

The Harvard Law School Record

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Review To Survey Immigration Laws

As a Republican administration takes over the government, Robert W. Ginnanes of the Solicitor General's Office of the Department of Justice discusses "The Control of Federal Administration by Congressional Resolution and Committees," in the lead article of the next issue of the *Harvard Law Review*, to be released next Tuesday.

Donald C. Cook, Chairman of the Securities Exchange Commission, and Myer Feldman, Special Counsel to the Commission, follow with their second article on "Insider Trading Under the Securities Exchange Act."

The remainder of the *Review* is devoted to student discussion of "Immigration and Nationality."

Trouble Forecast

According to Ginnanes the real fight in Washington may not be between the two parties but between the President and Congress. The Reorganization Act of 1939 provided that concurrent resolutions submitted by the President need not go back to him for approval or veto. After a study of the records of the Constitutional Convention, Ginnanes feels that all resolutions with a few limited exceptions should be sent to the President and be made subject to his veto.

He goes on to criticize the fact that federal administrators must often come into agreement with Congressional committees prior to taking specified action.

The Cook and Feldman article discussing Section 16B and C of the Securities Exchange Act deals with the problem of determining the profit realized (See REVIEW on page three)

Illness Causes Prof. Hudson's Absence Prof. Cox Is Mentioned As Possible Successor To Conant; Law School Position Held A Drawback

While the *RECORD* was busy taking exams, along with the rest of the second and third year classes, the Law School was still supplying news. Notable among the events which occurred in the in-



Manley Hudson

terim, were the sudden illness of Prof. Manley O. Hudson and the rumor that Prof. Archibald Cox might succeed President Conant.

Prof. Hudson, Bemis professor of International Law in the Law School, was taken ill early in January and is presently in the Phillips House of the Massachusetts General Hospital. Assistant Professor Louis B. Sohn is taking Professor Hudson's seminar in International Labor Problems and Visiting Professor Clive Parry has assumed Mr. Hudson's course in International Law. Mr. Parry is also taking Mr. Sohn's place in

assisting Professor Bowie in the seminar on Legal Problems of Federalism.

Cox In Rumors

Prof. Archibald Cox, former chairman of the Wage Stabilization Board, and currently teaching in the Law School, has been often mentioned as a possibility for the office of President of Harvard, left vacant by the appointment of James B. Conant to the post of High Commissioner to Germany. Conant's resignation, to take effect on September 1, has opened the door to speculation on a successor.

Opposition to the nomination of Professor Cox is expected to arise chiefly because of his position as a faculty member of the Law School rather than of the College. Other views on the course of action to be taken by the electors, however, suggest that past presidents, notably President Eliot, were called from other groups than Harvard College.

Denham, Cox To Head Panel On Taft-Hartley Amendments

Robert Denham, Prof. Archibald Cox, Leslie E. Woods, and David Feller will try to answer the question "What Shall We Do With Taft-Hartley" in the first Harvard Law School Forum of the year.

Prof. Donald H. Wollet will moderate the Forum which will be held tomorrow night at 8 in Rindge Tech High School.



Robert Denham

The Forum will be directed towards a discussion of Sen. Robert A. Taft's recent proposed amendment to his own still controversial legislation.

Labor's views on these amendments will probably be expounded by Mr. Feller, LL.B. '41, who is assistant general counsel of the Congress of Industrial Organizations.

Mr. Woods, director of Industrial Relations for the Raytheon Manufacturing Corp. of Waltham, will express the industry viewpoint. He is also chairman of the Industrial Relations Committee of the Radio and Television Manufacturing Association, and serves in a similar capacity for the Boston Chamber of Commerce.

Mr. Denham, who was the first general counsel of the National Labor Relations Board, seems to personify much of the feeling pro and con on the present Act. While in that office he achieved much prominence by his persistent charges of unfair practices against unions, though he was much slower in his actions against violations by management.

In fairness, it should be pointed out that Mr. Denham's apparent discrimination was caused by strict compliance with the Act, which gives priority to charges against unions. He also served for 13 years as a trial examiner for the NLRB.

(See FORUM on page four)

"Case of J. S." Truly Representative Of Voluntary Defenders' Procedure

A few weeks ago the "Case of J. S." was closed. To the Voluntary Defenders it was just another job well done, to be buried in the file in Gannett House and forgotten. To anyone unfamiliar with the activities of the student members of the Harvard Voluntary Defenders, however, the "Case of J. S." may serve as a good introduction to their work.

The "case" really began last summer when Prof. Sheldon Glueck, having received a letter from the sister-in-law of J. S., referred it to the Voluntary Defenders. A third-year student was assigned to the case. His first job was to interview the author of the letter, then to interview J. S. From these interviews he was able to gather the following facts:

J. S. was born in Italy in 1897. He came to this country and served in the Navy during the first World War. Shortly after his honorable discharge, he became involved in a dance-hall brawl in the course of which he killed a patrolman of the Boston police. He was duly tried and convicted of murder in the second degree and sentenced to imprisonment for life. As of last summer, he had served 32 years of this sentence.

Pardon Denied 10 Times

Ten times J. S. had applied for a pardon; ten times his petition had been denied. Despite the fact that J. S. had no previous criminal record, and that his prison record was good, J. S. could not obtain a pardon because of the tradition that pardons were never given to "cop killers."

Convinced that J. S. merited executive clemency, but that due to his poverty he was unable to retain legal counsel to plead his case, the Voluntary Defenders decided to help him.

Then followed weeks of painstaking investigation. First came an interview with the Executive Secretary of the Governor's Council in order to learn the "machinery" for obtaining a pardon. Then came interviews with the members of the various agencies participating in the pardoning process, such as the Department of Correction, the Parole Board, the Attorney-General's office, the Warden, the Chaplain of the prison. Factors for and against the pardon had to be analyzed and considered in relation to J. S. Then began the task of marshalling the evidence; finding and proving the facts that would establish the desirability of his pardon.

Affidavits Necessary

Affidavits from his family were secured, showing that he had a good home on the outside. Affidavits from the Warden were secured testifying to the good behavior of J. S. in prison. These affidavits proved to be of particular importance, since a major factor in each of the previous denials had been a "bad record."

(See DEFENDERS on page four)

Prof. Jaffe Critical Of McCarran Act Urges Reform Of Our Quota System

"The principal evil of the McCarran Immigration Act was that it continued the policy of its predecessor legislation," Prof. Louis L. Jaffe of the Law School said in a talk at the B'nai Brith Hillel Foundation here Sunday night.

On the administrative side, he termed the Act "a bacchanalia of meanness," repeating a statement he had previously made before the President's Commission of Immigration.



Louis Jaffe

Professor Jaffe explained that the Act had been the result of five years of study on how to improve an admittedly poor piece of existing legislation. The resulting continuance of the policy of discrimination because of national origin naturally makes the Act a failure, in his estimation.

Quotas Needed

Completely unrestricted immigration, he agreed, is impractical if we are to preserve our present standard of living. However, he criticized the present disproportionate large quotas for people of Nordic origin.

Prof. Jaffe suggested that the present national quota system continue but that the quotas be based more on population and less on a theory of racial superiority.

President Truman's Commission recommended the abolishment of the national-origin quota completely. The Commission's system would take 30 per cent of our immigrants from each of the following groups: displaced persons, relatives of citizens and residents of the United States, and laborers needed here. The remaining 10 per cent would be admitted on a free quota.

New Board Rates

The price of transient dinners and lunches were each reduced five cents in price, and the weekly board rate at the Commons was cut 50 cents. The price reduction, which was announced last week, became effective Sunday.

Dinners are now priced on a scale from 95 cents to \$1.05. Lunches at the Commons will cost transients 80 cents. Breakfast will remain at the present price of 65 cents. The general reduction was made possible by earnings made in the first part of the year.

ELUSIVE QUARRY:

Creditors Rights Against Fraudulent Debtors

(This article was written exclusively for the *RECORD* by Maxwell S. Mattuck, LL.B. '17. Currently in private practice, Mr. Mattuck has been Assistant U. S. Attorney for the Southern District of New York, Chief of the Criminal Division in 1925, Chairman of the Special Committee of the National Crime Commission from 1927 to 1930, and author of several articles on the legal aspects of commercial frauds.)

What are a creditor's rights when commercial fraud is involved and what are the means and methods of enforcing them?

Some basic assumptions are implicit in the question: credit has been given; the debtor has defaulted in payment; the creditor has reason to believe that the default is the result not of a temporary or an innocent financial embarrassment but of an attempt by the debtor to defraud.

The obvious first step is to institute involuntary bankruptcy proceedings against the debtor. (The debtor himself may have anticipated such an eventuality by a voluntary bankruptcy proceeding or by some form of petition for an arrangement or reorganization.) The institution of such proceedings requires that an "act of bankruptcy" shall have been committed by the debtor. What constitutes such an act is set forth in 11 United States Code, Section 21. The fraudulent concealment of assets is one such act of bankruptcy but, since at best the creditors at this stage of the proceedings are not likely to have more than a suspicion

that such is the case, acts of bankruptcy other than this one more usually form the bases for creditors' involuntary bankruptcy petitions — as for example the admission in writing by the debtor of his willingness to be adjudged a bankrupt.

Assuming that this initial step has been taken and the debtor's affairs have been brought under the jurisdiction of the courts, a trustee is elected (or appointed) and becomes charged with the duty of marshalling the debtor-bankrupt's assets. (For all practical purposes we will consider the trustee as representing creditors' rights and interests.) He retains counsel and the job of investigating the debtor-bankrupt's affairs is thereupon begun. It is now that creditors, oftentimes through a committee organized by them, can in cooperation with the trustee and his attorney learn whether or not fraud of any kind has been committed by the debtor during his management of the bankrupt business. This fraud may be of various sorts used in combination or separately such as the issuance of a false financial statement to secure credit, transfers in fraud of creditors, the concealment of assets. For the purposes of this article we shall discuss the last named fraud as being the most encountered and as perhaps the most typical.

The first right that the creditors have and will assert against the bankrupt is the right to examine him on the detailed management and operation of the business which



Maxwell Mattuck

(See FRAUD on page four)

New Endowments Given Law School

The Harvard Law School Fund has received a gift of \$15,000 from the Cleveland Pneumatic Tool Company to endow the Lawrence E. Green Memorial Scholarship. Dean Erwin N. Griswold has announced. Mr. Green, a graduate of the School in the Class of 1921, was a partner in the firm of Hale & Dorr in Boston until his death in the spring of 1952. As a practicing lawyer, Mr. Green contributed much toward improving and developing the cooperation between lawyers and businessmen.

Pinanski Fund Gift

A gift of \$128.30 from the Abraham E. Pinanski Memorial Fund has been received to be used in support of the seminar in Medico-Legal Problems. Judge Pinanski, Class of 1910, was a member of the Superior Court of Massachusetts at the time of his death several years ago. As a jurist particularly interested in the relationships between medicine and law, Judge Pinanski gave strong support to medico-legal study during his lifetime.

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I Refuse To Answer

"We have a new problem in America today. What can we do about the hoodlums and Communists who are thumbing their noses at our investigating committees and courts of law?" This is the question posed by Judge Morris Ploscowe in his article "How to Make Gangsters Talk" in the February 1 issue of "This Week" magazine. Judge Ploscowe is the Executive Director of the American Bar Association's Commission on Organized Crime, and one of the men who helped prepare the final report of the Kefauver Committee to the U. S. Senate. He speaks in favor of the Commission-endorsed Senate Bill 1747. His proposal is worthy of earnest consideration by every American.

To illustrate the type of situation which he hopes to correct, Judge Ploscowe cites the case of Carlos Marcello. The verbatim account of Marcello's testimony before the Kefauver Committee went as follows:

Question: Do you have a criminal record?

Marcello: I refuse to answer on the grounds that it might tend to incriminate me.

Q. Now, sir, you take the position that having a criminal record would incriminate you?

M. I refuse to answer.

Q. Where were you born?

M. I refuse to answer.

Q. How old are you?

M. I refuse to answer.

A Federal Court subsequently freed Marcello when he was cited for contempt. This result is not unusual. Judge Ploscowe points out that "the only convictions involved defendants who had not mumbled the magic words. Frank Costello was one of them. He made the mistake of walking out on the committee. If he had stayed and repeated the \$64 words he would probably not be behind bars today."

The solution offered by Judge Ploscowe and Senate Bill 1747 is to grant immunity to any witness who refuses to testify and whose testimony is "really important." If a witness refuses to answer after being granted immunity "he can be jailed and kept there until he does." As a safeguard against abuse Senate Bill 1747 further provides that a prosecuting attorney cannot grant this immunity without first obtaining the permission of the Attorney-General of the United States; in the case of Congressional Committees, a grant of immunity must receive the approval of two-thirds of the full committee.

Judge Ploscowe frankly admits that this immunity law might "chip away some of the protection furnished by the Fifth Amendment." But he points out that the original purpose of this amendment was to prevent the use of confessions obtained by torture, and concludes that there is no reason to extend the protection in the way it is often interpreted today.

To those to whom "civil rights" have become a fetish, this frank admission of Judge Ploscowe's may appear to constitute a threat to our very existence as a free people. To those to whom "Americanism" has become a formula for ignoring civil rights in the suppression of unpopular ideas, Judge Ploscowe's proposal may appear to be just what the doctor ordered. We withhold comment, urging careful consideration of past experiments with immunity laws and alternative proposals such as that offered by James L. Gratton in our Letters to the Editors column, elsewhere on this page. The views of our readers are welcome.

Gallery

WILLIAM J. BRENNAN, JR.
Associate Justice
Supreme Court of New Jersey



Dean Griswold once said that Chief Justice Hughes sitting on the bench "looked more like God than any man I have ever seen." To a lesser degree, perhaps, most distinguished jurists seem to convey this regal, almost divine appearance.

Justice William J. Brennan, Jr., of the New Jersey Supreme Court, is one very pleasant exception to this pattern. In him are blended the qualities of both an excellent judge and an exceedingly charming, genial warm and natural human being.

A graduate of the class of 1931, Justice Brennan, along with another Law School alumnus, Justice Nathan Jacobs '28, typifies the young progressive attitude of the very new New Jersey Supreme Court.

Interested in Reform of Procedure

As a practicing attorney he had been keenly interested in reform of the then out-moded New Jersey judicial system. Consequently while a member of the Editorial Board of the New Jersey Law Journal, he was the Board's spokesman in presenting many valuable suggestions to the Judiciary Committee of the 1947 New Jersey Constitutional Convention which organized the present New Jersey court pattern, generally considered to be the most modern state judicial system.

Shortly after the innovation of the new system, Governor Alfred E. Driscoll, LL.B. '28, appointed Mr. Brennan to the Superior Court and a year and a half later to the Supreme Court.

Quite naturally Justice Brennan is proud of the entire State Court procedure, which is patterned after the Federal Rules of Civil Procedure. However, as chairman of the Supreme Court's Committee on Pre-Trial Procedure and Calendar Control he naturally exhibits an extra bit of enthusiasm when talking about the pre-trial practice in New Jersey Courts.

Speedy Justice

"Our state," Justice Brennan says, "is probably one of the few in the entire nation where a plaintiff can file his complaint and be sure that it can come to trial within six months." This remarkable clearance of the court calendars he attributes in large measure to the success of the pre-trial hearing which accomplishes two very important things. It has increased greatly the number of cases disposed of by amicable settlement before trial. But even if the case goes to trial the pre-trial conference has the result of minimizing the opportunity for maneuver and surprise and also has narrowed the issues and so shortens the trial considerably.

Another unusual part of the New Jersey system is the means of assigning opinions to members of the Supreme Court. "In some appellate courts," Justice Brennan states, "there is a regular rotation of opinion writing among the members. However, we never know who will write the opinion in a given case until after we have heard the oral argument and voted for the decision." According to the justice, this means that not only does every record and brief have the close study of every Justice before the oral argument, but also that the advocates must be better prepared themselves because the court is so well prepared.

Oral Argument Improved

"Too often in the past a judge's failure to read the brief would cause him to ask only the most elementary questions, and the advocate could do but little elaboration on contentions made in the brief. Consequently, in many cases the oral argument was almost worthless," Justice Brennan says. "Now it is the most important part of every appeal."

This court practice, followed also in the Appellate Division of the Superior Court, is part of the New Jersey drive to improve the quality of oral argument. In line with this effort the Supreme Court has adopted a rule effective in

September 1954 relieving attorneys of the necessity of waiting three years before taking a counsellor's examination, but substituting a requirement that they successfully pass a law school graduate course in appellate advocacy and an examination thereon given by the Board of Bar Examiners.

However, students interested in New Jersey practice will take heart in the Justice's commendation of the Ames competition as excellent experience in appellate argument.

During summers while attending Law School, Justice Brennan clerked for the Pitney firm in Newark, then as now the largest firm in that city. Upon graduation he continued with the firm for 18 years, except for Army service during the war, and as a partner after 1938. In 1949 he resigned from the firm, then Pitney, Ward & Brennan, on his appointment to the Superior Court.

Won an Early NRA Case

While in practice his most extensive experience was in the field of Labor and Administrative Law, though the Pitney organization deals mostly in corporate and financial practice. Earlier in his career he won a suit in the district court on the grounds of the unconstitutionality of a provision of the National Industrial Recovery Act. Before the appeal by the government was heard, the Schechter case, which invalidated the NIRA, was decided and further argument became unnecessary.

With such success behind him, Justice Brennan continued to do much of this sort of work until the Army made him a major and the Ordnance Department's labor lawyer. Later he was made the chief of the civilian personnel division of Army Ordnance. Following that job came a promotion to colonel and assignment to be chief of the Labor Branch of Army Service Forces, in which part he served also as aide to the Under Secretary of War, Robert Patterson.

Post-War Strike Litigation

On return to civilian life he became involved in a mass of litigation arising from the many post-war strikes in heavy industry and public utilities. One of the most interesting of these cases was one in which he argued the constitutionality of the New Jersey compulsory arbitration law. The law, which requires a binding adjudication in a public utilities dispute, was held constitutional after it was amended slightly.

Justice Brennan, who was married while still in college, now has two sons and a daughter. The older boy, now a junior at Colgate, plans to enroll in the Law School a year from September.

With such a wealth of experience behind him one might tend to overemphasize Justice Brennan's past deeds, but it takes only a casual observation of this energetic man to tell that the future can expect even more from this youngest member of the New Jersey Supreme Court.

H. C. K.

Sub Judice

ASK ANYONE WHO KNOWS

Words could not describe the plaintiff's feelings when her fiancée broke their engagement and so she resorted to her action. Besides suing Sam Glickstein for breach of promise to marry she added a second count to her declaration charging Sidney Glickstein, Morris Glickstein and Goldie Geyer, who are the brothers and sister of Sam, with having maliciously induced him to break the engagement. The plaintiff further alleged that they did so by making "false, malicious, and scandalous statements," about her.

The lower court dismissed the latter claim and the plaintiff appealed.

Held: Affirmed.

It appeared that there were no words in the declaration which were sufficient to uphold a cause of action of slander. The appellate court therefore concerned itself with whether the plaintiff had alleged facts sufficient to support any cause of action against Sidney, Morris, and Goldie.

The appellate court found that Illinois had never passed on the question as to whether an action would lie for interference with a contract to marry. The court surveyed the opinions of other jurisdictions and found that the majority denied any relief in such cases.

"The rule . . . seems to have been based upon the salutary premise that fullest freedom be permitted interested third parties to inform each of the parties to the marriage contract of the qualities, habits, peculiarities and reputation of the other before marriage in order that the permanency of the subsequent marital relationship might better be ensured. This principle of freedom to exchange information in this respect was regarded of such importance as to justify the risk of an occasional abuse by maliciously motivated individuals." *Brown v. Glickstein*, 107 N.E. 2d 267 (Illinois, July 1952).

Letters to the Editor

TO THE EDITOR:

The statement by Professors Chafee and Sutherland on the privilege against self-incrimination merits thoughtful attention of all who are concerned with the conflict between government's legitimate needs for information and the individual's privilege to remain silent.

Without claiming any degree of expert knowledge on the subject, I would like to suggest a method for safeguarding the privilege from the abuses to which the professors objected. It is a method, I believe, which has been completely overlooked by courts and prosecuting attorneys, although it rests upon unimpeachable, albeit ancient, authority.

Chief Justice Marshall, in an episode during Aaron Burr's trial for treason, had occasion to lay down the first authoritative American ruling on the privilege given by the Fifth Amendment. Marshall was sitting on circuit in Virginia during the examination of Burr's secretary in regard to a letter from Burr, written in code, to another alleged conspirator in the treason plot. The secretary was asked whether the letter was in his (the secretary's) handwriting, and his lawyer claimed the privilege not to answer the question on behalf of his client. Twice, during the subsequent argument of counsel, Chief Justice Marshall insisted that if the witness was going to claim the privilege *he should be put on oath* before he could assert it. (The risk the witness feared, apparently, was that knowledge of a treasonable undertaking without divulging it to the authorities was a federal crime.)

In the opinion Marshall subsequently handed down, *In re Willie (Burr's Trial)*, 25 Fed. Cas. 38, No. 14692e (D. Va. 1807), he twice emphasized the requirement that the witness claim the privilege under oath:

"... and if he say on oath that he cannot answer without accusing himself, he cannot be compelled to answer."

"If in such a case, he say upon his oath that his answer would criminate himself, the court can demand no other testimony of the fact. If the declaration be untrue, it is in conscience and in law as much a perjury as if he had declared any other untruth upon his oath; as it is one of those cases in which the rule of law must be abandoned, or the oath of the witness be received." (Italics mine.)

As Professors Chafee and Sutherland pointed out, there are plenty of reasons why a witness may want to claim the privilege, but there is only one valid reason—genuine apprehension of criminal prosecution. As I understand it, the professors argue that courts insist that the witness show enough facts to disclose a real possibility of such a risk.

A very cursory search has convinced me that perjury charges have been rarely, if ever, brought against a witness who claimed the privilege falsely. But, as Chief Justice Marshall indicated, the privilege can be claimed only under the sanction of an oath. It seems to me that we have forgotten the significance of this sanction, and I suggest that the use of perjury indictments against those who claim the privilege falsely would provide not only an additional weapon against criminals, but would also go far in preventing abuse of this important privilege.

Procedurally, one difficulty with the privilege today is that courts fail to explain it precisely to balking witnesses. A fair and detailed explanation of the circumstances under which the privilege can be claimed, coupled with the threat of perjury would have the twofold result of protecting witnesses who really need the privilege and punishing those who would abuse it. The anomaly of the privilege is this: the court puts itself at the mercy of the witness. And we demand something from the witness in return—namely that he be on oath. If we can prove that he claimed the privilege wrongfully, we should punish him with the sanction the oath offers. Contempt should not be looked upon as the exclusive remedy.

There are difficulties in this suggestion. One is the difficulty of proof in the perjury proceeding. The other is that in conducting his defense to a charge of perjury, the witness may be forced to disclose precisely what he was seeking to hide in the first place. Neither difficulty seems to me sufficient to prohibit trying out the idea.

For those who are interested, I have found only a few cases stressing the importance of the oath in this situation. I list them below.

The cases are: *U. S. v. Kimball*, 117 Fed. 156, 163 (S.D. N.Y. 1902); *U. S. v. Quitman*, 27 Fed. Cas. 680, 682, No. 161111 (E.D. La. 1854). See also *U. S. v. Sullivan*, 274 U.S. 259 (1927), where the problem was implicit although unarticulated.

J. S. GRATTON, 3L

Alumni Notes

LL.B. '02—J. Charles Dennis, who has served as United States Attorney in Seattle since 1934 is retiring to private practice.

LL.B. '03—Clifford E. McGlauffin has been re-elected to his eighth term in the Maine House of Representatives. He serves as a member of the Committee on Judiciary.

LL.B. '07—Heber H. Rice has been appointed Executive Director of the Federal Bar Association. Colonel Rice has served as Special Assistant to the Attorney General of the United States, Head Attorney of the HOLC, and most recently as Attorney-Adviser in the General Accounting Office.

LL.B. '12—Harold B. Tanner of Providence has been elected Chancellor of Brown University.

LL.B. '23—Harold F. Birnbaum has withdrawn from membership in the Los Angeles firm of Loeb and Loeb, and has opened his own office in Los Angeles.

LL.B. '30—A. Cecil Snyder has been appointed Chief Justice of the Supreme Court of the Commonwealth of Puerto Rico.

LL.B. '31—Charles P. Nelson of Augusta, Maine, has been re-elected to the House of Representatives of the United States, where he serves on the Armed Services Committee.

Ex. '31—David W. Fuller has been re-elected to the Maine House of Representatives. He is a member of the Judiciary Committee.

LL.B. '31—H. Chapman Rose has been named Assistant Secretary of the Treasury.

LL.B. '32—James L. Reid has been re-elected to the Senate of the State of Maine, where he will serve on the Labor and Judiciary Committees.

Leonard H. Farmer, Jr., has become a member of the Toledo firm, Fuller, Harrington & Seney.

LL.B. '34—C. Clark Bryan was recently promoted from Attorney to Assistant General Counsel of the American Life Convention of Chicago, a trade association of 240 life insurance companies.

LL.B. '37—W. F. McCrady and Hilard Kreimer, LL.B. '49, both formerly associated with McCrady & Nicklas, have formed a new firm, McCrady and Kreimer, in Pittsburgh.

LL.B. '40—James J. Field has become a member of the New York firm, Proskauer Rose Goetz & Mendelsohn.

Martin H. Webster has received an appointment as a member of the Federal Income Tax Committee Taxation Section of the American Bar Association.

LL.B. '41—Louis C. Wyman has been named Attorney General of the State of New Hampshire.

LL.B. '43—Willis A. Trafton has been elected to the House of Representatives of the State of Maine.

LL.B. '48—Alan F. Wohlstatler, for-

REVIEW —(Continued)

from short-wing insider trading, as well as who realizes the profit and exactly when it is realized. They also consider the constitutionality of Sec. 16.

McCarran Act Discussed
For the past five years, the *Review* has devoted all or most of one student section to "Developments in the Law."

This year the topic, "Immigration and Nationality" deals primarily with the controversial McCarran-Walters Act passed over President Truman's veto.

The January *Review* led off with the first of the Cook and Feldman articles. John Henry Lewin contributed a discussion, "The Federal Court's Hospitable Back Door—Removal of 'Separate and Independent' Non-Federal Causes of Action." Henry S. Drinker discussed "Problems of Professional Ethics in Matrimonial Legislation." An article "Denial of Certiorari Despite a Conflict," by Robert L. Stern, finished the contributors' part of the issue.

Dean's Office Reports Exam Date's Revision

The Dean's Office has released the following revised May-June (1953) Examination Schedule for the first and second-year classes:

Monday, May 25:

9:00 A. M.: Commercial Law.

2:30 P. M.: Contracts.

Wednesday, May 27:

9:00 A. M.: Taxation.

2:30 P. M.: Procedure.

Friday, May 29:

9:00 A. M.: Administrative Law.

2:30 P. M.: Agency.

Monday, June 1:

9:00 A. M.: Corporations I.

Tuesday, June 2:

9:00 A. M.: Property I.

Wednesday, June 3:

9:00 A. M.: Constitutional Law.

Thursday, June 4:

9:00 A. M.: Torts.

Friday, June 5:

9:00 A. M.: Trusts.

Saturday, June 6:

9:00 A. M.: Criminal Law.

merly Attorney for the Federal Maritime Board, has been admitted as a partner in the firm, Denning & Wohlstatler, of Washington, D. C.

Harold M. Guzy has become associated with J. K. Lasser in New York City.

LL.B. '50—James C. Gibbons has become associated with the law firm of Embry, Johnson, Crowe, Tolbert & Boxley, of Oklahoma City, after serving as Assistant Staff Advocate of the Second Armored Division.

Burton C. Wood has been appointed Administrative Assistant to Congressman John Jarman of Oklahoma.

LL.B. '51—Chester C. Shore has opened an office for the practice of general and administrative law in Washington, D. C.

Bull & Bear Hear Wool Futures Talk

The Bull & Bear Club listened to a comprehensive discussion of the wool industry last Friday in the Mallory Smith Room presented by Mr. Norman I. Midgley of Bates & Co., worsted top manufacturers. Mr. Midgley described the various processes which wool undergoes during top manufacture and distributed samples of each stage.

Most of the worsted top manufactured in the United States is done with wool imported from Australia, New Zealand, South Africa, or South America. Mr. Midgley pointed out. He indicated that trading in wool futures, which has come into use only during the last 15 years, is now a permanent feature of the industry. Manufacturers all deal in futures because it enables them, through hedging, to minimize the risk of a loss in buying and selling wool.

Wool Futures Liked

Speculators are fond of trading in futures because the margin requirements are only 10 per cent to 15 per cent, as compared with 75 per cent in the stock market. Most banks consider hedging a very safe procedure, and wool manufacturers are therefore able to borrow up to six times their capital if they are fully hedged.

Mr. Midgley, who received a degree in accounting at Boston University, emphasized the importance of accounting methods in the textile industry. He stated that it is of great importance that textile firms use the LIFO method of evaluating inventories, since inventory is a large item in the balance sheet of any textile firm.

Wool To Stay Cheaper

Mr. Midgley closed his remarks with a comparison of wool and synthetic fibers. He was of the opinion that synthetics will never be able to undersell wool, since sheep are raised primarily for their meat, wool being merely a by-product. Mr. Midgley believes that eventually the most popular suit in this country will be a blend of 60 per cent wool and 40 per cent synthetic fibers.

President Leonard Weinberger announced that Martin Hertz, 3L, is currently in first place in the Club's \$10,000 investment contest.

Result of Parietal Poll Announced by Council

Results of the Dormitory Council poll on parietal rules have been announced by the Council.

Voting by a majority of three to one for extension, law students indicated their preferences for the hours of 5 p. m. to 11 p. m., Monday through Thursday; 5 p. m. to 1 a. m. Friday; 12 noon to 2 a. m. Saturday; and 12 noon to 12 midnight Sunday.

Using the opinion poll as a foundation, the Dormitory Council hopes to redraft the hours during which the entertainment of guests in the dormitories is permitted and present the plan to the Law School administration for consideration.

Burton S. Resnic, Harris Cohen, and Stanley Rothenberg, tabulated the ballots of approximately 400 residents of the dormitories.

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NEWS IN BRIEF

LINCOLN'S INN ELECTS

John Moore, 2L, of Denver has been elected president of Lincoln's Inn. The following second year students have also been elected to club offices: James Heigham, Ipswich, vice-president; William Brennan of Buffalo, secretary; James Rose of New York City, treasurer.

Elected to the Board of Governors of the club for the Class of '54 are H. Martin Owyn of Decatur, Ill., Frank Boaz of Summit, N. J., William Prickett of Greenville, Del., and Mitchell Reese of Taunton, N. J. Governors from the class of '55 are Philip Harper from Denver and Michael Egan of Savannah, Ga.

PBH COMMISSION LIST

The directory of commissions in the armed forces, which was prepared by the Law School Committee of the Philips Brooks House, may be obtained at the PBH office beginning today.

ADULT EDUCATION CLASSES

The 10-week winter term at the Cambridge School for Adult Education began on Jan. 7.

Among the many courses offered is a special class designed to improve reading skills.

AMES BEGINS AGAIN

First-year doubles arguments will run from March 2 through March 12. The docket of arguments was posted Monday. Sixty-six clubs completed in the fall round of first year arguments, in which 98 per cent of the first-year class participated.

Second and third-year students are urged to register as judges for the spring round of first-year arguments.

HARVARD LAW WIVES

The annual cocktail party will be held on Saturday, February 7 from 5-7 p. m. in Harkness Commons.

On Wednesday, February 11, Dr. Vota R. Hall, outstanding child psychologist, will speak. Dr. Hall is assistant psychiatrist at the Massachusetts General Hospital, assistant in psychiatry at Harvard Medical School, and consultant psychiatrist to the Massachusetts Hospital School for Crippled Children. This meeting will be held in Wheeler Room at 8 o'clock.

VALENTINE FORMAL

A Valentine's Day Semi Formal Dance will be presented in Harkness Commons on Saturday evening, February 14.

The Law Dormitory Council has arranged for two bands and dancing will be on both the upper and lower levels.

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McCarran Act Hit By Prof. Ramsay

Tuesday afternoon, February 3, Prof. David Ramsay of the Physics Dept. of Harvard University addressed the Law School Coffee Hour on "A Scientist's View of the McCarran Act."

Prof. Ramsay prefaced his remarks with a general statement condemning the McCarran Act in its entirety. For lack of time, rather than go through individually the defects of the Act, he chose to limit his remarks to the effect the Act had had upon scientists.

Act Burdensome

Previously professors were admitted to the United States free of quota restrictions and accompanying red-tape. Such privileges have been abolished by the McCarran-Walters Act. Scientists now are subjected to a battery of questions, most of them meaningless and unnecessarily burdensome. It is becoming more and more difficult for the United States to take advantage of international collaboration among scientists, a factor which has been of so much benefit in the past.

Even restrictions on temporary visas, which allow scientists to deliver lectures and participate in conferences in the United States, have reached great extremes. The situation has so deteriorated that American scientists have become reluctant to hold international colloquiums in this country.

Goes Too Far

It is not as if all the entry barriers were to restrict "atom-stealing physicists," but scientists in all fields have been restrained. Journals giving accounts of scientific conventions in this country are disseminated throughout the world, while we are deprived of the contributions that "McCarran-made ineligible" could make, he stated.

Prof. Ramsay cited the recent difficulties of a medical doctor in obtaining a visa although he was an anatomist. While Prof. Ramsay felt there should be some safeguards upon unrestricted entry, he believes the McCarran Act has gone much too far.

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FRAUD —(Continued)

right, granted by 11 U. S. C. 44, provides for such examinations on application by the trustee or creditors. (Except in unusual cases it is the trustee's attorney who will conduct this examination.) Long before the new Federal Rules of Procedure broadened the rights of litigants to examine adverse parties, trustees and creditors had such rights under the Bankruptcy Statutes. And an important right it is for through its medium, if painstakingly done, fraud, if any, will be discovered. It may very well be that the bankrupt may plead his privilege against self incrimination (under 11 U. S. C. 25 his testimony could not be used against him in a criminal proceeding anyway), but that very plea will put creditors on notice that there is something in the case demanding intensive inquiry.

Scanning the Books

Related to this examination of the bankrupt (or its officers) in person is the audit of the books and records of the bankrupt business into possession of which the trustee presumably will have come when he has taken over. Obviously this will require the retention of accountants who in their report will describe in detail the fiscal history of the bankrupt's affairs with an expert analysis of what has become of the bankrupt's assets. Herein may lie the key to the honesty or dishonesty of the bankrupt's conduct of the business.

Missing Records

But suppose, as oftentimes happens in fraudulent cases, that the trustee on taking possession of the bankrupt's business has found that some or all of the important books and records are missing, what is to be done then? The writer has had such an experience in a case which eventually reached the Circuit Court of Appeals, Second Circuit, — *In re M & M Mfg. Co., Inc.* 71 Fed. (2) 141. In this case the petitioning of the debtor corporation into bankruptcy was a simple matter because there was a previous assignment for the benefit of creditors which constitutes an "act of bankruptcy" (11 U. S. C. 21). Thereafter we conducted an extensive examination of the active officer of the bankrupt corporation and we found that the truth or falsity of a financial statement previously issued by the bankrupt corporation for the purpose of obtaining credit could not be checked because of the absence of certain books necessary for that purpose. Since, if the statement were false, dire results would follow, the motive for the disappearance of the books in question became presumptively clear. We thereupon instituted a proceeding under 11 U.S.C. 110, usually called a "turnover proceeding", which confers on the trustee the right by a summary action to compel a bankrupt to surrender bankrupt estate property in his possession. The proof of possession

must be "clear and convincing," but such it was in the instant case. The missing books were traced into the possession of the officer of the bankrupt corporation shortly before the bankruptcy and their disappearance (plus the motive above mentioned) without adequate explanation supported the conclusion that the officer still had them. An order directing their turnover followed and for the failure to comply the corporate officer in question was jailed.

Shrinking Assets

The same procedure has oftentimes been followed where examinations of the bankrupt and his books have developed facts showing that there exists a shortage of assets. A large shrinkage or disappearance of such property within a short period preceding the bankruptcy will put the bankrupt to the onus of explaining its disappearance.

The prosecution criminally of a bankrupt who has fraudulently concealed assets from the trustee is, however, fraught with fewer difficulties. Here it is not necessary that the assets allegedly concealed be found in his physical possession. It is sufficient that the evidence (it may be based entirely on the bankrupt's books) show that the bankrupt has not delivered to the trustee all the assets which rightfully belonged to the trustee. In other words for purposes of a prima facie case it is enough that an unexplained shortage of assets be proven. The duty thereupon devolves on the bankrupt to "go forward with the evidence" to account for the shortage. The ultimate decision is for the jury to make; it can accept or reject the bankrupt-defendant's explanation.

The exculpatory alibis used by bankrupts under these circumstances are varied. But the one most often used is the "gambling loss" alibi. Through the media of examinations and audits a merchandise or cash shortage has been established. The bankrupt defendant must now account for it. Gambling losses are his defense. In cases of this character which the writer has encountered he has made it a practice to have examinations at length on the details, — where, when, what tracks, what horses, what bookmakers, what records. All these will be lacking and in their absence the defendant is sunk. The writer has yet to see a case in which such a defense has been accepted by triers of the facts. The fraudulent bankrupts do, however, keep on trying.

Miscellaneous Rights

Much could be written here about other rights that creditors have if they intend to pursue the prosecution of commercial frauds. Under the federal laws there is, besides the bankruptcy law, the mail fraud statute which makes it a criminal offense to use the mails in furtherance of a scheme to defraud, and under which business racketeers are oftentimes prosecuted. Under the laws of many states the issuance of a false financial statement to procure credit is a misdemeanor. Larceny statutes may apply where there is proof that there was no intention to pay when the goods were bought on credit. All in all it is fair to say that where creditors and prosecuting authorities are diligent commercial frauds can without too great difficulty be ferreted out and punished.

FORUM —(Continued)

Prof. Cox, who recently resigned as Chairman of the Wage Stabilization Board, has resumed his teaching duties at the Law School. His resignation from the Board last November received considerable publicity, because it came in protest over President Truman's grant of an above-ceiling pay boost to the coal miners.

The Taft-Hartley Law has been vigorously denounced by labor forces as a "union-busting" piece of legislation. Democratic Presidential candidate Adlai E. Stevenson made a campaign pledge to repeal it, and President Eisenhower had agreed that certain parts of it need amendment. But the extent of the revision has caused almost as much controversy as the original legislation provoked.

DEFENDERS—(Continued)

Early discontent had led to some black marks on J. S.'s record during the 20's, but for 21 years his record had been good. His first request had been turned down on the basis of these early black marks. Subsequent requests were similarly turned down without it being called to the attention of the Governor that his record had been good since 1931. Not until someone with legal training came along, someone who was willing to help J. S. despite his inability to pay for it, could the proper facts be presented to the Governor and his Council.

Bright Spot On His Record

In the course of these interviews another fact was discovered which resulted in a vital deposition by a retired prison guard. In 1943 J. S. had restrained a fellow convict who had attacked this guard, certainly saving the guard from serious harm, and probably saving his life. This fact bore heavily on the contention that J. S. had adjusted himself properly to the prison community, and would be a useful citizen upon his release.

On the basis of his investigation into the relevant facts and his research into the public policy problems underlying executive pardons, the student in charge of the case of J. S. wrote a brief to be submitted to the Governor's Council, with the pertinent affidavits attached. The same student then was heard orally before the Council when it took up the pardon problem before Thanksgiving. Although Thanksgiving and Christmas, the traditional times for granting pardons, passed without a decision, on Jan. 31 word was received: J. S. was a free man.

The "Case of J. S." is not the most

dramatic or the most important in the Voluntary Defenders files. On the contrary it is the very fact that this was a "routine" occurrence that best illustrates the kind of job that the Voluntary Defenders do. Help to those who need it is their creed; inability to pay for it their only condition.

Pardons, of course, do not constitute a very large percentage of the problems they handle. The great bulk of their work consists of interviewing prisoners in jail who request legal aid or advice. If a story sounds worthy of further consideration, it is thoroughly investigated.

When the crime charged against the prisoner is a misdemeanor, carrying a sentence under 2½ years, the students may represent him in the District Courts, if it appears that such representation is necessary to insure a just disposition of the case. When the charge involves the commission of a felony carrying a sentence over 2½ years, the case is referred to the Boston Voluntary Defenders Committee.

Works With Boston Group

But this does not end the matter for the Harvard Voluntary Defenders, since they render aid to the B. V. D. C. in several ways. First, they take notes concerning the Commonwealth's case and cross-examine the prosecution's witnesses when the prisoner is brought up for hearing on "probable cause" in the District Court. This makes the subsequent defense in Superior Court much easier for the lawyer from the B. V. D. C. Second, they may assist the B. V. D. C. in the conduct of the trial in Superior Court.

If an appeal is taken, they will usually assist counsel on appeal as well. Where the case depends upon extended investigation the work of the H. V. D. becomes increasingly important. It is the painstaking interviewing of witnesses and running down of facts (which costs so much and which would otherwise be unavailable to the defense) that is the main contribution of the H. V. D.

Prepares Law Memoranda

A second main type of work which the H. V. D. does is the preparation of legal memoranda on certain recurring legal problems, for the use of the B. V. D. C. and their own organization. These memoranda discuss such topics as the right of the defense to poll the jury, the effect upon a verdict of a discovery that the jury has had access to newspaper accounts of the trial, and the

effect upon a verdict of certain actions of trial judges.

Work for Juvenile Courts

This fall the organization began to do research work for certain judges of the Boston Juvenile Court. H. V. D. intends to do more work of this kind in the future, and also will represent juveniles before the Court when the Judge feels such representation would be helpful and requests it.

The third main category of their work consists of answering letters of inquiry from inmates of various correctional institutions throughout the country and advising them as to the legality of their incarceration. Most of these letters come to the H. V. D. because the grapevine has passed along the word that you can get "a fair shake" from them.

Many of these complaints provide no legitimate basis for action by the H. V. D. Those that do, however, are carefully followed up. In the past year the H. V. D. has obtained at least three reversals in cases of unjust sentences. Even in the cases where, after investigation, it is found that nothing can be done, their work is not for naught. The knowledge that an independent and unprejudiced organization cared enough to review the facts in his case and to check the law applicable to it, does much to put the convict in a healthier frame of mind.

The work of the Voluntary Defenders is carried on by 13 third-year men and 13 second-year men, carefully selected on the basis of their interest in criminal law and their expected ability to represent the indigent in a court of law.

The most common crimes involved in their cases are Breaking and Entering, Larceny, and Robbery, but nearly every crime on the statute books appears during the course of a year's work including murder, manslaughter, rape, incest, and polygamy.

To the innocent, saved from unjust incarceration; to the guilty given a square deal under the law; to the friendless and poor rendered the help that legal advice can give; to all of these, the work of the H. V. D. stands in the finest traditions of American justice.

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