

The Harvard Law School Record

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Soviet Russian Liability Laws Is Review Item

Discussions of foreign and international law form the bulk of the articles in the forthcoming issue of the *Harvard Law Review*. The first item is a paper by Prof. John N. Hazard of Columbia analyzing social insurance schemes in Soviet Russia. Because of the modern trend away from the personal injury action toward plans under which the cost of providing compensation for injury is shared by a wide segment of society, an evaluation of the Soviet plan may be useful in discovering the strengths and weaknesses of comparable American schemes.

The author begins by explaining why the Soviet Civil Code made liberal use of the doctrine of liability without fault and established the rule that damages should be computed in light of the relative wealth of the parties. Many of the statutory provisions bear out the author's thesis that the Soviet government is using the insurance schemes for political purposes, such as imposing pressure on workers to join trade unions, and to remain on the same job for long periods of time.

An Article titled "Territoriality and Universal Recognition of Rules of Conflict of Laws" presents an English translation, prepared by Dr. Kurt H. Nadelmann, of an article published in the *Revue Critique de Droit International* by Prof. Jeanpaulin Niboyet, an eminent French authority on conflict of laws.

Professor Niboyet notes the failure of attempts to achieve a universal private (See Review on page three)

Forty-One Year Stay At Law School Furnishes Anecdotes For Chafee Talk

This article was originally an address, entitled "Harvard Law School Then and Now," delivered by Professor Z. Chafee, Jr., at the luncheon of Harvard Law School graduates in New York City, January 25, 1952.

On the morning forty-one years ago last September when I approached Langdell Hall for the first time, crossing a non-descript oblong even more treeless than now, I remember thinking, "This place will never have the meaning for me that college did." No intuition told me that the rest of my life would be centered in that place and in the men I would know there. Henceforth, little as I realized it, Harvard Law School was to inspire most of my thinking and draw toward it a large part of my emotion and hopes.

It was a marvelous experience, after



PROF. Z. CHAFEE

college where love of studying was then an oddity which tended to isolate one from the multitude of students and where men scattered their energies in many diverse directions, to find oneself in a mass of men all moving together because of a single strong desire to acquire a knowledge and a mastery of law. And



First row (left to right): R. J. Graving, O. Oldman. Second row (left to right): P. H. Schiff, I. C. Macdougall, W. J. Chadwick, M. Aaron. Third row (left to right): R. L. Ottinger, T. R. Howarth, E. G. Galbraith, C. G. Wright, P. C. Lambert, J. S. Gratton.

Board Announces Prizes For Fall Ames; Drafting Program, 1st Year Doubles Start

Prizes, consisting of books on legal topics, have been awarded to the students who have submitted or delivered the best brief or oral argument of the first and second year trials for the fall of 1951. Peter H. Schiff, Webster Club, received first prize for the best first year brief. The second prize was awarded to Peter H. Bator of the Leach Club. For delivering the best oral of the first year, the prize went to William J. Chadwick of the Anonymous Club. Iver C. Macdougall received the prize for the best written judicial opinion.

The Scott Club was awarded the Roscoe Pound prize for the best club record of the qualifying round. The Marshall

Club prize for the best brief was given to Marcus Aaron II and Richard J. Graving, of the Cardozo Club. Oliver S. Oldman of the Casner Equity Club received the Scott Club prize for the best oral argument.

Hoping to stimulate interest and develop competence in draftsmanship, the Board of Student Advisors is continuing this year with its sponsorship of a drafting program. Members of eleven clubs from the second year qualifying round have been invited to participate in this project. Those persons who have accepted have been assigned to six new clubs, each with two teams. A team will work on one of the three projects selected, in competition with three other teams from different clubs. By this arrangement each club will be able to consider two problems.

Three problems have been selected for the clubs to work on. Two of them were worked on last year with great success and were consequently included again in this year's program. One problem involves the drafting of a Uniform Workman's Compensation statute, focusing attention on the possible disputes arising under a conflict of laws situation. Preparing a standard contract for wholesale whiskey distributors, which can be used in arranging nation-wide distribution of whiskey, is the second project. The third problem requires the drawing of a trust agreement for a man who is to die in a year, and who desires to establish a trust of his business for his minor children.

The solutions drafted by the various club-teams will be typed at the expense of the Board, and submitted to a panel of nine judges (three considering each problem) who will select the proposal which most adequately solves the problem. Next year the Board hopes to have an elimination contest between the two or three clubs winning this year.

Spring Arguments

The docket for the second semester of the first year Ames arguments was posted on February 4. With a view towards exams, first year arguments have been scheduled early in order to provide time for studying. Arguments will start on Monday, March 3, and continue until Friday, March 14. This semester the arguments will still be intracub; however, they will be doubles arguments, with each team composed of the two persons who were adversaries in the first semester. During the first series arguments 66 clubs competed representing 97% of the first year class.

For the final argument of the Ames competition, to be held on Monday, March 17, Associate Justice William O. Douglas will preside. The two clubs competing are the Marshall and the J. Smith Clubs. Private and public international laws are the primary issues of the case.

S. B. A. Lecture To Feature Reginald H. Smith Address

Reginald Heber Smith, LL.B. '14, managing partner of the Boston firm of Hale & Dorr, will lecture on "Lawyers as Public Spirited Citizens," next Tuesday afternoon at 4:30 in Langdell South Middle. This will be the third in a series of five talks on the general theme of "Lawyers' Problems of Conscience," presented by the Harvard Student Bar Association.

Mr. Smith is the seventeenth man to receive the American Bar Association Medal, the highest honor the Association can bestow upon one of its members, which was presented to him at the 1951 Annual Dinner. His name has been added to a distinguished roster of recipients of this award which include Samuel Williston, Oliver Wendell Holmes, and Roscoe Pound. The citation heralded his important contribution to the modern system of legal aid.

Course In Air Law Opened By McGill

The Institute of International Air Law of McGill University, Montreal, Canada, has announced the opening on October 1, 1952 of its 1952-1953 session. Applicants for admission to the full course in the Institute leading to the degree of Master of Laws are now being received. To qualify, the applicant must hold a law degree from any approved law school. Preference will be given to those having a working knowledge of English and French.

Having been established by McGill University within the last year, the Institute is at present the only organization devoting itself exclusively to the subject of air law. The purpose of the Institute is two-fold: first, to provide facilities for advanced studies in International Air Law; and, secondly, to provide an academic organization for research in this field. Located in Montreal, the Institute has the benefit of being able to use the facilities of the International Civil Aviation Organization and the International Air Transport Association, both located in that city.

Included in the required courses are Private International Air Law, an analysis of the conflicts of law arising in international aviation, and International Air Regulation.

Individuals interested in further information or application forms to the Institute should write: The Institute of International Air Law, McGill University, 3544 Peel Street, Montreal, Quebec, Canada. Annual fee for degree candidates for the course in residence is \$400.



REGINALD HEBER SMITH

Mr. Smith's interest in the lawyer as a public spirited citizen stems in great measure from the active "behind the scenes" role which he has played in making legal services available to the poor and to persons with moderate means. His book, "Justice and the Poor," has been acclaimed as "the most authoritative treatise in this special field of law reform."

Writing extensively on the subject of providing competent legal advice and assistance to the "millions of persons of moderate means," Mr. Smith developed the idea of a Lawyer Reference Plan in an article published for private distribution to members of the American Bar Association on Jan. 1, 1947, and reprinted in the Record, Vol. 3, Nos. 6 and 7.

(See Smith on page three)

Three Municipal Reformers To Discuss City Corruption At Forum Tomorrow

"Corruption in the Cities," with New York City Council President Rudolph Halley, New Boston Committee founder Jerome Rappaport, LL.B. '49, and Walter M. Phillips, LL.B. '38, Philadelphia City Representative, as the speakers, opens the spring series of the

lieve this forum will give its audience a good understanding of what reform officials can achieve," said David Silvers, 3L (N.Y.U. '49) of New York City, coordinator of the program. The speakers will also discuss how citizens can work for better government.

A graduate of Columbia's college and law school, Rudolph Halley was an Assistant U. S. Attorney from 1937 to 1942. At that time he was appointed to serve on the Truman Committee investigating war frauds, and in 1944 became its chief counsel. Early in 1950 he was named as the investigator for the Kefauver Committee and became familiar to millions through his appearances on television. Last year he was elected president of the New York City Council by a plurality of more than 150,000.

Jerome Rappaport, LL.B. '49, helped organize the Forum in 1946 and was its first president. One of the founders of the New Boston Committee, he was appointed an assistant secretary to Mayor Hynes after the election and was a member of the Committee on Administration. Now Assistant Corporation Counsel of Boston, Mr. Rappaport is also a visiting lecturer on American government at Boston University.

Walter Phillips, LL.B. '38, now a member of the Philadelphia Planning Commission and City Representative

(See Forum on page four)



RUDOLPH HALLEY

Harvard Law School Forum tomorrow at 8 p. m. in Sanders Theater. Government Professor Carl Friedrich of Harvard will moderate.

"In view of the success of reform movements in various cities in the last elections and the undoubted importance of reform as a campaign issue in the forthcoming national elections, we be-

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In Memoriam

During the week of January 20, 1952, Harvard Law School lost two great friends as death called Robert P. Patterson, LL.B. '15 and Winthrop H. Wade, LL.B. '84. Judge Patterson lost his life in the airliner crash in Elizabeth, N. J., on Tuesday of that week at the age of 60. Mr. Wade passed away at his home in Dedham the following Saturday. He would have been 92 on February 20.

Although a generation apart in age both men will long be remembered by Harvard Law School and her alumni for whom they worked and served. Mr. Wade, who was the School's oldest graduate, was one of the founders of the Harvard Law School Association in 1886 and its treasurer until 1893.

In addition to an illustrious career in public service both on the federal bench in the Southern District of New York and the Court of Appeals for the Second Circuit and in the War Department as Assistant Secretary in 1940, Undersecretary and finally Secretary of War in 1945, Judge Patterson served as national President of the Association from 1937 to 1949.

Those who knew these men have suffered personal losses, and all men of Harvard Law School will miss two such as these.

Judges Wanted

This month first year men and women start working on the doubles arguments for the Ames Competition. The success of the entire Ames program depends, however, on the cooperation of the rest of the student body also.

The Board of Student Advisors is asking all second and third year students to register as judges. The small amount of time required for this job should be no deterrent, for the benefits to those who participate as counsel and as judges are manifest.

LETTERS to the EDITOR

To The Editor of the RECORD:

It would not be fair to expect Dean Griswold to eject from his classroom students who are not registered to attend that class. But it is not unfair to expect those students who are not registered for the Dean's tax section to conduct themselves so as to respect the rights of those who are supposed to attend.

Not merely do these interlopers grab up seats which have been assigned, and then refuse to move, but they also take unto themselves materials which are distributed and meant exclusively for the students of the class.

There is no remedy that I could possibly suggest for the present situation except to ask those who insist upon intruding into this tax class that they restrain themselves, and remember that we should like the opportunity to have a seat in our own class and such material as is meant for us.

The Dean has repeatedly asked these men to stay their hand in taking seats and materials, all to no avail. Perhaps this plea from a fellow student may have some effect.

NAME WITHHELD BY REQUEST

Gallery

EDWARD O. GOURDIN

Jurist



The recent appointment of Edward O. Gourdin to the bench of the Roxbury District Court made him the first Negro to be appointed a Special Justice and the third Negro to serve in the judiciary of the Commonwealth of Massachusetts. It was not the first time, however, that handsome and genial Ned Gourdin had set records. A former track champion and Olympic athlete, Ned Gourdin has been setting records for quite some time.

He was born in Jacksonville, Florida, in 1897, and prepared for Harvard at Cambridge High and Latin. While at Harvard College in 1920 he became national junior A. A. U. 100-yard dash champion. The following year, in a post-war revival of the Harvard-Yale-Oxford-Cambridge meet, he set a new world's record in the broad jump with a leap of 25 feet 3 inches. In 1921, and again in 1922 while at Harvard Law School, he was crowned national pentathlon champion.

Upon completing his final exams in 1924 he immediately left for overseas as a member of the 1924 Olympic team. It was in a training camp outside of Paris that he received official word of his graduation from Law School. Unfortunately, the lack of practice told on him severely and twice before the games he found himself crippled with a leg injury. In spite of this injury he managed to take second place in the broad jump and contributed some points toward an American victory.

After returning to America and passing the bar exam, Edward Gourdin started his own law practice. He soon demonstrated that his talents were not confined to outdoor track. In 1936 President Roosevelt appointed him Assistant U. S. Attorney for the Massachusetts District, and he soon rose to be chief of the civil division.

COMMON CARRIER

The Swiss Supreme Court has ruled that a taxi driver must not drink any alcohol while at work—even outside the country.

A Zurich taxi driver recently took some customers on an all-day trip to Bregenz in Austria, where he had a good lunch and a good bottle of wine. He knew that in Switzerland taxi drivers were not allowed to drink while working. But this was Austria, he argued, so Swiss laws don't apply.

On his way back to Zurich, he scratched the fender of another car and a blood-test, routine procedure in Switzerland, showed that his blood contained 0.1 per cent of alcohol.

The Supreme Court turned down his appeal against a five-day jail sentence on the grounds that he broke the law, not by drinking wine in Austria, but by bringing it back to Switzerland in his blood.

* * * * *

A YEN FOR LIVING

A former president of a branch of the Malayan Chinese Association was convicted in court on charges of dishonestly converting to his own use \$70 which he allegedly received for the purpose of bribing police officers. He was fined \$167 and sentenced to nine months rigorous imprisonment.

* * * * *

THEY SHALL NOT PASS

After getting several "unprepareds," Professor Hardee tried again:

H.: "Mr. X?"

Mr. X.: "Can I pass?"

H.: "I don't know. Probably not if your exam is like this morning's answer."

The office of the U. S. Attorney, he feels, is just like any other large law office, except that you have but one client, the U. S. Government. As chief of the civil division his work involved almost every field of law. There was not one of his courses in Law School that did not prove valuable to him in practice. For example, he handled cases concerning Government contracts, leases, and purchases; claims under the Federal Tort Claims Act; civil tax disputes; maritime cases; government loans; life insurance claims; and a bewildering variety of legal problems handled on behalf of dozens of government agencies.

Although in theory he is to be primarily a barrister, in practice a lawyer in the U. S. Attorney's office must often be a solicitor too. Many federal agencies have an inadequate legal staff while others have no legal staff at all, and so the legal problems of these agencies fall by default to the U. S. Attorney.

The bulk of Edward Gourdin's activities outside the law office and the courts have centered on the military. During World War II he served as a Colonel in the Infantry. As commander of the 372nd Regiment he served in both the American and Pacific theaters. At present he is an Assistant Chief of Staff, G-3, in the Massachusetts National Guard. He is also a military aide to Governor Dever, and has helped to draw up the defense plans of the Commonwealth.

Introduction to Military Discipline

The legal aspects of army life were originally called to his attention while he was still a sophomore in college and a member of the Student Army Training Corps. A dynamic young professor from the Law School was scheduled to deliver a lecture on Military Law to the members of the S. A. T. C. The young professor strode to the lectern, fixed the students with a steely stare, and promptly "chewed them out" for failing to stand at attention when an officer entered the room. It was "my first, but fortunately not my last, introduction to Major Austin Wakeman Scott," he recalls.

He is intensely proud of his class, the Class of 1924, which included among others James Landis, former Dean of Harvard Law School, and W. Barton Leach. Their first year here at Law School was enlivened by the presence of A. B. "Happy" Chandler. The spirit of those who graduated in '24 is perhaps best illustrated by a remark of another member, ex-Senator Claude Pepper. In response to the question "Who would you like to see nominated for President?" he answered without hesitation "Any member of the Class of '24." In a more restrained manner, Edward Gourdin feels the same way.

Much as he is justly proud of his class, his class is justly proud of Edward Gourdin. As an Olympic athlete, private attorney, chief of the civil division in the U. S. Attorney's office, Special Justice, and Colonel in the Army and National Guard, Judge Gourdin has displayed a combination of courage, loyalty, service, and skill of which all Americans may well be proud.

Off the Record

IT'S A CRIME

Utica, N. Y.—Willie Smith finished nineteen days in jail recently—one day for each foot he said he drove a car without a license. He was arrested, pleaded innocent and was sent to jail pending trial. In court for trial he told City Judge John J. Walsh:

"I was sitting in a car double parked in front of a grill. An officer told me to move the car and I explained to him the owner was in the grill. The officer told me to move the car. Then I moved it just under twenty feet and the officer asked me for my license. I didn't have any so he locked me up."

Mr. Smith said he had pleaded innocent on arraignment because "I figured due to the circumstances I wasn't guilty." The officer, Sgt. Michael Grazidei, interrupted, "But he moved the car and he didn't have a license."

Mr. Smith changed his plea to guilty and was sentenced.

* * * * *

LIP SERVICE

The Egyptian Appeals Court has ruled that a young Egyptian who kissed the window pane of a railway train carrying his girl friend away had committed an "indecent public act."

It thus reversed the ruling of a lower court and fined him 5 pounds (about \$15). It is against the law in this Moslem country for persons other than relatives to kiss in public places.

The prosecutor said the young man had "criminal intent," since he meant to kiss the girl, but was thwarted by the window pane. The defense attorney said his client was an educated man and would not stoop to such an "indecent act."

Sub Judice

MUST HAVE BEEN VODKA

Jacob was driving his automobile after an evening of dancing, and some drinking, when upon rounding a curve he was blinded by the headlights of a parked car. A quarter of a mile and some seconds later he collided with another parked car containing Cleo, the plaintiff in the present action. Some time later when Jacob had left the scene of the accident, plaintiff's husband, upon looking into defendant's car, found and removed an almost empty fifth of 86 proof whiskey. The lower court held that the fruits of this illegal search and seizure might not be produced in evidence by the plaintiff. Cleo appeals from a verdict for the defendant (and lower court rejection of her argument imputing communistic tactics to defendant.)

Held: Reversed and remanded.

The court recognized a privilege against illegal search and seizure which is protected against private parties as well as police officers. However, unlike criminal cases wherein the court follows the federal rule in not accepting evidence so procured, it permitted the presentation of such evidence in civil cases. The barring of such evidence is in the main practiced by the courts in an effort to curtail intemperate behavior on the part of police and therefore not applicable to civil actions.

The court, although reversing on the grounds already discussed, refused to accept plaintiff's argument for reversal based on the fact that counsel was stopped in the course of the following argument by the trial judge, even though the defendant did not object to the argument.

"... if there ever was a communist argument to inflame you against this young lady, the plaintiff here, it was to say this, that the husband didn't want to get dirty, that he wanted to live in town and drive a Packard. What possible reason could he have for saying that, except to try to prejudice you against this young lady because of some imaginary wrong on the part of her husband; he doesn't want to get dirty and he wanted to live in town. Well, some farmers do live in town, and they are good citizens. And we shouldn't insult them. But we do if we take counsel's statement. But I submit that this is hardly a good argument in a court of law. That, members of the jury, would put you in the class of communists, which you are not."

The upper court agreed "with the trial court that the argument was improper. In the present state of public feeling to even intimate that one is a communist, or is indulging in communistic tactics is highly inflammatory. Though great latitude is permitted counsel in arguing a case to the jury, nevertheless he should refrain from abusive, vituperative, and opprobrious language, or from indulging in invectives, or from making any statements, or reflections which have no place in argument, but are only calculated to cause prejudice." *Walker v. Penner*, 227 P. 2d 316 (Ore. 1951).



THIRST FOR KNOWLEDGE

Professor Chafee told the following story:

A plaintiff was so happy when the verdict was announced that he passed out cigars to all the jurors. He was later prosecuted under the criminal statutes making it a crime to give a juror food or drink before or after the verdict. The question was whether cigars fell into this category. All of the judges save one held that cigars were food. The remaining judge held that they were *drink*.

NEWS IN BRIEF

ADMINISTRATIVE BOARD

During the spring semester, 1952, the members of the Administrative Board will be as follows:

Dean Griswold; Vice Dean Hall; Professor Kaplan, First Year Chairman; Professor Braucher, Second Year Chairman; Professor Maguire, Third Year Chairman.

Second year students should note that Professor Braucher has replaced Professor Amory as the Second Year Chairman.

First year students should note that Professor Kaplan remains the First Year Chairman, and questions relating to first year students should be taken to him.

LAW WIVES

The Law Wives will hold a cocktail party from 4:30 to 6:30 on Saturday, February 9, in Harkness Commons. Law wives and their husbands and faculty members and their wives have been invited. There will also be a regular meeting on Tuesday, February 12, in Harkness Commons, at 8 p.m. A talk on "Silversmithing" will be given by Mr. and Mrs. Joseph Sharrock. The talk will be illustrated both by samples of the speakers' work, as well as by lantern slides.

PHILLIPS BROOKS HOUSE

PBH announces that a Law School Committee Bulletin Board has been set up in the Graduate Center for the purpose of keeping the students informed about activities which are going on in the Boston area and in the Law School.

AMES ARGUMENTS

First year dockets posted: Rounds 3 and 4, today. Rounds 5 and 6, next Monday. Facts issued: Round 2 today, Round 3 on Wednesday.

Second year: Drafting competition facts issued tomorrow, Feb. 8.

Lucius H. Biglow, Jr., First Year Chairman, has announced that there are openings available for second and third year students to judge first year arguments.

Davis' Book Voted Henderson Award

Professor Kenneth Culp Davis, LL.B. '34, who was Visiting Professor of Law here for the academic years '48-'49 and '49-'50, has been awarded the Gerard Henderson Memorial Prize by vote of the faculty for his book *Administrative Law*, published in 1951.

The prize, in the amount of \$1000, is to be awarded "by the faculty of the Harvard Law School, at intervals of not less than five years, to the author of a critical and constructive work, of outstanding excellence dealing with administrative law or other legal problems affecting government."

It was established in 1935 in memory of Gerard C. Henderson, of the class of 1916. The first award of the prize was made in 1946 to the Attorney-General's Committee on Administrative Procedure, and its Director of Research, for the Final Report of the Committee, published in 1941.

Mr. Henderson's daughter is now a second-year student in the Law School.

SMITH — (Continued)

The Lawyer Reference Plan is "an agency whereby the general public can be referred to competent and reliable lawyers who, for a fixed moderate fee would be willing to give a consultation on a legal problem and then render additional legal advice for a moderate fee if further legal service seems desirable and necessary. The Lawyer's Reference Service in Massachusetts has received a liberal endowment and is administered by a testamentary trust fund of which Mr. Smith is currently a trustee.

Leading logically and inevitably out of the Reference System is the Legal Service Office. Instead of being served in the office of the lawyer to whom he has been referred, the client applies directly to a Legal Service Office, maintained under bar association auspices and staffed for the purpose of serving him right there.

Lawyer-Intern

"A law office," according to Mr. Smith, "is not an educational institution; and a law school is not a law office." Between the two is a gap which the law student must fill by learning how to deal with human beings and how to assume responsibilities. Mr. Smith has always felt that all the law student can expect to get from his schooling is an excellent mind until the day comes when the law school's work in conjunction with a "legal hospital" allows the students a chance to deal with the human side of law work.

The Legal Service Office is designed to fill that chasm between the law school and the law office. At the same time that this Service provides for those of moderate income (falling between the poor who qualify for Legal Aid and those who can afford to pay substantial fees), it also offers a two-year apprentice training to law school graduates. In these offices, the "apprentice-intern" learns "the ethical concepts which make the legal profession a noble calling."

Tribute to Smith

Dean Vanderbilt of the N.Y.U. Law School, past president of the A.B.A., once said that Smith was "a tower of strength in anything that he is really interested in." Mr. Smith is interested in the Harvard Law School Association, which he served as its Treasurer for 28 years. He has been a member of the Board of Editors of the A.B.A. Journal since 1941, and in assuming the directorship of the Survey of the Legal Profession refused to accept any compensation.

Mr. Smith's talk will be the third in the current series of discussions dealing with the ethical questions that arise in the practice of law and with aspects of a lawyer's practice not ordinarily dealt with in the course of instruction here. The series was opened by Norris Darrell of Sullivan and Cromwell, who spoke on the "Responsibilities of the Lawyer in Tax Practice." Paul H. Douglas, U. S. Senator from Illinois followed Mr. Darrell with a lecture on "Canons of Ethics for the Lawyer in Government and Politics." The fourth and final meetings of the series will be devoted to "Trial Tactics and Justice" and "Ethical Problems in the Prosecution and Defense of Criminals" respectively.

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REVIEW — (Continued)

international law by providing that the law of an individual's own country was to follow him wherever he might go. In place of that approach, which was politically attractive to only a few nations, the author offers the principle of territoriality.

In the article, "Payments Under Void Trusts," Prof. Daniel M. Schuyler of Northeastern University takes up a question that has seldom been explored thoroughly by the courts. When a trust is declared void after a trustee has made distributions according to its terms, there is a possibility that the trustee may be surcharged for payments made to the wrong persons.

After discussing the considerations which should determine the trustee's liability, the author concludes that a trustee should be surcharged only when he has clear grounds for supposing the trust to be invalid.

The considerations bearing on a distributee's liability to return payments made to him are similarly analyzed. Following a discussion of statutes of limitations and the doctrines of laches and estoppel as they bear on this problem, the author concludes that the distributee ought to be required to return payments he has received only if one of these defenses or a substantial change of position cannot be shown.

Profs. Austin W. Scott and Warren A. Seavey have both written Comments for this issue. Professor Scott deals with the background and ramifications of a recent New York statute for facilitating the revocation of a trust. Professor Seavey treats a recent case in which a government inspector recovered from the operators of a packing plant for injuries suffered from a fall occasioned by slipperiness of which the plaintiff was aware.

Mr. Charles G. Craig, of the Massachusetts Bar, has prepared a Comment concerned with state validation statutes passed to facilitate accounts receivable financing. Examples of these statutes are dealt with in Professor Fuller's casebook of Contracts. In view of the recent amendment of Sec. 60(a) of the Bankruptcy Act, these statutes are no longer necessary to accomplish their original purposes, and Mr. Craig recommends their repeal or drastic amendment.

Alumni Notes

LL.B. '04—Arthur J. McFadden, president of the California State Board of Agriculture, has been elected to the Board of Fellows of Claremont College, Claremont, California.

LL.B. '14—Charles E. Dunbar, Jr., a member of the firm of Dunbar, Marks and Claverie of New Orleans has been appointed to the legal advisory committee of the National Civil Service League.

LL.B. '17—Dring Needham has been appointed as judge of the District Court for the Ninth Judicial District of Iowa.

LL.B. '19—Archibald MacLeish has been elected chancellor of the American Academy of Arts and Letters.

LL.B. '23—Byron K. Elliott, executive vice-president of the John Hancock Mutual Life Insurance Co., has been elected a trustee of Wellesley College.

LL.B. '23—Nochem S. Winnet has been elected President of the Harvard Law School Association of Philadelphia.

LL.B. '24—Marcien Jenckes has been named a member of the Brookline Board of Park Commissioners.

LL.B. '28—Richard P. Tinkham announces the dissolution of the firm of Tinkham and Tinkham and the formation of a new partnership for the general practice of law under the name of Tinkham, Beckman and Kelly in Hammond, Indiana.

LL.B. '29—James E. Newton, an attorney for the Securities and Exchange Commission, spoke on "Criteria for Determining Application of the Federal Securities Act" before the Seattle Bar Association on December 5.

LL.B. '29—Carl F. Schipper, Jr. has become a partner in the firm of Goodwin, Procter and Hoar, Boston.

LL.B. '31—Charles M. Merrill has recently become a member of the Supreme Court of Nevada.

LL.B. '40—Fairman C. Cowan has become a partner in the Boston firm of Goodwin, Procter and Hoar.

THE MISSES LITTLEFIELD

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CHAFEE—(Continued)

six years of teaching. At the start of the year, a new student settling in Walter Hastings found a telephone in his room. He lifted the receiver, and to his pleasure discovered the thing worked. Evidently his predecessor had subscribed, and it had been left there. This was too good an opportunity to neglect. He called in a few of his friends—all of them from the South—and they proceeded to call up their girls in boarding schools and colleges from Sweetbriar to Baton Rouge. Their method was sweet simplicity. A little investigation showed that the instrument was on a party line, which included R though it apparently had no letter itself. So the call would be put through for R. Somebody kept listening, and when the call got through and R responded to the ring, the student would say, "Sorry, this is for us," and R would hang up, leaving the coast clear. Everything was honey and pie until the first of next month, when R got a telephone bill of prodigious size for all those long-distance calls to the South. R naturally remonstrated with the telephone company, which ran down the facts and reported them to the Dean.

Faculty Acts

Though no joke for the student who rented the Hastings room, the ensuing Faculty discussion about what to do with him is funny to recall. If he had merely deceived the telephone company, I think we might have let him off, on the theory that the company was to blame for not removing the telephone and the temptation—*Volenti non fit injuria*. But foisting the charges on R was another matter, and we sent him home for the rest of the year to ponder ethics before resuming law. Joey Beale vigorously dissented on the ground that the young man had committed no crime. It was not obtaining goods under false pretences—no goods. Getting services by fraud, Joey said, had not been made a crime by the Massachusetts legislature except for the non-applicable statutes against putting slugs in coin-boxes in the subway.

Another resident of Hastings took a girl to play tennis near-by on Jarvis Field. It was a hot day, and afterwards they went to his room to cool off, which in those days was squarely against dormitory rules. But that was just a starter. She didn't feel any cooler and was sure she needed a shower-bath. So he escorted her to the shower out in the entry and gallantly stood guard outside the

closed door. Unhappily for him, other inmates of the entry had been playing tennis too, and came out for showers. A line formed and his explanations got unfriendly comments. The argument waxed so loud that the proctor showed up and reported the case to the college authorities, who then had charge of Hastings. They fired him from the dormitory and advised us to fire him from the School. I remarked that I saw no charge of unlawful conduct. Cleanliness was next to Godliness, and he had shown no signs of lack of fidelity to a client—quite the contrary. So he went on studying law, but as to the girl I don't know the rest of the story.

New Building

Now, through the generosity of our graduates, new buildings cover Jarvis Field. Their architecture has been bitterly attacked in letters to the Harvard Alumni Bulletin. These critics might, I think, feel quite differently if they could share my experience of seeing these buildings and the life of the students within them as an integrated whole. I hold no special brief for the modernistic style. Happiness comes to me from many different kinds of architecture—the Greek temples at Girgenti, the Gothic colleges at Oxford, the front of Whitehall, from which Charles I stepped to lose his head, the red houses around the Place des Vosges, and the White House in Washington. The same happiness is given me by this work of Gropius.

Often when I feel fed up with law and need a break, I just walk around the new buildings for ten minutes. I like the different levels, the contrast between curved walls and straight walls, and the large windows which bring outdoors and indoors unusually close together. I like to stroll through the halls and glance into the Swayne lounge or the cafeteria or the Wheeler Room just to see the boys and girls enjoying themselves. These buildings are a marvelous bridge across the constantly widening gulf between the teacher who is growing older and the students. I believe that we have here, not only a more satisfying environment for the students of today than the scattered lodgings, apartments, and one or two dormitories of old days, but also a notable achievement in the art of fusing stone walls with human life.

The intellectual life of the School has also changed its form though not its intensity. Outside the curriculum, we have not only the law clubs and Ames Competition and the Legal Aid as of old, but also since the war, the HARVARD LAW SCHOOL RECORD, the students'

Forum for varied public questions, and the Dormitory Council. Sometimes I wonder if we are not becoming a little too much organized and losing the singleness of aim which I, as a student, found such an inspiring contrast with the three-ringed circus and multiple side-shows of college. In the actual teaching, we no longer pursue the policy of the old swimming-hole—throw the first year men in and let them keep afloat if they can. Instead, a corps of young graduates teach the boys the strokes, and hold up their chins a bit.

Shifts in Attitude

I shall not speak today of the considerable alterations in the subject-matter of courses, but only of some shifts in attitude since my own student-years. One obvious change is that English decisions of the past century, which used to play a large part, now get very little attention. Still more significant is that law is viewed somewhat less as a science and rather more as an art. In discussing decisions, the class are not so sure as we students used to be that there must be only one right outcome, which was likely to be that favored by the professor in the course, and that any judge who held otherwise was a dunderhead or a bull in a china shop. The possibility is clearer that the judge was trying to choose between two roads, with a good deal to be said in favor of each of them and sometimes neither of them entirely satisfactory. The teacher himself, as years go by, becomes more kindly toward judges. He realizes the gaps in his own knowledge of the one or two subjects he has studied for years. How then is it fair to expect perfection in every case in a judge who is constantly forced to turn from a future interests problem to a criminal trial to automobile accidents to a breach of trust to a tangle of liens and mortgages?

One thing I hope very much from you active practitioners as you look at our processes and our products—that you will not ask us to be practical. Our duty, as I see it, is not to be practical and thus anticipate in the School what they will have to learn from you in law-offices. Instead, we can serve both them and their future associates best if we teach these youngsters the things which they cannot learn anywhere else than in law school. To prepare them for the detailed tasks of the two years following their graduation would use up the time which we now try to spend in fitting them to deal wisely with the problems which will confront them after ten or twenty years, problems whose nature nobody can clearly foresee.

Deficiencies in Graduates

In 1928 we asked a number of leading members of the bar what deficiencies they found in our recent graduates. A distinguished member of a Wall Street office said that the boys who came down to him from the School did not know the alphabet of finance. "They don't even know the difference between a collateral trust bond and a piece of waste paper." Soon afterwards the market dropped in October, 1929, and we found there was no difference.

A more pervasive change from forty years ago is being part of a very troubled world. We, before the First World War, could look forward to doing much the same thing as our fathers or as the lawyers among our fathers' friends. The boys and girls of today face a very uncertain future. Yet, it is honor to them that they seem to go steadily ahead just as we did, and are not disturbed. Perhaps, as old Professor Gray in his last illness told Sammy Williston, "The back

adjusts itself to the burden," and they have shaped their characters to struggle with come what may.

Indeed, these young men at Harvard Law School and the young women who will share their uncertain lives seem to me far more free from the jitters which fear produces than do their elders in the outside world. Consequently, in closing I should like to speak to you members of the bar of what you can possibly do to counteract the worst change which I find occurring in contrast with forty years ago. That is, that the kindness of the old days is disappearing and there is ever so much hatred constantly showing itself in Americans against Americans. Differences of opinions about very difficult problems, like the proper policy toward Chiang-Kai-Chek or human rights in the United Nations or the legal position of radical citizens are constantly treated, even by distinguished lawyers, as if there were a moral gulf between the two sides, with everybody on their side loyal and wise and everybody on the other side disloyal, subversive, totalitarian, etc. Name-calling is steadily replacing thoughtful arguments.

Discussion Needed Today

What the American public needs most from the bar today is not information but insight and the attitude which has always prevailed in the classrooms at Harvard Law School, of realizing that there is often much to be said on both sides of a question and endeavoring to hear both sides and judge calmly between them—the attitude of attacking the problem and not the antagonist. It is of the utmost importance that our discussions about difficult public questions should be conducted within a common framework and on the assumption of the classroom and the courtroom that our opponents are men to be reasoned with and not to be denounced as conspirators. The terror with which England went through the Popish Plot is not the right attitude for the American people, and we lawyers should do our best to produce a different attitude. The less we worry about conspiracies and the more we worry about solving problems through reasoning and an accurate knowledge of the facts, the better.

"I don't much believe in deliberate conspiracies," writes a thoughtful English novelist, J. B. Priestley, "I wish I did, because they would make life much simpler. But we don't live in a world of neat plots, but in a foggy atmosphere of prejudices and cross-purposes, silly rumours, tragic blunders. It's the same atmosphere—when you come to think of it—that you find in Shakespeare's trage-

dies. Quite unlike the black-and-white melodramas of the minor Elizabethans. Meanwhile, what really threatens our existence is not the Great Plot on the other side but the Great Drift on our side and everybody else's side. We are menaced not by the vast secret conspiracy but by the vast secret tides that carry us against our will towards the whirlpool and the rocks. We do, without knowing what we are doing."

FORUM—(Continued)

and Director of Commerce, began his administrative career by serving as a regional officer of the War Labor Board in 1943-44. Recently he spent three years as president of the Delta Manufacturing Company. He is currently on the board of the Philadelphia Housing Authority.

In elections just prior to the mid-term examinations Louis Del Duca was



JEROME RAPPAPORT

chosen president of the Harvard Law School Forum, succeeding Richard Gold, 3L (Yale '49) of Milwaukee. Mr. Del Duca, 3L (Temple '50) of Philadelphia had served as chairman of the Planning Committee. James Ryder, 2L (M.I.T. '50) of Charleston, W. Va., and Martin J. Hertz, 2L (N.Y.U. '50) of Brooklyn, were chosen first and second vice-presidents, respectively. Sheldon Goodman, 3L (N.Y.U. '49) of New York City is the new secretary of the organization, while Frederick Levy, 2L (C.C.N.Y. '50) of New York City, was re-elected treasurer.

Next Wednesday at 8 p. m. in Langdell North Middle, Professor Robert R. Bowie will speak on the merits and organization of the Schumann Plan, in the first of this semester's Legal Programs.

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