

The Harvard Law School Record

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PRICE TEN CENTS

NEW CASES SCHEDULED BY BOARD

Prizes for Last Term Announced; Many Ames Awards Given

The social and intellectual advantages of law club activity, as well as the organization of the work, were explained to first term men at a meeting in Langdell Hall on Thursday, October 24, presided over by Frank M. Coffin, president of the Board of Student Advisers. Speakers were Dean Edwin N. Griswold, Professor Edmund M. Morgan and Professor Archibald Cox, as well as Henry J. Smith, Chairman of the 1st year Committee, who emphasized that clubs must be formed. The names of members should be submitted to the Board of Student Advisers in Austin Hall by 10:00 A.M. on Thursday, Oct. 31. Membership lists will be posted on Friday, Nov. 1st, in both Austin and Langdell Halls. Any duplications or omissions must be reported by 5:00 P.M. that same day to the Board, so that complete, corrected rosters may be posted on Saturday.

Smith also revealed that 1st term facts would be issued on Monday, Nov. 4, from the conference room window opening on the lobby of Austin Hall.

Dean Griswold, urging the participation by all the students present, stressed the value of law club work, and pointed out that it was analogous to class room attendance, of which there is no check-up at the Law School, but at which everybody's presence is expected.

The double aspect of the law club program, by which both intellectual and social stimulation are afforded the student, was commented upon by Professor Morgan. Friendships formed in law club days, he asserted, have been valuable to him in professional advancement.

Professor Cox pointed out that a man's ability to present his case and clearly state his ideas were aided greatly by moot court work. The law students first experience with synthesis and extensive expression, as opposed to the mainly analytical method of classroom work, comes with the preparation and argument of his first case, he said.

Prizes for the June, 1946, term were handed out at the meeting. Winners were as follows:

BEST ORAL ARGUMENT: James H. Bernard, 1st term member of the Patrick Henry Club. The prize was a copy of the Holmes-Pollock Letters.

BEST BRIEF: Robert M. Thomas, 1st term member of the Pow Wow Club. Prize: Holmes-Pollock Letters.

Honorable Mention: Arthur Berger

Eugene J. T. Flanagan

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STACK PRIVILEGES

It will be impossible to continue the war-time rule under which stacks were opened to third year men, Dean Griswold stated in response to RECORD questioning Saturday. Present enrollment figures compel this action, he declared, pointing to the 235 men now in the fifth, sixth, and seventh terms.

The permission for third year men to go into the stacks developed during the war when classes were small and held in seminar rooms. In February there will be 310 third year students, in June 587, and by next October 826, so the return to the pre-war rule was inevitable, even if its imposition were deferred.

No exception will be made for men writing papers, and only in extraordinary cases may special requests for stack permits be granted. The Dean pointed out that large library facilities are directly available to all students in Langdell Hall and in the newly reopened Austin reading room. He was unable to formalize any basis for making exceptions.

It will not be helpful to request an individual professor for a stack card, since these requests will be handled at the Dean's office solely.

CHANCERY CLUB TO RESUME ACTIVITY

Smokers, Cocktail Party, Dance Slated For Fall

The Chancery Club is planning a season of increased activities for its members according to President Eugene Cavin (Texas '40 of Galveston, Texas).

In this, the third term after its reorganization necessitated by the war, the Chancery Club in addition to its regular Tuesday luncheon-meetings at the Hotel Continental, already has on the calendar two smokers. The first of these smokers, an introductory get-together for old members and proposed new members, will be held this Friday, November 1, at Kendall House at 4 o'clock. A second smoker, to which several members of the faculty will be invited, will be held at Kendall House on Friday, November 8, at 4:30.

Also in preparation are plans for the members of the club to attend the Harvard-Brown game in a body. After the game, there will be a cocktail party. Later in the fall, the club will give a dance.

Originally organized in 1926, for the purpose of injecting a bit of merriment into the grim routine of studying law, the Chancery Club today is attempting to create a medium through which students of the Law School, both married and single, have a chance outside of the classroom to know one another better. One further purpose of the club is to give students and members of the faculty a chance to meet and become acquainted on a more informal basis than would otherwise be possible.

FORUM TO MEET ON FRIDAY

Salisbury, Dallin, Pope To Discuss Russian Policy

The 1946-47 series of Harvard Law School Forum meetings will get under way at 8 p.m. this Friday, Nov. 1, in Sanders Theatre, Memorial Hall, with a discussion of the question "What Are the Domestic Sources of Russian Foreign Policy?". This meeting will be the first of a series of 12 to be held during the 1946 Winter term and the 1947 Spring term.

Speakers for the opening meeting, who will lead up to the question period with addresses of 20 minutes each, will be Harrison Salisbury, correspondent for the United Press and author of "Russia on the Way"; Arthur Upham Pope, director of the Iranian Institute and author of "Biography of Maxim Litvinoff"; and David Dallin, author of "The Real Soviet Union," "Soviet Foreign Policy," and "The Big Three."

For the benefit of those who have been wondering whether they should purchase a new membership to the Forum, the Forum officers have announced that all memberships are good for a total of three terms, including the summer term. Thus, those who purchased a ticket during the 1946 Spring term will be admitted to all lectures held during the 1946 Winter term, which includes the first seven meetings of the 1946-47 series. Those who subscribed during the 1946 Summer term and those who subscribe now will be admitted to all 12 meetings of the 1946-47 series.

The Forum membership now stands at 1200 and the Forum officers have indicated that it may be necessary to close off the membership in the near future, since each ticket entitles one couple to admission and the seating capacity of the lecture hall is limited. Memberships are on sale for \$3.00 at the Forum offices in Gannett House from 9 a.m. to 5 p.m., Monday through Friday. Admission to individual forums will be 50 cents for non-members.

LINCOLN'S INN SOCIETY

The Lincoln's Inn Society which has its temporary clubhouse at the Hasty Pudding Club, 10 Holyoke Street elected the following officers to serve until June 1947: President D. Mercer, Vice-President Mac Asbill, Treasurer A. D. Hargrave, Secretary John E. Kilgore. The Board of Governors are: W. P. Bundy, D. Dunlap, J. F. Kieran, Jr., L. B. Morris, Jr., J. A. Rousmaniere, P. Q. A. Selbert.

Lincoln's Inn will meet Tuesday, Nov. 5, at 3 p.m. in LSM.

DEAN ADDRESSES ALUMNI AT NATIONAL GATHERING



Dean Erwin N. Griswold, whose address was the principal feature of the Harvard meeting at ABA's Atlantic City Convention.

OVERCHARGES ON BOOKS

The Harvard Student Council has been investigating several complaints of overcharges by book dealers in the Square. A few cases of abuse have been discovered. Unfortunately the main difficulty lies with second-hand and out-of-print books, on which there are neither ceilings nor list prices.

All Law School students are urged to be particularly watchful of the prices they pay for books. If they are buying texts under the GI bill, they have a responsibility for the careful use of Government money; overdrafts on students' allotments will be deducted from eligibility time.

Any student who has any complaints or questions about the proper price should refer same to the Book Order Department of the Veterans office in Weld Hall 9.

Large Number Of Cases Handled By Legal Aid Bureau Last Term

All of us know that there is an organization in the law school called the Harvard Legal Aid Bureau; most of us have a vague idea that it has something to do with giving free legal aid to poor people; and some of us have even seen men and women, quite obviously not members of the law school, wandering around looking for the Legal Aid offices in Gannett House. But few students outside of members of the Bureau staff, have a clear idea of how many and what types of cases Legal Aid handles.

On April 1, 1946, the organization reopened its offices after a wartime period of inactivity. Despite a recess between May 4 and July 8 for examinations and vacation, and a period of half-time work from September 9 to 27 because of examinations this past semester, the 35 members of the Legal Aid staff have done work for 282 clients since April. In addition, the Bureau declined to aid 71 other persons after discussing

their cases with them. This latter group included criminal cases, which Legal Aid is not authorized to handle, and clients who were trying to get the law to aid them in various "high-handed" schemes.

The Bureau's authority to do its work is derived from two advisory opinions of the Supreme Judicial Court of Massachusetts which state that giving gratuitous legal advice to poor people is not the practice of law. Therefore, the staff members, as law students who are not yet members of the Bar, are not "practicing law" when they work for the organization.

Of the 282 clients since April, 72 were veterans of World War II. Sixty-one cases involved family problems such as divorce, separation, and custody of children. Property cases, such as evictions, numbered 119 and there were 55 clients whose cases involved other economic problems. 201 of the 282 cases were disposed of during the month in which the applications for aid were received.

Practicing lawyers referred 21 clients to Legal Aid, social agencies sent 15, and employers sent another 32. There were 27 clients who had been previously served by the Bureau.

The service rendered on each case varies, of course, with the needs of the clients. Fifty-six people were merely given advice as to what their rights were and how their problems could be handled. In 35 other cases, after consultation with staff members, the people were referred to other agencies such as the Boston Legal Aid, where Harvard Legal Aid was unable to do anything further. In 75 cases, service was completed without the necessity of court action and 4 cases were closed after court action. After partial service had been rendered, 31 cases were terminated for a variety of reasons including the client's desire to drop the case.

BROOKS HOUSE TO EXPAND SERVICES

Handbook, Directory For Students Contemplated

Tickets for the legitimate theatre or any musical may be obtained through the Phillips Brooks house without charge for the service by merely dropping over there between 10:30 and 12 noon or 4 and 5 P.M., Chairman John Martin declared today. This will save the enthusiasts of the theatre among law students the time and trouble of a trip to Boston.

This is only one of the many functions performed by the Law School Committee of Phillips Brooks House. Foremost among these services is the lending library which procures casebooks and then rents them to law students for a nominal fee per semester. The Committee plans to hold a drive later on in the term to supplement the casebooks which are now available.

Other projects contemplated by the committee are a handbook, akin to the one published by the undergraduate school, which will serve to acquaint neophytes of the law school with the surroundings, and a directory which will list all the students in the law school. The committee is also working in conjunction with Mr. Dimmitt to bring outstanding lawyers to the school for the purpose of giving present students first hand information on the practice of law of certain types in certain localities.

The committee which administers these functions is composed of fifteen members selected from all classes in the school. At the present time the following are members: Robert Trump, Dan Hannon, William Haynes, Dan Paul, George Burditt and Gene Emery.

A dance program is now under advisement, and plans will be disclosed when more nearly complete.

Reports to Graduates At Harvard Luncheon Of ABA Convention

In a speech delivered before a group of Harvard alumni at their annual gathering during the American Bar Association Convention held last Monday at Atlantic City, Dean Erwin N. Griswold analyzed the problems which confront the Harvard Law School and stated his position in relation to them. The speech was so integrated and is sufficiently important that it does not permit of partial quotation and in lieu of excerpts the RECORD will print the entire text plus additional details of the convention in the next issue.

There were approximately three hundred alumni in attendance at the luncheon which was held in the Cambridge Room of the Hotel Claridge. Secretary of War, Robert P. Patterson, presided at the only formal meeting of the Law School alumni during the year and introduced Dean Griswold. Undersecretary of War, Kenneth C. Royall, and Undersecretary of Navy, John L. Sullivan, both Law School alumni, also delivered brief talks.

At the speaker's table in addition to those aforementioned were the president elect of the American Bar Association, Carl B. Rix, the incumbent president, Willis Smith, the editor in chief of the A.B.A. Journal, and a past president of the A.B.A., Judge William L. Ransom, and four past presidents all of whom are Law School alumni, Joseph W. Henderson, Gurney E. Newlin, Henry U. Sims, and Frederick H. Stinchfield. Also at the head table were a past president of the Canadian Bar Association, Dwight L. McCarthy, a representative of the English Law Society, Sir Norman Birkett, the Assistant Secretary of Navy, John W. Kenney, and the following members of the Harvard Law School Association Council: John G. Buchanan, Jackson R. Collins, Clarence N. Goodwin, Frank W. Grinnell, George W. McCarter, Robert N. Miller, Kurt Pantzer, Murray Seasongood, Reginald Heber Smith, and Joseph N. Welch. Among others present were the Chief Justice of the Province of Manitoba, E. K. Williams, and Harrison S. Dimmitt, Secretary of the law school.

PERMANENT POSTS GIVEN HOWE, COX

Mark DeWolfe Howe and Archibald Cox, both of whom have been serving as Visiting Professors of Law, have just been given permanent appointments.

Professor Howe was formerly Dean of the Law School at the University of Buffalo. During the war he served in Europe as a Colonel in Military Government. In addition to teaching American legal history and equity, he is currently engaged in editing the journals of Mr. Justice Holmes.

A former editor of the Harvard Law Review, Professor Cox worked with the National Defense Mediation Board, the Office of the Solicitor General, and the Departments of State and Labor. He now teaches torts and labor law.

Modern Crisis Shows Pressing Need For World Legal System

There is a new profession waiting for the law school graduate these days. It is not over-crowded. In fact, there are so few men in the field that it is hardly mentioned as a possible vocation. And yet, the demand is tremendous; the possibilities here for trained lawyers are unlimited. It means hard work and perseverance but it is a true calling. In the practice of world law, the troubled world itself is our client.

To go about the ordinary business of living, the world needs peace. We have survived the last war determined to abolish waste and destruction, but we lack a clear-cut notion of how to do it. Much has been written by analysts of international affairs and all agree on one point. Whether they are generals, scientists or politicians, this is the inevitable conclusion. The only substitute for war is law.

In the past, the nations of the world have managed to get along somehow.

When the bubonic plague broke out in 1347 and wiped out three-fourths of the population history almost stood still. The result was world-wide international co-operation that stamped out the fear of epidemic. After six centuries of scientific progress we are faced with the same situation. Do we have to wait for it to happen before we act? The people are ready to accept any workable alternative to a bacteriological free-for-all, yet pessimism is widespread. Power politics have been the curse of the embryonic UN; the diplomatic give and take has bogged down the procedures of mediation and arbitration have proved ineffective in political controversies; what else can we try? Utopian plans for a world government have been meticulously outlined. The framework of a world police force has been drafted. The cart is full of the machinery of peace but it is in front of the horse! There must

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Alumnus Presents Postscript To Employers' Right Of Free Speech; Recent NLRB Decisions Cited

The timeliness of the recent article in The Harvard Law School RECORD on "Employer's Freedom of Speech" by Alf Stavig is evidenced by succeeding events. On August 28, 1946 the National Labor Relations Board made public its decision in the case of *Clark Bros. Co., Inc.* (Case No. 3-C-753), distinguished by the announcement of a new Board principle and a vigorous dissenting opinion from Gerard D. Reilly, Board member, whose term of office has since expired.

The new principle is that the conduct of an employer prior to an N.L.R.B. election in assembling his employees during working hours and on company premises, to listen to anti-union speeches by company officials, independently constitutes an unfair labor practice of interference, restraint, and coercion within the meaning of the National Labor Relations Act, regardless of whether the speeches themselves may be privileged under the Constitution. The majority of the Board (Paul M. Herzog and John M. Houston) reasoned that the employees were compelled to listen to the speeches because the only way they could have avoided hearing them would have been to leave the premises, which they were not at liberty to do during working hours without company permission. This compulsion,

the majority felt, violated the employees' statutory rights to self-organization and freedom of choice of collective bargaining representatives. In the words of the majority opinion, the employees must be "free to determine whether or not to receive such aid, advice and information."

On this point the dissenting opinion notes that the employer's anti-union speech in the *American Tube Bending* case (134 F. (2d) 993 (CCA 2) 1943 Cert. denied 320 U. S. 768), which the Second Circuit held to be an exercise of free speech under the Constitution, was also made during working hours on company premises. The majority admit that there was what they term a "captive audience" in that case, but consider the question an open one because the Board had not there found that the employer's action in "compelling an audience" was, in and of itself, an unfair labor practice.

The majority opinion refers to the employer's "coercing its employees to listen to speeches" as an exercise of its "superior economic power." The dissent suggests that such a reference is fallacious in view of the vast financial resources of national industrial unions, such as the UAW-CIO, which was the union involved.

The case is of further interest because it applies the so-called "course of con-

duct" rule, under which the employer's statements and speeches are found to be illegal as part of a "totality of acts and statements" which interferes with, restrains, and coerces the rights of the employees. The dissent implies that the majority in reality hold the speeches themselves unlawful by tying them to some minor aspect of interference. Mr. Reilly points out that apart from the statements and speeches, the only acts the majority rely upon are findings that there was a disparity of treatment as between competing labor organizations in the distribution of campaign literature in the plant and that there was surveillance by company officials. The surveillance consisted of several visits by the company's labor relations director to "a drinking establishment for the specific purpose of overhearing employee conversations regarding the organizational campaign of the CIO."

While the literature distributed by the company and its advertisements and speeches contained no direct threats, and contained statements that the company would abide by the result of the election and would not discriminate against any employee, they were plainly worded in expressing its opposition to the CIO. The employees were not left in any doubt that the employer pre-

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Editorials

THE PLACEMENT PROBLEM

The huge size of the first, second, third, and fourth term classes here points up sharply the problem of employment of graduates.

Men enter law school from a variety of motives. The desire to serve in an ancient and honorable profession, willingness to prepare thoroughly for a career of public service, an acute interest in contemporary problems, or even a family tradition or background in the law, may be among the more usual reasons. However, and it is not really crass to say this frankly, the prospect of acceptable remuneration makes the decision to attend law school an easier one. Few if any, studying here, have hopes of wealth from the practice of law but almost all look forward to a respectable reward for competent professional service, after the period of apprenticeship.

For many of the graduates of the next decade this matter of livelihood is a matter of employment. It still is possible of course to go to a small town and begin practice alone. For the man with the price of a small library, a year's office rent, and a year's existence in his pocket this is still possible. The increasing complexity of practice renders somewhat dubious the service to his client that such a man could perform. Many leading lawyers got their start this way; how many will in the future is problematical.

For the majority who do not elect to open a shop of their own an opening must be found. In suggesting the role of the school and of the Alumni in this enterprise we do not mean to hint, even faintly, that the responsibility for his survival is not one for the individual. It is a responsibility that cannot be collectivized.

The placement service here has made a start, and with the personnel and resources available for the task, quite a lot has been accomplished. It would seem that the school has the intent to shoulder at least all of its share of the problem, but a system adequate today, will be insufficient next year.

Occasionally this paper receives written, and frequently oral comment, that the trend of Harvard graduates to flood into New York and Washington is unfortunate. Perhaps this sentiment is widely held by members of the Alumni bar who practice elsewhere.

If so, they have a real opportunity, through cooperation with the expanding placement activity, to assist in diverting the flow of men from New York and Washington. Through formation of placement committees (as described in last week's Record) members of the bar can make available to the school accurate, thorough, and timely information about professional opportunities in the various cities, and exert themselves to make openings for promising graduates. Thus in a single, although necessarily continuous campaign, the older graduates can solve one of the problems most pressing at Langdell and alter a condition in the profession which many state to be undesirable. The functioning of similar committees in New York and Washington can ensure the efficient placement of qualified men who desire to work for the Government or in Wall Street. If a sizable fraction of our 18,000 Alumni will enter into this program with enthusiasm they will markedly help the school, the profession, and perhaps their own offices. Efficient placement can be done only if enough positions are reported to effect a prudent apportionment of square and round pegs.

Through the work of the Committee on Legal Education the Law School is attempting to adjust its program of instruction to meet the problems of practice today. The painstaking and thorough response of many Alumni to questionnaires illustrates the consciousness of our older graduates that the school is endeavoring to perfect its techniques in accordance with the criteria ascertained through practical experience. Consequently there is sound ground for hope that our Alumni body will rally 'round and aid the school in helping its current graduates have a promising and desirable start in their professional careers. The maintenance over a period of years of such an arrangement will strengthen immeasurably the bonds of the Harvard lawyers' community.

C.G.S.

Letters to the Editor

To the Editor of the Record:

As one who contributed to the Committee for Action on the Georgia Lynchings, I should like to say something about the editorial in which you take one of my colleagues to task for not making a similar contribution.

Demands for contributions of this sort come from a great variety of sources. Characteristically today they come from newly formed committees, which for the solicitee are only names on paper conveying no intimation of the actual management of the fund to be raised.

It is an unfortunate fact that we have in this country certain ideologically oriented groups of the extreme left and right that are willing and eager to obtain money under false pretenses. Those of us who have in the past been burned (and I count myself among them) have become exceedingly gun-shy.

When I was approached by the Georgia committee I

am frank to say I was at first very doubtful about the purposes of the solicitation. Helping the innocent victims of mass hysteria was a cause that appealed to me strongly; helping subsidize some propagandistic line could appeal to me only if I knew something about the line. After some discussion, I gladly contributed my check because I became convinced that the intelligent and liberal-thinking young man who approached me was sophisticated in the ways of our ideological extremists and generally knew his way around. I said to myself that they would not make a sucker of him, and that I was therefore safe in going along with him. This very personal impression was the only assurance I had that my money would not be used to advance some party line, of which I might or might not approve.

Apparently my colleague (for aught I know, more wisely) has concluded that salvation lies in a blanket refusal to contribute to all causes except where he knows exactly how his money will be spent and who will spend it. To depart from that principle, and to make a choice among causes less clearly understood and identified, can demonstrably lead to editorials in the Record and other unpleasant consequences.

I should certainly not like to attempt to dictate the policies of the Record, but I urge strongly that giving and not giving be kept a private matter. Let publicly expressed opinions be publicly criticized, and if need be, publicly castigated. But let us keep to ourselves the discretions or indiscretions of our pocketbooks, for if we are denied this privilege, the natural result may be to drive all of us into the position of my colleague.

Very truly yours,

LON L. FULLER,
Professor of Law,
Harvard Law School

With all due deference, we feel that Mr. Fuller missed the point of last week's editorial. His colleague's right to refuse a contribution was as basic as ours to assail the philosophy which we argued was implicit in the statement "imposing on the student teacher relationship." The Record will continue to support the desirability of any political action by students which is not inconsistent with democratic ideology. The issue is far broader than a couple of dollars. As a skillful debater Mr. Fuller attacks the point obliquely, but, it is submitted, does little to rehabilitate the ostrich attitude we so thoroughly deprecate.

C.G.S.

To the Editor of the Record:

As Raymond Preston Underwood stated in the second installment of his informative article, "The Plight of Conscientious Objectors," in the Harvard Law School Record for August 7, the trials of most conscientious objectors prosecuted as Selective Service violators simply serve to determine whether or not the objectors had complied with orders of their draft boards.

These were generally orders to report for induction into the armed forces or the Civilian Public Service Camps established under the law for religious objectors to non-combatant as well as combat service in the armed forces. With few exceptions, Federal Courts refused to entertain as a defense in such criminal proceedings the claim that the orders of the draft boards were invalid. Judges uniformly ruled that the objectors' only remedy was to enter the armed forces and then sue for writs of habeas corpus, ignoring the fact that in so doing they would belie their principles.

This rule of law however was upset early last February by an important decision of the Supreme Court in the case of *Estep and Smith*, which Mr. Underwood did not mention. *Estep and Smith* were two Jehovah's Witnesses who had asked their draft boards for classification as ministers, as do all members of their sect, but were denied that request. Although the Supreme Court did not pass on the merits of their claims, it reversed the lower court for not allowing them to raise as a defense the contention that they were improperly classified.

The majority opinion of Justice Douglas and the concurring opinion of Justice Murphy indicate that the convictions of those who were gagged by the lower courts should never have taken place.

The Committee for Amnesty believes that the *Estep and Smith* decision points up very forcefully the need for amnesty for the imprisoned conscientious objectors. The miscarriages of justice due to the erroneous interpretation of the law by the lower courts in hundreds of cases can not otherwise be rectified. No agency can sift out every case where the objector was convicted because his attorney, relying on judicial opinions, had advised against raising the defense that the draft board's order was illegal. Practically all the imprisoned objectors have lost the right to appeal by this time, and to all who have served their sentences but are subjected to continued punishment through the loss of civil rights, only an amnesty is available.

So far as conscientious objectors are concerned, the American civil liberties picture is indeed black, and Justice Murphy raised a fundamental question in his opinion in the *Estep and Smith* case:

"All of the mobilization and all of the war effort will have been in vain if, when all is finished, we discover that in the process we have destroyed the very freedoms for which we fought."

Sincerely yours,

ALBON MAN
Secretary, Committee for Amnesty

Off the Record

Heard in Professor Chafee's class in Equity:

"As Lord Thurlow said: I was brought up on the Lord's Prayer but I have generally found that the prayer for general relief is more effective."

Mr. Scott, who should know, claims that heaven is the only place where everyone gets one hundred cents on the dollar.

A. R. contributes to the Law of Domestic Relations with the observation that the trouble with modern marriage is that it requires two people.

Sub Judice

THE "OUTLAWS" STATUS*****Revocation of Motion Picture Association seal of approval will not be enjoined where Association conditions its approval on satisfactory advertising.*

Plaintiff sought an injunction *pendente lite* restraining the defendant from revoking the seal of approval granted to plaintiff's picture *The Outlaw*, and from conspiring with its members to prevent or restrain the distribution of the picture. The defendant which is a voluntary membership corporation (of which plaintiff is a member) has set up a Production Code Administration and an Advertising Code Administration.

The Outlaw was granted a seal of approval after certain objectionable frames had been removed from it. Thereupon the producer got into trouble with the Advertising Code Administration. As a condition of the continuance of the seal of approval it was required that advertising matter should be submitted to the Advertising Code Administration for approval. Certain advertising was rejected, but some of that was apparently used without approval.

Plaintiff pressed his claim for injunction on the grounds that he was unfairly discriminated against and that the combination of defendant's members amounted to a conspiracy to suppress competition in violation of the Sherman Act. The court found that these broad allegations had not been sustained on the proof. *Held*, preliminary restraining order dissolved and injunction *pendente lite* denied.

For the benefit of those unfortunates who have not seen the picture, the judge tells us that *The Outlaw* is a "story built on the saga of Billy the Kid, and apparently is a glorified Western, featuring to some extent the escapades of Billy, and those of a tough girl, Rio, in a western frontier town, who uses, among other attractions, a gun and a pitchfork with considerable lethal intent."

The advertising in question consisted of leggy and bosomy lithographs of Rio plus a caption stating that the picture was exactly as filmed without a scene cut. In addition a sky-writing airplane wrote *The Outlaw* in the sky over Pasadena, and then made two enormous circles with a dot in the middle of each.

The court said it need not declare whether it had rejected the advertisements because of the exposure of too much female anatomy, or because of the misuse of the expressions mentioned. The court refused to interfere with efforts to maintain the highest possible moral and artistic standards in motion picture production. At this point there had been no showing of any refusal or threatened refusal on the part of any exhibitor to show the picture without a seal. The plaintiff cannot enjoy the benefits of the seal contract without carrying its burdens. *Hughes Tool Co. v. Motion Picture Association*, 65 F. Supp. (D.C.S.D. N. Y., 1946).

WILLS AND HUSBAND'S ELECTION*****Testamentary trust not terminated by husband's "election" to renounce will where such renunciation amounts to precluded step to have court construe the will.*

Occasionally a federal court has an opportunity to interpret a will when the parties are of diverse citizenship. *Testatrix* died in Florida where she was a resident at the time of executing her will and at her death. The will was admitted to probate in Florida court, and a suit under the Florida Declaratory Judgment Statute was filed in the state court to construe the will. Because the diversity and jurisdictional amount requirements were met it was possible to remove the case to the United States District Court in Florida.

Testatrix bequeathed the residue of her property to her brother in trust for the life of her husband. Forty per cent of the income was to be paid to her husband and the rest to her brothers and sisters. Upon the death of her husband the trust property was to be divided equally among the six brothers and sisters.

If the husband renounced the will and elected to take the share of a surviving husband, available to him under the laws of *testatrix's* mortuary domicile, whatever was left of her property was then to go to her brothers and sisters *per stirpes*. Plaintiff construed the proviso as giving him the right of election to permit the trust to become effective and take forty per cent of the income, or to renounce the trust and take the share of the trust estate to which he would be entitled under Florida law in the same manner as though his wife had died intestate as to the trust estate. Defendants contend that the will means that if the husband renounces, he takes only what Florida law allows him. Florida law unlike New York law (where *testatrix* had some property both real and personal) does not give a husband rights in his deceased wife's estate which she cannot take from him by will. The defendants claimed that the husband took nothing by renunciation as the *testatrix* died testate as to all her property and nothing remained for the husband to inherit. Furthermore, by renouncing, he deprived himself of all interest in his wife's estate.

The court held that the will did not give the husband the right of election to permit the trust to become effective or to renounce and take as though she had died intestate. All the *testatrix* meant by the proviso was that if the law of her domicile at death should give her husband rights in her estate which she could not take from him, he was to be limited to that portion and the rest was to go to her brothers and sisters.

The husband was careful in the phrasing of his "election," which he filed on the same day he filed a bill of complaint to interpret the will. As a result, the court construed this "election" as merely making known the construction he placed on the will. Therefore, the plaintiff had not terminated the trust and could still enjoy his life interest. *Riley v. Doing*, 66 F. Supp. 825 (D.C.S.D. Fla., 1946).

DISCHARGED VETERAN PHYSICIAN*****Medical director not entitled to re-employment where company's position changed.*

Plaintiff was employed as company physician by the defendant and had semi-executive status. At all times his service was satisfactory. He entered the army as a Major in 1942 and was discharged as a Lieutenant Colonel in 1945. When he left the company, plaintiff was told that there was some doubt as to re-employment when he returned.

During plaintiff's absence a new president took over the direction of the company, and a reorganized holding company acquired stock control. The defendant no longer maintained a medical examiner but left that to its insurance company.

Gallery



ARCHIBALD COX

his first year on the Faculty, teaching Labor Law as well as first and second term Torts.

Professor Cox's classes are delightfully informal; the students are constantly encouraged to participate in the discussion. It is a good example of what has become known as the "Seavey-technique."

"Every student should volunteer in class," Mr. Cox believes. "While there is no definite correlation between A-men and those who volunteer opinions most often in class, participation is indicative of the genuine interest in the law which should be part of the student whose life at the Law School is the Law."

Cox's approach to the study of law is implicit in his own enthusiasm for teaching. "The student who will get the most out of Law School," in his opinion, "is the one who gets pleasure from the law for its own sake, who likes to argue hypothetical cases aside from the practical considerations of preparation for classes, and who goes as far as he can in the Ames Competition for the sheer enjoyment of it." This is not an advertisement for greater participation in law-club work, although Mr. Cox is Faculty Advisor for the Ames Competition.

Professor Cox graduated from Harvard College in 1934, and from the Law School in 1937. He was forced to resign from the *Law Review* after his second year, because of eye-strain. Upon graduation he became clerk to Judge Learned Hand of the Second Circuit Court of Appeals.

Three years of private practice followed with the well-known Boston firm of Ropes, Gray, Best, Coolidge, and Rugg, during which Cox had an opportunity to try his hand at a wide variety of cases, including government hearings and arguments of cases on the appellate level. The greatest number of these were labor cases, on which he worked with the now District Judge Charles Wyzanski. His only regret of the work of these years is that he never had an opportunity to argue a case before a jury—just for the experience of it.

In 1941 Cox joined the small staff of the short-lived National Defense Mediation Board, which later became the War Labor Board. "Altogether," he recalls, "we had about 120 of the toughest labor disputes in the country on our hands, and we all received plenty of experience in the entire range of labor law."

In December, 1941, Cox joined the office of the Solicitor General in the Department of Justice (then Charles Fahy). It is the function of this office to review briefs prepared by the counsel of the other departments and agencies. After review, the cases are assigned for argument to either a member of the Solicitor General's staff, or the initiating department.

It was several months before Professor Cox was assigned his first case to argue before the Supreme Court. For this all-important occasion, he was placed in the enviable position of arguing a case which couldn't be lost.

A District Court in California had denied citizenship on the grounds that the applicant was a pauper. It was a clear case of a statute having been misread, but despite the fact that the government itself urged reversal, the Circuit Court of Appeals for the Ninth Circuit had affirmed the lower court's decision.

The case was coming before the Supreme Court on a writ of certiorari. The government was going to confess error, and there wasn't a chance of losing. Nevertheless, Professor Cox prepared his arguments carefully and diligently, a most necessary precaution as it turned out.

Chief Justice Stone plied Cox with questions mercilessly, which became increasingly unconnected with the main issue of the case. Justice Frankfurter, rallying to the support of a former student, asked questions which enabled Cox to return to the issue, once in a while—an experience which veteran Ames Competitors can easily appreciate.

When the argument was over, it was felt that Professor Cox could breathe as easily as a producer who has read the reviews of his new hit show. But imagine the stir when the Supreme Court affirmed the Circuit Court of Appeals! There was consolation in the fact that the main issue had not been dealt with—the case had been decided by a split vote, 4-4, on a procedural question. Official Washington wondered, "What will happen when Cox really tries to win a case?" Official Washington knew the answer when he left—a perfect batting average.

In 1943, Cox was appointed Associate Solicitor of the Department of Labor, which position he held until July, 1945. His primary job, aside from acting in the Solicitor's absence, was responsibility for all of the Department's litigation, which in a practical sense amounted to the enforcement of the Fair Labor Standards Act.

Prof. Cox is married and lives in Wayland, Mass. with his wife, the former Phyllis Ames, granddaughter of Dean Ames, and their three children, Sarah, 7, Archibald Jr., 6, and Phyllis, 1. He joined the faculty in October, 1945 and since that time has enjoyed an increasing reputation as an instructor.

"A professor must learn his trade just as anyone else," he admits. "I've learned a great deal the last year and I look forward to learning a great deal more."

M. B. B.

The appropriate section of the Selective Service Act provides for restoration of employment unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so. 50 U.S.C.A. Append. § 308 (b) (3) (B). This case was held to come squarely within the section, and the complaint was dismissed. *Featherston v. Jersey Central Power & Light Co.*, 66 F. Supp. 882 (D.C. N. J., 1946).

The Witness Stand

The Question: Is the present law school system selective enough to prevent overcrowding in the profession?

1. Morton Braun, Brookline, Mass. 2nd Term.

I don't think law schools and Bar Associations should set themselves up to prevent the so-called overcrowding. I think that graduates of certain schools are recognized over and above other schools of lesser legal rank. I wouldn't say the present system was effective since if a student can't get into a bigger and more well-known school he will attend one of the lesser ones and enter the profession anyhow. That probably doesn't raise the level of the profession. Despite the top-heavy hierarchy of bar associations etc. which tends to raise the level of the profession there is a tendency running counter to the natural rules of free enterprise found in business. In the long run we at Harvard probably benefit, however.

2. W. L. Erden, Moltenville, Nebraska. 4th Term.

I don't think so. The fact that there are so many different schools available, both good and bad, doesn't seem to help the problem. If one of the more selective schools declines to accept a student then he can find some means of studying and eventually practicing law. In fact some of the local schools plan their courses with a view to pointing for the bar exams. That seems to be very effective in continuing to overcrowd the present group.

3. A. R. Jones, New York, N. Y. 3rd Term.

Not only isn't the present law school system effective in preventing overcrowding in the profession but the various state bar associations seem to be doing very little to protect what is already there. My own state admits veterans with two years of law school without having to take a bar examination. Apparently anyone with two years of college and two years of some local law school with very low standards from a professional standpoint can enter the profession with next to no effort, comparably speaking. I say this with no little self pity but to use a Harvard phrase the system is "putrid."

4. N. W. Sankey, Libers, Michigan. 5th Term.

Hasn't it always been said that there is always room for a good one? I don't understand this attitude of considering a profession overcrowded. Regardless of the school attended or the manner of restricting future lawyers if there is a desire to enter the field it will be entered. A rejection from one of the better known law schools deters very few men who really want to be lawyers and I don't think there is any feasible way to control it at present. The best method is still by the state bar examinations which should be tightened if there is a feeling that the profession is too crowded.

5. Marshall Buckalew, Charleston, W. Va.—4th Term.

The question of overcrowding of the profession should have no bearing on the number of men that are allowed to enter and complete a course in the study of law. The main reason being that many students of law never practice or intend to practice the profession but make use of their training in other fields. I think that the standards for practice are being raised sufficiently by acts of state bar associations and the legislatures of the various states. The economic necessity of earning a living will clear the field of the incompetents.

6. Kenneth W. Hoehn, New York, N. Y. 4th Term.

I have no means of knowing, other than hearsay, that the profession is overcrowded. If indeed it is, then supply and demand should serve to discourage that portion which would otherwise be eliminated by more stringent requirements, for the maxim, "Survival of the fittest," makes law no exception. Greater selectivity might therefore do more harm than good.

7. Haskell Goodman, El Paso, Texas. 4th Term.

I think there ought to be less elimination through failure and a little more selectivity in admission to law schools. A system by which all schools could set out uniform standards for admission would be desirable. I think the concern about lowering the standards of the profession by admitting more students to law schools is unwarranted. If the schools have a wider

Alumni Notes

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

The Boston Bar Association, at its annual meeting held recently, elected the following Harvard Law School graduates to hold office in the Bar Association for the coming year: Judge Jacob J. Kaplan, LL.B. '10, was elected president; Walter Powers, LL.B. '09, first vice-president; Oliver Wolcott, LL.B. '15, treasurer; Talcott M. Banks, Jr., LL.B. '31, secretary. Elected to the council were Richard S. Bowers, LL.B. '26; Claude R. Branch, LL.B. '11; John A. Daly, LL.B. '14; Richard H. Lee, LL.B. '28; Robert H. Montgomery, LL.B. '12; Paul B. Sargent, ex-'29.

The Governor of New Hampshire and Council confirmed on October 17 the appointment of Superior Court Justice Laurence I. Duncan of Concord, N. H., LL.B. '30, to the state Supreme Court. At the same time Supreme Court Justice Oliver W. Branch of Manchester, N. H., LL.B. '04, was elevated to the position of Chief Justice. In this capacity, Justice Branch succeeds Justice Thomas L. Marble, LL.B. '04. The latter appointment becomes effective on December 24.

While most states have yet to hold elections, Maine's traditionally-early September elections resulted in returning three Harvard Law School alumni to important state and federal offices. U. S. Senator Owen Brewster, LL.B. '13, Republican, was returned to the Senate for a second term. Senator Brewster has previously served as Governor of Maine, and as a two-term Congressman.

In the First Congressional District, Representative Robert Hale, ex-'14, Republican, was returned for his third term in Congress by a two-to-one margin. Heading the list of state officials was Governor Horace A. Hildreth, LL.B. '28, Republican, who won a second term in that office. Hildreth is at present the only state governor who can be claimed as a Law School alumnus.

Ex-'90—Charles Gaston Smith, President of the Institution for Savings in Roxbury and vicinity for 40 years at the time of his retirement a few years ago, and a Boston attorney since his completion of law school work in 1890, died at the age of 82 on Oct. 18. Smith was a prominent and lifelong resident of Boston. He was graduated from Harvard College in 1887. At various times during his life, he served as a director of the National Rockland Bank, as trustee of the Roxbury Latin School, and as a director of the New England Hospital for Women and Children. At the time of his death, he was also a director of the Boston Consolidated Gas Company.

LL.B. '96—Edward H. Deavitt died at Montpelier, Vermont on October 2. LL.B. '03—Ernest E. Sargeant died at Spokane, Washington on September 24. LL.B. '04—Channing H. Cox, president of the Old Colony Trust Company of Boston since 1934, retired recently from that post. He is continuing however to serve as a Director of the Company, and he is also a vice-president of the First National Bank of Boston, which post he has held since 1925.

LL.B.—Edward H. Green, of the firm of Sullivan & Cromwell in New York City, was elected in September to the Board of Directors of the United Stores Corporation.

LL.B. '04—Henry L. Shattuck is campaigning for Lt. Governor Robert F. Bradford '26, candidate for Governor in the coming elections.

LL.B. '10—Judge Jacob J. Kaplan has resigned as a director of the Eastern Massachusetts Street Railway Co. because of the pressure of other business, it was reported in Boston on October 24.

Ex-'26—John Sherman Cooper, state Circuit Court Judge in Kentucky, is the Republican candidate for the U. S. Senate. His Democratic opponent is ex-Congressman John Young Brown.

range of selectivity, it would tend to better standards for all schools.

8. John Carr, Elkhart, Indiana. 4th Term.

Yes. I think the system is selective enough for the system of education as it is today. The fault is with the examination system. I agree with Dean Griswold that the best method of selection is to allow each student to write a paper for each of his courses in place of the present yearly examination. I do believe, however, that the practical difficulties of such a system would be insurmountable.

LL.B. '29—Ernest R. D'Amours, Attorney-General of the State of New Hampshire, will present a report to the National Association of Attorneys General on the progress of New Hampshire's relatively-new law calling for the Attorney-General's department to supervise the handling of charitable trusts in the state. Inasmuch as New Hampshire is a pioneer state in this field of trust protection, the national association has asked D'Amours to explain it at the annual convention to be held in Hollywood, Calif. in November.

Ex-'32—Maurice W. Acers is the Special Agent in Charge of the San Antonio, Texas office of the F.B.I. According to a report from the Mexican border, his business, which consists in part of taking charge of draft evaders who sat out the war in Mexico and who have since returned to the United States, is briskly flourishing at present. Several hundred persons in this category have been apprehended in the year and one-half since the end of the war. The flagrant violations wherein an American citizen deliberately fled the country to evade the draft result in loss of citizenship by the offender and these persons are prohibited from reentry into the United States. Lacking American or any other citizenship, these persons become expatriates, literally men without a country, for the rest of their lives.

LL.B. '32—Telford Taylor, Brigadier General in the U. S. Army, is the successor to Supreme Court Justice Robert H. Jackson in charge of American prosecutions of Nazi war criminals. After attending Williams College and Harvard Law School, he returned to Williams to teach and later became an assistant solicitor in the Interior Department. He moved to the post of senior attorney to the Agricultural Adjustment Administration, and also served as counsel to a Senate investigating committee investigating railroad finance. Prior to his entrance into the Army, he served as General Counsel to the Federal Communications Commission. He is married to Mary Eleanor Walker, a niece of James M. Landis.

LL.B. '35—Matthew E. Murray has returned from military service to the firm of Murray & Murray, Old National Bank Bldg., Centralia, Illinois.

LL.B. '35—Emil Steck has formed a partnership for general practice with William J. Currer, Jr. under the firm name of Currer & Steck, 708 Security Bldg., 510 So. Spring St., Los Angeles 13, Calif.

LL.B. '37—Adrian S. Fisher is the new Solicitor of the Department of Commerce.

LL.B. '37—Richard C. Cadwallader of Baton Rouge, La. was elected on Oct. 4 to the office of National Vice Commander at the American Legion Convention held in San Francisco.

LL.B. '38—Tom Harriman Wallace died at St. Joseph, Mo. on August 18.

LL.B. '42—Dwight L. King began work for the Utah State Supreme Court, Salt Lake City, Utah on August 26.

LL.B. '42—Robert M. Segal has taken space in the firm of Roewer, Reel & Donovan, 20 Pemberton Square, Boston, and is specializing in administrative work and labor relations. He was in the U. S. Army during the war, and also has served as a Regional O.P.A. Specialist on plastics, rubber and chemicals. He likewise was assistant to the President's Railroad Fact-Finding Board and was with the New England War Production Board.

LL.B. '46—Walter H. Wager began work last spring with the Practising Law Institute, 57 William St., New York City.

LL.B.—Frederick Wheaton Tillinghast died at Providence, R. I. on August 29.

Professor Sheldon Glueck of the Law School is co-author of a satire on the atom bomb. The play will be presented by the Veteran's Theater Workshop sometime this year.

BRaille SYSTEM USED IN CLASS

Students Help In Case Research By Oral Aids

Dick Ford is blind but he entered the School in October, 1945, immediately after his graduation from the University of North Carolina where he had become a member of Phi Beta Kappa. Now in the third term, he completed the first year with a more than comfortable margin. An accident deprived Ford of his sight at the age of eleven.

In covering the casebook material Ford uses readers drawn from his student friends. He makes his abstracts as they read. Though this method takes more time than reading to himself, it is the best method he can use since there are no casebooks in Braille and the amount of text and treatise material is small. Among the books printed in Braille are *Code Pleading* by Clark, *Wills* by Atkinson, and *Harper on Torts*.

The most difficult part of his work in law school, Ford feels, is the taking of classroom notes. Here one of the weaknesses of the system complicates the procedure. Ordinarily, Braille writing can be done on a machine similar to a typewriter with considerable speed. The machine is too noisy to be used in a lecture room. This means that he must use another method available for taking classroom notes. This method consists of punching a piece of paper which is clamped into a metal frame with a small scratch awl. It is a slow and tedious job, complicated by the fact that everything must be written backwards to make the perforations right on the face of the sheet.

With the combination of his abstracts and his transcribed notes Ford is able to do a large part of his study and review on his own. In addition, in preparing for his first year exams he found informal review sessions with other students to be quite helpful.

He takes examinations orally, dictating his answers to a secretary who also reads the questions to him. He is limited to the regular examination time of 4 hours which means that, as a practical matter, he must take the same exam as the rest of the students in less time, but this has not bothered him to any great extent.

In the Ames Competition Ford, a member of the Calhoun Club, participated in two arguments winning his singles on both oral and brief.

REGISTRATION

Law School enrollment continues to swell. According to figures released early this week by Harrison S. Dimmitt, Secretary of the School, 1723 men have registered for the current term. Of this total, 1607 are veterans.

Enrollment by terms is as follows: first term, 370 including 24 non-veterans; second term, 365 including 8 non-veterans; third term, 496 including 25 non-veterans; fourth term, 194 including 23 non-veterans; fifth term, 90 including 5 non-veterans; sixth term, 120, including 14 non-veterans; seventh term, 31 including 11 non-veterans; special students, 32 including 1 non-veteran; graduate students, 25 including 5 non-veterans.

AMES—(Continued)

BEST STUDENT JUDGE'S OPINION: Gene G. King. Prize Awarded: "The Age of Jackson," by Arthur M. Schlesinger, Jr.

Highest 2nd term club was the Pow Wow, and the members were awarded a copy of Pound's "Spirit of the Common Law." They are:

Bruckel, Wm. J.
Crolius, Clinton T.
Gillette, George C.
Hardie, Thomas G.
Machen, Arthur W. Jr.
Murnaghan, Francis D. Jr.
Perry, Leonard E.
Vail, Donald.

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Relations Of Law To Philosophy

Apart from strict consideration of legal system—the precepts, concepts, procedures and directions emanating from the specific philosophy of law or jurisprudence—it seems, at first blush, that any relations which may exist between law and philosophy, in the operative, every day levels, are mainly esoteric and loom out of fiction. This narrow view is substantiated (1) by force of legal history studied apart from the living conditions which give it life, and (2) by looking solely to the casebook and digest to study the emanation of the main bodies of law. It has long sufficed for the lawyer and the acolyte at the altar and even for the greater percentage of the bench to confine legal gymnastics to the strictly "legal" precedents. It is a practice, in the main, blind and one patently ineffective and static. If that were the total of the efforts of the proponents of this view, as they aver, their efforts would hardly have afforded law the growth and development, which mean its necessary function, in a dynamic, living society—and this they have done.

It is submitted that legal history is a fictional categorization for purposes of controlled investigation and that law itself is a fictional categorization for purposes of effecting control of human social relations. It is in the course of effecting this control that the divergent social pressures speak through judicial decisions by reasons solely that judges, too, are human and reflect a bias.

If it is redundant to point out the interrelation of the social sciences then certainly it should be redundant to point out that the "horizontal social science" of law—cutting through and partaking of all of them—is the articulate voice of social conflict, whether private or public, and that it speaks in terms expressing the more powerful social pressures. The values and interests of these pressures—and in any given period with change in the ascendancy, these values and interests are ill-defined (cf. our own day)—give rise to a complex picture possible to be illustrated by a porcupine with its erectile, quill-like spines bristling in all directions; judicial decisions have roots in this complex and thereby deal with questions of values.

It may logically be contended that a judge without an integrated or consistent theory of values can not render decisions mutually consistent one with the other. Likewise, it may be contended that a succeeding judge, with a different system of value, would be illogical in using his decisions as a precedent for his own. Fortunately, it may be said that the conflict of social forces are such as would make unwelcome any such consistency. As one

force loses its role of dominance another takes its place and the judge has shown himself, through his survival, to be a sounding board of change. Law, in this measure, provides the control of change. Change is not to be confused with progress—progress is measured by the survival and extension of values and not their constant flux which characterizes change. To progress, law renders the same service as to change: control. It is then patently possible for law so to control change that progress is delayed.

The question may be raised: How is law thus in every day operational relation to philosophy? Philosophy deals with the meanings and relations of values and progress is submitted as its constant everyday focus.

HARRY M. REIFF.



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Calendar

THE LEGAL WORLD

Locker Renewal Deadline

Deadline for renewal of lockers issued for the summer term is Saturday, Nov. 2. If students have not renewed their old lockers by that date, new assignments will be made.

There are approximately 300 lockers available in Austin Hall. Students interested in obtaining lockers in Austin may do so. It is permissible for students with the bulk of their classes in Austin to change from their present lockers.

All applications for renewals, changes and new lockers may be made with the Receptionist.

Law Club Meetings

The Blackstone Club will hold two meetings in Kendall House. The first will be this afternoon at 4:30, and the second will be Wednesday, Nov. 6, at 4:30.

The Morgan Club will meet in Kendall House tonight at 8.

The Chancery Club will meet Friday, Nov. 1, at 3 p.m. in Kendall House.

The Pitney Club will meet in Kendall House, Monday, Nov. 4, at 4:30 p.m.

The Hall Club will meet in Kendall House, Saturday, Nov. 9, at 7:30 p.m.

Topic for Paper

Prof. Leach will supervise and assist any student with an average of 68 or better in preparing his thesis on "Loopholes for Swindlers in the Law of Fraud." He recommends that only those students who have a light February examination schedule apply. One or two students will be considered.

Veterans Bar Reviews

Veterans interested in taking review courses preparatory to their bar examinations in states other than Massachusetts may also be certified by the Veterans Administration provided the course they intend to take has been approved by the VA. Application should be made to the University VA office in Weld Hall.

Forum

The opening meeting of the Law School Forum will be held this Friday night, November 1 at 8:00 P.M. in Sanders Theatre, Memorial Hall. Harrison Salisbury, Arthur Upham Pope, David Dallin will discuss the topic "What Are The Domestic Sources of Russian Foreign Policy?"

Registration Requirements

Mr. Dimmitt urges all first year students to check the requirements for admission to practice in the state in which they intend to practice. Information may be obtained from the Receptionist in the center of Langdell Hall. States which require registration before or shortly after starting legal training are California, Maryland, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, Texas, and Vermont.

Massachusetts Bar Review

Students interested in taking a review course this December for the coming Massachusetts Bar Exams should leave their names with Mr. Dimmitt. There is a possibility that a review course will be organized under Judge Felix Forte.

Ames Third Term Clerks

There will be a meeting of the clerks of all third term courts on the day following the issuance of grades to third term men. The meeting will be at 4:00 P.M. in Austin West and at that time it is expected that the membership of each club desiring to participate in the Qualifying Round of the Ames Competition will be determined. Any club which has lost or loses members may consult the Board of Student Advisers for names of other third term men who are available to fill in the membership. No club will be permitted to participate in the Qualifying Round without at least seven members.

THE OUTER WORLD

Plays

Ruth Gordon's new play, *Years Ago*, opens at the Copley on Saturday, November 2nd. Frederic March and Florence Eldridge star. Garson Kanin is the director.

Bernard Shaw's *Arms and the Man* will be presented by the Boston Theatre on Friday and Saturday evenings, November 1 and 2, at the New England Mutual Hall.

Toplitsky of Notre Dame, a new musical, opens tomorrow night at the Schubert.

Moss Hart's new play, *Christopher Blake*, has its premiere Tuesday, November 5, at the Plymouth.

Concerts

Father Flanagan's Boys Town Choir will be at Symphony Hall tomorrow evening at 8:30 P.M.

Boston Symphony Orchestra, Friday afternoon November 1 and Saturday evening, November 2 at Symphony Hall.

Alec Templeton, blind pianist, at Symphony Hall Sunday afternoon, November 3, at 3:30 P.M.

EMPLOYERS—(Continued)

ferred to bargain with the Independent Union, as in the past, rather than to contend with "outsiders," as he termed the CIO. One senses that the Board attempts to draw its line of illegality between what it considers a forbidden "aggressive campaign" on the part of the employer prior to an N.L.R.B. election and a permitted "appeal to the reasoning faculties of its employees."

Two other Board cases decided in late August indicate the trend. In one (*Norfolk Shipbuilding & Drydock Corp.*, 70 N.L.R.B. No. 36, Aug. 26, 1946) the employer two days prior to an N.L.R.B. election distributed a letter to the employees which was taken almost verbatim from the letter found privileged in the *American Tube Bending case*. The Board held it was here not privileged as free speech when considered in the light of the employer's entire course of conduct.

In the other (*Pioneer Electric Co.*, 70 N. L. R. B. No. 59, Aug. 26, 1946) the employer made speeches favoring the AFL over the CIO and indicating that other AFL unions would boycott the company's products if the company recognized the CIO. The Board held that the speeches were not privileged as free speech because they included this reference to boycott which the Board held to be a threat to the employees' economic security. In the Board's view, the fact that the employer's warning was prompted by an apprehension, even if well founded, that his business would suffer if the CIO rather than the AFL were the bargaining agent, provides no defense.

A case involving a different aspect of the free speech problem, which will be watched with interest, is that of *United Welding Company*. Here the N.L.R.B. Trial Examiner recommended that the sending of letters by the company to individual employees reporting on the progress of collective bargaining negotiations and explaining its point of view be considered a violation of the N.L.R.A. despite the fact that the letters were uncoercive. This case was argued before the Board on September 17, 1946, with the newly-appointed member, James J. Reynolds, Jr., sitting for the first time. The Trial Examiner's theory was that the letters constituted appeals, over the head of the bargaining committee, to individual employees to the detriment of the union's bargaining position. The company argued that the letters, being uncoercive, were protected by the Constitution. The attorney for the union argued before the Board that the employer's duty to deal with the exclusive bargaining agent includes the negative duty to deal with no one else. The company asserted a distinction between publicizing its views on the issues involved in the negotiations, as it did in its letters to the employees, and "dealing with" individual workers which it claims it did not do. Several issues other than free speech were also involved in this case.

Another event of recent interest in regard to this general subject was the address by Paul M. Herzog, Chairman of the National Labor Relations Board,

entitled "Words and Acts: Freedom of Speech and the N.L.R.B." delivered before the Industrial Relations Sections of the Printing Industry at Atlantic City, New Jersey, on September 9, 1946. Mr. Herzog acknowledges that the "so-called 'free speech' case" is one of the most difficult for the Board to decide. The nub of his speech is contained in one sentence "The question in every such case is whether in fact the employer's conduct does or does not constitute coercion." The criteria which the Board applies to the employer's utterances as stated by Mr. Herzog are: (1) Do they carry actual or implied threats, intimations of reprisals, or promises of economic loss if the employees do not follow the employer's wishes? or (2) Are they an integral part of his anti-union course of conduct and therefore "coercive in that context?" Again, Mr. Herzog stresses that the answer depends upon "the circumstances of each case."

Mr. Herzog's address contains an intimation, perhaps unintended, that the remedy for violation of the Act is not severe. He states that, "All the Board orders the employer to do in such cases of violation is . . . cease and desist from interfering with its employees in the exercise of the right to self-organization." Once the Board's order is enforced by the Circuit Court, however, conduct of the employer which originally justifies the Board's order would furnish the basis for a contempt petition and might involve an employer in serious consequences to the extent of a fine or imprisonment.

The N.L.R.B. free speech cases raise an interesting question for discussion by students of the law. When the Board decides that a particular employer's statement is coercive and hence a violation of the N.L.R.A. and not within the constitutional protection of free speech, is it making a finding of fact or a conclusion of law or deciding a mixed question of fact and law? The Board's findings of fact are conclusive upon the courts if supported by substantial evidence. Questions of law are reviewable by the courts. Whatever may be the desirable rule on other conclusions which the Board reaches in applying the Act, it would seem an exercise of wisdom on the Board's part in cases where a constitutional issue is involved to treat its conclusion as to coercion as one of law rather than fact and seek Circuit Court enforcement. The courts would then be free to explore the whole question without the usual restriction of conclusiveness which applies to administrative findings of fact. In the Tenth Annual Report of the National Labor Relations Board (1945) the Board notes (pp. 62, 63) the conflict in the Circuit Courts on this point. It cites *N.L.R.B. v. Laister Kaufmann Aircraft Corp.*, 144 F. (2d) 9 (CCA 8) and *Peter J. Schweitzer, Inc. v. N.L.R.B.*, 144 F. (2d) 520 (CCA D. C.) as supporting the rule that the Board's finding in respect to whether a given statement exceeds the employer's constitutional privilege is conclusive if supported by substantial evidence. On the other hand, it cites *N.L.R.B. v. J. L. Brandeis & Sons*, 145 F. (2d) 556 (CCA 8), *N.L.R.B. v. American Pearl Button Co., et al.*, 149 F. (2d) 311 (CCA 8) and *Big Lake Oil Co. v. N.L.R.B.*, 146 F. (2d) 967 (CCA 5), as applying the principle that the question is one of law.

Mr. Reilly, in his dissenting opinion in the *Clark Bros.* case, quotes Joseph Padway, general counsel of the American Federation of Labor, ("The Federationist" June 1944 p. 28) as writing, "If freedom of speech is to survive for trade unions and their members, it must not be denied, directly or indirectly, to employers." Unions may, and do, freely express their views about employers, often in language that could not be characterized as "temperate argument." Regardless of how one feels about the labor views of any particular employer, his right to express them should be safeguarded by assuring a full and complete court review whenever his exercise of the right is challenged from any source. And while admitting that administrative agencies have a proper place in a complex economy, it would still seem true that conflicts between constitutional and statutory rights are best determined by the courts as questions of law.

In his Atlantic City speech Mr. Herzog said ". . . we welcome the testing and evaluation of our decisions in the courts. Courts occupy a vital position in making secure the basic rights of American citizens; their guidance, especially in such matters as free speech, should be sought, and, when given, followed without hesitation by every Government Board." But the Board can expect to receive but little guidance from the courts so long as it continues to treat its conclusions in free speech cases as conclusive findings of fact instead of conclusions of law.

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WORLD LAW—(Continued)

be a law to enforce, and principles of justice to build the government on. Even trade disputes and economic injustices cannot be settled as long as there is a conflict of laws and no higher court of appeal. The would-be citizen of the world finds that there is no world in which he can enjoy legal citizenship.

There are two major legal systems which must be reconciled. It is not up to the politicians, it is a job for the lawyers of every nation. Before we can hope to set up that remunerative practice in our hometown, we must resolve the legal differences which stand in the way of a unified system of laws for the United Nations of the World. There is no other alternative—that is the goal for which we must strive.

Perhaps the lawyers of today are too busy with their regular clients to devote all their efforts to this task. It may be that they feel it is too late in life to take up this calling. Can we offer the same excuse for passing it by? Or do we like to emphasize our own security, the need for a well-paid job to support a family? If we knuckle under to the pleasant picture of the past profession, it will cost us our future. What value is a lucrative practice in an explosive, frenzied world? If the men who leave this school are not ready to throw themselves into the lifetime occupation of working out just decisions in disputes between nations, the profession will have failed the people.

In another 2 years we will have a course in comparative law here at Harvard Law School. That is an important step. It will define the magnitude of the undertaking but it will not provide the solution to international chaos. What can be done in the meantime? We must be practical about the job ahead of us. We need training and we must start to equip ourselves now. The courses on international law, both public and private, are indispensable. Dean Pound's lectures on Jurisprudence can give us the fundamentals of a worldwide point of view. But we need not wait until the third year to turn our

attention to preparing to take part in making world law. Here at the Law School we have one of the best libraries in the world, especially in the field of international law. Even though we are not equipped to lay the foundations of a new world legal structure, we can take up the subjects and doctrines that we are learning now and see where they would fit into a universal system. We are at the idealistic stage of our lives—let us make the most of it. When the whole world is clamouring for a new legal order, who can denounce our effort as visionary and impractical?

We should not forget the past in our exuberance for the future. The development of very great system of law has followed a definite pattern. That pattern can be the basis of world law if we will master its unique design. Whether it be the Roman households, the Anglo-Saxon kindred or the Cheyenne Indian tribes, there have been controversies that led to war and then to law. The "law-job" has always been there and been solved in pretty much the same way. Is it possible that the present one will prove too much for us? Having come so far in social engineering, are we to be overcome by the obstacles of the 20th century?

There is the challenge that faces us—a split atom does not demand a split world. Our field is law, it is the tool which we can use to bring about a new social order. It has been used before and we have the whole civilizations that prove its merit. Justice is our aim and the world our willing client. What more inspiring task could we hope to undertake? What practice do we find more vital and worthwhile?

W.S.B.

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