

The Harvard Law School Record

VOL. 1, NO. 3

CAMBRIDGE, MASS., WEDNESDAY, JULY 31, 1946

PRICE TEN CENTS

FACULTY MEN PUBLISHING REGULARLY

Many Articles, Texts,
Casebooks, Pamphlets
In Print or Projected

The current year has been fruitful in writing and abundant in plans for future publication by members of the faculty of the Law School. Despite the additional student load, considerable time is devoted by all members of the faculty to the presentation of current legal problems in the various professional publications, and to the preparation and revision of case and text books. Many of the faculty have recently published or are currently engaged in preparation of scholarly material.

The RECORD has undertaken to survey their field of endeavor to give some indication of the work of the past few months since New Year's Day and plans for the future. This report does not purport to be exclusive and the items mentioned represent only a cross-section of the work now going on.

Evidence: Common Law and Common Sense is Prof. John M. Maguire's answer to the need for a short effective textbook. Designed to be read by the student in a few hours, to give him a needed orientation, it analyzes the principles of evidence and endeavors to show the student how to think and reason within the evidentiary field, according to Mr. Maguire. This book is not of the horn book type and is designed to be a companion to a thorough study of the leading cases rather than a treatise on the topic. It is expected shortly from the Foundation Press. Mr. Maguire in collaboration with Prof. Magill of Columbia Law School is also preparing and editing a new member of Commerce Clearing House Series, *Students Federal Tax Service*. The first issue is already in distribution and others will appear periodically.

Preparation of new case books and revision of the old constitute a considerable portion of the publication load of the current year. The fourth edition of Magill and Maguire's *Cases in Taxation* is scheduled for early publication. Professor Zechariah Chafee's new edition of *Chafee and Simpson Cases on Equity* will be issued this fall by the Foundation Press. Prof. McLaughlin will take the fall term off to complete his case book on *Creditors' Rights and an Annotation of the Bankruptcy Statute*. Both Mr. McLaughlin and his collaborator Prof. John Hanna of Columbia are eager to complete the task, for the case book is out of date and out of print. The publisher, says Mr. McLaughlin, has attempted to photostat the case book.

A reportedly novel and striking departure from the usual form of contracts case book is in preparation by Prof. Lon L. Fuller and is expected to be available in bound final form by the fall of next year. A new case book for the first year course in property has reached the planning stage, but no date has been set for completion. Professors W. Burton Leach and A. James Casner are collaborating. Both are among some 18 to 20 contributors to a treatise on property being edited by Mr. Casner.

A new volume on administrative law, *Cases and Materials on Administrative Law* is slated for publication by Prof. Milton Katz. Scott on *Trusts* has added a pocket supplement as of the summer of 1946.

Case and Comment features extracts from two articles of Zechariah Chafee. One on Edward Henry Warren originally printed in *Harvard Law Review* of October 1945 appears in the May-June 1946 issue. Another from the September 1946 issue of the *Columbia Law Review*, "Reflections on the Law of Copyright," appears in the January-February 1946 issue titled "Long or Short Monopoly for Copyright."

President of the Association of American Law (continued on page two)



Left to Right, standing: Paul Hellmuth, Lindsley Loring, LL.B. '37, Charles Davis, Frank W. Grinnell, LL.B. '38, Professor Howe, LL.B. '30, Robert Trump, Seymour Epstein, David Olds, Rinaldo Capone, Professor Maguire, LL.B. '11, Reginald Heber Smith, LL.B. '14, the host. Seated: Charles Sweet, Charles Porter, Dean Griswold, LL.B. '28, S.J.D. '29, George Leighton, Herbert Berman, State Senator Edward M. Rowe, LL.B. '31, Professor Katz, LL.B. '27, A. N. Schneider. Scene: the Record dinner at the Ritz Carlton, Tuesday, July 23.

OLD LINE STATE GROUP FORMED Marylanders Organize Permanent Association of Harvard Law Men

Already looking ahead to their Alumni days, a group of Maryland students, under the leadership of Carol Hamant '47 of Baltimore, are forming an organization which will become the nucleus of a Maryland Chapter of the Harvard Law School Association. In so doing they are taking the first step toward the formation of a regional group of Harvard Law School men. The Association does not have any sub-units of less than national scope; however, the Marylanders look forward not only to the formation of a society beneficial to themselves and others so situated but also to setting the style for other areas to parallel.

Thirty-one members, all currently in residence, now comprise the group. A dinner is planned for 6:30 Friday, August 9, at which Professor Robert R. Bowie, LL.B. '34, a graduate of the University of Maryland, and Professor A. James Casner, a former professor there, will speak. Circuit Judge Calvert Magruder, LL.B. '16, of an old and distinguished Maryland family, has also been invited and is expected to attend.

This action, coming at a time when Alumni-Law School relations are a subject of renewed interest and much discussion, is certain to be watched with great interest by those closely concerned with the problem. The Maryland group however desires that emphasis be placed on the fact that their organization was spontaneous, arose from their own realization of the situation and the desirability of their action, and antedated Record publicity on the subject.

Present membership of the group, whose formal name has not yet been determined, includes the following: First Term: I. H. Hammerman, Howard J. Marshall, Robert M. Thomas and Laurence Weisman, all of Baltimore; Kendall Cole and Frank T. Gray of Silver Springs, and George W. McManus of Relay. Second Term: Thomas G. Hardie, Duncan Longcope, Francis Murnaghan, Peter Sfikas, William Siskind, Melvin Sykes and Joseph Weisheit, all of Baltimore; John W. Barroll of Mt. Washington, Ferndall M. Claggett of Marlboro, Frank I. Davis of Poolesville, Richard H. Mayfield of Chevy Chase, Donald Rothman of Pikesville, and Laurence Steck of Dundalk. Second Year: Rea H. Allison of Aberdeen, Burns Stanley of Cumberland, William Stanley of Laurel, and Robert E. Ashman, Herbert R. Cluster, Carol Hamant, and Marshall A. Levin, all of Baltimore. Third Year and Graduate Students: Robert E. Dick of Takoma Park, Cary M. Euwer of Upper Marlboro, and Eugene M. Feinblatt of Baltimore.

If other Marylanders, as yet undiscovered by this group are in schools, they can establish contact with the organization by calling Hamant at 49 Hastings.

Advocacy Idea Emphasized In Board's New Notes on Argument

Nervous counsel, rising to "please the court" in their first-term arguments one week hence, will do well to read again and ponder on the sage advice on oral argument which the Board of Student Advisers offers them in its new publication, "Introduction to Advocacy." State the facts not only as they are, but also as they must appear to your client. Meet the main issues squarely and at once, with a clear comprehension of the rules of law involved, believe that your client should win—student judges who read these suggestions will nod their heads wisely in agreement and remember their own hard-won experience.

Probably the most difficult thing for first-term men to remember is that they are really advocates and not debaters, that their interest is in winning a lawsuit the consequences of which are very significant to an unseen but long-suffering client. Every first-term man may be sure that he will have to answer one prime question before he finishes his first case—"Just how does 'it' (whether 'it' be rule of law, cited authority, or persuasive reason) apply to the facts of this case?"

LINCOLN'S INN HOLDS SUMMER DINE-DANCE Members, Guests Dance to Ken Murray At Hasty Pudding Ballroom Friday

Lincoln's Inn Society entertained its members and guests with a dinner dance at the Hasty Pudding Club last Friday evening, July 26th. The event marks the first Summer social function for the Society since the war.

Guests included the following members of the faculty and their wives: Dean Griswold, Professor Katz, Professor Fuller, Professor Casner, Professor Leach, and Professor Cavers. Another distinguished guest was Judge Calvert Magruder of the First Circuit Court of Appeals.

Lincoln's Inn has reopened its social program since its reorganization last fall in the face of the housing shortage. Before the war the Society had its headquarters and served meals to its members in the house next to the Hotel Commander, but the house was sold, and the members now have lunch together daily at the Hasty Pudding Club.

Officers of the Society are: President, Thaddeus R. Beale; Vice President, E. C. Brewer; Secretary, James A. Rousmaniere; Treasurer, William P. Bundy.

Supplementing registration figures appearing in the July 17 issue of the RECORD, Miss Margaret E. Quinn, Assistant in the Secretary's Office, announces that of the 1,447 students registered for the Summer term, 1,324 are veterans.

Of the 604 married students in the School 303 are first term men.

STUDENT BOARD GIVEN NEW DUTY

HALL SPEAKS ON EVIDENCE Addresses New Hampshire Law Enforcement Agents

The legal side of the use of expert testimony in criminal cases was discussed by Vice-Dean Livingston Hall of Harvard Law School at a meeting of New Hampshire law enforcement agencies at Littleton, N. H., on Wednesday, July 24.

The purpose of the meeting, attended by New Hampshire county solicitors, medical referees, judges, the Attorney General, and representatives of the State Police, was to discuss cooperation between medical examiners, police, and prosecuting attorneys in connection with the investigation of homicides.

Dean Hall discussed a number of criminal cases in which expert testimony had been used, including *Commonwealth v. Webster*, 5 Cush. 295 familiar to all first term men, and *Berry v. Chaplin*, 14 L.W. 2773 reported in the first issue of the RECORD, and emphasized the need, under present conditions of specialized knowledge, of using the most skilled pathologists available in difficult homicide cases.

Another problem in using expert testimony is to get impartial evidence before the jury. The medical examiners in Massachusetts, and the medical referees in New Hampshire, he said, were accustomed to testify as impartial experts, regardless of the influence of their findings upon the trials, and this was recognized in the fact that defense counsel felt such confidence in their fairness that only rarely did they call experts of their own.

Other speakers from the Boston area included Dr. Timothy Leary, medical examiner, Dr. Alan R. Moritz, professor in the Department of Legal Medicine of Harvard Medical School, and Mr. Stratton, chemist for the Boston Police Department.

The meeting was organized by Mrs. Francis G. Lee, who has been working with Dr. Moritz in the field of legal medicine at Harvard Medical School.

G.I. BILL MAY COVER BRIEFS

Dean Griswold Recommends Vets' Ames Typing Costs Be Assumed

Inclusion of the cost of typing briefs for the Ames Competition in the G.I. Bill of Rights seems likely now, as a result of certification of such expense by Dean Griswold.

In a letter to the Counsellor for Veterans the Dean set forth his conclusion that this was an expense which comes within the terms of Public Law 364.

Before the cost can actually be shifted to Uncle Sam it must be approved by the Counsellor for Veterans here and by the regional authorities in Boston. However, the administrative head of a school is in a position to give an opinion which amounts to the best evidence of the propriety of inclusion of a specific item as a required cost in that institution.

The sum of four dollars was mentioned as the amount to be charged the government for each of the three briefs a veteran-student will submit in the first year and qualifying round competitions.

Procedure, if Dean Griswold's suggestion is adopted, will be similar to that for required theses. The Student Board will submit to the Weld Hall officials a list of men participating and then the student will pick up his authorization slip individually at Weld Hall after the prescribed entries have been made.

It is to be emphasized that this plan has not yet gone into effect, and will not until other authorities take the expected favorable action on it. Announcement of further developments will be made in due course, after this procedure has been placed in effect.

FAMED LAWYER'S BUST DONATED TO LIBRARY

Jeremiah Mason Was Prominent New England Attorney of Webster's Era

A recent addition to the Langdell reading room is the bust of Jeremiah Mason, famed New Hampshire and Massachusetts lawyer, who died in Boston in 1848 at the age of 80.

The bust, which stands near the entrance to the Court Room, is a gift to Harvard Law School by Mason's granddaughter, Mrs. Richard T. Wilson of Newport, R. I.

Mason was admitted to the New Hampshire bar in 1791, and soon became the leader of the bar of that state. He was appointed New Hampshire attorney-general in 1802, and held this post four years before resigning. He was elected to the U. S. Senate in 1813 and served until 1817. He moved to Boston in 1832, where he practised until his death.

A frequent opposing counsel to Mason was Daniel Webster. An oft-quoted comparison of the two, given by a juror after a particularly heated trial, was "Oh, Mr. Webster is the best lawyer, but Mr. Mason always wins."

Advisers Will Now Act As Agency to Receive, Discuss, Forward Ideas

The Board of Student Advisers, long time managers of the Ames Competition, are now being entrusted with an additional and important function. In its collective capacity the Board will receive suggestions and comments from individual faculty members and students, develop these through investigation, analysis and discussion, and submit them in the form of completed proposals to the Faculty and Dean.

The forthcoming issue of the Bulletin, now in galley proof, contains an abbreviated statement of the new arrangement. "The Board also serves as a channel for considering and communicating to the faculty suggestions from students."

This climaxes, at least somewhat successfully, a long and earnest struggle to develop some means by which the more matured proposals arising in the student body could be evaluated, discussed, carefully phrased, and invited to the attention of the higher authorities without placing any individual student in the status of a complainant.

Nothing in this new set-up is designed to limit the freedom of the individual student to write letters to the RECORD, to consult with faculty members or administrative officers, or make his views or comments known in any other way. This merely supplements the traditional direct approach between faculty and student, and offers a medium through which many men's views may be collated, assembled and presented.

The Faculty has of course determined upon this change; the Board is now working out the details. Albert L. Goldman '46, President of the Board, stated "this added function does not establish the Board as a student council or similar group nor is it intended to give rise to such an organization. The Board does not consist of democratically elected members, but that is not important for in discharging its new assignment it will receive student suggestions rather than act as the source of suggestion."

The Board was principally selected to carry out this duty because of its wider contacts with the whole student body than the *Law Review*, the *Legal Aid* or the *RECORD*.

It intends to effectuate its new responsibility by receiving comment and processing such advice given at regular Board meetings. This will be done by having the various members of the Board get in touch with as good a cross section of men in the school as his contacts permit. After a broad opinion base has been ascertained the board will discuss and analyze the results of the survey and make any recommendations to the Faculty that it deems wise and desirable.

Proponents and opponents of the scheme agree that it is not a student government or anything of the sort.

ALUMNUS INAUGURATED AS ISLAND GOVERNOR

Hastie Continues Distinguished Work As New Executive of Virgin Islands

The recent inauguration of William H. Hastie, LL.B. '30, as Governor of the Virgin Islands brings him back to those islands where he served as judge in the U. S. District Court from 1937 to 1939. Nominated for the governorship by President Truman earlier this year, Hastie's appointment was confirmed by the U. S. Senate on May 1.

As the fourth Governor of the Virgin Islands since they were obtained from Denmark, Hastie will be required to cope with the perennial problem of the low living standard of the 25,000 people, 69% negro, who make up the population of these islands. He brings to the islands, however, his outstanding record of achievement in the service of the government and in behalf of the negro race.

After receiving an S.J.D. in 1933, Hastie left Harvard and was admitted to the bar of the District of Columbia. He was an Instructor in the Howard University Law School, Washington, D. C., until 1937. From 1933 to 1937 he was also Assistant Solicitor in the Department of the Interior. He held that post when appointed judge of the Federal District Court in the Virgin Islands in 1937, the first negro to hold such a position. Returning to Washington in 1939, Hastie became Dean of the Howard University Law School.

During the period 1940 to 1943, Hastie acted as civilian aide to Secretary of War Stimson with the task of planning for the utilization of negro manpower in the armed services. While engaged in this work, he persuaded the War Department to organize the 99th all-negro Fighter Squadron, but he resigned his position in the War Department in 1943, protesting the Army's segregation policy and the "reactionary policies and discriminatory practices of the Army Air Forces" against negroes.

Hastie's work in the interests of the negro earned him the Springarn Medal in 1942, awarded yearly by the National Association for the Advancement of Colored People to the American negro with the outstanding achievement record for the year. Additional recognition was accorded him when he was guest of honor at a luncheon in New York in April of this year. In addition to the personal tribute (continued on page three)

Inadequacy of Veteran's Monthly Allowance Clearly Revealed; Case Studies Show That Students Must Deplete Capital

Now that the stylistic ensembles of khakis and sports jackets, navy grey and bow ties have become familiar sights to the somber giants of the common law who brood on our walls, a fairly clear picture of the veteran at Law School can be drawn. He is someone who has spent the past few years in a foxhole or a fighter plane, in the Pentagon or the Pacific, almost certainly in a place he was happy to leave.

The so-called "G.I. Bill of Rights" has made it possible for many men to come to Harvard who otherwise would not have been able to come at all. This is particularly true of the married men, who comprise about 40% of the student body, but there is scarcely anyone who does not substantially rely on a monthly honorarium from Uncle Sam. Without it some would be forced to leave school, many would have to expend their savings, many others would have to sink steadily into debt in order to remain here. That would be the situation if we had no "Bill of Rights." Does the situation differ with it?

Perhaps a few random examples will illustrate the success of the G.I. Bill in making education possible for the veteran. In this consideration, let us remember that, despite the generous

thoughts of its framers, this bill is and ought to be, a subsistence bill, not an effort to raise the standard of living. Let us remember also, the sweeping changes that have taken place since it was passed: the upward trend in prices, recently somewhat accelerated by the vacation of the O.P.A.; the vexing shortages in almost every branch of the economy; the apparent inability of the nation to solve the problems of reconversion in the past eleven months. These have raised difficulties perhaps not anticipated when our Bill of Rights was drawn up. It may be useful to indicate a few of these difficulties, as experienced by men in the Law School.

J.S. is single, lives in a dorm, and receives 65 dollars a month from the government. He is a Naval officer and saved 3000 dollars during the war. With the G.I. Bill providing the payment of his tuition and text book bills, he hoped to live on a budget of 600 dollars a term. In the Spring term he spent 900 dollars. His 65 dollars was split up something like this:

Room rent (prorated): \$23.00, since raised to \$35.00 per month due to the University's increased costs of operation; food: \$60.00 (Since the restaurant he regularly patronizes has raised its

prices from 20 to 25 per cent in the past three weeks, this figure is no longer representative.); clothing (prorated): \$25.00, Seersucker suit @ \$17.50, A white shirt @ \$4.50, six sets of underwear @ \$2.00, A pair of shoes @ \$9.00, six pairs of socks @ \$1.50, half a dozen handkerchiefs for \$1.20; laundry: \$5.50 rough wash; luxuries (prorated): \$25.00, newspapers, *Time*, cigarettes, pipe tobacco, two movies, a box of stationery, an occasional beer and an occasional drink from Radcliffe. Also the Year Book, insurance, etc., etc.

Early in the term, the Department of Internal Revenue informed J. S. that he owed 400 dollars on his income as a Naval officer. He paid 100 dollars of this during the Spring term.

J. S. and his roommates bought some furniture, too. For 55 dollars they were able to get a rug, an easy chair, a floor lamp, and a few wall prints, all second hand, of course. The ingenious people who transform garages and corn cobs into bright, magazine-colored rooms would smile at their efforts.

It is not difficult to complete the outline of J. S.'s expenses. His case may be atypical. If so, the error is on the side of underestimation, for (continued on page four)

Wives of "hometown" name tags, many of the law wives gathered in enthusiastic state groups to make and renew acquaintances. An information table was provided for newcomers, and members of the Law Wives Club were on hand to act as hostesses. Favorite topic of conversation was the stunning pale green-and-rose color scheme of the newly redecorated first floor suite of rooms at Kendall House.

Wives of Harvard Law School faculty assisting at the tea included the Mesdames Warren A. Seavey, Austin W. Scott, Ralph J. Baker, John M. Maguire, James A. McLaughlin, W. Barton Leach, David F. Cavers, Mark D. Howe, Milton Katz, A. James Casner, Robert R. Bowie, Robert Braucher and Harrison S. Dimmitt.

Among the law wife hostesses who helped greet the guests were the Mesdames Robert Bingham, Alan Schneider, Horace Kalik and Walter Morey, assisted by the Mesdames James St. Clair, John Early, Donald Voorhees, Robert Cahall, Ivan Reichard, Murdoch Madden, Bennett Berman, Richard Wolford, Lee Bloom, Robert Hurst, Max Morelock, Hamilton Hoyer, Thomas Cravens, John Beyer and Roger Taylor.

Hostesses at the punch tables in the dining room were the Mesdames Jack Sigismund, Cyril Garvey, John Pennish, John Massengale, Lambert Turner, John Lawless, Jarvis Kellogg, John Grunow, Joseph Logan, George Gillette, Davisson Dunlap, Joseph Devine and Jack Webb. (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*, 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 Langdell Reading Room Desk. Business and Editorial Offices, Austin Hall, Cambridge 38, Massachusetts. Telephone: KIRKland 7600, extension 133.

Crimson Printing Company, 14 Plympton Street, Cambridge 38, Mass.

CHARLES O. PORTER, *President*
CHARLES G. SWEET, *Editorial Manager*
PAUL F. HELLMUTH, *Business Manager*

CHARLES W. DAVIS, *Advertising Manager*
RINALDO A. CAPONE, *Circulation Manager*
ROBERT C. TRUMP, *Treasurer*
HERBERT BERMAN, *News Editor*
THOMAS J. O'TOOLE, *Articles Editor*
DAVID M. OLDS, *Alumni Editor*
GEORGE N. LEIGHTON, *Current Case Editor*
SEYMOUR S. EPSTEIN, *Letters Editor*
ALAN NEIL SCHNEIDER, *Feature Editor*

Staff: G. Duane Aldrich, Morton B. Braun, R. H. Wolford, Irving Constant, R. W. Culbert, Nathan C. Fitts, Richard Fleson, Loren E. Juhl, Harvey Karlin, Clark S. Lyon, John C. O'Byrne, James L. O'Dea, Samuel Schwartz, Nathaniel Tepp.

Editorials

NOT BREAD AND CIRCUSES

The phrase "rugged individualism" has fallen into disrepute in these days. This is in part occasioned by its overuse during the thirties by opponents of specific and popular legislation. Certainly when a bank president mouths it unctiously in opposition to relieving the victims of economic disaster it has a hypocritical sound, unpleasantly like "let them eat cake." Yet assuredly the little fellow in the baggy pants sometimes needs to have his footing shored up in the complex whirlpools, rip tides, cross currents, and undertows which we call modern civilization.

But the patient can lie abed so long that he will never walk; he can come to love his crutches, and when cured still claim their aid. The beneficiary of unwise philanthropy, whether governmental or private, may himself be fatally retarded thereby.

Between these two generalities the student veteran must make his way. That the G I Bill and its compensables are thrust into a real problem is becoming increasingly evident.

Recently a student here made some little uproar at the Coop howling for typewriter ribbons to be furnished him on the G I Bill. Another wrote to the Boston Elevated demanding a special five cent subway ride for student veterans. These are examples of a growing and dangerous tendency for the individual to solve his problems for the moment at least, by pushing them off on Uncle Sam. More significant is the rising agitation for a bonus, sponsored at least in this state, by a national veterans organization and certain candidates for office.

While it may be easy to make a soap-box oration in favor of a bonus, there is almost nothing that can be said for it in a conversational tone of voice. It is a costly device and a crude one. There is little likelihood that a bonus can be well adapted to meet national standards, e.g. that the money be given to those who most need it, or to those who would use it as under the G I Bill for education or home-building, or to those whose lives were most dislocated. The bonus is not flexible enough to fit any one of those suggested standards. It will be madly inflationary, and probably in some cases will make the ultimate rehabilitation of its recipients even more difficult.

What is good for America is good for the veteran. Attempts on the part of veterans to make themselves a privileged segment of society will be in the long run harmful to the veteran himself; we will never have 14,000,000 prosperous veterans in an economy that is not healthy. "Citizens first, veterans second," puts it succinctly. This still leaves open the question, "what is good for the veteran?"

Certainly the government has some responsibility for him, but there is great danger of exaggerating that responsibility. Regardless of his precise motives, the soldier, sailor, or marine was fighting for his America. This paper is written almost wholly by veterans, read by a student body over 90% veterans. Let us not forget that had we not fought and fought successfully we would be reading publications in German, Japanese or Italian, if at all . . . that the war was not fought for others alone but for ourselves too. Not many politicians take time to remind the electorate that when they went to war each one was just doing his duty. Likewise forgotten is the unpleasant fact that since most of our generation are entitled to veterans benefits, the cost of paying them will fall largely upon veterans themselves.

For all these reasons then, the veteran should temper his willingness to dip into the public funds and should remember that the treasury is not a hogtrough.

More serious than the taxbill he may someday have to pay is the danger of his becoming dependent on the government, of seeking to meet his problems by forcing special privilege and special disbursement at the polls. The answer to each of the many little day by day problems that arise in life is not to create another veterans' preference.

Whatever the solution of our housing problem may be, it is not to commandeer apartment buildings for student veterans and throw the occupants into the street. There is no reason for veterans to have premier access to unusual, hard-to-obtain merchandise, though both these have been advanced. It would not be ethical to charge the government for textbooks, not normally bought by students, as if required. This week's decision on statutory construction to charge the government for typing Ames Competition briefs is marginal on this ground, though perhaps justifiable, so that no man should be deterred from the benefits of the Ames work on account of the expense involved.

Any decisions from above, or entreaties from below, which if adopted have the tendency to make the veteran seek to profit at the expense of the general public, in day to day specific preferences should be closely examined. The veteran is an individual, and should keep his individualism; he must not become or think of himself as the ward of the state.

At first blush it may seem ironical to suggest an upward revision of the G I Bill subsistence allowance in the light of this theory. When the plan was conceived the cost of living was markedly less than today and it was evidently intended that the subsistence allowance should be just that . . . should be the minimum amount on which the student (and dependents if any) could live while finishing school. Whatever the cause, the cost of living has greatly increased, and if prices do not substantially recede in the near future, the intent of the framers or the law will not be met, despite one increase. Perhaps some way could be developed to vary the allowances to students in colleges in high cost of living areas and cheaper regions . . . the price of rent, food, clothing, recreation and sundries may well be much higher in New York and Boston than in Township, Wyoming.

If the G I Bill allowance does not meet the minimum requirements as prices rise (if they do) it should be amended. The degenerate Roman mob, enjoying the bread and circuses of the Emperor, at the cost of their own independence, is the historical prototype of what the American veteran must not become. The solution is not in a bonus, in asking for petty preferences, or in costly projects which separate the veteran from the rest of the community. And whatever relief is granted, it should be in a framework of getting the student veteran on his feet, at once, as an individual in an equal society.

Letters to the Editor

(Letters were also received from Justice Felix Frankfurter and Federal District Judge Charles E. Wyzanski Jr., but these were accompanied by requests that they not be printed.)

July 23, 1946

To the Editor of the RECORD:

Sir:

Thanks for sending me a copy of the first issue of the Harvard Law School RECORD, which I found very entertaining. I hope you will be

able to maintain the same high standard in subsequent issues.

The size of the sheet is a little clumsy to handle. I doubt whether you will be able to maintain a publication of this size on a weekly basis.

With best wishes for the success of your venture, I am

Sincerely yours,

CALVERT MAGRUDER

July 23, 1946

To the Editor of the RECORD:

Sir:

I thank you for a copy of the first issue of your paper. It is very interesting, and I find in it an article on the question of whether an unincorporated association is a suable entity that bears upon a case I am working on. Unfortunately, the great size of your page makes your paper hard to handle or to bind. I think its value would be much increased if the page could be cut down.

Sincerely yours,

HENRY T. LUMMUS

July 23, 1946

To the Editor of the RECORD:

Sir:

I found the first issue of the Harvard Law School RECORD intensely interesting and extremely informative. The publications fills a distinct need.

Very sincerely yours,

ALFRED BENESCH,

H.L.S., 1903

July 24, 1946

To the Editor of the RECORD:

Sir:

Thank you for sending me a copy of the first issue of the Harvard Law School RECORD. I read it with interest and extend to you and your colleagues both my congratulations and wishes for its success.

It seems to me that the issues between you and Dean Pound are clearly defined in your editorial ["The Task of the Law Student", July 17 issue of the RECORD]. Only the success or failure of your venture will demonstrate which is right. I shall await the outcome with interest. Like most things in education, it depends upon the students themselves.

Sincerely yours,

PAUL H. BUCK, *Provost*

July 27, 1946

To the Editor of the RECORD:

Sir:

Your last issue of the RECORD concerned itself more with the AVC than it did with the Law School. Is this "Journal of Opinion and News" to be a spokesman for just one veterans organization or for veterans? For that matter, is it a veterans organization sheet or a Law School publication? Perhaps the overzealousness of certain staff members has been an undue influence on the type of acceptable material used in the news columns. You have started well. To use a favorite expression of former Mayor Fiorello La Guardia: "Don't louse it up!"

S. P.

July 24, 1946

To the Editor of the RECORD:

Sir:

A political reaction was anticipated following the end of the war but it now seems that the pendulum is swinging right, right, right to an almost dangerous degree. The Republicans lost their chance to assert new progressive leadership when the Stassen backed candidate was defeated in the Nebraska primaries. The great hullabaloo raised about Governor Thye defeating Senator Shipstead in Stassen's home state was given, perhaps, a little too much weight. It was not a tug back towards progressivism as much as was indicated. The issue was one of personalities more than policies and Thye's personal following was the chief factor involved.

The South had its big chance. Two of the biggest blots on our democratic (also with a large "D") scene were returned to plague us as we shall probably never remember having been plagued before. The Bilbo-Rankin force has defeated political progress in that section of the country for another two to six years. Defeat of reactionary Burton K. Wheeler was small compensation for the continued burden of incompetence the legislative field will have to carry nationally for the immediate future.

The crowning insult to liberal, progressive politics was the unholy swing in Georgia back to everything that State fought against for the previous four years. Popularly it was a progressive victory but due to an anachronistic county unit voting system the return to a rule of hate, and reaction could not be stemmed.

The above summary is just a complaint from a hopeful Law Student. Can't something be done to stem the tide?

LATE TIME

Off the Record

One young hopeful, resident in Jarvis Court Housing, remarked, "Mommy, when I grow up I'm going to get married and go to school too."

Is your wife expecting? A word to the sufficient is wise. See an insurance broker. They give twin insurance these days.

Scott's Law Dictionary—Puncher, n. Victim of an assault and battery. Vernacular, restricted.

Starting with the class in Evidence August 12th, 1946, the Society for Prevention of Cruelty to Law Students is expected to serve process on John Doe or Richard Roe or you know who.

Things we never saw before: A shaver of four years give or take a month running down the middle of the Langdell Reading Room shouting, "Daddy, come home now."

Operations of a shyster—Joe Smith was a supplier of refreshment to the thirsty public when the demand was greater than the supply. Joe prevailed upon two unscrupulous prohibition agents to "knock his door down gently with an axe" and seize his private stock. Unfortunately, that was done without a search warrant. Joe proceeded to employ some fine legal talent and had the search and seizure declared illegal. The evidence was also declared illegally obtained. *U. S. v. 100 Cases of Champagne*. Joe went back to his establishment and disposed of the prior seized champagne at what he called "a right price." The U. S. part of the case decided that that was enough of that. By carefully figuring the "right price" Joe got them figured further that Joe owed a slight sum in the way of "income taxes." Joe being very sensitive about the whole thing again had his lawyer take charge. Now it seems that the only evidence U. S. had about Joe's right price" was the same evidence declared illegal in *U. S. v. 100 Cases of Champagne*. Joe, and especially his lawyer, were very hurt about all this, but not half as much as old U. S., because he is still trying to figure a way to, as Joe so aptly puts it, "put the bite on" Joe.

Fables for the Bar

Once upon a time there was a motion picture called "The Outlaw" which was just about the nadir in motion pictures. The photography was blurred, the sets were cheap and rickety, the plot was so bad that even Richard Dix wouldn't touch it, the acting was wooden, uninspiring, and even abysmal, and the characters were so unbelievable that even Luella O. Parsons only gave it two stars. But despite these defects, people, instead of staying away in droves, as all the critics predicted, swamped the theatres to see it and relished every minute of it. MORAL: Jane, habeas corpus.

Student Board's hard-slugging, Oscar-Tallman-trophy-winning team risks their law school title in a match with a faculty club at 3 p.m. this Saturday afternoon. Inasmuch as the privilege of fair comment will protect spectators from slander suits by the contestants, a sizeable turn-out, particularly from the first year property class is expected.

Gallery

A close search of the records of Mark De Wolfe Howe's life revealed that he graduated from Harvard College in 1928 at the age of twenty-two and entered Harvard Law School in 1930. There was no information as to the years 1928-1930. A still closer search failed to reveal any hint as to what had happened in the two missing years. There appeared to be a gap in the seisin, an unheard of thing.

When queried, Mr. Howe lit a cigarette, leaned far back in his chair and grinned happily.

"Those were my glamorous years," he began. "I was an assistant-director at the Paramount Pictures Studio out on Long Island. The talks were just coming in and they were making features and shorts in New York where all the stage actors were."

"Stars? Sure. The Marx Brothers made their second movie while I was there. Claudette Colbert, Helen Morgan and Ginger Rogers were starting then. Fred Allen was a script writer, a great guy."

He paused and puffed reflectively.

"I wasn't very important," he went on, modestly. "Mostly, I shouted through a big megaphone at a bunch of extras. But, I was in a picture with Ginger Rogers once, 'Queen High' I think it was. A horrible picture. I substituted for Charlie Ruggles in one scene; the audience got a beautiful view of the back of my head and ears."

Having graduated from the Law School in 1933, he went to Washington that fall to be Oliver Wendell Holmes' secretary. It was a quiet year. The great justice had retired from the Supreme Court so that Howe's chief duty was as companion rather than secretary. He read to the old man, went driving with him and attended to his few business affairs. In the fall of 1934 he came back to Boston to practice law.

In 1935 he met Mrs. Howe. She had come to Boston from Ireland to visit relatives, among them her uncle, Dean Sperry of the Divinity School. They were married that year, their honeymoon being interrupted by the death of Justice Holmes. Mrs. Howe will be remembered as the director of the very excellent Radcliffe Idler's Club presentation of "Oedipus Rex" and "The Tinker's Wedding" last May. Before her marriage she had done some acting and a great deal of play writing at the famed Abbey and Gate Theaters in Dublin. Since their marriage she has had published a novel, "Mr. Venus", and many short stories.

Issue of the marriage are two.

"Two dizzy little blonds," he laughed affectionately, but with a slightly puzzled air. "Susan is nine and Fanny five." It was apparent that they do not always behave with the sweet reasonableness to be expected of a law professor's children.

After Holmes' death Mr. Palfrey, his literary executor, and Professor Frankfurter of the Law School asked Howe to compile the Holmes-Pollock letters, which were then in the Harvard Law Library. It took him almost two years to complete the work, and, when published in 1941 it won almost universal praise both in the United States and in England.

In the fall of 1937 Howe had given up the practice of law to become a teacher.

"I just didn't care as much about practice as I did about teaching law," he explained. "So, when the chance to go into teaching came along I jumped at it."

About that time the University of Buffalo School of Law was being reorganized by the new dean, Francis Shea. Shea in the course of the next two years assembled a small group of young men, among them Howe and Ernest Brown, who will be teaching at Harvard next year.

In 1938 Shea went on leave of absence to Washington as Attorney-General Frank Murphy's Assistant and Howe was appointed acting dean. In 1940, when Shea resigned, he was made dean and that was the position he held in January, 1943, when he left to enter the army.

Howe's army service was almost exclusively in military government, starting in Sicily, moving on to Italy and finally landing in Southern France with the Seventh Army. Late in 1944 he returned to Washington to become Chief of the Government Branch of the Civil Affairs Division, War Department. His stay there was broken only by an inspection trip to the European Theatre of Operations with Assistant Secretary of War McCloy and attendance at the Potsdam Conference in Berlin. On Saturday, October 20, 1945, he left Washington, a full Colonel, and on Monday, October 22, 1945, a civilian, commenced work at Harvard Law School.

Professor Howe is the youngest member of a great Boston literary family. His father, Mark Antony De Wolfe Howe, has published some fifty-six volumes, mostly biography, including a biography of Oliver Wendell Holmes, Sr. Mr. Howe and his father are often mistaken for each other because of the similarity of their names. He has even been listed on one occasion as his sister's father, a relationship not yet recognized by the law.

"I don't know what the libraries will do when the official biography of Justice Holmes, on which I am now working, is published," he commented, resignedly. "Their card files are really going to be confused."

His brother, Quincy Howe, is a commentator over the Columbia Broadcasting System and the author of six books on contemporary political history. At one time he was an editor in the publishing firm of Simon & Shuster, for whom he still does some work.

In addition to the biography of Holmes, on which he is now working, Howe has now completed work on a small volume of Holmes' Civil War letters to his parents. It will be published before the biography. He has access to all the Holmes papers and the biography will emphasize, to a much greater degree than did Mrs. Bowen's "Yankee From Olympus," the great man's judicial career.

Last year Mr. Howe taught Contracts. This summer he is teaching a course in American Legal History, his favorite subject. It is something new at the Law School. So far he has confined it to the legal problems of seventeenth century Massachusetts, but eventually the courses will cover a broader field. During the next year he will be teaching two sections in Equity. He is working now on his notes for that course.

In class Professor Howe is a very conscientious teacher. He sits at the desk, seldom rising, listens to each question and answers it carefully, emphasizing points by striking the desk lightly with two fingers. Students appreciate his candor. There is never any shrugging off of questions or giving of evasive answers. Two or three times during the year he readily admits:

"I'm sorry I don't know the answer to that question. But I'll find out and let you know tomorrow."

The next morning, before starting on the next case, he answers the question fully.

It is a far cry from the confusion of a movie studio during the late Twenties to the quiet lecture rooms and book-lined study in Langdell Hall in the Mid-torries. But Mark Howe has spanned the gap. His sandy hair just turning grey, blue eyes smiling, he turns to the work ahead with an easy confidence and a scholar's will to seek and expound the law.

PUBLISHING — (continued)

Schools Prof. Merton Ferson had an article on "The Rational Basis of Contract and Other Legal Transactions" in the November, 1945, issue of the *Cornell Law Quarterly* and has another scheduled for early appearance in the *North Carolina Law Review* entitled "Teaching Theory and Practice in the New Day." Fifty eight *Harvard Law Review* 886 contains a review of George O. May's "Financial Accounting" by Prof. Ralph Baker.

Touched with Fire is a collection of the Civil War letters of Oliver Wendell Holmes, Jr. edited by Prof. Mark D. Howe, which will be published this fall by the Harvard University Press. Mr. Howe adopts his title from the late Justice's famous quotation.

Representation in legal periodicals has been maintained at a high level and future plans bid fair to keep it so. But the more popular press is not completely neglected for the May 1946

issue of the *American Mercury* contains a critique by former Army Air Force Colonel W. Barton Leach on "The Absurdity of a Big Navy."

Plans for the next few months include an article by Prof. Paul Freund for the prospective Stone Memorial issue of the *Harvard Law Review* discussing the late Chief Justice's decisions in the field of conflict of laws. Prof. Robert Braucher has a piece in its early stages on the forum *non conveniens* doctrine. Two of the cases bearing upon this problem were before the Supreme Court but have been held over until the fall term, thus delaying completion of Mr. Braucher's work.

Two articles from the *Harvard Law Review* by Prof. E. Merrick Dodd have been reprinted as one pamphlet of a series on *Significant Developments in Law during the War Years* produced by the American Association of Law Schools. Mr. Dodd discussed the "Supreme

Sub Judice

LIFETIME SEPARATION In Death There Is Hope

An erring New York husband was recently told by the Supreme Court of New York that as long as the court decree remained in force his only hope of getting matrimonial freedom was death. *Allan v. Allan* (July 3, 1946) 15 L.W. 2051. A separation decree had been entered by the state court, and thereafter the defendant began divorce proceedings in a foreign state. The court enjoined the defendant from pursuing the divorce action. Then, as if looking for solid ground, the court said: "For its own protection this court is almost unlimited; it does not need any statute; it inherited all such powers when it succeeded the Kings Bench, Court of Common Pleas, Court of Equity and the Ecclesiastical Courts. . . . To the husband this harking back to the past ages must have sounded like the knell of doom."

MAIL ORDER THEOLOGY Is Freedom from Ridicule an Element in Due Process?

Certiorari was recently granted by the Supreme Court to the Circuit Court of Appeals for the 9th Circuit in *Ballard et al. v. United States*, 152 F (2nd) 941. The petitioners were prosecuted for conspiring to use the United States mails in fraudulent transactions. 18 U.S.C. sec. 338. Alleged violations consisted of representations made by petitioners in proselytizing for the "I Am" cult. In its opening argument the prosecution referred to the operations of the defendant as a "racket" and a "flim flam scheme that has been unparalleled in history." After a trial featured by heated argument during which the prosecution ridiculed defendants' religious beliefs, petitioners were found guilty. This was reversed by the Circuit Court of Appeals. On certiorari, the Supreme Court reversed and remanded the cause to the Circuit Court with instructions that it pass on questions reserved. The Circuit Court then affirmed the conviction.

In their petition the defendants contended that (1) they were denied due process when the trial judge allowed the prosecution to ridicule their religious beliefs; (2) they were tried by a different indictment than was returned by the grand jury when the truth of petitioners' religious views was withdrawn from the jury; (3) their constitutional rights were violated when the trial court restricted the jury to men only; (4) the indictment failed to state a criminal offense since the Supreme Court had ruled that the alleged falsity of petitioner's religious doctrines and teachings could not be submitted to a jury.

This case tests many of the fundamental doctrines of religious freedom guaranteed by the Constitution. That the problem is a perplexing one can be seen in the dissenting opinions of Mr. Chief Justice Stone, *United States v. Ballard*, 322 U. S. 78, 88; and Mr. Justice Jackson, *United States v. Ballard*, *supra*, 322 id. at 92.

PRESSURE FROM THE PRESS The Judge Must Not Be Stampeded

Texas judges, in the opinion of the Texas Court of Criminal Appeals, are highly sensitive to editorial comments. At least this is so while they are deliberating a motion for new trial. *Craig et al. v. Harney*, 15 L.W. 3046. This case is now in the Supreme Court on a petition for certiorari filed June 28, 1946. The petitioners were convicted in a contempt proceeding for publishing allegedly false news accounts of, and editorially commenting upon a county court trial. They were accused of attempting to scandalize the court and influence the judge in acting on a motion for a new trial. Publication of such matter, the court said, presented a clear and present danger of compelling a trial judge to change his ruling on the motion. Such freedom of the press was not guaranteed by either the state or federal constitution; and secondly, the truth of the publication is not a defense.

Before the Supreme Court the petitioners argue that (1) that the "tendency test" instead of the "clear and present danger test" was applied against them; (2) there was no danger of coercing a judge having normal stamina and reasonable fortitude; (3) since they were accused of publishing "false news," truth was a complete defense; (4) the judgment of the court was vitiated when it imposed punishment on the petitioners.

MASS VACATION A Secret Sale of Company Assets Will Not Abrogate Employer's Liability

According to an opinion of the Appellate Division of the Supreme Court of New York, an employer who promises his workers a week vacation with pay remains liable to the employees if without notice to them he sells the company assets. *Empire Case Goods Workers Union v. Empire Case Goods Company, et al* (July 8, 1946) Law Report News 11. Plaintiff, a union authorized to represent Empire's employees, entered into an agreement with Empire whereby the union called off a threatened strike and the defendant promised all employees of one year service prior to July 1, 1944, a week's vacation with pay. Four days later the defendant entered into an agreement to sell the company to a co-defendant. The deal was consummated but during this time all negotiations were kept from the knowledge of union officials. Meanwhile, the employees who were entitled to the vacation took the week off without any objection from the defendant. As a defense, the contention was made that the sale occurred before the time the vacations were taken by the employees. On the other hand the purchaser advanced the defense that he was not a party to the contract. In its opinion the Appellate Division agreed with the purchaser but disagreed with the employer. The rule in New York, according to the court, was that the employer remained bound to the employee until notice was given terminating the employer-employee relationship. In this case there was evidence that for business reasons both the purchaser and the employer had deemed it advisable to keep secret, as far as possible, the fact that there was an executory purchase and sale agreement. Therefore the union-plaintiff could recover the full vacation pay for all its members.

SELF-REVERSAL Even a Judge Can Change His Mind

An affirmation of a denial of motion for a new trial does not preclude the judge himself from reversing his previous decision. So held the Circuit Court of Appeals for the Third Circuit in *United States v. Smith* (July 16, 1946) 15 L.W. 2050. After the trial court had denied defendant a motion for a new trial an appeal was taken. Both the conviction and the denial of the motion were affirmed. Then under Rule 33 of the Federal Rules of Criminal Procedure the court exercised its discretion and granted a new trial. The United States appealed. Holding that there was no error, the Circuit Court pointed out that its order of affirmation merely determined that the trial court had not abused its discretion when it refused to grant defendant's motion for a new trial. Judgment of affirmation did not determine that the trial judge could not, in the exercise of his discretion, have properly granted the motion for a new trial.

Court and Fair Labor Standards" and "Supreme Court and Organized Labor."

The *American Journal of International Law* for January 1946 contains a discussion by Mr. Louis Sohn on one of the Yalta-born conflicts among the great powers entitled "Multiple Representation in International Assemblies." Mr. Sohn also served as secretary of the committee preparing the Carnegie Endowment's *Draft Convention on Utilization and Control of Atomic Energy* published in June, 1946.

A memorandum submitted to Congress by the National Committee to defeat the "Unequal Rights" Amendment was prepared by Prof. Paul A. Freund to point out the injurious consequences of passage of the proposed Equal Rights Amendment. The bill authorizing the submission of the amendment was defeated, this memorandum having been widely quoted as a sound prophecy of its deleterious consequences.

The Witness Stand

The Question: Would you prefer your grades to be given numerically rather than by the present letter method?

1. L. H. Bloom, New Rochelle, N. Y.
4th Term

Yes. I think John Early stated the reasons why very well in his letter to the RECORD. The chief reason would seem to be to clarify confusion in your mind as to how the average was reached. I doubt that there is any reason why numerical grades should be kept secret although the faculty is entitled to a word on that. Numerical grades would be an aid to the student's determination of the facts upon which academic standings are computed, especially where the terms are mixed up as at present.

2. Tudor Gardiner, Gardiner, Maine
4th Term

Yes. I have no reasons in particular. If I knew my numerical grade it might influence me in my term choice. I can't think of any reason why the numerical grade should be kept secret.

3. Charles Hanahue, Scranton, Pa.
4th Term

I don't know that it makes an awful lot of difference. It would give me an awareness of what courses I did well or poorly in. After all, this isn't the boy scouts. I can't see any reason why the numerical grades shouldn't be made available.

4. Walter P. Arenwald, New York, N. Y.
3rd Term

Yes. So that you could know exactly what your relative standing in a particular course was. It is more encouraging to know exactly where you stand. I don't see that anything is to be gained by secrecy. Jack Early expressed most of the cogent reasons in his letter to the RECORD. I think it would help in the choice of third year electives to know your standing in a particular first or second year course.

5. Hubert De Lynn, Boston, Mass.
4th Term

Yes. I would then know where I stand in my relative courses, especially with regard to the C grades. I think it is a good idea for the numerical grades to be given. I think knowing my numerical grades would influence my choice of third year electives. For example a low C in Business Associations II might steer me off Business Associations II. Another reason would be from a clerical efficiency standpoint. Transferring numerical grades from bluebooks would be less susceptible to error than the present change to letters before the transcripts are made out.

6. William Hart, Stamford, Conn.
4th Term

I'd prefer knowing my relative standing in class more than anything else but I would like to know my numerical grades. For instance, if I get 3 C's I have no means of comparing one course with another. I'd think it would be advantageous to know the numerical grades in making a choice of third year electives too.

7. Seymour Stadfield, North Bergen, N. J.
4th Term

With a C grade a student can either be complacent or worried. This can either be well founded or not well founded. By knowing the numerical grade a student would be better enabled to judge his true position in each particular course; especially in this true in law which strives for certainty. Yet, here, we are left reeling in uncertainty. The American idea of competition as a constant spur to do better is considerably defeated by the lack of knowledge of the true grade in a course and by revealing the numerical standing it would be an added means of fostering the competitive spirit so ever present in all of us.

8. John Carr, Elkhart, Indiana
3rd Term

I never thought about it. It's been over four years since I received a grade. I think I'd rather have them numerically unless the faculty would feel it prejudiced them so much that they would have to hand out lower grades. I don't believe numerical grades would influence me in my choice of future courses but they would give me greater peace of mind. After all, though, the present system of grading is to give the student the professor's opinion of what the student knows about the course. It doesn't matter much in the A, B, D and F range but the C range is so wide that at least a C plus or a C minus should be given if numerical grades are not.

9. Frank L. Hinckley, Providence, R. I.
4th Term

I think I would rather have my grades numerically. I would rather know how close to a B or a D my C grades were in each course, for my own peace of mind and to find out what courses I did best in. I do not believe my knowing numerical grades would influence my choice of third year electives but they would influence my choice of a term paper.

10. Phil Ball, Deerfield, Mass.
5th Term

I would rather have my grades numerically. I understand that at present if you have only one examination in a term you can't even get your average. I think you might as well know the truth. You may think all your marks were about the same and they may not have been. If you knew your numerical grades it would aid in leveling out the balance of learning. Not only in selection of subjects would it be helpful but it would aid in knowing how much work to put in on a course. It is particularly desirable where low marks are concerned. It would be a help to know how low they were.

11. Albert J. Parrena, New York, N. Y.
4th Term

I certainly feel the numerical answer would be the letter. The arguments Jack Early gave in his letter to the RECORD summed it up very well. Ideally it would be best to have a straight pass or flunk and just a class standing would be suitable. I feel that that would be particularly fairer than the present system where one examination makes or breaks a student.

Alumni Notes

LL.B. '21—*Napoleon J. Vigeant*, Judge of the Chicopee, Mass., court since 1944, collapsed and died July 24 while playing golf. He was 50 years old. Judge Vigeant was a native of Lowell, Mass., and had been active in politics in Chicopee, Mass., for the past twenty years. He was an officer in the Army in the first World War and returned to active duty as a Lieut. Colonel in World War II, serving as Judge Advocate of the 26th Division at Camp Edwards, Mass. He resigned from the service in 1944 and returned to Chicopee where he was appointed Justice of the Chicopee court. He began the practice of law in Chicopee in 1929 and had twice held the position of City Solicitor.

LL.B. '22—*Lloyd K. Garrison* has become one of the partners in the newly-organized firm of Paul, Weiss, Wharton & Garrison, with offices in New York City and Washington, D. C.

LL.B. '32—*Frank H. Sloss* has returned to private practice after four years of government service and has become a member of the firm of Sloss & Eliot, San Francisco, Cal.

LL.B. '17—*Wilson E. Griffiths, Jr.* has resumed his general practice of law in Pittsburgh, Pa.

LL.B. '24—*Willey H. Mitchell* has returned from active duty as a Lieut. Col. Air Corps, A.U.S. and has resumed his law practice in Duluth, Minn.

LL.B. '03—*Thomas J. Hammond*, Justice of the Superior Court of the Commonwealth of Massachusetts and a resident of Northampton, Mass., died there July 23, 1946. He had been serving on the bench since 1929, and before that had been District Attorney for the Northwestern Judicial District of Massachusetts from 1920 to 1927. Born in Northampton and a graduate of Amherst, Justice Hammond was an intimate friend of the late President Calvin Coolidge, and was a prominent figure in central west Massachusetts affairs.

LL.B. '21—*Lawrence M. Lombard, A.B. (Harvard) '17*, recently general counsel to the War Production Board and the Civilian Production Administration, has become a member of the Boston firm of Hemenway & Barnes.

LL.B. '42—*Stanley M. Epstein* has opened an office in Boston for the general practice of law.

LL.B. '41—*Irving R. Storch* has returned from service with the Army of the United States and as an attorney with the U.S. Department of Justice and has opened an office in New York City.

LL.B. '41—*Peter W. Billings* has returned from service as a Major in the Army of the United States, and has become associated with the firm of Fabian, Glendenin, Moffat & Mabey with offices in Salt Lake City.

LL.B. '39—*John F. Flaherty* has returned from active duty in the U.S. Naval Reserve and has become associated with Kirkland, Fleming, Martin & Ellis with offices in Chicago.

In memory of her brother, Frasier Curtis, Harvard '40, who was killed in World War II, Mrs. Schyler Hollingsworth, a member of the Harvard Law Wives, has presented a pair of candlesticks, a vase and several decorative plates to Kendall House.

LL.B. '44—*John E. Krout* is now associated with the Philadelphia firm of Drinker, Biddle & Reath. Krout was President of the *Law Review* for the issues of October 1943 through January 1944.

PURCELL GOES BACK TO PRIVATE LAW PRACTICE

Former S.E.C. Chairman Becomes
Noted New York Firm Partner

Ganson Purcell, former Chairman of the Securities Exchange Commission, has become a partner of the New York City firm of Root, Ballantine, Harlan, Bushby & Palmer. His turning to private practice calls a halt, at least temporarily, to his distinguished career in government service.

Graduating from the Harvard Law School in 1930, having received a B.A. at Williams in 1927, Purcell commenced practice in the District of Columbia, being admitted to the District bar in 1931 and to the bar of the United States Supreme court in 1937. Prior to his association with the Securities Exchange Commission, he acted as Assistant Legislative Counsel, U. S. Senate.

In 1934 he moved to the Securities Exchange Commission as a member of the legal staff, and rose through the positions of Assistant Director and Director of the Trading and Exchange Division to that of Commissioner in 1941, and Chairman in January 1942. President Roosevelt appointed him a member of the Economic Stabilization Board in 1943.

Purcell will act as Washington partner for Root, Ballantine, Harlan, Bushby & Palmer.

RECENT ALUMNUS NOW WASHINGTON POST HEAD

Philip Graham, '39, Ex-Review
President, Appointed Publisher

The acceptance by Eugene Meyer of his appointment as President of the International Bank for Reconstruction and Development has been followed by the announcement that Philip Graham, LL.B. '39, A.B. (Univ. of Fla. '36) succeeds him as Publisher of the *Washington Post*.

Although only thirty years old, Graham has already laid a brilliant foundation for his new career. Upon graduation from the Harvard Law School where he was President of the *Law Review*, he went to Washington as secretary to Justice Stanley Reed, and later as secretary to Justice Felix Frankfurter. Although he enlisted in the Army Air Forces as a private in 1942, prior to his enlistment he had also done legal work in connection with Lend-Lease. While in service he rose to the rank of Major in Air Intelligence, and saw duty in the Pacific under Gen. George C. Kenney.

Graham's interest in journalism is shared by his wife, Katherine, daughter of former publisher Meyer, whom he married in 1940.

IS NAVAL JUSTICE JUST???

(This article is concluded in this issue; as stated last week it is written by a former officer with experience in legal offices and general courts martial in several different commands of the Marine Corps, and the opinions are not necessarily those of the RECORD.)

A congressional sub-committee returned findings recently on the subject of Army courts. These were singular among reform proposals in their mild tones; at no time were officers referred to as "jerks" or generals as "brass-hats" and it seems from the moderation of their proposals that the committeemen evidently profited from the moderation of their language. They advised, *inter alia*, "permitting defense counsel to secure witnesses on an equal basis with the prosecution," "an end to closed door proceedings," "punishment to apply equally to officers and enlisted men" and that punishment for rape "should be the maximum imposed by the civil law of the country in which the offense was committed." With the first 3 of these we can find no quarrel, and those familiar with *Naval Courts and Boards* will note that all are included in the dictates of that publication (Ex-army note: this is the Navy's M.C.M.). Careful perusal of sections 244-250 in that publication fails to indicate any difference in the privileges of the judge advocate and the defense counsel in the matter of procurement and subpoena of witnesses, and it is commonly considered fatal error to deny an available witness to the defense (It was the writer's personal experience that a defense counsel could have men due for rotation or sick retained on the island for a court more easily than could the judge advocate.). As to closed door proceedings, cursory inspection of section 368 *Naval Courts and Boards*, will show that all trials must be public unless at the request of the accused the court chooses to close its doors. The Secretary of the Navy himself must give his consent for any other closing, even to the extent of barring females when delicate testimony is expected (How many of those who have thumped the tub about secret trials have read this section or the Court Martial Orders which constitute the case law exemplifying it?). As to the equality of punishment of officers and enlisted men there is also official information available in *Naval Courts and Boards* (section 457) which shows that for no offense involving a prison term (that is one year or more) is punishment less for officers than men save in the single case of "uttering seditious words." This anachronism no doubt should be remedied, but it hardly seems worth the furor. There are a number of purely military offenses such as "unbecoming behavior during divine service" and "endeavoring to foment quarrels between persons in the Navy" which bear a few months imprisonment for a man and dismissal for an officer. This can readily be changed without raising a national roar. On the whole, and for all the important crimes: murder, rape, robbery, desertion, housebreaking, sodomy, fraud, embezzlement, conspiracy, espionage, counterfeiting, false muster, extortion, perjury, accepting bribe, forgery, mailing obscene matter, assault with the intent to commit rape or murder, arson, polygamy, adultery, incest, fornication, AWOL, and resisting revenue officers, the punishment for officer and enlisted, each and alike, is the same.

These are the significant crimes. It is in the handling of these that the system of justice is worth examining. It is not denied for a minute that in such grave crimes as parking too long, speeding, loitering near the mess halls, and perhaps even profanity and gambling, the officers get a break. As a matter of abstract justice this may not be right, but it compares normally with similar situations in civil life, and will exist in any group as long as we do not achieve a complete egalitarianism. These latter things are a problem of "caste" rather more than of law, and it is further submitted that if the people really want to see captains and colonels locked up for parking violations it can be done under the present system of Naval law. These immunities, if indeed they rise to that dignity in either certainty or importance, are not written into law, but are in derogation of it, and seem a result of the human element in the service. Indeed it is a common complaint of junior officers that these minor delicts are not punished at the time and forgotten, but rather go into an officer's record, and may effect him adversely 6 months or even 6 years thereafter. The selection board case grinds slowly but often exceedingly fine. The point on the rape cases seems well taken at first sight, and of course if men have been unjustly confined for rape in order to impress a civil populace in liberated countries they should be released. There are, however, certain disadvantages to applying the local law to rape instead of American law. It would be rather upsetting to our military conflicts of law theory to be enforcing the law of Sierra Leone, Tongatabu or Korea. Would we conform to the local rules in ascertaining evidence sufficient for conviction of rape . . . would we be guided by local definitions, formulated out of mythical mores of half a hundred savage lands . . . would the local punishment (for example: mutilation) be applied if more stringent than our own? If the local law, proportioned or a marriage by capture *mos*, treated rape casually would we too punish it by fine of 5 pigs? It might be hard to justify that to at least some of our church groups. In one respect, that of age of consent in the so-called "jail-bait" cases, statutory rape, as a matter of practice, the Virgin Islands decisions are followed, and the local age of consent is controlling, with the result it is said that amatory sailors confuse 11 year olds for 13 year olds, instead of 15's for 16. Despite the theoretical difficulties, however, this modification is sensible.

As to the accused being convicted of rape upon slight evidence of foreign witnesses only this can be said: It takes quite a conspiracy to convict the man wrongfully. Without a good prima facie case trial is seldom recommended by the unit commander and approved by the chain of command to the convening authority. No judge advocate seeks rape cases for such are too notoriously difficult to prove. At least in the Pacific Islands, sympathy, if such a factor is relevant, is rather for the accused. It takes at least a majority of the court to convict, and normally the prosecutrix is rather thoroughly cross examined by defense counsel and court. The legal officer of the convening authority has to be satisfied as to the correctness of the evidence and the convening authority himself at least of the justice of a conviction. Then often there is an immediate superior in command who keeps a casual though unofficial eye on such things. Lastly there is a review in the Department. None of these can worsen the accused's plight; most can alleviate it considerably. To say that "many men are railroaded" is a loose statement at best, and in any individual case the complexity of the system, the geographical distance between its several cooperating parts, and the lack of privacy among those who must each support conviction, makes an assertion of deliberate "framing" one which would have to be documented thoroughly before inviting belief. The writer has no reason to suspect the Naval law to be on a plane with that of Alabama as to procuring dubious convictions of rape, nor would he defend it at such length if he so suspected, but see 287 U.S. 45, and dissent at 224 Ala. 540 and compare the wildest tabloid attack on Naval Justice with that sombre Supreme Court report.

At this point also should be noted a peculiarity of the charges against the military law. In general, it is that officers are let off too easily, not that enlisted men are convicted unjustly. In view of that general feature of the complaint, plus the focusing of critical attention upon rapes, it seems justified to give the GI Justice a fairly clean bill of health on the issue of satisfactory proof of guilt of accused men. Bearing this in mind we can more readily evaluate the other criticisms of the subcommittee and a *fortiori* of the more bitter calumniators. It is suggested that some tribunal of review be set up with power to alter or void military sentences. As a check on what was done during the haste and uproar of war, this is undoubtedly sound if done in a disinterested and impartial manner, because as a mathematical proposition mistakes have been made and should be righted. But as a permanent policy this looks rather dangerous. It opens the way to political pressure. The review in the Department is adequate for technical errors in reception of evidence and the like. The trial court in military law too has had the witnesses before it and should not be upset on the facts unless plainly wrong. And in the absence of proof of several specific miscarriages of justice we should not undo the entire system by superimposing a second layer of trial upon it. If the government is permitted representation and argument there would not be many more cases remanded than the Department sends back now. If not then of course conviction or acquittal finally would come in the last analysis to whether or not the culprit could set a good fire in Washington or not. There were Congressmen during the war who sought special favors of a military nature for constituents, and others who were ready to demand an investigation at the drop of a letter in the box. Such a tribunal as is proposed would be welcome to such statesmen . . . and when "the every voter a hero" movement gets in full swing it is not hard to imagine the clientele of our naval prisons being transferred to the colleges via the GI Bill. There have been pension grabs before, and the self restraint of politicians is dubious in the face of such an arrangement.

It would be revelatory to see statistics of completed investigations into this problem, case by case. Of course, if the accused's statement of innocence and a picture of his sweetheart and dog waiting for him is considered enough of a record to set aside the verdict of a General Court, we should have *mucho gusto* in the brig. But the cases that have been tried and ended in conviction, have been tried in the main in conformity with the relevant provisions of *Naval Courts and Boards*. The procedure there, if one is enough interested in the facts to stop and read for a few hours, is one which contains all the elements of procedural due process. Notice and opportunity to defend is fully met. The accused must be present throughout, he cannot be brought to trial till he is ready, he is furnished with charges and specifications which must allege (and the judge advocate prove) each and every material element of the offense, he is entitled to counsel and furnished with such upon his application. At the general court martial level (which is what we are here concerned with) the defense representatives do not seem markedly inferior to the judge advocates. If an officer is secured as counsel, he serves the accused for nothing. If civilian counsel are available they may be used at the accused's choice and, naturally, expense. Enlisted men can and have served as counsel, although this is infrequent, perhaps because of the relative scarcity of lawyers in the

SUBSCRIPTION BLANK

Name _____ Date _____
Address _____
CHECK ONE
☐ STUDENT RATES
☐ 9 Issues Delivered at Langdell Reading Room Desk \$.75
☐ 9 Issues Mailed \$1.25
GENERAL SUBSCRIPTION and ALUMNI RATES
☐ One Year Subscription (36 issues) \$6.00
☐ One Term (12 issues) \$2.00

Signature _____

MAIL THIS BLANK, OR PHONE THE RECORD OFFICES
AUSTIN HALL, CAMBRIDGE 38, MASS.
Phone KIRKLAND 7600, EXT. 133

lower ranks. The judge advocate must prove his case beyond a reasonable doubt. Naturally all the prosecution witnesses must appear and be cross-examined in person (except where depositions like the old equity inquiries with mutual interrogatories and cross-interrogatories are used). Possibly Yamashita did not have all this, from reading the minority opinion seemingly he did not, but that was Army not Navy, a commission not a court, and no one seems very worried perhaps because he has no friends here. The defense has the usual opportunity to present witnesses, the accused can testify or not at his pleasure, and is free from comment if he declines the stand. It is a cardinal principle of Anglo-Saxon justice that no innocent man suffer, and we are apt to look at justice wholly from that point of view. But there is such a thing as justice to society too. The greater part of those now serving prison sentences in the Navy are men who were absent for long periods while their country needed them, who dodged overseas details, or who deserted in the field. Some other man had to serve longer overseas or in action because of their absence or desertion, and perhaps died while so serving. The man who quit the service when he was needed or who proved himself unfit by committing a serious felony deserves justice from the Republic and he has had it. He deserves justice but not clemency. We have enough scars from this war to heal without wasting balm on self-inflicted wounds.

C. G. S.

ORAL ADVOCACY — (continued)

the best efforts of counsel, a brief may fail properly to etch out the real argument on which he relies. Too many matters have to be covered, legal propositions developed, cases stated and explained. The point is well made in the Board's publication that in the few minutes of oral presentation, counsel has barely enough time to hammer home the reasons for deciding the case in his favor, without dissipating his energies on the negative effort of showing why the case should not be decided in opposing counsel's favor. Constant rebuttal of opposing counsel's arguments is more harmful than valuable for the very real reason that it confines the attention of the court to the narrow issue of whether opposing counsel has good or bad arguments. If they are good, the fact that better arguments are available to counsel's own side of the case may well be missed.

"Introduction to Advocacy" is admirably suited to the needs of a first-year student for finding out the realities of legal practice in the Commonwealth of Ames. Because the publication makes a tacit assumption that courts will be well-informed, interested and alert, it is doubtful whether all of its suggestions would be as practical in actual courtroom argument.

The new publication, 74 pages long, replaces the old "Technical Aspects of Brief-Writing," outlines a new form for the briefs with more emphasis on the definition of the principal issues, and provides in a convenient form necessary information on both the technical and substantive problems in brief-writing in addition to its section on oral advocacy. The booklet is being employed in all first-term arguments this semester, and will become controlling in upper term arguments with the next semester. Law club supervisors are urged to make sure that their first-term men are thoroughly familiar with its contents. Copies are available at the office of the Board of Student Advisers in Austin Hall.

D. M. O.

UNIVERSITY THEATRE

HARVARD SQUARE KIR. 4580

REVIEW—TODAY ONLY
Barbara Stanwyck — Dennis Morgan
"CHRISTMAS IN CONNECTICUT"

Monty Woolley — Grace Fields
"MOLLY AND ME"

Thurs., Fri., Sat., Aug. 1, 2, 3
Tom Breneman

"Breakfast in Hollywood"

William Elliott
"In Old Sacramento"

Starting Sunday, Aug. 4
Ann Sheridan — Dennis Morgan
"ONE MORE TOMORROW"

"Rendezvous 24"

Continuous Daily from 1:30

HOTEL CONTINENTAL

CAMBRIDGE, MASS.

"One of New England's Best Hotels"

Visit PICCADILLY INN for
Relaxation, Refreshment and Repast — Fine Foods, Reasonably Priced

BANQUET and DANCE FACILITIES
accommodating from 10 to 650 people

Chauncey Depew Steele, Jr., General Manager

KIRKLAND 6100

Orford Grille

36 CHURCH STREET
off Harvard Square

Serving delicious food and
rare liqueurs in refined at-
mosphere at moderate
prices

Tables available for banquets
and parties

AIR CONDITIONED

Tel. ELI. 9153

---naturally

YOUR BANK

HARVARD
SQUARE
OFFICE

HARVARD TRUST COMPANY

Bella Vista RESTAURANT

LUNCHEON

11:30—3:00

DINNER

6:00—9:00

A LA CARTE

9:00 until closing

Visit our COCKTAIL LOUNGE

KIRKland 4311

44 Church St. Harvard Square

FOR BETTER RESULTS
USE
CLASSIFIED
ADVERTISING

RATES FOR HARVARD LAW
SCHOOL MEMBERS

\$1.50 an inch One insertion
\$2.50 an inch Two insertions
\$3.00 an inch Three insertions

CONTACT THE RECORD OFFICES,
AUSTIN HALL

Briefs, Term Papers Typed.
Electric Typewriter.
Reasonable Rates.
CALL LAS. 6119.

RACKETS RESTRUNG

ONE DAY SERVICE
Air Pressure Machine Stringing
TENNIS & SQUASH SHOP
67A MT. AUBURN ST. CAMBRIDGE
Opp. Lowell House — Tr. 5417

Calendar

THE LEGAL WORLD

Ames Competition

Aug. 1—Exchange, Round 2A; Brief conference, round 4A.
Aug. 2—Exchange, Round 2B; Brief conference, round 4B.
Aug. 5—Argument, Round 1.
Aug. 6—Exchange, Round 3A.
Aug. 7—Exchange, Round 3B; Argument, Round 2.
Aug. 8—Exchange, Round 4A.
Aug. 9—Exchange, Round 4B.

Oral Advocacy Lecture

Aug. 5, 4:30 p.m., lecture on "Oral Advocacy" by Prof. Leach in Langdell Court Room. Primarily for first term men but all students are welcome.

Ends of Terms

First term—Oct. 4.
Second term—Sept. 24.
Third term—Oct. 4.
Fourth, fifth, sixth, seventh terms—Sept. 28.

Law Wives

Informal Dance, Kendall House, Saturday, 8 p.m., August 17th. Refreshment charge of 50c a couple. Call Mrs. Joseph Logan, KIR 1143, if you plan to attend.

Picnic, August 10th, Crane's Beach. Cars will leave Kendall House at 2:30 and 5 p.m. For information, call Mrs. Horace Kalik, KIR 7415.

Swimming. Students' wives are permitted to use the university pool, 41 Holyoke St., every Tuesday evening, 7:30 to 9:30 p.m. Suits may be rented, or wives may bring their own.

Clubs

Chancery Club, August 1, 1 p.m., weekly luncheon, Piccadilly Room, Hotel Continental. August 10, dance, ballroom, Hotel Continental.

THE UNIVERSITY WORLD

Lecture

Boston University Forum, Wed. July 31, 2:30 p.m. Soden Building, 84 Exeter St., "Russian Culture" by Prof. Igor Nicholas Astrow, B. U. lecturer on Russia and the Russian language. Wed. Aug. 7, same time and place, Mr. Edmund Goodell, President of the United Nations Association of Massachusetts. Theme of this series of Wednesday afternoon lectures is "Russia... Iron Curtain or Open Door". Free to public.

Harvard Wives

Tea and Bridge, Wednesday, August 7, 4:47 p.m. at Cambridge Y.W.C.A. Admission, 25c.

Museums

Fogg Art Museum. Still featuring photographic exhibition prepared by Editors of Life Magazine covering Europe's historic monuments and works of art in combat areas. For those who like to take their culture graphically and conveniently, this is worth an hour of any law student's time. Open Monday-Friday, 9 a.m. to 4 p.m.; Saturdays, 9 a.m. to 1 p.m. Closed Sundays.

Dancing

Folk Dancing, Friday, August 2 at 9 p.m. in Congregational Church, Garden and Mason Streets—Cambridge. Special class for beginners at 8 p.m. Sponsored by Harvard Folk Dance Society.

Square Dancing, at Phillips Brooks House, cancelled.

THE OUTER WORLD

Dance

Friday, August 2, 8 to 12 p.m., Student Dance at Trinity Church, Copley Square, free to all students.

Plays

Cambridge Summer Theatre, Brattle Street. "Good-Bye Again" with Roger Pryor and law wife Phyllis Brooks, through August 3. "They Knew What They Wanted" with June Havoc (Gypsy Rose Lee's little sister) from August 5 through August 11.

Boston Summer Theatre, New England Mutual Hall, Clarendon St., near Copley Square, Boston. Bert Lahr in "Burlesque" through August 3. Libby Holman in "The Best of Friends" from August 5 through August 11.

Colonial Theatre, Boylston Street, Boston. Tallulah Bankhead in "Private Lives." Scheduled to close on August 3 but like all summer theatres, very subject to last second changes.

Music

Berkshire Festival at Tanglewood in Lenox, Mass. Boston Symphony Orchestra under direction of Dr. Serge Koussevitzky. Thursday evening, August 1; Saturday evening, August 3; Sunday afternoon, August 4.

Museums

Boston Museum of Fine Arts, Huntington Avenue, Boston. Currently featuring Frank Dahl and Glynas Williams in an extensive exhibit of their original drawings.

Boston Public Library, Dartmouth Street at Copley Square, Boston. Current exhibitions of etchings, coins, and from the field of industry. Open daily including Sunday.

Gardner Museum, Worthington Street and Fenway, Boston. Italian and Dutch Masters. Open Tuesday, Thursday and Saturday, 10 a.m. to 4 p.m.; Sunday from 1 to 4 p.m.

Baseball

August 2 (night), 3 and 4, Braves play the Cubs. On August 5, they take on the Dodgers in a night game. The Red Sox return to play Philadelphia on August 6, 7 and 8.

Movies

University Theatre, "Breakfast in Hollywood" and "In Old Sacramento" from August 1 through August 3. "One More Tomorrow" and "Rendezvous 24" from August 7 through August 10.

Esquire Theatre, Symphony Hall Station, Boston. "Henry V" with Lawrence Olivier. Recommended if only to see how excellent movies can be.

Tremont and Majestic Theatres, Boston. Ben Hecht's "Specter of the Rose."

VETERAN'S ALLOWANCE (Continued)

he led a rather Spartan life during the term. Now his savings are shrinking a bit faster, his 65 dollars commands a bit less in goods and services. If conditions do not deteriorate in the next year or so, (and some alarmists apparently think they may), J. S. will leave school with a bank account. It won't be much, but it should be enough to pay his train fare to Chicago, where he hopes to practice. He will also sleep soundly in the knowledge that, without the G.I. Bill of Rights he would have been a bankrupt at the end of his fifth term rather than on his graduation day.

J. D. is a post-war phenomenon at Harvard Law School: The commuter. This unmarried commuter has seen his savings bank balance drop by some 600 dollars in his first two terms. At present he is spending 85 dollars to 95 dollars per month on current expenses alone. Early this year he clearly violated the spirit, if not the letter, of the G.I. Bill when he ordered a tailor-made suit. Before the war he paid 65 dollars for such a suit; however, due in part, no doubt, to the unscrupulous manner in which consumers have bid up prices, he paid 100 dollars for his suit. It will wear a long time.

X, the married commuter who has children, is a rare type and it is just as well that he is. He has the advantage of receiving 90 dollars per month. This goes somewhat farther for the married man with no children than for the one with two or three of them. However, legislation as broad as the G.I. Bill, and of a gratuitous nature cannot be expected to cover all possible situations. It is difficult to express a nation's gratitude—in detail.

Mr. X's expenses begin where J. S.'s end. This man rents his five room house for 130 dollars a month. It is not in one of the better neighborhoods. However, he has had the opportunity to purchase a six room house, built in 1901, in quite good condition and in a fine section for 8700 dollars. Such opportunities do not often present themselves, but he reluctantly decided it was more than he could afford. Mrs. X cannot work because of the children; Mr. X cannot work because he wishes to graduate. Unfortunately, he was an enlisted man in the Army serving in New Guinea and failed to save much during the war years. The result is that he will turn to the loan companies during his fifth term. If there is no serious illness in his family while he is in Law School, he hopes to graduate with an indebtedness not greater than 2000 dollars—plus interest.

Turning to the married man who lives in a Cambridge apartment we find that things are brighter. Y. got his two-room apartment for only 65 dollars per month (plus a deposit of 75 dollars to the janitor for some sort of services connected with getting the apartment. His bill for utilities is seldom more than 10 dollars per month. Mrs. Y. complains about food prices in Cambridge, and food shortages; she even belongs to some anti-black market group.

Now that the O.P.A. has been disciplined, this situation, Senator Taft doubtless believes, will clear up quickly, despite the recent flurry that has brought butter to 90 cents a pound, milk to 21 cents a quart, hamburger to 67 cents a pound, and steak to 97 cents a pound. Mr. and Mrs. Y. lead a quiet life, but occasionally they go into Boston for dinner, the theatre and a little night clubbing. That sort of an evening seldom costs more than 30 dollars. Mrs. Y. is a stenographer. Her salary (25 dollars a week) plus the 90 dollars subsistence check have enabled the Y. family to keep their monthly expenses close to their monthly income. This requires that neither of them buy any clothes and that they spend no more than 50 dollars per month on food. (Mr. Y. was rather obese anyway.) Their savings have not suffered any serious depletion as yet. If there is no increase in their expenses, they should have funds sufficient to live on for six months when Mr. Y. graduates.

Many of the married men who have children are now living in "Splinter Village," the University's temporary housing project, sometimes termed "Tortilla Flat." Mr. Z. is one of these. He was an Army flier and he has two children. His monthly expenses are between 150 dollars and 200 dollars. The rent—35 dollars—is unique in Cambridge, if not in the entire nation. Food again is a troublesome item. Last month Mr. Z's milk bill was 16 dollars, he paid 65 cents a dozen for eggs, 80 cents a pound for a roast, 69 cents a pound for bacon. The food bill is close to 85 dollars every month. Of course, now that artificial price controls have been removed in some fields such as meat, dairy products, gasoline, and eggs and the economic laws of supply and demand are in operation there, these prices will soon drop, despite the grumblings of radicals who do not have the economic insight of Mr. Robert Taft, LL.B. '13, cum laude.

These temporary houses have proved to be a tremendous aid to men in the Law School. With rents approximately one-half the average Cambridge rent, with basic utilities, stoves, ice boxes and a heating plant included, with furniture available at rental from the university for a reasonable sum, and with a grassy yard for the children, they stand out as the finest service rendered to the veteran by any agency or segment of the government or community. One cannot live there on 90 dollars a month, but one can live there without mortgaging his health and his future, as is often necessary elsewhere. Most of the families living in the project should be able to preserve a substantial part of their savings during their years at Harvard. With careful budgeting, Mr. Z. hopes to limit his expenses to 180 dollars per month—half to be met by his subsistence check, and 90 dollars per month from his savings.

The problems all face do indicate unmistakably, that the "G.I. Bill of Rights" is not an experiment in "boondoggling," that it is not the paternalism of a munificent government. Rather do they seem to indicate that only an ascetic, and he an exceptional one, could live and go to Harvard Law School solely supported by the G.I. Bill. However, there is a fine American tradition that a log cabin is indispensable to the man who wants the best in education.

J. L. O'D.

The author himself was a conscientious objector and served as a medical guinea pig.

The Plight of Conscientious Objectors

The author himself was a conscientious objector and served as a medical guinea pig.

It is generally conceded that the greatest challenge to the maintenance of civil liberties comes during a war period. The exigencies of total war runs roughshod over individual rights and privileges. The resulting contests between the wartime state and the individual add considerable material to that body of law designated as civil liberties law. The Second World War has been no exception. Perhaps one of the most striking illustrations of this conflict between state and individual in wartime is that of the conscientious objector to war.

In its most recent decision pertaining to conscientious objectors the Supreme Court in 1945 by a five to four decision upheld the refusal of the Illinois Supreme Court to admit a conscientious objector to the practice of law in Illinois. Summers, the applicant for admission to the bar, was classified as a conscientious objector by his local draft board under the Selective Training and Service Act of 1940, as amended. There was no question of the sincerity of his beliefs, according to the court. His position was one of non-violence. He was a believer in passive resistance. He would not serve in the armed forces but was willing to perform alternative civilian work as provided for conscientious objectors under the Act. Summers was admittedly qualified for admission to the bar but was refused on the ground that he would be unable in good faith to take the required oath to support the Illinois Constitution because his conscientious scruples would result in his unwillingness to serve in the state militia in time of war as required by a provision of the Illinois Constitution. The majority of the United States Supreme Court, speaking through Justice Reed, affirmed the Illinois Supreme Court decision on the ground that the responsibility for choice as to personnel of its bar rested with Illinois and only a decision which violated a federal right secured by the 14th Amendment would require reversal. Reasoning from the *Schwimmer* and *Macintosh* cases, which held that the United States will not admit to citizenship the alien who refuses to pledge military service, the Court said:

"even the powerful dissents which emphasized the deep cleavage of this Court on the issue of admission to citizenship did not challenge the right of Congress to require military service from every able bodied man. It is impossible for us to conclude that the insistence of Illinois that an officer who is charged with the administration of justice must take an oath to support the Constitution of Illinois and Illinois' interpretation of that oath to require a willingness to perform military service violates the principles of religious freedom which the 14th Amendment secures against state action, when a like interpretation of a similar oath as to the Federal Constitution bars an alien from national citizenship."

Justice Black, speaking for the four dissenters, argued that the Illinois Constitution itself prohibited the draft of conscientious objectors except in time of war and also excepted from military duty persons who were "exempted by the law of the United States"; that since Illinois had not drafted men into its militia since 1864 and that if it ever should do so again, it is not unlikely that it will, as has Congress, exempt men who are sincere conscientious objectors. Thus the probability that Illinois would ever call Summers to serve in a war is not great. Justice Black goes on to say that he

"cannot agree that a state can lawfully bar from a semi-public position a well-qualified man of good character solely because he entertains a religious belief which might prompt him at some time in the future to violate a law which has not yet been and may never be enacted. Under our Constitution men are punished for what they do or fail to do and not for what they think or believe. Freedom to think, to believe, and to worship, has too exalted a position in our country to be penalized on such an illusory basis."

Without attempting to discuss the ideological basis for conscientious objection to war, it should be of interest to further examine the experiences of this minority group as one indicium of the level of civil liberties maintained in the United States during the Second World War.

In the first World War Congress provided in the Selective Service Act of 1917 for the exemption from combatant service in the armed forces of any man who was a member of "... any well-organized religious sect or organization... whose existing creed or principles forbids its members to participate in war in any form, and whose religious convictions are against war or participation therein." Thus exemption was provided only for members of recognized peace churches like the Church of the Brethren, the Society of Friends and the Mennonites, and the exemption was from combatant service only; no alternative service of a civilian nature was stated in the law. Ultimately some non-military forms of alternative service were approved for conscientious objectors, but all drafted men were considered to be members of the army until they finally were discharged, and therefore subject to military, not civil law.

In spite of an official Army policy of "kindly consideration," there were brutalities in the treatment of conscientious objectors in the army camps and in prisons. Some men in the camps were forced into uniform, beaten, immersed in latrines, prodded with bayonets, and threatened with execution. COs in military prisons were often kept for long periods in solitary confinement in dark, cold, unsanitary cells. Some were manacled for nine hours a day to the cell door in a standing position at such a height they were obliged to stand on their tip-toes in order to relieve the strain. The War Department officially discountenanced such measures, but did not prevent their being used in a number of instances.

Seventeen conscientious objectors were sentenced to death and 142 to life imprisonment. Others were given sentences ranging from one to 99 years. All of these sentences were eventually commuted, the last conscientious objector being released from prison in November, 1920.

Statutory Provisions

In the Second World War the Selective Training and Service Act of 1940, as amended, provides, in Section 5 (g), that persons who, "by reason of religious training and belief are conscientiously opposed to participation in war in any form," if their claims are sustained by the draft authorities, will be assigned to non-combatant military service or "to work of national importance under civilian direction." There is also a provision that any registrant claiming conscientious objection whose claims are not allowed by his Local Draft Board can take an appeal to one of the Appeal Boards set up under the Act. The appellant is entitled to a hearing conducted by the Department of Justice, which then must make a recommendation on the case to the Appeal Board. In making its decision the Appeal Board must consider, though it is not bound by, the recommendation of the Department of Justice.

It is to be noted that the draft provision for conscientious objectors in the Second World War broadens the base of exemption from the narrow recognition by the Selective Service Act of 1917 of only conscientious objectors of the historic peace churches to include all who were conscientiously opposed to war so long as their opposition was by reason of "religious training and belief."

One of the major deficiencies of the Selective Training and Service Act of 1940 was its failure to define "religious training and belief." In consequence of this omission there was a wide variation of the interpretation of this phrase by local draft boards. In December, 1940, the then Director of Selective Service, Clarence A. Dykstra, sent out a memo for the guidance of local draft board members who had to decide individual cases. In it he pointed out that the language of the Act did not "require membership in a religious organization or sect as evidence of the sincerity of their convictions." He made the following statement:

Religious training or discipline may be considered as having been received in the home, in the church, in other organizations whose influence is religious though not professedly such, in the school, or in the individual's own religious experience and conduct of life. Any and all influences which have contributed to the consistent endeavor to live the good life may be classed as "religious training." Belief signifies sincere conviction. Religious belief signifies sincere conviction as to the supreme worth of that to which one gives his supreme allegiance.

This broad definition of "religious training and belief" was considerably narrowed when in March, 1942, Mr. Dykstra's successor sent out a new interpretation. General Hershey wrote:

In each case I must be satisfied that the objection is based on "religious training and belief" which contemplates recognition of some source of all existence, which, whatever the type of conception, is Divine because it is the Source of all things.

Thus it appeared from this definition that in order to be "conscientious" under the law, an objector must prove a belief in a Divine Creator. Less than a year later, however, the United States Circuit Court (Second Circuit), in its decision on the *Kauten* case, stated:

A conscientious objection to participation in war under any circumstances... may justly be regarded as a response of the individual to an inward mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse.

Local Board members reading these varying interpretations may have found them confusing. Many Local Boards, however, were inclined to set up their own standards. This resulted in a multiple interpreted standard of "religious training and belief."

The registrant who could convince draft authorities that he conscientiously opposed all war by reason of religious training and belief, and who was willing to accept assignment to non-combatant military service or Civilian Public Service received the draft classification I-A-O (for noncombatant service) or IV-E (for Civilian Public Service).

Men who were assigned to noncombatant military service were regularly inducted into the armed forces and were assigned to non-combatant units. After 1943 they were assigned to the medical corps only. Most publicized I-A-Os were Lew Ayres, movie actor, and Elmer Doss, winner of the Congressional Medal of Honor.

Men who were classified IV-E were men unwilling to accept any form of military service, noncombatant as well as combatant, but were willing to be assigned alternative civilian work in lieu of military service. Under the Act, these men were assigned to "work of national importance under civilian direction." The problem of how this statutory command was to be carried out was delegated by the President to the Director of Selective Service by Executive Order 8675, issued February 6, 1941. Thus, though the Act provides for "civilian direction," the administration of the alternative service program for conscientious objectors, classified as IV-E, has been in charge of General Lewis B. Hershey and his military staff of assistants. Despite this apparent illegality, the courts have been loath to overthrow this method of carrying out the purpose of the Act.

The Camps

Conscientious objectors who were classified IV-E were assigned to Civilian Public Service Camps. Subject to the final administrative authority of National Selective Service Headquarters, these camps were administered jointly by the National Service Board for Religious

Objectors (consisting of representatives of the historic peace churches and other peace agencies) and representative technical agencies of the federal government (such as the Department of Agriculture). The federal agency administered the work project, frequently a former C.C.C. tree nursery or national park project, and the N.S.B.R.O. administered the affairs of the men.

The costs of support of the men in Civilian Public Service camps has been met entirely by the private contributions of the churches and peace agencies supporting the program and by the men themselves. The government supplied only the physical equipment of the camps and the technical supervisors of the work project. When the program was first drawn up the question of financial support thereof was discussed, and Clarence Dykstra, the Director of Selective Service, said that he did not think an appropriation could be obtained from Congress for work camps under private auspices. The three historic peace churches, Quakers, Mennonites and Brethren, then agreed to try to finance it themselves. The program has cost them well over a million dollars a year. Thus, without cost, the government has had the benefit of the labor of these men for more than four years. The men, their families, and churches generally accepted as inevitable the necessity of paying for the maintenance of the men. Many of the men, so long as their savings lasted, attempted to contribute to their own support. Thereafter, they were obliged to depend on the largesse of the peace churches. An allowance of \$25.00 per month was available to each man from these sources. The men received no other compensation. Clothing was supplied by the man himself or the peace churches. There was no provision for dependency allowances nor insurance by the government. Any help for needy dependents was supplied by the private sources. And there is no provision for these men in the "G.I. Bill of Rights."

(To be concluded next week.)

JIM'S PLACE
30 DUNSTER STREET
FAMOUS FOR CHOPS
STEAKS, SEA FOOD
Complete Dinners .50 - 2.00
Make JIM'S PLACE
Your Eating Place
Complete Air Conditioning

Libraries Bought for Cash
When your Books are for Sale
Phone MR. WILLIAMS, CAP. 7520
WILLIAMS BOOK STORE
85 WASHINGTON STREET, BOSTON

"GEORGE'S"
The Cottage Grill
Breakfast Lunch Dinner
Soda Fountain Sandwiches
94 Holyoke Street

TENNIS RACKETS
ALL MAKES — ALL PRICES
Largest Variety in New England
TENNIS & SQUASH SHOP
67A MT. AUBURN ST. CAMBRIDGE
Opp. Lowell House — Tr. 5417

HASTINGS HALL GETS COCA-COLA MACHINE

Installation Under Auspices Of The Phillips Brooks House Law Committee

Installation of Coca-Cola machines in Hastings Dormitory is expected shortly, it was announced today by Livingston Hall, Vice Dean. For some time there has been agitation to have such machines placed in the dormitories for convenience in late wakefulness, mixer making and just plain thirst quenching. Now permission has been obtained, and arrival of the cooling equipment is imminent.

Phillips Brooks House Law School Committee is the proprietor. Their members have been active in the drive for the facility, and the profit or loss, as the case may be, will inure to its funds. Disposition of empty bottles has been one of the problems contemplated with possible liability from falls, and general considerations of orderliness receiving prominent mention. Dean Hall requests the cooperation of all concerned to the end that Hastings not be reduced to a shambles of broken glass. If the bottle problem is not met satisfactorily it may be necessary to have the machines removed.

If the supply of Coca Cola is insufficient to meet the demand, other and similar beverages will be dispensed. It is anticipated that the demand may well exceed the supply at the outset.

For Accurate, Neat, Technically-Correct Typing of Your Brief
Call JACKSON — TR. 8165
— Typing for Law Club Men Since 1930 —
ELMER JACKSON
33 Trowbridge Street

Rent-a-Bike
for easy riding
lightweights
30¢ AN HOUR
\$175 PER DAY \$425 WEEKLY
LOW COST, LONG RUN
TRANSPORTATION
Buy a bicycle to solve the home-to-school problem.
This means of transportation enables you to avail yourself of better living accommodations out of the high rent congested, local areas.

REPAIRS
Done by our expert craftsmen. Under their skillful hands, your bike emerges like new!
OPEN SUNDAYS

THE BICYCLE Exchange
3 BOW STREET, CAMBRIDGE, MASS.
Tel. KIRKland 8535

SHORTS

HEAVY WHITE COTTON
BUTTON FRONT ELASTIC SIDES

\$1.95 each

The COOP
Concentrate Your Buying—Build Your Patronage Refund

HARVARD LAW REVIEW

SPECIAL STUDENT SUBSCRIPTION RATE

Volume 59 Next Four Issues	\$1.00
Volume 60 Eight Issues	\$2.00
(Regular rate for 8 issues \$4.50)	

Sets of the Harvard Law Review will be seen in the law libraries of the country's foremost law firms. Many of these sets were started at Law School by men who early recognized the Review's value as a comprehensive sourcebook devoted to scholarly and incisive analysis of the vital legal problems of the day. Begin your library now by taking advantage of these low introductory rates!

Inquire at

Harvard Law Review Association
GANNETT HOUSE
CAMBRIDGE 38, MASS.