

The Harvard Law School Record

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Cardozo, Frankfurter Clubs To Argue In Ames Semi-Final

Effect On Income Tax Of Lease And Sale Back Is Subject Of Argument

The Frankfurter Club will meet the Cardozo Club in the semi-final round of the Ames Competition before the United States Court of Appeals for the Ames Circuit on Monday, December 5, at 8 p.m. in the Langdell Courtroom. They will argue the case of *General Appliances Inc. v. Commissioner of Internal Revenue*.

The case concerns a sale and lease back type of transaction. Petitioner, a wholesale electrical appliance company, needed to replace its warehouse which had burned down. It assigned its leasehold interest in the land upon which the warehouse had stood, which had 63 years more to run, to an insurance company (whose income from the land was tax exempt) for \$50,000. The insurance company was to build a warehouse to petitioner's specifications at a cost to it (the insurance company) of \$450,000. It was then to lease back the improved land on a net lease for 22 years at \$36,000 a year with renewal options of 28 years at \$10,000 a year. Petitioner claims the right to deduct the \$36,000 as ordinary business expense, under Sec. 23 A 1 (a) of the I.R.C. Commissioner returned the entire \$36,000 as taxable income and so held by the Tax Court.

Arguing for the Petitioner is the Cardozo Club. The Frankfurter Club is representing the Commissioner. The oral advocates are Buddy W. Hart (Iowa State '45) and Buster C. Hart (Iowa State '45), both of Rapid City, S. D., for the Frankfurter Club; and Ray Eder (Harvard '47) of University City, Mo., and Robert C. Frisch (Harvard '46) of New York, N. Y., for the Cardozo Club.

Of counsel on the brief for the Frankfurter Club are Martin D. Cohn (Penn (Continued on Page three)

RECORD POSITIONS

Due to the recent election of new members to the editorial board of the RECORD, there are several positions open on the staff which may lead to eligibility for a position on the board in the Spring election. All interested men should leave their names in the RECORD office on the third floor of Austin Hall or attend a meeting at that office today at 1 p.m.

Elect Friedman To Record Presidency; Mur Named Editor

In elections held Thursday evening the RECORD named 14 men as members of its Board of Directors for the remainder of the fall term and for the spring term. The newly-elected men will assume their positions starting with next week's issue.

Bernard A. Friedman (Illinois '47) of Jackson Heights, N. Y., will be the new president, replacing Isadore M. Mackler (Columbia '41) of Port Washington, L. I. Friedman was formerly editorial manager.

The new editorial manager is Raphael Mur (Tufts '46) of Brooklyn, N. Y., who moves up from the position of copy editor. Julius Levinson (C.C.N.Y. '47) of Brooklyn, N. Y., the present treasurer, will be the business manager, succeeding Perry B. Leff (C.C.N.Y. '47) of Bronx, N. Y.

Seymour Hozore (N.Y.U. '47) of Brooklyn, N. Y., will be associate editor, replacing Arthur S. W. Chantry (U. of Washington '42) of Seattle, Wash.

News editor is Arthur Smith (Harvard) of Cambridge, replacing David Shedroff (Yale '45) of Denver, Colo. Copy editor will be Arthur Brody (U. of Chicago '47) of Chicago, Ill., who succeeds Mur. New features editor is Henry C. Caron (Brooklyn '48) of Brooklyn, N. Y., replacing Brody.

Articles editor will be Gerard Mandelbaum (Yale '46) of Bronx, N. Y., replacing Benjamin Gneslin (C.C.N.Y.) of New York City. Current Case editor Samuel Dash (Temple '47) of Philadelphia, Pa., will remain in that post.

Alumni-gallery editor is Bernard M. Hyatt (Maryland '43) of Annapolis, Md., succeeding David Alter (C.C.N.Y. '47) of New York City. Comment editor will be Murray Bogatin (N.Y.U. '47) of Long Island, N. Y., replacing Homer H. Hewitt III (Princeton '47) of Wynewood, Pa.

The new secretary is Harold Weinstock (N.Y.U. '47) of Stamford, Conn., who succeeds Seymour Hozore.

New members of the business board are Joseph H. Indick (N.Y.U. '48) of Elizabeth, New Jersey, advertising manager, who succeeds Harold Weinstock, and Allen S. Krakover (Pittsburgh '44) of Pittsburgh, Pa., treasurer, replacing Julius Levinson.

"Gov Reg" Class Hears Talk On Statistics Use

Recently, Professor Bowie's Government Regulation of Business class heard Albert Sawyer, New York attorney, discuss the problems and methods of preparing and presenting statistical and economic data in anti-trust suits.

Mr. Sawyer emphasized the problem of making understandable to persons having little or no statistical training, the significance of price and production data covering considerable periods of time and its pertinence to the proving or disproving of the government's contentions. Selection of sound statistical techniques and careful sifting of the available data together with clear presentation focusing on the issues of the case are procedures he considered vital to this phase of a successful anti-trust defense.

Placement Office Sees All Third Year Men In Initial Job Interviews

Approximately 450 men of the class of 1950 have streamed through Assistant Dean Louis A. Toepfer's Placement Office during the past few weeks.

High on the list of questions asked Dean Toepfer is the availability of jobs in government service. The necessity of admittance to the bar and lack of publicity given these jobs has made it a difficult question to answer. Another frequent query is whether marks are the sole criterion for placement. Dean Toepfer emphasizes the fact that they are not, for marks are but one of many factors used in placing graduates.

More than one hundred men have stated a preference for positions in New York City. This is part of a trend, as is also their preference to work for large rather than small firms. Very few men have as yet found positions, but the Placement Office is already girding itself to assist them in their quest.

Professor Bowie To Leave For Germany In February



ROBERT R. BOWIE

Succeeds C. A. McLain As General Counsel For Commissioner McCloy

Professor Robert R. Bowie will be given a leave of absence from the Law School at the end of the present term in order to take an assignment as general counsel for Mr. John J. McCloy, United States High Commissioner for Germany. The assignment is for at least one year, and possibly for 18 months.

The job will involve the supervision of the program of decartelization of German industry which has been under way for some time, the supervision of the Occupation courts, some supervision over the German legal system, the interpretation of the Occupation statute and the authority of the German government under this statute, the approval of German legislation, and the supplying of general legal advice to the headquarters in Germany.

It was pointed out by Mr. Bowie that the decartelization program has nothing to do with the program of dismantling of German industry, and that the two programs have been confused as being one and the same thing. The decartelization program does not involve any physical destruction of plants. Rather, it is aimed at dividing industrial concentrations into smaller and more competitive units.

Professor Bowie has already spent a year in Germany with the American Military Government and in June of last year he went to Berlin with the Under-Secretary of the Army as a consultant on occupational problems.

Mr. Bowie will succeed Mr. Chester A. McLain, LL.B. '15, S.J.D. '17 ('18), who held the office of general counsel for the last six months.

Lawyer Reference Plan Recommended For All American Cities Over 30,000

Lawyer Reference Plans, A Manual for Local Bar Associations, by Charles O. Porter, LL.B. '44 ('47), was published yesterday by the Survey of the Legal Profession. Issuance of this report coincides with the establishment of a special committee of the American Bar Association to supervise a promotional drive for Reference Plans in all cities of 30,000 or more. Advocates of the plan indicate that its adoption will accomplish three main objectives: prevent socialization of the bar, provide a nation-wide program of "preventive" law, and enable those in the great middle class to have reasonable and competent legal service as a matter of course. What the plan consists of, and how adequately it will accomplish these objectives, is the topic of this article.

A composite view of the 31 plans now in operation includes all these features: the plan is established with and is accompanied by adequate publicity, its offices are centrally-located and staffed by a member of the bar, the referral list includes all qualified members of the bar desiring to participate, and it is supervised by a committee of the local bar association.

The typical applicant for referral services has a problem which he thinks a lawyer can handle for him. In the course of a fifteen minute interview with the referrer, the lawyer in charge of the plan's office, he has time to outline what is on his mind, and to arrange an interview with a lawyer if he needs one. Having a lawyer at this preliminary interview eliminates non-legal problems, perhaps channelling them to the proper social agency. Where the applicant clearly has no case, the lawyer is capable of disposing of the problem on the spot. If a lawyer is needed, the referrer calls the next one on his list, and is usually able to arrange an appointment right away. The applicant then signs an agreement to see the lawyer and to pay a set fee for his first interview. A typical fee is \$3.00 for a half-hour. The applicant is also told that any further fees will be arranged with the lawyer whom he is to see; he leaves for the interview in a more satisfied state of mind than if the only assistance offered him had been the classified ad section of the phone book, the system which bar associations once thought the ethics of the profession demanded. Since the local bar association is assuring the reasonableness and integrity of the lawyers to whom referrals are made, in all but three of the plans surveyed, a committee of the sponsoring bar association supervises the admission of lawyers to the plan, and checks their work, usually through a form filled out by the lawyer after his work is done.

The first controversial point in the plan is the matter of publicity. Profes-

sional men have a certain amount of reluctance when asked to consider the advertising of their services. Of course, if competent and reasonable legal service is to reach the middle class, if the whole purpose of having a plan is to be met, the prospective client must be told that such a plan exists, and where he may obtain its services. Nevertheless, only in Philadelphia is there a substantial publicity campaign employing the services of a public relations firm. Los Angeles uses paid newspaper advertising. Chicago's plan received a boost from an article in the *Reader's Digest*. Dallas, Columbus, and Philadelphia are using regular radio programs. On the other hand, twelve cities can be listed as having no publicity since the plan is only mentioned there in legal publications.

Publicity

It would seem that the publicity required to promote the plan should be suited to the community in which the plan will operate, but there must be publicity if the plan is to be more than a shield behind which attempts to provide adequate legal service are attacked. The general ethical objection to publicity seems to be met by the fact that the A.B.A. is actively sponsoring these plans through a committee headed by William M. Wherry of the New York law firm of Wherry, Smyth and Weadock. The objection that adequate facilities are not

(Continued on page four)

Law Review Announces New Features As Result Of Survey Of Readers

Law Review editors announced this week that the new features and innovations in their current issue result from a survey among *Review* subscribers.

The editors supplemented the survey by interviewing practicing attorneys and holding round-table discussions with faculty members. The survey showed that while readers valued the *Review* as an indispensable research tool, the readers found its articles too long, not too readable, and not timely enough.

With the survey results in, *Law Review* editors set out to make the Bugle accord with their readers' wishes. The editors have set as their goal some middle ground between a technical reference manual and a reportorial magazine. This middle ground, they feel, will preserve the *Review's* scholarly tone. The result is the innovations reported in a recent RECORD. The innovations include a new department, "With the Editors," and a new Comment section featuring short, un-footnoted articles on topical materials.

The *Law Review* editors said the survey showed that only a minority of their

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World Law Group Hears Isard Speech On A-Power Costs

The World Law Group held its second luncheon-seminar of the current series on Atomic Energy Control at the Hotel Commander, last Tuesday, November 15. Prof. Walter Isard of Harvard University's Department of Economics spoke with the group on the general topic, *Economics of Atomic Power and Its Implications for International Control*.

Professor Isard gave several reasons why he did not think atomic power was likely to be a peacetime economic elixir in the immediate future. He said that in the first place the building of plants large enough to produce atomic power at reasonable rates would require much capital. Therefore, at least in the initial phases, the already strained government budget would have to subsidize atomic power. Even with unlimited government subsidies, present estimates are that atomic power would be more expensive than other power now being used in the United States.

In the international field, Professor Isard did not see atomic energy as being an equalizer between "have" and "have-not" nations. Only the "have" nations, he said, can muster the high-priced capital and skills needed for producing atomic energy. Professor Isard also discussed the possibilities of the larger nations' distribution power to their smaller "have not" neighbors. Only the USSR, whose resources are not as extensive as those of the United States nor as accessible, has the most to gain from the immediate exploitation of atomic power. Moreover, Russian power needs are more pressing because of their rapidly multiplying population. These factors, he thought, would bear deep consideration when and if the United Nations adopts an atomic energy plan.

NEWS IN BRIEF

YEARBOOK INFORMATION

The Yearbook wishes that all men would come to its office in Gannett House to check the information cards which they made out at the beginning of the term. All information must be checked by November 30. If not, present data will be used.

AMORY

Professor Robert Amory, LL.B. '38, was one of the successful candidates for the Cambridge School Committee in the recent election.

MANUALS AVAILABLE

Copies of *Lawyer Reference Plans, A Manual for Local Bar Associations*, by Charles O. Porter, LL.B. '44 ('47), are available at the offices of the Survey of the Legal Profession, 60 State Street, Boston, Mass., for those interested in setting up reference plans.

STUDENT DIRECTORY

Distribution of the *Law School Student Directory* started yesterday. Copies may be obtained at the receptionist's desk at Landgell Hall.

BOARD-BUGLE BASKETBALL

Avenging the narrow loss in two overtime periods suffered at the hands of the Bugle last year, the Board of Student Advisers, in a stunning upset, buried the Law Review under a 37-17 count on Tuesday evening, November 15, at Hemmingsway gymnasium, to open the 1949-50 basketball season at Harvard Law School.

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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

Several weeks ago we discussed the need for more scholarship funds to encourage the attendance of capable but needy students at the Harvard Law School. Scholarship funds, however, provide no more than a partial solution to the problem of student aid since there are many able students who require financial assistance but do not have the requisite grades to qualify for scholarships and many scholarship recipients need additional aid to cover living expenses over and above the scholarships covering tuition. Student loan funds have provided the chief source of aid in this area.

At present there are adequate loan funds available to meet immediate future needs if present loan policies are continued. As of June 30, 1949, there was a total of \$309,932.05 in the Student Loan Fund of which \$63,635.07 represented outstanding loans. Based on pre-war loan requirements of about \$25,000 a year, there are much more than sufficient funds on hand to cover loans given the pre-war turnover rate.

Pre-war experience cannot be used as a basis for future estimates since tuition and living expenses have increased. On the basis of the increase in tuition costs alone, future annual loan requirements may be estimated at about \$40,000 per year. Moreover, if the loan policy is broadened to enable borrowing in excess of tuition—and this may be necessary in any future period of economic stress—the annual requirements may greatly exceed the above estimates. Again, as the amount lent is increased, the time for repayment may also have to be increased with a resulting decrease in rate of turnover. Under a concurrence of these factors the present loan funds may not be ample.

The prospect of the early exhaustion of G. I. benefits makes it timely to consider the possibility of expanding student loan activities and the means by which this may be accomplished. In this connection, it is important to note that experience has proved that loans to Harvard Law Students are excellent risks. A study of loans to law students during the years 1934-1935 through 1941-1942 reveals a net interest yield of about 2.4% after deduction of collection costs and writeoffs for bad debts, a record which is all the more impressive in view of the depression conditions prevailing during much of that period. Although interest charged to students has since been reduced, a net yield from loan operations can still be expected in future periods.

While we shall not presently make any specific recommendations for expanding loan activities, the low risk in lending to Harvard Law Students as evidenced by past yield experience provides a broad basis for future expansion of loan funds and should be considered when the need arises.

I. M. M.

Letters to the Editor

To the Editor of the RECORD:

For the third time this year the Forum has found that another Law School organization has arranged a function which conflicts with one of its programs. Two of these, caused by the Board

Gallery

ROBERT M. SEGAL
Labor Lawyer



In the practice of law, it is quite unusual for a success story to be related concerning a person who has just reached the age of 34, but that is the story for this week's Gallery. In the relatively new field of labor law, Robert M. Segal, LL.B. '42, is a recognized leader both locally and nationally. He is counsel for the Mass. Federation of Labor and the New England Executive Secretary of the American Federation of Labor.

Mr. Segal graduated from Amherst College in 1936 and was a member of Phi Beta Kappa. He next went to the University of Chicago where he did graduate work in the field of Economics, and from there to the Brookings Institute in Washington as a fellowship student. It was while in Washington that he was appointed an assistant to the President's Railroad Emergency Fact-Finding Board in 1938. While with the Board, Mr. Segal worked with Dr. Harry A. Millis, a former chairman of the National Labor Relations Board, and former Dean James M. Landis. Through his close work with Dean Landis, Segal became interested in law and entered the Harvard Law School in September of 1939. After his graduation in 1942, he served with the Military Government in Europe.

While at the Law School, Mr. Segal, unlike most law students, knew the field that he intended to practice in and made successful efforts to take such courses as Labor Law (taught at that time by Professor Freund), Trade Regulations, and Administrative Law, all of which were at that time elective courses. "These courses, along with any other public law courses available, offer good training for a future labor practice," Mr. Segal commented.

Aside from his large labor practice as representative for many labor unions, Mr. Segal finds time for an amazing amount of allied work in the fields of labor and administrative law. He is the only labor specialist who is a member of the Council of the Harvard Law School Association. He is also a lecturer at Northeastern Law School, where he has taught Labor Law, Administrative Law and Trade Regulations. Although teaching takes up only a small part of Mr. Segal's time, he feels that the work that he has to do in preparation for his classes and in answering the questions of inquisitive students aids him in the better understanding of recent trends and decisions. Mr. Segal is also a lecturer at the Northeastern Labor Institute, where he teaches a course entitled Labor Contracts. The classes at the Institute are composed of people representing both labor and management, and the discussions center primarily about the drafting and interpretation of actual labor contracts which the members

standing program of the year, Clare Boothe Luce of Student Advisors' Ames Competition arguments, were excusable since they, as the Forum had planned their dates at the beginning of the school year.

However, the choice of the evening of Saturday, December 3, as the date for the Law School formal dance in conflict with the Forum's out-and-Reinhold Niebuhr speaking on *Christianity and Capitalism*, is not excusable. This date was chosen by the Forum in September and was sufficiently publicized for the Law School Committee of Phillips Brooks House to have been aware of its existence when it chose the date for its formal dance. It is inconceivable, with nine months of the school year available, that there could not have been another date suitable for this dance.

The only remedy conceivable to prevent a recurrence of this unfortunate situation is the establishment of some central Law School clearing agency, perhaps rising to the dignity of an elective Student Council, which could keep a calendar of all Law School events and prevent conflicts wherever possible.

RICHARD K. FINK
President, Harvard Law School Forum

of his class must negotiate and interpret in the course of their business day.

He has written numerous articles on labor law and the relationship between the lawyer and the economist in the *Bar Bulletin*, a law journal issued by the Boston Bar Association, and is the author of a multitude of pamphlets discussing legal aspects of collective bargaining. In an article entitled *Some Criticism of the Taft-Hartley Law*, Mr. Segal indicts the new labor act as "unfair and discriminatory . . . theoretical and unrealistic . . . and tending to disrupt peaceful labor relations and collective bargaining." His conclusions are drawn from his wealth of personal experience in the field and from the purely detached experience of the teacher.

Mr. Segal is also Chairman of the Committee on the Relation of Lawyers to Organized Labor for the Survey of the Legal Profession. Through his work on this committee and as a result of his own experience, he has come to the conclusion that a successful labor lawyer must be well versed in economics. "The legal aspect of labor relations, and the economic factors which are the causes and which will be affected by the result of the relations should be both thoroughly understood by any young man interested in the study and practice of labor law," Mr. Segal has said. "The young man interested in the practice of labor law, whether on the union or management side, must prepare himself for a turbulent career that encompasses not only law but also social relations and the economic values of the times. It is a very fluid field and one which is growing in importance from day to day."

The job of the labor lawyer today entails various functions, included among which are: (1) interpretation of national and state labor statutes; (2) negotiation and drafting of labor contracts between management and labor, and settlements between two or more unions; (3) interpretation of the union constitutions and by-laws; (4) a tremendous amount of speech-making to both labor groups and social and business organizations; and (5) the usual legal advice concerning the other branches of the law. The unusual opportunities for success in this new field should attract many competent and well-trained lawyers, and, it is Mr. Segal's opinion, the contribution that these men will make toward industrial harmony will be of great benefit to the whole nation.

Mr. Segal is still a young man, and in the few years he has been out of the Law School he has contributed much to an important part of our nation. If past performance is any indication, his contributions will grow in quantity and importance.

R. M. M.

Off the Record

The Guiding Light

We are pleased to report that students of the School will have little difficulty in securing a position, for the Placement Office has put out a pamphlet that is the last word in such matters. Aside from such interesting information as the inclination of lawyers to talk and to tell success stories, this handy little booklet contains revealing instructions on job-hunting.

The first thing we learn is that appearance and determination are every bit as important as grades. This is apparently a complete reversal of the administrative policy that has been laid down to us since entering school. We are delighted to hear, however, that if we comb our hair and grit our teeth our unmentionable grade in Evidence will be nullified, to say nothing of our obscure standing in the class. But the related theory that lawyers prefer men who had a standing similar to their own gives us more trouble. Now, instead of just making a vain attempt to obtain high grades, we are reduced to utter confusion trying to adhere to this hypothetical standard.

Then we are told that it is best to be admitted to the bar before seeking a job. What bar? On graduation, we might well rush out to Idaho, or some such place, to pass the bar exam and later find no jobs available in Idaho. After this experience is repeated several times we will have to abandon this line of attack or soon be forced to give up the law and take that dirty old vice-presidency in father-in-law's business.

And, finally, one last word of advice. We must buy a business suit, get our shoes shined, and have our hair cut. If we are enthusiastic about practicing law (no mean feat in itself) and confident about our ability, while always remembering to display that endearing quality of "restrained aggressiveness," getting a job should be a cinch.

Good luck, fellow students; we are headed for the Business School. H.

Secretaries' Lament

Will those who are in charge of Austin's pride Please settle down and fix its swinging door! Unwitting peeks into that room for men Is really something all we girls abhor.

EMBARRASSED.

Sub Judice

TWO STRIKES—ONE BALL

Cora was divorced by husband No. 1 in New York in 1919 for adultery. By the law of New York, Cora was not permitted to remarry until after the death of her former husband, and would be guilty of bigamy if she did remarry. Domestic Relations Law (N.Y.), sec. 8. In 1928 Cora married husband No. 2 in Pennsylvania which permits a divorced person to remarry. Husband No. 2 divorced Cora in 1937, also for adultery. Cora obtained an order from the Supreme Court of Erie County, N. Y. under Domestic Relations Law sec. 8 permitting her to remarry. After a "life of virtue" for over 11 years, Cora married husband No. 3 in New York in 1948, and in this action for annulment husband No. 3 "already wanted to get rid of her." Husband No. 3 claimed that the prior prohibition against Cora's remarriage controlled and that the marriage was invalid. Held: Complaint dismissed. The court found that the marriage to husband No. 2 in Pennsylvania was valid even though in violation of the New York statute since, "If Pennsylvania considered her fit again to assume the obligations which she had once disregarded, New York State would recognize her as fit to remarry." The sole question, then, was whether the original prohibition against remarriage in the first judgment of divorce rendered nearly 30 years before was still in force. Hinkly, Official Referee, decided that the prior prohibition to remarry was ineffective and said, "The determination of the question cannot rest upon a strict adherence to the view that the original judgment of divorce could only be modified by a proceeding in that action and that the defendant before she married this plaintiff was required to await the death of husband No. 1. On the other hand after the first decree of divorce, defendant had been lawfully married to husband No. 2, and nearly 30 years after the entry of the first judgment and upon proof that for 11 years after her second marriage she was presumed to be fit to remarry and the court so decreed, it cannot be determined that her last marriage was null and void because of the 30-year old decree. This legalistic reasoning seems to make the whole picture ridiculous, and common sense and logic dictate that once the court has been convinced that she was fit to remarry and so decreed, then the subsequent marriage to the plaintiff is valid." *D'arcangelo v. D'arcangelo*, 91 N.Y.S. 2d 101 (1949).

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TO HAVE BEEN OR NOT TO HAVE BEEN?

Mina brought an action through her next friend against the Marion Rapid Transit, Inc. to recover damages for permanent injury she suffered due to the negligence of the defendant while she was a viable child in the womb of her mother. The defendant demurred to this action, claiming that Mina was not a "person" at the time of the accident, and that Section 16, Article I of the Ohio Constitution permitted such an action only for injury done to "person." Judgment was entered for the defendant. On appeal, this judgment was reversed, and the Supreme Court of Ohio certified the record for review and final determination. Held: Affirmed. The court decided in the face of overwhelming precedent to the contrary that Mina was a person at the time of the injury within the meaning of the state constitution, and was entitled to bring an action to recover damages. The court phrased the paradox, "There can, of course, be no question that the plaintiff was a 'person' at the time this action was instituted. She is therefore entitled to the right thus guaranteed by the Constitution unless it be held that the injury in question was not done her person." The court saw no reason why a different result should apply in tort actions from that in criminal actions and actions for the distribution of decedent estates, where a child *en ventre sa mere* is given a separate identity. Yet it recognized that the general rule of law was to that effect. In support of its decision, the court quoted Prosser's treatise on torts, sec. 188, which stated, "All writers who have discussed the problem have joined in condemning the existing rule, in maintaining that the unborn child in the path of an automobile is as much a person in the street as the mother, and urging that recovery should be allowed on proper proof." The court said, "Let us be reminded that in the instant case we are dealing with a viable child, one capable of living and which demonstrated its capacity to survive by surviving. . . . To hold that the plaintiff in the instant case did not suffer injury in her person would require this court to announce as a matter of law the infant is a part of the mother until birth and has no existence in law until that time. In our view such a ruling would deprive the infant of the right conferred by the Constitution upon all persons, by the application of a time-worn fiction not founded on fact and within common knowledge untrue and unjustified." *Williams v. Marion Rapid Transit, Inc.* 87 N.E. 2d 334 (Ohio 1949).

Alumni Notes

LL.B. '27—Robert A. Leflar has just been appointed an Associate Justice of the Supreme Court of Arkansas. He will continue to serve as Dean of the University of Arkansas Law School. Among other duties, he is also President of the Southwest Athletic Conference.

LL.B. '28—Powell B. McHaney, A.B. (Univ. Mo.) '25, is vice-president and general counsel of the General American Life Insurance Co., St. Louis. At the fall convention of Pi Kappa Alpha in Salt Lake City, he was elected national president of the fraternity.

LL.B. '32—Louis Newman has been appointed labor adviser to the Majority Policy Committee of the United States Senate. Since August 1947 he had served as chief legal assistant to Chairman Paul M. Herzog, '27, of the National Labor Relations Board.

LL.B. '35—Joseph L. Frascona, Associate Professor of Business Law at the University of Colorado, will be a member of the Faculty of the College of Business Administration at the University of California at Los Angeles.

LL.B. '37—Samuel W. Earnshaw, transportation counsel, has announced

the opening of additional offices in New York City at 11 East 44th St. His other offices are in the Woodward Building in Washington D. C.

LL.B. '48—Since March 1, William E. Duecase, has been associated in the practice of law with Sylvanus W. Polk, Law '19-'20, with offices at 926 Commerce Title Building, Memphis, Tenn. Polk is a former mayor of Memphis and a past president of the Memphis and Shelby County Bar Association.

AMES—(Continued)

State '45) of Hazelton, Pa.; Norman S. Fink (Dartmouth '47) of Kew Gardens, L. I., N. Y.; Fred M. Kecker (Penn State '47) of Elmhurst, Ill.; Albert J. Marks, Jr. (Harvard '47) of W. Hartford Conn.; Melville B. Nimmer (Calif. '47) of Los Angeles, Calif.; and Bernard Quigley (U.S.N.A. '46) of Kansas City, Mo.

Of counsel on the brief for the Cardozo Club are Stanley S. Brotman (Yale '47) of Vineland, N. J.; Samuel Dash (Temple '47) of Philadelphia, Pa.; Paul S. Edelman (Harvard '46) of Brooklyn, N. Y.; William K. Glikbarg (Stanford '47) of San Jose, Calif.; Albert A. Raphael, Jr. (Yale '45) of New York, N. Y., and Marshall J. Seidman (Penn '47) of Pittsburgh, Pa.

Statistics On Lawyers' Incomes Announced By Commerce Department

A statistical report on the income of lawyers in the period 1929-48, has been published in the Survey of Current Business, a U. S. Department of Commerce periodical. Amidst a wealth of figures, graphs and charts, the following facts of interest may be deduced from the Department of Commerce publication.

In 1948, the most recent year of the survey, the mean net or average income of all lawyers in the U. S. reached \$8,315, and the median net income \$6,336. In comparison with physicians and dentists (the other two large independent professional groups), lawyers earn more than dentists, but less than physicians.

The survey, which was conducted by the National Income Division of the Office of Business Economics, divides lawyers into two main categories, salaried, and non-salaried. Non-salaried lawyers constitute roughly two-thirds of all lawyers, and are those who practice law as entrepreneurs, either with or without partners, and receive no additional salaried income from law practice. It was found that the earnings of non-salaried lawyers in the period 1929-48 corresponded very closely to the fluctuations in general business conditions.

In regard to the distribution of income among lawyers in the period 1936-48, it was found that the income of lawyers is more unequally distributed than that of other professional groups. However, there is less unequal distribution of income among lawyers, than among businessmen.

Size of the community in which the lawyer practices has a very important bearing upon his income. Generally speaking, the size of average income increases as does the population of the area in which the lawyer practices. Lawyers practicing in the Middle Atlantic and Far Western regions earn higher incomes than do their contemporaries in other areas. Southeast, Southwest, and Northwest lawyers show incomes generally well below those in other regions. New England and Central States lawyers are in an intermediate position.

In any given occupational group, age is one of the paramount factors in determining the size of income received, and this holds true for lawyers. Peak years for earnings for the lawyer are between the ages of 50 and 54 for independent lawyers, and between the ages of 60 and 64 for salaried lawyers. Salaried lawyers tend to reach higher mean and median net incomes than independent lawyers at each age level, with only some minor exceptions.

Furthermore, the survey finds that lawyers have a tendency to move over into related fields, and to augment their salaries from these other sources. Because of the close relationship to law to other fields, many lawyers derive income from business management, real estate, finance, and politics.

In regard to lawyers who are veterans of World War II, the survey found that in every age group in which veterans comprised a substantial proportion of lawyers, their average income was lower than that of non-veterans.

NEWS BRIEFS—(Continued)

PBH DANCE

The Law School Committee of Phillips Brooks House announces the Winter Formal to be held on Saturday, December 3 from 8 to 12 p.m. at the Woman's Republican Club.

ERRATUM

Last week's story on the Teaching Fellow program mentioned Professor Fuller's *Bank Contract Law*. It should have been *Basic Contract Law*.

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Index To Legal Periodicals, Edited By Professor Maguire, Now At Langdell

One of the best known and most valuable research publications to students and practitioners alike is the Index to Legal Periodicals. Of particular interest to Harvard Law School people is the fact that the offices of the Index are located in the Langdell Library.

The Index, as we now know it, ran simultaneously with earlier editions of a similar service compiled by Leonard A. Jones, and Frank E. Chipman. Its subsequent growth and pre-eminence over its contemporaries was due largely to the work of Dr. Eldon R. James.

In 1923, Dr. James was appointed professor of law and librarian at the Law School. In 1925, he became editor of the Index and was a prime mover in its reorganization. Previously it had operated in Ann Arbor, Michigan. Upon moving to the Harvard Law Library, the Index became dependent on subsidies from Harvard and the American Association of Law Libraries. Thereafter, through Dr. James' efforts, it became, as it is now, a financially independent institution. Research headquarters at Harvard are important because it has been necessary to have access to a complete and extensive source of periodicals.

At present, all research and compilation is performed at Langdell by Miss Jessie I. Wharton, the present editor,

and Miss Mary Gogan, assistant editor, with the consultation of Professor John M. Maguire.

Some three thousand periodicals are received by the Harvard Law Library and any that are included in the Index are sent to the Faculty Periodical Room.

Recently an additional service has been developed on a limited scale. Law firms, libraries, and schools not having access to as large a file of periodicals as exists here at Harvard, have requested photostatic copies of particular articles. While this service is still in its embryonic stage, it is already performing a valuable function in serving the needs of those engaged in some phase of legal preparation. It is hoped that with increased equipment and staff the Index will be able to expand this service and increase its usefulness to the legal profession.

REVIEW—(Continued)

readers thought that *Law Review* articles have too many footnotes. Also, a minority thought that the *Review* devoted too much space to biography, history, and philosophy at the expense of administrative, tax and private law. However, most of the Bugle readers liked the student written Note and Recent Case departments and wanted those departments expanded.

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DALTON-ELCOCK BAR REVIEW

The Fall Review, preparing candidates for the Massachusetts Bar Examination to be held late in December, began Tuesday, November 8, 1949, and will end late in December.

For information write:

Dalton-Elcock Bar Review

Ten Post Office Square, Room 915

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Calendar

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Round 6, Argument, today, November 23. Round 7, Argument, Tuesday, November 29. Round 8, Brief Exchange, today, November 23.

Harvard Law Wives

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REFERENCE—(Continued)

available for the volume of referrals which publicity might entail is certainly not related to the objectives of the plan; furthermore, there is no reason why an expanded plan can not be self-supporting. The present plans accomplish this by a nominal charge on the applicant or a registration fee for participating lawyers, or both.

The limited objection raised in San Francisco in 1948 is that the advertising of a half-hour of a lawyer's time for three or five dollars invites an invidious comparison with the fees which lawyers are charging their regular clients. On this point, Mr. Porter points out that this objection goes to the heart of the plan since it is primarily designed to over-

come the public's fear of high charges by publicizing the availability of competent legal service at fixed and moderate costs.

Organization

Just as adequate publicity is vital to the realization of the objectives of the plan, so is careful organization. The first step is sponsorship by the local bar association, working through an earnest and active Lawyer Reference Plan Committee. This committee is necessary to check on the conduct of the referrer, whose partiality could transform a scheme of public service into just another scheme. The qualifications of participating lawyers and their performance must also be subject to review. All but three cities, Bridgeport, Denver, and Houston have such a committee. Houston's plan is managed by a Lawyer Veteran's Committee. In Denver, the plan is financed by the Legal Aid society there, and all applicants to it come from legal aid. Bridgeport provides no funds for the volunteer lawyer designated by the bar association who screens the applicants referred to him by social workers at the community center, taking some of the cases, and informally choosing lawyers for the others. (Porter, *Lawyer Reference Plans*, p. 15)

But if there is agreement on the need for a supervisory committee among 28 of the 31 cities examined by The Survey of the Legal Profession, there is divergence on the question of independent organi-

zation. Eleven cities receive all applications from the Legal Aid Society, and fourteen have the same location and personnel. Twelve plans have as referrer the local bar association secretary or clerk; six consist of a bar association committee. Only New York, Chicago and Philadelphia have a full-time reference lawyer. In each of these cases an experienced lawyer was chosen by the bar association committee and receives between \$5,000 and \$6,000 per year.

Lawyer Referrer

Once the theory of good law service within the reach of the man of moderate means and readily available to him, is accepted, it follows that the best way to accomplish this end is by having a full-time lawyer as referrer. Legal Aid offices are for the poor; and there is no conception of charity in the theory of the reference plan. If the bar association secretary or clerk is a layman, his inability to advise on the spot is a serious drawback. If a lawyer, he would be ideal. When handled by a bar association committee, the responsibility is passed from one member to another, using at present the private offices of the members. This lack of a central office is a drawback.

A further argument for an independent paid lawyer-referrer is that where the other plans are being used today there is only limited, and perhaps no publicity given the reference plan. Other reports of the Survey of the Legal Profession, such as *The Family and the Law*, by Earl Lomon Koos, Ph.D., Department of Sociology of the Department of the University of Rochester, indicate that there are a vast number of people of moderate means who do not use the services of a lawyer because they fear the high cost of his services—and some people guessed that a preliminary interview might cost \$50.00—or they fear that the lawyer would not deal honestly with them. The survey of the reference plans reveal that of all the persons using the plan, 80 per cent have never previously consulted lawyers. It would be reasonable to anticipate that where the plan is established with adequate publicity, there will be too much work for anyone but a full-time reference lawyer. In the smaller communities where this might not be true, there should be enough demand to require the attention of a lawyer for a half day per week. But once the plan employs its own lawyer, its expenses rise sharply, and the question of financing becomes important.

Financing

Today most of the plans do not charge the applicant a fee, and do not collect one from the participating lawyer either. This is true in Chicago and New York, which have full-time lawyer referrers; the bar association pays the expenses of these plans. In Philadelphia, the applicant's fee is one dollar; that of the participating lawyer, five dollars. There a deficit resulted in their fiscal year 1948 to 1949 of \$3,344.00 which was met by the Bar association, the major expenses being the salaries of the attorney in charge and a stenographer. However, in Philadelphia the aim is to make the reference plan self-supporting. In Chicago, Mr. Charles G. Lind, the Reference Attorney there, does not find any indications that either fee will be charged, and looks upon the plan as a public service. The bar associations of these three cities are strong enough to carry whatever expenses they wish to assume in order to provide a full-time lawyer-referrer. Should the other plans adopt a greater publicity program, and wish for the advantages of a lawyer-referrer, (not to mention the thousands of new plans envisioned by the A.B.A., one for every city of 30,000), the problem of financing the plan, without burdening the local bar association, will be the critical one in determining whether a full-time lawyer-referrer is feasible.

Service Not Charity

Here it should be pointed out again that the plan is conceived of as a valuable service to applicants, not a charity. In practice, the lawyer-referrer has dis-

posed of roughly 80% of the cases coming to him without referral; a charge of \$1.00 is not excessive if considered in the light of the relief from anxiety provided. Experience in legal aid societies shows that the small charge of a quarter tends to preserve an attorney-client relation, and further tends to remove professional cranks. Lawyer registration fees are simply a good investment for the lawyer. A charge of ten dollars per year is not excessive, the average income per case being over twenty dollars in all the cities which reported these statistics. These figures could be adjusted, and perhaps some support from the local bar association included, to arrive at the proper rates for a thriving reference plan; it is basically sound financially.

Specialists

Other problems of organization are important, but not vital to the plan. One of these is the question of segregating specialists in various fields from the general file. The specialist will provide better service, and, since less of his time should be required, cheaper service. But, this has the effect of limiting the number of cases which go to the general practitioner of law, and it imposes a duty on the Lawyer Reference Committee to establish the claim of the specialist which it is in effect offering to the public. In part, the problem does not

exist where the committee is careful to have participating lawyers indicate which specialized fields they do not handle, the remainder being ones where the participating attorney feels that he does have skill. In the narrow fields of patent law, immigration, and perhaps others, lists of specialists are the most useful.

Neophyte Lawyers

Another problem is the inclusion of the lawyer just beginning to practice. Some plans today require a certain number of years of experience; in others the neophyte is intermingled with the rest. One practical solution seems to be the segregation of the young lawyer in a separate file. Cases which the experienced referrer feels are within the capabilities of the beginner can thus be handled by someone eager to do so, without impairing the integrity of the plan as a whole.

Twelve of the existing plans report that they do not represent all groups of the bar. This can be explained in part because of their affiliations with legal aid and bar associations. Certainly the plan is not designed to admit only a segment of the bar. If it is limited only to members of the sponsoring bar association, membership therein should be open to any local lawyer in good standing.

A. S.

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