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Cavers Confuses Defense Plans

Accepts Civil Defense Post, Condemns Civil Defense

By Charles F. Waite

Professor David Cavers has been appointed a member of a University-wide committee to explore the problem of what action the University should take in light of civil defense plans and policies of local, state and national governments. After accepting the appointment, his name appeared, along with those of 200 other Boston area professors, at the bottom of a newspaper advertisement condemning current United States efforts for civil defense.

The appointment of Professor Cavers and other members of the University Faculty was made by Harvard University Acting President Charles A. Coolidge pursuant to an understanding between President Nathan Pusey and the several University Deans.

According to an administration spokesman, the move was taken to explore what action, if any, the University should take to meet the possibility of physical injury or damage from fire or fall-out in case of nuclear attack.

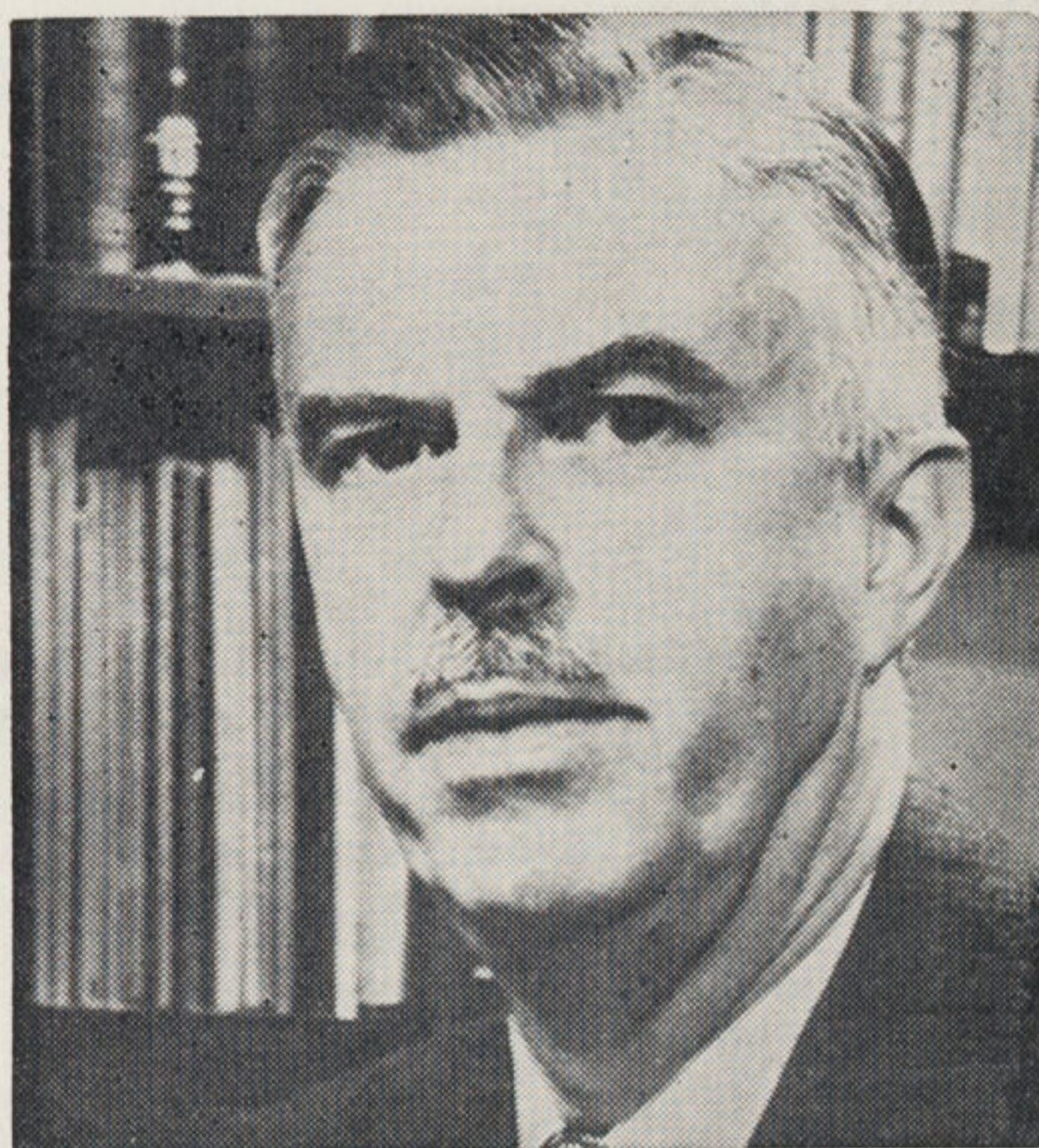
Dean Harvey Brooks of the Division of Engineering and Applied Physics will serve as chairman of the committee, which has been authorized to obtain outside assistance "if necessary."

Subsequent to the announcement of Professor Cavers' appointment, an advertisement entitled "An Open Letter to President Kennedy" appeared in last Friday's *New York*

Sees No Contradiction Between Views and Appointment

By Donald W. Kramer

Professor David F. Cavers said this week he sees no contradiction between his outspoken views concerning the value of a national civil defense program and his recent appointment to the University committee to study Harvard's possible preparations for nuclear war.



Professor Cavers . . .

. . . A Fall-out with Civil Defense

Cavers, one of 12 appointees of Acting President Charles A. Coolidge, told the RECORD that he would probably have some ideas to contribute both on the wisdom of making any real preparations and the factors to be

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Hearsay

The plight of the nation's railroads continues to get worse. To the already existing problems of loss of freight and passengers, one road, the Southern Pacific Company, has added that of guaranteeing what amounts to a lifetime wage to its telegraphers. The union, not an organization to miss an opportunity, got the Southern Pacific to sign a contract which included such terms.

Taking advantage of increased mechanization and automation in the form of an electronic traffic control system, the Southern Pacific found that, because of the closing of stations, it no longer needed all of the telegraphers it employed. It has only 946 of them this year as compared with 1,538 of them in 1957. So, in order to satisfy the management's desire to have these highly skilled and not too easily procured men available when it needed them and the union's desire to provide more job stabilization in the face of technological change, the union and the railroad agreed to a contract which provides that the telegraphers will hold their jobs or receive full weekly pay for life. Secretary of Labor Goldberg has called the contract "a landmark."

With all due respect to both the Secretary and the accommodation which the situation required, we feel that the union in making and in receiving its demands went too far. Similar proposals may be demanded by other railway brotherhoods and by unions in other industries which are faced with rapid technological changes. The plan may quash incentive. And even more importantly, there is the question of who is to guarantee the boss' business. Surely not subsidies.

Harvard Law Record

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COMMENT

By Fenno

In a period of American history in which the unity of the American people is perhaps more important than ever before, it is bitterly disappointing to read that no less a person than the Vice President of the United States has injected bigotry into a political campaign.

Campaigning in Texas for a candidate for Congress, Henry Gonzalez, the Vice President is reported to have said, "The eyes of the whole world are upon us. They want to see whether we're bigots, whether we're going to be prejudiced, or whether we'll go all out and vote for a good American." The implication in his words was clear: Vote for Gonzalez because he is a member of a minority group. If you don't vote for Gonzalez, regardless of his individual merits, you're a bigot.

Whether this appeal was effective is not clear. Gonzalez won the election, but perhaps he did so on legitimate grounds. It should be noted, however, that no sooner had he won the election than he flew to the scene of another campaign for the purpose of influencing voters of his background in favor of one of the candidates.

Vice President Failed

Unfortunately the Vice President failed to recognize that it is just as evil to vote for a candidate because he is a member of a certain group as it is to vote against him on that basis. The candidate's nationality, race or religion are neither qualifications nor disqualifications for office. All that should matter is his ability and his position on important questions.

Too often those who cry the loudest for an end to discrimination are guilty of gross hypocrisy, for they are only too eager on the one hand to encourage discrimination in the form of "ticket balancing" and appeals to minorities to "put one of your own in office," and on the other hand to adjure voters in general to demonstrate their lack of prejudice by voting for members of minority groups.

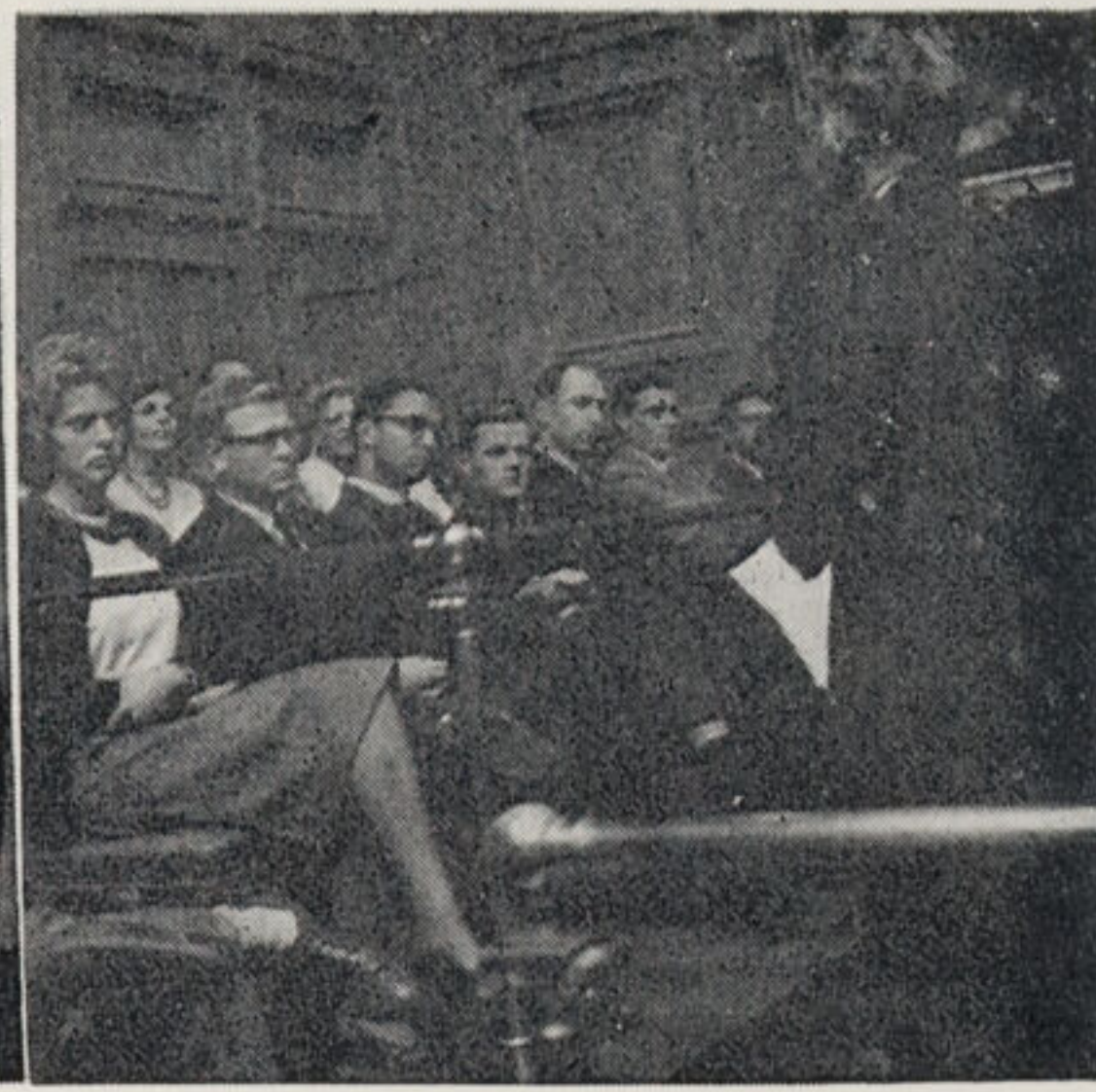
Trial Judgment For Plaintiff



Mr. Weinstein



Judge Gignoux and Counsel



— RECORD Photos by Donald W. Kramer
Professor Sutherland and Jury

By Daniel J. Kucera

Willis R. Hill, newspaper gossipist ("My Views") for the *Langdell Daily News*, received judgment in his lawsuit against publicity-minded Arcraft Pictures, Inc. at the annual Model Trial held in the James Barr Ames Courtroom last week. Hill's claim arose from Arcraft's alleged promise to pay \$35,000 to anyone who could prove that its star, self-styled thrill-king Craig Bilder, did not perform all the daring feats of "heroic Jack Lawson" in the film "Sons of the Midway" (censored in Boston). Hill says he offered such proof but was rebuffed by Arcraft.

The case was argued before the Honorable Edward T. Gignoux, Federal District Court Judge in Maine, by Professor Arthur E. Sutherland for the plaintiff and Lewis H. Weinstein, of Foley, Hoag and Eliot, for the defendant. The courtroom was packed with young, Harvard-like spectators who were divided into 3 groups: fans of Hill, fans of Bilder and fans of a certain blonde juror.

Contrasting Styles

The courtroom observed and experienced contrasting styles of advocacy: Professor Sutherland, slow, quiet, deliberate; Mr. Weinstein, quick, loud, biting.

Professor Sutherland presented two witnesses — the plaintiff Hill (Robert Huntley) and Lockwood Heath (Professor Paul Bator). Heath, ex-stuntman for Arcraft, said that he, not Bilder, performed two of the film's dangerous stunts. Professor Sutherland also

introduced into evidence the actual two scenes in question from the film. As the bailiff distributed popcorn, the mighty walls of the courtroom rolled apart, exposing an epic 180° screen. The two scenes were projected, and girls screamed as heroic Jack Lawson walked a tightrope between two tall buildings with a girl on his shoulders and as Lawson fell off the back of a speeding car, dirtying his coveralls. In general, Professor Sutherland tried to show that the tightrope scene was dangerous, that Heath, not Lawson, appeared in the car scene and that Hill accepted Arcraft's "offer."

Confidential Relationship

On cross-examination, Mr. Weinstein tried to show that Heath revealed these secrets to Hill while drinking ("Q: When the drinks rise in number your tongue becomes a little looser? A: Well, yes, I guess so."), thus breaking Arcraft's confidential business relationship rule.

Mr. Weinstein also introduced two witnesses. One was Miss Coke (Mrs. Henry Jacoby), who immediately gained audience rapport. The vice president for publicity at Arcraft, she said that Arcraft's "offer" was a mere stunt, that there never was an offer and that, if there was, it had been revoked ("I told him [Hill] the whole thing was ridiculous.")

Mr. Weinstein then introduced Craig Bilder (a drama student), who played the part of Jack Lawson ("The picture is primarily a vehicle . . . so the audience can see me

perform all these daring stunts." Mr. Weinstein tried to show that Bilder, not Heath, appeared in the car stunt and that, while Heath did appear in the tightrope scene, this was an illusory stunt, not a daring feat. On cross-examination Professor Sutherland tried to show that the stunt was dangerous. In a dramatic move, Bilder estimated as 15 feet the height that the tightrope was above the ground.

The Court denied the plaintiff's and defendant's motions for a directed verdict. The Court also denied seven of the plaintiff's eleven requests for instructions and sixteen of the defendant's eighteen requests.

In his closing argument, Mr. Weinstein quoted Scott's couplet, "Oh, what a tangled web we weave, / When first we practice to deceive!" and explained that the tightrope stunt and the "offer" were only illusions. Mr. Sutherland argued that probably no one was lying. "There is a sad wearing away of the sharp perception of the honorable that perhaps goes with the business of being one who perpetrates publicity stunts — a professional illusion" which ignores public reality.

Questions Submitted

The Court submitted three questions to the jury: (1) whether there was an offer, (2) whether the tightrope stunt was dangerous, (3) whether Bilder performed the car stunt. The Court, however, resolved four other issues in favor of the plaintiff: (1) whether the offer had been revoked, (2) whether there was sufficient consideration, (3) whether the plaintiff induced a breach of confidential relations, and (4) whether the offer was a wager.

The Court adjourned at 11:30 p. m., but the jury deliberated until 3:30 a. m. in an 11-1 deadlock. Finally, in the name of "group work," the two counsel entered into a stipulation (Rule 48) that the verdict of 11 jurors be taken. The jury then submitted a sealed verdict finding for the plaintiff (that the tightrope stunt was dangerous). Later, judgment for the plaintiff and defendant's notice of appeal were entered.

This week the first year class has been studying the record, reviewing the tactics of counsel and discussing possible grounds for appeal. The appeal is scheduled for December 11, with Professor Louis Loss for the defendant-appellant and visiting Professor Norval Morris for the plaintiff-appellee.

Bull and Bear Hears 'Computer' Financier

By David Berman

On Friday, November 10, the Bull and Bear Club heard William S. Morris, of William S. Morris and Company, New York City, speak on "The Uses of Computers in Bond Analysis." In a broad discussion of computers in business, Morris claimed that most companies are not making proper use of the computers they have purchased. He said that accountants and comptrollers generally assign to the computers the "drudgery of office work," while top management — generally unfamiliar with the methods and results of electronic data processing — ignores the potential value of computers in policy determination.

Morris suffers from no such handicap. A graduate of Princeton with honors in mathematics, he worked as an insurance actuary and then as an analyst for the First Boston Corporation before starting his own firm. In his business, he has relied heavily on the use of analog and digital computers. His computer stores vast amounts of information concerning the municipal and state bonds his company sells. Properly programmed, the computer can tell him at any time at what price a bond should be bought or sold, taking into account all the variables of a given market. It can also furnish him, in about a minute, with lists of bonds which meet particular specifications, while it might take a clerk a whole day to compile a similar list.

Morris also discussed how he captured a California bond underwriting contract this year by underbidding a group headed by California's largest banking firm. He said, however, that the aid of the IBM 1401 computer was valuable but not indispensable, and it was apparent from the rest of his talk that shrewd timing and careful psychological planning were not of insignificant help to him in carrying out his celebrated financial feat.



Due to the fact that next Thursday is Thanksgiving Day, a holiday, no RECORD will be published next week. The RECORD will appear again on November 30.

Semifinals Begin Next Week

By Charles F. Waite

The two rounds of the Ames Competition semifinal arguments will take place during the next two weeks, with third year members of the Cardozo, Casner Equity, Casner Law and Story Law Clubs vying for a chance to compete in the final argument next spring. The judges, cases and participants for the two contests are as follows:

Round One

The Honorable Harry A. Blackmun, Judge of the United States Court of Appeals for the Eighth Circuit, will preside at the argument in Round One, to be held Tuesday, November 21, at 8 p. m. in the James Barr Ames Courtroom of Austin Hall. Joining him on the bench will be the Honorable M. Joseph Blumenfeld, Judge of the United States District Court for the District of Connecticut, and the Honorable Paxton Blair, Solicitor General for the State of New York.

The case to be argued is *United States of America v. Crest Finance Co.*, which involves questions of the priority of federal tax liens over contractual liens under state law. The following issues are presented:

1. Whether an assignment of accounts receivable under the Illinois Assignment of Accounts Receivable Act as security for a present loan takes priority over a subsequently assessed federal tax lien.

2. Whether a federal tax lien takes priority over such assignment taken after assessment of the tax, but prior to filing of notice of the tax lien. The issue involves construction of the terms "pledgee," "mortgagee" and "purchaser," as used in IRC §6323(a).

3. Whether a federal tax lien takes priority over an assignment made after assessment and after notice to the assignee of the assessment, but prior to filing of notice of the tax lien. This issue also involves construction of IRC §6323(a).

Third year members of the Story Law and Casner Equity Clubs will compete in this argument. Story Law Club members are Evan R. Berlack, Ossining, New York; Stephen F. Ells, Cambridge, Massachusetts; William K. Hoskins, Cincinnati, Ohio;

Michael R. Marron, Cambridge, Massachusetts; Mark A. Michelson, Brookline, Massachusetts; E. Lewis Reid, Jr., Cambridge, Massachusetts; Robert D. Webster, New York, New York; and Thomas C. White, West Hartford, Connecticut.

Casner Equity Club members are James G. Greilsheimer, New York, New York; Louis L. Hoynes, Jr., Indianapolis, Indiana; George E. Pike, Jr., Dewitt, Arkansas; Samuel H. Seymour, Washington, D. C.; Mrs. Ellen Donovan Smith, Emporium, Pennsylvania; Michael Whiteman, Great Neck, New York; and John G. Wofford, New York, New York.

Round Two

The Honorable J. Cullen Ganey, Judge of the United States Court of Appeals for the Third Circuit, will preside at the argument of Round Two, scheduled for Tuesday, November 28, at 8 p. m. in the Ames Courtroom. His associate justices will be the Honorable J. Skelly Wright, Judge of the United States District Court for the Eastern District of Louisiana, and Robert W. Meserve, Esq., of the Boston law firm of Nutter, McClenne and Fish.

The case to be argued is *The Andover Shoe, Inc. v. Union Shoe Machinery Corporation and Jameson Machinery, Inc.* The appeal is from a judgment for the plaintiff entered in a treble damage action under the Clayton Anti-Trust Act. The principal issues include the following:

1. Whether the "passing on" of excessive rental charges resulting from a price fixing agreement to the customers of the lessee of shoe machinery is a defense to a treble damage action.

2. Whether the New York rule that fraudulent concealment does not toll the statute of limitations or the federal rule that it does should be applied in a Clayton Act case where the forum state period of limitations governs.

3. Whether under the federal rules of fraudulent concealment an affirmative act of concealment must be proved.

In this argument, third year members of the Casner Law and Cardozo Clubs will compete. Members of the Casner Law Club are John H. Doyle, New York, New York; Miss

Marjorie L. Girth, Cranbury, New Jersey; Gregory M. Harvey, Morristown, New Jersey; Edward C. Pinkus, Hempstead, New York; M. Laurence Popofsky, Oskaloosa, Iowa; Melvin S. Schwarzwald, Canton, Ohio; Sidney L. Shushan, New Orleans, Louisiana; and George J. Wade, Tenafly, New Jersey.

Cardozo Club members are Gary O. Concoff, Los Angeles, California; Robert E. Fast, LaBelle, Pennsylvania; Leon P. Gold, New York, New York; Bruce A. McAllister, Brooklyn, New York; Gerard M. McGhee, Chatham, New Jersey; Daniel R. Murdock, Commack, New York; Malcolm G. Smith, Los Angeles, California; and Theodore I. Wallace, Jr., Elmhurst, Illinois.

All law students and their guests are invited to attend both of the arguments.

Forum To Present Famous Nuclear Physicist

Dr. Leo Szilard, famous nuclear physicist and recently a harsh critic of United States nuclear policy, will deliver a talk on the topic "Are We On the Road to War?" for the Harvard Law School Forum on Friday, November 17, at 4:15 p. m. in Lowell Lecture Hall.

Dr. Szilard was one of the earliest of the modern scientists to apply nuclear physics to the problems of war and peace. Among the first of the scientists to conceive of the possibility of an atomic chain reaction and to recognize what it might mean to the world, he took the initiative in 1939 to induce the United States government to assume responsibility for development of atomic energy. A letter on this subject, written to President Franklin D. Roosevelt by Albert Einstein in 1939, was based on the work of Szilard and Enrico Fermi, who together later developed the first sustained atomic chain reaction for the production of atomic bomb materials. As a result of this work, Fermi and Szilard were awarded the first patent in the atomic energy reactor field.

In 1945, Szilard assumed the leadership of those of his colleagues who were opposed to dropping atomic bombs on Japan. In 1946, he led a successful fight against the May-Johnson bill, which would have placed the development of atomic energy in the United States in the hands of an agency rather than under direct "civilian" control of the President.

Since 1946 Dr. Szilard's main interest has shifted to molecular biology. With E. P. Wigner he shared the Atoms for Peace Award in 1959. He has recently taken to writing and has published *The Voice of the Dolphins* — five stories of social and political satire — which is now in its third printing.

The special afternoon Forum program will be moderated by Don K. Price, Professor of Government and Dean of the Harvard Graduate School of Public Administration. Admission is 50¢ or by Forum season ticket.

Presidential Assistant Will Address Democrats

By John A. Rava

Special Assistant to the President Richard N. Goodwin, LL.B. '58, will address an open meeting of the Law-Graduate Democratic Club tomorrow at 1:40 p. m. in the Harkness Commons Meeting Room. In the coterie of White House advisors more closely associated with the academic realm than with the politically-oriented, Goodwin has been closely linked with influencing the Administration formulation of Latin American policy.

Goodwin, who served as president of the *Harvard Law Review*, has made a rapid rise since graduating from the Law School in 1958. He was Special Consultant to the House Subcommittee on Legislative Oversight, aiding in the investigation and revelation of the television quiz "fixes" in 1959. He joined the President's campaign team in 1960 and was brought into the White House by the President immediately after the inauguration.

The talk tomorrow will be informal, with a period reserved for questions. Goodwin will be among the first of the so-called "Harvard clique" in Washington to speak in Cambridge about his experiences in the first ten months of the new Administration.

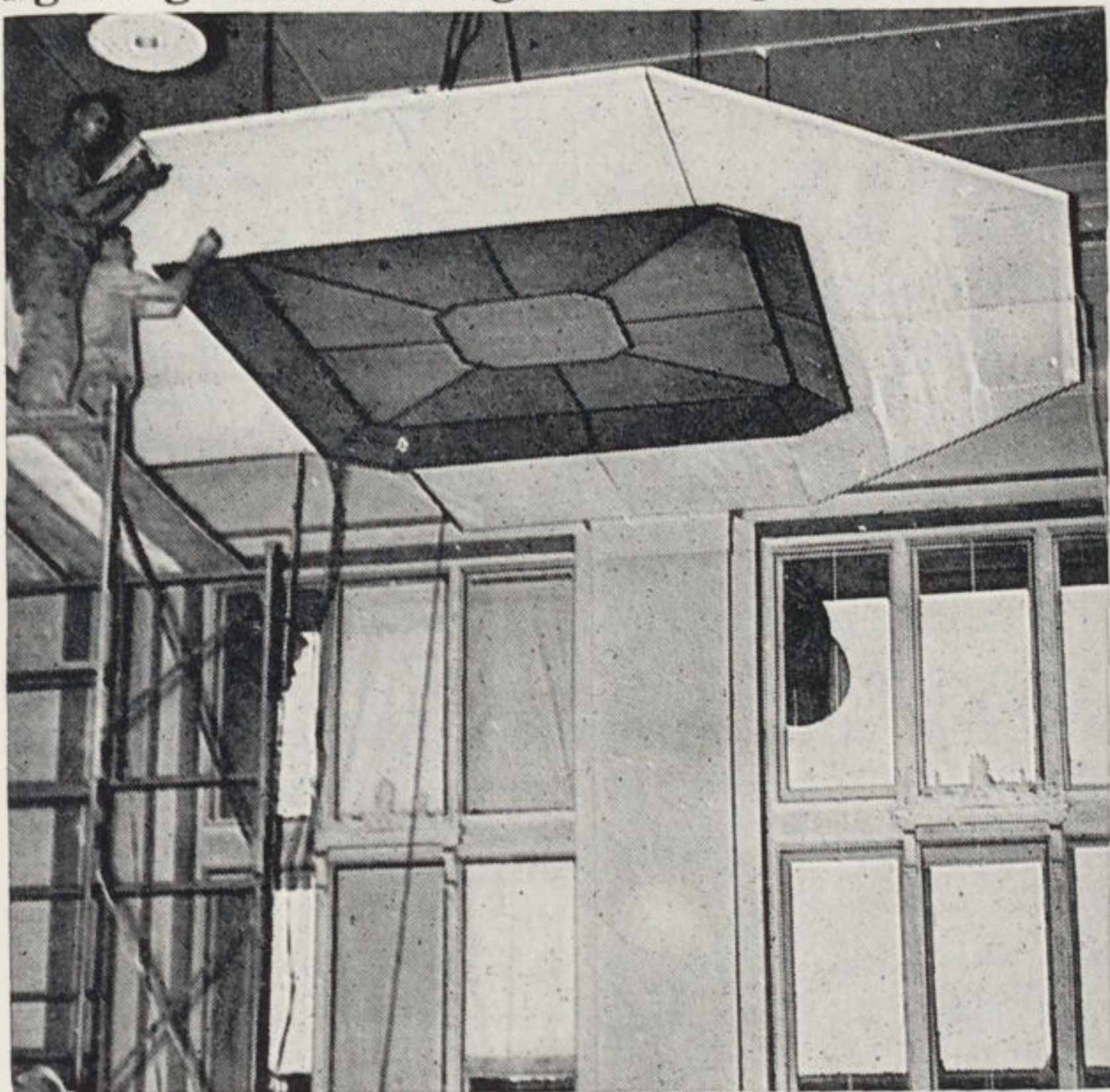
Casner on Tax Panel

Associate Dean A. James Casner will be chairman of a panel of lawyers and law professors who will discuss federal tax aspects of estate planning at the Federal Tax Institute of New England's forum on current developments in federal tax law, on Saturday, December 2, at John Hancock Hall in Boston.

Lighting Expert Gives Views

By Donald W. Kramer

Abe Feder talks about light with a capital "L." At age 52, he is considered the "Grand Old Man of Light." He is the nation's foremost advocate and practitioner of "organic" lighting. Once he begins talking about "wash-



— RECORD Photo

A new Langdell light fixture . . .

ing walls," "targeting beams" or considering "comfort factors," he goes on without prodding to reveal parts of his philosophy of light.

Feder, who is considered both a fanatic and a genius, was here last week testing and experimenting with the model light fixture he has created for Langdell Library. It is the first part of a system to be installed during the summer.

For more than 20 years, Feder has been recognized as the foremost authority on all types of lighting. A few of the projects completed by his consulting company, Lighting by Feder, are the United Nations General Assembly room, the New York Port Authority Bus Terminal, the New York Coliseum, the Prometheus Fountain in Rockefeller Center, the New York Tishman Building, the New York Aquarium at Coney Island, the lion cages and the penguin house at the Bronx Zoo, the corset department at Gimbel's, the Desert Inn at Las Vegas, Nevada, the Swedenborgian Cathedral in Bryn Athyn, Pennsylvania, and more than 300 Broadway

shows, including "My Fair Lady" and "Camelot." In 1956 he designed the entire exterior lighting system of Idlewild International Airport.

Thomas Edison discovered artificial light and put it in bottles and tubes, Feder has said. "I want to take it out of the bottle and put it everywhere." He continually thinks of light as an architectural and structural component. He says it is the only material that can "fill space without actually filling it."

Feder talks disparagingly about the present lighting system in Langdell Library. He decries the "pots" that hang all over the center section of the reading room. He says they are too glaring and inefficient. He does not like the fluorescent "railroad tracks" in the north section because they give an uneven light, with the top of the room "as dark as death." Nor does he like the eight-foot fluorescent squares in the south portion of the room. These, he says, shed more light on the ceiling than on the books; none of the systems relates to the architectural concepts of the



— RECORD Photo

. . . receives Abe Feder's watchful supervision.

room. They were merely hung from the ceiling to give some light below.

In contrast, Feder has developed his own apparently "effortless" lighting system. Twelve fixtures like the test model will be installed in each of the two end-portions of the main room, with a huge skylight effect

added to the center of the room. The main advantage will be a balance of light, with equal intensities throughout the entire area. The reader will not be nearly so aware of the source of the light. With a false ceiling dropped several feet from the present one, and with the skylight breaking the room into three parts, most of the "grand dimensions" that make the reader feel ill at ease will be counteracted.

Feder illustrated the importance of these factors by demonstrating the difference between studying under his lights and under the end lights. In the end section, when the student looks up from a book, he is immediately aware of a tremendous glare, of a great expanse of space and of so many other objects that are in his perimeter of vision. Under Feder's light system, the glare is gone, the dimensions are reduced, and the light is a warmer color and softer intensity, making the whole atmosphere more comfortable.

At the same time, the simultaneous use of both incandescent and fluorescent lights enhances the readability of the pages. Fluorescent light alone has a very flat effect, but the infrared of the incandescent lamps "targets into the book" so that the words seem to stand out.

The intensities of light can also be changed by the number of tubes or the amount of output being utilized. By cutting down on intensity when the sun is doing the job for free, and by using less wattage in general, the Law School will be able to save money on electric bills, Feder says.

Beamed onto Reflectors

The consultant has also come up with unique ways of lighting the inscriptions above the windows and the pictures in the alcoves. The false ceiling around the main room will stop a few feet short of the walls. Recessed in the fixture will be fluorescent lights which will be beamed onto reflectors and off to the inscriptions and the walls themselves. No one standing on the floor will be aware of the source of the light, and it will effectively add to the balance in the entire room. In the alcoves, light will be directed from a new shelf above the reference tables to the ceiling and the pictures on the wall. Again the source will be "invisible."

"I learned early in the theater," Feder said, "that the most important thing is what people look like in light. It has been my

credo ever since. They have to look like human beings. They have to have color in their cheeks." He compared the people working under his fixture with the jaundiced "ghosts" sitting in the end section.

"Light must not superimpose itself in a room," he declared. "It has to be effortless. You have to be comfortable. There has to be a certain serenity in the atmosphere."

Feder has been working with light ever since his interest was aroused when he attended a great magic show as a youngster. At the Carnegie Institute of Technology, he was constantly active in lighting undergraduate shows, frequently getting himself into trouble for cutting holes in the stage to conceal new lights. He quickly became discouraged with his architectural studies, however, when his professors refused to recognize the values of light as a structural component.

He moved on to New York and began working with theatrical productions. His big break came in 1937 when he did the lighting for Orson Welles' production of Christopher Marlowe's *Dr. Faustus*. He was immediately hailed as a creative genius.

Today, as boss and chief creative talent for Lighting by Feder, he is always working on new lighting techniques and concepts. Climbing around a ladder in Langdell last week, he noted that he seemed to spend most of his time climbing ladders or crawling around construction beams.

His assistant, Jules Horton, says Feder comes up with most of the basic designs adopted on projects. As with most creative work, Horton says, some ideas come easily while others are much more difficult. "It all depends on how well he is sleeping. If he's sleeping well, it takes longer."

As commissions continue to come in for newer and more varied projects, Feder continues to set his mind to work in a wide range of ideas. "We're still in the Ice Age in the realm of light," he says.

Griswold Rumored for Post

Harvard Law School Dean Erwin N. Griswold has been called by several news reports a "good probability" to be appointed Ambassador to Australia by the President, most notably in an article in Monday's *New York Times*. Facts to substantiate this rumor had not, however, been forthcoming up to press time of the RECORD.

Mosk Tells of Western Politics

By John A. Rava

California Attorney General Stanley Mosk last Friday night entertained a capacity audience with a witty and informative political talk. In a departure from the tenor of many local politicians, the California Democratic National Committeeman and Attorney General openly discussed the intricacies of California politics and administration at a dinner meeting of the Law-Graduate Democratic Club.

Looking forward to the important 1962 California gubernatorial election, Mosk admitted that Democratic Governor Edmund G. (Pat) Brown faces an uphill battle for re-election against probable Republican nominee Richard M. Nixon. Brown's popularity has receded from its 1959 peak, he said, due to unfortunate public impressions concerning his indecisiveness.

After building up a remarkable first year record, Brown suffered from his handling of the Chessman case and was attacked for failing to act when he was constitutionally unable to do so, Mosk said. Brown's image was also tarred by the 1960 Democratic National Convention. Many expected Brown to control the California delegation, when instead it had been constituted so as to represent all the competing factions. Mosk commented that he much preferred his state's chaotic delegation to one like New York's monolithic unit, where the delegates took orders from above.

Probable Candidate

An unannounced but probable candidate for re-election himself, Mosk was far from pessimistic about Brown's chances. Even though Nixon last year received over 49 percent of the nation's presidential vote, including a majority in California, and has never lost an election in California, Mosk claimed that he is unpopular with certain segments of the population. "Nixon tends to unify the Democrats," he stated. "Having foisted him on the American people, we Californians are determined to have the honor of retiring him."

Commenting upon the supposed resurgence of the right wing, Mosk quipped, "They've always been there and now they have a home." Mosk's office put out a now famous statement linking the John Birch Society to old ladies wearing worn out tennis shoes. He mentioned that he had received about 50

tennis shoes in the mail since then. He had hoped that they might be useful, but they were all for the right foot, and he is "not in favor of unbalanced people."

Asked about publicized Democratic intra-party friction in his state, Mosk replied, "We do our fighting in a goldfish bowl and the Republicans do it in a smoke-filled chamber." He attributed his selection as national committeeman to dissatisfaction on the part of Governor Brown and Democratic congressmen with the policy pronouncements made by his predecessor. He denied that a conflict



— RECORD Photo By Charles F. Waite

California Club members and guests cluster around California Attorney General Stanley Mosk at a cocktail party given by the club for the visiting official while Democrats impatiently wait in Harkness Commons to hear him speak.

existed between professionals and amateurs during the 1960 Presidential campaign. "We have no pros in politics in California because we have no patronage." While a certain Midwestern state might have 40,000 jobs riding with a change in state administrations, he declared that, of the 1,000 jobs in the state justice department, he controlled only 8. "We get better government service this way," he said.

The Attorney General concluded by explaining that even strictly legal functions of his office may have political consequences. Thus the decision of the Attorney General's office to argue for the exclusionary rule in criminal prosecutions, prior to the recent Supreme Court declaration on the subject, led to the Republican outcry that the Democrats were "soft on crime." Emotional issues like this are difficult to refute rationally, he added.

FEATURES SECTION

Observations on the Supreme Court

By Solicitor General Archibald Cox

This speech was delivered before the recent annual meeting of the American Judicature Society. Mr. Cox explains the special problems which make the business of the Supreme Court unique and analyzes the process of decision. His conclusions regarding the divisions within the Court and the criticisms leveled at it should be considered by law students as well as lawyers.

One following the Supreme Court intimately cannot avoid being struck by the very special nature of its work. There are many cases which might arise in any court and which are not unusual except in their difficulty, but more than half the docket, I estimate—and much the most important half—is quite different from normal judicial business and quite unlike the usual flow of litigation through state and inferior federal courts. Too often we tend to forget the difference and its consequences.

For one thing the size and quality of the interests affected is quite extraordinary. I do not mean merely that there are suits between the United States and du Pont and General Motors, or that even the case against a small taxpayer may establish a rule affecting millions of dollars. The point is that in many cases the real contest is not so much between individuals and business corporations as between institutions and ways of life; and in reaching decisions this fact is explicitly rec-

Mr. Cox received his A.B., 1934, and LL.B., 1937, from Harvard. He has served in the Departments of Justice, Labor and State, was Principal Mediation Officer for the National Defense Mediation Board in 1941, and Chairman of the Wage Stabilization Board in 1952. He has also served on various labor arbitration committees and on a Congressionally-appointed committee to recommend changes in the Taft-Hartley Act. As advisor on labor matters to a certain young Senator from Massachusetts in 1959, he helped draft compromise provisions which were incorporated into the Landrum-Griffin Act that year. Mr. Cox was a member of the Law School faculty from 1946 until 1960, when he was appointed Solicitor General.

ognized. Throughout American history the prime examples have been the contests between state and federal authority and the definitions of the powers of the executive and legislative branches, but familiarity does not lessen the intensity of the contest and new aspects are always arising. Consider, for example, the recent work of the Court in defining the investigatory powers of Congress.

Less familiar examples also abound. Next term the Court will hear *Arizona v. California*, an original suit to determine the rights of six states and the United States in the waters of the Colorado River. The decision will profoundly influence the relative growth and prosperity of Southern California, most of Arizona, and perhaps parts of Nevada and New Mexico. It may also affect whether the trend of our water law is national or local.

Underlying Issues

The school segregation cases, the appeals from the conviction of "sit-ins," and the inevitable litigation over the "freedom riders" grow out of the conflict between the ideal of liberty and equality expressed in the Declaration of Independence, on the one hand, and, on the other, a way of life rooted in the customs of many of our people since before the signing of the Declaration. The cases cannot be decided wisely without facing the underlying issue.

Indeed, an extraordinarily large proportion of the most fundamental issues of our times ultimately go before the Supreme Court for judicial determination. They are the issues upon which the community, consciously or unconsciously, is most deeply divided. They arouse the deepest emotions. Their resolution—one way or the other—often writes our future history. I have already mentioned race relations and the conflict between pressures for conformity and individual freedom. A newer example is the tightening contest for political power between rural areas which are now grossly over-represented in the state legislatures and growing metropolitan districts whose problems, because of malappor-

tionment, are too often neglected. This October the Court will hear reargument in the Tennessee reapportionment case upon whether the claim that gross malapportionment in both houses of a state legislature violates the Fourteenth Amendment, presents a justiciable question.

Perhaps it is an exaggeration to suggest that in the United States we have developed an extraordinary facility for casting social, economic, philosophical and political questions in the form of actions at law and suits in equity, and then turning around and having the courts decide them upon social, economic, and philosophical grounds. It is plainly true that we put upon the Supreme Court the burden of deciding cases which would never come before the judicial branch in any other country.

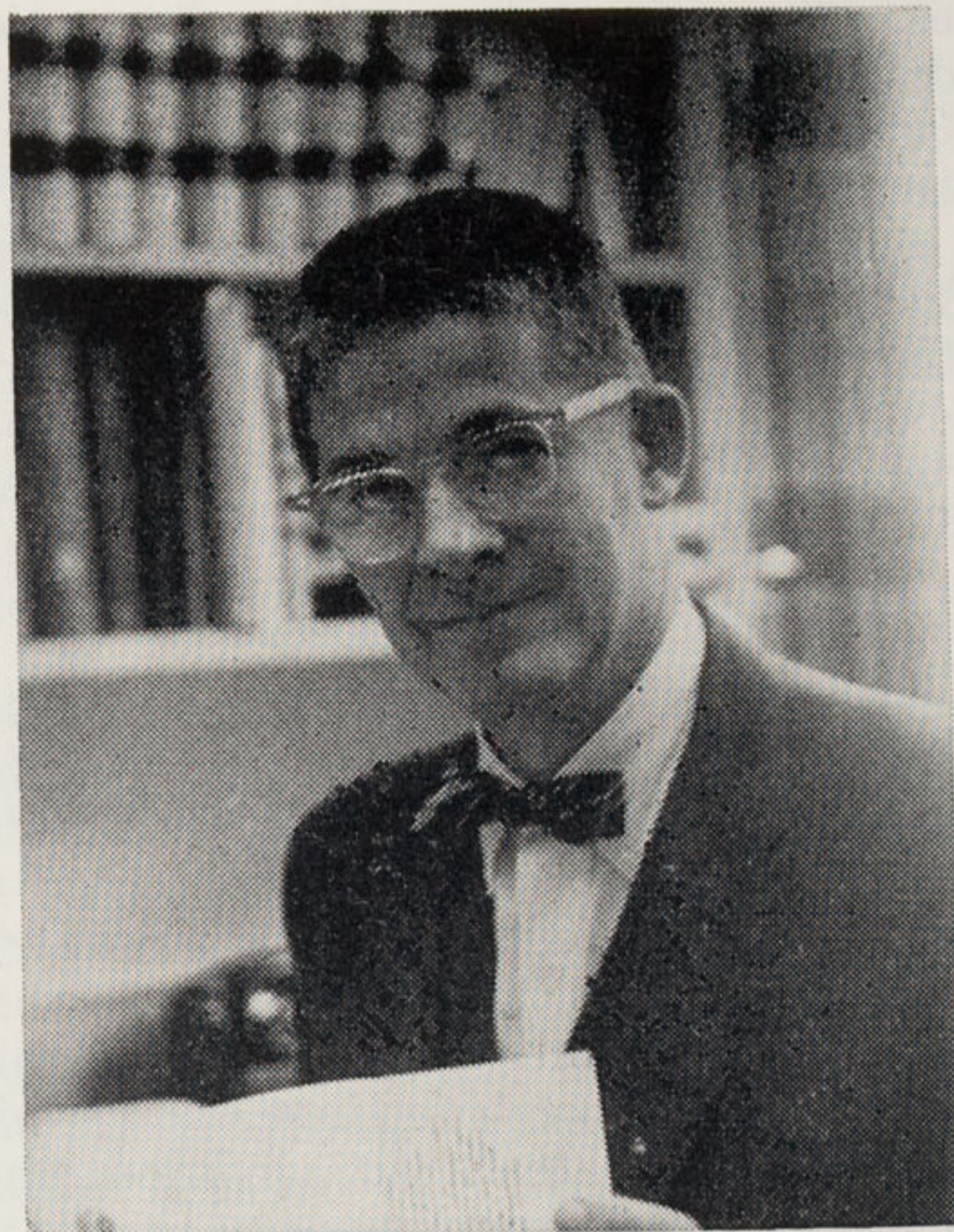
Court's Work Unique

The unique nature of the Court's work, more than any other characteristics, places its stamp upon the institution, creates the Court's own peculiar problems, and shapes its role in our national life.

The criteria and materials relevant in reaching decisions are unlike those in other cases. Neither precedent nor the words of the First or Fourteenth Amendments would even point to a decision, one way or the other, in the Sunday law cases. There are few instances in which *Farrand* or the *Annals of Congress* contribute anything useful to constitutional exegesis. All too often the Court must write upon a clean slate. During the past two decades, for example, it has created a completely new body of law dealing with the substantive relation and procedures which should obtain between public employees and the government.

Sharp Divisions Within Court

It is the special quality of the litigation which explains the sharp divisions within the Court. The character of the issues would make divisions inevitable even if the self-restraint practiced by some earlier justices in withholding dissent still prevailed. I submit, however, that the divisions and disagreements are not only desirable, but essential. Unanimity could be achieved only by appointing to the Court nine justices with one cast of mind and one set of experiences. Then we would have unanimous decisions and a clear cut line of authority, all one way or all the other. This might seem desirable to those



who know that they know all the right answers to all questions — provided, of course, that the Court's unanimous answers were the same as theirs. In truth, the most fundamental and divisive issues that face the community should not be decided overnight, nor should they be decided in clean-cut fashion, all one way or all the other, until time and events have matured the analysis. One makes safer and quicker progress through an unfamiliar swamp by proceeding hummock to hummock, island to island, sometimes taking two steps forward and one step back, or even two steps back for one step forward.

It is also the character of the Court's business which catches it up in public debate and makes the justices the subjects of bitter controversies. Anyone who reads its history knows that this is nothing new. The stupid attacks upon Chief Justice Warren and his associates, however shocking, are hardly as virulent as the shafts which were loosed against John Marshall. Nor is proper criticism to be regretted. Our law is the richer and the wiser because academic criticism is part of the stream of development. And laymen have much to add, even though one may wish at times that they had greater awareness of the nature and limits of the judicial function. It is essential, just because the public questions which the Court faces are pressing and divisive, that they be thoroughly canvassed in public each step at a time while the Court is pragmatically evolving new prin-

ciples. The ultimate resolution of questions fundamental to the whole community must be based in a common consensus of opinion.

Let me make it plain that in emphasizing the unique quality of the Supreme Court's work, I do not mean to imply that it should be otherwise or that the Court should exercise more care not to deal with cases which would not be justiciable under other political systems. The process is an integral part of our constitutional system. It has worked remarkably well.

The reasons for the Court's success are less evident and a good deal more complicated. If someone were to propose that we establish a Council of Nine Wise Men, appointed for life, to whom we would refer all the country's most difficult questions, all those which divided the community most sharply, which aroused the strongest feelings, and which would have the greatest future in importance, the country would unanimously reject the suggestion. What works — and what the country accepts — is the process of decision *according to law*.

"Decision According to Law"

It would be interesting to press on and inquire into the meaning of "decision according to law" in the very field from which many conventional legal guide posts are lacking. One would have to inquire into the advantages of the adversary system and reasoned presentation and into such precepts as that the Court will decide only a "case or controversy" and then only such questions as are necessarily presented; to indicate the irrelevance of partisan political considerations and the existence of a limiting, albeit undefined framework of discourse; and to note that the Court is bound by law even as it makes it — and even though the system would fail if new law were evolved too slowly.

It is our common devotion to the process of decision according to law that binds together the legal profession. And it is the community's deep and common devotion to the rule of law that supports our process of constitutional decision. More than anything else it binds all of us together.

There is nothing very new in what I am trying to say. Others have said it far more effectively. I dwell upon these reflections partly because they are the deepest impressions of my six months in office, but also for two other reasons.

First, because the Supreme Court does play so large a part in our national development, because we call upon it to resolve issues which embroil it in controversy, it is important to have the country understand the Court's true nature.

Proper Criticism Essential

Second, if my reflections hit anywhere near the mark, they suggest an important distinction. It is one thing to criticize a particular decision — or even to criticize every decision — and to seek to have the law changed by statute or later decisions. Such criticism, as I have said, is not only proper but essential. But criticism of decisions in the effort to produce a change is one thing. Encouragement to disobedience, to stalling and deliberate evasion are quite another. The essential difference between the western world and the Communist dictatorships is expressed in the ancient words of Bracton — "*Non sub homine sed sub Deo et lege*" — "Not under man but under God and law." The rule of law depends upon voluntary acceptance. Those who disregard — or stall-off by obvious evasion — the decisions of the Court, are endangering the rule of law scarcely less than those who invite mob violence; and this is true, I think, whether the decisions be flouted by private citizens or public officials.

Similarly, one must mark the line between criticism of decisions and attacks upon the integrity of the justices and the processes of constitutional adjudication. To disregard this line, however fine it sometimes seems, and thereby to attack the rule of law, is a gross disservice to the nation.

Bar Has Obligation

At a time when the rule of law is challenged not only all over the world but sometimes at home, surely the bar has an obligation to speak out in explanation of the process, and to bespeak compliance with law as one of the foundations of civilization. Some voices are loud and clear. Erwin Griswold has brought distinction to the Harvard Law School and Eugene Rostow to Yale by their public speeches in defense of the Court. The country would gain if the voices of the American Bar Association and individual practicing lawyers were heard more often — not simply in the glittering generalities of Law Day but in the defense of the specific application of the rule of law to controversial decisions. Surely it is the duty of lawyers to plead publicly and

in their own communities for observance of the rule of law even in the case of unpopular decisions.

One who argues cases from time to time and sits in the Supreme Court day by day during both oral arguments and the delivery of opinions soon acquires both admiration and affection for the Court and all the justices. The problems with which they deal are so difficult, the number and variety of cases are so overwhelming, the implications are so far-reaching that one sits humbled by the demands upon them. That the judges are human — that some opinions seem inadequate and some decisions may be wrong — makes the experience more moving because the whole attests to the sincerity and capacities of man.

Cavers Accepts Post

(Continued from Page 1)

Times, signed by Professor Cavers and other faculty members of Boston area institutions of higher learning. Professor Cavers was the only member of the Law School Faculty, however, who signed the letter-advertisement, which states that it was "paid for by the individual contributions of the signatories."

The advertisement scores current emphasis on fall-out shelters, claiming that "government encouragement of shelter construction . . . has led to a cruel deception of the people with respect to the protection which would be afforded."

The letter summed up the signers' position by averring that the current civil defense program of the federal government "prepares the people for the acceptance of thermonuclear war as an instrument of national policy," which acceptance would "substantially increase the likelihood of war."

The letter concludes by urging that the efforts toward a civil defense program should instead be channeled "toward a positive program for peace with freedom."

On Sunday, Professor Cavers appeared on a New York City television program to discuss the building of fall-out shelters. He called shelter-building part of the arms race and said it did not create a good climate for negotiation.

"You have to evaluate whether a shelter program makes war more or less likely," he said. "I think possibly more, since fear and hatred are its likely products."

No Contradiction

(Continued from Page 1)

considered if the University does undertake a major program. He has been studying, writing articles and speaking on atomic weapons and arms control, he says, since 1946.

The Fessenden Professor of Law was one of 200 Boston area professors who signed an open letter to the President in last Friday's *New York Times*. Cavers said the letter represented his views on national policy and "at present" he feels the same way about University policy. He added he had reacted strongly against New York Governor Rockefeller's civil defense proposals in March, 1960, and has not changed his views since.

Cavers noted that it is "perfectly plain" that the University has facilities which would be useful "under certain circumstances of attack." But he doubts the wisdom of spending much money or time developing or creating others. If the University does decide to embark on a major shelter program, Cavers believes he could contribute to some of the technical considerations involved.

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Recent Book

MY LIFE IN COURT. Louis Nizer, Doubleday, Garden City, New York, 1961. 524 pp. \$5.95.

The title of this book is somewhat deceptive; it implies a long, dreary autobiographical account of the author's life as a trial lawyer, interwoven with the inevitable saccharine reminiscences and jejune jewels of wisdom. In fact, the book is essentially a biography not of Louis Nizer but of half a dozen of his most fascinating courtroom battles. Instead of homespun philosophy the reader is treated to the finespun psychology of trial strategy and tactics. In place of Nizer's complete life story, the book presents highlights from the lives of Quentin Reynolds, Westbrook Pegler, Billy Rose, John Astor, Loew's, Inc., *et al.*

Who is Louis Nizer? He is a senior partner in a large New York law firm and a wizard at convincing a jury that black is white. He obviously indicates a partiality to plaintiffs. But he is hardly a typical plaintiff's lawyer. He probably doesn't even belong to NACCA. He is as at home in an appellate court as before a jury, and he manipulates a proxy battle as easily as a defendant's witness.

As a writer with experience in both legal and nonlegal fields, Mr. Nizer is only partially successful. His style reflects some of the bombast of the courtroom, which seems out of place in print. However, he makes extensive use of the very effective technique of permitting a trial to speak for itself through long excerpts from actual trial transcripts. Fully one fifth of the book is taken up by these excerpts. In this way the drama of the courtroom is successfully revived, and the action moves along at a rapid pace. Whenever the transcript begins to drag, the author breaks in to narrate, or explain a point of law, or reveal a clever trick of cross-examination.

The book is well-organized. The first episode is far and away the most fascinating trial battle and

serves to buttress the reader's interest against the duller passages which follow. It concerns the libel suit of Quentin Reynolds against Westbrook Pegler and the Hearst chain. Pegler had written a fantastically defamatory column in which he stated or implied that Reynolds had exhibited cowardice as a war correspondent and moral depravity in his private life, was thrown off the editorial staff of *Collier's* magazine for his pro-Communist leanings, and was a draft-dodger and war profiteer — among other things.

Pegler will long rue the day he wrote that column; Nizer cross-examined him for seventeen days, forced him into countless contradictions and admissions of inac-

curacies, proved conclusively that all of his charges were untrue, and made a fool of him to boot. Unfortunately, Reynolds' gross income actually went up after the defamatory column was printed, so that compensatory damages were impossible to prove. Did the jury award punitive damages? Or did Reynolds leave the courtroom vindicated but penniless as a result of Mr. Nizer's no doubt substantial fee? Read the book and see, if you don't already know. In fact, the question is anticlimactic, since it is the battle itself, and not the outcome, which provides most of the excitement and suspense.

The book then proceeds into several divorce cases, some involving famous people. Unfortunately, Mr.

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Nizer cannot resist the opportunity to enlighten the reader concerning his own views on divorce. Once past this difficult hiatus, however, the pace again quickens. The strange case of the husband who made love to his wife's feet — and *only* to her feet — is recounted.

A plagiarism case involving that well-known folk song, "Rum and Coca-Cola," ensues. Nizer sets out to prove that it really was a folk song — at least the melody was — written in Trinidad around the turn of the century. (For those concerned, the Andrews Sisters had nothing to do with the plagiarism.) It seems that Morey Amsterdam, the comedian, had heard the melody in the Caribbean during the war, with racy lyrics added courtesy of G I ingenuity. (See p. 267 for a sample.)

With toned-down lyrics, the song became a smash hit in the United States. At the trial, Nizer matched wits with one Dr. Sigmund Spaeth, a sort of professional witness in song plagiarism cases, among other things. Dr. Spaeth had gained renown by proving that "Yes, We Have No Bananas" was plagiarized from classics. In a cacaphonic cross-examination, Nizer spated Spaeth and won the case.

The next case plunges Nizer into a squabble over the loyalty of certain members of the German-American community of New York

City during World War II. Nizer represented Professor Friedrich Foerster, a man who had recognized the danger of a revitalized Germany long before Hitler came to power. The author characterizes him as belonging to the "category of truly great men not universally recognized." The case is interesting, as again pre-trial preparation in depth and incisive cross-examination produce startling results. This case exemplifies an exceedingly cloying writing trait which Nizer displays throughout the book. Without fail Nizer's client is portrayed as a pillar of virtue, while the opposing party is an arch-villain. No doubt juries are sometimes swayed by such an oversimplified presentation, but most readers will only be annoyed.

In all fairness to Mr. Nizer, however, it should be pointed out that the most disastrous of the book's mistakes must be charged to a spelling oversight. One sentence reads: "He denied that she died from raptured uterus."

After two negligence cases — a malpractice suit and a wrongful death action — which lawyers for insurance companies should not read if they want to sleep nights, the book enters upon what turns out to be far and away the most downright fascinating episode in the book: the fight for control of Loew's, Inc. As all good second

year students who have read *Campbell v. Loew's* well know, a stockholder named Tomlinson (backed by Louis B. Mayer) sought to gain control of Loew's, which was then (and is now) headed by an executive named Vogel. Vogel retained Nizer to represent the corporation in the internecine wranglings which followed. An agreement was reached between the two factions to divide evenly the board of directors. The board was comprised of men of high character, including former secretaries of defense, the Army and Navy. The Tomlinson group presented Vogel with a continuing series of crises, ranging from harassment of corporate business to the removal of Vogel. Nizer met each challenge brilliantly. The dispute resulted in a knock-down-drag-out proxy battle and stockholders' meeting, and numerous court actions, all of which were successfully handled by Nizer. Whether or not Nizer blows up his own role is impossible to tell, but it is to his credit that throughout the book he is sufficiently tactful so that such appears not to be the case.

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THIRD YEAR INTERVIEWS
Harrisburg, Pennsylvania: Mc-
Nees, Wallace & Nurick. Francis

B. Haas, Jr., Esq., & Arthur L. Berger, Esq. (2 p.m. Monday, November 20.) Monday, November 27.

Indianapolis: Ross, McCord, Ice & Miller. R. Stanley Lawton, Esq. (2 p.m. Monday, November 20.) Monday, November 27.

Washington: Arent, Fox, Kintner, Plotkin & Kahn. John J. Sexton, Esq. (2 p.m. Monday, November 20.) Monday, November 27.

Manchester: Devine, Millimet & McDonough. Norman H. Stahl, Esq. (2 p.m. Friday, November

24.) Friday, December 1.

Minneapolis: Erickson, Popham, Haik & Schnobrich. William J. Erickson, Esq. (2 p.m. Friday, November 24.) Friday, December 1.

Newark: Stryker, Tams & Dill. Burtis W. Horner, Esq. (2 p.m. Monday, November 27.) Monday, December 4.

Washington: Office of the Secretary of the Army. M. Reynolds Sands, Esq. (2 p.m. Tuesday, November 28.) December 5.

Kansas City, Missouri: Morrison, Hecker, Buck & Cozad. William B. Cozad, Esq. (2 p.m. Wednesday, November 29.) Wednesday, December 6.

Cincinnati: Procter & Gamble. Mr. Henry H. Wilson, Jr. (2 p.m. Thursday, November 30.) Thursday, December 7.

THIRD YEAR OPPORTUNITIES

Alaska: Contact Placement Office. For opportunities with the Office of the Attorney General of Alaska contact Placement Office by Monday, November 27.

Boston: Friedman, Atherton, Sisson & Kozol. Contact Joel A. Kozol, Esq.

Hackensack, New Jersey: Garven, Gelman & Hollander. Contact Wilfred W. Hollander, Esq.

Los Angeles: Forster & Gemmill. Contact Robert L. Meyer, Esq.

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