

The Harvard Law School Record

VOL. 9 No. 12

CAMBRIDGE, MASS., TUESDAY, DECEMBER 20, 1949

PRICE TEN CENTS

NEWS IN BRIEF

AALS MEETING

The American Association of Law Schools will hold a three-day meeting at the Edgewater Beach Hotel in Chicago beginning on Wednesday, December 28. Round tables on teaching methods, law school administration, graduate training, bar examinations and the various courses in the law school curriculum will constitute the major portion of the program. Dean Erwin N. Griswold and Assistant Dean Louis A. Toepfer will head the Harvard Law School delegation of more than twenty faculty members and teaching fellows.

CHICAGO HLSA

The Harvard Law School Association of Chicago will hold a luncheon at the University Club in Chicago on Wednesday, December 28. Faculty members in Chicago for the meeting of the American Association of Law Schools will attend. Edward M. Bullard (LL.B. '20) is in charge of all arrangements.

ATTENTION, SUBSCRIBERS

The board and staff of the RECORD extend best wishes for Christmas and the New Year to all subscribers.

The present issue is the last for the current term. The next issue will appear at the beginning of the spring term, Wednesday, February 8, 1950.

CHAFEE ARTICLE

Professor Zechariah Chafee, Jr., has published an article entitled *Legal Problems of Freedom of Information in the United States* in the current issue of *Law and Contemporary Problems*. The article is included in a symposium on *International Human Rights*.

(Continued on Page three)

Plain Talk For Legal Writings Advised To Ease Reading, End Gobbledygook

Everyone knows that the "ordinary reasonable man" can't even begin to understand a lawyer-writing. Even lawyers can't understand a formal writing of another lawyer the first time they read through it. Shakespeare, Dickens and Joe Miller all laughed at lawyers' language; our own time coined the word "gobbledygook" to ridicule it. The lawyers know they're being laughed at and some feel guilty about it, but still they continue on their merry way, taking the longest way round to get to the point.

What can lawyers do to make themselves understood? The common rules of thumb tell you to use short sentences and the Anglo-Saxon word for the Latin. But if you went through the Internal Revenue Code and just put in a period every time you saw a semi-colon and a "highest" every time you saw a "maximum" you still wouldn't have a clear or readable statute.

In "The Art of Plain Talk" [Harper Bros., 1946] Rudolf Flesch describes a method for translating unreadable English into what he calls plain talk. Although the method uses mathematical formulae and tables, it is based mainly on three factors. Flesch says that a piece of writing will be more readable if it has 1) short sentences; 2) many personal references—that is, the use of names and personal pronouns (using personal references keeps you from using the passive voice), and 3) few affix words—these are words built up of prefixes and suffixes (for example: from "sign" to "signify" to "significance" to "insignificant"). Flesch's book has many more rules for readable writing (such as the use of "working" verb and usual sentence order), but his readability formula is based on just those three factors.

Mrs. F. D. R. To Speak For March Forum

Program On Catholicism With Blanshard, Survey Of American Arts Listed

Mrs. Eleanor Roosevelt and Mr. Paul Blanshard will appear in Cambridge next semester as speakers of the Law School Forum, according to Anthony P. Nugent, Jr., president of the Forum. Nugent made this announcement yesterday when he released the Forum program for this spring.

Mrs. Roosevelt will be in Cambridge on March 17, and will discuss the topic *Woman's Place in Today's Society*. Appearing on the program with her will be Dr. M. Farnham, co-author of *Modern Woman—The Lost Sex*, and Dr. Harold Taylor, president of Sarah Lawrence College.

Mr. Blanshard will speak at the first Forum of the new series. The program will be held February 10, and will be called *American Freedom and Catholic Power*. This Forum will be followed by a symposium on *Arts in America*, to be held the week of March 6. The symposium will consist of separate programs on music, poetry, theater, painting and architecture.

Other forums of the spring series have been announced, but according to Paul Edelman, head of the Forum's planning committee, no speakers have as yet been scheduled. The topics to be discussed are *The Welfare State, As Others See Us*, and possibly a final forum on *Psychiatry in Neurotic America*. The first of these programs will be held March 31, and will be a discussion of the United States as a welfare state, with a comparison to developments in Britain. April 14 is the date set for the forum *As Others See Us*, at which speakers from Western and Eastern Europe, Asia, and South America, will present the views of America held by their peoples.

Rewriting A Case

For our case sample we've chosen about 100 words from *Mack Truck Corp. v. Thelen Trucking*. We've picked this one mainly because it is a fairly recent case (1931) so that we won't get any old fashioned words or too many Victorian tricks of style. (You can find it in 205 Wis. 434, 237 N. W. 75, 83 A. L. R. 952, or Bogert & Britton, *Cases on Sales*, 604.) In this case an installment buyer had defaulted in his payments. The seller repossessed, resold the merchandise, and was suing the installment buyer for the balance. Owen, J., had decided that the seller hadn't given the buyer sufficient notice of resale, since the seller had given only nine days notice where the statute required ten. Seller said that buyer consented to the resale. Then the court said:

It is not contended that the notice actually given satisfies the requirements of the statute, but plaintiff contends that it was the right and privilege and within the power of the Thelen Trucking Company to waive that notice, and that it did so by giving the consent above indicated. It is both apparent and generally recog-

(Continued on page four)

New Dormitories



Pictured above are the new dormitories as the outside rapidly nears completion.

Lawyer Suggests Integration Of Study Of Avoiding Litigation In Law Courses

This article was written especially for the RECORD by Louis M. Brown, LL.B., Harvard Law School '33, lecturer at Southern California School of Law on "Preventive Law," author of numerous law review articles, and former counsel, Reconstruction Finance Corporation.

Our ever-present litigant, John Doe, is always in trouble. He is always suing or being sued. But his brother, "Preventive" Doe, is different. He does not want to sue or be sued. He wants to stay out of as much legal trouble as is possible in our society.

"Preventive" Doe is, let us say, a business man. He wants an approach to law from the viewpoint of the business man who must live with law. As a business man, he wants to know how he can prevent or minimize legal trouble.

He puts his problem this way: A client, a business man, comes to his attorney after he has been sued. The client relates a story. His attorney may point out a mistake which the client made in his dealings with the plaintiff—perhaps he failed to give a certain notice to the plaintiff. Nevertheless, the lawyer takes the case and will try to find a satisfactory defense or reach a settlement. Now, suppose the client asks the lawyer to tell him how he, the client, can avoid making mistakes in legal matters.

It is not a satisfactory answer to the client to tell him to call his lawyer before he gets into trouble, because this answer still leaves the client with the problem of knowing when he is in a situation which is likely to give him legal trouble.

A satisfactory answer must indicate to the client how he can detect law-creating situations and how he can determine whether a law-creating situation is one which is likely to require professional advice.

Courses in commercial law or business law have the same inherent problem. The course is law, yet the students are not preparing to become lawyers. It has been said that law schools do not purport to teach law students the law, but rather to teach students how to find the law. Business students likewise should not be taught the law, nor how to find the law. They do need to be taught how to recognize law-creating situations as they arise, the symptoms of legal trouble in business situations, and how to stay as legally healthy as is possible.

The following is a brief statement of some of the ways that preventive law can be integrated in the educational program.

Law School Program

A. *Separate study of preventive law.* Basically, there is a need for a jurisprudence of preventive law. Study and research is needed to discover the techniques and methods which can be employed to minimize legal risks. By concentrated effort, a descriptive science of preventive law can be developed, existing methods and techniques for prevention can be made known, and new meth-

ods and techniques can be invented. Rules and principles to enable people to stay legally healthy should be discovered and made known.

Techniques to enable the profession to diagnose legal trouble before trouble arises should be discovered. We need to develop techniques so that it will be worthwhile as a preventive device, for a client to see his lawyer "twice a year." Can we invent anything like the double entry accounting system so that, at least, the more obvious legal mistakes will be "automatically" reflected? Can we develop anything that serves the purpose of an X-ray machine so that even though the client does not realize he has a "disease", we can discover whether or not he has, and if he has, its severity?

We need to make constant surveys of the extent to which people use the services of attorneys. We need to determine what motivates people to consult counsel. We need to learn about those situations in which people fail to consult counsel. To what extent is this due to cost? To what extent is it ignorance that a legal problem exists? Or a feeling that counsel cannot be of assistance? Or to what extent is it due to a belief that the profession does not have the ability to employ preventive measures?

To some extent we now have preventive techniques. Careful estate planning is one of them. It prevents trouble and accomplishes desires that would otherwise be impossible.

(Continued on Page three)

Scott To Speak At N.Y. HLSA Meeting

The Harvard Law School Association of New York City is sponsoring a Harvard Law School Alumni luncheon at the Roosevelt Hotel on Friday, January 27th, at 12:15 P. M. This luncheon will be held in connection with the annual meeting of the New York State Bar Association.

The speaker will be Prof. Austin W. Scott, LL.B. '09. Wilkie Bushby, LL.B. '21, president of the Harvard Law School Association of New York City, will preside. The guests will include Judges Augustus Hand, LL.B. '94, and Learned Hand, LL.B. '96, of the United States Court of Appeals for the Second Circuit, Judge Robert P. Patterson, LL.B. '15, president, Association of the Bar of the City of New York, Presiding Justice David W. Peck, LL.B. '25, of the Appellate Division, First Department, New York Supreme Court, and Judge Bruce Bromley, LL.B. '17, retiring judge of the New York Court of Appeals, as well as Harold J. Gallagher, LL.B. '17, president of the American Bar Association, and Harrison Tweed, LL.B. '10, president of the American Law Institute.

Invitations are being mailed out early in January to the approximately 4,500 lawyers in New York State who attended Harvard Law School.

Dorms To Be Completed By Next August

Architects Report That Furnishings Are Chosen; Describe Dorm Interiors

With the application of a buff-colored brick facing over the concrete and steel skeletons, the new dormitories of the Graduate Center are rapidly taking their final form this week. Virtually all the exterior work, except the windows, is completed on the two leading units on the northwestern corner of the project.

According to Benjamin Thompson and Norman Averill of the Architects Collaborative, Inc., the firm that designed the center, the living accommodations for 575 men are scheduled to be finished by August 31, 1950 for occupancy in September. Of the total, law students will number 386 with 189 graduate students from Arts & Sciences. Present plans call for 223 single rooms, 194 men in double rooms with curtain partition and 158 men in two-room suites with a connecting door.

Most of the furniture for the rooms has already been selected after endless designing, testing and negotiating to arrive at furnishings that will result in comfortable and attractive surroundings. Mr. Thompson, who has been working closely with Vice-Dean Livingston Hall and Assistant Dean George Minkin, showed the selected furniture to the RECORD. Among the items are: a chocolate brown desk with metal drawers and typewriter slide on one side and a solid birch top. The desk will be lighted both directly and indirectly by a swinging-arm desk lamp. Matching the desk is a table-bookcase on wheels of the same

(Continued on Page three)

Set Tentative Date For Publication Of H.L.R.'s Next Issue

The *Law Review* announces that they have set Tuesday, January 10, 1950 as the tentative publication date for Number 3 of their present Volume 63. The issue will contain articles by jurists and outstanding practicing lawyers on topics that should interest both students and alumni.

It will include an article by Randolph Paul, Esq., noted tax expert, and former general counsel of the Treasury Department, entitled *The Responsibilities of the Tax Adviser*. Mr. Paul characterizes the tax adviser as a citizen whose special qualifications carry with them added responsibility to the public. He strongly disapproves of tax advisers whose sole effort toward creating a better tax law lies in maligning the present Code and its stringent enforcement by the courts. "Without further description I am sure that almost everyone will recognize the type of literature to which I am referring. Sometimes it is smug and pious; often it is vehement; generally it is sincere. Yet it has, always, the same hollow ring."

Professor Cox and Associate Professor John T. Dunlop of the Harvard Economics Department have collaborated on an article discussing the experiences of the NLRB in attempting to regulate collective bargaining and suggesting several bases for future procedure.

In the third article of the issue, William T. Coleman, Jr., Esq., discusses the interrelation of corporate dividend problems with problems of conflicts of laws. This article will have special pertinence to students now taking Conflicts and Corporations II.

In the Comment section Thomas MacKay Cooper, Lord Justice General of Scotland, gives his views on the Civil versus the Common Law, arriving at the conclusion that the Common Law is a spent force that will soon take its place

(Continued on page four)

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 MUR.....Editorial Manager
JULIUS LEVINSON.....Business Manager

EDITORIAL BOARD

SEYMOUR HOZORE.....Associate Editor
ARTHUR SMITH.....News Editor
ARTHUR BRODY.....Copy Editor
SAMUEL DASH.....Current Case
H. C. CARON.....Features
GERARD MANDELBAUM.....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, Lauren D. Rachlin, 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

Students and alumni were called upon last year to give their suggestions as to names for the new dormitories to be erected on Jarvis Court. The response was negligible. At the time nothing existed but the plans and perhaps many consider it a premature gesture to suggest names for lines on blueprints. We hope that the small response did not indicate apathy.

Today we see the framework of the Graduate Center units close to completion and two buildings with their exteriors all but finished. Soon the whole project will be completed and names will be assigned to the dormitories. These names in time will be used by Harvard Law School men as Langdell, Austin and Hastings are today. Those who are to make that choice should have the benefit of knowing what students and alumni consider fitting. We know that students and alumni are interested in the dormitories, for their money is making them possible. Sending in a suggested name or system for selecting names would certainly be no more trouble than sending in a check or a pledge, and those who have yet to send in their contributions could send such suggestions in with them. Others can send suggestions to the RECORD and we will relay them to those in whose hands the decision rests.

Letters to the Editor

To the Editor of the RECORD:

Your position on the propriety of a Guild invitation to a defense attorney in the Communist Trial to discuss the issues in that case would impose a doctrine of guilt by listening on top of the encroaching notion of guilt by association recently deplored in John Lord O'Brian's article in 61 *Harvard Law Review*.

Your editorial prejudices the appeals of these attorneys who have never had an opportunity to defend, having been summarily convicted. . . . I believe that anyone taking the trouble to read the record objectively (as I have tried to do), no matter how preconceived his impressions, will come to admire the courage and integrity of the defense lawyers. . . .

When this case comes to be viewed in its historical perspective, I am convinced that the contributions to the cause of freedom made by these lawyers will be ranked with that of Andrew Hamilton. . . . After two New York lawyers had been disbarred for daring to challenge the jurisdiction of the court in Peter Zenger's sedition case, old Andrew Hamilton risked disbarment to come from Philadelphia to renew that challenge and successfully to appeal to the jury over the rulings of the court to establish the principle of a free press. . . . In the retrospect of two centuries, his contribution is enshrined in bronze memorials in those very bar associations which are now considering proceedings against these attorneys.

Assuming, however, your premise that these lawyers were in contempt, your conclusions are, nonetheless, unjustified. Wherever a case raises important public questions . . . anyone who can contribute to the discussion should be free to do so. It is in our tradition that cases, particularly those affecting civil rights and the administration of justice, be discussed during their pendency. This tradition is healthy. Who can doubt the importance of Professor Frankfurter's contributions to an understanding of the Sacco-Vanzetti case

during its pendency? The tragedy is that there were not enough others. . . .

It is unfortunate that the great name of the Harvard Law School . . . should be invoked to protest a courageous and necessary action by the Lawyers Guild. . . . In an earlier generation giants like Chafee, Wickersham, Hughes, Pound, Marshall and Frankfurter rose against similar trespasses upon freedom. This generation, in the face of a greater assault is silent.

HAROLD I. CAMMER, LL.B. '32

[We regret that, because of its length, we were obliged to cut this letter. As to its substance: We think full discussion of cases raising important public questions is not only healthy, but necessary, as we stated in our editorial of November 30. We merely question the ethical propriety of the lawyer in such a case discussing it while it is pending. Professor Frankfurter could contribute to public understanding about Sacco-Vanzetti; Justice Frankfurter cannot do the same for the Smith Act prosecution.—Ed.]

To the Editor of the RECORD:

On the weekend of the Yale game, November 19, the Coop installed *gratis* a television set of considerable worth in the Faculty Club. When approached, the operating management justified this action as advertising, saying that the exhibition was to promote interest in the television sets available at the Coop.

The attempt to conceal this accommodation of faculty members who wished to see the game, under the cloak of legitimate advertising, reveals the half-hearted effort made by the management to conceal its duplicity. Students were denied the privilege of renting television sets for the World Series even though they were willing to pay for that privilege.

It should be clear that those in charge of the Coop place a high priority on catering to the desires of the faculty even at the expense of an essentially student supported organization. If this is not so, then let me suggest that the next "demonstration" be held in the Courtroom some Thursday evening so we can all watch the wrestling.

Examination of the superstructure of the Coop reveals the Professors Ralph J. Baker and Edmund M. Morgan are stockholders, Professor Austin Wakeman Scott, Vice-President, and Professors Robert Amory and Archibald Cox, Directors. If uncompromising rigidity is the touchstone in defining a fiduciary's obligation of loyalty to his *cestui*, we should apply the same test even when the fiduciaries happen to be members of the faculty. DONALD ZIMMERMAN, 3L

To the Editor of the RECORD:

At this Christmas season the St. Thomas More Society wishes to share the beauty of this prayer of St. Francis of Assisi who also wanted peace on earth and good will toward men:

"Lord make me an instrument of Thy peace; where there is hatred, let me sow love; where there is injury, pardon; where there is doubt, faith; where there is despair, hope; where there is darkness, light; and where there is sadness, joy. O Divine Master, grant that I may not so much seek to be consoled as to console; to be understood as to understand; to be loved as to love; for it is in giving that we receive, it is in pardoning that we are pardoned, and it is in dying that we are born to eternal life."

EDWARD GILMORE, 3L

Off the Record

To the Editor of the RECORD:

Re your statement recommending a course in "how to break a girl's will": Personally, I've always been more concerned about breaking a girl's "won't."



Fernando Zobei-Montoya, 1L

. . . And then the judge said something about a breaking and entering being necessary but that since IV William Blackstone 226 "to come down a chimney is held a burglarious entry; for that is as much shut as the nature of the thing will permit."

Gallery

WILLIAM EDWARD McCURDY
Professor of Law



With some trace of a southern drawl, left over from a childhood spent in Georgia, Professor McCurdy took us over part of a life span stretching from the Harvard Law School to parts as distant as Germany and back again.

At first the law faced the peril of a competing interest in Mr. McCurdy's life. While in Harvard College, the study of history demanded most of his attention. In fact, even after starting the Law School in the fall of 1916, he remained attached to his first intellectual love by continuing as an assistant in the history department at the college. This conflict caused him to withdraw from the Law School after a few months of the first term and concentrate on history. However, after being swept away and tossed back by the First World War, Mr. McCurdy reentered the Law School after the Christmas of 1918. Professor McCurdy found himself doing double-duty: in addition to his regular classes he enrolled in a special course as a refresher to his pre-war legal studies.

The Faculty at that time consisted of about a dozen professors, among them, Pound, Wam- baugh, Williston and Beale. In reply to a question concerning the comparison between pressures upon a student of college and law work, Mr. McCurdy said: "The Law School required more regular work," but he added with a touch of optimism, "less catching up in the long run." Apparently, nothing in the Law School fazed the Professor very much since by the end of his student days he had argued in the final round of the Ames Competition and had been an Editor of the *Law Review*.

While most of us are willing to leave here after the normal three years, Mr. McCurdy stayed on for another year to serve as Ezra Thayer Teaching Fellow and take his S.J.D. in 1922. After this, he became secretary to Mr. Justice Brandeis for the year 1922-1923.

While secretary to Mr. Justice Brandeis, Mr. McCurdy was called upon to perform a variety of functions. He gathered material on legal problems of particular interest to the Justice; he prepared memoranda on the law, particularly where state law was involved; he proof-read the draft opinion, checking the draft with the record and as the year went on, added considerably to his store of knowledge of the law through discussions with the Justice. The case upon which Mr. McCurdy worked longest was the famous Southwest Bell Telephone case, in which, through a concurring opinion, Mr. Justice Brandeis set forth the "prudent investment" theory of value for rate making purposes.

In 1923 Mr. McCurdy returned to the Law School to teach Sales. He also taught Contracts part of that year because Professor Williston was ill. After becoming a member of the Law School Faculty, Mr. McCurdy became a member of the American Law Institute's group for the *Restatement of Contracts*, and, after its completion in 1932, a member of the groups for the *Restatement of Restitution* and a part of the *Restatement of Torts*.

Mr. McCurdy has taught classes that numbered from twelve students during World War II, to official classes of two hundred and fifty, which with the addition of eager student auditors totalled something over the three hundred mark. He said he preferred classes between 125 and 150 students where you are apt to have at least twenty or thirty students to build an interesting and enlightening discussion around. He noted that, "The general quality of the student body went up immediately after both wars," and he attributed this to the broader experience of the students who returned from a war and the raising of admission standards.

In 1945, after teaching through the war years, Mr. McCurdy left the Law School, temporarily, to become a Special Advisor to the Legal Director of the United States Zone of Occupied Germany. He returned to the United States in June of 1946, but was back in Germany in 1947. In June, 1948, he became Associate Director of the Legal Division, and from March, 1949 to September, 1949, served as Acting Director,

Sub Judice

HIS MAJESTY'S LOOT

In 1942 Reading was a sergeant in the Royal Army Medical Corps on duty as stores-keeper at the General Hospital at Cairo, Egypt. While on leave in Alexandria he earned for himself £20,000 by sitting, dressed in "His Majesty's" uniform, in lorries carrying contraband drugs, thus enabling the lorries to escape civilian police inspection. Military authorities apprehended Reading when their suspicions were aroused by the soldier's large bank account plus his expensive home and automobile. The British government took possession of the bank account and released £5000 of the money to Reading for his defense, which left £13,000 in the government's hands. Reading was court martialed and sentenced to two years imprisonment for conduct to the prejudice of good order and military discipline. Reading filed a petition for the return of the £13,000 retained by the Crown. The petition was dismissed and Reading appealed. *Held: Affirmed.* Denny, J. in the trial court said that he did not find that there was a fiduciary relationship between Reading and the Crown while Reading was on leave in Alexandria, but found that this was not necessary to the Crown's case. Asquith, L.J., in the criminal court of appeal, held that this was error, but found that there was a fiduciary relationship, and so affirmed the dismissal of the petition. In making out the fiduciary relationship, he said, "In the present case the master, the Crown, entrusts to its servant a uniform, to be used for the master's interest and benefit, and not otherwise. It is not the soldier's property. He may not sell it. . . . He must wear it for the benefit and in the interests of his master. . . . A uniform is in one respect a physical object. But it is also a vehicle of certain intangible adjuncts—authority, prestige, immunities of various kinds, it has a certain status and standing. *Inter alia* it carries with it facilities for imparting a veneer of officialism and legality to transactions which without its imprimatur would arouse suspicion. These facilities attaching to the uniform the suppliant was bound to use for his master's benefit." The court found that Reading sold the use of the uniform, and had no more right to do so than to sell the uniform itself, and held that to use the uniform to violate a war ally's criminal code was a breach of the duty Reading owed to the Crown. *Reading v. The King* [1949], 2 K.B. 232.

MAN HITS CAR

Douglas fell over Whittaker's automobile and brought an action to recover damages for the injuries he suffered. Douglas had been standing in the street watching a fire, and Whittaker drove his car up to within a very close distance behind Douglas, not giving him any warning of his presence (because, Whittaker alleged, he did not want to scare him). When Douglas made "an involuntary movement to turn around, he fell over the automobile and injured himself." These facts were stated by the plaintiff's counsel in his opening statement, and on the defendant's motion the court directed a verdict for the defendant. *Held: Reversed.* The court said that a motion for a directed verdict after the opening statement of the plaintiff's case should be denied "if the statements of counsel, treated as facts, together with all rational inferences of which those facts are susceptible, can, upon any reasonable view of those facts and inferences be deemed sufficient to support the plaintiff's cause of action." In determining whether the opening statement had been sufficient, the court said, "This brings us to the question whether the defendant's conduct as described in the opening could be found to be negligent. Suppose another traveler came along the public way, stopped to watch a fire, and while standing there, put a bundle on the ground behind and so close to the plaintiff that the latter as he turned around fell over it. Could it be ruled that the traveler was not negligent? In the case at bar, the statement that the plaintiff fell over the automobile, when considered with the fact that the plaintiff was complaining of an injury to his shin, may properly be construed to mean that he fell over some part of the automobile which projected a distance above the ground sufficiently high to come in contact with a man's shin. We think a jury could find that the defendant was negligent." *Douglas v. Whittaker*, 86 N.E. 2d 916 (Mass. 1949.)

thus holding the highest legal posts in the the United States Zone of Occupied Germany. As the Acting Director of the Legal Division, Mr. McCurdy's position was somewhat comparable to that of an Attorney General, or, from a military standpoint, a Theater Judge Advocate. His Division rendered legal opinions, supervised the administration of justice and the operation of the penal system and had certain review functions in respect to criminal cases, among other duties.

This fall Mr. McCurdy returned to the Law School and is once again teaching Contracts.

B. M. H.

Alumni Notes

LL.B. '06—Roy F. Bergengren of Montpelier, Vt., received the honorary degree of LL.D. from St. Francis Xavier University, Antigonish, N. S. on May 25. From 1934 to 1945, when he retired, he managed the Credit Union National Association in the United States and Canada. He cooperated with the Nova Scotian Institute in a program of economic reconstruction, for which he received his honorary degree.

LL.B. '33—Colonel Otis M. Whitney member of the Massachusetts Governor's Council, was recently appointed to command the 182nd Infantry, Massachusetts National Guard, the oldest regiment in continuous existence in the Western Hemisphere. During World War II, Whitney led the first U. S. Army troops into Guadalcanal, and served for more than two years in the Southwest Pacific. He won the Silver Star and a Presidential Unit Citation. He is senior partner in the law firm of Whitney, Sheehan & Williams, with offices at 44 School St., Boston, and 29 Walden St., Concord, Mass.

LL.B. '35—Frank L. Dennis, assistant managing editor of the *Washington Post*, has been appointed a lecturer on the staff of the Department of Journalism, George Washington University.

S.J.D. '36—W. Page Keeton has resigned as dean of the University of Oklahoma Law School to become dean of the School of Law, University of Texas.

LL.B. '42—Laurence R. Sperber, who was formerly engaged in the general practice of law in New York, recently opened law offices in the Frederick Building, 214 North Canon Drive, Beverly Hills, Cal.

PREVENTIVE LAW—(Cont.)

wise not be prevented or accomplished. Title insurance is, from a landowner's point of view, an improvement over older methods of assuring the landowner against title defects.

Concentrated study of preventive law might accomplish several results. It could help to organize a body of knowledge of presently available preventive methods, improve existing techniques, discover and invent additional methods, and encourage new frontiers of prevention.

B. *Integration of preventive law in course instruction.*

The case method has its proponents and opponents. As an instrument for teaching preventive techniques, the case method can take on a new complexion. There is a distinction not often made between "hot" facts and "cold" facts. In

NEW DORMS—(Continued)

construction and height that can be used either by itself or to increase the desk surface.

A form-fitting bentwood chair will be at the desk. For real comfort there is a squat easy chair covered with leather simulated plastic. A solid wooden stool will serve either as a footstool or as another chair.

The ceiling of a typical room is to be acoustic tile, the walls will be painted cinder block and the floor asphalt tile. A built-in wooden cabinet provides closet and drawer space along the wall opposite the seven foot window. This expanse of glass will have a three-foot section adjustable for ventilation and each section will have a wooden slat-like roller shade.

law school teaching the case is generally looked at as a set of completed ("cold") facts. The problem for class discussion is the legal opinion. But a view of the facts as "hot" facts makes for a different slant. Look at the reported facts as though the client were seeking legal advice regarding the transaction as it was occurring. This is the same distinction that Professor Lon Fuller referred to three years ago in *THE HARVARD LAW SCHOOL RECORD* (December 18, 1946) where he used the terms *forensic* or



LOUIS M. BROWN

frozen facts, and *managerial* or *live* facts. In discussing legal education he emphasized the need to expand legal education in two directions: "First, so as to include live facts, and not the frozen facts of a written record, and Second, so as to include the 'extra-legal' considerations that bear on the final decision."

The "live", "managerial" or "hot" facts are the facts which, when occurring give, the attorney opportunity to direct his client into channels which minimize legal risks. The typical question in the class room for this purpose is "Put yourself in the position of an attorney advising his client as though the facts were currently happening. What course of action would you advise?"

Another crucial inquiry is, "How could the litigation have been avoided?" Even a superficial survey of members of the profession reveals a common belief that frequently the clients on both sides lose by litigation. Thus, it is even pertinent at times to inquire how the winning party might have avoided the litigation. For example: A creditor, though successful in obtaining judgment on an account receivable, might have avoided the litigation if he had concurrently with extending credit, obtained an amply secured promissory note. Less obvious methods of avoiding possible future litigation deserve exploration by law students.

Avoiding litigation also includes taking into account "extra legal" considerations that bear on a final decision. What of the client's legal costs? His time? His plant manager's time? The effect on his business reputation? And so on.

What about the settlement of controversies? What skills do lawyers employ in effecting settlement? When is settlement advisable? How compare the total costs of settlement negotiations with litigation? When should litigation be used as a method to effect settlement? In what situations is settlement not possible? When are settlement negotiations a waste of the attorney's time and the client's money? These questions cannot all be answered at any one time. Only some of them may be pertinent to the particular case under study in classroom discussion. But these are questions designed to promote thinking in preventive law. To a great extent the approach which these questions suggest can be integrated in the existing law school courses without disturbing the curriculum. "Cold" cases can be visualized in terms of the facts when they were "hot".

Commerce School Program

It is not difficult to state what a "commercial law" course in college should not do. It should not make the student feel that by taking the course he is thereby capable of being his own lawyer. It should not be regarded as a substitute for professional advice.

One way to overcome these difficulties would be to eliminate these courses. If this be the suggestion, I quickly disagree. There is another, and more useful alternative.

The solution lies in a proper orientation of the subject matter. The analogy to medicine is strikingly true. Patients need to learn the symptoms of ill-health, the rules of hygiene, the principles of first-aid. And these they can learn without feeling they thereby are doctors of medicine or that they can substitute their judgment for the doctor's training and experience. Many are the lives that were saved (and mine is one among them) because a professor in a hygiene class taught that a pain in the abdomen, especially on the right side, *might* be a symptom of an appendicitis attack and when such pain occurs (1) do not take a cathartic, and (2) call a doctor.

There is, of course, a vast difference between a bodily symptom of such a disease and a symptom of legal trouble. There is an automatic human response to pain. Generally, there is no such response to an impending legal problem. But even though automatic response be absent, there is a substitute. People can learn to recognize at least some of the *warning signals* of legal trouble. And these they can learn without being given the feeling that they thereby are lawyers.

To do this, at least one thing is essential. The "law" which non-lawyers should learn is not the law of legal concepts. It is not law from the lawyer's point of view. It is the other side of the coin. It is law from the viewpoint of the person subjected to law—for example, the business man. Re-orientation is needed in the commercial law study of law. The approach should be: start with situations or events which are recognizable to the layman and which are law-creating situations or events which confront a person before he ordinarily gets legal advice. A business man can recognize a business situation; he need, in general, not recognize a legal concept. Useful warning signals of legal problems are to be found wherever a business fact or event is also a law-creating fact or event. Paying money, for example, is an easily recognizable business fact. Students in business colleges can be safely taught that paying money is also a law-creating fact. They can be taught more. They can be taught that where the debtor is in doubt as to whether he owes a debt, he ought not pay anything on account. Many a lawyer has wished that his client, having such a doubt, had not paid even a "red cent" on account but rather had come for legal advice. And many a client has wished that he had been informed of the risk that by making any payment, he

might become obligated to pay the creditor's entire claim.

Students can also be taught the limitations of legal advice. A lawyer cannot protect against every risk. There is a distinction between the practical risks which a client must recognize and the legal risks concerning which competent counsel can advise. Mr. Newparent wishes to buy Blackacre. Whether Blackacre is a good parcel of land for Newparent's needs, whether it is solid land or fill, etc., are practical considerations which are essentially Newparent's responsibility. He may not "blame" his attorney if Blackacre is under water. The client must assume the responsibility for the practical risks. He may, more rightly, "blame" his lawyer if he has advised his lawyer of the practical risks and his lawyer overlooked obtaining available legal protection against the practical risks. This is not to say that wise counsel may not well point up the practical risks as well as the legal risks but if such be the case, the client is getting more than legal service (as often he does) and his attorney is taking into account "extra legal considerations that bear on a final decision."

Use of Case Method

The case method is likewise available as a teaching tool. Recorded cases can be taught in the context of "hot" facts. But the emphasis is different than in the law school. Here the typical questions in the class room are "Put yourself in the position of the plaintiff (or the defendant) at the time the facts were live. What would you have done? What practical risks were involved? What warning signal was there that indicated the need for legal advice? What was the probable total cost of the litigation and how might the cost have been reduced?"

Students, too, can well be given some instruction in how to employ an attorney. For in so doing, a client is taking the one step about which, in the very nature of things, he can get no independent legal advice. In this one undertaking, alone among all others in which he engages, the client must be his own lawyer. He ought therefore be taught the essential nature of the attorney-client relationship.

Thereafter, the student will be the layman, the actor of law-creating events. What he will do or not do will affect his legal risks. The bar has the duty to inform the layman which of his many common human activities may increase his legal risks and how he, in the light of his experience, can detect those risk creating events.

NEWS IN BRIEF

(Continued from page one)

LEGAL AID BANQUET

The Legal Aid Society held its annual banquet at the Signet Society on Dunster Street, Cambridge, last Thursday evening. Charles B. Rugg, LL.B. '14, the first president of the Harvard Legal Aid Society was the principal speaker. Dean Erwin N. Griswold and Arthur E. Schoepfer of the Boston Legal Aid Society also addressed the 37 members of the Society and their guests.

COMBINED CHARITY DRIVE

Jerome J. Gelman, 3L, Chairman of the Law School's Combined Charity Drive, announced this week that the Drive has collected \$2,715 so far. Only a small number of pledge cards are still out. The \$2,715 the students contributed is almost twice the amount any previous student body contributed to charity in any year. Much of the success of this year's drive results from the fact that all appeals for charity were combined and students asked to make only one contribution.

When the drive is concluded, the Phillips Brooks House Committee will make public the details as to the distribution of the money collected.

WORLD LAW GROUP

The World Law Group will hold its second in a series of two luncheon-seminars on the *Genocide Convention* today at 1 P. M. in the Hotel Commander. Mr. Frank W. Grenell, Mass.

Delegate to the A.B.A., will discuss the position of the A.B.A. in reference to the Convention. Copies of the convention will be available at the meeting. All law students are invited to attend.

TUFTS COLLEGE PLAN

A new program has been arranged between Tufts College in cooperation with the Law School of Harvard University whereby undergraduate students at Tufts desiring to study law may plan a seven-year course leading to the degrees of A.B. and LL.B., it was announced by Dr. Leonard Carmichael, Tufts president. The program will go into effect in September, 1950.

Under this arrangement a student may take courses at Tufts College for three years, followed by two years of study at Harvard Law School. During the sixth and seventh years, Tufts law students will do part of their work at the Medford college and the other part at the Harvard Law School. The bachelor's degree will be awarded by Tufts College and the law degree by Harvard University.

Only those Tufts students who are specifically accepted by the Law School of Harvard University will be eligible for this program, it was explained by Dean Erwin N. Griswold, who said that the new arrangement that has been made in connection with Tufts College is not something new, but an extension of a program that has for some time been in effect with Harvard College.

Intrepid Reporter Braves Dust, Chills To Interview Dickens Haunting Stacks

Some spiritualists who had been trying to contact Houdini told us a few weeks ago that Charles Dickens would be getting a furlough this Christmas. Their press release said that calculations showed the author might land near the Law School. We were inclined to dismiss this information until we talked to that Law Review man who had been brought to the surface by an intrepid rescue party after being lost for two weeks down deep in the stacks. He told us that Something—he suspected a poltergeist—had been kicking up a fuss near the old English Pipe Rolls. Using our ouija-board to put two and two together, we investigated. We are proud to report that it was Mr. Dickens and that he was willing to speak for publication.

The dim evening is dimmest, the cold rain is coldest, and the long faces longest when one approaches that grotesque old obstruction called Austin Hall, squatting its ruddy silence and steeped in tradition from its foundation to its cornice bearing an inscription which reads in part, "Thou shalt teach them ordinances and laws . . ." 18 Exodus 20—a Biblical mandate that to this day few teachers have felt obliged to follow. And hard by Austin Hall in the heart of the dimness stands a building large and pretentious called Langdell Hall which, like the law, overpowers the observer with its horizontal pervasiveness but in which, initiates know, it is impossible to go from one point to another directly—one must go either up or entirely around.

Leaving the gathering dusk one can pass through the south entrance and enter the vestibule which has a peculiar dimness of its own. Here are the hordes of cigarette butts—the tired white-jacketed attendants on the wordy frustrations that haunt this arid place. They sing through the air like the dry wind. Listen:

Where is and who can have the res?
To arrest, must you call the police?
You have to be a burglar at night?
Estoppe!—Is that right?

Now up the steps and into the vast Langdell Library which extends as far as the eye can see. On such an evening as, this there are scores of students mistily engaged in one of ten thousand stages of their endless preparation for next year's finals, groping for the Reports, leafing through the Dictionaries, fighting for the Law Reviews, rushing about with Treatises, Restatements, Indices, Digests, Summaries, Briefs, Casebooks until they

pile before them a mass of law that would trouble a goat to digest.

From this point the well known Langdell Courtroom can be reached; that battleground upon which numberless Ames cases have been fought and hopes crushed. 'Tis a pity that the victors have carried with them the bright light of their victory, and the losers have left behind with their defeat, its gloom. For it is through this gloom that bewigged English Chancellors must peer from their places along the wall, to see His Honor the Chief Justice sitting elegantly on the bench wearing a gray suit, a white shirt, and a silk, striped tie, flanked by his associates wearing gray suits, white shirts and silk, striped ties. At the bar is the case of *Scrooge v. Cratchit*, replevin for a Christmas goose.

"Mr. Stumble," says the Chief Justice, "is that all there is to your argument?"

"Your Honor, it is the position taken by 47 out of 48 jurisdictions," counsellor replies with foggy innocence.

"This court is not bound by precedent, Counsellor," snorts the Chief Justice smacking his lips.

Scrooge v. Cratchit drones on.

"That is a cogent argument, Mr. Trip," says an Associate. "Do you have any authority to bolster it?"

Mr. Trip gazes mournfully into the chaos on the lectern before him. "Only one of the 48 states has held in my favor, Your Honor."

"That is too bad; the court would like to see more precedent on this question," replies the Chief Justice drying his chin.

The gloom grows perceptibly, the elegance and the splendor join gleefully with the fog and the court is centered in a whirlpool of thick legal gravy. Out of it come the words, flowing in all directions, bouncing from the walls, wobbling into the corners. . . . Well may the court be dim, for heavy hangs the judicial oatmeal about the lights and thick are the mental mists across the windows. This is the moment we must flee before the floors grow too slippery with distinctions and the air too thick with technicalities. So into the library, down the steps to the vestibule and out into the darkness and rain to reflect on what was seen and report that. . . .

Here the ghostly voice died away, and the wispy figure disappeared into the Pipe Rolls. An immense silence filled the stacks except for the occasional plaintive chomp of a book worm for its mate.

H. C. C.

Calendar

UNIVERSITY WORLD Christmas Service

Members of the Radcliffe Choral Society, under the direction of William F. Russel, will present a program of Christmas carols at Memorial Church, today. Services will be held at 4:30 and 8:15 p.m.

Boston Symphony

Charles Munch will conduct the Boston Symphony Orchestra tonight in Sanders Theatre at 8:30 o'clock. The program: Berlioz, Overture *The Corsair*; Roussel, Symphony No. 4, Op. 53; Brahms, Symphony No. 4 in E minor, Op. 98.

Forum

The Students' Association for Natural and Social Sciences presents a forum on *Utopia?* The speakers will be Professor E. A. Shils, University of Chicago; Professor B. F. Skinner, Department of Psychology, and Associate Professor Henry D. Aiken, Department of Philosophy. The charge is sixty cents.

Christmas Cards

Christmas cards of paintings, prints, drawings, and sculpture are now on sale at the Fogg Art Museum and at the Houghton Library.

OUTSIDE WORLD

Ford Hall Forum

The Ford Hall Forum will present *How to Build a Happy Life in the Year Ahead*, a discussion by Dr. Murray Banks in Jordan Hall, January 1, 1950 at 8 p.m.

Movies Around Town

Beacon Hill Theatre—*Devil in the Flesh*, French with English subtitles.
Esquire—*The Fallen Idol*. British.
Kenmore—*Torment*, Swedish with English subtitles and *Passionelle*, French with English subtitles.
Loew's State and Orpheum — William Faulkner's *Intruder in the Dust* and *Tension*.
Pilgrim Theatre — *Desire and Shanghai Express*. Two Marlene Dietrich revivals.
RKO Boston Theatre—Gary Cooper and Helen Hayes in *A Farewell to Arms*, and Edward G. Robinson and Loretta Young in *Hatchet Man*. Revivals.
Wilbur Theatre, Boston—Grace George and Walter Hampden in *The Velvet Glove*.

Theatres

Brattle Theatre, Cambridge—Shaw's *Misalliance*.
Colonial Theatre, Boston — Katherine Hepburn in Shakespeare's *As You Like It*.

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

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

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 KI 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

THE MISSES LITTLEFIELD

HARVARD SQUARE

PROFESSIONAL TYPISTS

4 Brattle Street TR. 6-7495
Harvard Square

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

PLAIN TALK — (Continued)

nized that the statutory regulation of such contracts is to protect the improvident and necessities from unfair dealing and imposition. Section 122.26 prohibits any agreement on the part of the buyer before or at the time of the making of the contract, and prohibits any agreement in the contract, by which the buyer waives any of his rights of redemption. [The court then went on to say that the "spirit of the statute" also prohibits this waiver after the contract was made.]

Most cases and law review articles read like this. If you've had practice, you can understand it the first time you read it, but it still comes hard. The sentences average 38 words; the excerpt contains about 52 affix words, but not one personal reference. On Flesch's scale, Owen, J.'s writing is Very Difficult. Flesch says that even college graduates can't read Very Difficult Writing with ease.

Now we'll try to rewrite this excerpt so that it can be read easily by a 15 year old whose father is behind in his payments. (Of course, the 15 year old won't understand all of this until he looks up "waiver" and perhaps a few other words.)

The Mack Truck people do not say that the notice they gave is the kind of notice the statute says you must give. But they do say that Thelen Trucking Co. could waive that notice requirement. And, Mack Truck's lawyer says, when Thelen consented to the resale, they waived that notice. Everybody knows we have passed laws regulating sales on the installment plan in order to keep installment sellers from cheating extravagant and needy people. Section 122.26 will not allow the buyer to waive his right of redemption in the following cases: 1) Before the seller and buyer make the installment contract; 2) while they are making the contract; 3) in the contract itself.

This rewrite is slightly longer than Owen, J.'s version. Many people think that writing briefly, concisely, is the same as writing readably. These people are right only when they are talking about writing that tries to be pretty instead of saying something. That's the kind of writing that says "celestial orb" while it tries to tell you that sun-spots may cause droughts. But purple-prose aside, short writing makes long reading. When you're going through a Restatement, which do you find easier to read, the Black Letter or the Comments?

Secondly, the rewrite shows that Owen, J. was not answering the plaintiff's contention in an organized way. He threw in two ideas about the statute without showing how those ideas were

relevant to his answer to plaintiff's contention. In other words, he didn't use a build-up. In the original, that lack of build-up isn't quite as obvious. Owen, J.'s rhetoric keeps the reader, just as it probably kept Owen, J. himself, from seeing a gap in the logical exposition.

All right, how about the people who draft statutes? They want to write precisely, and they have to use technical language.

We'll now try to rewrite a statute. As our sample we've chosen a statute that has been read by all the present students in the Harvard Law School. It is the Delaware statute on the recording of deeds, Laws of Delaware (1937) c. 190. Casner and Leach use it as a sample of a Type III statute on page 268 of their case-book.

If a deed concerning lands or tenements be not recorded in the proper office within 15 days after the day of sealing and delivery thereof, said deed shall not avail against a subsequent fair creditor, mortgagee or purchaser for a valuable consideration unless it shall appear that such creditor when giving credit, or such mortgagee or purchaser, when advancing the consideration, had notice of such deed. But this provision shall not extend to a lease under a fair rent for a term not exceeding twenty-one years, when possession accompanies the lease, or the lessee is to come into possession within one year after the making of it.

This statute is just not meant to be readable; it tries to sound like a voice from Sinai and awe the reader rather than enlighten him. In analyzing this statute to prepare ourselves for its translation, we see that the long first sentence can be paraphrased analytically as follows: "A deed that is not will not avail—unless." Obviously, this structure makes the statute hard to read, for when you remember that "unless" means "if not" you see that the statute's structure is not the notorious double negative—it is a triple negative. A double negative is hard enough to work with, but a triple negative is impossible. So let's work with a double negative by saying "A deed that is not" equals "Deed X." Then our sentence reads, "Deed X will not avail—unless."

To make the statute more understandable, we want to change from negative to positive. Now, we could let the negatives cancel each other and wind up with "Deed X avails if." But if we did that we wouldn't be making a fair translation. "If" and "unless" are tricky words. Logicians say "if" indicates a sufficient cause, while "unless" usually indicates a necessary cause. Therefore, to show that the men in the Delaware Legislature intended a necessary cause, we have to make our structure say, "Deed X will avail only if"; or, if we want to follow the logicians even more closely, we can say, "Deed X will avail if, and only if."

With the structure we want in mind, the job of translating the statute becomes fairly easy. All we have to do then is to separate the different classes of people the statute talks about. Our translation is as follows:

[A deed of lands should be recorded in the proper office within 15 days after the day it was sealed and delivered.] If it is recorded after that 15-day period, the consequences are as follows:

A) This late-recorded deed avails against a subsequent fair creditor only if that creditor had notice of the deed when he gave credit.

B) This late-recorded deed avails against a subsequent mortgagee [for a valuable consideration] only if that mortgagee had notice of the deed when he advanced the consideration.

C) This late-recorded deed avails against a subsequent purchaser for a valuable consideration only if that purchaser had notice of the deed when he advanced the consideration.

The rules in this [Chapter] also apply to a deed of tenements. However, these rules do not apply to a lease that has all of the following characteristics:

- 1) the lease term is less than 21 years;
- 2) the lease is under a fair rent;
- 3) the lessee gets possession [of the leased property] within one year after the lease was made.

The brackets show where we felt compelled to put words into the Delaware Legislature's mouth. As translated, the

statute is still not a marvel of readability, but at least the unreadable parts result only from the technical language we used and not from putting six ideas into one sentence. The fact that the technical language remains is as it should be. Like any other specialist, the lawyer has developed technical words and he doesn't have to explain those technical words every time he uses them. After all, a cook-book defines "baste" in the glossary, and not in every recipe.

We could make it even more readable by putting in more personal references. For example, we could start off by saying, "Suppose you have a deed—," and work out the provisions in terms of you-the-deed-holder and we-the-legislature. However, you might not think that the proper approach toward drafting a solemn statute that will be LAW.

Frankly, we can't see what would be so bad about that kind of approach. The aura of sanctity would perhaps be lost, but the sovereign's command would still be there. Since the subjects would now be better able to understand the command, we think they would respect the command more.

Again our rewrite job runs longer than the original. You may think that this is an objection to the use of plain talk; you may say that statutes have to be written concisely. We don't see just why concise statement is so very necessary to a statute. We don't want the statute to ramble or talk about the weather of course, but that does not mean we have to talk about three different groups of people in one sentence just because we're going to treat these groups in much the same way. If we make statutes too concise, we'll wind up with more talk in the long run, for many people will have to do a lot of writing to explain the statute.

As far as the need for precise language in the statute is concerned, if you compare the translation with the original, you will see that the translation is more precise. The bracketed words we put in all fill gaps in the original statute. Of course, we can't say that in every case rewriting a statute will make it more precise. We suspect that it will, but we can't tell for sure until we try to rewrite a lot of statutes.

Can Lawyers Use Plain Talk?

This brings us to our final topic: should lawyers try to write more readably along the lines suggested by Flesch and this article? In a way most lawyers and law students are already translating lawyer-writings. When they read a case or a statute or a law review article, they try to translate the language into their own. The fact that all this translation goes on demonstrates that lawyers can and do use plain talk. Legal readers would be saved that job of translation if lawyer-writing had been readable in the first place.

Some law review contributors and judges may protest that this mechanical plain talk formula will destroy individual writing style. If by style, these gentlemen mean long subordinate clauses, Churchillian periods, and single sentences that say everything, they are right. Plain talk will destroy all of those things. But if by individual style we mean an individual way of thinking and answering questions, and an individual feeling for word sound and rhythm, plain talk will not destroy individual style. Plain talk will help individual style by highlighting those elements.

Perhaps, there are some lawyers who feel that laymen should not be allowed to understand what lawyers are talking about. Like a lodge member who won't divulge the secret grip, these lawyers have a vague feeling that the masses should not be let in on the mysterious secret language. These secret-fraternity lawyers feel that if laymen are to respect the legal profession, we must have gobbledygook. Perhaps they are right. Perhaps we must keep the law and the lawyers work shrouded in mystery if we are to get the prestige we deserve. But we don't think so. We think that if we take the mystery out of the law, the layman will see the hard work and the clear thinking that are part and parcel of the lawyers' job. When that happens, the layman will respect lawyers and the law more than he does today. A. B.

LAW REVIEW — (Continued)

in a historical niche as a great experiment. Civil Law, according to Lord Cooper, is the law of the future. Also in the Comment section is a discussion by George D. Hornstein, Esq., of the New York Bar, of recent state statutes requiring "security for expenses" in shareholders' derivative suits.

The Notes section of the forthcoming issue will include papers on the taxation of corporate liquidations, and the fine print clauses of contracts. The final note is a tribute to the work of Charles Doe, Chief Justice of the Supreme Court of New Hampshire 1876-1896, whose judicial career revolutionized his state's law of procedure and evidence and profoundly influenced American jurisprudence.

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

Rackets Restrung

ONE-DAY SERVICE
AIR PRESSURE MACHINE

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

"JOE" KEEZER

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

HARVARD COMMUNITY EXCHANGE

1094 MASS. AVE. CAMBRIDGE

LAW AIDS

HARVARD BOOK STORE

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

PLYMPTON LAUNDRY

49A Mt. Auburn St.
PICK UP AND DELIVERY
NO CONTRACTS
Call UN 4-1962

LUCIA'S

ITALIAN-AMERICAN FOOD

Open daily 12-9

Sundays 1-9

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

SKIS & EQUIPMENT

STEEL EDGES — REPAIRING
SKI ACCESSORIES OF ALL KINDS
SKATES SHARPENED

TENNIS & SQUASH SHOP

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

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

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