

The Harvard Law School Record

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'The American Girl' Is Topic Of Opening Forum Program

Harvard Law School's Forum inaugurates its 1953-54 season this week with a program on "The American Girl." To discuss the mores, manners, and morals of the nation's womanhood, the Forum platform will be shared by Al Capp, creator of Li'l Abner and a favorite Forum speaker; Mme. Magda Gabor, one of the famous Gabor sisters of stage and screen; and Earl Wilson, nationally syndicated society columnist of the *New York Post*, and author of the recently

published *Look Who's Abroad Now*.

With Mr. Capp's humor, Miss Gabor's continental approach, and Mr. Wilson's general familiarity with the subject matter, this promises to be one of the most interesting Forums in recent years. The date is set for tomorrow evening, at 8 p.m. Tickets will be sold at the door.

People who are interested in working with the Forum are invited to submit



Magda Gabor

their names at the Forum office at 23 Everett St.

At a recent meeting of the Forum new officers were elected for the current term. They are: President, Jack H. Olive, 3L, of Ruston, La.; First Vice-President, Edmund Rosenkrantz, 3L, of New York; Second Vice-President, Herbert Wasserman, 2L, of New York; Secretary, Anton Bigman, 3L, of Bradock, Pa.; and Treasurer, Herbert Paul, 2L, of New York.

Dorm Council Elects Conlan President

The newly elected dormitory council met last week and selected its leaders for the year. The representatives unanimously voted John B. Conlan, Jr. 3L of Northwestern University and Chicago as President of the Council. Other officers chosen were: Vice-President, Sam Pringle 2L of Princeton and Pittsburgh; Secretary, Herb Wasserman 2L of Harvard and N.Y.C.; Treasurer, Dave Kera 2L of N.Y.U. and Jamaica. The executive committee has formulated plans for the smooth functioning of the Council this year as representative vis-a-vis the administration.

The beginning of the social program was announced this week by Paul Glenn 2L of Princeton and Sharon, Pa. The program, though sponsored by the Dorm Council, is for all law students. Admission to the series of semi-formals, combos, and record dances throughout the school year will be by a social activities card—available from any of the

(See COUNCIL on page three)

SEMI-FINAL PAIRINGS

The Board of Student Advisers has announced that pairings have been made for the semi-final rounds of Ames Competition. Jaffee Club will represent the appellant while Gardner Club will argue for the appellee in the December 3 contest. The following day's argument will find Story Club for the appellant arguing against Griswold Club which will represent the appellee.

The final clubs lists for the Ames competition will be posted on the law club bulletin board tomorrow.

Two-Thirds Of Class Of '54 Due To Enter Military Service

Job prospects for the class of 1954 look bright, say Assistant Deans Louis A. Toepfer and Russell Peck. In a leaflet sent to offices and firms wishing to consider Harvard Law students for future employment some surprising statistics on the present third year class were revealed.

On the 450 men and women graduating next June, about two-thirds are eligible, and will presumably be taken, for military service. This means that

only 150 students will be actively interested in employment immediately following their graduation. This is a substantial decrease from the class of 1953, of which only about half went into military service, and it will be the largest number of a graduating class at the Law School ever taken.

Accordingly, although the job opportunities are currently a trifle slow, it is



Russell H. Peck

balanced by this decrease in the number of men available. Further, it has enabled the placement office to initiate a new interview procedure. In previous years, the interested firms notified the office of their coming, and the placement office picked men for interviews on the basis of the interests evidenced on their placement cards. This resulted occasionally in men who were no longer interested in that particular field receiving

(See PLACEMENT on page three)

Growth Of Financial Aid For Students Announced By Dean In Annual Report

Significant increases in the number of third-year seminars and in the amount of financial assistance for students were among the highlights of the 1952-53 school year cited by Dean Erwin N. Griswold in his annual report.

The Dean's report also stressed recent progress in the field of teaching materials and in the development of legal research activities. Financially, it revealed gifts of \$687,739.44 and a surplus of \$8,356.22 at the end of the year (the second time since the end of the war the school has been out of debt.)

The report points out that during the coming year fifty seminars have been planned, compared with only eight for 1947-48. "This . . . gives each third-year student an opportunity to do an intensive piece of work on a relatively narrow problem," the Dean explained, "instead of confining his study to fairly general surveys of rather broad fields, as was the case with much of our work in the past."

Dean Griswold reported that this development has been made possible only because of a "considerable increase" in the size of the teaching staff. "In 1927-28, there were 1,535 students in the School, and 26 members of the teaching staff. During the past year, we have had a smaller number of students (1,477), and 44 full time members of the teaching staff. For next year, we plan a staff of 49 full-time teachers."

The report also noted the large number of new casebooks edited by Harvard professors as a result of the new teaching program, which necessitated the revision of many School courses.

The amount of financial aid extended during the past year amounted to \$194,041.91, including \$130,414.00 in scholarships, to 204 students, more than double the amount awarded three years ago, and \$26,000 more than in the previous year. Loans amounting to \$63,627.91 went to 152 students.

(See REPORT on page three)

Appellate Advocacy A Specialist's Job; Demands Style, Logic And Selectivity

The following article was written for the RECORD by Paxton Blair, LL.B. '17. Mr. Blair has been chief of Appeals Division, N.Y.C. Corporation Counsel's Office; Justice of the N. Y. Supreme Court; and lecturer on Appellate Practice with the Practising Law Institute. At present, he is practicing alone as a specialist in appeals.



Paxton Blair

The first duty of the appellate advocate is to remember that an appellate court, unlike a trial court (which saw the case develop before its eyes), doesn't know a damned thing about the case, and must be informed from the ground up. The second duty is to convince the court he has a program of presentation, and has thought out carefully the order in which he proposes to state the facts and the points of law.

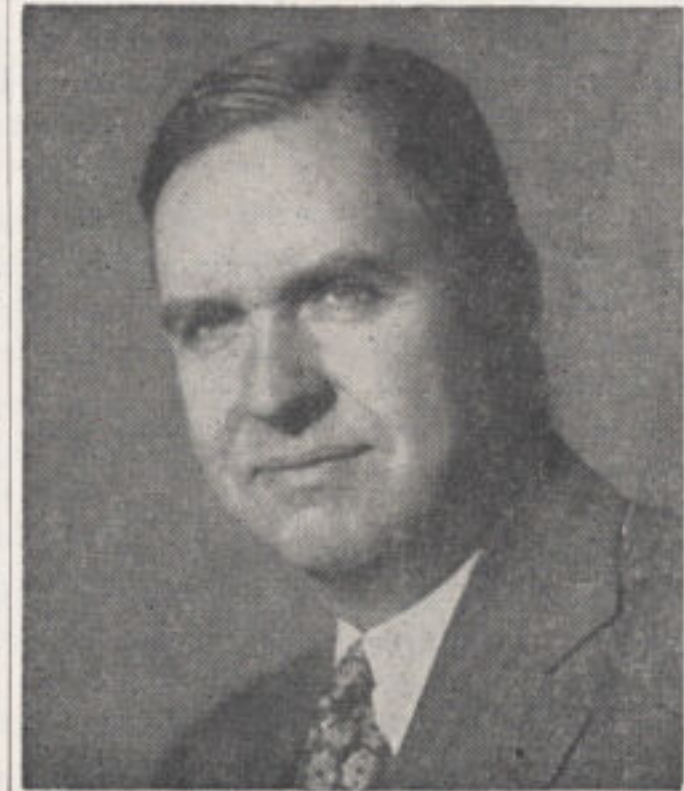
For the presentation of facts, the chronological order is usually best. Each fact should be stated with the contributions of the various witnesses concerning it pieced into a mosaic. To pursue the opposite method and digest the story first of one witness and then another is disadvantageous because it makes it hard for the court to gain an awareness of

what facts were proved up to the hilt, what were the subject of conflicting testimony and what were pleaded but not proved.

A brief should start with a highly compressed but accurate statement of how the case came up. In my law school days, there was current around the Law School a merry jingle lampooning a certain professor's insistence on this circumstance in connection with each case recited upon:

"How did the case come up, come up. Oh, how did the case come up?"

(See ADVOCACY on page three)



Erwin N. Griswold

Autobiography Of Wall Street Broker Is Story Of A Modern 'Horatio Alger'

Lying In State, by Stanton Griffis: Doubleday and Co., Inc., Garden City, New York. 1952. 315 pp. \$3.75.

This is the informal autobiography of a modern Horatio Alger whose accomplishments are as varied as they are exemplary. Mr. Griffis takes you into his confidence in a modest, frank, and appealing manner, and in a short while has you reliving the moments of an eventful life, those moments which seem to remain after the din and clatter of the theatre of war, in which they have been fought, have quietly died away to become a part of history.

Attended Cornell

This son of a congenial minister was raised in an intellectual atmosphere of family life; attended Cornell where he was captivated by the philosophy of one of this century's greatest idealists, Woodrow Wilson; enjoyed more than his share of unusual experiences; and went on to become an outspoken democrat in the more conservative walls of marble and granite known as Wall Street.

The author leads the reader from one venture to another, from the failures of a disillusioned dreamer in his excursion

into Oregon agriculture, to a successful career as a Wall Street broker.

Mr. Griffis has served as a teacher of English in a modest Oregon college, and as a government trouble-shooter sent to Sweden in successful bid to foil the Nazi rush for arms.

Outstanding Autobiography

A varied career such as is Mr. Griffis' contains more than the usual raw material for an outstanding autobiography. But here Mr. Griffis gives us more. In addition to his frankness he gives us his incisive wit which is interspersed in the realistic philosophy with which this man has risen to be counted among the leaders of his era. He is a man who has "angeled" a sinking Brentano's, and who can still tell you that bonds and insurance are "must" items in a man's investment portfolio, and that "common" is not all it is cracked up to be.

Highly Recommended

This autobiography is one of a life which many readers would wish for themselves. The book, from this corner at least, is highly recommended.

G. C.

Capacity Crowd Listens To Stock Expert As Bull And Bear Club Opens 2nd Season

A capacity crowd of more than 200 investment-hungry law students jammed the Harkness Meeting Room last Thursday at the opening meeting of the Bull and Bear Club. The group watched the New York Stock Exchange Film "What Makes Us Tick," saw another film on investing, and listened to Mr. Ralph B. Dibble of Merrill Lynch, Pierce, Fenner & Beane discuss the outlook for the stock market. Mr. Dibble described various factors which had contributed to the decline that the Dow-Jones average has experienced this year and which conceivably could cause it to decline further. These factors included reduced government spending, the tight money policy of the Federal Reserve Board and the Treasury, the fall in commodity prices due to overproduction, increased competition in most manufacturing industries, a rise in inventories, an over-expansion of productive capacity in many industries, and, more recently, a slight decline in steel, and auto production, building construction, and a continuation of the depressed conditions

in the non-ferrous metals and textiles.

Mr. Dibble concluded his talk by listing many stocks which in his personal opinion were good stocks. He then answered numerous questions put to him by the members.

Yesterday the Bull and Bear Club listened to Mr. Stuart Scott and Mr. Brown, partners in the New York odd-lot firm of Carlisle & Jacquelin, discuss odd-lot trading. A film on odd-lot trading was shown first, after which Mr. Scott spoke about this important investment specialty and answered questions.

70 Graduates Pass Mass. Bar In July

Dean Erwin N. Griswold has released the following statistics in connection with the Massachusetts Bar Examination which was given in July, 1953.

Of Harvard Law School graduates taking the examination for the first time, 65 passed and 11 failed; in other words 85.5% of those taking the examination from the Law School were successful. In addition, three Harvard Law School graduates took the examination for the second time, one took it for the third time, and one took it for the fifth time. All of these five passed.

A Good Record

Thus the overall figure for Harvard Law School graduates was 70 passing, and 11 failing, or a passing ratio of 86.4%.

This compares with the following total figures for all of those taking the examination: Taking it for the first time 239 out of 369 passed, or 64.8%. Counting those who had taken the examination before, 303 out of 614 passed, or 49.3%.

"This is a good record for Harvard graduates," says the Dean, "but it ought to be better."

LAW WIVES

The Law Wives' first regular meeting will be held Wednesday, October 21, at 8 p.m. in the Meeting Room of Harkness Commons. There will be a short business meeting followed by an address by Mrs. Miles Baker, Advisor for Harvard Wives, who will speak on employment, baby sitters, housing, and other subjects of interest to law wives who have recently come to Cambridge.

The program will be shared by Mr. Budek, who will present a group of D. P. children in a number of Polish folk dances.

Dues will be payable during the evening. Refreshments will be served following the entertainment.

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The Unwisest Cut Of All

Last year we were winning the cold war. This year we seem to be losing it. Last year we were the head of a great alliance of free nations ready to fight to the last against Soviet aggression. This year we are one of many countries unable to agree on any basic policy for self-preservation. Last year we thought we could strike the Soviets as hard as they could strike us. This year we are told that we are defenseless and weak in striking power, while the Russians can stop our blows and still destroy us. Last year we saw progress in winning the "neutral" nations like India to our point of view. Today they are drifting away from us to the power sources in Peiping and Moscow.

The fault for this shocking trend must be placed at the door of the present administration, for it told the people, and they believed, that we could win the cold war and still maintain the business-as-usual philosophy. We cannot. The cost of adequate protection will consume an increasingly greater proportion of our national wealth, of our human resources, of our energy and thought for each future year.

The Soviet hydrogen bomb and the Soviet strategic air force are, or shortly will be, capable of a fatal blow at the cities of America and Europe. The free world, we are told, lies practically defenseless before the Soviet bombers.

Without the strongest mutual support, each European nation is no match for the Soviets. The pressures for negotiation, for appeasement, for outright surrender grow stronger with every day of United States delay in devising policies to counter the Soviet H-bomb. The free world cannot survive without us, and knows it. We cannot survive without our allies. They must not fall one by one, victims of our lack of firmness. We must recognize the new threat of a sudden Soviet attack, and begin counter-measures which will restore European faith in our leadership and purpose. Our allies have not slipped far, and they will return at once if we meet the Soviet challenge by deeds.

Honest men like President Eisenhower and Secretary of Defense Wilson must face these unpleasant truths. They are faced with the horrible choice of either telling the people that our defense forces are adequate when we are told that they are not, and that reduction of taxes can proceed, or else admitting it was a grave error to believe we could have drastic defense cuts in the immediate future. The only possibility for important reductions in Federal expenditures is in a general world settlement. It would be unrealistic to assume that we can have peace while the Russian Communists are in power and have armed strength equal to the free world's.

With these facts before them, the principal officers of the United States can reach only one conclusion: we must create a new national defense policy to meet the new Soviet threat. The people must be prepared for at least a continuation of high taxes, a huge Federal payroll, large draft calls. Every day during which we drift without a policy is of benefit to the Soviets. The administration should give the facts to Congress and the people as quickly as it can.

The administration must find the courage to admit a grave mistake and to reverse its stand on defense spending. They should take heart from Eisenhower's great prestige; he can explain the shift in thinking without losing popular support. If we are not to lose ground to the Soviets he must explain the facts soon. The threat of Communist conquest of the world has never been greater. We cannot afford to drift without policies in the face of unthinkable disaster.

Gallery

FRANCIS ALFRED ALLEN
Professor of Law



Harvard Law School has a reputation for appointing busy, brilliant young men to its faculty, but few have had a more varied legal experience than Francis A. Allen, who was appointed professor here last spring. In the seven years since he graduated from Northwestern University's school of law, Professor Allen has given time to teaching, state and local government, legal journalism; in addition he has served for two years as law clerk to the late Chief Justice of the United States, Fred M. Vinson.

Born in Kansas City, Kansas, in 1919, Professor Allen was graduated from Cornell College (Iowa) with highest honors in history and political science. "This was the original Cornell," he explains. "Its trustees gave it that name in the hope that Mr. Cornell would give it some of his money. Instead he left it all to the University of New York."

From Cornell, Mr. Allen went to Northwestern for his law training. His studies were interrupted by three years in the air force, but before he left for service, he was selected editor-in-chief of the *Illinois Law Review* (now the *Northwestern University Law Review*). Harvard Law Review editors who think they have a tough job can gain solace. "We started out with a six-man board," he recalls, "but after a few months the draft hit and we had only two left. I don't know how we ever got the Review out, since we not only had the problem of editing, but also told of writing. As it was, the issues came out several months late, with the May issue not being distributed until September."

Mr. Allen's war experiences were mainly in the role of weather forecaster, and in that capacity he spent a year of his service in India. His job was not an easy one; he cynically notes, "the forecasting of weather is not too far removed from that of forecasting judicial decisions." After his release from the air force, he returned to Northwestern, where in 1946 he received his law degree, *magna cum laude*.

As law clerk to Chief Justice Vinson for two years after graduation from Northwestern, Professor Allen had an interesting and instructive experience. It was the Chief Justice's first year on the bench "so we worked out procedure together. The work of a clerk for the Chief Justice is more closely tied up with the administration of the court than that of the other clerks, but that is the only major difference." Allen was one of three clerks for the Chief Justice; during his second year he was senior clerk. Among the important cases on which he worked with Vinson were the one involving John L. Lewis's contempt of court and, in his second year, the restrictive covenant case.

Professor Allen went directly from his clerkship to the faculty at Northwestern Law School, where he taught until his appointment at Harvard last year. In addition to his teaching, he found time to serve in several other projects. He was Associate Editor of the *Journal of Criminal Law, Criminology, and Police Science*, a post he still holds. For a short period in 1946 he was a member of the legal staff of the Chicago Housing Authority, and subsequently was elected to the Board of Governors of the Metropolitan Housing and Planning Council of Chicago, an influential private organization.

In 1952-53, Mr. Allen was chairman of the Advisory Committee of the Illinois Sex Offenders Commission, where he was kept "very busy." "The legislature gave us only \$7,500 for the study, and it soon became evident that this would not be adequate. As a result most of our work was done by volunteer help—lawyers, social workers, clergymen, psychiatrists and others—and they did a fine job. I think that the report of our commission compares very favorably with some in other states which were more liberally favored. It was a unique experience in popular participation in government." In the field of active politics, however, Mr. Allen can claim little activity or success. "I campaigned for Stevenson voluntarily in the last election and we lost Illinois by 400,000 votes. That experience indicated the wisdom of keeping still."

Comparing Harvard with Northwestern, Professor Allen commented that "each of the sections here is about the size of an entire class at Northwestern. Some classes there are split into sections, but from the teacher's standpoint there isn't too much difference between a class of 60 and one of 120. I would think that the difference between the two schools in student caliber, if any, will show up at the bottom and middle levels of a class instead of at the top. Top students would do well anywhere." At Northwestern, Mr. Allen "pretty much made the rounds," but at Harvard his work so far has been in Criminal Law, where he teaches two sections, and in Commercial Real Estate Transactions in which he will conduct a seminar next term. "So far," he said, "I like Harvard very much," adding more cautiously, "of course it's too early to have reliable impressions, but there's certainly no reason to think that I won't."

Off the Record

PIMBE'S CASE

(Required reading before attempting this poem are: Pages 372-3, Casner & Leach, *Cases & Text on Property*; also, see Page 245 of Scott, *Cases on Trusts*.)

Horatio Pimbe was out on a limb
Because of the Statute of Uses;
To forfeit his land the court made demand
Because of Throckmorton's abuses.

What puzzled our hero was relative zero—
A cipher that's minuticate;
A hell of a ruse, so the cestui que use
Lost out when the trustee was traitor.

'Twas old King Hank Pimbe had to thank
For all his trouble and care;
Too many wives and evenings in dives
Had left the king's pockets quite bare.

To fill the exchequer this regal homewrecker
With the Statute of Uses did score;
The result was confusion, but dough in profusion
For Henry and Annie, his . . . wife.

Their daughter, Queen Lizzy, was all in a tizzy;
To her it seemed rather mean.

As a matter of grace, she gave back the place,
And Pimbe shouted: "Gawd save the Queen!"

J. S. Gratton, LL.B. '53



"QUICK, SHAPIRO, LOOK LIKE A HARVARD MAN."

Sub Judice

A DENT IN HIS DENTURE

Trachenberg had his automobile insurance with Home Indemnity Co. and it was of the common type. He was covered for collision, liability and "Medical Payments." This latter coverage stated—"To pay all reasonable expenses incurred within one year—for necessary medical services—for each person who sustains bodily injury caused by the accident."

One day while driving through New York's busy streets, Trach was involved in a collision while not fatal nevertheless, injurious. Trach suffered some minor bruises, cuts, etc., and was reimbursed \$103 for medical payments incurred. He submitted, in addition, thereto a bill for \$175 to replace his denture which was completely smashed. Strangely enough, Trach suffered no injury whatever to his mouth or gums.

Investigation soon revealed that this was not so strange—for Trach's teeth were not in his mouth. That's right, the denture, it was discovered, was in his shirt pocket, and when the car collided, Trach was forced against the steering wheel with the resultant destruction to his teeth.

Trach correctly alleged that the breaking of his teeth was a direct result of the accident and that if it had not occurred he would not have sustained a broken denture. He maintained vehemently that the destruction of his denture was "bodily injury."

Home Indemnity, of course, replied that the policy was not intended to cover personal property damage. That at least while the denture was not in his mouth but rather in his shirt pocket, it was in the nature of personal property rather than part of his body. (A type of equitable conversion takes place when the teeth are taken out of the mouth.—Ed note.)

On this novel point of law for which there appeared no citation of direct authority,

Held: That where insured's denture was in insured's shirt pocket when accident occurred, breaking of denture was not a "bodily injury."

"It is true," said the court, "that if there should be any doubt as to the meaning of any clause in an insurance policy, it should be liberally construed in favor of the insured and strictly against the drawer of the policy. However, the policy must be given reasonable interpretation. The words taken must be taken in their plain, ordinary, usual, and popular sense."

The court refused to follow the only case mentioned by the plaintiff. That case involved a policy covering bodily injury as a result of robbery. The insured was a college student who lost his fraternity pin while battling for the goal posts. "Injury to wearing apparel," said that court, "did not constitute bodily injury."

Apparently the N. Y. court was willing to equate teeth-in-the-pocket with fraternity pins—both wearing apparel . . .

In any event Trach did not recover. As if not satisfied with the "analogy" to fraternity pins, the court solidified its reasoning with appropriate parallels in the law of fixtures.

Had it been in his mouth (where it belonged), the court remarked that Trach would have recovered the loss thereof since the teeth were in the nature of "xtures" and thus part and parcel of the body.

The court also thought recovery would have been allowed if Trach could have shown that he was undergoing an "adjustment" period with his denture, and that the teeth were temporarily in his pocket to relieve gum irritation, etc. On that point the court sagely observed, "a denture is more apt to be more comfortable in the pocket than in the mouth." (Probably still more comfortable in a glass of water.—ed.) Trach apparently failed to prove that the teeth were "more comfortable in the pocket than in the mouth" and was denied recovery. Hearings aids, glasses, false eyes, etc., in the pocket are OK, but false teeth, no, no, no, said the court.

The court finally drew its last comparison. It held that so harsh a view that a legbrace or an artificial leg is strictly an item of personal property, and that the body ends where the leg stump begins is untenable. Teeth are more akin to shoes. They both perform physiological functions; one, an accessory to the foot, the other to the mouth.

Trach will be required to shell out his own cash for a new accessory. *Trachenberg v. Home Indemnity Co.*, 121 N.Y.S. 2d 911, Municipal Court of N.Y.C., May 27, 1953.

REPORT (Continued)

In the report, the Dean announced that for the first time in the history of the Law School, "tuition scholarship awards are being recommended for students with 69 averages, who show great need." This change, which is on a somewhat experimental basis, is a direct result of the success of the Alumni Scholarship program. Aid will be provided this year for 17 students who would otherwise have been ineligible.

Possibility Of New Policy

Although reporting that the financial assistance program has worked reasonably well, the Dean cited several shortcomings. Among these are in the areas of evaluating the college records of entering students so that all deserving candidates receive scholarships, and helping the men with heavy loan obligations who have to meet the same maturity date as the men who have borrowed only a moderate amount.

The report hints the possibility of

"completely new scholarship and loan policies" to make possible "the desire of the School that no otherwise qualified man should be prevented by financial reasons from obtaining a legal education here." Among the possible remedies, the Dean cites the closer integration of scholarships with loans. "One suggestion," he reveals, "is to have all students who need financial assistance first draw upon loan funds up to a specified amount each year. Those who need additional support can then receive help in the form of scholarships or grants-in-aid."

Favors Student Deferment

"Because there is probably merit in having scholarships as a reward for high academic performance," the Dean explains, "some scholarships could be awarded to outstanding students in each class," and given independently of the Financial Aids program. "Under such a plan all students would know the amount of aid they could expect for their course, provided they maintained satisfactory standing and continued to need assistance. Prospective students could be told that a definite amount of financial aid would be forthcoming if they needed help."

The Dean spent a portion of his report discussing the effect of military service on law students and the School, restating his belief in student deferment. He said that the existence of selective service has greatly added to the administrative problems of the school, and also noted that "we are again entering a period during which a fair number of students will receive government assistance" under veterans' benefits.

Ford Foundation Grant

Gifts and banquets during the year included \$27,187.71 designated as gifts for capital and \$661,163.40 as gifts for immediate use. Among the latter were \$120,759.84 as unrestricted gifts to the Annual Giving Harvard Law School Fund, and \$400,000 from the Ford Foundation, \$200,000 for the Program in International Taxation, and \$200,000 for research in juvenile delinquency under the direction of Professor and Mrs. Glueck.

Alumni Notes

LL.B. '04—Gilbert H. Montague was awarded Doctor of Laws degrees by Kenyon College and by Springfield (Mass.) College in June, 1953.

LL.B. '27—Kingsley Taft has contributed notes on the Ohio Constitution in the most recent edition of Baldwin's Ohio Revised Code.

LL.B. '31—Paul M. Herzog has resigned as Chairman of the National Labor Relations Board and has been appointed Associate Dean of Harvard's Graduate School of Public Administration.

LL.B. '35—Samuel Spencer is on leave from the firm of Spencer, Moore & Whalen to act as Commissioner of the District of Columbia.

LL.B. '36—Lawrence S. Rosenstrauch, who formerly practiced by himself, has joined in the formation of the partnership of Cozart, Rosenstrauch & Nilan in Columbus, Ga.

LL.B. '39—Herbert N. Maletz has resigned as Chief Counsel for the Office of Price Stabilization and has entered private practice in Washington, D. C.

LL.B. '41—C. George Anastos has been appointed by Senator Joseph McCarthy (R. Wisc.), as an assistant counsel to the Senate Investigating subcommittee. He has been a special assistant to the United States Attorney General in the prosecution of internal security cases since 1951.

LL.B. '43—James S. Lanigan has become associated with the firm of Roosevelt, Freidin & Littauer in New York City. He was formerly special assistant to Averell Harriman, assistant campaign manager for Adlai Stevenson, and assistant to Charles Murphy, special counsel to the President at the White House.

LL.B. '44 ('48)—John S. Pennish has joined in the formation of the partnership of Bernstein, Frankel & Pennish in Chicago. The new firm has merged with the firm of Mulder and Frankel.

LL.B. '47—Donald A. Schmechel has become a member of the law firm of Wright, Innis, Simon & Todd in Seattle, Wash.

LL.B. '48—Lawrence I. Boonin and Louis J. Carter have formed the partnership of Carter & Boonin for the general practice of law in Philadelphia.

LL.B. '50—Henry B. Keiser has been appointed Assistant to Judge Eugene Black of the Tax Court in Washington, D. C. He was formerly Assistant Staff Judge Advocate at Lowry Air Force Base, Colorado.

LL.B. '51—Nathan S. Paven, formerly with the office of chief counsel of the Office of Price Stabilization, has opened offices for general practice with the firm of Schlesinger & Manuclian in Boston.

James T. Curtis has formed the partnership of Casey & Curtis in Lowell, Mass., for the general practice of law. He was formerly clerk to the Attorney General of Massachusetts.

NEWS
IN BRIEF

'53 EXAM QUESTIONS

Reprints of the 1953 examination questions are now available at the West Wing Entrance of Langdell Hall. There is also a limited supply of pamphlets for 1951 and 1952.

LIBRARY TOUR

The Board of Student Advisers will give guided tours of the library this afternoon and tomorrow afternoon, October 15 and 16. Those men interested in the tours should sign the lists on the law club bulletin board in Austin Hall. The tours will be given from 1:30 p.m. through 5 p.m., and will begin in the Courtroom of Langdell.

All second and third year men are eligible to judge the first year Ames arguments. Those men who are interested should submit their names to the office of the Board of Student Advisers on the second floor of Austin Hall.

FORMAL DANCE

Phillips Brooks House will hold a formal dance on November 7, 1953, 8 p.m. to 12 p.m. in Harkness Commons. Tickets will be sold at \$2.50 both at the door and in Harkness Commons for the week prior to the dance.

COUNCIL (Continued)

council representatives or Paul Glenn for \$2.

Saturday night, October 24, is scheduled for the Briefwriters Blast. Believing the students could use diversion from their Ames work, the Council has provided for a first-rate dance to take over dimly-lit Harkness meeting room for the entertainment of languishing law students and their dates.

PLACEMENT—(Continued)

interviews, while some men were not interviewed who desired it. Under the new system, the firms notify the placement office well in advance of their visit, and also send full particulars as to what type of work they do, the type of men they desire, salary particulars and other descriptions of their opportunity. Lists are then made available for students to sign. If students cooperate, as they have been to date, by signing only for those firms in which they are actively interested, the necessity for drawing lots for interviews will be averted, while at the same time making interviews available to all who fulfill the requirements and have a definite interest in the opportunity.

ADVOCACY (Continued)

What care I what the prisoner did.

Raped or stole a pup?"

But the wisdom of this insistence, as an essential to sharp focusing of the issues, will grow upon the lawyer the more he argues before appellate courts. Some of the things which the court will want to know at the very outset, and which you must keep in mind because of their bearing on the permissible scope and the proper form of your brief, are these: Which of the parties below is appellant and what is he appealing from? If you are before the court of last resort, are you appealing from a judgment of affirmance or from a judgment of reversal? This is an important factor because on an appeal from an affirmance, the court of last resort cannot inquire into the facts; but on an appeal from a judgment of reversal, accompanied by new findings of fact, the court of last resort may inquire into the facts.

Judge v. Jury

Another significant element to be noted is whether there was a free, i. e., undirected, verdict or was the case taken away from the jury. It is a more onerous undertaking to upset a jury's verdict than to upset a court's determination that there were no issues whatever to submit to the jury. Was the judgment appealed from entered after a trial or upon affidavits? And you yourself must never fail to remember whether your brief is addressed to a court of last resort or to an intermediate appellate court. This is an important factor, since the court of last resort can change the law of the jurisdiction, whereas an intermediate appellate court cannot.

Let us now consider some of the fundamental requirements a lawyer should possess if he is to excel in appellate work.

Cultivate Good Style

First of all he should cultivate a good English style, and keep before his mind the fact that in a law office one will find three English styles: (1) the style of a contract, a mortgage, a conveyance, etc.; (2) the style of a pleading; and (3) the style which should characterize briefs. A brief written in the other two styles is a monstrosity.

Secondly, the appellate specialist should learn the art of arranging thoughts in logical sequence. Thus if you are writing a brief on behalf of a person who has been run down by a bus, and are trying to secure an affirmance of the judgment in his favor entered upon a jury's verdict, you would not begin with the medical testimony. You would begin with the conduct of the bus driver. You would stress his

(Continued on page four)

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(Continued from page three)

speed, and factors—heaviness of traffic, or darkness of the street—tending to show it was excessive. Perhaps there was testimony that he had just taken on passengers, and was busy making change when he should have been on the lookout for pedestrians. You would then go on to show the plaintiff's movements and to negative contributory negligence. Only after all this would it be logical to take up the nature of his injuries, and other factors bearing upon the amount of the verdict.

Need 'Courage Of Exclusion'

Thirdly, a capacity for selection should be developed. The brief should not be a mere abstract of everything in the record. Select the circumstances which bear directly on the correctness of the judgment below (if you are for the respondent), or select the most palpable errors in the conduct of the trial (if you are for the appellant). Avoid playing up features which common sense and experience gleaned from reading the cases tell you would not be likely to be made the *ratio decidendi* of an opinion in your favor. Mr. John W. Davis, formerly Solicitor-General of the United States, is fond of observing that lawyers should exhibit the "courage of exclusion." And it does require courage to overcome either the client's ignorant insistence on the inclusion of trivialities, or your own petty fears that the court might pounce on something you left out. Unless you practice exclusion, there will be a dissipation of emphasis, and a foggy pres-

entation of the issues to the appellate court.

After the opening paragraph telling how the case came up, the recommended order (unless court rules otherwise prescribe) is as follows:

Pleadings;

Facts (or, if you prefer, "The Trial"

or "The Testimony");

Statutes involved (if any);

Opinion below (if any);

Outline of argument (the point-headings all grouped together for ready reference);

The points, one after the other;

Conclusion (preceded by summary if length of brief warrants it.)

Watch Headnote Phrasing

Blind headnotes must be avoided. By them is meant headnotes which are so unenlightening and undistinguished that they might fit any one of a hundred records, and therefore fail to give a clue to any of the propositions of law which inhere in this particular record alone and differentiate it from all others. It is bad to phrase a headnote thus: "The verdict was against the weight of the evidence." Or: "The verdict was proper and should not be disturbed." Or: The plaintiff failed to make a *prima facie* case." Here are examples of headnotes on adequacy of evidence which do not exhibit the vice of blindness:

"The plaintiff having been caught lying in collateral matters on several occasions, and his supporting witness having told a story which

was so inherently improbable and devoid of circumstantiality that it may well be doubted whether he was even present when the accident happened, the verdict in his favor was against the weight of the credible evidence."

"The shocking inconsistency between plaintiff's story on the stand and the story he told the hospital attendants immediately after the accident, and the inconsistency between his own assertion of loss of consciousness and the doctors' testimony of conversations with him, show that the verdict was against the weight of the credible evidence."

Headnotes Have Power

The order of the headnotes is important and should be chosen with an eye toward sequacity or logical inevitableness. They should exhibit a tendency to follow one another as the night the day, so that when read in sequence they re-sound with a note of inevitability, and tend to sweep the court into agreement with counsel's contentions.

Headnotes should not exceed four in number. That is about the limit the court can bear in mind, both during the argument and during their ensuing conferences. Loss through dissipation of emphasis ensues if this rule is violated. Only the most extraordinarily long and complex record justifies a departure.

Cite With Caution

The treatment of authorities is a difficult matter upon which to make general statements. But two principles have recognized force and pertinence:

(a) Be absolutely sure of their accuracy. If you have before you a recent case in a *nisi prius* court or in an intermediate court of appeal, do not rest content with Shepardizing it. Shepard's Citations can never be right up to the minute. Inquire at the office of the clerk of the next higher court as to whether an appeal has been docketed in the named case; and whether argument and decision have taken place.

(b) Never cite a lower court decision to a higher court. However, if you have a point which is *res nova* in the higher court but which is found among the decisions of a lower court, cite it with a suggestion of apology, viz.: "This is only a lower court decision but we feel its reasoning should commend it to this court."

Brief Must Stand Alone

Some comment would seem called for as to the extent to which the principles above stated must be modified to fit a respondent's brief.

You have already received the appellant's brief when the time comes to write the respondent's brief. Does this make a difference? My answer may stamp me as a heretic but I say "No." The reason

is that a respondent's brief in a court of last resort must be complete in itself and must stand as solidly on its own foundation as an appellant's brief. I therefore persevere in heresy by saying that a respondent's brief should be completed in first draft form *before you even read the appellant's brief*.

Two strong considerations conduce to this result.

Know Court's Limitations

In the first place, the court of last resort, limited as it generally is to passing upon questions of law, does not much care what the court below did, or which side is appellant. It will weigh the opposing briefs in the scale and follow whichever most nearly accords with its views of what is, or should be, the law of the State.

In the second place, the scope of your brief should not be affected by the scope of your opponent, the appellant's, brief. You should not get your hopes up because of his sins of omission. It is your duty to call the court's attention to a hostile case which the adversary has overlooked. Furthermore, your adversary's brief reflects the learning and industry, in all probability, of only two, or perhaps three, legal minds. But (if you are in a seven-judge court of last resort) when the issues are discussed in conference, your opponent's position may be scrutinized by fourteen legal minds, i.e., the minds of seven judges and the minds of seven bright young law secretaries. Therefore give your brief the strength to stand up under the powerful impact of all these minds, and not only against such forces as are manifest in the appellant's brief.

I therefore reject the advice, which I occasionally hear from lecturers on appellate practice, that when you represent the respondent, you may rest content with an attack directed toward your adversary's "jugular vein."

Of course after your adversary's brief has been studied, go back to your own and insert such passages of comment and correction directed toward his brief as may be required. Test the adequacy of your handling of what he seems to think

are the strongest cases his way.

As to oral arguments, I urge that they be made and that, generally, counsel not rest content to submit upon briefs. If you are present to argue orally, you can bring back into line a judge who, by his questions, shows he has gone off on a tangent. Furthermore, if all the judges have heard oral argument, the reporting judge in conference has to spend less time giving his brethren the background. They can proceed at once to their deliberations on the crucial questions of law and policy involved.

I have always held that the trial man is *not the best man* to handle the appeal, but may even be the worst. The point has been the subject of divergent views in some public law offices I have known.

Depend On Specialists

There are, to my mind, overwhelming advantages in entrusting the appeal to an appellate specialist. He will view the case precisely as does the appellate court, through the little square window of the record, so to speak, and not as something viewed from the great outdoors. The trial man's mind cannot free itself of unconscious assumptions, of matters which came up during preparation for trial but which did not get into the record, either because a witness he interviewed failed to respond to a subpoena or was not allowed to testify because of failure to establish qualifications. Or if the witness did testify, some important facts may not have been established because of sustained objections.

Summing It Up

To sum up: style, sequacity, conciseness, and integrity are the qualities which should characterize appellate briefs; and he who argues orally must show an awareness of the atmosphere, qualities, and orientation found in an appellate court (viz., dignity and learning, calmness and unhurriedness, concentration on points of law rather than fact), and of the court's want of power to consider anything that is not in the printed record, coupled, nevertheless, with an appreciation on the judges' part that they are laying down principles whose application will extend beyond the case at bar.

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