

The Harvard Law School Record

VOL. 4 NO. 3

CAMBRIDGE, MASS., WEDNESDAY, JUNE 25, 1947

PRICE TEN CENTS

ONE-SIXTH GET A OR B GRADES

Complete Figures Released on First Year and Graduates

Final tabulations of the first year examination results were completed this week. The Dean's Office revealed that of the 352 men who took the examinations for the first time, the highest ranking man attained a 78 average, while the average man attained a 65 average, and the lowest ranking man attained a 50 average.

One-fourth of the class received a 68 mark or better. There were 7 A averages, 217 C's, 43 D's, and 34 failures. The percentage figures are: 1.9% A's, 14.7% B's, 61.6% C's, 12.2% D's, and 9.6% failures.

Of 32 repeaters, 7 raised themselves to a C standing, 6 to a standing, and 19 failed for the second time. A total of 40.6% passed the repeat examination. If repeaters are included in the tabulations for the first year class, the number of failures would be increased to 53, or about 14%.

Statistics have also been released on the 115 man class which graduated last month. Of these men, 4 had A averages, 16 had B averages, 87 had C averages, and 8 had D averages. One-fourth of the class ranked above the 68 mark. The middle man of the class received a 66.

The grade-distribution of this class which graduated in May, compares favorably with the grade distribution of the previous graduating class. The latter (February) class, consisting of 107 men, boasted 6 A averages, 15 B's, 80 C's, and 6 D's. Percentage comparisons show that the February class as a whole did slightly better than the May class. These comparisons, with the May class listed first, are: 3.4% A's compared with 5.6% A's; 13.4% compared with 14% B's; 75.6% compared with 74.7% C's; and 6.9% compared with 5.6% D's.

A comparison of the first year marks with the marks of the two graduating classes reveals that the first year class has a lower percentage of A's, and approximately the same number of B's. The average man in the first year had a 65 average, while the average man in the graduation class had a 64 average. In general, except for the smaller number of failures, the grades of the graduating classes seem closely to correspond with the grades of the class which has just completed the first year.

Roscoe Pound's Last Class Will Not Be Forgotten By His Students

At the end of last term Professor Roscoe Pound, possibly the world's foremost contemporary legal scholar, held his last class at Harvard. It was an ordinary class in most ways. No great statements were made; there was little ceremony. This is what happened.

It was to be Roscoe Pound's last class, after thirty-five years of teaching at Harvard Law School. The classroom in Langdell North was almost filled by two o'clock, though most students who were enrolled in the course had not yet arrived. The visitors were old students who came to honor a beloved teacher, students who wanted to hear this renowned scholar before he left Harvard, and students' wives who had been promised a Pound lecture. Although the regular class occupied about one-third of the seats, today people were sitting in extra chairs brought in from other rooms, and were standing in the aisles and in the doorway. When Pound entered the room at 2:08 the crowd had to stand

UN Charter Voids American Anti-Racial Covenants, Student Claims

The continuing validity of covenants restricting the rights of minority racial or religious groups has been raised in the United States Court of Appeals for the District of Columbia in two cases decided by a divided (2-1) court on May 26, 1947. *Hurd v. Hodge*, No. 9196, and *Urciolo v. Hodge*, No. 9197.

The lots in question, which were sold to Negroes, were subject to restrictive covenants. In the District Court of the United States for the District of Columbia, the deeds to the colored purchasers were declared null and void, and the Negroes were ordered to vacate the land and were permanently enjoined from renting, selling, leasing, transferring, or conveying the said land to any Negro or colored person. The judgments of the District Court were affirmed in the cases cited above.

On appeal to the Supreme Court, these cases could provide the test as to whether racial restrictive covenants are valid and whether they are enforceable by injunction. According to Edgerton, J., who wrote the dissenting opinion in the cases, the Supreme Court has never ruled on either of these questions.

The majority opinion of Judge Clark in the Court of Appeals does not go beyond the bounds of stare decisis. Taking prior decisions at somewhat more

than their face value, he states "we adhere to what we said in *Mays v. Burgess*, 79 U.S. App. D.C. 343." The Supreme Court denied both certiorari and rehearing in the *Mays* case and dismissed an appeal (271 U.S. 323) in the other principal authority relied on by the majority, *Corrigan v. Buckley*, 299 Fed. 899. The analysis of Judge Edgerton in the dissenting opinion is quite convincing on the technical point that the *Corrigan* case does not decide the questions. When he proceeds to the arguments based on public policy, the vacuity of the majority holding becomes apparent. These issues can no longer be safely decided on the ground that for over 25 years the decisions of the court in question have uniformly upheld the validity of these covenants in whatever form concluded.

The basic reason for this change in circumstance, so slightly reflected in the American decisions to date, is the fact

(Continued on page four)

RECORD SEEKING ADDITIONAL MEN

At this time each term, the RECORD extends its invitation to those who wish to join its staff.

Interest in writing, and in presenting worthwhile ideas is the sole requisite to membership. A scholastic average of 62 or better is required. Past experience is helpful, though not essential. So far, no applicant has failed to do satisfactory work on the paper.

The RECORD presents material which is of interest to the lawyer in the broadest scope of his activities. Ever-increasing research activities, plus investigations of topics of current interest, keep those who work on the RECORD in contact with current ideas. The stimulative effects of such contact, together

(Continued on page three)

FACULTY TEAM TO MEET BUGLE

Softball Contest Slated For Saturday Afternoon

Rumor was rife throughout the corridors and classrooms of Langdell. Was it true that the faculty, emerging from the cocoon-like world of esoteric thought and academic argument had condescended to challenge the *Law Review* to a softball game?

Investigation led us to the lair of Professor McLaughlin where we found that paragon of the podium and luminary of the athletic field almost obscured by heaps of scholarly manuscripts and flanked by rows of impressive legal volumes, checking over the line-up for the approaching battle.

The game is to take place on June 28th at 2:30 p. m. on one of the athletic fields behind the stadium. The exact field has not yet been determined.

On being queried as to his colleagues' prospects of victory Professor McLaughlin, who issued the challenge to the *Review*, modestly replied that while almost anyone should be able to beat the faculty the *Law Review* could not.

With the air of a General contemplating the prospects for a summer campaign he pointed out that the faculty would get off to a slow start because of a lack of practice. A major drawback would be the fact that by the time his team warmed up it would be ready to quit due to exhaustion. "Perhaps," he mused, "the team might be compared to the old Mississippi steamboat that had to stop the engines every time it wanted to blow its whistle."

The faculty will rely on sagacity and skill to overcome the advantages of endurance and stamina held by its more youthful antagonists.

(Continued on page three)

PICK 19 STUDENTS FOR LAW REVIEW

LAWYER'S GUILD

Men interested in the National Lawyer's Guild are invited to a meeting at Kendall House at 3:00 p. m. Friday, June 27. Robert Silberstein of New York, a former member of the *Harvard Law Review* and National Executive Secretary of the Guild will speak on the Guild and the "Problem of the Young Lawyer."

ESSAY CONTEST DETAILS TOLD

Competing Students May Earn Academic Credits

The Office of the Dean has announced the opening, for 1947-48, of competition for the Addison Brown Prize of \$250. Any student in the Law School in regular standing may compete. The Prize will be awarded for the best essay on some designated subject of maritime or private international law.

Dean Griswold has informed the RECORD that he considers good work for this Prize worth academic credit. Therefore, he feels that any fifth or sixth term student who has completed a course in Conflicts or Admiralty Law will be able to arrange for credit, "provided he can satisfy his instructor that he can do a really good job in working for the Addison Brown Prize."

The following topics are suggested by the Dean's Office: Assignment of Accounts Receivable and the Conflict of Laws; Mortgages and the Conflict of Laws; International Air Transport and the Conflict of Laws; The Doctrine of Forum Non Conveniens as applied in matters of Admiralty in the Courts of the United States; The Present Significance of *Southern Pacific Company v. Jensen*, 244 U. S. 205; The Interpretation in Suits in Admiralty of Federal Statutes Waiving the Immunity of the United States.

The Addison Brown Prize is awarded annually or biennially from a bequest of Addison Brown, former judge of the District Court for the Southern District of New York. There was no award made during the war years; the last award being made in 1941 to Louis Bruno Sohn, noted international law scholar. Other recent winners were Carl A. Auerbach, in 1938; and Arthur Henry Robertson, in 1939.

Manuscripts must be delivered to the Office of the Dean not later than May 1, 1948.

Professorial Dilemma On Saturday Classes Is Revealed By Reporter

Between the lines of an innocuous notice which appeared recently on the Official Bulletin Board is a story of internal dissension which threatened to split the faculty of this august institution of higher learning. The notice read, "At a meeting held on Tuesday, June 17, the Faculty considered at some length the question of the advisability of shifting classes during the Summer Term so that classes would not be held on Saturday."

"The vote of the Faculty was against making any general change in Saturday classes, the general basis of the decision being that the Summer Term is like any other term, (only hotter) and should be operated accordingly. However the Faculty did vote that classes will be omitted on Saturday, July 5, 1947, each instructor being free to make up the omitted classes as he may find it convenient."

Your reporter happened to be in the

Third, Fourth And Fifth Terms All Have Men Chosen

The seven top honor men of the third term class have been invited to join the *Harvard Law Review*, announced Albert M. Sacks, President of the *Law Review*.

The winners of these highly coveted invitations will serve on the Editorial Board of the *Law Review*, the highest academic honor conferred upon students at Harvard Law School. All attained "A" averages of seventy-five or better.

The names of the honor men, given in alphabetical order, are as follows:

Leon C. Baker (Brooklyn College '46) of Brooklyn, New York; Hugh Calkins (Harvard '45) of Newton, Massachusetts; Abrams J. Chayes (Harvard '43) of Chicago, Illinois; William C. Garrett (Stanford '43) of Tulsa, Oklahoma; Cecil B. Highlands (West Virginia University '39) of New Martinsville, West Virginia; Mahlon F. Perkins (Harvard '40) of Washington, D. C.; Henry F. Streeter (Harvard '42) of Morristown, New Jersey.

William C. Garrett attained the highest scholastic average in his class with an overall standing of 78.

Seven members of the fifth term who attained averages of 75 or better, the scholastic standing which marks the threshold of the *Law Review* were also invited to join the *Review's* Editorial Staff. These men are:

Norman W. Colquhoun (Amherst '43) of Shaker Heights, Ohio; Frank J. Davis, Jr. (University of Maryland '41) of Rockville, Massachusetts; Richard H. Kuh (Columbia '41) of New York City, N. Y.; Francis D. Murnaghan (Johns Hopkins University '41) of Baltimore, Maryland; Melvin J. Sykes (Johns Hopkins University '43) of Baltimore, Maryland; Francis J. Vaas (Holy Cross '38) of Newton Center, Massachusetts; William W. Winter (George Washington University '41) of Washington, D. C.

The following named men in the fourth term also received invitations to join the Editorial Staff of the *Law Review*:

Judson J. Allgood (Harvard '46) of Findlay, Ohio; Eastman Birkett (Dartmouth '42) of Penn Yan, New York; Joseph H. Flom (C. C. N. Y.) of Brooklyn, N. Y.; Benjamin Forman (C. C. N. Y.) of New York City, N. Y.; John T. McNaughton (DePauw '42) of Pekin, Illinois.

stacks on that same Tuesday afternoon, but was wandering far afield in search of some law on Bastardy in New Zealand, and so chanced to come upon a little known and little used room wherein the Faculty are wont to meet to discuss Policy. His attention was arrested by a furious bellow from Prof. C., who was supposed to be on vacation this Summer, but who (as later listening disclosed) had made a special trip up from Rhode Island to present his views on the vital issue. The substance of his remark was that he had sweated out last summer at Langdell and he'd be - - - - - if he'd see "you other birds getting long week-ends just because you've managed to put so many of us out in the pasture this summer, thus reducing our customary control of affairs."

It would be inequitable, he averred. Prof. S. (also surprisingly enough

(Continued on page three)

The Harvard Law School Record

Published weekly on Wednesdays for twelve weeks of each term by *The Harvard Law School Record Corporation*, Austin Hall, Cambridge 38, Massachusetts. Subscription price: \$2.00 per term mailed, \$6.00 per year mailed; student subscription \$1.50 per term mailed, \$1.00 per term distributed at the Law School. Individual copies \$.10 each at the Law School; \$.15 each mailed. Business and Editorial Offices, Austin Hall, Cambridge 38, Massachusetts. Telephone KIRKland 7600, extension 133.

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CHANGES OF ADDRESS should be sent to the RECORD office, Austin Hall, Cambridge 38, Massachusetts, at least three weeks in advance to insure prompt delivery.

Entered as second class matter November 19, 1946, at the post office at Boston, Massachusetts, under the Act of March 3, 1879.

Editorials

The National Student Conference on Legal Education, which will be held at Columbia Law School on July 11 and 12, has a larger significance than its title would indicate. Delegates from some fifty law schools will gather to discuss legal education, a subject traditionally reserved for legal educators. There is a dissatisfaction among law students with many aspects of legal education. The Conference shows that the students now in the schools intend to do something about the defects they see, instead of waiting for changes which would come slowly, if at all.

If it was true of the last generation, as President Roosevelt said in 1932, that "this generation has a rendezvous with destiny, then it seems to be true of this generation that it is determined to have a hand now in the shaping of its destiny. The Conference on Legal Education is one indication of that. Here at Harvard several students, seeking wider information on how they could fit into international efforts for peace than the Law School offered, formed their own World Law Group. They have met regularly to hear experts in various international fields discuss international problems and the preparations necessary for men who wish to aid in solving them. The Group has aroused great interest among students; men want to prepare now to take a hand in international affairs which they know will profoundly affect their lives. Plans are now being discussed by several students for the formation of state and regional groups of students who are interested in good government so that on return to their homes they will have the preparation necessary for effective action and also an acquaintanceship among men of similar objectives in their own communities.

Out of the universities in the next few years will come a group of what President Conant of Harvard has called "tough minded idealists," men who will not be satisfied with yammering in the background, but will be willing themselves to undertake the hard work necessary to make the "new world" they envision. As always, lawyers must provide most of the leadership in public life. It falls on the men who will graduate from the law schools in the next few years, then, to form the nucleus of this group. The Student Conference on Legal Education, the World Law Group and the plan for organization of students interested in good government in their states show that many law students are now preparing for that leadership. Men in high places might well make note of what is happening and prepare for what is to come.

H. K.

Letters to the Editor

To the Editor of the RECORD:

On inquiry at the Harvard Athletic Office I was told Hemenway Gym would remain open this summer. . . . However [I now hear] it will remain unavailable until September. This is the inevitable letter of inquiry and protest cast adrift thru channels. It requests you to find out why Hemenway is closed and, if there is a reason, to ask the people who decide these things to compare it with the weight of the following observations.

The gym, just next door to the law school you will recall, has a daily capacity of 240 people in its squash courts (24 courts accommodating 2 men every half hour for 5 hours). There are over 1,500 in the law school this term, 500 of whom I would guess as a conservative estimate, play squash or handball 3 times a week when

they can get courts. This means that there are possibly 250 people a day who would like to use a gym which can take care of only 240. The decreased enrollment during the summer term does not therefore seem an adequate reason for closing the gym, especially if you include in the count those sedentary but hygienic souls who drop by only for a shower.

If, on the other hand, the summer is thought too warm for squash by the people who decide these things, I suggest that the RECORD take its usual and efficient measures to ascertain public opinion on the matter, and, if upper echelons prove to be misinformed, to lead them out of the darkness.

If finally the men who have been making smooth the way around Austin Hall are engaged as well to spend the summer converting Hemenway into an indoor hockey rink or something of the sort, I suggest you dispose of this letter in the accustomed manner.

Yours sincerely,
William Q. Keenan,
2nd Term Law.

To the Editor of the RECORD:

We are taking the liberty of using the medium of your paper to make an appeal for a course in domestic relations covering marriage and divorce, which we hope can be offered in the fall term of 1947.

A rather quick survey of the two most recent registers reveals that the last course in domestic relations was offered in the Spring of 1947 and it covered the parent-child relationship. It appears that no such subject on marriage and divorce has been scheduled for the next three terms.

Experts in the field predict that in a few years the divorce rate will reach an all time high. This seems to indicate more legal work of this nature, work which has become much more complicated than in the past because of the recent enactment of community property laws by some states. Thus, some of us feel that encountering the more fundamental principles here in the Law School will facilitate our future work as law clerks.

We hope that this appeal will find support by others and eventually bring forth a fulfillment of this proposal.

SIXTH TERMERS

Off the Record

A HARVARDSHIRE LAD BLUES
(with apologies to A. E. Housman)
*With rue my heart is laden
For golden times I had
With many a co-ed maiden,
With many a college lad.*

*Through books too thick for leaping
My golden times are fled.
Through cases piled a-heaping,
I study law instead.*

J. S.

The Book Shelf

MONTGOMERY: A BIOGRAPHY. Alan Moorehead, Coward-McCann, \$4.00, 245 pp. plus Index.

Controversial is the only word that can describe Field Marshal The Viscount Montgomery of Alamein. In this rather excellent book, the Australian-born war correspondent has pierced the many legends that have surrounded "Monty," and traced the development and perhaps the mellowing of this brilliant and tempestuous figure, about whom Churchill is supposed once to have said: "In defeat unthinkable, in victory insufferable."

Montgomery is one of those men who are the personification of the big "I" and who accordingly create either intense devotion and loyalty or intense hatred in those about them. His extraordinary arrogance, and his complete contempt for incompetents among other irritating characteristics, combined with his famed incidents of insubordination have made him perhaps the most debated personality of the recent war.

A good deal of the enigma that is Montgomery, however, can be explained if we look at the life he led during the fifty-five years before the victory at El Alamein—a period which is almost entirely unknown to most of us. Those who believe it is the environment of the child that shapes the man will discover reassuring evidence in Montgomery's early years, because he was without doubt his parents' child. From his mother, the daughter of a churchman, he received his stern and Victorian characteristics and from his father, a Bishop, his abstemious and ascetic ones. His mother's strictness also developed in him a rebellious nature, which time and time again was to get him into trouble, because he never seems to have learned the meaning of the word tact.

(Continued on page three)

Gallery

ROBERT AMORY, JR.

Date: 27 October 1946. Time: 0900. Base of operations: Austin West with classroom filled to capacity. Objective: Teaching the second term course of Real Property. Background: This course, the bane of existence of many a first-year man, had heretofore been the province of such towers of erudition as Professors Warren, Pound, Scott, Casner, and Leach. Personnel: A tyro law professor, just eight years out of the Harvard Law School and more recently a colonel in the U. S. Army. In short, this was "D" day, "H" hour for Robert Amory, Jr. Today, "D plus 240 more or less," it appears safe to report the operation was successful and the situation is well in hand.

Not that the mission was carried out completely without opposition. Quite naturally, a student body, over 90% war veterans seeking to rid their systems of things Army, Navy or Marine, were wary of this tall, military-like teacher whose platform appearance and stentorian tones brought memories of the days when things were done "by the numbers." "A," "B," and "C" lost their pristine simplicity to become "Able," "Baker," and "Charlie." Students who, to borrow a Scottian phrase, succeeded in "skillfully overemphasizing the insignificant," were asked "to police up the area." Those who managed to skirt the basic issues of a question were told they "had bracketed the area but missed the target point." In the earlier weeks of the maneuvers there even were reports of a proposed counter-attack supported by copies of *Moyinhan* and *Bigelow*. And students were roundly "chewed out" for taking two minutes to recite a full page brief that should have been "written in the margin of the casebook and read in thirty seconds at the most." (Howls from the class at this point.) Notwithstanding these minor setbacks, the great majority of the men who participated in any of the phases of "Operation Amory" during the past ten months concur in the conclusion that their introduction to real property was not at all impaired by the energetic offerings of this neophyte in the teaching field.

"I was lucky." This is Amory's over-modest explanation of his ability at the age of thirty-two to look back upon an exceptional record in military affairs and a law career that finds him established in the country's foremost law school. A product of New England in every sense of the word, (born in Boston, Massachusetts and educated at Milton Academy, Harvard College—A.B., magna cum laude, 1936,—and the Harvard Law School—treasurer of the Law Review, Volume 51), he persuaded his wife, the former Mary Armstrong, Vassar, ex '40, to "graduate" in 1938 and strode down the matrimonial aisle on Commencement Day in June of that year. He then proceeded along the path of many a bright Law Review veteran to the gilded chambers of the New York City law firms, being admitted to the New York State Bar the following year.

Two years with the firm of Wright, Gordon, Zachry, and Parlin convinced Amory that such was not the life for him. Engaged primarily in stockholders' derivative actions and anti-trust suits, he spent 90% of the 24 months in New York working on three cases, two of which were started before Amory graduated from the Law School and none of which was finished by the time he left the firm.

At this stage Uncle Sam entered upon the scene. Mr. Amory frankly attributes his enlistment as a buck private in the army in 1941 not to any wave of patriotism but to a desire to get out of New York City, coupled with a pretty good hunch that the U. S. was bound to enter the war. Being married, he could not meet the qualifications of the Navy's V-7 program, and as a second choice he enlisted in a field artillery unit, with a commission as a second lieutenant following one month later. Thus he set out upon a military career that found him working at all times in "line" outfits and culminated in his appointment in July of 1945 as regimental commander of the 553d Engineer Boat and Shore Regiment, one of the combat amphibious outfits that made history in the Pacific war zone.

Amory's outfit participated in four major campaigns in the Southwest Pacific, seeing action at Cape Cretin, Saidor, New Britain, Aitape, Luzon, and Mindanao, in direct support of six Army and one Marine division. With the primary objective of operating landing craft and handling engineering work on beachheads, the 553d worked in providing vital transport facilities in landing operations. Amory himself received the Bronze Star from the Marines for action at Talasea, New Britain; the Silver Star for leading 65 men up the Mindanao River in a flanking action that persuaded 2,000 Japs to evacuate a vital area; and the Legion of Merit for general leadership at New Guinea and the Philippines.

(Continued on page three)

Sub Judice

BE CAREFUL WHOM YOU CALL A "COMMUNIST"

On or about March 15, 1945, Westbrook Pegler, the ex-ports writer, delivered himself of the following headline: "Communists Go 'Big Business' to Trick U. S." The article, written in the customary style we love so well, dealt with the activities of Abraham N. Spanel, the Russian-born president of the International Latex Corporation. Mr. Spanel's sins were many, among the more grievous being his habit of running newspaper advertisements praising the New Deal and "waxing rapturous over Henry Wallace as an American political prophet, a champion and symbol of the aspirations of the common man and the underdog." To Pegler, "this was a poetic construction well expressing the attitude of some demagogues of the extreme left who regard the American citizen as a soulless lump to be fed, quartered, ordered and disciplined even as a dog. A native of Russia and an admirer of the Soviet system might be pardoned in the error."

Mr. Spanel sued Pegler and his associates in a libel action in the District Court in Illinois, but his suit was dismissed as failing to state a cause of action. On appeal the Circuit Court (7th) reversed, holding that under Illinois law it is libelous per se to write of a man or a corporation that they are Communists or Communist sympathizers, because the label of "Communist" today in the minds of many average and respectable persons places the accused beyond the pale of respectability and makes him a symbol of public hatred in violation of the statute. The court, however, pointed out that it was a question for the jury whether the article did indeed characterize Spanel as a Communist or a Communist sympathizer. Pegler's contention that the article was privileged under political license and that when persons such as Spanel enter the arena of political discussion they cannot be heard to whine under the fury of counter-attack, was held by the court to be improperly raised on a motion to dismiss, it being an affirmative defense. *Spanel v. Pegler*, 160 F. 2d 619 (C.C.A. 7th, March, 1947).

A "MANHATTAN" MAY HAVE BEEN THE PROXIMATE CAUSE

On a Sunday morning in April of 1944, Mr. Harold Harder of Sheboygan, Wisconsin, got an irresistible urge to obtain possession of a bottle of vermouth. He did not live to regret it, but so great was his urge that he threw caution to the winds, thus ultimately denying to his widow a recovery in damages against the proprietor of the Friendly Tavern. The root of Mr. Harder's trouble was that the Friendly Tavern was in the process of being fumigated with deadly cyanide gas, and though signs about 17 x 14 inches in size, bearing red letters and two skull and cross-bone figures and the warning, "Danger, Fumigating With Cyanide Gas, Deadly Poison, All Persons Are Warned To Keep Away, Do Not Enter," were placed on all entrances to the building, such was the urgency of Mr. Harder's call that he strode into the building, procured a bottle of vermouth from the "back bar" and got to within ten feet of his point of entry before the gas took hold. In spite of this, a jury of his peers made the following specific findings: "(1) That Harold Harder did not enter the building with the intent to commit larceny; (2) That Harold Harder did not commit larceny after entering the building; (3) That the defendants Maloney were negligent with respect to failing to protect against public entry into the building; (4) That such negligence was a cause of the death of Harold Harder; (5) That Harold Harder was negligent as to his own safety in respect to lookout; that he was not negligent in failing to heed the danger sign posted on the door of the building or remaining in the building longer than reasonably necessary to leave after detecting an unusual odor or in the exercise of ordinary care should have detected an unusual odor; and (6) That Harder's negligence as to lookout was the cause of his death; that his failing to heed the danger sign posted on the door and remaining in the building longer than reasonably necessary to leave after detecting an unusual odor or in the exercise of ordinary care should have detected an unusual odor was not a cause of his death, and that the defendants Maloney were 75% negligent and Harold Harder was 25% negligent." Although the Supreme Court of Wisconsin found it necessary to cite the *Restatement of Torts*, sec. 301 (2) it did not have too much difficulty in deciding that the verdict was not in accordance with the evidence and in ordering a dismissal of the plaintiff's complaint. (*Harder v. Maloney*, 26 N.W. 2d 830, April 8, 1947)

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Alumni Notes

Alumni are especially invited to forward contributions to this column to the RECORD office, Austin Hall, Cambridge (38), Mass.

LL.B. '97—Robert Gray Dodge, a trustee of Wellesley College since 1897, and in more recent years chairman of the board of trustees, has resigned.

Dodge and Romney Spring, LL.B. '97, were recently honored at the Harvard Club in celebration of their 50th anniversaries as members of the bar.

Ex. '17—Howard W. Robbins, of the law firm of Robbins, Noyes & Jansen, has been elected as a new incorporator of the Massachusetts Savings Bank in Boston.

LL.B. '24—Kenneth D. Johnson, former district court judge at Quincy, Mass., has been appointed as special assistant to Secretary of War Patterson. A veteran of both world wars, he served in the recent war with the rank of colonel. Since his release from active duty last year he has been working in Washington as a civilian foreign affairs analyst in the War Department's Civil Affairs Division.

LL.B. '41—The Law firm of John L. Sullivan, LL.B. '24, and Thomas E. Dolan has announced that Edward D. Wynot, LL.B. '41, has associated with them for the general practice of law under the firm name of Sullivan, Dolan

BOOK SHELF—(Continued)

His peacetime Army career, although undistinguished, was marked by an intense interest in military matters, which set him apart from the ordinary peacetime Army officer. His rebellious attitude towards seniors, and Spartan severity towards juniors, however, more than once prevented his advancement. An example of his rebellious nature can be seen in the incident over his now famous black beret. More than once he was told to cease wearing it because he was not a member of the tank corps, but he always refused, believing it improved morale. Morale for him is the first weapon of war.

Comparing Montgomery's life to a V-2 rocket, which at first climbs slowly and awkwardly, Moorehead likens Alamein to that point where the rocket "suddenly alters course for no apparent reason and shoots off at tremendous velocity into the stratosphere." The author's detailing of Montgomery's first forty hours on the desert front, describing his almost instantaneous decision on a complicated and dangerous situation which resulted in a victory, is a fine example of war-reporting at its best.

Perhaps for American readers, the most fascinating part of this story, however, is the war in France. For an understanding of the dispute which centered around Montgomery, reference must be made to Ralph Ingersoll's book, *Top Secret*. (Query: Was Moorehead's main purpose in writing this book to refute Ingersoll?) It was Ingersoll's belief that Montgomery failed at Caen, and otherwise was an inept leader. Moorehead, on the other hand, asserts that at Caen everything went according to Montgomery's plan, and that throughout he was the master tactician. Moreover, he hints that if Montgomery had been given his way, the war might have ended in Europe during the winter of 1944-5 rather than have dragged on for five more costly months. Undoubtedly it will be many years before these arguments will be settled finally by military historians with full access to all the records, but meanwhile this volume will add new interest to the debate.

Not purporting to give a military analysis of Montgomery's victories, Moorehead does develop the over-all strategy in a few of them, but only as a means of bringing out highlights in Montgomery's character. Perhaps the military accuracy in a few instances could be questioned, and, indeed, Moorehead's picture of Montgomery as the infallible general does seem to be carried too far, but the main element in the story, the character study, is admirably done. For example, the concluding sentence of the book seems to typify the man: "When Montgomery marched to the War Office in June 1946 (to become Chief of the Imperial General Staff) there was still perched firmly on his head the symbol of it all—the black beret."

E. F.

& Wynot in Manchester, N. H. Before attending Law School, Wynot used a Dartmouth fellowship to spend a year working with Supreme Court Justice Robert H. Jackson, then assistant attorney-general in charge of the anti-trust division of the Department of Justice. After this training he entered Law School, and was editor and treasurer of the *Law Review*. After graduation he joined the New York law firm of Debevoise, Plimpton & Page, and remained associated with them until he entered the Navy in 1943. Released with the rank of lieutenant commander in 1946, he has recently been with the Office of the General Counsel of the Navy Department.

S. J. D. '42—Dr. Ernest H. Schopler is now back in his native Germany, affiliated with the American Military Government there. He is Chief of the German Law Revision Section of the Legal Division, Office of Military Government for Germany, a position for which he is well qualified because of his legal scholarship both in the United States and in Germany. He aids in preparation and revision of German legislation initiated by Military Government, and in this capacity is U. S. delegate of the German Law Reform Committee and the Criminal Law Committee of the Allied Control Authority, four-power Military Government agency for all of Germany's four zones. One of his particular present responsibilities is preparing legislation which provides restitution to victims of Nazi persecution of identifiable property taken from them.

In December of this year he expects to return to a former position with the Lawyers' Cooperative Publishing Co., Rochester, N. Y. While at the Law School, Schopler won the Joseph H. Beale Prize in 1941.

LL.B. '43 (47)—Arnold M. Greenfield is with the Maxwell Co., Inc., Miami, Fla.

GALLERY—(Continued)

In light of his military experience it is not surprising that Mr. Amory considers the common ground existing between veterans—students and teachers alike—as one of the most significant features in the Law School. "Having known the same general experiences, the students and many of the faculty today do not feel the gap between them that existed in my day as an undergraduate. We have shared in a common enterprise demanding individual sacrifice in the attainment of an objective above mere personal gain. That in itself should give direction to our general approach to legal problems." Convinced that the ability of the U. S. to flex a strong muscle in the eyes of the world is the best guarantee of peace, Mr. Amory resigned his colonelcy in the Officers Reserve Corps to accept a majority in the National Guard, which he believes is currently the more active of the two organizations. At present he devotes many of his extra-Law School hours to work as executive officer of the 211th Mechanized Cavalry Squadron, Massachusetts National Guard.

This summer Mr. Amory, who resides with his family in Cambridge, continues his pioneering work in teaching the newly introduced course in Corporate Accounting. Nearly 300 students are in the class and "may prove too large a number to be effective guinea pigs." But the course has struck a responsive chord in the student body and this fall Amory begins work on a much needed casebook on the subject. During the past year he has attended classes at the Graduate School of Business Administration and he believes the faculty should work for a closer liaison with the Business School in the development of a law student who is much more familiar with the economic facts of life. Equipped with a profound understanding of the problems of veterans and the role they will play in the post-war world, and aided by a sincere appreciation of the social responsibilities of lawyers in this age, Robert Amory, Jr., may properly be reclassified into civilian life as "a welcome addition to the faculty of the Harvard Law School."

M. P. K.

TAX EXPERT JOINS SUMMER FACULTY

Teaching a course in Federal Taxation for the summer term is Mr. Arnold Raum, a member of the Solicitor General's Office and a graduate of Harvard Law School in 1932. Following his graduation, Mr. Raum studied law for a brief period at Cambridge University.

Upon his return to this country he worked for a short time with the RFC during the period of the reorganization of the banks, after which he joined the Tax Division of the Department of Justice. Here Mr. Raum prepared and argued a great number of tax cases, his work bringing him before every circuit court of appeals and the Supreme Court of the United States many times.

In 1939 he was appointed to the Solicitor General's Office, where he now has full charge of all tax cases going before the Supreme Court. In the same year he was sent to Louisiana to aid in securing the indictments against members of the Huey Long gang. Although Mr. Raum was primarily concerned with income tax evasion during this period, a series of mail fraud convictions was also secured.

Mr. Raum also argued the case for the government in *United States v. California*, a test case involving title to the tidewater on oil fields. Argued in March of this year, no decision has, as yet, been handed down in this case.

He formerly taught a course in taxation at Yale Law School for one semester in 1937-38.

GAME—(Continued)

The tentative and as yet incomplete line-up for the Faculty is: Professor Casner, catcher or 3rd base; Professor Freund, 1st base; Professor Leach, 2nd base; Professor Field and Coach McLaughlin as pitchers; while Professors Amory, Brown, and an as yet anonymous guest of Professor Amory will play in the outfield.

In Gannett House the legal eagles await the approaching massacre with restrained enthusiasm. John Bledsoe, coach of the Review's athletes, on being queried as to his team's condition modestly replied, "It's the best coached team I ever saw."

Another editor, who preferred to be quoted as an unusually reliable source, poked his head out from behind a book long enough to mutter, "We'll whale the daylight out of them."

Coach Bledsoe went on to point out that this was the best team the *Law Review* has had in years. It far surpasses the football team last fall and the basketball team last winter.

"After our easy victory on the 28th of June," said the Review coach we are open for challenges from other Law School teams.

RECORD—(Continued)

with practice in expressing oneself clearly, make worthwhile the few hours per week which are required by the newspaper.

We want to express ourselves clearly, because we do not feel that we are doing a good job unless our staff includes all men who desire to do constructive work of a nature which the RECORD can use.

Some people work on the RECORD because they like newspaper work; others are working on research projects on specialties, which will not conflict with the Law Review, but which give the researcher the same training advantages that he might receive on the Review. All are getting from the RECORD training in writing clearly and concisely, experience in meeting and talking with lawyers, and a certain amount of recreational pleasure.

Scholastically speaking, the averages of ninety per cent of RECORD members have risen since they began work on the paper. Last term, several men on the paper for the first time made the Student Board. One member of the RECORD Board has increased his term average from 59 to 71.

If you are interested in the RECORD, visit our offices in Austin Hall any time from 2:00 to 5:00 p. m. Wednesday, Thursday, or Friday afternoon.

CLASSES—(Continued)

present at the memorable meeting) observed that it appeared to him that Saturday classes were a kind of *res*, and that a kind of trust (which he was developing in his new edition) had arisen through usage. An unidentified member pointed out that maintaining the customary Saturday classes was a debt to past generations of Summer scholars, and defied Prof. S. to draw a distinction that would hold water. Prof. S. and this unidentified voice then left the room seeking a blackboard where they spent the remainder of the afternoon trying to draw a distinction which would hold water, without much success, although their arguments were absolutely brilliant.

The meeting continued with increasing violence, little regard being held for the customary rules of order. Prof. M. tried to enter a replication, but was denied the opportunity by Prof. Q. who declared that his patience was being taxed. Finally Prof. O. got the floor and began to balance the interests. He presented all sides of the question in an intelligent, lawyer-like manner, throwing in a few questions that weren't on the floor for discussion, but at the end of an hour and a half everyone, including your reporter, had come to the realization that the issue was of tremendous importance, though some members indicated that they were still not clear on the issue.

For example, Prof. M. finally got a chance to enter his replication and from the tenor of his remarks it soon became apparent that he had been laboring under the impression that the decision the members faced was whether classes on every day but Saturday should be dispensed with for the Summer, holding 13 straight hours on Saturday as a substitute. He was straightened out rapidly, but took with little grace his colleagues' gentle joshing to the effect that he was still getting his P's and D's confused the way he does in class.

Prof. X. suggested that a contractual obligation to continue Saturday classes existed, that there had been reliance upon the published schedule, and that he himself relied upon being away from home Saturday. This remark brought forth much ill-tempered comment from other members who expressed their personal feelings concerning the relative desirability of Langdell's cool depths

as opposed to where they would be expected to be in the event that they were to get Saturdays off. Prof. Q. broke in upon this wrangling and proclaimed in a loud voice that his patience was being surtaxed by the matter.

Prof. H. then suggested that consideration be given to how the students would feel about the matter. A deathly silence fell upon the conference room, and finally Prof. Z. requested him to withdraw his question as being completely out of order. The discussion was renewed with increasing heat and vigor, each professor offering his views on the question, or what he thought was the question, until it was getting on toward six o'clock. Prof. Z. then suggested that a vote be taken, whereupon the members voted unanimously in favor of continuing Saturday classes.

Prof. Z. then asked how many members were going to be available on the 4th of July week-end and on receiving a show of hands announced that Saturday, July 5, 1947 would be a holiday at the school.

R. W. C.

AMES—(Continued)

Two hundred and seventy-two second term men will take part in the intracampus preliminaries which the Board plans to conclude on July 16th and 17th, seven weeks before the first September examination. There has been an unusually low number of withdrawals, and among the forty participants who have dropped out of the competition, many have left school or have been excused by the Board for valid reasons. Facts for these arguments were issued on Monday and Tuesday of this week and all briefs will be due on July 10th. It is hoped by the Board that a number of upperclassmen will be willing to serve as justices in these courts.

Should any questions arise concerning these plans, first year students will be advised by Frank L. Davis, Jr., 3L, and James W. Perkins, 3L, and second year men by John E. Massengale, 3L.

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Calendar

THE LEGAL WORLD

Holiday

There will be no classes on Friday and Saturday, the 4th and 5th of July. Classes omitted on the 5th may be made up as the instructor finds it convenient.

The New York Practice Course

The non-credit course in New York Civil Practice is to be given on Mondays from 4:00 p.m. to 5:40 p.m., in Langdell North commencing on June 30.

Non-Veterans

A set of casebooks is available for loan to a first or second year non-veteran. Inquire at the Record office.

Law Wives

Mrs. Donald McKay will speak tonight, 8 p. m. in Kendall House on *Modern Irish Poetry*.

Ohioans

Ohio students planning to attend the "Ohio Politics" dinner at the Faculty Club, this Saturday, June 28, at 6:30 p. m. are asked to pay for the tickets at the Record office before 5 p. m. today.

THE OUTER WORLD

Pops Concerts: The Boston Pops Orchestra is playing nightly at Symphony Hall through Saturday evening, June 28. Tickets are available at the box office for from \$.50 to \$2.00.

SOFTBALL LEAGUE PLANS ANNOUNCED

The Phillips Brooks House Committee, represented by Thayer Drake 2L and George Bogert 3L, sounds the call to summer softball. Already twelve clubs have been organized in the Langdell League and the play-offs are underway. Any ten-man club or any individual desiring to participate can make arrangements with the committee by calling Trowbridge 0139.

These diamond clashes will take place either at Soldiers Field or at the Business School area. Weekly schedules including time and place of the game will be arranged by the managers and these schedules will be posted on the bulletin board in Langdell South and printed each week in the Record along with the standing of the clubs.

Schedule for week of June 23-27 will be:

Monday, Beagles vs. Black Acres; Tuesday, Chancery vs. Revisers; Wednesday, Legal Aid vs. Solicitors; Thursday, Lincoln's Inn vs. Trover Boys; and Friday, Conveyancers vs. Perkins; Morris vs. Independents.

POUND —(Continued)

his Outline without reference to any notes, and finished his lecture promptly at three o'clock. Whether it was the significance of the occasion, or whether it was Pound's departure from his regular practice of reading his lecture, it was generally conceded by his students that this last lecture was the best he had given during the term. The visitors were well rewarded.

When Pound had finished, his audience arose expectantly. One of his students carried up to his desk a silver tray inscribed as a remembrance from his last class in Jurisprudence at Harvard. Everyone waited for this student to utter the customary eulogy, but he merely handed Pound the tray and went back to his place. The sudden applause served as a common expression of tribute.

Pound reacted with stoical good grace. He appreciated the gift and was sure that Mrs. Pound would be pleased to have it. He was sorry that he had not been able to meet more of his students during the past few years, and he invited them all to visit him in his office before he left for China. He wished everyone good luck!

The photographers wanted pictures and asked Pound to pose holding the tray. After two shots they were not satisfied and wanted still another. Pound modestly complained, "This has gone far enough," but stood for one more picture.

As Pound started up the aisle he heard the familiar applause always given a professor after the last class of his course, but today the applause was unusually loud, and continued as he paused at the doorway to wave farewell and then crossed over into Langdell North Middle on the way back to his office.

J. P. L.

U. N. and Restrictive Covenants

(Continued from Page One)

that the United States has been a Member of the United Nations since October 24, 1945. This action was officially taken by Presidential Proclamation on October 31, 1945. The Senate had previously advised ratification on July 28 and the President had ratified the instrument, signed in San Francisco on June 26, on August 8, 1945. Any doubts that a treaty duly adopted in accordance with our constitutional procedure becomes the supreme law of the land are settled by the Constitution itself. Art. VI, and Art. I, sec. 8, par. 18. In this connection then, the final proclamatory clause must be considered carefully. After giving the text of the Charter, it states:

Now, therefore, be it known, that I, Harry S. Truman, President of the United States of America, do hereby proclaim and make public the said Charter of the United Nations, . . . , to the end that the same and every article and clause thereof may be observed and fulfilled with good faith, on and from the 24th day of October, 1945, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof. United States Treaty Series No. 993 at p. 184

The issue arose at one time whether, insofar as it affects matters within the control of the states, Congress could pass legislation to give effect to the terms of a treaty which it might not be able to do directly. *Missouri v. Holland*, 252 U.S. 416, 17 A.L.R. 636 (1919) answered the question in the affirmative and went on to lay down the rule that treaties may be made which affect rights exclusively under the control of the states. Thus, it has been repeatedly held that a treaty controls an inconsistent state law, and in the case of *Asakura v. Seattle*, 265 U.S. 332 (1924), the court went further to say that the treaty-making power is not limited by any express provision of the Constitution. It added that this power does not extend "so far as to authorize what the Constitution forbids" but that it does extend to all proper subjects of negotiation between our government and other nations.

CHARTER PROVISIONS

Concluding then that the obligations of the United Nations Charter are binding on the United States and the citizens thereof, let us review them in brief and see whether they square with this holding of the Circuit Court. The purposes and principles of the organization are outlined in Article 1, of which paragraph three is as follows:

3. To achieve international co-operation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

And in Article 55 (c) of Chapter IX, International Economic and Social Co-operation, this purpose is stated again more explicitly:

. . . The United Nations shall promote: (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

It is submitted that the opinion of Judge Edgerton that these specific obligations make the majority holding untenable is most reasonable. We cannot foster the universal respect for freedom by entertaining this type of suit, "and the ghetto system they enforce." (U.S. Ct. App. No. 9196 at p. 16) How much the court has failed the best expectations of our citizenry can be measured by their failure to face and courageously answer this question posed in the closing lines of the dissenting opinion:

The question is whether law should affirmatively support and enforce racial discrimination. Appellants do not ask that appellees be forced to sell them houses. Appellees alone have come into court with a claim. They ask the court to take away appellants' homes by force because they are Negroes. There is no other issue in the case.

MICHIGAN DECISION

Recently, on January 7, 1947, the Supreme Court of Michigan reached a similar decision. *Sipes v. McGhee*, 316 Mich 615, 25 NW (2d) 638. It upheld the granting of an injunction to enforce

a private agreement which contained this covenant, "This property shall not be used or occupied by any person or persons except those of the Caucasian race." This was a unanimous decision. It was rested squarely on a decision exactly 25 years old, *Parmalee v. Morris*, 218 Mich 625 (1922). It took into account nothing that had transpired since that time. All of the arguments of the amici curiae as to health, safety, delinquency and change of position of the Negro population were brushed aside as being most strong and convincing but not on the record.

The true stature of the United States Court of Appeals for the District of Columbia, sitting in the year 1947 it should be mentioned again, is revealed by this passage dealing with the impact of the United Nations Charter and other recent declarations of policy.

It is suggested that the intervention of a World War and the declarations of statesmen and international deliberative bodies now makes the device of restrictive covenants against minority racial groups a matter of concern and public policy rather than that of private contract, as was assumed . . . in the *Parmalee* decision in 1922.

Some of the briefs go so far as to insist that the declarations of the Atlantic Charter and the United Nations Conference at San Francisco are international treaties and have the effect of law.

After careful study of this passage it might be better to say that the Court does not take judicial notice of treaties of the United States nor of Presidential Proclamations. It does not yet seem to be aware that the United Nations has passed out of the Conference stage.

In conclusion the court states that it does not understand these documents to have achieved the status of law but rather that they embody only nice aims and a "plea for justice rather than the application of the settled principles of established law."

ONTARIO FOLLOWS ON

Before returning to a general consideration of the proposed departure it might be well to consider the opinion of the High Court in Ontario in *Re Drummond Wren* (1945) 4 D.L.R. 674. This case involved an application pursuant to s. 60 of the Conveyancing and Law of Property Act, R.S.O. 1937, c. 152 to have a restrictive covenant declared invalid. The applicant had purchased the land subject to the unlimited restriction "land not to be sold to Jews, or to persons of objectionable nationality." The court declared this restriction void on three grounds: (1) contrary to public policy, (2) a restraint upon alienation, and (3) for uncertainty. Only the first ground is really pertinent and of interest here.

Judge Mackay reaches the concept of public policy to be applied to this case by considering both Dominion and Provincial statutes as well as Canada's membership in and ratification of the United Nations Charter. He also mentions the resolution against discrimination in the Act of Chapultepec March 6, 1945. Attacking the problem broadly he stated:

In my opinion, nothing could be more calculated to create or deepen divisions between existing religious and ethnic groups in this Province, or in this country, than the sanction of a method of land transfer which would permit the segregation and confinement of particular groups to particular . . . areas, or conversely, would exclude particular groups from particular . . . areas.

Clearly this view is sound in the light of modern experience and is as applicable to the United States as to Canada. For those who might argue that this case is based on the existence of an Anti-Discrimination statute in Ontario, Mackay specifically disavows any reliance on this further than considering it as legislative recognition of the policy applied in the case.

EDITORIAL COMMENT

Both the court in the District of Columbia and the court in the State of Michigan had as many indications of legislative intention in the form of specific statutes as did the Ontario court. Their failure was a reluctance to place the judge-made law abreast of the times

by ascertaining public policy through analogy to prior judicial decisions rather than by consulting with and analogizing from legislative enactment. Although this has been done more in countries of civil law tradition, the Canadian editorial comment found the departure of Mackay refreshing and completely in accord with the accepted notions of legislative supremacy and the democratic form of government.

In another recent American decision, *Livingston, J. of the New York Supreme Court* (February 13, 1947, 15 Law Week 2472) raised the contention that even the treaty obligations of the United Nations Charter do not make the enforcement of such covenants invalid. He adopted the view taken by the Michigan court in *Sipes v. McGhee* that such covenants are merely private contract arrangements and are not effected by the usual State or Federal constitutional provisions. The basic weakness of this contention is shown by the holdings of the Supreme Court in *United States v. Belmont*, 301 U.S. 332 and *United States v. Pink*, 315 U.S. 203, that a duly executed treaty will control matters of private contract which normally fall within the jurisdiction of the states.

Livingston went on to elaborate that, notwithstanding such a view, a matter of racial discrimination not falling under Constitutional inhibition would be "essentially within the domestic jurisdiction" within the meaning of Article 2, paragraph 7 of the United Nations charter. This view would, if sustained, leave

matters pertaining to racial restrictions on use of property and other forms of discrimination beyond the power of the United Nations. In view of the action of the General Assembly in the matter of the Indian minority in the Union of South Africa, such an argument would probably not carry much weight. There is a further objection to thus limiting the control of discriminatory acts to be found in the United States' avowed support of the proposed draft Bill of Human Rights.

The position of the US delegate, Mrs. Franklin D. Roosevelt, has been that our adoption of the eventual charter of human rights is a foregone conclusion, since these rights are already embodied in our Constitution.

In conclusion, it is submitted that the judicial departure called for by *Re Drummond Wren* and the dissenting opinion in *Hurd v. Hodge* should be concretized by the Supreme Court in the event that the matter comes before that body on appeal. A forward looking decision would remove some of the unfair practices which in our own time throw doubt on our world position. The words of President Truman are apt: "When we fail to live together in peace, the failure touches not us, as Americans, alone, but the cause of Democracy itself." (Feb. 28, 1947.)

By DAVID S. STERN,
Sixth Term

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