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Williston: 'Greatest of Teachers'

By Austin W. Scott

Dane Professor of Law, Emeritus

On Monday, February eighteenth, the law school world lost its most distinguished teacher. On that day, Professor Samuel Williston died in his hundred and second year.

He was born in Cambridge on September 24th, 1861. He was graduated from Harvard College in 1882 and from the Harvard Law School in 1888. He was an editor of the first volume of the Harvard Law Review. After his graduation from the Law School he served as Secretary to Mr. Justice Gray. He practiced law for a short time in Boston. In 1890 he began his career as a teacher of law. In that year he became an Assistant Professor at the Harvard Law School, becoming a full Professor in 1895. In 1908 he was named Weld Professor, and in 1919 Dane Professor. In 1938 he retired from active teaching and became Dane Professor of Law Emeritus. He thus completed a teaching career of nearly half a century.

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Samuel Williston

Justice Brennan:

Internship Needed

By Neil L. Chayet
and Donald W. Kramer

Supreme Court Justice William J. Brennan, Jr., urged the nation's law schools to consider some sort of "law internship" to provide their students with more exposure to the "living law" that affects real people, in his speech at the Legal Aid Bureau's golden anniversary Banquet February 13.

Recalling his own experiences as a member of the Bureau, Justice Brennan stated that

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Final Tribute Paid

The Harvard community's final tribute to Samuel Williston was a short memorial service in Memorial Church February 20.

Before a background of white candles and green palm leaves Rev. Ralph N. Helverson read passages from the scriptures and Marcus Aurelius, and three passages from Williston's own writings — on law, on teaching, and on his own life. Prayers concluded the service.

Mr. Williston, who died February 18 at his home at 17 Berkeley St., Cambridge, was

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To Find a Professor

Harvard Law School is looking hard for men to augment its depleted faculty. The ravages of the New Frontier and retirement have taken a heavy toll; and unfortunately, there is no flock of qualified men rushing to fill the many gaps.

We feel that there is a bright side to the need for a wholesale recruitment program — there is now a real chance to improve and broaden the educational climate of the Law School.

In his address to the Legal Aid 50th Anniversary Banquet, Mr. Justice Brennan asked the question: "Might it not be possible to expose a much larger percentage of the student body, at some time during the three years of law school, to the realities of the attorney-client relationship?" He went on to state that, "no medical or dental school would think of sending out into practice, or even into internship, a young physician who had never taken down a case history or recorded a patient's pulse or temperature."

Too many professors of law, prospective or otherwise, tend to forget that the law is not a dead thing; that in large part the law functions on behalf of real people, and in real courtrooms. How many of us, or of the faculty, for that matter, know what the words "A lawyer's job" really mean? How many can, and more important, do instill into a student the sense of really "being a lawyer", of doing more than worrying about noble theory and intellectual pursuits.

This is not to say that Harvard Law School should search for men who are "practical men", excelling only in the how-to-do-it method of teaching — surely there are men who can teach a course which is rooted in reality and yet is still intellectually challenging. The burden which is on Legal Aid, the Voluntary Defenders, the few courses such as Business Planning, Estate Planning, Family Law, and a few seminars is far too great; the question "how would a lawyer handle this?" is far too seldom asked.

Let the Harvard Law School search hard for men who have a sense of currency, who have a sense of practical understanding as well as a far ranging intellectual capacity — Harvard Law School should settle for nothing less.

Harvard Law Record

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TONGUE 'N CHEEK

By Fenno

The recent fifty-mile walking craze has focused attention on physical fitness. However, here at the law school we are in good shape. Although we may sit for hours at a time moving nothing but the eyeballs, at other times we are feverishly active. To add inches to our arms and chest we have fat and heavy textbooks. Law school girls can be seen switching their briefcases from side to side as they walk. To sharpen reflexes and quicken footwork there are deep pools of melted snow stretching across important parts of the walks outside Langdell.

As if these opportunities were not enough, there are squash courts available at Hemenway Gymnasium, next to Austin Hall, for any law student willing to pay 2 1/2¢ per minute or \$24 per semester. For thirty minutes one can romp in these white-walled cubicles, getting in perhaps as many as two full 15-point games before the 30-minute bell signals the end. For one with a keen sense of timing, by the way, this 30-minute bell can be used to good advantage. Since the bell is accompanied by an influx of the next duet, one can make his last shot disappear into the opening door, thereby mystifying his opponent (and perhaps disabling the eager player making his entrance).

For those who cannot afford to play squash under such conditions, and who, at the same time, feel somewhat restless during these winter months, a bronze figure of a naked discus thrower crouches in front of Hemenway as an inspiration. It is rumored that this figure represents a former law student who, after reciting poorly in Contracts one morning in February a number of years ago, bought a discus, took off all his clothes (although this didn't seem necessary, really), and hurled the discus in the direction of Austin Hall.

Research Bureau Plans Journal

By Edwin S. Kahn

The Legislative Research Bureau will launch a new journal next year to present serious commentary on the problems of state legislation.

Preliminary plans call for the journal to be published twice a year, financed initially by a grant from the Law School.

The Bureau currently publishes "Selected Drafts," but that publication now circulates only to some state agencies, law libraries and a few practicing attorneys. The Journal will be an expansion and refinement of the student-written "Drafts" — it will occasionally include articles by others, but the primary focus will be the presentation of drafts that have been developed by the Bureau, along with appropriate comments.

The only widely-circulating publication dealing with state legislation is an annual bulletin of the Council of State Governments, but it presents drafts without criticism or a discussion of underlying problems.

Bureau Will Recruit

The Bureau will shortly recruit additional second-year students so that it will be able to produce its normal output of draft statutes as well as the journal next year.

The Bureau is the only student-run, voluntary organization in the country that does research on legislative problems and presents draft statutes to its clients, usually state legislators.

David L. Peterson, 3L, Bureau President, emphasized that the publication will not duplicate the function of the Law Review. He said it will try to serve as a focal point for thought, discussion and criticism in the field of state legislation.

Student Dies

David Horvitz, 2L, died at his home, 152 Brattle St., Cambridge, Thursday, February 14. He was a 1960 graduate of Harvard College.

He is survived by his parents, Mr. and Mrs. Harold Horvitz, and two brothers.

The Bureau presently has about 25 second and third-year students. Teams of three usually work on a year-long legislative problem, presenting the client with a draft statute and commentary showing why the students wrote the draft the way they did.

About 10 second-year students will be recruited to augment the current staff. They will be selected, after application, on the basis of drafts they draw up in response to a sample legislative problem.

Final details about the publication such as subscription price, size and format have not yet been determined. The first issue of the journal, still unnamed, may appear in January, 1964.

FCC Case Channeled for Ames Final

An appeal based on a recent FCC decision denying renewal of a broadcasting license will be the subject of the Ames finals this spring, the Board of Student Advisers' office announced recently.

Members of the court will be Byron R. White, Associate Justice of the United States Supreme Court, Elbert P. Tuttle, Chief Judge of the Fifth Circuit Court of Appeals, and Sterry R. Waterman, Judge of the Second Circuit Court of Appeals.

The decision, 22 Radio Reg. 483, involves a denial on four grounds: misrepresentations made by the licensee to the Commission; failure of the licensee to exercise control over station operations; excessive amounts of coarse, vulgar, suggestive, double-meaning programming; and over-commercialization.

Representing the appellant broadcasting company will be Story Equity Club, and representing appellee FCC will be Holmes Club.

Members of the Story "firm" are David Brown, Vincent Damiano, Alan Danson, William Hardy, John Mullen, Richard Newman, Katrina Renouf, and Fred Scribner. Holmes' members are Anthony Carey, Pierre duPont, James Kelley, Richard Lassen, James Nichols, Harold Pratt, David Supino, and John Wallace.

Mild in Manner, Rigorous in Demands

(Continued from page 1)

He was not only a teacher but a very productive scholar. He was the editor of case-books on Contracts and on Sales and on Bankruptcy. He was the editor of Pollock on Contracts and of Stephen on Pleading. In 1909 he published a treatise on the law of Sales. In 1920 he published his most famous book, Williston on Contracts. This book became at once an outstanding law book, and was recognized as such throughout the English-speaking world. Shortly after his retirement, he published an autobiography with the title *Life and Law*.

Eschewed Ivory Towers

Professor Williston was no ivory-tower theorist. After his appointment to the Harvard Law School faculty, he continued to practice for some years, and throughout his life he engaged from time to time in the practice of the law.

He was for many years active in the work of the Commissioners on Uniform State Laws. He was a Commissioner from Massachusetts from 1910 to 1929. He drafted the Uniform Sales Act which was adopted in 1906, the second act promulgated by the Commission, following the Uniform Negotiable Instruments Law. He was the draftsman of several other Uniform Acts, including the Warehouse Receipts Act and the Bills of Lading Act. He was by nature and by training a superb draftsman. He was one of the original members of The American Law Institute. As Reporter, he drafted the Restatement of Contracts. He acted as stimulating adviser in the preparation of the Restatement of other subjects.

The importance of his work was early recognized by the bar and by academic institutions. He was given the first award of the Gold Medal of the American Bar Association for "conspicuous service to American jurisprudence." The degree of Doctor of Laws was conferred upon him by Harvard and Yale, and Amherst and Williams.

He had cultivated interest in many fields. He was in his day something of an athlete. He won his Varsity letter at Harvard by his performance on the track team, riding the

high bicycle with great speed and success. He was active as a golfer. He was skilled at billiards. He was also an excellent bridge player.

His scholarly work is available for all who can read. But those of us whom he taught will always think of him as the greatest of teachers. It is difficult to communicate our feeling to those who never had the opportunity to study under him. He was mild in his manner but rigorous in his demand for clear thinking. He was indeed *suaviter in modo, fortiter in re*. He did not lay down the principles of the law as he saw them, but would play off one student against another, and the principles gradually emerged. He was a master in the putting of supposititious cases as a method of testing principles. And throughout the process he showed a delightful sense of humor. As an artist in teaching he was supreme.

He Himself Towered

When I was a student in the first year at the Law School, I wrote to my father about the professors under whom I was studying. I said that, "With Professor Williston we get new ideas every moment; and he presents them in such a way that we have to discover them for ourselves."

Judge Learned Hand, who was graduated from the Law School in 1896 and who was a student under Professor Williston in the earliest years of his teaching, has written that to know him as a teacher is reserved to those who were his pupils. "For that, one should have sat under that unperturbed young man; one should have felt the impact of the apparently effortless self-possession, which, though it never imposed itself, always won. For, while this Socrates of ours never coerced our assent, like his prototype he did not let us alone until we had peered into the corners of our minds, and had in some measure discovered the litter they contained. Such self-revelation was indeed often painful — is painful still — but out of it came a gratitude which has endured; still endures after the initial difference in years has been fore-shortened almost to the vanishing point." Such is the feeling of all of the thousands of those who sat at his feet.

More Electives in New Curriculum

By Charles M. Hamann

The curriculum for 1963-64 offers no radical changes from the present one, but seeks to further the installation in the second and third years of a genuinely elective system, Associate Dean A. James Casner said last week. Classes will be somewhat smaller, courses more numerous, and electives better balanced between fall and spring semesters.

The Law School Faculty ratified the proposed curriculum at a meeting, Tuesday, February 19. Dean Casner, empowered to make appropriate changes by the Faculty mandate, reported that a few issues remain undecided "because of uncertainty at this point as to personnel" but that most courses are definitely settled.

Agency Terminated

The first-year course in agency will no longer exist. All first-year sections will study Development of Law and Legal Institutions next year. Currently only two of four sections are taking the Development course, new this year. Dean Casner speculated that uniformity will eliminate feelings of discrimination among first-year students. Some students have felt "gyped" because they have had to take Agency and not the other, or vice-versa, he said.

New teachers on the faculty will teach first year sections in Civil Procedure (Professor James H. Chadbourn), Property (Assistant Professor Frank I. Michelman), and Contracts (Assistant Professor David L. Shapiro). Professor Robert A. Girard of Stanford will teach a section of Torts, and Professor Colin Howard of the University of Adelaide, Ezra Ripley Thayer Teaching Fellow for 1963-64, will give a section of Criminal Law.

No teaching assignment has been made for one section of Torts and one section of Criminal Law. Criminal Law, long a step-child of the Law School, has received added emphasis in recent years, and the Administration continues to work to cure this weakness. Dean Casner said that successful resolution of the problem was a matter of "finding in due course professors to carry on this work."

One new course and many new divisions are the principal changes in the second year curriculum. Assistant Professor Charles Fried will teach a course in Roman Law in the first semester of next year. The new course will be offered as one of the second-year perspective courses.

An additional section in Accounting has eliminated the necessity for section-splitting in the required courses next year. This year Accounting was taught in three sections; all other required courses, in four. Next year there will also be four Accounting sections.

Three second year elective courses have added a new section. Trusts has expanded from one section to two; Economic Regulations and International Transactions and Relations have each expanded from two sections to three. All second-year elective courses are open to third-year students except the course in Commercial Transactions. A special section for third year students, taught by Professor Arthur E. Sutherland, will be given in that subject.

Visiting Professor Vern Countryman of the University of New Mexico School of Law will join Professor Robert Braucher in teaching second year sections of Commercial Transactions. Another Visiting Professor, Robert E. Mathews of Ohio State University, will give the second semester course in The Legal Profession.

The third year course schedule will offer "a great deal more selection in the fall" and "a much more balanced semester choice than last year," Dean Casner said. Twenty courses will be given in the fall semester as compared with 12 such courses in 1962-63 — 19 courses as compared with 18 in the spring. Third year students will select year-length courses from 14 offerings for 1963-64 — sixteen were offered this year.

Fourteen individual professors (15 — last year) have agreed to undertake personal supervision of third year papers outside a seminar. There will be 14 full-year seminars — last year only 8 were offered. Fall seminars decrease from 12 to 11; spring seminars increase from 11 to 12.

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Griswold Speech Chides Supreme Court

By Thomas E. Woodhouse

Dean Erwin N. Griswold criticized the absolutist doctrine of the Supreme Court, particularly as manifested in the New York school prayer case, *Engel v. Vitale*, in a speech in Salt Lake City, yesterday. The Dean, delivering the annual William H. Leary Lecture, spoke before a Law School audience at the University of Utah.

The Dean took his title, "Absolute Is in the Dark," from a fable printed several years ago in the *Saturday Review*. Absolutes are phantoms and can only hinder sound and useful thought, he said.

The Supreme Court has engaged in a species of absolutism in certain types of cases, he observed. The most extreme form of the absolutist position has been taken by Mr. Justice Black.

Referring to the Black approach as the "Fundamental theological" approach, Dean Griswold criticized its devotees for substituting what purports to be a literal reading of the words of the 1st and 14th Amendments of the Constitution for a more sophisticated appreciation of their meaning.

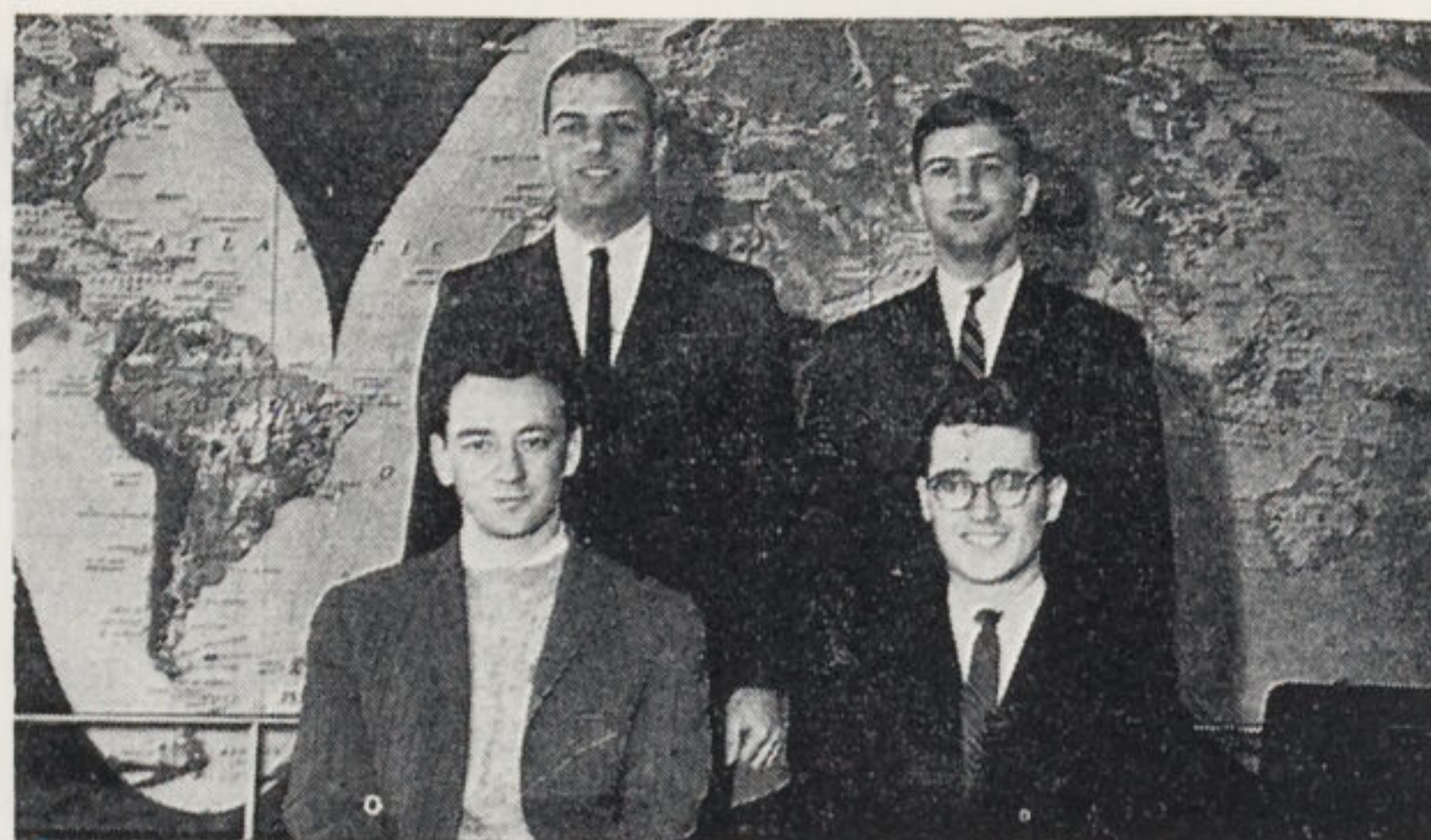
Opposed to this approach is the "balancing," or even better, the "comprehensive" or "integral" approach to the words of the 1st Amendment.

The latter approach, which Dean Griswold found to be preferable, involves an examination and integration of all the relevant texts and conditions of our constitutional system, in a living, organic sense.

Attacking the *Engel* decision itself, Dean Griswold ventured the thought "that it was unfortunate that the question involved in the case was ever thought of as a matter for judicial decision, that it was unfortunate that the Court decided the case, one way or the other, and that this unhappy situation resulted solely from the absolutist position which the Court has taken."

Law and Love Lecture

Today's discussion of Law and Christian Thought at Canterbury House will center on Reinhold Niebuhr's "Law and Love in Protestant and Catholic Thought."



Seated: Marshall Nesson, Secretary O'Scannlain;
Standing: Committeemen Goldman, Schaumberg.

Third Year Elects Officers

Charles R. Nesson and Diarmuid F. O'Scannlain were elected Class Marshal and Secretary respectively, in the third year class election last Wednesday. Wendy Marcus, Alan B. Goldman, and Thomas Schaumberg were voted Committeemen.

Nesson, a member of the *Law Review*, was the victor among four candidates; the three Committeemen were elected from a field of 14. O'Scannlain, former president of the Republican Club and Williston Competition Semi-Finalist, ran unopposed. The remaining four men who will make up the full class committee will be appointed by the elected officers.

Most of the ballots were cast during the Business Planning class. Those who were unable to vote at that time marked ballots obtained at the Receptionist's desk. The class also voted to adopt the Class Charter which regulates class activities. This year's charter is substantially the same as in previous years.

Curriculum

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Third year course emphasis continues to move toward "professionally oriented courses," the Associate Dean said. The purpose of these courses is to teach "the conception of what it means to do a thorough lawyer's job." A new course, Corporate Planning, taught by Assistant Professor James Vorenberg in the fall semester, has joined ranks with such courses as Estate Planning, Business Planning, Financial Planning, Trial Practice and Family Law. Also new to the curriculum is Real Estate Planning, a second semester course taught by Professor David Westfall.

Hart Converses on Law and Justice

By Michael J. Henry

Professor Henry M. Hart, Jr., Dane Professor of Law, last week became the first member of the Law School faculty to give the annual Oliver Wendell Holmes Lectures. Professor Hart titled his series of three lectures "Conversations on Law and Justice," which as he remarked in his introduction, he had originally conceived "as an affirmation, but when you get into a conversation, you know, you never know quite where it is going to lead."

A fictitious second-year law student with an undergraduate education in behavioral political science was created as a foil by Professor Hart to unveil the problem to which he addressed himself, and the three lectures were conducted as a Socratic dialogue between the student and Professor Hart.

"I'm having trouble getting my bearings in the law," opened the student. "What really troubles me is not so much the question of the nature of law, but the question of knowledge about it. How do we connect the law and what we know about law with the way things are in the world?"

The student said that he came to law school devoted to the social scientist's creed that questions of fact and value have to be rigidly separated, but soon discovered that virtually every legal problem involves an inseparable combination of the two. He wished to know how a justification in reason can be found for the judgments about questions of value which inevitably have to be made in solving such problems.

Answering the student's contention that there is a logical gulf between what is and what ought to be, that you can never derive from a premise simply of fact a conclusion about a question of value, Professor Hart noted that if the first part of this premise were accepted as absolutely and always true, discussion of the problem "would be over before it has be-



Professor Hart

gun."

On the other hand, he said, if the converse were always true, "think what human life would be like if ethical philosophers by purely secular reasoning were able to tell us with ruthless scientific exactitude just what it means for things and actions to be good.

"All that would be left for Man would be to summon the power of will to do what the ethical philosophers told him to do. What then would become of human dignity and the responsibility upon which human dignity rests? It is the mission of Man on earth to try to find out about these things for himself, or else to make his peace with God and to accept the basic principles upon faith."

Professor Hart added that it would be a calamity if social scientists were able to determine absolute values, since government might then be tempted to try to enforce such values upon all citizens with all of the power which it commands, and "robots all we then would be." He reminded the student that the idea that knowledge is necessarily incomplete is one of the roots of the ethical justification for political democracy.

In spite of inadequate knowledge, he said, life goes on, decisions have to be made, and the problem is how

do we proceed upon the basis of incomplete knowledge. He noted that "reluctance to make personal commitments on rational grounds upon questions of value is a disease of our time, or at any rate of the intellectuals of our time."

Since we do not postulate the existence of absolute values, or at least the ability to know them, we cannot solve value questions as they arise in the law by relating those values to any absolute standards of value, he said.

Professor Hart charged that there was "poverty and futility" in "any theory of law or society which tries to root itself solely in the facts of human behavior." Such a theory, he said, tells us nothing about the soundness of the going system, about who ought to make decisions, and about how value questions are to be decided.

However, law too, he noted, has been dogged by the idea of rooting itself in the facts and letting some other discipline take the responsibility for the evaluations, giving as examples the positivist and "American legal realism" movements, at least in their pure forms.

Concluding his introductory lecture, Professor Hart said: "We live in a time in which the possibilities of satisfying men's needs and developing his potentialities as a responsible human and social being are without known limits. . . . Can we be content to confront this future with a concept of law which finds its current standards of value only in the fact of the values which officials currently accept?"

Professor Hart's second lecture was devoted to a demonstration of how one can reason about values in the law. He set out a central value problem of political and legal philosophy: how can government justify the exercise of power over people, or, alternatively, what other reasons justify obedience to the law besides the government's monopoly of physical force?

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Holmes Lectures

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In introducing his proof that there ought to be a legal system, Professor Hart noted that this was quite different from saying simply that legal systems have been observed to exist in every society.

Upon this basis, one might also argue that there ought to be measles, since every society has had measles, he said. He contended, nevertheless, that there are facts from which one can reason to an inescapable conclusion that there ought to be a legal system.

Professor Hart began with the factual premise that Man is a social animal, who has wants and needs which can be satisfied only in relation with other men. Even in the most primitive society, the necessary defense against a hostile environment requires cooperation, he noted.

As men are forced to come together because of their basic nature of having certain needs and wants, they discover advantages of social living additional to these basic satisfactions. For instance, they discover that productivity per person increases greatly by working together rather than in isolation. He pointed out that even Thoreau relied upon a long heritage of language and thought which he took with him when he went into the woods supposedly to exist alone.

From these observations, Professor Hart concluded that Man has a purpose of achieving the benefits of social living and concluded that a legal system is necessary to secure these benefits; "People who are living and working together, trying to secure the benefits which pooling of their efforts makes possible have to have some kind of understanding about the terms upon which they are doing this." Thus society requires a set of principles and institutions to order and coordinate the whole society, which must speak with the voice and authority of the whole society.

Only the law fulfills these requirements, Professor Hart maintained. "To speak of the law and

other methods of social control is to use an improper phrase," he said, "for they are not coordinates." Although the Church and the King used to speak for the whole society, this is no longer the case in most places.

Addressing himself to the problem of what does the phrase "benefits of social living" mean, Professor Hart pointed out that Man has been learning them through living, discovering them as he goes along. This conception provides the key to the nature of the law as a dynamic social process for determining and achieving the "benefits of social living," he maintained.

"Law is neither something which exists simply in fact nor something which exists in some limbo of value unconnected with fact, but a doing of something. When you are doing something there is no logical difficulty in making up your mind rationally . . . of adjusting means and ends," he said. With this conception, political and legal institutions and the law would not be accepted simply as existing facts, but their worth assessed in terms of their achievement of this basic purpose, he argued.

Reason can play a part in the determination of law, Professor Hart pointed out, only when there is awareness of an underlying purpose which the law is attempting to achieve: otherwise existing rules would simply have to be accepted as is. By using reason to profit from the continuing experience of men, the law can be continually improved, he suggested.

Accepting the underlying purpose of the law as the achievement of the benefits of social living by ordering society, it is possible to deduce from this purpose through reason some more specific rules of law, Professor Hart observed. For

instance, he pointed out, a going society requires mutual forbearance of aggression, some mutual assistance, minimal recognition of property security, faith in the future promises of others, and some sanctions to make sure that people who would voluntarily obey the rules will not be sacrificed to those who would not. It is also obvious, he said, that there must be some means of settling what the necessary rules are to be, and this requires another set of rules for making such decisions.

In the final lecture, Professor Hart, admitting that his answers were not as conclusive as he had initially hoped, inquired into the appropriate roles of the legislature and the courts in this decision-making process based upon his previous assumptions.

As far as the courts are concerned, he argued that we should not simply accept decisions as exercises of the "sovereign prerogative", but should "insist that these judgments of value be related through reasoning to the way things are in the world" so that they can be independently criticized. He noted that one conclusion from his discussion is that greater attention should be given in judicial decisions to the underlying purposes which the law is attempting to achieve than has heretofore been customary.

"Suppose we were to decide," he concluded, "that the commitments in the Constitution mean that every American is entitled, within the limits of what is possible under the limiting conditions of social and human existence, to an equal opportunity to develop and to exercise his capacities as a responsible human being who is also a responsible social being; and that the overriding purpose of all actions taken by the authority of society as a whole through the processes of government and law is to make that opportunity as meaningful as possible."

If we accept this basic value postulate, he suggested, it then becomes possible to solve subsidiary problems of the means of reaching this end through reason.

Wirtz Here Next Year

Secretary of Labor W. Willard Wirtz will be next year's Holmes Lecturer, Dean Griswold has announced. Secretary Wirtz is a member of the Law School class of 1937.

Brennan at Legal Aid Banquet

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"the student who has once had to understand a client's problems and advise him accordingly can never again look upon the decision of a court wholly in a vacuum."

He asked whether law schools could expose a much larger percentage of the student body to the realities of the attorney-client relationship.

"No medical or dental school would think of sending out into practice, or even into internship, a young physician who had never taken down a case history or recorded a patient's pulse or temperature," he said.

"Yet three quarters or more of a typical graduating class of lawyers enter private practice or government work without the opportunity of confronting one live man or woman who is immediately in need of legal advice."

Addressing more than 200 Bureau members, alumni and Faculty at the Harvard Club of Boston, Justice Brennan said he had no solution to the problem. "I am simply trying to raise the question," he maintained.

He carried the point farther, however, by urging more emphasis in the curriculum on "the premium placed upon conference, negotiation and settlement" rather than the resort to litigation.

And he urged a greater willingness to take unpopular and unremunerative causes, especially criminal or civil rights cases.

"The tradition seems to have lost caste with too many



— RECORD Photo by Donald W. Kramer

Dean Griswold and Mr. Justice Brennan

of our profession," he charged. "I must say frankly that I think that law schools have some responsibility for this.

"I don't think the criminal law is given as central a position as it should have in a law school curriculum. I have the uneasy feeling that whatever there is doesn't sufficiently drive home that many of our most precious guarantees of liberty and human dignity are at hazard in criminal procedures."

Mr. Justice Brennan's remarks were reflective of the tone of the entire evening, emphasizing the necessity to stress the values for which the Legal Aid Bureau stands. He said these values were manifested in "helping confused and worried little people over problems of rent and family and small inheritances — problems of little or no significance in the large but which can assume terrifying proportions for the people concerned."

Among the other notable Bureau alumni at the affair were Gray Thoron, Dean of Cornell Law School; Hon. Edward T. Gignoux, Judge, U. S. District Court of Maine; Hon. R. Ammi Cutter, Justice, Massachusetts Supreme Judicial Court; Hon. Raymond S. Wilkins, Chief Justice, Massachusetts Supreme Judicial Court; Alexander C. Tener, Legal Aid Bureau Incorporator; and Vice-Dean Louis A. Toepfer. Also present were Dean Erwin Griswold, and Dean Emeritus Roscoe Pound.

As the first of the after dinner speakers, David Anderson, 3L, President of the Bureau, quickly won his audience with the statement: "Most people we see don't want to see a golden anniversary." He said, however, that over 90% of the bureau's clients achieve what they are seeking, which is usually a divorce or a settlement of some other domestic relations

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Forum on Lawyer's Image

The Law School Forum will present "The Public Image of the Lawyer" tomorrow at 8:30 p.m. in Lowell Lecture Hall. Morris L. Ernst, Louis Nizer and Sylvester C. Smith will participate in the Forum program, moderated by Professor A. James Casner.

Mr. Ernst, named 1960 "lawyer of the year" by the Association of the Bar of the City of New York, has had extensive state and national public service experience.

Mr. Nizer is author of the best-seller, *My Life in Court*, in which he recounts some of his better-known courtroom victories.

Mr. Smith is the 86th president of the American Bar Association and general counsel of the Prudential Insurance Company of America. He has served as a special Assistant Attorney-General of New Jersey, has been instrumental in the 1936 reorganization of the A.B.A. and has served in its House of Delegates as representative for 20 years and then as chairman.

Williston

(Continued from page 1)

at the time of his death the oldest living alumnus of both Harvard College and of Harvard Law School.

Mr. Williston taught at the law school from 1890 through 1938, and for his teaching he gathered accolades from the great. Learned Hand called him "a modern Socrates." Felix Frankfurter said of him, "He was the greatest artist as a teacher I ever encountered."

On the occasion of Mr. Williston's 90th birthday in 1951 Zechariah Chafee, Jr. '13 summarized Williston's prowess: "My section did not have him at the start of Contracts. For weeks we heard enviously of Sammy's delightfulness from classmates in the other section. At last one morning in mid-term there he was behind the desk. In my lecture-notes are multiple exclamation points..."

Mr. Williston is survived by two sisters, Miss Constance Williston of Cambridge and Mrs. Gary Calkins of Scarsdale, N. Y., and two daughters, Mrs. Murray Hall of Cambridge and Mrs. Chester B. McLaughlin of Bronxville, N. Y.

Law Review Elects Boudin

The Harvard Law Review has elected its new president, Michael Boudin, 2L. A Harvard graduate, Boudin is a resident of New York City.

The other officers will be: R. Gordon Smith, Managing Editor; S. Paul Posner and Stanley N. Futterman, Case Editors; Frederic J. Truslow and Stephen G. Breyer, Article Editors; Robert C. Means, Developments and Supreme Court Note Editor; James B. White, Book Review and Legislation Editor, and Treasurer; Bert W. Rein and Jerome I. Chapman, Note Editors; and Daniel P. Levitt, Note Editor, and Supreme Court Note Editor. All the officers are in their second year at the Law School.

The election, an annual marathon, began Friday about 12:30 p.m. and continued until about 7 a.m. Sunday.

Dorm Council Activity

A resolution to expand the size of the Dormitory Council's Judicial Committee from five members to nine was defeated at a Dorm Council meeting February 14.

Nicholas Ciriello, 3L, Committee chairman and Council Vice President, defended the present size and composition of the committee, which includes him and the heads of the other Dormitory Council Committees. He stated that, "Enlarging the committee would serve no purpose."

One basis of the resolution was that occasionally, under the press of work and other obligations, no more than three members of the committee attend a "trial". Ciriello pointed out that, in such a case, he has always told the "defendant" that, if dissatisfied, he may use his individual right to demand that the full group hear his case.

On the basis of this statement the Council unanimously passed a resolution that the committee's chairman shall state before each hearing that the defendant has a right to a hearing before the full committee if he so desires. This resolution plus Ciriello's statement that the committee would never pass on a case with less than three members present, concluded the discussion.

In other business Stuart C. Hall, 2L, pointed out that lighting fixtures are being installed in the new dorms with all due speed.

Creeping Pedestrianism Illegal?

By Daniel J. Kucera*

Banned in Boston? That's right! You can't take a 50 mile hike in Boston—or anywhere else in the Commonwealth, for that matter. If you try to outstep the law and are caught, you will get a \$100 fine or 6 months in jail.

Chapter 272—"Crimes against Chasity, Morality, Decency and Good Order"—of the Massachusetts General Laws is the voice of authority. Therein, section 103 provides:

"Whoever shall participate in, operate, maintain or aid in the conduct of any marathon or walkathon, so called, whether or not an admission fee is charged or a prize is to be awarded to one or more participants therein, which shall continue or be intended to continue for more than four consecutive hours in any period of twenty-four hours, except a marathon road race, so called, over a course not exceeding twenty-seven miles in length, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than six months, or both."

Here is a real problem in statutory interpretation. How do you know when you are participating in an illegal walkathon? What is walking? What kind of walking is lawful?

Puff, Puff!

According to Webster, who often gets a word in edgewise, "to hike" means "to proceed with exertion or effort." But for most of us vegetating Americans, even a short stroll takes great effort. He continues: "to walk or tramp, especially for some distance in rural areas." How about the urbanites? Or, "to increase or rise, as prices"—but that includes only the Bureau of the Budget.

In general, then, "to hike" means "to walk." However, when it comes

to walking, Webster is lost for words. One definition is "to go restlessly about contrary to the normal course of nature, as a somnambulist or a specter." This pertains only to students changing classes.

He continues: "to move along on foot; to advance by steps; specifically, of two-legged creatures, to proceed without running, or lifting one foot entirely before the other touches the ground; of four-legged creatures, to proceed with a gait in which at least two feet are always on the ground." Webster completely ignores octopuses, centipedes, and worms.

Breeze Along

He becomes esoteric: "to move in a manner likened to walking, as a chimney swaying through the action of the winds." In passing, he says that "to walk Spanish" means "to walk tiptoe involuntarily through another's lifting one by the seat of the trousers, etc."

In short, Webster is not too helpful in interpreting the statute. Fortunately, however, stare decisis comes to the rescue. There are a number of decisions which can help to define legal walking. Let's take an old fashioned walk through some of them.

The word "walk" springs from the old Anglo-Saxon word "wealcan," which means "to roll, toss one's self about, roll about." *Nordman v. Mechem*, 227 Mich. 86, 198 N.W. 586 (1924). There the court held that roller skating on a highway was walking within terms of a statute requiring cars to slow down on approaching walkers on the road.

Moreover, you may be walking even though you are standing still. In *White v. Edwards*, 222 Mich. 321, 192 N.W. 560 (1923), the court held that a pedestrian mo-

mentarily standing still is also within the protection of a law which declares the duty of a car driver toward highway walkers.

In the same way, a person leaning against a defective bridge railing on a public highway, while waiting for an electric car, is a "highway traveler." *Ahern v. City of Concord*, 82 N.H. 246, 132 Atl. 570 (1926). But see *Bacon v. Life and Casualty Insurance Co. of Tenn.*, 121 A.2d 724 (D.C. 1956), where the insured, who had been half in and half out of a moving automobile in which his wife was riding, grappling with the driver, was held not to be standing or walking when he sustained his injury.

In general, then, walking "has been said to include creeping, hopping, jumping, running, skating, skipping or sliding, and even standing." 67 C.J. *Walk* sec. 3.

No matter how you walk, be careful *when* you walk. For example, "never on Sunday" might be a good motto to follow. Many statutes, such as one in Maine, prohibited traveling on the Lord's day.

Pure Air

However, if you have a good excuse, you can always walk around the statute. Thus, *Virgin, J.*, held that "a young lady who, on the Lord's day walks one-fourth of a mile to her aunt's house, calls there and invites her cousin to walk, and they then proceed to walk three-fourths of a mile, simply for exercise in the open air is not thereby traveling" in violation of the statute. *O'Connell v. City of Lewistown*, 65 Me. 34 (1876).

In the same way, *Davidson v. City of Portland*, 69 Me. 116 (1879), held that if while walking in open space for exercise on Lord's

(Continued on next page)

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Lawf Review

(Continued from page 11)

day, one enters a shop, buys and drinks a glass of beer, and then after resuming walking is injured by a defect in the highway, he may still recover, unless the beer contributed to produce the injury. And *Sullivan v. Maine Cent. R. Co.*, 82 Me. 196, 19 Atl. 169, (1889), held that only unnecessary walking was prohibited.

So far, then, we have established that unnecessary motion is illegal. At this point, it should be disclosed that an immigration inspector's use of a slip with the words in Yiddish equivalent to "blessed is the man that walketh not in the counsel of the ungodly . . ." in giving a literacy test was not in compliance with a statute requiring the slips to contain "words in ordinary use." *United States ex rel. Friedman v. Tod*, 296 Fed. 888 (2nd Cir. 1924). This point is largely irrelevant, but it would be a shame not to mention it.

Stick To It

If, while marching along, your walkmate picks up a twig to use as a hiking aid, do not fret. "It has been expressly declared that ordinarily a cane or walking stick is not, as a matter of law, a deadly weapon." Annot., 30 A.L.R. 815 (1924).

It is all right to talk to the trees during your hike, but be careful where you go. "The right of speech is an incident of the right of highway travel, but the right of highway travel is not inherent in the right of speech." *State v. Cox*, 91 N.H. 137, 16 A.2d 508 (1940).

Whatever you do, be careful in choosing those with whom you walk. Daisy Hopkins was arrested at the University of Cambridge by University constables (campus cops). She then was charged before the Vice-Chancellor of the school with the hideous crime of "walking with a member of the University." Evidence was given that she was seen walking with a gentleman of the University and that she was a woman of bad

character. The Vice-Chancellor committed her to the Spinning-House for 14 days. "I came to the conclusion that the said Daisy Hopkins was a person of bad character, and I was satisfied that she was in company with the undergraduate for an immoral purpose." On application for writ of habeas corpus, however, the court held for Daisy. It said that the proceedings below were irregular and the offence was not within the jurisdiction of the Vice-Chancellor. *Ex parte Daisy Hopkins*, 17 Cox Crim. Cas. 444 (1891).

The Unmovables

It is fairly clear that the Massachusetts anti-walk statute grew out of the fabulous "walkathon" era of the 1930's. Thus, many states have similar statutes.

For example, a Florida law prohibited a "marathon, marathon dance, walkathon, skatathon, hika-thon" or other similar mental and physical contests. In *Weaver v. Stone*, 11 F. Supp. 559 (S.D.Fla. 1935), plaintiff sought to enjoin the sheriff from enforcing the law. He wanted to conduct "a contest wherein a number of couples compete for the championship in a walking contest, walking forty-five minutes and sleeping fifteen minutes out of each hour, with slight variations consisting of entertainment features for the public and elimination tests; the contest to run and operate for a period of one thousand hours (nearly 42 days) or more, including time on and off the floor . . ." In holding for the sheriff, the court said that the statute was not unconstitutional for vagueness.

A similar Texas statute was held to be a proper exercise of police power. *Sportatorium, Inc. v. State*, 104 S.W.2d 912 (Tex. 1937). That case involved a combination walkathon and dancethon. A witness testified that "we have a man watching them to see that their two knees do not touch the floor. We don't believe in allowing boys and girls to crawl around on the floor and allowed to carry on. We do not believe that a boy and girl

should be allowed to stay out there any longer than they can stand on their feet. In other words, if they fall down once, that is enough to disqualify them."

In summary, then, you might be within the Massachusetts statute if you make any unnecessary motion, write in Yiddish, walk with a member of a university, keep walking for 42 days, and let both of your knees touch the ground.

On the other hand, you are safe if you do not walk more than 27 miles (length of the Boston Marathon), go out just for exercise in the open air (if you can find any), stop in for a few beers along the way, go easy on your Yiddish, use a cane or walking stick, keep away from campus cops, and do not stay out there any longer than you can stand on your feet.

More Problems

Of course there are still many questions to be answered. What happens when you walk from one state to another—are you in interstate commerce? Are you an original package? Although the shoe business will boom, what about airplanes, trains, buses, and cars? The whole economy might slump, and we all would be walking the streets. What will become of such American traditions as the cakewalk, boardwalk, and sidewalk? Will teenagers still dance to "walk 'n roll?"

Regardless of the problems and consequences, however, walking is a good thing. It is here to stay, Massachusetts statute or not. So, wherever you go—from the lowest valley to the highest mountain—remember, "you'll never walk alone . . . so walk on, walk on, walk on . . ."

International Night

The Law Wives will hold an International Night in Harkness Common at 8:00 P.M. next Wednesday. The national dresses of many countries will be modeled, and foreign deserts will be the refreshments. A foreign recipe book will be on sale.

Letters to the Editor

To The Editor:

I enclose a letter which we have sent to all our season subscribers. Since this was written shortly after the program in question [Ross Barnett, Feb. 4], it could not be directed to answering the specific letters of complaint which have appeared in your columns. As suggested, however, we do owe an apology to those who bought tickets in advance and did not get into Sanders, and we thus extend this apology to them.

I write on behalf of the officers and staff of the Forum to apologize to our season's subscribers for the breakdown in admission procedure which occurred Monday night at our program featuring Governor Ross Barnett. So far as we can now ascertain, the confusion resulted from a combination of factors, among which were the unprecedented crowd (for Sanders Theater), the ability to use only one entrance to the building, the unforeseen rigidity in procedure, and many other minor problems which were not successfully solved on the spot.

The experience, however, has been instructive, and we are now in the process of re-evaluating our procedures for handling large crowds. One change which we have already instituted must now be made clear, since it will directly affect all season ticket holders. Henceforth, we will not attempt to guarantee the right to buy an extra ticket *on arrival at the door*. Rather, we hope to avoid the con-

fusion created by the uncertainty as to the number of seats remaining by guaranteeing the right to purchase an extra ticket at the Forum office until four o'clock on the day of the program. If you are unable to come to the office you may phone to reserve an extra ticket, which will then be held at the door for your arrival (until 10 minutes before program time, as stated on your ticket)....

Robert C. McDiarmid, 3L
President

To The Editor:

Regarding your editorial [Feb. 14, 1963] on the Combined Charities Drive, it should be made clear that the Law School Committee of Phillips Brooks House foresaw the possibility of some decrease in returns by conducting a low-pressure drive. However, based on the recommendations of last year's Drive Chairman, it was decided that those features which had been objectionable to some students be eliminated this year.

The Combined Charities Drive is not a professional fund-raising drive, nor is it run by professional fund-raisers. The results of the Drive, nonetheless, were quite disappointing.

Two observations may be of interest. First, this year's method was equally effective insofar as it related to contributors of large sums (at least, as to second and third year people). Second, there is some evidence of a tendency among part of the student body to adopt a "you-didn't-come-to-see-me-so-I-don't-have-to-give-anything" attitude. The Committee regrets

this position, and still believes that charity should stem from moral impulse, not personal confrontation. But zealous campaigning *does* the job, whether or not such should be the case.

The Committee believes that the RECORD's suggested "middle ground" does not differ substantially from last year's method. And so, "balancing the interests," it seems that the complaints of a small but vehement minority must be subordinated to the more effective results of an all-out drive. Otherwise, the ultimate losers are those people served by the charities — and they have already lost more than their share in life.

Contrary to the RECORD's "impression," the Committee cares very much about this Drive. But we do thank the RECORD for its concern, and also those generous ones who have contributed.

Robert S. Kenison, 3L

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Legal Aid

(Continued from page 9)
or landlord-tenant problem.

He said over 70% of the cases were in the domestic relations area, while in 1952, only 46% were in this field.

Mr. Anderson then turned the proceedings over to the evening's toastmaster, Hon. R. Ammi Cutter, who pointed out that the celebration might only rise to the level of a de facto fiftieth anniversary celebration, as the actual incorporation papers of the Bureau state 1914 as the date of incorporation. Judge Cutter then introduced several of the Bureau's original members from the class of 1914, including Leo Brewer, John Daly, George Gardner, and Frank Hodgson.

Judge Cutter then acknowl-

edged some of the many friends of the Bureau, who were present at the banquet including Hon. Haven Parker, East Cambridge District Court, Joseph LeCam, who is the Bureau's attorney of record, and Edward Crane, Mayor of the City of Cambridge.

Judge Cutter's final introduction was of "the Den Mother of Legal Aid," Mrs. Ester Cushman, who received a standing ovation.

Hon. Raymond S. Wilkins, Chief Justice of the Supreme Judicial Court of Massachusetts, after reminiscing about his early days on the Bureau, praised the organization for being a pioneer in dramatizing "the important public function of the lawyer—who owes to everyone the chance to have their cases heard."

The Chief Justice closed with the exhortation that "the paths of justice should be ever open to the poor" and stated that the Legal Aid Bureau has been a prime force in the realization of this goal.

Dean Griswold, beginning his historical review, told the audience of his fruitful search

(Continued on next page)

Lincoln's Inn Elects

Charles N. Steele, 2L, was elected President of the Lincoln's Inn Society at its annual election. Elected Vice-President was Morris Cheston, 2L; Secretary, Edward P. Swain, Jr., 2L; Treasurer, Richard J. Guggenheimer, 2L. Members of the Board of Governors are Benjamin Scott Custer, Jr., 2L, William A. Truslow, 2L, Daniel E. Webster, 2L, Albert P. Reichert, Jr., 2L, David R. Scott, 1L, and Hanes A. Heller, 1L.

NEW FICTION

THE CENTAUR

by John Updike

The author retells the myth of Chinon, the noblest and wisest of the centaurs, who, painfully wounded and yet unable to die, gave up his immortality on behalf of Prometheus.

4.00

RAISE HIGH THE ROOF BEAM, CARPENTER AND SEYMOUR, An Introduction

by J. D. Salinger

Two more long pieces, originally published in The New Yorker, concerning Seymour Glass and his family.

4.00



Legal Aid

(Continued from page 14)

of the minutes of the Harvard Law School Faculty for entries concerning the Legal Aid Bureau. Although the minutes go back to the year 1870, no references to the Bureau appears until 1934 — 20 years after its founding.

The Dean said that the sparsity of mention of student organizations in the minutes of the faculty is proof of the strength of these organizations. He said "they run themselves — they are a significant part of the process of self-education."

The crises of the Bureau are well-marked in the minutes, however, beginning with 1935 and the act of the legislature doing away with the 200-year-old status of "Attorney-in-Fact," which allowed anyone to represent another person in court, if he merely had a power of attorney to do so. The statute "knocked the props from under the Bureau."

The following statement in

the minutes is illustrative of the difficulties of the Bureau:

"On October 1, 1935, Professor Frankfurter moved that the work of the Legal Aid Bureau should come to an end — and it was so voted."

The Bureau next appeared in the minutes on November 26, 1935, when Dean Pound moved to allow the Bureau to recommence its activities. The Bureau floundered on uncertain ground until May 5, 1936 when Professor Hart moved adoption of a resolution which called for resumption of activities, subject to the supervision of a committee of the faculty and "avoidance of dealings with clients." And so it went for more than four years, each faculty meeting seeming to spell the end of the Bureau.

A key helping hand came from the Supreme Judicial Court of Massachusetts which held early in 1937 that the representation of indigent defendants without a fee did not constitute the practice of law. The Bureau has since worked under the supervision of an attorney of record.

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Letters to the Editor

To The Editor:

In Mr. Chayet's article "Conflicts Law O. K.", he indicates that Attorney General McCormack in giving an opinion on the Full Disclosure Section of the 1961 Conflicts of Interest Law "rendered it almost completely ineffective." The article then goes on to indicate that a 1961 Special Commission suggested a much more stringent law which was enacted in 1962.

In one paragraph Mr. Chayet infers that the Attorney General rather than the Legislature had something to do with making the law effective. In another paragraph wherein the article mentions the members of the 1961 Commission, it fails to mention that Attorney General McCormack was chairman and one of the guiding spirits of the Commission. Legislative history on the present Code of Ethics Law, had it been related in your article, would have indicated that it was only through the personal persuasion of Attorney General McCormack that the law was enacted.

I would appreciate your making these facts known in your excellent publication.

Very truly yours,
Sumner Z. Kaplan,
LL.B. '44 ('48)

EXETER THEATRE

Ends Tomorrow:
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SHORT SUBJECTS at
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Placement Opportunities

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

THIRD YEAR OPPORTUNITIES

Alaska: Alaska Legislative Council, Box 2199, Juneau. (Opening for a legislative counsel). Send resumes to the Executive Director.

Colorado: T. Raber Taylor, Esq., 625 American National Bank Building, Denver 2. Contact Mr. Taylor.

Colorado: Henry & Adams, Equitable Building, Denver 2. Contact Arthur Henry, Esq.

Michigan: Butzel, Levin, Winston & Quint, 1990 First National Building, Detroit 26. Leave resumes at Placement Office by 1 p.m. Friday, March 1.

New York: Blum, Moscovitz, Friedman, Blum & Kaplan, 10 East 40th St., New York 16. (Patent and trademark, engineering or science background needed). Contact Mr. Kaplan.

Washington, D.C.: Office of the General Counsel, U.S. Dept. of Agriculture, Wash. 25. Leave names at Placement Office by 1 p.m. Thursday, Feb. 28.

SECOND YEAR OPPORTUNITIES

Massachusetts: Dept. of the Attorney General, the Comm. of Mass., State House, Boston. (Summer intern program). Get application forms from Placement Office.

Michigan: International Brotherhood of Teamsters of America, 2801 Trumbull Ave., Detroit 16. (Summer internship) Contact Mr. Florian Bartosic, House Counsel.

ACADEMIC OPPORTUNITIES

Wisconsin: University of Wisconsin Law School, Madison 6. (Teach Legal Writing course). Contact Dean George H. Young.

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