

The Harvard Law School Record

VOL. 9 NO. 9

CAMBRIDGE, MASS., WEDNESDAY, NOVEMBER 30, 1949

PRICE TEN CENTS

Clare Luce, Niebuhr Discuss Christianity, Free Enterprise

Saturday Evening Topic Of Forum To Be Heard On Nation Wide Hookup

Reverend Reinhold Niebuhr and ex-Congresswoman Clare Boothe Luce will discuss the topic *Are Christianity and Capitalism Compatible?* at a program to be held on Saturday evening, December 3, at eight o'clock. The meeting, sponsored by the Harvard Law School Forum, will be held at the Cambridge High and Latin School in Cambridge. Professor Samuel Beer of the College will act as moderator.

The first hour of the program, which will include the initial speeches and part of the discussion and question period, will be transcribed for nation-wide rebroadcast over ABC from 9 to 10 p. m. The broadcast will be heard locally over Boston station WCOP.

Reverend Niebuhr has been Professor of Christian Ethics and Philosophy of Religion at Union Theological Seminary in New York City since 1928. Prior to World War II he belonged to a group of anti-pacifist churchmen, and he acted as editor of the bi-weekly *Christianity and Crisis*, which was dedicated to the idea that "... the halting of totalitarian aggression is a prerequisite to world peace and order." Niebuhr preached opposition to the Nazis all during the thirties, and this doctrine is found in *Christianity and Power Politics* which he published in 1940.

Before moving to New York, Reverend Niebuhr had a congregation in Detroit which was made up largely of automobile workers. It was here that he gained that sympathy for the working class, which was later reflected in his teaching. In 1932 he published *Moral Man and Immoral Society* in which he

(Continued on Page three)

Griswold Stresses Importance Of Bar Exams; Advises Adequate Preparation

(This article was written for the RECORD by Dean Erwin N. Griswold.)

Last fall I circulated to all students a leaflet on the subject of bar examinations. The purpose of this leaflet was to be sure that students understood the importance of bar examinations, and the importance of their doing well in them. In particular, it was designed to urge students not to take bar examinations "cold," but to urge them to make careful plans and preparations for this culmination of their legal study.

This presentation of the subject seems to have met with reasonable success. The results of a number of bar examinations have come in during the summer and fall, and the figures are reasonably satisfactory. For example, in the California bar examinations held in April 1949, 88% of our men taking the examination for the first time were successful, a figure which was comparable with that of the leading schools in California.

In the Illinois bar examinations, of March 1949, 86% of those taking the examinations for the first time were successful. This was a higher percentage of success than that of any other school, except the University of Michigan Law School which had 94% successful.

In the Massachusetts bar examination, held in the summer of 1949, 61 Harvard Law School men were successful out of 85 taking the examination, or 71.8%. This is a considerably lower figure than I would like but it compares favorably with the overall record of success in the examination, including all those who took it, which was 40.8%.

In the Pennsylvania bar examination of March 1949, 89% of Harvard Law School men were successful on their first examination. In the Pennsylvania bar examination held in August 1949, the Harvard success rate was 90%. In each case, this was higher than the record ob-

WINTER FORMAL

The Law School winter formal will be held this Saturday, December 3, from 8 p. m. to 12 midnight, at the Women's Republican Club of Boston. Tickets cost \$2.50 per couple, tax included, and will be on sale in the foyers of Langdell South and Austin Hall throughout the day today, tomorrow and Friday, and Saturday morning. Music will be furnished by George Graham and his orchestra. Set-ups will be available, but couples are asked to bring their own liquor.

New Openings For Teaching Fellows To Be Available

Third-year students who may be interested in Law School teaching fellowships for 1950-51 are invited to a meeting to be held at 3:10 Friday afternoon, December 2, in Langdell South. Professor David F. Cavers, faculty adviser to the first-year group work program, will discuss the work of the teaching fellows in conducting that program and the professional opportunities it may open up for the participants.

The number of posts to be filled for the coming year is not definitely known as yet since some of the six fellows now on the staff may continue another year. Last year three of the fellowship appointments were made from the class graduating in June 1949.

A considerable number of third-year students have already expressed an interest in the fellowships and Professor Cavers anticipates applications from recent graduates of this and other law schools.

tained by the graduates of any other School.

The record of success in New York is comparable with that achieved in California and elsewhere. It is more difficult to state the figures, since the New York examination is divided into two parts, and men may pass one part or the other, or both of them.

Although these results are reasonably satisfactory, I hope that they may be improved. I want again to emphasize the fact that bar examinations should be taken seriously, and that men should not enter upon them without a considerable amount of special preparation. Students should remember that failure in the bar examinations is not something to be encountered lightly. It makes an impression on prospective employers and others, even though the examinations can be taken again. In some states, as in California, there is a limit on the number of times a man may be examined. Three examinations only are allowed in that state. Thus, a failure the first time brings the deadline materially closer. I want to suggest, too, that students should try to do their best in bar examinations not merely for their own sakes but for the sake of the School. In a very real sense, they are carrying the School's colors when they undertake this task. They owe it to the alumni, to those who teach here, and to the students who will come after them to do their best to maintain the position and reputation of the School.

In making this statement, I do not wish to create the impression that the Harvard Law School regards its mission as being solely to prepare men to pass bar examinations. If that were all that the Harvard Law School had been able to do, it would surely have failed in its task. On the other hand, if the gradu-

(Continued on Page three)

Federal Judge, Internal Revenue Man And Tax Specialist On Ames Bench



WILSON C. PIPER



GEORGE C. SWEENEY



WALTER G. SILCOX

Present System Of Election Of Judges Inefficient; Hyde Extols Missouri Plan

The following article was written especially for the RECORD by Laurance M. Hyde, Chief Justice of the Supreme Court of Missouri.

American methods of judicial selection and tenure developed from the English Revolution of 1688 against the Stuart Kings. In England before Magna Charta, the will of the prince was the law of the land. Thereafter, the limitations and safeguards of the Great Charter were effective in individual cases only to the extent that the courts would enforce them. When the judges' commissions read at the pleasure (*durante bene placito*) of the king, these great principles of liberty meant little in a case in which the king's interest was opposed to them. There were some outstanding instances of courageous judges, such as Lord Coke, who would not let the king dictate their decisions. But the fact that they usually lost their offices after refusing to follow the king's will, was not conducive to the establishment of an independent judiciary. Judicial independence came only after James II was driven out by the Revolution of 1688. The Settlement Act of 1701 established that the judges' commissions should thereafter read "during good behavior." (*Quamdiu se bene gesserint*.) The present high standing of the English judiciary has been the result.

Control of Judiciary

The events leading to the Revolution of 1688 were fresh in the minds of the men who wrote our Constitution. They had still more recent examples of the stifling of the judiciary in the acts of colonial judges controlled by the king. They had complained in the Declaration of Independence that "he has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries." They believed as stated in the Federalist papers that "independence of judges is equally requisite to guard the Constitution and the rights of individuals." Jefferson commented: "In England, it was a great point gained at the Revolution that the Commissions of the Judges, which had hitherto been during pleasure, should thenceforth be made during good behavior. A judiciary dependent on the will of the king had proved itself the most oppressive of all tools in the hands of that magistrate."

For these reasons, a judiciary selected by executive appointment, with confirmation by the Senate, and with life tenure, was established by the Constitution as an independent branch of our government. This example of life tenure was either followed or preceded in the constitutional provisions of ten of the original thirteen states (although judges were chosen by the legislature in some) and by eight of the eleven new ones admitted before 1830. But during the next 25 years, 15 states changed to short terms of office filled by popular election. Every state admitted after 1846 adopted the latter system. Now only three states (all being among the original thirteen)

retain life tenure, and only two of them have the appointive system. This change came mainly during the Jacksonian period when much of the country was unsettled and rapidly expanding. The tendency was to make all offices elective for short terms and this resulted in requiring judges to run on political party tickets, the same as officers in the policy making branches of government. Little thought was then given to the effect of making judicial offices dependent upon partisan favor.

On this subject of short term tenure with elections on political party tickets, a former Chairman of the Judicial Administration Section of the American Bar Association, Justice Henry T. Lummas of Massachusetts, has pointedly said that a politician may make a good judge if he can cease being a politician when he goes on the bench, but that the tendency of the party election system is to require every judge to be a politician to remain a judge. James Bryce, writing "The American Commonwealth" in 1889, commented: "Anyone of the phenomena I have described—popular elections, short terms, and small salaries—would be sufficient to lower the character of the judiciary. Popular elections throw the choice into the hands of political parties, that is to say, of knots of wire-pullers inclined to use every office as a means of rewarding political services, and garrisoning with grateful partisans posts which may conceivably become of political importance. Short terms oblige the judge to remember and keep on good terms with those who have made him what he is, and in whose hands his fortunes lie. They induce timidity, they discourage independence." We have had great judges under the party election system, as have other states; but its batting average is too low.

In recent years, there has been a tendency toward improving the standards of the state judiciary, especially to free the judges from dependence upon politics.

(Continued on page four)

World Law Club Hears Cord Meyer, Bundy On Politics Of Atom-Bomb

The World Law Group held its third and final luncheon-seminar of the current series on Atomic Energy Control at the Hotel Commander, last Tuesday, November 22. Mr. Cord Meyer, Jr., and Mr. McGeorge Bundy, spoke with the group on the general topic, *The Political Problems of Atomic Energy*.

Mr. Meyer stated that according to the best estimates the U. S. now has about five or six hundred atom bombs of varying destructive ability while the U.S.S.R. has had at least one and is presumably presently engaged in the manufacture of many more. With two major antagonists possessing the atom bomb, he went on, the U. S. must, under the existing relations with the U.S.S.R., expand its power to the point of safety.

(Continued on Page three)

Sweeney Presides; Associates Will Be Silcox And Piper

Judges on the bench of the United States Court of Appeals for the Ames Circuit next Monday at 8 p.m. in the Langdell Courtroom will be U. S. District Judge for Mass., George Clinton Sweeney, Wilson C. Piper, Esq. LL.B. '42, and Walter G. Silcox, Esq. They will hear the semi-final argument between the Cardozo and Frankfurter Clubs on the case of *General Appliances Inc. v. Commissioner of Internal Revenue*.

Judge Sweeney will be chief justice in the Court of Ames. He was a student at Williston Seminary for a year, then attended Georgetown University from which he graduated in 1924. After his admission to the Massachusetts bar in 1924, he practiced law in Gardner, Mass., becoming mayor of Gardner from January 1, 1931 to June 15, 1933 when he resigned to become an assistant attorney general of the United States until 1935, at which time he became U. S. District Judge for Mass. Serving overseas with the 76th Division in the first World War, he rose from a private in Co. A, 301st Military Police Battalion in 1917, to sergeant in 1918.

Mr. Wilson C. Piper graduated from Colby College, A.B. 1939, and the Law School in '42. After admission to the bars of Maine and Massachusetts, he was law clerk for Judge Calvert Magruder for a year, and then served in the army for a short time. Since then he has been with Ropes, Gray, Best, Coolidge and

(Continued on page four)

Powell, Mansfield Clubs Submit Briefs In Ames Semi-Final

The Powell Club will meet the Mansfield Club in the semi-final round of the Ames Competition before the Supreme Court of the Commonwealth of Ames on Wednesday, December 7, at 8 p. m., in the Langdell Courtroom. They will argue the case of *City of Boston v. Mary Cord*.

This case involves the constitutionality of a city ordinance making the interference with a health officer in the performance of his duty a misdemeanor. Petitioner, the City of Boston, sent an inspector from the Health Department to investigate a complaint concerning the conditions at the home of Mary Cord, owner and resident. The inspector approached the home with a policeman. Mary Cord asked the inspector for a search warrant, and when told that none had been issued, she denied the inspector admission to the house. The policeman then arrested her for the misdemeanor of interfering with a health officer in the performance of his duties. This city ordinance is based on a statute providing that the Health Department could make its own orders and enforce them.

Mary Cord was found guilty as charged in the Municipal Court of the City of Boston, Ames, and fined \$25 or 10 days. She won her appeal to the Municipal Court of Appeals and the City of Boston now takes this appeal to the Supreme Court of Ames. For the purposes of this case, the Constitution of Ames contains the same provisions as the Fourth and Fifth Amendments of the Constitution of the United States; moreover, all the statutes of the District of Columbia are in force in Ames.

Arguing for the petitioner is the Mansfield Club. Oral Advocates are William W. Dunn (Harvard '46) and Val S. Schoenthal (Iowa '46); William C. Bundy

(Continued on Page three)

The Harvard Law School Record

Published weekly on Wednesdays for twelve weeks of each term by *The Harvard Law School Record Corporation*, Austin Hall, Cambridge 38, Massachusetts. Subscription price: \$2.00 per term mailed, \$4.00 per year (24 issues); student subscription \$1.50 per term mailed, \$1.00 per term distributed at the Law School. Individual copies \$.10 each at the Law School; \$.15 each mailed. Business and Editorial Offices, Austin Hall, Cambridge 38, Massachusetts. Telephone KIRKland 7-7600, extension 447.

BERNARD A. FRIEDMAN.....President
RAPHAEL MUI.....Editorial Manager
JULIUS LEVINSON.....Business Manager

EDITORIAL BOARD

SEYMOUR HOZORE.....Associate Editor
ARTHUR SMITH.....News Editor
ARTHUR BRODY.....Copy Editor
H. C. CARON.....Features
SAMUEL DASH.....Current Case
GERARD MANDLERBAUM.....Articles
BERNARD M. HYATT.....Alumni-Gallery
MURRAY BOGATIN.....Comment
HAROLD WEINSTOCK.....Secretary

BUSINESS BOARD

JOSEPH H. INDICK.....Advertising Manager
ALLEN S. KRAKOVER.....Treasurer

STAFF

Wallace E. Cowan, Harvey Greenfield, Marc Grayck, Charles E. Grodberg, Gilbert Haakh, Jerry Hamovit, Norman W. Loveless, Richard M. Marshall, Nathan S. Paven, Larry J. Ratzel, Jerome Reiss, Jules Ritholz, Julius H. Sherman, Nathan J. Siegel, Edward D. Simsarian, Harold Trachtenberg.

"Entered as second class matter November 19, 1946, at the post office in Boston, Massachusetts, under the Act of March 3, 1879."

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

The frequent seminars presented by the local chapter of the National Lawyers' Guild on well chosen subjects, conducted by reputable, capable speakers, have been a fine service to the School. They have amounted to a course in civil liberties for those attending. Their high quality and flexibility may well be the reasons that there has been no call for such a course in the regular school curriculum.

At present there is a serious clash within the local Guild on the policy for running these seminars, which possibly threatens their usefulness. Spokesmen for the Guild will say no more than "Things are in a state of flux at present." We have learned that the clash was touched off a few weeks ago by a proposed serious departure in policy. The immediate proposal was to bring one of the attorneys in the recent New York Communist trial to speak at a Guild meeting. This man was convicted of contempt of court for his conduct in that trial and is at present on bail pending his appeal. For him to have accepted an invitation to speak in public about his own case while it was pending would only show his further contempt for the code of legal ethics. The Guild by bringing him here in effect would be condoning his former unethical conduct and inducing him to commit still another breach of ethics. By listening to him students would be participating in that breach. As students we should be learning how to live by the ethics which will rule our professional lives. Accepting as one with something to teach, a flagrant violator of his professional ethics is certainly not a step in that direction. If we are willing to overlook such conduct in others, how closely will we stick to propriety ourselves? If we do not respect it as students we probably never will.

We hope that the Guild will continue its service of keeping the school conscious of current questions of civil liberties. In so doing they should arrange discussion of the Communist trials. We hope they can get speakers close to the trial. However, in selecting speakers, the Guild should consider the professional questions involved.

We feel too that since its programs are so widely attended by non-Guild members and that the kind of speaker brought here reflects upon the School generally, the Guild should solicit the opinions of the whole student body on the nature of future civil rights seminars. B. A. F.

Letters to the Editor

To the Editor of the RECORD:

I am in considerable sympathy with the letter which you published in your last issue from Richard K. Fink, President of the Harvard Law School Forum. This letter calls attention to a conflict of dates between the Forum program on Saturday, December 3, and the dance scheduled by the Law School Committee of Phillips Brooks House.

As a matter of fact, there is already established an excellent procedure for avoiding such conflicts. My administrative assistant, Miss Mary Conlan, is specifically assigned the task of assigning rooms for student meetings, and of

maintaining a date book for Law School activities. Miss Conlan knew of the Forum program on December 3. However, the Law School Committee of PBH never approached her, and did not seek to learn whether there was a conflict on December 3.

We probably cannot forbid people from scheduling things when they want to. At least we hope not to have to try. What I do want to do, though, is to point out that there is an excellent procedure now available for avoiding such conflicts, and to urge all student organizations to clear their dates through Miss Conlan.

ERWIN N. GRISWOLD, Dean

To the Editor of the RECORD:

This is in answer to the recent letter to the Editor by the President of the Harvard Law School Forum in which he criticized the Law School Committee of Phillips Brooks House for its choice of December 3 as the date for the Law School Winter Formal Dance.

When the committee chose the above date, it was not aware of the conflict with the Forum. All arrangements had been made and contracts signed before the regrettable conflict was brought to the committee's attention. It was then too late to make an acceptable change although all possibilities of change were thoroughly explored.

As at least a temporary means of avoiding such occurrences in the future the committee is now preparing an activities calendar which will be posted on all bulletin boards and which will contain the dates of the future activities of all Law School organizations.

This conflict need not be too damaging to either organization if students will follow the lead of those who are planning to attend the forum first and then proceed to the dance at an early hour.

REUVEN J. KATZ
Chairman, Law School Committee
of Phillips Brooks House.

To the Editor of the RECORD:

... This matter of having the voices of our classic professors recorded is entirely praiseworthy—unfortunately it is like the weather, with everybody talking and nobody doing. The matter involves a project which is down the RECORD's alley. May I suggest that you put the project up to some well-heeled graduate with a sense of history and get a gift of money to do the work and acquire the machine and wire or tape. Official inaction will kill this almost certainly, and if a faculty vote is required then it may not be forthcoming due to familiarity breeding contempt or excessive modesty.

The second suggestion concerns a resource of legal education which is left largely neglected at the Law School and which the RECORD is ideally equipped to exploit. I refer to the propinquity of State and Federal Courts of Boston. It is a fair bet that the majority of the Law School student body do not visit a court until after they graduate. This is largely a matter of inertia and the difficulty of procuring information plus the lack of educational benefit in walking into a trial or appeal in mid-passage.

I should think that it would be a simple matter for a member of the RECORD staff to establish a regular liaison with the clerks of the various courts in order to get information on what cases of interest were docketed and when and where they would be heard. When trials of interest with prominent counsel are due the mere fact of notice might attract men to attend. Attending a court proceeding would be particularly useful in giving the first-year student a more tangible feel of the law. The Ames competition hardly does so. . . .

PALMER SMITH, JR., 3L

[As to the first suggestion, the RECORD is in favor of it. As to the second, it must be explained that what Mr. Smith contemplates is a near impossible feat. From time to time, the RECORD has published reports of sessions of the Supreme Judicial Court, Federal District Court and Tax Court of the United States; but it is impossible to know until the day of the case when a specific case will be heard and this is insufficient notice to the students. In addition, it is impossible to know when a case will be submitted on the briefs.—Ed.]

To the Editor of the RECORD:

It hardly facilitates a third year student's writing a paper to fulfill the Law School requirements to find many of the books which one must consult to be missing for days on end.

I have had need to refer to three books listed, two of which—28 U. S. Code Annotated § 1-71 and Shepard's New York Statute Citations, paper bound supplement to 1949—have been missing from Langdell Reading room for over a week. A third, 160 N. Y. Supplement, has been missing from Austin Library for at least two days.

Lucky is he with a split personality such that he can be in Langdell and Austin Reading Room at one and the same time in order to find all necessary materials.

GEORGE W. SCHMIDT, 3L

Gallery

ABRAHAM FELLER
General Counsel to the UN



It was on the way back to Lake Success after a recent Law School Forum that we caught up with Abraham Feller, counsel to the Secretary General and General Counsel to the United Nations. Approached on the subject of present-day legal education, he drew on his specialized experiences with the UN.

The General Counsel said: "The role of the lawyer in international affairs, perhaps more than in national or municipal life, demonstrates that a specialist in any one branch of law is not ideally equipped to cope with the social and political problems which continually arise on the international level, especially in an organization like the United Nations." After placing the problem in this context, Mr. Feller went on: "Since graduating with the Class of '28, I have had the opportunity to meet lawyers from almost every nation, educated in the several great systems of law, but there is no legal training that surpasses in versatility that which is received at the Harvard Law School; and, this is as applicable to a practice whose milieu demands the supposedly 'sociological approach' as it is in private law."

Mr. Feller's present position seems to be the logical culmination of a varied and spectacular career. After taking his A.B. at Columbia in 1925 and his LL.B. at Harvard in 1928, his ability along international lines was soon recognized, and he was appointed a Teaching Fellow in International Law at Harvard in the early thirties. Seeking to proselytize his talent to other and even rival institutions, Mr. Feller later served as a member of the law faculties of Stamford and Yale. At these institutions in addition to International Law, he also taught Administrative Law and Anti-Trust Law. During World War II, Mr. Feller was Deputy Director of OWI and head of the Division of Psychological Warfare. Then in rapid succession he became General Counsel of UNRRA, and, in 1946, Advisor to the U. S. Delegation at the First General Assembly, a post which he held until assuming his present position.

In the Secretariat, the General Counsel has the assistance of a twenty-man staff, no two of whom have much more in common other than the fact that they are lawyers, and have an avid interest in the success of this international organization. However, Mr. Feller was glad to inform us that, "They get along quite well although there are significant differences in their respective approaches to legal problems."

Currently involved with the formation and commission of a new central administrative tribunal for the various agencies within the U. N., Mr. Feller expressed concern over the lack of understanding of the differences between the solution of international difficulties at the U. N. and those settled in the courts. He pointed out, "One cannot expect the decisiveness of a Common Law judgment, from a large, not totally systematized body. Indeed," he commented, "the problems are worked out with extreme detail, but the results take a correspondingly long time to reach." Among the more dramatic difficulties before the United Nations at the present time, Mr. Feller noted, is the assessment and collection of reparations for the death of Count Folke Bernadotte, the Israeli-Arab conciliator, from the governments responsible for his death.

Diverting this methodically quick man away from the subjects of his official business, we enquired into his reactions concerning the present status of the Law School, especially in reference to and in comparison with his own era. The answer came immediately and unequivocally. "The students are about the same, but the faculty," he said thoughtfully, "is considerably better." A student during the heyday of our great icons, Mr. Feller added confidently, "Yes, it is actually and potentially a finer staff." This point, which greatly attracted our interest, unfortunately could be examined no further for the General Counsel was whisked away in the next moment.

ROBERT W. LEINER

Sub Judice

"FEELTHY" DISCS

Alpers was convicted for depositing obscene phonograph records with an express company for carriage in interstate commerce in violation of the provisions of 18 U.S.C.A. §396 (now §1462) which included: "Whoever shall . . . deposit . . . with an express company . . . to any other state . . . any obscene, lewd, or lascivious, or filthy book, pamphlet, picture, motion picture film, paper, letter, writing, print, or other matter of indecent character . . ." Alpers appealed on the ground that phonograph records were not within the coverage of the statute since the statute enumerated particular classes of obscene matter without including records. *Held*: Reversed. The court based its decision on Alpers' contentions that "Congress evinced a clear intention of limiting the application of the statute and of the general words employed therein, relying on the rule that where a statute employs specific words enumerating specific classes, modes or species, the statute should be construed as being limited in operation and not all-inclusive in scope." The court said that it could not find within the coverage of the statute a place for phonograph records. Defining photograph as "light writing" and phonograph as "sound writing," the court concluded that the former and not the latter was included in the statute. The question of whether a lascivious book in Braille would be within the statute was left undecided by the court. The government attempted to bring the records within the meaning of the word "print" in the statute, but the court defined the word "print" as "to impress letters, figures, and characters by types and ink of various kinds on some such yielding surface," and said, "The method of producing a phonograph record, as we understand it, is accomplished by a needle cutting the non-resistant surface of a wax disc. After this operation is completed that which is recorded is not understandable until produced as sound through a mechanical device and then conveyed to the senses in a manner so radically different from that of imparting to the senses the meaning and contents of prints ordinarily associated with the printing art that one cannot say there is not reasonable doubt that Congress intended to include them. The rule of strict construction requires a holding that phonograph records are not included in the word 'print.'" *Alpers v. United States*, 175 F. 2d 137 (9th Cir. 1949.)

Off the Record

Accelerated Education

Upon hearing of Professor Amory's election to the Cambridge School Board, a disgruntled student of Bullet Bob's Accounting course remarked that Professor Amory would probably change the three R's to the three F's—Fast Readin', Fast 'Ritin', Fast 'Rithmetic. Firo

Anticlimax

From the *New Yorker's* Anticlimax Department of November 5:

"Some may wish to surrender without a fight, but that is not the policy of the government of the United States. It is not in the American tradition or the spirit of the American Bar Association."

CRISES IN LEGAL HISTORY



Fernando Zobel-Montes IL

H L S Runs Out of Wall Space

Alumni Notes

S.J.D. '24—*Henry L. McClintock*, who has been a member of the Faculty of the University of Minnesota, has joined the Law Faculty of the University of Colorado beginning this Fall.

LL.B. '30—*Julian T. Hargraves* was recently elected a director of the Framingham (Mass.) Co-operative Bank. Hargraves, currently with the firm of Hilton & Hargraves, was for many years with the Boston law office of Sawyer, Hardy, Stone and Morrison. He is a member of the board of directors of the Framingham National Bank.

LL.B. '32—*John Stevens*, is one of the authors of *Okinawa: The Last Battle*, published recently by the Historical Division, Department of the Army. Except for the war years, Stevens has been in Philadelphia since 1932 as a member of the law firm of Stradley, Ronon, Stevens & Young.

LL.B. '40—*Henry J. Mahady*, who is a practicing lawyer in Westmoreland County, Pa., has been appointed an instructor in the Department of Economics, Labor Problems, and Labor Legislation at St. Vincent College, Latrobe, Pa.

FORUM—(Continued)

suggested that force was needed to attain real social change. *Reflections on the End of an Era* (1934) maintained that capitalistic society as it then existed was doomed.

In 1939 Reverend Niebuhr gave the Gifford Lectures at the University of Edinburgh, being the fifth American who was so honored. The lectures appeared in book form under the title *Nature and Destiny of Man*. He has since published *The Children of Light and the Children of Darkness* (1944), and *Discerning the Signs of the Times* (1946).

Clare Boothe Luce is a noted author and playwright who has just returned to this country after a trip to Europe. From 1943-46 she served as Congresswoman from the fourth district of Connecticut.

Formerly Associate Editor of *Vogue* and Managing Editor of *Vanity Fair*, she became known as a playwright when *Abide With Me* appeared on Broadway in 1935. More successful was *The Women*, a social satire which was produced in 1936, and also *Kiss the Boys Good-bye* (1938). These last two plays and *Margin for Error*, produced in 1939, were subsequently filmed.

NEWS IN BRIEF

FLANDERS TO SPEAK

Senator Ralph E. Flanders (Rep., Vt.) will deliver the Godkin Lectures, one of the University's lecture series, next Tuesday, Wednesday and Thursday, December 6, 7 and 8, at 8 p.m. in New Lecture Hall. The general title of the series is *The American Century*. Specific lecture titles are *Internal Strength* on December 6, *External Policy* on December 7, and *Pax Americana* on December 8. No ticket of admission is required.

BREWSTER SPEAKS

The Harvard Law Republican Committee will present Senator Owen Brewster (LL.B. '13) of Maine this Friday, December 2 at 7 p.m. in the new Lamont Library Forum Room. The meeting will be open to the public, and questions from the floor will be welcome.

RECORD POSITIONS

There are still several positions open on the RECORD staff for second year men 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.

LAWYERS GUILD

Tomorrow, December 1, at 4 p.m. in LNM the Harvard Lawyers Guild will present Professor John T. Frank of the Yale Law School. Professor Frank, the author of a recent biography of Mr. Justice Black, will discuss the opinions of the Associate Justice.

LEGAL MEDICINE LECTURE

Dr. Richard Ford, Professor of Legal Medicine at Harvard Medical School will give his fifth lecture, which is entitled *Medical Malpractice* in LNM at 5:10 p.m. on Tuesday, December 6.

WORLD LAW—(Continued)

This policy, he thought, if pursued alone, would require the decentralization of industry the enforcement of which might seriously affect our civil liberties and might also lead to a preventative war. Therefore, as an alternative to this very likely unsuccessful short term power policy, Mr. Meyer suggested a limited world federal government with powers similar to our federal government and, most important, with ability to put an end to the national war making power.

Mr. Bundy agreed essentially with Mr. Meyer, but thought that the world was not ready for federal government until there is a modicum of consensus and inter-cultural understanding. For instance, he pointed out, the term "justice" has at least three different definitions in separate parts of the world. In the U.S.S.R. it refers to economic equality, in the Orient it connotes a color line, and in the U. S. it refers to individual liberty. Therefore, Mr. Bundy thought that we must develop understanding basic to world government through continued economic and educational intercourse before a war of destruction overtakes us.

AMES—(Continued)

pers (Arkansas '47), Lionel C. Epstein (N. Y. U. '47), Reuven J. Katz (Cincinnati), William B. Patrick (The Principia '47), James W. Rigrish (Ohio State '47) and Harold W. Smith (W. Va. '39) are of counsel of the brief.

Oral counsel for the Powell Club are William J. Holloway, Jr. (Okla. '47), and James C. Gibbens (Yale '47). Of counsel for the brief are Joseph E. Bare, Jr. (Rochester '47), Charles F. Harrington (Rochester '47), Frank A. Howard (U. of Miami, Fla. '47), Duncan E. Lennon (Illinois '42), Alfred M. Naff (U. of South '47), and Burton C. Wood (Okla. '47).

GRISWOLD—(Continued)

ates of the School were not able to enter upon bar examinations with reasonable prospects of success, it would be equally clear that the School had not met its responsibilities. The Harvard Law School tries to train men to an understanding of the law and of the problems of adjusting human relationships which go much beyond anything usually covered in bar examinations. Much of our instruction has no direct relation to bar examinations, and as far as I know our classes are never planned and conducted for the specific purpose of preparing men for bar examinations. Nevertheless, the Harvard Law School does undertake to prepare men for admission to the bar and for the successful practice of law, and merely as a practical matter it cannot accomplish this task unless the students can achieve a reasonable degree of success in the bar examinations.

I should, however, go beyond this. Many of the state bar examinations are excellently planned and conducted, and the School believes that such examina-

tions serve a very real educational purpose. They provide an excellent opportunity for comprehensive examination of a man's whole law school course, including in most cases some fields of the law which he may not have studied in School but which he would work up for himself. In the process of preparing for such a bar examination, a man will be called upon to organize and synthesize his knowledge of the law in a way which should have real educational merit. Nor will it do him any harm to have to work out the way in which the general principles he may have learned in law school have been developed under the statutes and decisions of a particular state.

As I said at the beginning of this article, the results of our men in recent bar examinations has been reasonably good and there is no real cause for concern. However, I repeat my admonition of last year: Bar examinations should be taken seriously, and should not be entered upon without an adequate period for special preparation. If this is done, recent experience shows that the prospects of success are reasonably good.

A timely book every thinking American should read!

ON UNDERSTANDING THE SUPREME COURT

By Paul A. Freund

\$3.00

This superbly written and penetrating appraisal of the factors which influence the decisions of the Supreme Court will appeal to its admirers and critics alike. Every fair-minded person will want to read this warm, subtle and intelligent approach to the understanding of decisions which affect all our lives, written by one who has argued many cases before the Court, has served as clerk to Justice Brandeis, and now teaches Constitutional Law at Harvard.

To be published December 5—a most appropriate Christmas gift.

See your local bookstore

LITTLE, BROWN & COMPANY

34 Beacon St., Boston 6, Mass.

LAW AIDS HARVARD BOOK STORE

OPP. LAMONT LIBRARY
1248 MASS. AVE. Cambridge 38, Mass.

THE MISSES LITTLEFIELD

HARVARD SQUARE

PROFESSIONAL TYPISTS

4 Brattle Street TR. 6-7495
Harvard Square

PLYMPTON LAUNDRY

49A Mt. Auburn St.

PICK UP AND DELIVERY
NO CONTRACTS

Call UN 4-1962

SQUASH RACKETS

Largest Variety in New England

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

Opp. Lowell House — TR 6-5417

CARSON'S

25th Year
of Good Home Cooking

Serving
Breakfast - Luncheon - Dinner
466 Broadway, Cambridge
Just a block from the yard

Open
7:00 A. M.—7:30 P. M.

HOTEL COMMANDER

Across the Common from Harvard

Private Dining Rooms
for Luncheons, Club Reunions, and Meetings
Grill, Snack Bar, Dining Room
Garden Street, Cambridge
KI 7-4800

Winter Driving is ROUGH on Your Car! RIGHT NOW is the time to do one of two things about it:

1. Prepare your Car to Withstand the Rigors of Cold and Snow—or
2. See Us About Getting a Brand

NEW '50 FORD

Announcing a New Policy for Our Customers:
Phone Kir 7-3820—for free transportation to and from our shop

We have a few for Immediate Delivery

Elbery Motor Co., Inc.

Near Memorial Drive

360 RIVER ST., Cambridge Phone KI 7-3820-21

Authorized **FORD** Dealer

TOURS CRUISES
AIRLINE-TRAIN RESERVATIONS
UNIVERSITY TRAVEL CO.
Harvard Square · KIRKland 1650

CASH SALE

J. PRESS Own Make Ready to Wear Clothing, Imported Topcoats, Overcoats and Weatherproofs, Imported Furnishings and Accessories.

SALES FOR CASH OR CHEQUE ONLY
NO C.O.D.'s—NO RETURNS

Ready To Wear

\$60.00 and \$55.00 Own Make Jackets	\$47.50
\$75.00 Own Make suits	\$67.50
\$80.00 Own Make suits	\$72.50
\$85.00 Own Make suits	\$74.50
\$90.00 Own Make suits	\$79.50
\$34.50 Own Make blue blazers	\$31.50
\$90.00 Own Make tuxedos	\$79.50
\$90.00 Own Make chesterfield coats	\$79.50
\$90.00 Own Make topcoats and overcoats	\$79.50
\$95.00 Own Make topcoats and overcoats	\$82.50
Burberrys, London and other imported topcoats, overcoats, and weatherproofs at	
10% reduction from new devalued prices.	

\$16.50 Own Make slacks	\$14.50
\$19.50 Own Make slacks	\$16.95
\$22.50 Own Make slacks	\$18.95
\$25.00 Own Make slacks	\$21.50

SPECIAL \$62.50 to \$82.50 English

reversibles	all \$52.50
\$12.50 Imported clan kilting and tattersall waistcoats	\$11.45

\$65.00 Sheepskin trench coats	\$59.50
\$75.00 Sheepskin trench coats	\$69.50

Hats, Furnishings, Accessories

\$3.50 Neckties	now \$2.85
\$3.00 and \$2.50 Neckties	now \$2.15
15% off . . . Other neckwear price ranges.	
Odd lot four-in-hands and batwings up to \$4.00 value	now \$1.25

\$5.75 and \$5.50 Own Make shirts	now \$4.85
\$6.00 Own Make shirts	now \$5.35
15% off . . . Other shirt price ranges.	

\$10.50 Nutmeg and Snuff hats	\$8.95
\$11.50 and \$12.00 Blackamoor—Serpent—Pumpkinseed—Mowbray and Clubland	\$9.85
\$4.50 Backstrap caps	\$3.85

15% off Gloves — Mufflers — Sweaters — Hose — Dressing Gowns — Pyjamas — Belts — Braces — Kerchiefs — Leather Goods — and Jewelry	15% off.
---	----------



Gentlemen's Tailors and Furnishers

82 MT. AUBURN ST.
CAMBRIDGE

Calendar

UNIVERSITY WORLD Art Exhibit

The Fogg Art Museum is presenting a Diego Rivera exhibition which will end today.

THE LEGAL WORLD Ames Competition

Second Year
Round 8, Argument, today, November 30. Round 9, Brief Exchange, today; Argument, Wednesday, December 7. Round 10, Brief Exchange, Thursday, December 1; Argument, Thursday, December 8.

AMES BENCH—(Continued)

Rugg, specializing in tax work. While at the Law School, Mr. Piper was a member of the Board of Student Advisors during his second year, and an editor of the *Law Review* during his third year.

Mr. Silcox entered the Bureau of Internal Revenue in 1920 after service with the Navy in World War I, and is at present assistant head of the New England Division Technical Staff of the Bureau of Internal Revenue. While with the Bureau he studied at Southeastern University in Washington, D. C., receiving his B.C.S. in 1921, M.C.S. in 1922, and LL.B. in 1931. He is a member of the bars of Washington, D. C., and Massachusetts, and has been admitted to practice before the U. S. Supreme Court.

HYDE—(Continued)

ticians and political parties. In several states the terms have been lengthened, particularly for appellate court judges. In others, judges no longer run on party tickets. These remedies, however, do not solve the principal problem of selection and tenure. It is an old saying that by looking at a frog one cannot tell how far he can jump. It is likewise true, although perhaps not as fully realized, that by seeing a man's picture on a telephone pole voters cannot tell whether he possesses essential judicial qualities. Many voters have little more than this to use as a basis for their decisions on state-wide judicial officers or even on local judicial officers in large cities. It requires personal acquaintance to determine whether a man has the essential judicial qualities. Often, in rural districts of small population, the majority of the voters either do have such personal acquaintance with candidates for judicial office or know someone who has. This was particularly true in the past when a term of court was a great event and gathering place for people of rural counties and when most of the men of every community had the informative contacts of jury service. In elections on a state-wide basis, people may learn something of the personality and ability of candidates for governor or senator, who go about the state appearing before large crowds, discussing their views concerning governmental policies in which the voters are intensely interested. Since judges cannot do this, voters do not expect either to see state judicial candi-

dates or to be able to have any sure source of information about them. Therefore, they do not become interested in them and either vote blindly or follow



LAURANCE M. HYDE

the suggestion of someone who does have an interest.

This lack of interest, because of lack of sure means of information, is the reason why attempts at completely open, non partisan judicial elections, on a state-wide basis, usually show no better results than elections on political tickets. Party labels are sometimes better than no labels at all. If voters have no means of their own for selection, someone must necessarily make a selection for them. Since a political party must take the responsibility for failures of its candidates, party leaders will make an effort to obtain more or less intelligent selections. The nominating primary election, however, has weakened their responsibility and helped the chances of the self-advertiser and the machine-made or pressure group candidate; and this is so, perhaps even to a greater degree, of non-partisan state-wide elections.

Just as bad, too, is the fact that, under the party primary and election system, tenure depends even more than selection, upon issues wholly irrelevant to any judge's ability, record or qualifications. This has been illustrated by recent experience in Missouri, where, in twenty years between the first and second World Wars (1919 to 1939), only twice (1922 and 1936) was a judge of the Supreme Court of Missouri who had served a full ten-year term re-elected to another term. The ten elections during this period all turned on national party issues. One able former member of our Supreme Court said that he was elected to be a judge in 1916 because Woodrow Wilson had kept us out of war; and that he was retired from office in 1920 because he had not. Judges, the same as persons in other positions requiring special knowledge and training, should improve with experience in doing their work. Certainly, it is not conducive to obtaining the best possible judicial service for the state, to replace judges as soon as they have had sufficient experience to learn how to do their work well. Moreover, even when a judge is re-elected much time has been lost from judicial work by participation in long primary and general election campaigns. This is one factor that has made it difficult for many courts to keep up with their dockets.

Missouri Plan Outlined

In 1940, Missouri changed from a political party primary and election system to a non-partisan system for its judiciary. The purpose of the Missouri plan is to take politics out of the Courts and to take the Courts out of politics. The operation of our plan during the past nine years shows that this can be done. Our judges are prohibited from holding any office in a political party or organization, making any contribution therefor or taking part in any political campaign. This was accomplished by a Constitutional Amendment proposed and submitted on initiative petition, sponsored by the Missouri Bar Association. It applies to the Missouri Supreme Court with seven judges, the three Courts of Appeals with three judges each, and the

Circuit Courts (trial courts) of our two largest cities. There are eighteen circuit judges in St. Louis and ten in Kansas City. It also applies to the Probate Judges of St. Louis and Kansas City and to the Court of Criminal Correction in St. Louis. As to all other trial courts (circuit courts) of the state, it is optional with the voters of any circuit to adopt it in a local option election if they so desire.

Three distinct steps are provided in the plan for the selection of judges, as follows:

1. Judges are nominated by non-partisan, non-salaried commissions, composed of both laymen and lawyers.
2. A judge is appointed by the Governor from a list of three candidates, nominated by the appropriate non-partisan commission, for the particular office to be filled.
3. After a brief trial period (of at least twelve months), the judge must be voted on, and approved, by the people in order to remain in the office to which he was appointed. Thus the judge has no opponent, and runs against no political party, or national political party, but only on his record of service on the bench. Unless that record is corrupt or obviously inefficient, there is every reason to expect that he would receive a favorable vote. Nevertheless, the voters may, if they desire, dispense with the services of a judge whom they believe has proven himself dispensable.

We believe that this plan utilizes the best features of both the appointive and elective systems, but provides safeguards lacking in either of these systems. It is more democratic than the usual appointive system because it gives a better opportunity for consideration of the views of the Bar and the people in selection and provides for an executive appointment with confirmation by the vote of all the people rather than only that of one house of the Legislature. Likewise, the people have the opportunity at regular intervals to decide the question of

further service. Thus the people apply the standard of good behavior. The provision for confirmation by the entire electorate is in itself an excellent preventative of poor appointments; and the further provision that appointments must be from a previously selected list removes the opportunity to appoint personal or political favorites of either the governor or senators.

Conclusion

Our experience has demonstrated the effectiveness of our plan to bring about a gradual and continuing improvement of the judiciary. It has taken our courts out of politics. Our political parties have respected it and have made no effort to influence elections under it. Judicial qualities have been substituted for party affiliations as the principal basis for selecting and retaining judges. Court dockets have been brought up to date, delays lessened and expense of litigation reduced because judges spend no time campaigning for re-election but are free to use all their time on their court work. Our judges are now always working on the next case and not on the next election. All this has increased the confidence of our people in the courts and raised the prestige of the judiciary. Our people believe in the plan because they have three times voted overwhelmingly in favor of it. We believe that it is the best plan of selection and tenure for state courts that has yet been devised.

Certainly the foundation of our whole legal system must be the respect of our people for the law and this must depend mainly upon confidence in the independence, ability and integrity of the judges who apply it. Requiring judges to run on party tickets with other candidates who are partisans of the political party supporting them is surely not the ideal way to create such confidence or to maintain judicial independence. There must be no partisanship in the administration of justice and there should be none in the selection and tenure of judges.

LUCIA'S

ITALIAN-AMERICAN FOOD

Open daily 12-9
Sundays 1-9

1764 MASS. AVE., CAMBRIDGE
4 Blocks Below The Law School

"JOE" KEEZER

Buys and Sells
Used Clothing, Jewelry,
Bric-a-Brac and Antiques

HARVARD COMMUNITY EXCHANGE

1094 MASS. AVE. CAMBRIDGE

BUY DIRECT FROM FACTORY CAMBRIDGE CLOTHES

55 Carleton Street, Kendall Square, Cambridge
Half a block from KENDALL Station Entrance
Open Every Day From 8:00 A. M. to 6:00 P. M.

Suits, Topcoats, Sport Jackets,
TOP QUALITY: Gabardine Slacks & Trench Coats

Suits which retail for \$55 and up, we are able to sell for \$39.75,
because you are buying direct from the factory

No Charge for Alterations

JIM'S PLACE

30 DUNSTER STREET

FAMOUS FOR CHOPS
STEAKS, SEA FOOD

Complete Air Conditioning

Complete Dinners .50 - 2.00

Porterhouse Steak for 2 \$3.75

STUDENT VALET SERVICE

CONTRACT PRESSING

Cleaning - Pressing - Alterations
Hat Renovating Shoe Repairing

For Service and Satisfaction Never
Obtained Before Call TR 6-0268

1609 Mass. Ave. Next to Bence's

HOTEL CONTINENTAL

"One of New England's Best Hotels"
Cambridge, Mass.

VISIT PICCADILLY INN FOR RELAXATION,
REFRESHMENT AND REPAST

Full Course LUNCHEONS—95c and up
Full Course DINNERS—\$1.40 and up

All Beverages moderately priced

Excellent Function Facilities for Parties of All Sizes

Chauncey Depew Steele, Jr., General Manager

Call: Kirkland 7-6100

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

Boston, Massachusetts

Telephone HA 6-2850

FORMAL WEAR

FOR HIRE & FOR SALE

Complete Line of Accessories

William's Clothier

24 BOYLSTON ST. HARVARD SQ.
TR 6-4847

Rackets Restrung

ONE-DAY SERVICE
AIR PRESSURE MACHINE

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

The
Viking
Restaurants
Smörgåsbord
Swedish Hors d'oeuvres served
with Luncheons, Dinners,
STEAK—CHICKEN—LOBSTER
Music at Solovox
Open 11 A.M. till 1 A.M.
442 STUART ST.
Copley Sq. (near Theatres)
In Boston It's the Viking
AIR CONDITIONED
Lounge Bar



Why Pay for Expensive
Overhead?

ORCHIDS \$3.00

at

MAHEGAN

FLOWER SHOP

20 NORFOLK ST., CENTRAL SQ.
call TR 6-3932 free deliveries

SKIS & EQUIPMENT

STEEL EDGES — REPAIRING
Ski Accessories of All Kinds
SKATES SHARPENED

TENNIS & SQUASH

67A MT. AUBURN ST. CAMBRIDGE
OPP. LOWELL HOUSE TR-6-5417

STUDENTS!

DO YOU WANT TO
SAVE MONEY?

FOR SERVICE AT A SAVING
TO THOSE WHO JOIN THE CAC*

- ✓ 21% off on Lube jobs.
- ✓ 10% off on Motor Labor Repair.
- ✓ 10% Reduction on Radiators, Heaters and Spotlights.
- ✓ 10% off on Tires and Seat Covers.
- ✓ 5c off on quart of oil, immediately.
- ✓ 2c off on gallon of gas, immediately.

*CAMPUS AUTOMOBILE CLUB

Info: Call TR. 6-6910 or stop at

Sales—NASH—Service

HARVARD AUTOMOBILE CO.

1230 Mass. Ave., Harvard Square
Cambridge, Mass. TR 6-6910

SAVE ON WAR SURPLUS

CLOTHING

FOOTWEAR

LUGGAGE

CAMPING AND SPORTING EQUIPMENT

CENTRAL WAR SURPLUS

433 Mass. Ave.

4 Prospect St.

★ ★ AT CENTRAL SQ. ★ ★