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NO. 10

White to Judge Ames Finals

By Charles M. Hamann

Vice-Dean Louis Toepfer officially confirmed this week that Byron White, Associate Justice of the Supreme Court of the United States, would preside at the final argument of the Ames Competition, to be held sometime in the spring. The date for the argument, however, has not yet been set. A definite date is not expected until January when Justice White will have had an opportunity to assess his spring schedule.

President Kennedy appointed Justice White at the end of March of this year to the seat on the high bench vacated by former Associate Justice Charles E. Whittaker. Justice Whittaker retired because of poor health and the strain of the heavy work load of the Court.

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The Man With the 'Ho'



See Story, Page 6

Lobby Renovated

by Donald W. Kramer

The receptionist's lobby on Langdell Hall may look bare this week without the paintings that normally cover the walls. But by the end of Christmas vacation, the paintings should be back, along with the new lighting, new paint, and new furniture that are parts of a bright new interior design.

Mary Conlan, Administrative Assistant to Dean Griswold, said this week that renovations had been needed for a long time to make the lobby a more attractive place for visitors, students, and staff. The new design, she said, will highlight the Feke painting of the Royall Family that normally hangs in the lobby.

After the walls are repainted white, special lighting fixtures will be installed to light the walls and highlight the paintings. The famous Roscoe Pound desk will be set back farther in the room, and a new ceiling light will be installed above it.

(Continued on page 4)

Resolutions for 1963

As the year draws to a close, the RECORD joins millions of other Americans in compiling a list of resolutions for 1963.

- Resolved that the Dormitory Council should secure additional vending machines for the law dorms, which would sell such items as milk, coffee, hot chocolate, sandwiches, and candy. At present there are only two such machines — both candy dispensers. Of the numerous law students who study late into the night, many like to take a break from time to time to nibble a sandwich or drink a cup of coffee. Because nearby restaurants and the Harkness grill are closed after midnight, it is difficult to secure these study aids unless one decides to venture down into the Square, and on the typical Cambridge winter's night this is not too appealing a prospect to one on foot or even to one owning a car. Installation of vending machines would certainly be a welcome addition to the dorms.

- Resolved that the Administrations of the Law School and of the University should seek to establish a branch of the post office on university premises, as is the case in many other universities and colleges throughout the country, *e.g.*, Yale and the University of Texas, and/or that the Dormitory Council should continue to try to persuade some nearby store to serve as a sub post office for this area of Cambridge.

- Resolved that the Administration should expedite the installation of the overhead lighting fixtures in the dorms, or else dorm residents will have been left in the dark for most of the year.

- Resolved that the Administration fill in the gap in the covering between Harkness and Story Hall so that people will not be drenched as they pass back and forth when it rains. Alternatively, if the bicycle rack were moved, it would be possible for students to stay beneath the presently covered area. Also, something should be done to drain off the large puddles of water which accumulate on the flat sidewalk in that area during the Cambridge monsoon.

- Resolved that the library should collect the briefs submitted by all parties in proceedings before the federal administrative agencies so that interested students, especially third-year ones whose paper topics fall in the area of administrative law, may have access to them without in some cases having to make long trips to other libraries or even longer ones to Washington.

- Resolved that the RECORD will help to save the eyesight of its editors and readers by not publishing again until January 31.

Harvard Law Record

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TONGUE 'N CHEEK

By Fenno

New Year's Eve is always a time of great nostalgia, a time to reflect upon experiences of the passing year. And for us students, it is a signal that midyear exams are just beyond a flip of the calendar page. Thinking back, though, wasn't this an exciting semester? For example, here are some of the highlights:

SEPTEMBER: ... 1600 law students arrive at Langdell accidentally; thought it was Peace Corps headquarters ... Fred First-year attends his 74th Ames club smoker; declares "Law School is fun" ... Austin Hall is still standing...

OCTOBER: ... 2000 college seniors arrive at Peace Corps headquarters accidentally; thought it was Langdell ... Ted Third-year attends, without a break, his 150th consecutive interview at the Placement Office; finally accepts job as assistant to Miss Appel ... record number of 140 back-bench in one class ... student falls into duplicating machine at Distribution Center; doubles his pleasure, doubles his fun ... 5 millionth plate of scrod served at Harkness; scrod is graciously returned, but plate disappears ... student caught breaking parietal hours; ripped poster right off closet wall ... Austin Hall is still standing. . .

NOVEMBER: ... Peace Corps arrives at Langdell accidentally; finds conditions "primitive" ... Sam Second-year gets 90 points on his Ames oral; largest penalty ever assessed ... World Tree cracks; rewelded; cracks; rewelded; RECORD reporter cracks; who cares? ... 715th patron of Harkness drops his tray ... Austin Hall is still standing. . .

DECEMBER: ... Pigeons invade Langdell; faculty retreats ... a law review volume is returned to shelf ... fertilizer spread on Langdell shrubs; growth of law noted ... Austin Hall is still standing ... students reluctantly leave for Christmas vacation; hope for a happy new year.

Model Appeal Results in New Trial

By Charles M. Hamann

Last Thursday night the Ames Courtroom was the scene of the appeal in the case of *Donnelly v. Knight*.

In his opening address, Professor Roger Fisher, attorney for the plaintiff-appellant, promised to prove five points:

1. Coercion is not a defense to a wrongful death action.

2. Evidence of coercion was insufficient for the case to go to the jury.

3. The charge failed to state specifically that fear of "death or serious bodily injury" was required for a valid defense of coercion.

4. The charge relating to the burden of proof was prejudicially confusing.

5. The negligence cause was not barred by the statute of limitations.

Professor Fisher requested a reversal on points 1 and 2, or a new trial on points 3-5.

Law Well Settled

On point 1 he argued that defendant Knight was the principal actor in the robbery and that the law is well settled that coercion is no defense in criminal actions.

As to point 2—since Knight saw the crook drive off, leaving him at the store—there was not a continuing threat, but only a promise of future harm, which the law will not admit as a valid defense. Thus a verdict should have been directed for the plaintiff.

In arguing for a new trial, Professor Fisher pointed out that the jury charge was prejudicial to plaintiff in two respects. It referred consistently to "bodily harm" even though the defendant conceded that "death or serious bodily harm" was required for a legally valid defense. Secondly, in several places the judge seemed to place the burden of disproving any coercion on the plaintiff.

Interpretation Of Ames Law

Point 5 involved the Ames law providing that a widow may sue on any act which caused her husband's death which would "have entitled the party injured to maintain an action" if he had lived. Professor Fisher argued that this law should be interpreted to mean that she had any cause of action which he would have had at any time after the injury. Thus, the fact that the statute of limitations had run on the negligence cause

of action by the time he died did not affect her rights.

Professor Sander, attorney for the defendant-appellee then rose. He pointed out that the plaintiff's leading case involved a gangster who later shared in the "take" and therefore was properly refused the defense of coercion. Professor Sander admitted he had found no case directly supporting his position, but neither had he found any case directly opposed. And, he believed that prevailing opinion held coercion to be a defense, especially since the defendant did not do the shooting.

Instructions Not Prejudicial

Professor Sander argued that the instructions were not prejudicial since the trial judge began by specifying "serious bodily harm" as the requirement and later used "bodily harm" merely as a shorthand form. Professor Sander also suggested that when the judge charged that the plaintiff had the burden of proving Knight was a willing participant, "willing" meant "non-coerced." Therefore, the charge only meant that the plaintiff had the burden of proving Knight's coercion story was false so that, according to Professor Sander, the burden of proof was properly allocated.

On point 2, Professor Sander contended that there was a continuing threat to defendant since the crook might have returned at any time and the jury could have so found. There was also the threat to his fiancée, Marsha Mather.

He then explained that under the wrongful death statute the widow received every cause of action her husband had had at his death; but since the statute had run on the negligence cause before his death, it was now barred.

Sander Concludes

Professor Sander concluded by saying that according to the plaintiff's interpretation one could be liable for an injury which caused death thirty years later.

After lengthy deliberation, the judges ordered a new trial on the grounds that the jury charge was confusing as to which party had the burden of proof.

White

(Continued from page 1)

The American Bar Association Committee on the Federal Judiciary termed Justice White "exceptionally well-qualified" for the post he was then assuming. Senate Majority Leader Mike Mansfield remarked after announcement of the appointment: "I couldn't be any happier. Byron White is the right man in the right place for the right job, and from the right section of the country." Justice White, the first man from Colorado to serve on the Court, is the only Supreme Court justice from the vast area of the country between the Mississippi River and the Pacific Coast states.

Prior to his appointment to the Supreme Court, Justice White's greatest fame stemmed from his prowess as a football player. Nicknamed "Whizzer," he was a college All-American in 1937. After college, he played professional football for Pittsburgh and Detroit.

Football came second to Law. Although he helped to pay his way through Yale Law School by playing football, he quit the sport upon graduation and became a clerk to the late Chief Justice Fred M. Vinson of the United States Supreme Court.

Justice White graduated *magna cum laude* from Yale; earlier he had been first in a class of 267 at the University of Colorado, where he received his undergraduate degree.

Justice White, Deputy Attorney General at the time of his appointment, was President Kennedy's "personal choice" for the job. A long-standing acquaintance between the two dates from before the Second World War.

Supreme Court justices have not always presided over the Ames Final. In 1946 the Deans of the Harvard, Yale, and Columbia Law Schools judged the argument.

Forum Elects

The Harvard Law School Forum elected on Monday evening, Dec. 10, the following: President: Robert McDiarmid, Vienna, Virginia; Planning Vice President: Thomas Mansbach, Norfolk, Virginia; Administrative Vice President: Harvey Poll, Seattle, Washington; Secretary: Martin Newman, Great Neck, New York; Treasurer: Robert Hadley, Wilmington, Ohio.

Commuter Problem Eased

The University has recently raised the number of commuting graduate students who may use the Andover parking lot from 250 to 500.

Earlier in the year the lot was restricted to those graduate students with numbers 2101 through 2350. But spot checks run about every two weeks, according to Dean A. D. Trottenberg, showed the lot was not being used to capacity, and now the lot is open to all with stickers bearing the numbers 2101 through 2601.

Those commuters with newly acquired rights are ones who registered early in September, a spokesman for the University Police said recently.

The highly desired lot is in front of the Cambridge Electron Accelerator and near the University Museum.

Law School Enrollments Up

Enrollment in approved law schools increased by about 3300 students this fall, according to figures in a recent issue of the American Bar Association News.

The total rose from 41,499 in the fall of 1961 to 44,805 this year, reported John G. Hervey, adviser to the Section of Legal Education and Admissions to the Bar. The largest increases were in first-year classes, which jumped from 16,589 to 18,346.

Lobby Renovation

(Continued from page 1)

Custom-made furniture will be brought in, and a new carpet will be placed on the floor. The colors will be predominately red and gold, the colors of the Royall Family painting.

The glass in the fire doors between the lobby and the faculty offices will later be replaced with clear glass so that there will be a clear view throughout the length of the west wing of Langdell.

The outer lobby will also be repainted in a light blue, and the statue of Joseph Story will be more effectively lighted.

Lighting work is expected to be started this week so that the project can be completed by January 7.

1960 Graduate Tells of Africa

Archibald Alexander, a 1960 graduate of the Harvard Law School, has recently returned from a year in the Ivory Coast, Africa, where he served as assistant to the President of the Supreme Court there.

Describing the capital city of Abidjan, where Alexander spent much of his time, Alexander said, "This is a booming town. Much construction work is going on. There are many night clubs with much excitement. However, this is not so true in English-speaking Africa."

Alexander noted that he found working under French law to be very stimulating and

offered sharp contrasts to the law he learned while in an American law school. "The disadvantages and advantages of our system stand out with much more vividness," Alexander continued, "and one finds oneself questioning many of the basic assumptions one took for granted before." As an example of the advantages he saw in the French system, Alexander pointed out the efficiency in the processing of civil cases through the courts. Under the French system, he noted, there are no jury trials in civil cases.

He found divergence from the American
(Continued on page 9)

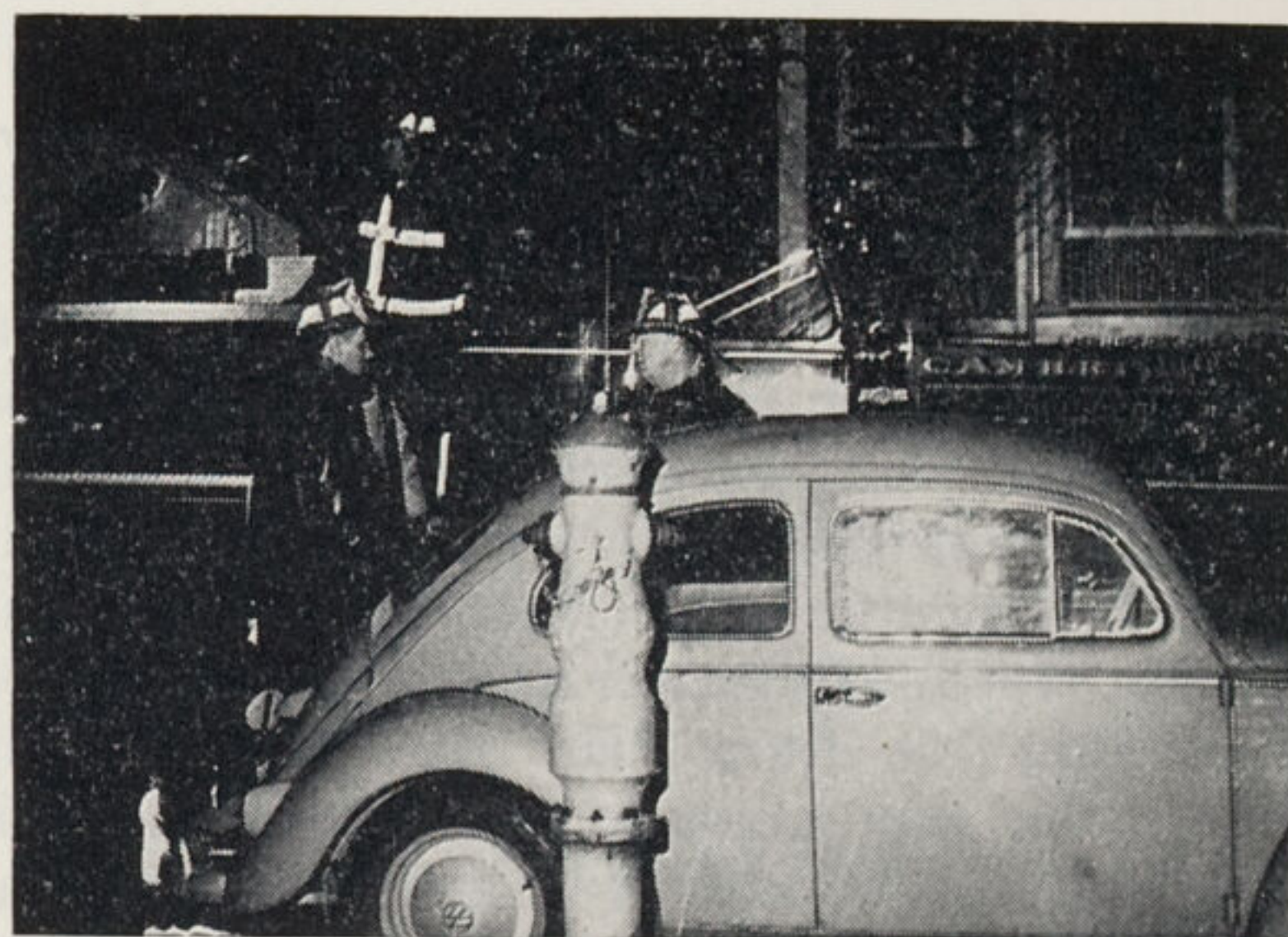
Fire On Everett Street: More Tickets Than Flames



Cambridge firemen were called to Everett Street three times within five days last week, but there was nothing more serious than a fire in a waste can.

Shortly after midnight Tuesday, firemen were called to Dane Hall (above) on an apparent false alarm. About 9:15 p.m. Wednesday, they were called to Perkins Hall, a Graduate School dorm, when the contents of a waste can caught fire. It was out by the time firemen arrived. Shortly before noon Saturday, they were called to the apartments at 19 Everett Street when escaping steam was reported as smoke.

On two of the three calls, firemen found cars owned by students parked directly in front of the hydrant opposite 23 Everett Street. It would have been almost impossible to use the hydrant if that had been necessary. Both cars received tickets.



Record Photos By Donald W. Kramer



Photo by Paul A. Rochlin



'Here's One in the Original Package'



Photos by Donald W. Kramer

'Is This Track in Interstate Commerce?'

Santa Is a Yale Man

Editor's note: Santa Claus appeared Saturday afternoon to distribute gifts to the children of the married law students. He was, in reality, Paul Lynch, former Yale football captain and presently 2L. All of the kiddies were still dazed and swooning when Paul said his final "Ho Hos" and deftly picked his way through the crowd with his empty sack to return presumably to the North Pole. None of the children saw what

happened next, but if they had, there might have been some disillusionment. "Santa" darted into the men's rest room across the hall and began to change his outfit. The following song is to be sung to the famous tune of "Daddy Is a Yale Man" and must be familiar to a large number of people in the Law School, perhaps as many as three. The song is about what might have happened if someone had noticed there was no sleigh.



An Arms-Length Deal



No Standing



'Was It a Voidable Preference?'

As the New Haven train left South Station,

A young girl climbed on with a doll;

She said "I'm not grieving

That it's come to leaving,

For I've had enough foll-de-roll."

Said the conductor, "What the heck's

gotten into that cute girl with
the doll,

That she should be riding this train?"

So when they reached the sticks,

This brave sister of six,

Gave a sigh and began to explain:

"My dad is so clever, my mom is a smarty,

They told me that Santa was real;

But I watched him leave after Saturday's party

And—do you know—he ducked in the restroom
to peel!

"Thus my parents the truth they did hide, eh?

I never knew something was fishy—oh;

But I know now he's bona fide,

To me Santa's void *ab initio*."

Said the conductor, "I still want to

know what the heck's gotten into
that cute girl with the
doll,

That she should be riding this train."

So when they passed the sticks,

This brave sister of six,

Broke a smile and began to exclaim:

"Tho Santa is a Yale man, Yale Bowl sounds
divine;

And I can believe in,

A man who did weave in

And out on the fifty-yard line.

"So I'm going to get lost in

This wild train from Boston

And find one more "Santa" from Yale, -ale, -ale,

find one more "Santa" from Yale."

Law School Association Foresees Record Membership

By Michael J. Henry

More than 10,700 alumni have already paid Harvard Law School Association membership dues this year, a figure which foreshadows an almost certain record membership total by the end of the 1962-63 year, said Assistant Dean William L. Bruce this week. Last year's final total, was 11,111, which is the present record.

There are now 22,314 alumni of the school, so that about 50 percent are active dues-paying alumni association members.

The upcoming publication of the quinquennial catalogue of alumni, distributed free to members who paid dues this year and last year, has undoubtedly stimulated the membership increase in part, he noted.

However, the catalogue is only one of a number of activities which alumni association dues support. A portion of the dues paid to the national association is returned to the 56 local associations to be used in defraying the cost of local programs.

Alumni association dues also provide funds for national scholarships. This contribution, which is presently increasing at the rate of \$15,000 annually, forms the hard core of the scholarship program.

Distribution of the RECORD is also supported by association dues. The Law School newspaper is sent free of charge to dues-paying alumni who indicate a desire to receive it—a group which presently numbers about 10,300.

Vacation Library Hours

	Langdell Hall Reading Room	ILS Reading Room
Dec. 22	8:30 a.m. - 5 p.m.	9 a.m. - 5 p.m.
Dec. 23-25	closed	closed
Dec. 26-28	9 a.m. - 5 p.m.	9 a.m. - 11 p.m.*
Dec. 29	closed	9 a.m. - 5 p.m.*
Dec. 30	closed	closed
Dec. 31	9 a.m. - 5 p.m.	9 a.m. - 5 p.m.
Jan. 1	closed	closed
Jan. 2-4	9 a.m. - 5 p.m.	9 a.m. - 5 p.m.
Jan. 5	closed	9 a.m. - 5 p.m.*
Jan. 6	closed	closed

*Students may enter through the front door of ILS wing when Langdell Hall reading room is closed.

Revised Examination Schedule

SECOND AND THIRD YEAR

	Mon., Jan. 14	Tues., Jan 15	Wed., Jan. 16	Thurs., Jan. 17	Fri., Jan. 18	Sat., Jan. 19
9:00 A. M.	Admiralty, Insurance	Legal Method in Int. Disputes	English Legal Hist.	Comp. of Soviet and Am. Law	Admin. Law, The Civil Law System	State & Local Tax
2:00 P. M.	Intro. to Amer. Law	Conflict of Laws A	Creditors' Rights, Estate Planning	Legal Process A and B	Evidence A-1, A-2	Accounting

There will be no third-year classes Jan. 14-19; second-year classes will be held Monday, Jan. 14, and Tuesday, Jan. 15. First-year classes will go on as usual.

Stable Year in Market Predicted by Analyst

By L. F. Kaplan

Mr. Edmund Tabell spoke on analysis of the present market by the combination of the fundamental and technical approaches Friday before a meeting of the Bull and Bear Club.

Mr. Tabell discussed market price in terms of four factors: earnings, dividends, current money rates, and finally "investor confidence." He described the first three as measured by a fundamental standard, the index, and the last, the emotional one, though difficult to measure, by a technical approach — "a breadth of market approach."

Mr. Tabell showed how the comparison and evaluation of investor sentiment could be accomplished by utilizing and contrasting a speculative index (the average price of all stocks on the N. Y. Exchange) or breadth action index with an investment index (*i.e.*, the Dow Jones Industrial Average). By the use of charts Mr. Tabell demonstrated the ability of the breadth index to predict and lead the investment movement. He showed how a slump in the breadth action in 1961 suggested the 1962 decline in the investment index.

Mr. Tabell described the current rise in the market as a result of the highly liquid posi-

tion of investors during the summer sell-off.

He went on to predict that the market will decline in order to "broaden its base," *i.e.*, securities will be placed in the hands of people who are planning to hold their stocks for long-term investment purposes. However, he also stated that the market would not decline below 525 on the Dow Jones Industrial average. He also expects the 1963 market to stay within the 1962 range. The overall effect of these factors is that the new year will be one of consolidation.

Reflecting that the current market is very reminiscent of the 1949 market, he said that he expects 1964 to be the start of a durable or heavy goods boom. He mentioned Standard Oil of New Jersey and General Motors as especially attractive purchases in light of this boom and their favorable price/earnings ratios.

PBH Drive Falls Short

The scant response so far of the Law School Community to the Combined Law School Charities Drive is reflected in the current figures. As of Sunday, December 16, Law School students had contributed only \$600, far below last year's final figure of \$1800. Although there is no deadline for contributions, only 99 had responded out of the 1642 contacted. Robert Kenison, Chairman of the Drive, said that he hoped that the student body would at least equal last year's total.

African Opportunities

(Continued from page 5)

system in the area of constitutional law, where the Ivory Coast, following the French guidelines established during colonial days, views its Constitution as something to be changed only by the legislature, and not by the courts.

Generally, Alexander said, the French made a great effort to do away with the existing native institutions in trying to impose the French centralized system of law upon the citizens of the Ivory Coast.

Alexander went to Africa as a part of the In-Service Training Fellowship program of the Massachusetts Institute of Technology, a program which recruits among law clerks in this country. Another recent Harvard Law School graduate, F. A. O. Schwartz, Jr., was in Kaduna, Northern Nigeria, last year, where he assisted the attorney general and helped in the codification of laws.

Other programs which are seeking either law students who are about to graduate or recent graduates are the following, according to Mr. Joseph E. Leininger, Secretary of International Legal Studies:

(1) The Africa-Asia Public Service Fellowship Program of Syracuse University, administered by the Maxwell School of Public Administration in Syracuse University. Under this program ten persons a year are chosen to go to Africa, India, and Pakistan.

(2) The Sailer Project, headed by Dean John S. Bainbridge of Columbia Law School, in which men are placed as teachers in newly emerging law schools in Africa.

(3) The Peace Corps, whose legal training program is just getting started. Its aims are the training of local judges and peace enforcement officials and the general shoring up of legal institutions in Africa.

EEC Official Discusses Monopolies

Mr. Gerrit Jan Linssen, Chief of the Agreements and Monopolies Division of the European Economic Community's Competition Regulation of Business class last week.

Mr. Linssen's answers to the questions addressed to him by Professor Schwartz elucidated the similarities and differences in the American and Western European approaches to antitrust problems

Williston Finalists Named

Four teams, consisting of 14 third-year students, will go into the final round of the sixth annual Williston Competition this spring.

Names of the finalists of a starting group of 24 teams were posted recently by the Board of Student Advisers and Benjamin R. Schenck, 3L, chairman of the Competition. The winners are:

For problem SF-6 (Federal); Cameron S. Avery, John A. Bohn, Paul M. Donaldson, Andrew J. Haswell.

Problem SF-2 (New York); William L. D. Barrett, Norman Leibovitz, Joseph M. Rosenthal, Michael B. Tischman.

Problem SF-9 (Illinois); D. Knox Bemis, Fenton J. Burke, Roger L. Zissu.

Problem SF-8 (New York); Mark Lainer, John B. Niles, Jack L. Rozran.

The competition is designed to give participants practice in the art of legal draftsmanship. It was originated in 1951 and was reorganized in 1956. It is open every spring to second-year students who are not members of the Law Review, the Board of Student Advisers, or an Ames Club in the quarter-final round.

Professors to Attend Meeting

Fifteen or twenty Law School professors are expected to attend the annual meeting of the Association of American Law Schools at the Edgewater Beach Hotel in Chicago, which begins December 28.

Assistant Dean William L. Bruce said recently that deans and professors from many law schools will be available for consultation by men interested in teaching. He said there is an increased demand for teachers because of national enrollment increases. But he added that most law schools are looking for men with experience gained from fellowships, advanced study, or several years private practice.

The Harvard Law School Association of Illinois will host Harvard graduates at a meeting during the convention.

In the Supreme Court of Ames

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I. D. SCROOGE and WIFE

v.

S. CLAUS

Argued February 30, 1962

Decided December 26, 1962

1. Constitutional Law ♪ ♪ ♪ 12(25)

The Court will refuse to consider precedent or public policy when faced with a purely political question because to do so otherwise would be unprecedented and against public policy.

2. Constitutional Law ♪ ♪ ♪ 54(40)

In determining whether a particular clause of the Constitution violates a state law, and therefore is un-Constitutional, the court will first determine whether it is a case or controversy.

3. Courts ♪ ♪ ♪ 9

The Supreme Court is supreme, by virtue of its supremacy, over the other branches of government, there being only one branch of government, which has supremacy over the other branches of government and it shall declare the supreme law of the land.

4. Judges ♪ ♪ ♪ 100(1)

Where a judge falls asleep during the taking of testimony or arguments of counsel, the court . . . must . . . a . . . zzzzzz.

5. Headnotes ♪ ♪ ♪ 1

In citing cases, counsel should only refer to the headnotes because they allow him to grasp the complexities of a complex complexion when confronted by confusing conflicts which tend to emphasize equitable justifications for any standard within a relationship which must consider all the factors in such manner that the proper conclusion is presented.

6. Method ♪ ♪ ♪ 500

Where a party is unable to hear the pro-

ceedings, or cannot see the witnesses, or quivers in great fear, there is prima facie evidence of the Socratic Method.

7. Procedure ♪ ♪ ♪ 90(6)

Deck the halls with bows of holly, fa la la la la, la la la la.

8. Alimony ♪ ♪ ♪ 2(2)

Evidence to the effect that "I saw Mommy kissing Santa Claus" must be considered.

9. Property ♪ ♪ ♪ 1

Seisin's Greetings.

10. Cheer ♪ ♪ ♪ 1962

Merry Christmas to all and to all a good night.

I. M. Cheap and Real Tightwad (of Coins, Bills & Notes) Grub City for the appellants.

Frosty T. Snowman III and Rudolph R. N. Reindeer (of Dasher, Dancer & Prancer) Ames City, and Jing L. Bells (of Good, Cheer & Bemerry) North Poll for the appellees.

Mrs. S. Claus, North Poll, for the world, as amicus curiae, by special leave of the court.

DANIEL J. KUCERA, Chief Justice, delivered the opinion of the court.

This was an uncivil action brought in the Inferior Court of the Successionist Province of Ames on December 26, 1961. Plaintiffs Scrooge and wife are residents of Ames, domiciled in a certain manor house, to wit Langdell Hall. Defendant Claus is a resident of North Poll and is President and majority stockholder of a certain big corporation, to wit Santa's Workshop, Inc., said corporation being the world's largest manufacturer and distributor of certain items, to wit gifts.

In their declaration, plaintiffs allege that on or about December 25, on or in their dwelling place of Langdell Hall, defendant, with force and arms, broke and otherwise entered the close of plaintiffs and willfully and wantonly did drive his sleigh and reindeer on plaintiffs' roof, damaging new-fallen snow



deposits and old-fallen pigeon deposits; that defendant did cause plaintiffs unbearable mental suffering and anguish from fright due to defendant's noise, clatter, hoofbeats, and bells which caused plaintiffs, who had just settled down for a long winter's nap, to spring from their bed to see what was the matter and to tear open (and, in their excitement, off) the shutters, etc.; that defendant then slid down plaintiffs' chimney, scattering dust and soot about their always-clean rooms; that plaintiffs casually lost and defendants found certain victuals and viands, to wit milk, cookies, scrod, veal cutlet, beef brisket, one vegetable and one salad (or in the alternative, two vegetables), and converted them to his own use; that defendant undertook and did faithfully promise to deliver certain gifts, to wit high grades, lots of girl friends, and partnerships in law firms, etc., but instead did deposit certain other gifts, to wit coal, onions, hard bread, coupon books, Coop bills, etc.; that defendant with malice aforethought and heart bent on social mischief did shake his belly like a bowl full of jelly, thereby causing treatises and reporters to fall off plaintiffs' shelves and disappear or become beat, battered, and bruised beyond recognition; and that defendant did violate state laws by working on a holiday; wherefore, plaintiffs did suffer irreparable harm and sought damages of \$100 plus green and/or plaid stamps.

Defendant pleaded not guilty, non assumpsit, res judicata, non suit, nihil dicit, public policy, mercy, and season's greetings.

In a brilliant, well-reasoned opinion by KUCERA, D. J.,* the lower court found for defendant. 33-10 Harv. L. Rec. 13 (1961).

*As a result of *Baker v. Carr*, 82 S.Ct. 691 (1962), the Successionist Province of Ames was re-apportioned, and agrarian reform was instituted. Control of the Ames Legislature

Plaintiffs now appeal, claiming as error the lower court's determination that the only point in question was whether the wearing of a certain red suit, trimmed with white, over a plump body topped by a bearded head while driving a flying sled led by eight tiny little reindeer on a certain night creates a privilege and/or duty to act in certain ways.**

[1] Clearly, the court was correct in holding that the distinction here is perfectly clear and well settled. *Field v. Kaplan*, 1 Aust. Langd. 9:00 (1962). Under early annotated and digested common law, sleigh rides were generally accepted by reasonably intoxicated men as normal means of transportation. *Ex parte Annual Vest Lectures*, 540 Sleepy People 62 (1962).

Appellants contend that defendant's red suit was unpatriotic and subversive and cite *John Berserk Society v. 60 Minute Man (Our Boy)*, 4 July 1776 (1066). That case is distinguishable because it involved only red tape. The fact that defendant has a plump body has no bearing on his culpability, because he did not throw his weight around. *Battery Belles v. Innocent Bystander*, 1595 Mass. Ave. 1595 (1918). Also, the unruly long hair and extensive beard was not unusual. *Cliffie v. Wildener Library*, 3 Haavd. Yaad 33 (1929).

[2] The fact that the children were all nestled in bed with visions of *Law Review*

switched hands, and certain judicial vacancies appeared — including that of Chief Justice of the Supreme Court. Finding no one else better qualified, Governor Kucera also took on the responsibilities of Chief Justice of the Supreme Court — which appointment he subsequently affirmed as the sole member of the State Legislature.

**Counsel for both sides waived a jury trial because twelve members of defendant's peer group could not be found.

dancing in their heads precludes mental suffering. 115 *Corpus Delicti Secundum* 765; see also *In re Practice Exam*, 50 Good Grief 50. (1963). Moreover, the fact that they sprang from the bed suggests a defect in the eggnog rather than a threat of violence by defendant.

[3] The lower court's finding that plaintiffs cannot bring suit on soot without alleging a soot case is suitable. Otherwise, the suit case would not be a soot case, but rather, an open and shut case. Moreover, a suit case for soot where defendant is sued for having a soot suit is served only where evidence in the suit shows soot from the sued soot suit sifted about in the sued suite where the suitor sued the suitee for suit soot from his sued soot suit and not from some suet stains separate from the suitee's soot sued soot suit. Puzler on Torts, *Soot Suit Sootsy*, p. 115.

[4] Trover does not lie because plaintiffs failed to allege specific crumbs, fibers, and nutrients, and because they did not allege that the food was edible. The question of gifts is resolved, for there *was* sufficient consideration. That is, while there was a detriment to the donor, there was also a benefit to the donee. *Rehash of Contracts*, Sec. 90.

Shaking of defendant's belly cannot be the proximate cause of bodily harmed treatises and reporters. Accord, *Bored of Student Advisers v. Board of Student Revisers*, 12 Unknown 61 (1860), where Marshall, C.J.S., held that any torn page during the commission of a felony such as studying would be raised to massacre in the 98.6th degree.

[5] Plaintiffs make a compelling argument that defendant violated their right under the 14th and 4th Amendments "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," in that a warrant was not issued upon probable cause, supported by oath, and describing the chimney to be searched and the cookies to be seized. Traditionally, we do not decide a Constitutional issue unless there is a non-Constitutional issue on which the case can be determined. However, we must make it clear that plaintiffs' Constitutional rights were not violated. The fact is that the 14th and 4th Amendments have been declared un-Constitutional. *U.S. Supreme Court v. John Q. Citizen*, 365 Every Day 52 (1940). Moreover, plaintiffs' Constitutional rights are irrelevant, because the great Commonwealth of

Ames does not have a Constitution.

[6] In their appeal, plaintiffs raise several untimely questions, such as defendant's income and gift tax status; his right to exclude from his gross income the value of meals and lodging received from plaintiffs; his right to take deductions for losses, depreciation of his sled, and contributions to charities; and his right to claim exemptions for various dependents including eight reindeer, several elves, and a few billion people. However, Commissioner would argue that plaintiffs are taxpayers, and therefore they are not within the class of persons to be protected by the Internal Revenue Code. *Helvering v. Helvering*, 2 Sander 00 (LNM Cir. 1962).

[7] Appellants say that defendant is not a bona fide purchaser, in good faith, without notice, and for value, of the gifts which he gave. They misunderstand the situation. Defendant did not buy the gifts; he made them. And, the gifts were fully negotiable. *Uniform Commercial Claus Code*, Art. 25. Moreover, defendant did not violate the Sherman Antitrust Act or the National Labor Relations Act. This fact is true because of the doctrine of charitable immunity. *World Tree v. Job Weld Done*, 52 Often 62 (1950).

[8] Plaintiffs contend that a decision for defendant would deny them all legal remedies. They are wrong. Plaintiffs could have passed a stockholders' resolution forbidding the transaction, amended the by-laws, increased the number of directors, or removed the directors from office.

[9] It does appear, however, that defendant violated a state law which prohibits working on a holiday. Moreover, defendant clearly violated the parietal hours, having entered and left plaintiffs' home well after midnight. These are serious offenses against the general welfare of the Commonwealth.

[10] However, we must affirm the lower court's decision. There was a serious defect of substance in plaintiffs' pleadings. They failed to pay the filing fees and writ expenses, although they knew or should have known that it is better to give than to receive. Moreover, on appeal, plaintiffs made several errors: their brief was a page too long, and they miscited a case. In a dignified court such mistakes cannot be tolerated.

Therefore, the judgment of the Inferior Court of the Successionist Province of Ames is affirmed. Yes, Santa, there is a Harvard.

An Answer to Administrative Abuse

By Ralph Nader

Mr. Nader, LL.B. '58, is a former President of the RECORD.

The expansion of the service state has caused a mounting concern in many countries over inadequate institutional checks on administrative abuse, incompetence, and inefficiency.

Political systems have evolved various ways to deal with this problem with varying degrees of success — the Procuracy in the Soviet bloc, the administrative courts in civil law countries (e.g., the French *Conseil d'Etat*), and the ordinary courts in common-law jurisdictions. These do not exhaust the means of external control over administration in the latter two areas inasmuch as elections, legislatures, communications media, and civic groups play a part. However, there is substantial evidence in recent years of dissatisfaction with existing protections against administrators and with supervision of them. This uneasiness is being expressed in countries old and new and is leading to a focus of interest on the Scandinavian office known as the Ombudsman. The lamentable quality of much federal, state, and local bureaucratic behavior calls for greater examination of this institution.

Established first in Sweden (1809) and followed by Finland (1919) and Denmark (1954), the Ombudsman is a Parliament-appointed commissioner who acts as the guardian of the general and specific rights of the citizen against official injustice. His function is to supervise the civil and military administrators on all levels so that no public servant pursues unlawful ends, or makes unreasonable and arbitrary decisions, or otherwise commits mistakes or acts of negligence in discharge of his official duties. (In Sweden and Finland there are two Ombudsmen—one for military, the other for civil affairs). He investigates in-

dividual complaints, takes inspection tours, and recommends changes in or additions to existing laws.

Although the Ombudsman's authority differs (e.g., unlike his Swedish counterpart, the Danish commissioner has no jurisdiction over courts), the basic rationale is similar and can be summarized as follows:

- While the best hope for administrative justice lies in wisely framed laws and a civil service of skill and integrity, there are bound to be cases where citizens cannot obtain redress for unjust treatment whether as a result of bias, mistake, or arrogance. Many of these grievances are wholly unsuited to the jurisdiction of the courts or may require much time and expense to remedy judicially.

- The Ombudsman is independent of the Executive and provides a practical, prompt remedy at no direct expense to the complainant. In addition, the perspective afforded by constant observance of various agencies and the experience gained by actual cases and his field inspections place him in a strategic position to suggest ways to better the administrative process.

The Ombudsman's power is actually much greater than his authority. He cannot change any decision, but by urgings, admonitions, and occasional prosecution of officials, his views generally prevail.

Several factors contribute to such effectiveness. One is that the Ombudsman has the confidence of Parliament (which has the power to remove him), and he is usually a widely respected former High Justice (Sweden) or a prominent legal scholar (Denmark). Circumspect use of his powers and a long, but not life-long, tenure augment the status of the office.

A second factor is wide publicity—considered a leading deterrent to bureaucratic lapses and misdeeds.

Here the press assumes an important twofold role. Almost daily, newspapers report the complaints, decisions, or recommendations freely available to them at the Ombudsman's office. In turn the press helps to inform the Ombudsman and his small staff of attorneys, who scan the papers regularly for possible abuses. Many improvements have resulted, and editors have added incentive to intensify their alertness.

A third factor is that the Ombudsman has full access to the documents and minutes of all agencies.

The Ombudsman accounts to Parliament annually by submitting a detailed report of several hundred pages describing the suggestions, prosecutions, and most significant cases handled. This report is widely distributed to officials, news media, and interested citizens. It contributes to what all the Ombudsmen told me was their greatest impact—prevention.

A perusal of these reports will reveal such cases as an unfounded denial of a license, wrongful detention, police overzealousness or laxity, preferential treatment and influence peddling, receiving gifts, unreasonable delay, inadequate or unpublished regulations, and arbitrary censorship. Also reported are undesirable conditions in prisons, mental institutions, police bureaus, public prosecutor offices, and other public areas. In Denmark and Sweden the Ombudsman has jurisdiction over both national and local officials. Parenthetically, Scandinavia's standards of public administration are among the finest in the world. In 1961, the Swedish Ombudsman, Alfred Bexelius, received 983 complaints (two-thirds requiring no action) and initiated 97 matters himself in a country of 7½ million people.

Both Mr. Bexelius and the Danish Ombudsman, Professor Stephan Hurwitz, believe their office

(Continued on page 15)

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Ombudsmen

(Continued from page 13)

strengthens popular confidence in the Executive. For example, when the courts cease being the sole recourse for grievances they cannot or will not decide, the expectations of the public in the courts are not undermined. Similarly, an Ombudsman who processes complaints wisely and promptly, minimizes, if only by clarification, citizen resentment against an agency. Getting officials to give reasons for

their decisions eliminates the anonymity deemed so reproachable.

The principle of check embodied in the office is gaining headway in other countries. New Zealand established an Ombudsman (calling him just that) this year. The first officeholder is Sir Guy Powles. Norway, which now has a military Ombudsman, is expected to install a civil counterpart soon.

In Britain a vigorous discussion over a non-partisan office, independent of the bureaucracy, to investigate complaints against public authorities, excluding the courts, has been carried on in the press, among the legal profession, and before the House of Commons. Sir Jocelyn Simon, the Solicitor General, and the Legal Society, JUSTICE, are among those strongly endorsing a modestly empowered Ombudsman with eventual expansion envisaged.

We can be mindful of Edmund Burke's caveats about borrowing institutions and still find many features of the Ombudsman adaptable for development on American soil. Recommendations similar in function have been made over the past two decades by various state and federal study commissions and by scholars, notably the late Professor Zechariah Chafee, Jr., in 1931. Most of the former groups, however, do not explicitly provide for legislative control independent of the Executive and for the handling of individual complaints.

It is necessary to realize that many disputes between govern-

ment and citizen, often small in nature, do not lend themselves to resolution by judicial review. There are numerous reasons for this situation, including limitations of jurisdiction, policy, or house-keeping; practical deterrents of delay and expense, even under the best court systems; and reluctance of attorneys to take such cases.

The Ombudsman type of institution provides the incentives of "feed" and "followup" to efforts of the press, political candidates, or the common citizen to investigate or stand up for their rights or criticize reprehensible practices. Not the least beneficial result would accrue to state legislatures. It would stimulate a greater independence of action which is necessary for effective functioning of our system of government.

Next month a bill to establish an office having several Ombudsman functions will be introduced in the Connecticut legislature. Other states should take the opportunity to undertake a similar examination of the proposal.

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

THIRD YEAR OPPORTUNITIES

Baltimore: Cross & Shriver, 610 Mercantile Trust Building, Baltimore 2. Contact J. Paul Bright, Jr., Esq.

Boston and New York: Scudder, Stevens & Clark, 10 Post Office Square, Boston. Contact Mr. Edward L. Emerson.

Charleston, W. Va.: Spilman, Thomas, Battle & Klostermeyer, Kanawha Banking & Trust Company Building, Charleston 21.

Cleveland: Rosenthal, Roesch, Buckman & McLandrich, 1505 Union Commerce Building, Cleveland 14.

Chicago: Dale, Haffner & Grow, 134 North LaSalle St., Chicago 2. Contact James P. Haffner, Esq.

Chicago: Rusnak, Deutsch & Gilbert, 208 South LaSalle St., Chicago 4.

Greensboro, N. C.: McLendon, Brim, Holderness & Brooks, 440 West Market St., Greensboro.

Los Angeles: Youngman, Hungate & Leopold, 6505 Wilshire Blvd., Los Angeles 48.

Miami: Louis Schneiderman, 832 Alfred I. DuPont Building, Miami 32. Contact Mr. Schneiderman.

New York: Allied Chemical Corporation, 40 Rector St., New

York 6. Contact J. D. Becker, Esq.

Pasadena: Boyle, Atwill, Meyer & Stearns, 170 South Euclid Ave., Pasadena 1. Contact Robert L. Meyer, Esq.

Washington: Raysor & Ortman, 1366 National Press Building, Washington 4. Contact Thomas M. Raysor, Esq.

THIRD YEAR ACADEMIC OPPORTUNITIES

Boston: Teaching fellow, Boston College Law School, Brighton 35.

New York: Fellowship. The Association of the Bar of the City of New York, 42 West 44th St., New York 36. Contact Paul B. DeWitt, Esq.

SECOND YEAR OPPORTUNITIES SUMMER CLERKSHIPS

Boston: Ely, Bartlett, Brown & Proctor, 294 Washington St., Boston. Contact Cecil E. Whitney, Esq.

Boston: Hutchins & Wheeler, 2994 Washington St., Boston. Contact Henry Wheeler, Esq.

Jacksonville: Botts, Mahoney, Whitehead, Ramsaur & Hadlow, Barnett National Bank Building, P. O. Box 4099, Jacksonville 1. Contact C. C. Erlandson, Esq.

New York: Wickes, Riddell, Bloomer, Jacobi & McGuire, One Chase Manhattan Plaza, New York 5. Contact George M. Hasen, Esq.

Washington: Securities and Exchange Commission, Washington 25.

Publication Schedule

Because of the forthcoming holiday season, the RECORD will not be published for quite awhile. Next Thursday is the birthday of the girl friend of one of the editors; January 3 is the anniversary of the Supreme Court decision which fixed the boundary between Texas and Oklahoma in 1927; January 10 is the anniversary of the incorporation of Standard Oil by John D. Rockefeller in 1870; January 17, the U. S. took over the Virgin Islands in 1917; on January 24, the Boy Scouts were founded in 1908. We will be celebrating them all.

For librarians, who are the only ones who really care, the next issue should be cited as Volume 36, No. 1. It will appear Thursday, January 31, 1963.

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