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June 13

*"America's Oldest
Law School Newspaper"*

VOL. 31

CAMBRIDGE, MASS. SEPTEMBER 22, 1960

NO. 1

To the Students:

On behalf of the Faculty, I want to extend a hearty welcome to all students, both new and old, who have come to spend this year at the Harvard Law School. We hope that it will be a happy and successful year for all of you.

As students, your year will be governed largely by your own standards and expectations. If you look for a vigorous but stimulating, and often exciting, intellectual experience, you should certainly find it. There should be many challenges to meet, fine friendships to form, and countless opportunities for growth and professional development. On the other hand, if you expect a miserable year, a time of tension and pressure, a period of unremitting work and no pleasure, you will probably have just that.

As your teachers, we, too, have expectations. We want you to go about your work with zest and enthusiasm. We expect you to work hard, and to enjoy it. If the law is to be your career, you should find satisfaction in doing your work well, or you have made the wrong choice. We think of you already as lawyers, as adults, as mature and responsible men and women, and we have great confidence in your ability to work independently, to solve your own problems and to conduct your own affairs. But at the same time, we are glad to help you when you decide that help is needed.

With best wishes for a good year,

Erwin N. Griswold
Dean

6-29-60

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Harvard Law Record

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Hearsay

Reflections on first-year students going through the line at registration. Topic: murderers' row — where blood hungry organizations (of course not the RECORD, oh no!) lie in wait with their salesmen, their wares and their membership cards in bright and glorious display.

What a grand sight to see the first year student, college graduate that he is, nevertheless have to pit his wits against the mercenaries.

The student signs his last administration commitment, agreeing to sign-on at Harkness for the next 30 eons. He thinks it is all over. Indeed, he is already weakened. Who wouldn't be? Harkness for 30 eons!

Then he sees it. There is only one way to the one exit. Before him stretches a long line of tables. He is faced by the gauntlet, a long leering row of eager, cheery, smiling faces, each with their placard, their hands outstretched, their rolls of membership have room for just one more, or possibly two.

Sign now, or miss out.

But I'd like to think about it for awhile.

Sign now!

Yes sir, if you say so, sir.

Very few escape the net. What chance have they? Shrewd though they may be, most succumb. This or that offer looks too enticing. You mean you have all those speakers? Free beer? Free love? And for only half of my first five years' salary after I graduate? Where do I sign?

Only a few breeds elude the hawkers. They are the ones to cheer for. They are the heroes of this tale.

They come in different shades, but above all is the sprinter. Chin up and out, arms pumping, eyes fixedly ahead, he never stares from side to side. Through he goes. Neither hand nor word nor eye can stop him. The bottlenecks give way before this Olympus. He is home. Safe! The outside lobby has been reached.

But, alas and alack, he is of the few, the cherished, honored few. The rest succumb, dole out, join, surrender.

Moral of this Reflection: organization membership drives were better than ever.

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, September 22

The HILLEL SOCIETIES of Harvard and Radcliffe will hold religious services observing Rosh Hashanah, the Jewish New Year, on September 21, 22, and 23 as follows:

Traditional Service at Phillips Brooks House

Wednesday and Thursday,
.... 6:30 p. m.

Thursday and Friday,
.... 9:00 a. m.

Liberal Service at Stebbins Auditorium

Wednesday 8:00 p. m.

Thursday 9:30 a. m.

Tuesday, September 27

The YOUNG REPUBLICAN CLUB will sponsor Hon. Prescott Bush, U. S. Senator from Connecticut, speaking on "Campaign Issues for 1960" in the Harkness meeting room at 8 p. m.

The SAINT THOMAS MORE SOCIETY will hold a Smoker in the Wheeler Room of Holmes Hall at 8 p. m.

FUTURE EVENTS

Friday, September 30

The BULL AND BEAR CLUB will present Mr. John Harriman, financial columnist of the *Boston Globe*, radio commentator on business and author of the recent book *It's Your Business*, in the meeting room of Harkness Commons, at 1:40 p. m.

The YOUNG REPUBLICAN CLUB will hold its Third Annual Dance and Mixer with Wellesley and Radcliffe at Harkness Commons at 8:30 p. m. Admission by membership card.

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Honoraries Name New Members

New members for the year 1960-1961 have been announced by the *Harvard Law Review*, the Board of Student Advisors, and the Legal Aid Bureau.

The following second year students were invited to membership on the Editorial Board of the *Law Review*: Harvey M. Applebaum, Bessemer, Ala.; Stephen R. Barnett, Hartford, Conn.; Albert L. Clovis, Canton, Ohio; Robert L. Dunn, New York, N. Y.; Nancy E. Eastham, Andover, Mass.; Donald M. Feurstein, Chicago, Ill.; Stephen J. Friedman, Brooklyn, N. Y.; Robert A. Gorman, Flushing, N. Y.; Norton M. Hall, San Diego, Calif.; Bruce J. Havighurst, Shaker Heights, Ohio; Michael S. Horne, Hopkins, Minn.; Richard C. Johnson, Milton, Mass.; Clay C. Long, Montgomery, Ala.; John C. McCarroll, Dobbs Ferry, N. Y.; John A. Martin, Birmingham, Ala.; Donald L. Morgan, Irvington, N. Y.; James M. Murphy, New York, N. Y.; Stuart R. Pollak, San Francisco, Calif.; Richard A. Posner, Scarsdale, N. Y.; Joseph L. Schwartz, Miami Beach, Fla.; Ernest E. Smith, Gonzales, Texas; Arthur H. Travers, Gary, Indiana; Lloyd Weinreb, Lawrence, N. Y.; David M. Wishnick, Chicago, Ill.; Thomas D. Wright, Fombell, Pa.; and Alfred D. Youngwood, New York, N. Y. Richard A. Posner and David M. Wishnick were ranked first and second in the class.

The third year men invited to membership on the *Review* were Freddy R. Becker, Philadelphia, Pa.; Edward L. Epstein, Walla Walla, Washington; Leonard E. Epstein, Jersey City, N. J.; Newman T. Halvorson, Jr., Gates Mills, Ohio; Wilmot R. Hastings, Swampscott, Mass.; Robert E. Jordan, South Boston, Va.; John R. Quarles, Wellesley Hills, Mass.; and Cyril V. Smith, Cambridge, Mass.

Student Board

The following second year students have joined the Board of Student Advisors: Donald H. Berman, Auburn, Maine; Stephen Chrystie, Van Nuys, Calif.; C. Dean Duseault, Needham, Mass.; Stanley Keller, New York, N. Y.; John C. King, Charleston, W. Va.; Peter M. Panken, New York, N. Y.; Jerome E. Sharfman, Neponsit, N. Y.; Leslie Trager, Scarsdale, N. Y.; and David R. Weinstein, West Hartford, Conn.

The following third year students were also invited to membership: William R. Cotter, Tarrytown, N. Y.; Frederick F. Greenman, Jr., New York, N. Y.; Anthony M. Kennedy, Sacramento, Calif.; and George H. Shapiro, Atlanta, Ga.

Legal Aid

The following second year students have joined the Legal Aid Bureau: Stanley S. Arkin, Los Angeles, Calif.; Gerald S. Backman, Far Rockaway, N. Y.; Irwin G. Barnet, Rochester, N. Y.; David W. Bernstein, New York, N. Y.; Andrew S. Dempsey, Cleveland, Ohio; Gregory M. Harvey, Morristown, N. J.; Charles F. Hosmer, Detroit, Mich.; Cordell W. Hull, Dayton, Ohio; John R. Kramer, Cambridge, Mass.; William R. Malone, Terre Haute, Indiana; John P. McLoughlin, Saginaw, Mich.; George E. Pike, Jr., Dewitt, Ark.; Jack E. Rosenfeld, Paulsboro, N. J.; Daniel C. Schaffer, Brooklyn, N. Y.; Victor Schnee, Newark, N. J.; Samuel H. Seymour, Washington, D. C.; Marcel Shwergold, Kew Gardens, N. Y.; Helmut Wallenfels, Worcester, Mass.; and Michael Whiteman, Great Neck, N. Y.

The following third year students also joined the Bureau: Peter M. Fass, Brooklyn, N. Y., and William D. Popkin, New York, N. Y.

Harkness Looks To Outside Help

In its eleventh year, Harkness Commons dining hall is being operated by Stouffer's Management Food Service rather than the University Dining Hall Department. Stouffer's Management Food Service is a division of Stouffer's Restaurants, a firm which operates a chain of restaurants throughout the northeast. The Food Service also has been managing the dining halls at M. I. T. Mr. Warren Thompson is the Steward in charge.

Even though under different management, Harkness will offer the same hours of operation, the same type of service and the same methods of payments as it did last year. It continues to offer items ranging from full course dinners to light snacks, but provides

for a wider variety of a la carte items which are available throughout the day.

The dining hall opened this year on Thursday, September 15, for luncheon and remained open through luncheon on Saturday, September 17. It reopened on Monday, September 19, and will continue to remain open seven days a week throughout the academic year except holidays. It is open from 7:30 a.m. to 7 p.m. Breakfast is served until 11 a.m., luncheon until 4 p.m., and dinner until 7 p.m., when the dining hall closes.

Meals and snacks can be purchased for cash or with University coupons, which can be obtained in \$5.00 and \$10.00 books and charged against the next term bill.

Sign-on Contracts

Two sign-on meal contracts are also available. A 21-meal contract costs \$16.95 per week, and a 15-meal contract, good Monday through Friday, costs \$13.30 weekly. Both

contracts represent a considerable saving over pay-as-you-go rates. Students under contract may choose complete meals or items from the a la carte menu. The contracts allow for a 60¢ credit for breakfast, 95¢ for luncheon and \$1.25 for dinner.

At 8:30 p.m., the Grill Room opens and serves sandwiches, ice cream and beverages until midnight. At noon the Grill Room is open for students who prefer sandwiches; a short order chef prepares sandwiches, dessert, and beverages for students who prefer not to go through the two cafeteria lines. The Grill Room menu is available at dinner as well, but is served at the cafeteria lines.

Every effort is being made to see that service at Harkness is as quick as possible. Although there has been a considerable line at 1:05 p.m., the problem is one largely under student control. The Food Service suggests that students make an attempt to avoid this congestion by scheduling their lunch at a less orthodox hour.

Four Join Law Faculty

Four new men have been appointed to the Law School faculty for the current academic year. They are Caleb Foote, Sanford H. Kadish, Friedrich Kessler and Philip E. Areeda. Professors Foote, Kadish and Kessler have received one year appointments as Visiting Professors, while Mr. Areeda will become an Assistant Professor of Law.

Professor Foote, B.A. '39 Harvard, M.A. '41 Columbia, LL.B. '53 University of Pennsylvania, is a Professor of Law at the University of Pennsylvania. He served as Consultant to the Division of Human Rights of the United Nations from 1957 to 1959. At the Law School, Professor Foote will be the Walter E. Meyer Visiting Research Professor of Law. He will be engaged in research on Criminal Law and Family Law, and will have no class duties.

Professor Kadish, B.S.S. '42 City College of New York, LL.B. '48 Columbia, is a Professor of Law at the University of Utah. He was an editor of the *Columbia Law Review* from 1946 to 1948 and a Visiting Fulbright Professor at the University of Melbourne in 1956. Professor Kadish will be the Ezra Ripley Thayer Teaching Fellow. In addition to teaching a section in Criminal Law, he will

conduct the course in Labor Law until Professor Cox returns from his leave of absence on November 15.

From Yale

Professor Kessler, J.U.D. '28 Berlin, a Professor of Law at Yale, will teach Contracts and Jurisprudence. He was a co-editor of a casebook on contracts that was published in 1953. Reputed to be one of the most popular teachers at the Yale Law School, Professor Kessler will take over the teaching schedule of Professor Fuller, who will be on a year's leave of absence.

Mr. Areeda, LL.B. '54 *s.c.l.*, is presently a member of the White House Staff serving the Administration as an economic adviser. His title is that of assistant special counsel. At the Law School he was a note editor of the *Law Review*. Following graduation, he traveled in Europe for a year on a Sinclair Kennedy Fellowship.

Due to his position with the government, Mr. Areeda will not begin teaching until after January 1. During the second semester he will conduct a course and a seminar on Administrative Law. He has received a three year appointment.

Dean Addresses First-Year Students

Dean Griswold addressed the members of the first year class in a crowded Ames Courtroom on Sunday. Most of the 544 students in the entering class were present to hear the Dean introduce himself as "the fellow who tries to head up the operation of the place to which you are coming." He stated, "This is, on the whole, a tolerably serious place, yet it should not be taken *too* seriously."

Telling his listeners something of the history of the English legal profession from which our own is derived, the Dean went on to indicate the roles that some of the men in this entering class would one day fill. He took the careers of post Second World War graduates, Governor William F. Quinn, LL.B. 1943 (47) *c.l.* and Congressman Frank M. Coffin, LL.B. 1943 (47) *c.l.*, as examples. And he predicted that, as in previous classes, many future state and national legislators and state supreme court justices were sitting before him in the Courtroom.

Dean Griswold took a few minutes to read to the first year men from Mr. Justice Frankfurter's recent book, *Felix Frankfurter Reminiscences* (see Recent Books, page 13 *infra*). He said that the atmosphere of the Harvard Law School which was reflected in Justice Frankfurter's book expressed "much of what I would like to say this afternoon."

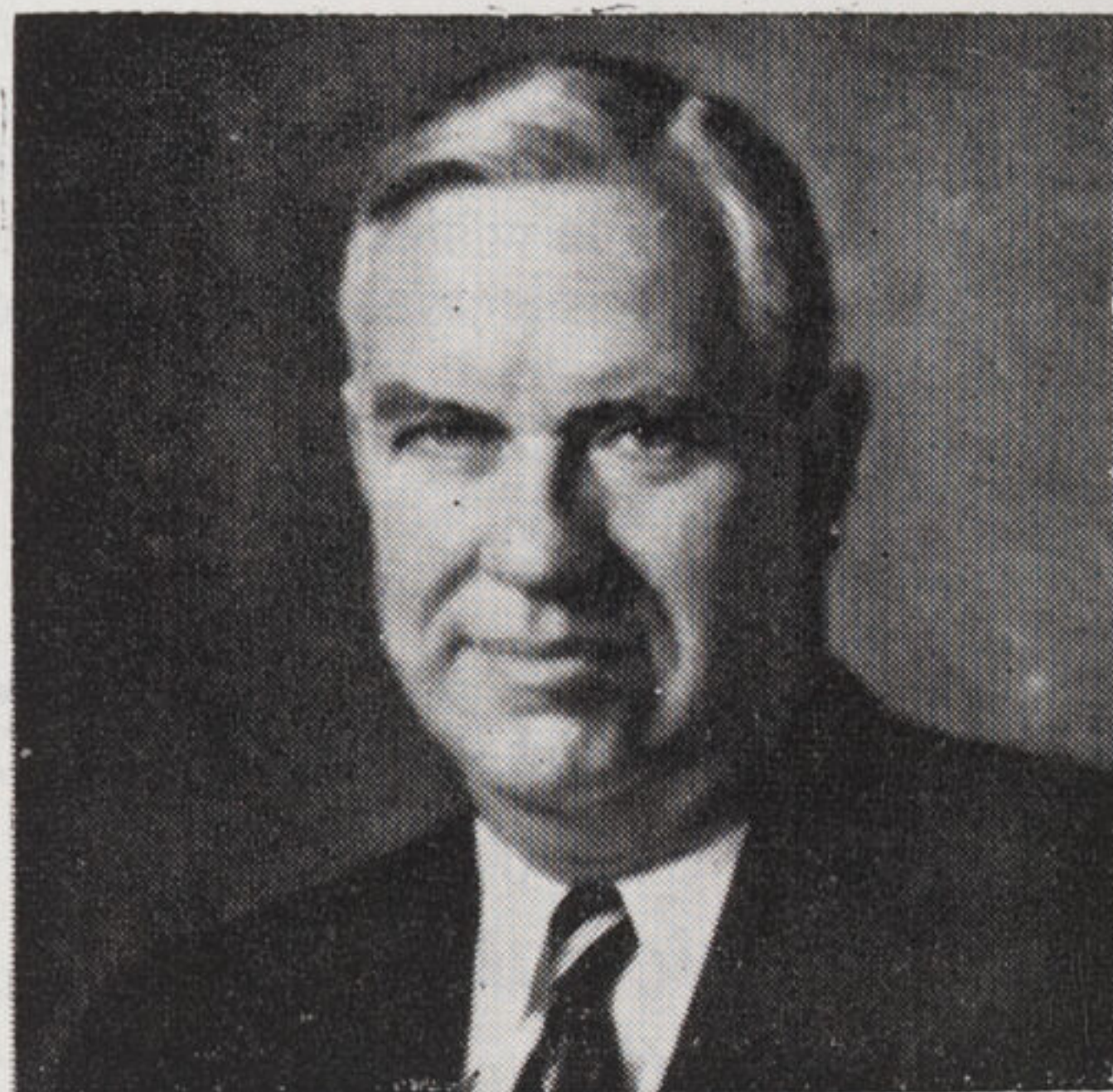
In speaking about the class before him, the Dean noted that there were 84 married students, 16 women, a husband and wife pair, 11 Fulbright scholars, and a track world record holder. Forty-five states are represented, and he offered a prize to the man who, within the next three days, brought in a representative from one of the states neglected. (Alaska, Mississippi, North Dakota, Oregon, and Wyoming).

The Law School, said the Dean, is a place of intellectual excitement — there is great intellectual stimulation in this place. And he warned that the law is not as precise as students might think. One thing at the Law School, he emphasized, is to train the judgment to deal with questions having many facts and many factors.

To those who came to the school without an all consuming desire to study the law, he nevertheless suggested that they give it a very substantial chance. It will be liked, he

said, by those who want an opportunity to deal with things that affect people, to deal with affairs, and to enter the public life through private life. It can be the beginning of a fascinating and fruitful career.

At the close of his remarks, Dean Griswold told the first year class about the importance



of the Ames Competition in the Law School curriculum. He emphasized the fact that full participation is expected and went on to explain the elimination system which culminates in the final argument in the spring of the third year. At that time, he informed them, the briefs are printed and a justice of the United States Supreme Court presides at the oral argument. This final argument in the moot court competition, he said, is of a higher calibre than many arguments heard in appellate courts. The Dean then introduced the president of the Board of Student Advisers, Jerome A. Rabow, 3L of Buffalo, N. Y., who explained the role of the Ames Competition further and invited any first year men who might have questions to bring them to the office of the Board in Austin Hall.

World Affairs Talks Given This Fall

Under the title of "The Round Table of World Affairs," a series of speakers will be presented at Phillips Brooks House at 4 o'clock each Sunday afternoon during the fall political campaign. Although offered as part of the program of the University Hillel

Societies, it will be open to the public.

Professor Abram J. Chayes of the Law School will speak at one of the October meetings on the subject, "The Meaning of 'The Initiative' in Foreign Policy." Other speakers, drawn from the Harvard community, include McGeorge Bundy, Dean of the Faculty of Arts and Sciences, and Crane C. Brinton, McLean Professor of Ancient and Modern History.

R.O.T.C. for Law Students

An R. O. T. C. program that can still be entered by first year law students is currently outlined in the announcement of "Courses of

Instruction Offered by the Faculty of Arts and Sciences."

Compression of this four year program into three years is entirely feasible if enrollment is accomplished at the start of the first year of Law School. Credit may be established for prior military experience or for having pursued R. O. T. C. as an undergraduate.

The Harvard Army R. O. T. C. is a General Military Science unit and therefore commissions officers in all branches of service (except the Judge Advocate's Corps, Medical Corps and Chaplain's Corps).

Further information may be obtained from the Department offices at 25 Francis Avenue.

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Meatball	40c - 25c
Roast Beef	60c - 35c
Crab Meat	60c - 35c
Italian Sausage	50c - 30c
Pepper & Egg	40c
Cheese	45c - 25c
Tuna Fish	40c - 25c
Meatball & Sausage	60c - 35c
Salami & Provolone	60c - 40c
Imported Ham	50c - 30c
Super - Genoa Salami, Cappellicola, Ham, Provolone	60c - 40c
Mortadella & Provolone	50c - 30c
Pepper Steak	60c - 40c
All Cheese	50c - 30c
Lobster	60c - 35c
Hot Pastromi	60c - 40c
Fried Egg	50c - 30c
Pepper Burger	60c - 40c
Corned Beef	65c - 40c
Ham Super	50c - 30c
Veal Cutlet	60c - 40c
Turkey	75c - 40c
Cappellicola	60c - 35c
Cheese Supreme	60c - 40c
Egg Salad	50c - 30c
Deep Sea Doodle	60c - 35c
Sausage	50c - 30c
Super Italian	50c - 30c
Salami & Minced Ham	60c - 35c
Luncheon Meat & Cheese ...	50c - 35c
Pepperoni & Provolone	60c - 35c
Salami, Ham & Provolone ..	60c - 35c
Coffee (to stay or to go)	10c

Tho' Mr. K. Regrets

Forum Plans Year's Programs

Two Harvard Law School Forums are set and several others are on tentative tap as plans are moving into actualities for the coming year. Senator Leverett Saltonstall, GOP incumbent facing re-election this fall here in Kennedy-Massachusetts, will appear before the Forum on October 7. On November 4, a panel discussion, tentatively entitled "Propaganda Abroad," will feature George V. Allen, head of the United States Information Agency, and William Lederer and Eugene Burdick, co-authors of the *Ugly American*.

While this is happening, the Forum has also been exploring other possibilities, coming up with partial successes and a few disappointments. This being election year, chief efforts have been directed toward securing one or more of the presidential or vice-presidential candidates. However, according to Forum president Richard Smith, 3L, the fact that this is a "safe" Kennedy territory has dampened the possibilities.

In this regard, however, flat "no's" have not been received and Republican candidates Richard M. Nixon and Henry Cabot Lodge have shown some interest.

Mr. K. Regrets

The most vocal rejection of a Forum invitation came recently through the publicized telegram sent the Forum by Nikita S. Krushchev. An invitation to the leader of the Soviet Union had been extended by the Forum prior to the imposition of the State Department ban restricting Krushchev to Manhattan during his stay in the United States while attending sessions of the United Nations.

After thanking the Forum for the invitation, and mentioning the mutual benefit he felt would come of such a program, Premier Krushchev said he was unable to attend "since by a decision of the State Department," he was "deprived of the possibility to go beyond the limits of the Manhattan area," thus being deprived "of the possibility to enjoy the freedoms of a democratic country, the United States of America."

The telegram from Krushchev, totalling eight pages in length, then went on to laud the possibilities for peace contained through

the efforts of the United Nations General Assembly, but at the same time he criticized the United States government for maintaining attitudes which bring discriminatory conditions against other countries and other peoples.

In a poetic flourish considered by the Forum to be mainly for propagandic purposes, the volatile head of the Soviet Union thus declined with regrets, but expressed a hope for a better tomorrow, when "the sun will rise at last; dark clouds will disperse and all the people will understand the necessity of friendship and cooperation among nations."

Other Controversies

If Krushchev had appeared, he would not have been the first such controversial figure to grace the Forum's platform. It was just a year and a half ago that Fidel Castro spoke before an open-air crowd of ten thousand down by the Harvard Stadium. Other speakers who have also aroused mixed emotions have included his Excellency Mikhail Menshikov, Ambassador from the Soviet Union; Archbishop Makarios, newly-elected President of Cyprus; Mr. Abdel-Kader Chanderli, envoy to the United Nations from the Algerian FLN; and his Excellency W. C. DuPlessis, Ambassador from the Union of South Africa.

Although last season the Forum was plagued by a series of unfortunate incidents whereby certain promising programs had to be cancelled, they were still able to bring to Harvard certain notable speakers, such as, in addition to Chanderli, Governors Brown of California and Hodges of North Carolina, cartoonists and political satirists Al Capp and Walt Kelly, Presidential Science Advisor G. B. Kistiakowsky, Cuban Ambassador to the U. N. Manuel Bisbe, Walter Reuther, and Harry Golden.

One bad break, indirectly, has also occurred this year. An unforeseen development resulted when the other half of the Saltonstall forum, Governor Foster Furcolo, was defeated in his bid for the Democratic nomination for U. S. Senator and thus the chance

to oppose Saltonstall in the November general elections. However, efforts are being made to secure Mayor Thomas O'Connor of Springfield, Mass., the victor, to replace Furcolo on the program.

Conservatives Form Political Group

A new political action organization for young people was founded at a recent weekend conference of conservative youth leaders in Sharon, Connecticut. Students from Harvard and Yale Law Schools and forty-two other colleges and universities gathered to create "Young Americans For Freedom," a national group dedicated to advancing the Conservative position in United States politics.

The group will seek to mobilize support among American youth for Conservative political candidates and legislation and to act as spokesmen for Conservative opinion on key political issues. Walter H. McLaughlin, Jr., LL.B. '60 of Belmont, Massachusetts was chosen a regional director.

Robert M. Schuchman, a student at Yale Law School was chosen as chairman of the organization. In his words, "The tremendous growth of Conservative sentiment among the youth of the country culminated in the meeting held in Sharon. We believe an organized and dedicated Conservative youth can nationally affect the course of political events."

Seminar Will Be Held On Suez Crisis

A special seminar, *Problems in International Politics and Law: the Suez Crisis*, will be conducted this year by Professor Bowie of the Government department and by Assistant Professor Schwebel of the Law School. The first session of the seminar is tentatively scheduled for today, at 2 p. m., in Littauer Center. A small number of law students who are interested in legal aspects of the Suez crisis are invited to join.

This seminar will examine, by case study, the process of defining national interests and policies and methods of handling conflicts in international affairs. The role of international law in the formulation and implementation of national and international policies will also be considered, with the Suez crisis of 1956 being used as a focus for study.

For students participating in this seminar, a paper will be required either on questions relating to the nationalization of the Suez Canal, or on the intervention by Israeli and Anglo-French forces.

While the seminar will count for two hours credit in the Law School, as if it were a seminar meeting in one term, some of its meetings will be held in the fall and the remainder in the spring.

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Professorship To Roger Fisher

Roger D. Fisher has received his appointment as a Professor of Law in Harvard University. Mr. Fisher, who practised law in Washington before joining the Harvard faculty in 1958, specializes in the common law and in international legal problems.

He served on the legal staff of the Economic Cooperation Administration in Paris and on the staff of the U. S. Solicitor General,



Professor Fisher

arguing cases before the Supreme Court. He also was in private practise for several years with the firm of Covington & Burling in Washington.

A native of Chicago, Mr. Fisher received the A.B. from Harvard in 1943, and after military service he returned to Harvard, receiving the LL.B. *magna cum laude* in 1948. He was a member of the editorial staff of the *Harvard Law Review*.

Republicans Present Senator Bush

The Honorable Prescott Bush, United States Senator from Connecticut, will address

the first meeting of the Law School Young Republican Club on Tuesday evening, at 8 p. m., in the Harkness Commons meeting room. Senator Bush, a moderate Republican, will speak on the topic, "Campaign Issues for 1960."

Before his election to the Senate in 1952, Senator Bush was widely known in business and industrial circles. The *New York Times* declared in an editorial before his first election in 1952 that he would make an excellent member of the Senate; and the same paper commented six years later, after his reelection, that he deserved the endorsement that he had received.

Senator Bush is presently serving on the Armed Services, the Banking and Currency, and the Joint Economic Committees in the Senate. At the Republican National Convention this past summer, he presided as chairman of the commerce plank of the Platform Committee.

Alumni Notes

LL.B. '04 — Gilbert H. Montague has been awarded a "Distinguished Service Award for Outstanding Contributions to the Advance of Horticulture and Botany" by the New York Botanical Garden.

LL.B. '27, *s.c.l.* — Henry J. Friendly, Judge of the United States Court of Appeals for the Second Circuit, has been elected President of the Harvard Alumni Association.

LL.B. '34 — Robert T. Kimberlin, vice president for corporate development, has been elected secretary of Crown Zellerbach Corporation by the company's board of directors.

LL.M. '46 — Joseph O. Tally, Jr. has been elected to the presidency of Kiwanis International.

LL.B. '49 — Edward L. Springer has become a partner in the firm of Burgwin, Ruffin, Perry & Pohl, 2323 Grant Building, Pittsburgh, Pennsylvania.

LL.B. '50 *c.l.* — Henry B. Keiser has been reappointed to the positions of president and chairman of the board of Federal Publications, Inc., Washington, D. C.

FEATURES SECTION

The Law Vs. Plural Marriages

By Ralph Nader

For nearly a century every deterrent that could be mustered by formal and informal social controls has failed to dislodge the Fundamentalists from practising plural marriage as a basic tenet of their religious belief. They presently are estimated at 20,000, living in Utah and neighboring states. The cultists, as they are often called, claim that this divine covenant is an original and continually valid doctrine of the Mormon Church, despite its renunciation by that body in 1890 and the excommunication of most cultists who continue to insist that theirs is the true religion.

This parting of the ways has meant hardship for the Fundamentalists. The humorous folklore that has grown up around polygamy has obscured the fact that these highly religious and moral people have undergone the sacrifice of living in isolation and under strict self surveillance to preserve a way of living they feel is sanctioned by divine revelation.

Renunciation of plural marriage by the main Mormon Church was undoubtedly prompted by pressure from federal criminal prosecutions commencing in 1862 in Utah Territory under an Anti-Polygamy Act. The famous case of *Reynolds v. U.S.* upheld in 1878 the constitutionality of this law asserting that polygamy was "odious among all nations of Northern and Western Europe and hence contrary to Anglo-American principles of morality."

Legislation Restricts

Further legislation upheld by the courts precluded polygamists from voting in the territory and annulled the territorial charter of the Corporation of Latter-Day Saints, confiscating all lands except that held for bona-fide church purposes.

As it became apparent that the issue would jeopardize Utah's prospect for statehood, the Mormon Church proceeded on the new doctrine that renunciation of polygamy was a divine mandate, the defiance of which constitutes grounds for excommunication. The statehood enabling act stipulated that the Utah constitution contain a provision prohibiting the practice. This was complied with

and made operative by statutes making polygamy and unlawful cohabitation felonies.

In past years enforcement efforts have been sporadic and unsuccessful. Prosecutions usually followed rumors of new converts or new colonies of Fundamentalists, notably in 1938, 1944, 1953 and 1955, by both state and federal authorities. The latter, proceeding under the Mann Act, was severely hampered by venue problems.

Raid in 1953

Short Creek, Arizona, was just such a prospering polygamous colony before raided in 1953. The group there was known as the United Effort and numbered about 400 persons organized on a community property basis. Short Creek straddles the Utah-Arizona border in the region beyond the Grand Canyon known as The Strip, one of the remotest areas in the country. After receiving the reports of two Burns Detectives sent there on reconnaissance, a posse comitatus swooped down in the predawn of July 26, 1953 and rounded up all the inhabitants failing to seek sanctuary over the Utah line.

In a highly dramatic radio address to the citizens of Arizona, Governor Pyle declared a state of insurrection in Mohave County where Short Creek is located, and described the "momentous police action" against a population "dedicated to the production of white slaves," against "this foulest of conspiracies [that] has flourished and expanded in a terrifying geometric progression," against "a community entirely dedicated to the warped philosophy that a small handful of greedy and licentious men should have the right and power to control the destiny of every human soul in the community."

The Governor's tirade can be contrasted with a former Utah Judge's observation that "people professing to follow their belief in polygamy are entertaining that belief as a matter of genuine and sincere religious conviction, a fanatical religious conviction and not as sometimes said, people who are basically licentious and lustful. Aside from polygamy, they are a very good law-abiding, moral type of people." Similar expressions were

voiced by the Judge before whom 26 of the Short Creek violators were tried.

Costly Failure

The Short Creek raid proved itself a costly failure. By 1955 when the children were released from state custody, after expenses of \$110,000 were incurred for their care, the colony slowly resumed its normal life and now is prospering once again. No further enforcement is planned by either county or state officials. Nor did anything materialize out of the hearings held at Short Creek in 1955 by the Senate Subcommittee to Investigate Juvenile Delinquency. Senator Langer had promised a full report and action.

In Utah the limitations of enforcement has lately resulted in the formation of an Anti-Polygamy Citizen League. Its initial public report, issued last November, emphasized the detrimental effect which children of plural marriages have on other children in the community. The survey also stressed the low economic status of polygamists, allegedly due to the inability of one man to support several families, and the lowering of neighboring property values "as a result of poor property maintenance and care." These allegations, which have been repeated many times previously to whip up community fervor, are questioned by more impartial observers who point to facts showing the contrary. As an action program, the League advocates broader legislation, boycotting of known polygamists' shops and businesses, and the discharge of cultists currently on Civil Service rolls at Hill Air Force Base.

Reasons For Failures

Why have law enforcement efforts generally failed? First, in eradicating Fundamentalist polygamy, it is necessary to break the hold of a strong religious commitment, *not* masculine concupiscence. Judge Tuller of the Superior Court of Pima County, Arizona told a group of violators: "You have an unshakable belief that it is the rest of the world that is out of step . . . nothing short of life imprisonment would prevent you from committing the same crime in the future." He added that confronted by such immutable beliefs, punishment would neither deter nor rehabilitate the offenders. The separation principle was probably based, to a degree, on a commonsense recognition of the law's limitations in the area of religious persuasions.

Problems of investigation and prosecution

also hamper enforcement. How can a suspected polygamist, an expert at evasion and cloaking his activities, be brought to trial? His arrangements do not exactly correspond to an oriental seraglio. Wives are often located in two or more of the mountain states; colonies are situated in remote areas; the children of one wife may be placed with another; birth certificates are falsified and sympathetic neighbors are reluctant to divulge incriminating information.

The proper charge presents difficulties. The charge of polygamy, frequently used at the turn of the century, has to surmount the barrier of proving the second marriage. Plural marriages take place secretly; no certificate is made out, the service is performed by a sect member often a relative, and only one wife will assume her husband's name. Technical pitfalls in a prosecution for bigamy in other states are well known, perhaps none better than the "trigamy as a defense to bigamy" Maryland case. *Wright v. State*, 81 A.2d 602 (1951).

Flexible Charges

In recent times, other more flexible charges are brought including unlawful cohabitation, fornication, marrying the spouse of another and contributing to the delinquency of a minor.

The cost of caring for children of these marriages, after their parents have been convicted, can be very costly and even prohibitive to many counties. Caring for the Short Creek children amounted to a year's budget for Mohave County, had it paid the entire bill.

Prohibition by law of plural marriages is based on a rationale which proceeds from felt assumptions to foregone conclusions. Courts have characterized them as "crimes against the family" and a "contemptible evil." And with sweeping righteousness, the Supreme Court of Utah has objurgated the offenders:

"The good name of this State and its people, committed to sustaining a high moral standard must not be obliged to suffer because of the unsavory social life of appellants and others claiming the constitutional right under the guise of religious freedom to bring shame and embarrassment to the people of this State."

It seems that what most concerns articulate anti-polygamists is the contaminating or epidemic potential of a religiously based practice toward igniting pure licentiousness and

a moral breakdown among non-cultists. This fear could explain the extremes in which their execrations are couched.

In our monogamous system that admits of no exceptions, the solution of the problem of polygamy may require more than legal control or enforcement attempts. These but inspire greater furtiveness and vigilance by the sects. A more sophisticated use of informal social approaches may succeed where attempts at enforcement have failed.

Record Gets Backing, Continues as Before

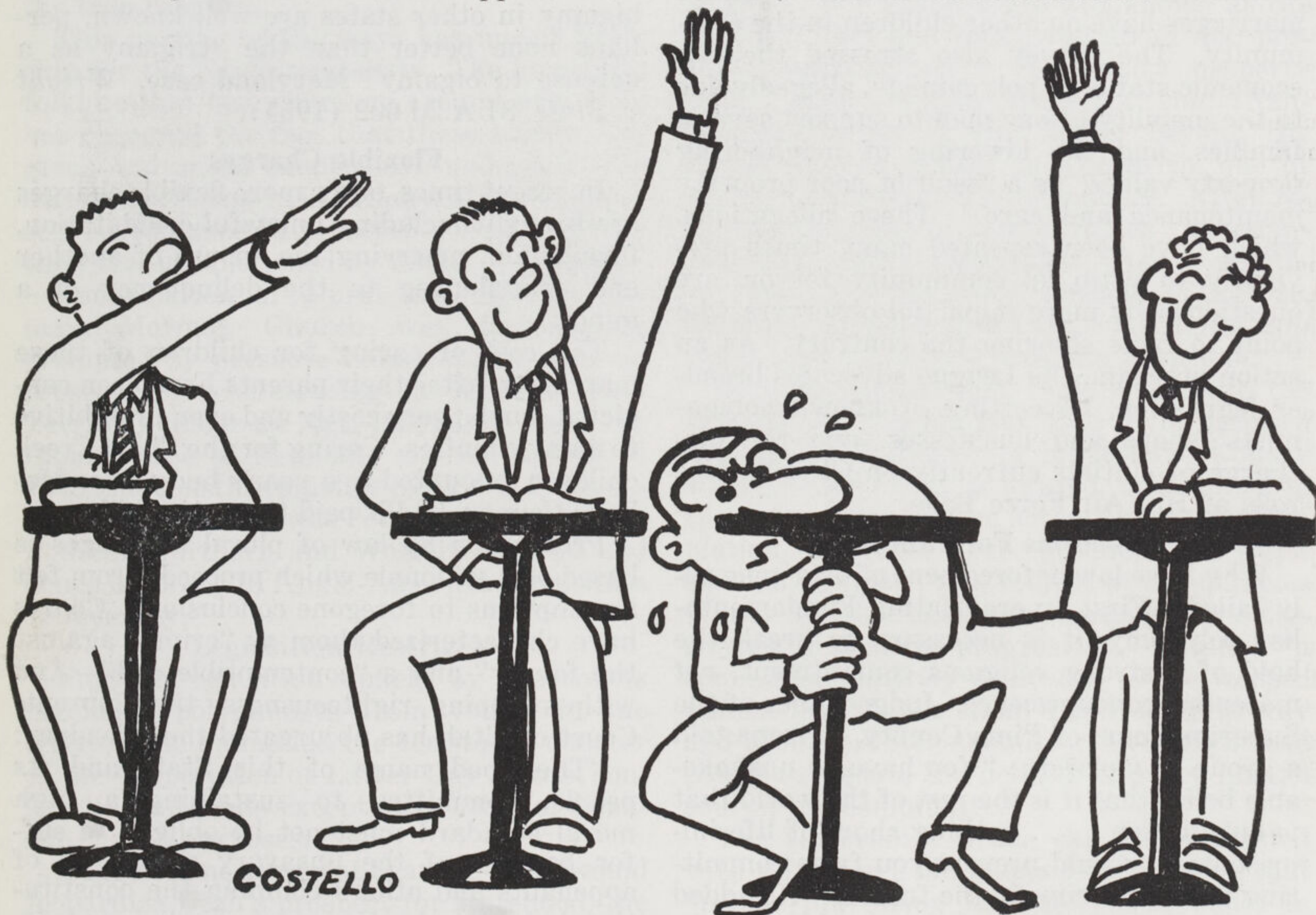
In the Hearsay column of the last issue of the RECORD in the spring, it was noted that the future of the RECORD was in doubt. The Harvard Law School Association was then considering a reduction in its support of the

RECORD, and without the financial backing of the thousands of alumni who receive the RECORD, the paper in its present form would virtually cease to exist.

This support was not withdrawn, and now Volume 31 makes its appearance to follow in the footsteps of its predecessors. Thus, for another year the lights will be burning on the top floor of 23 Everett Street, and the RECORD will appear weekly in the halls of Austin and Langdell.

The editors of the RECORD take this opportunity to extend their thanks to those who came to its support at a critical time; and we wish also to acknowledge the letters of those who wrote to inquire and encourage.

The RECORD will continue, sometimes perhaps with deliberation and consideration, sometimes perhaps with a touch of *flagrante delicto*, but continue nevertheless.



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Recent Books

By Robert C. Berry

FELIX FRANKFURTER REMINISCES, as recorded in talks with Dr. Harlan B. Phillips, Reynal & Company, New York, 1960.

That the Harvard Law School has played an important part in the life of Mr. Justice Felix Frankfurter bears little questioning. *Felix Frankfurter Reminiscences* should be the ultimate testimonial to this fact.

It has been said of Justice Frankfurter that he has remained at heart a law professor, though he has now been absent from the halls and classrooms of Langdell and Austin since 1939. If this epithet has been intended to point to Justice Frankfurter in his preliminary approach to law and lawyers, but without directly describing his qualities as a justice of the highest court of the land, then this might well be borne out by *Felix Frankfurter Reminiscences*.

This book is the result of efforts that first took the form of tape recorded interviews with Dr. Harlan B. Phillips of Columbia University's Oral History Department. According to Dr. Phillips, there was no thought of these conversations being welded into book form, at least not in Justice Frankfurter's lifetime. Nevertheless, such has been done, and people interested in readability plus vivid accounts of events and personalities in and around the law during the past sixty years will not be disappointed in this volume.

This book ends, at least chronologically, with 1939 and the fabled telephone call from Franklin Delano

Roosevelt to a B.V.D.'d Felix Frankfurter. After first hearing why Roosevelt did not want to appoint him to the Court, Frankfurter then heard his close friend come forth with the unexpected words, "But unless you give me an unsurmountable objection I'm going



Mr. Justice Frankfurter

to send your name in for the Court tomorrow at twelve o'clock."

This of course was to swing the one-time Austrian immigrant into yet new and other swirling channels of life. Though what these latest years have held will have to lie in expectancy until a continued edition of Frankfurter reminiscences are also put into book form, this little diminishes the appeal, the interest, which this initial pre-1939 vintage projects.

If an outline of this book were to be drawn, some wag might propose dividing this volume into pre-Harvard Law School, during Harvard, interim Harvard, back to Harvard, and beginning post Harvard. This is overstatement, but it is not without elements of truth. As Justice Frankfurter emphasizes time and time again, if he had not come to the Harvard Law School, his entire life would have been entirely different. For him this seems to be a starting point and, as well, a point of return.

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passages in the book are when he is describing some of his teachers and colleagues at the Law School. Of James Barr Ames, he says: "He was a wonderful teacher, an original mind, and he illustrated, to a degree unexcelled by anybody I ever knew anything about, the conception by Socrates of a teacher, that of a midwife. Ames was the midwife of minds." Of Professor Samuel Williston: "He was the greatest artist as a teacher I ever encountered, not the most stimulating teacher, but the greatest virtuoso in conducting a class, a wonderful person."

Thus he continues, through John Chipman Gray, Joseph H. Beale, Jeremiah Smith, and the many more who came to attend and teach at the Law School in the years to follow.

More to Come

To limit any discussion of this book to the events directly tied in and around the Law School is, however, to be grossly inadequate in reporting.

There is also Felix Frankfurter in Washington during the Theodore Roosevelt and Taft administration, and during the First World War. This of course was the Washington that came long before Justice Frankfurter's Supreme Court days.

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For this reason, his work as a junior to Henry Stimson when Stimson was United States Attorney and later Secretary of War are most illuminating. Also during the First World War, such experiences as the Mooney case in California, the Morgenthau Mission to Turkey, and the Paris Peace Conference all fall before the Justice's rapier observations and estimates.

Intertwined among these are perhaps the toppings to the cake, his appraisals of the men who are now history — Teddy Roosevelt, Wilson, Coolidge, Hoover, F. D. R., and others, long lists of notables and friends.

It cannot be doubted that Felix Frankfurter has a keen capacity for looking into, analyzing, and remembering the events he has wit-

nessed. Nor can it be doubted that he has, in this book, unhesitatingly, perhaps even eagerly, set forth how the men he describes, including himself, have faced the events and weathered the aftermaths. Some of the judgments he passes may surprise, but they are basic to this book and to what is obviously Felix Frankfurter.

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Letters to the Editor:

To the Editor:

On page 13 of your issue of April 21, 1960, I noticed your poem on the "Metallic Judge." I had the poem copied and sent to one of my colleagues on the Bench who has a taste for poesy, and who must remain nameless. This afternoon I received from this learned judge the enclosed poem which he had composed.

I thought you might find this of interest.

George L. Hart, Jr.
Judge
LL.B. '30

* * *

I know each "fledgling justice"
Gets much and sage advice
On how to keep decorum
And rule with words concise.

But all this is but persiflage.
What he needs is something more,
A suit of stout good armor
Like the cavaliers of yore.

With a helmet stout and sturdy
And a chest encased in mail—
He may within be frightened
But *outside*, all others quail.

Old Popham went the whole way
And indubitably was right,
When he spoke of leaden bottoms,
For such a helpless wight.

For they keep the slob in balance,
And weighted to his chair
When every instinct in him
Is crying out for air.

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For nothing is so upsetting
As to be forced to sit and hear
While some dope is really banging
At your unoffending ear.

But yet decorum dictates
That you do exactly that,
While passion swells within you
To kill the raucous rat.

Your iron-studded derby
And the steel beneath your robe
Avails you nothing here my friend,
When the attack is at your lobe.

What can you do? I'll tell you—
Forget all that's been said,

And unload your leaded bottom
And throw it at his head.

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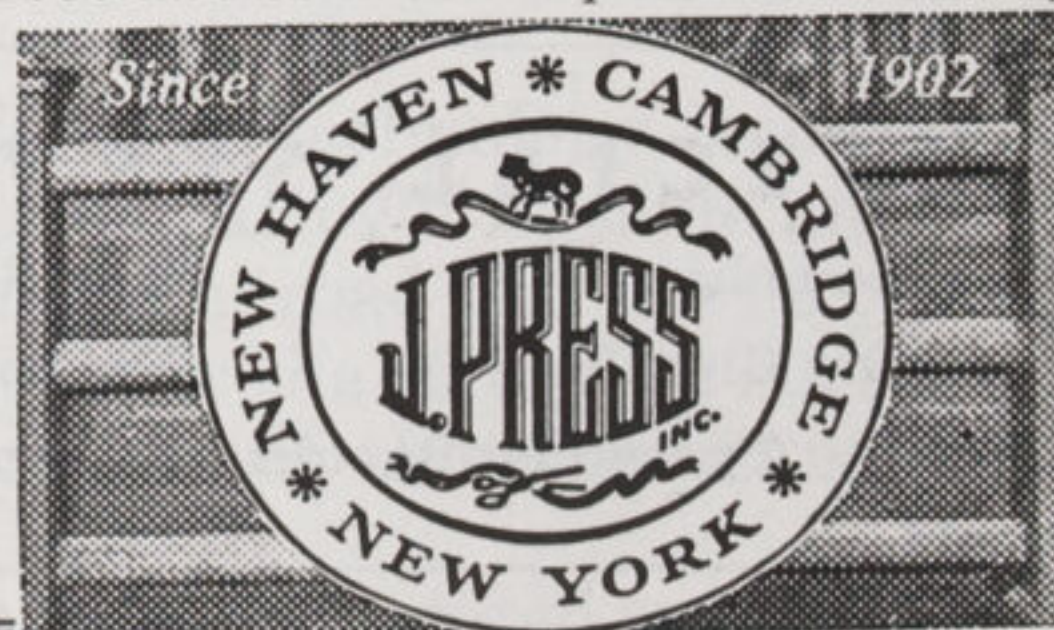
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