

The Harvard Law School Record

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PRICE TEN CENTS

Military Status Questionnaire Shows Fall Enrollment Drop

Results of the Military Status Questionnaire indicate that Harvard Law School can expect a decrease of nearly 400 in the enrollment of second and third year men for the fall term of this year.

This questionnaire, distributed to first and second year men by the Placement Office shortly before Christmas, was returned by 88 per cent of the students receiving it.

Of the 511 first year men and the 463 second year men, 134 had received their orders as of December. Another 86 men had been classified 1-A although they had been assured of induction postponements until June.

A total of 210 men are in the reserves or national guard. The greatest proportion of these, 140, are in the inactive reserve, and only 33 had been assigned to units.

Only 21 men had been granted 2-A classifications, and 13 were 3-A. Largest of the deferred classifications was 4-A, 225. Only 13 of these are now 26 years old and are almost sure of remaining exempt under the present law. The remainder are eligible for more than a year. A total of 38 of these are married.

Forty-three men have 5-A classifications, over 26 years of age, and 60 are 4-F.

A faculty committee, headed by Professor Louis Jaffe, has been established to consider the problems presented by the mobilization program. Other members are Professors Henry Hart, Benjamin Kaplan, Robert Braucher, and Assistant Dean Louis Toepfer.

Because of the uncertainties surrounding the present manpower situation, however, the committee, though considering a wide variety of steps, has not as yet reached any decisions regarding possible changes in the Law School.

Several positions on the Record news and business staffs are now open. Interested second year men may obtain further information from Miss Murphy, at the Record office.



Students and their guests relaxing in the Swaine room.

Bevins Announces Rules Governing Students' Use Of Commons Rooms

Assistant Dean Wesley E. Bevins, Jr., head of the Dormitory Office, announced recently the general policy for student use of the common rooms in the new dormitories.

As the common rooms are primarily for the benefit of the students, the Dormitory Office has placed the following restrictions on the use of these rooms:

1. The organization scheduling the rooms must consist of approximately 90% Harvard graduate students or their wives.

2. Persons attending the meetings must be predominately graduate students or their wives. This means that

meetings which are open to the public cannot be scheduled in the Graduate Center.

3. On weekends (6 p.m., Friday to 12 midnight, Sunday) the large Meeting Room in Harkness Commons can be used only for meetings of a purely social nature and there are to be no preceding lectures or business meetings. At other times the room may be used for quasi-social events provided that attendance will be over 100 persons. The Wheeler Room is open at all times for meetings at which the attendance will be greater than 25 and less than 100 persons.

4. No meetings may be scheduled more than one month in advance and no organizations may schedule more than one meeting per week.

Students who wish to have a private party in a common room may do so if the group is over 20 people and the persons invited to the party are predominantly graduate students.

Saturday nights are reserved for the use of the Graduate and Law School Dormitory Council Dances which have proved to be a huge success. Bridge games are allowed in the snack bar evenings, Monday through Friday.

The scheduling of meetings will be done through the office of Assistant Dean Bevins, Alumni Center, Walter Hastings Hall. Under exceptional circumstances, these restrictions may be waived upon joint consultation and agreement between Assistant Dean Bevins and Assistant Dean McLoughlin.

Precedent, Book Shortage, Not Disdain Prevent English Citation Of U. S. Cases

This article was written especially for the Record by John H. C. Morris, D.C.L. (Oxford '32) Visiting Professor of Law from Magdalen College, Oxford.

Why don't English courts cite American cases? That is a question which I have often been asked since I arrived at Harvard. There appears to be a widespread impression that English courts pay no respect to American decisions. If such an impression exists, I would urge that it be reexamined in the light of the following considerations.

In the first place, it is simply not true that English courts never cite American cases. There are celebrated instances, well known to every English lawyer, in which the citation of an American case has not only turned the scale in the instant case, but has overturned the previous weight of English authority and caused whole new chapters to be

written in the text-books. I will give one illustration. In *Donoghue v. Stevenson*, (1932) A. C. 562, the plaintiff purchased a bottle of ginger beer in a cafe. The ginger beer had been manufactured by the defendants. It was contained in an opaque glass bottle so that the contents were invisible until they were poured out. When the plaintiff filled her glass for the second time, there floated out the decomposed remains of a dead snail. In consequence partly of what she had seen and partly of what she had drunk, the plaintiff became seriously ill. She sued the manufacturers for damages. There was no question that the manufacturers had been negligent in not preventing the snail from finding its way into the bottle. The only question was whether they owed a duty to the plaintiff. The overwhelming weight of English authority said no, on the seemingly irrelevant ground that the plaintiff was a stranger to the contract between the manufacturers and the retailers. But the House of Lords by a majority of 3 to 2 overruled the earlier cases, preferring the result reached in *Macpherson v. Buick Motor Co.*, 217 N. Y. 382 (1916). Lord Atkin said: "It is always a satisfaction to an English lawyer to be able to test his application of fundamental principles of the common law by the development of the same doctrines by the lawyers of the Courts of the United States". This is, no doubt, a striking and extreme example, but it is not an isolated one, as anyone can see by looking at almost any volume of the Law Reports.

Infrequency of Citation

I shall probably now be asked, "Granted that English courts do sometimes cite American cases, why don't

(Continued on page four)

Prof. Chaffee Donates Classical Music Player

Thanks to a gift by University Professor Zechariah Chaffee, Jr., a large, custom-built phonograph and a set of classical records will soon be placed in the Wheeler Room of Holmes Hall. The gift is to be dedicated to Donald Fairfax Ray, LL.B. '12, who died during World War I.

The instrument is to be assembled from specially built parts, including a cabinet uniquely designed by Architects' Collaborative to fit in with the atmosphere of the room as well with the makeup of the machine itself. The phonograph will also include a Klipsch Speaker System, a high fidelity unit containing separate horns for high and low frequency channels, permitting a wider range of variation.

Rise In Food Rates Waits On Price Board Approval

Confronted by rising food costs and increased labor expenses, the University will announce an increase in board rates as soon as confirmation is received from the Office of Price Stabilization, Vice-President Edward Reynolds announced this week. A rise in room rents is also contemplated but will not take effect until after the conclusion of the present school year.

The University has postponed the new board rates, which were to take effect

on February 1, until it learns whether the price freeze applies to colleges and charitable institutions.

The contemplated rise will mean one dollar per week more from those who have signed on permanently and proportional rises in the transient prices.

Mr. Reynolds explained to representatives of the Dorm Council and the Record that these increases were caused by two factors:

(1) Toward the end of last year, the University granted a five per cent increase in wages, to all employees. This was coupled with a one-and-one-half per cent increase for Social Security taxes as the University employees came under coverage for the first time.

(2) The primary reason for the price rise is the sharp increase of food costs. As an example, Mr. Reynolds pointed out that in the last six-month period the University dining service served 73,000 less meals than during the same period in the preceding year, yet the cost increased by \$80,000.

Thus far, Harkness Commons serves more daily meals than did the old Vanserg dining hall last year, and is showing a profit. Assistant Dean Bevins assured students that if any surplus results it will be used for better food. There is also some possibility of lowering prices in the Grill Room. Dean Bevins explained that it is still too early to say definitely whether Harkness will show a profit for the full year since college dining halls usually operate on a declining return in the last part of the school year.

During the last war, the OPA ruled that price controls did not apply to colleges and charitable institutions. Whether the present controls will apply is still in doubt. If they are held to apply, the University may be forced to charge extra for second portions, which heretofore have been available on an unlimited basis. Mr. Reynolds claimed that Harvard is the last of the Ivy League schools still offering unlimited seconds at no extra charge.

Leach Talks On Korean War Tomorrow At First 'Coffee Hour' Program

The Harvard Law School Coffee Hour inaugurates its weekly program tomorrow at 1:30 p. m., in the lounge of Harkness Commons. At 2 p. m., Professor W. Barton Leach will open the series of talks with a discussion of Ground-Air Operations in Korea.

Originators and directors of the Coffee Hour program are: Thomas W. Pearlman, 2L (Amherst '49), Providence, R. I.; Myles S. Backman, 1L (Brown '50), Providence, R. I.; and Andrew Vance, 2L (Harvard '48), Washington, D. C. The elements of the plan were given the approval and aid of Deans Livingston Hall and Wesley Bevins. Also contributing their share to the success of the operation are the Harvard Law Wives, who will serve the coffee, which the Law School will supply free.

In line with the policy of informal talks by prominent figures, Walter Gropius will speak on Planning the Graduate Center on Thursday, February 15. Professor Edwin O. Reischauer, of the Far Eastern Dept. at Harvard is to give a talk on the Korean situation, Wednesday, February 21.

Modeled after a similar program in use at Brown University, planning for the Law Coffee Hour was begun in the first semester. Its general purpose is to provide students some relaxation from the specialization of their classroom hours. Stress has been put on the informality of these gatherings and listeners will have a question-and-answer period at the conclusion of each talk.

Holmes Philosophy Is Howe's Subject In Review Feature

The Positivism of Mr. Justice Holmes by Professor Mark De Wolfe Howe will be the lead article in the February issue of the *Harvard Law Review* to be published February 10. Professor Howe, former Dean of the Buffalo Law School, seeks to refute the oft-made contention that Justice Holmes was not concerned with the influence of morality on law.

Author of *Touched With Fire* and *The Holmes-Pollock Letters*, Professor Howe is now compiling the correspondence between Holmes and Laski. In his current article he considers Holmes' philosophy in the light of his early training and experiences.

The paper was originally the basis of an address at the University of Buffalo under the auspices of the Fenton Foundation. It first appeared in shorter form in *Measure*.

Professor A. James Casner presents a discussion of the drafting problems in the creation of trusts which are designed to obtain the estate marital deduction, in an article entitled, *Estate Planning: Marital Deduction Provisions of Trusts*. Prof. Casner furnishes examples of provisions which meet the requirements necessary to qualify trusts for the deduction. In the second issue of the present volume, Prof. Casner discussed the role of power of appointment in estate planning.

Mr. Lewis D. Spencer, a member of the Chicago firm of Eckert, Peterson & Leeming, discusses the disposition of tax cases which come before the agent in charge of various tax offices. He traces the procedure to be followed during the audit of a return and the hearings held.

An analysis of the mechanics of railroad equipment trust financing and of the more serious consequences of the diverse state laws is made by Mr. DeForrest Billyou, associated with the firm of Cravath, Swaine and Moore, Chicago.

NEWS IN BRIEF

JUDGE CHOOSES ECONOMIST

Judge Charles E. Wyzanski, Jr., LL.B. '30, has appointed Asst. Prof. Carl Kayser of the Harvard University Department of Economics as his law clerk. Judge Wyzanski, now trying the Government's anti-trust suit against United Shoe Machinery Corp., said Mr. Kayser would advise him on the economic phases of the voluminous evidence being submitted. District Court officials have said the move is without precedent in the U. S.

FIRST ROUND PRIZES

The Board of Student Advisors announced early this month the first year prizes for first round Ames arguments and briefs. Prizes for the best orals went to Murray Drabkin, 1L (Hamilton '50) of Portchester, N. Y. (Glueck Club); and Gerald Gunther, 1L (California '50) of Brooklyn, N. Y. (Webster Club). The prize for the best brief was won by

Robert Patmont, 1L (Brooklyn '50) of Berkeley, Calif. (Marshall Equity Club). Prizes to each consisted of law books of their choice.

APPLICANTS FOR H. V. D.

As stated at an open meeting in Langdell North Middle on Friday, February 2, The Harvard Voluntary Defenders is now accepting application for membership from all interested second year men. Letters must be submitted to Mrs. Cushman at the Legal Aid office in Gannett House by Friday, February 9 at the latest and are to contain name of applicant, reason for desiring membership, and experiences in administration of criminal justice or related fields.

ROSS ESSAY CONTEST

The American Bar Association announces that it is conducting an essay

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CHANGES OF ADDRESS should be sent to the RECORD office, Austin Hall, Cambridge 38, Massachusetts, at least three weeks in advance to insure prompt delivery.

Credit Where Credit's Due

We of the RECORD sometimes indulge in criticism but we seek also to give credit where credit is due. In that latter category the excellent work of Harvard Law School administration and the alumni organization is too often assumed and less frequently commended. Without attempting to specify exhaustively we would like to review some of the more recent developments as we start Volume Number 12.

The present administration had done a splendid job in seeking for its students what they seem to require. The group work program inaugurated for first year students certainly aids in understanding legal technique. The individual attention and practice examinations at the half year mark result in a better appreciation of taking law school examinations and understanding legal topics. To improve what was once a dismal housing situation, new dormitories and better living accommodations have been provided. Dining and recreational facilities are provided at the new Harkness Commons building. The drastic revision in the second and third year programs is a realization of the growth and new importance of certain areas of the law. These are some of the improvements that have kept the Harvard Law School outstanding in the field of legal education and should keep the Harvard Law graduate among the leaders of this nation.

In addition, to uphold any school's standards it is essential to have an organized and actively interested alumni. The Harvard Law School Association has done much to aid the Law School. The Law School's share of the expenses involved in erecting the new Graduate Center are almost paid for. The splendid financial support by alumni contributions is largely responsible. The continued backing of the school by organized alumni is absolutely essential. Every alumnus should be a member of the Association in order to keep his affiliation with the School alive and effective.

Letters to the Editor

To the Editor of the RECORD:

The Forum Board of Directors appreciates the excellent publicity and the interest which the Editors of the RECORD have taken in our activities. The constructive criticism offered in the Dec. 13 issue calling for more controversial forums is indicative of this continuing interest.

However, we must correct any erroneous ideas as to Forum policy. The Forum has always attempted to present controversial, timely, and interesting topics featuring recognized authorities. The real problem arises in trying to effectuate this policy. Programming difficulties often arise because of the tendency of some speakers to minimize or avoid controversy. We must depend on the moderator to overcome this type of obstacle since it is impossible to predict with 100 per cent accuracy what an individual's performance will be on a particular evening. Another factor which must be given attention is that of avoiding as much as possible the superficiality of treatment which may result

because of the limited time allotted to speakers.

These considerations are always before the Forum's Board of Directors. We feel that the programs planned for the 1951 spring season effectively carry out these policies.

LOUIS DEL DUCA

Secretary, Law School Forum

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To the Editor of the RECORD:

Professor Jaffe apparently neglected to tell your Gallery reporter (RECORD, Nov. 29, 1950) that it was during his tenure as Dean of the University of Buffalo School of Law, and largely through his efforts, that in Oct., 1949 the new law school building was dedicated. We provincials are mighty proud of our new school and of those who made it possible. So far as the quality of the Law taught here, suffice to say that Harvard saw fit to draft from us not only Professor Jaffe, but Professors Howe and Brown as well.

Should any of Professor Jaffe's first year students in Torts be tempted to double-talk his way out of a corner, let him be forewarned; although the RECORD (*supra*) does not mention it, Professor Jaffe taught Torts, too.

BERNARD SICHERMAN, LL.B. '47
University of Buffalo

* * * * *

To the Editor of the RECORD:

The story about the interchange between Mr. Justice Holmes and appellant's counsel (Off the Record, Dec. 6, 1950) reminded several of us of a story told of the late Matt Excel, one of the sharper-tongued trial counsel in Ohio a generation or so ago.

He was defending a carpenter, of German extraction, against a charge under the Sedition Act. In his opening statement to the jury, he began somewhat as follows:

"Almost 2,000 years ago, in the city of Jerusalem, a poor, Jewish carpenter was on trial in the Imperial Court on a charge of sedition. . . ."

When he got that far, the Federal judge hearing the case (who had a well-deserved reputation for being very stern, sharp-tongued, and especially hard on alleged wrong-doers) interrupted and said:

"Mr. Excel, do I understand rightly that you are about to compare the prisoner at the bar with our Lord?"

Mr. Excel: "I would not be guilty of such profanity, your Honor. I was merely about to compare this court with that of Pontius Pilate."

EDWARD I. WALLACH, LL.B. '31

Off the Record

OVERHEARD IN THE TUNNEL BETWEEN AUSTIN AND LANGDELL

A Third Year Man gleefully explains Professor Baker's (*Corporation II*) course to a neophyte:

3L: Well—you take a two-class, watered white elephant with soft spots . . .

2L: Uh . . . yes . . .

3L: And it's shut in a box, suffering plenty of grief . . .

2L: But . . .

3L: Then, unless you get nimble with your dividends, you'll probably put it through a bath, squeeze out the water, and slap a freeze on the junior gravy so the cushion men won't kick—or else offer 'em a big stick of candy. See?

2L: What's a . . .

3L: But if 34(b) starts to bite—as it sometimes will—you'd better call in the noncallable preferred, collapse it, or inject a Shanik and make it switch upstairs—unless the flank is really well protected . . . Of course, a slow scotch might help, but whatever way you cure this elephant, don't be too cute, or the court will plump against it. Think you've got it now?

2L: Well, I . . .

3L: That good. Just remember that, essentially, it's a course on how to turn a shoe string into a gold chain. Nothing to it. . . . ELLEM

ODE TO ST. IVES

St. Ives, thou art the lawyer's saint:

Canst thou not help us moderately

to make the RECORD's columns be

what now they lamentably ain't?

Surely it would be good to see

a rime of semi-purity,

a gracious, cleanly riming—and

a piece of verse that really scanned.

St. Ives, whom lawyers hold in awe,

help them merge some Art with Law.

DIOPHANTUS J. S. TEUFELSCROCH

* * * * *

SQUIBS FROM SCOTT V. SHEPHERD

Bright comeback heard in Professor Seavey's TORTS Class, Section 3:

Professor Seavey to Student: When is a tort committed in the case of fusing and lighting a bomb?

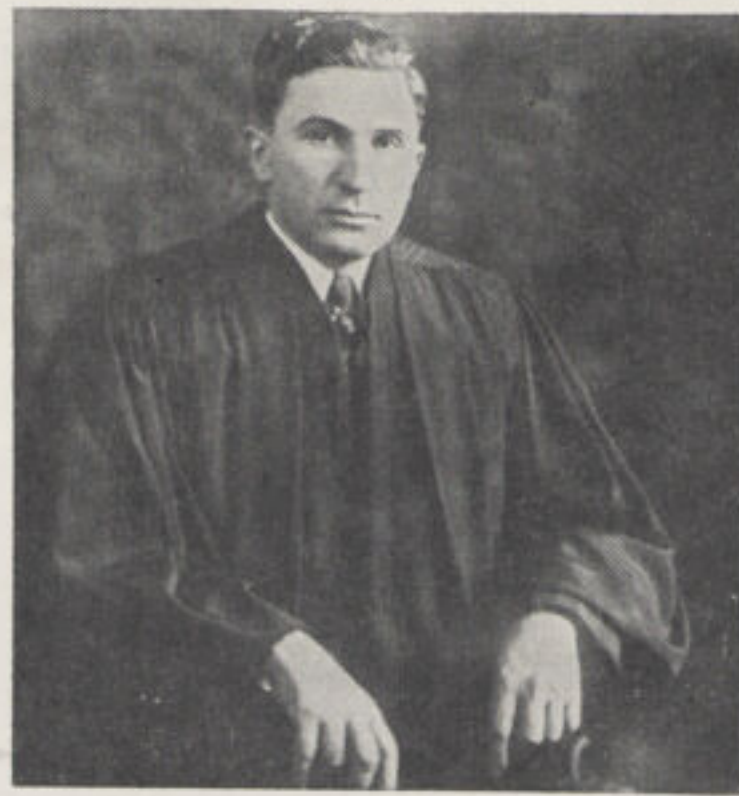
Student: When the bomb goes off.

Professor Seavey: Because???

Student: Because otherwise one could set a fuse long enough to outrun the Statute of Limitations.

Gallery

NATHAN L. JACOBS
Judge



"Jack of all legal trades — and master, too" would probably be an apt description of Senior Judge Nathan L. Jacobs of the New Jersey Superior Court.

The Judge, who believes in a well-rounded career for a lawyer, has adhered to his own philosophy. Practitioner, teacher, government counsel, labor arbitrator — all that and more are packed into a career which began when he graduated from Harvard Law School in 1928.

From such a wealth of experience, one might find it hard to select a single accomplishment which stands out above the rest, but Judge Jacobs does not hesitate to say that his work in helping to revamp the New Jersey judicial system clearly holds that distinction. Although he had never run for public office previously, friends prevailed upon him to be a candidate for delegate to the State Constitutional Convention in the summer of 1947.

Because of the summer-long illness of the chairman, Judge Jacobs served as acting head of the committee during the entire Convention. He worked hard in his modest, but firm manner to help achieve the sweeping revision that converted the obsolete New Jersey system into what many have called one of the most modern and efficient judiciary setups in the country. Striving for perfection, the committee achieved both flexibility (judges are switched from one court to another to ease the load on the busy courts) and unification (the chief justice is the administrative head of the entire State judicial system). So successful was Judge Jacobs and his committee that New Jersey appellate tribunals often can hear cases less than a year after the appeal is filed, while in the federal circuit courts, for example, the time lag is frequently as much as three to five years.

Extra-Judicial Work Forbidden

One shortcoming that the Judge finds in the New Jersey system is that the judges can't undertake any extra-judicial work. This provision forced Professor Jacobs to resign from his position on the faculty of Rutgers Law School after 19 years of service there. Teaching, he feels, is an experience all practicing attorneys could profit from. "It enables the lawyer to keep abreast of new philosophies and concepts in the profession and to turn his attention toward the intellectual aspects of his work."

Judge Jacobs met with immediate success in his first contact with law, finishing his initial year at the law school at the head of the class. He graduated second—behind a student named Erwin Griswold—in a class that included Professor Louis Jaffe and Governor Alfred Driscoll of New Jersey. He was Note Editor of the Law Review. After completing a year of practice and teaching in Newark, he returned to the Law School to get his S.J.D. in 1931.

The next 17 years he spent alternately in private and public practice. During this period Judge Jacobs served as Chief Deputy Commissioner on the first Alcoholic Beverage Commission in New Jersey, Chairman of the State Labor Arbitration Board, and Counsel for the State Office of Price Administration. In the spring of 1948 he was appointed to the old New Jersey Supreme Court and when the revision took place in September of that year he assumed his present position as Senior Judge of Part A of the Appellate Division of the Superior Court.

Pride in Faculty

Perhaps it's a little bit of the teacher in him that makes the Judge look with intense pride and admiration on the Harvard faculty during his years at the Law School. He has a picture hanging in his chambers of the entire group, among them such men as Beale, Pound, Frankfurter and Williston. "The men in our class thought they were the finest faculty the Law School ever had, but," he conceded smilingly, "I've heard some good reports about the present staff too."

Responding to a question as to whether he

Sub Judice

THE WANDERING JEEP

The amount of \$2,627.95 was at stake in a recent case before the U.S. Court of Claims. The outcome of the case depended upon whether the jeep was primarily a passenger or freight vehicle; railroad transportation rates were higher for one than for the other. The government paid the lower rate, contending that the jeep was primarily a freight vehicle. Union Pacific RR brought suit for the difference in the two rates, claiming that the jeep was primarily a passenger vehicle.

Held, the jeep is primarily a passenger vehicle. Jones, C.: "The jeep, having been everywhere else, is now in court. Wherever anyone went the jeep was there. It frequently aggravated, but made itself indispensable. The name of the jeep is shrouded in mystery and involved in dispute. It is most generally thought to have been nicknamed by some soldier after a character in the Pop-eye Comic Strip. At any rate it became the darling of the whole army. . . ."

"A number of experts testified, differing greatly in their conclusions. We were somewhat confused when we started and when we had finished reading their testimony our confusion simply covered a wider range. . . . True [the jeep] was used for hauling, but that does not necessarily make it primarily a cargo truck."

"When I was a boy, calves being more numerous and cheaper than ponies, we undertook to substitute by using a calf named Bobby. We built a wagon—entirely homemade—using a cracker box for a bed and four unmatched wheels. After several run-aways and wrecks we had the calf trained so we could not only do light hauling but could ride him. We called him our little pony. But somehow nature had intended him for other purposes and we finally gave up. We almost shed tears when they slaughtered him for beef. The memory lingered on and we still thought of him as part pony. . . ."

"[W]e finally had to admit that the animal (was not) primarily a horse, even though we had made [him] serve the purpose. . . ."

"I have seen my father haul everything from ploughshares to a crosscut saw in a buggy, but that hardly made the buggy a freight vehicle. . . ."

"Surely the jeep was used for hauling. It was in many respects an all-purpose car. The army called it a truck, but that is not very persuasive, since the army called all wheeled vehicles trucks, except the sedans. . . . It was not a streamlined luxury creation, but it was especially useful in rough terrain where the sedans, motorcycles, and other passenger cars could not go."

"We find that the wartime jeep was primarily a passenger car. The plaintiff is entitled to recover." *Solari v. United States*, 91 F. Supp. 765 (July 10, 1950).

* * * * *

QUESTIONABLE TRIAL TACTICS

Hood, Associate Justice: "At this point the prosecuting attorney turned to the defense counsel sitting beside him at the counsel table and asked in a low voice, 'Are you going to put the defendant on the witness stand?' The defense counsel rose to his feet and in a loud voice requested the Judge to withdraw a juror and declare a mistrial, because the prosecuting attorney had asked him that question, at the same time repeating the question."

"Of course the government was prohibited from calling to the attention of the jury the defendant's failure to testify, but from the record it appears that it was the appellant's own counsel who did this. The trial court was of the opinion that the jurors did not hear the question by the prosecuting attorney and would not have been aware of it except for the remarks of appellant's counsel. Even assuming the prosecuting attorney should not have asked the question, no prejudice resulted if the jury did not hear it. Affirmed." *Van Storey v. United States*, 77 A. 2d 318 (Municipal Court of Appeals for the District of Columbia, Dec. 20, 1950).

prefers the role of the teacher to that of the jurist, the Judge expressed the feeling that each field had its own unique compensations. He observed that the law professor can advocate changes in the law whenever he feels they are needed, but the jurist on the other hand "must be restrained by the responsibilities of his position and the conflicting opinions of his brothers on the bench."

Despite this multitude of activity the Judge still finds time to enjoy domestic life with his wife and two young daughters. And on occasion he'll shoot a round of golf or take a long walk around his semi-rural home to keep trim looking. However, most of his abundant energy still seems to be directed toward professional pursuits, and a fuller appreciation of the legal profession.

HERBERT C. KLEIN, LL.

Alumni Notes

LL.B. '21—Malcolm Fooshee, during the past year, was called by the Inner Temple (Inns Of Court, London) to the English Bar.

LL.B. '23—John R. Bartels has been appointed to the Supreme Court of the State of New York.

LL.B. '29—Earl R. Hoover became a judge of the Court of Common Pleas of Cuyahoga County, Ohio, for a full six-year term. Lester Lum Colbert, President of the Chrysler Corporation, appeared on the cover of the January 29 issue of *Time Magazine*.

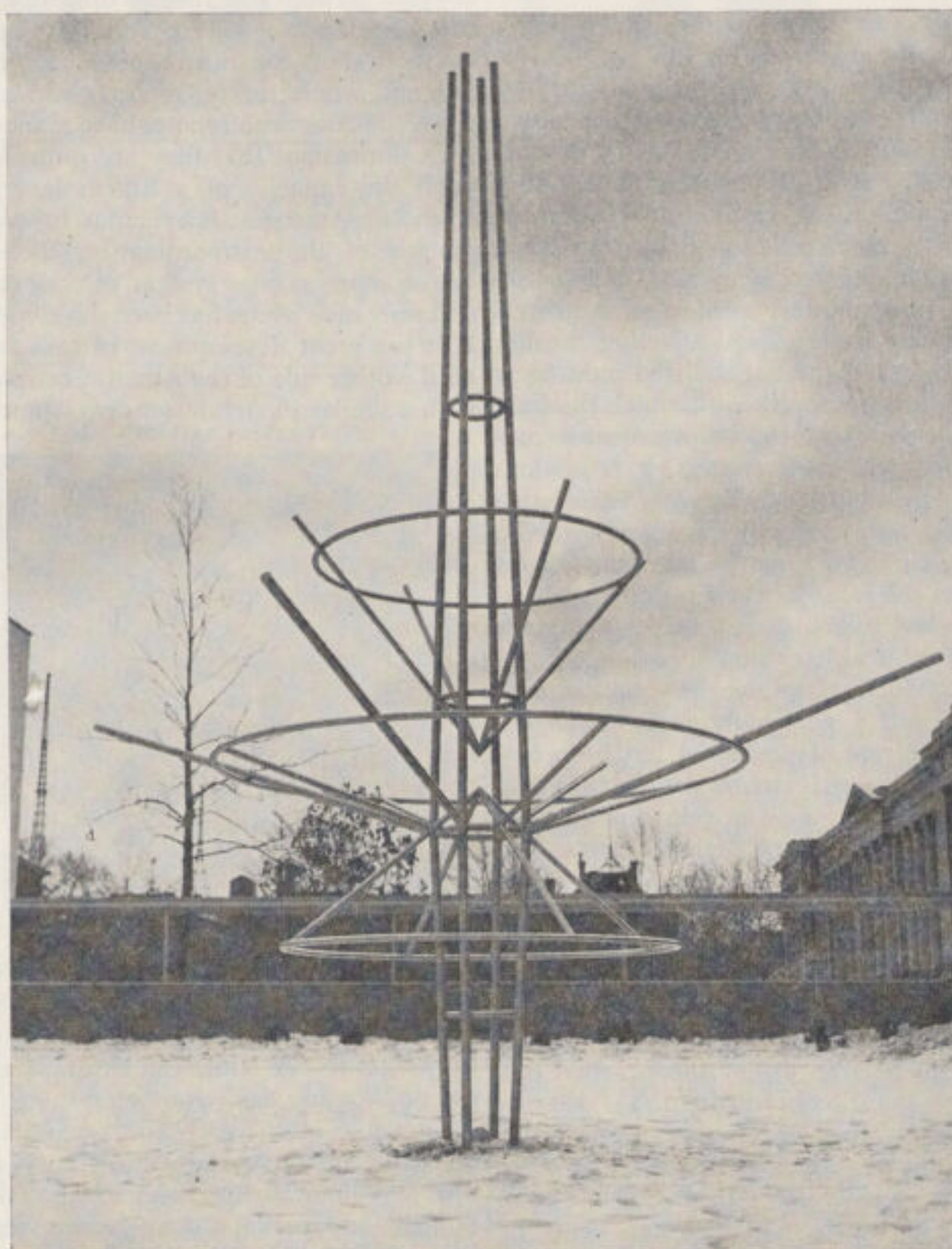
LL.B. '33—Herbert A. Bergson, formerly Assistant Attorney General in charge of the Anti-trust Division in the Department of Justice, has been appointed General Counsel of the Office of Defense Mobilization. Louis M. Brown addressed the American Business Law Association on the subject, *The Education of Potential Clients* which was based on his recent book, *Manual of Preventive Law*.

LL.B. '34—Frank J. Delany, Solicitor of the Post Office Department, is also Chairman of the Committee of General Counsel, which is composed of the top legal officers in the Federal government.

LL.B. '36—Herman I. Orentlicher, Associate Professor at George Washington University Law School, has been elected to Phi Delta Phi.

LL.B. '39—Prof. Robert Braucher of the Harvard Law School has an article entitled "Federal Enactment of the Uniform Commercial Code" which appeared in the Winter issue of *Law and Contemporary Problems*, a quarterly published by Duke University Law School.

A Tree Grows Near Langdell



The World Tree: Its Inner Meaning; "What Is It?" Inspires Critical Essay

In response to numerous inquiries regarding the "World Tree" sculpture in Harkness Commons, the RECORD assigned a staff member, familiar with modern art, to study the structure and report on his findings to our readers. His article is now presented in the hope that it will contribute to student understanding of this important addition to our famous Gropius-designed graduate center.

Richard Lippold, who created the "world tree", has best summed up the attitude of modern sculptors toward their work when he advised observers of his newest work to "Enjoy it!" Therein is the secret of all Art, and especially of the world tree: To know the tree is to

love it, and to love it is to enjoy it. This essay will enable serious-minded, right-thinking, reasonable men, and students, to know the tree for what it really is.

Now then, with the foregoing invaluable information, you are in a position to appreciate the True Artistic Meaning of this grand objet d'art (object of art). The tree is a symbol! (From the Greek symbolon, "A sign by which one knows a thing.") The thing one knows, is in this case, is "the inner tensions of our times," according to Mr. Lippold. What be clearer? Everyone is aware that our times have Inner Tensions; indeed, and outer ones too! Perhaps there are even some sideways tensions involved here! One can readily deduce that this subject is fraught with complexities.

Kindly regard the picture of the tree. It will be observed that there are four prongs extending towards the compass points. These indicate universality on the one hand, and may also be useful for hanging out one's laundry on sunny days. The significance of bath towels, and polka-dot shorts being spread in all directions is, of course, the spread of American patterns of Culture—in this case, the marvels of the Bendix washer, Crane Plumbing fixtures, and Duz soap—throughout the civilized world. A few unclosed prongs point heavenward, foreseeing the day when an American General Store and Ford Agency will be established on Mars. *Quel glorieuse idee!* (How nice!)

The tree is a striking example of modern design. Note, for instance, the clever use of space: there is space all around the tree; and there is even some space in the tree. See how clearly the outer space has been separated from the inner space! Not to mention the side-space!

To the uninitiated, the tree may be without meaning. But to those of us who have learned to appreciate such works, it stands as an example of how Meaning is unrelated to Art. Indeed, the tree may be called a prime example of meaningless art; or then again, perhaps it would be more proper to call it "artless meaning."

But these are mere labels! There it stands, in all its glory, surrounded by gaping passers-by—and therein is its power! It makes one stop, and look, and wonder; it makes one rub one's eyes and blink unbelievably at it. It makes one think, "What th—." And from this first thought, it is but a short step to such serious meditation as "What is Life?" D.S.

Tax, Commerce Powers, Due Process Aired By Roberts In Holmes Lectures

While conceding that it may have been inevitable that the Supreme Court should follow the "voice of the people," Owen J. Roberts, former Associate Justice and now Dean of the University of Pennsylvania Law School, emphasized in concluding his three Holmes Lectures, that the court has a far different role than that which the framers of the Constitution originally had envisioned.

Mr. Roberts spoke on last Tuesday, Wednesday, and Thursday evenings on the general subject, *Corollaries of the Constitution: The Supreme Court's Role*.

On Tuesday evening, Mr. Roberts spoke on *Sovereignty and the Power to*

Tax, tracing the development of that power from its first exposition in *McCulloch v. Maryland*, where Chief Justice Marshall stated the doctrine that

neither a state nor the federal government may tax the instrumentalities of the other. In departing from this in later decisions, the Court, Roberts said, has been motivated by reasons of policy and statesmanship rather than to find the letter of the law in the Constitution.

In the second lecture on *Conflicts of the Police Power*, Roberts discussed the history of the commerce power of the federal government and the question of how far the state can act in the field of interstate commerce where Congress has not acted, tracing also the development in recent years of federal control over local enterprise in the name of "Interstate commerce." Roberts stated that since the N. L. R. B. cases, the Court has been unwilling to limit the power of Congress, and sees no real limits to the power if the Court continues to follow its present interpretation.

The third lecture in the series was entitled *The 14th Amendment*, in which Roberts traced the gradual development of the due process clause. He gave serious consideration to the view that the 5th Amendment guaranteed only those liberties which were traditionally guaranteed in England before the Revolution; that the others were enumerated in the other first eight amendments because they had been abridged specifically in England by laws of Parliament.

The completed drafts, along with explanatory memoranda, will be submitted to a group of practicing attorneys for rating. A monetary prize will go to the winning club.

If the program proves successful this year, it is expected that it will be expanded and will become an important part of the work at the School.

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Calendar

LEGAL WORLD Ames Competition First Year

Round 3	Thursday, Feb. 8
Round 4	Friday, Feb. 9
Round 5	Monday, Feb. 12
Round 6	Tuesday, Feb. 13
Round 8	Wednesday, Feb. 14

Treasure Room Exhibition

First constitutions of States admitted to the United States since 1850 are now on exhibition in the Treasure Room adjacent to Langdell Reading Room. The exhibition will continue to February 15, 1951.

OUTSIDE WORLD

Judge Hastie to Speak

Judge William H. Hastie, United States Court of Appeals, Third Circuit, will speak before the Ford Hall Forum this Sunday evening at 8. His topic is *Uncle Sam and His Overseas Possessions*.

NEWS BRIEFS—(Continued)

contest pursuant to the terms of the bequest of the late Judge Erskine M. Ross. The contest is open to all members of the Association in good standing, including new members elected prior to March 1, 1951, who have paid their annual dues for this fiscal year.

The subject of the essay to be discussed is *The First Ten Amendments: The Character, the Status, and the Relative Importance and Dignity of the Rights Guaranteed Thereby*. The prize is \$2,500 and the essay must be submitted on or before April 2, 1951. Anyone wishing further information should write to the Executive Secretary of the Association at: American Bar Association, 1140 N. Dearborn St., Chicago 10, Illinois.

AMES CLUB PHOTOS

Ames Club supervisors are now accepting orders for the Ames Club group pictures taken by the yearbook photographer earlier in the year. Price for a 5 by 7 copy is \$1.25; 8 by 10's are selling for \$1.50. Sale ends on February 15. Supervisors have duplicates available for inspection.

LAW WIVES INVITE

Memo to the *New Yorker*: Harvard Law Wives did not invite their mates to the lecture on *Divorce* but they are inviting them to a cocktail party in Harkness Lounge from 4 to 6 this Sat.

DALTON-ELCOCK BAR REVIEW

The next Massachusetts Bar Examination will be held July 10 and 11, 1951. The Dalton-Elcock Bar Review, preparing candidates for this examination, will be held at The Republican Club, 46 Beacon Street, Boston, Massachusetts, beginning June 1 and ending July 6. Classes will be held Monday through Friday from 9 A.M. to 12 Noon and from 1 P.M. to 3 P.M.

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Dorm Cards Admit Holder To Dances

Law School Activities Cards will be the only acceptable admission to the semi-formal dance to be held from 9 to 12 in Harkness Commons on Feb. 17. The dance is part of the regular series of weekly Commons dances sponsored by the Dormitory Council.

Set-ups will be sold at the dance and corsages are optional. Hal Reeves' orchestra will supply the music.

The new activities cards may be purchased from any member of the Council for \$1. To accommodate those who cannot contact a council member, cards will be on sale throughout the week in Langdell South.

The cards will admit the bearer to all weekly record dances, sponsored jointly by the Dorm Council and the Graduate Council, as well as any semi-formals that the Dorm Council may sponsor on its own. The cards issued by the Graduate Council will admit the bearers to the record dances but not to the Law School semi-formals. Membership tickets in the First Year Students' Association are not valid for any of the Council affairs.

"Lost" Law Art Works Now Exhibited At Fogg As Students Scan Walls

On Jan. 19, some of the more alert 3L's noticed they were missing. First and second year men, lacking the deep association, only vaguely felt their absence. In the lecture rooms, no mention was made by the faculty. But there was no denying it; six Harvard men were missing. William Maxwell Evarts, Christopher Columbus Langdell, William Pinkney, Daniel Horsmanden, Charles Fox, Edmund R. Randolph; all were gone.

Was it the draft? Couldn't be—besides the six men, the family of Isaac Royall was missing! Were they lost in the myriad of the Graduate Commons, or asleep in the Langdell stacks? No! Granted a five week reprieve from the anonymity of the weed-like growths of paintings in the rooms of Langdell, they are being exhibited in the quiet, artistic halls of Fogg Museum. There they will remain until Feb. 24, as part of a showing entitled, "The American Spirit in Portraiture, 1675-1900," hung by Evan Turner and William H. Gerdt, Jr., Graduate art students at Harvard.

Should you develop an uncontrollable nostalgia for the six men's faces, or the anemic Royalls; or better, should you get culture hungry, just drop over to Fogg any afternoon. S.H.

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ENGLISH COURTS—(Cont.)

they do so more often?" There are, I think, three reasons for this.

(1) All courts (and those in England are no exception) are now concerned far more than they were 100, 50 or even 30 years ago with matters of statutory construction as opposed to matters of "pure" common law. Rent restriction, taxation, divorce, workmen's compensation, the statutory powers of Ministers to make regulations affecting health, housing and the nationalized industries: these are the topics with which the bulk of English reported cases are now concerned. In such matters, it is obvious that decisions from the same jurisdiction are the only ones which will carry weight. Even if the foreign statute is word for word the same as the English statute, it does not follow that its social, economic and political background is the same.

(2) In England, whether we like it or not (and I personally do not like it), the doctrine of precedent has been carried to more extreme lengths than in this country. Lower courts are bound by the decisions of higher courts. The Court of Appeal is (with a very few exceptions) bound by its own decisions. The House of Lords (unlike any other court of last resort in the world) is bound by its own decisions without any exceptions at all. That is the theory, and to a large extent the practice too. Since the theory distinguishes sharply between "absolutely" and "persuasively" binding precedents, it follows that there is less occasion to cite precedents from other jurisdictions, which can never be more than "persuasively" binding. Any reluctance of English courts to cite precedents from other jurisdictions is certainly not confined to American precedents, nor does it imply any lack of respect for American courts. Northern Ireland is part of the United Kingdom; its Supreme Court is a very learned court; yet it is rare for a Northern Irish decision to be cited in England.

(3) Perhaps the most weighty reason of all is the stark fact that English law libraries do not possess copies of American law reports. The largest public collection of American reports in England is in the Middle Temple Library, but even this is not quite complete, and it does not, I think, have a copy of *Shepherd's Digest*. This is largely a matter of relative cost. For an American law library to subscribe to the English law reports in addition to those of all the state and federal reports is not, relatively speaking, a serious financial item; but for an English law library to subscribe to a complete set of American reports would involve, relatively speaking, a very heavy expenditure, not only of money, but also of book-binders' time and shelf space.

Respect for U. S. Law

The following remarks of Lord Wright in *Monarch Steamship Co. v. Karlshamns Oljefabriker A-B* (1949) A. C. 196, 230-1 emphasize this point:

"Decisions of the United States courts, even the Supreme Court are not of coercive but only of persuasive force in the courts of this country. It is certainly desirable that as far as possible there should be uniformity between the law merchant as administered in the United States and in Britain. The origin and foundation of the law in both countries are the same. But as time goes on and cases arise, individual differences emerge and accumulate. Even the general principles of the law of carriage by sea do not receive identical expression or development in the courts of the two countries. That same phenomenon may be observed even in comparing the laws of the different States and the federal

courts. Instances must be familiar to lawyers. There is a further difficulty in that the British lawyer cannot be familiar with the American decisions. He has not access to the reports; and, indeed, the American reports have reached such dimensions that they are quite beyond the capacity of a British lawyer. Even the American lawyer has to avail himself of the extraordinarily efficient and comprehensive system of indexing and reference which has been developed. It is the great development of case law on the other side of the Atlantic, coupled with a similar though lesser development



PROFESSOR MORRIS

on this side, which has discouraged the practice, at best rare, followed up to the middle decades of last century by British judges to cite American cases. I am not disparaging or discouraging the full-est possible interchange and reciprocity between American and British lawyers, but I cannot help recognizing how difficult and perhaps dangerous it may be to ask a British judge to rely on a particular United States decision torn from its setting in the totality of United States case law and statutes, simply because of some partial similarity in the facts."

Lord Wright is one of our more liberal-minded judges, and no one who has read his reviews of *Williston on Contracts* and the *Restatement on Restitution* is likely to accuse him of a lack of respect for American lawyers.

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The new course will provide a background knowledge of the areas where lawyers, both in and out of the government service, can be expected to assist in the immense tasks which the mobilization effort imposes on the country. Among the subjects to be covered are: the stabilization and control of prices and wages; the stabilization of labor manpower; the stabilization of production, and government procurement.

The course will be taught by at least eight members of the Law School faculty who had experience in these fields during the last war. Following a general survey of some of the broad issues presented by the country's defense program, each of the participating instructors will present a detailed consideration of his particular field of experience.

Professors joining in the course include: Robert Braucher, who served in the Air Forces; Ernest J. Brown, who was on the legal staff of the War Production Board and in the U. S. Army; David F. Cavers, of the Office of Price Administration; Archibald Cox, of the National Defense Mediation Board; Richard H. Field, former General Counsel of the Office of Price Administration; Henry M. Hart, Jr., who served in OPA and in the Office of Economic Stabilization; Louis J. Jaffe, of the Agricultural Adjustment Administration and the National Labor Relations Board; and Benjamin Kaplan, who served in the Army Service Forces.

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