

The Harvard Law School Record

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PRICE TEN CENTS

NEWS IN BRIEF

DORM FUND DRIVE

Solicitation for the Dorm Fund Drive will start on February 17 and continue through February 25, chairman William C. Briggs, 3L, explained to students in the Law School last week. Chairman Briggs stressed the fact that, even though this is a long range program giving no immediate benefit to those solicited, the funds are needed now. Pledge cards are available; and those pledging will not be solicited again as alumni.

In charge of actual solicitation are: Chairman, William C. Briggs; Vice-chairman, Albert Millos; First Year Co-chairmen, Charles Biddle, Ted Taubenech; Section chairmen, Gardner Beckett, Francis Fisher, James Vorenberg, and John Monroe; Second Year Co-chairmen, Alexander Reed and Ray Picciotti; Section chairmen, John P. Davis, George Kidder and Coleman Bornstein; Third Year chairman, Welles Henderson; Vice-chairman, Charles Hodgkins.

VAN WATERS BOARD

Dean Erwin N. Griswold has been named to head a three-member board to hear the appeal of Dr. Miriam Van Waters, former head of the Massachusetts Women's Reformatory at Framingham, who was ousted for alleged abuse of her office. The other members of the board are Mrs. Roger L. Putnam, wife of the former Mayor of Springfield, and Robert G. Clark, Jr., First Assistant District Attorney of Plymouth and Norfolk Counties.

TEACHING FELLOW PROGRAM

A greater number of students and recent graduates than had been anticipated have applied for positions as Teaching Fellows for the 1949-50 school year, and consequently the process of choosing the successful candidates has been slowed down. It will be at least two or three weeks before the names of the recommended Teaching Fellows will be presented to the Harvard Corporation for approval.

Professor Cavers, who will be Faculty Adviser for the program, has announced that over 20 present students and nearly as many recent graduates have applied for the six positions available.

PBH CLOTHING DRIVE

The PBH clothing drive for students studying at the Salzburg Seminar in American Studies will continue throughout this week. Boxes are located in Langdell, Austin, Hastings, Perkins and Phillips Brooks House for contributions of used clothing and shoes.

SQUASH TOURNAMENT

The Phillips Brooks House Committee of the Law School announces that a squash tournament will be held at the courts in Hemenway Gymnasium beginning February 28. Those desiring to enter should contact William Eberle, CA 7-4042.

Plans have also been made for a basketball tournament to be held in Hemenway beginning February 21. However, entries are being closed after today. Teams may enter by having the captain sign the entry sheet on the bulletin board in Hemenway. The P. B. H. Committee requests that those signing up for this tournament make every effort to play all scheduled games.

WORLD LAW GROUP

The next meeting of the World Law Group will be held Wednesday, February 23, 1 p.m., at the Bella Vista Restaurant. Men interested in attending are asked to contact any of the following: Bill Condrell, PO 7-8388; Bernard Hyatt, UN 4-3109; Paul Monnory, EL 4-8223; James Peabody, KI 7-5333; Bill Rahill, UN 4-9677.

Clashing Ideas About Asia On Friday Forum

Fairbank, Reischauer, Pound, Malone Debate U.S. Aims & Obligations

A New Foreign Policy for Asia? will be discussed at the Forum meeting this Friday, 8 p.m., at Rindge Tech auditorium. Speakers will be Professor John K. Fairbank of Harvard College; Senator George W. Malone, Republican, of Nevada; Professor Roscoe Pound, former dean of the Law School, and Professor Edwin O. Reischauer of Harvard College. Professor Arthur N. Holcombe of the Harvard Government Department will act as moderator.

Professor Fairbank is associat professor of history at Harvard College and associate chairman of the Committee on International and Regional Studies, in charge of the China program. During the war he served with the OSS and OWI in China and was special assistant to the American ambassador in China during 1942 and 1943. He is the author of the recently published book *The United States and China*.

Senator Malone was elected to the Senate in 1946. He is currently a member of the special Senate committee mission investigating the Indonesian revolt. As a member of this special mission he visited Indonesia where he had the opportunity to survey first-hand the problems confronting the United States with relation to its policy towards the Netherlands and the Indonesian Republic.

Professor Pound, University professor-emeritus, served as dean of the Law School for 21 years. The author of many books on the law and its philosophy, he has recently returned from a three years' stay in China where he served as legal adviser to the minister of justice of the Kuomintang Government.

Professor Reischauer returned recently from Japan where he was sent as a member of a five-man State Department

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Law Library Lands Latest Legal Lore

By adding 12,000 volumes during the last six months of 1948, the library collection reached a total of 676,594 volumes and maintained its position as the largest law school library in the world.

Of the new books, 7580 were purchased. The great bulk of these books was acquired in order to keep the library up to date with the latest publications in law and allied fields. Over half of the purchased books were continuations of reports of decisions of courts of the United States and of other jurisdictions.

To accomplish this, the library received regularly 12 copies of each volume of the United States Reports, seven copies of Federal Reporter and Federal Supplement, four copies of the National Reporter System, and four copies of the various state reports.

Although a far greater number of books were given as gifts to the library, only 3250 were added to its permanent collection. Many of those added were reports of state officials and the text of proceedings before legislative committees. Still other gifts were older books of which the library had no copies or needed additional copies. Where it has no need of a particular volume, and if the donor has given his permission, the library will attempt to sell the acquisition to other law libraries, or to trade it for some desired work.

The method whereby law libraries publish lists of books which they wish to exchange for other books in order to diversify their own collections has been used for some time. Exchange is usually made volume for volume. A total of 1367 volumes was obtained by this method.

Legal Education Committee Reports Adoption of Major Curriculum Change

AMES JUDGES

The Board of Student Advisers is requesting men from the second and third year classes to judge first year inter-club double arguments March 14-23. Members of the faculty will sit as chief justices in approximately half the arguments. Students interested in judging are asked to contact club supervisors or the Board of Student Advisers in Austin Hall.

The following article is the first of a series of two by Professor Lon L. Fuller, Chairman of the Committee on Legal Education of the Harvard Law School. These articles only cover that part of the Committee's work dealing with the curriculum. The Committee is composed of Professor Lon L. Fuller, Chairman; Dean Erwin N. Griswold, and Professors Ralph J. Baker, David F. Cavers, Paul Freund and Milton Katz.

The faculty has adopted a new program for the prescribed portion of our curriculum, that is, for the first two years. The new schedule of courses will become effective next September.

The changes in the second year are considerably more extensive than those in the first and third. Accordingly, this article will deal briefly with the third year work, and be devoted chiefly to a description of the second-year curriculum as it will appear during the school year 1949-1950.

Prof. Williston Recalls Ames, Langdell, Gray, and Student Life of Class of '88



PROF. SAMUEL WILLISTON

(This article, by Professor Williston, is the first in a series describing the Law School in earlier days.)

In 1885 when I entered the Law School as a student the success of the changes introduced following the appointment in 1870 of Christopher C. Langdell as Dean was still questioned by many. It is one of the many distinctions of President Eliot that he upheld the Dean in spite of the slight indications of success of the new administration for many years.

In 1885, the total enrollment of students was 154, less than that in 1867-68 or 1868-69, under the old administration. Moreover, the enrollment in 1875-76 was 161, in 1877-78, 189, and thereafter steadily diminished. In 1882-83 the minimum of 131 was reached. In 1883-84 the number was 145 and in 1884-85 it was 153.

In spite of the fact that not only the degree from any college, but also, in the absence of a degree, the passing of a not very difficult examination in Blackstone's Commentaries and in either Latin or French, entitled an applicant to enrollment as a first-year student, there were only 114 regular students in the School when I entered. Of these 52 were in the first year. There were also 40 special students of whom the only requirement was that someone should certify to their character and that they should pay their tuition fees regularly. Since no examination was required of them, the attendance at lectures of many of them was irregular.

Though the School professed to be national, and the instruction was based on that assumption, half of my class came from Massachusetts and two-thirds of its members were graduates of Harvard College.

Besides the meagre attendance of students the new methods of teaching were confronted with the severe criticism of distinguished lawyers, and with the establishment of the Law School of Boston University by prominent Boston lawyers, who undertook to teach law in the good old-fashioned way of having students memorize text books and the generalities of learned lecturers.

Besides the Dean, the Faculty consisted of James B. Thayer, John C. Gray, James Barr Ames, and William A. Keener.

The curriculum consisted of the standard subjects of private law. The courses in the first year with nine class-room hours were all required. In the second year, courses with fourteen class-room hours were offered, of which ten were required. In the third year, candidates for the honor degree were required to take courses aggregating ten hours of class-room work; those less ambitious could obtain a degree by passing examinations on eight hours. Twelve or thirteen class-room hours were offered from which to choose in that year, but election also might be made of second year courses which had not been taken in that year. The total number of courses offered little opportunity for election. The only serious omission, however, from the law as then practised was in the law of corporations. There was indeed a course given by Professor Ames entitled Partnership and Corporations, but his interest was in the law of partnership, and only about a fortnight at the end of the term was given to corporations. The only course devoted to public law was Constitutional Law, to which one hour a week was given as an elective in the third year. When it is remembered that the first Interstate Commerce Act was not enacted until 1887, it is easy to recognize how little the government, state or national, had undertaken to regulate business.

All the courses were based on the study of cases. Professor Langdell had already in 1885 prepared casebooks on Contracts, Sales and Equity, Pleadings, and Professor Ames had prepared casebooks on Torts, Common Law Pleading, Trusts and Bills and Notes. In other courses we were referred to the original reports. This involved somewhat troublesome competition among the members of a class to secure the reports to which its members were referred; but there was the incidental advantage that every student soon became familiar with the

(Continued on page four)

Congress Gets Revised Military Justice Code

Reform in disciplinary procedures of the armed forces came closer to realization last week with the transmission by Secretary of Defense James Forrestal of a proposed *Uniform Code of Military Justice* to the committees of both branches of Congress.

The Code, "an Act to unify, consolidate, revise, and codify the Articles of War, the Articles of Government of the Navy, and the disciplinary laws of the Coast Guard," is the work of a committee composed of representatives of the three main branches of the Armed Services, and headed by Professor Edmund M. Morgan.

The Defense Secretary has urged early consideration of the Code, and Congress is expected to act upon it during the present session. It is anticipated that hearings on the bill will be scheduled in the immediate future.

In a subsequent issue the Record will publish a summary of the proposed code.

A second article will describe the changes introduced into the first year, and will attempt to explain some of the principles that underlie the current curricular reforms.

Second Year

Equity. The course in Equity is to be dropped as a separate course. The subject of Specific Performance has been assigned to Contracts, while the basic principles of equity jurisdiction will be taken up in the first-year course in Procedure. The course in Administrative Law, which will henceforth be given in the second year, will also deal to some extent with equitable remedies.

Because the new curriculum becomes effective next September, there will inevitably be something of a gap in the training of the present first-year class with respect to the subject of equity. Some self-education in this field will probably be advisable to supply this lack. Professor Chafee has expressed his willingness to give guidance in that study by a lecture, or a series of lectures, next year.

Sales and Bills and Notes. These courses have already been absorbed in a single course called Commercial Law.

(Continued on page three)

Legal Aid To Open New Branch Office For North Boston

The Harvard Legal Aid Bureau will open a new branch office in North Boston next Tuesday, according to an announcement yesterday by Donald C. Lubick, president of the Bureau.

The new branch will hold office hours during two afternoons of each week in the North Bennett Street Industrial School. It will service an area which is one of the most thickly populated in the United States, the number of persons per acre averaging slightly above 1200.

The installation of this branch office is part of the new expansion program of the Legal Aid Bureau which seeks as its main objectives to increase the size of the honor society in order to make the valuable legal aid training available to more students, and to increase the availability of legal aid services to those members of the community who cannot afford to hire attorneys.

The suggestion for this branch office came from Mr. Thomas V. Rankin of the Boston Bar and Thorne Edwards of the Bureau. It thereafter received the endorsement of the Harvard Legal Aid Bureau, Dean Griswold, the Boston Legal Aid Bureau, and the Boston Bar Association.

In accordance with its present policy the Bureau will continue to be manned by high-ranking students who are permitted by Massachusetts law to argue any cases necessary in the Massachusetts courts, without being members of the bar. The only fee legal aid clients pay is 25 cents to cover clerical expenses.

The North Bennett Street Industrial School at which the office will be located is a settlement house that was founded in 1881 for charitable purposes. The school has donated the office space to the Harvard Legal Aid Bureau for the purposes of the branch office.

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

Editorials

This week students of the Law School are being asked to contribute to the Harvard Law School Fund. This fund will finance the dormitories, teaching fellows, scholarships, research and other programs. The pledges are payable over a five year period. This is the first fund-raising drive since 1926. It is not often that the Law School approaches its students or alumni for assistance.

We have heard some students ask why they should contribute to this fund. The answer to this, we believe, is found in the type of education and opportunities which the Harvard Law School provides and extends to all members of the school, irrespective of class standing. In the January issue of the *Harvard Law School Bulletin*, Judge Learned Hand, LL.B. '96, tells of the legal lessons that he took away from this institution. We are reprinting a portion of Judge Learned Hand's eloquent statement in this editorial because we believe that these lessons are still taught today, and because we believe that in gratitude for those lessons the Harvard Law School Fund deserves the support of all of us.

J. S.

"What was it that brought to the School its resplendent fame in the profession, and changed the course of legal education? Everyone is likely to have his own answer, and I cannot vouch for mine; but it is this. They taught us and we believed—and those of us who are still left still believe, I fancy—that every civilized society must depend for its existence upon its recognition of, and adherence to, some body of principles, ascertainable from not inaccessible sources, having moral authority and carrying sanctions. This authority, which alone makes the sanctions tolerable, is derived in large measure from continuity with the past; it is traditional. This is not because the compromises of the past, which these principles embody, are necessarily those that would emerge from similar conflicts today, or, for that matter, were ideally the best even when originally they got themselves accepted. It is because they have proved their ability to withstand the shock and abrasion of time; because no better solutions have as yet been able to establish themselves in their place; and because man by his nature inevitably will act in large part on habit and convention. He feels their authority, if for no stronger reason, because the alternative is war in one form or another. These men taught us that to make use of this inheritance flexibly, yet authoritatively, we must know how it came about and why it had continued to maintain itself. They taught us that, particularly in a democratic society, a loyal enforcement of these principles as they are, until by accepted procedures they have been superseded, is the condition of that orderly change without which civilization perishes either by atrophy, or by convulsion. They taught us that, though government is an adjustment of conflicting interests, its stability depends upon the measure of moderation that the more powerful groups are willing to impose upon themselves; and that such moderation cannot be imposed *ad invitum* by any bench of judges, but must depend upon the mutual forbearance of the citizens.

"To that faith the School throughout its history has been true. This time of all times is one when its influence is most needed; not alone

because of those dangers from without which will demand all our constancy and all our self-discipline, but because yeasty prophets fill the air with unhatched doctrines, greedily swallowed by the half literate. From us to whom so much has been given, much may properly be asked. This mansion of ours, where has ever dwelt what is fair and bright and of good report—let it not be said of us that we are unwilling in our turn to set it in order, so that in the future as in the past it should nurture the best promises and the best hopes of our illustrious profession."

LEARNED HAND, LL.B. '96

Off the Record

RULES OF UNCIVIL PROCEDURE The Summons

Prepare, over the seal of court,
A summons for the claim that's sought.

Insert your client's right address
But for defendant's make a guess.

Because if he'll, poor boy, not get it,
Defendant, and not you'll regret it.

With sheriff's "last and usual" return,
Actual receipt's not your concern.

Suppose some innocent is defaulted,
The judgment's none the less exalted.

And so your only thought must be,
Make the ad damnum full and free.

The Complaint

If you have got a claim to make,
But want to keep it quiet,
And leave defendant in the dark
Until in court to try it;

Just file with with the clerk of court
Upon a brief complaint;
Allege no fundamental facts
But only some that ain't.

No difference what your pleading says,
Omit all dates and data
So he's on the uneasy seat;
It really doesn't matter.

If he should then interrogate
Or take your deposition,
You still are free upon the trial
To alter your position.

And if because your pleading's mute
He's caught without his pants,
The fact that you have nothing said
Prevents a variance.

PART II

Of all the books now dead and gone
The dearest far is Chitty;
And if you are particular
You'll say the more's the pity.

In olden days the pleader
Crossed his Ts and dotted Is,
But nowadays he substitutes
A shell of mere surmise.

A pleading used to be a spot
To test your erudition,
For if you failed to make the grade
Your case went to perdition.

But now it's quite the other way
No pleading is defective
Because it fails to state the facts
Or any that's effective.

Just say the plaintiff feels aggrieved,
Or that he judgment prays,
Or that defendant owes some dough,
In unenlightening ways.

No matter how you cut and pare,
No matter how proficient,
You'll struggle far before you'll have
A pleading that's deficient.

BAILEY ALDRICH, LL.B. '32

Boston.

Indoor Birdwatchers (More)

Roger T. Clapp, '22, reports from Providence, R. I., that the follownig odd species have been observed in that area, to wit: The Bleary-Eyed Hangover (or Common Nightouse), The Yellow Spotted Cravat (which has the unique property of laying its eggs on itself) and an industrious bird known as The Seasonal Bottle-neck.

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A for Effort

One of the students working behind the desk in Austin library reports that a first year student, with an Ames case on fur bearing animals, filled out a slip for the *Rocky Mountain Review*.

Gallery

AUGUSTUS NOBLE HAND
Judge, U. S. Court of Appeals for the
Second Circuit



"I had no intelligent preference for the law but I had a family full of lawyers, you see." Judge Augustus Noble Hand, a distinguished member of one of the most capable courts in the United States, was explaining why he turned to the law as a profession. He spoke deliberately, slowly, coloring his sentences occasionally with a flourish or an unexpected colloquialism. His white hair, moustache, bushy eyebrow, and full ruddy cheeks gave him a mixed impression of distinction and heartiness.

The judge and his lawyer-relatives stem from a long line of seafarers. Those of his ancestors who survived the marine hazards moved from their Long Island home to take up farming in Vermont. The Shoreham estate which had been in the Hand family for some 150 years was sold only two years ago by the judge and his distinguished cousin, Judge Learned Hand.

Augustus C. Hand, the judge's grandfather, migrated into the Adirondack region of New York. He was the first lawyer in the Hand family and the one to start the family tradition of public service. He served as Surrogate, member of Congress, state senator, and Judge of the Supreme Court of New York.

Augustus Noble Hand was born in Elizabethtown, New York, in 1869. At an early age he showed that he had acquired the legal aptitude of his grandfather and his father Richard Hand. The judge recalled, "When I was six or seven years old, I attended a session of the State Supreme Court. It was a negligence suit in which a farmer's horse had been frightened off by a travelling circus. When the trial was finished, I wrote and delivered a speech and a charge about it."

This was not the only demonstration of precocity. At the early age of 14, Judge Hand graduated from high school, already a scholar of the Latin and Greek classics. After the strenuous pace he had set for himself in high school he was constrained to spend two years "resting, trapping, shooting, studying French."

Then after one year at Exeter, he came in 1886 to Harvard College. This was the Harvard of Santayana's student days, the Harvard which was listening to the lectures of James, Taussig, and Dyer. Judge Hand did not leave the Yard unchanged. As Judge Wyzanski says in his article in 61 *Harvard Law Review*, he learned from James that self confidence and success come from thorough work and methodical study habits. It was this thoroughness which Hand was to take with him to the bench.

After graduating *magna cum laude* in 1890, Judge Hand worked in his father's law office for one year. He had not yet made definite plans for his future. "I had not made up my mind about the law. I usually do not make up my mind until the last gun is fired and the emergency is upon me." However, after some soul searching, he finally chose the law and on the advice of his Plattsburgh friends, Ralph and Henry Kellogg, he came in 1891 to Harvard. He recalled with pleasure the evenings during his Law School career that he spent at the home of Justice Holmes, to whom Arthur Dehon Hill, a close friend, had introduced him. Some evenings the talk would run to the frivolous. "I can remember asking Judge Holmes, 'If the plaintiff declared in debt on a bond and the defendant pleaded that Robin Hood dwelt in a wood would he not have raised an immaterial issue and be entitled to a repleader?'" While at the Law School Judge Hand was elected to the *Review* and was affiliated with the Choate and Pow Wow Clubs.

Judge Hand graduated *cum laude* in 1894 and clerked for two years in the office of Stearns and Curtis. In June, 1897, he became partner in

Sub Judice

TWEEDLEDEE VERSUS TWEEDLEDUM

Certain railroad companies included in their bills to the United States for war time shipments a charge for wharfage services, when, in fact, the United States had performed these services itself with its own employees. Section 9 of the Interstate Commerce Act, U.S.C.A., title 49 allows any person claiming to be damaged by a common carrier in interstate commerce to bring an action against the carrier in a United States District Court or to make complaint to the Interstate Commerce Commission. These two remedies are mutually exclusive. The United States elected to make complaint to the I.C.C., and lost. In an effort to have the order of the I.C.C. set aside, the United States through the Attorney General's office filed a petition in a statutory three-judge court. The answer to the petition of the United States was also filed by the United States and was signed by the same assistant attorney general who had signed the petition. This procedure resulted from the application of the Interstate Commerce Commission Act, U.S.C.A., title 28, section 46 which provides in part: "Suits to enjoin, set aside, annul or suspend any order of the I.C.C. shall be brought in the district court against the United States." So, in this case the United States was suing the United States. *Held*: Complaint dismissed. The court said, "It is elementary that the same person cannot be both plaintiff and defendant at the same time in the same action. It is incongruous that the same person should direct and conduct both the prosecution and the defense in the same suit, no matter in what capacity he may appear." In support of its decision the court explained that in this type of situation the United States is not a mere nominal party defendant, since the legislative history of the statute involved demonstrates that Congress deliberately and intentionally provided that such suits should be brought against the United States. In this case, the court said, it was the duty of the Attorney General to act for both sides, and the situation was accentuated by both pleadings being signed by the same officer. To the claim made by the United States that it was now left without a remedy, the court answered that the United States still had open to it the other alternative of suing the railroad companies in a district court of the United States. *United States v. Interstate Commerce Commission et al*, 78 F. Supp. 580 (District Court of the United States for the District of Columbia.)

the firm of Curtis, Mallet-Provost and Colt. Upon the death of his uncle, Clifford Hand, in 1901 he joined the partners of the latter in the firm of Hand, Bonney and Jones.

When the judge was asked whether he misses practice, he replied immediately, "Not a minute. I did not like the responsibility to the client involved in practice."

In 1914 Judge Hand was relieved of this responsibility only to assume a greater one. He was appointed to the Federal District Court for the Southern District of New York. Judge Hand looked back on his service in that court with considerable pleasure. "It is true that much of the work in the District Court was concerned with detail and sometimes became boring. But the cases on the motion calendar were novel and important. Some of them involved constitutional problems not often met in other courts." Judge Hand compared the District Court with the Circuit Court. "In the District Court you are not checked by associates. The work is your own. Here you live in an ivory tower. You don't see witnesses or counsel. On the other hand, you have very alert and earnest associates and on the whole the quality of the work done is better." In 1927, President Coolidge appointed Hand to fill a vacancy on the Second Circuit, no mean honor in view of the fact that the Republican president had chosen Hand, a Democrat, for this important post.

When asked how he goes about deciding a case, Judge Hand replied, "I don't know." He did indicate, however, that precedent is of great importance to him in coming to a solution. "I try to follow Holmes' precept, 'It's my job to play the game according to the rules.' I believe that it is not the province of the judges to make the law." His conversation carried out the theme he propounds in his article in 18 *Pennsylvania Bar Association Quarterly* 46 at page 54, "Until we are empowered by the legislature to lay down rules according to our own judgment we had better leave drastic changes in the common law to the law-making body."

Judge Hand closed the interview by issuing a word of advice to the appellants of the future. "I would like arguments and briefs to be shorter. They are so long as to confuse and not long enough to decide the case."

F. R. R.

Alumni Notes

LL.B. '13—Richard M. Page was elected secretary of the Ethyl Corporation in August. He is continuing his duties as counsel for the company.

LL.B. '23—Byron K. Elliott, vice president and general counsel of the John Hancock Mutual Life Insurance Co., was elected president of the Association of Life Insurance Counsel on December 8.

LL.B. '35—William R. Furlong, Jr. resigned from the U. S. Maritime Commission on July 1, 1948, and has since opened offices in Washington, D. C., for the practice of law before the administrative agencies and courts of the Federal government.

LL.B. '36—A. Robert Ginsburgh has been promoted to the rank of Brigadier General, U.S.A.F., effective Dec. 13, 1948.

LL.B. '42—Donald E. VanKoughnet is an attorney in the anti-trust division of the Department of Justice, Washington, D. C.

LL.B. '42—Sydney R. Rubin has opened an office in the Elwood Building, Rochester, New York, for the general practice of law, specializing in taxation. He formerly practiced in Washington, D. C., after serving for a time as an attorney in the Department of Justice.

CURRICULUM—(Continued)

Development of this new course is to be continued, and the course will be assigned two hours a week throughout the second year.

Students will be asked to prepare themselves for the course in Commercial Law by studying, during their first summer vacation, a specially-prepared introduction to the subject. The readings which they will study will deal with negotiable instruments, sales and bankruptcy. The object of the readings will be to put before the student not only the main legal principles of modern commercial law, but also the business and economic background against which these principles operate.

In the regular course given during the second year the emphasis will be on the security aspects of sales transactions and the function of banks and other financing agencies with respect to such transactions.

Administrative Law and Constitutional Law. These courses will henceforth form a part of the prescribed second-year curriculum. Administrative Law will be assigned three hours in one term, while Constitutional Law will run two hours through the year.

These courses have been placed in the

second year because (1) in the judgment of the faculty they should be taken by all students, and (2) they furnish a needed background for such third-year courses as Government Regulation of Business, Corporations, Taxation, Labor Law, and Public Utilities, and for specialized seminar work such as that now being offered on the Civil Aeronautics Board and the Federal Communications Commission.

Accounting. This course has been assigned two hours for one term in the second year. The considerations that underlie the addition of Accounting to the prescribed curriculum are briefly as follows:

The concepts of law and accountancy have become increasingly interrelated in recent years. A substantial training in legal principles is required of accountants, and it is the faculty's judgment that an understanding of the fundamental principles of accounting should be a part of the basic training of the lawyer. Almost every lawyer is brought in the course of his practice into contact with problems that involve accounting concepts. Experience has shown, however, that the lack of a proper foundation in accounting theory prevents most lawyers from drawing the necessary understanding of accountancy from their contact with the subject in practice.

It is the object of the new program to turn men out with a sufficient training in the theory of accounting so that they will be started right, as it were, on a program of self-education in this subject. The course in Accounting will also contribute to the understanding of other law-school subjects, particularly Corporations and Taxation.

Students whose previous training is such as to make the course superfluous for them will be permitted to substitute another two-hour course for it. A single college course in Accounting will not normally be regarded as supplying such a training, however.

Legislation, Legal History, Jurisprudence and Comparative Law. Each student will be required to take one course drawn from a list of four or five courses falling under these general headings. The courses will be especially designed for the second year, and each of them will be assigned two hours in one term.

The object shared by these courses will be that of examining the premises underlying our legal system, so that the student may gain a larger perspective of its aims and its relations to the whole life of man in society. The courses are given in the second year so that the student may apply whatever insights are acquired in them to the other second and third-year subjects studied in the law school.

Insofar as possible the student will be permitted to elect the subject of his preference from among the courses that come under this heading. The practical exigencies of scheduling may, however, require that an assignment among these courses be made on an equitable basis after students have indicated, say, a first, second and third choice.

Corporations. The second-year course now called Business Associations I will henceforth have an assignment of two hours a week throughout the year.

The summer reading program, already mentioned in connection with Commercial Law, will ultimately include a general introduction to corporation law and a brief summary of the most important principles of the law of partnerships. The readings will also attempt to convey to the student an understanding of the

business and economic functions of the various forms of modern business organizations.

In the past one of the principal difficulties in teaching the subject of corporations has been the fact that for many students the role of the corporation in modern economic society, and the manner in which corporations are in fact organized and managed, have been something of a mystery. The program of summer study should permit the regular course to take for granted what has often in the past had to be supplied by lectures.

The course will regain its old title, Corporations, because the subject of partnership will be largely dealt with by text in the summer readings.

Henceforth two advanced courses in the law of corporations will be offered in the third year, one being a short course assigned two hours in one term, while the other will meet two hours a week throughout the year. The object of this arrangement is to permit the student to take a longer or shorter course of study in the law of corporations as his special needs and interests may dictate.

Trusts, Wills and Future Interests. The present course in Trusts is not affected either as to hours or content by the faculty's action. It will remain a two-hour course through the second year.

The course in Property II (Wills and Future Interests) will in the future be assigned the same amount of time as Trusts. In view of the reduction in the time allowed to Property II, the instructors in that course plan to require certain readings in the subject of Wills during the first summer vacation.

Third Year

The content of the third-year courses is not immediately affected in any substantial way by the faculty action. The requirement of a third-year paper that was suspended after the war will again be in effect. The courses of the third year remain elective, except that henceforth all students will be required to take Taxation.

While the new program does not itself introduce any important changes in the third year, it is likely that it will affect the future development of the third-year offerings. One of the principal objects of the changes introduced into the second year has been to make possible a freer election among the third-year courses. In particular, the faculty sought to facilitate, and make room for, courses and seminars devoted to an intensive study of issues that cut across the conventional boundaries separating the various branches of the law.

Provision for Specialized Work in the Third Year. As has already been noted, the new curriculum provides in the second year the foundation courses in public law that will generally permit specialized work in this field during the third year.

Those intending to specialize in Taxation or Labor Law will be permitted to substitute in the second year the course in Taxation or Labor Law for the course in Commercial Law. By completing the basic course in their specialty during the second year, such students will be prepared for advanced work in their chosen fields of interest during the third year.

Students who have similar interests in other specialized fields (such as International Law) may make a similar substitution in the second year with the permission of the Administrative Board.

Written Work. As has already been stated, the requirement of a third-year paper, which was suspended after the war, will be reinstated next year.

This paper may be written outside the ordinary program of instruction under the direction of a member of the faculty, it may be part of the work of a seminar, or it may be prepared in connection with the program of legal writing commonly known as "the basement law review." Though the "basement review" has been temporarily suspended because the senior class now in the school consists only of seventh-term men, it is hoped that it may be continued in operation next year.

(Continued on page four)

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Calendar

LEGAL WORLD Law Wives

Mrs. E. Merrick Dodd will discuss *Women in Politics* at the Law Wives meeting in Kendall House tonight at 8 o'clock.

UNIVERSITY WORLD Summer Travel

Do You Want To Go Abroad? will be the topic of an address by Russell Ellis tonight at 8 p.m. in Phillips Brooks House. Under the auspices of the Experiment in International Living, the speaker will outline student travel in Europe during the summer of 1949.

AVC Housing Campaign

The Harvard Chapter of AVC opens an extensive campaign to deal with the housing problem at Harvard with an informal discussion by Ted Francis of Hunnemann and Co., and John Monro, Counsellor for Veterans, at the Winthrop House Junior Common Room tonight at 7:30 o'clock. An apartment referral system will be one of the topics discussed.

CURRICULUM—(Continued)

Summer Readings. Reference has already been made several times to a program of summer readings to be completed during the first vacation. As has been indicated, these readings will probably embrace the following subjects: (1) an introduction to the economic functions and the basic legal principles involved in negotiable instruments, sales and bankruptcy, to serve as preparation for the second-year course in Commercial Law; (2) a similar introduction to corporations and partnerships as preparation for the second-year course in Corporations; (3) readings in the law of wills to serve as an introduction to the course in Property II.

The task of preparing suitable texts for this purpose is of such magnitude that only a portion of this program can be put into effect next summer. In preparing the readings a form of presentation will be sought that will be readily comprehensible and yet avoids dogmatism. The program will be kept within such limits that it should not interfere with the plans of those students who

wish to undertake gainful employment during the summer, or who wish to travel or to study other subjects.

The next installment of this article will discuss some of the more general objectives underlying the new program, and some of the practical difficulties that must be solved in putting it into effect.

FORUM—(Continued)



JOHN K. FAIRBANK

commission to study the present state of the humanities and social sciences in that country. He served as a lieutenant colonel in army intelligence during the war, doing most of his work in the Far East. He is the author of *Japan—Past and Present*.

WILLISTON—(Continued)

reports designated by the names of the reporters.

Professor Ames' casebooks followed—or rather began—the modern type of casebook, that is a selection of decisions showing the development of the principles of the subject treated. Dean Langdell's plan was different. His first casebook was on Contracts. In it he printed every English case (with an occasional New York, Massachusetts or United States Supreme Court case) involving the legal principles covered by the book. Just as a lawyer investigating a question thoroughly would look up every pertinent case, so Langdell planned his book to give students the same exhaustive training; and as the English decisions were the foundation of American law they were the primary authorities. Of course, it was a consequence that time and space would permit consideration of no more than a few principles. The two volume casebook on Contracts contained cases only on mutual assent, consideration and conditions based on a breach by one party to a contract. Even this fraction of the law of contracts could hardly be covered in the allotted time. The casebook on Sales was made on the same theory.

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The independence of students that characterized President Eliot's administration, especially in its earlier years, was manifest in the Law School. There was little in the way of guidance of the student, apart from the lectures and the ten-minute period after them. As Professor Ames said, "the table was spread," and it was for the student to partake.

The personal advice which might naturally come from the Dean of the Law School, and which later was freely sought and freely given by Professor Ames and his successors in the office, was rarely sought from Langdell. His naturally retiring and reticent nature was already increased in 1885 by failing eyesight, which compelled him to wear dark glasses and prevented him from recognizing students. Professor Gray alone at that time seemed to make a conscious effort to help students outside the class-room. Dean Langdell was secluded in his office; Professor Thayer worked at home, carrying books there daily from the library. With these and a considerable collection in his house, he prepared his lectures and his written work. Ames and Keener worked in the stack, which the students rarely invaded until the *Law Review* was started in 1887 with the approval and aid of Ames. Gray, however, throughout his teaching career in Austin Hall, worked in the open alcove in the reading room. This brought him close to the students and his kind reception of any inquiry as to legal problems made him the chief source of information at that time outside of the class-room.

The freedom from guidance by the Faculty was perplexing to some bewildered beginners, and the common-law established by the students themselves gave some an unfair advantage. At the beginning of the year each student appropriated a seat in each lecture room and a place at a table in the reading room, not to be poached upon by others. Those who knew the custom and took prompt advantage of it on the first day of the term had the benefit of their diligence, and the students did not tolerate invasion of their prescriptive rights.

There was no oversight by the Faculty of the law clubs and no aid for students who were left out. There were not enough clubs to include all members of the class. Election to one of them was similar to that in a social club except that scholastic ability, rather than personal popularity was the primary basis of election.

But the merit of an institution of learning depends primarily on its teachers, and even in this respect candor compels the admission that Langdell, though entitled to a permanent high place in the history of education, did not, in my time at least, deserve praise as a teacher. He must have given inspiration to some of his earlier pupils, but he had ceased to be effective in the class-room. His courses when I was in the School were on Equity, Suretyship and Mortgages. He stated the cases elaborately and then analysed them. He did not like to be interrupted with questions, and the cases with which he dealt were rarely recent and often obsolete; so that though his exposition was clear and logical we learned our equity chiefly from Ames in his courses on Trusts and Bills and Notes.

In spite of Langdell's inadequacy as a teacher, and of any disparaging remarks that I have made, the School was nevertheless in one of its great periods. The case system of study was on the threshold of its great influence not only in the study of law but in many other branches of learning. The School was

growing in numbers and in reputation. The tide had definitely turned. In my second year the entering class of regular students was 71, in my third year 89, with correspondingly enlarged total registrations. What the consciousness of this pioneering success meant to us is hard now to realize. "Most can raise the flowers now for all have got the seed"; but at that time we recognized that we alone were the elect.

We had great teachers who were then in their prime. Even Langdell, the eldest of the Faculty was under sixty in 1885. Keener, the youngest, was an expert in dialectic and in leading students to reason for themselves and to apply principles to tangled skeins of fact. He presumably learned this art from Ames, as have many subsequently from that great master. Thayer and Gray, though not equal to the other two in the mechanics of teaching, made their students take an active part in their courses and the small number of students made all the courses virtually seminars. Furthermore, Thayer, Gray and Ames had not only legal scholarship and character, but wide reading outside the law, and the perfect manners and personal distinction that are the final grace of a teacher and the inspiration of a student.

Although the lack of guidance outside of the class-room doubtless bore hardly on some, the freedom and independence acted as a stimulus to most. Even the fact that students were perplexed at first roused them to greater effort than if the path had been easy. The required schedule of work was not so severe as to exhaust the energy of the capable and ambitious, and independent investigation of special topics was common. The work in the Law clubs was thorough. Briefs were filed some days before the argument, and all members were expected to study them and to give oral opinions after the argument. This work extended through the second year. Third-year members acted as chief-justices.

In 1887 a few brilliant members of the

third year class felt an urge for another type of work. In this group were Joseph H. Beale, later professor in the Harvard Law School, Julian W. Mack, who studied law for three years in Berlin and England after graduation in Cambridge and afterwards became successively professor of law in the University of Chicago Law School and a distinguished United States Circuit Judge; John H. Wigmore, later Dean of Northwestern University Law School and author of the monumental treatise on evidence. Their plan was to write legal essays and to read them to the group. The plan was soon enlarged and the beginning of the *Harvard Law Review* was the result.

In those years students were marked on their examinations, as they are now, but no information was given them except that they had passed or had failed or had got the honor mark. Conspicuous ability and scholarship were naturally recognized by the students, but no nice distinctions could be made by them or their prospective employers because of slight differences in marks.

For most of those in the School in the years of which I write, the days spent there were felt at the time to be red-letter days, and remained so in memory.

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