

The Harvard Law School Record

VOL. 6 NO. 2

CAMBRIDGE, MASS., WEDNESDAY, FEBRUARY 25, 1948

PRICE TEN CENTS

NEWS IN BRIEF

FORUM ELECTIONS

George H. Esser, Jr., 3L (VMI '42) was elected president of the Harvard Law School Forum at a recent meeting of the Board of Directors. He succeeds Henry P. Lopez (Denver U. '45), who was graduated after holding that position for one term. Richard A. Holman



ESSER



HOLMAN

3L (Cornell '43), was elected vice-president, succeeding Homer E. Capehart, Jr., 3L (De Pauw '45). Following Esser as second vice-president is Frank Cohen 3L (St. Louis U. '43). Re-elected to the offices of secretary and treasurer respectively are Francis J. Milligan, Jr., 3L (Loyola '45), and Karl Schmeidler 3L (Cornell '44). Election of new members to the board has been deferred until later in the term.

BIRTHDAY DANCE

King's Bench will celebrate its first anniversary at a Birthday Dance for members of the organization this Friday evening, at the University Club, Boston. Plans for the event have been arranged by Co-chairman J. Taylor Greer 3L and Sydney G. Fisher 3L.

HASTINGS FIRE

A fire last Sunday evening in 48 Hastings, occupied by Robert and David Loeffler and Leonard Silverstein, all 3L, caused damage estimated at \$600.

Five engines reported to combat the blaze, which tied up traffic on Massachusetts Avenue for about 20 minutes.

P. B. H. ELECTIONS

The Law School Committee of Phillips Brooks House announces the election of its officers for the coming term. George T. Bogert, 3L, (Cornell '41), is the new Chairman succeeding Julius A. Leetham, (Stanford '41), who was graduated from the Law School in January. Marshall M. Massey, 2L (Harvard '45),



BOGERT



MASSEY

succeeds Carl L. Shipley, 3L (Georgetown '42), as Treasurer, and William S. Meyers, Jr., 2L (Oklahoma U. '45), replaces George M. Burditt, 3L (Harvard '44), as Secretary.

LAWYERS GUILD

The Harvard Chapter of the National Lawyers Guild meets each week for a two-hour session to discuss the law concerning individual liberties and rights. The discussion is based on assigned case material. In the first seminar, Professor Mark DeWolfe Howe outlined the history and interpretation of the civil liberties aspect of the Constitution. The second lecture last week was conducted by Charles F. Anderson, LL.B. B.U. '47, a graduate student at Harvard Law School; his topic concerned freedom of assembly.

Future seminars will be conducted by Professor Powell, Bowie, Morgan, Freund, Cavers, Brown and by Osmund K. Fraenke of the American Civil Liberties Union.

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FIRST H.L.S.A. AFFILIATE IS IN "PHILLY"

Local Chapter Has Ambitious Program; Membership Of 156

The Harvard Law School Association of Philadelphia was the first local group to be granted affiliation status with the parent Harvard Law School Association under the national organization's 1947 constitution. The Philadelphia Association is similar to the recently formed Indiana organization whose achievements were reported last week except that its independent history dates back to 1934, when more than 60 alumni founded a local club. Today, the Philadelphia Association is an affiliate of the national organization; it has 156 members and operates a Philadelphia placement committee to aid graduating Harvard Law students; it donates an annual scholarship to the Law School.

The affiliation of local units with the parent Harvard Law School Association is the result of a new constitution which was adopted by the national alumni group at a reorganization meeting last June. It was provided that a local organization would be eligible for affiliation if its aims were similar to the parent association—that is, if it were organized to assist the Law School, to promote mutual acquaintance among the graduates, and to aid in the placement program. The well-established Philadelphia Association quickly requested affiliation and the council voted acceptance.

The Philadelphia organization has no

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Recent Litigation Illustrates Difficulties Met In Prosecuting Malpractice Action

A great majority of the actions for malpractice which reach the trial stage end with directed verdicts for the defendant doctor. On February 19, 1948, however, in the case of *Rines v. Klein*, et al, in the Superior Court of Massachusetts, Norfolk County, the facts of a malpractice action not only went to the jury but that body returned a substantial verdict against two of the five defendant doctors. The case is of great interest to both the legal and medical professions, but of even greater interest are the factors leading to the instigation of the action and the difficulties encountered in preparing the case for trial.

Mr. David Rines, the plaintiff, is a wealthy Boston patent attorney. He has been an astronomer, a member of the U. S. Coast and Geodetic Survey, a visiting lecturer of the Harvard Graduate School of Engineering, and is listed as a qualified scientist in "American Men of Science."

Early in March, 1943, Mr. Rines' wife entered a Boston hospital for treatment of a painful back condition. One month later she died. At the time of her death, Mr. Rines did not question

the treatment of his wife but desired to know the exact causes of her death. He discussed her case with various doctors, and as he pieced together the fragments of medical information he decided to investigate the matter further. Unable to obtain what he considered complete information from medical men, Mr. Rines determined to discover the facts for himself.

Since he was not a qualified member of the medical profession, Mr. Rines had no recourse to medical societies or to hospitals. However, he studied the writings available in the libraries

(Continued on page three)

DEAN TO JUDGE ON BROADCAST

Knutson Bill Will Be Topic For ABC Program

"Should the tax reduction provisions of the Knutson Bill be enacted?" will be the issue for litigation this Sunday as faculty and students produce the second in the program series, "On Trial," for coast-to-coast broadcast over the ABC network. Dean Erwin N. Griswold, former consulting tax expert to the Treasury Department will sit as judge.

The program is released through the major portion of the network from 12:30 to 1 p.m., but local listeners can hear the program at 4 p.m. on WCOP.

The series of programs, now established as a permanent public affairs feature of the American Broadcasting Company network, had its premiere last Sunday with Harvard Law School students discussing enforcement of the Palestine partition. Prior to last Sunday the series was broadcast for three months on a tentative basis under the title, "World Security Workshop."

In the opening broadcast, Professor Howe presided over a spirited debate in which Counsel Thomas P. O'Boyle (Holy Cross '42) and his witness Arnold W. Rivkin (Brooklyn '41) supported enforcement of partition as the basis for true peace in the Holy Land and essential to United Nations prestige. Opposition counsel William B. Webb (Wash. & Lee '42) and witness Bushrod B. Howard, Jr., (Williams '42) denied the assertions that enforced partition would bring Palestine peace and proposed es-

(Continued on page three)

SPORTS PROGRAM GETS UNDER WAY

The P. B. H. Law School Committee sports program for Law students moves into high gear this spring with a squash tournament in March, a continuation of the current basketball tournament and a proposed ping-pong competition to be organized if student demand is sufficient.

The squash tournament will be open to all students and will be organized in two leagues, one for experienced players and one for the less experienced. This plan will give enthusiastic but untalented squash players at the Law School a chance to participate in a tournament. Men interested in signing up for the competition may do so at the Hemenway Gym desk by Feb. 28. Further information is available at the gym or can be obtained by calling E. Thayer Drake at El 4-7293.

Basketball competition continues with 12 teams in two leagues pointing for league honors. Continuing the rivalry of last summer when the Law and Business Schools clashed on the diamond, two Law School quintets, one made up of all-stars and the other of league-competition winners, will meet Business School teams at the end of the season.

GRADUATING CLASS SHOWS NO FAILURES

Only One Student Completes Course With "A" Average

The three-year record of the February graduating class, as announced by Assistant Secretary William J. Bowe, Jr., showed an unusually large proportion of the final averages in the middle areas. As for those on the extremes, there was only one man out of the class of 204 who finished with a final average of A, while no student who lasted to the third year failed to graduate.

The cumulative averages of the 204 graduating students were divided into grades as follows: A's, 1; B's, 34; C's, 152, and D's, 17. The middle man in the class had a 66. The man one-quarter down on the rank list had a 68; the man three-quarters down a 63. Except for the higher bunching in the B and C category, this latest graduating class presents a statistical picture similar to its predecessors. The following chart is put in terms of the percent of each class that had the particular grade as a cumulative three-year average:

Date	Graduated	A	B	C	D	E
Feb. 1948	5	16.7	74.5	8.3	0	
Sept. 1947	1.6	16.0	69.5	11.3	1.6	
June 1947	3.4	13.4	75.6	7.6	0	
Feb. 1947	5.6	14.0	74.7	5.9	0	

In comparing the results this class got at the end of the first year with their final averages, it is apparent that the general level has risen considerably. This is readily explained by the dropping of the lowest 20 per cent at the end of the first year. But this fact would not account for the sharp drop in the D category in comparison with first-year

(Continued on page four)

YEARBOOK SUBSCRIPTIONS

The deadline for subscriptions to the 1948 Harvard Law School Yearbook is the end of the first week in March. Those who wish to pay the balance on their subscriptions and those who wish to subscribe can do so at the Yearbook office in Gannett House at any time between 9 a.m. and 5 p.m.

Subscriptions will also be received between 10 a.m. and 1 p.m. in Austin Lobby on Monday, Tuesday and Wednesday and in Langdell North on Thursday and Friday.

VOLUME ON POUND WRITTEN BY SAYRE

The College of Law Committee of the State University of Iowa has completed the publication of *The Life of Roscoe Pound*, a 400-page volume written by Professor Paul Sayre (S.J.D. 1925), of their faculty.

Included in the book are discussions of Dean Pound's boyhood, his school and college days, his activities as a practicing lawyer and judge, excursions into botany, political activities, law teaching in Lincoln and Chicago, his years as professor and dean at Harvard Law School, his friendship and holidays, and his public service, writings, and character.

Of particular interest to Harvard Law School men is the author's use of information concerning the history of the School and of the personalities, past and present, surrounding it.

Professor Sayre was also the editor of *Interpretations of Modern Legal Philosophies*, a volume of essays in honor of Dean Pound published by the Oxford Press last year. *The Life of Roscoe Pound* sells for \$4.50, and may be obtained from the College of Law Committee, The State University of Iowa, Iowa City.

Proceedings In Poindexter v. Prosser Set For Ames Arbitration In April

The famous "Case of the Five-dollar Bill" of *Poindexter v. Prosser* will be tried in a court of the Commonwealth of Ames during the first part of April. The case, previously scheduled for the Third District Court of Cambridge, Mass., has been removed to the Ames Court by agreement.

As yet no judge has been named. From sources close to the bar, the RECORD has learned that three judges have so far disqualified themselves. One judge, it is believed, on the ground that he was once a professor, a second on the ground that he was once a student, and the third because he was interested in five-dollar bills.

According to Poindexter his claim arose as follows: To illustrate a point of negotiability in Bills and Notes class, Professor Prosser asked for a five-dollar bill. Poindexter handed the professor the money which was pocketed and has not yet been returned. Poindexter forthwith went down and filed a claim in the Cambridge District Court in tort and contract for the five dollars plus five dollars exemplary damages.

The following day during class a constable procured by Poindexter rushed up and served proper process on Prosser. At the end of the hour, nevertheless, the professor pointed out that a special occasion in Poindexter's life was to occur on the morrow, and gave Poindexter \$5. Poindexter says that the special occasion being his marriage, and such items like furs being very useful on such occasions, he was very grateful to the professor, but was careful to point out to Mr. Prosser that the \$5 was a gift and that the claim for the original \$5 still remained.

Professor Prosser, on the other hand, denies the validity of Poindexter's claim and maintains that the money was given to him by Poindexter as a gift.

Mr. Prosser has not yet designated counsel nor decided what line of defense he would take. Rumors that the professor would be represented by Legal Aid were squelched when the bureau reported that they did not believe the professor sufficiently indigent to qualify for their aid. A usually reliable source indicated that it is not unlikely that one Edmund Morgan would head the defense staff.

Poindexter also has not yet named counsel. Poindexter informed the RECORD that he had several men in mind, but that it really didn't matter since even a Yale man (or woman) could win this one. The plaintiff pointed out that he was fighting the cause of future generations of students, and that he was amply supported by citations from Prosser's Hornbook on Torts plus a strong *semblance* in *Dobson v. Commissioner*.

Meanwhile the RECORD learned that professors and educators all over the country have rallied to Mr. Prosser's support. One professor was quoted as saying: "This is a far more serious threat to academic freedom than the Barnes Bill. If Poindexter wins, the illustrative method is dead."

On the other side students were sympathetic to Mr. Poindexter. The general feeling among those interviewed was that money may be negotiable, but not that negotiable. One student said, "This is a far more serious threat to academic freedom than the Barnes Bill. If Poindexter loses, student rights are dead." A first term deep in the Hornbook looked up long enough to remark that he thought that Professor Prosser should be "tort" a lesson.

Incidentally, Poindexter has been inquiring whether it isn't too late to substitute Advanced Commercial Law for Bills and Notes. Sed Quare.

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Editorials

FOR SOME CONVERSION IS DELAYED

With even General Ike shedding battle jacket for cap and gown, the New York Bar Examiners apparently feel that veterans are so adequately absorbed into the civilian economy that special concessions to them should be quietly withdrawn. Massachusetts, which relaxed requirements only to the extent of permitting pre-graduation bar exams, has indicated that this single concession will continue for another year. A number of other States, however, are reputedly preparing to follow New York's example of restoring normal residence requirements for veterans and of eliminating permission to take bar exams prior to law school graduation.

One small veteran group—those whose law school studies were broken by the war—have mostly finished school by now and have had the benefit of the postwar concessions. A good and larger veteran group, which will finish school in the next six to 18 months, deserves and in a number of instances badly needs these same concessions.

Recent graduates have filled the shortage of young lawyers for clerkships in larger firms. "Hang out your own shingle in a smaller town," is the current solution proposed by placement officials. That pat answer rings hollow to the man who must wait six months to take his bar exams and again as long to get his grade. If during his service travels he has selected some place other than his home State in which to practice, a lengthy residence requirement or "declaration of intent" will be a second stumbling block.

Law practice, of course, never has and cannot now provide openings for all law school graduates. Many must go into business, banking, and even reverse Eisenhower by going back into the service. Such a choice should not, however, be imposed on the older veterans with families to support by placing unnecessary hurdles in their path.

Trained to pierce verbose fog, the veteran law student cannot be satisfied with "maintenance of traditional high standards" as a reason for withdrawing present concessions and for failing to extend additional reasonable concessions to the older veteran students. The standards of the bar will not be lowered by such a step. Every law school dean has testified that these men are more mature, more intelligent, and harder working than any previous classes. These men have made many sacrifices in order to practice law. They merit reasonable adjustment of traditional requirements originated for graduates normally four to eight years younger, without experience of responsibility and without the expenses of supporting a family.

ELI GOLDSTON.

Letters to the Editor

To the Editor of the RECORD:

Allow me to offer some mid-winter gripes, just so the administration won't think everything is perfect. First of all, the matter of ending classes on time. Naturally no one expects his professor to break off in the middle of a persuasive policy argument just as the second hand reaches a certain point. However, there would seem to be no need for a professor to keep the

class overtime habitually; a modicum of planning could prevent this. The situation is aggravated when incoming students for the next succeeding class are delayed and the new professor slips in the back door and begins shouting, "Let's get down to business. Class must begin!" Surely a better working arrangement can be evolved, so that students are not blamed for the unrestrained enthusiasm of the preceding professor.

And another thing. In one of the classes recently the professor and students were attempting to decide whether papers should be written instead of exams given. The professor took the position that he could not possibly read and grade individual papers of 20 pages each. However, he was perfectly willing to have students work two or three on a paper, such papers being 40 or 60 pages long, and each student in a group receiving the grade the paper as a whole received. The latter proposal was voted down, for obvious reasons. The idea of the individual papers 20 pages long was lost in the confusion. Am I wrong, or do two and two still equal four?

CONFUSED THIRD YEAR STUDENT.

To the Editor of the RECORD:

I wonder whether you could advise whether I am pursuing a proper course during my second year at Harvard Law School. At present I spend 30 per cent of my time at movies, plays, concerts and the like, 59 per cent of my time with the female of the species, 3 per cent of my time studying, and I confess the rest is spent foolishly. Of course this is all very much different from my first year here, but I have been led to understand that everything in the second year is so obvious that studying is entirely unnecessary. What led me to my conclusion are statements and footnotes in the text material of the book we use in Property II, entitled "Cases and Text on the Law of Wills," by none other than Professor W. Barton Leach. To illustrate let me point out a few of the author's comments in the first 125 pages.

Preface p. iii. . . . indeed what I say here seems to me pretty obvious.
P. 10 . . . the obvious cases just stated.
P. 15 . . . dower and curtesy were obviously contingent interests.
P. 36 This is an obvious deterrent.
P. 65 f.n. . . . There were obvious reasons.
P. 102 The possibilities of knavery are obvious.
P. 116 Obviously this is a vague line to draw.
P. 116 . . . and obviously the problems involved are again essentially fact problems.
P. 117 There are obvious difficulties.
P. 118 The obvious objection to helping him is . . .
P. 119 f.n. Obviously, if the contest of probate is successful . . .
P. 122 . . . which is obviously closely related to the problem of . . .

And so it goes. Now in view of how everything is so obvious am I obviously misled or am I doing right?

OBVIOUSLY PERPLEXED.

(You are obviously right. And in case you're around next term drop in and see us. This may be the thing to replace the case method. Obviously we are interested.—Ed.)

Off the Record

POEM

(With apologies — to the readers)

Sometimes I wish that students
Wouldn't scare their fellow-students
By painting courses worse than they are.
The ones who went before me,
Say Evidence 'll floor me,
And ruin me 'fore I've gotten very far.
With them I beg to differ.
The problems aren't much stiffer
Than those encountered elsewhere after all.
To illustrate my thesis
And show I have no weakness
I'll have to state a hypothetical.
Now the driver was a-go'in'
But his horn was not a-blowin'
At least the victim shouted as he fell,
Of course, you had to guess it,
A witness could attest it,
He stood there at the time and heard the yell.
'Course the Prof. may act perplexed,
Get the class entirely vexed
But me—I see no cause for this complaint
For I know the problem's easy,
No need to get uneasy,
Why sure, either it's hearsay, or it ain't!

THE SAD WOOLSACK.

Gallery

BENJAMIN KAPLAN

Professor of Law

"For excitement, there is nothing quite like the trial of a lawsuit—almost any lawsuit. But no man should specialize in trial work unless he is willing to face the prospect of stomach ulcers or high blood pressure." These words of warning come from Benjamin Kaplan, Professor of Law. His reflections on problems of law practice are valuable, since the major part of his legal career has been spent as a practicing attorney in New York City. He has himself specialized in non-ulcer producing work at the appellate level.

Kaplan was born in New York City, attended the public schools there, and graduated from the College of the City of New York in 1929. While in college, he found time for numerous extra-curricular activities, such as writing for the student paper and serving as captain of the debating team for two years.

At Columbia Law School, Kaplan was top-ranking man at the end of his first year, which put him on the *Law Review*, of which he was editor-in-chief in 1932-33. During summer vacations he took a postman's holiday and did research work in legal history for one of the professors. In 1933, Kaplan graduated, and found his place in a private firm in New York City. The first cases he worked on involved extended litigation in which his firm represented the State Superintendent of Insurance, who was attempting to salvage something from the failure of a large number of title and mortgage guaranty corporations. Several times appeals were carried to the United States Supreme Court, as minority groups attacked the legislation under which the superintendent was operating. "Those were busy days," recalls Kaplan. "Often I arrived at the office in the morning only to find several orders to show cause pushed under the door, returnable at 10 a. m. that day!"

A case of considerable interest came up several years later when Frank ("I am the Law") Hague, Mayor of Jersey City, declared Jersey City closed to C.I.O. organizers. Several attempts were made to deliver speeches and distribute pamphlets in spite of this ukase, and when Hague began to enforce his order the C.I.O. and American Civil Liberties Union sought to enjoin Hague from thus restricting basic freedoms. In this case Kaplan worked closely with Morris Ernst, well-known liberal, who was a senior member of the same firm. The litigation reached the Supreme Court (plaintiffs having kept away from the New Jersey courts as the better part of valor!) and resulted in a victory for civil rights as protected by the Constitution.

In 1942 the course of international events intruded upon the lives of most American men. Kaplan was in the middle of his honeymoon when a telegram arrived, calling him to Washington. After an interim period as a civilian consultant, he entered the Army, serving as a member of the Legal Branch of the Office of Director of Materiel, ASF. Professor Bowie, now teaching at the Law School, was a fellow member. Kaplan found the work stimulating and strenuous, and believes that the lawyers accomplished much in the rationalization of war procurement. In 1945 Kaplan joined the office of the Assistant Secretary of War for duty with Mr. Justice Jackson, in his job of prosecuting Axis war leaders. This assignment took him to London, Berlin, and finally Nuremberg.

He was discharged in 1946 with the rank of Lieutenant-Colonel, resumed activities with his old firm long enough to work on some labor cases, and was called to Harvard Law School for the spring term last year.

In the classroom, Kaplan's strong, clear delivery is appreciated by those in the far recesses of the room, although they may be disconcerted by the searching questions they hear. Each case is subjected to close analysis, not only for the particular rule of law announced but the implications for drafting and counseling, the relation of the case to existing law in the field, and questions of what the law should be. Class procedure is a well-balanced combination of lecture and student participation, and the material is covered at an even pace.

Kaplan finds the student body here eager and intelligent. He hopes that students find time to read beyond the cases and get a full understanding of the law as the resultant of forces, many of which lie outside the law itself—including, notably, political and philosophical forces. "Above all," he says, "students ought constantly to ask themselves, upon what ground of policy does a particular rule of law rest—and is the policy a sound one? It isn't enough to learn legal doctrine and the techniques that go with it; you should go further and ask, what justifies the doctrine? The will and capacity to pursue that question to the end distinguish the wise lawyer from the merely clever one."

S. R. E.

Sub Judice

SAY IT ISN'T SO * * *

Plaintiff, sharing the famous sentiments of Mark Twain ("Reports of my death have been greatly exaggerated") alleged that defendant newspaper had published an obituary notice concerning plaintiff although plaintiff was in fact very much alive. Further, the obituary notice had read in part, "Mr. Cardiff who fought for Ireland's independence lies in state at 566 4th Avenue." The address mentioned was actually a bar and grill owned by plaintiff. The complaint did not allege that the newspaper knew the announcement was false, but did allege that the publication was "libelous, false, malicious and defamatory and caused plaintiff great shock, mental anxiety, disrepute, ridicule and reproach." Held: Defendant's motion to dismiss the complaint granted. The notice was probably a trick by friends of plaintiff. A publication falsely stating that a person has died is not libelous per se, and special damages would have to be pleaded. "However, the court is of the opinion that taking the innuendo to its fullest extent as pleaded by the plaintiff, that nevertheless there is still no libel. . . . At its worst the publication might cause some amusement to plaintiff's friends. But it is difficult to see where his reputation would be impaired in the slightest degree and the law of defamation is concerned only with injuries thereto." *Cardiff v. Brooklyn Eagle, Inc.*, 75 N.Y. Supp. 2d 222 (Sup. Ct. 1947).

Notes on Recent Cases

CONSTITUTIONAL LAW: VALIDITY OF RENT CONTROL LEGISLATION. *Woods, Housing Expediter v. Miller*, 8 CCH Sup.Ct. Bull. 605 (February 16, 1948). * * * President Truman announced the termination of hostilities by Presidential Proclamation on December 31, 1946, although noting that "a state of war still exists." In order to extend the rent controls provided by the Emergency Price Control Act of 1942, which was due to expire on June 30, 1947, Congress passed the Housing and Rent Act of 1947, which became effective on July 1, 1947. Although the powers granted the Housing Expediter were less extensive than under the former Act, which had been sustained as constitutional during the war, defendant believed the new Act to be unconstitutional in time of peace. Tenants in defendant's rental units in the Cleveland area were notified on July 2 of 40 per cent to 60 per cent rent increases, this demand admittedly violating the new Act and regulations adopted pursuant thereto. The Housing Expediter sued to enjoin the violations, but the District Court denied the injunction on several grounds, including the view that the Presidential Proclamation of December 31, 1946 inaugurated "peace-in-fact" though it did not mark termination of the war.

On appeal to the Supreme Court, the judgment was reversed and the constitutionality of the Act upheld. The majority opinion was written by Mr. Justice Douglas. Admitting that the former Act was upheld on the special war power of Congress, "The legislative history of the present Act makes abundantly clear that there has not yet been eliminated the deficit in housing which in considerable measure was caused by the heavy demobilization of veterans and by the cessation or reduction in residential construction during the period of hostilities. . . . Since the war effort contributed heavily to that deficit, Congress has the power even after the cessation of hostilities to act to control the forces that a short supply of the needed article created."

The fact that Congress had not specifically referred to its war power was not important. "The question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise." The court also rejected the argument that the Act violated the Fifth Amendment by exempting certain classes of housing, i.e. hotels, motor courts, etc. "Congress need not control all rents or none. It can select those areas or those classes of property where the need seems the greatest." Conceding that the use of war powers in dealing with war-created peacetime problems might open the way to abuses, the court pointed out that each case would still be subjected to judicial inquiry.

Mr. Justice Jackson concurred in the result, but was more concerned about the use of "vague, undefined and undefinable 'war power'." He was convinced, however, that this case represented a proper application of the principle. "I find no reason to conclude that we could find fairly that the present state of war is merely technical. We have armies abroad exercising our war power and have made no peace terms with our allies not to mention our enemies. I think the conclusion that the war power has been applicable during the lifetime of this legislation is unavoidable."

Alumni Notes

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

LL.B. '31—John J. Ford, who has served as Municipal Court Judge since 1943, has been named to the Los Angeles Superior Court bench.

LL.B. '33—David C. Shaw has announced his resignation from the National Labor Relations Board. With Thomas S. Wilson he has formed a partnership, under the name of Wilson and Shaw, for the general practice of law at 29 Eleventh Avenue West, Eugene, Oregon.

LL.B. '33—Joseph M. Corwin (formerly Joseph M. Cohen), after 14 years of government service, has become associated with his wife, Sally Alpert Corwin, in the general practice of law and for consultation in financing and planning housing and urban redevelopment, with offices at 31 State St., Boston.

LL.B. '34—Charles H. Livengood, Jr., for the past two years a lecturer on Labor Law and Criminal Law at the Duke University Law School, has been appointed an associate professor, effective at the beginning of the fall semester, 1948.

LL.B. '35—Mack Swigert has become a member of the firm of Taft, Stettinius & Hollister, 603 Dixie Terminal Building, Cincinnati, Ohio.

LL.B. '36—Leon A. Bradbury has opened offices for the general practice of law, specializing in taxation, at 933 Main Street, Hartford, Conn.

LL.B. '37—James M. Estabrook, who has been a member of the staff of Haight, Griffin, Deming & Gardner for the past ten years, has become a partner in the firm, at 80 Broad Street, New York City.

LL.B. '37—Owen Jameson and Gerald H. Trautman have become members of the firm of McCutcheon, Thomas, Matthew, Griffiths & Greene of San Francisco and Los Angeles.

Ex. '38—Victor M. Gordon has become one of the associate editors of the Connecticut Bar Journal, to which he has already contributed several articles.

LL.B. '38—John Sheldon McCook has joined in the formation of a partnership under the name of Roberts, Austin, Muller & McCook for the general practice of law at 165 Broadway, New York City.

LL.B. '39—Edmund A. Stephan has become a member of the firm of Mayer, Meyer, Austrian & Platt, 231 South La Salle Street, Chicago, Illinois.

LL.B. '39—George Boyd, Jr., has become a member of the firm of Wise, Corlett & Canfield, 122 East 42nd Street, New York City.

LL.B. '42 ('46)—Schauer, Ryon & McMahon of 26 East Carrillo Street, Santa Barbara, California, have announced the participation of T. Preston Webster, Jr., in a special department devoted to Tax and Estate Planning.

LL.B. '43 ('47)—Leon Dicker has become associated with the firm of Barron, Rice & Rockmore at 10 East 40th St., New York City.

Difficulties Met in Malpractice Action

(Continued from page 1)

throughout the Boston area. Finally, realizing that the book knowledge he acquired was inadequate for his purposes, he decided to supplement his information with formal medical schooling.

A graduate of Harvard College ('07) and a resident of Boston, he first turned to the Harvard Medical School, applying for admission although then over the age of 60. The authorities consented to admit him to the second-year courses as a graduate student if he fulfilled their histology requirement. Professor Blake of the Massachusetts Institute of Technology, at the request of Professor Schmidt, an eminent scientist at M.I.T., taught Mr. Rines histology, and within a short period the professor's sole pupil received an honor grade. After paying full tuition he was admitted to the Harvard Medical School.

After studying for months as a medical student, first at Harvard and later at the College of Physicians and Surgeons, a greater Boston institution now extinct, Mr. Rines then obtained work as an orderly in the Boston City Hospital emergency ward and was later transferred to the surgical department. This practical experience only added to Mr. Rines' conviction that further action should be taken.

According to Mr. Rines, the sole objective that remained before him throughout his entire experience was not the desire for vengeance but rather the desire to institute what he considered to be vitally needed reforms. At first he felt that the best course of action was to inform the leaders of the medical profession of the facts of his case and to ask them to take appropriate action. However, after contacting a number of medical organizations, Mr. Rines became convinced that recourse to the courts was the only solution.

Mr. Rines then set out to prepare his case. Although familiar with the difficulties of obtaining medical testimony in the prosecution of actions for malpractice he undertook an extensive search for experts who would aid him in the prosecution of his action or in giving medical testimony at the trial. In a letter to the American College of Surgeons he asked for the names of competent doctors who would be willing to testify in his behalf, but he was informed that "it is not the policy of this organization to furnish the information desired."

Mr. Rines continued in his search and at one stage of the game made a special trip to Michigan in a fruitless attempt to obtain the aid of an outstanding writer in the medical field who had written sympathetically of the problems in prosecuting malpractice actions. An

author of a widely known book who stated that nothing in medical ethics required one doctor to protect another or prevented one doctor from testifying against another if the circumstances warranted such testimony, was equally unwilling to assist Mr. Rines.

At this point Mr. Rines gave up all hope of obtaining an expert and decided to prove his case through the defending doctors. He was fully prepared to do this, and the record of the case seems to indicate that his counsel, who learned the necessary medical facts from Mr. Rines, was quite successful in this method of approach. Three weeks before the commencement of the trial a doctor did offer to serve as a medical expert for the plaintiff. His services were not used, but after the trial started, another doctor was obtained and he did give testimony on the plaintiff's behalf. The doctor, a member of the American Medical Association, was subjected to severe cross-examination and only by reading the record and the judge's charge can one determine whether Mr. Rines' case was strengthened or weakened by this testimony.

At present Mr. Rines maintains that the medical profession furnishes the public inadequate protection against malpractitioners. The doctor must be made accountable by law to the patient and the public. Mr. Rines recommends that a government agency staffed by doctors not associated with any medical society be established and given the duty of supervising closely the performance of practicing doctors—"just as the S.E.C. was organized to check a hitherto unbridled stock exchange." As an alternative to the first recommendation he suggests that the operating room be open to the public with a privilege

in the patient to have the public excluded.

Supplementing these suggestions Mr. Rines further advocates a change in the teachings of the medical schools in the country. The student should be taught that instead of being duty bound to protect the profession he is duty bound to aid the public in testifying against the alleged misdeeds of a fellow doctor.

Mr. Rines further maintains that many of the difficulties and expenses of bringing a case to trial can be cured by changing certain rules of evidence and certain substantive laws. He advocates the adoption by the legislature of Rule 529 of the A.L.I. Code of Evidence which allows medical treatises to be placed in evidence as truth of the matter asserted therein. In the recent trial two doctors who testified for the defense were confronted with their own writings which contradicted their testimony on the stand. Had these physicians not testified their writings would have been inadmissible. In view of the difficulty in obtaining experts, Mr. Rines argues that the writings which are acceptable when the author testifies should be equally acceptable when the writer is not a witness.

Mr. Rines also advocates a rule that any doctor licensed to practice will be qualified to testify as to good and bad practice in his field. The record in the recent trial shows that the judge was hesitant and troubled about qualifying plaintiff's expert. Mr. Rines maintains that the qualification of a practicing physician should not be discretionary with the judge.

The decision of the jury on February 19, 1948 was the culmination of almost five years of tireless effort on the part of Mr. Rines, an undertaking which involved the expenditure of a sum of money far in excess of the damages recoverable under Massachusetts law.

Undoubtedly this combination of adequate financial resources plus an extensive legal background reinforced by the unusual medical knowledge that Mr. Rines obtained was of great weight in the successful prosecution of his action. If the concurrence of these factors is essential to the success of a malpractice action under the existing system of laws, the challenge to the American public in general and to the legal and medical professions in particular for reform in this area is clear.

S. K., 3L

BROADCAST—(Continued)

establishment of a trusteeship as a substitute for the proposed plans.

For this week's trial John L. Casey, Jr. (Harvard '45), head of the Speaker's Bureau of the Harvard Young Republican Club will serve as counsel for the affirmative and will question witness Andrew James Casner, Professor in the Law School and a member of Governor Bradford's community property commission.

Counsel for the negative, John T. McNaughton (DePauw '42) is case editor of the *Law Review* and will start studies this October at Oxford under his recently awarded Rhodes Scholarship. Witness for the negative will be John Keith Butters of the Harvard Department of Economics and Assistant Professor of Finance at the Business School. In collaboration with John Lintner, Butters authored "Effective Federal Taxes on Growing Enterprises."

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Calendar

LEGAL WORLD

Tuberculosis X-rays

Every student is urged to have an X-ray taken of his chest. There is no charge for this service. Register today through Friday in Austin and Langdell lobbies. The X-rays will be taken at Memorial Hall Monday, March 1 through Wednesday, March 3. For further information call Bernadine Brooks in the Vice-Dean's office.

Glueck Club

All men who have been members of any court of the Glueck Club are urgently requested to attend the first meeting of the Spring semester, to be held at Kendall House, Monday, March 1, at 3:15 p.m.

Brandeis Club

Members of the Brandeis Club are invited to a party at Kendall House on Saturday, at 8:30 p.m.

UNIVERSITY WORLD

United Nations Council of Harvard
Cultural Factors of One World, is the topic to be discussed by Professor Talcott Parsons, chairman of the Department of Social Relations, in the final lecture of the series entitled *The Theory and Practice of One World*, to be given in the Littauer Auditorium, March 1, at 8 p.m. The lecture is open to the public without charge.

Graduate Forum

The fourth of the Graduate (School of Arts and Science Students') Forum will be held tomorrow evening at 7:30 p.m., in Littauer Lounge. The subject is *Can Economic Policy be Scientific?* Speakers include Holland Hunter, on *The Economist Looks at the Soviet System*; Karl Kaysen on *What Price Competition*; and James Tobin on *Can the Council of Economic Advisers Do Better Than E. B. Rideout?* Everyone is welcome; no tickets are required.

Harvard Conference on Careers, 1948

Business as a Vocational Field will be discussed at Lowell House, tomorrow evening at 7:45 p.m. Conference members include Nicholas E. Peterson, vice-president, The First National Bank of Boston; Professor T. H. Sanders, professor of accounting, Graduate School of Business Administration, Harvard University; Owen J. Brown, Jr., vice-president, Godfrey L. Cabot, Inc., and as chairman, Edward Reynolds, administrative vice-president, Harvard University.

Sanders Theater Concert

Alexander Schneider, violinist, and Ralph Kirkpatrick, harpsichordist, will play at the Sanders Theatre, Memorial Hall, tonight and tomorrow night at 8:15 p.m. Admission is free.

H. L. S. A.—(Continued)

constitution or by-laws. Its dues are two dollars a year and all graduates living or practicing in Philadelphia or vicinity are invited to join. Under the leadership of Joseph W. Henderson, LL.B. '13, president, and John Stevens, LL.B. '32, secretary, the Philadelphia unit is carrying out its 1948 objectives. Approximately once a month the club holds a luncheon at which one of its members or guests discusses a current legal topic; recently John Russell, Jr., lectured on *The Community Property Law*; Herbert S. Thatcher, general counsel for the A.F.L., analyzed the *Taft-Hartley Act*; and Henry S. Drinker, LL.B. '03, discussed *Legal Ethics*.

In an effort to assist the Law School, H. Orvel Sebring, Jr., LL.B. '33, directs the local placement committee. He and his staff acquaint the new graduates with current employment prospects in Philadelphia and send them to other members of the association for interviews. So far as the scholarship fund is concerned, the Philadelphia group hopes to raise \$500 annually.

As the RECORD explained in a previous article, the constitution of the national organization provides for a representative council chosen through democratic machinery to direct its affairs and elect its officers. Each association may select a representative who will be added to the council and hold the office of vice president. When in attendance, this member is entitled to vote on all questions.

Though the annual dues for active membership in the parent organization are \$5.00, the 1947 constitution provides that an affiliated local unit can recover \$1.00 from this \$5.00 fee for local use if it so desires.

GRADUATES—(Continued)

grades. This must represent a real movement of men from D's to C's in the course of their last two years.

No statistical analysis for the fourth term men was possible at this time because all their grades had not yet been received at Mr. Bowe's office. Furthermore, there is no rank list prepared for men finishing the fifth and sixth terms as individual terms are not considered complete units of work for ranking purposes.

NEWS BRIEFS—(Continued)

P. B. H. CANDIDATES

The P.B.H. Law School Committee has several openings this term for which present second and fourth term men are eligible. The committee welcomes anyone interested in organizing and staging the Law School dances, the intramural athletic program, and other committee activities.

Second and fourth termers interested should leave their names with George T. Bogert, 3L, at Perkins 29 or Carl L. Shipley, 3L, at Hastings 43 on or before Saturday, Feb. 28.

FORUM

Two journalists, New York Herald Tribune columnist Joseph Alsop and

PM's Washington commentator I. F. Stone, steamed full speed into the Harvard Law School Forum question for last Friday night, "Must We Stop Russia." Both veered off in sufficient time to avoid collision, and after going around, almost met on the other side to continue discussion. But referee Milton Katz of the Law School pushed the contestants apart, and though there was agreement by both that the Marshall plan was, essentially, a possibility for easing world tension, basic differences in position were developed.

Stone minimized the Russian threat while Alsop urged that we douse the flame of Russian expansion.

A heated question and answer period kept the audience of over 1200 on the alert.

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