

'Trial Tactics'—Lyne's Topic Before Student Bar Group

Daniel J. Lyne, LL.B. '12, of the Boston firm of Lyne, Woodworth and Evarts, will speak at the fourth in a series of lectures sponsored by the Student Bar Association next Tuesday, March 4, at 4:30 p.m., in Langdell South Middle. His topic will be "Trial Tactics and Justice."

In line with the general subject of "Lawyers' Problems of Conscience," Mr. Lyne will deal with the divided loyalties a lawyer faces when he must argue all causes and serve as a friend of the court as well. Although a lawyer must argue the best he knows how, at times he may feel the propositions he advances are not in the public interest or even contrary to the best development of the law, and it is with this conflict between private and community desires that he will deal.

Mr. Lyne has a long record of service with local government, community enterprises, and private business. In 1916, four years after receiving his degree cum laude from the Law School, he became Boston Overseer of the Poor, and from 1920 to 1923 was Overseer of the Public Welfare.

For the next few years he was an



DANIEL J. LYNE

Assistant District Attorney. Then in 1927 he was named to the Mass. Board of Probation, serving until 1937. At that time he became a director of the Legal Aid Bureau and is still with that organization.

A past president of the Boston Bar Association, Mr. Lyne was also a member of the Boston Chamber of Commerce from 1933 to 1936, and from that date to 1940 was vice-president of the Mass. (See Lyne on page four)

Censorship In Films Constitutional Question

Two major developments in the matter of movie censorship occurred in the last few weeks. The Supreme Court decided to review the constitutionality of New York's ban on the Italian film, "The Miracle," and a Texas appeals court upheld local censors who barred showings of "Pinky," the story of a young Negro boy, in the theaters of Marshall, Texas.

At issue in "The Miracle" case are four sections of the New York State Education Law. The effect of these is to say that films may not be shown without a license and that no film may be licensed if it is "obscene, indecent, immoral, inhuman (and) sacrilegious."

It was the contention of the film's distributor that the statute was in violation of the federal Constitution as being too vague, and thus an infringement of due process; as an infringement of the separation of church and state; further, as an infringement on the free exercise of religion; and, finally, because it puts an illegal clamp on freedom of expression.

In the Texas decision, the state's Court of Criminal Appeals upheld a \$200 fine against a theater manager who defied a city ban against showing the motion picture, "Pinky," which touches on Negro-white relations in the South and the problem of Negroes passing as white.

In the course of its decision the court said: "We cannot concede that the motion picture industry has emerged from the business of amusement and become propagandists of ideas entitling it to freedom of speech."

Farr Begins Military Justice Series Wed.

Warren F. Farr, LL.B. '30, of the firm of Ropes Gray Best Coolidge and Rugg will begin a series of six lectures on military justice next Wednesday at 5:10 p.m., in Langdell North Middle.

In these lectures it is expected Mr. Farr will trace the constitutional basis and historical development of the courts martial system, and the changes brought about by the new uniform code. He will also deal with the scope and conduct of courts martial under the Code and the review of court martial proceedings by military authorities and by civil courts.

Students who wish to attend these lectures have been advised to purchase copies of the Manual of Military Law at the Coop. It is expected that mimeographed materials will also be distributed during the course of the lecture series.

Mr. Farr was formerly an officer in the Judge Advocate General's Department and a member of Mr. Justice Jackson's staff at the Nuremberg Trials.

Chafee Declares Proposed Amendment Impediment To Treaty Making Power

This is the second of four installments of an article written for the RECORD by University Professor Zechariah Chafee, Jr., dealing with a constitutional amendment under consideration by the A.B.A. The proposal reads:

"A provision of a treaty which conflicts with any provision of this Constitution shall not be of any force or effect. A treaty shall become effective as internal law in the United States only through legislation by Congress which it could enact under its delegated power in the absence of such treaty."

THE PRESENT TREATY POWER, CAPABLE OF DEALING EFFECTIVELY WITH ALL SUBJECTS WHICH CALL FOR INTERNATIONAL AGREEMENTS, COMPARED WITH THE LIMITATION OF TREATY ENFORCEMENT TO THE JURISDICTION OF CONGRESS OVER PURELY DOMESTIC MATTERS.

After the second part of the proposed amendment made an Act of Congress indispensable to enforce the kind of treaty provisions which are most likely to be violated, the third and final part refuses to let Congress pass such an Act in many situations where it would be badly needed. Congress will not be able to do more to carry out a treaty than it could do any way under the domestic clauses of the Constitution.

Contrast the present situation with that under the proposed amendment. Any question as to the validity of implementing statutes arises very rarely now, because (as already shown, the self-executing character of our treaties usually makes such legislation unnecessary. Once in a long while, however, an American treaty does call for an Act of Congress affecting states and private citizens. The outstanding example is the Migratory Bird Treaty of 1916 with Great Britain, then acting on behalf of Canada. This could not easily have been self-executing because its enforcement required new federal criminal laws to punish hunters who killed migratory

PBH Leap-Year Mixer

A "Leap Day" Mixer will be held by the Phillips Brooks House Committee in the Lounge of Harkness Commons tomorrow afternoon from 4 to 6 p.m. A limited number of tickets will be sold at \$7.55.

Busses will bring girls from Newton College of the Sacred Heart, Simmons, Wellesley, Radcliffe, and Wheelock Colleges. Women students at the Law School have also been asked to come.

The second mixer dance to be offered by PBH this school year, the social will feature music by George Graham and his band, and refreshments will be served. Tickets may be purchased at the foot of the ramp leading to the cafeteria at dinnertime tonight and before the dance tomorrow.

'Segregation' Forum Subject Tomorrow Night At Sanders



THURGOOD MARSHALL



MARION A. WRIGHT

Review Features Note On Res Judicata 'Temperate' View Adopted On Changes

Continuing with its project of presenting new developments in the law, the March issue of the *Review* features a 70-page note on the doctrine of *res judicata*.

After a brief history of the principles and a comparison with other doctrines, the section begins to survey changes and new construction since the last full study of the subject in the *Restatement of Judgments*, published in 1942. Prior to that text, the only other recent full-scale survey was in *Freeman on Judgments*, which dates from 1925.

Although there have been several law review articles on the topic in the past few years, the *Review* editors have here

attempted to present a comprehensive picture, pointing out areas where the rule does not work too well and suggesting improvements. The view adopted is a "temperate" one.

Among the improvements being put forward are that the test of foreseeability be applied to cases of collateral estoppel, that some sort of framework be put on the expanding scope of persons who can take advantage of the doctrine, and that stock be taken of the decline in the requirement of mutuality.

Concluding the study is a survey of the application of *res judicata* to the fields of criminal law, administrative law, patents, bankruptcy, and declaratory judgments. In previous years the *Review* has dealt with the Taft-Hartley law and statutes of limitations.

The March issue also features a stirring appeal by Professor W. Barton Leach to reduce the havoc wrought by the Rule against Perpetuities under the title, "Perpetuities in Perspective: Ending the Rule's Reign of Terror."

The need to prevent English soil from being parceled out forever among the great families is shown to be the justification for the Rule in 1680. Since the danger of family aggrandizement is no longer so great, Professor Leach suggests we must be careful that in rigidly applying the Rule we do not go beyond protecting the public interest in preventing a dead hand from stretching too far, and disrupt the prudent dispositions of reasonable men.

He frames an indictment against the Rule, formulating the following counts: (1) that gifts are stricken down for what might have happened, not for what did; (2) that the Rule's requirement that an interest be certain to vest within the prescribed period causes invalidity to be predicated on the remote possibility that octogenarians or toddlers might have children; (3) that the penalty for violating the Rule is imposed not on the violator but on the objects of his bounty, and that the penalty is too severe in any case; (4) that the Rule is applied to options for the purchase of land, without plausible reason for doing so; and (5) that rights of entry and possibilities of reverter are exempted from the operation of the Rule, without a plausible reason for making the exception.

FTC Orders Discussed

Harry L. Shnideman, a Washington lawyer and former *Review* editor, in a discussion of Federal Trade Commission orders issued to sellers, requiring them to cease discrimination among buyers, takes up two suggestions by sellers as to how these orders ought to be limited, and deals with the extent of and defenses to each order.

Sellers suggest that a minimum price differential should be allowed, to give

An advocate of "gradualism" in interracial relations, a special counsel for the National Association for the Advancement of Colored Peoples, and a representative of the Southern Regional Council will discuss "Can We Afford Segregation Now?" at the second of the Harvard Law School Forum spring programs tomorrow night at 8 in Sanders.

Speakers in this probe of the Nation's Negro-white relations are Thurgood Marshall, special counsel for the NAACP; Marion A. Wright, president of the Southern Regional Council; and Alfred G. Ivey, former associate editor of the Winston-Salem *Sentinel and Journal*. Professor W. Covington Hardee will moderate. Miss Ruth Schectman, LL, of New York City, was the coordinator.

Thurgood Marshall has been with the NAACP since 1936, when he was appointed an assistant special counsel. Since then he has been one of the leaders in the fight against racial discrimination and the philosophy of "separate but equal" accommodations in education.

Recipient of Springarn Medal

In 1946 he was awarded the Springarn Medal, awarded annually to "the Negro making the greatest contribution to the advancement of the Negro in American life." He was the advocate before the Supreme Court in the *Sweatt v. Texas*, in which the Court ruled that Negroes were to be admitted as students in Texas law schools on a non-segregated basis.

(See Forum on page three)

Party Lines Tight, Coffee Hour Hears

Stressing the role of internal cataclysms in regrouping various interest groups to form a winning political combination, Professor V. O. Key of the Harvard Government Department, in Tuesday's Coffee Hour discussion, set forth a number of factors to be considered in forecasting the probable ability of the Democratic Party to continue to win presidential elections.

The first internal disturbance on which he focused was the Civil War, following which he noted, the winning combination of Republicans, as well as the opposing Democrats, was held together not only by memories of the "bloody shirt and the rebel yell," but also by "a skeleton of steel and gold," constructed of opposing agricultural and commercial interests, which waged constant battles over such questions as the Tariff and Free Silver.

The Republican dominance on the national scene was punctuated by qualified Democratic successes only in electing a President for a single term, and the groups which had gathered under the Republican banner remained a cohesive whole until the turbulent years following 1929.

Even the 1932 election, Professor Key

(See Key on page three)



PROF. Z. CHAFEE

There was a good deal of doubt whether it could validly do so under the commerce clause. But with the treaty, the Supreme Court held (in the decision already discussed) that this issue of domestic constitutional law became irrelevant. A great many cases had already decided that self-executing treaties could deal constitutionally with matters which belonged to the states so far as domestic law was concerned, such as title to land, the Statute of Limitations, local taxation, and regulating who could engage in particular occupations. The *Migratory Bird Case* simply applied the same principles to a treaty which was not self-executing.

The constitutional scope of treaties is virtually as wide as the realm of

(See Chafee on page four)

(See Review on page four)

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Outside Activities

It is true that the fundamental purpose of the law school is to provide the student with the means wherewith to learn "law." But this phase of our education has certain secondary features as well, the avoidance of which may result in an inadequacy in our overall education. These secondary features are labelled "extra-curricular activities."

The pressure of daily routine and the natural force of inertia are making the lives of all too many of our students a good deal more incomplete than is desirable. There is the inevitable alarm clock in the morning, two or three classes to attend, and then the rest of the day and evening to deal with. For most, this means study, study, and more study. Dormitory life has tended to break the monotony to some degree by affording numerous opportunities for bull sessions and the like. But the underlying theme is still generally the same. This type of life has its virtues, but there can be too much of a good thing.

In a sense the tag, "extra-curricula" is a misnomer, for schools have long recognized that certain activities closely associated with the school and yet not a part of the student's prescribed work, are extremely important to his education.

Our honor societies—Law Review, Board of Student Advisers, and Legal Aid—are strictly speaking, extra-curricula organizations set up by the school. But membership is restricted to the top ranking students, and few indeed, have been known to turn down the chance to join.

There are, however, a good many other organizations on the campus which are readily accessible to the rest of the student body, and which, though perhaps lacking the prestige of the honor societies, afford ample and varied opportunities to feel more at home while here and to leave a mark on the institution after graduation. They provide the chance to do something creative, to mingle with fellow students on a different level, and to meet the faculty on a more personal basis.

They do all this and more. Work done with them cannot be thought of as hours lost from profitable studying, for studying, like a great many other things, responds to the law of diminishing returns.

The means are at hand. The organizations are present and functioning. All that remains is for the student to make more and better use of them.

Brotherhood

Recently, in Harvard Yard there occurred an incident which brought forth indignant cries throughout the nation and heaped shame upon the University as a whole. The facts are not clear but the implications certainly are.

There is no place in the world of education for such doings—whether done "in fun" or maliciously. In truth there is *no place in the world* for the burning of a cross unless it be in the unenlightened, narrow and ignorant minds of simple backward men.

Gallery

EDWARD A. COUNIHAN, JR.

Associate Justice Supreme Judicial Court of Massachusetts



The appointment a few years ago of Edward A. Counihan, Jr., to the bench of Massachusetts' highest court came as no surprise to the host of friends and admirers he acquired in forty-three years of general practice. As a lawyer, judge, and civic leader he had exhibited a combination of legal insight and social awareness that eminently qualified him for a position on the Supreme Judicial Court.

"Ed" Counihan was one of those rare students at Harvard Law School who was born and raised in Cambridge. In 1900, at the age of 18, he entered Harvard College. "It was quite a class," he recalls. "You may have heard of one of my classmates—his name was Franklin Delano Roosevelt." But "Ed" Counihan did not wait to finish College with his class. Instead he completed his college work in three years and entered Harvard Law School in 1903. He recalls one new classmate in particular, "a boy who was a prodigious worker and whose assiduous questioning of his professors won him a name even then." This boy was Felix Frankfurter.

Faculty Favorite

"Of the members of the faculty, the standout was undoubtedly Professor Samuel Williston," says Judge Counihan. "Not only was he the master of every detail of his subject, but he was able to communicate this knowledge to his students with patience and kindness." Since the faculty at that time included, among others, such names as Ames, Beale, Thayer, Jerry Smith and Gray, this is high praise indeed.

In February of his third year here at Law School, "Ed" Counihan decided to take the bar exam. To the surprise of his classmates ("and also some of my professors") he passed it. Immediately upon graduation, therefore, he set up his own practice, a practice which he relinquished only to accept his appointment to the Supreme Judicial Court in 1949. Although he never entered into a partnership while he was practicing law, Judge Counihan acknowledged his indebtedness to several of his "office associates"—men with whom he shared an office without a formal business tie-up. Among his former office associates were the late Hugh Bancroft, LL.B. '01, former General Counsel of the Boston Elevated; the late Frederick W. Fosdick, LL.B. '01, a Judge of the Superior Court; and the late Herbert Parker, former Attorney-General of the Commonwealth of Massachusetts.

LETTERS to the EDITOR

To the Editor of the RECORD:

As members of the Dining Hall Committee of the Dormitory Council, we have been endeavoring to make student opinion on dining hall affairs known to the proper officials. We feel that these officials have been very cooperative.

Naturally we are very interested in hearing of the suggestions which our fellow students may have concerning the dining hall. Therefore we encourage all students to let their ideas be known to the members of the Dormitory Council so that we, in turn, may present them to the dining hall management. If possible, we suggest that all ideas be in writing.

SHELDON WITT, 2L
AUSTIN NOBLE, 2L
GEORGE ROUMELL, JR., 1L

To the Editor of the RECORD:

We feel that an outstanding flaw in the Ames Competition, as it is presently run, is in the system of grading the briefs and oral arguments. This flaw is the lack of uniformity therein. Under this system there is by necessity a great lack of uniformity since there are different judges

In 1913 Judge Counihan was instrumental in founding the Inman Cooperative Bank, now the Cambridge Federal Savings & Loan Association. He became the first President and General Counsel. Although he resigned the position of General Counsel upon accepting his appointment to the Supreme Judicial Court, he still remains the President of the Bank. In his practice a large part of his work came to involve probate and conveyancing. He resisted the pressures towards specializing, however, as he feels that general practice is the most interesting type of work. Today his two sons, Edward (in the class of '36), and Paul, LL.B. '43 ('48), carry on his former practice.

Appointment To Bench

In 1921 Judge Counihan was appointed a Special Justice of the Cambridge District Court. Since Massachusetts permits Special Justices to maintain an outside practice, Judge Counihan devoted part of his time to each. Although the District Courts have come in for some criticism in recent years, Judge Counihan feels that, though certain abuses need to be corrected, the District Court system itself is basically sound.

Of his 28 years on the District Court Bench Judge Counihan says, "It is a very valuable experience. More people have contact with this court than any other, and so most people form their opinion of the administration of justice upon their experience here. The responsibility upon a District Court Judge is thus a heavy one if our judicial system is to play its proper role in our society."

The burden and responsibility upon the shoulders of the members of the Commonwealth's highest court is no less severe. Since Massachusetts has no system of certiorari, any case may be appealed of right to the Supreme Judicial Court. Each judge will ordinarily write between 40 and 50 opinions each year, in addition to some *nisi prius* work. Despite the quantity of the burden, increased in recent years by numerous complex cases involving administrative law, the caliber of his associates is equal to the task. Judge Counihan has particular praise for Chief Justice Qua, LL.B. '04, whom he feels has "a sound legal mind and is a tremendous force not only in the Court but upon the entire bar of the Commonwealth."

Civic Leader

In addition to his work as a lawyer, banker, and judge, Judge Counihan has also distinguished himself as a political and civic leader. As a young man he served several years on the Cambridge School Committee. As a non-partisan candidate he then served on the Cambridge City Council. He also served as a State Senator for a year, this time as a Democrat.

During the last war he was chairman of the Cambridge Civil Defense, and also served on the Draft Board. He has been President of the Clover Club of Boston and also of the Cambridge Club, a local civic organization containing numerous faculty members. Membership in the Elks and the Knights of Columbus and a position as chairman of the Cambridge Centennial Committee also have occupied his time.

Throughout his long and varied career Judge Counihan has never lost contact with the Law School. "I think the Law School has made terrific strides under Dean Griswold," he says. It must be with a similar sense of pride that Harvard Law School looks upon the record of Edward A. Counihan, Jr., lawyer, business leader, civic and political leader, and member of the Supreme Judicial Court.

D. C.

for most arguments. These differences are magnified, however, because the judges are given no standards by which to do their grading. With no guides they are left to themselves to decide what are the important elements of a brief or oral. The result is bound to be a great lack of uniformity and meaning to the grades given.

Of course the arguments are not so important as to require measurement to the breadth of a hair. However, where a person has devoted considerable time to them, and especially in the later interclub rounds, it is desirable to have the most accurate grading which is easily attainable and to this end we feel a slight change might make a considerable difference.

In accordance with the discussion above we suggest that the Board of Student Advisers define a set of standards for both briefs and orals to be used by the judges. These standards should have possible grades attached to them, such as one to ten. The judges should be furnished mimeographed scoresheets for arguments and briefs with a space for each sub-score and a small explanation of what is the standard. For example, one item on the oral score sheet might be labelled: "Ability to grasp and cope with unexpected arguments." The score for brief or argument would be the total

Sub Judice

RIGHTS OF STATE WARD

Hyman Kronick was, at the time of bringing this action, staying at a jail in New York's exclusive Westchester County. However, feeling that he had his future to look forward to, he set out to claim his right in the two diamond rings herein involved.

Hy had purchased the rings from Katz, one of a group of diamond merchants who congregate on the Bowery near Canal Street in New York City. Hy paid \$900 for the rings and received a receipt made out to Daniel Mills, his then alias. This receipt was later destroyed when the name of Mills lost its utility. Hy had bought the rings for his fiancée in Georgia, but the engagement was broken and the gift was not made.

Hy later loaned the rings to a Miss Woodward in Washington, D. C., so that she might have the pleasure of wearing them. Miss Woodward, after being out of contact with Hy for some time had a talk in reference to the rings with a detective of the Washington police force. As a result of this conversation she turned the rings over to the Property Clerk of the Washington police force with a request that they be turned over to the rightful owner. Hy brings this action on the ground that his prior possession entitled him to recover unless the Washington Police Department proved superior title.

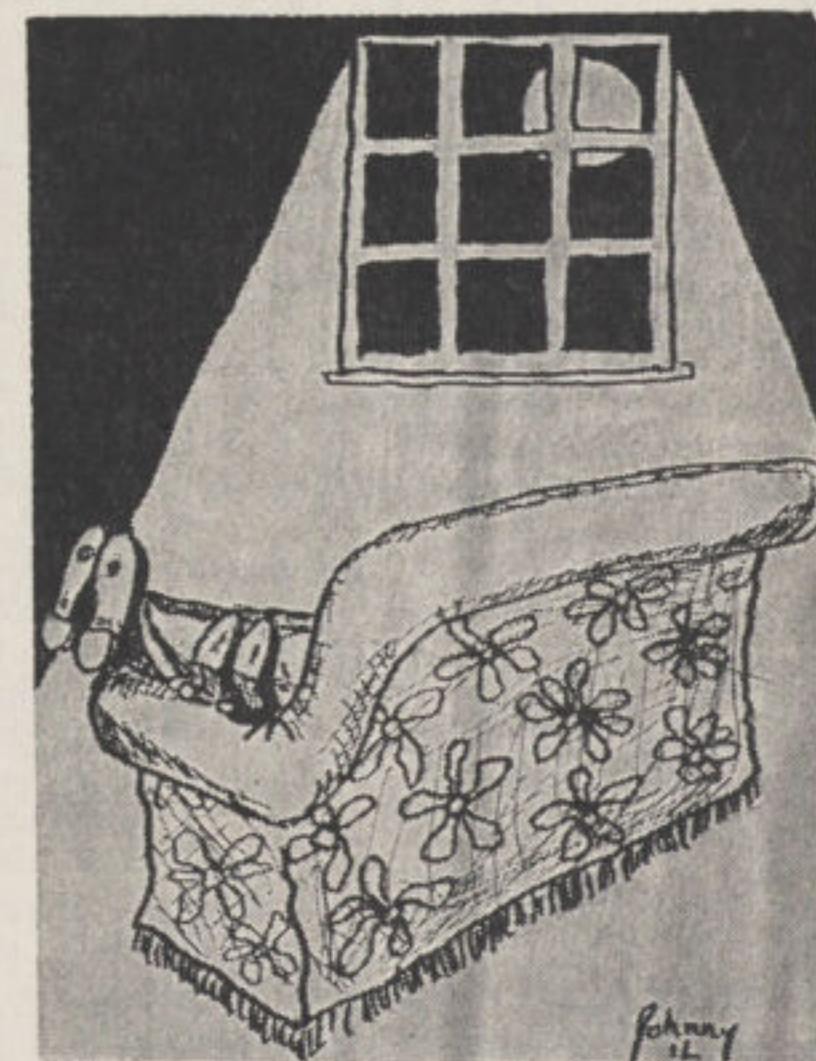
When the police first acquired the rings, they spoke to Hy at his present address and discovered his story of having acquired the rings by purchase from Katz was true. However, a second day of questioning Hy revealed that he knew that the rings were stolen goods, and, although he refused to state who the true owner was, he made admission to the fact that he knew the history of the rings.

Held: That the police are to retain the rings.

If the rings are stolen property then Hyman has established no title thereto, and there is nothing in the record to establish that Hyman is the rightful owner for whose benefit Miss Woodward turned the rings over to the police. The court also states that even had the appellant come by the rings properly, had he given them to Miss Woodward as a gift, her actions in handing them over to the police would not be sufficient to restore title to him.

The court also rejected his contention that his criminal record should not have been revealed. This on the ground that his record was admissible at least for use in reference to his credibility.

His argument that his testimony was improperly handled was rejected by the court, because the standard procedure in the case of witnesses who are unable to attend a trial was properly applied. *Kronick v. Sullivan*, 83 A. 2d 518 (D. C., 1951).



VOLENTI NON FIT INJURIA

of the sub-scores.

The advantages of this system would be to introduce the same standards into the judgment of all Ames cases. The score sheets would require their use and prevent falling back unconsciously on general considerations. The conscientious judge would be aided by having a check sheet before him; the student, by having an itemized showing of his proficiency. Lastly, this arrangement would require almost no additional effort on the part of the Board of Student Advisers once the initial adopting of standards was completed.

FRANCIS PERKINS, 2L.
SHELDON SEEVAK, 2L.

FORUM—(Continued)

Mr. Marshall also argued the Texas Primary case, the Irene Morgan case declaring the Jim Crow law of Virginia unconstitutional as it applied to interstate passengers, and the recent re-



ALFRED G. IVEY

strictive covenant cases. He spoke here last year on "Is There Justice In the Army," at one of the Forum legal programs.

Marion A. Wright, president of the Southern Regional Council, is a lawyer who has been active in the movement to abolish segregation in Southern public schools and universities. He is also president of the South Carolina Conference of Social Workers and a former chairman of the South Carolina Commission on Adult Education.

Segregation and Discrimination
Of the "separate but equal" view he has said, "Segregation makes discrimination not only possible, but easy and attractive. Where the objects of public expenditure are neatly divided into two classifications, and policy making and purse control are in the hands of a group having identity of interest with one of the classes, the other class will always fare ill. Segregation will always mean discrimination."

A former associate editor of the Win-

Calendar

Three One-Acters

Moony's Kid, Don't Cry, and The Long Goodbye, one act plays by Tennessee Williams, will be presented tonight and tomorrow evenings at 8:30 in Agassiz Theatre at Radcliffe. Tickets are 25 cents each.

Movie Thriller

Dead of Night, a psychological thriller directed by Albert Cavalcanti will be shown tomorrow at 7 and 9 p. m. in the Fogg Art Museum.

Lecture On Marriages

Professor Carle Zimmerman will speak on *Stresses and Strains of Marriage* at Phillips Brooks House tomorrow at 8 p. m.

Budapest String Quartet

Under the auspices of the Pierian Sodality of 1808, the Budapest String Quartet will give a concert in Sanders Theatre Sunday at 3 p. m. Tickets are \$2.40, \$1.80, and \$1.20.

ston-Salem *Sentinel and Journal* and now a Nieman Fellow at Harvard, Alfred G. Ivey describes himself as an advocate of "gradualism," and a voluntary F.E.P.C. He lists himself as opposed to the Dixiecrat program in its anti-civil rights attempts, but favors a continued program of education to help the Negroes advance educationally, "with increasing opportunity to use that education as good citizens."

In an outline of his talk, he states that he favors the elimination of segregation in education in places "where public sentiment favors it," and lists as examples, "New England, New York, and other places outside the South." To him the "separate but equal" view "seems to be the proper way to introduce new habit patterns acceptable to white and Negro people."

Alumni Notes

LL.B. '32—James H. Nichols has joined the firm of Satterlee, Warfield and Stephens of New York City.

LL.B. '36—Lawrence J. Verdier has become a member of the Detroit firm of Armstrong, Essery, Helm and Marshall.

LL.B. '42—Richard E. Olwine is practicing law in New York City under the firm name of Olwine and Chase.

LL.B. '43—Robert S. Ivie and Donald S. Voorhees have joined Richard H. Riddell, LL.B. '41, as partners in the firm of Riddell, Riddell and Williams in Seattle.

LL.B. '49—Marvin J. Wise is associated with the law firm of Thompson, Knight, Wright and Simmons, of Dallas, Texas. Mr. Wise was awarded a diploma in Comparative Legal Studies in June, 1951, after completing a year's course of study at Cambridge University, England, under a Fulbright grant.

LL.B. '51—Alan F. Westin is the author of a book review appearing in the March issue of the *Yale Law Journal*, of *Civil Liberties Under Attack*, in which Professor Zechariah Chafee, Jr., has written a chapter. He is also the author of an article entitled "Wire-Tapping: Supreme Court vs. F.B.I." which is to appear in the February 23, 1952, issue of the *Nation*.

Ralph P. Katz was recently awarded the first prize of \$200 for his essay entitled, "State and Local Taxation of Radio and Television Broadcasting," in a contest sponsored by the Federal Communications Bar Association. The article will be published in the forthcoming Winter edition of the *Federal Communication Bar Journal*. Mr. Katz is presently associated with the New York firm of Sargoy and Stein.

KEY—(Continued)

thought, did not reveal any new pattern of voting; it was simply another of the periodic expressions of temporary dissatisfactions with the party in power. But in 1936 it became evident that F. D. R. and the depression had shattered, perhaps forever, the "normal" voting patterns which had for so long assured the Republicans of their pre-eminence. The New Deal measures had gathered together several groups of discontented voters, among them the farmers, won by the Agricultural Adjustment Act; organized labor, with the endorsement of the National Labor Relations Act; and the ghosts of various Populist movements who saw some of their dreams fulfilled with the enactment of the Securities and Exchange Act and the Public Utilities Holding Company Act. Substantial numbers of unemployed also approved the measures taken by the New Deal to relieve their plight. The result of this combination of circumstances was that Roosevelt in 1936 received twenty-six-and-a-half million votes, more than any candidate before or since.

Coalitions of voters thus formed, Professor Key pointed out, have exhibited great durability and do not seem to be affected permanently by such issues as corruption in the government or questions of foreign policy; it seems that only a major domestic upheaval will upset them. For this reason, he did not think that World War II and its consequences would necessarily have a lasting effect on the ability of the Democrats to stay in power. The Democratic

Party, however, he said, has a special problem of finding leadership, which is peculiar to its composition. Heretofore, parties have been largely sectional, cutting across class lines so that each claimed the loyalty of substantial numbers of the classes such as lawyers, who traditionally furnish leadership in politics and who can man the governmental posts. The Democratic Party, having been formed largely of disaffected groups who had not been able to rise in the economic scale, may suffer from a lack of such leaders. A labor leader, for instance, if rising in the councils of the party, will always have to keep in mind that he owes his position to the labor group from which he sprang, whereas a lawyer, thought Professor Key, would be able to act with more independence on the theory that he could find more clients to replace those who might be out of sympathy with his political opinions.

In answer to questions, Professor Key asserted that he thought that even if a popular Republican such as Eisenhower could carry a number of the southern states, it would not change their voting permanently; nor did he think that the Republican Party, by changing its policies, would be able to wean many southern Democrats away from the party of their fathers.



The legal philosophy and social outlook of the late Mr. Justice Brandeis will be the subject of a talk to be given by Professor Paul Freund next Wednesday at 8 p. m. in Langdell North Middle, as part of a series of free Legal Programs sponsored by the Harvard Law School Forum.

The talk is the second of a two-part series; the first lecture was a discussion of the philosophy of Mr. Justice Holmes, which was presented by Professor Mark DeWolfe Howe last evening.

NEWS IN BRIEF

PBH BULLETIN BOARD

A new bulletin board in Langdell South has been assigned to the Law School Committee of PBH. The Board will be used to inform students about activities in the Law School, the College, and the Cambridge community.

POSITION IN DES MOINES

Third year men interested in placement with a Des Moines, Iowa law firm should leave their names at Assistant Dean Toepfer's office by tomorrow.

LAW WIVES

A bridge and canasta party will be held by the Harvard Law Wives next Wednesday at 8 p. m. in the small rooms next to the Wheeler Room in Holmes.

COFFEE HOUR

Professor Robert R. Bowie will speak on "Germany and the West" at the Coffee Hour next Tuesday at 1:30 p. m. in Harkness Commons.

AMES ARGUMENTS

Rounds 1 and 2: Arguments next Monday and Tuesday, respectively. Round 3: Brief exchange due today; the arguments will be held next Thursday. Round 4: Brief exchange tomorrow.

Rounds 5 and 6: Brief exchange next Monday and Tuesday, respectively. Round 7: Brief exchange next Thursday; arguments March 13. Round 8: Briefs to be exchanged March 7, with the arguments on March 14.

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	Won	Lost		Pct.
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Legal Eagles	2	2		.500
Bookworms	2	2		.500
Lincoln's Inn	2	2		.500
Divinity	1	4		.200
Re-educators	0	4		.000
LEAGUE B				
	Won	Lost		Pct.
Lakers	5	0		1.000
Neversweats	3	1		.750
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CHAFEE—(Continued)

foreign affairs, subject to the limitations already quoted from Field and Hughes; and the scope of federal laws enforcing treaties is correspondingly wide. If the nation could make the treaty at all, then it ought to be carried out effectively. Obviously, it was impossible to rely on the chance that every state over which the birds flew would pass game-laws to comply with the treaty. Enforcement had to be by the nation or not at all.

The proposed amendment would have caused the case to go the other way, unless the Supreme Court had strained itself to make flying birds interstate and foreign commerce or owned by the nation like radio-bands. Lawyers who think the extinction of several species of birds no great loss ought to be disturbed by the danger that the proposal will take away effective treaty protection from many rights of private property.

Treaty of Alliance

Let me illustrate this from another treaty which was well known to the framers of the supremacy clause. The Treaty of Alliance with France in 1778 (11 Journals of Continental Congress 429, Washington, 1908) entitles Americans in France to dispose of their land and goods by will with complete freedom and also to let their property descend by intestate succession to persons residing in France or elsewhere, without having these privileges impeded under pretext of any rights of local governments or private persons; and French subjects were to enjoy in the United States "an entire and perfect reciprocity" relative to the same matters.

The right of Frenchmen to inherit land in several states which then had statutes forbidding all foreigners to own land was certainly a matter of "internal laws," and the second part of the proposed amendment would have required an Act of Congress to make the treaty "become effective." Yet if Congress had passed such a statute, the third part of the proposed amendment would have made it invalid. Nothing in the Constitution outside the treaty clauses gives Congress any power to determine who shall inherit land inside a state. Consequently, if a Frenchman had been

left by will a plantation in Virginia, a state statute would have kept him out of the land and our national government would have been helpless to do anything whatever about it. Before long, the French government would have gone back on its side of the treaty and refused to let Americans inherit property in France.

Contrast what actually happened in Virginia under the supremacy clause as the framers wrote it. The first important treaty made after the Constitution, the famous Jay Treaty with Great Britain in 1794 (8 Stat. 122) agreed that British subjects now holding lands in the United States and American citizens now holding lands in the British Empire "shall continue to hold them according to the nature and tenure of their respective estates and titles therein; and may grant, sell or devise the same to whom they please, in like manner as if they were natives . . ." Without any Act of Congress, this treaty provision was given automatic effect by the Supreme Court so as to override a Virginia statute to the contrary. *Fairfax's Devisee v. Hunter's Lessee*, 7 Cranch 603, 627 (1813).

Imagine what states would have done to the Jay Treaty if the proposed constitutional amendment had been in force. Since the ownership of land was surely "internal law," this treaty could not have "become effective" without an Act of Congress. The hostility to the treaty in the House of Representatives would have made such an enactment almost impossible. And even if it had somehow squeezed through Congress, the third part of the proposal would have made the Act unconstitutional.

Obviously Congress could not regulate the ownership of lands in a state "under its delegated power in the absence of such treaty." Therefore, this treaty would have been defied by state after state with impunity. The British would have been embittered, and Washington's efforts to restore essential commercial relations with the mother country would have been futile. British anger would have probably led to their total repudiation of the Jay Treaty and our consequent loss of the many kinds of advantages which our nation obtained thereby.

To generalize about the third part of the proposal, it deprives the nation of much of its power to perform its promises to other nations in many matters which have customarily been covered by treaties. They are the very matters in which local disobedience to a treaty is most likely to occur. The only way to obtain compliance with a treaty, if this proposal should prevail, would be for the Administration to persuade every one of the forty-eight states to shape its laws voluntarily so as to carry out the treaty. That is a burdensome and well-nigh hopeless task.

Because of the present inclination of the Supreme Court to give a very wide scope to the domestic powers of Congress and decline to declare Acts of Congress unconstitutional, the third part of the proposal may be less significant to-day than at an earlier period in the history of the Court. Perhaps this third part is less harmful than the second part, but the two taken together would gravely interfere with the observance of treaties made by the United States.

HOW OUR 1948 COMMERCIAL TREATY WITH ITALY WOULD BE AFFECTED BY THE PROPOSED AMENDMENT

For purposes of illustration I have used our three chief treaties in the eighteenth century, but the proposal will have the same damaging effects upon provisions commonly inserted in our treaties during the twentieth century. One very recent example will suffice—the Treaty of Friendship, Commerce, and Navigation, which we concluded with Italy in 1948 and the Senate ratified in 1949. (Department of State Publication 3642, Treaties and Other International Acts Series 1965). Many of its most valuable provisions furnish reciprocal protection to property rights. They certainly relate to "internal law" and some of the protection could not be given by Congress "in the absence of [a] treaty."

Article I entitles the nationals of either party "to engage in commercial, manufacturing, processing, financial, scientific, educational, religious, philanthropic and professional activities except the practice of law . . ."; to own or rent land and buildings for residential, commercial, religious and other professions; and to choose their own employees regardless of nationality.

Article II entitles American corporations in Italy to exercise all these same privileges on the same favorable terms as Italian corporations, and gives reciprocal privileges to Italian corporations to do business in the United States. This last provision "shall be construed as according such rights and privileges in any state . . . of the United States . . . upon terms no less favorable than those upon which such rights and privileges are or may be accorded therein to corporations . . . created or organized in other states . . . of the United States . . ."

By Article III, Americans can organize Italian corporations, hold stock and offices in them, etc., and *vice versa*. Italian corporations controlled by Americans can engage in Italy in "commercial, manufacturing and scientific activities" on the same terms as other Italian corporations; and American corporations controlled by Italians can similarly carry on these activities in the United States.

Article IV allows citizens and corporations of either country "to explore for and exploit mineral resources" in the other country upon a most favored nation basis.

Article V entitles the nationals of each nation to receive "the most constant protection and security" for their persons and for individual or corporate property in the other's territories. All sorts of rights in criminal and civil proceedings are then specified, and these of course affect state courts. By Article VI dwellings, warehouse, shops, etc., are not to be subject to unlawful entry or molestation, and permissible searches or inspections are to be conducted "so as to cause the least possible interference" with the occupants or the ordinary conduct of business.

Article VI deals fully with reciprocal rights to own and dispose of land, personal property, etc., in the other country. Article VII mutually protects patents, trade marks, and other industrial property. Article IX prevents internal taxes of any sort which are more burdensome than those imposed upon citizens and domestic corporations. Article X protects the entry and sojourn of commercial travelers.

The most precious human rights are covered by Article XI—liberty of conscience and freedom of worship, such as the conduct of services in appropriate buildings "without annoyance or molestation of any kind" by reason of religious belief; and freedom of the press and free interchange of information, including freedom of transmission of press material, motion pictures, etc., to be used abroad, and freedom of publication in the other country on the same terms as its citizens.

There are a great many more reciprocal privileges given, but enough has been said to show the great need for this treaty, and the numerous similar treaties which have been or will be made with other countries to "become effective as internal law." Under the Constitution of 1787, this happened automatically to the Italian treaty, and inconsistent state statutes were immediately nullified. Under the proposed amendment, if it were in force, the President would have to go to great trouble and delay before he got the necessary Act of Congress covering all the complex treaty promises, and he might not succeed at all. Even if he did, part of the Act would surely be unconstitutional under the proposal. For instance, the purely domestic powers of Congress do not include the right of an Italian citizen to practice medicine in a state, not at least when the state laws exclude all foreigners from being doctors.

(To Be Continued)

REVIEW—(Continued)

them some leeway, free from the threat of enforcement or contempt proceedings. The FTC has in the past sometimes made this sort of allowance in its orders, but just as often has not.

Sellers would also like to have the benefit of defenses available under the statute (the Robinson-Patman Act), which the FTC considers are denied by its order in a particular case. For example, if a seller raised a defense of cost-justification and the FTC ruled that there was no such justification, and issued an order prohibiting the discrimination, the seller would like to be able to raise this defense again in enforcement or contempt proceedings based on a violation of the order.

Stock Transfer Restrictions

In his article, "Restrictions on Transfer of Stock in Closely Held Corporations: Planning and Drafting," Dean F. Hodge O'Neal of Mercer University's Walter F. George School of Law attacks a problem of practical importance to a number of corporate shareholders and to their attorneys.

The problem is the drafting of stock transfer restrictions which will enable shareholders to enjoy the corporate form of organization while retaining control over the selection of participants in a business. Dean O'Neal emphasizes the importance of such restrictions to closely held corporations where dissension among shareholders or the incompetence of a single person purchasing shares may adversely affect the operation of the business.

LYNE—(Continued)

Civic League. In 1933 he was on the Mass. Special Crimes Commission and co-authored the report issued by that group.

Present positions he holds are with the Voluntary Defenders Committee as treasurer, as director with the International Friendship League, and he is a member of the Greater Boston Development Commission. He is a trustee of the Waltham Watch Co., which is in the process of a creditor's reorganization.

Continuing its practice of trying to make the question period as interesting as possible, the SBA will hand out mimeograph sheets suggesting lines of inquiry. The final speaker in the series will be former Mass. Governor Bradford.

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