

The Harvard Law School Record

VOL. 5 NO. 9

CAMBRIDGE, MASS., TUESDAY, DECEMBER 2, 1947

PRICE TEN CENTS

NEWS IN BRIEF

Civil Liberties Forum

Roger N. Baldwin, Director of the American Civil Liberties Union, deplored the strengthening of conservative forces which have made more difficult the fight for the expansion of civil liberties, speaking before an audience of 750 at the Harvard Law School Forum last Tuesday. Following the program for which Baldwin was the sole speaker, Moderator Mark Howe of the law school directed a question period with Elijah Adlow, Judge of the Boston Municipal Court, Professor E. Merrick Dodd of the Law School and John Saltonstall of the Boston bar as special interrogators.

On the brighter side, Baldwin hailed the report of the President's Committee on Civil Rights as a new landmark and praised the spirit of democracy inculcated in Japan under the leadership of General MacArthur. Baldwin pointed out that democracy is not necessarily capitalistic, and except for this country, democratic socialism is the most likely political expression of the democratic concept.

Estate Planning

A series of three lectures on *The Creation and Preparation of Estate Plans*, will be given at the Law School beginning this week by Mayo A. Shattuck, Esq., (LL.B. '12), of the Boston law firm of Hausermann, Davison, and Shattuck. These lectures will be given on successive Thursdays in the Langdell Courtroom at 4 p.m., and will last about one hour. In his first lecture Mr. Shattuck will discuss *The Lawyer's Function in Estate Planning*. His topic on December 11, will be *A Typical Estate Plan*, and the following Thursday he will deal with the subject, *Cautions For The Estate Planner*.

Mr. Shattuck is a widely recognized authority on Trusts and Wills, and his lecturing experience has included seventeen years at Northeastern Law School, and three summers at Colorado Law School, as well as frequent appearances before bar, banking, insurance, and trust company associations. The great demand for Mr. Shattuck to present his material on estate planning before these professional groups indicates the practical importance of this problem which is so interwoven with the law of Trusts, Wills, and Future Interests, Conflict of Laws, and Taxation.

Ames Quarter-finals

In the last quarter-final argument of the Ames Competition this term, last Tuesday evening, the Hughes Club defeated the Morgan Club by a very narrow margin. Burton M. Blum and Raymond Torkildson were oral counsel for the winning club.

The Honorable Lewis Goldberg, Justice of the Superior Court of Massachusetts, presided as Chief Justice. He and his associates praised both arguments and briefs.

With the conclusion of the quarter-finals, the four clubs to participate in next term's semi-finals are the Blackstone, Jeremiah Smith, Casner, and Hughes clubs.

Student Broadcast

Four editors of *THE RECORD* and Leon Baker of the *Law Review* discussed American civil liberties in a pre-Forum broadcast on Station WHDH last Tuesday. Those who participated were Richard H. Wolford, Joseph P. Logan, Laurence P. Corbett, and Miles G. Wedeman.

Law and Medicine

Dr. Gaylord P. Coon, a psychiatrist on the Faculty of the Harvard Medical School, delivered the second and concluding lecture of his series on the *Med-*

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FRANKFURTER SPEAKS HERE

Overflow Crowd Hears U.S. Supreme Court Justice

After dedicating the Pantaleoni Corner in the Root Room last Saturday, Justice Felix Frankfurter addressed an overflow Courtroom gathering of faculty and students. He talked on many topics, including the nature of a proper legal education and the intellectual characteristics of the lawyer.

By way of introduction, the Justice declared: "We of the Supreme Court secure freedom of speech for everyone else, and deny it to ourselves." Therefore, although we would enjoy speaking on such topics as "Chief Justices I Have Known" or "The Nine Old Men versus the Nine Young Men, a Study in Comparative Jurisprudence," he would have to forego these pleasures.

Mr. Frankfurter expressed his feeling of reverence for the Law School, his "sanctuary"; his deep attachment had grown out of three years here as student and a quarter of a century as professor. Even on the court, he intimated, he acts as a professor. "The measure of my success will be the extent to which I am true to the standards, purposes, and aims of a professor at the Harvard Law School," he declared. The qualities of a good professor are open-mindedness, a complete absence of dogmatism. He cited Dean Ames as the foremost example of these legal virtues.

In discussing legal education, the Justice suggested its purposes should be to make the mind flexible and subtle and to increase the capacity to grapple with new problems. He named ten outstanding graduates of the School, of whom Stimson and Lilienthal were two, as persons who proved to be eminently qualified to tackle the totally new problems raised by the war and the atomic age. Admitting that such men are born and not made, he asserted that their law school training was an important factor in their success. However, he objected to the inclusion of "bread-and-butter" courses in the curriculum.

Mr. Frankfurter compared the lawyer and the scientist. The lawyer, he said, is distinguished as an "expert in relevance." Since the law touches life in a wider and perhaps deeper way than any

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Post-Retirement Professors Teach Law In Unique California Plan

Some law professors are never too old to continue teaching. At least this is the theme that has proved to be true after seven years of experience at the University of California Hastings College of Law in San Francisco.

Hastings is the one law school in the world where full-time professors are hired only upon retirement from other schools at the age of 65 or 70. All American colleges and law schools have mandatory retirement rules, but Hastings capitalizes on these requirements. For its appointees, life begins when you retire.

David E. Snodgrass, LL.B. '21, conceived this unique personnel approach in 1940 after his appointment to the deanship at Hastings. During that year a former Stanford law professor, Arthur M. Cathcart, Ex '99, at the age of 67 became secretary to Judge Curtis Wilbur, U. S. Circuit Court of Appeals, Ninth Circuit, in order to retain an active interest in the legal world. Dean Snodgrass, recalling that valuable legal talent was being wasted in many cases by such premature relegation to the sidelines, persuaded Cathcart to join the Hastings faculty. Thus the "65 Club" was inaugurated, and since then many noted figures in the law have joined.

Professor Edward S. Thurston, LL.B.

Oral Counsel In Ames Semi-Finals

Gardner Club



MOORMAN



MCCLINTOCK



CHRISTOPHER



BRIDGE

Jeremiah Smith Club



O'BOYLE



MUNSEN



POPE



PRESTON

Grotius Club

Holmes Club

Palestine Legal System Combines Ancient Law With Royal Orders

By VICTOR A. LEVONTIN,
Graduate Student

(The author's comments on the law of Palestine, and the country's history under British administration of that law, will be dealt with in separate articles.)

Prior to British military successes in 1917, Palestine had for centuries been governed by the Ottoman Empire. On November 2, 1917, the British government, in a statement which became known as the Balfour Declaration, pledged the "use of their best endeavors to facilitate the achievement" of "the establishment in Palestine of a national home for the Jewish people." Declarations almost identical in content were made in 1918 by both France and Italy. A Resolution to much the same effect was formally passed by the Congress of the United States on June 30, 1922.

Earlier, in 1919, an Agreement was signed between His Royal Highness, the Emir Feisal, on behalf of the Arab Kingdom of Hedjaz, of one part, and the Zionist Organization, of the other, incorporating in terms the Balfour Declaration. To gain an idea of the friendly relations which at that time existed between Zionist and Arab leaders one

might mention that the Agreement was followed the same year by a letter from the same high personage to Prof. Felix Frankfurter, stating, among other assurances, that the Arabs "look with the deepest sympathy on the Zionist movement."

Such statements indicate that the community of nations was faced with a genuine problem, created on the one hand by the necessity of erecting a framework for the National Home, and on the other, by the consideration that Palestine was not at that time capable of standing on its own political feet. A solution was found in the institution of the Mandate.

Article 22 of the Covenant of the League of Nations provided that, to places like Palestine, "there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization, and that securities for the performance of this trust should be embodied in this Covenant." To act for it in the implementation of the trust, the Council of the League of Nations chose the Government of the United Kingdom. A formal instrument, known as "The Mandate," signed on July 24, 1922, forms the cornerstone of civil authority in Palestine. Its Preamble recites Balfour's Declaration, which it was then universally assumed would serve as the mandatory's guide. Later that year, His Majesty, acting pursuant to this power, passed the Palestine Order-in-Council, providing the country with a fairly detailed Constitution.

At the head of the Executive stands the "High Commissioner and Commander-in-Chief," appointed by His Majesty. A Legislative Council, partly nominated, partly elected, was planned, but never

(Continued on page four)

P. B. H. ANNOUNCES DECEMBER FORMAL

The Winter Formal Dance sponsored by the P. B. H. Law School Committee will be held at the Boston City Club on Friday, December 12. Burt Edwards' orchestra will provide music for dancing from 9 until 1 o'clock.

Tickets will go on sale at Gannett House this Friday. The number of tickets that will be sold will be strictly limited so that there will be table space for every one at the dance; the committee urges students to make their purchases early.

The tickets are priced at \$4.50 a couple including a corsage for each girl; these flowers can be selected at the door from a variety of types and colors. Contrary to the procedure at the informal dances, refreshments will be sold at reasonable prices by the City Club and students need not arrange for their own supply.

M. P. K.

SEMI-FINALS TO BE HELD THIS WEEK

J. Smith, Gardner, Grotius and Holmes Clubs Will Argue

The semi-final arguments of the Ames Competition will be held tonight and Thursday night in Langdell Courtroom at 8 p.m. These arguments will determine the two clubs that will argue in the final round next term.

The case tonight being argued by the Jeremiah Smith and Gardner Clubs concerns the power of the Federal Trade Commission to restrain or order a manufacturer to discontinue the use of basing points to set prices distant from the seller's place of business. The order is based on Section 5 of the Federal Trades Act. This case, suggested by Professor Bowie, is patterned after several pending in the courts.

Oral counsel representing the appellants, the Ames Tube Co., are Lawrence S. Munsen and Thomas P. O'Boyle of the Jeremiah Smith Club. Irvine F. Belser, William V. Finn, James B. Grant, Jr., Francis W. McCalpin, and Arthur R. Slade, Jr., participated in the writing of the brief.

The Commission is represented by the Gardner Club, whose oral counsel are George McClintock and Albert Moorman, Jr. Of counsel on the brief are Stephen G. Lax, Herrick K. Lidstone, Byrne Litschgi, Ray Myers, Jr., Paul H. Roney, and Francis M. Wheat.

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F.E.P.A. PRAISED BY McKENNEY

Commissioner Describes Act to Lawyers' Guild

Elwood McKenney, Harvard '40, Mass. Fair Employment Practices Commissioner, discussed the problems of administering the Massachusetts Fair Employment Act at a regular open meeting of the Harvard Chapter of the National Lawyers' Guild last Tuesday. As background he discussed the results of surveys made in support of the bill's passage last year which showed large scale arbitrary discriminatory hiring policies. Massachusetts is one of four states that now have such statutes; the others are New York, New Jersey, and Connecticut. Movements are underway now to pass such statutes in other states.

The statute establishes the "right and privilege to work without discrimination because of race, color, religious creed, national origin or ancestry." The act makes it an "unlawful employment practice" for any employer to refuse to hire; to discriminate as to compensation, conditions or advancements; or to fire on the basis of such discrimination. The act applies to all employers with more than six employees and includes labor organizations and employment agencies; it excludes fraternal, educational, charitable and religious organizations.

A three-man commission is set up to administer the act with power to subpoena persons and records for their hearings which, however, are not bound by "strict rules of evidence." They have the power to order the charged party to cease and desist from his practices and to take whatever affirmative action is necessary. Wilful violation of such order is punishable by imprisonment up to one year, a fine up to \$500 or both. Orders are reviewable in Mass. courts.

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The Harvard Law School Record

Published weekly on Tuesdays for twelve weeks of each term by The Harvard Law School Record Corporation, Austin Hall, Cambridge 38, Massachusetts. Subscription price: \$2.00 per term mailed, \$4.00 per year (24 issues); student subscription \$1.50 per term mailed, \$1.00 per term distributed at the Law School. Individual copies \$1.00 each at the Law School; \$1.50 each mailed. Business and Editorial Offices, Austin Hall, Cambridge 38, Massachusetts. Telephone KIRKland 7600, extension 133.

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CHANGES OF ADDRESS should be sent to the Record office, Austin Hall, Cambridge 38, Massachusetts, at least three weeks in advance to insure prompt delivery.

"Entered as second class matter November 19, 1946, at the post office at Boston, Massachusetts, under the Act of March 3, 1879.

Opinions of the Staff

THE PARKING PROBLEM

With the coincidence of a large enrollment, and increased distribution of automobiles, there has been a reduction of parking facilities for student commuters using motor vehicles.

Although excellent work has been done by the University in providing housing facilities, many students have been forced to find homes a substantial distance from Cambridge. Their dilemma allows either long periods of laborious travel on local rapid (sic) transit lines, if such lines run near their homes, or the use of automobiles, if they own them.

During the summer, a macadam roadway and sodded landscape took away parking space for approximately 15 cars between Austin Hall and Hemenway Gymnasium. During the last few weeks, new "Restricted Parking" signs were installed near Jefferson and Pierce Halls, across the quadrangle from Langdell. In addition, hitherto used parking areas on the quadrangle were fenced off. Further, many restricted areas are not designated by signs, and students who park there in good faith are tagged by University police.

The solution is not for student drivers to leave home earlier. If, instead of arriving at 9 a. m., they planned on arriving at 8:30 a. m., the problem would merely be advanced a half-hour. Congestion would still exist. And, while the Chief of Police's office tells of a student who drove from Perkins Hall to a class in Austin, most student motorists have legitimate reasons for driving to school.

The Business School is enlarging its parking areas permanently, defraying the expense by a term fee on student motorists desirous of parking there. For a temporary parking area, an assessment might not be necessary here. Even if it were, the assurance of finding a space would, for most drivers, be worth the expense. Temporary parking lots could be set up at the eastern end of the quadrangle in front of Langdell, and in the space between Austin and Hemenway. Other areas might be discovered. These temporary parking lots would disfigure present grass areas, but they would result in a practical advantage similar to that of the unprepossessing ex-GI buildings used for housing students.

Even if these suggestions are impracticable, the least that can be done is the posting, conspicuously, of signs which inform the student drivers that certain areas cannot be used for parking.

NATHANIEL B. TAFT.

Letters to the Editor

To the Editor of the RECORD:

In your issue of October 15th there is a letter by Isadore M. Mackler who discusses the proposed federal income tax legislation extending the benefits of community property states to all married couples. He states that the proposal "continues the inequality between married and unmarried persons." This is an assumption which is open to challenge. The word "inequality" is not a happy choice. The basic concept of a graduated income tax assumes that inequality of the tax burden is socially more fair than taxation at a uniform rate to net income. If we assume this basic concept, then the question arises whether a married couple should pay the

same or a lesser effective rate on their combined incomes than is paid by unmarried persons having the same income.

Mr. Mackler appears to assume the rate should be the same. This has never been so since our federal income tax law was adopted in 1913. In the lower brackets of income, the differential in rate has always been substantial. Under the present Revenue Code, on a net income of \$2,000 before exemptions, an unmarried person pays an effective rate 1.50 times that of a married couple. While this differential becomes infinitesimal in the upper income brackets where the married couple's income is all that of one spouse in states which do not have community property, it still remains substantial in states having community property, or in other states when each spouse has an equal or nearly equal net income.

As Mr. Mackler points out, the proposed amendment would remove the existing inequality against married couples in the upper income brackets having the same income. The following table shows the difference in the effective rate now paid and which would be paid under the proposed amendment under existing rate brackets by an unmarried person and married couple having the same income, all that of one spouse:

	Present	Under Proposed
At \$ 2,000 net income.....	1.50 times	1.50 times
At 2,500 net income.....	1.33 times	1.33 times
At 4,000 net income.....	1.18 times	1.22 times
At 6,000 net income.....	1.12 times	1.12 times
At 50,000 net income.....	1.014 times	1.34 times

If, at income levels up to \$3,000, it is socially fair for a married couple to pay an effective rate equal to the effective rate of an unmarried person having one-half the income, why is the same thing not also socially fair in the upper income brackets?

Mr. Mackler appears to assume that the existing differential in lower income brackets is unfair. If such be his opinion, I wonder how many will agree with him? The writer, for one, does not.

Very truly yours,

H. BOARDMAN SPALDING, LL.B., 1911.

To the Editor of the RECORD:

That the RECORD saw fit to devote its valuable space to the article panning Professor Rodell of the Yale Law School is a genuine disappointment. If the article was in light jest, it is forgiven. But it seems more likely an unsuccessful attempt in retaliation to ridicule a man who on previous occasion has been pre-eminently successful in ridiculing us.

It is to be regretted that R. W. C. did not instead rebut the acridly scorching criticisms Rodell levied at us in 54 Y. L. J. 897, which should be required reading for all 1st and 7th termers. Presumably Rodell's attack there can be answered; but as yet that attempt has not been made. Perhaps by following his implied suggestion there to re-evaluate our goals of legal education we can disprove his assertion that there is no critical, progressive, or independent spirit at Harvard Law School. But Rodell is so much more a master of satire than we, why let him choose the weapons? Any attack on him *ex parte* Yale by way of wit is doomed to failure.

But far more important and lamentable, we have avoided the issue. Perhaps we are unaware of it. If so, there can be no better proof of his indictment.

Sincerely yours,

MARVIN J. WISE, 2L.

To the Editor of the RECORD:

There is a standing rule in Langdell Reading Room that the lights are not to be turned on before a given hour in the afternoon, unless a reading room official deems it necessary. Accordingly, the lights are not always turned on when a request is made by a student. Usually the requests of students, granted or not, precede the specified time or exercise of official judgment.

Undoubtedly it costs a great deal to light the Reading Room. But practicing economy where it affects our eyes is the falsest kind of saving. It is regrettable enough that students have to ask to have the lights turned on, but it is downright disgusting for such a request to be refused.

The answer will come forth that a careful check is kept to see that lighting conditions don't sink below a reasonable minimum. But such a minimum may well be less than is required by a particular student. There are times when we all find it imperative to use the Reading Room. Accordingly, any student, who so desires, should at least, have the maximum use of available lighting facilities.

The problem is not without technical and other complexities. I suggest an investigation of the entire situation aimed at developing plans for both short and long-run improvements. In the meantime, whenever a student feels compelled to ask for it, let there be light!

JAMES M. WOLF, 3L.

Gallery

WARREN ABNER SEAVEY

Professor of Law



It is by preference that Warren A. Seavey, Bussey Professor of Law, teaches first year classes at Harvard Law School, but first year students do not always care for Mr. Seavey's teaching methods. The first case studied in his course is *I. De S. & Wife v. W. De S.* and the class is still working on the same case in the second week of the term. Men leave the room in a bewildered state, their notebooks empty.

Mr. Seavey seeks to teach law that can't be put into notebooks and regurgitated into bluebooks at the examination. An instructor should speak far less than fifteen percent of the time, he thinks. In class he listens to a student state a proposition, then utters a piercing "Oh, is that right? Is that right?" and waves at another student whose hand is up. Soon the discussion is being tossed back and forth among half a dozen students.

Sometimes, the Professor is backed into a corner by a student, but he almost never answers a question. Sitting behind the desk, slight figure far back in the chair, peering owlishly through his glasses, he listens politely to the sometimes heated questions, smiles and says: "What do you think?" or "It's all a matter of degree, is it not?" Or he may go off into a hypothetical case such as "Now suppose I lead a tiger through Harvard Square on a string at 6 o'clock on a Saturday evening, am I liable if..."

Mr. Seavey was born in Charlestown, Mass., in 1880, was graduated from Harvard College in 1902 and received his LL.B. from the Law School in 1904. After two years of practice in Boston he accepted an invitation to organize a law school at the Imperial Pei Yang University at Tientsin, China. Teaching was done in English, which all the students understood, but the chief difficulty was the lack of books. For the moment this was solved by a few Harvard casebooks and a large store of hypothetical cases, although later an effective library was built up.

Seavey returned to the U.S. in 1911 to teach for a year at Harvard and then at Oklahoma State, Tulane and Indiana. In 1917 he went on active duty as an infantry officer. He was a captain and had just been transferred to the front line when the war ended. At about that time the A.E.F. University was being organized at Beaune, France.

"No one had considered a law school," he says. "I went to Beaune, and, after explaining how simple it would be to have one, I was permitted to recruit seven lawyers as instructors and 170 students. We wrangled two buildings used by medics for barracks. The students remade them into classrooms and managed to 'borrow' without discovery enough material to furnish the school. We then had a complete law school except for books; the mimeograph and hypothetical cases took up most of the slack."

In 1920 Seavey became Dean of the University of Nebraska Law School, resigning in 1926 to become Professor of Law at Pennsylvania. In 1927 he came back to Harvard.

Professor Seavey has compiled the casebooks on Torts and Agency used in the school and has been Reporter for the Restatements of Agency, Restitution, Torts and Judgments. He has also published a great many law review articles and he hopes eventually to complete treatises on the law of Agency and of Frauds.

The real education to be obtained at Harvard Law School, Prof. Seavey thinks, is in discussion with fellow students. "Without questioning the caliber of the faculty, the true distinction of the school lies in the mob that throngs the corridors of Langdell between classes," he said. "We have the best student body of any comparable institution in the world, and students make the school."

To law students he has this to offer:

"Don't worry about making a lot of money. You'll make enough to live on, which is all you need. Do what you most like to do, if it is constructive. But whatever you do, give the best you have."

E. J. F.

(This is the first of several Galleries which will be reprinted from time to time from earlier volumes of THE RECORD for the benefit of new students and alumni.—Ed.)

Sub Judice

ONCE IN A WHILE A TRIAL JUDGE IS WRONG * * *

Meeks was convicted of murder in the first degree and was sentenced to life imprisonment. One Campbell was found dead in a ditch in Juneau, Alaska. His throat had been cut and some \$2000 had been taken from him. The government's principal witness was Kelso B. Hartness, a gentleman out on parole on a forgery charge. The defense attorneys, during the cross-examination of Hartness, made every effort to get before the jury and into the record the fact that Hartness had been convicted of a crime, but the trial judge blocked these efforts, maintaining that the only way to inquire about a prior conviction was by the direct question "Have you ever been convicted of a crime?" The learned trial judge took this view in the face of Section 4256 of the Alaska Compiled Laws 1933, which specifically allows the introduction of the record of a prior conviction for impeachment purposes.

In the presence of the jury, the Court pursued the following conduct:

(Defense counsel to Hartness): "Have you any reason or motive for testifying other than the reason or motive of trying, to the best of your ability, to tell the jury the truth of any facts within your personal knowledge?"

(The Court): "Don't answer that question. Proceed with your cross-examination. This is the last time I am going to warn you."

(Defense counsel to Hartness): "Are you sometimes known as A.S.—are you the same Hartness that was the defendant in the case entitled 'The United States against Hartness?'"

(Government attorney): "Objection, your Honor."

(The Court): Just a moment. The Court reluctantly finds you in contempt of court, on failure to apply to the order of the Court made frequently, in the presence and view of the Court, and it is the judgment of the Court that you be fined the sum of fifty dollars and that you be removed from the prosecution of the case until the fine be paid or the contempt purged."

On the attempt to purge himself in the absence of the jury, the defense attorney stated his purpose to introduce the judgment when the identity of Hartness as defendant was shown. The Court rejected such a statement as a purging of the contempt, stating:

(The Court): "There is only one way of asking of the convicting of a crime; by the single and sole question: Have you ever been convicted of a crime?"

(Counsel): "Without identifying the case?"

(Court): "Yes."

(Counsel): "I respectfully submit it has been frequently done, to identify to the witness the case you are referring to. In fact, some courts insist on it."

(Court): "They have never done it in Alaska. They have never been permitted to do so. There is only the one way."

(Counsel): "I respectfully submit on the statement I made there was no intent at all to act contemptuously. I was in good faith attempting to lay a foundation to prove the witness is a convict. I request permission to continue."

(Court): "You may ask him only the one question. You will be removed from the bar of this court until the fine be paid or the contempt purged. . . ."

On appeal, the Circuit Court of Appeals for the Ninth Circuit held that the trial judge was all wrong. Reversed. *Meeks v. U.S.*, 183 F. (2d) 598 (September 12, 1947).

HONORABLE DISCHARGE IS MERE HEARSAY * * *

One of the grounds for objection in a recent case before the Municipal Court of Appeals for the District of Columbia in a prosecution for negligent homicide, was the refusal of the trial judge to admit an honorable discharge certificate as evidence of good character. Such a certificate, said the Court, did not meet the test that "the only admissible evidence of good character is what people generally, who know the accused, think about him." The Court nodded in the direction of Professor Wigmore, conceding that there was something to be said for the contrary view, for the learned professor takes the view in his treatise that such a certificate should be liberally construed to import not merely general good character but any other fundamental moral traits that may be relevant in criminal cases; that the discharge is a comprehensive summary of a man's character and therefore relevant on virtually any charge of serious crime.

"However," said the Court, "the overwhelming judicial view seems to be that a discharge certificate is hearsay, *ex parte*, *res inter alios acta*, made by a person who is not before the court available for cross-examination, and inadmissible." *Ridgell v. United States* (August 28, 1947, 54 A. (2d) 679).

Alumni Notes

Alumni are especially invited to forward contributions to this column to the Record office, Austin Hall, Cambridge (38), Mass.

At the fiftieth annual meeting of the Rhode Island Bar Association, Fred A. Otis, LL.B. '06, was elected president, succeeding Harold B. Tanner, LL.B. '12. Other officers elected were James L. Taft, LL.B. '25, first vice-president; Andrew P. Quinn, Ex '22, second vice-president; James H. Higgins, Jr., LL.B. '35, secretary; Hayward T. Parsons, LL.B. '19, treasurer; and Frank C. Cambio, Ex '20. Supreme Court Justice William O. Douglas addressed the meeting.

Ex '94—Judge Charles L. Hibbard of Pittsfield, Mass., passed away on November 15. He had been a judge of the District Court of the Central Berkshires since 1913, and on October 1 he had resigned as presiding justice of the Appellate Division of Western Massachusetts, a post which he had held for twenty-five years. At his death he was a partner in the firm of Hibbard & Hibbard with his son.

LL.B. '95—Charles S. Wing, Sr., a practicing attorney in Boston for many years, died on November 12 at his home in Newton Centre.

LL.B. '08—Alfred L. Castle has been elected to the board of governors of the American National Red Cross.

LL.B. '13—Ernest Angell has been elected president of the Association Against Election Frauds, Inc., an organization formed in New York City by all of the local bar associations to provide an all-year-round working panel of younger lawyers to assist in the enforcement of election laws. The group will cooperate with the State Attorney-General.

LL.B. '34—David D. Hochstein has been released to inactive duty by the U. S. Navy, and has returned to the Department of Justice with a promotion to principal attorney.

LL.B. '42—Lawrence R. Sperber, formerly with Stroock & Stroock & Lavan, has just commenced private practice at 277 Broadway, New York City.

LL.B. '44 (47)—The engagement of Miss Barbara Gene Rosenberg, of Jackson, Mich., and Harry T. Stutman, has been announced. Stutman recently passed the Delaware Bar.

LL.B. '47—Bertram S. Silver has become associated with the Boston firm of Muchnick & Bearak, for the general practice of law. Offices are at 148 State Street.

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NEWS BRIEFS —(Cont.)

ico-Legal Aspects of Lunacy last Tuesday in Langdell North Middle. Dr. Coon concentrated chiefly on the legal tests of criminal responsibility and concluded with a short discussion of testamentary capacity.

He explained that the criminal law is still largely governed by the rules in M'Naghten's case in 1843. These rules set up the "right and wrong" test; i.e., if the accused appreciates the nature and quality of his act, or if he knows what he is doing is wrong, he is held responsible for his actions.

The criticism levelled against these obsolete medical theories adopted by the law, said Dr. Coon, is that they emphasize punishment rather than treatment. He advocated the establishment of suitable treatment institutions so that the courts will stop sending men to the gallows who have only partial mental responsibility.

In regard to testamentary capacity, Dr. Coon informed his large audience that it is not a question of insanity, but rather whether the testator appreciated what he was doing.

Ohio Club

Students from Ohio will gather in the Faculty Club, December 15, at 7 p.m. for cocktails and dinner. Speaker of the evening will be Professor Edmund M. Morgan, who will discuss "The Young Lawyer in Politics."

All students from Ohio, or any men who plan to practice there may purchase tickets at the Record office at any time before December 10, 1947.

Members of the committee organizing the affair are William A. Geoghegan (Cincinnati), Eli Goldston (Warren), Harvey Karlin (Cleveland), George I. Meisel (Painesville), and S. Arthur Spiegel (Cincinnati).

Touch Football

This afternoon, weather permitting, the Tigers of League No. 1 will clash with the Benedicts of League No. 2 in the final touch football contest of the season. The winner of this playoff will receive the P. B. H. Law School Committee prize.

Meanwhile, Law School gridsters are awaiting the result of their challenge to the Business School in re a post season all star game.

Basket Ball

Twenty Law School basketball teams went into action last week on Hemenway courts. There are four leagues with five clubs in each. Robert A. Goldman 2L, who is in charge of the organization of these leagues, announced that schedules and results will be posted on the Hemenway Gym bulletin board. Players can obtain an individual copy of the weekly schedule at the gym.

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AMES —(Continued)

Judges before whom the argument will be held are Charles E. Wyzanski, Judge of the U.S. District Court for Massachusetts, and Charles P. Curtis, Jr., Esq., and Charles A. Coolidge, Esq., both of the Boston bar. Judge Wyzanski, whose presence has given sparkle to many previous Ames arguments, will preside as Chief Justice.

The Grotius and Holmes clubs will argue this Thursday in the second semi-final. This case involves an attempt by the government to assess an income tax deficiency of \$150,000 on an assignor of a royalties contract; the Bureau of Internal Revenue claims that the income received by a wife as assignee of royalties due her assignor husband was really the income of her husband. Another issue in the case is the effect of a prior decision of the Board of Tax Appeals on the same assignment in a previous year. This case is patterned after a case now pending before the U.S. Supreme Court.

Representing the plaintiff-appellant, Charles Mark, are Charles S. Bridge and Gale A. Christopher of the Grotius Club. Of counsel on this brief are William C. Brunell, W. Robert Chandler, Richard H. Garner, Irving C. Paul, and Robert P. Yeomans.

For the Commissioner of Internal Revenue in the oral argument are Wilmot T. Pope and Henry A. Preston of the Holmes Club. Arthur S. Bartlett, Charles F. Choate, Roger Derby, Charles N. Foster, and William P. Homans, Jr., wrote the brief.

Judge Carrol C. Hincks, of the U.S. District Court in Connecticut, will act as Chief Justice with H. Brian Holland, Esq., and Allan H. Higgins, Esq., both Women have been invited to both arguments, and will be admitted as soon as the doors of the Courtroom are opened at 7:30 p.m.

F.E.P.A. —(Continued)

The Commissioner pointed out that the administration of the act has silenced the fears of former opponents who argued that tolerance cannot be

legislated and that efficient plant operation would be sacrificed. Employers and employer groups that originally were very much opposed to the passage of the act are now among its strong supporters.



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Calendar

THE LEGAL WORLD

Estate Planning

Mayo Shattuck, Esq., of the Boston bar, will deliver the first in his series of lectures on Estate Planning on Thursday, December 4, at 4 p. m. in Langdell Courtroom.

Legal Writing

Prof. Freund will discuss the new program of legal writing in Langdell Courtroom today at 5 p. m.

Harvard Law Wives

Clare Luce's *The Women* will be given by some of the Wives on Wednesday, December 3, at 8 p. m. in Kendall House.

Griswold Club

A pre-holiday banquet (informal) will be held at the Hotel Continental, Cambridge, on Wednesday, December 3, at 6:30 p. m.

Yearbook Pictures

Law Club Pictures for the Yearbook, which will be taken on the front steps of Langdell Middle, have been scheduled as follows:

Date	1:15 p. m.	1:30 p. m.	1:45 p. m.
Dec. 2	Douglas	Cox	Gardner
" 3	Griswold	Grotius	Dodd
" 4	Kaplan	Kent	Madison
" 5	Mansfield	Pollock	Scott
" 8	Thurston	Blackstone	Braucher
" 9	Casner	Morgan	Thorpe
" 10	Warren	Parsons	Freund
" 11	Wilson	Gladstone	Stone
" 12	Bacon	Thayer	Coke
" 15	Langdell		

Law And Medicine

Dr. Alan Moritz of the Harvard Medical School, who delivered the first lecture, will discuss *Deaths Known or Suspected to be Due to Homicide: Evidential Objectives* today at 4 p. m. in Langdell North Middle.

THE UNIVERSITY WORLD

Motion Pictures

The Fogg Museum will present a

series of motion pictures, one each month from December through April. Membership for the entire series may be obtained by writing to the Boston Film Society, 314 Marlboro Street, Boston, and enclosing \$3. On Friday and Saturday, December 5 and 6, *The City and The 39 Steps* will be presented. Others in the series will be *The Cabinet of Dr. Caligari*, *Duck Soup* with the Marx Brothers, *Etoile de Mer*, *The Birth of a Nation*, and *Potemkin*.

Sunday Services

Professor Reinhold Niebuhr of the Union Theological Seminary will deliver the sermon at the Memorial Church on Sunday, December 7, at 11 a. m.

Hillel

Two visiting professors from the Haifa Technion will speak on *Professional Opportunities in Palestine*, next Friday at 8:30 p. m. at Hillel House, 5 Bryant St.

Gardner Museum

The program for this week is: Wesley Copplestone, tenor, and Robert Fraser, pianist, today at 2:45 p. m.; Eleanor Davis, mezzo-soprano, and Virgil Parker, pianist, on Thursday, December 4, at 2:45 p. m.; Estelle Freeman, contralto, and George Zilzer, pianist, on Saturday, December 6, at 2:45 p. m.; and Julius Eatchen, pianist, on Sunday, December 7, at 2 p. m.

THE OUTSIDE WORLD

Ford Hall Forum

Why Do Human Beings Act The Way They Do? will be the topic Oscar W. Junek will discuss at the forum on Sunday, December 7, at 8 p. m. in Jordan Hall, Boston. Take Huntington Ave. car to Opera House.

FRANFURTER—(Continued)

other profession, this ability to ferret out the relevant considerations of any type of problem is a necessary qualification for the lawyer. The scientist, however, though highly trained in what is relevant within the limited area of his field, becomes lost among the maze of conflicting forces that operate outside his particular specialty.

He made one observation as to the work of the Supreme Court. In his opinion most of the labor cases that he hears should never reach the courts. Both sides have a tendency to fight every misguided claim to the limit; employer and union, instead of seeking to get along together, spend their energies pressing what they consider to be their abstract rights.

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PALESTINE—(Continued)

materialized. Since 1923, the High Commissioner himself had authority to legislate for "the peace, order and good government" of the country, promulgating "Ordinances." On the higher levels of lawmaking, then, the taxpayer is not represented. Moreover, the powers of making laws and of carrying them out are vested substantially in the same office.

The Judiciary consists of two tiers of courts: The ordinary civil courts, and the various communal or religious courts, having jurisdiction in matters of personal status (such as marriages, alimony, legitimation, and succession) of their members. Numerous cases of inter-religious conflict of law and jurisdiction frequently arise. From the civil courts, appeals in certain cases lie to the Judicial Committee of the Privy Council in London. Since judgments of the religious courts are executed by the civil courts, a circuitous method of testing their validity is available when they reach the phase of execution.

Constitutionally, His Majesty's exercise of power within Palestine takes place in a foreign country, and is therefore considered to be governed by the (British) Foreign Jurisdiction Act, 1890. Internationally speaking, however, the provisions of the Act, as well as of the Order-in-Council itself, being unilateral, ought to be subordinate to the Mandate. Still, it has been repeatedly held by the courts that "the Palestine Order-in-Council, 1922-3, is not subject to or governed by the terms of the Mandate for Palestine, except in so far as the Order-in-Council has incorporated in itself the terms of the Mandate." This renders it possible to place given pieces of legislation beyond attack on the grounds of inconsistency with the Mandate by the simple device of passing them in the form of Orders-in-Council—which was done more than once.

Defense regulations and similar techniques, increasingly in vogue, may unlike the common "Ordinance," become effective at once. They can be passed under an enabling clause sufficiently wide to reduce the chances of court review almost to the vanishing point, and they are legislation by the "Executive!" In the words of the recent Anglo-American Committee on Enquiry, "About £4,600,000 (\$18,400,000) was spent on 'law and order' during the financial year 1944-5, as against £550,000 (\$2,200,000) in health and £700,000 (\$2,800,000) on education. Thus even from a budgetary point of view Palestine has developed into a semi-military police state."

The peacetime law is applied by the various communal courts, ranging from use of the Jewish Talmud and its exegesis, to the Mohammedan Koran, plus commentaries to the Byzantine law in its modified form prevalent in the Greek Orthodox Church. There is greater uniformity in the jurisprudence of the civil courts, since these apply "the law of Palestine," in the following order: Ottoman law in force toward the end of that regime; then Orders-in-Council and locally enacted statutes "and subject thereto and so far as the same shall not extend or apply, shall be exercised in conformity with the substance of the common law and the doctrines of equity in force in England . . ." The Ottoman Civil Code ("Mejelleh") is, however, tacitly—often incorrectly—assumed to be too anemic to govern a given situation, and English common law is brought around. Besides, vast tracts of English law were introduced by *ad hoc* statutes, so that at present the criminal law (though not criminal procedure), the laws of companies, partnerships, negotiable instruments, bankruptcy and several others are substantially English. Civil procedure is also, subject to peculiarities in jurisdiction, based on English models, and there are provisions for discovery and interrogatories.

Land law stands on a peculiar footing, due to its connection with a rather archaic system of tenure. More and more, however, incidents of tenure, as distinguished from tenure itself, are governed by common law notions.

The Ottoman law itself was not entirely homogeneous in approach or content, and the lack of homogeneity has been largely retained. Thus, today, on the whole and bearing in mind that communal—as distinct from civil—jurisdiction may be found lurking at any unexpected turn and get assertive, the picture resembles a mosaic rather than a monolith.

CASES SCHEDULED FOR MASS. COURT

For the convenience of students who would like to visit the Massachusetts Supreme Judicial Court during its sessions, THE RECORD has made a list of the more interesting cases scheduled for this week. The cases are listed in the order that they will be heard, but the particular day upon which they will come up is indefinite and if a student wants to hear a particular case he should call the Clerk, CAP. 0351, and find out when it is most likely to be argued. The Court meets only during the first week of each month, and hears argument from 9:30 a.m. to 1:00 p.m., and from 2:00 p.m. to 3:15 p.m., allowing one-half hour to each side. To get to the Suffolk County Courthouse take the subway to Park Street and then take a northbound train to Scollay Square.

Probably Today:

Joyce v. Devaney, M. 4723, a bill in equity to restrain the obstruction of a driveway in Medford. *DuBois v. Atlantic Corporation*, S. 10,514, a tort action for deceit in a business transaction. *Duggan v. Rennie*, E. 10,515, a will contest.

Probably Wednesday:

Carlton Hotel, Inc. v. Abrams, S. 4726, a bill for an accounting for personal services brought by an attorney who is his own counsel in this action. *Cohen v. Boston Edison Co.*, S. 10,517, tort action for damages caused by improper wiring. *Coburn v. Moore*, P. 10,520, a tort action brought by the executor of decedent's estate against a doctor for negligence in treating the decedent.

Probably Thursday:

O'Brien v. American Radiator and Standard Sanitary Corporation, S. 10,526, a contract action to recover commissions allegedly due for the sale of real estate.

Probably Friday or Saturday:

Poulos v. Coca Cola Bottling Co., S. 10,529, action in either tort or contract for injuries received from the breaking of a bottle.

Leary v. Jordan Marsh Company, S. 10,542, an action in tort for personal injuries sustained by plaintiff when she fell down in defendant's store. *Beekes v. Cutler*, S. 10,510, tort for personal injuries caused by defective machinery which plaintiff was using while in the employment of the defendant.



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