

The Harvard Law School Record

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PRICE TEN CENTS

NEXT TERM SCHEDULE DISCLOSED

Greater Variety Of Courses Offered For Third Year Choice

The announcement of courses for the Fall Term, made this week by the Dean's Office, featured the impending end of the accelerated program. No entering class will be admitted in June, 1947, and it is probable that the class entering in September, 1947 will return to the three year program, finishing in June, 1950.

This means that the February, 1947 class will be the last group promised the three term per year accelerated program. All classes which enter under the war-time program are assured of its continuance until their graduation. This necessitates a slow reconversion.

The program of instruction for the next term departs little from the status quo. However, the number of sections to be taught is increasing each term, and courses associated by the student with a particular professor are frequently being given by someone else.

Professor Pound will offer his course on Jurisprudence for what, it is rumored, will be his last year of teaching law. He is scheduled to return from China before the beginning of the Fall Term.

Printed copies of the schedule will be made available in large quantities by the end of the week it is anticipated, so that every man may have one. Third year courses, all new, include an arrangement whereby Taxation can be taken either as a one term or a two term subject. Dean Griswold will teach the one term, five hour a week version, Professor J. M. Maguire the spread-out section, three hours the fall term and two the spring.

The spring term courses are also divulged, so that the advanced men can plan two terms at once when working out the inevitable conflicts of subjects and hours.

To the Third Year and Graduate students, the schedule for the Fall Term presents many conflicts. There are four combinations of courses which the student cannot take. However, when there is a conflict, one of the conflicting courses will be given again in the Spring Term. The only complete impossibility for both terms is the combination of Domestic Relations (a) and Legislation. Men can take one or the other, but not both.

The courses and the Professor giving the course for the Fall Term are:

First Year Second Term: Agency, Professor Hall; Judicial Remedies, Professors Morgan and Katz; Contracts, Professor Fuller; Property I, Professor Amory.

Second Year Third Term: Trusts, Professor Baker; Equity, Professor Howe; (Continued on page three)

Forum History Discussed; Future Plans Revealed

The second youngest student organization in the Law School (having seniority only over the Record), the Harvard Law School Forum, is flexing its muscles preparatory to embarking on its new season when the fall term begins. With a membership of around 1000, the cooperation of the Faculty and a tentative list of leading speakers, including Harold Stassen, Philip Wylie, Joseph Grew, Maurice Hindus, Wayne Morse, John L. Lewis, and others, the Forum hopes to cement its place in the life of the Law Student.

Its history is as brief as it is understandable.

Faced by the exigencies of law studies the average student found little time to keep abreast of national and international issues of importance. Many had been long isolated by service in the war. Further many felt that the time had arrived when it was mandatory that they be acquainted with and articulate about the dominant problems plaguing the world today.

But there is little time on the average schedule at Langdell for reading or hearing everything material on the subject. The only solution would seem to be the setting aside of a few hours or one evening during which the issues would be crystallized and the contending opinions dissected by the more competent and outstanding men in the fields in which they arose. To accomplish such purpose was, and is, the work of the Forum.

The idea originated with Jerome L. Rappaport when in his first term in January. When he made it known to other students, there was quick response. Within three days over thirty students had volunteered to aid with the administrative work. Nearly one hundred topics and an equal number of speakers were recommended by the student body as a whole. Plans were set in motion to obtain a place in which the meetings could be held.

The initial group of volunteers became the necessary hierarchy of the infant organization but at the first meeting the express intent to make the Forum the only elective student organization at the Law School became manifest. Finances were arranged by the decision to sell memberships in the Forum which would enable the holder to attend all meetings, submit policy suggestions and to vote for the Board of Directors when elections were held.

The inaugural meeting of the Forum was held on March 8th in the New Lecture Hall. This was at the beginning of the Spring term and the initial registration had brought a gratifying total of nearly 500 students into participating membership. Dean Landis and the entire Faculty had shown a great willingness to help out, and had assisted Rappaport in the procuring of speakers for the discussions. For the first meeting Professor Chafee had written a simple and moving dedication to the students of the Harvard

Law School who had lost their lives in the war. In it he said (in part):

"... The victory they helped win has preserved for us the liberty to share our own lives and the welfare of our nation and world. Freedom is not safety, but opportunity. The best return which we can make for their sacrifice is to have the determination to make full use of that opportunity by facing the perplexing problems now before us with courage and frankness and open minds."

At the inaugural Forum the war crimes trial was discussed by Col. Murray Bernays, adviser to Justice Jackson, and Professor Leo Gross of the Fletcher School. Col. Bernays supported the present American position on the legal aspects of the trial, while Mr. Gross suggested that we should admit frankly the *ex post facto* principle as applicable, since it is divorced from international law.

The following week was less academic and more heated. Louis Waldman, well-known labor lawyer, Isadore Katz, general counsel to the Textile Workers of America, and Dr. Emerson Schmidt, Director of Economic Research for the U. S. Chamber of Commerce, clashed on the issues facing labor and management in the coming years. Associate Professor John Dunlop acted as moderator.

The participation of Norman Thomas in a discussion with Alven Hansen, Dan Smith and Iowa's Senator Bourke Hickenlooper which revolved around the problem of "60 million jobs" with its consequent economic influences on our society brought an over-flow attendance to the Hall. By this time many students had come to accept the Forum wholeheartedly and had begun to take part in the open forum at the end of the talks. Questioning from the floor became stiffer and more pointed. Where some speakers had oversimplified, or generalized to an extreme, they were forced back to the line and requested to clarify and particularize this point or that position.

Then it was that the Forum began to take the shape intended for it.

"The Philosophy of Law" brought Professor Roscoe Pound, Huntington Cairns of the National Art Galleries and Karl Llewellyn of Columbia Law School together for a discussion of a topic close to home. Professor Pound said "that the law was the result of experience developed by reason and that reason was in turn tested by experience."

Shortly after this meeting, plans were completed for the first election of Forum officers. Candidacy was opened to all members of the group and the only requisite to being named on the ballot was to obtain the signatures of five Forum members to a petition. These names were to be put on a large ballot and each member asked to vote for 10 names. The twenty men having the highest total would become the Board of Directors of the Forum, and from their own ranks would select the season's officers.

This plan was announced at the fifth Forum, which was a discussion of the need for reorganization of our legislative (Continued on page three)

AMES FINALISTS ARGUE TOMORROW IN LANGDELL

AMES FINALISTS



DAVIS



TURNER



CANCIAN



LEIGHTON



KRAEMER



FORD



BERMAN

A picture of the other contestant, James D. St. Clair, was unavailable.

NEW LAWYER'S YEAR BOOK DEFECTS TOLD

Reports Reveal Outstanding Weakness In Written Work

As a by product of the questionnaire sent to a cross section of law school graduates this spring, which was described in last week's Record story on the work of the Committee on Legal Education, the defects of young lawyers can now be stated in the light of the information received.

When assisting a senior associate or engaging in research work the young lawyer's most commonly noted defect is "lack of literary ability or power of effective expression on paper."

"Tendency to one track thinking; failure to formulate and have ready alternative solutions or strategies" is the defect most frequently noted in the young lawyer when handling matters in a responsible capacity, more or less on his own.

The lawyers answering the queries had propounded to them fifteen possible defects of the fledgling while in a subordinate and a responsible capacity respectively. They could evaluate these as "not serious but common," "generally present and moderately serious" and "commonly present and very serious"; decide that the item was virtually absent; or indicate that the deficiency was found in only a few individuals but to a serious, moderately serious, or very serious extent. From compilation of these answers it is possible to reveal information of value not only to the Committee on Legal Education in their work of planning the curriculum, but also to the potential practitioner.

The three most serious defects of the newly admitted attorney when working more or less alone, in addition to the one track mind noted above, are "failure to secure an understanding of the underlying business, economic and organizational problems involved," "willingness to give advice without understanding its full implications, snap judgment," and "failure to participate in public affairs and bar association work." Least criticized in the list is "tendency to make important decisions without sufficient consultation with senior associates."

When the young lawyer is working more closely under the supervision of a senior associate somewhat different difficulties appear more prominently. However a similar factor, "failure to grasp underlying business or organizational issues; excessive concentration on purely legal aspects of problem" appears second on the list of noted defects. The other two which follow most closely are a "tendency to discuss learnedly the authorities and principles involved without bringing them to bear on the issue which requires decision" and "insufficient background of general culture."

At the bottom of the list of fifteen suggested defects are "tendency to simplify issues unduly, reducing whole problem to a neat but misleading formula" and "lack of intellectual initiative; disinclination to begin work until someone else has defined the issues."

The criticism has often been made that law school education causes the student to disregard statutes and to think exclusively in terms of case law. This criticism is somewhat refuted by the fact that few of those asked considered the defect as even moderately serious and over a quarter of the replies indicated that it was of no importance as a factor.

Few felt that lack of acquaintance with the mechanics of finding the law was a principal defect.

YEAR BOOK TO APPEAR NEXT WEEK

1st Post-War Volume Dedicated To Pound; Returnees Featured

Those who bought a chance on the 1945-46 edition of the Harvard Law School Yearbook should be encouraged to learn that the author's proofs were recently released by the publisher, and from all indications the forthcoming volume will uphold the reputation of preceding issues. The distribution date has been tentatively announced as the first week in September.

Dedicated to Dean Emeritus Roscoe Pound on the occasion of his 75th birthday on October 27, 1945, the opening pages of the book are devoted to picture of the Dean, starting with one taken at the age of four; a brief summary of his life; and tributes to his achievements, written by a number of eminent lawyers and scholars.

Following the dedicatory pages of the book is an "In Memoriam" section devoted to the Harvard Law School dead in World War II, and also Professors Joseph Warren, Edward H. Warren, and Joseph Beale, who have died since the last issue was published.

Also contained in the early part of the book is an interesting sketch of the History of Harvard Law School, written by Dean Pound, and a seldom-published speech of Oliver Wendell Holmes, delivered at a Chicago Bar Association banquet in his honor on October 21, 1902.

Included in the faculty section are pictures and biographical sketches of all faculty members, as well as a number of candid camera shots of the professors at work and at play.

The student section of the book leads off with a list of the graduates since the last issue, followed by photos of current students, together with their colleges, homes, and school addresses.

All Law School organizations, including the Harvard Law Review Association, Board of Student Advisers, Legal Aid Society, Law School Committee of Phillips Brooks House, Harvard Law School Forum, Chancery Club, Lincoln's Inn Society, and Harvard Law Wives, are covered by pictures and organizational data.

LAW FIESTA AIMS AT MEXICAN MOOD

Ken Reeves' Band To Preside; Beer And Set-Ups Available

Harvard Law School students will dance in a Mexican holiday mood at the Law Fiesta to be held Saturday evening, September 7, from 8 to 12 o'clock in Cowie Hall at the Business School. Ken Reeves and his ten-piece orchestra will provide the music.

The informal, all-Law School dance is being put on to raise money for improving the entertainment facilities of Kendall House, the Law School's social center.

Tickets, which will be limited to 325 couples, are on sale during the noon hour at Langdell Hall and Kendall House. Ticket price is \$2 per couple, including tax and door prizes.

Light refreshments will be served at the dance, according to Mrs. James St. Clair, chairman, and beer and set-ups will be on sale.

Prominent Judges To Hear Last Case In Tourney

The widespread interest shown in the first Ames Competition finals to be held since the war indicates that a large turnout of students and faculty members will be on hand at 8 p.m. tomorrow in Langdell court room to hear the case of *Commissioner of Internal Revenue v. Rocky*.

Final plans for the event, including arrangements for the entertainment of the visiting judges, were announced today by Joshua Jacobs '46 of the Board of Student Advisers, who is in charge of the program. As announced previously, judges for the argument will be the Hon. Peter Woodbury, judge on the United States Circuit Court of Appeals for the First Circuit, the Hon. John Edgar Murdoch, and the Hon. John Worth Kern. The latter two judges are on the Tax Court of the United States.

At 4:30 p.m. tomorrow, the visiting judges will be guests of honor at a tea to be held at Kendall House. Invitations to the tea have been extended to Dean Griswold and all members of the faculty and the Board of Student Advisers.

The tea will be followed by a dinner at 6:30 p.m. at the Faculty Club, which also will be attended by Dean Griswold. Faculty members invited to attend include Professors Austin W. Scott, W. Barton Leach, Milton Katz, and Archibald Cox. Representing the Board of Student Advisers at the dinner will be Albert Goldman '46, Chairman of the Board, and Joshua Jacobs.

After the argument there will be a party at Kendall House for the judges and the contestants.

Representing the Commissioner of Internal Revenue in the argument will be John Cancian '46 and George Neves Leighton '46, with Herbert Berman '47 and Daniel Kraemer '47 of counsel on the brief. Arguing for the respondent will be Charles W. Davis '47 and James D. St. Clair '47, with Thomas P. Ford '47 and Lambert Turner, Jr., '46 of counsel on the brief.

The case to be argued includes problems on trusts, federal income taxation, and appellate review. Leading cases on the problems involved are *Johnston v. Helvering*, ITC 228, aff'd in 141 F. (2d) 208 C.C.A. 2d, 1944, cert. denied, 323 U.S. 715, *Dobson v. Commissioner*, 320 U.S. 489, and *Kelley Company v. Commissioner*, 66 S. Ct. 299.

The build-up for the final argument began in October, 1945, when the quarter-finals arguments were organized to get the Ames competition started for the benefit of students returning from the armed forces, the law club activities having suspended during the war years. The quarter-finals were followed by semi-finals arguments held last term, one argument of which will be remembered as the case of the *Cooley Sugar Company v. The Ames National Bank*.

The present Ames finals will be the last to be held until the clubs participating in the qualifying round arguments this term reach the final round.

The results of the qualifying round arguments were announced last Saturday and the eight clubs receiving the highest scores have been advanced to the quarter-final round.

Following are the names of the clubs, (Continued on page three)

DEAN HALL RECEIVES MEDAL OF FREEDOM

Major General McClellan Made Award in Langdell last Monday

In recognition of his meritorious service as Chief of the Operations Analysis section of the 13th Air Force, Livingston Hall, Vice-Dean, on Monday afternoon in Langdell Hall, received the Medal of Freedom. This decoration is awarded for civilian service in the field under combat conditions, and its receipt is an unusual and significant distinction.

Presentation was made by Major General Harold McClellan, who was accompanied for the purpose by the present chief of the Air Force Operations Analysis section, Dr. L. A. Brothers, successor to Colonel W. Barton Leach.

The services commended by this decoration were performed between September 1943 and April 1945 in Guadalcanal, Hollandia, Morotai, and Leyte. In April 1945 Mr. Hall left the civilian position and was commissioned Lieutenant Colonel.

Politics, Public Service Attract Council Members

In its last number the Record gave an outline of the organization of the Harvard Law School Association, and brief sketches of the Officers and some Council Members. Further information on the other members of the Council is presented here as a matter of interest to both students and alumni. The success of the Association's program for benefiting the school will depend in a large measure on the ability of these men.

Robert N. Miller, LL.B. '06, was born on September 12, 1879, in Jefferson County, Ky. He attended Rose Polytechnical Institute at Terre Haute, Ind., where he secured a B.S. in 1901, following which he taught High School in Louisville for three years before coming to Cambridge to secure his legal education. He practised law alone for twelve years after graduation, entering the Army in 1918 as a Major in the Judge Advocate General's Office. At the conclusion of the war he remained in Washington as chief counsel for the Bureau of Internal Revenue, a position which he relinquished in 1920 to begin the practice of law as a member of the firm of Miller & Chevalier. He is a member of the American Bar Association and the American Law Institute, in both of which organizations he has taken an active part in the study of problems of taxation.

Albert F. Bigelow, LL.B. '06, is a native of Massachusetts and has been active in public affairs in Brookline and Boston for many years. Before entering Law School he attended Harvard College and

secured his A.B. there in 1903. The practice of law in Boston has been but one phase of his numerous activities, which have included a membership in the Brookline Limited Town Meeting since 1916, a seat in the Massachusetts Legislature since 1927, and a term as member of the Board of Overseers of Harvard College from 1934 to 1940. Other activities in which he is interested include the Boston Legal Aid Society, of which he has been President, the Franklin Savings Bank, of which he is a trustee, and the Boston Provident Association where he is a director.

Thurman Arnold, LL.B. '14, was born at Laramie, Wyoming on June 2, 1891. Prior to his graduation from the Harvard Law School he attended Princeton, graduating with an A.B. in 1911. He returned to Chicago after completing his legal education and was admitted to the Illinois bar. His practice of law was interrupted by the World War, and he served in France as a First Lieutenant in the Field Artillery. After demobilization he returned to his home town in Wyoming and resumed the practice of law, but soon interested himself in politics and was successively elected to the Wyoming House of Representatives and to the post of Mayor of Laramie. He had also acted as lecturer in law at the University of Wyoming from 1921 to 1926. The following year he left Laramie to assume the post of Dean of the Law School at the University of West Virginia.

(Continued on page three)

PROFESSOR GARDNER TO REJOIN FACULTY

Gives Up Private Practice In Boston; To Teach Insurance

Professor George K. Gardner rejoins the School's faculty next semester after a four year absence to teach four hours of Insurance Law in the coming term. Professor Gardner has been practising law with the firm of Goodwin, Procter and Hoar in Boston during his absence.

Professor Gardner will be remembered by pre-war students for his unusual approach to law of Contracts I. His method has been compared to that of another famous law instructor, President Robert Hutchins of Chicago University, who is said to have begun his classes at Yale Law School when he was there with the remark, "If there are no questions about the cases assigned for today, we will proceed to tomorrow's cases." Professor Gardner has in the past emphasized student thinking to the point of exasperating many of his students in the opening weeks of his lectures, although eventually most of his students reached the conclusion that the Gardner Method is superior to spoon feeding.

Entering the Law School as a student in 1912, Professor Gardner graduated two years later. He practised in Boston until 1928, when he became a member of the faculty, teaching principally Contracts I and II and Insurance law.

In 1940, Professor Gardner assisted in the preparation of the case for the defend- (Continued on page three)

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Editorials

MORE FUNDS FOR THE SCHOOL

After a century of service to legal science which has led the great English historians to link the glory of Harvard with the glory of Bologna and of Bourges, the Law School may confidently appeal for that endowment which is claimed as of course and is possessed by every other form of serious educational endeavor; without which no educational enterprise of moment may expect to achieve adequate results under the conditions of today. pp. 159, 160, Centennial History of Harvard Law School. (1917).

Dormitories, a dining hall and common rooms have long been items on the agenda of the Law School, and, as President Conant recognized in his Report last year, of the University also. The present endowment funds, some five million dollars, are not sufficient to finance the necessary construction, especially considering the increased operating expenses of the greatly enlarged student body and that much of the income is tied up for special projects.

One of the problems of Dean Griswold's administration, not yet two months old, is obtaining additional funds. With the present sky-high prices for materials and labor, it may not be the time to erect additional buildings, although there are builders and architects who say the prices will stay up for a long time. Single students at the Law School would be elated if they could trade their rooms and "rat-houses" for dormitory accommodations. Perhaps a number of apartments for the married fraction usual in peacetime should be included in these plans.

An ever-expanding library may eventually force more provision for classroom space and some armchair architects have proposed a building exclusively for classrooms. Student activities like the Forum and the Yearbook have never had the office space they deserve, and although the RECORD at present is adequately housed in Austin, there will come a day when we shall need more space. The response of the alumni to these issues may hasten that day.

A prospective benefactor of the Law School can take comfort in the fact that no portion of his gift for buildings will be used in paying for the site. Land values in Cambridge are said to be assessed at 150 per cent and salable at about 300 per cent of normal value, particularly in the sectors near the School. But the land north of the Wesleyan Methodist Church to Jarvis Street and Jarvis Field itself is or could be available for these buildings.

The value of additional dormitories, a dining hall and a common room is obvious and needs no elaboration. President Conant's well-known concept of dinner-table education is an old story at the Law School where men were and are told not only to "eat law" but to "drink law" and "sleep law" as well, habits necessarily acquired in the First Year and in the nature of reflexes after that. No doubt graduates recall this process and know its merit in terms of their own careers. It is to these graduates the School will look for the endowments it needs.

C. O. P.

Letters to the Editor

To the Editor of the RECORD,
Sir:

... I hope that the Secretary of War will give due attention to all that your correspondent says [Editorial column, August 14, 1946], although I doubt whether my colleagues have at the moment much free time for the activities suggested: they are at present exceedingly busy men. But research of the type proposed was never more necessary than in the present emergency; an inquiry into methods of adult education in England might well be included. Although I cannot speak for my colleagues, I believe that our common experience would lead us all to support—and strongly—such a programme.

ELTON MAYO,
(Senior professor of the Department of
Industrial Research, Harvard Business
School.)

To the Editor of the RECORD,
Sir:

What is the point, Mr. Editor? After reading your horror story about South Carolina in a recent issue of the RECORD I am unable to understand exactly why it is such a news item as to merit publication in our school paper. The following are a few possible explanations that have occurred to me. I would appreciate it if you would enlighten me as to which is correct, or if I have failed to see it altogether let me know what the real purpose is.

1. Is it supposed to prove that there is no such thing as southern hospitality? Inasmuch as it purports to be your first paragraph "a lesson in Southern hospitality" by "four gallant Southerners," three whites and a young Negro, that would seem to be the answer. I hesitate to think that this is what prompted the story, even if the editor does believe that all Southerners are inhospitable. It would be a bit difficult to prove.

2. Is it to prove that certain public officials in South Carolina are incompetent and should not be in office? This would not be difficult to prove. Indeed I think with a little research, if the editor is deeply interested in exposing corrupt officials he might find that they exist not only in South Carolina, but in every one of the forty-eight states; and though I shudder to suggest such a possibility, even a few in our national government. In fact he might arrange a meeting between the

defective District Attorney of Bishopville and Mayor Curley of Boston and let them compare notes.

3. Is it to prove that South Carolina really didn't like President Roosevelt after all? It might take more than the hearsay testimony of a small filling station operator to prove this, inasmuch as Roosevelt never seemed to experience difficulty in carrying the state in an election.

4. Is it a campaign to raise money to defray hospital expenses for "A," our innocent victim? If so I shall be glad to make a contribution to help a fellow law student.

5. Is the RECORD starting a policy of printing an atrocity story every week? If so I suggest that the McGurk sex murder and other such current stories that seem to occupy about nine-tenths of the front page space in Boston papers might be more up to date. However, may I suggest that one of the nicest things about the first several issues of the RECORD was that it did not follow the dominant Boston newspaper idea that the only thing readers are interested in is stories of crime, atrocity, murder and violence. Can it be that the editor has talked to the publisher of the TRAVELER and found out that such a policy is the best one, because after all people do buy Boston newspapers? Until the RECORD came along we didn't have much choice.

6. Or is it to call attention to the fact that there are a lot of thugs in the South and that this story along with the Georgia mass murder conclusively proves that perhaps all Southerners are that way? Surely, you can't mean that, Mr. Editor. You must know that just as small a percentage of the populations in South Carolina or in Georgia as in Massachusetts approve of such conduct as you describe. I don't believe anyone would accuse all New Englanders of being sex maniacs just because there have been a few dozen sex murders in the past few years. I don't consider it a typical lesson in Northern hospitality that a few years ago a friend of mine was robbed and beaten by a gang of Cambridge thugs. Yet you seem to imply that an occasional outrage in a Southern state brands all Southerners as Cro-Magnons.

7. It couldn't possibly be that you are trying to stir up ill feeling among students from the South, Mr. Editor. I can't believe that, but certainly such articles do not do much affirmatively to build up brotherly love. I was under the impression that despite our many faults any place in the United States is a pretty good place to live, whether it be North, South, East or West. But perhaps you have the sections of the country rated by your own personal preferences. Or have you ever been to South Carolina, Mr. Editor?

JOHN E. MATHEWS, JR., Second Term.
(Continued next week)

Gallery

AUSTIN WAKEMAN SCOTT



A Harvard Law School student attending an alumni function anywhere in the country is likely to find himself surrounded by clamorous lawyers of all ages.

"How's Scotty?" they cry. "What's Scotty doing these days? Is he still the same in class?"

Soon the group is buzzing with talk punctuated by frequent shouts of laughter as the older men compare their memories of Scotty's classes thirty years ago with the student's description of today's sessions with Scotty. There is a note of affection in their voices that discloses their high regard for a great teacher, a regard that has lasted through the years.

In the great body of Harvard Law School students and alumni Scotty is Austin Wakeman Scott, Dane Professor of Law in Harvard Law School and known in the legal world as the foremost American authority on the law of trusts. Scotty regards the study of law as a serious business and he tries to make his students see how serious it really is.

"But," he adds, "I try not to scare the boys. When I was a student here I enjoyed learning law; it was great fun to engage with other young men in strenuous intellectual endeavor. I've always tried to make my classes feel the same way. The study of law ought to be enjoyable, not a grind. It should be good clean fun."

That Scotty succeeds in making his classes fun is clear to anyone who has sat in one of them and heard the frequent bursts of laughter that rock the classroom. He constantly paces the platform, his short spare figure always in motion, tossing out questions and spontaneous observations on the answers he receives. His teaching is full of vigor; he tries to make the cases come to life.

"Doesn't this case just make your hair stand on end," he will cry to show his disapproval.

The unhappy student who wanders from the path of logical reasoning in his answer is likely to find himself the object of a great deal of merriment from the rest of the class. Surprisingly enough, he will probably find himself laughing at his own mistake.

The student who hesitates in answering a question is lost.

"Mr. Bernstein, I wonder whether you think the opinion in *Poff v. Poff* on page 117 is correct or otherwise?" Scotty will ask, and then, after a few seconds of hesitation by Mr. Bernstein, "or perhaps I am begging the question. Perhaps I should ask whether you think."

The student who answers at too great length is also lost. He is likely to find himself in the position of one man who took about five minutes to answer a simple question.

"Mr. Kraemer," said Scotty, his face serious, "that was a good answer. In fact you gave two good answers. In forty years of teaching those were the best two answers I have ever heard."

He paused and Mr. Kraemer glowed with satisfaction.

"But, Mr. Kraemer, you answered the wrong question. Now the question was..." His words were lost in the gale of laughter that swept the lecture room. It was minutes before he could be heard again.

Mr. Scott was born in New Brunswick, New Jersey, but his ancestry is solidly New England on both sides of the family. He has an especially close feeling for Harvard, in part because his maternal grandfather, a great grandfather and three great-grandfathers were Harvard graduates.

"My father went to Yale," he added in a low voice.

He graduated from Rutgers University in 1903, having majored in history and mathematics, and began to teach at Rutgers Preparatory School that year. He had no idea then of studying law, but a chance reading of a volume of Blackstone aroused his interest and he began to study the Com-

mentaries in the evening. In 1906 he enrolled at Harvard Law School.

"It was an intellectual awakening," he says now. James Barr Ames, John Chipman Gray and Jeremiah Smith were still teaching, then, toward the end of their long and distinguished careers. Samuel Williston and Joseph Beale had hit their stride. They were all great teachers, especially Dean Ames. There were about six or seven hundred students in the school at that time; the great expansion of the student body came after the opening of Langdell Hall in 1907.

In 1909 Mr. Scott graduated, having been on the *Law Review*, and went to the New York law firm of Winthrop and Stimson, in which Henry L. Stimson was a partner. He had intended to become a practicing attorney, but in the middle of the 1910 school year Dean Ames died and Scott was asked to take his classes for the remainder of that year. He agreed to do so and commuted regularly between New York and Cambridge until June.

The teaching of law was much to his liking, he discovered, so the acceptance of an invitation to stay on as Assistant Professor of Law was natural. He has been at Harvard since then, with the exception of the 1911-1912 school year when, on leave of absence, he spent a year at the University of Iowa as Dean of its Law School. In 1915, when Dean Thayer died, he was designated acting-dean of Harvard Law School and occupied the position until Roscoe Pound became Dean in 1916. He has also taught summer classes at the law schools of Columbia, Cornell, and Stanford Universities and the Universities of Colorado and Chicago. For the past ten years he has taught in a summer school for Trust Company officers conducted in association with Rutgers University. He is a familiar figure to members of the bar throughout the U. S., having traveled to over a dozen cities to give lectures on the law of trusts.

Early in his career at Harvard Mr. Scott took an interest in the law of trusts and has specialized in it for some 35 years. He was Reporter for the American Law Institute's Restatement of the Law of Trusts, the writing of which took some eight years. His great treatise, *Scott on Trusts*, was in preparation over a period of years with the last three or four years before its publication in 1939 being largely devoted to work on it. The treatise cites over 12,000 cases and the pocket supplement issued in June, 1946, cites another 4000 cases which have been decided since 1939.

Professor Scott was married in 1914 and has two sons: Austin W., Jr., who recently returned to civilian life from service in the Navy, and Gordon K., who was recently discharged from the Army. Both are Harvard Law School graduates and both have chosen to go into teaching law. Austin, Jr. will start teaching at the University of Colorado School of Law and Gordon at Stanford University School of Law this fall. Outside of the Law School and his family, one of Mr. Scott's principal interests has been the Harvard Co-operative Society of which he has been vice-president and legal adviser for 25 years.

Students today are much the same as they were before the war, Scotty thinks. They state the cases a little better now and are somewhat more confident because of their greater maturity.

"But the students here have always been good; they have always worked hard; their attitude has always been one of extraordinary eagerness to learn," he explained enthusiastically. Still, even Harvard law students need encouragement to think and to express their own thoughts on the problems that are presented. Many a student has glanced up during his recitation, seen a look of displeasure on Scotty's face, backtracked and started off in another direction only to awaken too late and find he was right the first time.

Honors have come to Austin Wakeman Scott; from the law professors of America by his election in 1928 to the presidency of the Association of American Law Schools, from Rutgers and Harvard Universities in the form of honorary degrees of Doctor of Laws, and from the American legal profession in its high regard for his legal scholarship. But the Harvard Law School has always been his great love.

"I like the Law School pretty well," he says, nodding his gray head to emphasize the gentle understatement. "I like the Harvard Law School pretty well." H.K.

Off the Record

Have you been to class lately? Does your schedule call for lectures in different rooms on successive hours? If not, come along, as we show what the average Harvard Law student must undergo at least once daily.

You kiss your wife goodbye, sling your green bag over your shoulder, and head toward school. Cambridge is peaceful in the summertime, you notice, as you saunter toward your first class, scheduled for Langdell South. However, as you near the building, the tranquil atmosphere thins out.

At the southern entry, you are confronted by a Macedonian phalanx, a solid mass of morning-smokers and sun-worshippers, drawn up in battle array, blocking the stairway. Perceiving no unused battering-ram nearby, you realize the fool-hardiness of a frontal assault. So, you island-hop to the rear door, narrowly avoiding being run down by a Buick, Ford and Pontiac in succession.

Although buffeted by a gale (the wake created by the dash of hasty Hastings), you succeed in entering the building, and by adept use of gridiron tactics, you bully your way into the classroom and to your seat.

All too soon, the professor has tossed his last hypo at you. Knowing that your next class is to be in Langdell North Middle, you check your green bag to make sure your K-rations and first aid kit are both okay, and slowly move out into the aisle.

With luck, you should be within ten feet of the doorway before the opposition begins the battle with a blitzkrieg.

They want to get in; you want to get out. They can't retreat because a huge crowd is flowing down the steps from the library; you can't retreat because there is no other exit.

Grunting, squeezing and kicking shins, you reach the classroom doorway. Of course, only one door is open; the other is bolted shut. You push on, and, finally, feeling like the Ninth Armored when it crossed the Remagen bridge, you enter the hallway. All you have, however, is a small bridgehead. You are still in grave danger of being swept back into Langdell South, as the enemy redoubles its attack, and the situation deteriorates into complete confusion.

Here's the tactical situation at H plus three minutes: Your cohorts impelling you forward, the group from the library hitting your flank, the initial foe infiltrating in ever-increasing numbers, and, to add to your woes, the class in South Middle has just been released. From all directions come struggling students, pouring in both doors of the entry, sluggishly moving out of the other classroom, dropping paratroop fashion from the reading room vestibule. And, there you are, in the midst of the maelstrom.

Inexorably, time ticks away. And the attack has a schedule to maintain. So, you and your allies buckle down for the all-out offensive. Knees are brought into play, green bags are

Sub Judice

HOUSES FOR VETERANS****Expenditures for temporary veterans' homes is within constitutional powers

In the opinion of the Justices of the Massachusetts Supreme Judicial Court a bill authorizing expenditures by cities and towns for the temporary housing of veterans and their families is within the constitutional power to expend money for "public purposes." *Opinions of the Justices*, 67 N.E.2d 588. The General Court of Massachusetts invoked a constitutional provision allowing questions to be submitted to and answered by the Justices of the Supreme Judicial Court. It propounded questions concerning the constitutionality of a bill, then pending, which would authorize cities and towns to enter into contracts to provide temporary housing for veterans of World War II. Findings of fact were attached to the bill recognizing the existence of a housing shortage which could be presently relieved only by the use of temporary housing owned by the United States. These housing units were being distributed under a federal statute but were obtainable only through the assumption by cities and towns of contractual obligations requiring the expenditures of public funds.

The Legislators told the Justices that "Grave doubts have arisen as to the power of the General Court under the constitution of the commonwealth to authorize cities and towns to incur expense and to raise money by taxation or by borrowing the same for the purpose of providing housing for veterans." There were two questions propounded. First, whether it was within the power of the General Court to authorize cities and towns to appropriate, raise and expend money for the purpose of providing temporary housing for veterans of World War II (a) under the power to make reasonable and wholesome laws; (b) "Under the power of promoting the spirit of loyalty and patriotism, and of giving visible evidence that the Commonwealth and the United States during the war to suffer hardship on their return . . ."; (c) under constitutional powers given cities and towns to furnish shelter for their inhabitants; (d) or under any other powers. Second, whether the General Court had power to enact such a bill.

In their reply the Justices refused to answer the second question on the ground that it presented no specific point since the answer to the first question expressed an opinion favorable to the constitutionality of the pending bill. But as to the first question the Justices were of the opinion that the answer to subdivision (a) should be "Yes" while subdivision (b) required no answer apart from that given in (a). It was considered unnecessary to answer subdivisions (c) and (d).

POSTUM SCRIPTUM****Odds and ends from newspaper clippings

Editor's Note: A glance at the morning paper will usually furnish a preview of coming litigation. And the strange ways of fate and facts serve to prove that truth is indeed stranger than fiction.

Take, for instance, the recent experience of Rudy Vallee in a Nevada resort hotel. Rudy walked into the dining-room with the sole intention of partaking of an evening repast. But, complains the crooner, the management so manipulated the applause that he was unable to avoid singing for the patrons present. He then filed suit to recover what he says is a reasonable fee for his involuntary services. This amount, he says, is \$1,000.

This simple set of facts has only a new twist; but the problem is old with at least two good reasons why Rudy will not recover. But being from Yale, Rudy might have something new to add to the law of contracts.

A Chinese trial judge recently had a problem before him that reminds us of Professor Warren Seavey's examinations in the law of torts.

Four Chinese merchants pooled their meagre resources and invested in a small shipment of baled cotton, and then bought a cat to protect their investment against rats that overran the warehouse. Each one's ownership of a particular quarter of the cat was duly recorded with the town authorities. Presently, the feline injured one foot, and the owner of that paw bound it up with cloth saturated with oily salve. But the cat ventured too near an open lamp and the bandage caught fire. With its leg ablaze, it fled in terror among the bales of cotton, setting them afire.

Highly indignant, the owners of the three good paws brought suit against the owner of the injured foot for damages to their share of the cotton.

"Cat could not run on lame foot," the Chinese judge declared profoundly. "Therefore, three good legs of cat guilty of damage. Owners thereof must pay owner of sick foot for loss of his cotton."

whirled about . . . and, over a resilient carpet of the wounded, you stagger wearily to the doorway.

The great offensive has succeeded, and you are racing across the great, open plain of the yard. The necessarily rapid pace of the advance, coupled with the damaging blows inflicted by the enemy, continue to take a heavy toll. Buddies, men who have been with you through equally rough campaigns many times, fall by the wayside. You prop them up, under the cool green trees, bind their wounds, comfort them, and then hurry on, nodding silently as they weakly gasp, "I'll get the notes from you after class."

Relentlessly you rush onward, and arrive at the north end. There, too, are the remains of a horrific carnage, for the same type of battle had been fought in that locale also. But, you have not the time to regard the devastation. You rush to the doorway, grasp a knob, drop it (the bolted door, naturally), take the other one, open the door . . . and enter the room just as the professor finishes the first case. N.B.T.



"Now ask for Poppa to come back from Law School"
(Confessions of a Law Wife)

The Witness Stand

The Question: Should the U. S. release its atomic secrets at this time?

1. Walter Beardsley, Austin, Texas 2nd Term

Yes, I think they should be released according to the Baruch recommendations in the order and at the time specified. The developments of the last week should have no effect on such a decision. I think the Baruch report provides sufficient controls against bad faith of Russia of any other nation.

2. R. H. Garner, Madison, Wisconsin 2nd Term

I think we definitely should not. I think considering the present international scene as evidenced by Yugoslavian affairs indicates that we should hang on to just such things for an indeterminate time. I don't think if we gave away the secret of the atom bomb it would better our own position with regard to a foreign nation discovering it for themselves.

3. Harry W. Baughman, Punxsutawney, Pennsylvania Third Term

I take the orthodox stand that the secret shouldn't be released until there is a plan to safeguard the production and use of atomic energy. I think the Baruch report presents good controls but I think the main difficulty is that Russia wouldn't accede to a plan for control or inspection in Russia. I think we should not release the secrets until we can get adequate guarantees from all principal nations who might be involved, including the U. S.

4. Stuart Hayes, Dover-Foxcroft, Maine 3rd Term

No. We should wait until the UN has its machinery in operation to handle the question; then we should release them to international control. The rights of inspection would seem to handle proper control but I have my doubts as to whether nations are ready to give up their nationalism and sovereignty for the sake of internationalism.

5. Scott Anderson, Honolulu, Oahu, T.H. 2nd Term

Ultimately yes, but only when there is a practical world agency which could enforce the Baruch plan. To lead with a release and then wait for development of such an enforcement agency would be putting the cart before the horse. If the other nations of the world are willing to set up such an enforcement agency then the secrets should be released. Up to now there seems to be a present danger in releasing them because of the failure of nations to cooperate in lesser things.

6. Joseph Adams, Dorset, Vermont 3rd Term

Yes. I think we should disclose the secret to the Russians by dropping a few on the Kremlin. But seriously, I think we should come out in the open. The way it is now it engenders distrust among the nations of the world.

7. David B. Stearns, Milwaukee, Wisconsin 2nd Term

Under the present state of international affairs I do not. However, I think we should encourage international control of atomic energy with a strong central international board having broad powers of inspection and control. We ought to realize we cannot keep the secret forever, face that, and organize international control. The important thing is to develop the beneficial aspects of atomic energy rather than to allow our fears to restrict such development and deprive modern civilization of industrial and social benefits which would accrue as a result of this new source of energy.

Confessions of a Law Wife

The origins of the Law Wives group is obscure for most of the current membership. Some of us have a vague notion that it was begun before the war by the Dean's wife. However, no one has yet had the courage to come out with the truth. By a few strategically phrased questions, an astute investigator has uncovered the information that the Law Wives banded together simply to find out if the other girls' husbands stayed away from home so much. After each wife found to her relief that a two or three year absence from home was merely one of the occupational hazards she had to endure as a Law Wife, the group entered its next phase of development—a project to keep abandoned wives amused and in touch with reality.

During the war many wives whiled away their husbands' overseas duties, Penelope-fashion, by embarking on large scale pieces of handiwork—crocheting an afghan or braiding a rug. But at least their lives were brightened then by letters and an occasional string of beads made out of a cocoon. Unfortunately, none of us was prepared with any amount of handicrafts for this period of legal separation. Numerous desolate spouses claim that once they have watched their husbands disappear into Langdell, that greatest mother

of them all, they are henceforth known to them only by a wet towel on the bathroom floor or as the hand that endorses the \$90 veteran's check. And when their mate finally emerges, clasping the precious LL.B. to his now hollow, shrunken chest, he is even more of a stranger to his long-suffering wife.

In addition to shedding light on the genesis of organized Law Wives, this same situation also makes clear the general lack of enthusiasm for organization among Harvard Law School alumni. For one thing, scores of graduates have a tendency to go berserk at the prospect of reliving those days of yore; a great many husbands are not permitted to leave home for fear they'll never return; and the others are usually under doctor's orders to build up the red corpuscle count lost while learning their profession.

Of course, the one solace for a Law Wife is that it must all come to an end in six or seven semesters—if not sooner. Though some of the more skeptical among us are beginning to wonder if this state of conubial isolation will ever be over, we can only hope that having his name appear on a letterhead rather than a bluebook will guarantee that we'll be able to renew the old friendship with our life's chosen companion.

Lucy S. Schneider

Alumni Notes

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

The pages of the Congressional Directory, 79th Congress, reveal that Harvard Law School is represented in the United States Senate in the persons of five members of that body. This 5-96th is divided into three Republicans and two Democrats. Republican members are Senators R. Owen Brewster, LL.B. '13, Maine, Leverett Saltonstall, LL.B. '17, Massachusetts; Robert A. Taft, LL.B. '13, Ohio. Democratic members are Senators Claude D. Pepper, LL.B. '24, Florida; Theodore F. Green, ex-'93, Rhode Island.

Senator Pepper made the transition from law school to the Senate in the briefest time, requiring only 12 years. The average time required by the five Senators to reach their present positions was 27 years.

Turning to the House of Representatives, from a total membership of 435, Harvard Law School Alumni number 12, divided into eight Republicans and four Democrats.

Republican members are: Robert Hale, ex-'14, Maine; John W. Heselton, ex-'25, Massachusetts; Angier L. Goodwin, ex-'05, Massachusetts; Richard B. Wigglesworth, ex-'14, Maine.

WAGNER ACT CHANGE URGED BY REILLY

Retiring N.L.R.B. Member
Favors Part Of Case Bill

The need for some of the provisions in the Case Bill and for changes in the procedures by which labor-management relations are regulated was emphasized recently by Gerard D. Reilly, LL.B. '33, who voluntarily retired from the National Labor Relations Board on August 12. His five year term of office officially ends on August 26. In a statement to the press, he declared that he favored changes in the Wagner Act, and also in N.L.R.B. procedures so that employers might obtain the right to petition for bargaining elections and so that employers might have greater freedom of speech during union organizing campaigns. He emphasized his belief that the 1935 Wagner Act was basically sound as a foundation for national labor policy and had reduced industrial strife and the number of strikes.

Regarding the provisions of the Act, Reilly recommends Congressional action to:

1. Clarify the status of supervisory employees, whose situation was not discussed during the debate preceding the enactment of the Wagner Act.
2. Withdraw protection of the Wagner Act from unions which strike for objectives contrary to the Act or which could be achieved by orderly process under the Act.
3. Grant to the National Labor Relations Board the power to cope with unions engaging in secondary boycotts.
4. Transfer the prosecuting and enforcement functions of the National Labor Relations Board to the Department of Labor, thus leaving the Board exclusively a judicial body, and one which thus may inspire greater confidence in its impartial character.

Reilly has spent the majority of his post law school years in government service. After graduation from the Harvard Law School in 1933, he became a member of the Massachusetts bar, and was associated with the Boston firm of Goodwin, Procter & Hoar in 1933-4. He moved to the Department of Labor in 1934, where he became Assistant Solicitor in 1935, Administrator of the Public Contracts Division in 1936-37, and Solicitor in 1937. He retained the latter post until 1941 when he was chosen as a member of the National Labor Relations Board for a five year term.

LL.B. '16, Massachusetts; William A. Pittenger, LL.B. '12, Minnesota; Dewey J. Short, ex-'27, Missouri; John C. Kunkel, LL.B. '26, Pennsylvania; James G. Fulton, LL.B. '27, Pennsylvania.

Democratic members are: Wilbur D. Mills, ex-'33, Arkansas; Michael A. Feighan, LL.B. '31, Ohio; Daniel J. Flood, ex-'27; Albert L. Thomas, ex-'23, Texas.

Representative Short required only two years to make the transition from law school to the House of Representatives. Following him is Representative Mills who required only six years. The average time required for this transition was 16½ years.

LL.B. '82—Charles W. Andrews, for more than sixty years an attorney in Syracuse, N. Y., died at his home in Cazenovia at the age of 85. Mr. Andrews was the son of the late Chief Judge Charles Andrews of the Court of Appeals, and brother of the late William A. Andrews, an Associate Judge of the Court of Appeals.

He leaves a widow, the former Mary Hyde; a daughter, Ann, the wife of Hervey Allen, the author; and two sons, Charles, a lawyer, and John Cheney Andrews of Cazenovia.

LL.B. '97—The death on August 23, 1946, of Robert Cushman in Boston ended the career of one of the distinguished patent attorneys of the United States. A graduate of Brown University, and a member of the staff of the Harvard Law Review during his years in the School, Mr. Cushman had specialized in patent law for 48 years, and was senior partner of Roberts, Cushman and Grover of Boston. Since 1940 he had served on the national advisory council to the Committee on Patents of the House of Representatives, and was a past president of the Boston Patent Law Association. He is survived by his widow, Mrs. Mary Reed Cushman.

LL.B. '13—Warren Butler was married in New York on August 16 to Mrs. Linda Scarritt Tuckerman, daughter of the late Rev. Dr. and Mrs. William Scarritt of Boston. They will make their home in Middleton, Mass.

LL.B. '33—Mark DeWolfe Howe, now a professor at the Harvard Law School, has been appointed to the position of Legal Advisor of the Massachusetts branch of the American Veterans Committee.

FORUM HISTORY—Continued

system, namely, Congress.

Thomas Finletter, author and advocate of parliamentary principles, went down the line for his reforms as against Representative A. S. 'Mike' Monroney's exposition and support of the far-reaching changes which his committee had suggested, including alteration of the seniority rules, the filibuster rules and the House Rules Committee itself.

Before the results of the voting were tabulated and announced, a very savage interchange of economic ideas was made by Senator Edwin Johnson of Colorado and Edward Mason, former deputy to William Clayton, on the merits of the British loan. Senator Johnson emphasized the difficulty of breaking up the sterling bloc, and supported his preference for multi-lateral trading as opposed to our present unilateral policy. Professor Mason spoke along the lines of the political advantages and beneficial repercussions in world economy of such a loan.

With over three hundred ballots cast, the voting for membership in the Board of Directors resulted in the selection of the necessary twenty men. The leading candidates, with their vote, were: Jerome Rappaport 179, John F. Kieran, Jr. 102, Samuel Pruitt 85, John Crane 81, and Earl Capehart 70. At the first meeting of the new Board Mr. Rappaport was elected President; Mr. Kieran, Vice-President; Burns Stanley, Secretary and DeWitt Kirk, Treasurer. A planning committee was appointed for the next year to suggest topics and speakers and to solicit advice from all quarters.

The Forum then closed out its first season with a discussion on Cartels on Friday, May 10. William H. Davis, former chairman of the WLB, Judge Edwin Davis, Chairman of the FTC, Gilbert Montague, well-known anti-trust lawyer and Hugh Cox of the Department of Justice participated.

The trial of this new organization seems to have been a success. Response by the student body in the elections, in attendance, in participation and in criticism was the encouragement needed to sustain it. The Forum, as has been indicated, has worked out an ambitious schedule for the Fall. Its future as an extra curriculum activity depends on membership support.

It could become a permanent and necessary part of the Law School.

As Dean Landis has observed:

"An aliveness to the world about them, its pressing issues and its challenges, is almost essential to a proper appreciation of the law. To the extent that the Forum can promote these ends, it is a true adjunct of legal study. It should thus be a source of profit for whatever of the many pathways men now studying law will eventually pursue."

John F. Kieran, Jr.

Law School Annals

1849-1870

The interval between the Story regime and the appointment of Langdell in 1870 saw little of significance contributed by the Law School to legal education. The School followed the general decline in education prevalent throughout the country during the Civil War period. The slavery question infected both the students and the faculty with dissension and antagonism.

Considering the geographical location of Harvard, the number of Southern students in attendance up to the Civil War was remarkable. It was natural that they should speak up in defense of their home states and institutions. The Law School Parliament or Assembly, a student organization for the practice of parliamentary law and procedure, was an arena which heard acrimonious debate that frequently bordered on if it did not reach physical violence between the Northern and Southern students. Outside the School Southern members committed such heresies as booing Ralph Waldo Emerson and Charles Sumner at Free-Soil and Anti-Slavery meetings.

The violent reaction which followed the passage of the Fugitive Slave Law produced an unfortunate incident in the Law School faculty. Edward L. Loring had been appointed lecturer in 1852 and had made a great success both with the students and the faculty. In 1853 he was appointed University Professor of Law, but was brushed aside by the Overseers of Harvard, the majority of whom were strongly anti-slavery, because Judge Loring had been and still was United States Commissioner charged with the enforcement of the Fugitive Slave Law. His only offense was that he performed faithfully the duty put upon him by the Federal Government. From 1852 to 1858 Loring's enemies hounded him: out of his professorship in 1853, out of the Law School faculty altogether in 1854, then from his position on the Massachusetts Probate Court in 1858. At this point President Buchanan rescued him by appointing him to the Court of Claims in Washington. Throughout this persecution, the Law School buried its own sectional differences to stand by their erstwhile lecturer though without success.

From 1847 to 1870 the Law School was run by Joel Parker as Royall Professor, Theophilus Parsons as Dane Professor and Emory Washburn, first as University Professor and then as the first incumbent of the Bussey Professorship established in 1862. All three were regarded as excellent scholars, but they took the school as they found it and left it unchanged and unimproved. Before and during the Civil War, Parker was a very active pamphleteer and speaker in favor of the Republican Party until the Emancipation Proclamation which so offended his innate conservatism that he became a severe critic of Lincoln's policies. Parsons, the more liberal of the two, followed along with Lincoln; and the two professors finished their careers in 1870.

AMES FINALISTS—Continued

Results of this term's qualifying round, as announced by the Board of Student Advisers, are as follows:

1. Casner Club; Wilkey, Cahall, Collins, Walker, Lee, Carr, Disney, Martz; four victories; total score 557.
2. Scott-Pow-wow; Asbill, Quintrell, Macmeekin, Perkins, McCarter, Bennett, Platt, Waller; four victories; total score 544.
3. Taney Club; O'Dea, Culbert, Cady, Goodman, Lovett, Stout, Kehl, Simmer; four victories; total score 535.
4. Langdell Club; Stevens, Silva, Bernstein, Bondi, Bard, Baughman, Buckalew, Metzger; two victories, two losses; total score 548.
5. Grotius Club; Baylor, Bur, Hammond, Head, Oldfather, Olsen, Scoult, Witt; two victories, two losses; total score 543.
6. Root Club; Aldrich, Alphonson, Ford, Pinney, Potter, Constant, Dolan, Gardiner; two victories, two losses; total score 541.
7. Wilson Club; Abbott, Goodwin, Hoehn, Sullivan, Casey, Stewart, Montgomery, Akley; two victories, two losses; total score 536.
8. Fuller-Hughes; Schmidt, Carens, Barrows, Winer, Backman, Cracraft, Stein, Stevens; two victories, two losses; total score 527.

TERM SCHEDULE—Continued

Sales, Professor McCurdy; Property II, Professors Leach and Casner.

Third Year and Graduate: Administrative Law, Professor Katz; Conflict of Laws, Professor Freund; Constitutional Law, Professor Powell; Corporate Reorganization, Professor Dodd; Domestic Relations, Professor McCurdy; Government Regulation of Business, Professor Bowie; Insurance, Professor Gardner; International Law, Professor Hudson; Jurisprudence, Professor Pound; Labor Law, Professor Cox; Legislation, Professor Marty; Special Tax Problems, Professor Maguire; Taxation, Dean Griswold and Professor Maguire.

OPINION POLL

Tear out, mark and deposit in ballot box in Langdell South or Austin, or paste on 1-cent post card and mail to the Record.

DO YOU BELIEVE WE SHALL BE AT WAR WITH RUSSIA WITHIN FIVE YEARS?

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☐ Undergraduate ☐ Alumnus
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Calendar

THE LEGAL WORLD

Class Change

Prof. Baker's Third Year Class in Business Associations II will be held Friday, Aug. 30, at 3 p.m., instead of Saturday, Aug. 31, at 11.

Class Registration

Prof. Cox's Labor Law course will be taught from mimeographed material during the winter and spring terms, since casebooks are out of print. All students who intend to take this course either term are requested to leave their names with the Receptionist before Tuesday, Sept. 10, so the proper number of pamphlets can be printed. They will be available before classes begin at the cost of mimeographing.

Board of Student Advisers

Tea, Thursday, Aug. 29, 4-6 p.m., at Kendall House, for graduate and special students.

Final argument, Ames Competition, Thursday, Aug. 29, 8 p.m., in Langdell Hall courtroom.

Law Wives

A regular meeting of the Harvard Law Wives will be held Tuesday, Sept. 3, at 3 p.m., at Kendall House.

Law Club Dances

Griswold Club: Dance for members and guests, Friday, Sept. 6, 8 p.m., at Kendall House.

Chancery Club Smoker

A smoker for members of The Chancery Club and their faculty guests will be held Wednesday, Sept. 4, 4-6 p.m., at Kendall House.

Holidays

The school calendar for the 1946-1947 year has been released. Summer term ends Oct. 5, 1946, and the winter term begins after a 16-day recess on Oct. 21, running through Feb. 8, 1947. After a 9-day vacation, the spring term will commence Feb. 17, running through May 24. The summer term begins June 9, and continues until Sept. 13. Following a 16-day recess, the winter term of 1947-1948 will start Sept. 29, 1947.

Lectures will begin on the opening day of each term.

Legal holidays during the year include Labor Day, Sept. 2; Armistice Day, Nov. 11; Thanksgiving Day, Nov. 28; Patriot's Day, April 19; and Independence Day, July 4.

Christmas recess will be from Dec. 23 to Jan. 2, inclusive.

Republican Forum

All students interested in establishing a Republican Forum at Harvard next term are requested to send their names to William Rusher, IL, C-33 Hamilton Hall.

THE UNIVERSITY WORLD

Folk Dancing, Friday, August 30, 8:15 to 11:15 p.m. in Congregational Church, Garden and Mason Streets, Cambridge. Special instruction to beginners from 7:45 to 8:15. Refreshments, folk songs, and demonstrations by nationality groups.

Harvard Wives

Tea, Wednesday, September 4, 3:30 to 6:30 p.m., at Cambridge Y.W.C.A. Brief talks by Mrs. Hartlein and three Harvard Wives are scheduled. This is to be a joint tea with M.I.T. Wives. Admission 25c.

Bridge. Informal lessons given Wednesday, 8 to 10 p.m., at Cambridge Y. W. C. A.

Student Dance, Friday, August 23, 8 to 12 p.m., at Trinity Church, Copley Square. Free to all students.

THE OUTER WORLD

Plays

Cambridge Summer Theatre, Brattle St. Through August 31, Mary Boland in "Meet the Wife."

Boston Summer Theatre, (air-conditioned), Clarendon St. near Copley Square in New England Mutual Hall. Through Sept. 7, Grant Mitchell in "The Late George Apley."

Note: The summer theatres are closing.

Plymouth Theatre, Stuart St. near Tremont St., Boston. Through August 31, "Dear Ruth."

Colonial Theatre, Boylston St. near Tremont St., Boston. Through September 7, "Life with Father."

Wilbur Theatre, Tremont St. at Stuart St. Zasu Pitts in "Cordelia," through September 7.

Shubert Theatre, Tremont St., Boston, near the Hotel Bradford. For three weeks beginning September 2, Mae West in "Come on Up."

Employer's Freedom of Speech

(Concluded)

The difficulty in analyzing the free speech element in Board proceedings arises from the fact, as in the *Virginia Electric & Power Co. Case*, that speech plus other conduct in combination is found by the Board to constitute an unfair practice, or practices. An exceptional case arose in the Second Circuit which presented solely the employer's speech problem. In *N.R.L.B. v. American Tube Bending Co.* the company was found by the Board to have committed an unfair labor practice because of an employer's letter sent and speech delivered just prior to an N.L.R.B. election in the plant. No consideration of past practices on the part of the company was involved. On November 18, 1941, the Board directed an election be held December 2, 1941, to determine if the A.F.L. or an independent unaffiliated union represented a majority of the company's employees. Less than a week before the election the employer sent a letter to his employees and the company. The message posed the following queries, "To what kind of leadership are you going to entrust your future with the company? Is it unselfish or is it not? Is it interested in your personal, individual welfare, or is it self-seeking? On the basis of its past record is it open and above board and dependable, or don't you know? These are questions you should think about and talk over at home."

The President of the company on the day before the election read a prepared statement to the workmen on each shift. The President said in substance the issue of unionization is basically an issue as to whether the union will be able to benefit the employees by securing higher wages. The wages paid by the company were actually higher than that paid by other companies in the vicinity contended the employer. Referring to the outside union group as "strangers," the President suggested that they would not be able to improve the present workingman's position. The following day the election resulted in a majority voting against unionization. On the basis of the employer's pre-election conduct by letter and speech the Board found that the employer had committed an unfair labor practice and petitioned the Circuit Court of Appeals for enforcement of its order.

Judge Learned Hand, speaking for the court in reversing the Board's order and dismissing the proceedings, classified this case as following in the same pattern as *N.L.R.B. v. Virginia Electric & Power Company*. Hand interpreted the Virginia Electric decision as sustaining the privilege of the employer to express himself on labor policy, although he recognized the Supreme Court might only have been holding there was not enough evidence of coercion.

The Use of Letters

Suppose an employer releases a barrage of letters to impede a union organizational drive. When such letters individually on their face do not appear coercive, does the Board have a basis for finding an unfair practice under Section 8 (1) of the Act? This problem faced the Third Circuit in *N.L.R.B. v. Trojan Powder Co.* In February, 1941, the C.I.O. began organizing the Trojan Powder Company. In rapid succession the employer directed letters to his employees dated April 8, 9, 10, 14, and 25, 1941. The first letter announced an increase in bonus, stated further that only the employer could supply jobs, and that the company's loyalty to the employees would always at least equal the employees' loyalty to the company. The two subsequent letters stressed the company's interest in advancing the employees' welfare and discussed the necessity of employee cooperation. The fourth letter enclosed a statement to be signed by employees promising to work without interruption. The final letter discussed uninterrupted production, and favorably commented on the large number of employee loyalty statements that had been received. In addition to the letters some of the company supervisory members including a foreman had commented adversely on the high union dues and another foreman referred to the C.I.O. backers as "saboteurs." The court in viewing the entire scope of conduct granted

the N.L.R.B. petition for enforcement of the unfair practice order.

Statements After Court Appeal

After the Supreme Court had refused to review a decree for enforcement of a Board order issued by Circuit Court in the Third Circuit, the E. G. Budd Mfg. Co. complied with the affirmative acts required by posting the necessary notices, reinstating employees and taking steps to disestablish the company dominated union. At the same time this action was taken a letter was sent by E. G. Budd, President, to the employees, pointing out the results of the litigation and stating the company could no longer bargain with the association it had bargained with in the past. This letter also contained an enclosure, in the form of a company statement, signed by Edward G. Budd, President. This statement pointed out that employees were not required to join any particular union and carefully suggested that an unaffiliated union might be most desirable from their standpoint.

The Board petitioned the Third Circuit charging that Edward G. Budd and the company were in contempt of the court because of these expressions. The court dismissed the petition holding that these expressions are privileged under the guarantee of the First Amendment. The Board took the position that the letter and the enclosure should be viewed in the light of the Company's labor relations of the previous ten years. This view was expressly rejected by the court, which said if this proposition be applied, an employer, once having a court decree outstanding to abate unfair practices, would never be able to express himself on labor problems without the threat of a contempt proceeding. The court added that the right of free speech should not be forfeited because of misconduct in the past.

May an employer prior to a N.L.R.B. election publicize its past generous and liberal employee in showing that a union is unnecessary? An employer's communication under such circumstances set forth information about the wage policies and called attention to the company-sponsored employee benefit plans mentioning life insurance, pension trusts, sickness and accident benefits, hospitalization, vacations and Christmas bonuses. The letter closed as follows: "And now I'll close with this promise. In the past your Company has always tried to play the game honestly, fairly, and, always with the welfare of its employees in mind. Whatever the election on Friday decides, your Company will still continue to play the game..."

This letter sent by an employer whose hostility to the entrance of a union in his plant was well known was found by the Board to constitute an unfair labor practice. It was intended by the company, said the Board, that the continuance of the company benefits was dependent upon the plan remaining non-union. There was no express statement in the company's letter that the enumerated benefits plan would be unchanged if a union was selected to be the bargaining agent of the employees. The District of Columbia Court of Appeals adopted the Board's view on this point. Since no evidence was introduced which tended to show the company planned to discontinue its liberal benefit program, and the employer stated in the letter the company would still continue "to play the game" regardless of the election result, the position of the Board and the court may be regarded as doubtful. Judge Thurman Arnold's opinion pointed out that the employer could readily comply with the Board's order on this issue.

The Coercion Test

In a subsequent case an employer in pointing out the benefit program he had provided his workmen also added the statement that the recital of the benefits should not be construed as a threat of withdrawal. It was held that such an expression did not constitute an unfair labor practice.

To A.F.L. charges that the company paid low starvation wages, robbed employees of their lunch and rest periods, and had proven its inability to speak truthfully, the J. L. Brandeis Department Store published a series of articles in reply in a

company publication circulated to the employees. This paper reprinted an article by Westbrook Pegler concerning an A.F.L. official who had been convicted of conspiracy to violate the Selective Service Act. Later issues called the employees' attention to the cost in union dues if they should organize. The company said that the monthly cost to the store employees would be \$1.50. The second highest ranking official in the company during a discussion at a meeting of the company employees said that the union leader's use of falsehoods in appealing to workers compared favorably with the technique outlined by Hitler in *Mein Kampf*. The Board found such conduct violated the Act but the company resisted the Board's order.

In an enforcement proceeding before the Eighth Circuit the court said that the earlier view of a complete and unquestioned neutrality no longer applies in employer's speech activities. The test instead is whether coercive language was used and the court held no such language was used by the Brandeis Company. The Board tried to sustain its finding of coercion by pointing out the repetitious character of the statements and their vehemence. To that contention the court replied: "So long as the reasoning power of the employee and not his fear is applied to, the Constitution protects."

The Supreme Court, in *Thomas v. Collins* throws some illumination on the employer's free speech right. Factually this case involved the right of a labor organizer R. J. Thomas, at that time President of the U.A.W.-C.I.O., to speak before an audience of workmen and solicit union memberships without obtaining from the State of Texas an organizer's license as required by that statute of that state. A restraining order issued by a Texas state court was outstanding at the time Thomas spoke. In his speech Thomas was arrested for violating the Texas statute. He challenged the constitutional validity of the Texas Act by Habeas Corpus proceeding. The State Supreme Court sustained the Texas statute as being a valid exercise of the State's police power in the regulation of a vocation.

Mr. Justice Rutledge spoke for the majority of the Supreme Court in holding the Texas statute unconstitutional. He reiterated the "clear and present danger" doctrine as being the test for determining if a limitation on speech is proper. It was pointed out there was no menacing evil that would justify Texas in imposing such a stringent restraint on free speech. Justice Rutledge said further that not only was the constitutional right of freedom involved but also the guaranty of peaceful assembly.

Summary

In summary, it is clearly established that an employer can exercise his right of free speech on labor matters, provided the expression is not "coercive," as yet the scope of which limitation has not been clearly defined. Decisions have, however, established signposts of caution to the employer. An employer before expressing his views on labor issues to his employees should engage in some self analysis in carefully scrutinizing his past labor record. Has his company consistently blocked union organizational attempts, or has the company followed a policy of non-interference in employee labor movements? The Board and the courts view the company's reputation and background carefully in evaluating employer statements. An employer whose past background reflects fairness and liberal treatment of his employees may under the N.L.R.A. more safely express himself on labor issues as contrasted to an employer whose bitterness and hostility to unionism is well known.

In preparing any company statement the draftsman should avoid any expression which might be construed as a threat. An expression that the plant might be closed down, or work limited because of em-

ployee movements is likely to be found outside the area of proper employer comment.

A tactful employer in presenting his arguments should set forth the rights of collective bargaining guaranteed by Section 7 of the Act and advise the employees that they can exercise such rights without fear of retaliation. Should the employer undertake to discuss the N.L.R.A., the treatment should be in an impartial manner. The employer should not simply point out what the Act does not provide.

The Board, in examining employer's expressions, may find coercion by drawing inferences from statements which on their face would not appear coercive; for example, an employer calling attention to the company's liberal employee benefit plan with no express statement that the benefits would be continued regardless of the result of the forthcoming N.L.R.B. election. This type of employer statement was found to be an unfair practice by the Board, and the Board's order was sustained by the reviewing court. Use of the "inference" device by the Board would in the long run make the employer uncertain as to the interpretation the Board might place on any statement he issued, and therefore tend to stifle discussion on the employer's side.

As guides to privileged employer discussion, courts have said that employees should be appealed to by temperate argument, and reason should be appealed to and not fear. An employer should not take the risk of conducting a rapid fire circular campaign opposing unionism in his plant even if the messages are non-coercive on their face.

Finally, the employer should bear in mind that the N.L.R.A. was directed against conduct, and the Board, in seizing on a pattern of employer activity that is allegedly an unfair labor practice, may use as evidentiary material, employer expressions. In the *Virginia Electric & Power Co. Case*, Mr. Justice Murphy said: "But, certainly, conduct, though evidenced in part by speech, may amount, in connection with other circumstances, to coercion within the meaning of the Act."

Alf Stavig, LL.B. '46

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