

The Harvard Law School Record

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Rodell, Sutherland To Clash Over "Supreme Court" Issue

Professor Fred Rodell of Yale Law School will attack what he has styled the "not so supreme Supreme Court," while Professor Arthur E. Sutherland of the Law School will come to the defense of the Justices in a special legal program sponsored by the Harvard Law School Forum next Monday evening at 8 p. m. in the Harkness Lounge.

Eighteen years a teacher at Yale and the author of *Woe unto You, Lawyers* and *Fifty-five Men: The Story of the Constitution*, Professor Rodell said of the high judicial body in a "Look" article of July 31, 1951, "... the Truman-Vinson Court, judged both by the quantity of work it takes on and by the quality of its work, has branded itself—conservatism aside—as incompetent, indolent and irresponsible."

He began his article by saying: "The Supreme Court of the United States today belies its awe-inspiring title. Degraded by President Truman's devil-may-care appointment of four justices whose work has ranged from mediocre to miserable, the Court has sunk to its lowest point in 100 years." He pointed out that in the 1949-50 Term a "bare" 94 cases were decided, while in 1950-51 the body reached "a nadir" of 86.

Professor Rodell went on to say: "When Truman chose Harold H. Burton, Fred M. Vinson, Tom C. Clark and Sherman Minton, it was clear that their major qualification for the nation's top judicial jobs was that they were old cronies of the President. Today, it is clear that a nine-man Court weighed down by so sad a quartet either cannot or will not properly perform its high function."

Professor Sutherland told a representative from the RECORD that he thought that Justices of the Supreme Court had always been bitterly criticized. "John Marshall was the target of a good many attacks. The criticism made of the present Court could probably be found substantially duplicated in the files of newspapers at almost any time in the Court's history. The number of cases decided by the Court in any term is not a good gauge of the value of its work. Opinions will always differ as to the propriety of refusing discretionary review of any given case."

"One of the real needs in American Government today is self-restraint and temperance. The Congress from time to time is too unrestrained in its attacks on various public functionaries and in return attacks on the Congress are probably intemperate. Among lawyers, discussion of the Supreme Court, while appropriately evaluating its work, may well set an example of restraint and balance."

Professor Sutherland came to the Law School in 1950 from Cornell Law School, where he had been a professor since 1945. Prior to that he was in private practice in Rochester. He has been admitted to practice before the Supreme Court. In 1927-28 he was a secretary to Justice Holmes.

The debate will conclude a three-part series presented by the Forum. Earlier lectures were given by Professors Mark DeWolfe Howe and Paul A. Freund.

Form 1040 Trot

Form 1040, an informal dance sponsored by the Law School Committee of PBH, will be given Saturday, March 15, in Harkness Commons. George Graham and his seven-piece band will provide the music. There will be "halftime" entertainment and refreshments.

The dance will run from 9 p. m. to midnight, and a late 1 a. m. dormitory permission has been granted for the evening. Tickets are \$1.20.



PROF. A. E. SUTHERLAND

HYRC Elections Held Bell Heads Group

Max S. Bell, Jr., 1L of Wilmington, Del., was elected chairman of the Law School Committee of the Harvard Young Republican Club at the Committee's annual elections held on Wednesday, February 27. Also voted into office were Richard Harburg, 1L of Philadelphia, Pa., as vice-chairman, and Noyes T. Powers, 1L of Cumberland, Me., secretary. Charlotte Horwood, 2L of Cambridge, and Charles A. Hickmann, 2L of Huntington, L. I., were elected members-at-large. Mr. Bell succeeds Ted Horvath, 3L of Cleveland, Ohio, the retiring chairman.

Preparations are now being made for the second quadrennial Mock Republican National Convention which will be held in the New Lecture Hall on April 23. This convention will be patterned after the National Convention at which the Republican presidential candidate is named. Governor Theodore Roosevelt McKeldin of Maryland is scheduled to deliver the keynote address.

Segregation Forum Hits At Gradualism

"Gradualism" has run itself out," Thurgood Marshall, chief counsel for the National Association for the Advancement of Colored People, declared in last Friday's Law School Forum presentation of "Can We Afford Segregation Now?" He spoke on the platform with Marion A. Wright, president of the Southern Regional Council, and Alfred G. Ivey, former associate editor of the *Winston-Salem Sentinel and Journal*.

Having flown in from an investigatory visit to Cairo, Ill., scene of a recent race riot, Mr. Marshall said, "We cannot afford segregation now. We cannot afford it financially and morally; and with it we are losing our leadership in the fight for world peace."

Referring to a 1935 case in the State of Maryland in which the court adopted a "temporizing attitude" toward the efforts of a Negro student to gain admission to a law school, Mr. Marshall said, "Donald Murray wanted a legal education for himself, now; not for his grandchild."

Continuing in his criticism of "gradualism" and the "separate but equal" philosophy in education in the Southern states, he asserted, "we ought to break down segregation yesterday." He gave as his view that a fight against segregation must be carried on with lawsuits and legislation, believing racial discrimination will not be abandoned voluntarily.

(See Forum on page three)

Ten Ames Teams Join In Drafting, Judges Announced

Three different types of legal documents are being drafted by ten different teams comprised of five law clubs in the current Drafting Competition, which closes next Monday when the finished documents will be turned in.

Copies of these final drafts will be mailed out to experienced men and women in the field, who have been asked by the Board of Student Advisers to serve as judges. The final results of the competition will probably be available by the middle of April.

Trust agreement documents are being drafted by members of the Watts, Story-Powell-Webster, Seavey-Wilson, and Frankfurter-Griswold clubs. Judging the trust agreement documents will be Oscar M. Shaw, LL.B. '31, Richard Bancroft, LL.B. '29, and Faneuil Adams, LL.B. '22. The trust agreement is designed to meet the problem of a man who is to die in a year and desires to create a trust of his business for his minor children.

A standard contract for wholesale whiskey distributors, to be used in nationwide distribution is the subject of documents being drafted by members of the Story-Powell-Webster, Seavey-Wilson, and Marshall clubs. Franklin T. Hammond, Jr., LL.B. '26, Ernest W. McCormick, LL.B. '25, and Frank M. Coffin, LL.B. '47 will serve as the panel of three judges to determine which of the contract documents best meets the problem. A midwest law firm which serves as counsel for several large whiskey distillers has already requested a copy of the winning draft in this competition.

A Uniform Workman's Compensation statute which will meet possible disputes arising under a conflict of laws (See Ames on page three)

Hershey, Randall To Debate U.M.T. At Forum Tomorrow



MAJOR GENERAL HERSHEY

With Congressional action still hanging fire, the Harvard Law School Forum will present a discussion of "U.M.T. In America's Future," tomorrow evening with Major General Lewis B. Hershey and Edwin Randall as the speakers. The program will begin at 8:30 p. m. in the New Lecture Hall.

According to Jay Lockman, 1L of Philadelphia, coordinator for this forum, some of the questions the speakers have been asked to answer include: Do our defense needs necessitate such a program? Can we afford the expense? Is there another way out? How long will the program last?

Opposing adoption of a Universal Military Training provision now will be Edwin Randall, a Field Director of the American Friends Services Committee. In his view, "U.M.T. is the effort of the military to extend to peacetime the same control over the country they are allowed in time of war."

In urging letters to Congressmen to stop the bill, Mr. Randall said, in a recent letter to the *Boston Traveler* "U.M.T. would train multitudes of men for jobs they would never be called on to perform," and also that what would be in effect a permanent program is being represented by "trickery" as an emergency need.

General Hershey, Director of Selective Service, has repeatedly urged speedy adoption of Universal Military Training as a vital part of our defense program, and has long been an advocate of compulsory service in the armed forces as a peacetime measure.

A graduate of Tri-State College, in Indiana, General Hershey was a school-teacher for a short time before World War I. Entering the army as a private in 1917, he rose in the ranks and became a Lieutenant Colonel in 1940. He was promoted to his current rank in 1942.

In his career with the regular army, he served as an assistant professor of military science and tactics at Ohio State from 1923 to 1927; was on duty at Fort Bliss, Texas, from then until 1931; attended the Command and Gen- (See UMT on page three)

Petitions Due Mon. For Class Elections

Candidates for the position for permanent class officers for the Class of 1952 have been requested to submit their nominating petitions no later than 12 noon next Monday, March 10, according to rules adopted at an organizational meeting held last week.

Officers to be elected by ballot between March 20 and 24 are class secretary, treasurer, and marshal. Persons selected will hold these positions permanently.

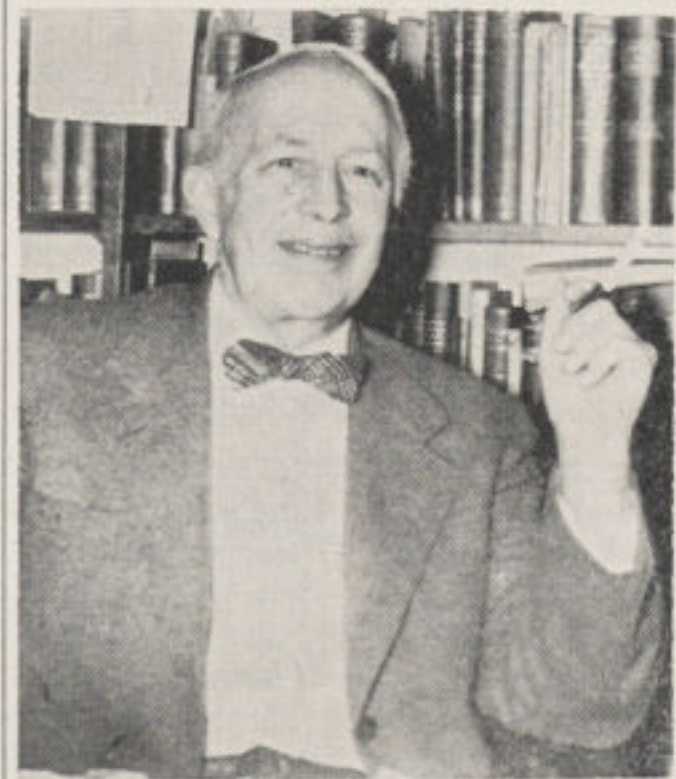
Petitions may be submitted by leaving them in the HARVARD LAW SCHOOL RECORD boxes either in Austin or Langdell Halls. The form on page 3 or a facsimile should be used. According to the rules adopted, the petition must contain not less than ten nor more than 12 valid endorers.

(See Elections on page three)

Chafee Discusses Convention's Reasons In Framing Wide Treaty Making Power

This is the third of four installments of an article written for the RECORD by University Professor Zechariah Chafee, Jr., dealing with a constitutional amendment approved 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."



PROF. Z. CHAFEE

Having thus described the changes which the proposal would make in our present constitutional law, I next turn to a broader subject—the reasons of the Philadelphia Convention for inserting the present two treaty clauses in the Constitution. With the exception of the compromise between large and small states through equal representation in the Senate and the method of electing

the President, no subject probably received more attention from the Convention than treaties.

The treaty-making power was at first given to the Senate alone. Then some wanted it to be in the President alone. After the combination of both was arranged, there was considerable controversy about the two-thirds vote especially for a treaty of peace, since a minority of the Senate might thereby be able to perpetuate a war. The supremacy clause had its start on the very first day that the Convention got down to real business, and during three months it came up again and again in different forms until it took final shape. Instead of going into details, I shall present four features of the treaty power, which the debates show the Convention to have had very much at heart while they framed these two clauses.

Scope Necessarily Wide

First, the scope of the treaty power should be very wide, as wide as the necessities of international intercourse, of which these statesmen were fully aware. The vital distinction between foreign affairs and domestic matters was taken for granted throughout. Indeed, this distinction was ingrained in their minds long before they met in Philadelphia. It did not begin with the Constitution—it was an outstanding feature of the Articles of Confederation. In domestic affairs, apart from the management of war and military matters generally, the Articles made the states everything and the Continental Congress almost nothing. It could not even levy taxes, but merely recommend them to the state legislatures. Its only exclusive peace powers were to coin money, fix weights and measures, regulate Indian (See Chafee on page four)

Holmes' Skepticism Defended By Howe

Pointing out that the criticism of Mr. Justice Holmes could be distinguished as falling into three groups, Professor Mark DeWolfe Howe went on to defend the Justice against the charge of "skepticism."

Casting aside the "Pegler-type" of attack as "unworthy of comment," and also showing that Catholic writers object to his overall skepticism, while the Professor Fuller critique objects to Holmes' "exclusion" of morality from law, Professor Howe said Holmes' attitudes were a result of his experience and the thinking of his times.

Professor Howe traced the development of Holmes' skepticism from his childhood in a household where "the important questions were asked," through Abolitionist activities at the College, and his service in the Civil War, where he lost his remaining faith in absolute values.

A skeptical approach toward life and an attitude that truth was only relative to a particular time and place was a view popular during Holmes' career. In the early part one symptom was the spread of Darwinism, and later, numerous theories springing from Darwinism gained acceptance in other fields of science and social studies. Professor Howe suggested that Holmes' enormous popularity in his time resulted from his typification of a widely-held attitude.

(See Holmes on page three)

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Forum

We can recall with some nostalgia when the programs of the Harvard Law School Forum were looked forward to eagerly, for the issues presented and the roster of speakers would assure us of a balanced discussion of some depth. It does not appear to us that the Forum is carrying on in that tradition now.

Rather than point to any particular program as falling below a minimal standard of instruction and entertainment, we should prefer at this time only to draw attention to this situation and suggest some improvements. But we will add that the large turnout at the Forum's legal programs and the good attendance at the Tuesday coffee hours would indicate that the full-dress Friday forums are not meeting the desires of the student body in the main, to judge by the attendance at those functions.

The Forum should strive to obtain well-known, top rank speakers, men who have taken a definite stand on the issue and are willing to state these views in serious fashion. The Forum directors should also turn away from the concentration on political issues now too dishearteningly a certain feature of its offerings and return to its former and more admirable mixture of cultural matters, legal problems, and truly important issues of the day.

Undoubtedly the Forum performs a valuable function in the Law School and the Cambridge community, and it would be missed. We ask that it revitalize itself, that it draw speakers from a group and present topics of broader scope. It is patent that a forum need not be always presented in a set form, and the organization should experiment with new means of presentation.

There are broad opportunities before the Forum. If it wishes to survive in the competition from other extra-curricular organizations of like bent that have arisen over the past two years, it must expand its outlook. We submit that the Forum board of directors might profitably look to its past and to the work of similar groups for a plan of improvement.

LETTERS to the EDITOR

To the Editor of the RECORD:

Messrs. Perkins and Seevak in their letter to the Editor last week pointed up a troublesome problem in the lack of uniformity that has on occasion been displayed in the grading of Ames briefs and oral arguments. Each year literally hundreds of persons must participate in the evaluation of first year and qualifying round performance. The problem takes on more than academic interest in the second year when from four to seven clubs may be extended invitations on the basis of three winning arguments in the fall Qualifying Round. Selection will depend here on numerical grade averages.

In the past, the Board of Advisers has provided attorney, faculty, and student judges in the Qualifying Round with mimeographed in-

Gallery

JOSEPH CANNON BAILEY
Business School Professor



It is a rather disconcerting fact that almost a third of the alumni of Harvard Law School are not in active practice today. It does not, however, follow that the years they spent at Law School were of no use to them. It certainly is not true if the experience of Joseph C. Bailey is at all typical.

The beginning of his life gave little indication of what was to follow. Joseph C. Bailey was born in Danville, Illinois, in 1899. He entered high school, played on the football team, and was in all respects just like the other boys in that small prairie community. Then a streptococcus infection hit him and began wasting him away. The doctors of those days could only shake their heads and suggest that Wyoming was a very healthy place. Since it was his only hope, Joseph Bailey left high school and went West.

Varied Jobs

He first herded cattle and then, regaining his strength, began a career with the railroad, becoming a timekeeper. At seventeen he found himself appointed to the post of Federal Fuel Administrator for the Rocky Mountain States. He can only surmise today that no one in Washington knew a thing about him except the title he held on the railroad's payroll. After some months in that post he resigned to volunteer for the Air Corps. He was accepted just as the war in Europe was ending. The question then became—back to the railroad, or what?

About this time his friends—firemen, engineers, and brakemen—began to urge him to go back to school and exercise an opportunity to go on to college. Joe Bailey expected a lot out of college—he had a lot of questions he couldn't answer; in fact, he didn't even know how to begin. He went back and managed to get four years of high school into two years, and then entered college with his hopes high.

Roaring Twenties

The disillusionment that followed was crushing. And unfortunately, the attitude everywhere was "No questions please, you'll hear the right answer provided you sit still and listen quietly to my lecture." Illinois U. was no exception. For two years Joseph Bailey bucked the system, asked his questions, and for his efforts, received only the reputation of "a good, but provoking non-acquiescent" student. He decided that the system was "all hogwash," but then set out to master it with a system of his own to prove to himself that he wasn't just rationalizing his dissatisfaction. And so the following was done: The day before an exam he "briefed" his notes, then committed the brief to memory. He received straight A's his last two years in college.

After graduation he shifted to Europe with a boatload of mules to have a look at how they did things over there. He remained only for one summer, though, and then returned. On the return voyage to America he met some students

instructions relating to decision and grading of arguments. We request that marks conform with the numerical grading system at the Law School and describe that system. Judges are cautioned to make awards independent of the merits of a particular case and with due consideration for unequal burdens of persuasion which a case may impose on counsel. Criteria to be used in grading such as structure, analysis, technical accuracy, and appropriateness of citation are announced but without direction as to the fractional weight to be given these factors.

The scoring system suggested by Messrs. Perkins and Seevak is currently being used by the University of Texas School of Law. Under it, students are graded on each of a group of supposedly comprehensive and equally important skills of brief writing. The cumulative total provides the score for the brief and, interest-

from Princeton, Yale, and Harvard. To his surprise he discovered "they didn't carry handkerchiefs in their sleeves, or have tea and crumpets every afternoon." They had something else, though, something Joe Bailey didn't believe existed. They had gotten an education that not only permitted questions, but also gave them a method with which they themselves could approach the answers.

He entered Harvard Law School and, waiting on tables and stoking a furnace to pay his expenses, Joseph Bailey began the rocky road of a first year man. He says of the experience, "I was at sea for the first few months, but under the guidance of 'Bull' Warren, Austin Scott, Manley Hudson, Joseph Beale, Calvert Magruder, and Samuel Williston I began to catch on. They were masters of logical, disciplined, constructive thinking, and the case method opened up doors to self-development that never before had been possible in lecture classrooms."

He had never intended, however, to become a lawyer, but wished to investigate the processes of higher American education. Upon leaving Law School he became Field Secretary of the Foreign Policy Association, and later became a sales manager for a book publishing firm. In '33 he became Consultant, and later Special Assistant to the Resettlement Administration under Rexford Guy Tugwell. Throughout this period he could not shake the impact upon him of the Law School's methods. His disillusion with higher education as useful training for solving problems had been so dramatically reversed at the Law School that he decided to become a teacher. He especially wished to see if the case method would work as well in other fields.

Classes Again

Returning to school he took a Ph. D. at Columbia and became an Assistant Professor in Social Sciences at Hunter College, teaching history. He published a book entitled "Seamen A. Knapp—Schoolmaster of American Agriculture" dealing with the county farm agent system. Their so-called "demonstration" method works where others fail, he feels, because it operates along lines similar to the case method; instead of spoon-feeding or lecturing, it obliges the farmer to teach himself improved methods of agriculture.

It occurred to Professor Bailey that if this method could be so successful in dealing with the problems of agriculture, why hadn't urban society devised an equally effective teaching technique for dealing with the problems of an industrial civilization? He soon found out that Harvard Business School had begun to do just that. Under the leadership of Dean Wallace B. Donham, LL.B. '01, the Business School borrowed the case method from the Law School in the early twenties and was using it in 1945 with marked success. This, decided Joseph Bailey, was where he wanted to be.

Business School

In 1947 he became a Lecturer on Human Relations in Harvard College, and taught a course given under the direction of the Business School. He quickly rose to be Associate Professor of Human Relations at the Business School, and most recently has been given the opportunity to teach Administrative Practice in the Advance Management Program.

The A. M. P. is a thirteen week course given twice each year to groups of top business executives. The average age of the class is 42, and each man averages twenty years of business experience. Most of them are men at the top of their specialty—Sales, Production, Finance, Personnel, etc.—who are being groomed for higher positions of broader responsibility. They come from small corporations as well as big ones like United States Steel and Standard Oil.

It is to men of this calibre that "ex-railroader" Bailey teaches Administrative Practice, and it is from them he has won an enthusiastic response. With the truly amazing variety of his background and his intense devotion to the case system he learned at Harvard Law School, this response should cause no surprise. D. C.

ingly, this conforms with the general numerical marking system used for coursework. Grades are given for "clear and forceable English," "accurate formulation of questions presented," "soundness of analyses," "use of an approved system of citations," etc. The system has much to commend itself and is currently being considered by the Board in its study of the problem.

It is clear that the proposed system will not solve the dilemma of the high and low markers. Nor is the classification of appellate advocacy into the distinct and equally important elements of performance an easily achieved goal. One answer may lie in a more detailed formulation of what considerations ought to rule judges in grading arguments. It would seem that the actual marking range is less important than what standards of performance are denoted by numbers used. General familiarity with the Law

Sub Judice

GHOST TOWN

The City of Cincinnati brought this action asking that the real property owned by the defendant be declared a part of the Cincinnati Municipal Corporation. This triangular plot entirely surrounded by the City is all that remains of what was once Millcreek Township. The rest of the Township having in time past been divided between Cincinnati and other subdivisions of the State.

What the City attempted to do was to evade a state statute which requires that when a political subdivision of the State is to become part of another division of the State it must be with the consent of the owners and residents of the area to be annexed. In the present case the one resident of Millcreek Township who has all the qualifications of an elector has no way of exercising the franchise, because the township no longer has trustees, nor is it any longer a voting precinct.

The fact of the matter is that Millcreek Township no longer consists of anything more than a cemetery and the City contends that it is necessary to protect property therein that the court declare it a part of the City, since the Township no longer maintains a police force.

Held: The Township is not to be annexed to the City.

The court would not go against the express terms of the statute, and annex the town against the will of the resident thereof. The court suggested that the City if able secure a change in the statute so as to enable it to achieve its purpose. *City of Cincinnati v. Wesleyan Cemetery Association*, 96 N.E. 2d 331 (Ohio, 1950).

DOMESTIC TRANQUILITY

Ruth was granted a divorce from John by the lower court, and the custody of both the minor children. John appealed the lower court's decision as to the custody of the younger child on the ground that Ruth was an unfit person to have custody of a child of tender years.

For some years prior to her bringing of the divorce action Ruth had not only refused John his marital rights, but had refused him admission to that part of their home above the basement on the ground that he had lost his manhood.

As to her treatment of their son Jerry, "he was denied the privileges of a home to play in, which is necessary for a normal boy of his age. It is clear from the evidence that the plaintiff used vile, profane and vulgar language in the presence of this child. . . . It is likewise clear that the manner in which she treated the defendant could and would destroy Jerry's respect, love and affection for his father. It also appears from the evidence that the plaintiff, during the pendency of the action, denied the defendant the right to visit the child which caused him to resort to law enforcement officers to exercise this right."

Held: Decree Modified.

Although custody of minor children is usually awarded to the mother, in this case John had proved her unfit to care for a child of tender years. *McNamee v. McNamee*, 47 N.W. 2d 383 (Neb. 1951.)



ARMORY v. DELAMIRE

School marking system might give it an advantage over the use of some other numerical basis. Perhaps a requirement that judges grade briefs in advance of the oral argument would help to focus attention on the particular considerations that ought to go into achieving the final result.

On the other hand, something may be said against trying to strait-jacket and subdivide a judgment that may in its nature be general. In the last analysis, it is the competence and attempts to achieve fairness on the part of those who sit as Ames judges that will determine the success of the competition.

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Alumni Notes

LL.B. '12 — *Max Lowenthal's* paper, "Police Methods in Crime Detection and Counter-Espionage," which was delivered at the Conference on Criminal Law Enforcement in March 1951, has been issued as a pamphlet by the University of Chicago Law School.

LL.B. '17—*Bruce D. Bromley*, partner in the New York law firm of Cravath, Swaine and Moore and former Associate Judge of the Court of Appeals is Chairman of the National Civil Service League's legal advisory committee.

LL.B. '29—*John A. Christie* has been appointed counsel to the sheriff of Bergen County, N. J. *Clyde L. Colson*, S.J.D. '34, a member of the West Virginia University Law Faculty, has written an article entitled "Service of Process in a Delinquent Lands Proceeding," which was published in a recent issue of the *West Virginia Law Review*, official publication of the State Bar Association.

LL.B. '32—*Charles B. Nutting*, S.J.D. '33, former dean of the University of Pittsburgh Law School, has been appointed vice-chancellor of the University. He is president of the Association of American Law Schools.

LL.B. '33—*Richardson Blair* has been appointed a member of the legal advisory committee of the National Civil Service League. The main purpose of the committee is to supervise the League's new monthly legal periodical, *The Civil Service Law Reporter*. Blair is a member of the Philadelphia law firm of Ballard, Spahr, Andrews and Ingersoll.

LL.B. '36 — *Benjamin B. Priest* has been appointed general counsel of the Massachusetts Bonding and Insurance Co., Boston.

LL.B. '37—*Robert D. Brooks* has been appointed general attorney-commerce for New York Central Railroad.

FORUM—(Cont.)

During his talk, Mr. Marshall mentioned several examples of the extremes to which segregation and "separate but equal" had been carried. Among these was a rule in one state forbidding whites and Negroes to stand in the same line to vote in a primary because it might encourage intermarriage, and that during the summer months in one state the books used by Negro children in their segregated schools could not be stored in the same warehouse with books used by white children. "Even books," he said bitterly, "cannot associate with each other."

On the other hand, Alfred G. Ivey, now a Nieman Fellow at Harvard, and an advocate of "separate but equal," defended the "gradual" approach to the elimination of segregation, saying, "It is not like daylight savings time; it can't be overturned overnight."

He maintained that in his editorials for the *Winston-Salem Sentinel and Journal* he supported a slow working out toward an equality of opportunity for all, but had cautioned "we must not go too far too fast." Immediate abandonment of the tradition of segregation, he warned, would lose supporters of this objective in the moderate and gradualist sympathy in the South, and might stir up the forces of reaction.

But the president of the Southern Regional Council, Marion A. Wright, was in favor of abolishing segregation now. As an example of waste, he noted that the cost of maintaining the "separate but equal" doctrine will be close to one billion dollars, and said, "The states which have saddled themselves with the burden of a dual school system are least able to afford such luxuries."

Mr. Wright also pointed out that continuing a policy of segregation was playing directly into the hands of those seeking to undermine American leadership in international affairs.

Dorm Council Aims New Finance Plans

Henceforth the Dorm Council will follow a policy of spending money in the same year in which students contribute it by their purchase of Activity Cards, officers of the legislative body announced recently. Similar disbursement will be made of revenues received through student use of the cigarette, soft drink, and washing machines installed in the dormitories.

A study of expenditures shows that the greater part of the Council's income is used to defray the cost of dances in Harkness Commons; \$135 was spent to purchase a public address system for the weekly record dances; some \$50 is used each time live music is provided at the weekly socials.

The cost of the Barrister's Ball was estimated at \$125 for an orchestra, decorations, and refreshments. This term's Last Clear Chance dance, now scheduled for April 28, will require similar outlay. Close to 300 couples attended the last semi-formal affair.

HOLMES—(Continued)

The lecturer also thought the recent criticism came from a change in thinking in American philosophy and jurisprudence. He said that since the time of Hitler, people have become increasingly convinced that there is a certain minimum standard of values which must not be violated, if we were to preserve civilization.

Not criticized, Professor Howe said, were Holmes' two primary Constitutional doctrines: that the role of the judiciary as a law-making body be limited, and the rule of "clear and present danger" in cases involving free speech. Lastly, Holmes' historical approach—typified by *The Common Law*,—was a permanent contribution, Professor Howe thought.

AMES—(Continued)

situation is the aim of the drafts being prepared by members of the Watts, Marshall, and Frankfurter-Griswold clubs. Franklin J. Marryott, and Emma S. Tausant are two of the three judges of this competition.

Prizes will be awarded the winning group of each problem by the Board of Student Advisers. The Board is also planning a final round between the two winning law clubs. Positions of the participating law clubs will be determined on the basis of total points garnered in the entire competition.

In line with its increased attention on the problems of draftsmanship, the Board of Student Advisers will have available in the near future the material first distributed at the lecture by Kurt Pantzer, LL.B. '17, S.J.D. '20. Only those who attended the lecture but did not get the material then and left their names with the Board will be able to get this material.

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NEWS IN BRIEF

AMES COMPETITION

Round 3: Arguments to be held tonight. Round 4: Arguments scheduled for tomorrow evening. Rounds 5 and 6: Arguments next Monday and Tuesday, respectively.

Round 7: Brief exchange today; cases will be argued next Thursday. Round 8: Briefs will be exchanged tomorrow and arguments are to be held the following Friday.

GROUP WORK

Regular meetings of the first year group work program will recommence Monday, March 10. For the remainder of the sessions the groups will deal with short projects designed to aid in preparation for the final examinations.

LAW WIVES

Miss Jessie Turtle, head of the Harvard Nursery School, will speak to the Law Wives on Wednesday, March 12, on the "Value of Nursery School Training to the Pre-School Child." This meeting will be held in the Wheeler Room at 8 p. m.

COFFEE HOUR

On Tuesday, March 11, at 1:30 p. m. in Harkness Commons, Professor Harry T. Levin, chairman of the department of Comparative Literature in Harvard University, will speak on "American Literature in Europe Today."

COMMUNION BREAKFAST

A Communion Breakfast will be given by the Saint Thomas More Society this Sunday, following the 9 a. m. Mass at St. Paul's Church. The breakfast will be at the Hotel Continental. Edmund W. Flynn, Chief Justice of the Rhode Island Supreme Court has been invited to speak.

FORD HALL FORUM

Sunday evening at 9 p. m. the Ford Hall Forum will present Norman Thomas and Meryle Rukeyser arguing the question, "Is Socialism the Best Answer to Communism?" The free program is held in Jordan Hall, at 30 Gainsboro St., off Huntington Ave.

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CHAFEE—(Cont.)

affairs, and operate post offices. The states could do the rest.

In foreign affairs, by contrast, the states were nothing and the Continental Congress was everything. Congress had the "sole and exclusive right and power . . . of sending and receiving ambassadors—entering into treaties and alliances . . ." On the other hand, "No state without the Consent of the united states in Congress assembled, shall send any embassies to, or receive any embassies, or enter into any conference, agreement, alliance or treaty with any kind, prince or state . . ." Of this latter provision Madison wrote in *The Federalist* (No. 44) that "for reasons which need no explanation, [it] is copied into the new Constitution." At the same time, the exclusive national power to make treaties was continued, but was transferred from the whole of Congress to the President and the Senate.

Because of the vital distinction between foreign affairs and domestic matters, the extent of federal power over the latter was considered as an entirely separate subject for treaties. Nobody in the published debates ever suggested that the scope of the treaty power of the nation should be cut down to the domestic powers of Congress. Throughout it was assumed that the United States ought to possess the same capacities to enter into international arrangements as did the other civilized nations with which we might negotiate.

Treatment of Domestic Legislation

The reason is plain why the Constitution enabled the national government to do things in foreign affairs by treaty which Congress could not do by domestic legislation. In home matters the framers expected that most of the work of governing Americans would continue to be done by the states. Specified legislative tasks of national importance would be assigned to Congress, but state legislatures were to take care of the rest. Except for a few outrageous things nobody could do, like enacting bills of attainder, everything in domestic matters belonged either to Congress or to the states. Thus *somebody* could do whatever law-making needed to be done in a civilized country—there was no vacuum.

But in foreign affairs there were no comparable two areas of national matters and local matters. Everything legitimately possible in foreign affairs was of national importance. Here a vacuum would exist if the federal treaty power were narrowly limited. The states could not take over. They were forbidden to conduct negotiations with other nations. Consequently, unless the national government could act, nobody could act.

The people of the United States were accustomed to governing themselves through scores of bodies from town and county commissioners up to Congress, but when it was a question of bargaining with other nations they had to act as a unit. The framers knew that they were founding a great nation, and they wanted it to be able to behave in the world like a great nation.

'No Man's Land'

Contrast the proposed amendment which, after a century and a half of international growth which nobody in Philadelphia could have foreseen, would create a No Man's Land, where neither President, Senate, House, nor Supreme Court will be able to relieve international tensions by sensible agreements effectively performed. For the sake of states' rights, this amendment would deprive the nation of functions which the states cannot possibly perform.

Secondly, the framers were anxious to guard the nation against unwise or corrupt treaties and took much pains to do so adequately. They repeatedly expressed such fears as that the Senate, if solely empowered, might sell a big slice of territory or part of the navigation of the Mississippi; or that a President, if acting alone, might make a treaty grossly favoring his own state, or he might be bribed by another nation to yield damaging concessions and then flee to the bribing country for refuge from the indignant vengeance of the American people. There was no carelessness about hedging in the treaty power with proper precautions. The attitude of the framers on this point was summarized by John Jay in *The Federalist* (No. 64):

"The power of making treaties is an important one, especially as it relates to war, peace, and commerce; and it should not be delegated but in such a mode, and with such precautions, as will afford the highest security that it will be exercised by men the best qualified for the purpose, and in the manner most conducive to the public good. The convention appears to have been attentive to both these points. . . ."

And Hamilton wrote in a later issue (No. 75):

"The qualities elsewhere detailed, as indispensable in the management of foreign negotiations, point out the Executive as the most fit agent in those transactions; while the vast importance of the trust, and the operation of treaties as laws, plead strongly for the participation of the whole or a portion of the legislative body in the office of making them."

Difficulty Avoided

Third, on the other hand, the framers

did not want to have it too hard to conclude treaties. They were not willing to obtain complete safety from bad treaties by making it virtually impossible to have good treaties. As Jay wrote in *The Federalist*—"Let us not forget that treaties are made, not by only one of the contracting parties, but by both." The Convention knew that it would be very difficult for us to conduct satisfactory negotiations with a nation which was able to turn its positions at the conference into a formal agreement, if the offers of our delegates were by contrast merely tentative and subject to almost insuperable obstacles before ratification was possible. For this reason, the framers rejected two possible methods of ratification which were brought up in the Convention as alternatives to the method eventually adopted of a vote by two-thirds of the Senators present.

One rejected plan was to require two thirds of all the members of the Senate, including those who were absent. Against this Hamilton wrote in *The Federalist* (No. 75):

" . . . all provisions which require more than the majority of any body to its resolutions, have a direct tendency to embarrass the operations of the government, and an indirect one to subject the sense of the majority to that of the minority. This consideration seems sufficient to determine our opinion, that the convention have gone as far in the endeavor to secure the advantage of numbers in the formation of treaties as could have been reconciled either with the activity of the public councils or with a reasonable regard to the major sense of the community. If two thirds of the whole number of members had been required, it would, in many cases, from the non-attendance of a part, amount in practice of a necessity of unanimity. And the history of every political establishment in which this principle has prevailed, is a history of impotence, perplexity, and disorder."

The other plan, which received fuller attention, was to have the House of Representatives participate in treaties, either in making them or in passing a required implementing statute. On August 23, Gouverneur Morris made a motion that no treaty should be binding on the United States "which is not ratified by a Law." During the full discussion which followed, much stress was laid on the practical disadvantages of such a re-

quirement. For example, it was said that at the conference which negotiated the treaty, the delegates from the other countries would have definite instructions how to proceed, but not ours. Previous consultation with the President and Senators would not enable them to know what course would be approved. If the ultimate power to make the treaties effective was shared by the House, they would have to be instructed by Representatives to, and that was impracticable. Morris' motion was then voted down 8 to 1. It was renewed by Wilson two weeks later and again voted down.

During the struggle over ratification, the same desire for using the House of Representatives was urged by opponents of the Constitution. In replying, Pierce Butler told the South Carolina legislature that negotiations always required the greatest secrecy, which could not be expected in a large body. And C. C. Pinckney also stressed the need for speed with some treaties. The Senate being a smaller body, could be called together quickly, but it would be very hard to convene the House at short notice.

When a similar objection came up in the North Carolina Convention, Davie insisted that treaties were not like ordinary statutes and ought not to be adopted in the same way. "The power of making treaties has, in all countries and governments, been placed in the executive departments." This was not only because of the need of secrecy, planning, and speed, but also to prevent treaties from "being impeded by the violence, animosity and heat of parties which too often infect numerous [large] bodies . . ." And Hamilton in *The Federalist* (No. 75) pointed out the drawbacks of sharing control over treaties with the House:

"The fluctuating and, taking its future increase into the account, the multitudinous composition of that body, forbid us to expect in it those qualities which are essential to the proper execution of such a trust. Accu-

rate and comprehensive knowledge of foreign politics; a steady and systematic adherence to the same views; a nice and uniform sensibility to national character; decision, secrecy, and despatch, are incompatible with the genius of a body so variable and so numerous. The very complication of the business, by introducing a necessity of the concurrence of so many different bodies, would of itself afford a solid objection. The greater frequency of the calls upon the House of Representatives, and the greater length of time which it would often be necessary to keep them together when convened, to obtain their sanction in the progressive stages of a treaty, would be a source of so great inconvenience and expense as alone ought to condemn the project."

These reasons against treaties going to the House are very important in connection with the amendment now under consideration. In substance this proposal simply revives the overwhelmingly defeated motion of Gouverneur Morris. To require an Act of Congress before a treaty can be made effective is almost the same thing as requiring it to be ratified by the House in the first place. Indeed it is worse in some ways, because the interval between the customary ratification by two thirds of the Senate and the discussion of the implementing legislation in the House will allow plenty of time for fresh animosities to gather. The framers were even more anxious that treaties should not be hard to get enforced after they were ratified, than they were to prevent it from being too hard to make treaties. A broken national promise is a greater blot on our honor than no promise at all.

(To Be Continued)

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