



*"America's Oldest
Law School Newspaper"*

VOL. 33

CAMBRIDGE, MASS., NOVEMBER 2, 1961

NO. 6

Model Trial Set

By F. Bruce Abel

While Cambridge citizens exercise their voting rights next Tuesday, twelve of them will also serve on jury duty in the mythical Commonwealth of Ames. They will sit for the case of *Hill v. Artcraft Pictures, Inc.* at the annual Model Trial to be held in the James Barr Ames Courtroom at 4:45 p. m.

Witnessing the trial will be the first year class, which has taken part in the pre-trial

not be available for the trial.

The case, developed by the Teaching Fellows, involves a claim by Willis R. Hill, a newspaper columnist for the *Langdell Daily News*, for \$35,000, the sum mentioned in an advertisement placed in the newspaper by Artcraft. The advertisement, signed by Finley Ransome, president of Artcraft, promised to pay the money to anyone who could prove that its star, Craig Bilder, was not the one who performed all the daring feats of "heroic Jack Lawson" in one of Artcraft's productions, "Sons of the Midway."

Hill thinks the money should be his, since he claims to have proof that Craig Bilder did not perform all the daring stunts that he is said to have done. Before turning to the firm of Sutherland & Hawkins, Hill tried in vain to collect the money from Artcraft himself. He contacted them first by phone but was

(Continued on Page 15)



Arthur E. Sutherland . . .
. . . Counsel for Plaintiff

proceedings in the roles of junior members of the firms of Sutherland & Hawkins and Weinstein & Jones, representing Hill and Artcraft respectively. This week the class took the deposition of an important witness who will

Massachusetts Governor To Speak Here

Massachusetts Governor John A. Volpe will visit the Harvard Law School campus Monday to address the Harvard Law and Graduate Schools Republican Club at an afternoon meeting in the Harkness Commons Meeting Room.

Since Monday is the day before elections, it is expected that Republican Governor Volpe will make comments and observations on the campaigns in various states.

The talk will be open to the public, and all law students are invited to attend.

Hearsay

The Ames season is again upon us, and with it comes an orgy of library research. Each night during the season the library is full of dazed but dogged students poring over their tomes. But, alas, the scene is marred by an annually-recurring sight: great piles of books, twenty and thirty volumes strong, heaped in front of a few of the more rapacious students. While their colleagues bemoan the barren shelves, these students hasten away for another book, or go for dinner, leaving their piles of books behind.

To plead with the guilty ones is of course a waste of valuable RECORD space. The pattern of their antisocial behavior has long been fixed. But it is hoped that the library officials might take note of this nagging problem. Some sort of policing system could be devised whereby students would be limited as to the number of books they could accumulate at any one time — certainly no more than five. Conceding the fact that the library staff is overworked, it would not seem to be an unmanageable additional burden upon them to wander about occasionally and collar violators.

If violations continued, penalties might be imposed. A fine per book in excess of the maximum number allowed would quickly bring recidivists into line. Just how much the elimination of this problem would facilitate Ames research is not known, but finding out would be a desirable end in itself.

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Published weekly on Thursdays during each academic year in the months September through December and February through April by THE HARVARD LAW SCHOOL RECORD CORPORATION, 23 Everett Street, Cambridge 38, Massachusetts. Subscription price: \$2.00 per semester, \$4.00 per year mailed; student subscription, \$2.00 per year distributed at the Law School. Individual copies 15c each at the Law School, 25c each mailed. Business and editorial offices, 23 Everett Street, Cambridge 38, Massachusetts. Telephone UNIVERSITY 8-7600, extension 418.

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COMMENT

By Fenno

Last week a Negro mailman who had been suspended on various charges was reinstated by the Postmaster General. In the statement announcing his action, the Postmaster General said that he would not want such a person "delivering mail to my family's home." He also asserted that there had been "a clearly evident campaign here to twist admitted facts into false conclusions" and "shabby use of pressure" on behalf of the suspended mailman. Nevertheless, he reinstated him, and the implication is evident that this was the result of political pressure by the National Association for the Advancement of Colored People.

This surrender by the government to a pressure group is seriously disturbing. One is prompted to ask why it is all right for the mailman in question to deliver mail to other homes when the Postmaster General wouldn't want him to do so to his own family. Granting that the Postmaster General had courage enough (and make no mistake, it took courage) to make the statement he did, why didn't he have courage not to bow to this shabby pressure? Was it because he received orders from above or couldn't be sure of support for a justifiable decision?

In this particular case the N. A. A. C. P. has put the individual interest of one of its members ahead of the interest of Negroes generally and of the nation. Of course, the N. A. A. C. P. is not the only offender; many special interest groups labor under the delusion that regardless of the merits of the individual case nothing is more important than the general cause they are espousing.

In cases of this type, not only do these special interest groups discredit the community they claim to represent but, by forcing government action by officials who lack the integrity to withstand this inappropriate political pressure, they subvert the good of the nation as a whole.

Sabbatical Activities Bared

By Donald W. Kramer

Three Harvard Law professors who enjoy teaching are working hard this year at *not* teaching—and still enjoying themselves. Professors Robert H. Keeton, Richard H. Field and Mark DeWolfe Howe are participating in Harvard's sabbatical leave program this semester, relinquishing their teaching duties to work full time on scholarly projects of their own special interest.

Professor Keeton, who is best known for his work in torts, is taking the first semester off to prepare several law review articles in the field. Professor Field, an authority on civil procedure, is on leave the first semester to serve as Reporter for an American Law Institute project to recommend changes in jurisdictional lines between state and federal courts. Professor Howe, an expert on constitutional law, will spend the entire year working on the second volume of his three-volume biography of Oliver Wendell Holmes. The three widely different projects prescribe their own widely different approaches, but they have one thing in common—they have become more-than-full-time jobs.

Slight Exaggeration

Professor Keeton, sitting in front of a table full of reference books, told the RECORD this week that it was only slight exaggeration to say he spends 15 hours a day trying to think out some of the problems he is working on for articles. He plans to write on several topics normally considered in a first year torts class, one of them being assumption of risk. He began working on the project about ten years ago when he first began to think about these questions, but he did not begin drafting until last summer.

Now that he has full time to spend on the project, he finds that it is a great advantage to be able to confer on difficult questions with his colleagues. In addition to the review articles, he hopes to get started on several "longer-range interests." He said the semester leave was extremely helpful in having given him an opportunity to do what he could not otherwise do. But, voicing a sentiment common to his two colleagues, he said it is "nothing like the classroom."

Professor Field is taking the semester to spend full time interviewing judges, lawyers and teachers and reading opinions about suggested modifications of jurisdictional lines between state and federal courts. Beginning his second year on a five-year project for the American Law Institute, he has not yet determined exactly how much will be submitted this year.



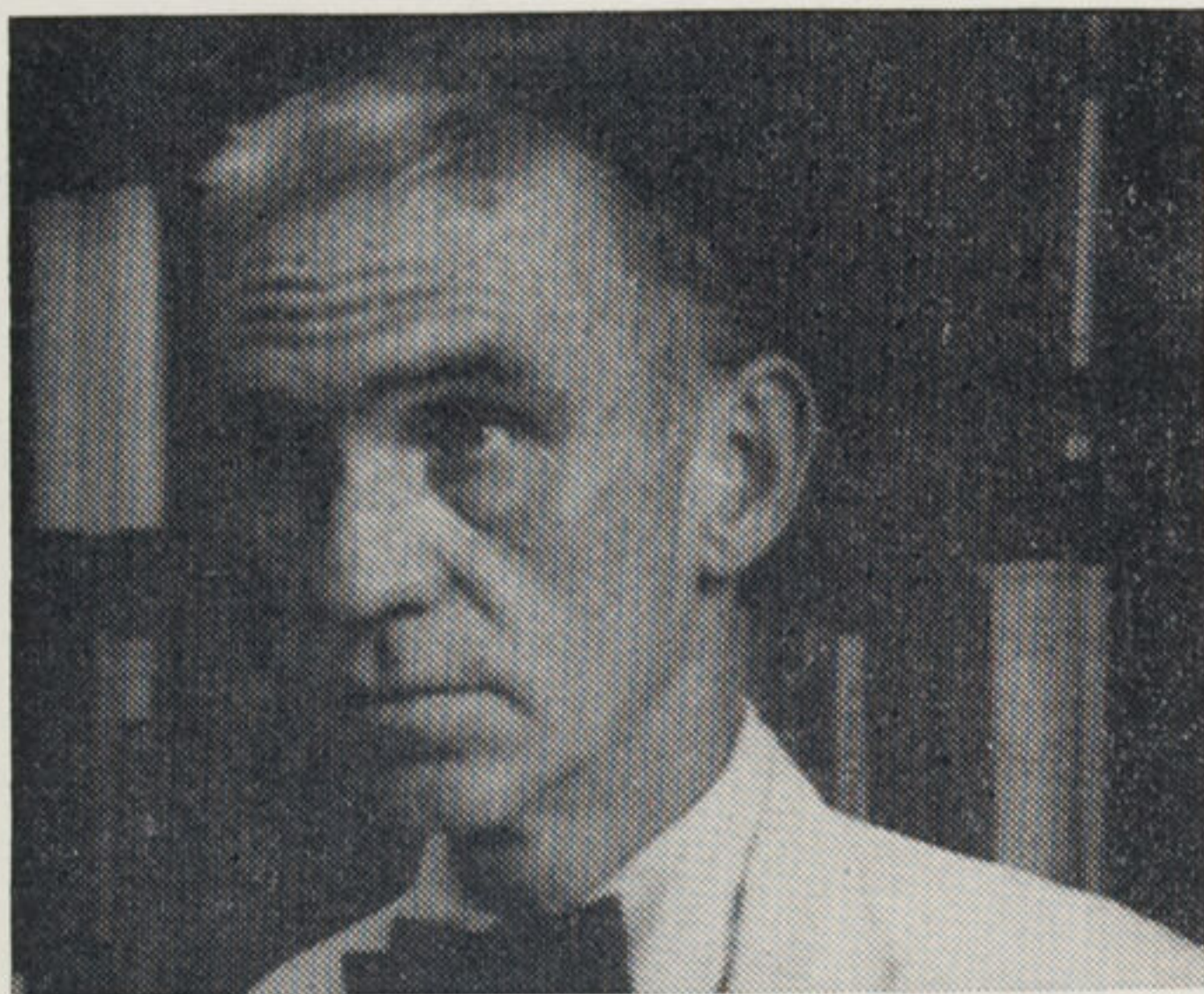
Professors Field and Keeton

With Associate Reporter Paul J. Mishkin of the University of Pennsylvania, he will draft proposed acts for Congress. Following the same process used in approving the Restatements, the suggestions must be approved by a special advisory committee, by the Council of the Institute, and then by a full membership meeting.

Professor Field has already made three or four trips in connection with the project and expects to make more. He meets monthly with Mr. Mishkin to consolidate findings. This is the first sabbatical Professor Field has taken in his fourteen years at Harvard, although he is eligible for one every seven years. He also misses the "day-to-day enjoyment of the classroom" but says that his project is personally challenging and could be important and useful work "if it ever gets anywhere."

Professor Howe was found last week surrounded by shelf upon shelf of books and manuscripts he will use in his "intellectual biography" of Oliver Wendell Holmes, which will cover the period from the end of law school to his appointment to the Supreme Court. He said that he already felt at home

in all of Holmes' published works of the period but that he would spend part of the year delving into unpublished materials. He is especially interested in Holmes' conduct as a trial judge during single-judge sittings of the Massachusetts Supreme Judicial Court. Professor Howe said that nothing has been published on this aspect of the Justice's life.



Professor Howe

One of the problems Professor Howe faces, he said, is determining a "sensible" amount of time to spend on this type of research. "The results are almost all luck," he noted, "and it's difficult to know which are the interesting cases." Most of Professor Howe's work will be done on his own, but he says he expects to consult his colleagues later concerning some areas of law where he is not himself an expert. He said he would not predict whether he would finish by the end of the year, although he hoped he would.

Foundation Grant

Under Harvard policy, a sabbatical can be a half year at full salary or a full year at half salary. Professor Howe, who is taking the full year off, also has a foundation grant to help him with his work. He is a little worried that a full year, with its two summers, might be a little too long to keep working at top pace without going stale. He said he, too, misses the daily excitement of the classroom, but he would not like to spend all his time at either teaching or research. He feels that, without a major project such as his own, the half-year leave is probably the most satisfactory arrangement.

Professor Howe added his impression that there is a special tradition at the Law School: unlike many faculty members at Harvard College, professors here "feel much more of a responsibility to teaching than to research."

Dorm Council News

By John L. Worden III

Appointment of a committee to study transformation of the Law School Dormitory Council into a Law School student government will be discussed at the next meeting of the council. A reason given by the council for the proposal is that the organization is now moving into areas and activities concerned with the entire student body, rather than just the residents of the dormitories.

At last week's meeting of the council a motion to incorporate the residents of Wyeth Hall into the Association and their delegate into the Dorm Council was defeated. However, the delegate will be consulted by Dorm Council officials from time to time, it was stressed.

W. Phillips Rockefeller, 2L, Red Hook, New York, chairman of the council's social committee, reported that a small profit had been made on the recent mixer at Harkness Commons. Such events usually result in a loss for the council. Another mixer will be held before Christmas, he said.

The treasury was reported to have a balance of \$1,684. The council's principal source of income, about \$800 a year, is from various vending machines on the Law School campus and from washing machines in Richards Hall.

In a final action the council directed its building and grounds committee to look into the possibility of providing paper towels in dormitory lavatories.

CURRICULUM CHANGES

At intervals of approximately ten years, the Faculty takes a searching look at the curriculum of the Law School. During the 1960-61 academic year, the Faculty considered many proposals and voted certain changes in the academic program. Next week, in articles to be published concurrently by the *RECORD* and the *Harvard Law School Bulletin*, these changes will be described by Associate Dean A. James Casner, who was chairman of the Law School Committee on Legal Education which submitted many of the proposed changes to the Faculty.

Report From Harkness

By Donald W. Kramer

Dining operations at the Harkness Graduate Center are running about the same as last year, C. T. Tucker, University Director of Dining Halls, reported this week. He considered this fact "good in itself."

Steward Warren Thompson, who is in his second year of managing Harkness under Stouffer Restaurants' contract with the University, agreed that the first month was generally satisfactory. But he said that he and his staff were continuing their efforts to improve service, offer more attractive food of better quality and still keep costs low.

Thompson said revenues were running very close to, or a little bit ahead of, last year's. The number of students on meal contract — 495 — is within five of last year's total. The only significant change in operations has been a sharp increase in the use of special facilities for organizational meetings and parties.

Normal mealtime business continues at a "tremendous volume," Thompson said, sometimes "almost more than we can handle." The worst time, he explained, is immediately after 1 p. m., when students finish their morning classes. The servers can handle only a limited number of people per minute, and the lines back up to great lengths.

Unless students will voluntarily stagger their lunch hours, Thompson said, the only way to change the situation will be to shift the academic schedule, probably by adding 8 a. m. classes. But he emphasized that he did not want to get involved in such academic questions. He stressed that Harkness was "here to serve, not to be served."

Thompson said he was not aware of any general complaints about the quality of the food and was able to recite the very few instances of complaints received. Before the Stouffer firm took over the management last September, student discontent was frequently voiced.

In an effort to provide better service, a new bake shop has been installed this year. "However, this will not prove itself for a while yet," Thompson said. "We don't have the production capacity we will have when our people get used to doing three or four things at once."

A television set, to be used when sporting events and nationally significant programs are televised, will be installed in the south dining room of the second floor. Thompson said he has no intention of allowing it to be used during meals, but will turn it on for sporting events on weekends or for important evening shows during the week. He hopes it will provide a more attractive atmosphere in the grill area and promote sales of food and beverages in the evening.

The grill, he explained, is an expensive operation that pays for the food and labor required, but adds virtually nothing toward overhead expenses.

Niebuhr Talk Scheduled

By Mrs. M. Vance Munro

Dr. Reinhold Niebuhr, acclaimed by many as the most influential American spokesman for neo-orthodoxy in contemporary Protestantism, will address an open meeting of Harvard Law Wives at 3 p. m. Sunday in the Harkness Commons Meeting Room.



Dr. Niebuhr was educated at Elmhurst College, Eden Theological Seminary and Yale Divinity School. He was a pastor in Detroit from 1915 to 1928 and then went to Union Theological Seminary, where he became Professor of the Philosophy of Religion. He is now Dean Emeritus and Professor of Theology Emeritus at the Seminary.

The talk will be open to the public, and husbands of Law Wives are particularly invited to attend.

New Library Lighting Being Installed

Installation of the test section of the dramatic new Langdell Library lighting system was scheduled to begin yesterday, Grounds and Buildings Superintendent J. W. Ingraham reported early this week.

Delivery of the model fixture created by Broadway set designer Abe Feder was delayed more than a week to allow last minute color changes in some of the parts. In the meantime, preliminary work in the southwest corner of the main section of the reading room has been virtually completed.

Heavy bolts have been placed in the ceiling in order to hoist the completed model. Saw-horses have been placed in the blocked-off section so that the assembly process can begin immediately.

The new lighting system, which has been described as "just short of sensational" by Vice Dean Louis A. Toepfer, is intended to provide more effective light for students while cutting the heroic proportions of the room and reducing electric bills. The combined use of both fluorescent and incandescent lighting is planned to make words "stand out from the page" and also require less wattage than the present system.

The assembly will be a three-stage process requiring approximately a month to complete, Ingraham said. The first step will be to put the main structural features of the model together. Then a complicated electrical system, designed to approximate daylight at all times by using different types and intensities of light, will be installed. Finally, the model will be hoisted into place about 20 feet above the floor.

Experimentation with the model will continue during the year so that the most advantageous design can be determined. Library officials hope to install the remaining fixtures in the complete system during the summer.

Civil Liberties Lunch

William Higgs, legal counsel to the Advisory Committee on Civil Rights in Mississippi, will address members of the Civil Liberties Research Service today at 1 p.m. in the Mallory Smith Room.

Bull and Bear Hears Account Executive

By David Berman

At a luncheon meeting in the Mallory Smith Room on Monday the Bull and Bear Club heard James Fox, account executive at Merrill Lynch, Pierce, Fenner and Smith, speak on "Techniques of Trading." Most of his talk was on the subject of trading in commodities, an area which he felt could earn handsome gains for persons with a "large bankroll" and a "speculative temperament."

Fox also spoke briefly on his view of the stock market, characterizing himself as a "gambler" because he is willing to buy stocks at their new highs. He said that through his knowledge of the quality of management and the still unpublicized recommendations of his company, he is usually able to buy stocks within weeks of large price advances.

'Better Red Than Dead' Is Debate Topic

Two Harvard Law School students will debate two scholars from Cambridge University, England, on the topic "Better Red Than Dead" during a two-hour broadcast of the television program "Open End," to be shown in the Boston area next Thursday evening.

Jack I. Samet, Forest Hills, New York, and Dennis R. Hunt, Rockford, Illinois, both first year law students, appear with moderator David Susskind on the program, which will be broadcast at 9 p.m. over WGBH-TV (Channel 2), the Cambridge educational television station. The broadcast, originally presented live in New York City on October 22, will be shown in this area by means of video tape.

According to an "Open End" spokesman, the program represents a departure from the usual "Open End" format. Susskind acts as moderator, rather than host, of an "informal debate." The two English students, Leon Brittan and David Saunders, defend the thesis "Better Red Than Dead," and the Harvard Law students attack it.

Judge Henry Friendly To Be Lecturer



Three talks on the proposed general topic "Definition of Standards in Federal Administrative Adjudication" will comprise the Law School's 1962 Oliver Wendell Holmes Lectures.

The Honorable Henry J. Friendly, Judge of the United States Court of Appeals for the Second Circuit, has been selected to deliver the lecture series, to be presented February 13, 14 and 15 at 8 p. m. in the James Barr Ames Courtroom of Austin Hall.

The Holmes Lectures were made possible by the income from a bequest by Justice Holmes to the Law School. As the result of a Faculty decision, the income is devoted to paying the honorarium of the lecturers as well as the cost of publishing the addresses.

Former Holmes Lecturers have included Owen J. Roberts, former Justice of the United States Supreme Court; Hans Kelsen, authority on international law; and, last year, Benjamin V. Cohen, S.J.D., who spoke on constitutional development.

The public is invited to attend the three lectures. There will be no admission charge.

'Rocky' Talks Postponed

Governor Nelson A. Rockefeller of New York will deliver the annual Godkin Lectures on Government at Harvard next February 7, 8 and 9. The lectures had originally been scheduled for this month.

Governor Rockefeller, who has been governor of New York since 1958, earlier served in

the federal government as coordinator of Inter-American Affairs, Assistant Secretary of State, Undersecretary of State, Undersecretary of Health, Education and Welfare, chairman of President Eisenhower's advisory committee on government organization and in other posts.

The Godkin Lectures on Government, founded in 1903, honor the memory of E. L. Godkin, British-American journalist of the 19th century, who founded *The Nation* and edited the *New York Post*. They are administered by the Graduate School of Public Administration.

Dean Barnes Will Direct Studies

An Office of Latin American Studies is being established at Harvard University under the direction of William Sprague Barnes, Assistant Dean of the Law School and Director of the World Tax Series. The Office will encourage cooperation among scholars in all parts of the University concerned with Latin America.



The Office, made possible by a grant from Kidder, Peabody and Company and The Kidder, Peabody Foundation, will explore an increase in research on Latin American issues at Harvard. This is a first step in the development of a new program of Latin American studies at Harvard.

Since World War II, Harvard has established several area centers for international research, including the Center for East Asian Studies, the Center for International Affairs, the Center for Middle Eastern Studies, the International Legal Studies program, the Russian Research Center and the Center for the Study of World Religions.

SPORTS

Soccer Team Wins Five Straight

By Derek L. Driemeyer

The Harvard Business-Law soccer team extended its string of wins to five by beating the Harvard freshmen, 4-0, and a team of MIT graduate students, 2-0.

Peter Bennett started the scoring in the Harvard game by picking up a loose ball in a scramble in front of the goal and slipping it past the goalie. His score preceded one by George Harley, and shortly thereafter Tony Bryan scored from his right wing position. George Harley added the final goal of the game and made his total for the day two scores.

While the scoring was very much in favor of the HBS-Law team, the game was more of an equal contest than the score would indicate. The freshmen were in good shape and ran their opponents all over the field. The HBS-Law defense, however, was able to hold the freshman line in check throughout the game.

The game against the MIT team was a contrast to the freshman game. The HBS-Law team was very much the dominant force on the field but was unable to make this advantage pay off in goals. The shots that were made were mostly either over or wide of the goal, and only two found the mark. The first goal did not come until the third period, when Eckehard Simon scored on a low shot from his inside position. The second and final score came late in the game when John Kurland headed the ball in from his left wing position.

The next game for the HBS-Law team will be played against the Harvard Varsity on Wednesday, November 8, at 3:30 p.m. on the Harvard Varsity field.

Law students interested in participating in non-partisan pre-election or election day work for the November 7 election are invited to contact Neil L. Chayet, 2L (UN 4-4404), Republican Club representative, or John A. Rava, 2L (UN 4-6632), Democratic Club representative.

Landis Slated For ABA Meeting



Former Harvard Law School Dean James M. Landis heads the list of speakers who will address the American Bar Association's 28th regional meeting in Birmingham, Alabama, November 9-11. Landis recently resigned from his position as Special White House Assistant for Administrative Agencies.

Course Given In College Teaching

The Harvard Faculty Committee on Teaching as a Career is offering this year an extra-curricular course in college teaching. The course is open to graduate students of Radcliffe and Harvard. The course, initiated in 1947, was last held in 1958.

Leading faculty members and administrators of Harvard and Radcliffe are taking part in the nine weekly sessions of the course, which will end December 11. The course gives students a preview of the rewards and responsibilities of the academic profession, according to a Committee spokesman. The subjects being considered are the American college and university today, college appointment, lecture techniques, teaching the sciences, faculty responsibilities, the teacher's relationship to his students, life in the academic community and the changes involved when a graduate student becomes a teacher-scholar. All sessions are being held in the evening.

FEATURES SECTION

Trial by Nonjury

By The Hon. Gerald F. Flood

This is an address to a Bench-Bar Conference held recently in Atlantic City under the sponsorship of the Philadelphia Bar Association. Judge Flood analyzes the most common arguments against the nonjury technique, especially as regards negligence cases, and concludes that the practical advantages outweigh the objections.

The careful study of all suggested remedies for court congestion in the Supreme Court in New York City, made by the University of Chicago Law School, indicates that the nonjury trial is the one thing that has definitely proved effective in relieving congestion. This also appears, as to the courts of Philadelphia, in the study of Professor Leo Levin and his associates.

Consider what an enormous civil backlog we would now have in Philadelphia were it not for the arbitration system.

Consider what a backlog we would have in criminal courts of Philadelphia today if we tried all cases to a jury as we had to do until so recently as 1935. In 1927, the Supreme Court, in declaring invalid an attempt by Judge Edwin O. Lewis to try a criminal case without a jury, observed that so far as it was informed, this was the first time any Pennsylvania judge had tried such a thing. In the last two years of my chairmanship of the Criminal Business Committee, when we had pretty complete statistics, 37 per cent of all criminal cases coming into court were disposed of by guilty pleas and 63 per cent tried. Of those tried, a little over 95 per cent were tried without jury and something under 5 per cent with jury. Thus all dispositions

Judge Flood received his A.B. and LL.B. degrees from the University of Pennsylvania in 1920 and 1924. He practiced law in Philadelphia from 1925 to 1937, when he was appointed to the Common Pleas Court No. 6 in Philadelphia County. He has been a Lecturer in Law at the University of Pennsylvania Law School since 1944 on the subject of Pennsylvania Practice. Recently he was elevated to the Superior Court of Pennsylvania.

were 37 per cent by guilty pleas, 60 per cent by jury waiver and only three per cent by jury trial. You can see where we would be if we were restricted, as we were until as recently as the Act of 1935, to only guilty plea or jury trial without possibility of waiver.

Finally, there is the dramatic result of Chief Justice Horace Stern's experiment in nonjury trials when he was President Judge of Common Pleas Court No. 2. He persuaded counsel to waive jury trials in most of the smaller cases and, when this succeeded, in larger ones. In a very few years a backlog of over 3,000 cases awaiting trial in that court was reduced almost to the vanishing point.

The trend away from the jury trial is probably irresistible in the long run. In England, the home of the jury trial, where the backlog came earlier and there was no written constitution to prevent any restriction of jury trial, there is a jury trial of right in only six types of civil cases, libel and slander, false imprisonment, malicious prosecution, seduction, breach of promise and fraud cases. You will notice these are all cases which have a criminal tinge.

Since the nonjury trial has saved the situation in our criminal courts, and since Judge Stern's experiment had such dramatic results as a backlog solvent and the arbitration system has done so much to cut down our civil backlog in the last few years, one of the most promising roads of attack on the backlog would seem to be an effort to extend still further the use of the nonjury trial.

I have heard the lawyer's fear that verdicts would be lower if judges, rather than juries, fixed damages, or on the other side, that in some types of case they would be higher. I have heard that some plaintiffs' lawyers feel there will be more defendants' verdicts. More justifiable, I think, are the defendants' fears of more plaintiffs' verdicts. But I should guess most trial lawyers really have their doubts as to what the result would be, and it is this uncertainty that frightens them off. The judge's natural instinct for settlement and compromise will, I think, result in more

plaintiffs' verdicts, although by the same token, those verdicts may often be smaller than the jury would allow. My experience during my last five years on the trial court has led me to believe that juries were bringing in substantially more defendants' verdicts, but substantially bigger verdicts for the plaintiff when they found for him.

The Chicago study gives some indication that judges, on the average, fix damages as much as twenty per cent less than juries. At least this was the result of a survey where judges were asked what they would have given in 3,000 personal injury cases tried before them with a jury. The investigators also submitted a précis of personal injury cases to several hundred trial lawyers. Their average estimate was that the judges would give nine per cent less. If these figures are accepted, I ask you plaintiffs' lawyers to consider whether it isn't a fair offset against a two to three year delay, and I ask you defendants' lawyers also whether it isn't a fair exchange.

Most Cases Are Average

Of course, I know that some of you will feel that none of your cases is an average case. But, for this purpose, most cases are average. I think if plaintiffs themselves were asked to vote uncounselled, they would go for the quicker, lower verdict. And it is hard for me to believe that the insurance companies would refuse if this were their only objection.

There remain the differences between judges. Since there are not eleven other judges to balance off the trial judge's idiosyncrasies as there are in the case of the individual juror, most lawyers remain unwilling to trust their pet cases to a trial judge alone unless they know in advance who he is.

Except for the fact that some lawyers feel that their training and practice qualifies them best for persuading juries and are, therefore, unwilling to see the scope of jury trial diminished under any circumstances, I think the chief objection to waiving jury trial is the fear of drawing a judge whose philosophy will make him unsympathetic to the case of one side or the other in advance. What can be done to overcome this?

How the judge should approach a civil non-jury case will probably long be a subject of controversy. Shall the judge approach the decision as a jury would, with his instinct for compromise given full play? Or should he

follow the law and the instructions he would give the jury? If he does the latter, the doctrine of comparative negligence, so repugnant to our law, and so dear to the hearts of sympathetic jurors, will be eliminated in fact as well as in law. This will make a difference. The doctrine of the last clear chance will no longer have any more validity in our trials than it has in our law books. The judge has two eyes and experience, it is true, and will likely see the case as a three dimensional problem. But he doesn't have the 24 jury eyes that sometimes seem to see a fourth or fifth dimension to the problem with such surprising results, which in retrospect often turn out to be good and just.

I have heard that our revered ex-Chief Justice Horace Stern, the judge who was most successful with nonjury trials in Philadelphia, was criticized occasionally for not adopting a strictly legal, logical attitude. I prefer to believe that Judge Stern was correct in his approach. And yet it is difficult for some judges to bring themselves to follow it.

I heard the opposite criticism in the late thirties from Judge Kenworthy, who was one of our most active and able trial lawyers, usually for defendants. I think he meant the criticism for most of my brethren then on the bench, but specifically he meant it for me and my colleagues on the Common Pleas Court No. 6 who were then new at the job. He said he had strongly favored negligence trials without jury but he was giving it up because of the hidebound all-or-nothing attitude of the judges who seemed to feel they were bound to go all the way for one side or the other and either find for the defendant or give the plaintiff every last penny to which he could be entitled under all of his evidence. Judge Kenworthy felt, on the contrary, that in nonjury cases we should act as a jury would act.

I have been asked whether I have any specific suggestions which might help. Certainly I have nothing new, but I will repeat some that others have made over the years.

One: When we set up the bail arraignment system in 1956, we recognized as a fact of life that most lawyers would not agree in advance to waive a jury trial unless they knew who the trial judge was going to be. To suggest that this be announced in advance was anathema and an insufferable affront to the dignity of some of my older colleagues who had been

on the bench from the glorious earlier days of the Common Pleas Court. But the catastrophic growth of the backlog between 1936 and 1956, and the disappearance of all but one of the bitter-end jury trial judges, made the Common Pleas Judges agreeable to a system under which the judges who were going to sit on nonjury criminal cases would be announced in advance.

It may well be that a panel of judges to try nonjury civil cases during various months should be announced and lawyers should be allowed to "pick their judges" within limits, as long as both sides agree. If the judges will agree on this, it seems to me that many cases will be transferred from the jury list to the nonjury list when the panel of judges is announced. This is now being done in Los Angeles, where the court has established a panel for this purpose made up of judges who have been most successful in nonjury cases.

A second thing that might make nonjury trials more palatable to both judges and trial lawyers would be immediate decisions just as a jury would make them. I don't know whether or not all or most of our judges do this now. When I tried a negligence case without jury, I always, or nearly always, entered my decisions first thing the next morning. I waited to see whether my first impression would change overnight. This was my substitute for the jury room discussion. My mind almost never changed overnight. I don't believe it would have been any more likely to change after 60 days, except that I would probably have forgotten a good deal of the testimony and my impression of the witnesses.

Counsel might feel better if they had some requests for findings to present at the conclusion of the case, of the sort that might be contained in points for charge in a jury case. These would be merely for the purpose of calling the judge's attention to matters in the case which counsel think important. The judges might also find this helpful. Of course, in a negligence case the trial judge should never be required to make findings, as he was before 1937, or the nonjury negligence trial would disappear completely.

In non-negligence cases, different considerations apply. Often there will be knotty legal problems which require consideration and prevent a quick decision. But it is the negligence case we are talking about primarily.

What I have said about the judicial approach to nonjury negligence cases suggests that settlement might be easier in such cases when the judge has heard part of the testimony, or even when he has read the pleadings and heard opening statements. If he indicates his initial reaction, it might go a long way toward effecting a settlement.

The business of the Philadelphia courts is largely proportional, not to the nearly static population within the city limits, but to the very rapidly growing metropolitan population. This metropolitan population was probably not more than 2,000,000 in 1900 when we had 12 judges, exclusive of the Orphans' Court, for Philadelphia. By 1940, when the metropolitan population had increased to something over 3,000,000, the Municipal Court had been established and the total number of judges for Philadelphia, exclusive of the Orphans' Court, had been increased from 12 to 35. In the last 20 years, while metropolitan population has grown to 5,000,000, there has been no increase in the number of the Philadelphia judges.

At the present rate of increase, the metropolitan population will reach 8,000,000 at the end of the next 20 years in 1980. Experience of the last 20 years indicates that there will be no proportionate increase in the number of judges. The automobile has been the main factor in the spreading of the residences of the population from the city to the suburban areas, while a large part of the business of the whole area, particularly its commercial, financial and legal business, remains centered in the city. This means that our negligence cases are apt to grow in proportion to the metropolitan population, since the larger the population of the metropolitan area centering on Philadelphia, the greater will be the automobile traffic in and out of the city.

Under these circumstances, if we continue to handle negligence cases as we do now, they will so completely clog our courts that the whole judicial process will be choked. Unless a more efficient method of handling our negligence cases is evolved, the present system is bound to go by the board and a compensation or other administrative system will take its place. Despite some suggestions for such a system, no one has yet offered such a plan which promises a satisfactory result for litigants. A little thought will indicate how much more difficult it will be to establish such

a system for automobile accident cases than it was for industrial accidents when the Workmen's Compensation system was evolved.

But if our present system becomes completely or practically unmanageable, as it threatens to do because of an increasing backlog of automobile cases, the history of America, with its pragmatic approach to such problems, indicates that some other system, however difficult or unsatisfactory it may appear, will replace it.

If we think our system of trial for the ultimate determination of such cases as we cannot settle reasonably promptly, ought to be preserved, we had better diligently explore

all suggested methods of improving it and making it as efficient as the nature of the system will allow, and cooperate in putting such improvements into effect. Our trial without jury in the criminal court and our arbitration system in the County Court makes me feel that, while we must do many things to make our system function better, the one that will do the most toward solving our problems within the framework of the present system is an expansion of trial without jury in negligence cases, saving the jury for the very few hard-core cases where almost all of us would agree that a jury trial is necessary for proper disposition.

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Gallery

By Usher A. Moren

If the casual passer-by were to glance into one of the Seminar Rooms of the International Law Building on a Tuesday afternoon, he might well be confronted with any one of a number of surprising activities in progress ranging from color slides of a medical examiner's autopsy to a discussion centered around a take-apart model of the human brain, or a recording of jury deliberations on an insanity plea in a murder trial. The viewer would not, however, have been suddenly transported to a medical school; he would have been, rather, a chance witness to some of the more colorful demonstrative teaching techniques employed in the two



Medico-Legal Problems Seminars at the Law School.

The tall, slim instructor around whom the inevitable group of students would cluster after each seminar meeting is William J. Curran, Lecturer in Legal Medicine at the Harvard Law and Medical Schools. This, however, is only one of a number of Mr. Curran's present positions and professional commitments, which include Director (and founder) of the Boston University Law Medicine Research Institute, Professor of Law at Boston University School of Law, and Edward R. Utley Professor of Legal Medicine at the Boston University School of Medicine.

Mr. Curran, who was an honors recipient and first in his class at the Boston College

Law School in 1950, places the beginning of his interest in the interdisciplinary area of law and medicine in the work leading up to his LL.M. degree at the Harvard Law School in 1951, when he wrote his thesis on the mental health laws of Massachusetts. His thesis was subsequently published by the Boston Bar Association. He then practiced in Boston for two years, after which time he returned to academic pursuits in such widely separated places as Santa Clara, California, and Chapel Hill, North Carolina. He returned to the Harvard Law School in the summer of 1953 as Associate Director of the Massachusetts Administrative Procedure Project; and in the following summer, as a Rockefeller Research Associate at the Harvard Medical School, he began his association with the Medico-Legal Problems Seminar. He continued as Associate Professor of Law at Boston College Law School until 1957, when he was appointed to the faculty of the Boston University School of Law.

Intense conviction breaks through Mr. Curran's usually calm exterior when he speaks of his early interest in the field of legal medicine. "I felt," he says, "that there was a need for a certain number of basic law teachers in the field who, while active in the highly specialized field of legal medicine, could supply a much needed connection with the high-level, scholarly research of the law schools." It was largely for this reason that he decided to "take the plunge" and devote himself full-time to the subject. "The only thing interdisciplinary before," he recalls, "was my automobile as it went from school to school." Finding that any substantial progress in the area was hindered by differences in interest and approach from law school to medical school, Mr. Curran decided to broaden his own professional base and in 1958 received the degree of Master of Science in Hygiene from the Harvard School of Public Health, to his knowledge the only attorney without prior medical training to have done so.

At the same time, he was becoming progressively more convinced of the need for an independent interdisciplinary institute which could both bridge the potentially harmful gap between the fields of law and medicine and

provide for growth of a developed kind in both research and training. In 1958, a grant of \$250,000 from the Federal Government made possible the establishment of such an Institute, with Mr. Curran as its Director. One of the first projects of the Institute was a survey of medico-legal education in the United States. Learning that courses in the medico-legal area were available at twenty-seven law schools, both the need and justification for a book in the field became evident, and Mr. Curran's *Law and Medicine: Text and Source Materials on Medico-Legal Problems* was published by Little, Brown and Company in 1960.

Mr. Curran quite definitely considers himself basically and primarily a teacher of law. He points with pride to his establishment of, and term as Editor-in-Chief of, the *Annual Survey of Massachusetts Law* from 1954 through 1956. He feels that research activities in the medico-legal area are very healthy for law schools, as such research cannot be done in the law library alone, and thus the researcher is forced into interdisciplinary work. "The net result," he thinks, "is appreciably beneficial not only to medicine, but to the law, in that it brings about a mutual acquaintance with the educational and working methods and standards of another vital discipline."

When queried about the most important legislative contribution made by the Institute, Mr. Curran points unhesitatingly to the Tuberculosis Reorganization Act drafted by the Institute under his direction and enacted into law in Massachusetts in 1961, to be effective in 1963. This act reorganized the state tuberculosis hospital system from 18 dissimilar state, county, and city institutions, to 5 regional treatment centers, with central responsibility on the state level. In line with this, he feels that one of the greatest problems for the coming legislative session will be the staving off of local-interest efforts to water down or nullify the effectiveness of this legislation.

As to subjects of future importance, Mr.

Curran refers to the necessity for more knowledge and understanding about malpractice, a problem that is poisoning the relationship between law and medicine. "This is something that is not handled satisfactorily on either side," he says, "but since both sides are dissatisfied, hopes for progress are high." He also points out the need for a more scholarly handling of the presentation of medical evidence in the courtroom. As one approach to this problem, he is presently engaged in collaboration with Professor Edward Cleary of the University of Illinois Law School on an evidence casebook for use in basic evidence courses, which will consider the problems raised by evidentiary material from the areas of medicine and the behavioral sciences.

The interview might have gone on indefinitely, except that a secretary broke in to tell Mr. Curran that a cab was waiting to take him to a class at the Boston University Medical School and that he had a meeting of the Newton Board of Health that evening. "Sewage," he said, as he gathered up papers for his class. On the way down the stairs he spoke enthusiastically of his planned trip through Europe next February with his wife and three children, when he will make a study of the comprehensive governmental medical care programs of a number of countries and the effect and impact of these programs on the general field of legal medicine.

"By the way," he said, "if you're free this weekend, the Institute is making its first foray into the area of post-graduate education. We're holding a two-day course at the Statler Hilton, Friday and Saturday, November 3 and 4. It's entitled 'Scientific Investigation in Criminal Justice.' Some of the best men in the country will be speaking, and the advance registration is quite interesting: police, prosecutors, lawyers, detectives, doctors, and even one hypnotist, with people attending from as far away as Florida and California."

Then he was in the cab and disappeared into the traffic, a very busy man on a very busy road.

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Model Trial

(Continued from Page 1)

rebuffed by Artcraft's publicity man. Hill tried sending a letter requesting Artcraft to send its check for \$35,000 at its "earliest convenience" and including a sworn and notarized affidavit stating the proof he felt he had.

Representing Hill in court will be Arthur E. Sutherland, senior partner of the mythical firm bearing his name and Bussey Professor of Law at Harvard. Lewis H. Weinstein, of Weinstein & Jones in Ames and of the Boston firm of Foley, Hoag and Eliot, will present Artcraft's defense. Mr. Weinstein will give a second semester course in Trial Practice. The case will be argued before Judge Edward T. Gignoux, a 1940 graduate of Harvard Law School and presently a Federal District Judge in Maine.

Beginning at 4:45 p. m., the trial will run straight through the evening, with a recess for dinner, until the jury returns a verdict. The verdict, however, will be placed in a sealed envelope and not opened by the judge until the next morning. Because the seats in

the courtroom will be filled by the first year class, attendance will be restricted to this group. A verbatim record of the trial will be made and given to each member of the class later next week in preparation for the appeal, which is scheduled for Monday evening, December 11, at 8:00.

Computer Talk Planned

The Student Bar Association will present a talk by Reed Dickerson this afternoon at 1:30 in the Harkness Commons Meeting Room. Mr. Dickerson's topic will be "Electronic Computers and the Practical Lawyer."

Doctor To Address Wives

Next Wednesday the Harvard Law Wives will hear a talk by Dr. Dean A. Clark, M.D., at 8 p. m. in the Harkness Commons Meeting Room.

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Placement Opportunities

Further information is available at the Placement Office, 23 Everett Street. Not all opportunities are listed here. Interviews are listed in the following order: city, name of firm, interviewer, (deadline for contacting Placement Office), date of interview.

THIRD YEAR INTERVIEWS

Los Angeles: Voegelin, Barton, Harris & Callister. Richard B. Humbert, Esq. Requirement: average of 68 or above. (2 p.m. Friday, November 3.) Wednesday, November 8.

Dearborn: Ford Motor Company. Richard I. Fricke, Esq. (2 p.m. today.) Thursday, November 9.

New York: Greenman, Shea & Zimet. Sol N. Corbin, Esq. (2 p.m. today.) Thursday, November 9.

Elizabeth: Esso Research and Engineering Company. Mr. J. K. Small. (2 p.m. Friday, November 3.) Friday, November 10.

New York: International Business Machines Corporation. H. Bartow Farr, Jr., Esq. (2 p.m. Friday, November 3.) Friday, November 10.

New York: Lowenstein, Pitcher, Hotchkiss, Amann & Parr. Harry B. Clark, Esq. (2 p.m. Friday, November 3.) Friday, November 10.

Newark: Pitney, Hardin & Ward. Donald B. Kipp, Esq. (2 p.m. Friday, November 3.) Friday, November 10.

Philadelphia: Duane, Morris & Heckscher. Maurice Heckscher, Esq. (2 p.m. Friday, November 3.) Friday, November 10.

Providence: Edwards & Angell. Bancroft Littlefield, Esq. (2 p.m. Friday, November 3.) Fri-

day, November 10.

New York: Hays, Sklar & Herzberg. Robert Wolf, Esq. Requirement: average of 72 or above. (2 p.m. Friday, November 3.) Saturday, November 11.

Chicago: Mayer, Friedlich, Spiess, Tierney, Brown & Platt. Robert L. Stern, Esq. Requirement: average of 69 or above. (2 p.m. Monday, November 6.) Monday & Tuesday, November 13 & 14.

New York: Goldstein, Judd & Gurfein. Earle K. Moore, Esq. (2 p.m. Monday, November 6.) Monday, November 13.

Newark: McCarter & English. Francis E. P. McCarter, Esq. (2 p.m. Monday, November 6.) Monday, November 13.

Philadelphia: Montgomery, McCracken, Walker & Rhoades. Robert M. Scott, Esq. (2 p.m. Monday, November 6.) Monday, November 13.

Philadelphia: Rawle & Henderson. J. Welles Henderson, Jr., Esq. (2 p.m. Monday, November 6.) Monday, November 13.

Pittsburgh: Kirkpatrick, Pomeroy, Lockhart & Johnson. Thomas W. Pomeroy, Jr., Esq., & Charles J. Queenan, Jr., Esq. (2 p.m. Monday, November 6.) Monday, November 13.

Nation-wide: Arthur Andersen & Company. Messrs. Alfred F. Falk & Charles Morrison. (2 p.m. Tuesday, November 7.) Tuesday, November 14.

New York: Chas. Pfizer & Company, Inc. Messrs. R. C. Allen & E. A. Agostini. (2 p.m. Tuesday, November 7.) Tuesday, November 14.

New York: Everett, Johnson & Breckinridge. Malcolm Johnson, Esq., & Michael Loening, Esq. (2 p.m. Tuesday, November 7.) Tuesday, November 14.

Pittsburgh: Reed, Smith, Shaw & McClay. Charles Denby, Esq. (2 p.m. Tuesday, November 7.) Tuesday, November 14.

Worcester: Mirick, O'Connell, DeMallie & Lougee. Paul R. O'Connell, Esq. (2 p.m. Tuesday, November 7.) Tuesday, November 14.

Columbus: Porter, Stanley, Treffinger & Platt. Bruce G. Lynn, Esq. (2 p.m. Wednesday, November 8.) Wednesday, November 15.

New York: District Attorney of the County of New York. Richard H. Kuh, Esq. (2 p.m. Wednesday, November 8.) Wednesday & Thursday, November 15 & 16.

New York: LeBoeuf, Lamb & Leiby. Arvin E. Upton, Esq. (2 p.m. Wednesday, November 8.) Wednesday, November 15.

Chicago: McBride, Baker, Wienke & Schlosser. Frank A. Wollaeger, Esq. (2 p.m. Thursday, November 9.) Thursday & Friday, November 16 & 17.

New York: Beer, Richards & Haller. Walter E. Beer, Jr., Esq., & Cyril F. O'Neil, Jr., Esq. (2 p.m. Thursday, November 9.) Thursday, November 16.

Washington: Pogue & Neal. Robert H. Shorb, Esq. (2 p.m. Thursday, November 9.) Thursday, November 16.

THIRD YEAR OPPORTUNITIES

Boston: Hill, Barlow, Goodale & Adams. Contact John L. Saltonstall, Esq.

Cleveland: Gottfried, Ginsberg, Guren & Merritt. Contact Robert L. Merritt, Esq.

Miami: Nichols, Gaither, Beckham, Colson & Spence. Contact Placement Office by Friday, November 3.

New York: Marshall, Bratter, Greene, Allison & Tucker. Requirement: Law Review, Board of Student Advisers or Legal Aid. Contact Oscar L. Tucker, Esq.

Norfolk: Willcox, Cooke, Savage & Lawrence. Contact T. H. Willcox, Jr., Esq.

Washington: Spencer & Whalen. Requirement: no anticipated military service. Contact Frank J. Whalen, Esq.

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