

The Harvard Law School Record

VOL. 9 NO. 6

CAMBRIDGE, MASS., WEDNESDAY, NOVEMBER 9, 1949

PRICE TEN CENTS

Television, Ice Rink, Round Trays To Be Dorm Features

Houses Still Unnamed; Set Tentative Policy For Admission To Residence

Good weather has enabled work on the new dormitories to proceed ahead of schedule, according to information received from Vice-Dean Livingston Hall and Assistant Dean George Minkin, and it is expected that the dormitories will be ready for occupancy by the beginning of the next school year. As yet no names have been selected for the new buildings, nor has a final decision been made on admission policy. The thought of the dormitory committee at present, however, is that members of all classes will be admitted to residence.

Great care is being taken in the selection of furniture for the rooms, and in the provision of proper recreational facilities for the residents. To illustrate the thinking which has gone into the latter phase of planning, present blueprints call for a sunken area between the dormitories to be flooded during the winter for ice-skating, a television duct, numerous large and small common rooms for meetings and parties, and ladies' rest rooms. The first floor of one of the buildings will be devoted entirely to recreational facilities, including a newspaper reading room.

Almost all of the furniture to be used has been designed by The Architects Collaborative, Inc., the group working on the dormitory. The easy chair selected, is deep, comfortable and roomy, covered with simulated leather plastic. A desk has been designed of metal with a wooden top which has three drawers and a typewriter slide. Sixteen running feet of bookcase shelf space will be provided. Deans Hall and Minkin spent a good deal of time measuring the books used by the average law student to arrive at the correct measurements for the bookcases.

The dining hall facilities are designed to provide seating facilities for groups of six, which is considered a good conversational size. A new tray has been designed, circular in shape, to take the place of the old-fashioned rectangular trays.

NEWS IN BRIEF

LAW AND MEDICINE

Dr. Richard Ford, Professor of Legal Medicine at Harvard Medical School, will give the third in a series of six lectures on the relationship between law and medicine, in Langdell North Middle at 5:10 p.m. on Tuesday, November 15. The topic will be *The Medical Expert*.

SELLING YEARBOOK ADS

Any student interested in selling advertising for the *Yearbook* should contact Perry Leff at the Yearbook office in Gannett House this week. Liberal commissions are offered.

REPUBLICANS

The Harvard Law Republican Committee will meet Thursday at 7:30 in the Common Room of Kirkland House. Charles Gibbons, minority leader of the Massachusetts House of Representatives will speak.

WORLD LAW GROUP

The second in the series of luncheon seminars on Atomic Energy Control will be held by the World Law Group in the Cape Cod Room of the Hotel Commander on Tuesday, Nov. 15, at 1 p.m. Mr. Walter Isard of the Department of Economics in Harvard University will

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YALE GRID TICKETS

The Harvard Athletic Association has announced that tickets for the Harvard-Yale football game will be on sale this Thursday and Friday for law students at the Association's office at six Quincy Street.

Latest Law Review Lists New Columns, Tribute To Hughes

In an attempt to make the *Law Review* more valuable to its readers, the editors have made important innovations which will appear for the first time in the November issue due tomorrow. This will be the first issue of the *Review* to meet its regular publication schedule since the early war years.

The first new feature is the "With the Editors" column, which will tell of coming articles and notes in the *Review* to be discussed, in addition to more detailed descriptions of the contributors than has been possible in the past. It is hoped that interesting letters addressed to the *Review* may be printed here. There is also a new Comment section. This will contain short articles from three to ten pages in length. These articles will be quite flexible in form and should provide an opportunity for current writing by busy professors and practitioners who do not have the time to do a full-length leading article.

A third innovation in this issue is a student note on the *Business of the Supreme Court: 1948 Term*. The editors have concentrated on the leading decisions and have attempted to analyze in detail their effect on the law. The note also includes an extensive tabulation of the Court's work according to the type of disposition, source of cases and subject matter of dispositions.

The issue highlights the career of the late Chief Justice Charles Evans Hughes as a judicial administrator. Mr. Justice Frankfurter has contributed a brief introductory article entitled *The "Administrative Side" of Chief Justice Hughes*, which describes the rare qualities of the late chief justice and their influence upon the Court. A further insight into the functions of the Supreme Court, from

(Continued on Page three)

Cavers Suggests World Ten Years' Moratorium For Industrial A-Power

In the third of a series of lectures on contemporary law problems presented by the Harvard chapter of the National Lawyers' Guild, Prof. David F. Cavers advanced a plan for the international control of atomic energy. "The nub of the problem," he said, "lies in the physical fact that the nuclear fuel to be used for atomic power is the same as the explosive used in the atomic bomb."

It is the installation of large plants for the production of nuclear fuel for atomic power which must be controlled. The difficult problems of controlling such large-scale installations he continued, are the source of most of the disagreements between the United States and Russia in the UN Atomic Energy Commission. Therefore, if all such plants were forbidden under an international control plan for a period of let us say ten years, these difficulties could be bypassed and a chance that a permanent plan might be worked out later would be greatly increased.

This moratorium plan, Mr. Cavers argues, would not be likely to deprive the world of any benefits from the industrial use of atomic power. For, as Professor Cavers pointed out, the utilization of atomic power in industry is not

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Lawyer Specialists Gather To Present Practical Aspects Of Diverse Careers

PLENARY SESSION SPEAKERS



LON L. FULLER



HAROLD J. GALLAGHER

Judge Augustus Hand Recalls Days of Holmes, Gray, Langdell at Law School

This article was written especially for the *Record* by Augustus Noble Hand, LL.B. '94, Judge of the United States Court of Appeals for the Second Circuit.

I entered the Law School in the autumn of 1891. The courses seemed very difficult at first, although they were perhaps not as hard for me as for some of my fellow students because I had spent a year in my father's law office at Elizabethtown, New York, after leaving Harvard College. Therefore I was somewhat familiar with legal terminology and had had some experience in seeing how things were done both in office practice and in trials before the courts. Nevertheless it was all blind enough. We were given opinions of the courts to analyze as best we could. Some of them were written in law Latin and Norman French. By "main force and awkwardness" we would try to find out what the cases were about. In class we would be asked by our instructors to say what had been decided and whether we agreed with the decisions. A Socratic dialogue between the instructor and members of the class followed. It was tough going but excellent training in the verbal subtleties which underlie all reasoning that has to deal with the meaning of words and the formulation of thoughts. The discussion in the classes soon began to show us what it was all about and after two or three months we began to have our feet on the ground.

Nelson Perkins, Benjamin Apthorp Gould, Robert Shaw Barlow, Arthur Dehon Hill, Philip Mercer Rhinelander, Weston Stickney, Lawrence Mason Stockton, and I formed a law club to which we gave the euphonious name of the "Bung Hole." According to my recollection, Professor Ames gave us the first case to argue and presided over our court. The question was whether an injured party could recover damages for malicious prosecution of a civil action. I was counsel for the plaintiff and while I lost for lack of authorities to support my contention I got great satisfaction from the experience. After the decision dismissing my declaration we all stayed in Stockton's room in Hastings Hall drinking beer, eating ham sandwiches and further discussing the case. We had an able lot of men in the group, but many of us soon drifted away to the older clubs—I to the PowWow, and several others to the Thayer. Perkins became a leader of the Boston Bar as well as a member of the Harvard Corporation; Hill and Barlow afterwards became law partners, and Hill was successively district attorney of Suffolk County, corporation counsel of Boston, and a leading barrister of the town. It was Hill who first introduced me to Justice Holmes, then an associate justice of the Massachusetts Supreme Court. I well

remember calling with Hill at the Holmes' house on Beacon Street about the year 1892 and getting a great thrill when the Justice roared at my repeating a decision by the disreputable old English Judge Scroggs as follows:

"And Scroggs, J., laughed merrily and said, if a man bring an action in debt upon a bond, and the defendant plead that Robin Hood dwelt in a wood, doth he not tender an immaterial issue and shall the plaintiff not have a repleader?" Holmes then, and always, was most kind to young men. It was delightful to see him in his own home with his vivacious, admiring little wife sitting with her embroidery while both "wise cracked" to the infinite entertainment of their guests.

Hill, Barlow and I all had literary and classical tendencies, if not aptitudes. Both of these men and some of my other Law School friends became much excited over George Santayana's *Sonnets* which Stone & Kimball published at Cambridge in 1893. We were sure that the author would be reckoned as a Keats. Many of the verses we could repeat by heart and I still think them of rare beauty. My interest in them was heightened by sitting next to Santayana at a club table in Memorial Hall during my last year in the School.

Hill then lived in the old Gannett House, where the Law Review Office now is, and used to give Browning readings in his room at which he loved to recite the lines from *The Statue and the Bust*:

"The counter our lovers staked was lost,
As surely as though it were lawful coin."
(Continued on page four)

Griswold Receives LL.D. At Canadian University

Dean Erwin N. Griswold was granted an honorary LL.D. at the Annual Fall Congregation (Convocation) of the University of British Columbia, on October 26. At the same ceremony he delivered an address on *Law and Justice in Contemporary Society*. On October 27, Dean Griswold took part in a symposium on Legal Education at the same institution. He spoke on *Post Graduate Legal Studies*.

The other participants in the symposium are D. Hughes Parry, Principal of the University of London Law School; Vincent C. MacDonald, Dean of Dalhousie Law School, Halifax, N. S.; Cecil Wright, Dean of Osgoode Hall, University of Toronto; and Dean F. C. Cronkhite of the Law School of the University of Saskatchewan.

The Dean spent October 28 in Seattle, where he addressed an informal gathering of the local Harvard Law School Association. Assistant Dean George Minkin took over his taxation class while Dean Griswold was gone.

Fuller, Saltonstall And Gallagher To Lecture At Forum

The Second Annual School for Young Lawyers will commence at the New Lecture Hall tomorrow afternoon at 3:45 p.m., when Professor Lon L. Fuller will address the first plenary session on the topic *Philosophy for the Practicing Lawyer*. Continuing through Friday night when Harold J. Gallagher, President of the American Bar Association, will speak on *Your Debt to Your Profession*, the School will follow the pattern established last year, but will include new speakers and new subjects.

Among the new topics which will be considered in the classes this year are *Tort Practice*, *Lawyers in Business*, *Banking*, and *Insurance*, *Criminal Law Practice*, and *Divorce Practice*. According to Anthony P. Nugent, Jr., 3L, coordinator of the School, the new subjects were chosen to satisfy requests made after the School closed last year.

In his address tomorrow, Professor Fuller will discuss the effect of legal philosophy upon the practicing lawyer. Preceding his address, Dean Erwin N. Griswold of the Law School will greet visitors to the School. Richard K. Fink, 3L, President of the Law School Forum which is sponsoring the school, will extend the Forum's welcome. Fink has announced that the meeting will be held at 3:45 p.m. instead of 4:10 as previously announced.

Registration for the programs began yesterday, and will continue today and (Continued on Page three)

Maass To Address Non-Partisan Rally On Hoover Report

The H.L.S. Citizens Committee for the Hoover Report will hold a rally today, at 4 p.m. in the Courtroom. Vice-Dean Livingston Hall will introduce Prof. Arthur Maass of the Harvard Department of Government who will explain the background of the Hoover Commission appointed by President Truman to find ways to eliminate waste and inefficiency in the federal government caused by the tremendous growth of agencies in the past 20 years. The commission did not consider the advisability of these new agencies but limited its work to the problem of getting the most value for each dollar spent.

Professor Maass served on the task force assigned to work on conservation, and is acquainted with the controversy between the Bureau of Reclamation and the Army Corps of Engineers.

The *Record*, the Harvard Lawyers Guild and the Harvard Law Republican Committee are sponsoring the rally so that students may get a better understanding of the Hoover Report.

The Citizens Committee does not necessarily endorse the report in full, but does urge Congress to give a priority to the reforms urged by the commission, to work from the bills written by the commission instead of passing bills based only on isolated portions of the report, and to pass the reforms as a whole.

The committee urges that the best time to accomplish these reforms is at the present when they are fully supported by the public and Congress. Reorganization has been attempted by every president from Taft to Roosevelt but has never succeeded very far because of the resistance of the federal departments. Harvard is the first law school in the country to establish a Citizens Committee.

The Harvard Law School Record

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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

Many decisions are being made at present which will affect the comfort and living habits of those who will occupy the new dormitories. Evidently no student opinion is being given to influence these decisions. Last year when the new dormitory room models were set up students gave valuable criticisms which led to some changes in the plans that had been proposed. Their opinions, however, came too late to stop some of the things that were already in process, and many changes that were made were in the nature of alterations.

For the good of the whole project students should make suggestions now while plans are still flexible. How the commons should be used? What should go into the grill room? Policies on its operation? Will there be a music room and where? How will the law and graduate school men share the buildings and various aspects of management? These are just some of the questions to be answered. It will be wasteful if these are decided so that they do not coincide with the wishes of the future occupants and need changing later. Worse still, they may be hard to change later and in the case of things which students may want which call for building they will be makeshift if provided after the project is completed. It appears that the planners are doing a fine job now in deciding what students may want, but no doubt they could come even closer to the wishes of students if they would tell the project administrators what they want and what they think of plans being made.

First and second year men should be particularly anxious to volunteer suggestions as to what should go into the places in which they will live. As individual action may not be very pointed, a representative group should be organized to solicit and formulate suggestions so that they can be presented in a useful form by students who feel obligated to see them through.

B. A. F.

This year, for the first time, the men of the Law School will be solicited for one charitable contribution to the newly created Combined Charities Organization. Separate drives for other groups like the Red Cross and the Community Chest will not be made as in past years.

This combined appeal is to the advantage of everyone. The limited number of volunteers at the Phillips Brooks House will be spared the extra burden of two or more drives. The law students will be spared the annoyance of several solicitations, and the share of each charity will not be dependent on how closely one appeal follows another.

Some of the men who would ordinarily bypass the solicitations of the Red Feather campaign will make a contribution to the Combined Charities Organization because they now have an opportunity to help organizations like the National Heart Association and others which are well entitled to their support but do not have adequate fund-raising facilities.

The Red Feather campaign will share in this drive. Students who think of themselves as being on an extended absence from their home communities are correct only to a point. They forget that, whatever their intentions as to the

future, they now spend more time here than at home and that they are dependent on Cambridge and Boston for their community services. The students who took chest X-rays, last year at the expense of the Commonwealth, and this year at the expense of the city of Boston, should be acutely aware of this.

Volunteers in every section will conduct the appeal and they will ask every man to contribute as much as he can with the hope that an average of five dollars per man will be achieved. The RECORD hopes that the drive will be greatly oversubscribed and wishes to congratulate the Phillips Brooks House for its efforts on behalf of the Combined Charities Organization.

B. G.

Letters to the Editor

To the Editor of the RECORD:

Since leaving the Law School, I have been employed with the International Refugee Organization, U. S. Zone of Germany Headquarters. This organization, which was established by the United Nations, serves the purpose of aiding in the repatriation or resettlement of the Displaced Persons of Europe. Although of course the funds used by this organization are contributed by the member nations of the United Nations, these funds are provided only for the essential purpose of the organization, which is the reestablishment of those persons who were persecuted or uprooted by the circumstances of the war.

The staff of this organization has now become interested in a project to supply toys for Christmas for all the Displaced Persons' children and the orphans still in this zone. Since no official funds are available for such purposes, we have decided to write to our friends and families in our home countries and request them to send to us whatever used or new toys their children could spare. I need not explore the joy that the receipt of toys would bring to these unfortunate children, many of whom have never known a true home. It is our ambition to supply at least one toy to each one of the 40,000 Displaced Persons' children still awaiting re-establishment.

I would be very grateful if you could publish my appeal in the RECORD, requesting all the students to send the toys which their children, brothers and sisters, could spare to this organization, to my attention. The address is:

International Refugee Organization
Hqs—U. S. Zone of Germany
APO 62, Postmaster, N. Y.

FELIX H. KENT, LL.B. '49
Legal Officer

Off the Record

Open Letter to the New Yorker

Dear New Yorker:

That interesting little note about Dean Sturges' telegram (RECORD, Oct. 11) in your Talk of the Town section of November 5 illustrates a problem that has plagued us for some time now and, we suppose, will be with us always. That is our inability to induce people to give us an adequate comment on current events, or, more often, to give us any comment at all.

Despite most vigorous efforts, we could not find a single person who would be quoted as opposed to the admission of women. Nearly everyone favored the idea and, worst of all, no one, not even the women of this country, really seemed to care. We had hoped for something stronger from Dean Sturges but felt that the subtle sarcasm of his wire added a bit of levity to our news story. It was not until the contents of the telegram graced your pages, however, that we realized that it was loaded with humor of such high quality, for only the very best can hope to gain entrance to your magazine. As a result, we are considering dispensing with our humor department, leaving our news staff free to inject, perhaps unwittingly, humor into our little paper. Our attempts at wit never quite seemed to go over anyway.

Incidentally, this was not our last brush with Dean Sturges. A few weeks later he came up to our staid old school to speak on *Legal Education at Yale*. On pre-lecture interview, he stated that he could not say definitely what his speech would contain, since he never uses notes, but that it would probably be about legal education at Yale. You know how exasperating that can be.

And even you, *New Yorker*, have been uncooperative in this respect. Once we sent you a difficult legal problem, a tax question as we recall, to comment upon. Your comment was very humorous, but, really, you just missed the point completely. Then later we sent you a cartoon for your inspection and comment. We heard nothing more about it. People just don't care any more, for certainly if anyone would have an appropriate comment handy, you would. So we have given up asking for comments and may even return to the more rugged practice of forming our own opinions.

P. S. Next time you see Dean Sturges, please thank him for paying for the telegram. H.

Sub Judice

MARRIAGE AND BAPTISTS UPHELD

The *New York Mirror*, a Hearst publication, printed a photograph of Miss Foray with Lieutenant Barfoot, a national war hero. Beneath the picture were the words: "Lt. Van Thomas Barfoot, Congressional Medal Winner, was married yesterday to Norma Louise Davis, in Matthews Baptist Church, Hudgins, Va. Mrs. Barfoot, former school teacher, is the daughter of Capt. and Mrs. James Davis, Halliford, Va." The only difficulty presented by this story is that Miss Foray is not Norma Louise Davis; she did not marry Lt. Barfoot; she is a Catholic and did not become a Baptist; she never was a school teacher, and she is not the daughter of Capt. and Mrs. Davis. The error occurred when the newspaper selected an old photograph believing the woman pictured in it was the bride of Lt. Barfoot. Miss Foray brought an action for libel against the Hearst Corporation, alleging she was "unmarried, of high moral character, and unblemished reputation, and by profession a model of junior misses clothes." She alleged that the reputed marriage suggested a "clandestine marital life," and was especially damaging to her reputation as a good Catholic, in that it suggested she had become a Baptist. The defendant made a motion to dismiss the complaint. *Held*: Motion granted. The court found that the defendant had made all of the alleged misrepresentations, but held that none of them could have the effect of subjecting Miss Foray to public scorn, ridicule and contempt. Discussing the false statement that Miss Foray was married, Cuff, J. said, "How could such an utterance be libelous per se? Marriage is an honorable, wholesome and necessary institution, recognized as such by states, governments and people throughout the world. Our laws favor marriage and discourage interference therewith. . . . Dignified, as the news report complained of indicates, by the various religions providing an inspiring and holy ritual for the ceremonies, recognized by the public as a very happy event, culminating after careful and long preparation, worthy of great celebration and even publicity, moving relatives and friends to shower upon principals gifts and words of encouragement looking toward a successful union, marriage and its progenital sequela must be accorded the highest honor in our way of life before which all other accomplishments of man and woman seem to shrink to invisibility in importance. Did it not inspire the poet, Ralph Waldo Emerson to write, 'All mankind loves a lover'?"

Concerning Miss Foray's misrepresented association with Baptists, the court said, "The Baptist religion is one of the outstanding religions in our country and bears, like the nation's other religions, an excellent reputation." *Foray v. Hearst Corporation*, 91 N.Y.S. 2d. 116 (1949).

The Judge Sees the Light

The art of pragmatic advocacy was well demonstrated in a Massachusetts courtroom the other day. It seems that a disgruntled customer was suing an appliance store for a refund of the price of a supposedly faulty toaster. As a climax to his brilliant defense, counsel for the store asked the court's permission to demonstrate the quality of the toaster. The judge nodded his approval.

Counsel plugged the appliance into a handy socket, stepped back and grinned: "See! It works perfectly." At that moment the courtroom was plunged into darkness.

When the lights came on again the judge solemnly stated, "I find for the plaintiff."

The Loved Ones

In case anyone has a personal or academic interest, in the following, one of the grounds for which the Michigan State Board of Licensing may refuse a license to undertakers:

"Using profane, indecent, or obscene language in the presence of a dead human body, or within the immediate hearing of the family or relatives of a deceased *whose body has not yet been interred or otherwise disposed of.*" (Italics ours.) 118 Mich. Statutes 1949, Subchapter 14.509.

Habeas Molarus

The following is reprinted from a newspaper published at a law school which admits women students:

"The most unusual woman interviewed was Spanish born Dr. ——. She got her DDS from Temple, and has practiced dentistry for several years. Her plans are to be lawyer and dentist in adjoining offices."

Credits

We wish to thank the members of the student body for their kind cooperation in sending poems and comments to this column. We also want to take this opportunity to thank Kate Smith and Colonel Robert McCormick, both of Malden, for their excellent contributions. Keep up the good work, you two; we appreciate it.

Gallery

JULIUS STONE

International Legal Scholar



Referring to *The Province and Function of Law* by Professor Julius Stone, Dean Roscoe Pound has written, ". . . (it) is a work which will be numbered among the masters." Professor Campbell of the University of Edinburgh has called this book, ". . . a mighty sociological learning, a tower from which to survey the contemporary province of jurisprudence and a starting-point for further exploration in many directions." The author of this book, which has been acclaimed as the most comprehensive work in the field of jurisprudence since John Austin, bears the title Challis Professor of Jurisprudence and Public International Law at the University of Sydney.

Harvard is getting its second look at the 42-year-old Englishman who is currently settled in Australia with his wife and three children. He was here before, from 1931 to 1936, where he received an SJD and despite his youth (he was 30 at the time) was an assistant professor at the Law School. He also managed to find time to be professor of international law and diplomacy at the Fletcher School of Law and Diplomacy. Another of his early attainments was the receipt of the Degree of Civil Law at Oxford at the age of 27, by far the youngest to have ever been awarded that honor.

Australia is a long way from England and America where one would expect most legal research and writing to be done. Yet Professor Stone feels he would not have been able to write his magnum opus, *The Province and Function of Law*, elsewhere. It provided the advantage of distance, without isolation, from which the development of the common law could be observed with greater detachment.

His career in Australia has not been limited to teaching and writing. Professor Stone served on governmental committees during the war and performed special duties on the personnel staff of the Australian commander-in-chief with the rank of lieutenant colonel. His greatest service was as radio commentator and until his departure last year was Australia's outstanding commentator on international affairs. His listeners were fortunate to have so much intelligence and knowledge devoted to their service in reporting and interpreting events.

Professor Stone diplomatically declines to take advantage of his visitor's status by criticizing America. He does, however, feel that American jurisprudence is overly concerned with semantics. Despite this, it provides an excellent place to study because of its freedom from tradition. Professor Stone is now working on his next book which will concern the development of law as an instrument of social control. He is also visiting professor of jurisprudence at the Fletcher School of Law and Diplomacy at the invitation of Professor Roscoe Pound, during Professor Pound's absence.

Law is taught differently in Sydney than in the United States. The case system is not in use, but instead the 800 students use text books supplemented by readings in the English reports. Jurisprudence is a fourth-year course and is intended to be a correlation and integration of the legal content of the curriculum and a criticism of it in the light of ethical and sociological theory. The course is divided into three parts. The first is law and logic; the second law and justice; the third, law and society. These divisions are followed in *The Province and Function of Law*. Professor Stone's own interest may be deduced from the fact that more than half of the book is devoted to the last classification.

Professor Stone does not confine himself merely to teaching theoretical courses like jurisprudence. He also teaches evidence and on occasion has taught a practice course. In a way, that is typical of the man, for Stone's life has not been devoted exclusively to work in the detached academic world. It has been equally devoted to work for his people and nation.

DAVID GROSBERG, 3L

Alumni Notes

The following names conclude the list of members of the class of January, 1949, who have reported their present activities.

Cloyd Laporte, Jr., Cravath, Swaine & Moore, New York City; John E. Laursen, Raytheon Mfg. Co., Waltham, Massachusetts; Stanley H. Levy, Levine & Berman, New York City; James C. Lightfoot, Lewis T. Moore, Philadelphia, Pennsylvania; Henry C. Lind, Charles H. Drumme, Providence, Rhode Island.

with Positions — as of October, 1949

Leland J. Markely, Rathbone, Perry, Kelley & Drye, New York City; J. Howard Marshall, Jr., Root, Ballantine, Harlan, Bushby & Palmer, New York City; Edward S. Masket, A. T. Berk, New York City; James R. Maxwell, Jr., Thorp, Bostwick, Reed & Armstrong, Pittsburgh, Pennsylvania; Robert W. Maynard, Clerkship, Evans, Hand & Evans, Paterson, New Jersey; Randolph W. McCandlish, Jr., Bank of the Manhattan Co., New York City; Edwin S. McKeown, Qualey, Staub & Arthur, Chicago, Illinois; Laughlin H. McLean, Deputy County Recorder, Cuyahoga County, Court House, Cleveland, Ohio; Robert G. Miller, Stryker, Tams & Horner, Newark, New Jersey; Francis J. Milligan, Jr., Continental Ill. National Bank & Trust Co. of Chicago, Chicago; John L. Mirabile, Pesner & Bloom, Spring Valley, New York; William S. Moorhead, Jr., Moorhead & Knox, Pittsburgh, Pennsylvania; Francis S. Moulton, Jr., Clerk, Supreme Judicial Court of Massachusetts, Boston, Massachusetts; George B. Munroe, Cravath, Swaine & Moore, New York City; Philip J. Murphy, Northwest Suburban Credit Bureau, Inc., Glenview, Illinois.

Cyrus A. Neuman, Bureau of Internal Revenue, Detroit, Michigan.

Louis Paisley, McConnell, Blackmore, Cary & Burke, Cleveland, Ohio; Mahlon F. Perkins, Jr., Donovan Leisure Newton Lumbard & Irvine, New York City; Roswell B. Perkins, Debevoise,

Plimpton & McLean, New York City; Albert N. Perretta, Gallop, Climenko, Gound & Lynton, New York City; Frederick Pope, Jr., Pullman & Comely, Bridgeport, Connecticut.

James E. Quinn, McGlynn, Weintraub & Stein, Newark, New Jersey.

John Richardson, Jr., Sullivan & Cromwell, New York City; Harry H. Riddick, The Hamiltons & Denniston, Mobile, Alabama; Walter S. Robbins, Robbins, Noyes & Jansen, Boston, Massachusetts; Walter McL. Robinson, Jr., Cravath, Swaine & Moore, New York City; Harold R. Rooks, Pillsbury, Madison & Sutro, San Francisco; Charles G. Rodman, Sullivan & Cromwell, New York City; Wayne J. Roper, Quarles, Spence & Quarles, Milwaukee, Wisconsin; Nathan B. Rosenblatt, Benjamin Gollay, New York City; Harold A. Rosenblum, Clerkship, Nathan Routman, Sharon, Pennsylvania; Jerome S. Rubin, Bell Telephone Laboratories, New York City.

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Manufacturing Company will come from Waltham, Massachusetts, to discuss *Corporate Practice*, while William I. Randall, '41, will come from Framingham to join John H. Downs, '47, and Robert T. Gannett, '42, of Vermont in a discussion of *Small Community Firm Practice*.

Abram T. Collier, '37, of John Hancock and Franklin J. Marryott of Liberty Mutual will represent Boston insurance companies at the seminar on *Insurance Practice*. Bailey Aldrich, '32, who will attend the same seminar, is one of more than twenty-five Boston lawyers who will attend the school.

REVIEW—(Continued)

the viewpoint of a former law clerk of Mr. Chief Justice Hughes, is contained in the article, *The Business of the Supreme Court as Conducted by Chief Justice Hughes*, by Edwin McElwain, LL.B. '34.

Other articles include: *Integration and Antitrust Policy*, in which Professor M. A. Adelman of M. I. T. discusses the effect on national competition of so-called "roll your own" productive methods of vertical integration and of multi-product production, with critical emphasis on the recent *A & P* and *Standard of Indiana* decisions; and *The Judicial Review Problem in the International Trade Organization*, by Seymour J. Rubin, LL.B. '38. Mr. Rubin, who was legal adviser to the United States Delegation to the Havana

Conference during the negotiation of the Havana Charter for the International Trade Organization, traces the legislative history of the judicial review provisions of the I. T. O. Charter and draws analogies to domestic administrative agencies.

Contributing to the new Comment section of the *Review*, Professor A. James Casner discusses the May, 1949, Treasury Regulations interpreting the Revenue Act of 1948. Writing again on the rights of the expectant legatee, Professor Austin W. Scott comments on the recent constructive trust case of *Latham v. Father Divine*. The final Comment, by Richard F. Wolfson and Philip B. Kurland, LL.B. '44, both Guggenheim Fellows and recently clerks to Supreme Court Justices, deals with the certification of the existence of a federal question to the Supreme Court by state courts.

NEWS BRIEFS—(Continued)

speak on *Economics of Atomic Power and Its Implications for International Control*. This will be followed by the usual question and discussion period. All interested law students are welcome.

FORUM

A meeting will be held in the Forum Office, Gannett House, tomorrow, at 3:15 p.m., for all first and second year men desiring to compete for the Forum Board. Those unable to attend should leave their names with the secretary.

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CAVERS—(Continued)

with us now, may not be with us for ten more years, and may conceivably never be with us.

Professor Cavers made short work of the criticism of the viewpoint he advocates by P. M. S. Blackett, noted English atomic scientist, as being that of an American in a power-rich state which has little need for atomic energy for industrial purposes. "Blackett," said Professor Cavers, "suffers from a common defect in assuming that the development of atomic energy for purposes of industrial power will occur in a short while."

Professor Cavers first became interested in the control of atomic energy in the fall of 1946 when he attended a conference on atomic control problems held in Cambridge under the auspices of the Cambridge Association of Scientists. He derived his ideas on how to deal with the control of atomic energy from the talks of the scientists at the conference. Recognizing the need for advocacy of a workable plan for the control of atomic energy, he has argued the case for the plan in the October, 1947, and December, 1948, issues of the *Bulletin of the Atomic Scientists*.

FORUM—(Continued)

tomorrow at Kendall and Gannett Houses. Registration is required to gain admittance to the seminars and classes.

Among the many noted speakers who will attend this year's school for Young Lawyers is Leverett Saltonstall, '17, Senior Senator from Massachusetts, who will speak at the Thursday evening seminar on *The Lawyer in Politics*. At the same time, the new seminar on *Criminal Law Practice* will be addressed by Wilbur Hollingsworth of the Boston Voluntary Defenders Committee, and Frederick T. Doyle, '17, Assistant District Attorney in Suffolk County.

The class on *Divorce Practice* will be held on Friday, and among those participating will be Harris B. Steinberg of New York City. Other New York lawyers who will attend the school include Orville H. Schell, Jr., '33, from the firm of Hughes, Hubbard, and Ewing, and Samuel L. Rosenberry, '28, of Milbank, Tweed, Hope and Hadley, both of whom will discuss *Placement and Interviewing Procedure*.

Paul F. Hannah of the Raytheon

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Calendar

LEGAL WORLD Ames Competition

First Year

Round 2, Argument, today, November 9. Round 3, Argument, Thursday, November 10. Round 4, Argument, Tuesday, November 15. Round 5, Argument, Wednesday, November 16. Round 7, Brief exchange, today, November 9. Round 8, Brief exchange, Thursday, November 10.

Second Year

Round 4, Argument, Monday, November 14. Round 5, Brief exchange, Tuesday, November 15.

UNIVERSITY WORLD Lecture

The Parents' Organization of the Harvard Pediatric Study will present Mrs. Clyde Kluckhohn of the Department of Social Relations who will discuss *The Dilemma of the Modern Housewife* on Monday, November 14, at 8:30 p.m., Peabody Room, Phillips Brooks House.

Concert

The Budapest String Quartet will give a concert in Sanders Theatre on Sunday, November 13, at 3 p.m.

California-Stanford Game

The California-Stanford football game will be broadcast via special telephone wire at Phillips Brooks House, Saturday, November 19, at 4:30 p.m. Admission is 50c.

HAND—(Continued)

For the sin I impute to each frustrate ghost

Is the unlit lamp and the ungirt loin,
With you of the virtue I issue join."

Such cultural interludes in our preoccupations with "shifting and springing uses," with dear old "scintilla juris" and the "rule in Shelley's case," and with speculations as to the limits of liability in *Fletcher v. Rylands*, ameliorated the rigor of Law School labors. We found much further pleasure in our gatherings in the Choate Club. I remember specially our Choate Club dinner at the Algonquin where I had been assigned to make a speech and took my life in my hands in criticizing the Case System as requiring some orientation for the first year students and some abbreviation for those of the last years. Though I was shooting at the gods I was moderate, as I have generally been in all things. I suppose I was thought mildly imbecile by members of the faculty who attended the dinner.

We had a great faculty at the School. Williston was probably the best teacher and clearest expositor I ever saw. Gray had a profound philosophical mind and in his field of real property and restraints upon alienation still remains supreme. Only a few years ago Judge Wyzanski listened to a long argument before the English Court of Appeal which turned on whether Gray's reasoning regarding certain restraints upon

alienation was correct, and that court rendered a decision following Gray. Gray was the member of the faculty who had the most general culture. One only has to read the letters from Gray to



AUGUSTUS N. HAND

Ropes while the former was in the Army in the 1860's to realize his wide reading. But according to my way of thinking Thayer was the most original of our instructors and made the most important impression on the best students. His treatment of the law of evidence as a set of rules excluding facts logically probative in order to prevent too great prejudice to the parties to a litigation illuminated the whole subject in days when "relevancy" was the test of admissibility laid down by Stephen and generally adopted by the bar. In Constitutional Law Thayer in those days was "a voice crying in the wilderness" which made every Harvard Law School man highly skeptical about the frequent tendency to hold legislation unconstitutional if it failed to meet the approval of a court. His doctrines though characterized by William D. Guthrie as the Thayer poison have largely prevailed. I think he was a very great teacher whose contributions to the law were most important. Ames was original and stimulating. He cared little for precedent and would readily employ a single decision of the Court of Chancery of Van Dieman's Land to overthrow a great mass of contrary cases with the reasoning of which he disagreed. His kindness and courtesy were unfailing and his passion to do justice strong and deep. Judge Jeremiah Smith was then our instructor in torts and corporations. He had been a judge in New Hampshire, was an intimate friend of the famous Doe, C. J., and upon the latter's retirement from the bench sometime in the 1890's was offered the chief justiceship by the Governor. Judge Smith was so kind to me that I imagined that a very high average I was said to have received in my first year's marks was probably due to his partiality. But last year Professor Scott gave me the marks for all my courses while I was in the Law School and I was surprised to find that Judge Smith's marks were among the lowest I received and those by Beale, who taught us Criminal Law, were so high as to account for my average in the first year. Beale was emotional and dogmatic, but beloved by all and a pioneer in this country in the subject of Conflict of Laws.

Langdell was then the dean. He was aging and beginning to go blind. On his way to or from the Law School he was always preceded by a barking fox terrier who would show him the way and warn off any pedestrians who were on crossing courses. In spite of distinguished mental powers Langdell was always somewhat eccentric and when he taught Equity Pleadings used to go into mild hysterics over a ruling of Lord Eldon that arose out of an abuse point in an accounting suit if he happened to differ with it. But even to the end of his life far larger matters would receive

his attention. Several years after my student days he wrote a powerful article in the *Law Review* on the rights of the United States to legislate for the territories acquired in the Spanish War. It was an extraordinary achievement of President Eliot to select a scholar like Langdell who revolutionized legal education, when the whole profession was at first against the experiment. "There were giants in those days."

One day in February, 1893, President Eliot escorted some ladies to the School to see the law library. My particular group of Hill, Barlow and Perkins were fresh-air fiends. We objected to the pollution of the air by gas burners, opened the windows of the big room in Austin Hall and sat at our long table wearing eye-shades and in our shirt-sleeves. Mr. Eliot sent word to us to put on our coats and told the librarian that no law office would permit clerks to sit in their shirt-sleeves, at least in winter. As a result we drew up what was known as the "shirt-sleeve petition," which scores of students outside of my immediate group signed, protesting against the invasion of our liberties by the president. I was told that the matter was taken up by the law faculty and that it also was outraged by the executive interference. Our shirt sleeves costume and cold-air fanaticism were a singular affection and the sympathy of the faculty for us seems astonishing, but I think we continued them without further protest.

The School in those days had hardly

more than 300 students, but we had many men in it besides those I have mentioned who afterwards became well known. Among them were Charles Neave, the most talented patent lawyer I ever knew and indeed a man with a clarity of mind and skill in trial work that put him in the first rank. The leader of my class was Edward B. Burling, now of Washington, D. C., who for many years has ranked as a distinguished lawyer. He has always been a splendid generous minded man and is now the head of a firm that is scarcely equalled anywhere in the ability of its personnel. For many years George Rublee, who was in the Law School in my time and is a man of great talent, was one of Burling's partners. Harvey H. Baker was another man in the Law School notable not only for scholarship but for his pioneer work in founding and presiding over the Boston Juvenile Court which led later to the establishment there of the Baker Foundation.

We had not the training of the best students of the present day but we had the best America then afforded and one I can hardly imagine getting on without. A marked characteristic of the Law School was a pervasive atmosphere of fairness. I believe there never was a place where a man was so uniformly judged on his merits by students and faculty, or where, in spite of the eagerness of the young men to excel, there were so few rivalries that were not wholly generous.

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