

The Harvard Law School Record

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PRICE TEN CENTS

YEARBOOK CHAIRMAN SELECTED

Hennessey, Mishkin Head Staff; Annual To Appear In 1947

The Yearbook Committee of the Phillips Brooks House announced its new board of officers this week, with the name of John B. Hennessey, Bates '43, heading the list as incoming chairman. Hennessey, now in his third term, is a native of Bridgeport, Connecticut, whose first year average was 72.

His aides in the production of the new 1946-47 edition of the Harvard Law School Yearbook will be Paul Mishkin, Michigan '44, a native of Brooklyn, New York, who will serve as editor; John E. Madden, Wisconsin '46, of Janesville, Wisconsin, the new advertising manager; and Wesley E. Bevins, Jr., Bowdoin '40, whose home is Salem, Massachusetts, and who will be the new business manager. The new officers were chosen from a field of sixty "B" students who were invited to apply. All had previous experience on college newspapers or yearbooks, or have spent time on the staffs of service journals.

According to Hennessey, announcements of further appointments to the Yearbook staff will be made in the near future. While the major positions have been filled, there remain numerous less burdensome and time-consuming jobs which are important to the success of the annual yearbook. The new staff is making an appeal for volunteers to help out with these tasks, and those interested are urged to leave their names at Gannett House with the secretary of the Yearbook Committee.

Hennessey also stated that any suggestions or criticisms from the general student body on the format or subject matter of the forthcoming edition will be welcomed by the Committee. The success of the Yearbook depends on the cooperation of the entire school, and such ideas as may prove to be worth adopting will enhance the value of the 1946-47 edition to the Law School as a whole.

Delivery of the new Yearbook is expected in May, but the actual date of delivery, it is felt, cannot be guaranteed. The printing situation is such that it may be necessary this year, as it was last summer, to mail copies to those students leaving school in the spring. The Committee feels that this will not be the way things turn out, but for those graduates who desire to buy copies, it states that though delivery is definitely

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WITT
The retiring chairman of the Yearbook Norman Witt, has announced the selection of John Hennessey as his successor.

QUARTERFINAL JUDGES NAMED

Docket Fixed For Eight Ames Cases

The docket for the quarter-final series of arguments in the Ames Competition, which will commence on December 9 and continue through December 19, and the bench for each argument were announced this week by the Board of Student Advisers.

This term's series of arguments will be the first to be held since the competition was formally resumed after the war, the eight clubs participating having won their way to the quarter-finals by virtue of their performances in the qualifying round held last term. After the quarter-finals, four of the clubs will be left to compete in the semi-final round next term, and the two winning clubs in the semi-finals will meet in the finals two terms from now.

All of the quarter-final arguments this term will be held in the Langdell Hall Court room, commencing at 8 P.M. on the dates indicated.

The first argument of the series will be on December 9, when the Casner Club will meet the Grotius Club. The case to be argued concerns the construction of a will and problems of class gifts. Chief Justice for the argument will be The Hon. Charles C. Cabot, Massachusetts Superior Court Justice. One of the Associate Justices will be Mr. Mayo Shattuck, Boston attorney, and Mr. Guy Newhall, also a Boston attorney, has been asked to be the other Associate Justice.

On December 12, the Taney Club will argue against the Wilson Club. The case to be argued involves a problem in Corporation law. The Hon. Stanley E. Qua, Massachusetts Supreme Judicial Court Justice, will be the Chief Justice, and Mr. John Burns and Mr. Abram Berkowitz, Boston attorneys, will serve as associate justices.

The Langdell and Thorpe clubs will meet on December 16 to argue a problem in Sales. The Hon. Abraham E. Pinanski, Massachusetts Superior Court Justice, will serve as Chief Justice for this argument. The Boston attorneys

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GRADUATES PLACEMENT COMMENCES

Plans For Future Hiring Made With Many Boston Firms

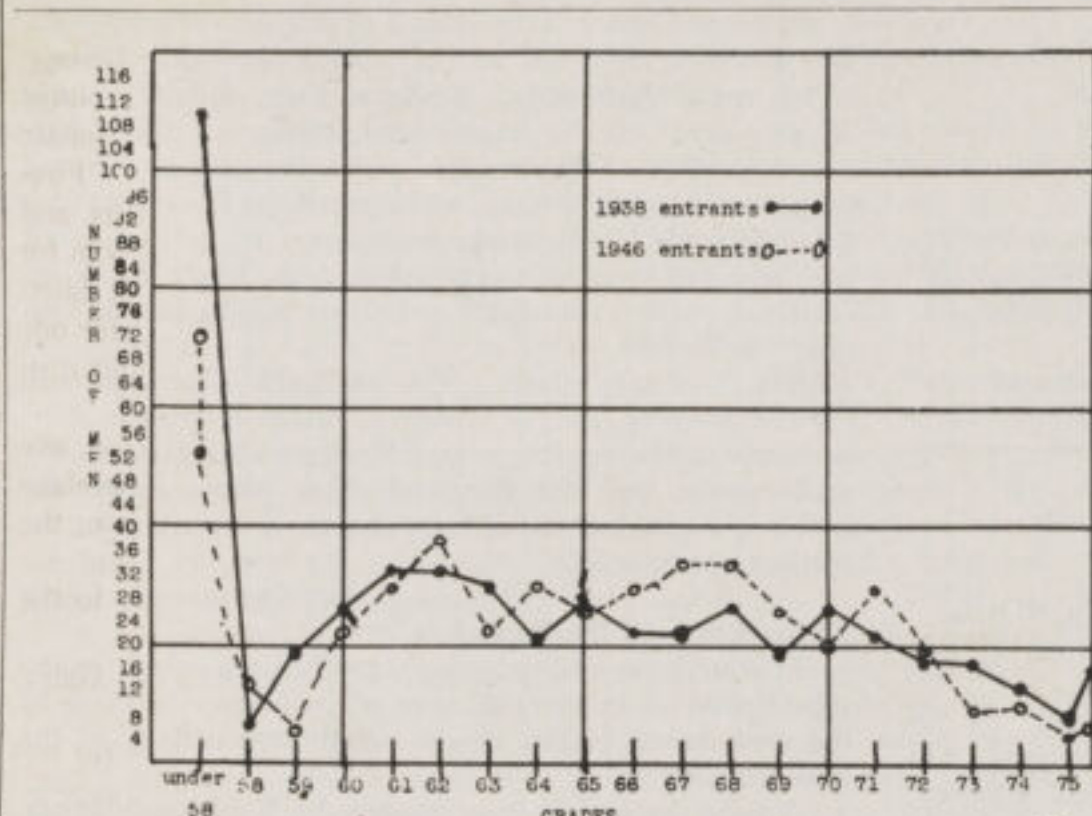
At a dinner last week in Boston given by the Law School Association the School's placement program gathered strong momentum. Present at the meeting to aid Harrison S. Dimmitt, Secretary of the School, were many of the hiring partners from several Boston law firms. Mr. Dimmitt told the group that starting in February 1948, the School would graduate about 350 men every four months. In a seventeen month period there would be over 1,700 graduates which is the largest concentration the School has ever had. He warned the group that normally twenty per cent of the graduates sought to practice in Boston.

Mr. Dimmitt disclosed plans to set up committees of lawyers in all important areas of the country to aid students in placement. These committees will garner all relevant facts on the needs of law firms and corporations in their area. To them Mr. Dimmitt will send a list of prospective graduates with all possible pertinent data on each student. At all times the local committees will be kept up to date on the number and capabilities of men due to enter that area. The Dean has indicated that there will be a fund available to help defray the mailing expenses, but it is hoped that the alumni will bridge the gap.

The consensus among the lawyers present at this meeting was that students should have good reasons for wanting to locate in a particular community. The large cities in the north-east have a high concentration of lawyers. Therefore, to have a fair chance there, a student should carefully evaluate his background and connections before he chooses a highly competitive location. It was strongly urged that students not overlook the smaller communities where the opportunities may be greater.

Boston lawyers present were Messrs. Reginald H. Smith, Charles M. Storey, Henry R. Guild, John Richardson, Claude B. Branch, Robert Hunneman, Herbert B. Ehrmann, J. Alexander Lane, Oscar W. Hausermann, John A. Peakes, Willard B. Luther, Alexander Wheeler, Jr., Hector M. Holmes, Leonard Wheeler, Samuel Adams, Lothrop Withington, Daniel J. Lyne, Arthur J. Santry, Sumner H. Babcock, Daniel J. Needham, Warren C. Reed, and Lucius E. Thayer.

GRADES REVEAL SUPERIORITY OF POST-WAR LAW STUDENTS



This graph depicts the distribution of grades among the class which has just completed its first year as compared with the class which entered in 1938. The vertical scale is in terms of number of men receiving a particular grade and the horizontal scale shows the grade received.

Calhern Says Role Of Holmes In Magnificent Yankee Inspires Him

Louis Calhern is a tall, broad shouldered, graying man who speaks with the measured voice of a skilled actor, which he is. Into two and one-half hours on the stage in "The Magnificent Yankee" he compresses thirty years of the life of Oliver Wendell Holmes, Jr.; from the day Holmes came to Washington to take his seat on the Supreme Court to March 4, 1933 when Franklin D. Roosevelt, inauguration ceremony over, came to visit the retired justice. Calhern seeks to convey a sense of the warmth of the great judge and of his humanity.

"I've been on the stage for thirty five years and this is the most challenging role I've ever undertaken," Calhern said in his dressing room before the performance. "It's my favorite role too. And, it has affected me personally. That's something an actor can seldom say about a character he attempts to present, but it's true in this case."

In preparation for the play, which opened in Washington last year, Mr. Calhern sought to learn all he could about Holmes' personality. He talked to several of Holmes' secretaries and to government officials and other people who had known him socially. He read Francis Biddle's biography and studied the Holmes-Pollack Letters. He tried to base his characterization on what he had learned.

"I can't think of any man who had all of the elements of greatness that Holmes' did," Calhern said as he applied the light coat of tan which is his

only makeup. "To me, his outstanding quality was common sense. He had the courage to have common sense. Common sense not only in his work on the court but in his relations with his wife and servants and his secretaries. I try to bring that out in the play. I like to think that I succeed in doing that. I certainly hope I do."

"We've tried to present this play in a dignified manner, without the usual theatrical tricks. I think we have succeeded in that because all the people I've talked to who knew Holmes and have seen the play are sold on it. I was completely terrified the night we opened in Washington that we might offend some of the many friends of Holmes who were in the audience. Most of them were present at a party given by Mrs. Biddle after the play and none of them complained."

Calhern feels that he himself has gained something of a new perspective from his role. Always a liberal in his politics, he fought hard for Roosevelt and the New Deal. After the last election he found many of his friends in despair at the turn in events, which they felt to be a turning back toward reaction.

"But, I think this country is going on, we aren't going back. I've picked up some of Holmes' optimism, if you want to call it that. What is it he said: 'No one president ever wrecked this country or ever will' and 'We live in a universe not measured by our fears.' You lawyers can work on his opinions, pull them apart to see if they were technically right or wrong, but

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LIFE MEMBERSHIPS GIVEN BY FORUM

Since the Harvard Law School Forum is dedicated to the memory of the 93 students and graduates of Harvard Law School who died in the service, the parents of these men have been given honorary life memberships in the organization, the Forum officers have announced.

In a letter which accompanied the life memberships, Jerome L. Rappaport, president of the Forum, said:

"The Harvard Law School Forum is dedicated to the memory of those members of the law school who gave their lives that this and similar manifestations of human dignity and freedom might exist."

"The Forum was started by law school men who felt that the consciousness of today's student should go beyond the vistas of his immediate field of concentration. The pressing issues facing us today must be heard, analyzed, and understood in order for those who are left to profit by what has taken place and by the sacrifices of others. Without this we revert to a society of mechanics—each to his trade, without mutual understanding, and without awareness of inherited traditions or how to use them."

"Those who died are part of these traditions. This is the only method open to us by which we can give them significance."

Number Of Failures Fair Lower Than In Previous Classes

That the new high standards of admission pay off in the blue books is the clear verdict of the October examinations. Comparison with a typical pre-war class (that entering in 1938) reveals that the greatest difference is found in a considerably reduced number of failures. Making allowances for the slight difference in size between the two classes here considered, we find that the number of failures has fallen about thirty percent. Nearly one-third of the first year men who failed this October were repeaters who had previously flunked in the summer term. This information should help dispel the widespread impression that despite the extremely difficult entrance requirements the usual number of first year men were falling as victims of the "curve."

Only 71 men failed in October out of a class of about 474; in 1938 113 out of about 512 failed. This 71 includes 22 failing repeaters, so only 49 who entered in February dropped by the wayside.

Although it may be no consolation to those whose grades have caused their departure from the School, an interesting note is that this year's failures were not only fewer but not so bad as pre-war. Marks as low as the mid-forties are usually recorded, but none fell below fifty last month. Another way to illustrate the superiority of the recently admitted class is to note the middleman of the class. In '38 he was a low 63; this time he is between 64 and 65.

The present third term did somewhat better than did the present fourth term at a comparable stage of the game: the October '45 entrants lost 53 out of 278 by failure at examinations while as has been noted only 49/474ths of the third termers dropped out. The 22 who failed again are of course included in 53 who failed in June.

The fourth termers had only 35 grades of 70 and above in their group of 278 while the third-termers this time (see the chart) had 96, out of 474 for a much larger proportion of 'good' grades. At the end:

The upper classes are not large enough to permit a significant comparison with previous classes but the grade pattern of students whose study was interrupted by the war shows no marked abnormalities. The School recognizes that in their second and third year men are prone to drop a couple of points. Among the 212 men now in the third year (fifth and sixth terms) only 24 men received 70 or better this time.

From the figures one paradoxical note can be elicited: a man who keeps a consistent grade through the three years

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Soviet Jurists Now Emphasizing Role Of Defense Attorney; Private Property Law Being Developed

This is the concluding part of an address delivered to the Harvard Law School Forum on November 19, 1946, by John Hazard L.L.B. '34, Professor of Law at the Russian Institute of Columbia University.

The Soviet criminal codes are designed to do two things: (1) to punish those who violate the rules believed necessary to the development of a new society, and (2) to present the other aspect, that is, guidance—guidance of the population and even of offenders, toward the new life. This approach has led to a policy of rehabilitation. If such a policy fails in the individual case, or even in the case of the mass in some instances, or if it is believed impossible of achievement in some circumstances, the full force of law is utilized. As a result of this approach, a reader of the Soviet criminal codes will find that most "personal" crimes, interpreted as murder, rape, larceny, are treated with relatively mild penalties. They are believed to be hangovers from the past. The thought is that if criminals are given the opportunity to learn their true position in the new society, and if that society produces more of the goods of this world than any previous society has done so that people can have things without stealing or murdering, the criminal will be reformed. For this reason the penalties in these instances are relatively mild. There is no death penalty for murder, for instance. The maximum

penalty is ten years in prison.

On the other hand, crimes directed toward the overthrow of the state are believed so vicious as to make reform out of the question. The penalties are, therefore, severe. The severity varies with the danger the state faces at any moment. Soviet criminal codes have sufficient elasticity to permit this variation, and this is the way they provide that elasticity. There is in the codes an article, known as the article on "analogy," which provides that the provisions of one article may be applied to an act covered by another for which there is a lesser penalty, or sometimes no penalty at all. This is to be done only when the social danger involved in the act is believed to require such application.

Let me give you an example of a trial I attended. As I have just pointed out, murder is a crime which is penalized by only ten years in prison. In the particular instance to which I refer the defendant committed a crime which is not limited to the Soviet world. He cut up his wife, put her in a trunk and shipped her by express. This is known as a trunk murder the world around. The depravity represented by this act far surpassed the crime of murder. After establishing guilt the court declared that it would apply the article of the code relating to banditry, for which the penalty could be death. The safety of the state was involved in preventing re-

currence of this kind of crime. The defendant was convicted and sentenced to death by way of analogy to another article of the code.

During the war reports in Soviet law journals indicated that the making of "moonshine" liquor was considered particularly dangerous to the state. Previously, it had been a relatively harmless activity, but in time of war when it was necessary to preserve strict discipline not only at the front but in the factories and on the farms behind the lines, the making of moonshine liquor was dangerous. It made it possible for persons living under great strain in the factories to get drunk and miss hours or even days of work. This affected production, and even the existence of the state itself, for it was fighting with its back to the wall, at a time when every man hour counted in the balance.

Another type of case which was also attacked by way of analogy was the crime of speculation. Under the criminal code speculation is a crime in peacetime only when one buys for the purpose of resale at a profit. If one owns a suit, wears it for two or three years and then decides to sell it because it is no longer suitable for its original purpose or because one needs a little cash for an unexpected bill, it is not speculation—even if one sells at a high price. It was not purchased for sale. During wartime, because of the

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Library Expanding At Rapid Rate Gaps Caused By War Being Filled

With well-earned pride, the librarian, Mr. Arthur Pulling, refers to it as, "the greatest law library in the world." Students of Harvard Law School too may well be proud of the library in Langdell, which we daily take for granted, because there is no library anywhere to compare with its collection of legal books and materials.

Consisting now of over six-hundred thousand volumes, the library, under the direction of Mr. Pulling has been increasing at the rapid rate of over twenty-three thousand volumes a year, and already from July to October of this year 7,681 new books have been added.

Keeping the reporter series, and other serial publications up to date is one of the library's major problems. At the present time, continuations and all law text-books from Europe that have been missed because of the war are being acquired. Deep in the stacks of Langdell are law books from every country in every language. For instance, there is the only set available for use outside of Japan of Japanese laws, although this may not interest too many, since it is

completely in characters. During the war, many of these foreign books proved of invaluable aid to AMG in providing laws for the occupied countries.

Always thankful for the many gifts it receives, the library last year received donations of over eight thousand volumes. In 1913, the Harvard Law School Association made a gift of \$10,000, which permitted the purchase of the George Dunn collection. This has formed the nucleus of the collection which is now the most complete anywhere of English text-books, statutes, and cases before 1601.

Added to the many rare and interesting volumes in the library is one just recently acquired. It is the only printed facsimile of the Australasian Federation Enabling Bill of 7th July, 1893. The volume, an exact replica of the original act, was prepared by the clerk of Parliament at Melbourne and was presented as a memento to Lord Brassey, Governor of Victoria, who gave the royal assent. Since it was this bill that consolidated the various states of Australia and brought it into dominion status, it is expected to be of much interest to classes in legislation.

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Application for entry as Second Class Matter at Boston, Massachusetts, is pending.

Editorials

SHALL HARVARD BECOME A TRADE SCHOOL

Take a look at the first letter at the bottom of this column, written by Mr. Walsh.

We sent out reply cards along with a copy of the RECORD to all the Alumni, not previously circularized. On the back of his card, Mr. Walsh, a Lowell, Mass. attorney, wrote that letter, and returned it in the business reply envelope.

One wonders whether he read the copy, and if so, how he decided the purpose was to 'build up' the Alumni. For his information, the circularization was not paid for by the school; the promotional policies of the RECORD are decided on the third floor of Austin and not in Langdell, and the publication is 100% student operated. At no time has any member of the faculty or administration asked us to seek contributions for the school or any project. Our purpose in developing Alumni subscription is to sell newspapers and to assist in the integration of the Harvard Law School Community.

More serious is his charge that the Law school is enmeshed in 'jurisprudence' and is not preparing men for the practice of the law. In short he accuses Harvard of not being a trade school.

That this institution does not principally attempt to prepare men for bar examinations would be readily admitted by any one familiar with the instruction and curriculum. But is that the end and aim of legal education? If that, or even if only the narrowly practical routine of a small town office, were all that Harvard aspired to teach, there would be little sense in operating a national law school.

Casual survey of the roster of Alumni in positions of eminence and responsibility, both at the bar and in public life all over the country, suggests that the school wisely takes a broader aim, and reaches a greater depth. It is easy to lose the forest for the trees, and urge that a legal education should prepare a man to meet this and that specific item of practice or procedure. Such an argument mistakes the mission of this institution, and if believed and followed would remove from the program here the elements which pertain to a profession rather than a mere livelihood. There are some things to be learned in school and others in a good law office.

It is trite, but evidently necessary, to remind some readers that a broadly trained man can be sharpened to a multiplicity of fine points as need arises. It would be a sorry thing if we received such training here as the legislature alone could repeal overnight.

The law, in our society today, could hardly remain a profession, with all the connotations of that term, if the law schools did not continue to be truly professional schools.

Let us not turn the clock back a century to the days of the apprenticeship.

C. G. S.

STATE THE CASE

"Mr. Zilch, will you state the case of Doe v. Roe." Zilch fumbles for his abstract, and finally reads. He doesn't read it very well, because either it's from a can he bought, somebody's work in the pool he belongs to, his neighbor's property, hurriedly passed to him, or if he did make it himself, it was probably done a week ago.

Zilch drones on in an inaudible monotone. Sometimes, if it's a short case and a long abstract, there is a chance to read the case for yourself. Otherwise, under normal circumstances, no one learns anything during the recital.

Then the real process of instruction is resumed. This consists of the dissection of Zilch for his classmates' edification, or sometimes the eliciting of truth from one who does not know it, by means of question and answer. In the hands of a master, such as Messrs. Scott, Seavey, and Freund, among others, this is a splendid method of teaching, and on it much of the fame of the school justly rests.

But what is gained by the dreary monologue?

If we must have the case stated to offer the teacher a taking off point, why not make the student stand, speak up audibly and interestingly, and although perhaps using notes, refrain from reading altogether.

As the practice is today, little if anything is added to the quality of the work, a good deal of time is wasted, and a chance to teach the men to express themselves intelligently and (what is just about as important) intelligibly, is wasted.

C. G. S.

Letters to the Editor

To the Editor of the RECORD:

My advice to the Law School is that it cut loose from theoretical "jurisprudence" and propaganda, to get back to educating men to be lawyers. Until then it will be useless to "build up" the alumni to contribute money for additional facilities.

RICHARD B. WALSH, LL.B. '10.

To the Editor of the RECORD:

For five terms I have wondered what that big room on the top floor of Langdell was for. Several times I noticed a delivery desk from which books were passed out. I perceived the walls lined with shelves on which books were stacked. Also there were several souls who were fearlessly trying to obtain information from said books. By a process of deduction I came to believe that Langdell Reading Room was a library in which Harvard Law students (and others) tried to study. I occasionally took this liberty and utilized it as such. I had also found that there were several places where social gatherings (of an informal nature) could take place. Austin steps, stairways outside the Reading room, and for the best the Root Room.

But now I find that myself and others like me are wrong. We miserable few are out of place. Langdell Lounge is for social gatherings. Perhaps they should donate 90 per cent of the tables and chairs to the "Firewood for France Committee." Put the soft chairs and tables in the reading room, and reserve the Root Room for those miserable anti-social characters (that's what hurts me) who fail to enjoy a chat between the lines. I for one am the type that uses the library too seldom for his own academic benefit.

But there is a solution. We anti-social characters will use the lawns in front of Langdell, Austin Steps, the stairways up to the reading room, Hastings sitting room, the wash rooms, and the thousand other places meant for bull sessions, so our social bugs can move en masse to the reading room.

AN OCCASIONAL GRIND

To the Editor of the RECORD:

In your letter of September 18, you have asked for my subscription as a "material vote of confidence in favor of the continuance of this newly inaugurated activity at the Law School."

A subscription has been entered by Goulston & Storrs, the firm with which I am associated. I trust that this indirect subscription will adequately indicate a "vote of confidence."

May I say that what you fellows are doing seems the greatest contribution that could be made to the Law School at the present time. A good deal of credit is due, not to the person who had the idea originally, but to those who had the gumption to follow through.

THOMAS KAPLAN

To the Editor of the RECORD:

I would particularly like to hear more about the questionnaire sent out by Professor Fuller's Committee on Legal Education. I am concerned by your statement that practicing lawyers are being asked questions on the frequency and importance of legal points arising in practice. There is, of course, no harm in getting the information, but if it is to be used to any great extent as a guide to what should be taught, there will be a departure from the Harvard Law School system of teaching principles. You say: "For instance under Evidence, the inquirer is asked to check on the frequency and importance of questions on judicial notice, presumptions, authenticated writings, best evidence, agents' admissions, pedigree, hearsay, ancient hearsay, *res gestae*, jury, illegally obtained evidence, pre-trial discovery and habit evidence."

This reminds me of a piece of so-called research made several years ago to ascertain what towns and other geographical features ought to be shown on school maps. Current periodicals in the form of newspapers and magazines were read and the geographical proper names were listed and counted. Under this system Reno, Nevada and Independence, Missouri are far more important than Babylon and Athens.

WALTER T. FISHER, LL.B. '17.

Off the Record

Exasperated beyond endurance by the clinkers which were being dropped in his class in trusts one Indian Summer day, Mr. Scott finally inquired: "Why do we have so many wrong answers today? Am I asking the wrong questions?"

The RECORD has received an appeal from a Law Wife, one Mrs. A. R., who complains that, with the approach of the Ames Competition:

"My good old ever-loving guy
Now's just another thing in a tie."

She has decided to institute legal proceedings and asks our help. We publish her complaint in the hope that some member of the Legal Aid will read it and come to her assistance.

I want to sue for alienation of affection.
Gentlemen, I appeal for your protection:
Send me a lawyer of Harvard degree
With skill, appeal and sympathy

To argue my case and make it strong
And gain redress for terrific wrong.
Still

Gentlemen, allow me to make this clear
Beyond a reasonable doubt, right here
Though I must admit to jealousy
It was not caused by my fellow she.

I don't have anything against the dames,
The one I want to sue is Ames.



Gallery

CITY LAWYER

PAUL J. FLEMING

When Paul J. Fleming was graduated from Harvard Law School in 1930 he went to New York with the idea of practicing there. After several interviews he decided that he could not be happy there and came back to his home in Youngstown, Ohio, a city of about 170,000, to practice.

"I still feel the same way," says Fleming. "From 1942 to 1945 I was a member of the legal staff of the Alien Property Custodian in New York. I was admitted to the New York Bar and when the war ended I had several offers from firms there, but Youngstown still was more attractive to me."

A thin man of medium height with sandy hair and cool eyes, Fleming is of a retiring nature. But his speech is penetrating and to the point.

To Fleming a city the size of Youngstown is the ideal place in which to live and work. It has many of the advantages of both the large city and the small city without many of their disadvantages. Here, he finds, the lawyer's identity as an individual in practice is preserved to a greater extent than it can be in the big city. He knows most of the lawyers in the city. He has a great opportunity to get practical experience in the courts and in negotiations. Older lawyers are much more willing to help a new man with advice.

"I remember one of my first trials," Fleming reminisced. "During a recess my opponent came up to me and pointed out something I had missed. He was an experienced man and was trying to help me get a good start. The judges here, too, are always ready to give a young man a lift."

The pace in Youngstown is more leisurely than in the larger cities and, in some ways, the small towns. The terrific grinding pressure of practice in a large office in a big city is absent. At the same time, it is not necessary to work on the large number of small cases as the country lawyer must do.

Most important to Fleming, family life is better in Youngstown. He is married and has five children and they constitute the center of his life. Family life is less complicated and much less expensive than in large congested cities. He has more time to spend at home and to take an active part in rearing his children. Schools, churches, recreational and health facilities are of as high quality as in any large city and usually far better than in the small town.

"The most important point is that you have to lead a satisfactory life as you can, as you see it," Fleming emphasized, leaning forward in his chair to light a cigarette. He puffed for a few seconds and then went on. "What a satisfying life is will vary with the individual. Some men are built for big city life, others for the small town. Most of us, I think, can find a degree of satisfaction wherever the opportunity for a successful professional life presents itself. In any case, it isn't the money that counts most. Few lawyers ever get rich practicing law, but you'll always make a comfortable living. Look around, see where you want to settle and what you want to do and do it. That way you'll probably live happily."

To the graduate coming to a medium-sized city to practice, Fleming advises a year or two in a fairly small law firm where he can get practical experience in all fields of law. In a city such as Youngstown there are few such firms and limited openings. The next best thing is to do as Fleming did when he came to Youngstown after graduation.

"I opened my own office. It was in a suite with several other, older lawyers. They were extremely helpful in taking me over the gaps in my knowledge." He laughed and rubbed his chin. "I think you boys will find that you know a great deal of substantive law but don't know how to make it practically effective. That's where an experienced man's help is valuable. It may be a struggle for a few years, but if you have the necessary ability your practice will grow."

In 1945, on returning from New York, Fleming accepted an offer to join the firm of Manchester Bennett, Powers and Ullman, biggest in Youngstown. Not large by big city standards, having a total of ten members, the firm offers Fleming the opportunity to practice as he most desires. While a good deal of his work is in labor law, he does a little of everything, including corporation, insurance, banking and probate work. He has access to the firm's fine library and research facilities. There is no monotony in such work.

Fleming advises young men to take an active part in politics as soon as they can after graduation. He himself was a candidate for state legislature in his first year of practice and was defeated by only twenty-five votes.

"You men have a great deal more to offer than the average candidate," he says.

Important, too, from a personal view, is the fact that running for office brings the new lawyer before the eyes of a great many people. Some of them may remember him when they need legal assistance.

The lawyer may join social organizations or refrain from doing so, as he feels inclined. Doing so may help business some; on the other hand it doesn't do much harm in Youngstown not to be a joiner. Mr. Fleming's main interest lies in his family so he has joined few organizations. In a small town, perhaps it is very necessary.

Law Club work is one of the most important activities at the school, he thinks, especially to the student who comes to the law school without a legal background. It gives him a general idea of appellate practice.

"I found that it also develops poise, ability to express ideas clearly and in a persuasive manner. Such qualities are invaluable in practice."

Fleming has always been glad that he had the chance to get his legal education at Harvard Law School.

"Among other things, the training you get at the school, and I don't know whether it's the method of teaching or the teachers or the type of student body you have contact with or a combination of all of them that does it, enables you to see what the problems in a given case are, then to see all the different angles in the problems and then to go on from there. The knowledge that you can do that gives a great feeling of confidence. You'll take a lot of kidding about Harvard from other lawyers but I think most of them secretly wish they'd had the same opportunity you did. They rightly expect a great deal more of you, too."

H. K.

Sub Judice

THE BARNES BILLS IN MASSACHUSETTS****People by initiative petition cannot destroy all political activities of labor unions.

The President of the State Federation of Labor brought separate actions against the Secretary of State for mandamus forbidding submission of an initiative to the voters which forbade political contributions by labor unions; against the Attorney General for certiorari to quash the "summary" and certificate of the Attorney General as to these proposals; against local registrars of voters to attack by mandamus the registrars' certificate to the name of a signer of the initiative petition; and against the same registrars of voters to attack by certiorari the registrars' certificate to the name of original signer of the initiative petition. All these actions were brought in the Superior Court which reported the cases to the Supreme Judicial Court without decision.

The Court found that there had been a small variance in the signature of one of the original signers of the initiative petition, but it refused to interfere by discretionary writ where the petitioners were guilty of laches in not discovering the variance earlier as investigation would easily have shown it. The certificates of the Attorney General were attacked because of the present incumbent's activity in advocating these bills. But the Attorney General has no "interest" in private sense of the term. His duties do not bar him from advocacy of legislation.

The Court ruled that the question whether either of the proposed laws, if enacted, would violate some provisions of the United States Constitution, or some other part of the Massachusetts Constitution other than the Amendments which permit initiative proposals, was not open at this time. The Court said: "Only when the impact of a statute upon particular individuals, who have both the opportunity and the incentive to defend their rights by argument, and upon a set of definite facts established after genuine controversy, has been shown, can a court decide a constitutional question with confidence that relevant considerations have not been overlooked."

The question whether a particular proposal relates to matters excluded by the Constitutional Amendments permitting the initiative is a justiciable question. Proceeding from there the Court finds that the political activities of unions would be destroyed by the first of these proposals. They would be "Deprived of a right to pay any sum of money for the rental of a hall in which to hold a public rally or debate, . . . a union could not carry on any substantial and effective political activity." Therefore, it would violate the rights of freedom of the press and of peaceable assembly and may not go on the ballot. Such rights are not violated by the proposal requiring reports by unions of financial matters. *Bouce v. Secretary of the Commonwealth*, 69 N. E. (2d) 115 (Mass. 1946).

COMPULSORY SELF-INCRIMINATION****Urinalysis taken from one arrested for drunken driving is not an illegal search and seizure nor compulsory self-incrimination.

Appellant was convicted of driving under the influence of alcohol. On appeal he contended that testimony about analysis of a urine specimen taken from him while under arrest was improperly admitted because it was insufficiently identified, and the evidence was insufficient to show that it was in the same condition when analyzed as when taken. He also claimed that the specimen obtained was taken by compulsion or inducement and was, therefore, an illegal search and seizure. His last stand was that urinalysis constituted compulsory self-incrimination in violation of the fifth amendment.

The court recognized that the urinalysis might have been decisive as witnesses testified both ways as to appellant's intoxication. The specimen was taken by a policeman after arrest. An officer told the appellant that if the sample was all right, it would be to his benefit. The testimony was that the bottle used was first rinsed and corked afterwards with a cork stopper. The bottle was never sealed but had the appellant's name on it. It being Sunday, the police officer took the bottle home and placed it in his ice box. On Monday the bottle was taken to a Health Department chemist for analysis. This chemist left the department before trial and did not testify. Some twenty days later another chemist analyzed the specimen and found it contained 0.24 per cent alcoholic content. This was the same figure shown on the records of the previous chemist.

Over objection the trial judge admitted the laboratory records of the analysis. An expert witness testified that 0.24 per cent alcoholic content indicated that the source was under the influence of liquor. It was also brought out that it was customary to take a blood test in addition as a check. That was not done here.

The trial judge was sustained. Evidence obtained from a person legally arrested is admissible over the illegal search and seizure objection. The court thought the third objection was more important, but it likened the taking of a specimen to the taking of a statement. It was not an involuntary confession. Judgment affirmed. *Novak v. District of Columbia*, 49 A. (2d) 88 (Mun. App. D. C., 1946).

ALCOHOLISM AS SELF INFLICTED INJURY****

A successful lawyer had two insurance policies naming his wife as beneficiary and providing for waiver of premiums plus payment of monthly benefits if he should become totally and permanently disabled. Total disability was defined as "any impairment of mind or body which continuously renders it impossible for the insured to follow gainful occupation." The policies also provided that "disability benefits shall not be granted if disability is the result of self inflicted injury."

In an action of assumpsit brought by the estranged wife-beneficiary against the insurance company the trial court found for the defendant, and its findings of fact and conclusions of law were sustained by the court en banc. On appeal, judgment affirmed. *Lynch v. Mutual Life Insurance Co.*, 48 A. (2d) 877 (Pa. Super. Ct., 1946).

The trial judge found that the insured had been totally and permanently disabled within the meaning of the policies, that the disability resulted from chronic alcoholism, and was self inflicted. The appellate court drew a distinction between the meaning of the policy to protect the insured against misfortunes but not his misdeeds. The court said: "A caveat must be entered. We do not hold that chronic alcoholism is as a matter of law a self inflicted injury. Our decision is that the evidence which the trial judge found credible justifies the conclusion that the disability suffered by this insured was self inflicted."

The Witness Stand

The Question: What improvements or changes would you like to see in the Library?

1. J. M. Fitch, Rochester, N. Y.
1st Term

There should be a good diagram of the library available to show where the various volumes are located. The mimeographed maps handed out aren't detailed enough. I had to find my way around pretty much by myself and it slowed me up at first. There could also be a better explanation of the available facilities since many of us aren't sure just what is available. I realize not everyone can get into the stacks but there could be an improvement in the time you have to wait for books.

2. T. Fender, Washington, D. C.
2nd Term

The personnel situation could stand bolstering. I think part of the trouble is that there isn't enough personnel to handle the requirements. The library is more crowded than ever and Austin Hall's reopening doesn't seem to have relieved the pressure too much.

3. R. H. Belin, Richmond, Va.
3rd Term

The Law School seems to be well endowed but there is an apparent deficiency in available volumes at times. I wonder if some of the money spent on rare books couldn't be put to practical available use. I heard that the incunabula, which are a nice thing to have, are all stored in the vault.

4. N. Freiburger, New York, N. Y.
1st Term

My only complaint is the way the books are marked up. That would seem to be a problem the students themselves will have to solve. Otherwise I find things satisfactory. Perhaps being only a first term is the reason.

5. R. Thomson, Pittsburgh, Pa.
1st Term

There seems to be a unilateral receipt system used which worries me at times. After I have returned a book I don't get my receipt back and there is no way for me to prove that I have returned the book. The service was slow but seems to have improved in the last few days.

6. Herbert Edelhart, New York, N. Y.
2nd Term

I think the library service is fine. I've never had trouble with it. There are plenty of books for my purpose and I find the desk service adequate. They might however set up a permanent information desk for the benefit of those preparing their first term briefs.

7. Paul Mishkin, New York, N. Y.
3rd Term

I think provision ought to be made for quicker return of books to the shelves. A remedy might be to have a few additional employees make the rounds and return the books to their proper places. A part of the library might also be set aside for discussion and strict silence enforced in the rest of the reading room.

8. A. H. Gregory, Maplewood, N. J.
4th term.

I have no complaints about the library service. It is adequate for my needs. I've not had much trouble with lack of books except toward the end of the year. The only remedy I can think of for that is an increase in the number of the more widely used treatises. It seems that a school like Harvard could have enough books of that type on hand. I think noise in the library is purely a student problem and I can't conceive of any plan of supervision of which I would approve. The same goes for the students' failure to return books to the shelves.

9. L. Edwards, Providence, R. I.
3rd term

If possible, some method should be set up to make the characters who scribble in books buy new ones. (See last week's RECORD.) I don't know how to catch the culprits. Something ought to be done about people who leave reports around on tables after they are through with them. A corps of runners could be employed to see that those books are returned to the shelves. In addition, a simple fine system could be devised for those keeping books out past the time limit.

Alumni Notes

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

LL.B. '23—Carlos J. Warner was married on October 4 in Boston, Mass. to Mrs. Rachel Derby Smith Grote of Boston. After Warner graduated from the Law School, he entered the State Department as a Foreign Service officer.

LL.B. '28—Andrew Jackson has formed a partnership with Cary Potter (Yale 1937) to render services as consultants in Personnel Administration and Labor Relations. The offices of Potter & Jackson are located at 6244 Madison Ave., New York 22, N. Y.

Jackson was originally associated with the firm of Milbank, Tweed, Hope, Hadley & McCloy (formerly Murray, Aldrich & Roberts). He later became counsel for Rockefeller Center, Inc., then acted as an attorney for the New York State Labor Relations Board, and recently completed five years' service with the American Sugar Refining Co., as Industrial Relations Manager. From time to time, during the war, he also served as an industry member of the Review and Appeals Committees of the National War Labor Board.

LL.M. '29, S.J.D. '35—Later information than that which appeared in last week's RECORD advises that Lynn D. Coffman is the present Dean of the Vanderbilt Law School.

LL.B. '32—Thomas H. Eliot, former Congressman from the Cambridge district and winner of the Ames Competition in 1932, was recently ejected from a committee hearing by John Rankin, chairman of the House Committee on Un-American Activities. Eliot was attending the meeting as counsel for Harlow Shapley, director of the Harvard College Observatory and chairman of the Massachusetts Independent Citizens Committee of the Arts, Sciences and Professions. Professor Shapley had been subpoenaed before the committee to answer questions about the activities of the PAC, the ICCASP and the Joint Anti-Fascist Refugee Committee, particularly in regard to the recent election contest between Joseph Martin and Martha Sharp. Eliot was ordered to remain outside the committee room by Rankin, who constituted a one-man sub-committee, and at no time was his client permitted to consult with him.

Eliot advised Shapley to decline to answer any questions without the advice of counsel. When Rankin ejected Eliot from the room, Shapley merely refused to testify.

LL.B. '35—Milton H. Cohen, director of the Public Utilities Division of the Securities and Exchange Commission, has resigned, effective December 31, to practice law. Cohen joined the SEC upon graduation, and has been director since March, 1943.

George E. Ray, LL.B. '35, and Oliver W. Hammonds, LL.B. '36, have announced the formation of a partnership for the general practice of law, under the firm name of Ray and Hammonds. Offices are at 1011-12 Praetorian Bldg., Dallas 1, Texas.

Since graduation Ray has had considerable government experience, first as attorney for the U. S. Board of Tax Appeals; then as special assistant to the Attorney General of the United States in the Tax Division of the Department of Justice; and principal attorney in the office of the Tax Legislative Counsel of the U. S. Treasury Department. Later he was chief counsel for the Mediterranean Theatre and deputy executive director of the Office of the Foreign Liquidation Commissioner in the U. S. Department of State. Recently he served as Lieutenant Commander, U.S.N.R.

Hammonds formerly was special assistant to the Attorney General of the United States in the Tax Division of the Department of Justice, and attorney

in the office of the General Counsel of the U. S. Treasury Department. During the war he served as Major, Army Air Forces, in the office of the Commanding General.

LL.B. '39—Campbell DeMallie's engagement to Miss Caroline Elizabeth Pratt of Lowell, Mass., has been announced. DeMallie served in the Navy during the War.

LL.B. '39—Irvin L. Stephenson, who served with the War Department General Staff during the war, became a member of the firm of Cheney, Jensen, Marr & Wilkins on his return from military service last spring. His business address is 920 Continental Bank Bldg., Salt Lake City, Utah.

LL.B. '40—Solomon Friss has opened offices for the general practice of law at 812 Fox Bldg., 1612 Market St., Philadelphia 3, Pa.

LL.B. '46—Oakley Wade, who received his degree in October 1946, was elected to the Colorado state legislature in a "blizzard and a landslide," in the November elections. The count was 698 to 418. Only one-third of the normal number of votes were cast because of the terrible blizzard which raged in Colorado during election week. Some polls were unable to open. Wade was the Republican candidate for the legislative seat.

GRADES—(Continued)

will graduate with a better average than most of the men who were a point or two ahead of him in the first year, but he will be in a poorer fraction of the class at the end of the third year, when he is ahead of those men, than he was at the end of his first year when he was behind them. This is explained by the fact that not only do the flunkies drop off from the bottom, but so also do many voluntary withdrawers.

The chart on page one is a clear presentation of the comparison between the class which entered in 1938 and the class which has just completed its first year. The 1938 class was eight percent larger, hence equal performance would have caused the 1938 line to plot parallel to and slightly above the 1946 line. Due to the great difference in size it was impracticable to plot the curve of any of the other classes presently in the School.

The actual breakdown of the present third term numerically, for those who want to compute their position is as follows: 77-2, 76-3, 75-6, 74-10, 73-9, 72-19, 71-27, 70-20, 69-26, 68-33, 67-33, 66-29, 65-26, 64-30, 63-25, 62-37, 61-30, 60-22, 59-13, 58-3, and failing (some of them obviously repeaters) 59-5, 58-13, 57-15, 56-5, 55-7, 52-5, 51-2, and 50-2.

AMES—(Continued)

who will be Associate Justices are Mr. Harvey Bundy and Mr. R. Ammi Cutter. The final argument of the series will be on December 19, when the Root Club will argue against the Scott-Pow Wow Club. The case includes problems in Agency and Bankruptcy. Chief Justice will be The Hon. George C. Sweeney, Federal District Court Judge. One of the Associate Justices will be Mr. Arthur Black, a federal bankruptcy referee. Mr. Daniel W. Lincoln, also a bankruptcy referee, has been asked to be the other Associate Justice.

The counsel who will handle the oral arguments for the various clubs, the counsel on the briefs, and a more detailed statement of the problems in each case will be given in subsequent issues.

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YEARBOOK—(Continued)

assured, publication may not be possible before the spring semester ends.

The new Yearbook officers feel confident that they can equal, or even surpass the outstanding edition of the annual that was published last year, according to Norman A. Witt, retiring chairman. Early fears that there would be little demand for a 1946-47 Harvard Law School Yearbook have been resolved, and with the appointment of the new officers, the Committee has a green light on the project.

HOLMES—(Continued)

that's what I've gotten out of playing him and I try to convey that feeling to the people out front."

The play runs in Boston until December 14 and then moves to Washington for a second run there. The present tour will end on July 1, 1947. There has been no interest shown in a movie of the play. Mr. Calhern explained why:

"Hollywood runs in cycles. Right now they're all afraid of biographical pictures. Besides, from their point of view the years of Holmes' life covered by the play were quiet and uneventful. Now if his secretaries had been dames —" he shrugged his shoulders expressively.

After having donned the brown wig and paste on the handlebar mustache, Calhern picked up a long black cigar and clipped the end.

"You know, I love this play and the Justice," he concluded, "but there's one thing I've got against the old man. I hate cigars and for two and one half hours eight times a week I have to keep puffing on these damn things because he liked them."

H. K.

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Law Wives Run Cafeteria Efficiently

Business is booming at the Kendall House Cafeteria this term, with approximately 300 law men daily swelling the lunch lines.

The cafeteria, a non-profit organization, is operated by the Harvard Law Wives association to provide cheap and nutritious lunches for their spouses and colleagues.

Mrs. Horace Kalik, the club's first vice-president and Kendall House chairman, reported a record high of 300 customers was reached last week (cq) and predicted even larger patronage the rest of the term.

An urgent plea to law wives for additional helpers to take care of the large crowds was made by Mrs. Kalik. Today's flourishing business contrasts sharply with the cafeteria's timid start last winter, recalls Mrs. John Lawless, first chairman of Kendall House.

Only two customers—Ex-Dean James M. Landis and Dan Mulvehill—appeared on the cafeteria's opening day.

"Our coffee-maker wouldn't work and Mr. Mulvehill managed to persuade the operator of one of the local cafes to come and fix it for us," Mrs. Lawless said. Between 20 and 40 students daily ate at Kendall House that first term, many of them supplementing lunches from home with hot coffee and soup.

Now at peak rush periods the diners overflow into the Kendall House parlors, halls and even perch on staircases.

Moved by student requests for a speedy and economical lunch set-up, Dean Landis first approached the law wives with the idea of the cafeteria last January. He offered to turn over Kendall House as a law school social center if the wives would operate the lunchroom.

The wives, familiar with their husbands' complaints of poor and expensive commercial cafes, quickly agreed to the plan and Kendall House came into being.

With the law school providing the money, the wives had the house redecorated and furnished as a social center, with a large parlor, dining room, card room, kitchen and smaller meeting rooms.

Arrangements were made for the house to be available for various law club activities, as well as the weekly law wives' meetings.

When a profit was shown at the end of the cafeteria's first term, the money was used to buy a combination radio-phonograph for the house. The lunchroom now operates on a non-profit basis, with the law school furnishing financial backing and the wives managing purchases and food preparation.

Although Kendall House now employs a part-time social secretary and a dish washer, operating expenses are kept at a minimum. Seven or more wives are needed each day to cashier and serve trays. The customers cooperate by returning trays and utensils to designated places after finishing their meals.

Five kinds of sandwiches, two soups, coffee, milk, crackers, cup cakes and ice cream are served daily. And in spite of rising prices elsewhere, a dime can still buy the most expensive item on the Kendall House menu.

Impressed by such bargain prices, some law wives would like to bring the whole family and meet Daddy for lunch at Kendall House. It's cheaper than eating at home, they say—but house rules forbid such practice, pointing out that the cafeteria operates for law students only.

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Calendar

THE LEGAL WORLD

Holiday

Thanksgiving Day—November 28—is a holiday here too. Even the Library will be closed.

Ames Competition

First term counsel: No briefs will be accepted for exchange at the Board Office unless the time and place of the argument appear on the cover of the brief.

Property I Exam

Men who took and passed the examination in Personal Property before leaving school to enter the Service, may in the coming examinations take that portion of the Property examination which covers Real Property. This applies both to men repeating the first term work and to those who elected not to repeat that term.

Law School Nursery

More children can be accommodated at the Law School Nursery, first floor of Hastings Hall. The nursery operates from 2 to 5 P.M. every afternoon and is under the supervision of a trained nursery school teacher. The charge is \$25 per day.

Water Rights Course

The ninth edition of L. Ward Bannister's *Outline of a Course on Water Rights Under the Appropriation System* is now available at the Langdell Reading Room desk. The price of the outline is \$75 and it is obtainable under the G.I. Bill of Rights. The course has been extended one week, and will now end on Dec. 11.

THE UNIVERSITY WORLD

Play

Harvard Veteran's Theater presents *I Was A King In Babylon*, a new play by William Gerhardt which is a satire on reincarnation. At Rindge Tech Auditorium, December 4 through 7.

Lectures

Harvard College Observatory. A series of five open nights will be held during the month of December at the Harvard College Observatory (entrances at 60 Garden Street and on Concord Avenue, opposite Buckingham Street). A short non-technical talk will be followed, when the weather permits, by telescopic observations of celestial objects. Exhibits showing the work of the Observatory will be explained by members of the staff.

Tickets for these open nights must be obtained in advance by sending a self-addressed, stamped envelope to Open Nights, Harvard College Observatory, Cambridge 38, Mass. stating for which night the tickets are desired. Applicants will be assigned tickets for one night only. No more than three tickets per person can be permitted. There is no charge for admission, but tickets will be distributed only to the capacity of the lecture room. The lectures will begin promptly at 8 P.M. The dates, titles, and speakers for the lectures are as follows:

Monday, December 2 *The Earth's Upper Atmosphere* Prof. Fred L. Whipple

Wednesday, December 4 *Explosions on the Sun* Prof. Donald H. Menzel

Friday, December 6 *Bright and Dark Nebulae* Prof. Bart J. Bok

Monday, December 9 *Explosions on the Stars* Dr. Cecilia Payne-Gaposchkin

Friday, December 13 (Children's Night) *A Trip in the Universe* Dr. Sergei Gaposchkin

THE OUTER WORLD

Plays

Call Me Mister, the Broadway musical revue written and staged by ex-GIs, will open at the Schubert Monday, December 2.

Mary Had A Little, a comedy starring Edmund Lowe and Mary Brian, opens at the Copley on December 2.

Apple of His Eye, the third of the Theater Guild-American Theater Society subscription plays, is at the Plymouth. Walter Huston plays the middle-aged Indiana farmer who falls in love with his hired girl.

Years Ago, the story of Ruth Gordon's Wollaston days, starring Fredric March and Florence Eldridge, continues at the Copley through this Saturday evening.

The Magnificent Yankee, with Louis Calhern as the Chief Justice, continues at the Colonial.

Twilight Alley, the new Duke Ellington-John Latouche modern parallel of John Gay's *The Beggar's Opera*, opens a limited pre-Broadway engagement at the Boston Opera House on Tuesday, December 3.

Music

Lily Pons will give her only Boston recital of the season at Symphony Hall on Sunday afternoon, December 1.

Boston Symphony Orchestra with Serge Koussevitzky conducting, presents the 8th in the regular concert series. Friday afternoon at 2:30 P.M. at Symphony Hall with the same program repeated Saturday evening, November 30.

RUSSIAN LAW—(Continued)

very great shortage of consumer goods, it was possible to obtain high prices for anything. In the face of this situation, some people who had reserved supplies, being unable to resist temptation, offered them in the black market. This was thought to upset the fixed price structure and therefore to be of danger to the state. What had previously been no crime at all became a crime by applying the article of the code relating to speculation to a type of activity for which it was not originally intended. These are three examples. More could be given to show how the principle is applied.

You may think that such action is entirely unfair as constituting the application of ex post facto law. So much has been said recently in connection with the Nuremberg trial, and particularly by Professor Glueck of this faculty that one need add little by way of comparison between the Soviet and other systems of law. It seems that international jurists find reason to support the Nuremberg decision in the development of the concept of common law crime in early English law. This concept is found in the developing period of American law, and is current in some states even today. Soviet law, and the international law of crime, being in their developing stage, are apparently adopting an established means of growing. One who is used to a stable society may shudder at the result, but we are told that it is not novel to Soviet law.

Some comfort may be found in the fact that before the war there was a sharp trend away from the application of the "analogy" article toward greater definiteness in the law. Even now the Supreme Court of the USSR has issued instructions to the judges of original and appellate jurisdictions to return as promptly as possible to the peacetime conditions where the principle will be applied sparingly and in most cases only when the act is already a crime and it is desired to raise the penalty. If the act is not defined as a crime before being committed, then it is not to be made a crime by way of analogy.

The sacrifices I have talked about are required in Soviet opinion to meet the needs of tomorrow. They are not, however, interpreted as requiring that innocent persons be punished as guilty because there is not time to establish their innocence. No state can survive forever, or even for long, if innocent persons are punished. The Soviet jurists know this as well as any one. It is possible that a population if it is told the rules of society will accept them, no matter how severe, if it can be certain that by observing them no punishment will follow. If innocent persons are punished revolution will follow eventually. The revolting point will differ for peoples with different historical backgrounds. For that reason the political scientists who would understand a foreign peoples must study its history. But whether it comes sooner or later, the revolution can be assured if innocent persons are punished over a long period of time.

At this point I must add a word of caution. Of course, if the danger to the state at any particular moment is so pressing that its very existence is threatened, the pendulum may swing towards the dragnet principle. Every one of you who served in the armed forces knows the need for such a principle in a crisis. The police of Calcutta must have it very much in mind during the riots. There can hardly be a halt to separate the innocent from the guilty in times of crisis, at least during the early stages when order is being established. The Soviet Government understands this principle and one finds a greater emphasis upon it in wartime. For instance, at the time the Germans were only sixty miles from Moscow, the USSR issued a decree which provided that spies should be shot on sight. Undoubtedly many innocent persons perished because they looked suspicious to an armed populace.

Lenin stated his philosophy on this point during the early days of the revolution. He said, "I have discussed soberly and categorically which is better, to put in prison several tens or hundreds of instigators, guilty or not guilty or to lose thousands of Red army men and workers? The first is better. And let me be accused of any mortal sin whatever and of violating freedom—I admit myself guilty, but the interest of workers will win out." It is clear that when the issue is survival or existence, the innocent are piled into the same hopper as the guilty, but when the question of survival is no longer in issue the innocent are separated, and must be separated if the state is to survive. It is not a matter of practical politics.

As the USSR becomes surer of itself, there is greater emphasis upon stability, and upon the importance of convicting only the guilty. Let me give some examples from the recent Soviet decisions.

It has been hard during the war to get the Soviet legal publications, but they are again arriving. The cases to which I refer relate to procedure. It used to be commonplace in the USSR, just as it was in the student body at the Harvard Law School, to consider procedure a necessary evil without much general importance. Soviet jurists are now being circularized with material calling their attention to the importance of procedure because of its relationship to the problem of which I have been talking. Procedure is declared to be a scientifically designed set of rules which, if followed, create a condition in which the chances of convicting the innocent are reduced to an absolute minimum. One of the aspects of the current drive for the observance of procedural rules is the popularization of the role of the defense attorney. It is no secret that during the early years of the revolution, prosecutors and judges thought the defense attorney an unnecessary nuisance, impeding justice. This approach is not limited entirely to the Soviet Union. Vyshinsky himself has come out in his book on the Soviet court system to support the Soviet defense attorney. He makes it clear that the defense attorney is just as much an instrumentality of the state and of importance to the state as the prosecution and the judge. His task is to present every shred of evidence which tends to prove the innocence of the accused, or if he is avowedly guilty, to permit the court to mete out a sentence which is designed to rehabilitate him.

I have seen instances in Moscow where the defense attorneys took their obligations extremely seriously. These were not cases where persons committed crimes against the state but cases of murder, rape and so on—the kind of case which takes up most of the time of any criminal court. The defense attorneys are sometimes ably by virtue of careful attention to detail to bring in evidence which had been overlooked by the prosecution and which is of immense importance.

You will find reported in Soviet periodicals a large number of wartime cases dealing with procedure. These come from the Supreme Court of the USSR, which has regularly been reversing cases in which procedural rules have been violated. Let me give some examples. In one of the reported cases reversal was based upon the fact that the defendant had not been present at his own trial, as is required by law. The facts showed that he was a deaf mute. The court had no expert in sign language and so it had been decided that since the defendant could not contribute to the proceedings, there was no need for him in the courtroom. The Supreme Court said that he should have been provided with a sign language expert and have been present, for the law required this procedural protection.

Another case involved a person who could hardly speak Russian. In the preliminary examination, which precedes the trial in accordance with a practice common to countries of the Continent, an interpreter had been used and the record was prepared on which the indictment had been based. This record was used at the trial, but the defendant had no interpreter. The Supreme Court of the USSR again reversed because of the violation of the procedural rule, by which any one not speaking the language of the court must have an interpreter.

As I have already stated, there are swings away from attention to the individual when danger to the state seems of paramount importance. Every one has heard of the Commissariat of Internal Affairs, which has certain powers under the law. It may banish to the provinces persons believed dangerous to society, even though no crime can be proved. These are usually the chronic grumblers who act like the proverbial rotten apple in the barrel in upsetting the morale of a community. This is an aspect of law of which even Soviet jurists are not proud. They look to the time when it will no longer be necessary to protect the state in such a manner.

Let us now proceed from consideration of the individual to consideration of property. I have said that Soviet political scientists plan to construct a new society. What is the task? It is to create an economic base which will be different from what it was under the capitalists. The reason for emphasizing the change of base is to be found in the Marxist analysis of history. Marxists believe that history has proved that the source of political power is economic power. They point out that the reason why the bourgeoisie is dominant in most parts of the world is because it owns productive property. The first rule of the revolution became, therefore, the removal of property ownership from the hands of the bourgeoisie and the transfer of this ownership to the state as the representative of the proletariat.

Many people who have studied the beginnings of the Soviet state thought that with the abolition of private ownership of the means of production there would no longer be need for lawyers. Events have proved this thought unfounded. No one is playing a more active part in Soviet life today than Vyshinsky, and he is a lawyer. There are thousands of lesser reputation. The USSR has not done away with our profession. The lawyer is in politics and social life in the USSR as much as anywhere.

Consider that when property is transferred to the state, it is unproductive unless it is used. It becomes necessary for the state to distribute the use of the property, while retaining title. There is a tremendous body of law relating to the use of property owned by the state. No manager of a government corporation's factory would think of acting on any subject until he had consulted his lawyer in the next room. In the arbitration tribunals which have to do with the settlement of disputes between government corporations, the bar plays a vital part. At one time the tribunals tried to exclude them in favor of the factory directors, but the lawyers retained their positions. The lawyers remain a very powerful element in Soviet society, and any one who is running a branch of state industry must have one by his side.

In addition to the great body of law relating to the use and administration of property owned by the state, there is a continually increasing body of law related to the right of ownership of consumers' goods. The Communist Manifesto says, "The distinguishing feature of communism is not the abolition of property generally but the abolition of bourgeois property." I was once testifying as an expert on Soviet law in a court in New Jersey in a case which had to do with the ownership of consumers' goods. The judge finally grasped the point and leaned forward to say, "You need not go further. Of course, I know

that you can own your own pants." Not every one does know this simple truth, and for that reason there is often confusion concerning Soviet property law. When the Marxists talk of bourgeois property, they mean producers goods, factories, land, subsoil and forests. They are not referring to private homes, bank accounts, clothes, manual tools.

There has been great emphasis upon consumers' goods of recent years. The first discussion of the law relating to them appeared when the civil code was enacted as far back as 1922. At that time there was a trend away from the rigid rules of the revolution. In 1928 the first of the Five Year Plans was introduced, and there was again major emphasis upon producers' goods. It was found, however, that labor productivity could be increased by making wider variations in wage scales for those who contributed most to production and the other things necessary to society. Such wages were important only if the recipient could acquire property and enjoy its use. By 1936 when the new constitution was promulgated, there was written into it a guarantee of property rights, homes and savings, even of inheritance. Provisions relating to these aspects had previously been in the civil code, but not on the level of the constitution itself.

During the war there has been further emphasis upon these property aspects. A large part of the emphasis has resulted from the need of supplementing state production and housing construction by local production and construction. For instance, in housing, there has been tremendous emphasis upon private construction because of the Soviet G.I. Bill of Rights, which provides that returning veterans shall be assigned plots of forest lands from which they may remove the timber for their home, and they shall also be granted loans to buy other materials. Small homes were also built around the transferred factories in Siberia during the war. The result has been a rash of small housing. None may be built to rent as apartment houses. In that the basic principle of Maxism is maintained, but the house which is built for personal use may be privately owned, and this ownership is protected by law.

Inheritance taxation was abolished during the war, and the circle of heirs who might take by way of intestacy or by will was enlarged considerably. If there are no immediate heirs, a testator may bequeath property to any one of his choosing. You can see immediately that with the expansion of inheritance in this way, personal property rights take on new importance. It will be interesting to watch the outcome of this move.

There remains article 12 of the Constitution, which says, "He who does not work shall not eat." Even if you become wealthy by way of high wages or inheritance, you cannot become a drone and do nothing for society, except live on capital or cut coupons on government bonds.

The great cleansing hit the law field in 1937. Professors who had been talking of the progressively diminishing importance of property law as it related to consumers goods were ousted and

criticized. Since that time new textbooks have been written which talk of civil law in Roman law terms. The USSR is in the continental tradition and its laws are those of the rest of the Continent, with variations to fit Soviet conditions and political philosophy.

There are a few examples of wartime cases to show how the civil code is being applied. They will be familiar to those of you who are studying contracts. They relate to cows. It is reassuring to find cows make law the world around. The cases relate to sales effected in occupied Soviet territory, or rather, territory about to be occupied by the Germans. A cow which was sold before the German army reached a village and sold under the pressure of the German advance for a few pounds of meat was the subject of a suit after the USSR reoccupied the territory. The original owner sought to set aside the contract. The court granted the petition on the ground that the contract was made under the pressure of war. On the other hand in a case where the cow was sold at the time of the German advance but because it was sick rather than because of the pressure of the advance, the court refused to set the contract aside. It explained to the original owner that the cow was sold for normal reasons, and there can be no changing of mind later because the cow did not die.

In summary, let me repeat what I believe is abundantly clear. Soviet law is a tool of state policy and that policy is clearly a class policy. Yet within the confines of that policy law protects the individual and his personal property to a greater extent. It provides that the interests of the state are paramount, and during a time of crisis this paramountcy is very obvious. Nevertheless it is appreciated that confidence in the state is essential to continuing order, and this can be obtained only if the citizen is protected by law. The effort is to create as large a number of people as possible in the USSR who support their government not because they have to but because they want to.

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