not enough. There are outbursts, indeed, of protest, but at times they remind one of Macaulay's jibe at the "periodical fits of morality" of England.

Won by Risk

The freedoms we enjoy were won by men prepared at the risk of life and liberty, to beard the brief authority sitting in judgment upon them; but are the Lilburns today guarding the ramparts to challenge those who would straight-jacket us into conformity? Must the individual be left to be crushed by these pressures? The social tyranny of extorting recantation, of ostracism and virtual outlawry as the new means of coercing the man out of line, is the negation of democracy.

Much of present western society demonstrates the truth of the saying, that wolves fight in packs but the lion fights alone. Corporate power in too many departments of life has become dominant and, for

security, we are tending to look to some such guardianship.

Notwithstanding, in other circumstances, its reality and supreme value to hungry and impoverished man political liberty may become a meaningless symbol, a song addressed to the ears of the dead. The many national courses, now under way, may well turn into parallel parades of competition in the production of gadgetry, and the inner resources prove to have neither depth nor permanence. But, whatever the future may bring forth, as the condition of realizing the possibilities of general government by intelligence, mankind must be reconciled within itself.

In the Commonwealth that bore Emerson, his words may with benefit be recalled: "There is no great and no small to the soul that knoweth all; and where it cometh all things are, and it cometh everywhere." As Justice Holmes expressed it, repose is not the destiny of man. In the grip of unrelenting strife, with tempting and negating forces, he must achieve that reconciliation or risk extinction.

Alumni Notes

S.J.D. '25 — Maurice H. Merrill, Research Professor of Law at the University of Oklahoma, is the author of a book, *The Public's Concern with the Fuel Minerals*, published by the Thomas Law Book Company, 209 North Third Street, St. Louis 2, Missouri. The forward is by Dean Roscoe Pound.

LL.B. '35 — Ernest L. Mortenson is the author of *Federal Tax Fraud Law*, published by the Bobbs-Merrill Company, Indianapolis, Indiana. Mr. Mortenson is also the author of the *This Week Magazine* series "What's the Verdict?"

LL.B. '50 — Harvey Greenfield has been elected Assistant Secretary of the Citadel Life Insurance Company of New York and Vice President, Secretary, and Director of the Financial Programs Corporation of America.

LL.B. '52 — Frederick M. Mars has formed a partnership with Bernard L. Burton and Burton H. Mars to engage in the general practice of law at 31 Oak Street, Patchogue, New York, and 69 West Main Street, East Islip, New York.

LL.B. '54 — Louis M. Kaplan has recently resigned as an Assistant United States Attorney for the District of Columbia and has become a member of the newly organized firm of Bonner, Kaplan & O'Connell with offices in the Mills Building, Washington, D. C.

LL.B. '56 — Sompong Sucharitkul is the author of a book *State Immunities and Trading Activities* published by Frederick A. Praeger, Inc., 15 West 47th Street, New York.

FEATURES SECTION

The Return of Legal Poets

Students at the Law School today, it is said, do not have as much fun as those of former years (even though they cannot take their studies more seriously than students of 25 years ago, since intensity of application seems to be a tradition of more than recent origin). If poetic expression can be taken to illustrate the *joie de vivre* of the community, this may be true. Spirit is reflected by students from time to time in the form of verse, for the poetically gifted do not lose their inspiration under the steady barrage of cases. Yet, apparently, today's student does not express his ideas in this way as enthusiastically as those of a quarter of a century ago.

Twenty-two years ago a little book, entitled *Langdell Lyrics of 1938*, appeared at the Harvard Law School. It was edited by Professor W. Barton Leach, and printed for private distribution by the Foundation Press, Inc., in Chicago. Those visiting the Root Room in Langdell Library will find a copy of this, with its pages yellowed and torn from frequent handling. Between the covers of this little volume are 16 poems of varying length and quality by both professors and students. These suggest that in that day the case material, particularly in the course in Future Interests, encouraged, or provoked, the students to rhyme.

Wondering if all poetic outpouring in the Law School could be encompassed in one little book, we approached Professor Leach and were rewarded with still other verses, both contemporary and subsequent to the original book. Recent poems, however, with a few exceptions, seem to be non-existent or well hidden. With the kind permission of Professor Leach, we shall here reprint a little of the verse appearing in his book, along with other poems not found therein.

One need spend little time in the classrooms of Langdell or Austin

to discover the Rule Against Perpetuities. It is not surprising, therefore, that early versifiers found it worthy of their efforts. The editor noted, with respect to the following poem, that it resulted from a reading of *Scatterwood v. Edge*, 1 Salk. 229 (1699), where the reason for measuring the period of perpetuities by any reasonable number of lives is suggested, "for Twisden used to say, the candles were all lighted at once." (quoted on page 12. Ed. Note: page references are to *Langdell Lyrics of 1938*):

DO YOU RULE YOUR PERPETUITY?

Lives plus one-and-twenty years,
The learned fathers thought,
Should be the time for vesting
Or the gift would come to naught;

As many lives as are ascertained
Without undue delay,

For you light the candles all at once,

As Twisden used to say.

This was to keep the land well oiled

And free to come and go,

For a dead man's hand must idle be
And his mind works awful slow.

This poem of anonymous authorship was followed by another, also contributed by one who remained nameless. The book had been pub-

lished three years when the following verse suggested that the difficulties of the Rule had not been solved for later students. Appearing under the pseudonym of Kill Joycemer, the poet voiced his despair:

FORESTS

I think that I shall never see
A simple perpetuity;
A comprehensible bequest;
Devises where remainders vest;
A clause whose words are plain as day
And mean precisely what they say;
A state where Shelly doesn't care
To rise and shout, "Is 'B' an heir?"
A case where dying men refrain
From making lawyers share their pain.
If wills are made by fools like me,
Not even God can take a fee!

One hardly could take his theme from *Langdell Lyrics* without giving recognition to the contributions of Mr. Donald G. McNeil, whose material forms such a great part of the book. We are told by his Property professor of those days that Mr. McNeil is now in practice in California, and perhaps his muse is quiet. In 1937 and 1938, however, his muse was lively and

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his pen was sharp. His poetic productions reflect the progress of the class through the third year course, but only a hint can be given here of the range of his verse. His first contribution was in response to Baron Turton in *Reeve v. Long*, 3 Lev. 408 (1695), and is so well known around the Law School that it needs no repeating here; but he soon was heard again over *Colburn v. Burlingame*, 190 Cal. 697, 214 P. 226 (1923). The case is described as follows by Professor Leach:

"... Leslie Colburn left an estate of about \$90,000 to his wife, Leora, for life, and then to his brothers and a sister-in-law, but with power in Leora to use the whole or any part of the principal which in her judgment should seem best "for her own individual benefit and support." Leora, after a decent interval, married one Merten S. Burlingame and for a short time lived with him in Chicago. Then they moved to California, Leora and Merten living off the principal of Leslie's money. The remaindermen brought a bill in equity to enjoin this dissipation of the fund; but the Supreme Court of California ruled that such a use of principal was within the terms of Leslie's will. Said the Court: "Having ample means, the not unnatural desire arises in her to remove to California, or at least to live there during a part of the year. Should she leave her husband moiling and toiling in Chicago? Presumably she concluded that it would be for her benefit that he should accompany her west. We can readily perceive that it might be much to her advantage that he should do so." (page 2)

The poet could not let this pass unnoticed and he wrote as follows:

NOBODY LOVES A REMAINDERMAN

Breathes there a wife with soul so dead

Who to her husband has not said,
"Come, my love, and stop this toiling.

Cease this so plebian moiling.

Leslie's dead. O Gee! O Joy!

Let's not rot in Illinois.

Leslie's dead, and with his shekels
We'll spend winters raising freckles.

So, remaindermen, we warn ya
We are off to California."

Professor Leach explains that he read this to a later class with the statement that it had not been topped and someone accepted the challenge. How well the anonymous challenger did may be judged from his work:

MEDITATIONS OF A LIFE-TENANT

Tell me not in mournful words
or numbers

That I'm meant to spend this life
in toil;

Leslie's gone now — good old Leslie slumbers,

Safely resting 'neath four feet of soil.

On his little play the final curtain
Dropped; he wouldn't want my
useless tears.

I'll pack my brown valise and
marry Merton,

And find a place to help us shed
our years.

California, Earthy Eden,
You've got what Chicago lacks:

Screen-stars, two-year-olds with
speed, and

Savings on the income tax.

(Two stanzas omitted)

(We'll) spend our time in footloose
flitting,

Yield ourselves to gay caprice;
We will find our fun committing
Depredations on the res.

We will satisfy our craving,
Kill the corpus bit by bit,
Run through Leslie's hard-earned
savings

For my "support and benefit."
Since the will was drawn with
kindness,

We will have ourselves a time,
And, departing, leave behind us
For remainders — not a dime.

Mr. McNeil was also the center of a misunderstanding as a result of which another student signed himself "Friday Poet," wrongly blamed him for claiming undue credit and used the following words:

(Title and two stanzas omitted)

I call upon the angry Muse:
May she rise in wrath and bruise
That literary beast of prey
Who styles himself "Man Saturday"!

May he never have a fee!
May his poor posterity
Pay the price in all the courts
For everybody else's torts!
May he be forever sued!
May his will be misconstrued
By some untaught judicial pest
So no remainders ever vest!
May he make a void devise!
Give his heirs a nice surprise
When debts and taxes decimate
The greater part of his estate!
And if a lawyer he should be
(Doubtful as this seems to me)
May the rascal starve and freeze
Living off of ten-buck fees!

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Property is not the only subject which stimulates the versifier, nor is Harvard Law School the only home of the legal poets. The RECORD, on March 4, 1954, printed a poem of near-epic proportions dedicated to Rose of Aberlone, a pregnant cow that was the subject of an action of replevin in *Sherwood v. Walker*, 66 Mich. 568, 33 N.W. 919 (1887). Brainerd Currie, Professor of Law, University of Chicago Law School, was the poet, and the poem deserves to be read in its entirety. An excerpt, however, will have to suffice. The case involved rescission, for mutual mistake, of a contract for sale of a cow, thought by the seller to be barren.

....
'Tis surely the animal seventh heaven
To be the res in a suit of replevin!
To be enshrined in a casebook — truly,
This is the bovid ultima Thule.

....
Bethink how Rose's heart was thrilled
And how her being was fulfilled,
How mad with ecstasy she went
When she was found parturient —
....
And even the reluctant drone
Must cope with Rose of Aberlone,
She rules the cases, she stalks the page

Even in this atomic age.

A situation familiar to students using Professor Lon L. Fuller's casebook in Contracts appears in *Kirksey v. Kirksey*, 8 Ala. 131 (1845). In a letter headed, "Dear Sister Antillico," a widow with her children was induced to leave her comfortable home to live on her brother-in-law's farm, but two years later she was unceremoniously asked to leave. Action in assumpsit followed, with the widow losing upon the appeal. Professor Clark Byse contributed the follow-

ing, which was written by a student at the University of Pennsylvania Law School, in 1951.

Gather 'round me my friends and listen to me

While I spin you the tale of a poor promisee.

She lived in the country, her husband had died.

The brother-in-law wrote, "Come, be by my side."

He promised her a home and some land to tend,

And gave her to believe all sadness would end.

For two wonderful years she lived in his house,

And cultivated the soil without benefit of spouse.

At the end of that time the brother-in-law said, "Go,"

So she came to the courts with her tale of woe.

The arguments lasted for many a day,

And the Judge finally gave his decision this way.

"You have suffered a lot, my dear," said he,

"But the promise was a mere gratuity.

No contract arises in such a case
Cause no consideration appears on its face.

Legal detriment there was and this to be sure,

But unless it was bargained-for I cannot concur

That a contract there was between you and the other,

Dear Sister Antillico and your in-law brother."

The search for later verse at the Harvard Law School continues and

contributions are solicited. Until such time as they appear, however, we shall rest with another offering from the pen of Mr. McNeil, who ended his poetic career at the Law School with the following:

A FAREWELL TO POESY

"If winter comes, can spring be far behind?"

Asked Shelley, *in a hopeful frame of mind.

For Shelley had the fruit and not the rind,

When spring came Shelley didn't have to grind.

For me, I cannot heed spring's incantations,

From me there'll be no fruity emanations,

My dirge is in sepulchral intonations:

You take the spring; I'll take examinations.

**An early nineteenth century poet, magnificently unconcerned with whether "heirs" should be construed as words of purchase or words of limitation.*

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Letters to the Editor

To the Editor:

It is encouraging to see that the RECORD has finally adopted a forceful style in an editorial. "Confusions and Contusions" presents a delightful change from your recent meek editorial on extension of the parietal hours. (December 17, 1959)

Because of periodic changes in officers and staff members, it is probably difficult for the RECORD to be consistent in its attitude on any particular subject over a long period of time. However, in any given publication, one would think that you would coordinate your writers to guard against inconsistencies which would weaken the force of your editorial. With this in mind, it is interesting to note that in your last issue, on page nine, you asserted that the Dormitory Council should be abolished because it serves no significant function, and on the very next page you had a feature section, complete with pictures, on the active intramural basketball league, which is organized and coordinated by the Dormitory Council.

Not only did the inconsistency of the sections bother me, but also I was troubled by your failure to discuss many of the Council's activities in your editorial. You neglected to mention that your organization sponsors the football, basketball and baseball leagues of the Law School, that it is in charge of solicitations in the dormitories for the annual charities

drive and that it sees that the hi-fi and TV in Holmes are in working order. Furthermore, public phones in the dormitories are made possible because the Council guarantees a minimum collection rate and makes up all deficits, which in the past have been considerable. Also the Council is in the process of providing pads and pencils for these hall phones. Moreover, it provides a structure whereby student opinion and desires may be communicated to the administration.

The effectiveness of our negotiations has recently been demonstrated by a change in the lavatory equipment of the new dormitories, not to mention aboli-

tion of the "sign-in" rule of last year. Student gripes on Harkness, parietal rules, inadequate lighting in the center section of the library, and inadequate student parking facilities are only some of the items that the Council has been discussing with Deans Toepfer and Bevins.

Thus it seems that the RECORD reached its conclusion only because of an inadequate sampling of our work. But the editorial has been of some value; for it has given

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the Council a great deal of unsolicited publicity and has afforded it an opportunity to show what it has been doing.

Very truly yours,
Walter M. Strine, Jr., President,
Law School Dormitory Council

To the Editor:

The course in Commercial Law is not an easy one. Different teachers place stress on various aspects of the subject. Some rely heavily on the Uniform Commercial Code, while others concentrate on the several other uniform acts (ie. Uniform Sales Act, Uniform Partnership Act, Negotiable Instruments Law, etc.).

Many of our students come from states where the U.C.C. has not been adopted and will not be adopted for a long time. It seems unreasonable to require them to become familiar with a practice that they will have to unlearn when they return home and begin practice.

Perhaps it would benefit our students more if the course were divided into sections, based on the areas of the country in which the student intends to practice. This is especially important for people who intend to practice in New

York, where a law revision commission has specifically rejected the Uniform Commercial Code.

It would be interesting to know if many of your readers agree with the opinion expressed above. I urge them to communicate their ideas to the administration through your office.

— Name Withheld
by Request

Calendar

Continued from page 2

Hall or may be purchased at Sanders Theater that evening.

Wednesday, March 9

The **LAW SCHOOL REPUBLICAN CLUB** will hold a luncheon meeting in the Mallory-Smith Room of Harkness Commons at 1 p.m. Professor William Y. Elliott will speak.

The **HARVARD LAW WIVES** will hold their annual fashion show, "Forecast: Fair and Warmer," in the large meeting room of Harkness Commons at 8 p.m.

The **PATENT LAW CLUB** will present Mr. Elmer Gorn, Chief

Patent Counsel for Raytheon, at 8 p.m. in the Wheeler Room, Holmes Hall. The topic of his address will be: "Turning Ideas Into Patents."

Future Events

The **INTERNATIONAL LAW CLUB** will meet on Friday, March 11, at 4 p.m. in the Wheeler Room, Holmes Hall. Mr. Israel Gal-Edd, Deputy Director of Internal Revenue of Israel's Ministry of Finance, will speak on "Some Considerations About Double Taxation Conventions Between Developing and Industrialized Countries."

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UNIVERSITY — The Gazebo — 3:00, 6:15, 9:30; The Man Upstairs — 1:30, 4:45, 8:00.

BOSTON

TELEPIX — Grand Illusion — 11:30, 1:20, 3:13, 5:18, 7:23, 9:28.

EXETER — The Magician — 2:00, 3:50, 5:45, 7:35, 9:30; This Is Farmborough — 3:40, 5:30, 7:25, 9:15.

UPTOWN — Cash McCall — 11:15, 2:40, 6:05, 9:30; Stage Door — 1:00, 4:25, 7:50.