

The Harvard Law School Record

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PRICE TEN CENTS

Gropius To Talk Tomorrow To "Coffee Hour" Audience

First Program Features Korean War Discussion By Brig. General Leach

Speaking before a group of over 150 students who crowded into the Swaine Room of Harkness Commons last Thursday afternoon for the Coffee Hour, Professor W. Barton Leach discussed the organization and role of Ground-Air Operations against the background of the Korean War.

This was the first program of a series recently organized along the lines of a similar organization existing at Brown University in which various faculty members discuss topical problems.

Prof. Walter Gropius, chairman of the Harvard Department of Architecture, will be the guest speaker at the second of the series, tomorrow promptly at 1:30 p.m. in Harkness. His topic will be *Planning the Graduate Center*. Co-chairmen of the coffee hour have requested that all guests be seated promptly at 1:30.

Professor Leach, who is a Brigadier General in the Air Force Reserve, drew upon a wide range of experience and understanding of the subject under discussion. During World War II he was Chief of the Operations Analysis Division of the Army Air Force; and at the present time he is a special consultant to the Secretary of the Air Force.

The first few weeks of the Korean campaign was a jerry-built operation for both the Army and the Air Force, Professor Leach stated. The Army, dispersed throughout Japan as an occupation force, was required to transform itself into a combat force under fire, lacking normal artillery, trained specialists and communications. Similarly the Air Force F-80s and B-26s, equipped for air defense of the Japanese islands, faced the problem of molding themselves into the air partners of the ground-air fighting team.

In discussing close support air operations the speaker emphasized the flexibility of current tactics—pre-planned heavy strikes directed through a Joint Operations Center, fighter bombers diverted from other missions in emergencies, and the almost instantaneous strikes from the "cab rank" of orbiting aircraft. While some strikes could be obtained in five minutes from the "cab rank," the more ponderous, specially munitioned strikes from remote bases might take as much as three or four hours.

Unofficial Name Sought For Pylon In Contest

In keeping with its avowed purpose of maintaining its pages as a reflection of the pulse-beat of HLS, the RECORD board of editors announce a competition to quiet the mounting roar of puzzled discontent which reached a climax last week following the publication on its pages of "The World Tree: Its Inner Meaning."

The competition is to give a name, worthy of its position, to our proud, stainless steel possession. The editors feel that "world-tree" is hardly an adequate appellation for such a noble piece of sculpture.

Recognizing that the whispers of wonder that arose at the end of the Christmas vacation gave way to buzzes of incredulity which in turn have been followed by a roaring of resentment resounding through the hallowed halls of Harvard, the board wishes to halt the reaction before it reaches atomic proportions.

With the kind aid, therefore, of Alan F. Doniger, 2L (Yale '49) of Great Neck, N. Y., campus Chesterfield repre-

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... Valentine Dance ...

The "Valentine Ball," a semi-formal dance sponsored by the Law School Dormitory Council, will be held in Harkness Commons this Saturday evening from 9 to 12.

The Dorm Council has announced that both corsages and tuxedos are optional. Hal Reeves and his orchestra will furnish music. Although no liquor will be served, set-ups will be provided.

Howard W. Weisberg, 3L (CCNY '48) of New York City, chairman of the Dance Committee, has emphasized the fact that admission will be by Law School Activities Cards only. These cards are obtainable from any member of the council for \$1.

New Draft Policy Sets Time To Enlist

The status of the college and graduate student in relation to the Armed Forces has received some degree of clarification within the last month. However, a definitive policy must await Congressional action on the new draft law now under consideration.

In January Secretary of Defense George C. Marshall, with the concurrence of Maj. General Louis B. Hershey, announced a new basic policy for enlistments.

Under the new policy a man called by Selective Service during the academic year can continue his studies and still retain the right to designate his choice of service. This right can be exercised by enlisting in the period beginning ninety days before the termination of the school year and ending thirty days before the school year ends.

It was also announced by Maj. Gen. Hershey that men who had graduated from school at the end of the fall semester will have thirty days in which to gain draft-exemption by securing a job in an essential industry. If this ruling is extended to June graduates it might well allow enough time for applicants to take their bar examinations.

Rainmaking, Twentieth Century Style, Inchoate Headache For Legislators, Jurists, Corey Says After National Survey

This article was written for the RECORD by Ralph E. Corey, B.A. (Wis. '42), LL.B. (La Salle U. '48). Mr. Corey, feature writer of the RECORD, is currently a member of the first-year class at the Harvard Law School. Mr. Corey's work is well documented; the RECORD will furnish citations upon request. The second installment of this article will appear in the next issue of the RECORD.

Some wag has declared in not-too-original paraphrase: "Weather is just like women—we can't live with her, and we can't live without her!"

Since the dawn of history, man has been obliged to live with weather—and accept it, because he could not control it. But like the element of fire a few thousand years before, control it he did in 1946. As a result of an outdoor dry-ice experiment by Vincent J. Schaefer, a General Electric Co. chemist, an eight-inch snowfall fell in upper New York and Vermont, although the local weather bureau had forecast "fair and warmer" weather.

It is a rare treat, indeed, to be present at the birth of a new science. But the process of artificial rainmaking and weather control is more than just another scientific experience. It is a legal phenomenon of the twentieth century.

Since that snowy December afternoon

in New England, the science of weather control has made considerable advances. But on the heels of these advances important legal problems have arisen which still remain unsolved and adjudicated by the law courts of this country.

What Is Rainmaking?

Before exploring the legal issues raised by the birth of this new phenomenon, a brief explanation of the artificial rainmaking process seems in order. Rainfall is mechanically produced by a human operator who passes dry-ice (or silver-iodide) particles through a super-cooled cloud (moisture cloud containing droplets in a liquid water state). A high instability in temperature, air pressure and humidity factors occurs just prior to precipitation. The sudden introduction of dry-ice particles creates nuclei of ice particles. A chain reaction and contraction is set up within the cloud body, and rain falls. Man-induced rain may be accomplished in several ways. Airplanes may fly above the cloud and "seed" dry-ice particles over and directly into the cloud. Rockets and ground generators can shoot up silver-iodide mist or dry-ice particles into the cloud. Then, by estimating wind velocities and direction of air currents, a situs of proposed rainfall can be calculated and forecast.

Controlled rainfall is only one of several benefits which can result from man's interference with weather. Weather control may be employed negatively, as well. Rainclouds can be made to drop their rain-burden prematurely. Hurricanes and tornadoes may be detoured from their courses by altering the weather factors in their paths. Extensive droughts, floods and consuming forest fires can possibly be averted. Weather can also be harnessed for military purposes, and made to serve in the fields of atomic, bacterial and chemical warfare.

Responsible Control Needed

These public benefits may result only if weather is controlled by some responsible agency. The possibility of grave damage to private and public interests from irresponsible attempts to control weather is great. The haphazard unscientific efforts of amateur rainmakers may actually be upsetting the balance of nature. It is alleged that private experimenters tend to strew every raincloud which hoves into sight with dry-ice. These clouds may float hundreds of miles away from the semi-arid zones which need rain. They may dump their moisture in places like the Red River Valley, North Dakota, which last spring had an incredible 5,000% of normal rainfall.

(Continued on page four)

NEWS IN BRIEF

FRANKFURTER TO SPEAK

Associate Justice Felix Frankfurter of the U. S. Supreme Court has accepted the invitation of Dean Griswold to speak here tomorrow afternoon at 5 p.m. in the courtroom of Langdell Hall.

In its announcement, the Dean's office stated that the Justice's appearance here will not be for the purpose of a formal talk, but more in the nature of an "informal chat" with the students.

Justice Frankfurter is in Boston at the present time in order to deliver the annual Louis D. Brandeis Lecture sponsored by Brandeis University. This lecture will be presented this evening at 8 p.m. in John Hancock Hall, Boston.

Formerly Byrne Professor of Administrative Law, Justice Frankfurter was nominated to the Supreme Court by President Roosevelt in 1939, after he had taught at Harvard since 1914. He received his A.B. from CCNY in 1902 and his LL.B. from Harvard in 1906.

COFFEE NOW BEING SERVED

Harkness Dining Hall now serves coffee seven days a week from 9:45 to 11:30 a.m. and from 1:45 to 5 p.m. All students who feel they need a pick-me-up can go up the south stairs (nearest Langdell) between those hours and for a 10c coupon get a cup.

SEAVEY ARTICLE

Warren A. Seavey, Bussey Professor of Law, has written an historical survey of the Association of American Law Schools, appearing in the current issue of the *Journal of Legal Education*, published by the Duke University School of Law. The article is entitled, *The Association of American Law Schools in Retrospect*.

KAPLAN REPLACES AMORY

Dean Erwin N. Griswold has announced that Prof. Benjamin Kaplan has been appointed to the Administrative Board to replace Professor Amory who has left the School for military service. All second year students having problems which should be brought to the attention of the Board should contact Professor Kaplan.

Former Chancellor Hutchins To Face Forum Questioners



ROBERT M. HUTCHINS
Former Chancellor, Univ. of Chicago

Sutherland To Preside; Future Programs List: Shirer, Capp, Sen. Long

After two months of inactivity occasioned by examinations, the Harvard Law School Forum resumes operations Friday, Feb. 16 at 8:00 p.m. in the Rindge Tech auditorium with the first program in its spring series *Can We Preserve Freedom and Achieve Security?*

Former Chancellor of the University of Chicago, Robert M. Hutchins will be the featured speaker. Recently he was named director of the Ford Foundation. Before taking his Chicago post, he had been named Dean of Yale Law School at the age of 29.

Instead of its customary procedure, whereby three or four guests present their opinions concerning a topic of current interest under the guidance of a moderator, Chancellor Hutchins will be the only speaker. However, Forum directors have arranged for three men to serve as interrogators, after he has given his address. The program will be given in cooperation with the Sidney Hillman Foundation.

Dean Chester Alter of Boston University, McGeorge Bundy, and William Y. Elliott of Harvard will serve as the interrogators. Professor Arthur E. Sutherland, Jr., of the Law School is to be the moderator. Sidney Meacham, Director of the Hillman Foundation, will speak briefly at the opening of the program.

Chancellor Hutchins headed the commission on The Freedom of the Press, which issued its much-discussed report in 1947. He is presently the chairman of the board of editors of the *Encyclopedia Britannica*, and a sponsor of the Great Books Foundation.

The following Friday, Dr. Ales Beller, United Nations delegate from Yugoslavia, and noted correspondent William L. Shirer will be among the speakers on *The Struggle in Europe*. This forum also will be held in the Rindge Tech auditorium.

In the fall semester *The Struggle in Asia*, which was discussed by Owen Lattimore, Paul Linebarger, and Dr. E. Sundarum, was felt by the Forum board to have met with such success that a debate on present-day problems in Europe was warranted. This second program for the spring, therefore, will be in the nature of a sequel, and of equal importance, in the light of the plans and

(Continued on Page three)

Dorm Council Proposes Longer Parietal Hours

At its last meeting the Dormitory Council passed overwhelmingly motions to extend parietal hours for guests to 10:30 p.m. on Sundays, to start weekday visiting hours at 1:30 p.m., and to abolish sign-up sheets. Under the present parietal hours 9:00 p.m. is the curfew on Sunday night and visitors during weekdays till 5:00 p.m. No change in the parietal hours, however, will take place unless approved by the administration.

A committee was appointed by Council President Edward H. Snyder, 3L (Wisconsin '48) of Milwaukee, Wisc., to meet with the administration this week on this matter. Robert D. Taichert, 2L (N. M. '48) of Santa Fe, N. M., chairman of the Council's Judicial Committee heads this *ad hoc* committee.

Also on the committee are Robert S. Hirschfield, 1L (Harvard '50) of St. Louis, Mo.; Thomas Mantel, 1L (Harvard '50) of Indianapolis, Ind.; and Nathan J. Siegel, 3L (Cornell '48) of Utica, N. Y.

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Time For Reexamination

The widespread dismal results on State Bar examinations during the past year is a matter to which we must devote serious thought. Performance on those tests was quite generally poor if the low percentage of successful applicants is a reliable indicator. One thing is certain — the importance of study for bar examinations should not be underestimated. Serious review and preparation is necessary. It is not wise to rest or rely on one's laurels in seeking admission to the various State bars.

But beyond possible lack of preparation, we cannot help wondering whether other factors are not also involved in explaining the unfortunate phenomenon. When a State such as Massachusetts in 1950 finds that four out of every five men examined are unqualified, although they are graduates of various law schools, there is something distinctly unsavory in that situation. Even though Harvard Law graduates fared better than the various State averages, certain questions come to mind. Does the fault lie entirely with the men examined? Or does it extend to the Bar Examiners or perhaps the law schools themselves? How is it possible that these men were able to pass courses in law school satisfactorily and yet falter drastically at the bar exams? Are law school demands too low, bar requirements too high, or are the goals of each inconsistent?

If the goal of the bar examiners is to exclude an arbitrary percentage of applicants at a rate established even before the papers have been graded, we cannot subscribe to that as a valid objective. Naturally, we do not claim to have any specific, direct evidence clearly proving such to be the case. But the results of the examinations inevitably lead to that as a possible inference. To fail a few men who have not integrated their legal knowledge could be justified in order to maintain high standards in the several bars. To exclude men at a wholesale rate to avoid overcrowding the legal field is unfair to the student who has devoted three years time to the study of law and sixteen years in acquiring a general background before that. A thorough investigation of bar examination purposes should be attempted by a State bar association.

Answers to the questions raised here would be most helpful for the entire legal profession as well as for those who aspire to enter therein. But until further notice, the only safe approach for students who are planning to take bar examinations is to view such prospective experiences even more seriously than they have approached and readied themselves for law school final examinations.

Letters to the Editor

To the Editor of the RECORD:

I am glad to see the Gallery article by Mr. Klein on my friend and classmate, Judge Nathan L. Jacobs of the New Jersey Superior Court.

However, I shudder at the last sentence of the fourth paragraph which states that "in the Federal Courts [of Appeals], for example, the time lag [in hearing appeals] is frequently as much as three to five years." . . . And the Judges of the Courts of Appeals will be startled, and rather discouraged, I think, after their efforts to keep

Gallery

KINGMAN BREWSTER, JR.
Assistant Professor of Law



Seated at his swivel-chair, mid-way between his desks for Trust and Anti-Trusts (Government Regulation of Business), Professor Kingman Brewster, Jr., gives an appearance of youth which bridges the period between student and teacher. Indeed it was only three years ago that he was on the other side of the desk as a student here, editing "Notes" for the *Law Review*. Prior to his studies at the Law School Professor Brewster attended Yale where he was an editor of the *Yale Daily News*. He received his B.A. in 1941. Journalism was his early love and it took a war to bring him into the field of law.

After graduating from college Professor Brewster worked with the Coordinator of Inter-American Affairs until Pearl Harbor interrupted his career. He served as a Navy bomber pilot on anti-submarine duty in the Atlantic. He was discharged in 1945 and entered the Law School.

Organized Cambridge AVC

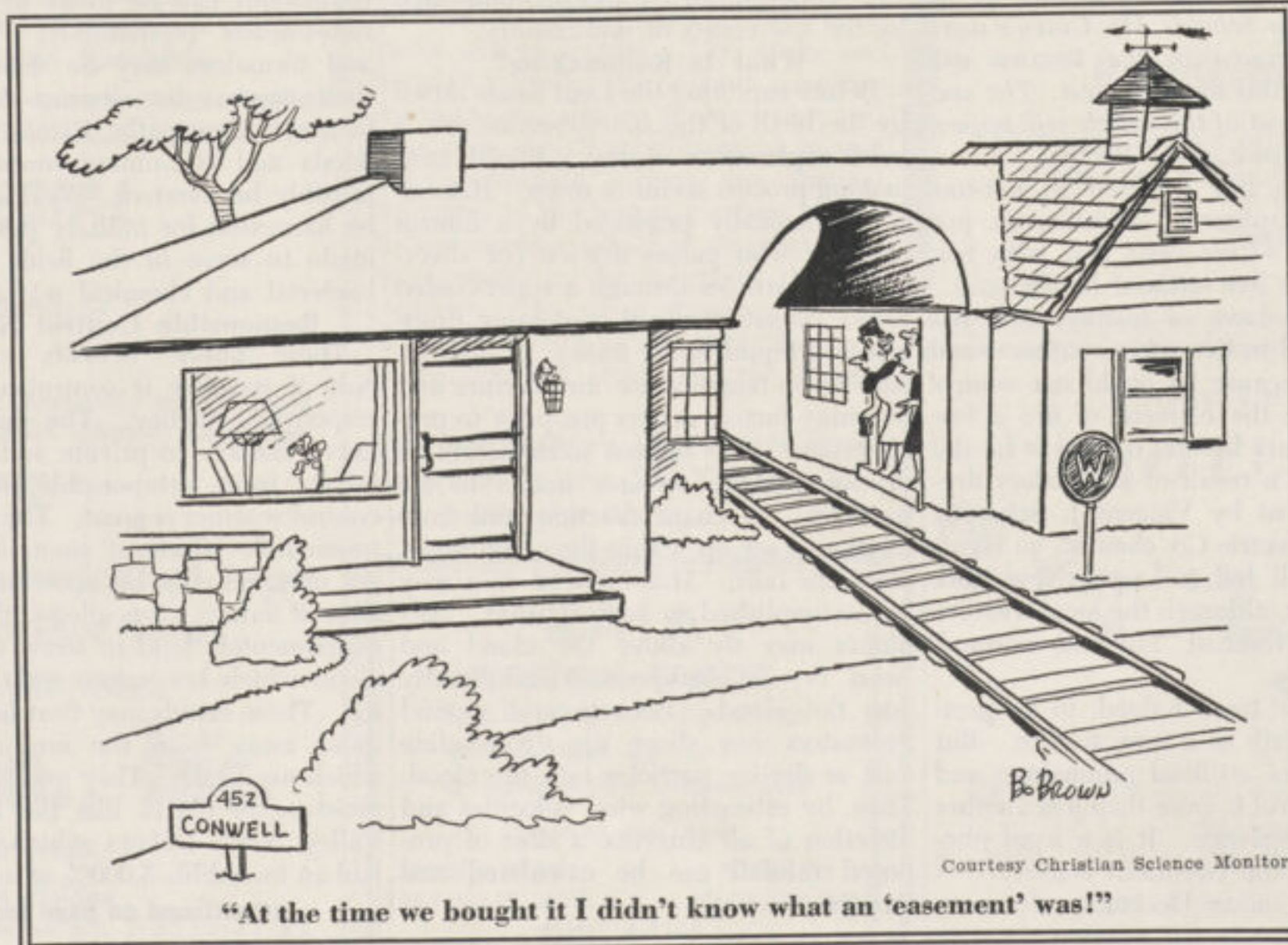
Shortly before his Law School activities got under way Professor Brewster was instrumental in organizing the Cambridge chapter of the American Veterans Committee. He recalls that Law School under the accelerated program was a "rough grind" for two and a half years. His wife, whom he married in 1942, accepted the fate of a Law School widow scarcely realizing that she would face the same situation again when her husband returned here to teach.

Receiving his LL.B. in 1948, Professor Brewster and Roger Fisher, his friend and classmate went to Paris as special assistants to Milton Katz, then general counsel to Averill Harriman, ECA coordinator in Europe. After one year in Paris Professor Brewster returned to teach for the first time at the Massachusetts Institute of Technology. He gave classes in economics and

abreast of their dockets. As a matter of fact, cases in the Federal Courts of Appeals, almost without exception, are heard very promptly, and have been for some time. Six months is perhaps an average interval, and cases are some times heard as promptly as three months after being docketed in the Appellate Court. This is often fast enough to keep the lawyers gasping.

I do not want to belittle in any way the remarkable progress which has been made in New Jersey. But the statement about the Federal Courts [of Appeals] is plainly in error, and seems to me unfortunate.

ERWIN N. GRISWOLD
Dean



participated in a research program on the economic structure of the housing industry.

Aided Norris Campaign

At the Law School he teaches Trusts and Government Regulation of Business. The large public policy content of the latter has particular appeal to him because of his long-time interest in politics which dates back to 1936. At that time he traveled to Nebraska to aid in the election campaign of the late Senator George Norris.

Professor Brewster's main interest today is in the muddled condition of anti-trust litigation and control. He thinks that the traditional casebook analysis of appellate opinions is not a satisfactory approach to the subject. The immediate problem which he sees in this field is the prospective stifling of competition by long-range legislative controls on prices, wages, material, and the other components of the open market.

Likes Yachting

Today Professor and Mrs. Brewster and their three young children live in a new home in Cambridge.

His family occupies most of his extra-curricular time, but he retains an active interest in his hobby, small-boat racing. As a member of the Vineyard Haven Yacht Club he helped retire the Prince of Wales Cup in Canada.

His other outside interest is the Harvard Law School plan to develop a World Law School, a graduate program which will draw students from all over the world to study comparative law and apply legal technique to the solution of problems requiring international solution. Professor Brewster's experience in international affairs has convinced him that "today there must be trained lawyers having an understanding of the diverse legal and political systems of the many countries which depend on each other for survival."

A. I.

Off the Record

In re: The "World Tree"

MONSTROSI-TREES

(With Apologies to Joyce Kilmer)

I think that I shall never see
Another such monstrosity.

A tree that looks as if to say
"Oh when, oh when is laundry day?"

A tree that may on Monday wear
A suit of my old underwear.

A tree that canines will ignore
And seek their favorite sycamore.

A tree about which Phil does sing;
At last we know-it is the "THING".

Poems are made by fools like me;
But only a greater could make that tree.

MURRAY M. MCCOLLOCH, 2L
HARRY GIN, 2L

OBSERVATIONS ON CUSTOMS

Overheard in Professor Morris' Class on Conflict of Laws:

Prof. Morris: In determining domicile where the house is on the border of two states, the Court has to look at what is the most important part of the house. In France it is probably the kitchen. To an Englishman the most important place is his garden. But in the United States the courts have decided that the most important place is the bedroom.

Sub Judice

DOWN THE DRAIN

Mr. and Mrs. Keenan, while on a trip, stopped at a strange hotel. Their room had twin beds with a lamp table between them. Mr. Keenan, being bothered by a nose irritation, went to bed prior to his wife and placed a box of kleenex tissues on his side of the table. Mrs. Keenan, when retiring at home, customarily removed her rings and placed them on the bureau. This night she retired without removing the rings. However, during the night, she found the rings uncomfortable, and in the dark and unbeknown to her husband she reached out, took some pieces of kleenex in which she wrapped the rings, and placed them on her side of the table. Mr. Keenan awoke several times during the night and used tissues, leaving the used wads on the table.

Mr. Keenan arose prior to his wife and in an attempt to tidy up a bit gathered up the wads on the table without noticing that some contained the rings. He disposed of them in the toilet and "flushed forthwith." The loss was discovered when Mrs. Keenan awoke, and futile attempts were made to recover the rings.

The Keenans brought this suit against Bowers, the Collector of Internal Revenue, for not permitting them to deduct the loss of the diamond rings. The claim was based on the allowable deductions "... if the loss arises from fire, storms, shipwreck, or other casualty."

Held: claim disallowed.

"It is well established that deductions are a matter of legislative grace and no deductions will be allowed unless the alleged loss falls within one of the categories of the statute. . . .

"The doctrine of *ejusdem generis* requires the statute to be construed as though it read 'loss by fires, storms, shipwrecks, or other casualties of the same kind.'

"In the instant case it may be conceded that the loss of the rings was due to an unexpected and unusual cause and was not an intentional act on the taxpayers' part, but the loss lacks the element of suddenness. The primary cause of the loss was the placing of the rings in the kleenex tissue. The loss was caused by a chain of events on the part of Mrs. Keenan and Mr. Keenan. There was no intervening sudden force, cause or occurrence which brought on an event such as would be present in a casualty arising from fires, storms, or shipwreck." *Keenan et al vs. Bowers* 91 F. Supp. 771 (1950).

MAN'S BEST FRIEND

Brotemarkle was enjoying one of his customary pleasure trips down a Los Angeles boulevard on his little motor scooter when an unleashed dog dashed out into the street and collided with the vehicle. Brotemarkle was thrown to the ground and suffered severe injuries. He brought suit against the owner of the dog alleging violation of the local ordinance which required that a dog must be restrained by a chain or leash when outside its master's premises. Defendant's demurrer was sustained on the ground that the ordinance was adopted for the limited purpose of guarding against being bitten by dogs — not against collision between dogs and vehicles.

In his brief on appeal, Brotemarkle argues that the case of an unleashed dog under the dog leashing statute is the same as the case of an unhitched horse under the horse hitching statute.

In answer to this contention, defendant had the following to say in her brief, "Cases involving animals other than dogs are not controlling here. Anybody knows that if a horse is not tied up, he may run away and hurt somebody; or if a cow, or a bull roams at large on city streets, trouble is sure to follow. With dogs it is different. Dogs have run at large from time immemorial, and except for biting, never except in extraordinary cases, have hurt anybody."

Held: on appeal, lower court reversed, cause remanded.

"The [defendant's] argument is interesting and persuasive. It would seem that one who rides a scooter must bear the hazards incident to that method of locomotion. But the ordinance forbids the owner to allow his dog to be at large, except upon a leash.

"In our great, metropolitan areas, it is no longer possible to enjoy many things which were part and parcel of human life in earlier times, and still are in suburban and rural communities. Whatever may be said about the affection which mankind has for a faithful companion, modern city conditions no longer permit dogs to run at large. For the purpose of pleading negligence, the ordinance is not to be restricted to injuries from dog bites only." *Brotemarkle v. Snyder*, 221 P. 2d 992 (Sept. 1950).

Thoughts on the motion picture Magnificent Yankee:

Estoppel by deed, Holmes said, was the need
In the case of Face Brick against Ayer;
And now he is prized — nay, immortalized —
By Metro and Goldwyn and Mayer.

Alumni Notes

LL.B. '91—Milton B. Warner of Pittsfield, Mass. has been reappointed by the U. S. Judges in Boston to his sixth term as United States Commissioner for this district.

LL.B. '30—Leonard A. Blue, Alfred W. Roberts, LL.B. '31, and Charles Oechler, LL.B. '33, who had been associated with Rathbone, Perry, Kelley and Drye of 70 Broadway, New York, have become members of the firm.

LL.B. '38—John F. Madden and Charles C. Worth, LL.B. '40, have become partners in the firm of Withington, Cross, Park and McCann of the Tremont Building, Boston. Thomas S. Hinkel has joined the tax firm of Ivins, Phillips & Barker of the Southern Building, Washington, D. C.

LL.B. '38—Sidney I. Roberts is co-author of a recently published book, *Annotated Forms for Tax Practice*.

LL.B. '40—Paul P. Lipton announces the formation of a law partnership with Leo C. Duersten at 225 E. Michigan St., Milwaukee, Wisconsin.

LL.B. '46—Oakley Wade is currently the Republican majority floor leader in the Colorado House of Representatives. Garfield H. Horn has been appointed General Counsel for the European headquarters of the Economic Cooperation Administration.

LL.B. '48—Theodore A. Bruinsma is now employed by McCarter, English and Studer, 11 Commerce St., Newark, New Jersey. Nathaniel B. Taft has joined the Law Department of the New York Life Insurance.

LL.M. '48—Cyril C. Means, Jr., is a member of the Office of General Counsel for the United States High Commissioner for Germany.

LL.B. '48—John E. Olson, Jr. is associated with Charles R. Zartarian, '37, and Joseph Neiman in the general practice of law at 49 Pearl St., Hartford, Conn.

LL.B. '50—Edward L. Newberger is an Assistant District Attorney of New York County, New York. Donald Zimmerman has been appointed Confidential Law Assistant on the staff of Lawrence E. Walsh, counsel to Governor Dewey of New York. C. Edward Hartman, II, has become associated with Fell and Hartman at 1600 Mercantile Trust Building, Baltimore, Maryland.

LL.B. '50—Dwight Sullivan is a member of the law offices of Francis P. Whitehead, Box 690, Deland, Fla.

FORUM—(Continued)

problems incident to the arming of the Continent against Communism.

Turning its attention to the American political scene, the Forum's third program will concern itself with *The Realignment of Parties*. Senator Russell Long (D., Louisiana) has promised to appear as one of the speakers when the forum is presented March 2. Other speakers invited to participate will be announced later.

Forum officers have chosen this topic because in their opinion the factions in Congress will have emerged at least tentatively by early March, and the effects of the Republican victory in November upon the Administration's small majority should then be apparent.

A wholly different aspect of the American scene will be discussed March 9, when the Forum presents *What Makes America Laugh?* Al Capp, creator of *L'il Abner*, has agreed to appear, and correspondence is continuing with such figures in the field of humor as James Thurber, Fred Allen, Henry Morgan and Bennett Cerf.

High controversy is involved in the fifth program of the Forum spring series on March 16. Federal and state aid to education will be discussed in *Private and Parochial Schools*. Bishop G. Bromley Oxnam of the Methodist Church already has been secured as one of the speakers. The Catholic attitude, independent public opinion, and the Administration point of view also will be represented.

A week after the spring recess, on April 27, another experiment in the techniques of presenting a forum will be attempted. *America—A Garrison State* will be given in the form of a symposium. Involved in this discussion will be the effect of the Internal Security Act upon thinking, as well as the conditions to be expected as a result of price control, industry mobilization, and the draft.

Henry Steele Commager, Professor of History at Columbia, will be at Harvard Law School during March to give one of the lectures in the Forum's series of Legal Programs.

Others, but feel that the "clear and present danger" to law and order is sufficient to justify its stepping into the public scene.

CONTEST—(Continued)

sentative (no charge for the plug), the RECORD now offers a grand prize of three cartons of cigarettes (Chesterfields, of course) for the best name for our precious pylon. Entries will be judged by the editorial board on the basis of neatness, originality, and appropriateness. All entries must be left at the RECORD office in Austin Hall before March 1, and should include the name and address of the entrant.

The editors trust that they are not invading the domain of the International Society for the Propagation of Taste and Discernment Among Intellectuals and



Assistant Dean Bevin At Work

Photo by Crystal

Alumni Center Found Under Hastings; Provides Information Service To Grads

A certain mystery surrounds the subject of signs posted at the south end of Walter Hastings Hall which speak of the "Alumni Center." In part, this confusion as to what the Center is derives from the novelty of its present location, for it was not until the beginning of this year that the various offices comprising the Center were moved into remodelled quarters in the basement of Hastings.

Primarily set up as an informational service for alumni groups, the Center is composed of the Alumni Records Office, the Harvard Law School Association, the Fund office, and mailing and duplicating rooms. Assistant Dean Wesley E. Bevin, director of the Fund and head of the Dormitory office, supervises all of the operations.

As to the purposes for which the Center was established, Mrs. H. Fritts, who is in charge of the Alumni Records Office, remarks, "Previously our large mailings to the alumni were done by private firms; records were in a muddled condition, so that reference to them involved a lot of trouble; and our services were limited by not having a central place from which to work. Now we are attempting to continually expand our assistance to alumni groups in all ways possible."

Quinquennial Progresses

At present the Center is working on mailing out copies of the Alumni Bulletin to members of the Law School Association, and earlier this year letters and circulars concerning the Fund drive were handled through the office. Work is progressing also on the next Quinquennial which appears in 1953. The staff is prepared to answer requests from graduates for information concerning reunions and the preparation of separate lists of alumni by class and by geographical location is now proceeding. Shortly, the Center is expected to be able to furnish these lists on request and for a nominal charge.

To help the office keep track of alumni a file of telephone directories of the major cities is kept up-to-date. Legal directories are also used for that purpose and newspaper stories about alumni are clipped and filed. However, the Center does not subscribe to a clipping service, so that this portion of the work is not as extensive as might be wished. Professors cooperate by bringing articles on former students to the attention of the office and graduates frequently write in to tell about the achievements of their classmates.

Complete Files Kept

All these materials are put on file in the Alumni Records Office, where a folder is maintained for each man who has been at the school since about 1900. In connection with this aspect of the Center's activities, it should be noted that the files contain all correspondence

which has been received from an alumnus, beginning with the first scrawled postcard or letter requesting an admissions blank. The office attempts to secure copies of letters professors send out regarding graduates, especially carbons of recommendations. But transcripts are not included in the extensive dossier, for "a student's grades are his own business."

Curiosity Seekers Out

Requests for odd bits of information concerning alumni are continually being received by the Center and the staff tries to answer these, within certain limitations. Only the other day a letter asking the school to recommend a good lawyer was sent from a small city in Wisconsin. In cases such as this the office will not make its own recommendation, but will merely send a list of Harvard Law graduates in that particular area to the writer. Other requests, aside from letters by alumni, range from bids for information by biographers and newspapers, through confidential letters from government agencies, and to application by curiosity-seekers for personal facts about graduates—these latter correspondents receiving no aid.

As a rule the Center will not honor requests for information which it is felt the individual would not want made public. Thus, information may be given only of a general background nature. Honors received and extra-curricular achievements both in college and while studying here are included in the latter category.

No Place To Relax

Reorganization of the duties of the Center began some four years ago, when records then on hand were classified and put in orderly form. Material then stored in the archives of the Widener Library again was brought out into the light and placed ready at hand. Purchase of various mailing machines was begun at that time and the quarters now contain a Varityper, a Multilith and equipment for making addressing plates, in addition to the expected mimeograph.

Regularly in operation, the machines take care of the mechanics of billing for the Fund, do mailing for any local association, turn out class lists, send the Dean's Report on its way, forward the Alumni Bulletin, and dispatch circulars and letters. Not organized as a place where alumni may come in to relax and reminisce, the Center offers its assistance to all graduates and is open for their inspection and to their suggestions when they return to the campus. M. F.

Prof. Kaysen Aids In 'Big' Shoe Case As Wyzanski Clerk

Carl Kaysen, Assistant Professor of Economics at Harvard University, assumed a unique position for a non-lawyer when he recently became "law clerk" to Judge Charles E. Wyzanski, Jr. (LL.B. '30) to give assistance on economic problems similar to that annually given by a law clerk on legal issues. Professor Kaysen's work will deal principally with *United States v. United Shoe Machinery Corporation*, an anti-trust case that Judge Wyzanski is hearing in the United States District Court for Massachusetts.

Big Business Specialist

Professor Kaysen has specialized in the study of the economics of "big" business, including the government regulation course in Harvard Law School. He is 30 years old, a graduate of Pennsylvania University and has done graduate work at Columbia and Harvard. For the last three years he has been a Junior Fellow in the Society of Fellows of Harvard University.

To date the record is 7,000 pages double-spaced with the defense now presenting its case. But the government's trial brief is also a weighty part of the case. It consists of a shelf of paper bound books two to three feet long comprising about 7,000 pages. The bulk of this is seventeen volumes of *Excerpts from Documentary Evidence* but the *Summary of Analysis of Facts* alone runs over 600 pages. Most of the documentary evidence consists of corporation records.

Complaint Filed in 1947

The government filed the complaint against the United Shoe Machinery Corporation December 15, 1947. The trial started last spring and the government completed its presentation before Judge Wyzanski in June. At the end of November the firm of Choate, Hall and Stewart of Boston began to present the case for the corporation.

Other aspects of the case may be found in the November 1950 issue of the *Harvard Law Review* where it is one of three cases considered in an article *The Big Case: Procedural Problems in Antitrust Litigation*. The author is Breck P. McAllister, LL.B. '26 of the firm of Donovan, Leisure, Newton, Lumbard and Irvine, New York City.

Third Attack

This is the government's third attack against the United Shoe Machinery Corporation. The first started in 1911, and like the instant one, was brought under the Sherman Act. The Supreme Court cleared the corporation in 1918 but meanwhile in an action brought under the Clayton Act the corporation was required to modify its rental lease agreements.

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Calendar

UNIVERSITY WORLD

Foreign Policy of the United States

Mrs. Vera Micheles Dean, author, lecturer, and Research Director of the Foreign Policy Association, will speak on *The Next Phase in Our Foreign Policy* tonight at 7:30 P. M. in the New Lecture Hall. The lecture is sponsored by the Harvard Liberal Union.

Harvard Conference on Careers, '51

The annual series of career conferences sponsored by the Office of Student Placement will begin Thursday at 8 P. M. in the Senior Common Room of Lowell House. The general topic of the first meeting is Government Service (both State and Federal). Samuel T. Adams, Director of Personnel, U. S. Bureau of the Budget will discuss careers in The Federal Service. Perkins Bass, former President of New Hampshire State Senate and presently a member of that state's House of Representatives, will discuss State Government Service. Professor Charles R. Cherington of the Government Department will speak on Education for Government Service. The program will be moderated by Dean Edward S. Mason of the School of Public Administration.

Thornton Wilder to Speak

The first of the Charles Eliot Norton Lectures on *The American Characteristics of Classical American Literature* for the Spring term will be given by Thornton Wilder, Charles Eliot Norton Professor for 1950-51, at the Sanders Theater Tuesday at 8 P. M. The topic will be *Poe—Detective, Criminal and Victim*.

OUTSIDE WORLD

Ford Hall Forum

On Sunday evening, Dr. Harry D. Gideonse, President of Brooklyn College, will speak on *Foreign Policy—Design or Drift* at the Ford Hall Forum. The lecture will begin at 8 P. M.

Lowell Institute Broadcasts

The Challenge of Communism, Part II, will be the subject of the discussions under the heading *America At the Crossroads*, sponsored by the Lowell Institute Broadcasts, on Friday evening, 10 P. M., over WEEI.

WEATHER—(Continued)

fall. It has also been noted that widespread modification of the weather pattern over much of the United States may have resulted from a systematic silver-iodide seeding operation conducted during 1950 in New Mexico. Possible applications and benefits of artificial weather control should not be permitted to overshadow the ultimate objective: to render calculable the effects of any hypothetical human intervention, and to introduce responsible control, as distinguished from haphazard interference.

No Adjudicated Cases

With the exception of one recent New York case, *Slutsky v. City of New York*, 18 Law Week 2523 (May 11, 1950), weather control or artificial rainmaking problems have not yet been adjudicated by the American courts. In an attempt to discover possible adjudication in this new field, the author sent a questionnaire to the Attorneys-General of the forty-eight states. The questionnaire asked: (a) Do you know of any rainmaking or weather control litigation in your state? (b) Have any weather control bills been introduced into your state legislature, or into Congress by your representatives or senators? (c) What is your opinion as to possible grounds for legal liability arising out of damage resulting from artificial rainmaking and weather control? Over forty replies were received. The majority replied in the negative to the questions asked, and none admitted to any knowledge of state litigation or legislation in this field. Most officials queried declined to offer opinions on the subject of possible legal liability.

Among those who offered helpful comment was Mr. Harold R. Fatzner, Attorney-General of the State of Kansas: "About 1900 this State was beset with professional rainmakers who had enormous machinery with a funnel extending into the sky. . . .

"The people of Kansas generally rely upon prayer as to such matters, but there is little evidence that they have ever been heard, and if such a method was either successful or unsuccessful nobody knew where and how they could litigate any damage resulting from the success or failure."

Several Questions

Several questions develop out of an attempt to relate artificial rainmaking and weather control to legal liability. Some apparent issues are: (a) Is there an "ownership" in clouds? (b) What is

the liability at common law, if any, for injuries caused by artificial rainmaking? (c) If human control is to be exercised over weather, who should exercise it—private persons, the state, or the nation? (d) If weather is controlled by the federal government, what legislation and factors of liability should be created?

Who "Owns" the Clouds?

Until recently, no one has ever asserted a property right in clouds. The common law has long recognized certain so-called "natural rights", or essential natural advantages which are inherent in land and airspace. Pure air, the right of support, benefits from flowing water, freedom from nuisance and pollution have long been considered "natural rights". They represent essential portions of the value of the land in its natural condition. Without them, there would be little security in the enjoyment of land by its owner.

An Albany Law Review writer suggests applying the well-known water rights doctrines in an endeavor to determine possible property rights in clouds. Eli Goldston, inquiring into the legal aspects of artificial rainmaking for the first time in the Harvard Law School Record in early 1948, suggested that the legal concept of "natural watercourse" should be extended to cover the entire precipitation-evaporation cycle. He noted that in recent years, courts have increasingly applied surface water rules to percolating water problems. Goldston further suggested that the "best of present watercourse law be used, rather than treat celestial water as some mineral *ferae naturae*."

However, established water rights doctrines appear to be of doubtful applicability to the field of weather control. These doctrines apply to earthbound waters, and their judicial interpretations vary considerably throughout the United States. Moisture-bearing clouds are transitory and free-moving. They form and disintegrate at pleasure in the course of their travels. They are not earthbound, like lakes and streams, and follow no pre-determined, defined course or existence.

Several theories exist in the common law on which a court might base liability for alleged damages to property caused by artificial rainmaking and weather control. Three such theories are trespass, negligence and nuisance.

Trespass

The authorities seem to be in general agreement that intended trespass to property is made actionable by existing tort law. *Prosser on Torts* notes that "trespass may consist of any entry of a person or thing upon land in the possession of the plaintiff, or in remaining upon it, or allowing a thing to remain upon it, where there is a duty of removal." The *Restatement of Torts* finds liability for trespass only in the case of intentional intrusion, negligence or some "extra-hazardous" activity. Liability is imposed for ground damage, regardless of negligence or intent. A recent opinion of the Attorney-General of Minnesota holds that when drift from aerial spraying is carried over into neighboring fields, a trespass to real estate is committed. The decision effectively allows recovery of nominal damages by all owners of possessory interests whose land or effectively tenable airspace has been trespassed.

Negligence

The *Restatement of Torts* also impresses a strict tort liability for negligence in conducting an activity without due notice or warning, if an unreasonable risk and harm is created to persons and property on the ground. Persons damaged may recover for all harms caused by the actor's negligence. One case closely related to the field of artificial precipitation dealt with steam coming from a vent in defendant's building. The steam condensed in a cold wind, and fell, forming a coat of ice on the pavement adjoining defendant's property. Defendant had notice that this was happening. *Held*, Defendant's conduct was the proximate cause of plaintiff's fall on the ice, and defendant was held liable for his negligence. *Diehl v. Fidelity Philadelphia Trust Co.*, 159 Pa. Sup. Ct. 513, 49 A. 2d 190 (1946). In a similar instance, defendant was held liable for his negligence in allowing steam to escape across a public highway,

obscuring plaintiff's vision and causing him to collide with another car. In other cases, liability was established in aerial crop-dusting, and several states have passed legislation controlling crop-dusting activities.

The common law remedy for nuisance is a temporary or permanent injunction ordering its immediate abatement, on penalty of contempt of court. Statutory liability for nuisance in the field of aviation has been inserted in the Civil Air Regulations. The Regulations provide for the seizure of aircraft, recovery of a civil penalty, and the suspension or revocation of the pilot's certificate for violating the provision which states that "no person piloting an aircraft shall permit anything to be dropped from an aircraft in flight which might create any hazard to persons or property."

Proximate Cause

One of the most difficult questions with which a court will have to deal in determining weather control liability on a strict tort basis will be the pricking question of "proximate cause". Proof of what happened during a rainmaking experiment requires a laborious, if not impossible, reconstruction of scientific events in an air column whose volume may range up to thousands of cubic miles. The air column may be inclined at various degrees from the earth's surface. It may be moving twenty miles an hour, or with the fearsome velocity of a hurricane. Tremendous distances are involved at which such natural effects take place. It is unlikely that a plaintiff who alleges harm from an isolated rainmaking experiment will be able to prove factually to the satisfaction of a court or jury that the precise experiment itself proximately caused the rain which, in turn, caused his damage. Moreover, technical meteorological equipment and specially-trained weather personnel are required to record and evaluate the causal effects of the rainmaking experiment upon a raincloud. Such facilities would usually not be available to either of the parties in litigation, nor to the court.

As scientific knowledge and control in the weather field increases, proof of causation should become easier. However, the difficult burden of proof now placed upon the plaintiff to establish "proximate cause" may keep most aggrieved parties out of court, or will tend to promote pre-trial settlements.

Whether or not a strict tort liability develops out of the application of these

tort doctrines would seem in part, to depend upon the relative responsibility of the person or agency conducting the weather control experiment, and upon the relative importance of the purpose for which the experiment is conducted. The *Restatement of Torts* states that where government activity is "reasonable", despite imminent risks, the rule of "ultra-hazardous" activity should not apply. The *Restatement* also observes that the utility and social value of the activity will dispel most of the charges of public nuisance.

Rainmaker's Defense

A rainmaker might assert that he is privileged to make rain—that liability should not follow normal rainfall injury or incidental inconvenience (*damnum absque injuria*). He might also maintain that he is privileged on the grounds of public necessity or emergency. He might argue that an absolute privilege should exist to artificially create rain in the public interest, in event of emergency. In *Slutsky v. City of New York*, the only reported artificial rainmaking case in this country, Mr. Justice Pecora of the New York Supreme Court reaffirmed the ancient privilege of public necessity, and refused to grant an injunction against the City of New York to restrain its recent emergency rainmaking efforts. Justice Pecora said:

"... The court must balance the conflicting interests between a remote possibility of inconvenience to plaintiff's resort and its guests, with the problem of maintaining and supplying the inhabitants of the City of New York and surrounding areas, with a population of about ten million inhabitants, with an adequate supply of pure and wholesome water. The relief which plaintiffs ask is opposed to the general welfare and the public good; and the dangers which plaintiffs apprehend are purely speculative. This court will not protect a possible private injury at the expense of a positive public advantage. . . ."

(End of 1st Installment)

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