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Mrs. Luce Laments Republican Failures

By Murray S. Levin

"The Republican Party has probably had it," concluded Clare Boothe Luce in her timely and what one commentator called "lucid" exposition of "The Future of the Republican Party." Mrs. Luce was the dinner guest of the Harvard Law School Forum and addressed a responsive audience at Lowell Lecture Hall on the evening of Nov. 20.

Noting that there are "a whale of a lot more Democrats than Republicans in the country today," Mrs. Luce expects the operation of the "potent political P's" to increase the disparity in registration. The issue of *peace* and *prosperity*, of course, aids the *party in power*. The *power* and *prestige* of the *presidency* and the *power of the press* (which focuses on the *party in power*) are likely to reinforce the attention and allegiance of the nation to the governing *party*. And finally, the *persistence of polling patterns* works to the advantage of the "*in*" party.

Mrs. Luce cited Negro voting patterns in support of this last contention. First enfranchised by the party of Lincoln, the Negroes voted predominantly Republican for 72 years. Thereafter the welfarism of the New Deal gained massive Negro support for the Democratic Party, she said. In 1960 Republican

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Mrs. Luce

Nurse Freed in Car Theft

By Michael J. Ryan and Joseph M. Hassett

Miss Leona Carol Berry was found not guilty of a charge of auto theft in a jury trial before the Superior Court of the Commonwealth of Ames for the County of Gray.

Prior to the model trial held Thursday, Nov. 20, Miss Berry, a registered nurse, had been indicted for the theft of a 1963 Mercedes Benz 300-SE, the property of the wealthy Conrad Boniface Seeburger.

The defendant was arrested after a fatal auto accident in which she was involved,

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Ripon Wants Third Force

The Republican Governors' Association has been urged by the Ripon Society to release itself from "almost complete dependence" on the Republican National Committee and become a vital, third force in the rebuilding of the Republican Party. In a 20-page study of the history and actions of the Association, the group also charged that GOP vice-presidential candidate William Miller and the National Com-

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The Williston Disqualification

Because of the extent of controversy caused by the recent decision of the Williston Committee of the Board of Student Advisers to disqualify one of the teams for an infraction of a competition rule, the RECORD feels that it has an obligation to comment. It does so humbly, realizing that it has the advantage of hindsight.

Three explanations for punishing those who disobey, within a given system of rules, are deterrence, reformation and retribution. Each of these seems, to some extent, to have entered into the Committee's decision to disqualify the team for an unwitting violation of the Competition rule forbidding acceptance of "suggestions or assistance from any person not a member of the same team, in the preparation of the solution."

Generally speaking, the most serious remedies are most useful just by reason that they exist, that we know they are available to be applied in extreme cases. In Massachusetts the death penalty exists by statute, but for the past 14 years there have been no executions for any crime in this state. Disqualification from the Williston Competition at the Harvard Law School is likewise most useful just because it is *possible*. It becomes destructive of the spirit of the competition and of student morale when it is used in cases of honest mistake, and when the inequity resulting from the infraction can be reasonably corrected.

If Williston Competitors are unique among human beings, it is not by reason of an immunity to error—even to negligent error—as this incident has demonstrated. But it should be assumed that they are intelligent, earnest people, appreciative of the ethical and academic standards the adherence to which the Competition presupposes. As analogous assumptions cannot always be made for society at large, the case is thus even stronger for regarding the ultimate form of discipline only as the extreme exception.

Although the Committee should be commended for its efforts to find a solution before the final hearing, it is unfortunate that it did not forego its power to sit as judge, and try to mediate further, seeking at that time a viable compromise—one satisfactory to both sides. If there is no machinery for such mediation under the present rules, the Board should consider devising such in its planned revisions; for it was seen that only the harshest of solutions flowed from the formal adversary proceedings.

The unsatisfactory solution to this case occurred, partially, because of the ambiguity of the rules in point. It was unclear both whether an offense had been committed and whether a less drastic remedy could be implemented. In redrafting the Williston rules, these should command particularly close scrutiny.

The Committee and the two teams are presently working together to reach a solution acceptable to all in this particular case. We are hopeful that this solution will soon be found, and that the unfortunate occurrence will serve as no more than a guidepost to future rule-making and decision-making.

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TONGUE 'N CHEEK

By Fenno

Returning from Thanksgiving non-vacation, I found myself sitting next to a fellow who fastened his seatbelt over an even larger array of books than I did.

"What's all that?" I asked casually opening Volume 75 of the Harvard Law Review.

"Anatomy, Infectious Diseases and one on Psychiatry and Medicine," he said, rubbing his eyes dramatically.

"I take it you are a medical student," I said perceptively.

"That is very true," he said, toying with the stethoscope he wore jauntily about the neck.

"It's a tough life, this professional training," I said, drawing forth my little brown bag full of abstract paper. "How about these books law students have to cart around?"

"At least you don't have to carry books and a black bag. That thing weighs a ton," he said.

"Yes, but how about our long hours in the library and all those courses?"

"You've got us beat there. We've only got six courses, four operations and three clinics a week."

"We also have to prepare arguments for moot court."

"Well, we've got our mute corpse," he said, cutting in, "one med student to a side."

"I'll be glad when this long pull is over and I finally get into practice," I said, showing him my resume.

"Me too," he said wistfully, "only eight more years."

"It's not so bad," I said, making one more attempt to score. "How about all those pretty nurses who surround you?"

"They are nice," he said, "but I'm engaged to a law student."

"There's one thing you've got to admit," I said, kicking my attache case, "those architects have it pretty easy."

When the plane landed I could swear the runway on his side was greener.

UN Commission Scientifically Codifies Law

By Michael Lowenberg

The work of the International Law Commission, a nonpolitical agency of the United Nations, and its relationship to the political pressures of international diplomacy, provided the subject of a speech delivered by Dr. Shabtai Rosenne before the International Law Club on Thursday, Nov. 19.

Dr. Rosenne is Legal Adviser to the Israeli Government and is a member of the International Law Commission.

The current tendency in the United States to codify and "restate" the law has its parallel on the international level in a not-too-publicized aspect of UN activity — the work of the International Law Commission. The Commission is composed of 25 "persons of recognized competence" in the area of international law, and its function is the "scientific" codification of the law.

Dr. Rosenne emphasized that though members are nominated and elected by the General Assembly, they sit in a personal capacity and are not intended to represent national political points of view. Experience with the efforts of the League of Nations, however, indicated that nothing significant could be accomplished if the legal work were too remote from the oftentimes harsh realities of international politics. Consequently, the

Ames Final Round Features Keeton Equity, Kaplan Clubs

Kaplan and Keeton Equity clubs will meet in the final argument of the Ames Competition next semester, having defeated Root and Jaffe clubs, respectively, in semifinal arguments during the past two weeks.

Oralists for Kaplan club, representing plaintiffs in a suit against a community antenna television system (CATV), were Edgar Howbert and A. James Robertson. On the brief were Richard Campbell, Harry Miller, Philip Reynolds, Reade Ryan, Peter Tredick and W. Harvey Webster III.

The case has excited attention in the legal and business communities. Requests for copies of the briefs have come to the Ames office from the three major network broad-

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present Commission seeks to maintain a "delicate balance" between "scientific" legal objectivity and a realistic appreciation of political demands.

Dr. Rosenne pointed out that, as national governments have become increasingly aware of the importance of the Commission's work, the character of the membership has changed. Whereas most of the original members in 1948 were lawyers and professors, today the work of the Commission is almost entirely carried on by professional diplomats who maintain close ties with their delegations and governments. "Nevertheless," he continued, "the experimental quality and nonrepresentative character continue to predominate."

The Commission's codification of the "Law

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Williston Reinstatement Weighed

By Myer J. Sankary

A petition to reinstate the disqualified third-year Williston team of Bruce A. McMillen, Thomas S. Mansell, Sheldon H. Dahmod and Marvin H. Pilchen (See RECORD, Nov. 12) is now being considered by the Williston Committee of the Board of Student Advisers, according to J. Eugene Marans, the Board Chairman. A decision is expected this week, he said.

Shortly after the Committee's original decision, the opposing team of Ronald H. Alenstein, Clarence A. Jacobson, Richard M. Sharfman, and Caroline M. Simon initiated efforts to seek alternative remedies for violation of Rule 8(d). The team submitted its petition to the Committee on Nov. 18, suggesting various proposals.

At publication time of this issue of the RECORD, no further comments on the proposals were available.

In an interview with the RECORD, Marans indicated that the Board is making special efforts this year to improve the Williston Competition. "Many fine new ideas have been submitted to the Board by Williston participants in recent weeks," Marans said. "The more extensive our re-evaluation of Williston, the more valuable we recognize the program has become."

Mrs. Luce

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candidate Nixon carried less than 30% of the Negro vote; President Kennedy's subsequent espousal of the civil rights revolution and tragic assassination provided an additional emotional stimulus for bloc Negro Democratic voting. Mrs. Luce believes "the Negroes have booby-trapped themselves." Their vote is "in the bag" and no politician will exert himself in their cause.

Believing that "the best way to get the future into perspective is to look to the past," Mrs. Luce guided her audience through a "thumbnail sketch" of the history of American elections and parties. The former Congresswoman-diplomat drew the following conclusions from her historical *tour de force*: (1) Issues give rise to parties, but "a monopoly party can capture and monopolize all the best issues." (2) Splits in major parties can result only in defeat. (3) The public will not support "me-too" parties; they are destined to disappear.

"What does this mean for the GOP?" asked Mrs. Luce. "Unless the Democrats give the Republicans a reprieve" through war or depression, the Republican Party seems permanently weakened and may disappear altogether. Her exposition of the P's and Q's of political power demonstrates the odds the Republicans must overcome to regain a majority position in the country. The added burdens of a deep liberal-conservative split and the "me-too" image of the Party when headed by candidates such as Richard Nixon may make the odds insurmountable.

The prospect of one-party rule does not disturb Mrs. Luce greatly, for "it has not historically led to dictatorship." Indeed, the majority party often adopts the policies of the groups which oppose it. Thus Thomas Jefferson adopted Federalist notions about the power of the federal government — and so purchased the Louisiana Territory; thus Lyndon Johnson has adopted conservative notions about economy in government — and so closed unneeded military bases.

Mrs. Luce was often entertaining during the evening. She reminded her audience that "I campaigned for FDR when his program was well to the right of Goldwater's," called herself the "kitchen-maid of FDR's kitchen cabinet," and reminisced about being intro-

duced as the authoress of *Little Women*. Mrs. Luce was encouraged to learn of the relatively large number of women law students today and advised the girls "to take up the law now and be prepared to lay it down to the men later."

Ripon Study

(Continued from page 1)

mittee he formerly headed has worked to restrict the influence of the governors in party councils.

The Society, a Republican research and policy group centered in Cambridge with membership in over 30 states, prepared the report and accompanying recommendations for the meeting of Republican governors in Denver, Colo., Dec. 4-5. Ripon representatives will attend the governors' meeting, among them MIT Professor John S. Saloma, Society President, and J. Eugene Marans, 3L, a director of the Society.

"We believe that a strong Republican Governors' Association with an increased voice in the leadership of the national party is essential to the recovery and health of the Republican Party," the report stated. "We urge that all necessary steps toward that end be taken now."

Ironically, it was in Denver just 15 months ago that the governors' dependence on the National Committee was cemented, according to the Ripon analysis. It was then that the governors adopted their Articles of Association, drafted for them by the National Committee staff. The Ripon document strongly criticized the provision that the treasurer of the National Committee serve as treasurer for the new organization, suggesting that this arrangement gave "effective financial control" of the Association to the pro-Goldwater forces.

The study also condemned the requirement that the governors operate through the National Chairman in their dealings with congressional leaders. To such organizational weaknesses, the report attributed the fact that the Association was "paralyzed" during the very months when its leadership was so desperately needed.

"We trust that the urgency of the Republican Party's current political situation recommends prompt action to the governors," the report concluded. "The decision is now with them."

Model Defendant Found Not Guilty

(Continued from page 1)

while driving the Mercedes from the Seeburgers' Langdell residence to the home of her sister in neighboring Pound. Miss Berry alleged that the late Mr. Seeburger had given her the car as an engagement present during his apparent convalescence from bone surgery at Thayer Memorial Hospital.

The trial climaxed three weeks of preparation by the first-year Group Work sections. During that time the students considered many of the questions which might arise in preparation for the trial. Pre-trial maneuvering included motions by the defense to discover the contents of notes taken by arresting officer Willard Kraft and to suppress a love letter from Miss Berry to Cpl. Frank Kelley. The former was denied; the latter granted.

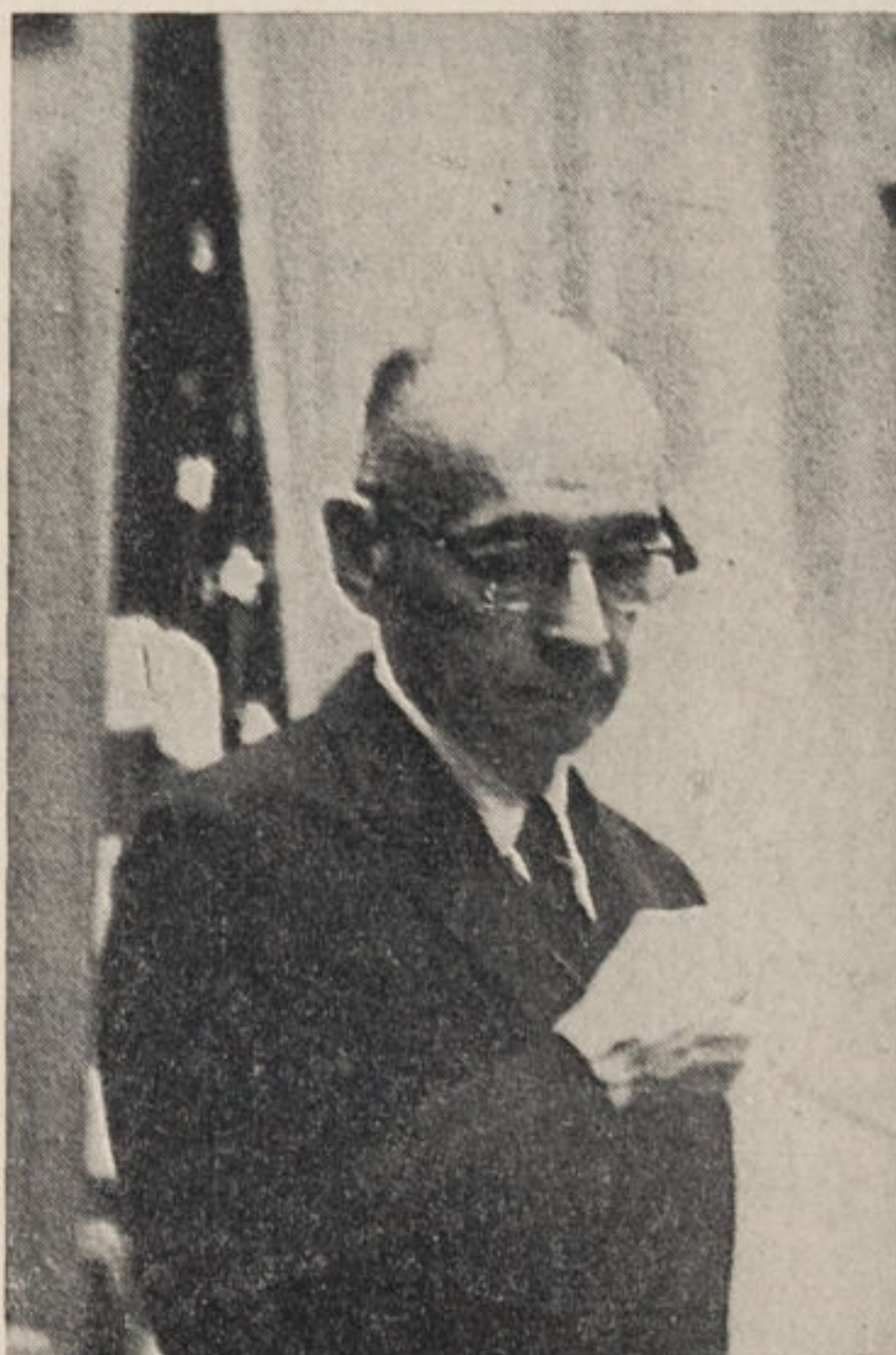
At the trial before Justice Reuben L. Lurie, LL.B. '26, of the Massachusetts Superior Court in Boston, Mr. James D. St. Clair, counsel for the defense, obtained an instruction from the court directing Professor Arthur Sutherland, prosecutor in the case, to caution the prosecution's witnesses to refrain from referring to the fatality involved in the accident.



The Defendant

The witnesses were greeted by mixed reactions from the enthusiastic courtroom audience. Miss Roberta Seeburger, sister of the deceased, was given a rousing ovation for her one-hour-and-fifteen-minutes on the stand during which she faultlessly parried Mr. St. Clair's questions, designed to establish an intimate relationship between her brother and Miss Berry. Miss Seeburger was portrayed by Miss Mary Conlan, administrative assistant to Dean Griswold.

Officer Willard Kraft (Visiting Professor Yale Kamisar) evoked numerous bursts of laughter from the audience with his attempts to



The Prosecutor

confound the prosecution. The audience appeared to enjoy the plight of the lawyer-witness attempting to argue his case from the stand.

Miss Berry (Mrs. Elizabeth Levey, a graduate student at MIT) demonstrated that honesty is the best policy by frankly admitting that she was engaged to both Mr. Seeburger and Cpl. Kelley simultaneously. She expressed her reluctance to write a "Dear John" letter to Cpl. Kelley, and after the death of Seeburger, a desire to retain Kelley now that she was



The Witness

alone. Apparently the jury (two men and twelve women, most of them in their twenties) sympathized with her plight.

The jury's deliberation was taped and replayed at a post-mortem session on Monday Nov. 23, in the Ames Courtroom. Professor Sutherland and Mr. St. Clair, a Law School lecturer on Trial Practice and a Boston attorney, presided. "It furnished an interesting lesson in jury psychology. At first the jury was evenly divided six-to-six (two of the jurors were alternates). Then the count was eight-to-four for conviction. This shifted radically to ten-to-two for acquittal. It looked as if it might be a hung jury, or at best a long siege, but as midnight approached, the two holdouts capitulated.

Ordinarily the Model Trial is followed by a Model Appeal. Teaching fellow David Robinson, however, explained that there will be none this year, since the state is unable to appeal an acquittal in a criminal case.

Rackets Restrung

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Touch Football Season Ending

The 1964 intramural touch football league, sponsored by the Dormitory Council, is drawing to a close with only two crucial games remaining on the season's card.

In the A-league, last year's champs, the Apostles, with a record of 3-0-0, face the determined Animals' Survivors (3-0-1) led by ace passer Ed Collins, 2L, and receivers Bob Franklin, 2L, and John Donovan, 2L. The Apostles plan to rely on regulars Stu Ludlum, 3L, Jim Stack, 3L, and Mike Bortman, 3L, to fashion a repeat victory.

The B-league has already been wrapped up by the Germain A.C., managed by Ed Germain, 2L. Victors in the C-league last year, the Germain team steamrolled to five straight victories, yielding a scant two touchdowns to their opponents. Their varied attack featured quarterback Ron Sheldon, 1L, end Jim Friedlander, 2L, and the cousin combination of Dave and Andy Bogen, 3L and 2L, respectively.

A deadlock remains in the C-league with five games played. Tied with identical records of 4-0-1 are the Ashe A.C., managed by Larry Ashe, 1L, and the Desparados, led by Lem Hewes, 3L. Each team has one game remaining; the Ashe team will face the always-tough Ptacek squad and the Desparados will face off against the Voluntary Defenders.

Although last year a league-winner playoff was held, the rapid approach of winter and the Christmas vacation makes a repeat of this unlikely, according to Bruce L. McDonald, 2L, of the Dormitory Council Athletic Committee.

Basketball Squads Will Form

Law students interested in spending a few winter hours working off their frustrations with a basketball are urged to begin forming teams for the 1964-65 Dormitory Council Intramural League.

The Council's Athletic Committee expects soon to be soliciting applications.

Three leagues are planned, calibrated according to degrees of skill. Games will be played weeknights in Hemenway Gymnasium.

UN Law Commission

(Continued from page 3)

of the Sea" has so far stimulated the greatest political interest. Dr. Rosenne suspects that an even greater response will be felt when the Commission presents its work on the "Law of Treaties."

A recurrent problem is the minimal interest and cooperation shown by national governments in the less controversial work of the Commission. Many governments fail to exercise their right to comment on Commission drafts; on one occasion France flatly refused to give requested information, complaining that it would involve "several tons of its archives."

Dr. Rosenne said that the Commission was aware, however, "that the codification of the law is related to the international situation; governments are not going to miss any opportunity to advance their own interests. They don't really want to crystallize their attitudes until they have to."

Commission drafts, said Dr. Rosenne, are often not merely codifications of the law, but reflect trends and "progressive developments." The annual General Assembly debate on the Commission report provides necessary "regular injections of political realism" and helps to assure that the codifications accord with world realities.

Dr. Rosenne contended that the Commission is an effective organ for codification of "classical international law," but not for subjects heavy with political content. The law of outer space was mentioned as a subject "too highly charged" for objective academic appraisal.

Dr. Rosenne admitted that it is "far too early for our studies to have found their way into various government archives." But the work on the law of the sea "put codification on the political map," and brought the Commission to the attention of high political officials.

The goals of the Commission, he said, were "to produce a text that will represent the highest degree of scientific accuracy and have a good chance of acceptance."

Whether the Commission is succeeding in this "delicate balance" of not-always-consistent goals, he said, "is not for me, but for others, to say."

Future of Freedom Party Charted

By Frank R. Parker

Professor James W. Silver of the University of Mississippi, in his book *Mississippi: The Closed Society*, calls Mr. Aaron Henry one of the "truly remarkable native Mississippians" he has known. No one who heard Mr. Henry speak, and who joined in the standing ovation at a Law-Graduate Democratic Club meeting recently, would dispute that he is a truly remarkable man.

In his introduction, by Club president Edward W. Stadum, 3L, Mr. Henry was described as, first, a druggist from Clarksdale, Miss., second, the state chairman of the NAACP, third, a member of the Executive Board of the Freedom Democratic Party of the state, and fourth, as the FDP's present candidate for U.S. Senator. Further, he had just flown to Boston after having helped to integrate the restaurants of McComb, Miss.

The main topic of the address, which incorporated vignettes from the poetry of Langston Hughes as well as Mississippi folk fables, was the activities of the Mississippi Freedom Democratic Party. The Freedom Party, claimed Mr. Henry, is the only authentic Democratic Party in the state. Not only did the regular Democratic Party not support the campaign of President Johnson, the Party's presidential candidate, but it also does not represent the interests of the whole population of the state. Although 32 percent of Mississippi's families earn less than \$3000, and in the delta, 51 percent earn less than \$1000, Mississippi's regular Democratic delegation to Congress voted against the recent anti-poverty bill. Also, the Negro leader asserted, the regular congressional delegation has voted against federal aid to education and other welfare measures that Mississippians, some of the poorest people in the country, need most.

Mr. Henry revealed the three-pronged strategy the FDP has conceived to attack the regular Democratic delegation to Congress. Initially, the FDP plans to challenge the white Mississippians' right to be seated in the House of Representatives. This they hope will involve enforcing the sanction provided by section two of the Fourteenth Amendment allowing reduction of representation for voter disenfranchisement.

Secondly, the Freedom Party will attempt to have their congressional candidates, selected at the mock election this summer, seated in place of the regular Democrats. Mr. Henry's assessment was, "We don't have high hopes for this method, but we're willing to try."

The challenge most likely to succeed, according to the speaker, will be to the seniority of the members of the House delegation. This action, which would be tantamount to expulsion from the Party, would be based upon the failure of Mississippi congressional candidates to support the national Party ticket and, in some cases, the active support of the Republican presidential candidate.

Asked during the question period if the FDP wanted to assume control of state politics, Mr. Henry replied that the Freedom Party "doesn't want to exchange white supremacy for black supremacy" but rather to elect the "best man" to each office.

In his remarks, the FDP leader emphasized the importance of enfranchising Mississippi Negroes. Of the 69,000 who applied for the ballot in Mississippi in the past few months, only 6,000 have gotten it. The federal government, and particularly the Department of Justice, Mr. Henry charged, have been "dragging their feet" in their attempts to have invalidated the literacy test and the other bars to Negro enfranchisement in the state.

But once voting-age Negroes in Mississippi
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Law Teachers Are Sought

"This is a good year for teacher-placement," Assistant Dean William L. Bruce reported recently.

Deans representing law schools in all parts of the country have been coming to Harvard to interview prospective law teachers. The hiring process culminates at the Association of American Law Schools meeting in Chicago during Christmas week, Dean Bruce said.

Presently seeking teaching jobs are four teaching fellows, one teaching assistant, five graduate students who are candidates for the LL.M. degree, and four third-year members of the *Law Review*.

Dormitory Council Maps Fun Drive

An all-school mixer will be held tomorrow evening from 8 to 12 p.m. in Harkness Commons, it was announced by Social Chairman Maynard Rabinowitz, 2L, at the Dormitory Council's Nov. 18 meeting.

Rabinowitz reported that his committee is planning small mixers with Radcliffe and Simmons before the Christmas holidays. He noted that invitations are being handled by dormitory representatives on a rotating basis because only a limited number of persons may attend each such mixer. Rabinowitz termed the small mixer held with Wellesley on Nov. 13, which about 60 persons attended, "successful."

Rabinowitz also suggested that the Council sponsor a "theater party" since a 20 percent discount on a block of 100 tickets could be obtained.

The cost of the recent Career Conference was approximately \$400, Conference Chairman Frank E. Morris, 2L, reported. Most of the Council's members felt that the conference had been a success. There was discussion about future conferences, and a number of the members expressed the feeling that the administration should share the expense and help with the clerical work involved in running the event. Further discussion on this issue was postponed until the next Council meeting.

The Athletic Committee is directing its efforts to negotiating with the University Athletic Department for longer hours and lower fees at the Hemenway Gymnasium, reported Chairman Robert A. Shelton, 2L. The Committee noted that the intramural football program, which it supervised, was due to finish by Nov. 28.

The fact that money was being lost in the soft-drink vending machines had previously been brought to the attention of Andrew R. Willing, 3L, Building and Grounds Chairman, and he took the opportunity at the meeting to announce that David T. M. Murphy, 2L, (Story 310) was supplied with roles of dimes to compensate those with just claims.

Willing also explained that it was University policy to retire damaged cigarette machines, and consequently a machine recently demolished will not be replaced.

The Building and Grounds Committee is also investigating the possibility of installing a dry-cleaning machine in the basement of Richards Hall, and opening a gate in the fence at the north end of Hastings Hall, Willing said.

The format for the Law School Show has been set, and the casting and music are now being organized, it was reported by David L. Klott, 2L, of the Theater Committee.

Anatomy of a Trial-by-Press

F. Lee Bailey, the Boston attorney who represented Dr. Sam Sheppard in the sensational trial for the murder of his wife, will speak Monday, Dec. 7, at 4 p.m. in the Meeting Room of Harkness Commons.

Mr. Bailey will display enlargements of newspaper headlines and editorials as examples of the power of the press to cloud the issues and convict one accused of a crime before trial.

The speech is being sponsored by the Student Bar Association.

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Afterthoughts

The Case Method and Inductive Reasoning

By Michael Hampden

"But 'glory' doesn't mean 'a nice knock-down argument,'" Alice objected.

"When I use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean—neither more nor less."

The inventor of the case system of legal study was Christopher Columbus Langdell, the first Dean of the Harvard Law School. He himself was scholarly, legalistic, conservative; his followers made his invention revolutionary. Langdell's first casebook, *Cases on Contracts*, appeared in 1870. He conceived of his method merely as the most efficient way to accomplish the purposes implicit in the method used by his renowned predecessors in the first half-century of the School's existence, the method of lecture and treatise-reading designed to set out for students the "principles of the law."

Langdell added the dimension of historical perspective to these principles. He left unquestioned the proposition that they were in fact the proper object of the law student's attention. But with the growing recognition of Harvard as a national law school with a duty to prepare its students for practice in legal jurisdictions as varied as they were numerous, Langdell's system was found to be an apt vehicle for revolution, which began in his lifetime with the publication of James Barr Ames' first casebook. By the end of the century, cases were no longer selected and arranged by the authors to illustrate the history of legal principles, but were intended, either by virtue of their good or poor logical development, their unusual fact situations, or

their success or failure in accounting for relevant considerations, to stand as individual examples of legal reasoning. The emphasis was no longer on the objects of thought, but on the process of thought itself.

In his introduction to *Cases on Contracts*, Langdell characterized law as a "science." What he meant, judging from his announced purpose in bringing out the casebook, was that the study of law should be more systematic than what the *Centennial History of the Harvard Law School* calls "the rambling or headlong perusal of his predecessors." But the infusion of order into a study does not alone make it a science. The analogy was not complete until the case methods of Ames, and later of Williston and Beale, were accepted as models both for their contemporaries and their successors. Their contribution was to bring to the study of law the *inductive method*, long recognized as the basic technique of the lawyer himself.

Induction is proceeding in thought from particulars to the general. Before the invention of the case method, generalities were presented to the student full-blown from a treatise. The case system demands more; the student must glean from the accumulation of decisions in particular cases, what legal generalities can be made. The lawyer does the same, then applies his generality *deductively* to his case in point. The classroom analogy to this second stage is the professors' putting of hypotheticals to test the principles gathered inductively from the cases.

In the natural sciences, a dilemma inheres in the inductive method. That is, to draw a conclusion about all particulars of a given class from observation of only part of the total number in

the class is a *non sequitur*. On the other hand, a generalization only about those particulars observed is merely a tautology, with no predictive value.

One way to dispose of the dilemma is to *define* the class being described as that which contains the characteristics attributed to it in the generalization. Thus for the generalization "for every action there is an equal and opposite reaction," the scientist who produces an action with an unequal and oblique reaction might say, "This is just plain not an 'action' as I have defined it." He escapes the dilemma, but being impaled on one of its horns (tautology), he is in an uncomfortable position to effect the predictive and applicative goals of science. Thus ordinarily he will choose rather to reformulate his generalization to take this observed particular into account.

In the law, however, the resolution of the dilemma by definition is more acceptable. Legal generalizations are constantly being changed by redefining terms within them to accommodate an "exception" to the rule. A Brooklyn federal court last month prohibited a newsman from reporting a lawyer's statement made in open court but out of the jury's hearing, in order to obviate the possibility of a juror's reading the statement in the newspapers, necessitating a retrial. The judge's order implicitly defined freedom of the press as permissive of such a ban—it did not formulate a new legal category altogether to replace "freedom of the press." This is the normal pattern in the law, and gives it a link to the past. "Exceptions" to rules of law are not newly observed phenomena, as in the physical sciences, but newly felt or finally recognized social and political

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Aaron Henry

(Continued from page 7)

get the vote, Mr. Henry quipped, "we can get Senator Eastland to behave like Senator Javits."

Mr. Henry also accused the federal government of being "lax in its duty" of protecting those who wanted to register to vote. Too often, the federal government has been an "ambulance service" rather than a dispensary of "preventive medicine."

Asked about the future plans of the FDP regarding the national conventions, Mr. Henry acknowledged that they did plan to attend the 1968 Democratic National Convention. "We won't let them alone until they let us in," he said.

The courage of this militant crusader was shown in his response to questions about his

personal safety. Asked whether he feared for his life, Mr. Henry replied that he did have guards at his home (which has been bombed several times), but that he was not in the habit of looking behind every tree. After all, President Kennedy had thousands of men protecting him. "If they want to get you," it was quiet and matter-of-fact, "they will."

Don't Miss the Ball

The annual Barristers' Ball of the Harvard Law Wives will be thrown this Saturday from 8 to midnight in Harkness Commons, event chairman Mrs. James H. Ryan announced today.

Refreshments and set-ups will be served. Admission is \$2 per couple, married or unmarried. The Dick Barrett Quartet will blow cool for the "Winter" theme.

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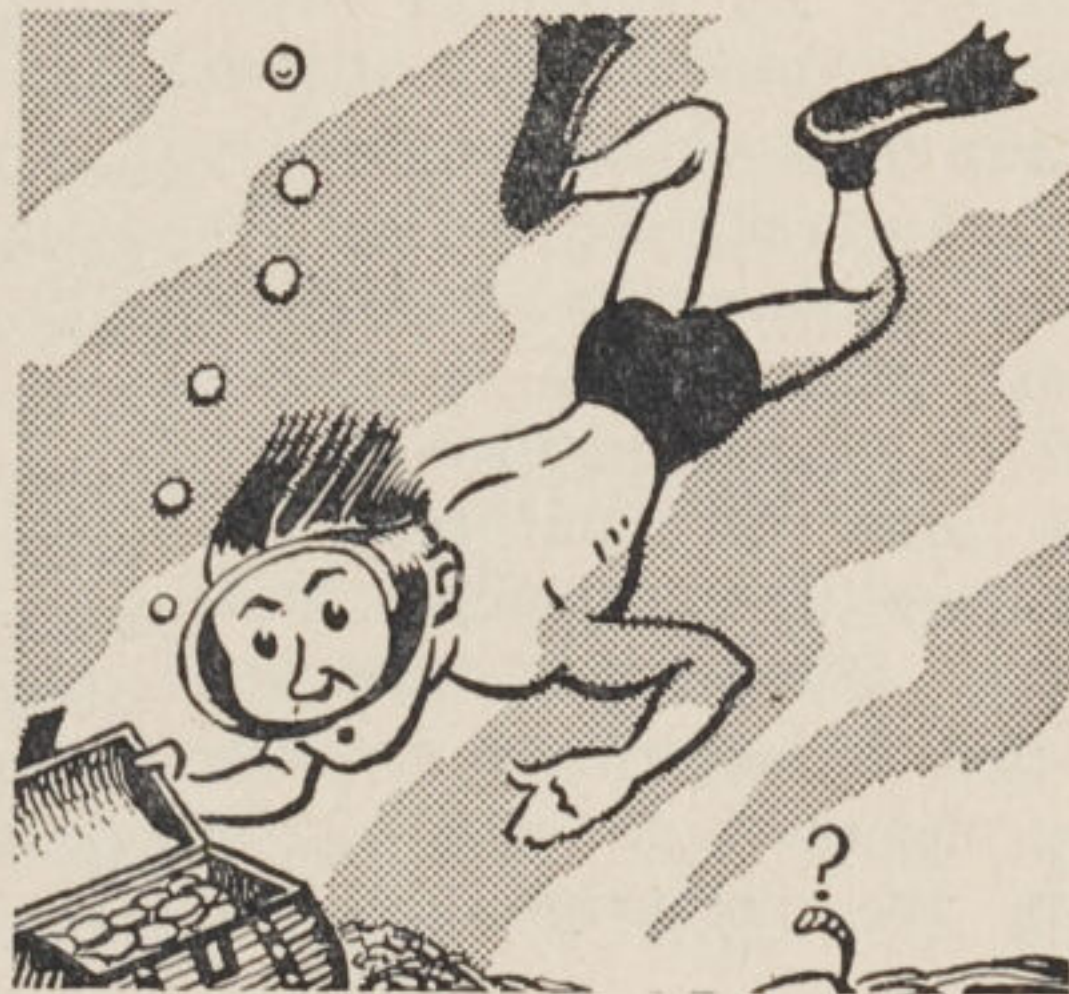
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Recent Book

A Search for Kin of a Celebrated Recluse

The Recluse of Herald Square. By Joseph A. Cox. New York: Mac-Millan Co., 1964. Pp. 246.

By Stephen L. Skillman

New York Surrogate Court Judge Joseph A. Cox has written an account of his five-year search for the true identity of Ida E. Wood, New York's celebrated belle of the 1860's and '70's. The objective of the search was to ascertain the next of kin, who would be entitled to the Wood fortune.

It was 1931 when Ida was discovered living alone in a run-down, dingy hotel, where she had lived as a recluse for the past quarter-century. The newspapers found out about this eccentric old woman who had been the queen of New York society 70 years before, and Ida's entire story was soon familiar to all who glanced at the front page of any New York newspaper. As

the wife of Benjamin Wood, former state senator, United States congressman, and millionaire newspaper owner, she had been a leader of New York society. She had danced with the Prince of Wales, met Abraham Lincoln, and later, after her husband's death, run his newspaper. Then, shortly before the panic of 1907, she disappeared.

Back Into Contact

For a quarter of a century the world was unaware of the existence of Ida E. Wood. But, brought back into contact with the world by her sister's death, Ida became a center of public attention for the second time in her life. When those interested in the welfare of the almost senile Ida induced her to move out of her dingy hotel room, a fortune totaling more than one million dollars was discovered there in the debris. Ida E. Wood's second experience at being a public figure ended in 1932 with her death. At this point the "mystery" begins.

Although it was clear that Ida had no surviving descendants, many would-be next-of-kin disputed over who Ida was, and where she had come from before her dramatic life in New York. It was here that the author, Judge Joseph A. Cox, then public administrator's attorney, entered the scene. He was placed in charge of the investigations to ascertain what people would take

Ida's fortune.

The search for Ida's true identity lasted five years before the investigators were satisfied they had found the right answer. In the course of this search, they were led through Louisiana, Massachusetts, England and Dublin, Ireland. More than 1000 false claimants, whose hopes had been spawned by the romantic past Ida had constructed for herself, had their hopes put to rest by the final deciphering of the few clues that had been left as to who she really was.

Painstaking Search

Without a doubt, the reader is made to appreciate, as he struggles through the details of some of the chapters, how painstaking a search this must have been. What was originally a newspaper human-interest story is undoubtedly dignified by this extensive examination of the wealth of data and inferences which were necessary in order to finally ascertain Ida's identity. The writer fails, however, in his effort to make this search come alive for the reader. The account of the investigators' reasoning is dry enough to create the suspicion that it is only a dressed-up version of the public administrator's file on the case. For those who enjoy human-interest stories, however, the first part of the book, which describes the life of Ida E. Wood, will be interesting reading.

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Afterthoughts

(Continued from page 9)

needs. An important way these exceptions are absorbed into the law is by definition.

The genius of the case method as it exists today is that it recognizes that the process of induction is fundamental to the lawyer's function as an advocate. The lawyer and the student are expected to select from the cases those decisions which lead persuasively to the *definitions* which when applied will give the desired outcome in the particular case. It is the job of "putting the individual facts or groups of facts into those legal abstract categories which are the terms of legal rules: 'motor-car' or 'vehicle'; 'road' or 'public highway'—and the rest. What shall we do with the rest." (K. N. Llewellyn, *The Bramble Bush*)

Thus the case method teaches what Llewellyn calls "resilience in choosing major premises." The practiced lawyer can avoid presenting the judge with the necessity of redefinition, in order to bring his decision within the rule, by choosing the "major premises"—past decisions in analogous cases—which lead most persuasively to the desired result.

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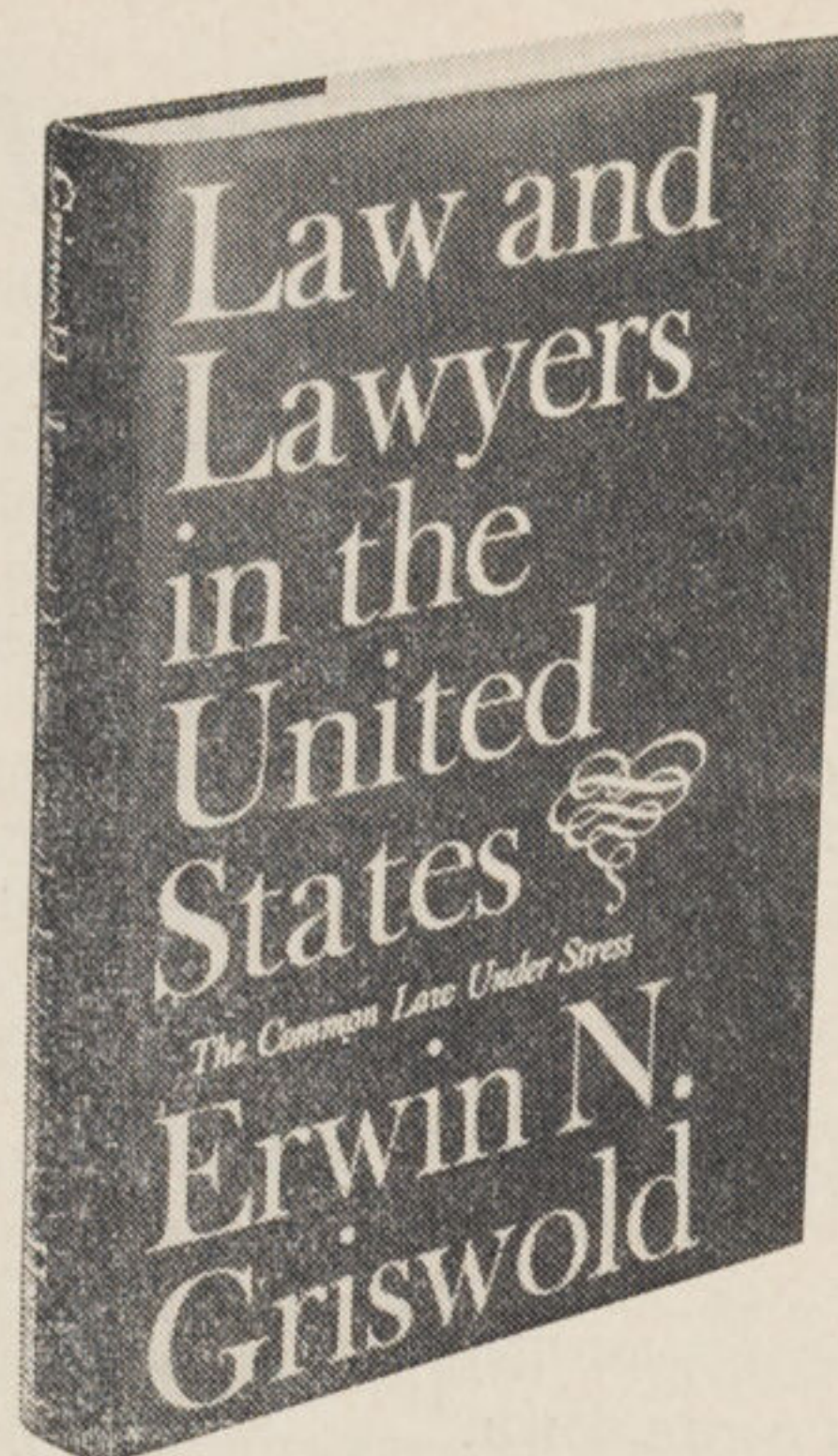
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Law and Lawyers in the United States

The Common Law Under Stress

By ERWIN N. GRISWOLD

In this succinct and eloquent book—of particular interest to the layman as well as the lawyer—the distinguished Dean of the Harvard Law School presents a history of the development of American law, of law practice, and of the education of lawyers in this country. The author emphasizes the complexity of American law, and, with vivid examples, writes revealingly about the interaction and conflict between federal and state law. Dean Griswold presents a timely and invaluable account of the legal aspects of Civil Rights from pre-Civil War days to the present, provides an historical description of the pertinent legislation, traces the changing attitude of the courts, details the problems of enforcement, and estimates the prospects for progress in the fields of voting, education, employment, housing, and public accommodations.

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**THE
COOP**

Ames Finals

(Continued from page 3)

casting companies and many attorneys throughout the nation.

Oralists for Keeton Equity, representing the Commonwealth in attempting to uphold the constitutionality of a "stop and frisk" statute, were Steven R. Nelson and Norman D. Slonaker. Counsel on the brief were Anderson G. Bartlett III, Stephanie K. Bartlett, Cary P. Clark and Robert G. Tunnell Jr.

Arguing for Jaffe were Gary S. Brooks and Paul W. Putney, with John M. Dixon, John E. Matson, David F. Polatsek, Hayes C. Stover, Edward I. Tishelman and Ronald M. Weiskopf on the brief.

Martin I. Kaminsky and Ronald Warnicke were oralists for Root, with Richard Haddad, George H. Hettrick, Jon J. Leibowitz, Irving C. Marcus, Richard D. Rosen and Jonathan Seagle on the brief.

Ironically, the Kaplan-Keeton Equity argu-

ment in the finals will be, in a sense, a rematch. Two members of Kaplan — Robertson and Webster — placed their club in the quarter-finals by defeating two members of Keeton Equity — Clark and Nelson — in the qualifying arguments last fall.

ABA to Grant Student Loans

The Managing Committee of the ABA Fund for Legal Education allocated \$2,000,000 in student loan funds to 89 law schools at a meeting in Chicago on Oct. 24-25.

Louis A. Toepfer, Vice Dean of the Law School, is a member of the Committee.

The loans, ranging from \$400 to \$1500 per year, will be available to second- and third-year students. Repayment of the loans, bearing an overall rate of about 6 percent, need not begin until a student completes his law course.

The Committee hopes to extend the program to the 47 remaining ABA-approved law schools who have not so far sought participation.

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Letters to the Editor

Counsel Provided For Indigent's Appeal

To the Editor:

I note that in the RECORD of October 1 you commented editori-

ally — based on the Dean's Report — on how the law schools can provide aid "until the time arrives when the public demands and makes provision for post-convic-

tion representation."

In *Desmond v. United States*, wherein I was appointed by the Court of Appeals to represent the indigent defendant on appeal from denial of his post-conviction motion under § 2255, the First Circuit established at least a qualified right to counsel in § 2255 proceedings. A copy of the Court of Appeals' Opinion is enclosed. After reversal and remand to the District Court, Chief Judge Sweeney appointed me to represent the indigent in the latter Court. We have had a trial of certain questions of fact, wherein the indigent and another witness who was in federal custody (brought here by writs of habeas corpus ad testificandum), among others, testified.

The *Desmond* case has established at least the fact that representation by appointed counsel is available on a post-conviction motion in certain circumstances in the district of Massachusetts.

Very truly yours,

Lloyd M. Starrett

[Editor's note: In the *Desmond* case, 333 F.2d 378, opinion by Woodbury, C. J., the court held that "a federal prisoner who has been effectively deprived of his right to appeal by decision practiced upon him by his counsel is entitled to present by motion under s. 2255 errors ordinarily cognizable only on appeal."

Noting that the "path to appellate relief by this route is steep and narrow," the court said: 1) applications for such relief "must be made promptly"; 2) it "must appear that an appeal would not have been futile"; and 3) the facts asserted by the petitioner must be proved, here meaning he "must show to the satisfaction of the trial court that he did not voluntarily, knowingly and intelligently forego his right to appeal but that he lost his right by deception practiced upon him by his counsel."]



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Letters to the Editor

'Good Faith'

(Continued from page 16)

to all contesting teams, even though the Committee was not the original source of the facts, but learned them from contesting teams. To read Rule 8(d) technically would forbid a team from asking a librarian where a certain key book is located, as this would constitute "assistance from any person not a member of the same team, in the preparation of the solution." It is not apparent, either from the rule itself, or from previous practice under the rule, that it was intended to bar anything other than third-party assistance in drafting and creative conceptualization of the solution.

The second fact constituting evidence of the actual state of mind of the disqualified team is its own voluntary bringing up of the matter. In every case cited in *Siano v. Helvering*, supra, which followed the duty-to-inquire theory of good faith, the violation which occurred was discovered either by a third party or by the naked visibility of the violation itself. None of these cases involved a voluntary turning-in of oneself. Voluntary revelation of an act which may have repercussions detrimental to oneself is extrinsic evidence of what the state of mind actually was when the violation was committed. (I am assuming that the revelation was truly voluntary, i.e. that there was no evidence that the disqualified team turned itself in because it knew that someone else had or would have found out anyway). I suggest that this combination of Rule 8(d)'s ambiguity, and the voluntary revelation, constitute such proof of innocent intent that no duty-to-inquire need be added to the state-of-mind definition of good faith.

All of this assumes that Rule 9 itself gives no hint of what is meant by "good faith." Actually, the word "inadvertent" as an alternate mitigation factor dictates a

strong presumption that "good faith" means solely honest intent. "Inadvertent" is defined in Webster's New Collegiate Dictionary as: "1) Not turning the mind to a matter; heedless; inattentive; 2) Unintentional." Quite aside from the color which it casts upon the meaning of "good faith," the word "inadvertent" presents a totally new and independent alternative as a grounds for mitigation. The phrase is: "good faith, inadvertent, or not serious." If, as the Committee stated, the disqualified team "made no deliberate effort to gain an undue advantage by conscious violation of Rule 8(d)," its violation was by definition inadvertent, regardless of how one construes "good faith."

What is disturbing is not the ultimate conclusion of the Williston Committee. If I'm not mistaken, Rule 9 merely allows leniency for the foregoing reasons, but does not require the Committee to impose a less severe penalty. Therefore the opinion might still be based upon a frank admission by the Committee that it chooses to exercise its discretion as to leniency in a severe manner. What is disturbing is the sloppiness of the Committee's grounds. This raises unanswered doubts. Did the Committee research the legal meaning of "good faith" and "inadvertence"? Did the Committee research the history and past interpretation of Rule 8(d) itself? Winning the Williston is a not unimportant star on the law school records of the winners. For those not on Law Review or the Board of Student Advisers, it can have much the same effect on careers and interviewing as high position in one's class. One hopes that the Williston Committee devoted as much care in researching

their opinion, upon which hung the fate of four classmates, as they did in studying for themselves to gain their own lofty class position.

Very truly yours,

Frederick O. Cowles, LL.B. '62

'Air of Reality'

(Continued from page 16)

a statute. I can tell you from personal experience as a participant in a statutory drafting problem in the competition that it is difficult enough to get oriented and draft a solution in two weeks or less. To foreclose competitors from available sources of information is a disservice to them and to the competition.

I do not mean to imply that there should be no controls on consultation such as occurred in this case. Perhaps there should be a requirement that a team contemplating such a move should be required to notify its opponents of the time and place of the conference and to give them an opportunity to be present. But to increase the difficulty of getting non-legal advice puts a premium on extra-legal knowledge of the participants in the problem area. Accordingly, it de-emphasizes innate drafting ability. So long as the information supplied in the problems is inadequate fully to inform participants, the need will exist for some degree of factual research. There is only a difference in degree between searching for appropriate magazine or newspaper articles and seeking out a human expert. Since the competition purportedly emphasizes not library research but the other skills of an attorney, resourcefulness should be encouraged under proper safeguards.

Assuming that the rule involved is ambiguous — and I would have interpreted it differently than the Committee, irrelevant though that may be — I would suggest a revision in accordance with the views hereinabove expressed.

Sincerely yours,

Ronald M. Wiener, LL.B. '64

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Letters to the Editor

Definition Sought For 'Good Faith'

To the Editor:

Let us assume that Mr. Sankary's report of the facts behind the disqualification of a third-year Williston Team is accurate (Harvard Law RECORD, November 12, 1964). If so, one wonders about the definition of "good faith" which the Williston Committee of the Board of Student Advisers applied in their interpretation of Rule 9 of the Williston Competition.

The Committee found no evidence of dishonesty and no deliberate or conscious violation. The disqualified team's action was termed "gross carelessness." Yet the Committee failed to apply Rule 9's leniency provisions on the grounds that no Rule 9 "good faith" existed. The Committee thus equated gross carelessness with lack of good faith. Other parts of the Committee opinion indicate a vague duty-to-inquire concept of good faith. This calls forth a long history in legal usage of the words "good faith." Initially the words implied honesty of intention, pure and simple, devoid of all elements of ignorance, negligence, or omission, and unrelated to any duty of inquiry. See the cases cited in *Siano v. Helvering*, 13 F. Supp. 776, 780 (D.C.N.J., 1936). This has been called the "state of mind theory" of good faith. *Siano v. Helvering*, supra, at p. 781. Some cases, however, have whittled down this definition by

introducing a duty-of-inquiry element. This tendency has been attributed to difficulties of proof. "To indicate what a state of mind should be is one thing. That depends on extrinsic factors. To show what it actually is, is quite another." *Ibid.* It indeed does stretch one's credibility to believe that an intelligent man who should have known what some clear law meant, simply didn't know. For example, what of the "good faith" of a tax lawyer who swears under oath that he didn't realize tax returns of a calendar-year taxpayer were ordinarily due on April 15th, and therefore failed to file?

Which concept of good faith should be applied in the Williston situation? I submit that two extrinsic facts exist which constitute proof of the offending team's actual state of mind, without resorting to the duty-of-inquiry theory. First, despite the Committee's conclusion that Rule 8(d) is unambiguous, it is a historical fact that in the past few years of Williston Competition, factual inquiries (as opposed to conceptual or drafting inquiries) have been made orally to third persons. I was a member of a team which reached the Williston finals in 1962. Several of the teams in that competition obtained clarifications of the facts by consulting third persons, and nobody considered this a violation of Rule 8(d). Information thus obtained was distributed by the Committee

(Continued on page 15)

Williston Needs 'Air of Reality'

To the Editor:

I just finished reading about the Williston disqualification in the RECORD. Although the die has already been cast, I feel compelled to express a modicum of disagreement with the Committee's decision, particularly the position that "The nature of the Williston Competition requires the problems to be solved in a vacuum. To the extent the contestants are circumscribed by the rules of the competition, the drafting of the solution must bear the element of unreality."

... [L]ast year ... I and the other members of the Williston Committee were asked for suggestions for stimulating interest in the drafting competition. It was and is my opinion that the competition would be enhanced by infusing it with an air of *reality*. A resourceful lawyer does not work in a vacuum. When faced with a problem in an area unfamiliar to him, he should be expected to do his best to acquaint himself with its background. How else can he know which approach will achieve the best results?

The instant case is an excellent illustration. Professor Hart teaches that the prime goal in interpreting a statute is a firm knowledge of the evil at which it was aimed. One would think such knowledge would be at least as important in drafting

(Continued on page 15)

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