

Model Act Envisions Criminal Law Academies

Suggestion of Prof. Glueck Embodied in Student Draft

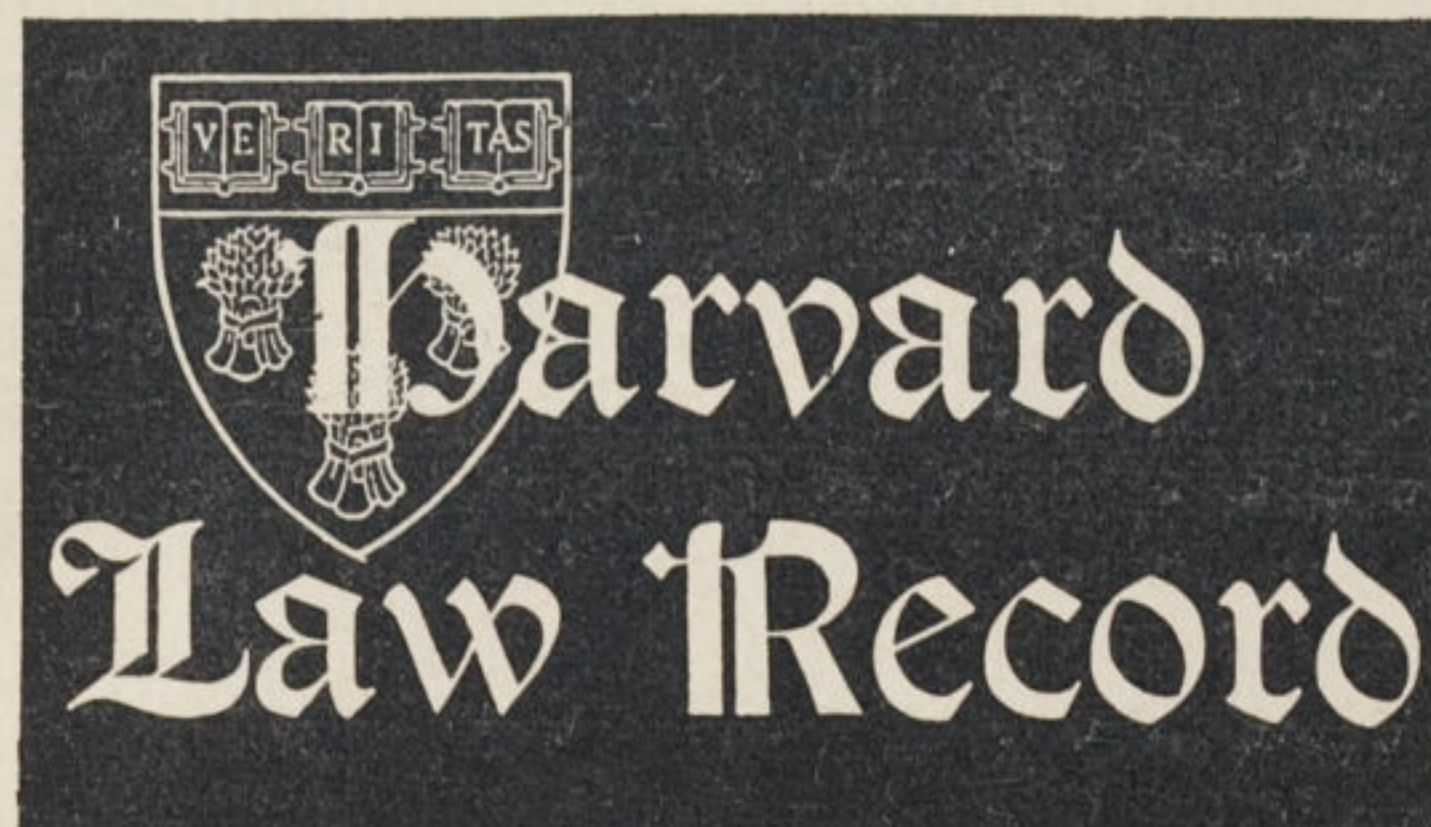
By Stewart D. Davis

Federal academies of criminal justice, connected with such established law schools as Harvard, may very soon be the result of a Student Legislative Research Bureau draft act printed in last month's *Harvard Journal on Legislation*.

Such academies, which would bring to bear relevant psychological and sociological disciplines in a four-year integrated law and criminal justice curriculum, were first called for in a 1963 speech by Sheldon Glueck, Roscoe Pound Professor of Law Emeritus who stated, "the time is long overdue for the systematic professionalization of all services dealing with delinquency, criminalism and other fields of human maladjustment cognizable by the law."

Prof. Glueck envisioned a "West Point" for Administrators of Criminal Justice which would, with federal backing, transform each "earnest and dedicated" student into a "specialist criminal lawyer — or rather, a specialist concerned with problems of law involving persons more than property." SLRB members, under Project Directors Woodbury H. Andrews, LL.B. '64, and Marsha Swiss, 3L, consulted with Prof. Glueck as they worked his proposals into

(Continued on page 4)



America's Oldest Law School Newspaper

VOL. 40 NO. 4
CAMBRIDGE, MASS.

FIFTEEN CENTS
FEB. 25, 1965

Williston Team Reinstated

By Myer J. Sankary

The third-year Williston team which was disqualified on Oct. 21, 1964 (See RECORD, Nov. 12, 1964) has been reinstated to compete in the final round of the Competition which begins Mar. 15. The action was announced this week by the Chairman of the Board of Student Advisers, J. Eugene Marans.

As a result of three months of negotiation initiated by the team of Ronald H. Alenstein, Clarence A. Jacobson, Richard M. Sharfman and Caroline M. Simon, a compromise solution was found to be satisfactory to all the

(Continued on page 14)

Harvard Law School Grieves Death of Felix Frankfurter

By Murray S. Levin

Felix Frankfurter is dead at 82. The retired Associate Justice of the United States Supreme Court died in Washington on Monday after suffering an acute heart attack.

Justice Frankfurter's career as teacher, scholar, public servant, lawyer and judge spanned more than a half century. He graduated from the Harvard Law School in 1906, returned to Harvard as Professor of Law

(Continued on page 2)



Justice Frankfurter

Justice Frankfurter

(Continued from page 1)

from 1914 to 1924, and served as Byrne Professor of Administrative Law until 1939, when President Franklin D. Roosevelt appointed him to the Supreme Court.

In *Felix Frankfurter Reminisces* the Justice tells of President Roosevelt's phone call on January 4, 1939: "I told you I can't appoint you to the Supreme Court," said the President. "Yes, you told me that. You've made that perfectly clear. I understand that." "But," continued the President, "unless you give me an insurmountable objection, I'm going to send your name in for the Court tomorrow . . ." So was Felix Frankfurter launched on his career as Associate Justice of the Supreme Court, a career which established him as a giant figure in American constitutional history.

Justice Frankfurter regarded the Harvard Law School as a starting point in his life and a point of return. The role played by the Law School in the life of the Justice and by the Justice in the life of the Law School has become legendary. Hundreds of students have gone from his classrooms fired by the force of his personality, his learning and his passionate concern for justice under law.

By Temperament a Teacher

Roscoe Pound saw in Professor Frankfurter's class "something of the character of Socrates' 'thinking shop.'" To Professor Paul A. Freund, Felix Frankfurter was "by temperament and conviction preeminently a teacher." The story is told of Mr. Justice Frankfurter's first Supreme Court conference. Chief Justice Charles Evans Hughes several times addressed him as "Professor Frankfurter," and then apologized. "Please, Mr. Chief Justice," said the Justice "don't apologize. I know of no more honorable title than that of Professor."

Justice Frankfurter's concern with the

Law School was a continuing one. The *Harvard Law Review* — which he edited in his student days — was privileged just this past month to publish a Memorandum by the retired Justice, "one of our most loyal alumni and esteemed contributors."

Five members of the Law School faculty served as law clerks for Justice Frankfurter: John H. Mansfield '51, Albert M. Sacks and Frank E. A. Sander '48, Donald T. Trautman '46, and James Vorenberg '49.

Justice Frankfurter chose as clerks for Justice Holmes, Professors Mark DeWolfe Howe '28, W. Barton Leach '21, and Arthur E. Sutherland '25. For Justice Brandeis Frankfurter chose, Paul A. Freund '31, Henry M. Hart Jr. '26 and Louis L. Jaffe.

Wide Influence

Archibald MacLeish, who studied at the Law School at the time when Professor Frankfurter was first making a name for himself as a young professor of law, has written: "Posterity may or may not take our word for it that Felix Frankfurter had more influence on more lives than any man in his generation."

Former Secretary of State Dean Acheson could "think of no one in our times remotely comparable to [Justice Frankfurter]," and compared him to Benjamin Franklin as having "something of the same personal influence."

Reinhold Niebuhr found Felix Frankfurter "the most vital and creative person I have ever known." The tributes can be expanded indefinitely. In 1964 twenty-five outstanding Americans — teachers, lawyers, writers — contributed to a two-volume tribute to Felix Frankfurter edited by Wallace Mendelson.

Justice Frankfurter once was heard to protest that he could not "compress life into a formula." It was precisely the Justice's sense of the complexity of life and his outstanding contributions to its many areas that will long serve to guide and inspire members of the legal profession. Perhaps James Reston, in a column written at the time of Justice Frankfurter's stroke in 1962, best expressed Harvard's feelings about the late justice: "They may put somebody in his place, but they won't replace him." Harvard Law School and the world of law has lost a great man and a great friend.

3Ls Report

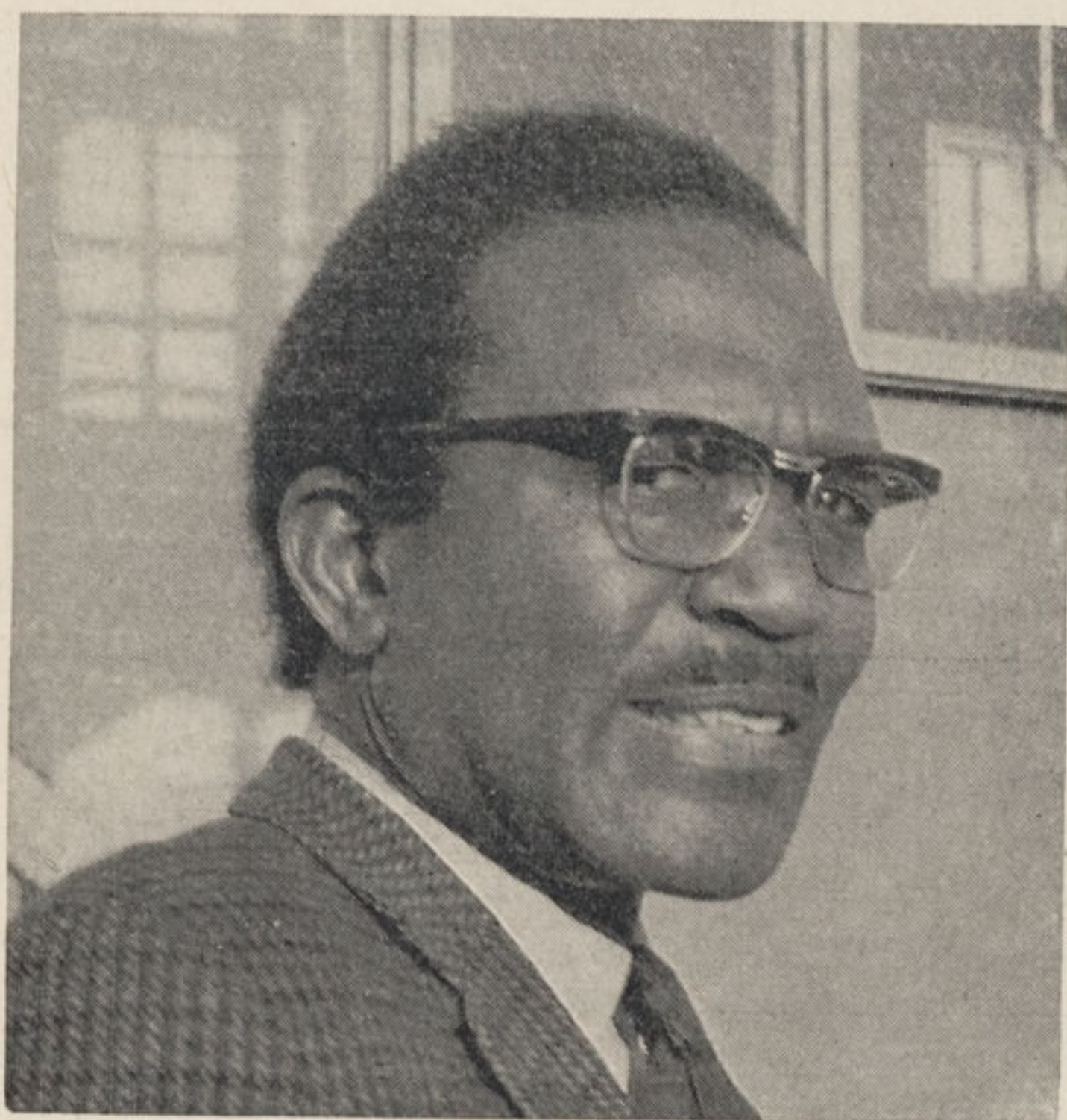
All third-year students who have accepted jobs and have not yet advised the Placement Office are requested by Placement Director Eleanor R. Appel to do so soon.

Bugandan Solicitor-General Studying Here

By Martin E. Robins

Frederick Mpanga, a 40-year-old LL.M. candidate, is at Harvard polishing his skills for his next role as the resourceful Attorney-General of legally-embattled Buganda.

As chief legal advisor to the government of the Kabaka (king) of Buganda, Mr. Mpanga will be forced to employ every ounce of his versatility. He will be responsible for developing the competence, sophistication and efficiency of the Bugandan legal system which is based on a combination of customary (recently codified) and English common law.



Frederick Mpanga

He will also assume the role of chief advocate and Constitutional interpreter for efforts to preserve Bugandan prerogatives from the encroachment of the Ugandan central government of which Buganda is a part.

A graduate of Makerere University in Buganda, and former private secretary to the Kabaka and Solicitor-General of the kingdom before coming to Harvard, Mr. Mpanga received the bulk of his vast legal training in England. He received his LL.B. from Hull University and a degree in public administration from Balliol College, Oxford.

The first task of the Attorney-General will be to upgrade Buganda's sovereign judicial system, the Principal Court. Composed of

five divisions, the Principal Court is staffed by laymen who possess only a "smattering of law," according to Mr. Mpanga. These lay judges rely heavily on ordinances and customary law in their decisions.

Opinions are handed down by three-judge panels. It is Mr. Mpanga's aim to fill at least one of the three seats in each division with a legally qualified figure. The Buganda students who have been sent abroad to England or India to study law, he said, should be returning in the next few years to assume these posts.

Mr. Mpanga will work to change the proceedings in the Principal Court to English rather than the native tongue, Luganda, so that appeals to the English-speaking Uganda High Court can be dispatched more quickly.

As the only American-trained legal official in Buganda, Mr. Mpanga thinks his study of the American federal system will be invaluable in his campaign to halt the central Ugandan government from destroying the Principal Court and other Bugandan prerogatives, such as tax revenues from non-Africans and the operation of secondary education.

His eyes light up at the thought of establishing a library of American constitutional case law from which Bugandan lawyers can research their arguments against impingements by the Ugandan federation.

Emphatically proud of Buganda *vis a vis* the three lesser states of the Uganda Federation, Mr. Mpanga frankly argues that "everything that matters [in Uganda] is in Buganda."

Buganda was a strong kingdom when the English arrived in the 1870's and was receptive to the educational work of religious missionaries. It has maintained a prosperous peasant agriculture—mainly coffee and cotton—and its people are wealthier and better educated than those of the Federation's other states.

"The British did a good job of impressing the people of the need for a legal system," Mr. Mpanga notes. "In fact they were so successful, people in Buganda will go to court on the slightest pretext."

(Continued on page 6)

Academies

(Continued from page 1)

their carefully drafted "Act."

A tentative academy curriculum, which would weave the study of the behavioral sciences and heavy dosages of criminal and constitutional law into a law school program (see box), spaced over four years, has been drafted by Boston College Law School Prof. Sanford J. Fox, LL.B. '53, a former teaching fellow here.



Sheldon Glueck

The proposal for the academies has received favorable responses from Justices Tom C. Clark, William J. Brennan and William O. Douglas.

The draft was conceived, according to its preamble, to meet a scarcity of qualified criminal lawyers. The need exists "to attract able persons to the field of criminal justice and to train them" for careers in "the prevention of criminal behavior, the protection of the criminally accused, and the rehabilitation of the criminally convicted." The need also exists "to improve the image of the criminal lawyer and his clients so that public attention may be focused on the importance of jus-

tice and the proper treatment for those accused or convicted of crime."

The draft act suggests Harvard as the location for the first academy by putting that university's name in brackets throughout. Prof. Glueck is hopeful that Harvard would be chosen as it has, according to his 1963 speech, "long had a tradition of research in the administration of criminal justice," particularly by the late Dean Roscoe Pound, Professor Felix Frankfurter and Prof. Glueck and his wife; it has excellent facilities and creative scholars in "the medical, psychology, anthropologic and sociologic fields;" and it has "one of the finest law and general libraries in the world." The Bureau reflects Prof. Glueck's respect for Dean Pound's voluminous and landmark contributions to criminal justice by proposing to name the academy for the late dean, regardless of its location.

Eventually, five academies are envisaged—in New England, the Mid-Atlantic states, the South, the Middle West and the West.

According to the draft, the students in each academy would number 105—one appointed by each Senator and five by the President. Before admission to an academy each applicant would be required to qualify for admission to the law school at which the academy is established.

The draft is exceedingly generous financially to the academies' students. It provides for their assuming "all expenses" of students while in attendance, for financial aid if needed during summer employment, and, upon signing a pledge to enter fields related to the administration of criminal law for the year following graduation, for a stipend of up to \$5,000 for that transitional year.

As outlined in the draft, the four-year curriculum will include not only a basic law school course of study leading to an LL.B. but an intensive exploration of such

subjects related to criminal justice as criminology, theories of personality, psychology of motivation, child and adolescent behavior, clinical psychiatry, ethics, juvenile and family courts, and methods of rehabilitation.

Following certain suggestions by Prof. Glueck, the detailed curriculum of Prof. Fox provides the

Tentative Curriculum

First year: Substantive criminal law; Law Enforcement Agencies; Torts; Contracts; Property; Civil Procedure. *Summer:* Police.

Second Year: Criminal Procedure; Constitutional Law in Criminal Cases; Evidence in Criminal Cases; Juvenile and Family Court Law; six hours of extra-legal courses*; Corporations; Taxation. *Summer:* Correctional Institutions.

Third Year: Corrections Law; Mental Disorder and the Law; colloquium; Placement (with judge in criminal court); six hours of extra-legal courses*; two electives from host law school or Academy. *Summer:* Hospitals.

Fourth Year: Comparative criminal law and procedure; Quasi Crimes (sex offender, drug addict, psychopath, alcoholic and defective delinquent laws); Placement (with prosecution); Placement (with defense); six hours of extra-legal courses*; two electives; colloquium.

*Illustrative list of extra-legal courses: Child Psychology, Psychology of Adolescence; Personality Testing, Personality Theory; Group Therapy Practices, Abnormal Psychology; Psychology of Sex; Sociology of the Family; Social Disorganization.

student a piercing look into criminal law, substantive and procedural, and into the criminal mind, psychologically and socio-

(Continued on page 20)

Berman: Losing Enemies By Making Friends

By Michael J. Ryan

The establishment of suitable arrangements for increased trade between the United States and Soviet Russia would be mutually beneficial to both countries, according to Professor Harold J. Berman of the Law School. He will testify tomorrow concerning his thesis in East-West trade hearings before the Foreign Relations Committee of the U. S. Senate. Prof. Berman discussed the question in an interview last week:

Q. Exactly what effect would increased Russian trade have on our economy? Do you suggest a ceiling for such trade?

A. We shouldn't start with the question of volume of trade. In the first place, nobody knows what the Russians have to export to us — they do not know themselves. We do know that they exported over seven billion dollars' worth of goods last year, and imported about an equal amount. I suppose that if we relaxed our export controls we could easily increase our exports to the Soviet Union from 20 or 30 millions to one or two hundred millions a year — I am talking only about nonstrategic goods — and if we entered a trade agreement with the Soviets we could perhaps double that figure over a period of several years. I doubt that under even the most favorable circumstances trade with the Soviets would ever amount to more than two percent of our total exports and imports. Of course, two percent is a lot. Two hundred million dollars is a lot. The point is that we should establish our trade relations within a framework of mutual advantage regardless of volume.

Q. You have argued that increased trade with Russia will make her dependent on us. But in the long run would we not actually be helping her to become more self-sufficient?

A. I do not think so. Certainly the experience of the past 15 years is to the contrary. Soviet foreign trade with Western Europe has increased almost tenfold in that period, and the more the Soviets import from the West the more they need to import. It is true that they often buy machinery with the hope of imitating its manufacture at home, but by the time they duplicate the Western manufacturer's methods of production, he himself has made considerable advances. As one English exporter put it, "We are building obsolescence into their system." But I would

(Continued on page 6)



Professor Berman

Mississippi Registrar Seeks Federal Protection From Dean's Questioning

Dean Erwin N. Griswold returned to the Law School after more than a week with the Civil Rights Commission in Jackson, Mississippi.

This month, for the first time since its establishment in 1957, the Commission has been holding hearings in Mississippi on charges of racial discrimination in voting and law enforcement.

According to Mississippi law, applicants for the franchise must be able to read and interpret any section of the Mississippi Constitution. County circuit clerks are given wide discretion to administer this requirement.

On Tuesday, Feb. 16, questioning by Dean Griswold troubled Mr. G. H. Hood, the circuit clerk from Humphreys County who has not registered a single Negro to vote this year. Asked by Dean Griswold to interpret a section of the Mississippi Constitution, Mr. Hood began reading it. The Dean again asked the clerk to interpret the section, but Mr. Hood declined.

"On the grounds that you might incriminate yourself?" the Dean asked.

"Yes," the clerk replied.

Soviet Trade

(Continued from page 5)

do everything possible to prevent them from purchasing single prototypes. An inter-governmental trade agreement could be a good safeguard against that.

Q. The statement is made that by raising the standard of living in Communist countries we will help to make these nations less aggressive. Is it not possible that we would be enabling them to become more aggressive — both politically and economically?

A. In the first place, we will not keep their standard of living down by refusing to trade with them. They will simply continue to trade elsewhere. In the second place, as the Soviet Union becomes more prosperous its stake in the status quo becomes greater. And in the third place, I believe that Communist aggressiveness is bound to diminish with increased contacts with the West. To put it another way, by refusing to enter into such contacts, and into exchanges of goods and ideas, we only increase Communist hostility. The best way to get rid of an enemy is to make friends with him. It is ironic that in the first years of the Bolshevik Revolution, the Soviet leaders were severely criticized by us for withdrawing from the world economy, seeking to practice autarchy, and discriminating against other countries in their trade policies. Now that they are reversing their course, we are leaving ourselves open to similar charges.

Q. How should trade with the Soviets be conducted?

A. I do not think it can be free, in the sense that our trade with England or France is free. It would have to be rather strictly regulated by our government — as it is, in fact, now. Only I would propose that our government use controls to foster trade with the Soviets instead of to reduce it. I think we should have the same kind of inter-governmental trade agreement with them that the Western European countries have, providing for exchanges of maximum quantities of particular goods. The State Department would have to negotiate the agreement, and then licenses would be issued to individual applicants within the quotas established by it. There would be complications

and difficulties — for us, this would be an almost unprecedented way of conducting foreign trade. But I think we could manage, and that we could not only prevent exports of military goods but that we could also direct exports and imports to our own advantage, and not only to theirs.

Q. Does the recent shake-up in the Soviet government portend any change in her stand on trade with the U.S.?

A. So far there are no signs pointing that way. Early in 1964 Kosygin reiterated the very concrete 1958 proposal of Khrushchev for a trade agreement with the United States — a proposal which we turned down, incidentally, and which was then made in very similar terms to the British, who took it up. And after the ouster of Khrushchev, Kosygin gave similar indications to a large group of prominent American businessmen in Moscow. The Soviets have generally, though not always, followed the practice of trading with their enemies. Even when the cold war was at its height, in 1952, Stalin was urging more trade with the West. Of course he saw in it his own advantage. Our policy, in my view, should be to turn trade with the Soviets to our mutual advantage, instead of treating it as a zero-sum game.

Fred Mpanga

(Continued from page 3)

Since independence was granted by the British in 1962, a Constitutional tug-of-war has been raging between Buganda and the Uganda Federation. The special federal relationship between them has remained undefined, and Mr. Mpanga is convinced there will be a great increase in legal activity on the issue.

Constitutional issues have already arisen in this context. At issue before the Ugandan High Court is a federal government suit for £500,000 of tax revenue collected by the Bugandan authorities from resident non-Africans. The Federation wants these funds channeled into the central treasury.

In seeking the abolition of the Principal Court, the federal government aims, according to Mr. Mpanga, to unify the nation's judicial system and assume the appointment power for its judgeships.

U.S. Ignorance of Red China Called Perilous

By Paul M. Branzburg

"The men in Washington charged with making fundamental decisions about Red China are engaged in a vast guessing game, the consequences of which they cannot predict," explains Visiting Professor Jerome A. Cohen. "This is very dangerous. We ought to improve our contacts and exchanges of information to reduce the risks of misunderstanding."



Professor Cohen

Prof. Cohen is on leave from the University of California School of Law at Berkeley where he is Professor of Law. He is teaching a two-semester combination course and seminar on Contemporary Chinese Law, which is offered jointly by the Law School and the East Asian Research Center.

We could learn more about Red Chinese intentions through the admission of the mainland regime to the United Nations. "Since the United Nations seems to be on the decline," observes Prof. Cohen, "we would have to weigh carefully the admission of China as a further disintegrating force in the UN. We would also have to consider our loss of face for having resisted Chinese admission for so long."

"On the other hand, whatever kind of UN organization evolves in the future, it cannot fulfill its functions adequately without the

presence of China. It would entail inconveniences, but in the long run it would be to our advantage to have better access to the Chinese."

The bulk of Prof. Cohen's scholarly efforts is devoted to the study of the legal system of the People's Republic of China and the influences which have shaped it. It appears that much of importance for Western lawyers and statesmen can be learned from a study of contemporary Chinese law.

For his first 30 years, Prof. Cohen had no idea that he was to devote himself to the study of Chinese law. He was born in 1930 in Linden, New Jersey, and there received his preparatory schooling. At Yale he majored in International Relations. He earned an A.B. with high honors and was elected to Phi Beta Kappa.

After graduation Prof. Cohen spent a year studying in Western Europe and North Africa on a Fulbright Scholarship. He then returned to Yale for his legal studies. At Yale Law School he was Editor-in-Chief of the *Yale Law Journal* and received the Betts Prize for the highest grades in his third-year class. He received the LL.B. in 1955.

During the 1955 Supreme Court Term Prof. Cohen clerked for Chief Justice Warren and during the 1956 Term for Mr. Justice Frankfurter. He noted that although it now sometimes "seems to have been a waste to have accumulated that much capital in domestic public law experience," one thing "comparative law teaches you is that you ought to know more about your own legal system."

The clerkships were followed by a year as an associate in the Washington firm of Covington & Burling, and then a year as an Assistant U. S. Attorney for the District of Columbia. "If you ever want to feel like a lawyer and you are in a hurry, it is a very good job. I had about 20 jury trials and eight appeals."

It was a "sobering" experience to discover that the state of international affairs can have a decisive effect on the outcome of a trial. Mr. Cohen cites the example of a Marine he prosecuted for petty theft. The trial was held on the day the Marines moved

(Continued on page 8)

Prof. Cohen

(Continued from page 7)

into Lebanon and the jury, in its patriotic fervor, was unable to reach a decision. When the case was retried, the Marine was convicted.

Prof. Cohen began teaching at Berkeley as Associate Professor of Law. He was promoted to full Professor in 1962 and has taught United Nations Law, Administrative Law, Criminal Law, Legislative Process and Equity.

His connection with Chinese law began in April 1960 when the Dean of the Berkeley Law School met with Dean Rusk, then the head of the Rockefeller Foundation. Mr. Rusk inquired if there was anybody in the United States who knew anything about the law of Communist China.

'Stand Firm at Thirty'

Three months later, the Law School was asked if it could educate someone on the Berkeley faculty in Chinese Legal matters. Prof. Cohen was given the task of determining whether or not the Law School should get involved in such a project and if anybody was interested. Since he was the only person who both met the standards of the law faculty and was interested, he "took the plunge."

Under a Rockefeller Foundation grant, Mr. Cohen began to study Chinese and Chinese law. "Confucius says, 'Stand firm at thirty,' and that is when I began the study of Chinese."

His work began with the laws and decrees published since 1949. Chinese newspapers revealed much about the "image the Chinese seek to project" about their judicial system. There have been two Chinese law reviews, one of which is still publishing. Since the Chinese do not have a system of reporting decisions, and because a great number of their legal principles are not published,

contact with mainlanders was necessary.

Prof. Cohen thus spent the year 1963-64 in Hong Kong interviewing, researching and collecting documentary material. He interviewed legal professionals, those who had run afoul of the Chinese law, and intelligent laymen.

"There is much to learn from Chinese law," declares Prof. Cohen. The People's Republic of China has "a number of institutions for extra-judicial settlement of cases." These have the advantage of being quick and inexpensive. The Chinese have made a great principle of promising leniency for those who confess, while we officially take a dim view of using promises of leniency to elicit confessions. The Communist Chinese also impose very mild penalties on first offenders.

Statesmen have also indicated a need for more knowledge of Chinese law. One of Prof. Cohen's colleagues "with an extremely responsible State Department role in formulating Vietnam policy," wanted to know during the Tonkin Gulf crisis if the Chinese observe the doctrine of "hot pursuit."

Prof. Cohen has served on the Joint Committee on Contemporary China of the Social Science Research Council and the American Council of Learned Societies. He and his family are living in Cambridge.

Graduate Fellowships Offered

Fellowships in international trade and development will be awarded for the 1965-66 academic year by the Law School of the University of Chicago. The fellowships are open to graduates of any law school in the world.

The fellowship stipend is \$6,000 for maintenance plus tuition and fees. Fellows may work toward the degree of Doctor of Jurisprudence.

Fellows will take part throughout the year in a joint seminar with faculty members, and will also devote themselves to individual research projects. They will choose their own research topics, subject to faculty approval.

Applications for these fellowships should be made no later than March 15, 1965. Application forms may be secured by writing to the Dean of Students, Law School, The University of Chicago.

A Short Vacation

The next issue of the RECORD will appear Thursday, Mar. 11, two weeks from today. Subsequent publishing dates are Mar. 18, Mar. 25, Apr. 1, Apr. 15 and Apr. 22.

Lensman Returns with Sneak-Preview of Show

We sent our photographer with his photographic memory over to a Law School Show rehearsal for the double purpose of getting some pictures of the chorus line, and bringing back some verbatim excerpts from the dialogue and lyrics. Following are some of the printable results of that visit; we were told this routine is a speculative commentary on the infusion of psychoanalysis into the law, à la Professor Dershowitz:

Harvard Judge: Now, ah, Mr. Hoffabeck, the allegation of the complaint as I understand it is that Mr. Vershimmilt, the owner and general manager of the plant, tarred and feathered 23 members of the union shortly before the election in which another union won. As I understand it, you go so far as to believe this to be an unfair labor practice under 8(a)(1) of the Act and you are seeking to void the election.

Hoffabeck: That's a-right.

Attorney: Your Honor, as attorney for the union, I really don't see any need for delay. It's perfectly clear that Mr. Vershimmilt is guilty of an unfair labor practice. 8(a)(3) plainly says that coercing employees is wrong.

Judge: Well, it's perfectly plain that you went to an inferior law school. I've heard technical arguments before but there's a limit. It may seem plain to you but the real question is why. Why, why, why? It's naughty to call someone an unfair labor practicer unless we're very sure of ourselves.



Following Choreographer Brenda Scheinman (foreground) are (left to right): Myrna Reiss, Kathy Baum, Madeleine Kay, and Nancy Goldberg.



Unposed around composer Jim Friedlander, 2L, are (left to right): Writer Al Goldhammer, 2L; Director Greg Good, 2L; Writer Mark Gasarch, 2L; and Producer Ron Gilman, 1L.

Vershimmilt: Just let me at that no-good union punk!

Judge: Please Mr. Vershimmilt, control yourself. After all, you needn't torture yourself like this.

Vershimmilt: Huh?

Judge: You're tearing your heart out! By doing some elementary research, I found that Mr. Hoffabeck looks exactly like your father. Don't you understand Mr. Vershimmilt, you're killing yourself if you go on like this.

Attorney: Your Honor, the Act is to encourage collective bargaining; there can be no collective bargaining where the defendant tars and feathers the union members. (Vershimmilt sobs quietly)

Judge: My dear Mr. Yale, the purpose of the Act may be to encourage collective bargaining but there are purposes in life greater than that.

Vershimmilt: (sobbing) Dad! (reaches toward Hoffabeck)

Attorney: What purpose can be greater than encouraging collective bargaining?

Judge: Father-love!

Attorney: But what about the Act? We're dealing with a statute.

Judge: Mr. Vershimmilt was not trying to coerce the union. In tarring and feathering the union members he was only trying to show his . . . love.

Vershimmilt: (kisses Hoffabeck) Daddy!

Justice Frankfurter

The impress of Felix Frankfurter's spirit will always mark the minds of his students. His zeal, his effervescence, his intensity of involvement with his times aroused the energies of innumerable young men to high endeavors. The stamp of his learning and his intelligence has become an indelible part of our constitutional history. Those who believed that some of his judicial restraints were mistaken would, I think, be among the first to acknowledge that his amazing and penetrating talents were a stimulating challenge to excellence—a blessing and an inspiration for all since they forced the best from each of us.

Mark DeWolfe Howe

The Williston Reinstatement

The Williston Committee is to be highly commended for its conscientious, and ultimately successful handling of the reinstatement of the disqualified team. The memorandum opinion emphasizes that the Committee has not changed its mind as to the propriety of the disqualification—that it is merely changing the remedy on a waiver of prejudice by the Alenstein team. Our contrary view of the disqualification is likewise unchanged (RECORD, Dec. 3)—that the unseemly penalty imposed at that time was the result of the oversimplified remedial provisions in the Williston rules, and of the adversary nature of the Committee's hearing to resolve the question. But the important thing now is that a solution acceptable to all the parties and unprejudicial to the other finalists has been found.

That it took more than three months just to prepare a statement of what actually happened is an indication of how difficult the Committee's task was. At the same time, the Williston rules have been revised, hopefully such that this problem will not recur. The Board had the choice of reformulating 8(d) either to forbid inquiries of any kind, or to permit supervised factual inquiries not going to the method of solution. By choosing the latter, with the stipulation that all contestants be given a chance to be present, the Board has eliminated one of the elements of unreality in the Competition which was exaggerated under the former rules. Rule 9 has been recast to give the Williston Chairman almost complete discretion to assign remedies when questions arise under the rules. Disqualification as the "ordinary" remedy has wisely been discarded. It was ironic that in this case the information obtained from the bank was not commented upon by the judge who compared the McMillen and Alenstein solutions in the semifinal round, whereas the personal experience of one of the McMillen team was thought to be significant to the team's approach to the problem. Under the revised rules such a circumstance is unlikely to recur.

The RECORD itself has not been unaffected by these events. Since the disqualification we have withheld, first, a letter to the editor from a group of students, and later, information on the progress of the reinstatement proceedings. In both cases, the withholding was at the request of interested parties who were genuinely afraid that publicity at those times would risk substantial injury to the attempts to resolve the dispute, and to some of the parties personally. That these views were respected raises the question of the proper function of a student newspaper. Like general newspapers, its purpose is to inform, but unlike them, its readership are its colleagues, with whom there exists a unique coincidence of interests and purposes. The proper balance of obligations implicit in these facts will, in rare cases, result in a kind of self-censorship. The important words there are "rare" and "self."

TONGUE 'N CHEEK

By Fenno

I was busy hawking my little green book, *1001 Footnotes for Every Occasion*, near the Harkness newsstand when I suddenly found myself in the midst of the one o'clock lunch line.

Noticing a friend with 99¢ in his hand and an intense look on his face, I inquired as to his trouble.

"I've got to hurry through lunch so that I can get over to Langdell South Middle to pick up my marks," he said, trying to untangle himself from the sandwich queue which had enveloped him.

"But the grades will not be out until Monday," I said.

"I know," he replied, "but I want to get a good place in the line."

"How can anyone be so concerned about a few little numbers?" I asked nonchalantly.

"Easily. Don't tell me you don't care how you did in your courses!" he said mockingly.

"There are two reasons that I don't get worked up over the giving of the grades," I retorted casually. "First, I make it a policy to forget what I learned in a course before the mark comes through, and second, I already have a job in my father's law office."

"What gets me is the bunching effect. When fall term grades come out, can final exams be far behind? Have you seen the schedule?"

"Yes, I have six exams in the first three days and a bar exam a week later," I replied modestly.

"Maybe it's a good thing that you don't care about your average," he said, attempting to share my misery.

"The way I figure it, after you leave law school you'll never again have to worry about making the grade," I said firmly.

Letters to the Editor

Shakespeare Invoked Against Required Course

To the Editor:

Re "Ethics by Osmosis" in your February 2, 1965 issue, one recalls the apocryphal story of the Harvard Law Professor (probably red-haired, *circa* 1937) who, when asked why the Law School did not have a course in Ethics, replied, "Those who get the highest grades would be the ones I would not trust."

This cynical paraphrase of "The lady doth protest too much, methinks" (Hamlet, Act III, Scene 2) has been confirmed by observation and experience where I have found that those who assume the most pious posture and who are only too ready to accuse others of lack of ethics may be most vulnerable themselves. Quite often the "stone casters," even though

they may belong to the "establishment," are discovered to have committed offenses that belied their pretensions.

Most of the regular courses in the Law School curriculum provide ample opportunities for the Professors to point out where and how legal ethics are involved; that, together with instilling a consciousness that a lawyer is an officer of the Court, should serve adequately as instruction. The student need not have his hand held while he reads through the Canons of Ethics and through a book such as *Legal Ethics* by Henry S. Drinker.

If the law student does not "get the message" by these means, no course in ethics would be of any remedial use.

Truly yours,
I. Jordan Kunik, LL.B. '37

Headline Assayed

To the Editor:

A serious flaw marked the otherwise fine reporting your publication gave to the talk by Professor Roger Fisher to our organization on Feb. 5. Although your headline misleadingly stated: "Prof. Fisher Assails Raids," the story beneath it correctly reported that rather he provided an analytical framework for evaluating the effectiveness of such raids and other international threats. Professor Fisher did not "assail" the raids; he assayed them.

John V. Surr, 3L
President, Harvard
International Law Club

CRONIN'S

114 MT. AUBURN ST.

Famous for Steaks
Chops & Sea Food

Tenderloin for Two
on Sizzling Platter
\$7.00

Porter House Steak for Two
\$7.00

— SAMPLE DAILY SPECIALS —

Soup or Juice
Roast Rump of Beef
French Fries — Tossed Salad 99¢
Rolls & Butter — Beverage
Dessert

Tel. EL 4-1366

Harvard Law Record

Michael D. Hampden	President
Myer J. Sankary	Vice-President
Paul M. Branzburg	Managing Editor
Michael Lowenberg	Assistant Managing Editor
Frank R. Parker	News Editor
Theodore S. Curtis	Assistant News Editor
Thomas E. Woodhouse	Features Editor
Stewart D. Davis	Faculty Editor
Robert A. Grayson	Executive Editor
Walter V. McLaughlin, Jr.	Executive Editor
Richard A. Hannaway	Executive Editor
Caroline M. Simon	Corporation Secretary
Brian Christaldi	Business Manager

Staff

Edward H. Hein, Robert M. Goff, Mack Armstrong, Robert L. Clarke, Murray S. Levin, Joseph M. Hassett, Frank W. Lloyd, Michael J. Ryan, Eugene A. Massey, Jr., Martin E. Robins.

Published on Thursdays ten times each semester by THE HARVARD LAW SCHOOL RECORD CORPORATION, 23 Everett Street, Cambridge 38, Massachusetts. Subscription price: \$2.00 per semester, \$4.00 per year mailed; student subscription, \$2.00 per year distributed at the Law School. Individual copies 15¢ each at the Law School, 25¢ each mailed. Business and editorial offices, 23 Everett Street, Cambridge 38, Massachusetts. Telephone UNIVERSITY 8-7600, extension 418. Permission is given for reproduction of any part of an article appearing herein provided that credit is given to both the RECORD and the author of the article. Second class postage paid at Boston, Massachusetts.

MANUFACTURED BY THE LEXINGTON PRESS, INC., LEXINGTON, MASS.

Rackets Restrung

One-Day Service
Tennis and Squash Shop
67A Mt. Auburn St., Cambridge
Opp. Lowell House — TR 6-5417

HARVARD SQUARE THEATRE

Through Saturday

Natalie Wood - Tony Curtis
"SEX AND THE SINGLE GIRL"
1:45, 5:40, 9:35

Laurence Harvey - Sarah Miles
"THE CEREMONY" 3:45 and 7:45
Sunday-Monday-Tuesday

Exclusive engagement! The full-length color film of
"DER ROSENKAVALIER"
(The Salzburg Festival performance starring

Elisabeth Schwarzkopf)
Shown at 1:30, 5:00, 8:30
UN 4-4580

BRATTLE THEATRE

Great Directors Series:
EISENSTEIN

February 25: "Potemkin"
Friday-Saturday:
"Alexander Nevsky"

Sunday:
"Ivan the Terrible, Part I"
Monday:

"Ivan the Terrible, Part II"
KHEIFETZ: March 2-3,

"The Lady with the Dog"
CHUKHRAI: March 4-5,

"Ballad of a Soldier"
DONSKOI: March 6-7,

"Childhood of Maxim Gorky"
Shows daily 5:30, 7:30, 9:30

Matinees Saturday and
Sunday 3:30

TR 6-4226

Exeter Street Theatre

KE 6-7067

Jacques - Yves Cousteau
"WORLD WITHOUT SUN"

also

"Churchill — A Nation's
Homage"

2:15, 4:05, 5:50, 7:40, 9:30

GINO & MIKE BARBER SHOP

Opposite Cambridge House
Motor Hotel

ONE BLOCK FROM
LAW SCHOOL

Five barbers for
better service

1638 Mass. Ave., Cambridge
EL 4-9790

Events of Note at the Law School

Fulton Lewis III, former HUAC staff member and leading conservative spokesman, and Boston Attorney Daniel Levenson, Massachusetts leader in the ACLU, will discuss "The Radical Right" before the Harvard Law Forum on Friday, Feb. 26. The meeting will be held in the Ames Court Room at 8:30 p.m.

* * *

The International Law Club has invited Edmund Gullion, former U.S. Ambassador to the Congo and presently Dean of the Fletcher School of Law and Diplomacy, to speak on the Congo, Monday, Mar. 1, at 8 p.m. in Harkness Commons.

* * *

Mid-term examination grades then available will be distributed on Monday, Mar. 1, at 3 p.m. in Langdell South Middle. A list of those courses for which grades are ready will be posted a few days earlier.

* * *

Herve Alphand, the French Ambassador to the United States, will discuss "De Gaulle and World Affairs" at the Harvard Law Forum on Mar. 5.

* * *

The Harvard Law Wives will hold their annual elections on Mar. 10 at 8 p.m. in Harkness. A lecture on the Montessori method of teaching will follow.

The HARVARD LAW SCHOOL SHOW

Presents

THE RECLINE and FALL OF THE LAW SCHOOL STUDENT

or

TROVER IN THE CLOVER

Consideration \$1.50

Sanders Theater

8:30 p.m. Sat.

March 13, 1965

TICKETS ON SALE NOW FROM THE
LANGDELL RECEPTIONIST

Recent Book

19th Century Federalism and Civil Rights

Federalism and Civil Rights. By Burke Marshall. Columbia University Press, 1964. Pp. 85. \$3.50.

By Frank R. Parker

A great deal of confusion has been generated over the career of Burke Marshall, the former Assistant Attorney General in charge of the Justice Department's Civil Rights Division. On the one hand, many liberals heap on him the highest praise for his work in civil rights, and he may well be the next dean of Yale Law School. On the other hand, of all government officials with civil rights responsibilities, Mr. Marshall was one of the most maligned and castigated by the activist, grass-roots civil rights groups. His new book serves to illuminate both views.

Under Mr. Marshall's leadership, the Civil Rights Division tried more than ever before to bring an end to state-supported racial discrimination.

But if today only about eight percent of the voting-age Negroes of that state can vote, the difficulty, Mr. Marshall says, lies in the limitations imposed by the federal system.

Although at the time of publication of his book, Mr. Marshall was advocating the passage of the 1964 Civil Rights Act, his pleas seem a more eloquent appeal for legislation such as the Resnick Voting Rights Bill (see *RECORD*, Feb. 18, 1965).

In addition to voting rights, Mr. Marshall discusses his more controversial view of federal power in relation to civil rights. In his introduction, Mr. Marshall characterizes the typical situation in which a student civil rights worker informs the Justice Department that the next day he will attempt to get registered a group of Negroes in a small Deep South community with a history of voter

discrimination. He asks the Department for federal protection against possible brutality, or at least, a "federal presence."

Mr. Marshall submits four main reasons why such a request cannot be granted: There is no "national police force, . . . that the protection of citizens is a matter for the local police"; the Department cannot act "until and unless something happens"; in general, "the federal government itself has no right to bring suit in federal court to protect federal rights guaranteed to individuals"; federal courts will not enjoin a pending or future state criminal proceeding.

The first two arguments are particularly misleading and betray a lack of analysis that will trouble many informed readers. Mr. Marshall cannot mean that there is no national force with police powers. The FBI agent, as everyone knows, is armed and is noted for his extensive powers of investigation along with his authority to make arrests for federal crimes. What Mr. Marshall seems to mean is that there is no federal force with primary responsibility for the maintenance of law and order in local communities. But where federal rights are asserted, deprivation of which is a federal crime, the federal government has sufficient authority to provide the kind of protection the civil rights worker requests.

Mr. Marshall himself shows how adequate police power can be assembled when the Justice Department decides to act. He describes in vivid terms how 600 federal marshalls and officers of the Border Patrol, the Bureau of Prisons, and the Treasury Department's Alcohol and Tobacco Tax Unit were sworn in as U. S. marshalls to protect the Freedom Riders in Alabama. The real issue, then, is one of policy, not

of power or authority.

The further contention that "something must happen," that is, that someone must be denied the vote, beaten, or killed before the Department can act, is simply not true. The argument ignores the power to punish attempts and conspiracies to commit federal crimes, and overlooks statutory authority such as that granted in the 1957 Civil Rights Act which specifically empowers the Attorney General to take preventive action (see 1 Emerson and Haber, *Civil and Political Rights in the United States* 167).

On the latter points of his argument, Mr. Marshall cannot believe that student civil rights supporters would be so ignorant as to suggest that the federal government should have a general power to bring suit to protect individual federal rights. "Apparently their schools and universities have not taught them much about the working of the federal system." But it is becoming increasingly evident that the statutory exceptions, as found for example in the 1964 Civil Rights Act, have all but eaten up the strange-sounding general rule. Similarly, there are an increasing number of cases where federal courts are acting to enjoin state prosecutions.

In general, one feels that there is some callousness involved when a federal official tells a civil rights worker that he must resort to the Sheriff Rainey of the South for protection. This view that the Justice Department has evidenced a callous disregard for the realities of the Southern situation seems to find further support in a remarkable passage on the Freedom Riders. Mr. Marshall describes how the Department got assurances from Alabama authorities that these Freedom Riders

(Continued on page 18)

Reinstatement

(Continued from page 1)

parties.

In a stipulation reinstating the team of Bruce A. McMillen, Thomas S. Mansell, Sheldon H. Nahmod and Marvin H. Pilchen, the teams agreed:

"That both teams will enter the final round, except that to avoid prejudice to the other two teams in the final round, the Alenstein solution will be judged against those of the other two teams and ranked relative to them. Then the McMillen solution will be separately judged (by the same attorney) against the Alenstein one, and if superior to the Alenstein solution, it will be given the

Williston Rules Revised

The newly revised Williston rules will go into effect this semester for the quarterfinal and final rounds of the Competition.

Rule 8(d) has been changed to 8(a)(4):

"Teams or team members are not permitted: To accept suggestions or assistance from any other person not a member of the same team, in the preparation of the solution; except that a team or team members may consult with an authority in a field other than law, concerning factual data (including policies and practices) relevant to a problem, if all participants competing on the same problem are given an opportunity to be present."

New Rule 8(b) requires clearance from the Williston Chairman for such consultation.

New Rule 9 provides:

a. If a question arises under any of these rules, it shall be promptly submitted to the Williston Chairman for decision. Such decision shall be binding on the contestants. b. In the event that a violation of these rules is alleged, the Williston Chairman may make such disposition as is appropriate: such disposition will be binding on the contestants unless reviewed by the Williston Committee at the close of the contest.

Alenstein rank and the Alenstein team will be awarded fourth place. If the McMillen solution is inferior to the Alenstein solution, the McMillen team will be awarded fourth place. No other team can finish below third place."

The accompanying statement of facts, agreed upon by both teams, explained that after the Committee had rejected the McMillen team's petition for reconsideration, the Alenstein team submitted to Marans a memorandum proposing to reinstate the disqualified team. The statement of facts does not set forth a reason for that team's change of position, but notes that one of the "proposals was almost identical with the alternate remedy suggested by the McMillen team's petition for reconsideration."

The Williston Committee agreed to reinstate "on the theory of waiver of prejudice by the Alenstein team, as long as prejudice to the other teams in the Williston finals could be avoided." The Committee affirmed its "original opinion that there was a violation of Rule 8(d) and that disqualification was the appropriate remedy."

Meanwhile, the Committee wired the judge, who had been instructed earlier not to make a decision on the relative merits of the solutions, to go ahead and determine a winner, "since victory by the Alenstein team, despite their disadvantage, would moot the question of reinstatement of the McMillen team." The judge's decision, however, was for the McMillen team. Although the statement of facts does not discuss the opinion of the judge, the written memorandum from the judge points out that he was partly influenced in the McMillen team's favor by the description of the experience of one of the team members, Marvin Pilchen, who had worked as a door-to-door salesman in Illinois. The judge did not refer to the conversation with the banker, which had been the cause of the disqualification, but did comment upon the sense of reality about banking practice in the McMillen team's brief.

The McMillen team had been disqualified for violating Rule 8 (d) of the competition which forbids a team "to accept suggestions or assistance from any person not a member of the same team, in the preparation of a solution." (See p. 15 for excerpts from the statement of facts.)

Events of Williston Dispute Acknowledged

The Williston Committee, composed of Laurence C. Browne, Edwin S. Kahn, Richard Landfield and J. Eugene Marans, released the following excerpted statement, agreed upon by the parties. Following the statement is the complete text of its memorandum decision. The reinstated team of Bruce A. McMillen, Thomas S. Mansell, Sheldon H. Nahmod and Marvin H. Pilchen is referred to as the D team; that of Ronald H. Alenstein, Clarence A. Jacobson, Richard M. Sharfman and Caroline M. Simon, as the P team.

...
Statement of Facts: . . . On Tuesday, Oct. 13, the D team designated two members . . . to go to the Harvard Trust Company to inquire about banking and trade policy and practice in regard to consumer paper. Only one member of the D team had read Williston rules 8 and 9 in application to this inquiry; but all members of the team supposed this was a legitimate form of research into trade practices for the purpose of preparing a solution.

On Wednesday afternoon, Oct. 14, McMillen and Mansell interviewed Mr. Hamilton, vice-president of the Harvard Trust Company in charge of the loan department . . . [T]hey explained they were working on a problem involving the negotiability of chattel paper and expressed interest

as to the bank's handling of this paper. They asked specific questions on banking policy and practice on the negotiability, discounting and demands for payment of consumer paper . . .

On Wednesday evening, all four members of the D team took up the issue among themselves whether the interview was a violation of the rules. With one member dissenting, they agreed that their acts might be regarded as a violation, and they decided at this time to notify the P team of the interview. The dissenter, Mr. Pilchen, took the position that this was legitimate research and the P team should not have the benefit of the D team's "ingenuity."

That Wednesday evening, McMillen of the D team disclosed to the P team both the occurrence of the interview and the D team's concern that a violation of the rules might have arisen. Mr. Sharfman of the P team at this time declined McMillen's offer to share the information obtained at the bank, but suggested that McMillen contact the Board and that the P team would abide by the Board's decision in the matter.

Later that Wednesday evening, McMillen telephoned Williston Chairman Browne to give him the same information he had disclosed to the P team. Browne told McMillen he would consult with other officers of the Board and would be in contact with him again the following day.

...

On Thursday afternoon, Sharfman visited with the Board officers Kahn and Rebell, who after conferring with Browne suggested two grounds of compromise that might be acceptable to the Board: (1) Offering the P team the opportunity, and the extra time if necessary, to consult with the banker in the same way as the D team; or (2) offering the P team an extension of time (of one day or more) to complete its solution. Sharfman informed Kahn and Rebell that any compromise involving an extension of time probably would be inadequate since Mr. Jacobson of the P team had to report for a part-time job on the same date the solution was originally to be submitted . . .

Arguments on Violation Issue:
 [At the hearing before the Committee] McMillen, as spokesman for the D team, argued that Rule 8(d) does not prohibit the solicitation or acceptance of "factual data" or "expertise" from a man experienced in the line of business involved in a particular Williston problem, as long as one was careful not to elicit from him any evaluation opinion on the merits of alternative methods of solution or actual suggestions as to drafting of clauses.

McMillen further argued that the prohibition of Rule 8(d) is less restrictive than that of 8(a)

(Continued on page 16)

Coin — Operated Dry Cleaning

\$1.75 per load

Poly Clean

Open 7 a.m. to 11 p.m.

1685 MASS. AVE.

(between Harvard
& Porter Squares)

Treadway MOTOR HOUSE

HARVARD SQUARE, CAMBRIDGE

Convenience • Comfort • Cordiality

Located on edge of Harvard Sq. 72 modern, air conditioned rooms. Complimentary continental breakfast daily. Only 20 minutes from Logan Airport. Within easy walking distance of MTA to downtown Boston.

FREE PARKING

Matthew F. Dooling, Innkeeper
UNiversity 4-5200



Williston

(Continued from page 15)

and (b), which forbid a team to "consult with" lawyers and faculty members rather than merely "accept suggestions or assistance" from other persons. The negative implication of the apparently less restrictive language of 8(c), he argued, created at least an ambiguity which should be resolved in the D team's favor.

Sharfman, as spokesman for the P team, argued that 8(d) presented a broad and unambiguous prohibition against discussion of the problem with persons not a member of the same team. He asserted that the distinction McMillen made between factual data and opinion was not meaningful in this case. Policy positions on negotiability, as expressed by the Harvard Trust banker, were indistinguishable from opinion, even though the holding of them by the banker in itself was a fact.

Sharfman further argued that the prohibition of Rule 8(d) is not substantially less restrictive than that of 8(a) and (b). Rules 8(a) and (b) do state an absolute prohibition against consultation with lawyers and faculty members about the problem; but the slightly less restrictive prohibition against the *acceptance* of suggestions or assistance of Rule 8(d) is provided only so that contestants need not divorce themselves entirely from their social milieu during the preparation of the solution. In other words, an element of "wilfully or knowingly"

is added for communications with persons other than lawyers or faculty members. In Sharfman's view, the purposeful solicitation of "suggestions or assistance," as well as the acceptance of the banker's assistance, was prohibited by Rule 8(d).

Arguments on Degree of Prejudice or Advantage: Questioning of Sharfman by the Committee at the hearing disclosed that in the preparation of its solution the P team had relied upon several important assumptions about banking policy quite different from those the banker disclosed to the D team in the specific area of the problem. The P team's central assumption was the bank's overriding concern with negotiability, but the banker considered this of only minor importance. The P team assumed that banks extensively discounted commercial paper, that banks were more interested in the maker than the payee, and that recourse was not very important; but the D team learned from the banker that these assumptions were incorrect.

Sharfman said the P team had considered going to a banker to check its assumptions, but that Miss Simon of that team had been of the view the rules prohibited such an interview. Sharfman asserted that the P team was seriously prejudiced by the disparity of opportunity for outside assistance between the two teams, and the P team could suffer considerable harm because of its incorrect assumptions.

McMillen declared that the in-

formation obtained from the banker did not affect the D team's solution. The D team had formulated its system prior to the interview, and the data obtained at the bank served only to corroborate their earlier assumptions.

Arguments on Disqualification Issue: Since under Rule 9, the "penalty for violation of Rule 8 ordinarily will be disqualification of the team," arguments were heard on whether disqualification or some lesser relief should be granted by the Board in the event a violation was found to have occurred.

Sharfman argued that the alleged violation was serious because it prejudiced the P team, even if it did not give the D team a greater absolute advantage. It was not inadvertant because one D team member had considered the effect of the rule prior to the visit, and nonetheless, the D team purposely had solicited relevant information from the banker. Good faith was not a defense since the D team did not consult either with the P team or the Board before visiting the banker, even though the plain meaning of the rule seemed to forbid the visit. Sharfman asserted that if a rule seems ambiguous, good faith and sportsmanship demand that one "bend over backward to avoid breaking it," especially where a competitive advantage is to be gained by possible violation.

McMillen re-emphasized the D team's good faith in promptly making full disclosure of the inter-

(Continued on page 17)

HARVARD PROVISION COMPANY, INC.

Harvard Square's First and Finest Retail
Package Goods Store.

With Over 60 Years Service to the Community
and the University

94 Mt. Auburn Street

Hours: 9 to 9 Daily
Free Delivery 'Til 4:45

Cambridge

Sat. 9 to 10 P. M.
Call KI 7-6684-5

ELSIE'S

Noted for the Best Sandwiches
To Eat In or Take Out
The Famous Special Roast
Beef Sandwich

KNACKWURST — BRATWURST
with Sauerkraut
OR POTATO SALAD

71 Mt. Auburn St., Cambridge, Mass.
Elsie & Henry Baumann 491-2842

Waiver of Prejudice Led to Reinstatement

(Continued from page 16)

view and information obtained therein. McMillen asserted that his construction of the rule was that this kind of solicitation of information was allowed, and that the D team in good faith did not believe until after the visit that the rule was ambiguous. He stated that if the Committee were to find a violation, the D team would accept any reasonable sanction that would eliminate any competitive edge it might have gained.

Sharfman reaffirmed the P team's view that disqualification was not too harsh a remedy, and that an extension of time for his team would be a little value . . . He suggested that there might be an adequate remedy short of disqualification, but he could not think of any.

Williston Committee Opinion Ordering Disqualification: On Wednesday, Oct. 21, the Williston Committee issued an opinion ordering a Rule 9 disqualification on its finding of a violation of Rule 8(d). The Committee found that the rule prohibited consultation with the banker and that the policy underlying this rule and similar ones of the Ames Competition supported the construction.

Disqualification was ordered since, according to Rule 9, that is "ordinarily" the penalty. Good faith was not deemed a defense, under the Committee's interpretation, because of "gross carelessness"

on the part of the D team in the failure of all its members to read and apply Rule 8(d) in this situation. The "inadvertant" defense was held not to apply since the interview was purposely planned after inspection of the rule by one D team member instead of being accidental. The "not serious" defense did not apply primarily because of the considerable relative advantage accruing to the D team and the substantial prejudice suffered by the P team as a result of the violation. The Committee found no evidence of dishonesty in this case. It concluded that it could not discover any reasonable, practical, and certain way other than disqualification to eliminate completely the competitive advantage of the D team now that the solutions had been completed.

...

D Team's Petition for Reconsideration: On or about Oct. 25, the D team submitted a petition for reconsideration of the disqualification on two grounds. First, the petition argued that "since seven out of eight people of [both] teams had read Rule 8 within the past year and yet found no conflict with the Rule in consulting with a banker as to "facts," the Rule must indeed not be clear," and therefore, there was no gross carelessness or lack of good faith in consulting with the banker. (This was contrary

to the evidence produced at the hearing which indicated that only one person on the D team — McMillen — and three on the P team had previously read Rule 8(d) with respect to visiting the banker.) Second, the petition argued that the Board should have restricted the P team's relief to the offer of an opportunity to speak to the same banker, or another banker, and of extended time if necessary, and it should have made this offer immediately after disclosure of the D team's interview, while the competition was still in progress and the two solutions could still be changed. (This was contrary to evidence produced at the hearing that the P team was not amenable to this restricted relief, that disqualification was the ordinary remedy for violation, that there was a danger of substantial prejudice to the P team, and that a formal hearing was necessary to examine carefully all the facts and issues in the matter.)

The petition also offered a possible alternative remedy. Chairman Browne consulted with Sharfman of the P team who found the alternative remedy unacceptable at that time.

On Oct. 30, the Williston Committee issued a brief memorandum opinion stating that the arguments presented in the petition did not change the Committee's original view of the situation, and

(Continued on page 18)

Scannell's Pharmacy

PRESCRIPTIONS

KI 7-8170

Corner of Kirkland
and Beacon

PACKAGED PROTECTION

If you occupy an apartment, the most efficient and economical way of insuring your PERSONAL PROPERTY is through the "New tenant's package form." Complete protection against loss by fire, theft, liability and many other perils is provided by a single policy and premium.

W. T. PHELAN & CO.

Harvard Square at 11 Dunster Street, (street floor)

TR 6-0876

Travelers Insurance Co.
Hartford Fire Group

Aetna Casualty & Surety
National Fire Group

Insurance since 1898

Williston

(Continued from page 17)

therefore, the original decision would stand.

...

MEMORANDUM OPINION ON STIPULATION FOR REINSTATEMENT OF TEAM

The Williston Committee on Oct. 21, 1964, disqualified the above-captioned semifinal team (hereafter McMillen team) pursuant to Rule 9 for violation of Rule 8(d) of the Williston Competition Rules, which forbids a team to "accept suggestions or assistance from any person not a member of the team." The Committee found that the defense of good faith was not available, that the violation was not inadvertent, and that it was serious.

The violation was serious and prejudicial to the opposing team of Messrs. Alenstein, Jacobson, Sharfman and Miss Simon (hereafter Alenstein team); they did

have the right to have the McMillen team disqualified. At the time of the hearing on the violation, the Alenstein team took the position that none of the alternate remedies suggested by the Williston Committee or the McMillen team — such as extension of time, joint access to the same information, point score penalties — could entirely eliminate the prejudice to them. They suggested that there might be an adequate remedy short of disqualification, but they could not think of any.

On Nov. 17, after reconsideration, the Alenstein team petitioned the Williston Committee that they now believed disqualification unnecessary and were willing in the best interests of the Williston Competition to waive so much of the prejudice to them as required that remedy. The Williston Committee then arranged the attached stipulation of alternate remedy with the McMillen team.

This remedy will not prejudice the other two teams in the finals. Their solutions will be judged only against the Alenstein one, which will be separately judged against that of the McMillen team. Neither of the other two teams can finish below third place. Both of the other two teams in the finals were given an opportunity

to register objections to this new remedy, and from their response the Williston Committee has concluded that no substantial prejudice will accrue to them.

The Williston Committee affirms its original opinion that there was a violation of Rule 8(d) and that disqualification was the appropriate remedy.

Board of Student Advisers
Williston Committee

Burke Marshall

(Continued from page 13)

would be protected, but when they reached Montgomery they were met and beaten by an enraged mob. After this had occurred, federal agents were brought in to protect the Riders. Then they headed into Mississippi, but the Justice Department, despite its earlier experience, decided once again to rely upon state assurances, this time proffered by Governor Ross Barnett. When the Riders reached Jackson, they were promptly arrested and, one by one, had to retain a lawyer, put up bail, and return to the state for separate trials. In effect, the Justice Department made a deal in which Mississippi could arrest those who had been protected by federal court orders in Alabama, in return for curbing the racist mobs.

To sum up, as his title suggests, Mr. Marshall during his term of office preferred his 19th-century notions of federalism to the 20th-century concept of civil rights. In doing so, he was giving first place to the system specifically designed and perpetuated to frustrate those rights he had sworn to protect.

Professional Dry Cleaning

by

Rite-Way
CLEANERS

KI 7-8008

4 Hudson St., Cambridge

(off 1672 Mass. Ave.)

SAVENOR'S

UNITED SERVICE
SUPER MARKET

Try our excellent meat department. For savings and convenience buy quality meat on budget terms and store in our freezer.

Also best selection of beers and wines.

90-92 KIRKLAND ST.
KI 7-1765

CHICKEN DELIGHT

UN 4 - 0520



Free
Delivery
Complete
Chicken,
Shrimp, Fish,
Rib and Clam
Dinners
Also Pizza

Hrs. Mon. 4-8
Tues. - Sat. 4-11
Sundays &
Holidays 11-11

SQUASH RACKETS

Tennis and Squash Shop

67A Mt. Auburn St., Cambridge
Opp. Lowell House — TR 6-5417

Used & New Law Books

LAW SCHOOL AIDS

Bought — Sold

HARVARD BOOK STORE

1248 MASS. 10 P.M. OPP. LAMONT TR 6-9069

Peace Corps Lawyers: Pragmatic Idealists

By Murray S. Levin

A Harvard Law School audience was challenged to break away from the "Exeter-Groton-Yale-Harvard-'I want a job'" mold and volunteer for Peace Corps-type work.

William Delano, a self-styled "advocate for taking time out to act," stressed that idealism "is most important to the Peace Corps operation."

The former General Counsel of the Peace Corps, now Secretary General of an international coordinating body for worldwide development work, brought to mind the early years of the Kennedy Administration with his call for law students "to give something rather than get."

"Some people here haven't even been to a summer work camp," Delano observed. "Their experience has been a bit slim." He noted that a tour of service in the Peace Corps tests young people and "makes them stretch and grow."

The Peace Corps has come a long way from the 1961-1962 days when cynics labeled it the "Kiddies Brigade," the "Children's Crusade," and the "button-down and bermuda set." The success it has achieved means that lawyers will be gaining experience with a going organization and will not be penalized, but rather can expect to find good legal job opportunities, upon completion of their service.

Delano discussed the great success of the Peace Corps—which he attributes to adherence to sound guiding principles—at some length. "We go where asked to go and leave when asked to leave. Our eyes are open, our intentions pure, and we're ready to work hard." Special privileges and immunities have expressly been turned down for volunteers, who receive a basic living allowance. "If a volunteer can save money, we cut his allowance. The idea is to have our people living as the local population does."

Often Peace Corps projects are designed by the host country and supervised by host country officials. Officials have sometimes proven incompetent and even corrupt. But Mr. Delano sees this as part of the Peace Corps challenge: "If you don't think it takes perseverance and maturity to travel 8000

miles to meet up with a corrupt local official, you just don't know."

Delano treated his audience to a Kennedy-style barrage of facts and figures: "Fifty-six percent of our people are in education, 18 percent are in community development" Only one percent of all Peace Corps volunteers are engaged in what is described as "other" work (Mr. Delano vetoed the term "miscellaneous") which includes law. There is no lack of lawyer-volunteers, "simply not enough job opportunities for lawyers *qua* lawyers."

The Peace Corps would like to use lawyers in legal as well as nonlegal positions. In the past lawyers have been most effective as community organizers, bringing about a working arrangement between people at the district level and their central governments. Lawyer-volunteers have done important work as teachers of law, consultants to national planning commissions, and members of different regulatory authorities. Lawyers often go on a Peace Corps assignment of a non-legal nature "and worm their way into important legal matters."

At present there are opportunities for nine lawyers in Nigeria, Liberia and Ethiopia. Five lawyers are also wanted for an assignment in Thailand.

HLS Is Second Largest

The number of students enrolled in the nation's major law schools has increased for the sixth consecutive year to a total of 54,265.

The new total for 1964 is an increase of nearly 5,000 over enrollment in 1963, reports the American Bar Association's Section of Legal Education and Admissions to the Bar.

The ten schools with the largest enrollments last year are: New York University, 2,200; Harvard University, 1,643; University of Texas, 1,427; Brooklyn Law School, 1,330; Georgetown University and George Washington Universities, both 1,215; Hastings College of Law, 1,088; University of Michigan, 1,072; Columbia University, 924; and Indiana University, 914.

Academies

(Continued from page 4)

logically. The student will "get his hands dirty" through well-planned summer programs which give him first-hand experience with local, state, and federal law enforcement officials the first summer; correctional institutions from the country jails to maximum security prisons the second; and hospitals and treatment centers the third.

Field placement in the third and fourth years will give the student an opportunity to clerk for a judge in criminal court, and to involve himself in preparing for and trying criminal cases on both the side of the prosecution and the defense.

Moot court experience would involve the student's taking the role of advocate in proceedings for sentencing, probation, revocation, or granting of parole, and the appellate review of any of these.

The academies would provide for graduate work in criminal justice and related areas for practicing lawyers, judges, social workers, probation workers and others. Prof. Glueck is hopeful that private foundations will be generous in providing funds for graduate fellowships.

The graduate program would serve such persons as high-ranking police officials and, according to Prof. Fox, "It may be hoped that the current tension and antagonisms between lawyers and these other workers in criminal justice will yield to the communication

and understanding conveyed by the educational experience."

The host law school will not be powerless with respect to its federal guest. Not only must the students pass its admissions screen, but the law school must approve the nomination of the academy's director, and its dean is to be a member of the academy's board of regents.

Prof. Glueck used the summary term "revolution in legal educa-

tion" to describe the effect on an existing law school like Harvard of "the weaving into a major part of its legal education the relevant contributions of extralegal disciplines."

Prof. Glueck is enthusiastic about the prospect of one or more academies beginning operation in the not too distant future. It is estimated that the cost of a year's operation of a single academy, not inclusive of physical plant, would be between \$300,000 and \$400,000.

Canal Tolls Affect Coal Exports

The prospects for increased United States exports of coal to Japan through lower Panama Canal tolls was discussed recently at a Tokyo seminar by Professor Richard R. Baxter.

The seminar, sponsored by Eastern Associated Coal Corp., the largest supplier of U.S. metallurgical coal to Japan, was attended by leaders of the Japanese steel industry.

Author of *The Law of International Waterways*, Prof. Baxter is a recognized authority in the field. He feels that either the forthcoming negotiations with the Panamanian government or discussions of a possible new Central American canal will bring a full review of the toll structure of the canal. The high tolls now collected, he noted, are one of the major handicaps preventing a high rate of coal exports to Japan.

Prof. Baxter contrasted the St.

Lawrence Seaway, an example of model waterway operation at low cost, with the Panamanian Canal which has accumulated a bureaucracy of some 11,000 persons in the half-century of its existence.

The fiscal desirability of stimulating the coal industry, much of which is located in the depressed area of Appalachia, was not ignored. This factor was considered to be a strong bargaining point for the coal producers, particularly in light of the current interest engendered by President Johnson's "war on poverty."

Prof. Baxter was of the opinion that even should higher payments to the Latin American state result from the forthcoming negotiations with the Panamanian government, the increase would probably be met from Department of State appropriations. Precedent for this course of action was set in 1955 when a rearrangement of the annual annuity was negotiated.

Another solution to the problem would be the establishment of a special bulk rate for cargoes such as coal. The only requirement would be that ships of all countries be treated equally.

ENTERED AS SECOND CLASS POSTAGE. BOSTON, MASSACHUSETTS.

RETURN ADDRESS:

HARVARD LAW RECORD
MAIL DEPARTMENT, LANGDELL HALL
HARVARD LAW SCHOOL
CAMBRIDGE 38, MASSACHUSETTS

SUMMER JOB

Cruising New England Coast
on power yacht. All summer.

Asa E. Phillips, Jr.
Call Richmond 2-2590