

The Harvard Law School Record

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REVERSAL OF KUOMINTANG STAND ASKED

Professor Seavey Starts Move by U.S. Group Against Chinese Actions

Professor Warren A. Seavey, long time friend of China, reacted to the recent killing of democratic leaders in China by setting in motion the influence of American Defense, Harvard Group, with a telegram to the State Department urging withdrawal of United States support from the Chinese National Government until the Kuomintang permits participation of democratic elements in state affairs.

The telegram was signed by twenty-seven Harvard professors and stressed that harm to American interests would result if the Kuomintang condonation of the killings was continued.

The text of the telegram sent is as follows:

Recent killing with Kuomintang approval of democratic and non-communist leaders seriously harmful to American interests. We of Harvard University urge withdrawal of all support until Kuomintang permits participation of democratic elements."

American Defense, Harvard Group, is an association of Harvard professors and friends formed after Dunkirk for the purpose of carrying on propaganda activities to make more Americans aware of the danger threatened by the successes of the Japanese in China and the Germans in Europe. After Pearl Harbor the group, numbering about one thousand, continued its activities for the purpose of getting information and using it to the best advantage in support of the war effort. Among the most active of the group were former Dean James M. Landis, Professors Seavey, Dodd and Leach.

The group achieved notable success in 1944 when the Chinese government announced plans for education in China and declared its intention to educate students in the principles of the Kuomintang and to control not only what the students studied but also what they thought and wrote. This appeared to American Defense to be inconsistent with American theories of freedom of thought and expression and Professor Seavey sent a telegram for the group to the State Department in protest. The State Department took steps to procure the removal of a Chinese Cabinet Minister, and the Kuomintang renounced its plan.

"Recently it has appeared," Professor Seavey stated, "that the Kuomintang has not merely refused to deal with the Communists, who, it must be admitted, are frequently unreasonable, but also has been engaged in approving of the murder of the leaders of liberal thought in the rest of China. This is a very dangerous tendency, opposing not only the best interests of China but also the best interests of all democratic people."

Upon the discovery of the Kuomintang attitude, the Harvard group, at the instance of Professor Seavey, dispatched the telegram to Acting Secretary of State Acheson urging that the United States use its economic power to prevent the destruction of liberal elements in China. The telegram would have been sent to recently appointed Ambassador Stewart had he not been seriously ill. The signers believe, according to Professor Seavey, that the United States can force the Chinese government to withdraw from the position which is now taken by the Kuomintang.

(Continued on page three)

Thorough Research Epitomizes Standard Set by Law Review

For the edification of the 98% of the student body, who are not members of the *Harvard Law Review*, the *RECORD* recently asked James Wilson, '47, President, to explain the work of the student staff in connection with the preparation of an issue.

The two departments in which the students are principally engaged are Recent Cases and Notes. To find those cases which are worthy of comment, all the reports of the United States, England and Canada are read by the staff as they are published in the advance sheets. All the session laws of the states and the cases arising thereunder are also covered. In a meeting with the Case and Note Editors, those who have found significant cases and statutes report them. From these the Case Editor selects those which he thinks worthy of treatment in the *Review*.

The next step is the assignment of a man to do a "prelim" for the purpose of determining whether the case or statute selected represents a break in the line of precedent, a new point, or a question of other significance; and also whether the material has been discussed directly in any previous publications. The procedure in the usual "prelim" is first, to check through the index of the *Harvard Law Review*, the *Index to Legal Periodicals* and treatises for articles, notes, and cases in point. All of the matter thus located is skimmed through with an eye open for citation of leading primary authorities. Next, the more pertinent of these leading cases are read. After completing this research, the "prelim-er" types out a two or three page report containing abstracts of the principal case and the primary authorities, a precis of secondary authorities and finally the writer's own opinion on the subject involved and whether or not it should be published.

"Prelims" and the writing up of recent cases are the primary training for new members of the *Review* who do usually at least three months of this work before qualifying as note writers. If no duplication is uncovered in the "prelim", the Case Editor assigns the case or statute to a man who is allowed one week in which to write it up. This means generally about forty-five hours of work for the writer and results, after editing, in one to two pages of print in the *Review*.

The Notes are usually the work of third year men. The topic may be suggested by discussion in the case meeting, in an advanced class or seminar or in a recent publication or it may be the idea of one of the editors. Again care must be taken to avoid repeating something already covered adequately in another law review. The note "prelim" is done in three days and the man assigned to write the note itself has one month in which to do it. He will have available the advice of one of the professors in whose field the subject falls. This liaison with the faculty is for the purpose of advice and not censorship, as the final word is with the student editors. The completed note covers from six to eight pages.

The key to the high quality of the *Harvard Law Review*, Wilson feels, is the extreme care with which the cases and notes are edited and checked by the editors and writers together. Every citation is investigated thoroughly for its pertinence and to exclude the possibility of dicta not cited as such. The work is checked four separate times through the various stages of going to press.

The whole staff of the *Review* works under a constant pressure of competition from other reviews, the threat of reversals of cases chosen for

discussion and the uncertainties of legislation such as the present situation with regard to price control. And further, the purpose of the *Review* is to keep the profession abreast of changes and trends of the law which means that everything must be printed as soon as possible. With this race going on always, nothing could be more discouraging than a reversal that returns a significant change in the law to a run-of-the-mill affair; or a repeal of a statute under which new points had arisen; or another law review treating the same subject matter as a Harvard note but getting earlier publication. All of these occurrences mean that the *Review's* note must probably be killed and all the work which produced it is wasted for purposes of publication.

In Wilson's opinion the chief values of the *Law Review* to the students working on it—the opportunity to apply the knowledge picked up in the school courses, the emphasis upon keeping posted on the state of the law and the fact that specialization is discouraged so that all members of the staff leave school with a complete picture of the whole field of the law.

C. S. L.

BABIES TO GET NEW NURSERY

Expansion Enables Admission Of 80 Children In September

Apparently veterans aren't the only ones who are "sweating out" admission to an institution of learning these days, judging from the list of infants desiring to matriculate at Harvard's nursery school at Phillips Brooks house.

However, there is a new air of optimism in juvenile academic circles as a result of the University's decision to provide facilities for almost tripling the enrollment by constructing a new building for the school at Kirkland street and Kirkland place.

Construction of the new campus is now in progress, and according to Miss Winnifred Lydon, director of the school, the Quonset-type structure should be ready for the new crop of two-year-olds in September.

When it moves to its new location, the school will have a capacity of 80 children per day, as contrasted with the 30 now being schooled at Phillips Brooks house. The new building will have a separate room for each of the two, three, and four year old groups, with a separate play area for each group outdoors.

Primary purpose of the University in expanding the nursery program is to accommodate the children of veterans studying at Harvard. Consequently, children of veterans will have preference for admission to the school. Although a tuition fee of \$1.25 per week is charged, the greater part of the expense of operating the school falls on the University.

In addition to Miss Lydon, the staff consists of Miss Elizabeth McKee, Miss Virginia Wright, Miss Margaret Cote, Mrs. Mary Ellison, and Mrs. Rosalind Sullivan. Also on the staff is Dr. Dorothea Moore, pediatrician from Harvard Medical School.

The *Record* still has available a few positions, both Editorial and Business, and solicits candidates for these. If you are interested come to the office, Austin Upper, any afternoon between 2:00 and 5:00.

Arnold Rivkin, '48, Member of A.V.C. National Planning Group, Chosen Head of Education Committee

Few men at Harvard Law School have solved the problem (sic) of what to do with those few moments when they are not masticating, imbibing, slumbering, or meditating on the law as effectively as Arnold W. Rivkin, '48. At the end of his first term this past June, Rivkin went to Des Moines, Iowa, for the first National Convention of the American Veterans Committee, and became the unanimous choice of the New England delegation for their regional Vice-Chairman.

This is not to infer that greatness in AVC was thrust upon Rivkin. He has been one of the most active leaders of the Cambridge Chapter since it was chartered in February. His alertness, stability, and judgment are some of the reasons he has been a representative of that Chapter at the State Conference of the Massachusetts Chapters of AVC, held at Worcester in May, and the chairman of the Cambridge delegation at the Des Moines Convention.

Rivkin's responsibility for all AVC activities in New England also carries with it a position on the National Planning Committee, AVC's principal governing body. We managed to commandeer a few moments of Rivkin's time the other day, just after his return from the second meeting of the newly-elected N.P.C., held in New York, to ask him a few questions about himself and the American Veterans Committee.

He modestly announced that he had been appointed to head the Education committee, whose function will be to inquire after the operation of those provisions of Public Laws 16 and

346 which deal with education, and to suggest revisions and additions to veterans educational benefits.

The mantle of leadership falls easily upon the Atlantean shoulders of Arnold Rivkin, having been elected president of the student body in his junior and senior years at Brooklyn College, New York. His impressive scholastic record includes undergraduate honors and a directed verdict of "A" in the case of Rivkin v. Criminal Law.

As reward for a highly commended though brief civilian career in War Department administrative duties and an extended ASTP course in French Language and Area Study, Rivkin was assigned in 1944 to the 69th Infantry Division as assistant squad leader. Later transferred to the 78th Division, he saw action in the Bulge, Ardennes, and Rhineland campaigns, and received a battlefield promotion to staff sergeant. Wounded at the Remagen bridgehead, Rivkin spent eight months in various hospitals before being discharged in September, 1945.

The Constitution of the American Veterans Committee forbids it from declaring its choice of candidates for political office, but this will be no bar to the publication and publicizing of the records of all candidates for re-election and the stand AVC has taken on all controversial issues. "If Congress is to be made as responsible to the people as it should be in a democracy, every citizen must know what his senators and representatives have done and what they may be expected to do," Rivkin asserted.

As might be expected, Rivkin is eloquent on

the subject of AVC and what it is trying to do. "The basic philosophy of AVC," he explained, "may be summarized as follows: that as citizens first and veterans second, we will work for a more democratic and prosperous America in a more stable world."

"Veterans' organizations, both good and bad, have always existed, but none before AVC assumed any responsibilities as citizens in addition to their fraternity as veterans, and none represented a progressive attitude," Rivkin continued. "Consequently, it was necessary to form a new veterans' organization after this war to appeal to those veterans with liberal and progressive tendencies. The proof of this necessity has been evidenced by the positive effect AVC has had on the old-line veterans' groups, forcing them to take more pronounced and progressive stands on issues which they formerly would have avoided."

"AVC is an avowed pressure group, the first, on a large scale, of citizens representing all professions, all salary groups—a genuine cross section of the nation," Rivkin stated, pointing to the recent decision of the National Planning Committee to establish AVC's permanent headquarters in Washington, if suitable quarters and housing accommodations can be found. In our democratic system pressure groups play a crucial part, as witnessed by the recent agitation against the Wyatt Housing Program and the OPA. It is time the average citizen was represented by a pressure group."

M.B.B.

Hemenway Gymnasium

Hemenway Gymnasium, whose ante-bellum role was exercise center for law students, will not be ready for basketball and squash players until next year, it was learned last week. Its annex, jammed close to Austin Hall will be torn down in the near future. The reconversion job will cost the government \$80,000 and is being delayed partly because only third-class materials are available at present.

When Samuel Austin's brother donated the money for the construction of Austin Hall, he stipulated that no building be erected within 60 feet on any side. That provision accounts for the location of the Gymnasium and Langdell Hall, but did not prevail against the government's eminent domain powers in the wartime emergency. The annex is regarded as a distinct fire hazard and its destruction will facilitate the reconversion of Hemenway.

HOUSING PROBLEM REMAINS COMPLEX

Devens, Brunswick To Provide Shelter For 500 Couples; Law School Situation Due To Ease

Although 500 couples will find lodgings at the Hotel Brunswick and Fort Devens beginning next term, housing at Harvard remains the major problem in the educational picture for the man lucky enough to win admittance. One thousand applications will be unsatisfied at the Fall term begins, according to the University Housing Office in Straus last week.

Less than a dozen vacancies are expected in the temporary housing units, otherwise known as "Tortilla Flats," on Jarvis Court, Andover Court and Harvard Way.

That the problem for law students may be expected to take a turn for the better is indi-

cated in estimated October enrollment figures released from the Dean's Office today showing a marked decline in the number of married students. At present more than 40 per cent of the law school students are married. In the entering class next term less than 20 per cent are married, according to their reports to the Dean's Office.

Out of a first term class of 404, 329 are unmarried. All but 28 of the 404 students are veterans. Six hundred and fifteen of the 1,447 students now in the law school are married.

Single law students will continue to live in Business School dormitories but their numbers will not be increased. Beginning next term, no law students will live in the College Yard which will be reserved exclusively for Freshmen.

After considerable study, University authorities gave up the idea of converting Eliot House, at the corner of Boylston Street and Memorial Drive, into a dormitory for married students because of the drastic physical changes involved.

Although the Fall Term of the Law School begins a month later than the College and two weeks after the Business School, law students will be given their fair share of the facilities afforded by the Lovell General Hospital housing units at Fort Devens. The Brunswick will accommodate 100 couples without children. Devens will take care of another 400, with and without children, and rents there will be adjusted to offset the cost of commuting. Applications may be made at the Housing Office, Straus Hall, in the Yard.

"Married students will also find the housing situation tight at the present writing," cautions *Law School Housing Bulletin Number Three* after warning unmarried students to arrive in time to spend a week or more to search for quarters. This *Bulletin* was sent to all prospective students last week.

Married students, the *Bulletin* urges, would be wise to arrive "well in advance" of the beginning of the term in order to have several weeks for a full time search. Filing an application blank with the Housing Office, concludes the *Bulletin*, merely gives a certain priority in assignment of quarters, where available, and in furnishing leads for the students' own search.

Students applying for assistance at the Housing Office must accept assignments to Fort Devens unless there are particular reasons why they cannot, the Housing Office has ruled. The area overlooks the Nashua River and is somewhat separated from the main part of the Camp. The present buildings will be transformed into housekeeping apartments with one, two and three bedrooms, livingroom, bath and kitchen. Water, central heating, domestic hot water, and electricity for cooking and lighting will be provided. Commuting facilities via the Boston & Maine Railroad, which has a spur track running into the area, are being arranged. The ride into Cambridge takes about an hour.

In providing the Hotel Brunswick, the University has estimated that it would incur an initial expense of at least \$30,000 and an expected operating deficit during the period of occupancy of possibly \$50,000.

No new buildings are being contemplated by the University for the housing of unmarried students, veteran or non-veteran. All dormitories are being utilized 50% in excess of their normally rated capacities.

AIDES NEEDED FOR FOOD DRIVE

Campaign To Relieve University Centers In Europe Opens Aug. 12

The Harvard Food Relief Committee will be in need of additional assistants from among the student body to do collection work during the coming fund-raising campaign. Originally created by the Harvard College Student Council, the Committee is working for the relief of students in European universities. Until now its main source of income has been the money saving achieved in the college dining halls through economies in the menu made with the consent of the students. This source netted \$2400 in June after the plan had been in effect only for three and one-half weeks. To this sum the Student Council added \$1000. During the summer term the return from food economies has fallen from the previous average of twenty-five cents per man per week to an estimated ten cents. Although the income of the fund has decreased, the need for food relief among European universities remains as great as ever. To solve the problem a fund raising campaign has been decided upon for the week of August 12, with a goal of \$15,000. Students who are willing to assist in the drive should contact Richard D. Campbell, Jr., Harvard '46, at Kir. 9410, or Thomas Kellifer, '3L who is Chairman of the Law School Committee of Phillips Brooks House.

Distribution of the \$3400 contributed from Harvard was as follows: \$1600 to Vienna, \$1000 to Paris, \$300 to Grenoble, and \$500 to Czechoslovakia. The \$3400 bought a total of 3100 lbs. of Crisco, 225 lbs. of powdered milk, 1300 lbs. of coffee, 2500 lbs. of corned beef, 180 lbs. of prunes, 2700 tins of sardines, 300 pints of orange juice. Letters of appreciation and thanks for these gifts have already been received although some of the food has not yet been delivered.



U. S. A. Signal Corps—Harvard Alumni Bulletin



Harbus

Although Fort Devens (upper photo) and "Tortilla Flats" (lower photo) are not sumptuous living quarters, they are temporary solutions to the housing problems of many students and their families. Barracks life is not yet over for the veteran. Despite these emergency measures which have somewhat alleviated the housing shortage the situation still remains critical and there will not be sufficient space to accommodate all married students and their families.

Law Wives Inaugurate Children's Playground

The "Law Babies" newest club at Harvard Law School, had its first meeting yesterday in the back of Kendall House.

Meetings for children of Law School students will be held every Tuesday, Thursday and Saturday afternoon from 1 to 5 p.m., according to Mrs. Richard H. Wolford, chairman of the project.

The supervised playtime is planned so that mothers can take turns watching the children and have free afternoons for shopping and working. "Any child may attend," says Mrs. Wolford. "Tiny babies may be left in cribs." The Law Babies have no dues, but parents are asked to donate one dollar to help pay for the wading pool and toys for the children. There will be no playtimes on rainy days although later the Law Wives hope to fix up a playground in the basement at Kendall House.

Mothers who wish to have their children participate are asked to see Mrs. Wolford at 50 Jarvis Court.

SCHOLARSHIP AWARD REQUIREMENT LISTED

Application For Grant Must Be Filed One Month Before Current Term Ends

Information for students desiring to apply for one of the forty-odd scholarships available to law school men was released this week by Livingston Hall, vice dean.

Application forms, which may be obtained from the receptionist in Langdell Hall, main lobby, at the end of the first month of the term, must be filed with the assistant secretary not later than one month before the end of the term preceding the term for which the award is desired. It is not necessary to apply for a particular scholarship.

Awards are made on the basis of financial need, scholarship (an average of 70 or higher is required), and character. If the income of the applicant is adequate to meet all necessary current expenses, no award will ordinarily be made. The possession of a modest amount of capital, particularly in the case of married men with several terms of attendance in prospect, does not necessarily bar an award.

Any student is eligible to apply for a scholarship, whether or not a veteran, except that no scholarships are awarded at the end of the third term. A student whose grades have been below scholarship average may apply for a scholarship for the next term if he believes this term's grades may be up to the requirements. Awards are made for one term at a time, and a new

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Editorials

SOURBELLIES and REACTIONARIES—

"A University is under the obligation to give general education to as many as possible, but the professional schools ought not to train more than the profession can absorb. A glut of lawyers creates unemployment and frustrated desires . . . It would be mistaken patriotism to train too many. . . A disappointed lawyer is just smart enough to make trouble for everybody. He is likely to become a sourbelly and a revolutionary."

So says Dean Young B. Smith of Columbia Law School as quoted recently in *Time* magazine. He has the New York Bar Association on his side. Last winter they sent Mr. Landis a copy of a unanimous resolution which, in effect, asked the laws schools to curb their output because the legal profession was overcrowded. "Those fellows are afraid of competition," said Mr. Landis contemptuously. He made no attempt to comply and there is not a jot of evidence that Dean Griswold concurs with Dean Smith. Our plant is running at full capacity and is expanding. It should continue to grow. Austin's library will soon be open. Classrooms have many free hours. It is up to the administration to find the professors—and perhaps up to the alumni to provide additional funds.

The LL.B. who finds all the clerkships taken, all the office space rented, need not turn to the nearest induction station for sourbellies and reactionaries. A good legal education prepares a man for more than the practice of law. To the extent that it restricts his abilities it needs revision. Or if he does turn to sourbellying and revolutionizing, his analysis and mastery of the pertinent facts may in the end justify the "trouble" he makes.

Of course it is "mistaken patriotism to train too many." It is bad manners to eat too much. It is foolish to drink too much whiskey. It is wasteful to spend too much. How many can the profession "absorb?" And who decides? Justice Holmes always expressed great faith in the market place as the arbiter in such matters. In all events the other vendors do best if they hold their tongues and attend to their own businesses.

Columbia's expansion by fifty percent above normal is larger than our own. They intend to continue on that basis for the next five years. Dean Smith apparently meant to advise other, less-favored law schools, because his dicta have no bearing closer to home, but even in that light his statements are wanting in both the logic and the common sense the law student sweats to acquire.

C. O. P.

DISSENT—

It is difficult to concur with the preceding editorial in its desire to overcrowd the law school and subsequently the profession. The obligation of Harvard Law School is to train men for the practice of law as effectively as possible, not to train as many as possible nor to rush them through at maximum speed.

The school's enviable reputation does not rest upon the size of the graduating class but upon its quality. That quality in turn depends upon judicious selection of entrants, competent teaching, availability of library and other facilities, and the creation of an atmosphere of law.

Presumably this further increase in the size of the school would weaken all these influences; the increase in the size of the classes would be at the bottom of the pile, from the less desirable applicants; the teaching staff, already overworked, would be either diluted or exhausted, with a consequent injury to the instruction; the size of the classes, the teaching load and the schedule which are already causing grave concern, would not be ameliorated by any 50% increase in the student body. The library's usefulness as a place of study is already limited by its Grand Central noise count in the mornings, its shortages of cubicles, and the frequency with which the Reports are unavailable. To enlarge the school would accentuate rather than alleviate these conditions. Why teach more men less???

It is understood that a further enlargement of the school is already pledged for October, which will strain our facilities to the bursting point. Circulation of hortatory material, designed to put on pressure for yet further increase is idle and vicious.

The idea of letting the market place alone decide how many lawyers we can use is rather like letting the passengers rush to the boats to ascertain their capacity in a sea disaster. An overcrowding of the profession will lead, it is submitted, to partial wastage of expensive education, lowering of ethical standards in the profession, barratry, ambulance chasing, and eventually lawyers selling insurance, real estate, and fidelity bonds.

Any revision of the curriculum to add general education to the already formidable load we carry would be to pile Ossa on Pelion. There is far more law now than we can even meet in three years. A law school can only prepare men for related careers in so far as a legal education so prepares them. Empty bellies beneath white collars bred Brown Shirts in Germany.

Dean Smith's remarks have a great deal of merit. Until we get out of law school and experience the actual conditions of the profession we should be very slow to criticize any move to ease its problems; it ill behooves one who has not yet wrung his very living from the practice of law to suggest placing more in the field than it can support in ethical decency. It is poor for a student to urge the lowering of the standards of the school, on whose excellent reputation his own chances of employment and initial success so largely depend.

This law school's responsibility is not so much met by opening its doors and lowering its standards, as by consistently graduating classes of men, equipped to rise to the top of the profession. So too the profession meets its responsibility to the public, not in numerical quantity of membership, but by the service it is prepared to render.

C. G. S.

Letters to the Editor

July 26, 1946

To the Editor of the RECORD

Sir: I compliment you on the first issue of the Harvard Law School RECORD. I hope that you will keep it going according to that standard and improve it. It seems to me that it should fill a real need in the life of the Law School.

Will you put me down for a subscription to it? I shall send you a check to swell your fast disappearing funds. . . .

My best wishes to the RECORD.

Sincerely yours,
J. M. LANDIS,
Chairman, Civil Aeronautics Board

To the Editor of the RECORD

Sir: I was glad to receive the first issue of the Harvard Law School RECORD.

You and your enterprising staff are filling a "long-felt want," as the patent lawyers used to say. All the more credit to you, in view of the great demand that the school work must make upon your time.

Wishing you the success you deserve, I am

Sincerely yours,
ROBERT P. PATTERSON,
Secretary of War and President of the Harvard Law School Assoc.

To the Editor of the RECORD

Sir: I enclose herewith my check, payable to your order, in the amount of \$6.00 to cover a yearly subscription to the Harvard Law School RECORD. Please be sure to let me have all the issues subsequent to that of Wednesday, July 17, 1946.

I have read the first number with a great deal of interest, and wish to confirm what its founders have doubtless surmised—that the paper is bound to be not merely a means of reawakening alumni sentiment on the part of the graduates of the Law School, being the spearhead for the coming drive for additional funds for plant facilities, library, chairs and scholarships; but the most direct instrument yet devised for obtaining positions for the graduates of the School. In the latter connection, I wish to suggest it would be of great benefit to those alumni who subscribe to the paper to read in its pages a list of the names, residences, undergraduate colleges, and grades of all members of the student body, rather than the limited information transmitted in the first issue, if it is the purpose of the School to increase its influence in the Middle Western, Southern, Northern, and Pacific areas of the nation; and an early acquaintance of firms in those territories with the personnel and calibre of young men about to be graduated is indispensable.

I still feel that the function, by which the Law School has turned over its best young men to New York offices, thereby siphoning them off from more natural placements in their places of origin, is the function most to be criticized.

I look forward to receiving further issues of your paper with interest.

I remain with warm wishes for your success,

Sincerely yours,
Kurt Pantzer
(Member of the Harvard Law School Association Council)

July 26, 1946

To the Editor of the RECORD

Sir: Suggestions for what they are worth:

1) The library would benefit materially and I am sure the students would cooperate if each table were provided with clear paper tape for the repairing of torn pages in the case books and reporter systems. Certainly the faculty must realize the extent to which the books are disintegrating.

2) Perhaps the percentage of F's would be lessened if something were done about the Austin classrooms to cut down the noise. Metal disks in the chair legs would help some. Cork covering on the floor would be excellent. Acoustic board on the ceiling or even under the chairs would be of some help. The only other thing is application of a hammer to the back of the heads of the jitterbugs who can't sit still in class.

Hopeful,
R. C.

July 19, 1946

Sir:

The paucity of subjects offered to third year students this term has evoked an introspective process within me resulting in the unflattering self appraisal that I must be a "sucker" to persevere through the fine New England summer absorbing some very excellent material for a graduate thesis which I shall never write. Or, for that matter, the lack of good subjects, I discover, has caused me to pursue courses of good use to future pedagogues, such as I shall not be. Fair Harvard, are you letting me down?

Bored

To the Editor of the RECORD:

Sir:

I have recently been asked to join no less than six different veterans organizations. In each case I was told that the particular organization requesting my membership was the only one to join. In these cases I was expressly told why I should *not* join any of the others. Happily, I have joined none. I want to join one, perhaps more than one. To do so I must divide myself into parts. Part plain veteran, part foreign service veteran, part religious veteran, part liberal, probator veteran and part pork barrel bonus veteran. It seems to me to be a case of some right and some wrong. When I can discover the right from the wrong I may join. At present they all seem like a congress of polecats.

Abraham Lincoln

June 30, 1946

Sir:

Can't we have a ten minute break between our two hour classes?

Nervous

The Law School Record will print letters to the editor received at its editorial offices. All letters must be accompanied by the name and address of the writer, which will be withheld upon request, but must be on file in the editorial offices.

Off the Record

The other day in class, an eminent member of the Harvard Law Review, whose name we had inadvertently misspelled in the first issue, asked the Professor, "How do you cite the Harvard Law School RECORD?" We were quite surprised at this, but pleased, nonetheless, and even a bit flattered. Feeling it well worth the money, and wishing to clear up this point, we walked over to Gannett House, spent twenty-five cents, and received "A Uniform System of Citation." (We don't know how to cite this little booklet . . . and it doesn't give any aid along this line, but for the purposes of this column, we'll call it UNLSYS.CIT.) The closest we can get to the subject is a statement to the effect,

"Names of newspapers are printed in regular type, NOT in large and small capitals. Page and column citations are given. . . . N. Y. Times, Nov. 21, 1921, p. 16, col. 8."

At first, this seemed to solve our difficulty, but reading on we found out that *The United States Law Week* is to be cited as a periodical, not as a newspaper.² As we come out weekly, this posed a nice question, but we decided that we should be cited as a newspaper. Thus, if you wish to cite this article, we recommend the following, HARV. L. SCH. REC., Aug. 7, 1946, p. 2, col. 2. We're glad to be able to help our more worthy brethren,³ and respectfully suggest that this be included in the next edition of their pamphlet.⁴

¹UNL. SYS. CIT. p. 20.

²Id. at 21.

³HARV. L. REV.

⁴UNL. SYS. CIT. op.cit. supra.

Last semester when we took Taxation, one of the required books was a loose-leaf book from one of the tax services. Lest the other organization complain about any lack of publicity, we are simply going to call this service "P-H." Since that time, we've been bombarded by a weekly campaign of advertisements about the other services that P-H offers. It seems that in addition to the tax service, this company will (for a price) keep us up to date in regard to what's happening in Washington, corporations, wills, unemployment insurance, bankruptcy, stock transfers, etc. One of their recent offers, and by their own words, this is a dynamic new loose-leaf service,¹ has to do with bargaining with labor unions. P-H has come to the aid of defenseless management! After cheerily starting out their letter, "We want to take care

of our old friends first . . ." it paints a dismal picture . . . "The Union Representative bargains the year round. He's skilled. He's fortified with facts. . . This Service will balance the scales." Among the important items that P-H has collected are the answers to such questions as . . . "Where shall you sit at the table? What kind of table should it be? Should the bargaining be done after hours? Should smokes be provided? Who shall take down the notes? Should all be supplied with pad and pencils?" We'd be the last to decry such research into these important psychological problems, so we're going to get the volume as an addition to our set . . . *What To Do Till the Lawyer Comes*.

As most of his students know, Professor Powell has quite a large membership in his "C" Club, composed of those men who have earned that grade. In speaking of a learned luminary in the legal world, he remarked that this man had been elected an honorary member as a man who . . . had he taken the course would have been given a C."

To those who have struggled and still may be struggling with the Common Law forms of action, it may be of some small comfort to know that Professor Katz has termed their history, ". . . contractual, delictual, or incomprehensible." Which brings to mind what Professor Freund stated in answer to a question, "As Professor Williston used to say, 'I can remember the distinction only long enough to state it once.'"

A poem came in the other day from a law wife who wished to sue the jurisdiction of Ames for alienation of affection. It was a little too long to print here, but you can get the tenor of it from these lines,

"Gentlemen, this is my complaint:

My happy home that was, . . . ain't."

Our only suggestion is that her husband had better explain the old maxim to her that "The law is a jealous mistress." And if that fails, there are various Legal Aid Societies.

Gallery

A. JAMES CASNER

Slight of build, serious of expression, when Professor A. James Casner strides into the lecture room he conveys the impression of an intensely energetic and able man. His voice is strong and steady, it reaches to the last row in the room as he moves from side to side of the platform asking and answering questions. He teaches at a steady pace, using the blackboard a great deal to diagram difficult facts and point up important decisions. His courses are popular.

"Casner's kind of rough at times," seems to be the general opinion. "But he sure can put Property over."

Mr. Casner came to Harvard from the middle west, the "freshwater region" as it is known to sophisticated Bostonians. He was raised in Bloomington, Illinois, where his father, a physician, still lives. One of the few non-Harvard Law graduates on the faculty, he received his LL.B. from the University of Illinois School of Law in 1929, at the age of twenty-two. That fall he became a member of the faculty at Illinois.

"That year convinced me that I wanted to teach law," he explained. In 1930 he moved to the University of Maryland School of Law as a Professor of Law. In 1935 he took a vacation from teaching to accept a fellowship at the Columbia Law School and the following spring was awarded his S.J.D. From Columbia he returned to Illinois as a Professor and in 1938 came to Harvard where he has been ever since, with an extended intermission for military service. He has also taught during summer sessions at the University of Michigan, Stanford and University of Texas Law Schools.

From the beginning, Casner's specialty has been the teaching of Property. He teaches Property I and II; likes them equally well. In 1935 he was made adviser for the Restatement of Property. In that Restatement he wrote chapters on Class Gifts and Restraints on Alienation. At the present time he is Editor-in-Chief of a projected treatise on the law of property which is being prepared by a group of specialists from all over the country. It will consist of about six volumes and is expected to be ready for publication in two or three years.

In 1940 Casner's interests moved outside of the teaching of law. That summer he attended the Military Training camp at Fort Devens and in the autumn became an officer in the Massachusetts State Guard. His services in the State Guard continued until he entered the Army.

In the meantime, he had become chairman of the Belmont, Mass., Committee to Defend America by Aiding the Allies. This was a branch of the organization which was active throughout the country in attempting to give people an appreciation of the seriousness of the situation which then faced us and to seek the passage of such measures as the Lend-Lease in aid of the Allies.

In June 1942 Casner left Harvard and, as a Major, was assigned to G-2, the Intelligence Section of the Army General Staff, in Washington. In July he was transferred to the Eighth Air Force, part of which was training in Bolling Field. In August 1942, a Lt.-Col. and Assistant Chief of Staff, A-4, of Eighth Air Force Composite Command, he moved to North Ireland. In the summer of 1944, a full Colonel, he was transferred to General Spaatz's staff, Hq., USSTAF, as Executive Officer in the Plans Section. He stayed in the low grey camouflaged headquarters at Widewing near London until December 1944 when USSTAF moved across the channel to St. Germaine, near Paris.

In May 1945, he flew back to Washington to become an Assistant in A-1, Personnel, AAF Hq., and shortly after VJ day was released from the Army. He resumed his teaching duties in October. Memos of his services are few: the Legion of Merit, the Bronze Star Medal, and the memory of two times when Harvard nearly lost him, once when there was an explosion aboard his plane in mid-Atlantic, again when his plane crashed on take-off near Paris.

Mr. Casner is now an associate in the Boston law firm of Ropes, Gray, Best, Coolidge and Rugg. After fulfilling his scholastic duties he spends as much time as he can in the law office, handling principally estate work. He finds that the practice helps his teaching.

"I can bring the attention of my classes to types of problems which are alive in practice," he says. "That makes the course a good deal more interesting than does the constant use of hypothetical questions."

Aside from the School and his practice, Professor Casner's main interest is centered on his wife and two sons, Andrew James III, 15, and Truman Snell, 12.

"Oh, I play a little golf, too," he smiled. "I've played since I was a boy."

His "little" golf consists of shooting in the low seventies. He likes all forms of card games, especially Bridge, in which he is of tournament caliber. Chess is a sideline fife enjoys.

At Harvard Mr. Casner finds the average ability of the students higher than it was at the other schools where he has taught.

"The things that make a law school great" he explains, "are a high type of student who sets the pace and a high faculty which is of a caliber to assist him. Harvard has both. Certainly the kind of students we have here makes teaching a great deal more interesting and stimulating."

Now, too, students are more mature than before the war. They have a better sense of judgment and a greater seriousness of purpose, both valuable qualities in law students. The fact that they are somewhat older than pre-war students will not be a handicap because everyone has been set back by the war.

From his observations in his Boston practice Mr. Casner thinks that opportunities for graduates are better now, and will be for some years, than they have been in many years. During the war comparatively few students were graduated. And, too, there has been the normal depletion due to death and other causes. Opportunities for men with legal educations in government and business have increased. Harvard graduates have an additional advantage in that the Law School is a national institution with alumni scattered throughout the country; theoretically these alumni should be partial to recent graduates who come, hat in hand, to ask for jobs.

At thirty-nine, A. James Casner can look back at a distinguished scholastic career that brought him, at twenty-eight, appointment as an adviser to the Restatement of Property, and a military career that carried him to positions of major responsibility in the higher command echelon of the Army Air Forces. He can look forward to many years of increasing usefulness to the Law School and to the legal profession.

Sub Judice

DOROTHY DIX DEPARTMENT****Come, ye unfortunate husbands and find solace.

In a recent divorce proceeding, *Garrett v. Garrett*, 47 A (2d) 609, the Court of Appeals of Maryland, faced with a very delicate problem took up the cudgel in no uncertain manner for a poor harassed husband. A wife was suing her husband on the grounds of "extreme cruelty, harshness, and brutality." The evidence produced by the wife in the trial court was not at all persuasive for the appellate judge. He failed to find cruelty in the fact that the husband earned about \$22,000 per year and of that amount gave the wife by her own admission \$170 per month to cover her expenses, that he took her on several trips to various parts of the world, that he bought her a home worth several thousands of dollars, and seemed to the judge to be a model of marital thoughtfulness.

On the other hand, the wife seemed to him "possessed of a quick and fiery temper, which she displayed to her employees, her friends, and to her husband." Also she "at times drank too much and intoxicants seems to have caused her to easily exhibit her temper." Further on, the court examined the evidence brought forward to substantiate her claims of being regularly beaten by her husband. The court was almost shocked that this paragon should be so maligned. Its interpretation of one particularly bloody set-to between the parties was that it was due rather to the wife's bad temper excited by the "fire water" than to any bloodthirstiness on the part of the husband. At the very end of its opinion, the judge chided the wife thusly, voicing the unexpressed thoughts of many tormented husbands:

"We will refuse the relief she prays and her remedy is to be more temperate in the use of alcohol, control her temper, correct the coarseness of her language and return to her husband."

BASEBALL****Pay without play.

For baseball managers who worry about getting the greatest value from their limited number of players, the decision of the U. S. District Court for Washington in *Niemiec v. Seattle Rainer Baseball Club*, 15 L.W. 2055, is hardly welcome news. The plaintiff was discharged from the Navy at the venerable age of 34 and rejoined the defendant's team under the provisions of the Selective Service and Training Act. When the time came to reduce the roster to the requisite number, Niemiec was the first to go, probably because of his age. In ruling that the player's unconditional release during the first year after discharge violated the Act, the judge stated that the club need not play but must pay the player despite the wording of the contract which had been signed. He said:

"I recognize the seriousness to baseball of having the judge dictate to its players. But since it has been argued—and correctly that baseball is the American game, certainly, then, baseball ought to bear its share of the burden in being fair to service men. . . . If (the veteran) and the others had failed in their job, there would be no American manager of any baseball club. If the Nazis permitted baseball, it would not be an exhibition that any of us would like."

Although the decision is undoubtedly in keeping with the provisions of the Act, the result would seem somewhat unfair to baseball clubs unless it were proved that there had been some discrimination. Baseball must remain a game for the young and agile and although a contrary result would be harsh upon men who had left their youth in the service, still the rigorous physical standards must be preserved if the institution of baseball is to remain in its exalted place.

In any case, the Niemiec case has done little to assuage the baseball management so beset this year by Bob Murphy, the Pasquels, and absconding stars.

CORRECTION PLEASE****Who's disabled?

Recently in *Griemann v. Traveler's Insurance Co.*, 67 N.E. 2d 493, the Appellate Court of Illinois had to consider the problem of what to do with a man who had been adjudged wholly disabled and who then came back in full health to haunt the court which had pronounced him thus. Under the policy of insurance issued by the defendant Co., the insured, Griemann, was to receive payment in installments of the amount of insurance in force at that time upon proof that he had become "wholly disabled—and permanently—prevented from engaging in gainful occupation."

On Feb. 20, 1939, Griemann was adjudged insane and duly committed to an institution. On July 9, 1940, his conservatrix made formal proof to the insurance company and in October of that year, payments were begun. But lo and behold! On March 7, 1941, Griemann was paroled and on July 1, 1941, was discharged as having been restored to sanity. Shortly thereafter, he obtained regular employment. Suit was then brought to obtain the balance of the insurance money since the company had stopped paying when Griemann was discharged.

The court found for the defendant. It rejected the plaintiff's theory that once having been adjudged insane, he became entitled by the express language of the policy to the full amount and the only question was the number of installments and the amount of each one. The court said that the language "wholly . . . disabled and permanently prevented etc." meant so long as he remained in that condition. It didn't try to explain away the explicit finding of insanity but throughout seemed to be bothered by the absurdity of having a whole and hearty man standing before the bar demanding relief because of "total disability."

The decision in this case is unquestionably sound even though it appears that the court had to indulge in a great deal of judicial eye-closing.

RAILWAY LABOR UNIONS****Discrimination unconstitutional.

Several of the railway brotherhoods have been charged with discriminating against Negroes. Everyone eligible was admitted to membership but locals were organized with a color line and the Negro groups were given no power to participate in any of the policy-making business of the local. In *Betts v. Easley* (15 L.W. 2011), the Kansas Supreme Court in reversing a lower court ruling stated:

"In the light of the history and purpose of the Act (Railway Labor Act), as construed in many decisions, the trial court's view that the acts complained of are solely of a 'private association of individuals' is wholly untenable. The acts complained of are those of an organization acting as an agency created and functioning under provisions of federal law. This being true, it is unnecessary to consider (the union's) contention that the fifth amendment is not here applicable because it relates only to actions by the federal government and not to acts of private persons."

The further contention that since membership in the union is voluntary, negroes have no right to complain about membership limitations, is "specious and unrealistic . . . this court cannot be blind to present day realities affecting labor in large industrial plants. The individual cannot act alone, and the Railway Labor Act gave clear recognition to the necessity of collective bargaining by freely chosen representatives."

Thus, it must follow that a union acting as the exclusive bargaining agent under the law, for all employees, cannot act arbitrarily, cannot deny equality of privilege to individuals or minority groups merely because membership in the organization is voluntary."

An injunction was granted restraining the union from continuing its discriminatory practices.

The ramifications of the decision may be very extensive indeed. This sort of judicial control over the policies and the practices of labor unions, although seemingly to insure the preservation of individual liberties may soon be extended to derive labor unions of much of their coddled independence. Lincoln marches or was it Robespierre?

The Witness Stand

The question: Do you expect to enter law practice upon graduation from Law School.

1. **H. Raymond Cluster**, Baltimore, Md.
4th Term. Married
Yes, although I wouldn't be adverse to taking a non-legal job if I thought it would be a good opportunity and I thought that my legal background would help me. I'm familiar with the Law School Placement Service and I intend to see them when I graduate but have no particular plans at the moment.

2. **Jacob Kaplan**, Burlington, Vt.
4th Term. Married

Yes. I have the clerkship Vermont requires all lined up but have no prospects for practice. I won't be admitted to the bar until I have served my clerkship, which wouldn't make me eligible for practice until January, 1948 at the earliest. I definitely do want to practice and would turn down other business opportunities in preference to a law practice. I am not sure whether I would want to specialize or not. In a small town a general practice would be most practicable and that is what I want.

3. **Johnson L. Evans**, Washington, D.C.
4th Term. Married

No. I am prejudiced against the legal profession. Nevertheless I have a desire to know how it functions. The realization of both its value and need in present day society and the fact that you come in daily contact with men from the legal profession in all walks of life is my chief reason for studying law. I intend to use my legal studies in connection with my engineering and accounting background; my big interest is in the administrative side. I have a particular interest in law as it might pertain to air law, both public and private. You can't get into international air law without a legal background. There are limitations in every other field which require legal training.

4. **Ray Underwood**, Boston, Mass.
5th Term. Married

I'm uncertain at this time. I don't have any prospects at present but I plan to interview the American Civil Liberties Union to see if they have any law jobs available. There is a possibility I may look into an opening with the TVA for legal or administrative work. I'm not concerned particularly with going into practice as such. I'd take any job in which I was interested and in which my legal background would be a help. I doubt at this time whether I would want to enter private practice.

5. **Walter H. Glass**, Austin, Texas
4th Term. Single

I don't know. I'd like a government job, as counsel with one of the better government agencies. It all depends on what kind of job is offered and I'll, in all likelihood, go back to Texas. I find the SEC most interesting and if I could get a job with that agency in Texas that would be nice. I do intend to be admitted to the bar, Federal, and probably Texas, but I do not intend to enter general practice. If work in one of the government agencies was done on a sufficiently high level and I could avail myself of my legal training I would find it acceptable.

6. **John B. Lawless**, Columbus, Ohio
5th Term. Married

I plan to go with a firm someplace and serve my clerkship for a year or two and then hope to go into practice on my own. I'm not worrying about it at this time, I figure something will come along. I've been warned not to get stuck in a firm and become afraid to break away. I have no particular preference but I'll probably accept. I understand the Placement Service will give you references if you tell them where you want to go and you can look them up yourself.

7. **Joseph E. Sullivan**, Buffalo, N.Y.
2nd Term. Married

Yes, I do intend to enter practice upon my graduation. That is how I feel about it at this stage of the game, anyhow. I have always been interested in transportation law and if I had a chance to take a job with some government transportation agency or private transportation agency in an administrative capacity I would take it but primarily as background to be used in practice.

8. **Robert Marks**, Troy, N.Y.
4th Term. Single

I intend to go into government work, as counsel for administrative agencies preferably. I would accept an administrative job which would not necessarily require me to practice. Any interesting and useful position requiring legal training would be satisfactory to me. Private practice does not appeal to me but I would like Government work. I have nothing lined up at this time, however.

9. **James A. Rousmaniere**, Louisville, Ky.
4th Term. Married

Yes, private practice preferably but not with a law firm. I would prefer being counsel to some corporation. I have nothing lined up at this time but intend to go to the west coast. I'm not familiar with the Placement Service but it probably would be better for law firm connections than for trying up with a private corporation. General practice doesn't appeal to me. Most of the training here seems to be dead set against general practice and you have to pick it up after graduation.

10. **Thomas E. Bennett**, Stillwater, Oklahoma
3rd Term. Married

Yes. I intend to serve a clerkship with a law firm. I then intend to go back to school, probably business school. Fundamentally, I do not expect to practice. I expect to be in business and expect my legal training to be of general help in my business activities. I expect my clerkship to be a practical supplement to my training here but do not intend to use my training for professional legal purposes.

11. **Hyman W. Rosenthal**, Dorchester, Mass.
Special Student. Married

I received my degree here in 1936. I am a practicing lawyer now. I'm studying tax work and doing research and writing a book. I intend to return to practice when I finish the term. I have thought about entering the Government service but it doesn't particularly appeal to me nor does teaching. I'm a member of the New Jersey bar but intend to apply for admission to the Massachusetts Bar. My chief interest remains in general practice.

Alumni Notes

Harvard Law School alumni play a prominent part as members of the Massachusetts judiciary. Reference to statistics reveals that five out of seven members of the Supreme Judicial Court are H.L.S. graduates, and fourteen of the thirty-one members of the Superior Court, as presently composed, are likewise H.L.S. alumni. Justice Thomas J. Hammond, '03, whose death was reported in the July 31 issue of the RECORD, would have made the fifteenth member of the alumni group on the Superior bench.

Further analysis reveals that it took the 5 alumni on the Supreme Judicial Court an average of 29 years from the date of receipt of their law degree to achieve their positions on the highest tribunal of Massachusetts. The shortest period required was 21 years, and 37 years was the maximum time prior to appointment.

The Justices of the Superior Court took an average of 21 years to reach their position on the bench after completion of their law school training. Justice Paul G. Kirk, '29, holds the record for requiring the least time to make the transition, having received his appointment only 8 years after completing his legal studies at Harvard.

Harvard Law School alumni are as follows: *Supreme Judicial Court:* Fred T. Field '03, Chief Justice; Associate Justices Stanley E. Qua, '04; Arthur W. Dolan, '00; Raymond S. Wilkins '15; John V. Spalding, '23.

Superior Court: Justices Nelson P. Brown, '03; William A. Burns, '00; Edward T. Broadhurst, '04; Harold P. Williams, '06; Edward F. Haniff, '07; Abraham E. Pinanski, '10; James C. Donnelly, '08; Lewis Goldberg, '13; Jesse W. Morton, '05; William C. Giles, '14; Paul G. Kirk, '29; Felix Forte, S.J.D. '32; Joseph E. Warner, '08; Charles C. Cabot, '25.

40—Word has been received of the death at Kassel, Germany of Irving C. Kaplan. At his death Kaplan was serving with the occupational forces. An infantryman in the 90th Division, he was wounded in the Ardennes Forest fighting. A resident of New Bedford, he was graduated from Boston University, and its Law School before coming to Harvard.

L.L.B. '28—Francis C. Reed, has been released from active duty as a Colonel, G.S.C. He has rejoined the firm of Hughes, Hubbard & Ewing in New York City.

L.L.B. '32—Jesse B. Mesquite, having resigned as General Counsel, Solid Fuels Administration, Department of the Interior, has announced the opening of his law office in Washington, D.C.

L.L.B. '33—Orville H. Schell Jr., formerly on active duty as a Lieut., USNR, has returned from service and has rejoined the New York City firm of Hughes, Hubbard & Ewing.

L.L.B. '36—William Shields Jr., has become a member of the firm of Coudert Brothers in New York City.

L.L.B. '37—Raphael Fine has been released from military service and has returned to general practice in Chicago, Ill.

L.L.B. '41—Lincoln Lauterstein has been appointed National Counsel for the American Veterans Committee.

MORSE '31 JOINS LABOR DEPARTMENT

Truman Appoints Former Labor Board Head Assistant Secretary of Labor

The recent appointment by President Truman of David Morse, L.L.B. '31, formerly General Counsel of the Labor Relations Board, to the post of Assistant Secretary of Labor clarifies a brilliant governmental career. Mr. Morse served before the war with the National Labor Relations Board, and had previously been on the legal staff of the Petroleum Labor Board in the NRA era.

During the war he served in the Allied Military Government as a labor adviser, and was released from the service with the rank of Lieutenant-Colonel, in 1945. Shortly afterward he was appointed to the top legal position of the National Labor Relations Board.

While a student at Harvard Law School, Mr. Morse was a classmate and roommate of Professor Paul Freund. Some students may be interested to find that Mr. Morse was not on the *Law Review*, but graduated with the solid "C" average enjoyed by most of us.

HUDSON CONFERS WITH UNITED NATIONS GROUP

Discussions in Switzerland Center On International Law Codification

Professor Manley O. Hudson is in Switzerland this summer conferring with officials of the United Nations on problems involved in the future codification of International Law.

The exact nature of Mr. Hudson's work with the U.N. is confidential at this time. His stay abroad will include attendance at the Conference of the International Law Association in Cambridge, England, in August, and possibly a trip to Istanbul, Turkey, at the end of the summer for another conference. His plans for return to the United States are still indefinite, but it is probable that he will be back in the Law School by either October or December.

Prof. Hudson was honored by the New York University School of Law last May for his "outstanding service in arousing the American bar to a realization of its responsibilities for the international organization of world peace." At a testimonial dinner, it was announced that the "Annual Survey of American Law," was being dedicated to Mr. Hudson for his having made the greatest contribution to the development of law covered by the book.

12. **Spencer W. Cunningham**, Portsmouth, O.
5th Term. Married

I do not intend to practice but a couple of years, just long enough to find out how law affects practical business. I want to learn how to use what I get here. I then intend to go into business. I want to do corporation promotion work; I feel that my legal training would be of particular use there. Anything other than running my own business, where I would be an administrator would be secondary. I prefer that to straight legal work.

A Case for Caste

The recent agitation in the press and in Congress concerning abuses in the so-called "Army caste system" has led to the appointment of a committee to study the complaints and to make recommendations to the Secretary of War for elimination of the abuses. It is quite apparent that the critics of the system have been much more vocal than its defenders. The newspapers have made the most of their rather colorful remarks. As far as the public is concerned I believe that the result has been to give an unfortunate, jumbled picture of the real problems to be faced.

Perhaps the most prominent and literate of these critics has been Robert Neville, one of the editors of *Life* magazine, who published an article summarizing and epitomizing the various gripes in the issue of February 25. After carefully reading this article and making the most reasonable inferences from its numerous contradictions, the average person could only presume that the chief characteristic of Army life was an invidious social system variously described as "outmoded," "undemocratic" and "caste-like"; that this system made enlisted men "untouchables" and led to such universal dissatisfaction that enlistments in the peacetime Army would be discouraged. I venture to suggest that if this thesis is accepted with all its implications, enlistments will probably stop altogether. But I challenge the accuracy of those conclusions, and the sufficiency of any of the writer's evidence to support them.

It would be absurd to contend that the Army system, insofar as it is a system, does not have features which are susceptible of great improvement. It does seem necessary, however, to make a distinction between inequities which result from abuse of a good or satisfactory system and those which result from a faulty system. Such a distinction is not illusory. For instance, most of the examples of discrimination against enlisted men which have been cited were the result of poor officers and not of a system which authorizes or encourages discrimination. Contrary to the impression given by Lt. Col. Neville, I believe that the majority of officers in the Army made a conscientious and largely successful effort to insure a fair distribution of PX supplies, to refrain from monopolizing USO Queens, to spare their men from standing in long lines and to get them out of trouble when it was necessary. To draw conclusions about the system from the actions of a minority of incompetent officers is illogical. Equally harrowing and illogical surmises might be constructed from focusing attention on the small number of enlisted men who got drunk, committed rape and looted during their Army careers.

It is not denied by these critics that there were some units in the Army which had a high morale, where the officers did their duty efficiently and treated the men under their wing with all the respect to which they were entitled; in fine, where officers did not abuse their privileges. Must we concede that these results were achieved in spite of the system rather than pursuant to it? It is difficult to justify such a conclusion. In fact, the goal of military training is to achieve this condition of high morale as an incident to unit efficiency. The standards of conduct enjoined by Army Regulations and the customs of the service are calculated to produce such a result. When the desired result is attained we are entitled to presume at least tentatively that it has been attained by adhering to the spirit of the system as well as its letter.

Officers do have privileges which are not shared by enlisted men. But all privilege is, or ought to be, an incident of responsibility. Privilege exists as a reward for or inducement to accepting responsibility. It also exists in many cases to make the carrying out of the accepted responsibility easier and more efficient. To the extent that privileges exist in excess of these requirements they ought to be shared, limited or abolished. Under this view it does not seem unreasonable that officers should have higher pay, better quarters, greater ease of transportation and greater privacy in proportion as their responsibilities justify it. Similar reasoning justifies the recognition of appropriate privileges for non-commissioned officers of all grades. If the system functions properly we ought to find that the most competent men hold the positions of great responsibility, and that their legitimate privileges are correspondingly greater. Any attempts at reform then should be aimed at improving the quality of leadership rather than reducing the advantages incident to leadership.

It is probable that even if the foregoing analysis was accepted the proponents of "system reform" would shift their ground slightly and denounce the military hierarchy for permitting the existence of abusable privileges. To this, I think, there is again only one answer. Every legitimate privilege is subject to abuse by the person exercising it. The only solution is to attempt to place the most competent men in the positions where responsibility exists and train them to exercise their powers wisely. There has been, to cite one example, much inveighing against the rules which prohibit social mingling of enlisted and commissioned personnel. "A relic of feudal society" we are told. "A mere survival from the peasant army of Frederick the Great." I presume we are not to conclude that the traditional nature of this distinction alone makes it bad, because most of the features of democratic government which we prize so highly have a respectable tradition behind them. Is the injunction irrational and without any functional value? A sober consideration of its purpose leads to another conclusion. The rule exists for the protection of enlisted men as well as for the convenience of officers. The latter must, in the course of their duties, make decisions involving the former, which ought to be as just and impartial as possible. Not

everyone can maintain the dispassionate judgment required in these decisions when the individual affected is on a friendly personal footing with the superior. Possibly some can, but certainly not all. The Army wisely recognizes this fact and seeks to avoid its consequences. There is no need for "lord and master overtones" or for the view that the enlisted man thereby becomes the equivalent of a "peasant" or "untouchable." There never was and never has been an Army rule which made it impossible for relatives and old friends to ignore these customs on appropriate occasions.

The vast majority of enlisted men do not deplore that lack of social equality which galls Col. Neville most, and it has never been a genuine factor in their discontent with Army life. Col. Neville is upset when officers get better recreational areas. He is unhappy at the "inverted snobism" which results from giving the more desirable areas to enlisted men. Surely he does not intend to press for a regulation which would require officers and enlisted men to mingle socially during off duty hours. The only alternative would be to abolish all restrictions completely—a move which would probably have little effect on the natural desire of officers and men to pursue their separate ways of amusement unvexed by the social dilemma which confronted the editor of *Stars and Stripes*.

The instances where officers have abused their responsibilities and privileges could be multiplied endlessly. No one can deny that there was an abundance of poor leadership. But such a recitation of grievances is fruitless if it leads to the conclusion that the remedy is to restrict privilege. Such a solution is entirely too superficial and represents a misleading approach to the real problem which is one of producing superior leadership. To this end it is suggested that the following might have been profitable fields of investigation by the Doolittle committee.

(1) A change in the functions of West Point to permit the graduation of a greater number of Regular Army officers each year, preferably by shortening the course to two years and drawing candidates from students who have taken the early part of their training in other liberal arts colleges throughout the country.

(2) The creation of a program of training for Reserve Officers which will insure that they have an adequate background in the principles of leadership and practical experience in commanding men. This program to supplement their technical training by branch of service.

(3) A renewed emphasis, in the training and promotion of officers and non-commissioned officers of all ranks and grades, of the principle that responsibility and privilege are two sides of the same coin; that the exercise of the latter is contingent on the discharge of the former.

(4) A change in the system of promotion, whereby the rank or grade would be determined by the job held, and where it would be possible to reduce as well as promote immediately upon the assumption of new duties. At present it is possible for an inefficient major to retain his rank and do a captain's job, while a captain may do the major's job for a year before he is promoted. The same inelasticity prevails in non-commissioned grades, and it is difficult to justify logically the rule that a non-commissioned officer may not be reduced unless he is reduced all the way to private.

(5) A readjustment of pay scales and allotments to dependents to correct inequities which may exist, and particularly to eliminate any privileges in the treatment of officers' dependents which bear no proportionate relation to officer duties. A privilege analogous to that of terminal leave should be extended to enlisted men or abolished for officers.

(6) A more efficient and realistic policy for the disciplining of officers of all ranks should be instituted, including a more liberal use of the General Officer's privilege to fine and restrict officers in his command. At the same time steps should be taken to insure a proper correlation between efficiency ratings and promotion. A revitalization of the Inspector-General's Department might go a long way toward accomplishing these results.

Certainly there must be other similar corrective changes which could be made, but in each case the guiding principle ought to be the fostering of more competent and responsible leadership. C. D. A.

SEAVEY

Professor Seavey's personal interest in China is partly the result of his having been the head of the Law School of Pei Yang University in China for five years from 1906 to 1911. At one time during the war, Professor Seavey recalls wryly, he nearly caused the execution of his friend Ambassador Stewart. In corresponding with Ambassador Stewart, normal channels were through the offices of the State Department. Professor Seavey sent one letter direct to Stewart in China and the Japanese were able to intercept it and use the contents to incriminate the present Ambassador, who was then the foremost American educator in China.

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Confessions of a Law Wife

One of Harvard Law School's oldest traditions is that its students carry their books around in green bags. This has become the standard badge of recognition for the Law student. Appropriately enough the law wife can be identified by the fact that she is always to be seen burdened down with a large and heavy grocery bag.

The marketing problem is such a monumental one these days that it is just about impossible to do it efficiently or methodically—and worse still, economically. However, some investigation into the matter reveals that most of the Law wives have some overall philosophy which they apply to their foraging techniques. Without jeopardizing the basic wisdom of any of them, these various philosophies can be classified into three distinct schools of thought.

The most popular *modus operandi* is known as the "Commando Attack." This is a short, speedy, deadly raid with only a few definite but difficult objectives to be won—salad dressing, coleslaw and round steak perhaps. This sounds relatively easy, but it must be borne in mind that this operation requires careful preparation. In the event that your assault on Sage's yields only the round steak, you must be in a position to conceal this last expedition from those manning the ramparts in Stop & Shop. A large knitting bag—expandable and adaptable—is unquestionably the safest camouflage at such times. Instances can be cited when as many as three boxes of soap flakes have thus passed unnoticed under the very noses of the enemy. When the element of speed is lacking, a more imaginative and subtle plan is to take along an old shirt of your husband's, hiding your First National treasures so that the prying eyes at the A & P think you're on the way to the laundry.

The second approach to the problem is the "Old Faithful principle"—placing all your loyalty in one grocer and relying upon his generous soul to see that you get the next can of tuna fish to cross his threshold. The only trouble with this system is that many of the natives have been here since the seventeenth century, and it makes it hard for us transients to be looked upon as old customers by the grocers. It is possible sometimes to create a synthetic atmosphere of deep-rootedness by conversing with the grocer in whispers that are inaudible to the woman who is standing on your heels. This makes him feel that on some earlier occasion he has let you in on a secret and must make good by coming across with a pound of bacon.

The final method, born in moments of direct shortages, is known as the "Paul Revere" strategy. This takes place when a kindly neighbor spreads the alarm and rouses the community with the news that "Harold has butter." This invariably happens at a time of day when you've just put your hair in curlers and are dressed in your least attractive chemise.

The trials of marketing are partially counter-

balanced by all the new-fangled foods that continue to appear which make the actual preparation of a meal a simpler thing than it was in the old days. There must be many a Law baby playing innocently in front of its pre-fabricated home who will grow up nourished by foods that are canned, frozen, concentrated, powdered, dehydrated, pre-cooked and ready-mixed. Thus even though many of these babies may never experience that sweet, childish delight of slugging someone with a real tomato, at least mama's life is a less harried one than formerly. For those wives who don't emerge from that early morning phase of disorientation until about noon, there is cause to rejoice in the rumors of a new breakfast cereal soon to appear on the market that you simply sprinkle on the back of your hand and inhale.

The procedure of planning a meal so that there is a correct ratio of leafy vegetable to citrus fruit to fortified grain is completely outmoded these days. The course of action currently practiced is to build an entire meal around the acquisition of some one rare item. So you can consider your evening bill of fare off to a good start if you were able to pounce on the last box of some of that hard-to-get dehydrated borscht.

In order to hang on to their title of queen of the kitchen, the present-day Law wives have a hectic job trying to cater to budgets, caloric charts—and, of course, husbands.

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Calendar

THE UNIVERSITY WORLD

Lecture

Boston University Forum, Wednesday, August 7, 2 to 3 p.m., Soden Building, 84 Exeter St., a talk by Mr. Edmund Goodell, President of the United Nations Association of Massachusetts, on "Russia . . . Iron Curtain or Open Door." This is the last of a Wednesday afternoon series of lectures on Russia, sponsored by B.U.'s Summer Session. Free to the public.

Phillips Brooks House Summer Program, Sunday, August 4, 7:30 p.m., talk by Dr. F. Gerald Ensley of Ohio.

Outing

Harvard Outing Club. This group sponsors at least one excursion a week in conjunction with Radcliffe and other local colleges. It boasts of being the most coeducational and non-exclusive extra-curricular activity in the University. As of our deadline for this copy, the excursion for this weekend was unannounced; for details see the bulletin board at Sever Hall (in the Yard, to the right of Widener, between the Library and Memorial Church) or contact Samuel Heyman, Adams House C-54.

Harvard Wives

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

Museums

Fogg Museum of Art. Exhibiting a series of photographs prepared by the editors of *Life*, to illustrate "Fine Arts Under Fire."

Dancing

Square Dancing. These dances, formerly held at Phillips Brooks House, will be resumed Wednesday, August 7, and subsequent Wednesday evenings, 8 to 11 p.m., at Lesley College Auditorium, Everett and Oxford Streets.

Folk Dancing, Friday, August 9, 8:15 to 11:15 p.m., in Congregational Church, Garden and Mason Streets, Cambridge.

Student Dance, Friday, August 9, 8 to 12 p.m., at Trinity Church, Copley Square, free to all students.

Carlton Club Dance, Aug. 10, 8 P.M., at Hotel Commander, Cambridge. Free to students.

THE OUTER WORLD

Plays

Cambridge Summer Theatre, Brattle Street. "They Knew What They Wanted" with June Havoc and Law Wife Phyllis Brooks through August 11. August 13 through August 19, Libby Holman in a pre-Broadway try-out, "The Best of Friends."

Boston Summer Theatre, New England Mutual Hall, Clarendon St., near Copley Square, Boston. Libby Holman in a pre-Broadway try-out, "The Best of Friends" through August 11. From August 13 through August 19, James Dunn and Julie Haydon in "The Time of Your Life."

All summer theatre plays subject to last minute changes.

Music

Berkshire Festival at Tanglewood in Lenox, Mass. Boston Symphony Orchestra under Koussevitzky. Thursday evening, August 8, Saturday evening, August 10, Sunday afternoon, August 11. This is the last weekend; the concluding selection is Beethoven's Symphony No. 9.

Museums

Boston Museum of Fine Arts, Huntington Ave., Boston. Exhibition of drawings by Frank Dahl and Gluyas Williams.

Movies

University Theatre, "The Green Years" and Short Subjects, from August 7 through August 10. "Do You Love Me" and "Strange Triangle" from August 11 through August 13. Charles Boyer in "Cluny Brown," and "Western Approaches" from August 14 through August 17.

THE LEGAL WORLD

Ames Competition

First term arguments:
Aug. 12—Round 3A
Aug. 13—Round 3B
Aug. 14—Round 4A
Aug. 15—Round 4B
Third term, qualifying round, exchange of briefs:
Aug. 12—first group
Aug. 13—second group
Aug. 14—third group
Aug. 15—fourth group

Note: Completed briefs must be turned in to the Ames office, Austin Hall, by 10 a.m. on the day specified.

Medical Examinations

The Law School Clinic has compiled a list of appointments for medical examinations, to be held in Austin Hall Aug. 12-16. Individual notices have been mailed, and a list of appointments is posted at the Receptionist's office, and in the Reading Room. It is important for students to be present for the check-up at the time indicated for them.

Softball Game

Faculty v. Board of Student Advisers, Saturday afternoon, 2 p.m., at the Business School Field.

Clubs

Chancery Club dance Aug. 10, ballroom, Hotel Continental.

Law Wives

Picnic, Aug. 10, Crane's Beach, Ipswich. Cars leave Kendall House at 2:30 and again at 5 P.M. It will be an afternoon and evening affair, and those planning to stay late are urged to bring food, as a fire will be set after dark. Call Mrs. Horace Kalik, KIR. 7415 for further information.

Regular Meeting, Kendall House, 8 p.m., Aug. 14. Miss Everts of the League of Women Voters will discuss the league's activities.

Informal Dance, Aug. 17, 8 p.m., Kendall House. Donations of 50c a couple will be asked. Call Mrs. Joseph Logan, KIR. 1143 if you plan to attend.

Class Change

Prof. Morgan's Judicial Remedies, Sec. 1, 1st term, will meet at 12 noon, LN, Mondays and Tuesdays, for the remainder of the term instead of at 9 a.m.

The Plight of Conscientious Objectors

Because most conscientious objectors have a more than average concern for social problems the assignees in Civilian Public Service camps found the usual camp project work of pulling weeds and "manicuring" mountains a work which did not affect the wartime social emergencies of the nation. Though they appreciated the long-term value of some of the forestry and conservation work and its importance to the permanent welfare of the nation in peacetime they urged Selective Service to make more effective use of their manpower to relieve acute and crippling shortages of personnel in public health service, tuberculosis and general hospitals, welfare agencies, especially in war-congested areas where juvenile delinquency was reaching alarming proportions, and in relief work in war-zones. Finally, Selective Service National Headquarters authorized some releases of personnel from Civilian Public Service camps to detached service units in public mental hospitals.

At the beginning of World War II, state hospitals for the mentally ill and training schools for mental deficient were showing the strain of insufficient finances and low state-imposed standards. To add to their difficulties the onset of the war caused the loss of experienced attendant personnel to the armed forces and to war industries. To help relieve this attendant shortage more than 2,000 men in Civilian Public Service volunteered to work in public mental institutions. Their assistance was primarily in the nature of custodial attendant work, *viz.*, the supervision of violent wards and incontinent wards. After three years of bed-pan carrying, patient feeding, patient baths, and bed-sheet changing, they could look back with satisfaction on a hard, monotonous—but necessary—job. And out of this experience grew The National Mental Health Foundation, organized by CPS mental hospital attendants and now headed by former Supreme Court Justice Owen J. Roberts.

This Foundation, with the cooperation of professionals in the field, publishes a monthly mental hygiene journal, conducts an extensive educational campaign for improving preventative, custodial and curative facilities of mental hygiene in the country, and carries out a program of extensive legal research of state mental hygiene laws with a view to recommendations for their improvement.

Another type of detached service project approved by Selective Service for the men in Civilian Public Service Camps was the "guinea pig" experiments. During the war CPS volunteers participated in more than 20 experiments under the office of Scientific Research and Development. The aim of one experiment was to discover methods of prolonging the lives of men adrift on the high seas with only a limited supply of water, food, and equipment. CPS "guinea pigs" fasted, drank salt water for days to ascertain the amount of sea water that could be taken without disastrous effects. Experiments to discover the most efficient food that would combine liquids and energy led to the development of a highly successful caramel-like food. In another experiment men were exposed to jaundice in order to investigate varying types of jaundice and to discover whether it could be transmitted by plasma from blood donors, as well as by serum used for prevention of mumps, measles, and other diseases. Another research project found CPS men subjected to a typical pneumonia in order to obtain information on the transmission of the disease, its relation to other diseases, and the nature of the virus. Elsewhere a test was conducted to learn the effectiveness of a simple insecticide powder against lice, conveyors of typhus. Thirty volunteers were infested with lice for a month so that the antilouse powder could be tried under natural conditions. Also an extensive experiment was carried on to discover a more effective drug for the prevention and cure of malaria and CPS men tested many new drugs for toxicity. There were numerous other experiments as to temperature, altitude, clothing, fatigue, and so on.

In an attempt to find out the best way to rehabilitate the hunger-wasted millions of Europe, 34 CPS men were systematically starved in a scientific study of starvation at the University of Minnesota. For six months the men had a diet of two meals a day consisting mainly of bread, potatoes and turnips, which somewhat approximated the protein-deficient food rations of Europe. The average daily value of the meals was 1600 calories as compared with 3300 calories needed by these men prior to the diet. The men were required to work every day necessitating an expenditure of 3300 calories. The result was a loss of about 22% of their weight.

Another group of CPS men asked for and were given training in parachute forest fire fighting on the west coast by the U.S. Forestry Service. For two years during the fire seasons they were used in this rather new method of fighting forest fires.

Despite the above outlined opportunities for more significant service in mental hospitals, "guinea pig" units, and parachute forest fire fighting units, Selective Service was not willing to authorize enough special service assignments to drain all the men from the camp projects. The majority of CPS men were kept in these isolated camps to maintain the commitments Selective Service had made to the government agencies involved. Once a forestry or soil conservation project was undertaken by the free labor of the conscientious objectors, it was usually not abandoned by Selective Service in spite of emergency needs for labor elsewhere.

As for foreign service, notwithstanding the

earnest efforts on the part of many CPS men to go abroad to help in relief work in war stricken areas the plan to facilitate this project was frustrated. After Major General Kirk, Lieutenant General Stillwell, General Loo Chi Deh (Surgeon-General of the Chinese Army), Secretary of War Stimson, Major-General Hershey, and President Roosevelt had approved a plan to send to China 70 CPS men as ambulance drivers, Congressman Starnes attached a clause to the June 1943 Military Appropriations Act effectively prohibiting this project. The reason given was that the transportation space was needed for more important items. Thereafter foreign relief work was closed to CPS men.

At the end of hostilities in August, 1945, the drafted men of CPS hoped that they would be discharged at the same rate as draftees in the military service inasmuch as they had been drafted at the same rate. However, the discriminatory nature of the demobilization of conscientious objectors is demonstrated by the fact that on May 1, 1946, only 13% of wartime draftees remained in the armed forces, while 56% of CPS men were still detained in camps and detached service units. When this policy of discriminatory discharge became apparent some of the CPS men went on strike. In addition to their protest as to discharges, they were striking against the military direction of CPS, forced labor without pay, and the "make work" jobs of CPS camps. Recently the strikers were indicted for the federal offense of violation of the Selective Training and Service Act.

Criminal Prosecutions

Up to this point the discussion has centered on those conscientious objectors who objected only to war and were willing to serve as conscripts either in noncombatant military work, or, if they objected to military service altogether, in alternative civilian service. Second were those who objected not only to war but also to the principle of conscription, even when the service demanded was civilian in character. Both attitudes included opposition to war—they differed chiefly in emphasis.

The areas within the law recognized individual conscience excluded (1) men whose consciences forbade them even to register under the conscription law, or who registered but were opposed to completing further steps toward draft classification; (2) registrants who claimed no religious sanction for their conscientious objection to war; (3) registrants claiming objection on religious grounds whose claims were not recognized by Selective Service authorities, and who nevertheless refused induction into the armed forces; (4) men who accepted induction into some form of military or civilian service, but later felt they could not conscientiously continue in such service; (5) men who conscientiously opposed, not all war, but only certain types of war including the one in progress. All of these men eventually clashed with the law and usually traveled the road to civil or military prisons.

In the armed forces, the charge on which conscientious objectors (not those classified I-A-O) were usually tried by courts-martial was that of refusing to obey a military order. Such refusal was consistent in men who were opposed on principle to all types of military service; the inconsistent factor was their presence in the army. Some claimed to have become conscientious objectors after their induction. Some had not been aware of the possible classifications under the draft law. In other cases men who went to the induction station merely under orders to report for physical examinations were inducted into the army immediately following the examination, with no previous warning or opportunity to refuse. Other objectors fulfilled the technical obligation of "reporting" to the army, but refused to take the oath of induction, put on military uniforms, obey military commands, or in other ways identify themselves with the military organizations. The army authorities claimed that such men were duly inducted and subject to military law. However, in the *Billings* case the Supreme Court eventually ruled against the interpretation and men who had consistently refused induction were then able to secure release to the civil authorities by means of individual court action.

Men who refused compliance with the draft law had to pass through the criminal judicial process of arraignment, trial, conviction, and sentencing. The trial procedure was usually only a formal matter of establishing that the defendant had in fact failed to comply with a Selective Service order. Since this was not denied, the usual plea was "guilty" or *nolo contendere*. Then the Federal courts followed the rule that the determination of classification by Selective Service was binding on the court unless the ruling was directly challenged by *habeas corpus* after appeals to the Appeal Board and the President had been exhausted.

Even in the *habeas corpus* cases, where the validity of the classification was properly before the court, many judges applied the administrative law rule that Selective Service decisions were conclusive, so long as the required procedure had been followed, and so long as the ruling was supported by some evidence and the discretion of the Local Board had not been abused. The courts interpreted these conditions liberally in favor of the Board. In a few cases,

however, courts sustained charges that correct procedure had not been followed, and such a decision might send a case back to the draft authorities for the correction of their error.

Wide variations in sentences resulted from the discretion which the law gave to individual judges, whose powers to sentence were limited only by the maximum of five years and a fine of \$10,000. The average sentence of all Selective Service violators, two-thirds of whom were conscientious objectors, was 30.6 months. By way of comparison, the average sentence for violators of narcotics laws was 20.8 months; of liquor laws, 10.6; of postal laws, 27.3; and of white slave laws, 28.3. Sentences handed down by military courts-martial were usually more severe than those of civilian courts, though they were less severe than those imposed by military courts in the First World War, and were usually reduced on review.

Slow Release

Although a total of 218 conscientious objectors, to June 30, 1945, were given probation by the courts, this procedure was not used extensively. Pressures against probation for these men were overwhelming in most parts of the United States. Selective Service officials appear to have worked actively against the grant of probation. A second factor was undoubtedly the pressure of certain groups which feared the social influence of according undue "privileges" to conscientious objectors. It is difficult to know how far these groups really represented the great bulk of public opinion in a given community. For the nation as a whole, a public opinion sampling taken during World War II has shown that Americans generally were not hostile to the conscientious objector but that they erroneously believed that "other people" were less tolerant.

Like other prisoners, conscientious objectors looked forward to the day when they would once more participate in the life of the world. When and how they would be released, and for how long, were matters of great uncertainty, however. A man might serve his full sentence, although more commonly the sentence was shortened by the deduction of "good time," that is, time allowed for good behavior. Or the time served in prison might be still further reduced by one of two types of parole. In any case he remained under the authority of the prison system until the full term of his sentence had expired. If released on "good time," more formally known as "conditional release," or on parole, his local draft board usually could not resume jurisdiction over him until his sentence ended. But when that time came, he might again receive Selective Service orders, refusal of which would start the legal wheels turning for a second or even a third sentence. This was not considered by the courts to be "double jeopardy" because they held that renewed refusals to conform to the draft law, although caused by the same conscientious scruples which had occasioned the first breach, were new violations of the law.

Since parole has long been regarded as a privilege to be granted in return for a pledge of future law observance, obviously this view did not fit men who had broken the law deliberately through adherence to moral principles. They neither felt that their past course had been mistaken nor could they conscientiously undertake to obey in the future the law which they had broken. Although the general character of the objectors and their usual lack of other clashes with the law made them the type of prisoners ordinarily most eligible for parole many of their requests for parole were denied. And the paroles which were granted to conscientious objectors were hedged with special restrictions. Because of these restrictions, many of the men either declined to apply for parole or refused to accept it when offered.

The end of hostilities in August, 1945, found over three thousand objectors in civil prisons and an indeterminate number in army custody, many with long sentences and others awaiting trial. While groups interested in the prisoners' welfare and in civil liberties promptly began requests for official amnesty, in harmony with the steps in prospect to return drafted men to normal civilian life, these efforts have been thus far unsuccessful. Support for these requests was found in the precedent established by the release of conscientious objectors, though very late, after the close of World War I. By way of contrast, there remain only a small number of conscientious objectors in English prisons at present.

One of the chief contributions made by conscientious objectors in prison was due to the hunger and work strikes by these men against the racial segregation and the censorship policies of the prisons. As a result, in some federal prisons these policies were officially abandoned or liberalized.

British Treatment

In view of the fact that over five thousand conscientious objectors were imprisoned for their beliefs during this war, it is obvious that the draft law provisions for conscientious objectors

could not have been a very genuine recognition of the conscience of the individual by the state. Many observers believe that a broader definition of religion and a more generous interpretation of the ministerial exemption to include Jehovah's Witnesses might have aided considerably. Recognition of conscientious objection to alternative conscript service as well as to military service has been urged by others. Perhaps the strongest condemnation of the wording of the American law and regulations affecting conscientious objectors, as well as of the administration thereof, arises from a comparison with the manner in which the same job was done in Great Britain. And it is to be considered that the British law had been in operation for some time before our law was written and that studies had been published of the administrative experience under the British draft law.

The British law imposes a fine of £5 for failure to register under the draft law, whereas our law contains a penalty of imprisonment up to five years, a fine of \$10,000, or both.

The next step after registration is the application to a local tribunal for classification. The British application form simply calls for "any statement you wish to submit in support of your application." Our Form 47, for the same purpose, asks a number of catch questions, and inquires about church and theological matters. Our law would exclude all who cannot trace their objections to some teaching of a purely religious nature, the social and political objections all being excluded from the exemption. The British law recognizes all kinds of objection, so long as they are conscientious.

The hearing before the local tribunal in Britain must be public; ours is private and often there is no hearing at all. Right to counsel is provided in Britain; the American procedure expressly denies this right.

In Britain the local tribunal may decide the case of a conscientious objector in one of these ways: (1) He may be classified as entitled to unconditional exemption, and not required to perform any sort of service. (2) He may be required to perform work specified by tribunal, which may be private or public, for wages or for maintenance only, but it must be civilian in character and under civilian control. (3) He may be assigned to non-combatant duty in the armed forces. (4) He may be registered for combatant duty in the armed forces. Our draft boards may assign a conscientious objector claimant to Civilian Public Service, to non-combatant service, or to combatant service; there is no unconditional exemption.

If, as a result of court martial, a conscientious objector in the armed forces of Britain is sentenced for three months or more and if he still claims conscientious objection, he may apply to the appellate draft tribunal for release, regardless of the fact that he previously may have been denied exemption by the appellate tribunal. The tribunal may order the release of the prisoner and may impose the usual conditions for draft exemption, just as though there had never been an interlude of army service and court martial. In this country, the draft boards lost all authority after a man had been inducted into the armed forces, and the courts will not review his case unless there has been flagrant error.

The final decision on the exemption of conscientious objectors in Britain is made by the appellate tribunal, composed of civilians. In this country the decision of the appellate draft board may be reversed by the Director of Selective Service, to whom this power has been delegated by the President. The Director of Selective Service is a General in the Army. He holds no hearing, and gives no reasons for his decision. Further, he is the final administrative authority over those men who are assigned to Civilian Public Service, though it is nominally "under civilian direction" according to the Selective Training and Service Act.

Thus our draft law provisions for conscientious objectors not only fall short of ideal civil liberty legislation and administration, they do not approach the practical wisdom of the British law and procedure on this subject. The presence of thousands of conscientious objectors in federal prisons throughout the United States underlines this significant fact.

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