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Record Number Takes LSAT

By Donald W. Kramer

A record number of applicants took the Law School Admission Test across the nation last Saturday, a fact which reflects a continuing surge of interest in the law, Vice-Dean Louis A. Toepfer disclosed this week.

According to figures from the Educational Testing Service, which administers the LSAT, more than 9400 students were scheduled to take the exam. This compares with 8100 who took the test last November, 7600 in 1960, and 5400 in 1959. The applications for Saturday's tests far surpassed the predicted number of 8500, John A. Winterbottom, LSAT Program Director, reported.

Both Dean Toepfer and Mr. Winterbottom said the large turnout on Saturday may reduce the number of people taking the tests administered in February or April, but they both expressed the belief that there has been a genuine increase in interest in the study of law.

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Case for Cuba

By Bruce Abel

Abram Chayes, Legal Adviser of the Department of State, and former professor at the Harvard Law School, developed the legal case for the country's blockade of Cuba before the Harvard Law School Class of 1952 at its tenth reunion, November 3.

Mr. Chayes, admitting that the "membrane that separates law from politics is thin and permeable," urged that "there must therefore be professional vigilance so that the law is not corrupted by *raison d'etat*." He concluded "that vindication or failure of the work of the lawyer, . . . must await the ripper judgment of history."

Mr. Chayes began his speech with a frank analysis which cited the key factors of success in the Cuban crisis to be "... the ability and the will of the United States to deploy the necessary force . . . and the mobilization of friends and allies . . . in support of our

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Coercion or Cooperation?



This Ames jury decided. See page 4.

Castles and Electrons

The RECORD feels that a major problem confronting the Law School is the frequent inability of students to hear what is going on during class. The large size of our classrooms makes it extremely difficult for many students, especially those whose seats are in the rear or at the sides of the room, to follow recitations or lectures. This auditory problem is one of the reasons why we urge the Administration to consider the construction of several new, smaller classrooms as rapidly as possible.

When students attend classes, they do so to engage in the learning process. The first step in the process, however, is hearing the material presented, and this is impossible in many classes as a result of the professor's inability to project his voice to the farthest regions of the room. As much as one wishes to take down as complete a set of notes as possible, he is not able to do so.

Some students who sit in the back of the room take new seats closer to the front, but there are a limited number of these seats available for exchange. Then, too, many of the seats in the front are on the sides of the room, positions from which it is often impossible to read anything the professor may place on the blackboard.

It is not only a question of not being able to hear the professors, for one often can not hear his classmates, as students in various parts of a room participate in the discussion. The only remedy is to yell "louder," and these inelegant interruptions destroy the continuity which is vital to a fruitful discussion.

Thus, if Harvard Law classes often seem to be restless and bored, may it not be that the auditory problem is a major cause?

Smaller classrooms designed to give the best acoustical reactions will undoubtedly solve the problem, and we hope that they will not be "castles in Cambridge." Until the School builds these, not too much can be done to improve one's chances of hearing his classmates, but this is not true in the case of the professors. If all professors would utilize the microphones with which the classrooms are equipped, we think that students would be able to hear much better, and the RECORD strongly recommends that the faculty enlist these electronic aides.

Harvard Law Record

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TONGUE 'N CHEEK

By Fenno

I was writing my Ames brief. At 10 p.m. on the eve of Due Day, I found a crucial law review article, 62 Fenno L. Rev. 302. It was a must.

Relaxed as President Adams signing up his midnight judges, I galloped toward the library. Slipping over a 3-inch layer of butts and ashes, I climbed the stairs. Reaching the golden door, I found it blocked by a mob circled about the prettiest first-year girl. Full-backing my way, I dashed to the shelves. But, alas! there was no Fenno L. Rev. in cite! Frustrated, I ran to the circulation desk, where the only clerk was circulating with the prettiest second-year girl. "Do you have . . ." "Sorry," he interrupted, "but you'll have to fill out a white slip." I handed him a scribbling. "Sorry," he replied, "it's not at the desk—you'll have to send down for it." "So do it," I groaned. "Sorry, but no stack service today."

My face reddened like a Harkness hamburger. The 21-meal contract card in my left pocket thumped. Clearly, the law is clear, but clearly the . . .

I had to sit down fast! After 30 minutes, I spotted an empty chair—between two girls. Clearly, they were not law students. Both were reading *Twisting at the U.N.* by U Toot. The perfume worked its spell. I turned to the blond wig. "Say, baby, you look like a nice kid—do you know where I can find 62 Fenno L. Rev. 302?" She smiled. I moved closer. Good thing I used 2 dabs tonight, I thought. She sighed . . . "You &*?! fool; everyone knows Fenno L. Rev. is at 23 Everett Street!"

I ran madly, colliding with the prettiest girl in the third-year class, who was shepardizing a flock of men. I tore into the RECORD office. It was empty, except for a typewriter and a blank sheet of paper. I sat down to type. Clearly, I thought, the law is a seamless web.

Mobilization, Money Aid Democrats

By Charles M. Hamann

Organization, money, and hard work were the components of a smashing Democratic victory in Massachusetts, a sampling of law students who had participated in the campaign revealed this week.

All sides reported Volpe "over-confidence"; Peabody workers spoke of "hard work" and "good organization." A Kennedy worker told of tremendous efforts to reach all the voters of Massachusetts while a Lodge supporter remarked on budgetary limitations which afflicted Lodge's campaign.

Strong and efficient organizations were key to Kennedy and Peabody success. Peabody supporters, Vincent P. McCarthy, 1L, Robert J. Perrin, 2L, and Robert S. Hillman, 3L, were cautious in their victory claims — one said "I'm happy about the results. I just wish they were more conclusive at this point" — but were unanimous in their praise of the Peabody effort.

Perrin, who worked full-time the last six weeks of the campaign, described the Peabody organization as "professional in the highest sense of the word." Many of those people who worked for Peabody had supported him in five campaigns.

Youth for Peabody

All candidates for major office organized youth groups to support their campaigns. The "Youth For Peabody" groups were unique in that they were highly decentralized in their operations. McCarthy, who was vice-chairman of Youth for Peabody, described his major task as organizing young people across the state to do "most of the 'dirty work' of the campaign." McCarthy attributed the strong showing of Peabody in traditionally Republican towns in part to the efforts of these groups, which numbered 110 by the end of the campaign.

The Kennedy campaign also utilized the efforts of youth. Albert F. Cullen, Jr., 3L, worked all summer for Kennedy, organizing young people from 17 to 25 to work for Kennedy. In Boston, Kennedy had about 375 such workers; in smaller cities such as

Lowell the numbers enrolled varied from 50 to 75.

Kennedy Forces Active

Before the general election the Kennedy groups wrote letters-to-the-editor, supporting Kennedy and answering criticisms. When a newspaper endorsed George Lodge's bid for Senator, these youthful supporters of the President's brother wrote replies. Like the Peabody groups, they handled many of the menial tasks of the campaign. Shortly before the election they distributed 1,500,000 copies of an eight-page tabloid, which told the Kennedy story to Massachusetts voters.

Limitless Kennedy resources (officially Kennedy's campaign cost \$141,000) played their part in the defeat of Lodge. Lodge, strapped for funds, had no counter to such mass publicity methods as the tabloid distribution. Russell E. Van Hooser, 2L, who helped to organize Students-for-Lodge groups on various college campuses in the area, admitted that "Lodge could have used a bit more of radio and TV time, but this was, of course, a question of money, which he didn't have." Lodge's status as a probable loser contributed to Republican reluctance to make large donations to his campaign.

The Peabody campaign was also an expensive one. While confident Governor Volpe limited his campaign letters to an estimated 30,000, Peabody forces spared no effort to reach Massachusetts voters through the mails. In the last two weeks of the campaign, more than 1,250,000 letters were issued from Peabody headquarters. Hillman described the mailing as "effective" and "selective." Old people, young people, Democrats, Republicans, Italians and Poles — all received letters geared to their particular interests, *e.g.* the letters to voters over 65 stressed Peabody's support of Medicare.

Neither Republican nor Democratic state organizations counted for very much in the campaign, but what cooperation there was between candidates was mostly on the Democratic side. Hillman said that "in the last two weeks Ted Kennedy gave us a lot of help — Chub Peabody spoke at all his [Kennedy's] rallies."

(Continued on page 7)

Defendant Not Liable in Model Trial

By Richard A. Hannaway

"Hear ye, hear ye, hear ye, the Superior Court of the Commonwealth of Ames, County of Pound, is now in session. Approach all ye who have business with it and attend."

It was 4:45 P.M. last Thursday in the crowded Ames Courtroom, and the Model Trial case of *Donnelly v. Knight* had just begun.

Nine hours later, after deliberating one and a half hours, the jury returned a finding for the defendant.

After both parties signified that they were ready to begin the trial, Mr. Jerome P. Facher rose to give his opening statement for the plaintiff. At this point the solemnity of the proceedings was disturbed by the following remarks:

Mr. Facher: "I'm afraid I don't know the name of Mr. Keeton's second associate who just took his seat."

Mr. Keeton: "That gentleman is the defendant, Mr. Knight!"

The assembled first-year students showed proper appreciation of this exchange, and the trial proceeded on a



Tell us more about it.



— Record Photos by Donald W. Kramer

Counsel read motions into record before Judge Quirico.

more lively note. In his opening statement, Mr. Facher promised to show that the defendant, Samuel Knight, was a co-conspirator in an attempted burglary at the Delamirie Jewelry Store in the city of Gray during which Mr. Hines, Mrs. Donnelly's late husband was shot by Knight's accomplice. He emphasized that this was a civil action for damages arising from Mr. Hines' later death from a bullet wound.

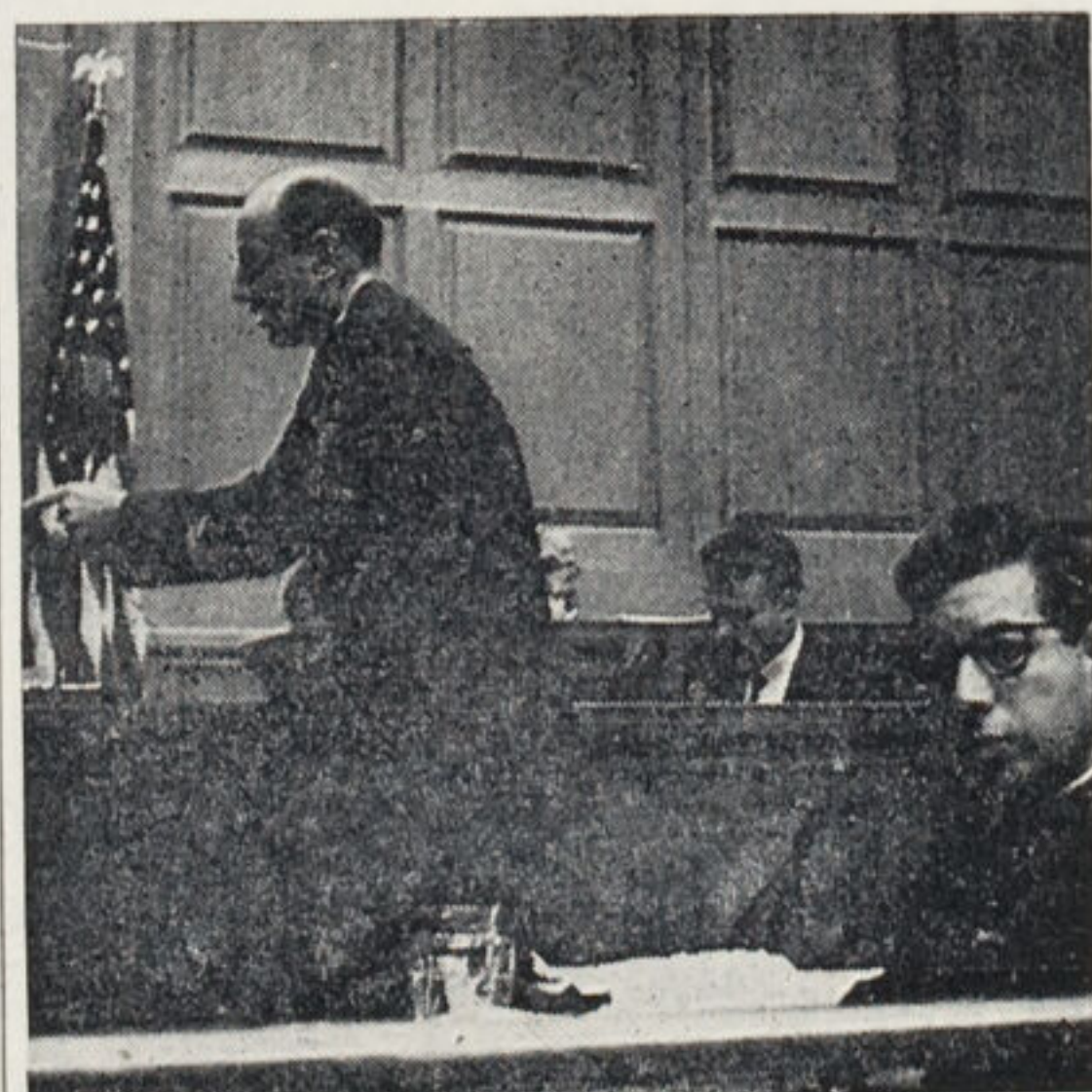
The first witness called by Mr. Facher was Mrs. Mary Hines Donnelly. Miss Janet Murphy, secretary to Dean Griswold, played the part.

Then Mr. Facher called Sam Knight, who was played by Mr. George Williams, the Faculty Assistant in charge of the Ames Competition. Putting Mr. Knight under close examination, Mr. Facher attempted to disprove the story of coercion. By employing questions calling for only "yes" or "no" answers and by restricting the defendant to "yes" or "no" an-

swers, he tried to show from Knight's own testimony that he had many good opportunities to escape from his alleged captor or to call the police.

He further tried to establish that Knight's efficiency in cleaning out the safe and the warning by his alleged captor when Patrolman Huggins approached clearly proved that Sam was a willing participant and his alleged captor was really his accomplice.

When Mr. Facher was finished, Mr. Keeton rose and asked: "Did you have an op-



'It's so incredible it must be true.'

portunity to escape without risking your life?"

Answer: "No."

Mr. Facher next called Patrolman Huggins—"now Det. Sgt. Huggins"—the officer who had been shot at during the robbery. Under direct examination, Sgt. Huggins, played by Professor Henry Steiner, testified that Knight had said nothing about being coerced until some time later:

Mr. Facher: "What did you do when you saw the defendant crouched on the floor of the jewelry store with the bag full of jewels beside him?"

Answer: "I asked him what he was doing there."

Mr. Facher: "What did he say?"

Answer: "He said 'I work here.'"

On cross-examination Mr. Keeton attempted to show that Huggins had been too distracted to pay any attention to what Sam said:

Mr. Keeton: "It's not very pleasant to be shot at, is it, Sgt. Huggins?"

Answer: "Very bad."

Huggins also admitted that he immediately considered Knight as a suspect and treated him as such.

Huggins also testified that there was no place in the jewelry store where a man might hide and be safe from

bullets. On redirect examination by Mr. Facher, Huggins said that one might be able to hide in the storeroom of the store.

After an hour's recess Mr. Facher called his last witness, Nick Adams, formerly a paper boy in the city of Gray. Nick Adams was played by Larry Corbett, an employee in the library. Adams testified that he saw the defendant in his car with his girl friend Marsha Mather about 10 o'clock that night, an hour at which Sam had said he was being held captive at gunpoint in another part of Gray.

Deceptive Shadows

Under cross-examination, Nick admitted that he had seen Knight only a few times and always seated in that car. Mr. Keeton suggested that Nick might have seen Marsha Mather in that car with a man and presumed that it must be Samuel Knight. He also suggested that since the top of the convertible was up and the light was coming from above, shadows cast inside the car might have caused him to be deceived in what he saw.

In his opening statement for the defendant, Mr. Keeton promised to prove to the jury that Samuel Knight was coerced into burglarizing his employer's jewelry store by threats of serious bodily harm or death to himself or his fiancée, Miss Mather.

Then Mr. Keeton called Samuel Knight to the stand. He related the force and threats used by Harry Keeble, one of Marsha's former suitors, and an unknown accomplice to force him to participate in the burglary. He said the pair approached Marsha and himself as they were about to drive to the

store to get an engagement ring. Keeble's accomplice thrust a gun in Knight's face and forced him to go along with the robbery. He also claimed that he had said to officer Huggins: "Boy, am I glad to see you" when the policeman came upon the scene of the crime.

But under cross-examination the defendant admitted that he was not entirely sure what he said that night. All Knight would say was that he was so nervous from his experience that although he intended to tell the officer about the coercion, his speech might not have been comprehensible. Again Mr. Facher brought up the opportunities to escape which Knight had had. Knight then admitted that when his captor ordered him to get out, he took the jewels and ran.

Mr. Keeton then called Marsha Mather, who was the only corroboratory witness of Knight's story of coercion. Mr. Keeton asked Miss Mather, really Lucy Stone, a junior at Bennington College, about her relationship with Harry Keeble.

In the course of her answer she mentioned that he had been in jail for several years. Mr. Facher objected, and the judge ordered the answer

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It's really getting late.



'It's so incredible it can't be true.'

Why Go to Law School

By Charles M. Hamann

In an effort to discover why people want to go to law school, three RECORD reporters questioned more than 40 of the 275 persons who took the Law School Admission Test in the Ames Courtroom Saturday. Prominent among their answers were a desire for a profession, a belief that legal study is good training for many fields, and a wish to serve others.

A Harvard student said that he wanted to go to law school because "to be effective in the issues of the day in business, politics or government, it is necessary to know the techniques of the law." Other respondents reiterated this theme. One viewed the law as "a profession widely applicable in other fields"; another thought that legal training offered "the most mobility in job possibilities."

The security offered by professional status appealed to some. A Harvard undergraduate declared that his primary interest was in medicine, but that he was not set on a medical career. He wanted to be in a profession, so he was taking the LSAT "just in case."

A desire to do good motivated others taking the test. One Harvard student said, "I think I'll get a lot out of it. Law has the potential for an awful lot of good or bad." A Wellesley senior, interested in city planning, hoped that through the law she could make "some contribution to society." Another student was "interested in humanitarian, social stuff."

A few of the exam-takers had a definite goal in mind. A Brandeis student thought that it might be nice to be a judge. One college man wanted to be a trial lawyer. Another said that he would "like to work for the government, the Justice Department, or something like that." One hoped to use the law in preparation for a foreign service career. Another wanted a profession to fall back on in case he did not make the foreign service.

A Princeton graduate, who had spent a year working as a corporation psychologist, wanted to be "independent." He said he was not interested in money and wanted to go to a small town and practice. "I want to avoid the 'big cities.' Big cities imply corporations."

Other students thought in terms of substantive enjoyment rather than purpose. A Radcliffe girl, apparently delighted with tales

of law-school hardship, said she enjoyed studying. A Harvard man viewed the law as "an interesting way to use your mind." An eschatologist thought that "it was a good idea to prepare for what comes afterwards."

A few of those questioned were blasé. A Radcliffe student said, "I don't know if I'll go to law school even if I get an 800. I'm taking the test out of curiosity." An undergraduate at Harvard answered, "I'm not really interested in the law. I'm just taking the exam to see how I'm going to do on it."

Another Harvard student declared himself hostile to a legal career. "I don't want to go to law school, and I'm taking the test for the hell of it," he said.

Toepfer Reports on LSAT

(Continued from page 1)

added, become attractive to some students but unattractive to an even greater number, suffering a net loss.

"Students have suddenly realized that the old myths about the law should be discarded," Dean Toepfer said.

"They realize that the field is not overcrowded and that there are wonderful opportunities for young people in law. There is also a movement toward service, and they realize that law is a service profession," the Dean continued.

He said that more and more students are "concerned with trying to do something significant to contribute to their generation and the world. They want to do something. They are tired of talk."

Dean Toepfer admitted he had no real proof for his contention but said it was the impression he had gained from general observations and discussions with those in the field. Mr. Winterbottom confirmed this impression on the basis of his contacts with college advisers and pre-law societies.

The Vice-Dean pointed to several specific indicators, however. At Harvard College, he said, last year was the first time in history that more seniors went into law than into medicine.

He also cited results from a National Opinion Research Center survey that showed law as attracting many students and losing few during their undergraduate years. He said medicine now has a high loss rate and a low gain rate. The "hard sciences," he

Student Politicians

(Continued from page 3)

In contrast, the Republicans chose to go their separate ways. Diarmuid O'Scannlain, 3L, President of the Law and Graduate School Republicans, reflected that "separate Volpe, Brooke, Lodge campaigns made for an awful lot of overlap. There was virtually no Republican campaign as such." A worker for Attorney General-elect Edward Brooke described his candidate as the only one who had the word "Republican" written on his posters in legible type. The torturing of the word "Republican" on giant "Vote Volpe" billboards rankled many Republican voters.

Richard B. Klein, 2L, who worked principally for Lodge, found "a lack of co-ordination generally" in the Republican campaign. "There wasn't a Lodge-Volpe sticker in the whole state. People were a little sick and tired that he (Volpe) didn't give any of the other candidates any co-operation."

Volpe's apparent setback was almost universally attributed to "his failure to campaign." In contrast one Democrat said that "the most effective weapon in Peabody's campaign was getting out and meeting people." John A. Rava, 3L, President of the Law-Graduate Democratic club, commented that "on election day we never encountered a Volpe worker at the polls."

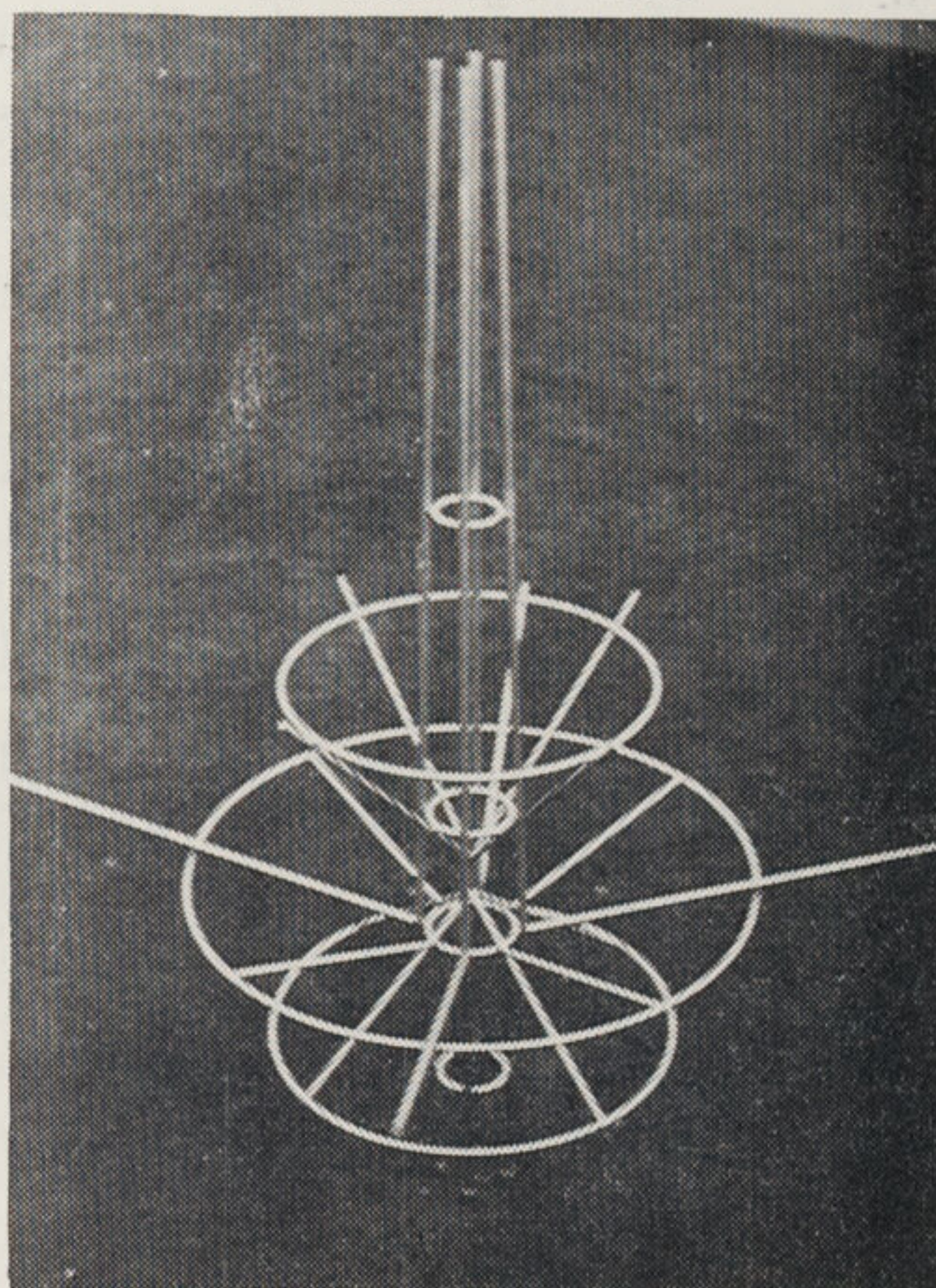
Local Republicans and Democrats also supported candidates running for less than statewide office. Tony Winsor, 3L, worked hard for the election of William P. Homans, Jr., candidate for state representative from the Second Middlesex District. Homan's successful election drive received almost as much support from Law School Democrats as did the candidacy of Peabody.

Dr. Howard D. Greyber's quest for elective office (representative from the Eighth Congressional District) was successful in an unusual way. Fighting registration odds which favored the Democratic incumbent, Thomas P. "Tip" O'Neill, by better than 4 to 1, Dr. Greyber received approximately 40,000 of 145,000 votes. Republicans were "encouraged" by the result. W. Phillips Rockefeller, 3L, who worked hard in the Greyber campaign, said that "no one had the wildest idea of winning, but it's pointless to default an election."

Reaction to the nation-wide results of the election varied. The more enthusiastic Democrats saw it as "a great triumph for President Kennedy," but Republicans, by and large, were not left lugubrious. One thought that the long-range effect of the election would be beneficial to the Republican party, pointing specifically to the GOP capture of state houses in important industrial states.

The demise of Richard M. Nixon excited particular comment. Democrats were universally happy to see him retired from politics. Republicans were less unanimous. One was "disappointed," another, "relieved."

A Healthier Tree



A University workman drove his truck up the driveway between Harkness and Story Hall about 8:50 A.M. one day last week. He hooked up some wires and took his tools out to the World Tree. Within a couple of minutes he had welded one of the branches back to the trunk of the Tree.

By the time students went to their 9 o'clock classes, the World Tree had been mended, and the workman had gone. The students, who probably didn't know the Tree had been sick, didn't know it was well again.

Law students don't seem to pay as much attention to the Tree as they used to, one member of the Administration observed. Arbor Day came and passed last spring, and no baby World Trees were planted. Nor did anyone plant ball bearings in the hope that World Grass would grow. The Tree just stood there, alone.

Only the town kids seem to care much about the Tree anymore. And they probably don't understand it.

Participation Increases In Second Year Ames

Second-year participation in the qualifying round of the Ames competition has increased by 15 per cent this year, the Board of Student Advisers has reported.

Board Chairman J. Roderick Heller, 3L, said the participation reverses the downward trend of the past several years. Although participation is not compulsory in second year, he said all students are "urged and expected" to take part.

This year 31 clubs will compete in 62 qualifying arguments. The orals run until December 5-6.

Dean Emeritus Roscoe Pound, Dean Erwin N. Griswold, and Professor Emeritus Austin W. Scott will be among the judges in the qualifying round.

Dean Pound will judge a labor-management relations case between Sutherland Equity and Casner Equity at 2:30 tomorrow afternoon in the Ames Courtroom. Sitting with Dean Pound will be Asa E. Phillips, Jr., a partner in the Boston firm of Phillips, Morse & Altman and John G. Kester, 3L, President of the Harvard Law Review.

Dean Griswold will judge a land-use planning argument between Pow Wow-Kent Club and Cardozo Law, Tuesday evening, November 27, at 7:30 in the Ames Courtroom. Sitting with Dean Griswold will be Albert S. Wolfe, a partner in the firm of Rackermann, Sawyer and Brewster and Board Chairman Heller.

Professor Scott will judge a trust case between Griswold Law and Root Law in the Ames Courtroom Wednesday, December 5, at 7:30. Associate judges will be Douglas L. Ley, a partner in Grabill, Ley and Mason; and David R. Anderson, a member of Legal Aid.

Following each of the qualifying round arguments, the Board sponsors a "coffee hour" for counsel and judges. Scattered reports of "poor sportsmanship" on the part of losing participants have disturbed the Board. The faculty judges, who contribute their time to the competition, have also been unhappy with the situation. Losing counsel have occasionally failed to show up for the "coffee hours," or if they appeared, have made it clear they felt the judges had been unfair.

Light Coming to Dorms

The mysterious plastic bulge on the ceilings of the graduate dorms will soon be replaced by new lighting fixtures. After a two-month delay in deciding which type and style of fixture was to light the way of the Law, a West German fixture assembled in Cambridge was chosen.

The fixture will be a circular fluorescent globe and will be installed in a few rooms on a trial basis to test its effectiveness.

If approved in the test period, the new fixtures will be installed in all the rooms in the graduate dorms.

Trouble on Everett Street

It is becoming increasingly apparent that students need not have dates in order to find weekend amusement on Everett St.

Saturday night, November 3, Cambridge firemen were called to the rear of Wyeth Hall when someone spotted smoke pouring from a window of the YMCA building. Firemen found it was only steam.

About 12:30 a. m. last Saturday, University and Cambridge police nabbed a prowler near the fire escape of the apartment building at 19 Everett St.

But by the time people gathered at either scene, they could only ask "What happened?" — past tense.

Maybe it's better to have a date after all.

Forum Program Tomorrow

"Ends, Means and Justification in Politics" will be the subject of discussion in the Law School Forum's offering tomorrow night at 8:30 in the Ames Courtroom.

Speaking will be Wassily Leontief, Professor of Economics at Harvard University, Arnold Brecht, Professor Emeritus from New York City's New School of Social Research, and Hans J. Morgenthau, Professor of Political Science at Chicago University.

Moderating the panel will be Carl J. Friedrich, Eaton Professor of Government at Harvard University.

Fuller to Lead Seminar

On November 28 at 8 p. m. in Harkness meeting room, Professor Lon Fuller will conduct the first of a series of seminars — sponsored by the Harvard Law Wives — on the problem of the "grudge informer."

Bull and Bear Hears Talk On Securities Selection

By Frederick Kaplan

Mr. George M. Hansen, Director of Research for the Keystone Custodian Funds explained the professional approach to financial analysis and security selection before a meeting of the Bull and Bear Club Friday.

The basic approach in selecting a security for long-term growth was described as a three-step process. First, the analyst examines for a growth industry, one in which the sales is growing faster than the population. Secondly, he examines for the division of the industry that is growing the fastest if it is a heterogeneous industry. Lastly, the analyst examines for the specific company with the most "growthiness."

The analysis of the specific company, he said, is concerned with the dollar sales, the manufacturing efficiency, and the methods used to finance the increased sales. These measurements are translated into indexes or standards—for dollar sales, dollar sales index on a base year; for manufacturing efficiency, dollar net income; and finally for financing methods, dollar net per share.

Mr. Hansen, who is also Editor of the Financial Analysts Journal, commented later that the current market is a repeat of the '46-'49 period. He said that the lows have been tested and that the prospects for a 650-700 Dow Jones average within six months are very good. He mentioned oil and paper industries as highly attractive in today's selective market. He did state, however, that a surging bull market is not foreseeable within the next six years.

At 1:45 tomorrow, George Hibbard, Vice President of the Bay State Corporation, will speak on institutional management of funds in the Wheeler Room.

GSA to Fight Discrimination

The Graduate Student Association will hold an open meeting on Tuesday, November 20, at 8 p. m. in Harkness Commons to consider possible programs of action to combat racial and ethnic discrimination in off-campus housing. Charles Whitelock, assistant to University President Pusey for civic affairs, and Mrs. Betty Pinkney, a leader of the Negro community in Cambridge, will be present for consultation.

'27 — A Good Year for Wives

By Bruce Abel

If the recent reunion of the Harvard Law School class of 1927 is typical, present-day students at the Law School can expect — 35 years hence — to have done well, no matter in what field, to have wives of unusual attractiveness, and to have a very good time at the 35th Reunion.

These observations of the 1927 class and its recent reunion (October 26-27) were revealed last week by Professor Livingston Hall, Secretary of the 1927 class. Mr. Hall, who compiled a booklet listing the background of each person in the class whom he was able to contact, pointed out that among those in the class are Judge Henry J. Friendly, U. S. Judge for the Court of Appeals for the Second Circuit; Judge Peter Woodbury, Chief Judge of the U. S. Court of Appeals for the First Circuit; Frederick A. O. Schwartz, partner in the firm of Davis Polk Wardwell Sunderland & Kiendl in New York City; and John Thomas Cahill, partner of Cahill, Gordon, Reindel & Ohl of New York City.

A brief check of the 1927 booklet shows that, although most of the members are presently practicing law, fourteen are judges, one is the president of a university, at least a half-dozen are college or law school professors, one a U. S. Congressman, one is a poet as well as a lawyer, and one other an antique dealer and appraiser. There were no women at the Law School in 1927.

Commenting upon the "appearance" of the returning members of the class, Mr. Hall had little to say except that "On the whole, I was pretty well pleased." Then, Mr. Hall offered his opinion that the wives were in "much better shape" than the men. "It seems to me," he went on, "that lawyers have more 'pulling power' with the ladies than non-lawyers."

Some 74 members of the 1927 class attended the reunion. Of the total of 572 men who attended Harvard Law School as members of the 1927 class, 325 received LL.B.'s or other graduate degrees.

Civil Liberties Talk

John de J. Pemberton, Executive Director of the American Civil Liberties Union, will speak in Langdell North at 1:45 tomorrow.

A Radical Or Reactionary?

By Dr. Wallace Mendelson

Professor of Government, University of Texas.



Justice Felix Frankfurter

The most important thing about a man is his philosophy — especially if the man is Felix Frankfurter. When he left Harvard for the bench in 1939 he was generally considered a liberal (in some quarters even a radical). Since then he seems to have become the voice of conservatism. If, in fact, the apparent change occurred, its impact upon history must have been profound. For during most of the past twenty years there have been four solid liberals on the Supreme Court: Justices Black and Douglas at first with Murphy and Rutledge, later with Warren and Brennan. Added to theirs, Frankfurter's vote would have meant a liberal majority — and presumably a death sentence for most of the cold-war security program.

In fact, however — unless I am steeped in error — Justice Frankfurter's outlook has not altered. In his private life he was, and is, one of the great liberals of our day. But it is basic in his philosophy that a man's private convictions are one thing; his duty on the bench quite another. This was the teaching of Holmes. By failing to

heed it, the conservatives among the "nine old men" destroyed the old Court — just as the libertarians might have destroyed the new one, if they had had enough votes to do so.

It comes to this: Professor Frankfurter didn't think the old Court should "govern" in favor of business — for the same reason that Justice Frankfurter thinks the new one shouldn't "govern" in favor of libertarianism. In short, the people should be allowed to govern for themselves — well or badly — with a minimum of judicial interference. It is ironical that, following this same precept of judicial self-restraint, Holmes — a thorough conservative in private life — was considered a liberal on the bench. Yet, Frankfurter, a liberal in private life, is now deemed a judicial conservative. The explanation is clear. In Holmes' day the crucial issues before the Court were *liberal* legislative efforts to regulate business. Holmes' inclination to let the people rule brought liberal results. Now the crucial problems before the Court involve conservative "security" regulations. In this context, Frankfurter's inclination to let the people govern brings conservative results.

All this may be clarified by a few concrete illustrations. In the 1920's, Professor Frankfurter (like Holmes) criticized the Court for interfering when a state re-

quired, for example, minimum wage standards for workmen. Later, Justice Frankfurter was equally critical of the Court for interfering when a state required a flag salute of public school children. Liberals, of course, were delighted with Frankfurter's plea for judicial restraint with respect to the minimum wage, but not with respect to the compulsory flag salute. In their view, the latter violated the freedom of those who felt strongly about bowing down to graven images; but wage regulation did not violate the freedom of those who felt strongly about "private property." (It will not do to argue that the two kinds of freedom rest on different constitutional provisions. They do not, as we shall see.)

That Frankfurter *as private citizen* found the flag salute requirement offensive is clear. In a deeply felt dissenting opinion, he wrote:

One who belongs to the most vilified and persecuted minority in history is not likely to be insensible to the freedoms guaran-

Mr. Justice Frankfurter, who retired from the Supreme Court in August, celebrates his 80th birthday today. He taught at the Harvard Law School from 1914 until his appointment to the Court in 1939.

The portrait of Justice Frankfurter by Gardner Cox, reproduced above, was presented to the Law School by Arthur W. A. Cowan, a Trustee of the Philadelphia Community Foundation. It now hangs in the Root Room in Langdell Hall.

teed by our Constitution. Were my purely personal attitude relevant I should wholeheartedly associate myself with the general libertarian views in the Court's opinion, representing as they do the thought and action of a lifetime. ***[But] I cannot bring my mind to believe that the "liberty" secured by the [Constitution] gives this court authority to deny [a school board] the attainment of that which we all recognize as a legitimate legislative end, namely, the promotion of good citizenship, by . . . the means here chosen.***

We are told that a flag salute is a doubtful substitute for adequate understanding of our institutions. ***We may deem it a foolish measure, but the point is that this Court is not the organ of government to resolve doubts as to whether it will fulfill its purpose. Only if there be no doubt that any reasonable mind could entertain can we deny to the states the right to resolve doubts their way and not ours.

The warmth of this opinion is matched only by the cold logic of his professorial argument that doubts as to the validity of wage regulations should be resolved by the people and their elected representatives—not by the judiciary.

Of course Frankfurter's position in both situations is wrong, *if the Constitution clearly prescribes which educational and wage regulations are permissible, and which are not.* Does it do so? Conservative judges in the old days held that the Constitution put severe limits on governmental power to regulate business, but left broad power to regulate civil liberty. Libertarians now take the opposite view on both points. And, of course, in both eras there were dissenters. These disagreements alone suggest that the Constitution must be somewhat less than free of doubt. Even more revealing is the fact that the colliding views on wage regulations and flag salutes are based on the same constitutional provision: "No State shall . . .

deprive any person of life, liberty, or property, without due process of law" Holmes found this inspired generality so uncommunicative that he referred to it as a "void." Obviously, it gives not the slightest hint as to the validity of any given wage rate, or the extent (if any) to which a person may properly ignore school regulations in the name of religious conscience. In the absence then of an intelligible constitutional standard, Frankfurter (as we saw in the flag salute case) would leave such problems to the people and their elected representatives. As he sees it, judicial intrusion upon legislative policy is permissible only in cases so extreme that they leave no room for doubt, i.e., only when the Court is prepared to hold that no reasonable mind could support the legislative view. This is to say simply that uncertainty is to be resolved in favor of the wisdom and integrity of the elected organs of government and the people to whom they must answer. For doubt entails choice; and choice in a democracy belongs to the people.

The chief opponent of this Holmesian approach is Justice Black, leader of the present Court's libertarian wing. In his view the Constitution's vague "due process" provision gives the judiciary no authority whatsoever to question the merits of any governmental regulation of business. In the context of such problems "property" is in effect read out of the "due process" clause, while the companion term "liberty" is conceived broadly enough to satisfy the most ardent libertarian. It follows, of course, that the compulsory flag salute is unconstitutional.

Men of generous instinct find inspiration in Justice Black's vision of personal freedom, but surely it is not plainly written in the Constitution. On this, Black himself is the best witness. When the compulsory flag salute first came before him on the bench, he found it valid. Three years later he found it invalid. He was with the majority in *Palko*; later he repudiated the *Palko* principle. In

Chaplinsky he observed with the Court that the prevention and punishment of libel "has never been thought to raise any Constitutional problem." Since then he has insisted that all libel laws are invalid.

I have suggested that Justice Black's conception of civil liberty is "the most," and so it is in the abstract. Yet, in practice he makes "concessions" *at least in the face of certain liberal economic interests.* Thus, he has insisted that free speech via picketing must give way to a "liberal" antitrust law, but not to a "reactionary" right-to-work measure. Similarly, he has found that evangelical peddling of religious tracts is a form of worship, and as such is immune from ordinary peddlers' taxes—but not from child-labor laws.

The present point is not that Black is inconsistent, but that surely he must find his standards somewhere other than in the "plain language" of the Constitution. It
(Continued on next page)



Dr. Wallace Mendelson received his LL.B. from Harvard in 1936. Presently on the faculty of the University of Texas, Dr. Mendelson is an authority on Constitutional law. He has written more than 50 articles and four books which are entitled: "The Constitution and the Supreme Court," "Conflict in the Court: Justices Black and Frankfurter," "Capitalism, Democracy and the Supreme Court," and "Discrimination."

Frankfurter

(Continued from page 11)

was precisely this kind of "resourcefulness" that inspired the great dissenting thrusts which Holmes, Brandeis, and Stone leveled against their conservative colleagues in the old days. Of those giant old dissenters, only Stone lived on into the new (post-1938) judicial era. He was as unpersuaded by the conservative "resourcefulness" of the old guard as by the libertarian "resourcefulness" of Black and company. At the close of a long career spanning the two quite different judicial epochs, Stone wrote an intimate friend:

My more conservative brethren in the old days [read their preferences into legislation and] into the Constitution as well. What they did placed in jeopardy a great and useful institution of government. The pendulum has now swung to the opposite extreme, and history is repeating itself. The Court is now in as much danger of becoming a legislative and Constitution-making body, enacting into law its own predilections, as it was then.

There can be little doubt as to where Stone found the seat of the difficulty on the new Court. Again in private correspondence, he observed:

I am fearful that [Black] will not avoid the danger of frittering away his opportunity for judicial effectiveness by lack of good technique, and by the desire to express ideas which, however valuable they may be in themselves, are irrelevant or untimely. There are enough present-day battles of importance to be won without wasting our efforts to remake the Constitution *ab initio* or using the judicial opinion as a political tract. This from the liberal Stone whose dissents on the old Court made him Chief Justice of the new one.

Few will insist that Justice Frankfurter has never violated his own canon of judicial self-re-

straint. The point is that—as compared to the libertarians now, or the conservatives of yesterday—his intrusions upon substantive legislation have been minimal. Ironically, he is now criticized for precisely that hands-off philosophy which won him an appointment to the bench. The real case against him (if there is one) is not that he has changed, but that he has remained so faithful to his conception of the judicial role in a democratic society. In his view, it is not his job to create a brave new world—the legislative function having been given to others. What has changed, of course, is not Frankfurter but the liberal party-line which in the 1920's and early 1930's found judicial review thoroughly undemocratic, yet now finds it quite the opposite. As Sidney Hook has observed, "To make one's philosophy of [the judicial role] dependent upon the composition of the Court at any definite time is cynical. Worse than cynical, it is foolish, for death and the pendulum of history are sure to place on the bench not merely conservatives but illiberals."

Delphic Terms

The crux of the difficulty is that for many purposes the Constitution speaks in quite Delphic terms. This indeed is its genius. To resolve their own doubts and disagreements, to accommodate an unknowable future, the Founding Fathers (like the amenders) often resorted to "convenient vagueness." Each generation's birth-right is to find its own wisdom—or the opposite—in the majestic generalities of the ancient document. And so the Constitution lives despite unforeseen vicissitudes because it derives vitality from the life about it. In Frankfurter's view the vitalizing function belongs to the people and their elected representatives, not to a handful of independent judges. Of course, his "reasonable-doubt" approach (as seen in the flag salute case) is not without difficulty. It does not give automatic answers. It will not make a great judge of a little man. Like other tools it is subject

to misuse. Yet at its best it does suggest an external standard for the guidance of a hard-pressed court: a standard rooted in the only sound basis for any legal system—"the actual feelings and demands of the community, whether right or wrong." In any event, surely it is less vulnerable than the pretense, or conviction, that the "due process" clause tells us something intelligible about flag salutes and minimum wages. We scoff at astrology and tea leaves, yet we seek answers to such problems in a document written ages ago by men, however wise, who had not the slightest knowledge of the world in which *we* live.

Room for Doubt

Justice Frankfurter cannot pretend that the parchment king is fully clothed. Unlike many on and off the bench, he recognizes that in many crucial cases the Constitution leaves room for doubt and choice, and that in a democracy choice is the province of politics, i.e., of the people, striving with whatever confusion toward their own conception of the good life. Unlike the libertarians (and the proprietarians before them) he finds the importance of the democratic process not so much in its immediate legislative product, as in the educational and tension-relieving role of the process itself. A generation ago he wrote that:

In a democracy, politics is a process of popular education—the task of adjusting the conflicting interests of diverse groups, . . . and bending the hostility and suspicion and ignorance engendered by group interests toward . . . mutual understanding.

Let us face it—there is apt to be both good and bad on all sides of every issue that divides us. By political give-and-take, we seek not the ultimate truth but a workable balance of community interests. Our political system is far too wise to gamble for Utopia or nothing, to reject the good in pursuit of the perfect. To impede its pragmatic processes by moralistic flats from the bench is to

tamper with our chief device for maintaining social peace and political stability. In short, as Frankfurter has observed, "The legal system of every living society, even when embodied in a written constitution, must itself be alive. Such a constitution does not merely enshrine the past. It is designed to give full scope to the future. ***The Constitution of the United States is thus not a historic parchment in a glass case. It is a continuous process of delicate governmental adjustments. ***As society becomes more and more complicated and individual experience correspondingly narrower, tolerance and humility in passing judgment on the experience and beliefs expressed by those entrusted with the duty of legislating emerge as the decisive factors in constitutional adjudication."

And so, from first to last, Felix Frankfurter has been wary of judicial efforts to impose JUSTICE on the people—to give them "better" government than they are able at the moment to give themselves. It is his deepest conviction

that no five men, or nine, are wise enough or good enough to wield such power over the lives of millions. Morris Cohen put it bluntly: if judges are to govern, they ought to be elected.

Of course, when the Constitution speaks clearly there is little difficulty. But Justice Frankfurter has not been as successful as some in finding plain answers to atomic-age problems in the stately abstractions of the 18th century Constitution (and a few 19th century amendments). True, then, to the faith on which democracy ultimately rests, he would leave to the political processes the burden of building legal standards in the domain of doubt. For in his view only that people is free who chooses for itself when choice must be made.

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Model Trial

(Continued from page 5)
stricken from the record.

Miss Mather said that she had told Harry Keeble accidentally that she was going to the jewelry store that night to get a ring. She also described how Keeble held her a prisoner and took her to Langdell 100 miles away and how he had told her she would never see Sam again if she told the police.

During cross-examination Mr. Facher suggested that her explanations were too "pat." Also he suggested that Sam had fabricated this story with her in the course of a phone conversation before she talked to the police. She denied this.

At 10:20 Mr. Keeton rested his case and delivered his closing argument. He argued that there was an armed and dangerous criminal outside the

store, one who proved his nature by killing Mr. Hines.



Of course Marsha wanted a ring. This, he said, was the man who coerced the defendant. He further argued that the failure of Sam to have his story ready was perfectly consistent with his claim of innocence, since a guilty man would have had a story all prepared. He said the story was so elaborate and so susceptible to contradiction that no man would have made it up for the police.

In his closing remarks,

Mr. Facher again emphasized that the defendant's acts indicated co-operation, not coercion. He said that the story about coercion was fantastic and urged the jury to consider who should bear the loss from Mr. Hines' death, Mrs. Hines or Samuel Knight. Finally he pointed out that although both Sam and Marsha spoke of being in fear of their lives, neither was injured. Mr. Hines was the only one hurt, he said.

After Suffolk County Superior Court Judge Francis J. Quirico delivered his charge, the jury retired to deliberate.

At 1:35 a. m. Friday morning the foreman handed over the jury's sealed verdict for the defendant.

The plaintiff will, of course, appeal. And the appeal will, of course, be granted. For there must be something to discuss at the Model Appeal in December.

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Chayes on Cuba

(Continued from page 1)

action." However, Mr. Chayes noted, these factors "depend . . . upon the reality and coherence of the case in law for our action."

Mr. Chayes developed the legal case for the Cuban action by pointing out that the quarantine was not instituted until after it had been approved by the Organization of American States proceeding under the Rio Treaty of 1947. Said Chayes: "The Treaty is explicit as to the measures which may be taken 'for the maintenance of the peace and security of the Continent.' The 'use of armed force' is specifically authorized. . . ."

The recommendation passed on October 23 by the Organ of Consultation of the O.A.S. (a special body which meets to plan for the "common defense") authorizing member states to take steps "including the use of armed force" to check the Soviet missile threat is not inconsistent with the United Nations Charter, Chayes pointed out. In fact, he noted, Article 52(1), which allows regional bodies such as the O.A.S., was incorporated into the Charter at San Francisco "at the insistence of the Latin American countries and with the inter-American System specifically in mind."

Mr. Chayes pointed out that the use of force by the U.S. must nevertheless be reconciled with the principles in Article 2 of the U.N. Charter. The Article prohibits member nations from using the "threat or use of force against the territorial integrity or political independence of any state. . . ." Mr. Chayes pointed out that "the promise not to use force is not absolute" and that one qualification, written into the Charter in Article 51 protects the "inherent right of individual or collective

self-defense if an armed attack occurs."

It was not in reliance upon Article 51 or upon the right of self-defense that the President based his actions, Mr. Chayes continued. "Self-defense, however, is not the only justifiable use of force under the Charter." The use of force was authorized for the same reason the United Nations itself has sanctioned it: "to deal with a threat to the peace," as in Korea and in the Congo. The use of force in these instances is legitimate for two reasons, Mr. Chayes continued. "First, all the members have constituted the United Nations for these purposes," and second, "the political processes by which the UN makes a decision to use force give some assurance that the decision will not be rashly taken."

It is these two factors which "legitimize the use of force in accordance with the OAS resolution dealing with the threat to the peace in the hemisphere," Chayes continued.

In explaining why the U. S. did not go first to the Security Council of the U. N., Mr. Chayes pointed out that "events since 1945 have demonstrated that the Security Council, like our own electoral college, was not a viable institution. The veto has made it substantially useless in keeping the peace."

"The withering away of the Security Council," Mr. Chayes added, "has led to a search for alternative peace-keeping institutions. In the United Nations itself the General Assembly and the Secretary General have filled the void. Regional organizations are another obvious candidate."

Since next Thursday is Thanksgiving Day, the Record will not be published. We will be giving thanks for the opportunity to attend classes on Friday and Saturday.

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THIRD YEAR INTERVIEWS

Washington: Kirlin, Campbell & Keating. Ronald A. Capone, Esq. (1 p.m., Friday, November 16.) Friday, November 23.

Washington: U. S. Securities and Exchange Commission. Peter Danman, Esq., Llewellyn Young, Esq. and Dave Bicks, Esq. (1 p.m. Friday, November 16.) Friday, November 23.

Albany: Office of Counsel to the Governor, State of New York. (1 p.m. Friday, November 16.) Friday, November 23. 72 average and New York residents preferred.

Detroit: Dickinson, Wright, McKean & Cudlip. B. Courtney Rankin, Esq. (1 p.m. Friday, November 16.) Friday, November 23.

THIRD AND SECOND YEAR

Washington: Cummings & Sellers. Eldon H. Crowell, Esq. (1 p.m. Monday, November 19.) Monday and Tuesday, November 26 & 27.

Indianapolis: Buschmann, Carr, Schnabel & Tabbert. John R. Carr, Jr., Esq. (Friday, November 16.) Friday afternoon and Saturday morning, November 23 & 24.

SECOND YEAR INTERVIEW

New York: Davis Polk Wardwell Sunderland & Kiendl. Peter A. Bator, Esq. (1 p.m., Monday, November 19.) Monday, November 26.

THIRD YEAR OPPORTUNITIES

Earle K. Shawe, 301 North Charles Street, Baltimore 1, Maryland. Contact: Earle K. Shawe, Esq.

Trust Department Executive Training Program: Continental Illinois National Bank and Trust Company of Chicago, 231 South La Salle Street, Chicago 90, Ill. Contact: Ray F. Myers, Esq.

Porter & Porter, 2012 Union Central Building, Cincinnati 2, Ohio. Contact: Robert C. Porter, Esq., LL.B. '52.

Law Offices, Samuel A. Gennet, 60 Park Place, Newark 2, N. J. Contact: Samuel A. Gennet, Esq., LL.B. '36.

Carpenter, Bennett & Morrissey, 744 Broad Street, Newark 2, N. J. Contact: Elmer J. Bennett, Esq.

Training Opportunities in Banking: New York State Department of Civil Service and New York State Banking Department. Contact: New York State Civil Service Department, State Campus, Albany, N.Y. or New York State Banking Department, 100 Church Street, New York 7, N.Y. Open only to residents of New York, Connecticut and New Jersey.

Hawkins, Delafield & Wood, 67 Wall St., New York 5, New York. Contact: Louis S. Auchincloss, Esq., or Mr. F. Colman Greene, Esq.

Langner, Parry, Card & Langer, 10 Columbus Circle, New York 19, N.Y. Contact: David J. Kera, Esq., or Stephen Goldsmith, Esq. in New York. Business: International trademarks. Foreign language desired.

Judicial Clerkship opportunity: Hon. Peter M. Gunnar, Oregon Tax Court, State Library Building, Salem 10, Oregon. Contact Professor Livingston Hall.

Cavalletto, Webster, Mullen & McCaughey, 112 East Victoria St., P.O. Box 779, Santa Barbara, Cal. Contact: Arthur A. Honzell, Esq.

Bigbee & Byrd, Bokum Building, P.O. Box 669, Santa Fe, N. M. Contact: Harry L. Bigbee, Esq.

Teaching Fellowships: Stanford University, Stanford, Cal. Contact: William T. Keogh, Associate Dean. Graduate work or practice experience desired.

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SECOND YEAR OPPORTUNITY

Honigman Miller Schwartz and Cohn, 2290 First National Building, Detroit 26, Mich. Contact: David K. Page, Esq.

NOTICE TO ALL STUDENTS

Cocktail Party, Wheeler Room, Holmes Hall, 4:30 to 6:30 p.m., December 1. Harvard Law School Association of New Jersey. Open to New Jersey students and those intending to practice in New Jersey.

Panel Discussion on the "Corporate Law Department," 4:00 p.m., Friday, November 16, Harkness Common Room.

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