

The Harvard Law School Record

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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.

Criminal Justice

The need for criminal law administrative reform has been highlighted recently by Mr. Wilbur C. Hollingsworth's article in last week's RECORD and Assistant District Attorney Viola's attack on the Harvard Voluntary Defenders.

The thesis of the common law has always been that a man is innocent until convicted. However, the problem of who is to defend the accused has never been faced.

The public interest has been secured by the law enforcing arm of the state. However, there has been no concern over the securing of adequate defense of the accused, and such worries have been left to individual groups. The Voluntary Defenders has attempted to bring back the balance which is the ideal in our system of justice. The only concern evidenced by the state in Massachusetts has been to appoint defense counsel in capital cases. In all other cases, the individual has been left undefended.

Until such time as the public sees fit to provide a Public Defender for these accused who cannot afford counsel, an office which will be able to utilize the full investigative forces of the State, the need for the groups such as the Voluntary Defenders will remain with us.

It is a sad commentary on Massachusetts justice that less than ten percent of cases reach jury trial. With such a low percentage, the need for the defense of accused persons becomes obvious.

Workable Solution

A financially workable solution for the dining hall rates problem short of actually increasing the weekly charge by one dollar as had been urged by University Vice-President Reynolds, has evidently been found. The new dining hall policy announced recently is actually reasonable enough, when viewed in terms of meeting the decreasing patronage of Harkness Commons. Reverting to a more liberal policy and allowing men who have signed off to sign on again in much the same manner as was permitted last year at the Graduate Dining Hall seems to us a practical necessity.

In addition, standard portions should be given the first time through the line to prevent waste. Anyone who is still unsatiated on completing the first portions will still be able to return and go through the line again. This small inconvenience is obviously necessary to avoid excessive waste of food and it is likely to prove the distinct economy which will avoid a deficit operation for the school year. Other possible solutions are far less desirable. No second helpings, compulsory signing on in terms of the pledges signed by dormitory residents, a decline in quality or increase in price of meals are all wholly unsatisfactory answers. Fortunately, such drastic measures have not been adopted. We urge full cooperation to avoid waste and yet maintain dining hall revenue at a level which will not necessitate the proposed additional charge.

Gallery

JOHN SLOAN DICKEY College President

Tall, dignified lawyer and college president, John Dickey has that quality which he says is indispensable to every man in our era—a sense of humor. The amicable president of Dartmouth College believes another necessity in one's make-up is an intellect sharpened to an edge. "Making the student think for himself by kicking out his crutch, the professor, enables him to develop a respect for precision in all types of work. This is acquired at Harvard Law School." The sense of humor is not.

Changes in Law School

On the contrary, in Mr. Dickey's years at the Law School, from which he received his LL.B. in 1932, there was an ever-solemn atmosphere, in that too many of the students had the fear of being in the third of the class that failed. Added to this was the feeling of not belonging, of an individual against a process—all changed today thanks to the community life which has sprung up because of the new dormitories and graduate center.

One of Mr. Dickey's great benefits from law school was his being exposed to the thinking and approach of Oliver Wendell Holmes. He enjoyed classes under such men as Williston, Frankfurter and Powell, and recalls vividly the day Professor Powell, in his friendly manner, cited a case in which Mr. Justice Brandeis wrote the majority opinion, Holmes dissenting. "The case is simple for all students," said Mr. Powell, "but Mr. Frankfurter doesn't understand it, because the gods have split."

Diversity in Work

Doing part-time work in penology to help him financially through law school, Mr. Dickey's job was to pick prisoners for rehabilitation. Choosing those who were to leave Charlestown Prison for an unguarded area was a trying task, but gave him experience in dealing with every type of human being. Before his graduation in 1932, he wrote *Culpable Homicide in Resisting Arrest*, 18 Cornell L. Q. 376. His interest in criminology and penology led him to continue this work after graduation, as assistant to the Massachusetts Commissioner of Correction, Francis Sayre, who was his professor in Criminal Law at Harvard. In this field, Mr. Dickey acquired much valuable knowledge in the field of government work which he later put to good use while in the U. S. State Department in the mid-thirties, working on everything from reciprocal trade to blacklists. During the war he also was special assistant to the Coordinator of Intelligence Affairs, Chief of World Trade Intelligence, and served as Public liaison officer, United States delegation, at the United Nations organization in San Francisco in 1945.

President Dickey's duties today are ever-pres-



ing, but he finds time to enjoy family life with his wife and three children, the youngest of whom is John Sloan Dickey Jr., age 10. But there is not time for hunting and fishing, the sports that he has loved since his childhood days in Pennsylvania. Not since his graduation from Dartmouth in 1929 have there been the long trips into mountains and streams for fish and game.

College President

After spending several years in the practice of law with the Boston firm of Gaston, Snow, Hunt, Rice and Boyd, of which he became a partner in 1940, Mr. Dickey left to reenter government work in Washington where he remained through the duration of the war. In October, 1945, he was chosen the 11th president of Dartmouth College, becoming one of the youngest of the country's college leaders. This position is the most gratifying of all he has held, and "it presents many types of situations which my legal training has helped me to meet." Mr. Dickey sincerely believes the difference between the college level of work and that of law school is too great and sees the solution to this difficulty in a quickening of the intellectual pace in the undergraduate senior year. This would better prepare men for graduate school and for the job of facing the future, and would cut down the number of college graduates who perennially cry out that they are prepared to do nothing after four years of booklearning.

The one piece of advice Mr. Dickey offers to law students, and to others, too, is never assume too much, for what you have in mind may not be the idea which the other fellow has. His lesson in this came when he was taking the oral bar examination in 1932, appearing before five distinguished judges of the Massachusetts bench after having finished the day's work at Charlestown Prison. The question of form directed at all examinees was asked, "Have you ever been in jail?" Answered Mr. Dickey eagerly, "Yes, Sir, I've just come from there!" A. B. I.

Letters to the Editor

To the Editor of the RECORD:

Whoever composed the vituperative attack on the subject of the Ames Competition which appeared in your current issue apparently lacked the courage to sign his name; and since it was a slur on all of us, an editorial reply is certainly called for.

The unknown author has placed withdrawing from the competition on the same general plane as selling state secrets or throwing basketball games, if not much worse. It comes as a surprise, however, to find that such conduct is the "course of the least resistance." This statement is rebutted, I think, by the dozens of people who would gladly have dropped out long ago had they known that it was possible. But most of us accepted in good faith the Board of Student Advisers' Booklet which announced gravely (p. 60) that participation was required. It is a sad commentary on the nation's future advocates that we should supinely accept a fraud so early in our careers.

But the letter you printed is defective in another respect. It does not take into account the motivation of students in choosing to apportion their own time as they see fit. The letter admits that dropping out of Ames may boost one's grade standing a few points, and it is hardly necessary to point out that the increase may make the difference between passing and failure. But more than this, the letter also assumes we all came here to be flunkies in law offices, which is an unwarranted generalization.

There are at least four other reasons why a lot of us came here. First, some students are waiting for another March on Washington reminiscent of the days when Frankfurter's boys ran the government. Second, some of us have our eyes on good conservative Wall Street firms that haven't taken a case to court for fifty years unless the Constitution was endangered. Third, most smart businessmen pick law-trained per-

sonnel for executive positions. And fourth, if we weren't here, we'd be in Korea.

In none of the above situations can we say that Ames offers anything of value. Not so, however, our rank in the graduating class.

And as to the lugubrious complaint that the wholesale withdrawals are sabotaging the law clubs, I can only sob, "Stop! You're breaking my heart!"

ERNEST E. MARLATT, II.

To the Editor of the RECORD:

Not only Mr. Sears but a substantial number of alumni believe that the Law School is encouraging and playing host to the Communist Party. That such an honorable group of men should hold this opinion is deplorable, and obligates all right thinking members of the student body to dispel any doubts that we are not one hundred per cent American in ideals and principles. To reassure those who have been led to think otherwise, the writer offers the following evidence.

A member of an International Law discussion group debating whether labeling Communist China an aggressor was justifiable, refused to argue in the negative because, "I want to get a job with the government someday, and you can't tell who may be sitting in class."

Another student refrains from attending a lecture in Boston on a controversial subject because he fears recognition will jeopardize his chances of being commissioned by the Army.

Another student solicited of his future earning power confessed that his reason for not joining the Harvard Lawyers Guild stemmed from the fear that a conservative firm in which he is interested would discover his participation and pass him by for a more reliable candidate. Said another student, "My father works for the government and I don't want to get him in hot water." Another student simply states, "I want to pass the Mass. Bar."

These examples show that we right-thinking

Sub Judice

IN SPRING A YOUNG MAN'S FANCY

"The latest popular vehicle of amusement—television—caused the activities of the parties to run into a common channel and ultimately into this court for security. Apparently in keeping with common experience, plaintiff's popularity and number of visitors increased substantially after he obtained his television set."

Swain was an elderly widower of about 73 years of age who lived apart from his family. Mr. and Mrs. Moore were neighbors who were in the process of building a home and often came to Swain's house to watch television after they finished work. Swain developed a deep affection for Mrs. Moore, but as the court notes: "By this I do not mean to suggest that either party was guilty of anything improper. . . . The defendant was about 32 years old and not unattractive viewed through eyes of any age."

With this relationship existing, Swain performed certain acts of "generosity", listed as follows: 1) Paid \$175.50 for 26 loads of dirt to be used in the construction of Moore's house. 2) Gave the Moores \$1,000 cash to buy bathroom fixtures. 3) Gave them two \$500 savings bonds payable on Swain's death to Moore's daughter (subsequently returned). 4) Transferred title to his \$2,500, 1949 Hudson (getting the Moores' 1937 Ford in return). 5) Purchased a \$57 coat for Mrs. Moore. 6) Gave the Moores \$2,700 in cash which they used to build a second story to their home.

After these transfers Swain was left with only his home and \$800 cash (which he kept for burial expenses). Swain then went to live with the Moores but after four months left, disgruntled, and brought suit for return of the money and car.

Held: Plaintiff is entitled to recover the Hudson car and \$3,700 less a reasonable deduction for time spent with the defendants.

"I believe the circumstances here warrant the conclusion that a fiduciary relationship existed between plaintiff and defendant. . . . Where a fiduciary duty exists, the law will presume fraud. . . . [T]he testimony exuded an aroma of exploited affections. . . ."

"While I do not intend to imply that defendant's actions were part of a calculated plan, nevertheless I do think that legally the defendants should not be permitted to retain the property." *Swain v. Moore*, Del., 71 A.2d 264 (Feb., 1950)

Off the Record

During the discussion of a 1901 case of an agent, authorized only to deal in the purchasing of tobacco, who exceeded his authority by borrowing \$4,000, the reasons for not allowing the agent to borrow were discussed.

An agent authorized to borrow could readily dispose of the money borrowed. An agent authorized only to buy, however, could not pass title, and would be limited to a slow use of the goods purchased.

Professor Hall: "In fact, in this case, at 20 cents a pack, smoking one every ten minutes, twenty-four hours a day, he could stock himself for thirty-eight years!"

Or, if he really wanted to live, he could smoke a good 5c cigar every half-hour, twelve hours a day, for forty-five years!

Limericks on Legal Topics

One erring inebriate Fine
Invaded D's home with design,
He swung just for fun,
But D with his gun
Laid out the poor fellow supine.
State v. Preece, 116 W. Va. 176, 179 S. E. 524

students have the situation well in hand and that the ideals of the American tradition are being constantly re-affirmed at the Harvard Law School.

RICHARD MANSFIELD, JR., 2L

To the Editor of the RECORD:

The relentless battle goes on. It's you against the motorist as you cross the intersection by Phillips Brooks House. Who will emerge victorious? The odds favor the driver. Everyday you thank the heavens for sparing you one more day. But there is always tomorrow. Will you come out on top then? Have you made out your will and had your last fling?

To suggest that a cop be stationed there all day to direct traffic would be blasphemy. After all Cambridge is too "poor to afford" to place a cop there and we can't disturb the peaceful "walks" through nature enjoyed by the Yard cops. Remember, young man, that you are supposed to be studying all day and shouldn't be venturing out in the cold, cruel world, so that anything that happens to you is your own fault anyway.

HERBERT THAU, 3L

Alumni Notes

LL.B. '28—**Powell B. McHaney** has been elected president of the General American Life Insurance Co., St. Louis. He was formerly executive vice president and general counsel of the firm. He is presently chairman of the Mayor's Citizen's Committee to administer the city's \$63,000,000 post-war improvement program.

LL.B. '31—**Talcott M. Banks, Jr.**, has been elected chairman of the Board of Trustees of the Fessenden School, West Newton, Mass.

LL.B. '36—**John S. Carlson** is president of the Harvard Club of Tulsa, Oklahoma. **Emmet H. Wilson, Jr.** has removed his office for the practice of law to I. N. Van Nuys Building, Los Angeles.

LL.B. '39—Among the ten outstanding young men of 1950, chosen by the United States Junior Chamber of Commerce is **John F. Floberg**, Assistant Secretary of the Navy for Air. In making the selection, the Chamber cited him for his "capable and far-sighted supervision of all Navy aeronautics and the development of modern airplanes for Navy use."

LL.B. '41—**John H. Jarman** of Oklahoma City, Okla., was recently elected a member of Congress.

LL.B. '43 ('47)—**William F. Quinn** has become a member of the firm of Robertson, Castle and Anthony, 312 Castle and Cooke Building, Honolulu, Hawaii.

LL.B. '48—**Bernard Axelrad** has formed, with a fellow member of the class, **Stanley Sevilla**, a partnership for the practice of law at the Chester Williams Building, 215 W. 5th St., Los Angeles, Cal.

LL.B. '48—**Bentley Tobin** has become a partner of **Oscar Titiev**, LL.B. '29, and **Magnus Greenman**, LL.B. '28, the firm to be known as Titiev, Greenman, and Tobin, located at 185 Devonshire Street, Boston.

LL.B. '49—**George W. McManus, Jr.** has opened an office for the general practice of law at 1418 Fidelity Building, Baltimore, Maryland.

LL.B. '50—**Franklin H. Preston** has recently been elected to the thirteen-man City Council of the City of Binghamton, N. Y. **Jerome J. Gelman** has opened his office for the general practice of law at 45 Church Street, Paterson, N. J.

Horty High Scorer As Effoes Defeat Jaspers In Tourney

On Monday in Hemenway Gymnasium, the Effoes defeated the Jaspers, 60-55, in the first game of the playoff tournament of the Law-Graduate Intramural Basketball League. John Horty, with 20 points was high scorer for the Effoes who will meet the winner of today's Gothams-Lakers game Friday in the semi-finals of the tournament. Late yesterday Chancery "A" met the Cagers for the right to play next Monday in the semi-final against the winner of the Cowboy-Lincoln's Inn contest scheduled for tomorrow.

The championship game will be played Wednesday, March 28 at 4:45 p.m. in the gym. Regular league play ended last week with the Gothams surprise winners in Division One and the Cowboys the undefeated champions of Division Two. The Gothams won their division crown with an assist from the Effoes who completed Chancery "A's" downfall last Wednesday by edging them 44 to 43.

In the week's best game in Division Two, the Jaspers out ran the Lakers for a 51-45 victory despite the 29 points of Dave Atcheson, 1L (Stanford '50) of Seattle, Wash. His big splurge brought him the division scoring crown with a 15.1 average.

The Gothams' Norm Dorsen, 1L (Columbia '50) of New York City, wrested the Division One scoring title from Johnstown (Pa.) John Horty, 1L (Amherst '50). Dorsen's final average of 17.9 surpassed the 17.2 average of Horty.

FINAL STANDINGS

DIVISION 1			
Team	Won	Lost	Pct.
Gothams	9	1	.900
Chancery "A"	8	2	.800
Effoes	7	3	.700
Lincoln's Inn	4	6	.400
Chancery "B"	3	8	.273
Legal Eagles	2	8	.200

Final Week's Games

Gothams 37, Chancery "A" 35
Lincoln's Inn 29, Chancery "B" 28 (overtime)
Effoes 44, Chancery "A" 43
Gothams 93, Legal Eagles 39

DIVISION 2			
Team	Won	Lost	Pct.
Cowboys	11	0	1.000
Jaspers	9	2	.817
Cagers	7	4	.636
Lakers	5	6	.455
Dicks	2	9	.182
Sturdlees	0	11	.000

Final Week's Games

Cowboys over Sturdlees — forfeit
Cagers 41, Dicks 37
Jaspers 44, Dicks 37
Cowboys 58, Cagers 33
Jaspers 51, Lakers 45

MOBILIZATION—(Continued)

Saturday morning. Professor Louis L. Jaffe, Harvard Law School, will preside. He was formerly Public Member of the Appeals Committee and of the Shipbuilding Commission, W.L.B. Speaking on the subject of *Wage Stabilization and Disputes Settlement Policy* will be Professor Archibald Cox of the Law School, and Professor John T. Dunlop of the Department of Economics and the Graduate School of Public Administration, Harvard University.

Professor Cox was formerly principal Mediation Officer, National Defense Mediation Board and Associate Solicitor, Department of Labor. Professor Dunlop is now Public Member of the Wage Stabilization Board. The commentators will be Professor Lon L. Fuller of the Law School, who engaged in Labor Law practice before the W.L.B. and has at various times served as a labor dispute arbitrator, and Robert M. Segal, Esq., LL.B. '42 of Boston. Mr. Segal, a labor lawyer, was formerly Assistant to the President's Railroad Emergency Fact Finding Board.

On Saturday afternoon's final session, Coordination of Controls, will be presided over by Dean Griswold. Speaking on *Overall and Long-Range Effects* will be William L. Marbury, Esq., LL.B. '24, of Baltimore, Maryland. Mr. Marbury, a Fellow of Harvard College, was formerly Chief of the Legal Branch, Procurement and Distribution Division, Headquarters Services of Supply, and Legal Adviser to the Director of Materiel. The final speaker will be the Hon. John Sparkman, United States Senator from Alabama, who will talk on the *Role of Congress in Planning and Administration*. Senator Sparkman is a member of the Senate Committee on Banking and Currency. Although there will be no commentators at this session, members of the audience will have opportunity to ask questions.

COFFEE HOUR TUESDAY

Hermione Gingold, "England's Funniest Woman," will appear at a special Coffee Hour next Tuesday at 1:30 p.m. She will answer questions about American and British plays and reviews.

Miss Gingold is currently starring in *It's About Time* at the Brattle Theater in a pre-Broadway run.

LAW WIVES HEAR NURSE

Miss Alice B. Updegraff of the Simmons School of Nursing will speak on *The Contribution of a Mother to Development of the Pre-School Child* at the Law Wives meeting tonight at 8 in the Wheeler Room of Holmes Hall.

'51 CLASS—(Continued)

(Bowdoin '47) of Yonkers, N. Y.; Vincent E. Leahy (Harvard '45) of Brookline; S. Kenric Lessey, Jr. (U.S.M.A. '45) of Chappaqua, N. Y.; Sidney H. Lyons (Northwestern '48) of Ft. Wayne, Ind.; Melvin M. Prague (Tufts '48) of Cambridge; Edward H. Snyder (Wisconsin '48) of Milwaukee; David M. Watnick (New Hampshire '48) of Haverhill, Mass.

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Speakers Clash Over Extent Of Public Aid To Parochial Education At Forum

In presenting the subject of *Public Aid to Parochial Education* for discussion at Rindge Tech last Friday night, the Harvard Law School Forum provided its audience with a spirited and provocative evening.

Bishop G. Bromley Oxnam saw the use of public funds in parochial schools as a threat to the public school system. He feared that if religious groups were assured of funds for their own schools, the public school would soon find its sources of financial support undermined by scores of competing sects. Looking at the Catholic parochial system, Bishop Oxnam found its views directly opposed

to the principles underlying the public school system. Therefore, he said, not only would the public school find its own finances endangered by public aid to the parochial school, but it would be confronted with a publicly supported institution which condemns freedom of speech, press, and assembly.

James O'Neill of Brooklyn College wanted the issue of public aid settled by means of the democratic process rather than by a retreat behind the barrier of the Constitution as he accused the Supreme Court of doing in the recent *McCullum* case.

Dr. George H. Williams of the Harvard Divinity School carefully distinguished between types of aid afforded to the parochial school. He supported public aid which went to "children as children," such as school lunches and free medical care, which should go to all children.

Dr. Vincent A. McCrossen of Boston College insisted that to deny the right of parochial schools to public aid was a denial of the long standing tradition of federal and state support of religious institutions. He pointed to the tax exemptions of church properties and the supplying of army chaplains as evidence of the recognition paid to the essential place of religious teachings in our society.

CAVERS—(Continued)

mission to revise the laws relating to estates, as a consultant to the U. S. Department of Agriculture in work on new food, drug and cosmetic legislation, and, since 1943, on the Research Advisory Board of the Committee for Economic Development. He also is on the Editorial Board of the *Journal of Legal Education*.

Professor Cavers was born in Buffalo, N. Y., on Sept. 3, 1902, and was graduated from the Wharton School of Finance and Commerce, University of Pennsylvania, in 1923. At the Harvard Law School, from which he was graduated in 1926, he was President of the *Harvard Law Review* and received the Fay Diploma. He entered the private practice of law with the New York firm of Rushmore, Bisbee & Stern, and served there for three years. In 1929, he returned to Harvard to begin his teaching career as an instructor in law.

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| IV. Coordination of Controls | Saturday Afternoon |

Speakers and commentators from Government service, private law practice, the University, and the Law School.

The sessions will be held at the Harvard Law School in Cambridge. The registration fee will be \$10.00, which includes dinner on Friday evening and lunch on Saturday in Harkness Commons, the dining hall for law and graduate students at Harvard University.

Registrations will be accepted in order of receipt and will be limited to the capacity of the Court Room in Langdell Hall. To register, send check for the \$10.00 fee (payable Harvard Law School) to:

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The COOP

Calendar

UNIVERSITY WORLD Career Conference

The 1951 Harvard Conference on Careers will hold a round-table discussion on the subject *Armed Forces and Selective Service*, Thursday evening, 7:45 p.m. in the New Lecture Hall. The round-table panel will consist of the following persons: Major Paul F. Feeney, Manpower Area Chief, Massachusetts State Headquarters, Selective Service System; Captain Douglas V. Gladding, U.S.N.; Major Jarvis R. Kingston, U.S.A.F.; Col. Charles P. Summerall, Jr., U.S.A. and Maj. W. Bruce Pirnie, U.S.A.R. Dean Wilbur J. Bender, will act as moderator.

Higher Education

The last in a series of six discussions on higher education in the U. S. will be led by Dean Francis M. Rogers of the Graduate School of Arts and Sciences on Tuesday evening, 8-9:30 p.m. at Phillip Brooks House. The subjects to be discussed will be: *Foreign Language Teaching in American Colleges and Universities*, and *General Conclusions*.

OUTSIDE WORLD

Ford Hall Forum

Paul A. Freund, Charles Stebbins Fairchild, Professor of Law, will discuss the topic *Can the Courts Safeguard Our Civil Liberties?* on the Ford Hall Forum, Sunday at 8 p.m. in Jordan Hall. The lecture is free and open to all law students and the public.

Lowell Institute Broadcast

Do We Need the R.F.C. Any Longer? will be the subject discussed on the Lowell Institute Program. *America at the Crossroads*, Friday evening at 10 p.m. over WEEL.

GLASS HOUSES—(Continued)

few women enter the legal profession in America. But the more maladjusted American women marry lawyers.) are eventually sent to a special American institution for which there is no European equivalent. At this institution, the young American is taught how to be a delinquent without breaking the law. That is the best compromise American society can reach. The special institutions which teach this subject are called 'law schools.'²⁹ (It is probably no coincidence that one of the most well-known American law schools is the one at Harvard, which is located hard by the Irish residential city of Boston. Many a Harvard student's rough edges are rubbed down by his encounters with the Boston Irish.)

"When young men in America are released from 'law school,' they are called 'lawyers.' As they have learned the basic political techniques from the Irish, and the legal loop-holes from their official tutors, they are politically invulnerable."³⁰ (Particularly as no one else enters politics.)

"The final result is that all the upper levels of American Government are dominated by lawyers, and the lower levels (which supply votes) by the Irish. Both must continue to remain the political lackeys of the capitalist bosses, because neither the Irish nor the lawyers can read, talk, or understand Standard American, which is spoken by the rest of the population. Only the ruling class knows how to translate from the vulgar tongue into Celtic or legal terms."

If you want to know how and why you're an American as well as a lawyer, don't miss *Americans in Glass Houses*. G. J.

FOREIGN TRADE —(Cont.)

the exporter and importer with their export or import contract (CIF, FAS, FOB, ex ship, and the like); the shipowner with his ocean bill of lading, dock receipt, delivery order; the marine underwriter with his insurance policy and certificate; the banker with his letter of credit, foreign exchange contract, and other financial instruments. These are the principal characters; there is a large and distinguished supporting cast.

The inherent complexity of the overseas commercial transaction is heightened by the fact that the principal parties are citizens of different countries, governed by different legal systems. The effects of the endorsement of a delivery order may be different in Belgium and in England; if the contract between the Belgian buyer and the Argentine seller contains a clause subjecting disputes to arbitration under the rules of the Liverpool Corn Trade Association, the case may reach the House of Lords. The House of Lords may say: since Belgian law on this point was not argued, we must assume that it is the same as English law.

In addition, the fact that the principal parties are citizens of different countries generally means that payment involves a bank remittance of foreign exchange. The cases reveal considerable confusion concerning the interrelations of the banks and other parties involved in these transactions. This confusion has been to some extent eliminated, and to some extent only codified, in the proposed Uniform Commercial Code (Article 6—Miscellaneous Banking Transactions). A comparison of the thirteen sections of Article 6 with the cases on which they are based makes a useful seminar exercise.

The many international commercial conventions demonstrate the international character of the body of law which governs commercial relations among citizens of different countries. The process by which such international law has been incorporated into the municipal law of the various countries may be seen in the history of the Hague Rules, drafted by the International Law Association in 1921, subsequently adopted as the Brussels Convention of 1922-1924, and belatedly enacted in 1936 by the United States as the Carriage of Goods by Sea Act. The various international conventions constitute a code of international commercial relations. They represent a culmination of the 900-year-old development of the law merchant.

But the law merchant, developed through the centuries to unite the international community of merchants, must now accommodate itself to a new era in which world trade is dominated by public authorities. The various nation-states, which in modern times have taken over the law merchant and integrated it with their own legal systems, now begin to exercise a far more direct and positive influence. The nation sees itself as an economic community. It thinks of its foreign trade not in terms of the private dealings of merchants but directly in terms of the national welfare. From the point of view of the national community, the principal questions are not cast in terms of the relations between A and B, but rather in terms of, "How is Country X to be fed and clothed?" "What must we give in order to keep our friends?" From the standpoint of law, much of what was once done primarily by private contract, coupled with tariff protection, is now accomplished by governmental allocation.

Yet it is significant that any govern-

ment, in organizing the nation's foreign trade, must rely upon the institutions which have been developed for the private transactions of merchants. Even the Soviet state trading agencies use the CIF contract and the letter of credit. On the other hand, a whole new body of law arises from the difficult problems faced by governments which seek to control foreign trade and which themselves enter directly into the international market.

Our first experience with this has resulted in the vast body of Customs law which fills Title 22 of the U. S. Code and the reports of the Court of Customs and Patent Appeals on its Customs side. Our second principal experience has been with exchange controls, and our third with export licensing. Today we are engaged in working out a still different form of control through export and import pricing by the Office of Price Stabilization.

Who Makes Decisions?

What governmental agencies shall make the decisions? By what standards shall the decisions be made? What protection shall be given to those who suffer under the decisions which are made? We are only beginning to work out the answers to these questions in the field of government control of foreign trade. The lawyer who represents a producer-exporter or an export broker may find himself practicing before the Office of International Trade, appealing a license revocation or contesting a proposed regulation. He will have little in the way of doctrine or precedent to help him.

The recent Rockefeller Report proposes that a single agency be established to carry out foreign economic policy, to take over the functions of the existing twenty-three governmental agencies now engaged in that pursuit. Doubtless no

single agency could, however, eliminate the underlying problems now reflected in inter-agency conflicts. Today the decisions as to what and how we shall export and import are being made principally by the State Department, the Commerce Department, the Department of Agriculture, the Department of the Interior, and the Department of Defense. The several agencies may be coordinated but it is doubtful that the conflicting interests which they represent can so easily be submerged.

These are some of the problems of state trading, which in some countries have been resolved dictatorially and which we are seeking to resolve democratically. Here the Constitution and judicial supremacy are of limited help since the constitutional power of the executive in the conduct of international commercial affairs is so great. There may be some comfort in the fact that competition between the various national states in turn compels the development of regional and international controls, as in the European Recovery Program and the General Agreement on Tariffs and Trade (GATT) and the International Trade Organization (ITO) of the United Nations.

The study of these and other international arrangements can hardly be exhaustive in a seminar in *World Trade from CIF to ITO*. Indeed, the method throughout the course must be one of sampling, with great emphasis upon intensive research by the individual student upon a particular subject for his term paper.

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