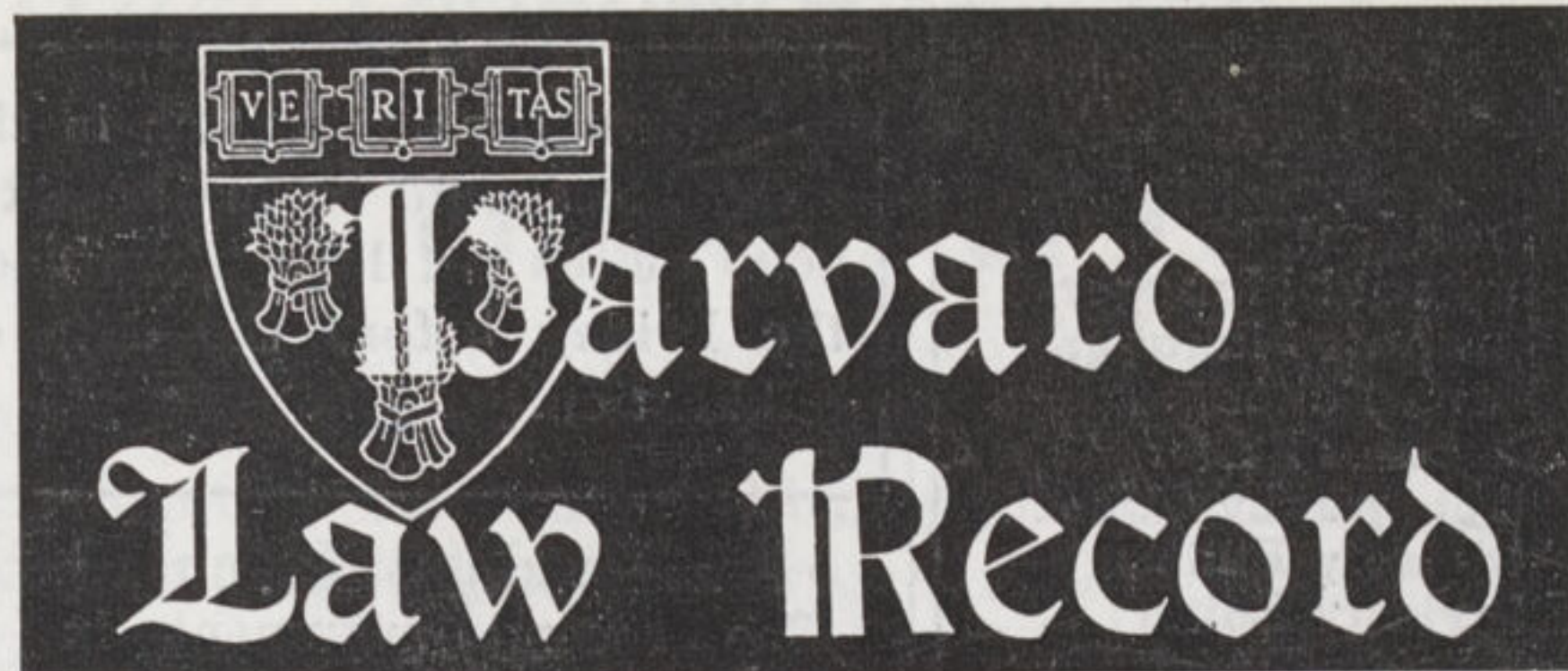




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NO .7

Press and the Public

Lester Markel, Editor of the Sunday edition of the *New York Times*, spoke last week to a Law School audience at the Coffee Hour on the subject of "The Press and Public Opinion." He stated that the essential job of the newspapers was to print news, and that most of them were not doing that effectively today.

Mr. Markel noted the following four important molders of public opinion: the public press, including all methods of communication; the government; schools, colleges, and universities; and citizen groups. He directed his remarks principally to the role of the newspaper, within this framework, in influencing public opinion.

That role, he pointed out, is the printing of news, and there is no job for the newspaper unless it does that. He illustrated the problem with a current criticism of television, i.e., that it provides too much entertainment and not enough information. Newspapers are subject to the same criticism, but their failure is more serious, since they have a more important role in providing information.

Contrast Two Mediums

Mr. Markel contrasted television and the newspaper by comparing the use of "emphasis" in the two communications mediums. Television, he remarked, is all "page one," while any emphasis that does exist goes to commercials. For newspapers, however, the problem of emphasis never ends. Almost everyone reads the story on the first page, but that on page 53 goes unnoticed. The same considerations affect each simple news

article as well, for the first paragraph receives the attention that the last one loses.

This consideration of "emphasis" is the crux of his present crusade for front page "interpretation." He noted three elements making up newspaper presentation of news—the facts, interpretation, and opinion. And he stated that the reading public needs more than merely the facts to understand the contemporary scene. His struggle is with

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H. Thomas Austern, Former Review President, Will Deliver Lecture

"Sanctions in Silhouette: What the Administrative Law Practitioner Has to Meet in Practice, as Illustrated in the Enforcement Techniques Under the Federal Food, Drug and Cosmetic Act" is the impressive title of the second annual Charles Wesley Dunn Food and Drug Law Lecture, to be delivered next Tuesday, March 22, at 2 p. m. in the James Barr Ames Courtroom.

Of particular interest to Administrative Law students, the lecture this year will be delivered by Mr. H. Thomas Austern, LL.B. '29 *m.c.l.* Mr. Austern is a senior partner for the firm of Covington & Burling in Washington, D. C. While at the Law School, he was president of the *Harvard Law Review*. Later he was a law clerk for Mr. Justice Brandeis and for Judge Mack. Since 1942, Mr. Austern has been the Chief Counsel for the National Canners Association.

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Hearsay

Last month the *Columbia Law School News* was chided in this spot for its false claim to being "America's Oldest Law School Newspaper." The Columbia editors replied on March 2, when their bi-weekly contained the following:

Our present contention is grounded on merit
The title is ours, and they'll never share it;
A six-by-nine newspaper I've never seen,
That's no newspaper, it's a short magazine,
And their polemics we're no longer fearing,
Since they come to, at most, just pamphleteering.
They may have us beat in number of pages,
But the News, we say, now's the product of ages.

It should be only fitting that we reply to such poetics by likewise calling on the Muses:

Columbia's off on a farcical caper,
Dubbing the RECORD not even a paper,
Dreaming of plaudits that come to the old,
But leaving the heart of the matter untold.
According to Webster, or so we can gather,
It's substance, not form, that's the crux
of the matter.
Facts, not noise, are what we anoint
As the guides to heed, for the case in point.

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 17

The second argument in the AMES QUARTERFINALS will be held between the Dawson and Gardner Clubs in the James Barr Ames Courtroom, Austin Hall.

The HARVARD DRAMATIC CLUB will present Voltaire's "Candide" in Agassiz Theater at 8:30 p.m. on March 17, 18 and 19. Tickets can be obtained at the Coop.

Friday, March 18

The INTERNATIONAL LAW CLUB will meet at 4 p.m. in the Wheeler Room, Holmes Hall. Mr. Kurt H. Nadelmann, a member of the United States' observer delegation to the Hague Conference on Private International Law, will speak on "Current Work on the Unification of Law in the World."

The HARVARD - RADCLIFFE ORCHESTRA will present a concert in Sanders Theater at 8:30 p.m. Tickets can be obtained at the Coop.

Sunday, March 20

The DORM COUNCIL will present a program of folksongs with Norwood Beveridge, IL, at 8 p.m. in the Wheeler Room, Holmes Hall.

The FORD HALL FORUM will present C. Northcote Parkinson, noted British teacher and author, speaking on "Parkinson's Law" at 8 p.m. in Jordan Hall.

Monday, March 21

The third argument in the AMES QUARTERFINALS will be held between the Bruce and Jaffe Clubs in the James Barr Ames Courtroom, Austin Hall.

The INTERNATIONAL LAW CLUB will meet at 8 p.m. in the Pound Room, Langdell Hall. Dr. C. W. A. Schurmann, Permanent Netherlands Representative to the United Nations, will speak on "The

(Continued on page 16)

Problems of Foreign Taxation Rights

"Many economists and businessmen claim that underdeveloped countries should encourage foreign investment by waiving their taxing rights toward income earned by foreigners in the under-developed area; that what is good for the capital-exporting country is good for the capital-importing country. I think that a strong case can be made for the proposition that the situation is just the opposite." This was among the points made by Mr. Israel Gal-Edd, Deputy Director of Internal Revenue of Israel, who spoke on "Double-Taxation and the Underdeveloped Countries" at a discussion group meeting of the International Law Club last Friday.

Mr. Gal-Edd, who is presently working with the International Program in Taxation, began his presentation with a sketch of the basic problems of double taxation. International income taxation rests primarily on two bases; the taxing power of the country in which the corporation is a resident and that of the country in which the income is earned. Since the residence state can tax all income from any source and the source state can tax all income earned through "presence" within the state, there is frequently double taxation of income earned by firms doing business abroad. The way to prevent the double burden is to have one country give up its right to tax to a certain extent or to give a credit or deduction on the tax paid to the other country. These measures can be taken unilaterally or by way of bilateral agreement through a treaty.

Various Arrangements

Many countries, such as the United States and the United Kingdom, have taken measures unilaterally. But most countries want to make arrangements bilaterally through treaties. The early treaties, such as those between the United Kingdom and her dominions, seemed to favor the residence state — the source state could tax only such items as wages and royalties paid the taxpayer. But the more recent treaties between independent states have, as a rule, given the source state the right to tax any income earned from tangibles within the state or through a permanent establishment in the state.

However, this arrangement still creates problems for the source state which is usually an underdeveloped state. The fact that certain types of income are exempted because they establish less connection with the source state gives the residence state a toe-hold from which it can argue that other closely similar types of income from tangible sources should not be taxed.

Also, the stronger bargaining position of the creditor in the residence state enables



Mr. Gal-Edd

him to force the debtor to arrange the transaction so that it is in a form that the source state cannot tax or that the debtor can pay the tax himself. Moreover, in some cases the more desirable type of transaction is the one that is taxable, because it establishes the closer connection with the source state, and thus the more desirable transactions are discouraged.

Best Solution

This has led some commentators to suggest that the best solution is for the source state to waive its taxing power so as to attract foreign capital, but Mr. Gal-Edd feels that the

only solution lies in treaties that are fair to both parties.

He feels there are flaws in the argument that what is good for the capital-exporting company is good for the underdeveloped country. The first flaw is found in the fact that to be consistent the residence country will have to waive its taxes on sources also, and many of these countries still have a great deal of foreign capital invested in them and may have more in the future. The second is that the residence countries must meet competition with other capital-exporting countries that have more liberal arrangements. The third point is that, in countries where the government gives tax credits, only the resident government will profit and not the resident business.

Moreover, Mr. Gal-Edd sees a tendency among businesses to treat the source taxes as more "natural" than those of residence. He cited the example of many English firms which preferred to move their residence to avoid double taxation than move their business holdings.

World-Wide Treaties

Many agencies have tried to solve the problem of double taxation by arranging tax treaties between all the countries of the world. In 1923, the League of Nations started a campaign toward this end which was later carried on through the International Chamber of Commerce and is now being handled by the O. E. E. C. Mr. Gal-Edd feels that the O. E. E. C. does valuable work, but that it overlooks the fact that treaties that may be fair between two industrialized countries would not be proper between an industrialized country and underdeveloped one.

Mr. Gal-Edd feels that it may be good for an underdeveloped country to make treaty arrangements with a highly industrialized nation, but it should never rush into this blindly — without asking "With whom?" and "For what purpose?" When there are so many countries which give relief unilaterally, there is no reason for making treaties unless it is to the source country's advantage. If the residence country is willing to make certain exemptions as to the taxing of foreign income altogether or to recognizing the source country's tax-sparing plans, there is good reason to make a treaty.

Concessions regarding the nature of the income taxable at the source would also sup-

ply a reason for a treaty. Moreover, the prestige of association with the country and provisions for cooperation and exchange of information between the two revenue systems would be valid inducements for a bilateral arrangement.

Mr. Gal-Edd concluded by admitting that, although he had begun by criticizing the grant of advantages to industrialized countries in treaty-making, he had probably ended by advocating granting them to the underdeveloped ones. But he added "I do not apologize for this. Laws of taxation do not exist in a vacuum; they are part of the economic life of individuals, businesses, and the nations of the world. Many nations are convinced that their own self-interest lies in assisting the underprivileged both at home and abroad. If taxation can be used in this endeavor — so much the better!"

— Baron

Legal Aid Banquet

Thurman Wesley Arnold, LL.B. '14, and at one time, an advisor to Franklin D. Roosevelt, employed statistical and legal analysis in demonstrating his appealing thesis, "Why the Harvard Legal Aid Bureau Is Good," to the Harvard Legal Aid Bureau at its annual banquet, held recently at the Signet Society in Cambridge. Mr. Arnold's thesis was overwhelmingly endorsed by the assembled Bureau members.

After an introduction by Professor Louis Loss, Mr. Arnold, who was an Associate Justice of the United States Court of Appeals for the District of Columbia from 1943 to 1945, stated his propositions. He pleaded for retirement of judges upon an affirmative vote of a majority of lawyers who have lost cases before them, for new law associates who will fade like cheshire cats after three years of practice (because his firm is becoming too large), and for further consideration, amplification, and documentation of his irrefutable thesis that the Legal Aid Bureau is, indeed, good.

The occasion was dignified by the presence of various Law School professors and distinguished alumni of the Legal Aid Bureau, among whom were two justices of the Massachusetts Supreme Judicial Court, Raymond Sanger Wilkins, C.J., LL.B. '15, and R. Ammi Cutter, A.J., LL.B. '25.

Schedule for Next Year

Lon L. Fuller and William E. McCurdy, Professors of Law, will not teach *Contracts* next year to entering students, because Professor Fuller will be on leave and Professor McCurdy will retire. Assistant Professor Stephen M. Schwebel and Professor Kessler will take over these two sections of *Contracts*.

Professor Livingston Hall will teach *Commercial Law* to second year students next year instead of *Criminal Law*. The second year will have a fourth section of *Administrative Law* and of *Taxation* to continue the Law School experiment with smaller classes. A new seminar in the *Legal Profession* will be offered by Professor Robert Braucher.

Three new courses and five new seminars will be added to the schedule for third year students next year. The new courses are *Legal Methods in International Disputes*, given by Roger Fisher, Lecturer on Law; *Taxation and Public Finance Respecting International Trade and Investment*, given by Stanley S. Surrey, Jeremiah Smith, Jr., Professor of Law; and *Comparative Contracts*, given by Arthur T. von Mehren, Professor

of Law. The new seminars are *International Administration*, given by Louis B. Sohn, Professor of Law and John Harvey Gregory,



Professor Fuller — on leave next year

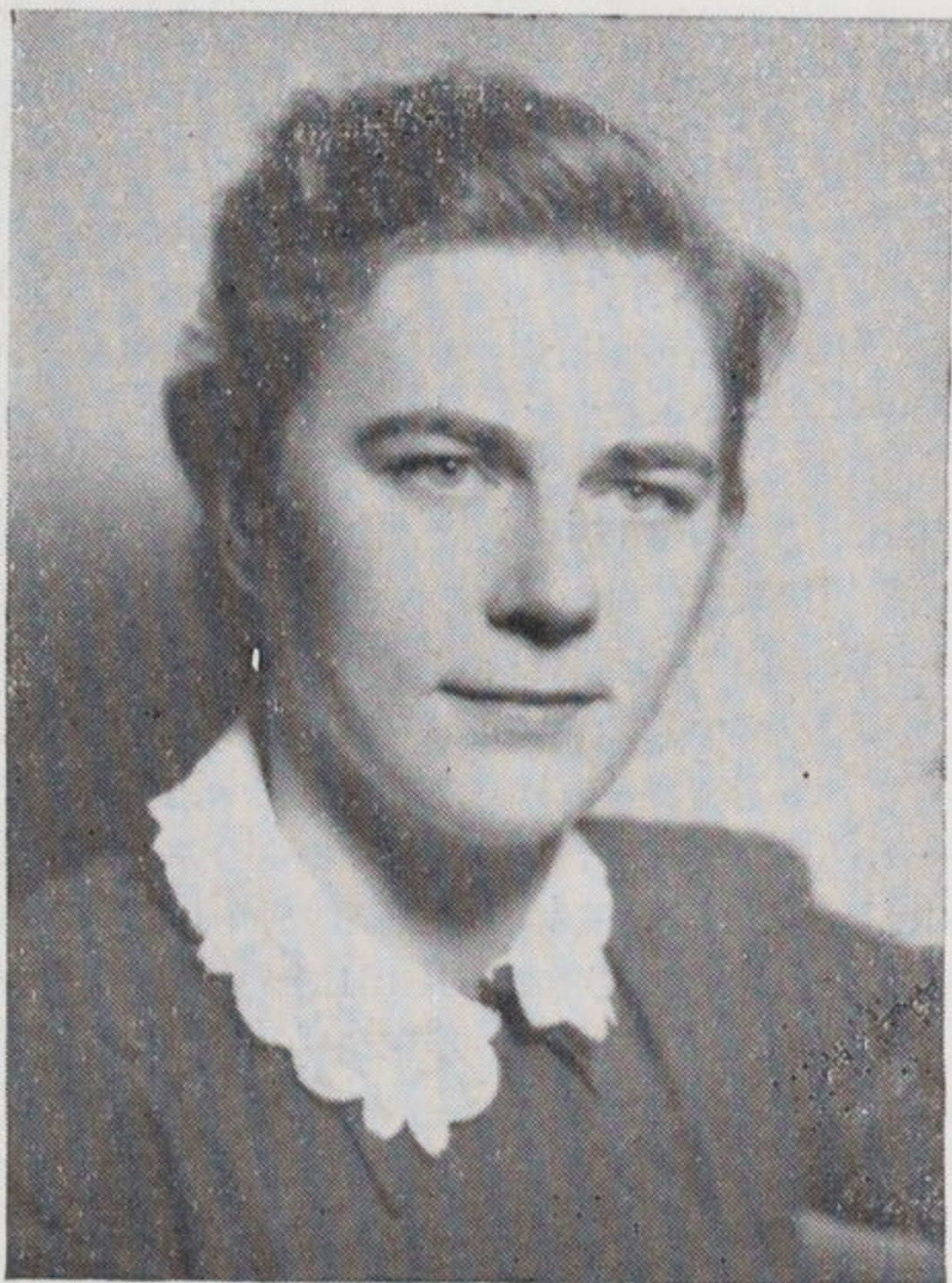
First Year				
	I	II	III	IV
Agency	Hall	Hall	Cox	Braucher
Civil Procedure	Sacks	Chayes	Field	Fisher
Contracts	Byse	Schwebel	Kessler	Dawson
Criminal Law	Kadish	Hart	Bator	Baxter
Property I	Casner	Leach	Leach	Haar
Torts	Keeton	Katz	Mansfield	Jaffe
Second Year				
	I	II	III	IV
Accounting	Herwitz	Vagts	Trautman	
Administrative Law	Jaffe	Byse	Areeda	
Commercial Law	Sutherland	Braucher	Hall	
Constitutional Law	Brown	Sutherland	Freund	
Corporations I	Chayes	Loss	Vagts	Sander
Taxation	Griswold	Brown	Surrey	
Trusts	Scott	Scott	Ratner	Bator
Electives				
Anglo-American Legal History		Howe		
The Civil Law System		von Mehren		
Comparison of Soviet and American Law		Berman		
English Legal History		Thorne		
Jurisprudence		Kessler		
The Legal Process		Hart	Sacks	
The Legal Profession		Braucher		
United Nations Law		Sohn		

Lecturer on World Organization; *International Legal Process*, given by Lecturer Fisher; an *Administrative Law Seminar on Air Transport*, given by Clark Byse, Professor of Law; *International Corporations*, given by Abram J. Chayes, Professor of Law; and an *International Business Seminar on the Law of Money*, given by Harold J. Berman, Professor of Law.

Professor Chayes is teaching an extra heavy schedule for the next three terms, so that he can devote the spring term of the 1961-1962 academic year to writing and research without any teaching duties. This is an experiment to determine whether or not it is desirable for professors to alternate between periods of concentrated teaching and periods of uninterrupted research.

The courses scheduled to be taught by Professor Berman may be changed if he receives final clearance to spend next year in the Soviet Union.

Soia Mentschikoff Will Speak Here



Professor Soia Mentschikoff

Professor Soia Mentschikoff of the University of Chicago Law School will address the Student Bar Association on Wednesday, March 23, at 1:40 p. m. in Harkness Commons. Her subject will be a comparison of

the decision making process as practiced by the courts and by arbitrators.

Currently doing experimental work on a program in arbitration at the University of Chicago, Professor Mentschikoff was a visiting professor at the Law School from 1947 to 1949. She was the first female member of the faculty, at a time when women were not admitted as students.

With her husband, Professor Karl Llewellyn, she contributed greatly to the drafting of the Uniform Commercial Code. He was Chief Reporter and she was Associate Chief Reporter.

Press and the Public

(Continued from page 1)

those who fail to recognize the distinction between interpretation and opinion and would restrict both to the editorial page. He pointed out that interpretation consists of the objective reasons for the reported fact, while opinion is subjective, and he indicated his endorsement of "interpretation" under certain other designations, such as "background," or "reporting in depth."

No Foreign News

The public must be made to realize that there is really no foreign news today, said Mr. Markel, since all news in effect is now local news. Events in Indonesia tomorrow can very quickly affect the boy next door. Unless the issues are simplified, however, the public cannot understand the mass of information which is immediately important. The simplification of issues, therefore, is crucial in the education of the public and is the result of careful interpretation, including judicious selection and emphasis.

Turning for a moment to the other sources of public education that he previously had noted, Mr. Markel said that colleges must provide a good general education, the government should present clearer explanations of current policies, and that citizen groups on the order of the Coffee Hour could do much. Elaborating on the potential role of government in molding public opinion, he suggested that press conferences would be more valuable if a number of the questions were submitted beforehand and careful answers prepared. He also advocated more talks of the "fireside chat" variety.

— Winslow

The Political Hippogriff

McCarthyism in Wisconsin Described

A sparkling talk by the Hon. John W. Reynolds, Attorney General of Wisconsin, last week provided about 70 Harvard Law and Grad Democrats with an historical review of the flora and fauna of Wisconsin politics. Highly informal and folksy, Reynolds nevertheless offered extremely frank comments, anecdotes, and personal vignettes on Wisconsin political life.

Reaching back to before the Civil War, Reynolds noted that his state had always been a political hippogriff. For example, partially under the influence of 1848 German Socialists, the state defied the federal Fugitive Slave Laws. Abolition of the death penalty was compelled by juries which simply refused to convict where a death penalty was mandatory. "Milwaukee juries wouldn't hang people, so capital punishment was abolished," Reynolds commented.

Reviewing Progressive Party history during the New Deal era, Reynolds stated that it was "FDR's New Deal political instrument in Wisconsin" until 1938. At that point, the New Deal-Progressive Party alliance broke up over Isolationism. Many Progressive Party intellectuals, then studying at the University of Wisconsin, were compelled to undergo a crisis of political faith and become interna-

tionalists. "World War II finished the Progressive Party in Wisconsin."

Joe Helped Unite

With tongue in cheek, Reynolds, a Democrat, paid tribute to Joe McCarthy as the man who "cemented the Democrats together in a way no other force could" and made of the disunited Democratic Party of Wisconsin a single, organized, viable political group. Thus "Joe McCarthy was responsible for the introduction of a real two-party system into Wisconsin," Reynolds somewhat mordantly observed.

"The Republican Party in Wisconsin was 'brainwashed' by McCarthy," Reynolds charged, and many anti-McCarthy Republicans either left or were expelled from the Party. This group included many University of Wisconsin students as well as some highly respected members of the Wisconsin business community. The President of the Harvard Law and Grad Democratic Club, David L. Adamany, 2L, for example, was expelled from the Republican Party of Wisconsin over the McCarthy issue, Reynolds noted. Another example of alleged "brainwashing" cited by Reynolds concerned the action taken by certain Wisconsin pro-McCarthy Republicans in compelling Eisenhower to delete any praise

FAMILY AFFAIR:

The judges at a recent Ames argument really kept it in the family, the Garber family, that is. These three, father and sons, composed one entire court for a first-year argument.

Mr. Rubin Garber is an attorney in Boston. The twin sons, Paul and Phillip (he's the one wearing glasses) are currently in the second year at the Law School.

There was no report on whether the decision rendered was unanimous or not.



of General Marshall in his Wisconsin campaign speeches. "Ike complied," Reynolds said.

"Joe McCarthy also made Democrats out of the working Press" and softened the attitude toward Democrats of such staunchly Republican but anti-McCarthy newspapers as the *Milwaukee Journal* and the (Madison) *Capital Times*.

Final Contribution

Joe's final contribution to the cause of the Democracy in Wisconsin was, according to Reynolds, "to help the 'Idealists' gain control of the Democratic Party in Wisconsin. Once in, they stayed in control, constantly gaining political experience, Reynolds observed.

Even today, the test of both Democratic and Republican parties in Wisconsin for political advancement is: "Where did you stand on Joe?" McCarthy's contributions to Wisconsin thus include both a sharp polarization of political viewpoint over the McCarthy issue, and the introduction of a real two-party system into Wisconsin.

Passing to the national scene, Attorney General Reynolds warned that Wisconsin is still strongly Republican, even though, in his opinion, McCarthy's ghost haunts Republican smoke-filled rooms. Nixon is popular in Wisconsin, and Reynolds, who has announced for Senator John F. Kennedy, argued that only a nationally-known Democrat with great voter appeal can beat Nixon. Asked about the religious issue in Wisconsin, Reynolds noted that "the only people in Wisconsin who seem concerned about it are the visiting press."

— Camp

Art Time Again

The Third Floor Art Contest, an annual event started by members of the class of 1960 who resided on the third story of Story Hall during the 1957-58 academic year, will again be held, with a showing and presentation of awards from 2:30 to 4:30 p. m. on Saturday, March 26, at 59 Kirkland St., Cambridge. All residents of the third story, Story Hall, during the school years 1957-58, 1958-59, and 1959-60 and all friends of residents are eligible to submit entries in the contest.

Entries must be drawings, paintings, or sculptures in any medium and of any size, but they must have been commenced after the closing of last year's contest, March 7, 1959. Entries must be signed, titled, and

priced; however, signatures, titles, and prices need not be legitimate. No entry may be such as to shock the conscience of the director, William J. Jones, Jr., 3L of South Orange, N. J. Any contestant may submit an unlimited number of entries.

Entries must be in the possession of the contest director by noon on the day of the showing. They may be given to the director, or to either Robert T. Gelber, 3L, Los Angeles, Calif., or Walter G. VanDorn, 3L, of Cambridge, or they may be mailed to the contest director at 69 Wendell Street, Cambridge 38, Mass.

Turning Ideas Into Patents

Elmer Gorn, Chief Patent Counsel for Raytheon, addressed the Patent Law Club last week on the role of the patent attorney in harnessing the patent incentive.

Once a corporation has decided to invest in research to develop products that may possibly be patented, the attorney must make a thorough "state of the art search." This produces guidelines for the engineer as to what paths promise a commercial product that will not be confronted by adverse patent claims.

The patent attorney can be a very effective "catalyst" by working closely with the scientist. Through provocative questioning and skillful probing into the various facets of a specific idea, the patent attorney makes the inventor think in broader and more fundamental terms. In so doing, the patent attorney not only bolsters the potential effectiveness of his patent from attack in an infringement or interference proceeding, but is himself a creative part of the research effort.

Student Bar Tours

The Student Bar Association is conducting its spring series of tours during the next two weeks. The tours will include trips to a mental hospital, a medium security prison, and a federal district court. The program is being co-ordinated by Robert Frome, 2L, Kew Gardens, N. Y. All those interested may contact him at TR 6-7304 to discuss arrangements for transportation.

The schedule is as follows: Friday, March 18, and Monday, March 21 — Metropolitan Hospital for the Mentally Ill; Tuesday, March 22 and Thursday, March 24 — Norfolk Penal Colony; and Friday, March 25 — a federal district court in Boston.

FEATURES SECTION

Court of Chancery's Rise & Fall

England's Court of Chancery enjoyed a long but rocky existence. Before its demise, great men and great principles affecting the law issued from its efforts. The history and developments of this court, described in the following article, can be seen on exhibit in Langdell's Treasure Room between now and April 16.

The current exhibition in the Treasure Room of Langdell Library traces the history of the Court of Chancery of England. Replete with case reports, manuscripts and photographs of some of the Chancellors, the exhibition traces the broad outlines of the history of that court.

Little more than an overall historical development could be expected from an exhibition of this nature, but the effort that has gone into this display presents more than that basic minimum. In short, the display presents the well-known facts about the Equity Court and just enough sidelights to intensify one's appreciation of those facts.

Beginning with the cautionary statement that no definitive history of the English Court of Chancery has as yet been written, a chronological order is followed in the presentation of the material on display up to the demise of the Court, resulting from the Judicature Act of 1873. Along the way, a few generally-held beliefs about the Court are dispersed.

Chancellor's Predecessor

One of these beliefs is that the Chancellor was the king's confessor. This, it is asserted, is not true. The Chancellor's predecessor in Anglo-Saxon times was the king's secretary, a cleric of low rank, who was known as a *pedisequus*, a follower of the king's footsteps or a sitter at the king's feet. The ecclesiastical nature of the office remained until Henry VIII appointed Sir Thomas More, the first of the lawyer-statesmen to become Chancellor, to succeed Cardinal Wolsey.

Prior to this, however, the *pedisequus* had come to be known as the Chancellor during the reign of Edward the Confessor. It was then that he was given a seal to keep. With the keeping of the seal came the function of drawing up all the royal writs and charters, and authenticating them by attaching the royal seal.

The exhibit includes the *Constitutio Domus Regis*, a description of the king's household about the year 1135, which shows that the Chancellor was in charge of the Writing-Chamber and the royal chapel. It was in the Writing-Chamber that the writs were drawn up; from there they would be given to the Chancellor to be sealed. Even at this early stage, he had an extensive power to make new law, since he controlled all the legal remedies in the realm.

Other Authority

The Chancellor also had other authority flowing from his position as an official in the Exchequer, in addition to being responsible for the Great Seal and the Chancery Roll, a record of financial transactions. In the Exchequer, he would act as a judge when cases were presented to it, or he could also act as a judge when he sat with the Curia Regis, the chief royal court, composed of the highest members of the royal household. With the Chancellor in these posi-

tions of authority, it was only a matter of time before the functions of equity would begin to come to the fore.

So it was in the 12th and 13th centuries, when the common law remedies and doctrines became inadequate to the demands of the contemporary society, that a court of equity became necessary. This is not to say that the common law was entirely inadequate to the situation. For, as is illustrated by Bracton's *De Legibus et Consuetudinibus Angliae* (circa 1250), the common law offered a few types of injunctive relief. For example, the writs, addressed in the now-familiar "The king to the sheriff, greeting" form, demonstrate the use of this type of relief by a remainderman asking for the prevention of waste by a doweress in possession, and by an order "not to sell anywhere else in the town except in Prior's market."

Courts More Rigid

Nonetheless, the common law courts were becoming less equitable

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and more rigid; as a result, the opportunity and need for equity became greater. During the 14th century, as is shown by a book from the twelfth year of the reign of Edward II (1319), the Court of Chancery as such made its first appearance. Its "common law" side came first, since it handled the administrative duties connected with lands that came into the king's hands through escheat. Later it was asked to handle matters addressed to the King's Council (the Curia Regis), seeking "extraordinary justice" as an agent of the Council.

This practice of praying for extraordinary relief directly to the king or the King's Council, when justice could not be found in the ordinary courts, had been going on since Saxon times. But it became common only toward the end of the 14th century. A royal writ of 1349 ordering that these petitions should be referred to the Chancellor was intended as a temporary arrangement, but soon the practice of applying directly to the Chancellor, rather than to the King's Council, became established, and the temporary nature of the arrangement fell by the wayside of necessity.

Thus the prayer would be: "To the most reverend Father in God, and most gracious Lord, the Bishop of Exeter, Chancellor of England.

... Considering that he hath no speedy remedy given to him by the common law." (1399) A very common allegation, showing the glory of a bygone day, was that the defendant had too great an armed power for the plaintiff to secure an adequate hearing in the law courts.

Separate Court

About 1440 (the precise date is not certain), the Court of Chancery was established in equity as a separate court, with the Chancellor sitting as the sole judge and

having the power to issue decrees on his own authority. But his jurisdiction was not certain, since its content was determined by the rigidity and inadequacy of the common law courts, rather than by a logical array of principles.

Later, the War of the Roses split the King's Council, and Edward IV had to reconstitute it in 1461 so that it retained its criminal jurisdiction, while the Court of Chancery kept its equitable-civil jurisdiction. Then came the *Act Pro Camera Stellata* (a copy which dates to 1508 is in this display), which strengthened the King's Council (now known as the Court of Star Chamber) in dealing with powerful wrongdoers. The dichotomy became obvious; a conflict in ultimate authority was bound to ensue.

The report of the case *J. R. v. M. P.*, which is on display, shows that the law courts were superior to equity at that time, since Chancery could imprison a party only for noncompliance with its order. This let the law courts continue to settle the legal case, even though the party was imprisoned at the time, thus disregarding an order of the Chancellor directed to one of the parties to stop the proceedings in the law courts.

Start of Conflict

The battle between the two sys-

tems was precipitated by the appointment of Sir Thomas More, the first lawyer to fill the office, as Chancellor by Henry VIII. The King gave as his reason for replacing Cardinal Wolsey the fact that the work of the Court of Equity was becoming so highly technical that a lawyer was needed, but he never gave support to the credence that another possible motive was that the Cardinal had not been able or willing to secure the King's divorce. Luckily, Sir Thomas prevented any open outbreak for awhile through his friendship with the lawyers of the common law courts and his noted dinners where he would make clear to them that equity had to work as he saw it should.

To this tendency of the Court to be eminently practical was added the formal rationale of the Court of Chancery being a court of conscience. This came from the treatise of Christopher St. Germain, entitled *Doctor and Student*, the first English edition of which was published in 1530. Because of this,

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—1:18, 3:18, 5:18, 7:18, 9:18.

UPTOWN—Summertime—11:00,
2:35, 6:10, 9:50; Desire Under
the Elms—12:35, 4:15, 7:50.

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Farmborough—3:40, 5:30, 7:25,
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everything was pointing to an open conflict between law and equity.

Some advances were made in the interim by Sir Nicholas Bacon, Lord Keeper of the Great Seal under Elizabeth I from 1558-1579. He improved the Court's organization and developed some rules of procedure. With the coronation of James I as King of England in 1603 came the appointment of Lord Ellesmere, a strict disciplinarian and great royalist, as Chancellor. Lord Ellesmere, needless to say, took the Court of Equity as being supreme.

Law Courts Advocate

On the other side was the Chief Justice of the Court of King's Bench, Sir Edward Coke. In the case of *Heath v. Rydley* in 1614, Coke made his position clear that the common law courts were supreme. Then, in the case of *Courtney v. Glanvill* (a manuscript of which is included in the exhibition), Coke forced the issue into the open. The manuscript of the decree of King James I in 1616 shows that the Crown decided in favor of Chancery.

From that struggle for supremacy, the history of the Court of Chancery seems to be one of a court on its decline, except for a few significant attempts to save it. After Lord Ellesmere died in 1617, Francis Bacon took the office and contributed a system of rules of procedure that were used until law and equity were merged in the 19th century. Bacon, however, was not completely fair in his dealings. He took bribes and justified his actions in doing so until he was impeached in 1621.

To this corruption could be added the factors of an archaic and inefficient internal organization. From the Master of the Rolls on down through the hierarchy, offices were sought for the income they would produce for the officeholder; in fact, they were freely bought and sold, and granted in fee and in reversion. After investing in their offices, the deputies could recoup their expenses and supplement their poor salaries by charging higher fees for their services. Then, once the parties met these financial burdens, there was the dilatory system of pleading to be faced. No oral evidence was permitted. Other strict rules were followed. One saving factor was that, during the 17th and 18th centuries, a series of developed principles were made into rules of law and a systematic use of precedent was propagated.

Reform Plea Refused

In 1649 came a plea for reform, which the lawyers refused. One suggestion was merger; this, too, was an unthinkable possibility. With the coming of the "Nominated Parliament" in 1653, the end of Chancery seemed imminent, particularly when a law reform committee ordered it abolished. Cromwell managed to save the day for the Court of Equity when he dissolved the Parliament before the committee's order could be considered.

When Charles II was restored to the throne, Chancery was also restored to its former decaying condition. From that time it grew continuously worse until it was abolished in the 19th century. Before that was accomplished, the Chan-

cellors managed to abolish the selling of Masterships and to set a fixed list of fees. They also managed to announce a few decisions which became important in this country as well as in England. (Lord Nottingham, 1675-82, announced what was to become the Rule against Perpetuities in the Duke of Norfolk's Case; and specific performance was allowed on an agreement between an heir of William Penn and Lord Baltimore on the disputed settlement of the boundary between Pennsylvania and Delaware.)

Before the final blow was to fall in the Judicature Act of 1873, the Reform Bill of 1830 improved equity's organization, and the Common Law Procedure Act of 1854 merged law and equity to some degree by allowing some equitable defenses to be interposed in common law actions and by allowing Chancery to take oral evidence.

The exhibition closes with the cessation of the existence of the English Court of Chancery as a result of the Judicature Act.

—Heatter

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Bull and Bear Club Growth

Through Varied Program, Club Stresses Business Knowledge

Once the Harvard Law School student has successfully survived the rigors of the first year, he is apt to think that he can cope with any new subject matter that the designers of the curriculum can dredge up. He often repents this intellectual boldness when, a few months later, he is confronted with those hybrid business-legal courses that so liberally sprinkle the second year of study. Accounting, Corporations, Taxation, Trusts, and Commercial Law raise such spectres as cumulative participating preferred shares, fiduciary obligations of trustees, short and long term capital gains, propriety of dividends, convertible debentures, short sales, and spin-offs. For many Law students these terms and concepts are completely new and often mystifying. The student's familiarity with many of them is often presumed by the faculty, or is glossed over lightly as each is encountered during a class session.

It was partially to fill this real gap in the Law student's knowledge of the workings of the business world that the Bull and Bear Club was organized in October, 1952. As the first President phrased the idea of the Club: "We're saving the boys a trip across the river" to the Business School.

The Club had its genesis in a small group which congregated in the Root Room to scrutinize the daily columns of the *Wall Street Journal* and to discuss the articles currently appearing in *Barrons* and *Forbes*. Their gatherings soon became regular and took on the characteristics of full-fledged "bull sessions," where a handful of students who shared a common interest in the workings and developments of the stock market and related finan-

cial affairs tossed their ideas back and forth.

Purposes of Group

From out of these meetings arose a fully organized Club devoted to discussion of financial matters. It was the intention of the 50 plus members who initiated the Club's activities in 1952 not only to educate themselves in the mechanics of the investment world, thereby filling that wide gap in the Law student's knowledge of business affairs, but also to provide a source of men interested in investment careers for recruitment by Wall Street firms. The organizers realized the importance of the lawyer's modern-day function as financial adviser to his clients and hoped to better prepare Harvard Law School students for this task.

As originally conceived, the Club's activities were to be threefold: bi-weekly luncheon meetings at which a speaker prominent in some phase of the world of finance would address the members; a Club publication denominated *Ticker-Tape* edited by members and containing both news of current speakers as well as educational feature articles explaining the intricacies of some aspect of the investment business; an investment contest in which participating members received a mythical \$50,000 with which to "play the market" for a six-month period.

After its first year of activity, the Club had to abandon the idea of luncheon meetings, because membership increased to such size that the Mallory-Smith Room could no longer hold all comers. However, the idea of the luncheon-discussion meeting was continued in diminutive form by the officers and several invited Club members, who lunched with each speaker before the regular Club meeting. This

custom still endures and often provides those participating with a more comprehensive understanding of the speaker's activities. The closeness of the questioning by the Club members at these sessions prompted one speaker to exclaim: "My God, I wouldn't dare go up to face that Cambridge audience without a well-prepared talk."

Sole Purpose

During the early years, the Club meetings were designed strictly to fulfill the educational purpose of providing the members with needed factual background concerning the mechanics of the business-investment world. The speakers dwelt at length on such topics as "The Use of Balance Sheet Ratios to Evaluate Shares," "Problems of the Regional Stock Exchange," "Trading in Wool Futures," "The Business of the Security Analyst." The result was predictable. By May of the first year, the Club minutes reported an attendance figure of 16, "a new low for the year." The Law student desired general knowledge of the business community, but not in this highly concentrated dosage. What was needed was a bit more glamor and a few less details. The majority of the members did not contemplate investment careers and consequently did not share the same interest and enthusiasm for the complex and intricate workings of the investment world which stimulated the Club's organizers.

This fact soon became apparent to the Club officers, who responded by effecting a shift in the emphasis of the Club's meetings. The "new look" in the Club's speaker policy was oriented towards inviting top executives of leading industrial concerns to address the Club. Their topics were to deal with the general business background and problems of that person's industry, as demonstrated by the experience of his company. The success of this shift in emphasis was immediately apparent. The

Club's membership figure rose to in excess of 300 students and has remained there ever since. As such, the Club is the largest extra-curricular group in the Law School.

New Policy

This new policy encouraged the Club officers to range far beyond the industrial confines of Boston in search of speakers. Such leading businessmen as George Alpert of the New York, New Haven, and Hartford Ry., Gordon Dean of the A. E. C., Lewis Gilbert and Wilma Soss of "shareholder democracy" fame, Royal Little of Textron, Inc., A. M. Sonnabend of Botany Mills, Hotel Corporation of America, Alleghany Corp., and what have you, Roger Blough of U. S. Steel, and Dwight Robinson of Massachusetts Investors' Trust soon became familiar figures in the Harkness Meeting Room. The Club developed its own favorites and invited a number of speakers back for repeat performances in succeeding years. On several occasions the speaker's remarks before the Club warranted coverage by such nationwide publications as *The Wall Street Journal* and *Forbes*, as well as in the local Boston papers.

The reputation of the Club among businessmen has grown to such an extent that it has become something of an honor to address the Club. In fact, Mr. G. Michael Bache braved the rigors of the recent blizzard, that paralyzed the entire East Coast, to travel from New York to Boston to speak to the Club.

Although the passive role of listener is the full extent of participation by many members, there are definite opportunities for the active-minded member as well.

Investment Contest

There is an investment contest which annually attracts about one-third of the membership. The financial acumen of both the neophyte investor, as well as his experienced brother, is typified by the results of the contest in its second year. Of 80 entrants, only 12 failed to show a profit in their portfolios at year's end.

The contest was originated for the dual purpose of stimulating the

novice to develop the habit of perusing the financial pages daily and to provide the more-experienced investor, who has already gotten his feet wet in the market, with an opportunity to speculate on the strength of his hunches without real financial loss. It is questionable, however, whether the contest experience has engendered "bearish" tendencies in many. Instead it seems to have had the effect of making the members more daring in their real investments.

Several years ago a number of the officers, acting on a "hot tip" delivered by a speaker from Merrill, Lynch, Pierce, Fenner, and Smith (née Beane) pooled their capital and rushed out to buy Cuban sugar. A decline in the market soon followed, and the shirt-less officers were a bit wiser in the ways of investment.

Journalistic Bent

For those members of a journalistic bent, the Club offers an opportunity for self-expression through *Ticker-Tape*. The members are encouraged to research an area of current business interest and to write feature articles on such, the author of the year's best article being awarded a subscription to *Fortune*.

The Bull and Bear Club has exercised a widespread influence during its eight years of life. Several members have gone to the unpardonable extremes of forsaking the Law for investment careers as a direct result of interests inspired by the Club activities. At one time, this raised such consternation among the Law School administrators that the Club President was summoned into the presence of one of the Deans, who had become unduly disturbed by the express intentions of several Club members of quitting the Law School, and was presented with the suggestion that perhaps the Business School was a more appropriate place for such a Club, since it certainly was not the function of the Law School to encourage men to enter other fields of professional endeavor.

True to Calling

Generally, however, these adopted sons of Business have remained

true to their calling and have merely incorporated their new-found business interests into their primarily legal outlook. That legalism still predominates within the Club is shown by the minutes of the first year which declare that the election of an officer who had failed to pay his dues is "null and void" and the individual "is therefore deemed never to have been an officer" because he violated the "implied assumption that all those elected would become members by paying their dues."

The Club's influence has spread beyond the limits of the Law School and the lives of the individual members. Such Law Schools as Vanderbilt and the University of Pennsylvania have also organized Bull and Bear Clubs, patterned after the Harvard model. The idea of the investment contest has stirred up similar interest in many centers of financial study. The ingenuity of a certain Loyola University business student deserves first prize in this category. His investments were centered in shares of preferred "horse-race bets," with the result that he far surpassed the other members of the group in percentage of return on his original investment.

Thus, from a modest beginning but eight years ago, the Bull and Bear Club, under the guidance of faculty advisor Louis Loss and a succession of very capable officers, has become a preparatory link between the worlds of law and business, in both of which worlds the modern lawyer must eventually take his place.

— Meyer

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Letters to the Editor

To the Editor:

On March 3 you printed a letter on the course in Commercial Law, objecting to the heavy reliance by "some teachers" on the Uniform Commercial Code. As one of those teachers, I offer a few words of explanation which my students will find familiar.

1. So far as I know, none of our Commercial Law teachers makes any effort to "cover" either the Code or the predecessor statutes or the prior common law. Rather, we take up a series of selected practical problems, and use available materials to illustrate methods of solution. It is not of vast importance which statute or case is used to supply a governing rule or an analogy.

2. There is no state where it can be said with certainty that the Code "will not be adopted for a long time." The concept of a "long time" must be understood in relation to the fact that today's law students are likely to be practicing law in the year 2000 A. D.

3. Lawyers in states now governed by the Uniform Sales Act or by the common law of sales are likely to find the Code helpful as an authority of the same order as the Restatement of Contracts. They are also likely to run into transactions which have contacts with states other than their home states. Moreover, many of our students will change what they now regard as fixed plans to practice in New York.

4. The Uniform Commercial Code, the Uniform Sales Act, and the common law of sales are not very different in their fundamental conceptions. In a national law school, we cannot hope to pursue every minor variation in every state, nor should we if we could. The code rule on a particular point bears about the same relation to the law of most states as the "majority rule" or the "better view" laid down in Langdell Hall on any

common-law question. Furthermore, some practice in finding the way from the Code to prior law or vice versa is justified as education in legal technique.

5. The New York Law Revision Commission has not "specifically rejected" the Code now being studied by Harvard students. In 1956 the Commission reported that such a Code was desirable, but called for "comprehensive re-examination and revision" of the 1952 edition of the Code. The revision called for has been completed; it resulted in the 1958 edition now being studied.

Robert Braucher,
Professor of Law

To the Editor:

Mr. Walter L. Nossaman '12, in writing in opposition to repeal of the Connally Amendment's limitation on the jurisdiction of the International Court of Justice, contends, first, that Article III of the Constitution of the United States vests the judicial power in a Supreme Court and such inferior courts as Congress may establish, accordingly prohibiting a transfer "of the judicial power of the United States to any foreign power"; and, second, that such a prohibition applies *a fortiori* to a power composed as is the Court of 15 nations, "nine" of which lack "any system even of domestic law which we would recognize as such."

In response to Mr. Nossaman's first contention, it should be noted that the disputes with which the International Court is concerned are international disputes. The judicial power described in Article III applies to foreign States only insofar as they waive their sovereign immunity and submit to it. United States courts have no jurisdiction over foreign States nor do the courts of other countries have jurisdiction over the United States. But States do have international legal disputes, which the International Court of Justice is designed to resolve. The judicial power of the United States is not normally at issue in the resolution of such inter-State disputes, and Mr. Nossaman's invocation of it is accordingly of doubtful relevance to the discussion about the Connally Amendment.

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submitted cases to international adjudication under virtually every President. Does Mr. Nossaman contend that, all these Presidents having overlooked Article III of the Constitution, the United States has been acting unlawfully since the days of the Founding Fathers?

In response to Mr. Nossaman's second contention, it may be noted that the record of the International Court of Justice demonstrates that there is not the slightest ground for the imputation that its decisions have been biased against Western interests in general or the United States in particular. If the composition of the Court is favorable to any group of nations (it is submitted that in any case the Court has been even handed), it is to the Western.

Stephen M. Schwebel,
Assistant Professor of Law

To the Editor:

As a sometime contributor to what has now become your Poet's Corner, I welcome your recent emphasis on only quasi-legal literary activities at the Law School. My only concern and regret is that there seems to be a dearth of "angry young men" at HLS to correspond with the trend toward such literary bitterness elsewhere. Accordingly, I send along an early offering reflecting the bitter-sweet recollection of an aging youth concerning a destructive characteristic of our beloved "institution."

ON HEARING OF HARVARD LAW SCHOOL'S INVESTIGATION OF PRESSURE ON STUDENTS

Pressure? We know not what you mean,
Unless it's that good old American competitive system.
Some weak-kneed sisters buckled under . . .

["But Grigsby (1L), isn't that the *second* time this week you've seen your wife?"]

Pressure? Bosh! We'll not spoon-feed our students;
For hard work there's no antibiotic.
Besides, the entire legal profession's known (and proudly so) to be inherently psycho-neurotic.

["Sonny (1L), take your eyes from that book; look, it's *Mumsy* on a surprise visit."]

Pressure? The thought's subversive;

We must maintain our reputation.

Only, *our* process substitutes ulcers

For mental constipation.

["Honestly, Judge Percy (Columbia '23), 71 is a *fine* grade up there, cross my heart and . . ."]

Pressure? Tradition wills it!

We shape our steel as finely as Roebbling.

Legal pain — unlike the other varieties — is ennobling.

["No, Phelps (1L), it isn't true that your class' high-grade student becomes Chief Justice of the United States and the lowest is publicly flogged to death."]

Pressure? I say "hurrah!"

And though the search be most persistent,

Our faculty, investigating,

Will find it non-existent.

["I say, Marquard (LL.B. magna cum laude '29 and

senior partner in Marquard, Marquard & Marquard), just why won't those buggers contribute to the Alumni Fund?"]

Arthur Stambler, LL.B. '48

Alumni Notes

LL.B. '28 *c.l.* — William J. Maier, Jr. has been disclosed to be the donor of \$2,000,000 to the Program for Harvard College for student scholarships at the College. The scholarship fund, established anonymously a year ago, will be one of the two largest at the College.

LL.B. '29 — Leon B. Newman has removed his law offices to 125 High Street, Boston 10, Massachusetts.

LL.B. '42(46) — Charles G. Sweet, who was one of the founders of the RECORD, has been elected President of the Washington, Pennsylvania, County Bar Association.

LL.B. '47 — Charles O'Gara has become a member of the firm of Hudson, Martin, Ferrante & Street, Monterey, California.

LL.B. '52 — William Embry has established his law offices at Rua Mexico, 111-s/504, Rio de Janeiro, Brazil.

Place your classified ad in the RECORD to: buy and sell textbooks, furniture, automobiles; list apartments for rent, and apartment rentals wanted; find something lost; or other notices. Classified ads of 25 words or less will be accepted for \$1.00 per insertion.

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Calendar

(Continued from page 2)

Role of Small Countries in the United Nations." A discussion on the Connally Amendment will follow the speech.

Tuesday, March 22

A series of lectures, beginning on March 22 and ending on May 5, will be given on "Soviet Foreign Policy in the Stalin Era" in Lowell Lecture Hall at 4 p.m. The lectures will be given by George F. Kennan, a member of the Institute for Advanced Study at Princeton University, a former Ambassador to the Soviet Union, and a Pulitzer Prize winner.

Wednesday, March 23

The HARVARD LAW WIVES will meet in Harkness Commons at 7:30 p.m. Dr. Samuel Miller, Dean of the Harvard Divinity School, will speak on "The Religious Significance in Contemporary Art."

The REPUBLICAN CLUB will hold a luncheon meeting at 1 p.m. in the Mallory-Smith Room of Harkness Commons. Mr. Charles A. Coolidge, author of the recent report to the State Department on disarmament, will speak.

The PATENT LAW CLUB will meet at 8 p.m. in the Wheeler Room, Holmes Hall. Mr. Brown, chief patent counsel for Polaroid, will speak on "Defenses in Patent Suits."

The STUDENT BAR ASSOCIA-

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Second-year student, B.B.A. in Public Accountancy from C.C. N.Y., would like summer position with tax attorney in New York city area. Salary considerations secondary to experience. Inquiries made through: Law Record 101, 23 Everett St., Cambridge.

TION will present Professor Soia Mentschikoff speaking on "Arbitration vs. the Courts" at 1:40 p.m. in the Harkness Commons Meeting Room.

Future Events

The AMERICAN LAW STUDENTS ASSOCIATION will hold a joint conference of the 1st and 2nd circuits at Boston College Law School from March 24-26.

The INTERNATIONAL LAW CLUB will meet at 4 p.m. on Friday, March 25, in the Gray Room, Holmes Hall. Mr. Woonsang Choi, a former Korean vice-consul in Los Angeles, will speak on "The Law of Relations between International Organizations and Their Officials: The Jurisprudence of International Administrative Tribunals."

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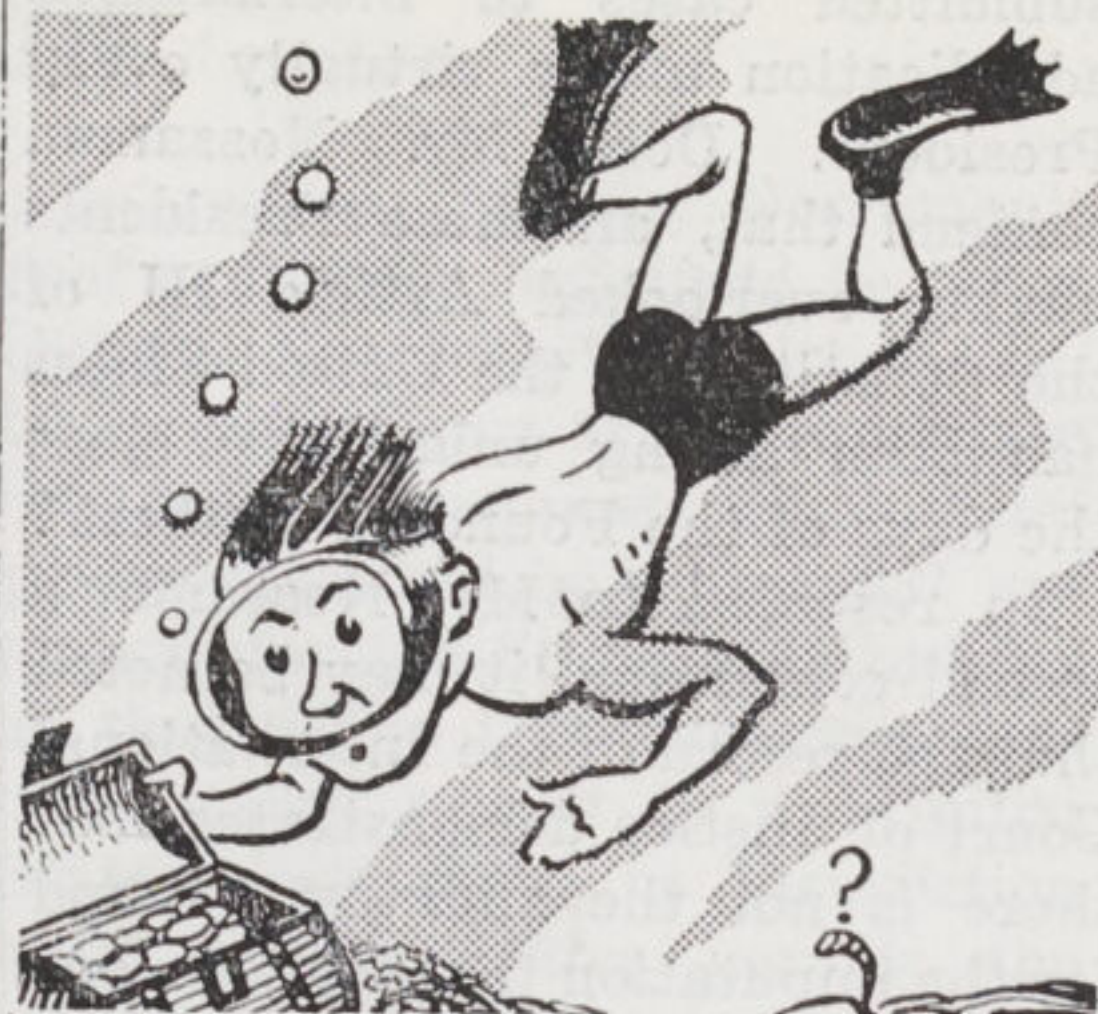
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