

Placement Rush Nearing a Close

By Stewart D. Davis

The recruiting season at the Placement Office is drawing to a close. Miss Eleanor R. Appel, Placement Director, said that the big rush will have ended by Dec. 1.

Noting that recruiting at the Law School is "to whip off the heavy cream and leave the skim milk," she said that a number of third-year students, focusing on New York City and one or two other large metropolitan areas, have had as many as 45 interviews and are still without jobs. She attributes this to the fact that, though many of these students

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Nurse to Be Tried Today

A capacity crowd is expected in the Ames Courtroom at 4:00 p.m. today when the long-awaited case of *Commonwealth v. Berry* comes up for trial before the Honorable Reuben L. Lurie.

For weeks now the case has been the talk of Gray County, Ames, and the townsfolk are divided as to what will be the fate of Miss Leona Berry — the enigmatic, and not uncommonly, 27-year-old nurse who is the de-

fendant in the case.

Chief Assistant District Attorney Ellesmere told the RECORD that he expects to have some "big surprises" in store for the court later today. He declined to indicate what these might be. Rumors are rife that the trial involves a murder, a car-theft, a dope ring, and several love affairs.

Ellesmere has assigned one of his top men, Professor Arthur Sutherland, to prosecute

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James Donovan Keynotes Career Conference

By Frank W. Lloyd

"Life is a series of *ad hoc* decisions made as alternatives are presented to you," said James B. Donovan, LL.B. '40, in his keynote address to the Career Conference held here last Wednesday.

Mr. Donovan illustrated his point that firm commitments to one area of the law should not be made too early, by using his own 24 years since graduation as an object lesson. Utilizing his summer job experience on a newspaper as a starting point, he wrote his third-year paper on the defense of fair comment in libel. He then accepted an offer from a New York firm active in that area.

He soon found himself handling problems in taxation, torts, estates and contracts, for which he was paid the "magnificent sum of \$1,800 a year." Offered a job in a wartime agency, Mr. Donovan plunged into such questions as who should share in patent rights for components of the atomic bomb, and the legality of using prison volunteers for testing anti-malaria medicines.

Soon he was helping to develop a highly bizarre insurance

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James B. Donovan

Aid in Career Choosing

As the interviewing season ends, it becomes apparent that a great number of second- and third-year students are going into interviews blind, not knowing what they wish to specialize in, nor what particular quality they can offer to a firm. To prevent a waste of time on the part of both the students and the interviewers, the former should force themselves to clarify in their own minds what field or fields draw their attention. The Law School has made a step in the direction of aiding career choices by supporting the Dorm Council's recent Career Conference.

At college we used to head for the hills, skis firmly lashed to our vehicles, whenever a career weekend was coming up. At that point we were trying to put as much distance as possible between ourselves and close contact with employment. "The law" was a vague entity, and it was hard for lawyers to interest young men in its practice.

Now, at law school, at least a majority are committed to a future at the bar. Having chosen a field, we wish to find out more about its specialties, a practical side of the profession we are approaching mainly from the academic viewpoint of the classroom. The first-year student enjoys hearing about what goes on inside the walls of a large Wall Street firm; the second-year student interested in the international law field finds it interesting to discover that such a practice is only an adjunct to more diversified jobs, and deals mainly with commercial problems; the third-year student can catch a glimpse of the narrow specialties he might never study in law school, such as admiralty.

A one-day career conference is well suited to the interests of a large number of the students. The one held this year, necessarily experimental in nature because it was the first, can serve as a model for others in the future. For example, this year's participating panelists can be polled to determine the areas which attract the greatest student interest.

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TONGUE 'N CHEEK

By Fenno

I was happily reading Shepard's and watching the Cardinals and Giants cavort in the mud last Sunday when I suddenly thought how nice it would be if people were as enthusiastic about law as they are about football.

I consulted my friendly neighborhood public-relations man to see what could be done.

"The first change to make is to conduct all trials outdoors, preferably in the sleet or snow," he said, warming to the idea. "One of the things people like about football is the vicarious participation. Therefore, we'll have to clearly identify both sides by differently colored vests and attache cases and number all the participants so that the fans can tell just what their positions are. For a little added color we'll have the judge wear a striped robe and use a whistle instead of a gavel.

"The logistics of the game are important, too. We can build up strategy-involvement if we give each side three recesses, to use whenever they think the opposition is gaining ground. Further, we'll let a witness' lawyer send in answers during cross-examination."

"What about sentencing?" I asked cautiously.

"The public likes the football scoring system, so all sentences will have to be in multiples of three-year periods with an extra year added if a conversion is involved," he said with conviction.

"What else?" I asked.

"Oh, a drafting system for law-review members with the firm losing the most cases in each area each year getting first choice. And then we'll have to put briefs in something a little flashier than those light blue covers.

"By charging admission we will get people so hepped up about the law that they'll come to court even when there isn't an exciting trial."

"What will they come for?" I asked.

"Just to watch the lawyers going through the motions," he replied briefly.

HARVARD LAW RECORD

Law Disarrayed Within African Realms

By Thomas S. Johnson

Jonathan Mallamud, LL.B. '61, and A. Frederick Mpanga (Grad.) spent last year in Uganda, Africa, 23 miles apart. But they had to travel 7,000 miles to meet one another.

The meeting was at the International Law Club's Nov. 12 panel discussion in "Developing Law and Developing Nations." Mallamud and Thomas J. Farer, LL.B. '61, were scheduled panelists, but the schedule was quickly amended to include Mpanga as well.

"I knew he was there," Mpanga explained later, "but I never got to meet him since I was in the hospital part of the time."

In an informal discussion, the three surveyed the problems facing many of the new African states. The African legal system is less than simple, Farer explained. In many instances three often conflicting legal systems co-exist — colonial, customary and religious. While attempts are being made to integrate them, progress is slow. A man can be arrested under one system of law and be found not guilty, only to face trial under another.

Uganda Bar Understaffed

Mallamud explained that, though things vary widely between the various young African states, Uganda is not unusual. It has a dual system of government, a dual system of law, and a dual system of courts. He served as an advisor to the Attorney General under a program sponsored by MIT.

Farer, a former member of the *Law Review*, was legal advisor to the Somalia Republic, also under the MIT program. He reported that the Africans take law very seriously — sometimes overly so. Somalia has a Supreme Court, six regional courts, and numerous district courts, he reported, but only two lawyers.

Reflecting her former colonial status, Somalia has an Italian Penal Code with Anglo-Saxon procedural rules, "containing every possible protection of civil liberties yet devised by the mind of man." As a result, he said, "Either you have nonenforcement of the Penal Code, or unconstitutional enforcement," with the latter, of necessity, being more likely.

Mpanga is currently Solicitor General of the Kingdom of Buganda, a province of Uganda. He took his law degree from Hull University, England, and became a barrister called by the Middle Temple. He did further study at Oxford and is here under a Rockefeller Foundation grant. He was recently elected as the ILC's Graduate Vice President.

Following the meeting, the group elected four members to its Executive Board: Michael D. DeVito, a graduate student and former member of the University of California *Law Review*; Gerald S. Cook, 1L, Michigan; David C. Siegfried, 1L, Princeton; and Jed H. Abraham, Berkeley, 2L. Katherine T. O'Donovan and Vicente Blanco Gaspar were previously elected to the Board.

Law Forum Will Feature

Mrs. Clare Booth Luce

Clare Boothe Luce, author, diplomat and politician, will be the featured speaker at the Harvard Law School Forum, to be held Friday, Nov. 20, at the Lowell Lecture Hall, at 8:30 p. m.

Mrs. Luce's talk on "The Future of the Republican Party" will be followed by a brief panel discussion and questions from the floor.

Panelists will be John Saloma, Assistant Professor of Economics at MIT and President of the Ripon Society, and Richard S. Bowers, President of the Republican Club of Massachusetts and former Brookline State Senator.

The Forum's moderator will be Assistant Professor Henry J. Steiner of the Law School.

Mrs. Luce, a Congresswoman in the 78th and 79th Congresses, served as Ambassador to Italy during the Eisenhower Administration.

Active in this year's campaigning, Mrs. Luce delivered a seconding speech for Senator Goldwater at the San Francisco convention. It was rumored she would campaign for U.S. Senator from New York on the Conservative Party ticket, but she later declined to run.

First Career Conference Features . . .

Donovan Is Keynoter

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program. Needed to protect the scientists working on classified projects, the program required that "the underwriters could not be told the nature of the hazards nor the location of the risks. They could not even investigate claims. In cases of refugee scientists, even the names of the insured were not known to the underwriters, to protect their families still in Europe."

After a stint with the Office of Strategic Services in underwater demolition work, Mr. Donovan was named general counsel for that agency. His work involved such problems as finding the means of trying international war crimes, and setting up dummy corporations (*a la* James Bond's Universal Export) to serve as cover for Allied agents.

After playing a major part in the Nuremberg War Trials, Mr. Donovan took a position with an association of several hundred insurance agencies, with the option to leave after three years and open his own firm. Since then, besides private practice, he has been called on to negotiate both the Abel-Powers spy exchange and the ransom of prisoners taken in the Bay of Pigs invasion.

Always faced with new problems, he is now, in his capacity as president of the New York City Board of Education, a defendant in 23 lawsuits arising from the current "bussing" controversy.

Mr. Donovan stressed to his student audience that by the nature of the legal profession "you will be drawn into the ebb and flow of human events." He made light of the supposed distinction between entering a large corporation-oriented firm and a smaller one, saying that in many cases the larger firm may widen, and the smaller one narrow, a young lawyer's outlook.

He also cautioned against entering government service immediately after graduation. "Lawyers who have exposure to private practice serve government better later on," he noted. "Those who defend individuals against encroachment understand better the power they deal with when they work on the other side."

Litigation Lawyers

Note Personal Rewards

By Joseph M. Hassett

"Physically wearing, but spiritually exhilarating," was the epithet given to the field of litigation and trial law by Harris B. Steinberg, LL.B. '35, in an afternoon panel session of last Wednesday's Career Conference.

Discussing this aspect of practice with Mr. Steinberg was George N. Leighton, LL.B. '46.

Contribution to the Law

Both panelists noted that the monetary rewards in this area are not as great as in some others, but emphasized the less tangible satisfactions of their professional experience. Mr. Leighton stated that trial practice offers a "wider scope, more contact with people and a greater opportunity to contribute to the development of the law" than most other types of practice. He recalled the pleasure of participating in the development of law from the initial interview with a troubled client to an eventual determination in his client's favor by the United States Supreme Court.

Mr. Steinberg recommended that the law student ask himself what type of practice would make him happy for the next fifty years. The student should select a career which meets this requirement and has as broad an occupational base as possible. In Mr. Steinberg's view, the young attorney should continuously re-evaluate his decision until satisfied that he has made the proper choice.

Both panelists have devoted most of their professional energies to criminal trial practice. Mr. Steinberg, a member of the Committee to Visit the Law School, conducts a private practice in New York City. Mr. Leighton, a partner in the Chicago firm of McCoy, Ming and Leighton, is preparing to move to the opposite side of the bar. He was elected a Justice of the Circuit Court of Cook County, Illinois, in this year's election.

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... Trial, Corporate, International Law

Wall St. Stresses Variety

The panel discussion on "Corporate Practice in a New York City Firm" at last week's Career Conference was presented by Samuel C. Butler, LL.B. '54, and Orville H. Schell, LL.B. '33.

Mr. Schell pointed out the great variety in the types of cases such a firm ordinarily handles: tax, estate planning, contracts, and in an increasing amount, international law. He stated that there was a tendency to departmentalize, so that as time goes on, a lawyer sees a particular type of case with greater frequency. Mr. Schell discouraged a young lawyer from planning to specialize in a given field without first seeing what else the law had to offer.

'Myths' Dispelled

Mr. Butler sought to dispel certain myths which have developed around the Wall Street firms. Concerning the "sweatshop" image that has grown up, he warned that the young lawyer must work hard no matter where he decides to practice, but pointed out that the large size of the typical Wall Street firm allows a more even spreading-around of the work load.

In response to a question on racial, national and religious discrimination, Mr. Schell conceded that such inequities did exist a generation ago, but contended that they have since disappeared. He also pointed out that the ability of the young lawyer to bring clients into the firm was no longer a criterion for hiring.

Both attorneys agreed that the chances of a young associate becoming a partner were about one or two in six. The elapsed time to partnership was estimated to be eight or nine years.

They also stressed that the individual was free—in many cases encouraged—to participate in politics and community projects.

Leaves of absence for government service are frequent occurrences, the attorneys noted, although they cause some delay in reaching partnership status.

Both Butler and Schell noted the firms' preference to hire people straight from law school, and train them in the firms' specialties.

Commerce a Chief Concern Of International Practice

By Michael J. Ryan

Commerce has become a significant concern of international law, John R. Stevenson, of Sullivan & Cromwell, told a Career Day Conference audience at the seminar on that subject.

He pointed out that the older concept of international law as something that was practiced only before the World Court is no longer realistic. The present stress on commerce creates a two-way street, with many United States corporations establishing foreign subsidiaries and an increasing number of foreign enterprises invading the American market.

There has also been an increase in personal legal problems on an international level in such areas as estates, divorce and tax. Bar associations have become increasingly active with respect to their counterparts in other countries, he added.

Mr. Stevenson commented on how one becomes involved in international practices. He noted that there are no firms which handle only international cases, and those which do specialize in the field do not necessarily look for a person specifically interested in international law.

Grades are Persuasive

Although foreign fellowships can help the individual once he is active in practice, they will not necessarily help him to get a position with such a firm. Good law school grades are more important. Mr. Stevenson advised beginning with a firm, rather than the government, since it can be difficult to readjust to private practice.

He concluded by affirming that a familiarity with a foreign language is useful, but by no means necessary. He pointed out that international lawyers do not spend as much time "on the road" as law students probably expect.

Recruiting Season Ends

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have superior records, a great percentage of them are facing military service.

Her advice to this group, and to all those who were not receiving enthusiastic invitations as a result of interviewing, is to "slow down." Miss Appel noted that such an enormous number of interviews is pointless for students whose grades are not quite scintillating enough to attract interviewers, who are not able to demonstrate a positive enough personality to the man who sees 15 to 20 interviewees that day and who do not have the "connections."

She suggests that the persons in this group would do better to try to visit the lawyers in their offices where, not being one of a large group, they will not suffer the "relentless loss of identity" which the interviewing schedules here bring about.

Miss Appel said that about a quarter of the third-year class has not participated in interviewing, and suggested this was partly due to future military service and to jobs already obtained.

About 20 of the class are known to have jobs, but Miss Appel believes the number is much greater, and the Placement Office will soon send out a questionnaire to determine the names and numbers of those who have gained employment.

Miss Appel pointed out that there is a growing interest in recruiting by West Coast firms, particularly those in Los Angeles and San Francisco. This she attributes to three facts: the presence of an ever-larger group of students from that part of the country, a stiff competition among all firms for capable young lawyers, and the tendency of western firms to investigate new recruiting fields. Many Eastern firms are now looking to such places as Stanford, while many firms interviewing in Boston are looking over the crop not only from Harvard but also from such schools as B.U.

Still taking place is interviewing for summer jobs by second-year students. Miss Appel suspects that a large number of high-ranked second-year students already have secured jobs.

She stressed that many of the firms hiring

second-year men are interested only in those who have "pretty outstanding records here." Noting that many of these students will not find jobs through recruiting done here by these firms, she stated that the Placement Office may be of some help in advising of existing opportunities.

She said that a second-year student's average should determine how much effort he should put into finding a job. "Don't work harder to get it than the value it will offer you," she concluded, noting that many other summer experiences are of more value than two months in a law firm.

Model Trial Set

(Continued from page 1)

the case. Miss Berry will be represented by James Draper St. Clair of Boston.

Of local interest is the rumored appearance of Officer Willard Kraft as witness for the prosecution. Officer Kraft's uncanny resemblance to one of the town's leading citizens and his reputed persuasive powers make him the man to watch at the trial.

Plan to be on hand.

Litigation Lawyers

(Continued from page 4)

In a lively question-and-answer session both attorneys deplored the popular tendency to identify the lawyer with his client. Mr. Steinberg lauded the British system in which a barrister cannot refuse a client. This system, he said, minimizes the equation of lawyer and client in the public mind. In the same vein, Mr. Leighton remarked that "It is in the highest tradition of advocacy for the lawyer to advocate the cause of his client without personally adhering to that cause."

The panelists were in agreement in lamenting the removal of the course in evidence from the required curriculum at the Law School. Mr. Steinberg deplored the fact that most persons accused of crime do not have the benefit of counsel from the time of their arrest, and that there are so few northern lawyers representing Negroes in Mississippi. "But," he asked, "who's going to do it? Not you people who are taking accounting instead of evidence."

Tax Expert Aided School-Prayer Appeal

By Paul M. Branzburg



Prof. Wolfman

"My middle son, when he was much younger, thought all people fell into two classes — either lawyers or clients. He may have been shocked to realize, two years ago, that there is a third class — law professors."

Such was the amused observation of Visiting Professor Bernard Wolfman who, in 1963, entered the full-time teaching of law after 15 years of practice. On leave from Pennsylvania Law School, he is teaching a second-year section in Taxation, a third-year course in the Taxation of Business Enterprise, and a seminar in Federal Tax Policy.

Though primarily a tax expert, Prof. Wolfman has long been active in the Philadelphia branch of the ACLU, and, on its behalf, he did the initial interviews of the Schempp family, plaintiffs in the 1963 school-prayer decision, *School District of Abington v. Schempp*. In his memorandum to the Board of Directors of the ACLU, he concluded that "it was more probable than not that the U. S. Supreme Court would hold

the Pennsylvania statute requiring public school teachers to read ten verses of the Bible without comment each day as an unconstitutional infringement of religious liberty." The Board of Directors was equally divided as to whether or not to sponsor the case, until Harvard Law Professor Clark Byse, then President of the Philadelphia ACLU, broke the tie.

Proposals for a Prayer Amendment to the Constitution are, in Prof. Wolfman's opinion, "very unfortunate. There is an infringement of religious liberty involved in these circumstances, which the school system, under the mantle of authority of the teacher, should not cause. I doubt that Bible-reading, as it was conducted in the Pennsylvania schools, adds any dimension at the moral or educational level which could at all outbalance the infringement involved."

Born in Philadelphia in 1924, nearly all of Prof. Wolfman's academic and professional life has been connected with that city. After receiving his preparatory education in the

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NELI Stages Mock Trial

By Murray S. Levin
with Joseph M. Hassett and Michael J. Ryan

John Doe had his day in court on Saturday, Nov. 7. Mr. Doe came to life at John Hancock Hall in Boston in the courtroom of the Honorable Frank J. Murray.

Commonwealth v. Doe was argued before a close-to-capacity audience of lawyers, students, and police officers and climaxed a full day of instruction on "The Trial of Criminal Cases" — another in the continuing series of New England Law Institute Saturday Seminars.

With two Middlesex County District Attorneys representing the prosecution and two Boston lawyers the defense, the criminal trial demonstration focused on the latest constitutional and statutory developments relating to the admissibility of evidence, confessions and the plea of "standing mute."

Perhaps most interesting in the Doe case were the efforts of his counsel to suppress evidence which the prosecution sought to introduce. After Doe's arrest, the arresting officer discovered knives, brass knuckles and a "billy club" under the seat and in the trunk of the car in which Doe had been riding.

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RECORD Takes a Week Off

The RECORD staff gives thanks for the respite scheduled for next Thursday in honor of a turkey's birthday or some such event. Our next issue will be out on Dec. 3.

Prof. Wolfman

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Philadelphia public schools, he entered the University of Pennsylvania. His college career was cut short in 1943 when he entered the Army and after basic training, was sent to learn Norwegian at the University of Minnesota's Army Specialized Training Program. Once he became fluent in Norwegian, the Army made use of his talent by sending him to England, France, Belgium and Germany as an infantry rifleman. Finally, he was able to return to the University of Pennsylvania where he received a Phi Beta Kappa key and an A. B. in political science in 1946.

While attending the University of Pennsylvania Law School, he kept busy as Note Editor of the *Law Review* and instructor in political science at the University.

IRS and the Courts

After graduation in 1948, Prof. Wolfman began his long association with the Philadelphia firm of Wolf, Block, Schorr and Solis-Cohen. He became a partner in 1956. His work was "primarily in counseling and negotiating tax-affected business transactions," but a heavy proportion of his time was consumed "in handling tax controversies at various levels of the Internal Revenue Service and in the courts."

"The nice thing about tax practice," he remarked, "is that it overlays just about every other area of the law. It is a dynamic and very stimulating field, and the lawyer is—and the tax student should be—concerned with the lovely, continuous interplay of the legislative, judicial and administrative processes."

For the last two years Prof. Wolfman has served as consultant to the U. S. Treasury Department, first in connection with the Revenue Act of 1964 and now with respect to tax-exempt charitable foundations.

Prof. Wolfman serves as member of both the Board of Trustees of the Federation of Jewish Agencies of Greater Philadelphia and the Executive Committee of the Philadelphia Defender Association. He is also a member of the Council of the Tax Section of the

Pennsylvania Bar Association and a member of the Tax Sections of the American and Philadelphia Bar Associations.

Prof. Wolfman's switch to teaching came gradually. For several years, beginning in 1959, he worked as a part-time lecturer at Pennsylvania Law School. Because of his enjoyment of law practice, his decision to teach full-time was a close one. "I suppose the prime reasons," he explains, "are the opportunity teaching provides for somewhat greater legal creativity and the fact that I like teaching law so much."

In his judgment, Harvard Law students comprise a "very able and sophisticated group. If I am forced to compare them with Penn. students, I would say the very top group is just about the same in quality and proportion to the total classes. I find, however, that what I would roughly describe as the B-plus group, is proportionately greater at this law school. This results in a more sustained, high-level classroom dialogue than is possible when that group is relatively smaller in number.

"However, I am disappointed to find that the *Law Review* students here come to class much more poorly prepared than they do at Penn. It therefore makes the dependence on the B-plus group more acute."

Prof. Wolfman is married and has three children.

2L Writing Program Ready

Application forms for this year's Second-Year Writing Program will be available beginning Monday, Nov. 23, at the receptionist's desk in Langdell Hall, Edward M. Stadum, 3L, co-chairman of the program, announced this week.

Thirty-five second-year students will be chosen at random from the applications submitted. Stadum estimated that participation in the program will require about the same amount of time as does Ames, and urged that only those willing to make this commitment apply.

Completed application forms must be turned in to Professor David M. Herwitz' secretary by 5 p. m. on Tuesday, Dec. 1, Stadum added.

Prof. Haar Aids Senate Planning Study

By Walter V. McLaughlin

The continuing role of the Law School's faculty in public service was emphasized recently with the release of a report on *The Effectiveness Of Metropolitan Planning* by The Joint Center for Urban Studies of MIT and Harvard.

Professor Charles M. Haar of the Law School was the Project Director of the study, which was intended for use by the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations.

It will serve, as the report states, "as background information on legislative matters affecting the orderly growth and development of the urban areas in the Nation."

Prof. Haar described the report as "an interesting attempt to combine different disciplines—the political scientists', the planners', and the lawyers',—in an effort to meet what is essentially an interdisciplinary problem."

Growth Problems

He said that the rapid growth of urban areas was presenting society with problems that lapped over man-drawn political boundaries. The report cites as an example the 16,000 units of local government which have a hand in administering the 212 areas falling within the Census Bureau's definition of standard metropolitan statistical areas, and which contained in 1960 some 113 million people.

The report analyzes the current attempts at planning by agencies with a wider jurisdiction than local government, which it argues are inadequate for the task. Yet the report is not a brief for the formation of super-city governments. Rather, it tries to evaluate, as Prof. Haar enumerated, the basic questions of federalism: what can and should be done at each level of government—local, state and federal; where does each fit in the whole picture? Further, he said, it poses the technical questions of what powers a metropolitan government can handle readily.

The immediate aim of the study was to

provide information on possible legislation to strengthen the various agencies by voicing the concern of the federal government in this area. Federal involvement, through highway programs, redevelopment and mortgage guarantees, is already immense, but a clear and coherent expression of the federal interest, often submerged until now in local considerations, is required.

This method still leaves much of the responsibility in local hands, yet puts important factors more urgently before local units for their consideration. Its purpose is typified by the Highway Act of 1962, which provided that federal contributions to state highway programs would be contingent upon the states providing an ongoing metropolitan planning process by 1965. Local peculiarities can be met by diverse forms of planning bodies, but the essential push—the federal incentive—would be felt.

The agencies would also help the federal government in its estimates and plans by providing an overseer for federal projects at the local level. Their impact would be gauged and waste reported before excessive amounts had been spent or real damage done, the report points out.

Prof. Haar noted that the project had beneficial side-effects, such as the training of several law students, and the distinguishing of which interest groups are really concerned with work done in the field.

GOP Celebrities Wooed

The Harvard Law and Graduate School Republican Club hopes to bring leading Republicans to the Law School for speeches in the near future, according to President Robert C. Kirkwood, 3L.

Included among those invited to speak are Massachusetts Lt. Gov.-Elect Elliot Richardson, Massachusetts Attorney General Edward Brooke, and Mr. Fred Scribner, former Undersecretary of the Treasury during the Eisenhower Administration and former general counsel to the Republican National Committee.

Southern 'Outrages' Blamed on Federal Lag

By Frank R. Parker

"The moral responsibility for the murders of Chaney, Goodman, and Schwerner in Mississippi does not rest with those who committed the crime."

Professor Howard Zinn, a Boston University historian, told a Civil Rights Committee audience recently that the murderers cannot properly be held to a full knowledge of what they did.

Rather, Prof. Zinn charged, "responsibility rests with the federal government, which has both the knowledge and the power" to prevent such atrocities. It is up to the citizens of this country to express enough outrage that the federal government will have to act, he said.

The speaker, who has just published two books on the civil rights movement and the South, attributed this governmental "inactivity" to a misconception of the white Southerner which pervaded the Justice Department under Attorney General Robert F. Kennedy. The misconception, Prof. Zinn explained, was that you "can't do with the white Southerner like you do with others" — that he must be educated, not coerced, into conformity to the law.

Zinn, who has lived in and traveled extensively throughout the South, asserted that Mississippi racists differ only in degree from the rest of us. Their traits are exaggerations of human vices found throughout the country. What is needed to bring about ordered change in the South, according to the speaker, is a "firm show of law."

Compulsion, "the distinguishing mark of law," must be used upon the intransigent racist minority. The supreme federal law

must be forced "down their throats," if necessary, asserted Prof. Zinn. Education will result from the compelled adaption to what the law demands.

Citing the desperate problem of protecting civil rights workers, who are "doing the federal government's job," Prof. Zinn renewed his plea for a force of 1,000 to 2,000 plainclothes federal agents. He argues that the proposal, which is mentioned in his book, *SNCC: The New Abolitionists*, is based upon authority granted by Title 10, United States Code, section 333.

The function of these agents would be to "stand between" the civil rights workers and the local terrorists. "If a force such as this had been there, the Neshoba County tragedy would not have occurred," Prof. Zinn concluded.

Airline Official to Speak

James W. Austin, Chairman of the Board and President of Northeast Airlines, Inc., will speak to the Bull & Bear Club on "The Northeast Story: Days with Howard Hughes," on Dec. 1.

The Hughes Tool Company is the dominant stockholder in the Boston-based airline. Mr. Austin is expected to describe his role as the liaison between the two companies.

Mr. Austin joined Capital Airlines in 1946 after serving in China, Burma, and India during the war as a Colonel in the U.S. Army Air Force. He was named President of Northeast Airlines in 1957.

The talk will be in Harkness Commons and is open to the public.

Treadway MOTOR HOUSE

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Prof. Fuller's Book Revisited

The Law Conceived as 'Becoming'

The Morality of Law. By Lon L. Fuller. New Haven: Yale Univ. Press, 1964. \$5.

By Barkley Clark

Jurisprudence has too long taken for granted the procedural underpinnings which make law possible. Such is the message of Professor Fuller's new book. This message is served up in a form particularly satisfying to students of the Law School. They will find much that is familiar, presented in a fresh, new light.

Problems from the law of contracts, torts and property abound. The 200 pages are honeycombed with "hypo's." Elements of "Legal Process"—particularly in Prof. Fuller's discussions of statutory construction and institutional design—constantly recur. The author's expertise on the legal fiction crops up again and again. The book brings legal questions into relation with linguistic analysis, scientific epistemology and the economics of marginal utility. In short, Prof. Fuller gets his message across—and in a juicy way.

To understand the point of this book the reader would do well to keep in mind the author's definition of law: "the enterprise of subjecting human conduct to the governance of rules" (p. 130). The crucial word, one feels, is "enterprise." In the most meaningful sense, law is

not a command, nor a relation, nor a datum, nor a mere instrumentality; these definitions give a feeling of flatness. Law is three-dimensional in that it is purposeful and has direction. If you will, law is constantly "becoming." The entrepreneur is the formal law-giver, such as a legislature, who is burdened with a duty to see that procedural regularity is kept above a minimum.

If this duty is breached the citizen may rightly claim that he is under no law at all. But, hopefully, the entrepreneur will go beyond his bare duty, and aspire toward excellence—the highest level of procedural legality which is possible in practice.

The heart of the book is Chapter II, entitled "The Morality That Makes Law Possible." Prof. Fuller catalogues eight procedural norms which any modern system of law presupposes. The chapter is exceptionally exciting because it forces the reader to step back and view from a distance a body of interrelated rules of which he has been aware, but which he has never looked at systematically.

The eight tenets of the morality that makes law possible are: (1) Generality. A legal system based solely upon *ad hoc* adjudications is no legal system at all, as we know it. If one is to "conform his conduct to the governance of rules"



Prof. Fuller

there must be rules. (2) Promulgation. It would be unthinkable to coerce the conduct of human beings who have never been informed of the rules to be followed.

(3) Retroactivity. Prof. Fuller discusses why we abhor retroactivity in criminal statutes more than in non-criminal areas such as taxation. He admits that a deviation from this procedural norm is at times necessary, as when retroactivity is used to cure a prior statute formally defective. (4) Clarity. The void-for-vagueness doctrine of constitutional law, he argues, is one recognition of the fact that laws must be understandable to those whose conduct is to be governed.

(5) Contradiction. Prof. Fuller

(Continued on page 12)

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Prof. Fuller

(Continued from page 11)

cites several examples of hostile judicial response to statutes which command a person to do two incompatible things. If internal contradiction becomes the rule rather than the exception, such legislative pronouncements would be monstrosities. (6) Laws Requiring the Impossible. The author discusses how legal liability is, for the most part, based upon fault—intent or substandard conduct. There are exceptions, however, and occasionally we “require the impossible.” Objective standards such as “the reasonable man” cannot be met by a mental incompetent. The law of quasi-contract works compulsions on people who were in no way “at fault.” Absolute liability is imposed upon ultrahazardous activity as a cost of engaging in such business. “The morality that makes law possible” demands that an explanation of these exceptions be given the citizen, who ordinarily expects legal sanctions only when he is at fault.

Congruence and Constancy

(7) Constancy of the Law Through Time. A law which changes every day is no law at all because it does not afford a reasonable opportunity to conform conduct to its demands. (8) Congruence Between Declared Rule and the Enforcement of that Rule. Much of this last procedural requirement, it is argued, is subsumed under “Due Process.” A typical example is the right to counsel, which assures that like

cases, upon like facts, which fall under the same rule, of substantive law, will be decided alike. The whole area of statutory construction also fits under the requirement of congruence. A court is not to interpret statutes with a “crabbed literalness” (p. 82), but in light of the mischief to be remedied—what Mansfield called “the intention of the statute” (p. 87).

In a sense, this last element of legality—statutory interpretation

guided by a notion of purpose and function—can be applied to Prof. Fuller’s general definition of law. A statute is more than the literal text; it cannot be adequately understood apart from its underlying purpose. So is “law” more than a command or a hierarchy of authority; it cannot be understood apart from its function in society, and this function is conditioned upon the eight procedural requirements

(Continued on page 13)



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Prof. Fuller

(Continued from page 12)

which compose "The Internal Morality of the Law."

Prof. Fuller draws upon Wittgenstein's language-analysis, which nicely illustrates why the "internal morality" must be included in the concept of law (pp. 138-139). Wittgenstein tells of a mother who left her children with a baby-sitter and asked the sitter to teach them a game. The sitter taught them how to duel with knives. The infuriated mother could rightly argue that this was no game at all. Given the context and purpose of the request, mother and sitter should have shared the tacit assumption that "game" did not include dueling. And so it is that a

citizen would not understand as "law" a number of commands which were self-contradictory, retroactive, inconstant, etc. The "Internal Morality of the Law," one can feel with the author, is an assumption so tacit that most legal thinkers pass it over altogether. Many of these thinkers, although they may refuse to go along with the author in denying the name of "law" to enactments riddled with procedural irregularity, might at least see the usefulness of this idea as metaphor.

Holmes Criticized

It is difficult to shake off the "brooding omnipresence" of procedural regularity which Prof. Fuller forces us to focus upon. He criticizes familiar definitions of law — Holmes' idea that law is the prediction of how courts will act, Gray's notion that law is what the

highest court says it is, Dicey's argument that law is what Parliament in its absolute sovereignty ordains — as failing to take into account the internal procedures of these institutions which are necessary conditions of their commands. In other words, "... the established authority which tells us what is law is itself a product of law" (p. 148).

The Grudge Informer

Prof. Fuller's book ends, appropriately enough, with the problem of the "Grudge Informer," a fellow familiar to all first-year students at Harvard. This case, based upon the state of the law in Nazi Germany, is a fitting climax to the book, because it serves as a test of the ideas presented through the preceding pages. The reader is presented with an historical situation in which the "Internal Morality of the Law" was butchered. Each of the eight requirements was deserted with impunity. Therefore, what did the body of arbitrary Nazi enactments constitute? Was it merely "bad law" which one could disobey without a guilty conscience? Or was there no law at all as we know it?

Upon the answer to this perplexing inquiry rests the fate of the "Grudge Informer." The scholar taking sides in the trans-Atlantic jurisprudential dispute had better keep the problem posed by the "Grudge Informer" well in mind, for each view of law must cope with it.



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John Doe's Trial

(Continued from page 7)

These items were not allowed to be introduced as evidence even though the case involved the alleged knifing of a police officer. A motion to suppress was denied in the case of Doe's unsolicited question to a police officer — "What will I get for doing this?" — which prosecution introduced as an admission.

Emphasizing the educational nature of the "demonstration trial," Judge Murray frequently interrupted the proceedings to explain the bearing upon the case at bar of the recent historic decisions — *Mapp v. Ohio*, *Gideon v. Wainwright*, and *Escobedo v. Illinois*. Judge Murray noted that more than half of the criminal cases granted *certiorari* by the Supreme Court are appealed on the grounds of inadequate counsel below. He called attention to the great need for skilled criminal lawyers and further pointed out how vital it is that practicing lawyers keep up with the revolutionary changes in the field.

Three hour-long morning sessions prepared the audience for the demonstration trial. Paul T. Smith, a Boston lawyer, lectured on "What to Do Immediately," with special emphasis on the consequences of the holdings of the *Gideon* and *Escobedo* cases. Wilbur G. Hollingsworth, Esq., also of Boston, spoke on "What to Do During Hearing and Trial." He discussed inadmissible evidence and motions to suppress. Finally, the Honorable Charles A. Bellows of Chicago, drawing on forty years of experience in the successful defense of criminal cases, offered advice on "How to Win Criminal Cases."

Long, Linsky Defeated

Charles W. Long, 3L, was defeated in his bid for re-election to the Massachusetts State Legislature on Nov. 3. Long, a Republican, had held the post since last December's special election in the strongly Democratic Allston-Brighton ward of Boston.

"My campaign suffered from the Goldwater-Miller ticket," Long said, "and from the redistricting." He referred to the fact that his ward, formerly with three Representatives, elected only two this year, and that he faced two strong Democratic incumbents.

Another Republican candidate whose hopes were drowned in the Democratic tide was Martin A. Linsky, LL.B. '64; he suffered defeat in the race for state Representative from Brookline by less than 500 votes, of some 28,000 ballots cast.

Ahead of Linsky in the six-way race were Democratic incumbent Michael S. Dukakis, LL.B. '60, Republican incumbent Freyda P. Koplow, and new-comer Jack H. Backman, LL.B. '48, a Democrat. Trailing Linsky by just over 150 votes was Raymond T. McNally, whose campaign was managed by Vincent P. McCarthy, 3L.

Though not openly disavowing the national ticket, Long ran well ahead of the Republican Presidential nominee. Linsky also did not support Goldwater, and outran the Senator two-and-a-half to one.

Long plans to stay in politics if possible, but remarked that most firms expect a lawyer to devote full attention to his work. He will seek a position with a Boston firm. Linsky is looking for either a political or a legal job.

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Letters to the Editor

Involvementism

(Continued from page 16)

best they can, to take some part in grappling with the social and political problems of their time. If law students are insulated from these problems at a time when many of them are learning how to think clearly, this insulation tends to carry over into their professional lives.

You and all our other successors over the past 18 years have done a fine job with the RECORD, a job worthy of the high standards of Harvard Law School.

Congratulations and best wishes,
Sincerely,
Charles O. Porter, '44 ('47)

Judge-Made Law Hit

To the Editor:

Mr. Hampden's article in the October 8 issue entitled "Social Reform in the Law" raises fundamental issues which have been too long overlooked. I suggest these points for consideration.

Assuming that the law is to be "an instrument of social change," were not the draftsmen of the Constitution wise in placing in the Legislative Branch, which is frequently required to account to the people, the responsibility to determine the timing and extent of such changes and the manner of their implementation?

If it is deemed that the Legislative Branch will not fulfill its duty, why is the Judicial Branch

better qualified than the Executive?

If the answer is that the Federal Judicial Branch is better fitted because it is appointed and not responsible to the electorate, and because the difficulty of Constitutional amendment in practice makes its edicts irreversible, is not this philosophy basically inconsistent with the concept of government "by the people"?

Sincerely yours,
Franklin N. Cunningham, LL.B. '48

Dershowitz Defended

To the Editor:

I write to reassure Mr. Auslander of the Class of 1950, who, in a letter in the November 5 issue, expresses concern that Professor Dershowitz will not teach Harvard law students that "real law" which will enable them to pass bar examinations and be "good" lawyers.

Professor Dershowitz was my lawclerk during the 1963 Term. I found him to be well versed in the law in the very sense employed by Mr. Auslander. He also happily proved to be very knowledgeable in other areas closely related to law. Psychiatry is only one example of

his many wide ranging interests. I assume that these interests, as well as his excellent legal background, explain his appointment to the Harvard Law Faculty. Mr. Dershowitz's students will be the beneficiaries of his engaging personality and extraordinary insight into the subjects he will teach, just as I was.

Sincerely,
Arthur J. Goldberg
Associate Justice,
United States Supreme Court

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Letters to the Editor

Williston Decision Claimed Unjust

To the Editor:

As a first-year law student newly indoctrinated in the spirit, value, meaning, and utility of the Ames and Williston Competitions, I find myself at once fascinated and distraught by the recent decision of the Board that the ascertaining of facts from a banker relative to the possible application of a draft statute to be submitted in the semifinal round of the Williston Competition, is grounds for disqualification.

It seems it is a violation to get assistance as to pertinent facts, because the contestants must be working in a *vacuum*. All data as well as all background in the law must be taken from books. If it cannot be found in print somewhere, it just can't be used. That this puts both teams on an equal footing of equal ignorance is the argument.

But does it? Suppose a member of one team has an M.B.A. with a major in Money and Banking? Or suppose one contestant has three years' experience working for a bank? Does this knowledge from experience disqualify him? As a practical matter, I rather doubt this would be the approach—to delve into the background of the competitors to see if any of them is too smart to participate.

But then where is the equal footing? Gone. The competition is now a measure of one's outside knowledge and one's legal knowl-

edge and competence. This element of unreality has become an element of injustice.

I doubt the value of the element of unreality in the first place. What is to be gained from working in a vacuum? It's like two Spaniards playing Scrabble in Greek. Just a useless game.

I'm glad I found out now before wasting time being a Williston Competitor. It's all Greek to me.

John E. Haner, 1L

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Students Should Grapple With Current Problems

To the Editor:

As the originator, one of the three founders (with Paul F. Hellmuth and Charles G. Sweet), and the first president of the RECORD I would like to make a few comments on Michael Hampden's "Growth of a Newspaper" in your issue of October 22, 1964.

That "America's Oldest Law School Newspaper" declaration on your masthead makes me feel like Cotton Mather or at least as ancient as Christopher Columbus Langdell and James Barr Ames.

Just before he left the school Dean Landis approved the establishment of the RECORD but my spies brought back word from the faculty meeting that two professors opposed it. Their names: Griswold and Fuller. With the invaluable help of Reginald Heber Smith, John Maguire and others we got it started anyway. Dean Griswold, high quality man that he was and still is, soon changed his mind.

What I wrote in that first editorial which Mr. Hampden quotes was based on a belief I still hold. Law students should attempt, as

(Continued on page 15)

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