

The Harvard Law School Record

VOL. 6 NO. 6

CAMBRIDGE, MASS., TUESDAY, MARCH 23, 1948

PRICE TEN CENTS

NEWS IN BRIEF

JUDGE APPOINTED IN \$5 CASE

The Board of Student Advisers has announced that Judge Frederic A. Crafts of the Waltham District Court will hear the case of *Poindexter v. Prosser*, now pending in the Ames District Court.

On Monday, March 29, at 8 p. m. in the Langdell Courtroom, Judge Crafts will hear arguments on plaintiff's petition to remove the cause to the Superior Court, on defendant's demurrers, and on defendant's motion that the plaintiff furnish an endorser for costs.

The trial on the merits will be on Tuesday, April 6, at 8 p. m. in the Langdell Courtroom, with Judge Crafts again on the bench. Whether plaintiff will be able to claim a jury trial depends on whether he is successful in having the cause removed to the Superior Court.

"ON TRIAL" BROADCAST

Light and heat were thrown on the subject of government sponsored health insurance on the concluding American Broadcasting Company's national network "On Trial" program from the Law School last Sunday afternoon.

Counsel Edward I. Rothschild, 3L and *Law Review* editor, who supported health insurance under government direction, engaged in a lively cross examination with opposing witness Dr. Elmer Bagnell, former president of the Massachusetts Medical Society, on the merits of a voluntary as against a compulsory program.

Rothschild's witness was Dr. Richard Weinerman of the United States Public Health Service and now in the School of Public Health at Harvard. Norman Colquhoun, 3L and *Law Review* editor, argued against a federal health insurance plan. Vice-dean Livingston Hall served as judge on the broadcast.

The "On Trial" programs were presented by the Law School Forum, under the direction of its public relations committee headed by Frank Cohen, 3L, Frank C. Boyce, 3L, and Joseph H. Flom, 3L, acted as co-chairmen in planning and scheduling the five programs.

RED CROSS FUND DRIVE

Tuesday and Wednesday of this week the Red Cross Fund campaign of 1948 will be carried to the classrooms of the Law School with the assistance of members of the faculty and the Law School Committee. Because of higher costs and expanded service to civilians and armed forces, more and greater contributions are needed this year than ever before. Ledger cards will be distributed in the classrooms for contributors to sign; deposits may be made at the door.

LAW SCHOOL COMMITTEE

Recent elections held by the Law School Committee of Phillips Brooks House resulted in the addition of three members from the fourth term and two members from the second term. The following men were elected from those interested after being interviewed by the committee: William D. Eberle 2L, Eric R. Haessler 2L, Benjamin F. Taylor, 2L, Martin P. Moser 1L, Sidney D. Inney, Jr., 1L.

TRUST LECTURE

On March 18, Gilbert T. Stephenson LL.B. '10, director of the Trust Research Department of the Graduate School of Banking, addressed a large audience at Rutgers on the subject, *Accounting Provisions of Wills and Trust Agreements*. Mr. Stephenson who lectures at the Graduate School of Banking in the summer told his listeners that the statutes on accounting are the most confused of the books. He advised young lawyers familiarize themselves with the local statutes in their area of practice and to work out a set of standard provisions in the instruments they draft in order to overcome the shortcomings of the statutory law.

(Continued on page four)

N. Y. CITY BAR TO SPONSOR MOOT COURT

Harvard To Debate Columbia On Trust Case Now Pending

The Association of the Bar of the City of New York announces that an argument between students representing Harvard and Columbia law schools will be held in the Association's chambers in New York City at 8 p. m. on Friday, April 9. The Association sponsored a similar argument last year between the Yale and Columbia law schools.

Representing Harvard Law School will be Lawrence S. Munson, 3L, and Robert G. Bailey, 3L, oral advocates; and Norman H. Brown, 3L, of counsel on the brief. Last term, Munson was advocate for the J. Smith Club in the Ames semi-finals, and Bailey and Brown were in the quarter-finals for the Langdell club.

The argument will be based on the record in an actual case, *Jane Currier Richardson v. David L. Richardson, et al.*, 71 N. Y. S. 2d 1 (App. Div. June, 1947), which is currently on appeal to the New York Court of Appeals.

The court which will hear the argument will be composed of Hon. Augustus N. Hand (LL.B. '94), Circuit Judge, CCA 2d; Hon. Robert P. Patterson (LL.B. '15); and Harrison Tweed (LL.B. '10), president of the sponsoring Bar Association.

In the case, Jane Currier Richardson, the plaintiff-appellee, is attempting to terminate a trust of which she was the settlor. The income of the trust was to be paid to the settlor for life, and upon her death the principal was to be paid to such persons as she might by will appoint, and in default of appointment to

(Continued on page three)

CLASS OF 1925 PLANS REUNION

Considers Proposal For Raising 1950 Gift Fund

The class of 1925 at the Harvard Law School has already started preparation for its 25th reunion which will be held in Cambridge sometime in 1950 when the Law School is in session. At present, the reunion committee is considering a proposal to raise a 25th Anniversary Fund for unrestricted use by the Law School. Although it has long been the practice of each Harvard class to make a gift to the University at the time of its 25th reunion, if this proposal is accepted, the class of 1925 will be the first in the Law School to do so.

No specific goal has been set for the Anniversary Fund because of the experimental nature of the proposal. A circular which was sent to all members of the class on Dec. 18 suggests that the gift be raised by annual contributions to the Law School through the Harvard Fund. All such contributions by members of the class between now and 1950 would be credited to the 1925 gift fund.

In a letter to Leonard Wheeler, Jr., LL.B. '25 (Harvard '22), partner of Goodwin, Proctor, and Hoar, Boston, and chairman of the reunion committee, Dean Griswold wrote: "I hope that your class will succeed in setting a precedent which later classes will be moved to follow, even if the doctrine of *stare decisis* is becoming a little unfashionable in some quarters these days." The Dean explained that the needs of the Law School were numerous and that he had set them forth in his annual report which was distributed to the alumni by the Harvard Law School Association. In

(Continued on page three)

The Faculty



Above is the latest available group picture of the Harvard Law School Faculty, which we print for the benefit of students who may not yet have had an opportunity to become acquainted with the entire staff, and for the benefit of alumni who may want to see whether their former instructors have changed.

Front row (left to right): Casner, Morgan, Scott, Dean Griswold, Hudson, Chafee, Toepfer; second row: Howe, Glueck, Hall, Maguire, Powell, Bowie, Bowe, Dodd; third row: Mentschikoff, Field, Katz, Leach, Pulling, Freund, Cavers; fourth row: MacLachlan, Braucher, Fuller, Cox, Amory, Sohn; back row: Brown, Kaplan, Gardner, Baker, Putnam, Dimmitt. (Not in picture: Seavey, Magruder, McCurdy, Hart, von Mehren, Minkin.)

Baseball's 'Monopolistic' Rules Resist Attack In Law Courts, Writer Asserts

"Batter up!"

Among the millions of fans eagerly awaiting the first such official call for the 1948 season are many who will have to make the choice between trekking to the nearest ball field and walking into the nearest law library. It might be well, for their benefit, to consider the legal problems inherent in organized baseball. These questions, which have been afforded scant treatment in the public press and in legal periodicals, include: The powers of baseball's commissioner (currently A. B. Chandler, Esq., Harvard Law, Ex-'24), the players' contracts, and the monopolistic aspects of the sport.

Baseball is governed by a body of "laws" mutually agreed upon by the participants. The big leagues are run according to the Major League Agreement and the Major League Rules, enacted by representatives of the National and American Leagues, and their constituent teams. Similar arrangements exist between the major and minor leagues. Provisions of these "laws" include the requirement that uniform contracts be submitted to the players, and

acceptance of the jurisdiction of the commissioner as the final arbiter.

The powers of the commissioner are found in the Major League Agreement of Nov. 1, 1946. Art. I, Sec. 2 lists as the commissioner's functions the investigation of any act alleged to be detrimental to the best interests of the game, and authority to summon persons, order the production of documents, and to determine after investigation the appropriate action to be taken in disputes involving the leagues or the players. For routine problems, this delegation works quite well. The chief criticism of it arises in cases like the suspension of Leo

(Continued on page three)

Diary Of A First Year Man Reveals Law As 'World of Faery and Romance'

November 1.

Gosh, I still have to pinch myself to believe I'm really here. The assignments don't cover enough ground, so I'm taking Evidence, Conflicts, Creditor's Rights and Taxation along with my regular courses. Of course they are third-year subjects, but the Law to me is a vast tapestry that must be seen whole, as an integral unit. Making *Law Review* will be no problem. The other chaps seem to lack completely what I call the "Big Picture." They waste time quibbling over details of assigned cases, and by reducing the litigants to letters, calling them A, B, X, and such dreary stuff, they lose utterly the drama that exists in the human element of little people like ourselves caught up in something bigger than any of us, to coin a phrase. What a rotten shame. I'm not reading any cases in terms of A, or B, or X. The true way will be to see the Big Picture, and actually hear the cry of the vendor extolling his wares; to envision the bargaining of parties, the grantee stepping for that first breathless moment upon Blackacre, knowing it to be his castle; the fatal pride of the tortfeasor, the inner thoughts of flesh and blood people in the cases: Meadows, Goldstein, Schwimmer. This is the Law as it will be for me; no alphabet, but a live thing.

And what a brave new world of commerce stands revealed in these old pages! Exotic cargoes I had never heard of: Manila hemp, pipes of brandy, and particularly guano, which somehow capti-

ARGUMENTS IN QUARTER FINALS BEGIN

Madison Club Meets Kent-Scott In First Ames Case Tonight

The first three quarter-final arguments in the Ames Competition will be held tonight, tomorrow and Thursday in the Langdell Courtroom at 8 p. m.

Comprising the bench in the first argument will be the Hon. Walter L. Collins, '02, Justice of the Massachusetts Superior Court; Frank L. Kozol, Esq., '27, of Friedman, Atherton, King and Turner, and Charles M. Ewing, '40, Lecturer on law at Harvard Law School in the summer of 1947. The Madison Club will oppose the Kent-Scott Club in a case involving a conveyance of Ames land by the Commissioner of a court in another State which is contested by a later decree of the original owner.

Oral counsel for the Madison Club are Leon C. Baker and Stanley B. Gomberg. Of counsel on the brief are Ernest L. Autrey, Sumner T. Bernstein, Robert A. Feltner, Richard A. Holman, Karl Schmiedler and Charles W. Tayler. The Kent-Scott Club's oral advocates are William S. Moorhead, Jr., and Roswell B. Perkins. The brief writers are Theodore F. Brophy, Hugh Calkins, George M. Chester, James J. Higginson, Hugh Knowlton, Jr., and Howard E. Rice.

The second argument will find the Pow-Wow Marshall Club arguing against the Morgan Club on the question of the application of an Ames forced-share statute to an inter vivos trust created in Massachusetts by a spouse domiciled in Ames. The bench will be the Hon. John V. Mahoney, Judge of the Probate Court of Suffolk County, Saul L. Kaplan, Esq., '19, of Lyne, Woodworth and Everts, and James Barr Ames, Esq., '36, of Ropes, Gray, Best, Coolidge and Rugg.

Speaking for the Pow-Wow Marshall Club will be George M. Hasen and Cornelius J. Peck. Counsel writing the brief

(Continued on page three)

vates the imagination. It belongs in those celebrated lines of Keats:

"Manna and dates, in argosy transferred
From Fez; and spiced dainties, every one
From silken Samarcand to cedared Lebanon."

The Law is not facts, and it is not dry justice. It is a new world of faery and romance. The examination in Criminal Law will be a challenge for those views, and I shall welcome it.

February 22.

There has been all too little time for keeping up this diary. Today, however, I learn that I made a 12 on the Criminal Law exam, which seems a bit low but has at least the virtue of stamping my thoughts as removed from the average. Perhaps I cited too much of the Kinsey Report. At any rate things will be different on the spring exams, where the instructors will have the chance to know me better.

A most delightful girl has come into my life. Her name is Renvoi and she goes to Portia Law School. Though somewhat gnome-like in appearance, she has an astute mind, and many are the sandwich dates I have enjoyed with her in the stacks. Renvoi shares my enthusiasm for the topic of guano, and with the second Ames trial near at hand I hope to get a case connected with that subject. I hope also to get through this Ames case without the fainting spell and nosebleed that overtook me in the first

(Continued on page four)

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 \$1.10 each at the Law School; \$1.15 each mailed. Business and Editorial Offices, Austin Hall, Cambridge 38, Massachusetts. Telephone KIRKland 7-7600, extension 133.

LOREN E. JUHL President
WALTER J. MYSKOWSKI Editorial Manager
A. BYRNE LITSCHIG Business Manager

EDITORIAL BOARD
LAURENCE P. CORBETT News
JEROME SHESTACK Features
BERNARD MARCUS Opinion
STANLEY R. EVANS Current Case
MILTON P. KAYLE Articles
SYDNEY ROTHSTEIN Calendar
ARTHUR S. FRIEDMAN Alumni
NATHANIEL B. TAFT Comment
MILES G. WEDEMAN Copy Editor
SAUL TOUSTER Technical Editor
RICHARD H. WOLFORD Associate Editor
JOSEPH P. LOGAN Associate Editor
EUGENE J. T. FLANAGAN Secretary

BUSINESS BOARD
LESTER J. TANNER Advertising Manager
HOWARD MONDERER Circulation Manager
WILLIAM P. CUNNINGHAM Treasurer

STAFF

George Benedict, Eli Goldston, Richard A. Holman, Paul J. Kirby, Herbert Lasky, Isadore Mackler, Richard Marshall, George L. Powell, Francis W. Ramsey, Joseph Schurman, Alvin Silverman, Jerry Wagner, Richard Wincor, Julius Levinson, Richard A. Chapman.

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."

Editorials

The legal research program inaugurated this term on the initiative of the *Harvard Law Review* and the Law School faculty is entering its sixth week of operation. The favorable reactions thus far of both the student participants and the *Law Review* supervisors point to the general success of this initial attempt to meet the long-felt need of the student body for supervised training in legal research and exposition.

Of the 52 students who volunteered to undertake weekly assignments in the project, just two were forced to withdraw because of the pressure of current classroom study. Convincing evidence of the enthusiasm of the student participants is the fact that most of them have spent far more than the estimated "15" hours a week on their individual assignments. The preparation of memoranda on subjects in widely varied fields has presented the opportunity for extensive research and objective analysis; the case note now being written by each student will stress style and form of writing as well as exhaustive research in a restricted field. Besides requiring full utilization of the facilities of the library, work in the program has brought the participants meaningful experience in applying to specific problems in new fields of law the general legal background thus far acquired in classroom study.

The three supervisors report that, as expected, the calibre of the work submitted has varied from mediocre to excellent. Definite improvement has been shown from week to week in the quality of research, analysis, and organization. The concentrated editing of the case note will stress style and form, and only at the conclusion of the program can an evaluation of this aspect of the work be made. It is interesting to note that after editing the well-documented memos submitted weekly by the students the supervisors state their own legal education has been enhanced by their connection with the program. In light of the foregoing, the supervisors are unanimous in the conclusion that the results to date have exceeded the goal which had been established for this stage of the work.

Though there are four remaining weeks in the project, it is not premature to commend the *Harvard Law Review*, and especially its three editor supervisors, for the excellent manner in which the program has thus far been conducted. That the Administration has endorsed this initial experiment in supervised research and writing is reassuring evidence of its awareness of the gap in student training, prevalent in most law schools operating on the case system, and of the necessarily restricted entry to *Law Review* work. It is to be hoped that the encouraging results of the current project will lead to the institution of a permanent program of this nature on a much larger scale, perhaps under the supervision of special faculty appointees. Such a plan would result in better trained students, confident in their ability to handle this important phase of work in the legal profession. It should also go far in introducing an additional criterion by which student ability may be evaluated to counteract the admittedly unhealthy emphasis on examination grades as the sole ground for student recognition at the Law School and for job placement after graduation.

M. P. K.

Letters to the Editor

To the Editor of the RECORD:

The "cold war" continues unabated. Perhaps we can throw aside our spectator's inertia and affect the struggle now going on.

We believe that if people are given the facts about the way American democracy operates they would prefer it to the way Russian democracy operates. Because of this belief we are increasing funds for propaganda services.

But it would be more effective if people "propagandize" themselves. One way of getting them to do so is to bring them over here. We should enroll in our universities many more foreign students than now study here, particularly those who cannot afford it.

How can we give impetus to such a program?

Let the student of Harvard, for example, set up an annual drive with a goal of about \$2 per student. That would net approximately \$25,000.

Each foreign student admitted would be given \$1500 a year for living expenses. The contribution of the University would be to admit these students free of tuition and other charges. Since Harvard's collection would be \$25,000 it could take 16 or 17 students.

These students would study here for a period of one to two years. Then others would replace them. During the next decade, if other universities join the program, a few thousand will have shuttled here and back.

These students will write home their observations of life under our theory of democracy. Their reports will spread. People who do not hear or read, or believe, what we send, will read and believe what their own people tell them.

Some will ask, "Why not use the money for food?" The answer is that an education in a country has a lasting effect on a person—longer lasting than on one who is fed enough to assuage his hunger for a day. Though food is desperately needed, it is not enough.

Some will conclude that a program of bringing a few thousand to this country for observation will have little effect. Perhaps. But most of us, if we wait to do only "big" things, will find that our lives have slipped away without our having done anything.

Others will say we have no time for such a program. But the battle between proponents of personal liberty and proponents of state control is a continual one. That education plays an important role is emphasized by the fact that despots always find it necessary to control education.

If the program, after study, proves practical, students should support it with enthusiasm as an opportunity to do more than sit back with an attitude of "sophisticated despair."

Universities should also be enthusiastic for an opportunity to participate officially in a fundamental struggle without offending any segment of the community which supports them, a factor which leads universities to passive roles on almost all issues.

PHIL BASKIN, 3L.

To the Editor of the RECORD:

Why the over-emphasis on grades in this School? Why do so many students think grades so important that they bury themselves in their books from one vacation to the next, forgetting that they are part of a community? Why have so many come to emphasize the development of examination technique, rather than the skills that will be used in practice?

Some of the causes are uncontrollable, e. g. student psychology and employer preference. But other causes are well within the control of the Administration and faculty. An example is the policy permitting the *Law Review*, the Board of Student Advisers, and the Legal Aid to select recruits solely on the basis of grades. This policy appears to put the School on record as attributing, solely and invariably, to those making the highest grades the qualities valuable in research and editing, in administration, and in advocacy—an obviously untenable position. The policy, when combined with employer preference for *Law Review* or Legal Aid experience, contributes heavily to the already too great emphasis on grades in this School.

If the basis for the School policy is a belief that men making high marks are most likely to be able to spare time for extra-curricular work, why not adopt a policy about as follows: Set a minimum average necessary for membership on any of the "honoraries" only high enough to assure that no man will, by working thereon, endanger his classroom standing. Then consider, in selecting recruits, not only academic ability, but also those other abilities that are of value in the work of the "honoraries." Measurement techniques for these other abilities might include interviews, reviews of background and experience, and/or trial periods.

Such a plan would involve more work for faculty and students in the selection process. But if judicious selections were made, it would not impede the efficiency of the organizations. The extra work would be well repaid by the plan's effect in de-emphasizing grades.

A. WAYNE GUERNSEY, 3L.

Off the Record

Re: Women Law Students

(With apologies to Christopher Marlowe)

Come learn with me and be my love,
As law school work we sample of.
We'll sit in Austin, eyes aglow,
And care not how reversions go.

I'll gaze into your lovely face,
And disregard the Erie case;
And when you smile at me I'm sure
The res will ipsa loquitur.

Dear, with your dainty hand in mine,
We will not write a single line.
And thus save hours galore to date,
Since we won't have to annotate.

I may not get my LL.B.,
But still I'll be a sight to see,
When clad in tails, and full of life,
Like I. de S., I'll have a wife.

ROGER ANDOVER.

Outspoken

The powder room adjoining Ninth Circuit Court Judge William Denman's (LL.B. '97) office used to have a very thin door. After several petitions for a soundproof door Judge Denman finally telegraphed his last appeal: "Do you think a Federal Judge sits only on the Bench?" Anteroom visitors heard nothing more.

Gallery

THOMAS REED POWELL

Story Professor of Law

For the past 23 years Thomas Reed Powell (TRP to the initiate) has been bludgeoning Harvard Law School students with verbal brickbats. Before that Professor Powell taught at Columbia and briefly at the University of Illinois, at which schools he began building up his tremendous reputation in the field of Constitutional Law.

Professor Powell has been described as brilliant, incomprehensible, benign and/or sadistic by the succeeding generations of students who have faced him in the past 41 years. Taken together, these conflicting epithets provide an insight into the complexity of his makeup.

Professor Powell is now 68 years old, but anyone who might believe that he has lost some of his youthful vigor need only linger in the hallway outside his classroom for a few moments before being rewarded with a bull-like roar emanating from the closed soundproofed doors of Langdell South.

Thomas Reed Powell is a unique teacher. In addition to being more demanding of the time and intellectual capacity of his students than most professors, he further complicates the life of those who have a hankering for Constitutional Law by working within the medium of his own conceptions of picturesque speech and patter.

Whenever an errant student finds himself in shallow water and going fast aground Professor Powell might commiserate with his victim and recall the less than sensational grades achieved in Constitutional Law by a number of present day jurists and authorities. Or TRP might yelp with obvious glee, "Watch the case system work!" and rephrase his question so simply as to make the point self-illustrative. This might happen several times an hour and is a guaranteed method of instilling humility into the class. He has aptly nicknamed *Powell v. Alabama*, 287 U.S. 45 (1932) as "my case," but be forewarned and don't cite it "my case" on the examination. The local canard that Powell is not the originator of "the sick chicken case" as a popular substitute for *U.S. v. Schechter Bros.*, 295 U.S. 495 (1935) is unfortunately true. Though Professor Powell is the leading exponent of the nickname, credit for the original appellation must go to the late Hugh Johnson.

Professor Powell's long acquaintanceship with the Supreme Court and with many of the present justices sometimes livens up his classes. Thus the eager notetaker finds himself writing, "This is one of Felix's more foolish decisions," or "I asked Felix what made him do it; I guess his clerk had an old case he liked the name of and wanted to cite it once more." (Those who recall Mr. Justice Frankfurter's visit to the School last fall will remember the pleasure with which he joshed Professor Powell.)

Powell is seldom at a loss to find words with which to express his distaste for anything. Thus, when one of the parties to an action has tried to take advantage of a technicality in the law and the court finds on the merits, Powell will term the decision a "think you're smart" case.

For several decades recognized as an outstanding scholar in Constitutional Law, Professor Powell has built up an impressive body of literature in the field. He is the author of *Separation of Powers*, *The Supreme Court and State Police Power*, a series of articles which first appeared in *Virginia Law Review* and were later published in book form, and an impressive group of essays on Gross Receipts Taxes which appeared in re-

cent volumes of the *Harvard Law Review*. Powell is remembered by the "Bugle" with genuine appreciation for the many learned notes he contributed, especially welcome and essential to the maintenance of rigorous scholastic standards during the wartime manpower shortage. He served as Special Assistant to the Attorney General in 1936 and in 1941 was a member of the President's Emergency Board on the National Railway Strike.

Perhaps Professor Powell's reminiscences are the most fascinating part of his lectures. He has had a gigantic amount of experience in his chosen field, and some of his forays into the field of gastronomic jurisprudence as it affects the law of the land are charming. For a few pithy examples see Note, 58 Harv. L. Rev. 858.

Professor Powell's more waggish moments are illustrated by his deathless remark when, upon being made a member of the faculty, he was asked if he promised "to support the Constitution of the United States." TRP's alleged reply was, "Why not? It has supported me for the last 20 years."

B. M.

Sub Judice

ALL THAT GLITTERS * * *

Mrs. Dora Roberts was a wealthy widow over 82 years old, owning a large ranch in Texas. She had heard stories of gold buried on her ranch near a hill called Signal Hill. Akers, learning of the old lady's interest in the legend, told her that he could obtain maps in Mexico which would reveal the location of the gold, if she would advance expense money. She advanced an initial \$1600, and some time later Akers returned, saying he had obtained the map. He directed Mrs. Roberts to a spot on the ranch where metal bars resembling gold were then found. In fact, the bars were of brass and had been made to order for Akers at a cost of 18 cents per pound. The metal bars were placed in the ranch house for safekeeping. This process was repeated many times, and Mrs. Roberts paid out expenses totaling over \$270,000 from 1932 to 1936. Finally Akers took all the metal bars to have them sold, but reported to Mrs. Roberts that on his way to town all of the "gold" was stolen. At about this time Mrs. Roberts discovered that she had been swindled, but, ashamed of her gullibility, she did not report the crime to any authorities. The statute of limitations on her claim ran out in 1938.

Akers and his wife neglected to include all of the above gains when filing his income tax returns, and he was convicted in 1940 of evading income taxes. In an effort to evade punishment, Akers next sued the Collector of Internal Revenue for a refund of the taxes paid on those amounts he had reported, hoping by this action to establish that swindling proceeds were not taxable. *Held*: Refund denied. Although there are cases holding that gains from embezzlement are not taxable income, swindling gains are taxable income, because title passes to the swindler. Although it could be argued that title might later be revested in Mrs. Roberts if she sued, her claim is now barred by the statute of limitations, and Akers holds complete title. *Akers et ux v. Scofield*, 73 F. Supp. 553 (W.D. Tex. 1947).

Notes on Recent Cases

TRUSTS: ANTI-VIVISECTION AS CHARITABLE PURPOSE.

National Anti-Vivisection Society v. Inland Revenue Commissioners, [1947] 2 All. E.R. 217. The anti-vivisection society claimed exemption from income tax on the income from investments on the ground that the society was a "body of persons established for charitable purposes only" within the meaning of the Income Tax Act. The main object of the society was the abolition of vivisection and, to that purpose, the enactment of legislation prohibiting vivisection, even for the restricted purposes permitted in the existing Act. The Tax Commissioners had allowed the exemption, feeling bound by the *Foveaux* case, decided in 1895. That case, not involving taxes, held that a power of appointment restricted to "charitable purposes" was validly exercised in favor of an anti-vivisection society. *Held*: Reversed. Exemption denied. The overriding test of a charity is whether it is for the public benefit, and in view of the Commissioners' finding that "any public benefit in advancing morals and education would be far outweighed by the detriment to medical science and research," the society could not be called charitable. Moreover, the main purpose of the society in seeking the repeal of legislation was political, and hence it was not established for "charitable purposes only."

The handful of previous English decisions generally treated anti-vivisection societies as charities on the theory that a gift is for charitable purposes if it is intended to relieve suffering of animals. In addition to the facts that taxes were here involved, the increasing importance of vivisection to scientific research was undoubtedly a factor in the present decision.

Alumni Notes

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

S. Pierre Robineau, LL.B. '12, and Laurence S. Levenson, LL.B. '44, have become associated with the new firm of Robineau, Budd, Levenson & Van Devere with offices at 1025-30 Alfred I. DuPont Building, Miami, Fla.

LL.B. '22—Robinson Verrill is a candidate for the Republican nomination for Governor in the State of Maine. He has been a partner in the Portland firm of Verrill, Dana, Walker, Philbrick & Whitehouse since 1926.

Henry Blumberg, LL.B. '26, and Elsdon C. Smith, LL.B. '30, announce their association for the general practice of law, as of April 1, with offices at One North La Salle Street, Chicago, Ill. Smith was formerly with Follansbee, Shorey & Schupp.

LL.B. '30—Edward B. Hanley, Jr., is engaged in the practice of law with Joseph Moschetto under the firm name of Hanley & Moschetto at 865 Olympic National Building, Seattle, Wash.

LL.B. '34—Nicholas J. Healy, 3rd, formerly special assistant to the Attorney General of the United States, has become a member of the firm of Nelson, Healy & Baillie with offices at 52 Broadway, New York City.

LL.B. '42—Thomas Raymond Mountain is now with Sibley, Blair & Young at 314 Main Street, Worcester, Mass.

LL.B. '44 ('47)—Theodore Harrison Stanton, (formerly Harry Theodore Stutman), is now with Rosenberg, Painter & Navarre, Jackson City Bank Building, Jackson, Mich.

LL.B. '44—Leonard Robbins has opened an office for the general practice of law in Hollywood, Fla.

LL.B. '47—Arthur Litz announces the opening of offices for the general practice of law at the Paul Brown Building, 818 Olive Street, St. Louis, Mo.

LL.B. '47—The city solicitor of Baltimore, Md., has appointed Marshall A. Levin a special assistant in connection with a grand jury investigation of veterans' housing.

LL.M. '47—Frank J. Harrison, Jr., is with the Chicago Title & Trust Company.

Baseball Rules Resist Legal Attack

(Continued from page 1)

Durocher last spring, or the imposition of a fine on the Chicago White Sox last fall for signing a high school youth.

In the Durocher case, many sports writers claimed that the Brooklyn manager was not given a full hearing, and that the punishment was excessive and arbitrary. In the White Sox case, the club's vice-president, Leslie O'Connor, charged that the commissioner acted beyond his authority, since the agreement prohibited the signing of boys whose schools were affiliated with a national association, and the youth who was signed did not attend such a school. Other sports experts defended the commissioner in each case, and the parties involved accepted his rulings as final.

Resort to the courts for an injunction against the commissioner was had in *Milwaukee American Association v. Landis*, 49 Fed. (2) 298 (1931), when one of the club's players was declared a free agent. The court denied the injunction. It said that under the "laws" of baseball the commissioner had the power so to act: it further said that since the question was submitted to the commissioner, the agreement so to do was no longer executory, and that his decision was binding "unless it was unsupported by evidence, or unless the decision is upon some basis without legal foundation or beyond legal recognition." Both the White Sox, who claimed that they had acted properly and had not submitted the matter to the commissioner, and Durocher, whose charges could come within the exception, could have created *prima facie* cases for judicial review notwithstanding the Landis case, but did not seek recourse to the courts. Until such a case is brought, there can be no real test of the validity of the commissioner's powers.

Most of the cases concerning organized baseball, however, have been confined to the second problem, the provisions of the player-club contracts, which are identical in form among the clubs. The three salient points involved are: the restrictive covenant, which prevents a player from performing with any other team; the reserve clause, which allows the clubs to renew the contracts from year to year, and to terminate on 30 days notice; and the right of the clubs to as-

sign personal service contracts via trades to other clubs. The courts only rarely consider these points separately. And, when they do consider a case, there is a division of opinion as to whether they will grant injunctive relief. Zollman, *Baseball Peonage*, 24 Marq. L. Rev. 139 (1940). Injunctions against a player's performing for another club are sometimes denied because of lack of mutuality, *American League Baseball Club v. Chase*, 86 Misc. 441, 149 N.Y.S. 6 (1914); and are sometimes granted because of the reasonableness of restrictions on the player, *Philadelphia Ball Club Ltd. v. Lajoie*, 202 Pa. 210 (1902).

The third legal problem, that of monopoly, is apparent from even a cursory examination of the baseball set-up. A new player, upon entering organized baseball, finds that he must comply with the existing regulations, or else not play with any team in organized baseball. Suspended players cannot perform with any team, since all agree not to employ them. The players, and the clubs, voluntarily comply with the agreement, in order that they may continue to be associated with the sport. The monopoly may be a benevolent one, but it is nonetheless still a monopoly.

And yet, two leading cases in which the question of monopoly was raised upheld the system. In *Federal Baseball Club v. National League*, 259 U.S. 200 (1922), the Supreme Court held that baseball was not interstate commerce, and so not subject to the Sherman Anti-Trust Act, because transportation across state lines is merely incidental to the main business of playing the game. In *American League Baseball Club v. Pasquel*, 188 Misc. 102, 66 N.Y.S. (2d) 743 (1946), the defendant head of the Mexican League was enjoined from inducing American players to breach their existing contracts. The court held that the defense that the contracts were "monopolistic, inequitable, unconscionable and against public policy" was insufficient. It would seem that neither state nor federal anti-monopoly statutes will be applied to baseball. In a recent consideration of the problem in Massachusetts, players and representatives of the clubs both appeared to protest against regulation. Similar complaints may be expected if other legislation is sought, for the parties involved seem quite satisfied with the *status quo*.

Baseball has acted to placate the players in recent years, following the nearly successful onslaughts of the Mexican League and the ill-fated American Baseball Guild, which sought to unionize the players. Player representatives are now allowed to sit with the Executive Council on all matters concerning the contracts, the minimum wage for players was raised, an elaborate pension system was introduced, and other benefits were created.

It appears, therefore, that only slight chance exists of a concerted attack on the system by those from within, since they benefit by compliance. If an attack is made, from inside or outside organized baseball, however, its chances of succeeding are great. The focal point should be the agreements and rules, the "laws" regulating the game, for they are the basis of the system. The power of the commissioner, the uniformity of the contracts, the whole close-knit arrangement of the sport stems from these "laws." Although the *Federal Baseball Club* case held the system not to violate anti-trust laws, insurance was considered equally immune for 70 years, until *United States v. South-East Underwriters Association*, 322 U.S. 533 (1943) held that it was interstate commerce and regulable. A similar turnabout might overrule the *Federal Baseball Club* case, and make organized baseball's *de facto* monopoly subject to controls.

However, the ultimate question remains: since for most purposes the set-up is satisfactory to the players, the clubs, and the fans, are not the legal problems relatively unimportant, when compared with a double-steal in the ninth inning?

N. B. T.

AMES—(Continued)

are Oliver M. Blackburn, James H. Case, Dario De Benedictis, John M. Harrington, Jr., George N. Prince, and Albert H. Swett. George H. Allen and Robert B. Hodes are oral counsel for the Morgan Club, while counsel on the brief are Richard A. Carr, Walter N. Kernan, Arthur A. Litt, James S. Mize, George Spiegel and Julius Tobin.

The subject of the third argument deals with the liability of a trustee for salary received from a corporate office where election was made possible by the voting of trust stock. The Gardner Club will represent the trustee, while the Langdell Club will argue for the beneficiary. The Chief Justice of the argument will be the Hon. Frank J. Donahue, '37, Justice of the Massachusetts Superior Court. His associates will be Harold T. Davis, Esq., '21, of Nutter, McClennan and Fish, and Philip J. Woodward, Esq., '31, of Haussermann, Davison and Shattuck.

Douglas F. Stevenson and Nelson F. Taylor will present the oral argument for the Gardner Club. Charles H. Bartlett, Jr., Marvin Borman, Harold L. Hitchins, Holmes E. Hobart, Robert H. Troescher and Miles G. Wedeman wrote the brief. Oral counsel for the Langdell Club are Sam S. Fitzsimmons and Roger C. Henselman. Of counsel on the brief are Robert G. Miller, James R. Blumenfeld, John Carroll, Thaxter P. Spencer, and Harold R. Rooks.

In the first quarter-final argument, two opposing counsel are members of the *Law Review*: Baker of the Madison Club and Perkins of the Kent-Scott Club. The third argument features an oral clash between two Student Board members: Taylor of the Gardner Club and Henselman of the Langdell Club.

REUNION—(Continued)

commending the proposal made by the 1925 class, he said that the best way of obtaining needed financial support was through the assistance and interest of the alumni.

Serving with Mr. Wheeler on the re-

union committee are John J. Burns (Boston College '21) formerly Justice of the Superior Court of Massachusetts and General Counsel of the S. E. C., now engaged in general practice in Boston and New York; Melbourne Bergerman (Wisconsin '22) Vice President and General Counsel, C. I. T. Investment Corporation, New York; Haskell Cohn (Dartmouth '22) partner in Mintz, Levin & Cohn, Boston; Eli Whitney Debevoise (Yale '21) senior partner of Debevoise, Plimpton and McLean, New York; J. Edward Lumbard, Jr. (Harvard '22) former Justice, Supreme Court of New York and now partner in General William J. Donovan's office in New York; and Arthur E. Sutherland, Jr. (Wesleyan '22) Professor of Law at Cornell University Law School, permanent marshal of the class of 1925.

MOOT COURT—(Continued)

her mother, if living, and if her mother was not living, then to the persons who would be entitled to the settlor's property under the New York intestate laws. The mother predeceased the settlor, who is now married and has minor children. The defendant-appellants are the trustees.

The Appellate Division held that, as a matter of construction, the trust agreement created a reversion in the settlor, who is entitled to revoke the trust under the provisions of P. P. L. § 23, which provides that a trust may be revoked with the consent of all persons beneficially interested. The Appellate Division said that this result was indicated by cases like *City Bank Farmers Trust Co. v. Miller*, 278 N. Y. 134, 15 N. E. 2d 552 (1938).

The appellants rely on cases like *Engel v. Guaranty Trust Co.*, 280 N. Y. 43, 19 N. E. 2d 673 (1939), in which the court held that, as a matter of construction, the trust instrument involved created a remainder rather than a reversion in the settlor.

The Harvard representatives will argue the question of construction for the plaintiff-appellee, Jane Currier Richardson.

News for Spring

Topcoats
Sport Coats
Suits
Shirts
Hosiery

TEDFORD-HARVARD-INC.

1410 MASS. AVE.

HARVARD SQUARE

The

HARVARD LAW REVIEW

Analyzes

*Developments in the Law
of Damages -- 1935-1947*

... a useful supplement for your own notes and treatises ... by the Editors of the REVIEW ... in the first issue of its current volume.

Clip and mail today

HARVARD LAW REVIEW ASSOCIATION

Business Office
Cambridge 38, Mass.

I wish to subscribe to the current volume of the REVIEW at \$5.50 per year. Mail issues and bill to:

Name:

Address:

HOTEL CONTINENTAL

"One of New England's Best Hotels"

Cambridge, Mass.

VISIT PICCADILLY INN FOR RELAXATION,
REFRESHMENT AND REPEAT

Full Course LUNCHEONS—95c and up

Full Course DINNERS—\$1.40 and up

All Beverages moderately priced

Delightfully cool in Summer—Comfortably warm in Winter
Chauncey Depew Steele, Jr., General Manager CALL: KIRKLAND 6100

DALTON-ELCOCK BAR REVIEW

This review, preparing candidates for the Massachusetts Bar Examination, is given twice a year: October through December, evenings, and in June, days.

For Information Write:

DALTON-ELCOCK BAR REVIEW
10 Post Office Square
Room 715 Boston, Mass.

UNIVERSITY THEATRE

HARVARD SQUARE K1. 7-4580

Today and Wed.—March 23 and 24

Larry Parks — Ellen Drew

"THE SWORDSMAN"

Franchot Tone — Janet Blair

"I LOVE TROUBLE"

Thurs., Fri., Sat.—March 25, 26, 27

George Sanders

"THE PRIVATE AFFAIRS
OF BEL AMI"

Dennis O'Keefe

"T-MEN"

Sun., Mon., Tues., Wed.

March 28, 29, 30, 31

Bing Crosby — Bob Hope

"THE ROAD TO RIO"

Tom Conway

"THE CHALLENGE"

CONTINUOUS DAILY FROM 1:30

JIM'S PLACE

30 DUNSTER STREET

FAMOUS FOR CHOPS
STEAKS, SEA FOOD

Complete Dinners .50 - 2.00

Visit our new Cocktail Lounge

Complete Air Conditioning

TENNIS RACKETS

ALL MAKES ALL PRICES

Sneakers - Shorts - Balls - Shirts

TENNIS & SQUASH SHOP

67A MT. AUBURN ST., CAMBRIDGE, MASS.

The
Viking
Restaurants
Smörgåsbord

Swedish Home Dainties served
with Luncheons, Dinners.
STEAK—CHICKEN—LOBSTER

Music at Solovox
Open 11 A.M. till 1 A.M.
442 STUART ST.
Copley Sq. (near Theatres)
In Boston It's the Viking
AIR CONDITIONED

Lounge Bar

LAW OUTLINES

HARVARD BOOK STORE

19 Boylston Street Harvard Square
next to Western Union

Calendar

LEGAL WORLD

King's Bench Dance

"Kiddie Dance" will be held for members and guests of King's Bench Saturday evening, April 3, at Cowie Hall.

Correspondence With a Foreign Student

Anyone interested in corresponding with a student at the University of Heidelberg, or with a former German P. W., or with a student in Bombay, please call George Burditt, EL. 4-4031.

Brandeis Club

Members of the Brandeis Club are invited to a luncheon at the Bella Vista this Thursday at 1:15 p. m. Professors Richard H. Field and Livingston Hall will be guests.

Guild Seminar.

Lawyers Guild Civil Liberties Seminar. "Rights of government employees and Limits on Legislative Inquiry." Instructor: John L. Saltonstall, Esq., of the Mass. Civil Liberties Union. Tuesday, 2 p.m., Seminar room #4. Interested students invited. Case assignment on reserve at Langdell.

Research work on one aspect of the "separate but equal" doctrine in regard to segregated education is being undertaken by the Lawyers' Guild to be used in briefs to be filed by the N.A.A.C.P. in forthcoming Supreme Court cases. This work will be begun this week and completed within two or three weeks. Any students interested in working on this project should contact Charles F. Anderson (grad. student) in cubicle #6 in Langdell or phone GA 7-4677.

Oxford Grille

"Known from coast to coast as the O. G."

Serving good food and good liquors at Reasonable Prices

In Re MacTee
It was Ruled definitely
The Probable Intent of T
Was to go to the O. G.

SITED AT 36 CHURCH ST. 36

BE CASUAL

The eager air may go well with instructors, but in your other relationships, a stolid silence is preferable. Be casual, whatever the price.

The casual air is enhanced by casual dress. A Duncan Macandrew sport coat and slack combination is casual, yet so well appointed that it commands immediate respect.

Custom Sport Jackets from \$39.00
Custom Slacks from \$17.00

Duncan Macandrew

CLOTHIERS for MEN

11 Dunster Street, Cambridge

THE MALLORY FOR SPRING '48

Come to the Coop and take one look at this trim hat and you'll see why it's called the Spring '48! It's light-weight, of course, with a rakish slant and a smart drape bow that rates lots of attention wherever you go. Best of all, it's a Cravenette-showerproofed. Ready for your inspection now, in new Spring grays and tans.

\$8.50 and \$10

Patronage Refund to Members

The COOP

UNIVERSITY WORLD

Masons

The Harvard Lodge, A. F. & A. M., will hold a meeting at the Harvard Faculty Club, 20 Quincy St., Cambridge, this Thursday at 7:30 p. m. Visiting brethren are cordially invited.

Adult Education

The Cambridge Center For Adult Education announces that registration has begun for the spring term starting March 29. Booklets containing information on more than 100 courses being offered may be obtained on request. Write to the Center at 42 Brattle St., Cambridge or call Kirkland 7-0314.

POLL —(Continued)

cap." Another alumnus says that there is no logic in educating a woman to a certain point and then barring her from professional schools. If she wants to help run the world, she should be well-educated for the job. He is sure the survival of the race would not be endangered! A third alumnus writes that he originally answered "no," but was then advised by his wife to reply in the affirmative — and he did so.

Two of the students who cast positive votes qualified their answers. One says that the females should be admitted only if there is an insufficient number of well-qualified male applicants, and the other adds that "the admissions committee should be damned circumspect about the number (of women) admitted."

Among those who oppose mixed classes is an alumnus who says that "with few exceptions, women are a definite nuisance at the bar or on the bench." Another graduate whose wife and sister have practiced law quotes his wife, "Women do a good legal job but most become wives and mothers, which is as it usually should be for their happiness and welfare. Their legal educations are waste motion."

Of the students in the opposition camp, one states that the facilities of Yale and Columbia are sufficient for the "few intelligent women" and others second the reasons advanced in the RECORD editorial. One foresighted young man urges that "if they're that smart, they ought to stay home and have smart children (boys) to send to Harvard Law School."

DIARY —(Continued)

trial and prevented my winning a prize.

It seems hard to realize that the first year is so far along. Some of the chaps are worried about not making the grade, but I myself can hardly get excited about examinations. First things first, to coin a phrase. And for me, "first" things are those that make for understanding of the basic fabric of the law. Take Real Property for example. The instructor is a perfectly nice sort, prepped at a good school, belongs to the right clubs, and appears pretty sound. But all he can make out of Real Property is A and B again. What a rotten shame. In the spring perhaps, I may show him that the law of land is a study in mediaeval lore, and that the important things are not the mortgages and the purchase price, but the now silent banquet halls, the minstrels, and the proud barons and dead ladies.

July 15.

Gosh, I still have to pinch myself to believe I'm really here. It's hard to realize that this is Seagull's Nook, one of the most famous guano islands off the coast of Chile. Quære, whether Ren-voi's father would have gotten me this peachy job if he had known that my final average at the Law School was 10.

But it makes no difference now. I am here, bubbling with health and I have found myself after a little groping. In that sense, the year of Law was certainly no waste. Furthermore it made me sharp. For example, when they put this precious cargo in sacks I shall know better than to break bulk if I am the bailee.

Yes, this is the life. Away on an exotic island, listening to the seagull's cry, and gathering each day this precious treasure until the sun, like a copper ball, declines in the west. Onward to silken Samarcand and cedared Lebanon.

R. W.

NEWS BRIEFS —(Cont.)

LAWYERS GUILD

On Thursday, March 18, the Lawyers' Guild heard Isadore Muchnick, a former city councilman and at present a member of the Boston School Committee, speak on *The Lawyer in Local Politics*. He expressed a faith that the next 10 years will see an increase in reform and a tendency toward responsibility in local government. The lawyer, he said, must play a primary part in this movement toward efficiency in public administration. At a business meeting the Guild elected the following officers for the Harvard Student's Chapter: president, George Spiegel 3L; vice-president, Martin Tucker 2L; treasurer, Isaac F. Tucker 2L; administrative secretary, Sherman Poland 2L; publicity secretary, Saul Touster 3L; membership secretary, Marcel Kistin 2L.

H. L. S. WALLACE COMMITTEE

Harvard Law School Committee for Wallace meets today at 4 p.m. in Langdell North. The Political Action Committee will report on plans for the group's participation in the petition drive to get Wallace on the Massachusetts Ballot.

Athletics

The two basketball clubs representing the Law School, the All Stars and the Swishers, were victorious last Saturday evening against their Business School rivals. The All Stars defeated the B-School stars by a score of 58 to 51 while the Swishers trounced the league-leading Busy School team 44 to 19. Starting line-up for the Law School All Stars included Bunks Burditt at center, Clint Stephenson and Chad Johnson at the guard positions, Homer Hewitt and Ed Matheny as forwards.

Play is being continued in the two Law School tournaments.

LOST

Gold Ring—Black Onyx Stone
Between Kendall and Langdell
North

RETURN TO RECORD OFFICE

TOURS
CRUISES

AIRLINE-TRAIN
RESERVATIONS

UNIVERSITY TRAVEL CO.

Harvard Square • KIRKLAND 1650



Suits and Coats Accepted
Nationally, Hand Tailored
in Our Shops Since 1896.

Soft fronts, comfortable, with
our famous construction in
natural shoulders omitting stiffness and padding.
No pinch waists with offensive commercial fads.

We Invite Comparisons

Ready-to-Wear . . . \$65

CUSTOM TAILORED TO INDIVIDUAL MEASURE
OF IMPORTED WOOLENS
from \$90

LANGROCK

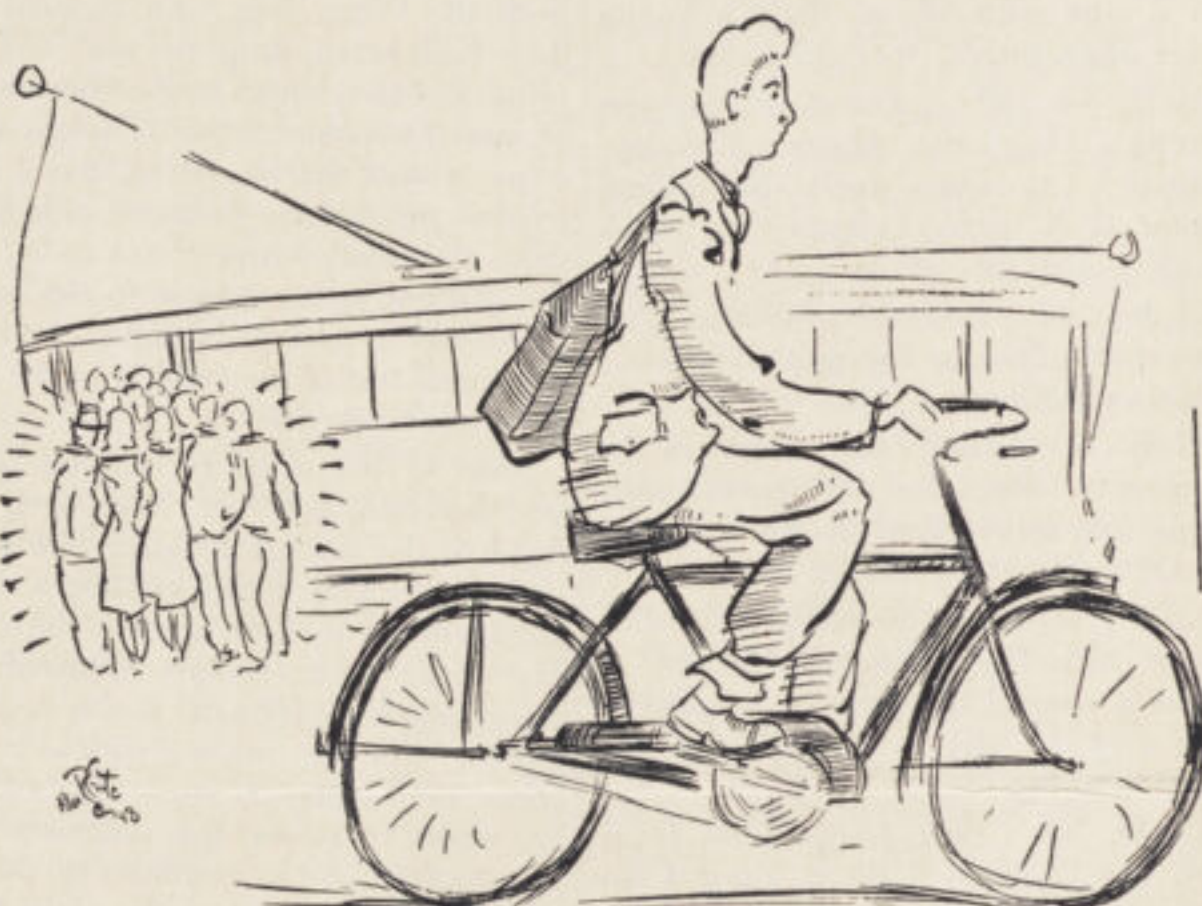
20 HOLYOKE STREET

NEW HAVEN
WORCESTER

PRINCETON
WASHINGTON

NEW YORK
PROVIDENCE

Do You Suffer from "LOST TIME"



RIDE-A-BIKE

The BICYCLE EXCHANGE 3 BOW ST
KIR. 8535

Catering to the car needs of Harvard men for 20 years

FRANK ELBERY

THE ELBERY MOTOR Co., Inc.

(authorized dealer)

sales FORD service

offers complete service facilities including a modern body, fender
and paint shop to put your Ford, Lincoln or Mercury in first class
condition.

360 RIVER ST. (near corner of MEMORIAL DRIVE, Cambridge)
TEL. KIRKLAND 3820-21-22

RACKETS RESTRUNG

ONE DAY SERVICE
Air Pressure Machine

TENNIS & SQUASH SHOP
67A MT. AUBURN ST., CAMBRIDGE

WELCH BAR REVIEW COURSE

70 PINE STREET, NEW YORK 5, N. Y.

June schedule sent on request WHITEHALL 3-2049
4-8693

Imported and Domestic Wines, Liquors, Cordials

HARVARD PROVISION COMPANY, Inc.

92-94 Mt. Auburn St., Cambridge — KI 7-6684

HOURS: 9 A.M.-9 P.M.—MONDAYS THRU SATURDAYS

ALL POPULAR BRAND SCOTCHES \$5.85 A BOTTLE