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Byse Helps Probe Housing Bias

By Michael J. Henry

The first public hearing of the Massachusetts Advisory Committee to the United States Commission on Civil Rights documented in profuse detail a pattern of discrimination against Negroes in housing in the Boston area. The pattern was developed at the hearing, in which Law School Professor and hearing co-chairman Clark Byse participated, both by the testimony of individuals, and by statistical generalizations from census data by professional researchers comparing housing indices of Negroes as a group to the population in general.

The pattern showed that Negroes are generally unable to obtain housing of any type at any price outside of certain very circumscribed areas, and that what housing they do obtain costs more and is in worse condition than equivalent housing for other people.

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Teach by Machine?



W. Barton Leach

By Stewart D. Davis

Can "programmed learning" be adapted to law school instruction?

W. Barton Leach, Story Professor of Law, said recently that, "It is unfortunate that there is a general impression that programmed instruction is limited to primary and secondary school material."

A Professor of Psychology at Harvard, B. F. Skinner, is presently applying "programmed learning" to college instruction. And Professor Leach believes that the method could be adapted to certain areas of certain courses at the Law School.

The method, instituting the learning-and-
(Continued on page 8)

Time-Study Planned

How much time do Harvard Law students really spend studying? And do they think it is enough? Do they think there is too much pressure on them?

These are some of the questions being asked in a time-study poll being conducted by the RECORD beginning today. Forms are being circulated to one-third of the students in the law school requesting a two-week analysis of how they spend their time and requesting answers to some more general questions about the law school. Results will be published after spring vacation.

The Road to New Haven

At the Yale Law School, only the first half of the first year consists of required courses: the remainder of Yale training is completely elective. In general, a student may plan his law school career as he wishes.

But at Harvard, it is often said we train *lawyers* — and it used to be thought that there were certain things that every young lawyer should know. But, at last, over the dissents of some of the more conservative members of the faculty, the tide is changing and, for whatever good it may do, the RECORD would like to throw out its frail anchor in an attempt to halt this tide.

The first to buckle was the third year, with required courses sliced one by one, until only Estate Planning remained, and, alas, this last mainstay of the third year is no longer required. Electivism is now hammering away at the second year. Commercial Law and Administrative Law have disappeared from the Required list, and all that survives is Taxation, Corporations, Constitutional Law and Accounting. And from all that can be gleaned from those who know, the second year will eventually be freed of the shackles of Required Courses. When the first year is assaulted, we hope that Torts and Contracts at least will survive the onslaught, lest we all become experts in Ignominian Law as practiced in Southern Prunedisia.

When required courses are gone, how does one choose his courses? Why, of course, he asks his roommate, if he should be lucky enough to have one in a class above him, or he asks that fellow who looks like an intelligent third year man, or he picks up the information at a wild party or mixer. And he should be very careful who he asks; for if he should make the woeful mistake of asking the fellow who got a sixty and hates the professor, he may get a slightly different evaluation than if he asks the fellow who got an 81 and a citation for work done beyond the call of duty.

But wait!, cry the advocates of electivism; it looks great for the law school to have a diversified curriculum, and the only way to obtain this is to allow students to plunge ahead in whatever field they wish. To reply, we state that it is a shame to sacrifice the well being of the individual to augment the image of the Law School, which we think is pretty good to begin with. We'll have more to say on electivism later.

Harvard Law Record

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TONGUE 'N CHEEK

By Fenno

Because of my unusual name, I suppose, girls tend to shy away. And so on long winter nights as I sit alone in my room, I am prompted to ask the question: What *would* it be like to be married? Would marriage really boost my ego, add hair to my chest and raise my average five points? I imagine so. (Sigh) Let me see, what would it be like to come home after a hard day and be . . .

1. *Married to a wife who works:* "Hello, dear, I'm home. How was your day at the cyclotron? . . . Smashing, eh? Pretty clever, you doll, you. How's about a kiss? . . . Hoo boy! Your kisses speak for themselves. *Res ipsa loquitor* . . . How's that? . . . Oh, that's a term in torts, honey. Every time someone gets hit on the head by a barrel he is involved in a *res ipsa* case. The barrel sort of 'speaks for itself,' see? Like it says, 'Look out, down there.' But, of course, nobody hears it, except other barrels, maybe. . . . Aw, shucks, honey, any law student knows as much. . . . Aw, he does too."

2. *Married to wife who is also in law school:* "Hello, dear, I'm home. How was your day? . . . Mashing, eh? Oh, by the way, do I have to cook dinner again tonight? I *do*? . . . No, I'm *not* upset. . . . No, I don't think I'm the smartest guy in law school. . . . Yes, I do realize you have a better average than I do. Do you think I'd play the role of the slaving housewife if I had a better average? And I'm not wearing that sloppy old housedress any more, either."

3. *A professor, and married:* "Anybody home? Sure is dark in here. . . . Oh, hi. . . . Hoo boy! Your kisses speak for themselves. . . . Oh, it's *you*, Marie. Is my wife home yet? . . . Oh, *hello* dear. Didn't see you there behind the ottoman. And hello to you too, Otto. . . . Dinner ready yet, dear? . . . Unprepared? . . . Oh, yes. My turn."

Faculty to be Razzed, Jazzed

The third annual Law School Variety Show will unfold Saturday, March 23, at 8:30 p.m. in Rindge Tech Auditorium. Producer Robert I. Postel, 3L, calls it "the only event during the year at which the students and faculty don't take themselves seriously." From the sound of some of the gags which he secretly disclosed to the RECORD this week, the faculty had better beware.

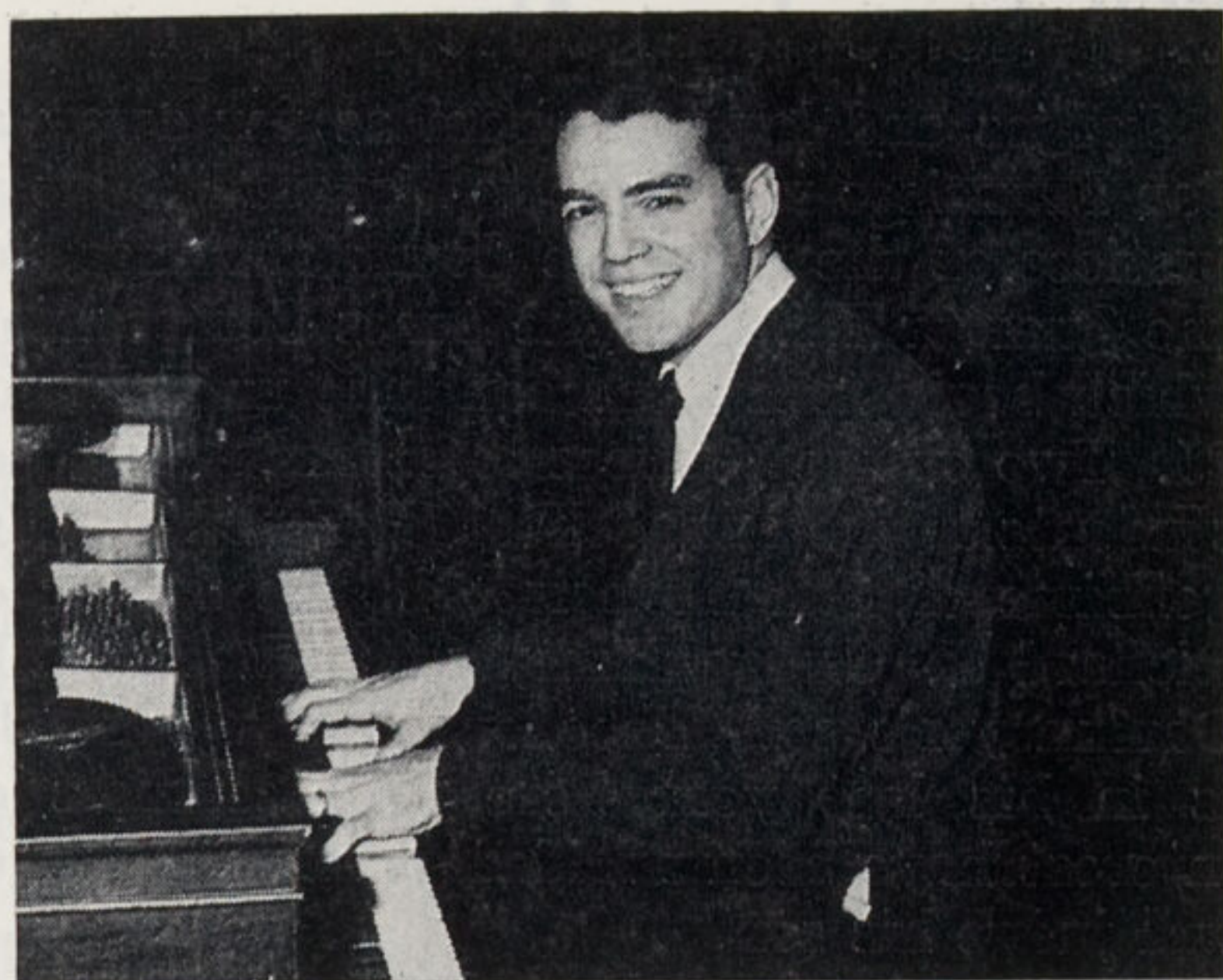
The featured performer of the show, which relies exclusively on Law School talent, will be Richard E. Rubenstein, 3L. Rubenstein, who composes his own music and writes his own lyrics for his keyboard antics, utilizes a broad base of comedy, "satirical, witty, always incisive and funny," in his performance. A Rhodes scholar before he came to the Law School, the versatile Rubenstein led a jazz combo in England. His band, for which he wrote the arrangements, was purportedly capable of any jazz style, whether Brubeck, Gillespie, or Ellington.

The faculty will get in its licks via Professors David R. Herwitz and Frank E. A. Sander. For the benefit of second and third year students who might otherwise hesitate to attend, Postel said that he had received a promise from the professors that they would not call on anyone in the audience during their act.

The talented "Seven Sons of Harvard," a jazz band, will provide musical accompaniment wherever needed as well as perform an act of their own. The group has played in Europe and at College Week in Bermuda; and this summer they have signed to play for the Holland-America line.

Folksong singer Judd L. Kessler, 3L, strumming his guitar, will add to the musical part of the show. Robert F. Levine, 3L, and Richard D. Siegel, 3L, will add hilarity with a song satirizing the efforts of the Harvard Law Wives to improve the academic standing and the social status of their husbands in the Law School. And Postel himself, who plans to emcee the show, will give another demonstration of that art which threatens to become America's number one pastime, a satiric view of the Presidential news conference.

Short sight gags will punctuate the show with humor. These gags, generally about one



Richard Rubenstein

minute long and with only two or three lines, will accent the foibles, real and imagined, of the legal and Law School systems. Producer Postel, who asked not to be quoted, said that these gags had been "pretested with Dean Griswold — he almost smiled."

Postel, who expects a "fantastic turnout," proposed the show as a "temporary relief from the aches and pains of the Law School." And tickets, printed in scientific laboratories, are on sale at the Langdell reception desk for only one dollar.

Board Names New Officers

James B. Lampert, 2L, Alexandria, Va., an M.I.T. graduate, has been elected Chairman of the Board of Student Advisers. David O. Brownwood, 2L, Berkeley, Cal., a graduate of Stanford, was elected Vice Chairman. The new officers will serve for the 1963-64 academic year.

Michael B. Sheppard, 2L, Orangeburg, S.C. (Furman) was elected First Alternate and Peter W. Martin, 2L, Cincinnati, Ohio (Cornell) was elected Second Alternate. The alternates assume the duties of the officers who may become unable to serve.

Coffee Hour

Dean George P. Baker of the Harvard Business School will speak on "Education for Business Leadership" at a Coffee Hour reception next Tuesday afternoon at 1:30.

Ames Judges Will Come from Afar

Judges and lawyers from as far away as San Francisco will come to Harvard to sit as justices of the Supreme Court of Ames, for the Quarter Finals of the Ames Competition, which begin today and continue until March 25. Two of the justices-to-be are fathers of students at the Law School. Richard E. Guggenhime of San Francisco is the father of Richard J. Guggenhime, 2L. Theodore R. Dankmeyer's son, Theodore Dankmeyer, Jr. is in his last year here. All conflicts of interest have been avoided as neither father will judge his son.

The Justices for Round 1 are the Honorable Harry D. Goldman, of the Supreme Court of New York; Richard E. Guggenhime, Esq.; and the Honorable Edward T. Gignoux, of the U. S. District Court for Portland, Maine. Chief Judge Frederick W. Bruce of the Maryland Court of Appeals; the Honorable Victor J. Baum, of the 3rd Circuit Court of Michigan; and Hyman W. Radovsky, Esq. will judge in the second Round.

Third Round justices will be Ernest Sargeant, Esq.; Orvel Sebring, Esq.; and the Honorable Richardson Preyer, of the U. S. District Court in Winston-Salem, N. C. Seymour P. Edgerton, Esq.; Theodore R. Dankmeyer, Esq.; and Judge Andrew A. Caffrey, of the U. S. District Court in Boston will sit on the Fourth Round court.

Defenders Expand; Also Elect Officers

The Harvard Voluntary Defenders authorized an increase to 20 second and third year members instead of the present 15 each, at their annual election meeting last Thursday evening.

Officers elected were Myles Hannan, 2L, of New York City, President; Thomas H. Chancellor, 2L, of Dallas, Tex., Vice President, Operations; and Paul Rochlin, 2L, of New York City, Vice-President, Research and Appeals. Mark C. Peery, 2L, of Claremont, Calif., was elected Vice-President without assigned duties in anticipation of the expansion next fall. His duties will be designated to fit the organization's new needs.

ILS Wins In Moot Collision

By Thomas E. Woodhouse

Does the United States have power to assume jurisdiction in a dispute between two foreign vessels which have collided on the high seas? Should the provisions of the Brussels Convention, never ratified by the United States, govern the adjudication of an action where both parties are signatories, but the forum is a United States District Court? Is it a violation of international law for the District Court to refuse to follow a Supreme Court precedent decreeing that law common to the two parties should be applied, or is it merely reversible error?

These questions were in issue between teams from Harvard and the Osgoode-Hall School of Law (Toronto, Canada) in a moot court argument sponsored by the International Law Club last Friday evening.

The wrong, contested in a civil action before the International Court of Justice, was a collision between an English and Belgian ship on the high seas off the American coast. Crippled by the collision, the Belgian ship was towed into an American port, and was promptly libelled in rem. The Canadian cargo owners recovered a judgment in a United States District Court. The government of Belgium protested the assumption of jurisdiction, and the United States government agreed to submit the question to the World Court.

The Harvard Team, whose members were Neil D. Thompson, 3L, James W. Spindler, 2L, and Barry S. Augenbraun, 1L, was declared the winner in an argument striking for the excellence of the presentations.

Professor Leo Gross of the Fletcher School of Law and Diplomacy was Chief Justice, and his Associates on the bench were Richard Wiley and C. Peter R. Gossels, both practicing attorneys involved in international work.

Love for Justice

Professor Harold J. Berman's essay on "Love for Justice" will be the topic at the weekly luncheon discussion on Law and Christian Thought at Canterbury House today.

The Faculty Outside the Class

Harvard Law School professors teach; and they do much more. They do research at the Law School and away from the Law School; they attend conferences and give speeches; they are active in governmental and civic affairs; and, in some instances, they carry on all these activities almost simultaneously.

To get a better picture of the extent of these activities, the RECORD staff set out last week to ask the faculty to list their outside interests. What follows is an impressionistic view compiled from interviews with more than half the Law School teachers.

Harvard Law School professors are consultants to the Defense Department, the Justice Department, the State Department, the Department of Labor, the Treasury, the Pentagon, and to Congressional committees. Professor Louis B. Sohn advises the Arms Control and Disarmament Agency and is a consultant to the office of Internal Security Affairs of the Department of Defense. Professor David F. Cavers assists the Joint Committee on Atomic Energy; Professor Henry J. Steiner, the agency for International development. Professor W. Barton Leach, a brigadier general in the Air Force Reserve, gives advice to the Chief of Staff of the Air Force.

Others engage in arbitration work: Professor Louis L. Jaffe has arbitrated labor disputes; last month Professor Ernest J. Brown decided a commercial arbitration case. Professor Derek C. Bok recently prepared an arbitration opinion on the effect of automation on a union bargaining unit in a local company and has just completed an 80-page opinion as master in an anti-trust proceeding for Judge Wyzanski of the Federal District Court of Massachusetts.

Professors at the Law School are engaged in activity at both ends of the democratic process. Not only do they advise in Washington, but they are active in state and local governmental affairs.

Several are town meeting members in the Massachusetts towns in which they reside. Professor Richard H. Field is the Town Moderator of Weston; Professor Livingston Hall serves in the same capacity in Concord. Professor Donald F. Turner is a town meeting

representative in Lexington; Professors Robert Braucher and Albert M. Sacks, and Dean Erwin N. Griswold, in Belmont.

Belmont resident Braucher is also a member of the Belmont School Committee, and the Republican Town Committee, a director of the organization for the Belmont Community Center and a regional vice-president of the Unitarian Laymen's League. Professor Charles M. Haar is a member of the Cambridge Redevelopment Authority; Professor Jaffe is on the Advisory Committee of COD, reform Democratic organization in Massachusetts.

Law School and University committees consume much of a professor's time. The Law School committees include the Admissions Committee, which takes five to 10 hours per week from January through May; the Committee for Planning and Development, which meets weekly, the First Year Committee, which supervises group work, the Committee on Graduate Studies, the Appointments Committee, the Committee on the Summer Program for lawyers, and the Committee on Neiman Fellows Instruction.

The legal projects of the professors are many and varied. Some have private practices, some work on new casebooks or on revisions of old ones, and others are reporters for the American Law Institute. Professors Paul M. Bator and Charles Fried are co-editing a new version of the Michael and Wechsler Criminal Law casebook. Professor A. James Casner is preparing a 1963 supplement to his Estate Planning book.

Professor Braucher is revising casebooks on Contracts and Commercial Transactions. He serves as Chairman of Subcommittee #1 of the permanent Editorial Board of the Uniform Commercial Code and is a reporter for the Restatement of Contracts. Professor Leach is devoting almost all his efforts to work on the Rule against Perpetuities in an attempt to promote curative legislation. The most recent statute, which he helped to draft, was passed in Western Australia.

Manifold meetings with private organizations and numerous lectures and talks add to the extracurricular burden of the profes-

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Faculty Activities

(Continued from preceding page)

sors. Professor Harold J. Berman has delivered more than 30 talks to various organizations on his experiences in the Soviet Union last year. Professor Richard R. Baxter has on his schedule a lecture to the Concord League of Women Voters. In April he will lecture for three weeks in Poland.

Not all speaking engagements are "live." Faculty members have appeared or will appear shortly on taped television programs concerning International Law and World Government, and jury trial. Professor Paul A. Freund is currently engaged in a two-program news-feature series on the CBS network, entitled "Storm over the Supreme Court."

Professor Casner's schedule of meetings and speeches during the last month and a half, while perhaps somewhat more full than is typical, is, nevertheless, indicative of the large number of minor functions and affairs in which Law School professors feel some obligation to participate. On February 6, he spoke to the Blackstone (Ames) Club at a luncheon meeting; on February 13, he attended the Harvard Legal Aid Banquet; on March 1, he moderated a program of the Harvard Law Forum; on March 2, he met with the Visiting Committee from the University, which had come to check on the state of Law School affairs; and on March 7, he judged a first year Ames case.

Travel occupies much time, particularly of those professors engaged in government work or international matters. Professor Charles M. Haar, who is presently on research status, traveled to Washington, twice during the month of February, the first time to discuss aspects of the "Alliance for Progress," the second time to attend a meeting of the "Committee for the Study of Mankind." From March 3 to March 6 he was in Florida where he delivered a speech on the land use problem in the Cape Canaveral area. On March 24 he expects to fly to Mexico in order to work on a property tax for Mexico City.

Professor Sohn travels almost every week, usually to Washington. In June, he will be in Athens, Greece, attending an ABA conference on World Peace through Law. In July, he will lecture at The Hague Academy of

International Law in the Netherlands. In August, he heads for Moscow where he will attend a disarmament conference.

Professor Oliver S. Oldman is another traveler to the nation's capital. Since September he has also done considerable traveling in Latin America, including trips to Santiago, Chile; Sao Paulo, Brazil, and Mexico City.

Professor Frank E. A. Sander was in Washington last week for work on his Equal Rights for Women Commission (See RECORD, February 14, 1963).

How much time do professors spend on outside activities? Those professors who made estimates said that they devote 50 to 90 per cent of the time directly to the Law School. But Professor Casner noted that it is "very difficult to draw a line between classroom and other activities. Everything I do outside of class has relevance to what I teach in the classroom."

CBS Tapes the Dean



— Photo by Robert A. Grayson

The Camera bears in on Dean Erwin N. Griswold, who is perhaps thinking of the prayerless school children of New York as he prepares himself for a video taping session in his office Friday. Dean Griswold appeared yesterday on the second part of a CBS television network feature, "Storm over the Supreme Court," in which he criticized the Supreme Court decision in the Regents' Prayer case. Taking the opposite point of view was Dean Rostow of Yale. Professor Paul A. Freund served as program commentator and consultant.

Yesterday's program traced the litigation in the Prayer case from beginning to end. The first program, televised in February, was a history of the grand conflicts which have rocked the Court since its inception.

Intellectuals Must Face 3 C's

By Richard A. Hannaway

"The intellectual must increasingly take the lead in the fight against the communist ideology if we are to win," William C. Sullivan, Assistant Director of the Federal Bureau of Investigation, told the Student Bar Association last Tuesday.

At the outset of his speech on "Communism and the Intellectual," Mr. Sullivan noted that there was no satisfactory definition of an intellectual. For a working definition Mr. Sullivan said an intellectual was one "who enjoys dealing with ideals and values, and has the capacity to think in terms of ideals and values." The value of these intellectuals has always been great in our society, he said. They were the pioneers of our American Revolution and the draftsmen of our Constitution. But America's need for the intellectual is at its greatest in the present crisis. This is the time, he said, when America, with the aid of the intellectual, must "reevaluate its historic role" and make a new and fresh application of our great traditional principles to the modern world situation.

Mr. Sullivan described the new world in which America finds itself as a world in which "the three C's are the predominant factors." The three C's are change, conflict, and challenge. The change in the world is embodied in the rise of newly independent nations and the great growth of the nationalistic spirit in many countries. The conflict today is one of ideas and values as well as the conflict of geographical areas and of states. Finally, the challenge is world communism, which Mr. Sullivan called "the first *total* challenge which this country has ever faced."

The Cold War is different from any previous conflict, he said. The clash of arms, he explained, was only a "partial challenge, a challenge in one area"; but the communist threat was a challenge in all areas and on all fronts. The major part of this challenge, he said, must be met by the intellectuals of a democratic society. They must answer the assault of the communist intellectuals on the economic, legal, sociological, educational and scientific fronts.

The role of the intellectual, he said, is to show that our traditional principles can provide better solutions than those of communism. Mr. Sullivan explained that "organizations like the FBI and the Armed Forces can only keep communism in check, they cannot provide the final solution."

As he saw it, this "final solution" could only be reached by the democratic intellectual creating new goals in opposition to the goals of communism, and by spurring the forces of freedom into action. The new goals that he stressed would not be a departure from the heritage on which America had grown great; but a reapplication of our heritage in the light of modern world conditions.

Mr. Sullivan then considered the attitude of the intellectual toward communism in America and found it satisfactorily hostile. Although many intellectuals allowed themselves to become the dupes of communism in the 30's and 40's, almost all of these left the Party when they discovered its true nature, he said. The record showed that the conscious perversion of history, the political indoctrination, and the regimentation of the mind which are characteristic of the Party made it impossible for a sincere intellectual to live for long within the Party.

Now that the American intellectual has become disenchanted with communism and has "seen it as it really is," Mr. Sullivan said that it was time for the intellectual to make his contribution, so vitally needed by his country, to the total war against communism. The battle, Mr. Sullivan said, was between a monolithic communist society "whose entire credo can be summed up as, 'Man lives by bread' and a democratic pluralist society whose credo is 'Not by bread *alone* does man live'."

Mr. Sullivan stated emphatically that the FBI did not approve of the suggestion made by some people that civil rights should be subverted in order to check communists. This, Mr. Sullivan felt, was "entirely the wrong way to go about defeating communism."

Teaching Machines

(Continued from page 1)

test system and making use of "teaching machines", is presently being employed by Professor Skinner in his undergraduate course on "Human Behavior."

After giving three lectures to his class, Skinner turns his students loose on the carefully programmed "machines," which are located in the basement of Seaver Hall.

The machines work by giving the student an incomplete sentence and asking him to complete it. After deciding what word or phrase would complete the sentence, the student checks the machine's answer. If he is correct, he knows it immediately and directly, which gives him pride in his accomplishment and an incentive to go on. If he is wrong, he is set straight so that, before going on, he becomes sure of his ground.

Then a second incomplete sentence is put to him, based on the prior sentence but itself imparting another small portion of learning to be understood. Again the student gives his answer and checks it against the correct one. And so on.

After a period of such self-instruction the students are given an hour exam and then Professor Skinner rounds out the semester with lectures.

Professor Skinner said that in this method of learning by slow steps the student averages 19 correct answers out of every 20 questions. He told the RECORD, "The students learn the material more completely and efficiently by this method, with less time and effort."

Professor Leach thinks that such "machine" could be made to work at the Law School. What is important, according to Professor Leach, is the expertise necessary to the programming. Professor Skinner is presently teaching a group of men how to program.

Enthusiastic about the idea of experimenting with such machines here, Professor Leach said that he is sure that the Casner-Leach Property text could be adapted to programming, especially chapters 12-13 and 15-16. "The chapter on taxes is a natural," he commented.

Professor Leach pointed out that there have been great advances in the psychology

of education in the past 15 or 20 years and that programmed instruction is based upon a very wide literature on the subject.

One recently-published book applying the question-and-answer teaching method to law, a "TutorText, is *Practical Law, A Course in Everyday Contracts* by Warren Lehman (1961). Professor Leach said he is "convinced that the book is a substantial advance over what we are now doing." He pointed out that the book is intended for non-lawyers, but added, "It is perfectly good law school stuff."

The book "teaches" by giving some basic principles and, on the same page, by asking the reader a simple question. The reader is given a multiple choice of answers and then turns to a page which corresponds to his answer. The answer pages either tell him why he is right, where he went wrong, or why he is normal in not knowing the answer. Then another page of information is given, followed by more questions, and so on by small steps through the book.

Professor Leach expressed satisfaction with the book, although he noted that it contains some "bad law" and that its method of instruction is inferior to that of Professor Skinner's "teaching machines."

Professor Leach said he would like to see innovations such as programmed instruction, with or without teaching machines, tried at the Law School. He commented that things are not too much different now than they were in his student days here. He pointed out that there have, admittedly, been changes in the third year, such as the emphasis on the professional approach in the Estates and Business Planning courses, and he noted that many of the third year courses could be given at practicing lawyers' institutes.

But Professor Leach favors more experimentation and more emphasis on methods of legal teaching. He said that he and Professor Skinner recently attended a luncheon with a group of young service officers, who said that at the Air Force Academy three of the best officers are assigned to analyzing and improving methods of instruction. Regarding this, he stated that he still feels strongly about an idea he has been pushing for years (citing an article in the *Journal of Legal Education* in 1947), that is, that there should be a professor of legal education here.

FEATURES SECTION

Booze Who In America?

By Daniel J. Kucera

"Man, do you think I'm crazy? I don't want to kill myself. I like whiskey lots better than wine, but I'd rather drink wine than drink that stuff I been makin' in that steel drum!"

That is what one moonshiner exclaimed recently to an Internal Revenue Service agent. Regardless of price, he would rather guzzle some tax-paid port wine than a wiskerful of his own brew. However, the Fed was unimpressed by the moonshiner's taste of honey and promptly quieted the still.

This case was only one of many attempts by the I.R.S. to bottle up illicit alcohol. In 1962, it made 8,629 arrests, seized 2,509 vehicles, destroyed 6,296 stills, and confiscated over \$2 million worth of property.

Mash seizures — considered as a sort of Keynesian index of moonshine production — declined 16.5 per cent. That means agents seized only 3,123,371 gallons of mash last year. Thus, in general, the mash business is a depressed industry — i.e., much of the mash market was a mushy mess.

The Alcohol and Tobacco Tax Division reports that over 93 per cent of the violations of federal liquor laws occurred in the South. Figures for Mashachusetts were not disclosed.

Yeast Shortage Rises

Federal agents are attacking the moonshiner's flow of raw materials as well as his finished products. Such basic goods as sugar, yeast, and containers are now scarce. Many marginal moonshiners have been forced out of business, while others have curtailed production because of inability to get the stuff through normal commercial channels.

The raw materials squeeze has forced some manufacturers to steal sugar and yeast and has uncorked a whole new type of entrepreneur — the "jar bootlegger" who sells used jars to moonshiners.

Federal raids often bring heartbreaking, sad stories and upset the lives and fortunes of simple, common folk. In one case, agents cracked down on a large distilling operation

just as it began its first run. The still, which took up three stories of a New Jersey industrial building, was a five section, 28 inch column continuous process operation. (Readers who are experts in the field will immediately recognize the technological sophistication of this process.) It had two large vats (oversized bathtubs), each with an 8,000 gal capacity. Think of the poor violator's frustration and tears as he saw his \$25,000 investment trickle away at the feet of the agents — there was hardly a dry eye in the house.

Business Ferments

In another case, the Eternal Revenue crumpled eleven small stills financed and managed by a gentleman moonshiner in Alabama. The combined capacity of this operation was 11,500 gallons, and whiskey produced was worth \$225,000 in tax revenues alone. The stills were located near the houses of interested citizens who had agreed to "look out for the law." Clearly, they did not look too carefully, or their vision was blurred by some of the brew.

The Feds clobbered one manufacturer three times in less than a year. In the latest raid, a still that took three months to build was knocked out after three weeks of production. These businessmen now do their drinking behind federal bars.

The I.R.S.'s smashing success in mashing mash and chopping up stills is probably good for the country. It punishes those who violate our tax laws and protects us from unpalatable, homemade heartburn.

On the other hand, however, a few things can be said for the virtues of the moonshine industry.

In view of the sluggishness of our national economy, moonshining could be quite important. An increase in mash output might give the economy a real shot in the arm. It might even double the figures. It certainly would double your pleasure, double your fun. The

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Moonshine

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best index of this, of course, would be GMP—Gross Mashional Product. An increase in GMP of 10 per cent each year should give us a boost.

Moonshining is a very efficient industry. The economies of mash production on a large scale allow a good utilization of mashional mashural resources. In a large country as ours, this is no mere drop in the bucket.

With the present high rate of unemployment, we need to make available as many jobs as possible. Instead of forcing mashers out of business, we should encourage them. The President could set up a domestic Mash Corps. The Government could subsidize moonshiners by grants, scholarships, loans, or tax relief on capital grains and depreciation of jugs and vats.

Finally, moonshining has contributed much to our culture. For example, in the field of music, it suggests such songs as: In the Still of the Night; Drink to Me Only with Thine Eyes; Shine On Harvest Moonshiner;

Beer Barrel Polka; Beethoven's Fifth; By the Light of the Silvery Moonshine.

On the whole, however, the Internal Revenue Service is probably doing the right thing. The liquor laws are designed to protect both the consumers and the legal producers.

Of course, it is clear that no law student would ever participate in moonshining. True, as a lawyer he will always be looking for proof—98 proof, 180 proof, etc. Or, he may ponder over the merits of the Eighteenth Amendment. However, no matter how much he dislikes pouring over the Internal Revenue Code and Regulations in the still of the night, he is not going to get himself over a barrel. Tha-atsh mooch ish veery clearsh. . . .

Four Class Committeemen Named

David M. Donaldson, Mike Liles, Jr., W. Phillips Rockefeller, and John A. Rava have been named to the third year class committee, class Marshal Charles R. Nesson reported this week. With the five officers elected last month, the four will help coordinate graduate class affairs.

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Recent Book

Glueck Analyzes Insanity Pleas

By Neil L. Chayet

LAW AND PSYCHIATRY: Cold War or Entente Cordiale? Sheldon Glueck, Johns Hopkins Press, 1962. 181 pages. \$4.95.

Professor Sheldon Glueck has undertaken to sponsor a difficult marriage, for law and psychiatry are sure to find married life quite rough going—at least for the first few decades. If Professor Glueck has done nothing else, he has shown that the time for union is long overdue—but, of course, he has done something else as well. He has given us a clear, crisp view of criminal law in the United States today, and how desperately it needs a new look—and a new mate—if it is to accomplish its important goals.

Birth of M'Naghten

Law and Psychiatry is the publication of the Isaac Ray Lectures, given by Professor Glueck at Tulane University in April, 1962. In the series of four lectures, he explains what he considers to be the stumbling blocks in the bringing about of the union of law and psychiatry; he then takes us back to the birth of the M'Naghten Rule and shows us where this rule has brought us. Finally, he gives a fine introduction to the Durham rule, along with his own recommendations for handling the enigma of how to ascertain those who are criminally irresponsible due to mental disease and what to do with them.

One has the feeling that what Professor Glueck has done is to at least set the record straight; he has shown with great clarity where we presently stand in the area of criminal responsibility, and even more important, how we got there.

Out of deference to the Isaac Ray Lectures, whose purpose is to advance friendly understanding between psychiatrists and lawyers in

their common goals (which goals themselves appear to be somewhat cloudy) Professor Glueck makes an attempt to set forth the points of divergence of the two professions. He says that "lawyers tend to look upon psychiatrists as fuzzy apologists for criminals, while psychiatrists tend to regard lawyers as devious and cunning phrasemongers." Professor Glueck takes the two professions even further apart with a brief discussion of the jurist's and the psychiatrist's varying views on the forces of free will and determinism; the jurist claiming that the unfortunate criminal could have avoided all of his criminality if he had so chosen, and the psychiatrist blaming the man's woe largely on the forces of society which have left him a minimum of free will. The jurist fears a "sea of self-destruction through the soft doctrines of permissiveness", while the psychiatrist insists that therapy and understanding are the keys to dealing with the criminal element.

Strict Rules Bad

In spite of these seeming "dilemmas in the partnership", as Professor Glueck calls them, there are common links which can be forged to bring together the apparent divergence of the views of the two professions. The links are rooted in the fact that man is both free and determined, and the real problem is to ascertain just how much free will is possessed by a particular defendant. Professor Glueck appears to be of the mind that we can no longer merely forge ahead in obedience to strict, unbending rules, as we have done for so many years. Rather we must strive to de-emphasize the idea of punishing those who do not meet the tight rules which are applied in most jurisdictions and strive instead to

bring about a meshing of punishment and therapy in an effort to understand why men act as they do and then to apply the most appropriate treatment.

If Daniel M'Naghten could only have known what his attack on a man he thought was Sir Robert Peel would lead to. His case gave rise to what men of the common law had long been searching for: a foolproof rule, easily applied and understood, which would assist a trier of fact in making a just decision on the issue of criminal irresponsibility by reason of insanity. Professor Glueck shows how the rule was and is far from foolproof, how difficult it was and is to apply, how easily misunderstood are its deceptively simple terms, and how often it has led to injustice. Simply stated, the rule states: "To establish a defence on the ground of insanity, it must be clearly proven that at the time of committing of the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it . . . he did not know he was doing what was wrong." Professor Glueck neatly sums up the worth of the rules by stating that they "have had the rigidity of an Army cot and the flexibility of a Procrustean bed."

Impulse Of Little Help

Approximately half of the jurisdictions have recognized the shortcomings of the M'Naghten Rule and have added the ingredient of irresistible impulse which comes into play regardless of the defendant's knowledge of right and wrong if the mental disease from which he was suffering "overpowered" his will. This addition, while better than the unadulterated M'Naghten

(Continued on page 12)

Glueck

(Continued from page 11)

rule, has done little to improve the flexibility of the rule, for it is said to be extremely difficult to "prove the irresistibility of a particular impulse." Professor Glueck points out that some judges have urged that another component added to the pot might improve the situation — this is the element of delusion. Professor Glueck implies that the advocates of this addition are themselves deluded about the true meaning of delusion and that the entangling of delusion with the right-wrong and irresistible tests will not go very far to solve the problems presented by criminal irresponsibility.

Losing A Wholeness

One of Professor Glueck's basic tenets appears to be that to lift out of context one or even three of the symptoms of mental disease is to run counter to basic psychological facts. He puts it best when he says "the person who is mentally ill is in a process of losing his wholeness . . . being mentally dis-integrated means having lost normal capacity for the assumption and the carrying out of responsibility from an ethical, cultural and, finally, legal point of view."

Professor Glueck is of the opinion that the answer does not lie in a mere sophistication of the M'Naghten Rules, as the American Law Institute has done in its draft the *Model Penal Code*. The A. L. I. has changed "knowledge" to "appreciation" of the criminality of one's conduct, or inability to conform his conduct to the requirement of law. This formulation has been adopted in some jurisdictions, but in Professor Glueck's view, holds little promise for appreciable improvement of the present situation.

What is needed, and to a great extent what Judge Bazelon has given us in the Durham case, is an approach which breaks away from traditionalism and gives us a recognition of a broader basis of irresponsibility as a result of men-

tal illness. Professor Glueck points out that this approach is not really new, as New Hampshire has employed an approach similar to Durham since Judge Doe's decision in the Jones case back in 1871. The Durham rule is basically, that "an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect." Professor Glueck is much happier with this rule than with the M'Naghten pattern, but he states that even Durham leaves a good deal to be desired. Not the least of his criticisms of Durham springs from the unusual burden of proof — apparently once the defendant brings forth "even a scintilla" of evidence that his actions were the product of a mental disease, the government must prove beyond a reasonable doubt that the defendant was sane at the time of the crime. It may be that this difficult burden for the prosecutor is a prime reason why, in the District of Columbia, the incidence of defendants being found not guilty by reason of insanity rose from less than one percent prior to Durham, to 25% in February, 1961.

Partial Responsibility

Professor Glueck is of the opinion that one of the best means of solving the irresponsibility dilemma is to provide for a verdict of partial responsibility, in addition to guilty or not guilty by reason of insanity. Such a scheme would allow the establishment of an intermediate position of criminal responsibility. In this way, the partially responsible criminal would be partially punished, after he had received adequate psychiatric attention. The mid-verdict would be particularly useful in those many cases in which the presence of a mental disease is found, but there are severe doubts as to whether or not the criminality was truly the product of the mental aberration.

In his last chapter, entitled "Wider Horizons" Professor Glueck discusses in detail the court-clinics which have been set up in a limited fashion in several jurisdictions, Massachusetts being one of them. This method provides judges with

psychiatrists to help them decide what would be in the best interest of the criminal and of society.

Lastly, Professor Glueck calls for a re-evaluation of both our attitudes and our facilities for the treatment of the mentally ill; for the union of law and psychiatry to be fruitful, or perhaps even possible, there must be adequate and well-trained psychiatric personnel.

Professor Glueck leaves us with the impression that a thaw in the cold war between the professions of law and psychiatry is imminent, and thankfully so, for it seems that the union of law and psychiatry may well provide the salvation of our system of criminal justice.

Spring!

Next Thursday the RECORD staff will be celebrating the arrival of spring. They will be listening to worms turn, looking for horses of a different color, and watching trees try to turn over new leaves. Some may even fall in love. Unless this last possibility occurs with unexpected inclusiveness, the RECORD will publish on March 28th.

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Byse on Discrimination

(Continued from page 1)

Evidence was also presented that discrimination against Negroes is practiced in public housing projects. There is a substantially smaller percentage of Negro families in public housing projects than the percentage of Negro families in the population at large, despite the greater need for public housing among this group. The whole housing problem for Negroes is aggravated by the severe general shortage of sound housing in the Boston area.

The Massachusetts Advisory Committee, composed of prominent citizens, is one of those committees which have been established in every state to assist the U. S. Commission on Civil Rights in its task of investigating and reporting on discrimination and denial of equal protection of the laws to persons because of race, religion, or national origin. Each state advisory committee performs a fact-finding role for the Commission.

In a RECORD interview, Professor Byse described the background of the Massachusetts Committee's approach to its work: "We have tried to break the problem of discrimination down in manageable divisions. The most important problem seemed to be housing. Until there is equal opportunity there, we cannot make much progress elsewhere. For instance, schools will remain de facto segregated as long as housing is. Thus we can't solve the education problem until we solve the housing problem."

Professor Byse pointed to the problem of job opportunities as another crucial area to which the Committee will probably devote

major attention. "Minority groups have to be brought into the mainstream, and we have to do it by providing them equal economic chances," he said. "If we could take care of housing and jobs in the North, we would have the problem pretty well licked here, since discrimination in voting is not a problem," he concluded.

At the hearing, Professor Byse took a rather different approach to the role of the law from that espoused by Mrs. Mildred Mahoney, Chairman of the Massachusetts Commission Against Discrimination, and Lee H. Kozol, Assistant Attorney General, Civil Rights Division. They emphasized conciliation and education, but Professor Byse indicated by his questions a belief in a more aggressive and forceful administration of the law, even to the extent of authorizing the Commission to impose fines for initial violations.

He told the RECORD that although a conciliatory approach could well be justified in the beginning stages of administration of anti-discrimination legislation, he felt that this stage should give way after a reasonable period to one of more aggressive enforcement.

As chairman of the Advisory Committee's subcommittee on the administration of justice, Professor Byse said he was seriously considering recommending to the Committee another open hearing, to be held on the subject of police practices concerning minority groups in the metropolitan area. He said that widespread public protests concerning police protection in Roxbury have given the subject a timeliness which makes it appropriate for the Advisory Committee to seek additional information.

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Food and Drug Lecture

Mr. Alanson Willcox, General Counsel of the Department of Health, Education and Welfare will give the Charles Wesley Dunn Food Law Lecture tomorrow at 2 p.m. in the James Barr Ames Court Room. The title of his lecture will be "Public Protection, Private Choice, and Scientific Freedom: Food, Drugs, and Environmental Hazards."

DeSapio Speaks Today

That dark potentate in the realm of New York, savant of politics, whom Murray Kempton in the *New Republic* (March 9) finds "capable of every sort of good manners except resignation" from his post of Democratic National Committeeman, Carmine De Sapio will speak to the Law-Graduate Democratic Club at 4 p.m. today in Harkness.

Republicans to Hear Three

The Republicans mobilize. Massachusetts Congressman F. Bradford Morse speaks tomorrow; William L. Higgs, Mississippi integrationist, March 21; and Mrs. Margaret Heckler, the only Republican on the Massachusetts Governor's Council, March 26.

ILC Pannel Discussion

A panel discussion, entitled "Corporate Counsel and Joint International Business Ventures," will be the topic of an International Law Club program, March 21 at 8 p.m. in the Roscoe Pound Room. Panelists will be Mr. Robert M. Campbell, General Counsel of the Ford Motor Company; Mr. James M. Fulton, General Counsel of Merck & Co.; and Professor Wolfgang Friedmann from Columbia University Law School, who will act as moderator.

Cohen on SEC Thinking

Securities and Exchange Commissioner Manuel F. Cohen will be the featured speaker at the Bull and Bear Club's meeting at 8:30 Tuesday in the Ames Courtroom. Professor Louis Loss will moderate a panel following Cohen's talk on "Current Thinking at the SEC."

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Placement Opportunities

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

THIRD YEAR INTERVIEWS

Washington, D.C.: Office of the General Counsel, Federal Housing Administration, Wash. 25. Leave names at Placement Office (1 p.m. Thursday, March 14.) Tuesday, March 19.

THIRD YEAR OPPORTUNITIES

California: Overton, Lyman, & Prince, Suite 607, 550 South Flower Street, Los Angeles 17. Send letter and biographical sketch to Mr. Schuck.

Colorado: Office of Richard C. Hopkins, Attorney at Law, Mercantile Bank Building, Boulder. Contact Mr. Hopkins.

New Jersey: Evans, Hand, Evans, Allabough & Amoresano, 129 Market Street, Paterson 1. Contact Robert F. Allabough, Esq.

New York: Lundgren, Lincoln & McDaniel, 63 Wall Street, New York 5. Send resumes to Clarence J. McGowan, Esq.

New York: Reed, Hoyt, Washburn & McCarthy, 52 Wall Street,

New York 5. If you don't face military service contact Mr. Giordano.

SECOND YEAR OPPORTUNITIES

Massachusetts: Bowditch, Gowetz & Lane, Room 565-340, Main Street, Worcester. (Summer Clerkship) Send resume to Warren C. Lane, Jr.

Letter to the Editor

To The Editor:

When I read the comprehensive schedule of courses now taught at the Law School—I refer to the article titled "More Electives in New Curriculum" which appeared in your February 28th issue—I could not help reverting to the curriculum which was in effect during my years at the Law School, 1900 to 1903.

If I remember correctly, the only courses taught at that time were the following: Real Property I, II, and III; Bankruptcy; Agency; Torts; Pleading; Criminal Law; Suretyship; International Law; Trusts; Domestic Relations; Personal Property; Corporations.

The practice of law has undergone so great a transformation that the graduate familiar with only those few subjects today would have great difficulty in getting along.

Very Truly Yours,
Alfred A. Benesch, LL.B. '03

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