

The Harvard Law School Record

VOL. 11 No. 5

CAMBRIDGE, MASS., WEDNESDAY, NOVEMBER 1, 1950

PRICE TEN CENTS

Civil Liberties Appeal Launches Drive Urging Quick Repeal of McCarran Act

Start Nationwide Drive To Re-Elect Opponents Of Controversial Law

Over 12,000 copies of a letter urging the repeal of the McCarran Communist Act were mailed to all parts of the nation last week.

The letter, written by Zechariah Chafee, Jr., University Professor, Archibald MacLeish, Professor of Rhetoric and Oratory, and Arthur M. Schlesinger, Sr., Professor of History, was mailed on behalf of "The 1950 Civil Liberties Appeal," constitutes the first nationwide attack against the McCarran Act.

The first step toward repeal, the letter said, is to give support to the three senatorial candidates for re-election who voted against the bill last September. They are: Helen Gahagan Douglas of California, John Carroll of Colorado, and Herbert Lehman of New York. The letter states that the outcome of the elections in these states will "be regarded either as an endorsement or repudiation—nationwide—of the McCarran Act."

The appeal further said that if these three candidates should lose in November, "their defeat will encourage further invasions of our democratic rights and freedoms and a further consequent weakening of the whole American position at home and abroad."

It urged that those who desired to preserve the American tradition of individual liberty "move now for a security act consonant with American principles and the real need of the struggle against Communism."

SIGNS REPEAL LETTER



ARCHIBALD MACLEISH

Lawyers Guild Opposes ABA On Loyalty Oaths

The National Lawyers Guild made public recently its opposition to the recent recommendation of the American Bar Association that the states require non-Communist loyalty oaths of all lawyers.

The Guild asserted that the requirement of loyalty oaths from lawyers would "undermine both the freedom and independence of the bar and the constitutional rights of the people which it is the highest duty of the legal profession to defend."

Reception of Radio Station WHRB at 550 on your radio dial is now possible by residents of the Graduate Center and Hastings.

WHRB is managed by University students and will publish the highlights of their weekly schedule in the RECORD. Tune in tonight.

Famous Japanese Jurists To Be Law School Guests

Six leading judges of Japan begin a three day visit at Harvard Law School today. Headed by the Honorable Kotaro Tanaka, Chief Justice of the Supreme Court of Japan, the group includes two Associate Justices and three High Court Justices.

On Wednesday and Thursday, they will attend Law School classes. Confer-

ences with particular faculty members on topics of special interest to the visitors are also scheduled. They will meet with Professor Glueck on criminology and with Professor Freund on constitutional problems. Faculty members will meet the jurists at luncheons. In addition, interested members of other faculties, will be introduced to the visitors at a tea.

A major conference will take place on Friday with a panel consisting of Professors Freund, Glueck, Howe, and Sutherland. The purpose of this meeting will be to enable the visitors to formulate and evaluate their observations about the American judicial system, as well as to obtain additional information.

This visit climaxes an American tour during which the visitors have been studying the American judicial system. Under the new Constitution of Japan, for the first time in her history, the judiciary has become a genuine and equal third branch of the government. The Supreme Court was established in August, 1947, as the apex of the new judicial system. New powers were conferred upon this tribunal. Among the most important is the power of judicial review over all legislative and administrative acts. Since the position and

(Continued on page four)

Chafee Criticizes Resolution Of A.B.A. Requiring Loyalty Oaths From Lawyers

As a member of the American Bar Association, I am greatly concerned over this Resolution because the measures recommended will create risks of grave injuries to the careers of faithful law-abiding lawyers and to freedom of speech and assembly.

A test-oath for lawyers has never been seriously considered in this country from 1867 when the Supreme Court killed the attempts to purge the federal and Missouri bars of Confederate sympathizers until September 18, 1950, when five Texas lawyers introduced this Resolution in the Association. The measures they recommended set up a novel and drastic disciplinary procedure. It raises obvious possibilities of conflicting with the *ex post facto* clause in the Constitution, the First Amendment, and the prohibition of self-incrimination in the Fifth Amendment. Nevertheless (as A.B.A. headquarters informs me), the General Assembly in the closing hours of the annual meeting adopted the Resolution "with very little debate, and the House of Delegates subsequently concurred in this action without debate."

"Patriotism is not enough," said the dying Edith Cavell. Deliberation, too, is desirable, as lawyers surely ought to know. Believing that every state bar association contains some lawyers who insist on a painstaking scrutiny of novel and drastic punishments before approving them, and hoping to help such men, I have written this statement.

The consequences of the Resolution cannot be realized without looking at its exact text. Its operative provisions fall into two main stages—the oath itself and the subsequent disbarment proceedings.

(Besides indicating subdivisions, I have italicized phrases which are especially capable of harm.)

For the first stage, "the legislature, the court, or other appropriate authority of each state" is requested "to require each member of its Bar, within a reasonable time and periodically thereafter, to file an affidavit stating [a] whether he is [b] or ever has been a member of the Communist party, or [c] affiliated therewith, and also [d] whether he is [e] or ever has been a member [f] or supporter of an organization that espouses the overthrow, [g] by force [h] or by any illegal or unconstitutional means, [i] of the United States government, or [j] any state government."

The second stage involves three different proceedings, all leading toward disbarment. (1) When a lawyer refuses the oath, he will presumably be automatically disbarred. (2) If his affidavit "reveals that he is or ever has been a member of the Communist party or of any such organization . . ." the appropriate authority [will] promptly and thoroughly investigate the activities and conduct of this lawyer "to determine his fitness for continuance as an attorney." (3) Usually he will deny membership in the proscribed organizations. Then, "in the event at any time later it be established" that he "has wilfully sworn falsely to any of the facts, he should be the subject of immediate disbarment proceedings."

Two features of this procedure are in-

(Continued on page four)

Moscow Law School Announces First Year Curriculum In Torts, Contracts

People who manage to get themselves on mailing lists these days frequently find they are sputtering explanations to a group of grim-faced Congressmen of the House Un-American Activities Committee. But there still exist a few brave souls whose habit of cutting out advertising coupons from magazines and sending them in for all sort of free literature is an inspiration to us all.

This "coupon-clipping" of the non-financial sort serves a three-fold purpose, namely: (1) it makes for a good hobby; (2) it inflates the ego of the recipient because he gets a great deal of mail, and (3) it serves as remarkably inflammable material for lighting the furnace.

Out of the conglomeration of literature that one may receive in this fashion, one would naturally expect to find such a pamphlet as *The Annual Bulletin and List of Courses offered at the Moscow Law School, U.S.S.R.* This bulletin not only lists the courses which may be studied, but actually presents the highlights of the law on each subject. Here follow some of the features of the first year law courses:

Risk Theory

TORTS: The high spot of a course in Torts at MLS is a study of the Soviet Risk Theory, known otherwise as the Doctrine of the Foreseeable Capitalist. The general premise of this risk theory is that since mere existence in the Soviet Union is the greatest risk in the world, no one can be liable to anyone else for negligence because it is impossible to create new and greater risks than those already created. For example, unlike the United States, bombs are constantly exploding in subway stations, and the citizens of Moscow are quite used to this phenomenon. Thus, in the famous case of *Palsgrafsky v. Trans-Siberian Ry. Co.*, 248 Moskva 339 (1928), the judge of the People's Court was considered absolutely correct when he directed a verdict for the defendants who carried a case of time-bombs into the railway station. These bombs exploded by accident and the concussion

knocked over a large portrait of Joseph Stalin on plaintiff's head. Said Justice Opgu of the Supreme Judicial Tribunal in a now-famous dictum, "It serves the plaintiff right. If she had been at work in the mines as she was supposed to be, this might not have happened at all."

Back in 1935 the Soviet government allowed certain Soviet law students to visit the Western world and learn how our law compared with theirs. Many of these students eagerly left their homeland and have remained here ever since. Their comrades in Moscow term the date of their departure, March 2, 1935, as the Last Clear Chance.

No Wills

PROPERTY I: The interesting feature of this course is the Doctrine of the Eradicability of Contingent Reminders, sometimes called the Rule in Vassilevskovich's Case. A contingent reminder is defined as a kulak who has fallen into the ways of error by thinking that he owns something. In such case, this despotic puppet of Wall Street is sent to the "Strict Settlement," which is a concentration camp in the northernmost portion of Siberia.

Since no one owns anything in Russia which he could devise by will, an estate planner's life there is pretty easy, if somewhat monotonous. Of course, they deal widely in the Soviet law of Fixtures which concerns persons who have stayed in the good graces of the Politburo for more than five years. Materials for this course are, as follows: Kuznetzky and Lochovsky, *Bona Fide Purchasing With Maps and Binoculars*, 5th Edition. (Note: Please do not try to secure a second hand copy of this casebook because this edition completely revises all previous editions.)

Forms of Action

CIVIL AND CRIMINAL PROCEDURE: If American law students are confused by their courses in Procedure, they would be totally lost in the maze of anomolous rules governing these matters in Russia. In line with the Progressivist movement most of the original forms of

(Continued on page four)

Dorm Council Considers Problem of Constitution

A Constitution was tentatively adopted by the Dormitory Council at its last meeting. The constitution is to be finally adopted at the next meeting of the Dormitory Council on November 7.

Under the constitution every resident of the dormitories will be a member of the Harvard Law School Dormitory Association. The Association itself will meet only upon petition of 25 of its members or upon a vote by the Dormitory Council.

The Association will function through the Dormitory Council which is composed of elected representatives from every dormitory floor and entry. The Council will meet at least twice a month.

Although Council representatives will be elected each term, officers of the Dormitory Council, who will also serve as officers of the HLSDA, will be elected from the representatives only once a year. In order to assure regular attendance at Dormitory Council meetings there is a provision for removal by two-thirds of the members of the Dormitory Council of a representative who misses three meetings in a term without good cause. Moreover, a representative may be recalled by a petition of two-thirds of his constituents.

Ratification of the constitution is to be by three-quarters of the members of the Dormitory Council. Thus far dormitory residents have not been accorded a direct voice in the adoption of the constitution.

Election of permanent officers of the Dormitory Council will take place on the same night as the adoption of the constitution.

Plaintiff Affirmed Mock Trial Winner

On Monday evening, Langdell courtroom housed an overflow audience, theoretically consisting of first year men, when the Supreme Court of Ames heard the arguments on appeal in the case of *Byrnes v. Hastings*. Judgment below was affirmed by the court, consisting of Judges Calvert Magruder and Louis Goldberg, and Charles Coolidge, Esq. Dean Erwin N. Griswold argued for the defendant-appellant. He was assisted by William S. Hack 3L and Arnold Nemiroff 3L. Professor Archibald Cox represented the plaintiff-appellee, aided by Ira Bartfield 3L and Ascher Katz 3L.

The appeal was taken from a decision in the Superior Court of Ames on October 16, where Professors Arthur Sutherland and Richard Field argued for the plaintiff and defendant, respectively. The jury awarded Byrnes \$1,000 damages for pecuniary loss and \$1,000 damages for emotional suffering caused by defendant's words.

Appellant contended that the basic issue was whether there was tort liability for mental distress caused by mere words not amounting to defamation; that the defendant's conduct was privileged; and finally that liability should be limited to harm done.

Appellee argued that there is an interest in freedom from severe emotional distress and that this interest is protected against invasion by words alone.

It was contended also that the plaintiff was entitled to recover on another theory. "It is settled law, that compensation may be awarded for mental suffering incidental to the tortious invasion of some other interest which the law pro-

(Continued on page four)

Violators Ensnared By Parietal Rules; Penalties Enforced

Three men have been denied the privilege of entertaining any woman in any dormitory room for a 30-day period for violations of the parietal rules, the Parietal Judicial Committee of the Dormitory Council announced recently.

These penalties were imposed after a full hearing was granted the offenders by the judiciary committee.

Two of the violations took place at Dane Hall and the other at Walter Hastings Hall, the Committee announced.

At Dane, one student entertained a woman in his room until 12:50 a.m. on October 21, without having signed in or out. The other Dane resident had a woman in his room until 1 a.m. of the same day and signed out falsely on the guest sheet.

Women remaining from a party were still in the room at the Hastings Hall offender at 1 a.m. on October 22.

None of the offenders contested the accuracy of the reports made by the University policeman. Under the procedure provided for such infractions, the reports were made to Vice Dean Livingston Hall, who forwarded them to the Committee.

The names of the offenders will not be made public, nor will their violations become a part of their official record, unless it is so directed by the Dormitory Council, the Committee said.

One offender reportedly intends to appeal the extent of the restriction imposed upon him to the Dormitory Council. If he fails at the point, he may appeal from the decision of the Council to Dean Hall. Officials said it is doubtful the decision of the full Council will be overruled.

Further violations by any of the offenders during the 30-day restriction probably will result in ouster from the dormitories, it was learned.

Present members of the Parietal Judicial Committee are Edward H. Snyder, 3L (Wis. '48), chairman; Robert D. Taichert, 2L (N. M. '48), and Monroe L. Inker, 3L (Brooklyn '48).

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.

OFFICERS

ARTHUR SMITH President
JULES RITHOLZ Editorial Manager
JOSEPH H. INDICK Business Manager

EDITORIAL BOARD

H. C. CARON Associate Editor
SIDNEY H. LYONS News Editor
HAROLD TRACHTENBERG Copy Editor
LAUREN D. RACHLIN Advertising Manager

DEPARTMENT EDITORS

Nathan S. Paven Features
William S. Hack Current Case
Jerome Reiss Treasurer
Nathan J. Siegel Gallery
Robert Ehrenbard Alumni
Joseph J. Thalhofer Articles

STAFF

Martin L. Barr, Clark A. Barrett, Robert Berry, Edgar J. Booth, Frank Brenner, Ralph E. Corey, Milton J. Crystal, Eugene Feldman, Jerry Fisch, Mathew Foner, Stanley L. Golden, Samuel Hack, Theodore J. Horvath, Richard S. Kaplan, William P. Kennedy, Joseph B. Manello, Irwin Markowitz, Lester Nelson, Calvin R. Pastors, Harold Putnam, Jack Rosen, Robert H. Rout, Herbert L. Scharf, William A. Scheurich, Jr., Norman Schoenfeld, John Sexton, Dan Sklar, David H. Vernon, Donald J. Yates.

"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.

The RECORD wishes to extend its heartfelt sympathy to the family and friends of Jeremiah Brickman (N. Y. U. '49) 2L whose death last Saturday night came as a sudden blow to all of us.

Honor System for Exams

Taking examinations is an old Harvard Law School tradition, and we bow to it, but it does seem that something could be said about the way in which the examinations are conducted.

Proctoring, is one way to deter cheating, but we are not sure that it is the best way. There is something of an adversary system in the proctoring process which has the unfortunate tendency of tempting some few proctorees to see what they can get away with. And in the legal profession, where a sense of honor is a prerequisite, it would seem that the mechanics of so important a function as taking law school examinations should be designed to promote that prerequisite.

Experience in Princeton and Virginia seems to indicate that the unpleasant business of weeding out the cribber can be accomplished without giving the student the feeling that he is not trusted to take an examination without close supervision. Where an honor system is in force, the rules of fair play are spelled out in detail. Students are on their honor not to cheat, and also to report those whom they have a reasonable basis of suspecting. Malicious reporting of a student is a very serious offense, as is a failure to report a clear violation.

We feel that there are benefits to all the students to be derived from a system that leaves the supervision of student examinations as a student responsibility; a system which instills in the overwhelming majority of the students the feeling that they are regarded as firm enough to conduct themselves properly in the examination room. The honor system purports to accomplish this; its merits and demerits could profitably be weighed.

Praising The Mock Trial

Two aspects of the mock trial held Monday in Langdell Courtroom deserve special commendation. As a technique of education, the process of first distributing the facts in a case, and then taking the controversy through the jury and appellate trial stages, should prove to be one of the best ways of introducing first year men to the study of law that could be arranged in a law school. Hard work in the preparation of the brief, and particularly the selection of very distinguished counsel guaranteed the success of the trials as an educational venture.

In the selection of the particular facts in the case those in charge of the program again excelled. The issues were vitally interesting to the student aware of the world about him; and with the student's interest aroused, the details of procedure, the applicable tort theories, all the legal aspects presented in the trial were much easier to get across. Most important of all, the connection between abstract legal theory and the dynamics of contemporary America was graphically made.

Letters to the Editor

To the Editor of the RECORD:

May we request publication of the following information on the policies and program of the Harvard Lawyers Guild for the benefit of students not familiar with our activities.

In the past the Guild has brought prominent and sometimes controversial men to the Law School to speak on current legal matters of national interest and importance. We have sponsored civil liberties seminars which were valuable supplements to the curriculum and conducted popular tours through federal and state courts. Our members have had opportunities to do research for *amicus curiae* briefs in civil liberties cases. This year all our past activities will be continued along with a new lecture and film series.

Our program is designed to take cognizance of the responsibilities of the liberal law student. At this time when the National Lawyers Guild is under severe attack from many ill-advised quarters carrying out our program may involve some difficulty. Nevertheless, we firmly believe that the Guild represents the attitude of the liberal lawyer today. Its support of UN action in Korea, its impressive record in the defense of the civil rights of unpopular defendants, and its grave concern with the invasion of individual freedom (revealed in its documented report on wire-tapping) prove this.

The ultimate success of our program will depend on an increase in our membership. In the near future we shall announce an open membership meeting which will present those interested with an opportunity to familiarize themselves with our members and our policies.

ALAN WESTON, 3L
President, Harvard Lawyer's Guild

To the Editor of the RECORD:

Many of the first and second year students are now busily engaged in research for their Ames arguments and third year men are working on their third year writing requirements. Consequently, Shepard's Citation are being used extensively. It's suggested, therefore, that students using the Citation, use them near the stacks in which they are located and not take them back to their seats all over the library.

HERBERT THAU, 3L

To the Editor of the RECORD:

In your engaging Gallery portrait of Professor John Humphrey Carlile Morris the statement is made that "an English student entering a university has already had the equivalent of an American college education." This statement surely requires correction. I dare say that the better students from the English public schools, thanks to a good bringing up as well as school training, may often seem "better educated" than the average American college graduate; but it is hardly true, in an academic sense, that they have had the equivalent of an American college course. That could not be expected of boys eighteen or nineteen years old.

JEROME D. GREENE, ex '00

Off the Record

The following opus first appeared in the *Marquette University Law School student publication OYER'S LAWYERS*. Professor W. Barton Leach, who brought it to our attention, has amended it to make it more applicable to the school here. Some variation in the terminology must be noted: "Briefs" for abstracts and "freshman" for first year man, etc.

Soliloquy

To brief or not to brief, that is the question—Whether 'tis nobler in the mind to seek alone The facts and broodings of bemuddled courts, Or to take arms against a sea of troubles And by canning, end them? To loaf, to can, To rest; and by a can to say we end The points of error and the countless griefs That Law is heir to, 'tis a consummation Devoutly to be wished. To loaf, to can; To can, perchance to flunk. Ay, there's the rub; For from a life of ease what faults may come When we have entered into our exams, Must give us pause. There's the respect That makes calamity of senior's briefs; For who would bear the whips and scorns of profs, The weekends lost, the many hours of work, The pangs of scorned love, the beers not drunk, The early loss of eyesight, and the pain That law demands her students undergo, When he himself might all this end With sets of canned briefs? Who would this bear, To grunt and sweat under a weary life, But that the dread of something in the end, The undiscovered questions from whose grasp No student doth return, puzzles the will And makes us rather bear those ills we have Than fly to others we know not of? The thought of June makes cowards of us all, And thus the native hue of canned briefs Is sicklied o'er with the pale cast of tests, And parties filled with song and exultation Become a thing of college days gone by; Law freshmen here are we. Soft you now; The noble Griswold comes! Dean, in thy promotions Be all my sins forgot.

Gallery

W. COVINGTON HARDEE
Assistant Professor of Law



One is immediately taken up with Professor W. Covington Hardee's refreshing enthusiasm for the law and the Law School. He attacked our little problem of writing a sketch of him with the earnestness and modesty of the best practitioners at the Bar. And rapidly the details and color worked themselves in.

He had always wanted to be a lawyer, ever since he could remember. In his modified drawl he related how he used to sneak into the courthouse as a small child to watch his father perform as advocate. And it had been Harvard Law School "from the very first." In 1940 he reached this goal, only to be cut short in his studies in 1942 by the Navy. Three friends, Jimmy Wilson, Covington Hardee, and Mallory Smith, all Southerners, joined the Navy from the Law School, and all three returned after the war to complete their studies.

Law Review Editors

Getting back to work, Professor Hardee told us, was not as dismal as he had expected. This he attributes to "a real desire and feeling for the law that most have who come to this school." He thought that mentioning this experience might serve to allay worries on the part of those who are being called for duty at the present time.

This bright trio worked up to be Law Review triumvirs: Wilson, President (now with Sutherland, Tuttle and Brennan); Smith, Case Editor (since tragically lost in a Cairo air crash); and Hardee, Note Editor. Professor Hardee graduated *magna cum laude* in 1947 and now returns to us after a three year absence. He thinks his practice during the interim with the firm of Ropes, Gray, Best, Coolidge and Rugg will stand him in good stead.

The School's system is enhanced, he believes, by the use of teachers from different fields of law; for example, professorial, government, and private practice. Each type emphasizes certain values and problems lawyers must face and it all should add up to a better curriculum.

Professor Hardee was enthusiastic about the new dormitories and thinks they will help the students intellectually and socially. The rooming houses which typified his era were none too gay nor were they conducive to study.

Outside Interests Varied

We asked Professor Hardee about his outside interests. They are writing reviews of books on law of public interest for the *Christian Science Monitor*, helping unsuccessful political candidates such as Roland E. Shaine and I. Y. Muchnick, defeated respectively for the Cambridge School Committee and for the Democratic nomination for Attorney General, and playing tennis and squash. His secretary interposed an addition: raking leaves and putting up storm windows.

During our interview the Professor nursed a burl pipe with a rather aseptic-looking cleaner. He thought it amusing that he, a Democrat, and Republican "Bullet Bob" Amory should both be teaching Corporate Accounting. It also amuses him that Bostonians think his accent a shade thicker than Rhett Butler's while friends in the South are sure by his speech he has been processed into a damn yankee.

Just Started Teaching

We then turned to law teaching as work. Although Professor Hardee had the worries of a beginner he has applied himself with characteristic Law School industry in preparing his courses in Corporations and Accounting. He spent the entire summer full-time mastering Amory's materials which he considers to be excellent for the needs of law students.

He overcame initial stagefright before his classes by telling them a joke; he would hate to think of his performance if it had not clicked. His Accounting class was especially amused when he told them he had never taken Accounting himself. But the class was gratified when he proved his summer had been well-spent.

Professor Hardee is married to the daughter of Professor Harold D. Hazeltine, a graduate of the Law School, who maintained his American

Sub Judice

STOP ME IF YOU'VE HEARD THIS . . .

Albers, while attending a luncheon, left the table at which he was being served, approached another table, stooped down and placed his arms along the shoulders of acquaintances who were seated at the table. In response to Albers' request one of these acquaintances told a humorous story, at which Albers laughed heartily. While still laughing, he straightened up, at which time he experienced a severe pain in his chest. This pain came from air escaping through a lesion or rupture into the chest cavity, resulting from the exertion of laughing. Albers had an insurance policy which provided for indemnity for loss resulting from bodily injury through accidental means. In a suit against the insurance company, Albers was allowed to recover his medical expenses. The insurance company appealed.

Held, on appeal, judgment reversed, cause remanded, with instruction to enter final judgment for the defendant insurance company. It was held that while the injury was accidental the means by which it had been affected was not and that, therefore, no cause of action had been proven.

Said the court, "... the plaintiff made a request of one of the men, who in response 'in a humorous kind of way—made a joking kind of statement' which caused all of them to laugh; the plaintiff harder than he usually did. The plaintiff was accustomed to laughing at jokes and his reaction in this case was not unexpected. The humor seems to have been invited and there is no suggestion that the humor produced a paroxysm, or that the laughter was uncontrollable. The mirth may have been uncontrolled, but not uncontrollable. While he was still laughing he started to straighten up. However, right at this point he felt a terrible pain . . . [resulting from] a lesion or rupture of the lung membrane. . . . There was nothing abnormal—nothing unusual in what had taken place. It was [only] the effect that was unusual." *Albers v. Continental Casualty Company* 57 Ohio Law Abstracts 410 (Dec., 1949).

GUEST GUESSES WRONG

A statute in the state of Washington makes it unlawful for hitchhikers to solicit rides. The statute also makes it unlawful for the driver of any motor vehicle to give a hitchhiker a ride. One Morton and one Diaz, in violation of the statute, solicited a ride from one Ursich, who was likewise violating the statute in offering the two a ride. As a result of Ursich's negligent driving, the vehicle ran off the road and hit a concrete pole. Diaz was killed and Morton was severely injured.

There is a host-guest statute in Washington which allows recovery by a guest only in cases of intentional misconduct by the host. In a suit for recovery, Morton and the administrator of the Diaz estate claimed that Ursich was deprived of the benefit of the host-guest statute because one should not be permitted to "create the relationship of host and guest by his own unlawful act." From a judgment dismissing the action, plaintiffs appeal.

Held, on appeal, judgment affirmed. An argument by the appellee (Ursich) that the parties were *in pari delicto*, and should therefore be left where the court found them, was rejected by the majority of the court. However, the court based its decision upon the fact that the host-guest statute did not specifically except hitchhikers.

Schwellenbach, J. dissents:

"The [host-guest] relationship was dependent for its creation upon an unlawful act of [the driver] himself. [The driver], therefore, as stated in [a previous case], 'by his own unlawful act put himself without the pale of the protection afforded by the statute which he seeks to invoke.'"

Grady, J. felt that the majority opinion did not state the proper basis for denial of recovery and so he filed the following concurring opinion: "[The anti-hitchhiking statute] deals with a different subject and has entirely different objectives. It is designed to prevent difficulties arising out of motorists giving strangers transportation, often resulting in the commission of crime, and the traffic hazards created by stopping on highways. Like many protective statutes, it is honored more by its breach than its observance. I do not see how a statute with such objectives can have anything to do with the formation of the host-guest or licensee relationship." *Bateman et ux v. Ursich*, 220 P. 314

citizenship while he was professor of law for 35 years at the University of Cambridge in England. The Hardees have one child, a 6 year old daughter.

Becoming and being a lawyer has always been central, natural, important and often exciting to him. But the most satisfying thing to him must be that he finds in his work a capacity for joy.

H. L. S.

Alumni Notes

LL.B. '26—Floyd Anderson has joined in the formation of the partnership of Anderson, Sulau & Drew, which has established a general legal practice at the Carew Tower, Cincinnati, Ohio.

LL.B. '28—James P. Hart has left his position on the bench at the Texas Supreme Court to become chief executive of a network of schools which includes the Southwestern Medical College in Dallas, and the Main Division of the University of Texas.

LL.B. '28—Milton Cook, a member of the Boston City Council, has been appointed to the Metropolitan District Commission.

LL.B. '29—Ernest Henry Breuer, formerly Assistant Law Librarian, has been appointed Acting Law Librarian of the New York State Law Library, Albany, New York.

LL.B. '39—Lawrence E. Corcoran has been awarded the National Award of Merit by the American Bar Association in his capacity as Director of Public Information for Massachusetts and more especially as the Director of the American Bar Association radio forum conducted in conjunction with the Yankee Network.

LL.B. '42—George Carnahan, formerly a member of the American Diplomatic Staff in Lima, Peru, is now associated with the research department of the Liberty Mutual Insurance Co. of Boston.

LL.B. '44 ('47), LL.M. '48—George Minkin, former Assistant Dean, is engaged in general legal practice with the New York firm of Riegelman, Strasser, Swarz and Spiegelberg, located at 160 Broadway.

LL.B. '48—Grant W. Wiprud has become a member of the firm of Douglas, Obar & Campbell which has its offices in the Southern Building, Washington, D. C.

Sorokin Raps Political Leaders, Weiner Urges Freer Inquiry At Forum

Requests for greater freedom of discussion and the prediction of a new ruling aristocracy of scientists featured the second meeting of the Harvard Law School Forum last Friday, held at Rindge Tech auditorium.

Participating in the panel discussion of *The Moral Responsibility of the Scientist* were Pitrim A. Sorokin, professor of sociology at Harvard; Norbert Weiner, professor of mathematics at MIT; and Henry D. Aiken, associate professor of philosophy at Harvard. Harlow Shapley, professor of astronomy at Harvard, was moderator.

Professor Sorokin, who declared that scientists are emerging as the new ruling aristocracy of the world, lashed out at the "ignorant and cynical" leadership of the politicians and statesmen of today.

Professor Sorokin revealed that scientific aristocracy is faced with the problems of whether to accept moral responsibility, how to raise morals above the tribal level and how to replace the antiquated political ruling class of today.

Professor Weiner urged that scientists be given greater freedom of discussion, pointing out that progress on most of the work underway to date has been hampered by restrictions on discussion.

In addition to the usual moral duties of any human being, the scientist has a professional moral duty to pursue truth, he declared. In that pursuit he must refuse to be merely an agent of the state.

Professor Aiken qualified the scientist's professional responsibility to seek the truth to the extent that truth is not the absolute to be sought. Instead, the attainment of the most for the common good should be the absolute guide to the professional duties, he said.

NEWS IN BRIEF

THANK YOU

Albert Ketcham, 2L, wishes to express his most sincere and heartfelt thanks to all who so generously donated their blood during his recent illness.

INTRA-MURAL FOOTBALL

With the playoffs in the intra-mural football leagues less than a month away, Shaw Hall is leading the Law League with a 3-0 win-loss score, while a three-way tie for first place exists between Chancery, King's Bench, and Lincoln's Inn in the Equity League.

Before the playoffs take place between the top teams in each league on November 20 and 21, each team will have played five games. The Law League is composed of the five new dorms and Hastings. The Equity League is made up of the three eating clubs and three other teams known as the Clowns, the Frogs, and the Oxen.

Climaxing the season will be the presentation of the PBH sports trophy to the winner of the playoffs by Herman Hickman, Yale football coach.

Al Cohen, director of the intra-mural leagues, has reported that an invitation has been sent to Yale Law School in the hopes that a game can be arranged between the top intra-mural teams of both schools.

P.B.H. DANCE

On the night of November 25 the Law School Committee of Phillips Brooks House will sponsor the "Yale Ball." The dance will be held in the Louis XIV Ballroom of the Hotel Somerset. The admission is \$2.40 per couple.

SELECTIVE SERVICE

Selective Service announces that a Transfer Board has been established at Phillips Brooks House to assist students by providing facilities for physical examinations, registration, and general information. Students asked to take a physical exam in their home town may have the examination transferred to this office. The phone number is EL 4-3590.

ENTERTAINMENT BUREAU

The Entertainment Bureau of the Harvard Student Employment Office, urges all talented law students who want to earn as they learn to register with Miss Branham at Weld Hall, 29 immediately. There are openings for puppeteers, magicians, bridge instructors, musicians, orchestra, ventriloquists, clowns, singers, and specialty acts.

The Entertainment Bureau handles bookings for these talented students of the University. Since there is no charge for this service, professional entertainers are much in demand by schools, clubs, churches, and other groups. The reputation of the Entertainment Bureau is spreading rapidly throughout the East. Requests have come in from all over New England.

New talent are urged to register now, since a brochure, "Let Harvard Entertain," compiled by the Harvard University Student Employment Office, will go to press soon.

LAW WIVES

Lawrence M. Jaffe will show colored slides of his trip to nine European countries to the Harvard Law Wives at their meeting tonight at 8 at Holmes Hall.

NEW BOSTON COMMITTEE

Jerome Rappaport, LL.B. '49, Executive Secretary of the New Boston Committee, announced recently that plans are being formulated by the committee to set up student units at all universities and colleges in the Boston area to arouse active participation in local municipal affairs.

TOURS-CRUISES

Airline-Train Reservations
UNIVERSITY TRAVEL CO.
18 Brattle St. KI 7-1650

Law School GOP, Democratic Groups To Debate Truman Far Eastern Policy

"RESOLVED: That Pres. Truman's policy in China is against the best interests of the U. S." will be the subject of a debate between the Democratic and the Republican Clubs of the Law School on Friday, November 3, at 10:30 p.m. over station WMEX, 1515 KC.

The Republican speakers will be Earl Kulp, Harvard '52, and Warren

Deutsch, 3L, William Gardner, 3L, and A. Goldstein, 2L, will speak for the Democrats. Professor Kaplan will moderate the discussion.

Friday's debate will be the last in a series of three held between the two organizations this year. The first debate pertained to the registration provisions of the McCarran Bill, while the second dealt with the current campaign in Massachusetts between Governor Paul A. Dever and Arthur T. Coolidge.

Democrats Active

Active on other fronts, the Democratic Club launched its election campaign last Thursday with beer and speeches at an open meeting attended by some 100 persons at Harkness Commons.

The principal speaker at this gathering was Rep. James O'Day, LL.B. '32, of Lowell. He compared the program and accomplishments of Governor Paul A. Dever with those of other leading Democratic administrations throughout the country.

Dever's program represents a progressive approach in the fields of labor, fair employment practices and social welfare, he said.

Francis J. Good, LL.B. '38, candidate for the State Legislature from the Cambridge area, also spoke.

On Nov. 14 the Democratic Club will meet to discuss the election results. At that time there is also scheduled an election of officers.

are brightening for the future," he announced. "The bureau has had good success with the June graduating class."

Applicants for Fulbright scholarships are the first group being called for interviews. Those who have not completed their placement record cards will follow and finally the remaining group will be called.

Restaurant

1640 Chez DREYFUS

1640 MASSACHUSETTS AVENUE
CAMBRIDGE, MASSACHUSETTS
TELEPHONE: ELIOT 4-8715

RIDES WANTED

NEW HAVEN, Fri., Nov. 3, after 12 Noon.
H. Rosen, 105A Shaw, EL 4-8111.

N.Y.C., Fri. Morn., Nov. 10, ret. Sun., Nov. 12;
2 students. M. Trachtenberg, 417 Story,
EL 4-8025.

HUNTER HAIG

\$58

The Harris Tweed Topcoat
OPPOSITE THE LAMPOON

HARVARD BOOK STORE

10% Discount on Law Student Aids
OPP. LAMONT LIBRARY
1248 MASS. AVE. Cambridge 38, Mass.

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

TYPING SERVICE

Constance Nelson — 1278 Mass. Ave.
Opp. Widner Gate
EL 4-4660

89c BUY YOUR ORCHID CORSAGE

AT 89c

TREELAND

(Only one block down Memorial Drive)

OXFORD SELF-SERVICE LAUNDRY

9 lbs. Wash—30c with soap
A Wash Load Dried—25c
Pick-up and Delivery Service—25c
1784 Mass. Ave., Cambridge KI 7-9579

Rackets Restrung

One Day Service \$3.50 to \$9.50
TENNIS & SQUASH SHOP
67A MT. AUBURN ST. CAMBRIDGE
opp. Lowell House. TR 6-5417

23 Years Catering to Harvard Men

PREPARE Your FORD NOW For WINTER DRIVING

Elbery Motor Co., Inc.

authorized

Sales FORD Service

Complete service including Body Paint
and Fender work and Wheel alignment

360 RIVER STREET, CAMBRIDGE

just off Memorial Drive

Phone KI 7-3820-21



OWN MAKE READY-TO-WEAR DINNER JACKETS and TROUSERS

Pure Silk Faced, From Light-Weight
Indigo Black Barathea Worsted

Single Breasted Shawl Collar,
Center Vented

JACKET and TROUSERS
\$95.00

IN NEW YORK
341 MADISON AVE.
cor. of 44th St.



Gentlemen's Tailors
Furnishers
82 MT. AUBURN ST.
COR. DUNSTER ST.
CAMBRIDGE

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

CENTRAL BARBER SHOP

Specializing in ALL STYLES of
Hair Cutting and Scalp Treatment
1611 MASSACHUSETTS AVENUE
Corner Everett and Massachusetts Ave.
Near the new Graduate Center

Tel. ELIOT 4-8371 11 A.M. to 12 Midnight

Young Lee Restaurant

CHINESE AND AMERICAN FOOD
DAILY SPECIALS
ORDERS PUT UP TO TAKE OUT

— o —

27-29 CHURCH ST. CAMBRIDGE
(Harvard Square)

Calendar

UNIVERSITY WORLD Point Four Discussion

Professor Hussein Kamel Selim, dean, Faculty of Commerce, Fuad I University of Cairo will describe the *Economic and Political Trends in Egypt Today* this evening at 8 in the Wheeler Room, Holmes Hall. This talk is sponsored by the Graduate Economics Club and is part of a series on the *Economic Development of Underdeveloped Countries*.

OUTSIDE WORLD Bertrand Russell

Bertrand Russell will speak in the New Lecture Hall on Friday, November 3, at 4:30. The topic will be *Mind and Matter*.

Brandeis Institute

The topic in the music series this evening will be the *Revolt Against Romantic Rhetoric: Technical Innovations of the XX Century*. The speaker will be Irving Fine. Max Lerner's subject Thursday evening at 8:15 will be *Business Capitalism and State Capitalism: The Case of America and Britain*.

The lecture in the Poetry series on Thursday will be concerned with *The Visionary Worlds of Gerard de Nerval and the Later Hugo*. Tuesday evening, Lee Strasberg, noted Broadway director, will speak about *The Director and the Theater*.

Ford Hall Forum

Sunday evening at 8, David Bradley has as his topic *No Place to Hide*. This is the same title as his recent book discussing the implications of the atom bomb tests on Bikini.

Current and Choice

The D'Oyly Carte Company at the Boston Opera House is presenting Gilbert and Sullivan operettas; John Gielgud in *The Lady's Not for Burning* by Christopher Fry at the Shubert; *The Country Girl* by Clifford Odets and starring Paul Kelly and Uta Hagen at the Majestic; and Rex Harrison and Lilli Palmer in *Van Druten's Bell, Book and Candle* at the Plymouth.

CHAFEE—(Continued)

disputable. It sets up systematic expurgatory oaths. It severely punishes associating with men of like opinions, which is mostly not a crime.

Expurgatory Oaths

The expurgatory oath should be compared by state bar associations with the opinions of the Supreme Court in *Cummings v. Missouri* and *Ex parte Garland*, 4 Wall. 277 and 333 (1867). Here as elsewhere, it is not just an issue of unconstitutionality. Lawyers should think a long time before they depart from any great tradition of liberty, even if the Court will perhaps uphold the measure because of unwillingness to interfere with a state's management of its own affairs. "Test oaths, designed to impose civil disabilities upon men for their beliefs rather than for unlawful conduct" were, as Justice Black says (325 U.S. at 577), "an abomination to the founders of the nation." Alexander Hamilton denounced them (4 Wall. 330-1) as a subversion of the "great principle" of the presumption of innocence. They "invert the order of things and, instead of obliging the State to prove the guilt, in order to inflict the penalty," they "oblige the citizen to establish his own innocence in order to avoid the penalty." They "excite scruples in the honest and conscientious, and . . . hold out a bribe to perjury." To quote Black again (339 U.S. at 447), "wherever the test oath was in vogue, spies and informers found rewards far more tempting than the truth."

This expurgatory oath is especially bad because of the vague behavior which a lawyer must disclaim, to avoid thorough investigation of all his "activities and conduct." Really dangerous lawyers can be ignored. If they are ready to start a revolution, why should they boggle at false swearing? Spies will take a chance on a perjury prosecution. I leave till later other lawyers who are Communists without personally aiding any criminal acts; they naively ac-

cept the lawful political beliefs set forth in the party constitution.

What really matters is the loyal lawyer, who is no Communist but has participated like other forward-looking men and women in unpopular enterprises, especially those irresponsibly labelled as "Communist fronts." These "honest and conscientious" men, whom Hamilton described, will occasionally refuse to take the oath. They remember their admission to the bar and their heartfelt promise to support the Constitution. They believe (not unreasonably) that this unprecedented oath violates at least three provisions of that Constitution. They consider it an unwarranted invasion of their liberties for anybody to make them disclose their lawful private opinions and activities about politics and economics. A main effect of loyalty oaths for teachers, in Massachusetts and the University of California, was to throw out of the profession a few persons of recognized loyalty after years of devoted service. The same thing will happen in the legal profession. Such men may be called over-conscientious, but excessive scrupulousness is not so common among lawyers that we can afford to drive it out of the bar.

Uncertainty in the Law

Most conscientious lawyers, however, will do what the court requires but they will be puzzled about what to swear. Look how many vague words the A.B.A. oath contains. When is one "affiliated" with the Communist party? Does "supporter" of an organization mean only paying money? He did support some of its activities in conversations or speeches. The biggest problem of all is whether some peaceable non-Communist organization he did belong to is proscribed by the oath (clauses [f] and [h] in my summary). Is "espouses" the same as "advocates," or something less? What means are "illegal or unconstitutional"? Is he bound by the list of subversive organizations published by the House Un-American Activities Committee, which includes the Southern Conference for Human Welfare and the Committee to Free Earl Browder? Or may he safely exercise his own judgment?

Suppose he honestly decides his organization is not within the oath, but the community would like to run him out of the bar. If the court disagrees about the nature of the organization, it may also find he has "wilfully sworn falsely" to this "fact," and disbar him. The oath is what Justice Roberts (301 U.S. at 263) called "a dragnet which may enmesh anyone who agitates for a change of government." Its vague phrases are an open invitation to hostile judges to deprive any heterodox lawyer of his livelihood.

(Continued Next Week)

MOCK TRIAL—(Continued)

tests." Here, defendant intentionally caused mental suffering in order to cause the plaintiff to break off an advantageous economic relationship.

After the decision of affirmance, the court indicated that it would have reversed if the issue had been solely that of intentional infliction of mental suffering. That issue, however, need not be dealt with, said the court. The verdict indicated that the defendant had more than mere castigation in mind. He sought to disrupt the plaintiff's beneficial arrangement by inflicting mental distress and therefore is liable.

JAPANESE—(Continued)

functions of the judicial branch have been patterned on the American model the visitors are studying the structure and operations of our system.

The group is particularly interested in the personal and procedural aspects of the United States Supreme Court; in the way this court makes use of its power of judicial review and manages its administrative business. Since the Japanese court procedure has been criticized frequently for its slowness, the visitors will observe how American courts organize their dockets, how they prevent delaying tactics, and master comprehensive evidence.

EXETER EXETER & NEWBURY STS.
BOSTON KE 6-7067
D. H. LAWRENCE'S
Rocking Horse Winner
PLUS
Jacqueline Misbehaves

M. L. S.—(Continued)

action have been abolished and have been replaced by three main forms of action, i.e. Non-Action, Counter-Action and Subversive Action. The most interesting feature of Soviet pleadings is the Boomeranging Demurrer which searches the record for any skeletons in the pleader's closet and may end up by having the pleader indicted for treason.

Recently the Soviet Law Institute codified the so-called Workers' Rules of Civil and Criminal Procedure. Greatly expanded procedural devices are mentioned therein such as the deposition and discovery process known as the Third Degree.

Shock Treatment

CRIMINAL SUBSTANTIVE LAW: American law students have a tendency to be mildly shocked by the use of circumstantial evidence in criminal trials in the United States. This practice also shocks Soviet legalists, so no one in the Soviet Union can be convicted without the most direct evidence imaginable, i.e. his own confession. The art of extracting these confessions is known only to a few persons in the Soviet hierarchy and is handed down from father to son along with a small vial of sodium pentathol.

The Russian substantive criminal law does not seem too different from ours. Defenses to certain crimes present the interesting contrast to our law. The definition of the defense of insanity, first ruled upon by the Praesidium of the Supreme Soviet in *McNaughtonovitch's Case* allows the defendant in a murder trial to be freed if (1) he did not know the nature and quality of his act, and (2) the fellow he killed was a Tool of the Wall Street Capitalists.

AGENCY: There is no law of agency in the Soviet Union since no one is allowed to work for anyone else, and in effect everyone is both servant and agent of The State, (which makes it pretty tough on Adams, Peters and Tidd, who are unable to find jobs).

No Consideration

CONTRACTS: The general protection afforded contracts in the Soviet Union could probably be summed up in one word "NONE!" In the now famous case of *Hawkinskovich v. McGheesky*, 2 Nizhni Novgorod 161 (1923); also noted in 21 *Vladivostok Law Review* 518, the

rule was stated, which has been followed ever since, that the effort is to put the injured party in just about as poor a position as he could have been put if he had not made any contract at all.

The course is divided into three parts, to wit: The Offer, The Acceptance, and The Breach. There is some discussion of third party beneficiaries since the State is a third party beneficiary of all contracts made in the Soviet Union.

Some years ago positive confusion reigned in the U.S.S.R. when it was noted by the Ministry of Shipping that all cargo vessels in the Soviet Union were named "Peerlessnikoff." Immediately an emergency meeting of the Politburo was called known as "The Meeting of the Minds" and an agreement was reached whereby nothing would be shipped on any of these vessels until names were changed. The resulting confusion which followed has been appropriately called the 10 Days That Shook the World.

Lead Medals

PRIZES AND SCHOLARSHIPS: The highest honor to be attained by a Moscow Law School student is the Order of the Non-Assignable Chose in Action, awarded annually for the best translation into Inner Mongolian of the Statute of Uses. A Stakhanovite Medal is also awarded for the most prolix law review note. It was awarded last year to Boris Lavaris for his breathtakingly emotional article on the Soviet transportation system called *Stoppage in Transitu*.

The school is highly endowed with millions of deflated rubles and Czarist money which is practically worthless today but which provides the fund for all scholarships, the best known of these being the "Ivan Ivanovich Memorial Scholarship to the Second Year student from Omsk, in the District of Minsk, in the Area of Tomsk, who attains the highest mark in the Conflict of Laws examination." This scholarship has never been awarded since Conflicts is only taught in the third year.

—S. L. G.

HUNTER HAIG

\$35

The Harris Tweed Sportcoats
OPPOSITE THE LAMPOON

TOPCOATS

Make your selection from our large stock of rugged topcoats—several excellent manufacturers, wide variety of quality fabrics, up-to-the-minute styling and superior tailoring. Your inspection is invited.

GABARDINES

Unlined \$50 to \$65
Lined \$60 to \$77.50

HARRIS TWEEDS
\$45

COVERTS
\$45 to \$65

SHETLANDS
\$55

The COOP

"JOE" KEEZER PAYS MORE FOR YOUR USED CLOTHING JEWELRY—AND PERSONAL BELONGINGS

Call KI 7-2455 or bring your clothes to

HARVARD COMMUNITY EXCHANGE

1094 MASS. AVE.

CAMBRIDGE

Longest "Old Clothes" Man at Harvard University

DALTON-ELCOCK BAR REVIEW

"The Fall Review, preparing candidates for the December, 1950 Massachusetts Bar Examination began September 18, 1950 and will end December 21, 1950. Classes are held Monday, Wednesday and Thursday evenings from 6 P. M. to 9 P. M."

Class will be given during the day.

For information write:

Dalton-Elcock Bar Review
Ten Post Office Square, Room 915
Boston, Massachusetts
Telephone HA 6-2850

SAVE 10% with a meal ticket at

CARSON'S RESTAURANT

26 Years at

466 Broadway, Cambridge
Just a block from the Yard

GOOD FOOD

Breakfast : Luncheon : Dinner
7:00 A. M. 7:30 P. M.