

The Harvard Law School Record

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LANDIS TO APPEAR AT LAW FORUM

Aviation, Law And Bureaucracy To Be Discussed Friday

On Friday, Dec. 13, the Harvard Law School Forum will meet twice, first at 4:00 P.M. in Langdell Court, and again at 7:45 P.M. in Sanders Theater. James M. Landis, formerly Dean of the Harvard Law School, will discuss "Critical Issues in Aviation Policy" at the afternoon session, while the regular evening forum will be a consideration of "Bureaucracy and the Legal Order" by Mr. Landis and Robert M. Benjamin, outstanding administrative attorney.

The afternoon talk will be in the nature of a progress report by ex-Dean Landis to the students on his activities since leaving the law school a short time ago. He is expected to explain his new role as Chairman of the Civil Aeronautics Board, and to pose some of the problems facing American Aviation in the post-war world.

At Sanders Theater in the evening, the discussion will center about the greatly increased use of administrative tribunals in government, both state and federal. After reviewing the question of their necessity in modern government, the speakers will dwell upon the problem of how administrative efficiency may be maintained, while at the same time preserving the rights of parties heretofore protected by strict judicial rules of evidence and procedure.

Both speakers bring a long acquaintance with the field of administrative law to members of the Forum. Mr. Landis, a former case editor of the *Law Review*, received his LL.B. in 1924, and S.J.D. in 1925. Since that time he has distinguished himself as a draftsman of the Securities Exchange Act, Member of the Federal Trade Commission, and Chairman of the Securities Exchange Commission. Author of "The Administrative Process," he was Dean of the Harvard Law School from 1937 until last June, and is now Chairman of the Civil Aeronautics Board.

Robert M. Benjamin, who graduated from Harvard Law School in 1922, is a former member of the *Law Review*, and has long been a distinguished member of the New York bar. He is the author of a definitive report on the function and place of administrative tribunals in the state of New York, a work which he executed under a commission from the governor.

Dean Erwin N. Griswold will be the moderator at the evening session.



JAMES M. LANDIS

QUARTERFINAL CASES BEGIN

Casner Defeats Grotius Club in First Argument

The second argument in the quarter final round of the Ames Competition will be held tomorrow at 8 P.M. in the Court Room, when the Taney Club will argue against the Wilson Club.

In the initial argument of the round, held last Monday night, the Casner Club, represented in the oral argument by Malcolm R. Wilkey and Clendon H. Lee, defeated the Grotius Club, represented by Harold F. Olsen and Jerrold Scott. No scores are given in this series of arguments.

Next week, the Langdell Club will meet the Thorpe Club on Monday night in the third argument of the series, and the final argument will be on Thursday night, with the Root and Scott-PowWow Clubs as contestants.

In the argument to be held tomorrow night, the Taney Club will be represented by James L. O'Dea, Jr. and Leonard K. Simmer, while J. M. Montgomery and K. W. Hoehn will handle the oral for the Wilson Club.

Of counsel on the brief for the Taney Club will be John L. Cady, Robert W. Culbert, James F. Lovett, and Robert O. Stout. The Wilson Club counsel on the brief will be R. J. Sullivan, J. C. Carey, C. E. Stewart, Jr., H. C. Abbott, and H. W. Goodwin.

In the case to be argued, a statute provides that the judgment of the directors of a corporation as to the value of property received in consideration for stock shall be conclusive in the absence of actual fraud. The question involved is whether, under this statute, a shareholder who purchased shares in exchange for over-valued property should be liable to the trustee in bankruptcy of the corporation for an assessment against his stock, the assessment amounting to the difference between the value of the property exchanged and the par value of the stock.

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GRISWOLD ANNOUNCES NEW PROFS

Ewing, Farr, Field Kaplan Appointed To Law Faculty

In an attempt to relieve the heavy teaching load on the faculty and to alleviate crowded classroom conditions caused by the large postwar enrollment, an appointment of several new members to the faculty has recently been made. As announced by Dean Griswold's office the new professors are: Charles N. Ewing, LL.B. '40, Warren F. Farr, LL.B. '30, Richard H. Field, LL.B. '29 and Benjamin Kaplan, LL.B. Col. '33.

Richard H. Field, LL.B. 1929, formerly a practicing lawyer in Boston, and recently General Counsel of the Office of Price Administration, has been appointed a Visiting Professor of Law. He will teach two sections of Judicial Remedies in the Spring Term.

Another appointment as a Visiting Professor of Law is that of Benjamin Kaplan. Mr. Kaplan received his LL.B. degree at Columbia in 1933, where he was Editor in Chief of the *Columbia Law Review*. He was in practice in New York until 1942 when he entered military service. He left the service in January 1946 with the rank of Lieutenant Colonel. During most of the war, he was with the Legal Branch of the Office of Director of Materiel in the Headquarters of the Army Service Forces in Washington. In 1945, he was assigned as assistant to Mr. Justice Jackson in connection with the Nuremberg Trials. In this capacity, he served in Washington, London, Berlin, and Nuremberg. He was awarded the Legion of Merit, and the Bronze Star.

Two other men have recently been appointed as Lecturers in Law, and will each teach a course in the Law School next spring and summer while continuing their practice in Boston. These are Charles N. Ewing and Warren F. Farr.

Mr. Ewing received his LL.B. degree from the Harvard Law School in 1940. He was President of the *Law Review* in 1939-40, and served as law clerk to Judge Calvert Magruder in 1940-41. From 1942-45 he served in the United States Navy ending his service as a lieutenant. He is associated with the firm of Hemenway and Barnes in Boston.

Mr. Farr received his LL.B. degree from Harvard Law School in 1930. After that, he was in private practice in Boston. From 1941 until early 1946 he

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YALE LAW FORUM DISCUSSES DIVERGENT TEACHING VIEWS



FULLER

Defenders of the Harvard teaching method at the first meeting of the Yale Law Forum.



LEACH

Fuller and Leach Defend Harvard On Controversial Topic

The traditional divergence of opinion between the two schools was evident as representatives of the faculties of the Yale and Harvard Law Schools presented conflicting views on the mode of including "non-legal" fields in the curriculum of a law school. The discussion inaugurated the Yale Law School Forum, Wednesday night, in New Haven.

Profs. Lon L. Fuller and W. Barton Leach of Harvard, and Profs. Myres McDougal and Eugene V. Rostow of Yale expressed their personal ideas on the objectives law schools should strive to attain, and discussed possible reforms of the current system which would give the lawyer a broader understanding of the problems he must face. Judge Charles E. Clark of the Circuit Court of Appeals for the Second Circuit, and former dean of the Yale Law School, was moderator of the discussion.

In substance, the four professors agreed that such subjects as economics, sociology, psychology and psychiatry should be considered in the classroom, but Yale and Harvard disagreed on the method to be employed.

Profs. McDougal and Rostow advocated the inclusion of these subjects in the law school curriculum as separate courses. Pointing out that law schools today employ the same methods that were used in 1900, they maintained that since today the law plays a larger role than ever before in national well-being and international good-will, it should qualify its students on a broader basis than that of legal discipline and training alone. This, they felt, could best be achieved by including the social studies in the curriculum, as such.

The view of the Harvard professors was that the present framework of legal education should be preserved. Profs. Fuller and Leach suggested that applied psychology, economics and the other "non-legal" courses would better help prepare the lawyer if they were tied in with "legal" questions. How to deal with clients, what to expect from courts, what are effective arguments, and similar questions, they contended, give the student an insight into psychology. How to guard against inflation, how to consider commercial and industrial factors, they pointed out, yield the economic approach much better if expressed in connection with particular problems than if there were a separate course in economics.

The meeting, despite the depth of its topic, was marked by an informality which persisted through the speeches, rebuttals and question-period in which the audience of 800 faculty and students participated. The discussion, which began at 8 P.M. continued until nearly midnight, and retained the interest of the listeners throughout.

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LAW WIVES

Kendall House Cafeteria is now serving lunch to over 300 students daily, between 12 noon and 2 P.M. This is made possible by the voluntary services of cooperating Law Wives. Because of the increasing number of law students being served, more volunteers are needed. If you can devote at least 30 minutes of your time in assisting any weekday during the above hours, stop in at Kendall House between 11:30 A.M. and 2 P.M. to sign up.

SOLUTION FOR CHINA ARGUED

Inclusion Of Communists In Government Disputed

The only solution to China's problems is to get the Chinese Communists into a coalition government; the fundamental feature of China's future government will be majority rule and the government will not include all parties and groups. These divergent views were set forth at the Harvard Law School Forum in Sanders Theater last Friday night by Professor John K. Fairbank of Harvard, and Dr. Chen Chih-Mei, counselor of the Chinese Embassy in Washington.

Under the chairmanship of Professor Warren A. Seavey of Harvard Law School, the speakers discussed, "What is the Solution in China," before a large audience. Professor Fairbank is Joint Chairman of the Regional Committee on China and a professor of history at Harvard. During the war he served as a member of OWI in charge of Far Eastern Affairs and later with the Information Bureau of the State Department in China, from where he was recently returned. He is also the author of several articles on Chinese history and problems in contemporary China.

Dr. Chen Chih-Mei, who shared several heavy air raids in Chungking with Professor Fairbank, received his Ph.D. from Columbia University, then taught public law in a number of Chinese universities. During the war he served as administrative assistant to Generalissimo Chiang Kai-Shek, and joined the Embassy staff in Washington in 1944. He was on the Chinese delegation to the conferences at Dumbarton Oaks and San Francisco, and is now China's representative to UNRRA and the Emergency Food Council.

In his address Dr. Chen deprecated the efforts of such Americans as Owen Lattimore and Theodore White, who claim to know what the solution is in China. He disapproved of those in America who treat China as they would a mathematical problem, take recriminations and propaganda at their face value and, by applying meaningless labels to various groups, attempt to propose solutions by rearranging these individual groups as a mathematician would rearrange his symbols.

He outlined China's problems and said that the key problem in China for a century was to throw off the shackles of foreign imperialism and achieve national independence. This hard-won freedom China will preserve against all aggression, political, economic, or military. Because of the widespread illiteracy and bare subsistence standard of living China is today backward and undeveloped, and modernization of China, particularly in regard to her huge rural agrarian population is China's greatest problem at present, Dr. Chen asserted.

Speaking of Russia, Dr. Chen stated that China and Russia have become true allies since the San Francisco Conference and Russia's entry into the war in Japan. Their present relations are now primarily guided by the Sino-Soviet treaty of August 1945, in which Russia pledged support to the present government of China. It is China's hope that future historians will regard this alliance as the greatest single factor for

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Former Law Review Editor Tells About School, Teachers, Editors At Time Review Was Founded

There is a certain timelessness about Harvard and its Law School which is apt to be taken for granted by the members of the ever changing student body. Surrounded by such seemingly ageless things as the College Pump, the elms in the Yard, the pictures of the be-wigged gentlemen on the walls of Austin Hall and the endless rows of reports in Langdell Reading Room, students are likely to forget that somewhere in the not too distant past the traditions of today had their beginnings.

The origins of even so austere an institution as the *Harvard Law Review* are within the recollection of living men. Sixty years ago several bright young students at the Law School conceived the idea of a periodical to deal with the development of the law. In February 1887 they put their idea into effect and the first university law review in America was born.

Among the first members of the *Law Review* was John M. Merriam of Boston. One of the few editors of the first issue still living, Mr. Merriam has seen their youthful efforts develop into an established institution for the study and analysis of the law. Unlike any other profession, the major periodicals of the law are the student controlled and edited law reviews, of which Harvard's is the first.

Mr. Merriam recalls clearly the birth pains of the *Law Review*. It was planned by a number of leading third-term students, including John H. Wigmore,

Joseph H. Beale, Julian M. Mack, Bertram Ellis, and John Jay McKelvey. They formulated the pattern of lead articles by outstanding scholars, book reviews of major interest and notes on recent decisions which has been so successfully followed to the present time. Other departments of the *Review*, such as notes on lectures delivered by professors and reports on law debates, have been dropped. An interesting fact is that in the early issues there were a number of leading articles by the students themselves. Along with an analysis of "Purchase for Value Without Notice," by Professor Ames, student-editor Joseph Beale wrote a lengthy article on the legal implications of the ticket as an instrument of business. He and other editors were modest in their hopes for the *Review*, emphasizing that it was "not intended to enter into competition with established law journals."

Mr. Merriam, in reminiscing of those early days, recalls that the method of choosing *Review* editors was not then as formal as it is today. He was picked during his first term, more on the basis of his distinguished record at Harvard College and the fact that he had been an editor of the *Crimson* than on his law school record. But, even then, outstanding scholarship was a criterion. After the first few issues of the first volume were published, the editorial staff was expanded and a conscientious student named Samuel Williston was added.

In a way, Mr. Merriam personifies his

era, the pride of a cherished heritage, the love of intellectual conversation and wit, the spartan concept of manliness and the emphasis on good taste and morals. His appearance belies the fact that he is over eighty years of age. He is straight and husky and his white brush-moustache accords well with his lively eyes. Born in Southbridge, Mass., educated at Phillips Exeter and Harvard College, Mr. Merriam entered the law school in 1886. He never graduated, however; during his second year he was offered the job of personal secretary to Senator George Frisbie Hoar of Mass. After service with the senator for a few years, he returned to Boston to "read" law, was accepted by the Massachusetts Bar in 1890 and has been a practicing attorney since.

In 1887 the Law School had a distinctly New England flavor. Of the two hundred students that year, nearly one-half came from Massachusetts and almost forty per cent were graduates of Harvard College. There were a few from Chicago (among them John Jay McKelvey, the *Review's* first President), others from New York, Philadelphia and one or two from as far away as California. The *Review* had the great advantage of coming of age in the golden era of the Law School. Mr. Merriam recalls that although C. C. Langdell "was on his way out," Ames, Thayer and Gray, among others, were carrying on his great achievements. The law clubs

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Torture, Execution Among Colonial Punishments For Slight Offences

The following is a condensation of a paper submitted in the course on American Legal History.

The earliest arrivals in the American Colonies began with the Common Law, the Bible, and the immemorial customs of the English people, and by the time of the American Revolution had not progressed very far from those sources. The addition of the Bible to Common Law as a source of criminological guidance extended the scope of the properly punishable.

The solution of the seemingly eternal problem of punishment, a problem even yet unsolved, was still in its earlier phases; in the desire to deter crime, penalties were made as horrible as possible.

Foremost in the punishments meted out to offenders in the Colonial period was death. Generally death was by hanging. Rhode Island provided that for Treason the miscreant shall "be drawn upon a hurdle unto the place of execution and there shall be hanged by the neck, cut down alive, his entrails and privy members cut from him and

burned in his view, then shall his head be cut off and his body quartered. If a woman she shall be drawn upon a hurdle to the place of execution and there burnt."

The bark of these capital laws was worse than the bite, but the bite was frequently fatal. In New York out of 446 cases before the Supreme Court of Judicature between 1693 and 1776, with certain years omitted, 351 persons were convicted, 75 confessed, and 20 suffered default judgments. Of these 87 were hanged, and 13 slaves were burned alive.

Breaking on the wheel (a form of execution whereby the victim is spread-eagled on a suitable frame which supports his joints, and these are then smashed by blows from a sledge hammer, well laid on) was uncommon, but New York was not alone in the employment of this penalty.

Torture was utilized upon Giles Corey at Salem in 1692 when he was arraigned for witchcraft and refusing to plead was pressed to death. This device

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Editorials

The John L. Lewis case is the center of such a highly charged situation that an emotional or political approach is the first reaction. As a result the legal issues are obscured and, in some thinking, obliterated in favor of the many parallel and collateral problems of human values as opposed to labor's social gains and needs. There are even accusations that the affair is being used by the Democratic Party to break the mine workers' union. There have been charges of the mine walkout as being "a monstrous thing" which will eventually lead to dictatorship. There has been the counter charge that outcome of the trial has been a "recrudescence of government by injunction." Though so closely associated with the true legal issues as to make them a part and parcel of any discussion they still belong to the basic elements of the legal problem.

Law students have been discussing the trial with more than the usual interest displayed in newsworthy topics. Langdell Hall has buzzed with talk about the case. A frequent comment involves the query whether any of the professors would discuss the legal issues in class. One in fact did; he devoted an entire hour to the restraining order question and the principles involved. Another, after several student requests, tied it in with class room discussion of jurisdictional problems. On the whole, however, there has been no coherent definition of the full issues involved. Discussion continues to rage on the emotional plane described and for lawyers, much less law students, this seems wrong.

Perhaps because it has not been suggested, perhaps because it has not been done recently, no one has come forward and suggested an informal forum on the subject to be held immediately, while the topic is alive and fresh. It is believed that if such a symposium were to be held Langdell Courtroom would need rubber walls.

The Lewis case is a law professor's gold mine. The problems of constitutional law could be outlined and presented by Professor Powell and there would seem to be none better qualified. The equitable issues lie well within the field of Professor Chafee for cogent presentation. Professors Freund or Hart could reasonably be expected to discuss the jurisdictional problems involved and Professor Cox might well speak on the application of labor law to the case. The chief purpose of such a discussion would not be to sit judgment on what is right or wrong but to point up the issues involved and to have such pointing done by the qualified group of experts which we have at the Law School, an advantageous fortune we can little expect upon leaving. It is not intended that this suggestion impose any additional burden on an already too burdened faculty, but this trial is the type of national event that has occurred once in a generation, if that often, and the student interest expressed would seem to warrant the full discussion proposed. The expected repercussions on the law, past, present and future, indicate a need for a full basic understanding now. The Law School Forum is the most experienced and likely group to make the arrangements should the idea take hold.

If it is now considered too late for an impromptu forum on the subject, may it be hoped that similar events can be anticipated and that it will be possible to make available to the students and faculty the fullest measure of learning and legal opinion which will in turn foster a clearer understanding of the interrelation of law and contemporary problems.

S. S. E.

Letters to the Editor

Letters submitted to the Record must be signed as evidence of the writer's good faith. Names will be withheld on request and pseudonyms substituted. The Record may edit where necessary but will not change content. Letters should be on one topic and preferably not more than two hundred words.

To the Editor of the RECORD:

The narrowness and reaction which the practice of law often breeds are notorious among the rest of the population.

They are dramatically illustrated by a letter in the Dec. RECORD by an attorney criticizing the appointment of a woman to the faculty because (1) "Bull" Warren wouldn't have liked it, (2) "women are by nature emotional beings and not competent enough to render judicial verdicts"; hence they should not be allowed to vote or sit on juries, let alone teach law.

The ridiculousness of this "argument" is so patent that it would be a waste of space to state its obvious fallacies.

The fact that it could be made by someone in the profession of which we are about to become members should give us all pause. It should make us resolve that, while we must perhaps, to make a living, keep rummaging in the grab-bags of the past, we will never let our vision

be so obscured that we are cut off from the mainstream of forward-moving humanity. Let us hope that no man now at Harvard Law School will ever write a letter demonstrating a comparable attitude twenty-five years from now.

DANIEL C. BLOM
3d term

To the Editor of the RECORD:

I read the issues of the RECORD with much interest, and found in many of its items and articles much that was of interest to me. As you may imagine, the considerable length of my absence from Cambridge Square made this news particularly welcome. Although the grapevine method is effective, it is not nearly so satisfactory a source of detail as the RECORD seems to be.

SIDNEY POST SIMPSON

To the Editor of the RECORD:

Perhaps it is only an accident that the Computations Laboratory is located directly opposite Langdell. I like to believe they located the super adding machine opposite Langdell in order to make its mechanical genius available to Law School students endeavoring to figure their averages. If the present trend of complicated system of grading continues it would be simpler to have the Computations Laboratory, instead of Dean Griswold's office, mail our grades.

Dean Griswold's recent letter suggested that emphasis on grades ought to decrease. I suggest that soft pedalling begin with the faculty. Specifically, serious consideration should be given to the adoption by the Law School of the marking system used by Harvard Medical School. My understanding of the Medical School system is that no letter or numerical grades are given; a student either passes or fails. Some modification of the Medical School grading method could be worked out to allow recognition of men fit for *Law Review* but the Law School following the footsteps of Harvard Medical School and emphasizing high admission standards rather than murderous competition for the advantage of a decimal point after you arrive at Langdell might eliminate a lot of what Dean Griswold euphemistically describes as the "too much concern" about grades.

MARK EASY

Off the Record

With the establishment of the Nursery School in Hastings Hall a need has arisen for books to keep the little kiddies amused and informed. We are in receipt of page proofs of a proposed Legal Primer to be used in the Nursery. It has been compiled by our friend "Publius." We will print excerpts from time to time, the first appearing below:

The Law Review Man

Come, little children, and see the emaciated *Law Review* Man. See what pretty bags he has under his eyes. He is very Smart. He knows it. He works Long, Hard Hours every day and night; consequently he is Nervous and Overwrought. But he is Easy to get along with. After he has finished writing up this Important Case, he will go home and push the Cherry Jello in his wife's face because it has Lumps in it. Is he not a fine Specimen? Soon the first year Medical Students will come and take him away.

The Editor

Here we have a Law School Editor. He is campaigning against Sin and Inefficiency Everywhere, especially in the Law School. Next week he is going to Lambaste the Law School Administration for having the Water Too Cold in the drinking fountains. Is he not Courageous? Hush, Children. Do not wake him. He is writing an Editorial.

-PUBLIUS

Having recovered somewhat from Bart Leach's onslaught of last week, our Calendar Editor, chief purveyor of verse for this column, replies to his critic:

OUR FOUR-FOOTED FRIENDS

The Legal Mind must have four feet,
Or five, in order to be neat—
A formalistic ritual
Of no importance to the Fool
Who wrote those verses—such a hash—
As made poor Leach and Ogden gnash.

R. W. C.

Something For The Trash Can

It seems like every day I hear a couple of chaps
"Tryin' to raise themselves by their own boot-straps."
At the end of the hour there's a couple more
"Beggin' the question" as they go through the door.
And in the hall are Jake and his short friend Jack
Tryin' their version of inverted attack.
The moral of this story is: if you wanna get through
Don't beg for nothin', and beware of the shoe.
That stuff went fine down at Podunk High,
But try it here, brother, and the well runs dry.

-G. P. O.



Gallery

MARC J. GROSSMAN
BIG CITY LAWYER

Marc J. Grossman, '15, is a small, dark, active man. Sitting only for brief moments behind his desk he is generally striding rapidly around his office, answering questions while on the go, waving an ever present cigarette for emphasis. His phone rings every few minutes and he answers it eagerly, concentrating deeply for the moment on the conversation.

To Mr. Grossman, practice in a city such as Cleveland, where he has lived since his admission to the bar in 1915, has more marked advantages and disadvantages than do either practice in a smaller city or in a small town. There is, to begin with, opportunity for contact with people in every economic and social stratum of life, for the examination of every facet of human experience, to him a fascinating study.

"I'm afraid that law has become more commercialized than ever before in the big city," he said, leaning back and looking through the window at the harbor and lake. In a moment he turned back. "But, you'll find there the greatest opportunity for practice in tax, labor law and before administrative boards. These have been growing fields in the law and from all indications will continue to grow for some years to come."

If a man wants to specialize in a particular field of law, he can do so more easily in the large city where the volume of work is such that he can choose the type he prefers. "In fact," Grossman continued, "it's getting to the point where a young man practicing in the city almost has to become a specialist. The existence of specialists makes it hard for general practitioners to attract work which falls within those specialties. The disadvantage to the profession as a whole of this increasing trend toward specialization is that legal practice is becoming ever more concentrated in the larger offices which are equipped to render specialized service in almost every branch of the law. One wonders whether something of the old time charm and dignity of the profession is not lost as, more and more, it takes on the characteristics of 'big business.'"

To Grossman, the cultural facilities of a large city are a great inducement to live and practice there. There is the opportunity for the enjoyment of music, the theatre, museums, public forums, a great public library and the many other things that make for more enjoyable living. Furthermore, there is the opportunity for public service, if the lawyer is so inclined. The need of charitable and other public organizations for skilled minds is so great that agencies are always eager for new talent.

While carrying on his legal practice, Mr. Grossman has held many non-political offices for which he has never accepted pay. In the early 30's he was Chairman of the Cuyahoga County Relief Administration, with over 250,000 clients. For seven years prior to entering the Army in 1947 he was Chairman of the Cleveland Metropolitan Housing Authority which built public housing valued at \$35,000,000 and on his release from military service was reinstated in this position. In the early days of the war he organized and was Chairman of the Cuyahoga County Civilian War Services and at the same time was Chairman of the Red Cross Home Service. After service as Chief Counsel for the Allied Commission in the Mediterranean Theatre, with rank of Lt. Col., he returned to Cleveland and was appointed Chairman of the Veterans' Emergency Housing Committee for Greater Cleveland. In addition, he has been, and is now, connected with many social agencies and is trustee of a large hospital.

"I find that community work doesn't interfere with my practice," Grossman said, pacing up and down before a wall studded with framed citations. "The work requires a great deal of administrative ability, the capacity to delegate duties so that you can do the maximum of work in the minimum of time. A lawyer is in an advantageous position in this respect because he can control his time, setting his appointments so that his legal and public services are integrated. It requires a good deal of night work, but it's worth it; the satisfaction to be derived from such work is enormous."

To offset the advantage of a big city practice there are many disadvantages. Right now there is an acute shortage of office space and graduates are having great difficulty in finding a place to work. The competition is terrific and continually grows keener, but, there has always been competition in law, a man with a solid legal education and ability need not worry. The tempo of life is very fast and wearing on the big city lawyers. He doesn't get the opportunity for rest and relaxation that the small town lawyer has; he is almost constantly on the go.

The graduate who plans to start out on his own in a large city is almost certain to have a hard time, Grossman thinks. On the other hand the danger in going into a large office is the danger of becoming a small cog in a very large machine. Probably the best idea is for him to go into a fairly small firm and get all the general experience he can before opening his own office.

"But, it's almost impossible to generalize," Grossman stressed. "So much depends on the individual, on what he wants to do, what connections he has. He should view the whole picture and then choose what he most wants to do, aside from the mere question of financial remuneration."

Finally, Grossman urges that all graduates get into community activities as soon as possible after going into practice. Any well trained person, he maintains, has an obligation to participate in community efforts. This is especially true of the lawyer who has been trained to organize his material and to think straight. The community will look to him for aid; there is always a great demand for competent men, agencies always seek new blood. The lawyer need only volunteer his services and he will be kept busy.

"I have found," he ended, "that, although it is absolutely essential that a man have some degree of security, the compensations to be gained from a full life are greater than any economic reward could possibly be. The opportunity to be of service in the legal profession and in the community life are to me the greatest advantages of being a lawyer. And that is true whether one practices in a country town or in a great city."

H. K.

Sub Judice

COMPENSATION FOR THE ATTORNEY-FIDUCIARY

It is the general rule that in the absence of statute an attorney-fiduciary who performs legal service is not entitled to attorney's fees even though he could have hired an outside lawyer for whom compensation would have been allowed. In a recent Ohio case a lawyer-administrator applied to the probate court for an allowance for personal services rendered in defending claims against the estate. It appeared that the administrator was not regularly engaged in the general practice of law but was actively engaged as head of two financial institutions. He hired counsel to defend certain suits in which the administrator assisted in the interviewing of witnesses and sat in on the trial. Fees for the outside lawyers were granted.

Under Ohio statutes the court said that a fiduciary-lawyer may receive compensation for legal services rendered to himself as such fiduciary under the guise of extraordinary services. This court was willing to recognize frankly that an attorney could be compensated for such services without denominating them extraordinary. However, in the particular case under discussion the court found that the administrator should be granted payment for "extraordinary services rendered as a layman but not as an attorney." The amount fixed as fair and just was \$100. *In re Cramer's Estate*, 69 N. E. (2d) 204 (Ohio Probate, Franklin County, 1946).

MURDER****

Appellant was convicted of murder and sentenced to five years' imprisonment. Before trial, in accordance with Texas law, appellant filed an application for suspended sentence in the event of conviction. Six character witnesses were presented on his behalf at this hearing. The state is permitted to cross examine these witnesses but may not use the offense charged in the indictment to destroy the defendant's reputation. Because the district attorney improperly questioned these character witnesses, the conviction was reversed. On the State's motion for rehearing the reversal was set aside, and the judgment affirmed.

Appellant then moved for a rehearing on the ground that the setting aside of the reversal was wrong, and that the cross examination was improper. Other grounds argued were that the district attorney's argument to the jury was unduly prejudicial, and that the deceased's widow and child should not have been permitted to sit inside the rail in the courtroom. In the court's earlier opinion, 196 S. W. (2d) at 639, the court had cautioned against the display of the widow and child in the courtroom, but it was not now disposed to consider that point as prejudicial. Rehearing denied. *Boone v. State*, 196 S. W. (2d) 638 (Tex. Cr. App., 1946).

DIVORCE & DESERTION****It isn't desertion if you don't care for your in-laws.

The husband charged his wife with desertion in a divorce libel. On that ground a master recommended a divorce, but the trial court sustained the libellee's exceptions and dismissed the libel. On appeal, judgment affirmed. *Ziegenfus v. Ziegenfus*, 49 A. (2d) 275 (Pa. Super. Ct., 1946).

The vicissitudes of marriage and unemployment found a rather young couple shifting their living quarters back and forth between in-laws. Finally, the husband found an available apartment owned by his mother where she apparently lived intermittently. The court found that the husband was under the domination of his mother and brother, and that he had never made a real attempt to settle his family in a home of their own. Though the evidence did not show that the mother-in-law was living in the apartment at the precise time of the wife's desertion, the wife was justified in getting out from the penumbra of incompatible in-laws.

FEDERAL TAXATION, REFUND PROCEDURE****

The inexorable wording of the statute overrides considerations of good conscience.

Plaintiffs (husband and wife) sought recovery of \$18,600 in income taxes allegedly overpaid for the fiscal year ended October 31, 1938 by reason of the denial by the Commissioner of a credit for a barred gift tax paid in 1936. The defendant (Collector) moved to dismiss the complaint for lack of jurisdiction and also pleaded the statute of limitations. Motion granted, complaint dismissed. *Elbert v. Johnson*, P-H 72,630, (S.D.N.Y., Oct. 15, 1946).

In 1935 the wife sought to make a gift of \$300,000 in trust for her daughter. On the transfer she paid a gift tax of \$18,600. Immediately after setting up the trust, pursuant to the terms of the trust instrument, the settlor borrowed \$298,000 on a 6% demand note. Interest on this note was paid, but the settlor was denied a deduction for interest paid. (45 B.T.A. 685).

Having shellacked themselves into a corner, plaintiffs sought to have the overpayment of gift tax allowed in reduction of a deficiency in income taxes arising out of the same transaction in their joint income tax return for the fiscal year ending October 31, 1938. The deduction was disallowed and a deficiency determined. Plaintiffs petitioned the Tax Court for a redetermination. The Tax Court (2 T.C. 892) found for the Commissioner on some other matters, but said it had no jurisdiction to permit recoupment of a barred claim. A petition for review was filed with the circuit court of appeals, but as it was never perfected, the decision of the Tax Court became final.

After this failure the plaintiffs filed a claim for refund. With the lapse of six months and no action on the claim this suit was instituted against the collector. The statute (now I.R.C. 322c) provided that the filing of a petition with the Tax Court costs the taxpayer his chance to pay and sue for a refund. The plaintiffs' answer to this was that the Tax Court having declined to pass on the recoupment because of lack of jurisdiction, the plaintiffs were entitled to litigate. After admitting the plausibility of this argument, the court said: "It is the timely filing of a petition in the Tax Court, rather than the decision of that court, which operates to deprive the district court of jurisdiction to entertain a subsequent suit for refund."

The Witness Stand

The Question: Do you think a course in practice should be added to the curriculum at the Law School?

1. Paul E. Ayers, Gambier, Ohio, 4th Term.

"Practice" like "common sense" is a word of broad meaning which lends itself to individual definition but hardly to elucidation. A course in "Practice" may have a limited function but it would seem more properly to be an acquired taste than a doctor's prescription. Apprenticeships, experience, psychology of the local setting come later. Time spent in substantive law seems much more valuable to the student who must walk before he can run. Ames serves its purpose. The Boston court-rooms have galleries open to students. The Clerk of Courts and older lawyers in your locality are generally genial persons!

2. Walter S. Acery, Maplewood, N. J., 2nd Term.

As I see it, we are at Harvard Law School to learn the Law. A course in practice at the Law School would be like a course in the bedside manner at the Medical School. In both instances, I believe they are better learned after graduation. At best, I feel a course in practice should be optional; open only to third year students (so that they will have some idea of the role of evidence); and should be similar to the present course in Water Rights, in that it would be brief, and would require no examination.

3. Leonard J. Keyes, Columbia Heights, Minnesota, 2nd Term.

Yes, I believe that such a course should be added as a third year elective for the benefit of those students who, upon graduation, intend to enter private practice, either on their own or with a small firm in the "hinterlands." It seems to me that the present curriculum tends to neglect these students in order to fulfill the requirements of those who do not intend to practice law or those whose legal aspirations are centered on either a governmental career or a submission to satellite status in one of the "larger firms."

4. Roger A. Derly, Jr., New York, N. Y., 3rd Term.

In my opinion, the School should give students what they cannot get in practice, and therefore I favor the theoretical approach. The case system has been criticized by Europeans as being too practical.

5. E. C. Anderson, Sharon, Pa., 1st Term.

I think it would be difficult to present the problems of practice in a course. In normal times students have their summers free and can associate themselves with law firms which seems a more practical means. Of course they would have to restrict their court room procedure to just observing, but that is the principal idea, to get acquainted with the means and methods used. I think that trial work will take care of itself and that it can be picked up upon entrance into practice. It is more valuable to limit courses to theory since law school is the only time to get an intensive training in substantive law. Practice can come later.

6. H. W. Paine, Portland, Me., 6th Term.

I think that a course in practice definitely should be added. My main reason for so thinking is that there is such a tremendous gap between the work done in school and the work done in practice. The pleading part should be a prerequisite to a course in evidence and might also include choosing of juries. After evidence it should include trial work at mock sessions. Ames doesn't fill the gap sufficiently since it is not compulsory and most students limit themselves to one or two arguments.

7. Stanley Gombeg, Upper Darby, Pa., 1st Term.

Ames seems to be the closest the curriculum comes to practice and that is only half of what students are looking for. Even in the Ames appellate work the judges are not necessarily cognizant of the proper things to look for which real judges would put before them. I don't think that a course in practice would give the student all the problems he would necessarily run into but it gives a good idea and familiarizes him with a practical approach.

8. A. A. Shapiro, Schenectady, N. Y., 6th Term.

It might be a good idea. I think it should be extra-curricular like the Ames Competition, however. Many of the law students don't intend to practice. It might be offered as a third year elective but shouldn't be compulsory.

Alumni Notes

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

LL.B. '92—William F. Pillsbury of 22 Berwick Road, Newton, Massachusetts, died Friday, November 22. He practiced law in Chicago for many years, and in 1910 entered the brokerage business in Boston as a partner in the firm of Lovell & Company. In 1920 he founded the Pillsbury Remick Company. He was a member of the Country Club of Brookline, and of the Harvard Club.

LL.B. '13—Oscar R. Ewing will be acting chairman of the Democratic National Committee during Robert E. Haanegan's temporary absence. Ewing served as assistant chairman of the committee from 1940 to 1942, and since August, 1943, as vice chairman.

LL.B. '21—Among the many candidates for the post of successor to the late Samuel Mandelbaum as Federal judge for the Southern District of New York is Henry Epstein. Epstein is a former Solicitor General, and more recently candidate for the State Court of Appeals.

LL.B. '28—Kingsley A. Taft, a distant cousin of the other Ohio senator (Robert A. Taft, LL.B. '13), was elected on Nov. 5 to fill the short unexpired term of former U. S. Senator Harold H. Burton, resulting from the latter's elevation to the United States Supreme Court.

Ex-'31—Theodore Paine Palmer, who served overseas as a captain, has returned to his pre-war position of Assistant Professor of Mathematics at Rose Polytechnic Institute, Terre Haute, Indiana.

LL.B. '31—Benjamin M. Ziegler, Assistant Professor in the Political Science Department of Amherst College, Amherst, Mass., has been named Associate Professor. Ziegler is teaching undergraduate courses in "Basic Concepts of American Constitutional Law," and "International Law and Relations."

LL.B. '32—Pierson R. Hildreth, of Amityville, Long Island, N. Y., on Nov. 18 was unanimously elected president of the Suffolk County Bar Association.

MERRIAM—(Continued)
were, even then, a vital part of the school. Mr. Merriam was a member of Pow-Wow and vividly remembers the heated advocacy of the moot court arguments.

Although it may be difficult for modern students to believe, Austin Hall was once brand new and in 1887 was considered the last word in university buildings. The first structure built exclusively for the Law School, it eased the pressure on the fifty year old Dane Hall which had, up to then, served as the main building for the school. Lectures then were much the same as they are now although there was less give and take than in the discussions so characteristic of most of today's classes.

The influence of the great teachers who nurtured many of the present day judges, lawyers and law professors is still strong, Mr. Merriam finds. One of his classmates inquired of him if Langdell on Contracts was still being used at the school. On being informed that Professor Lon L. Fuller had compiled a casebook on the same subject and that it was now in use, the old gentleman sadly shook his head and politely asked how anyone could hope to add to what C. C. Langdell had done.

B. W. N.

USE OF LAW SCHOOL PREMISES

All reservations for the use of Kendall House, the Court Room, and all class rooms must be made with the Administrative Assistant, with the exception of the usage of any of these premises by Law Clubs taking part in the Ames Competition. All arrangements for participation in the Ames Competition must be made through the Board of Student Advisers in Austin Hall. The Board of Student Advisers is then responsible for clearing reservations through the Administrative Assistant.

Kendall House—the first floor of Kendall House has been furnished and equipped for the benefit of the student body of the Law School, the wives of Law School students, and the clubs and organizations which are a part of the School's activities. The rooms and the equipment are free. The only rules governing the usage of Kendall House concern its preservation. All groups are requested to leave the House in the same shape in which it was found: all glasses must be washed and returned to the shelves; all ashtrays must be emptied; any furniture that has been moved must be replaced; the floors must be left clean; the windows closed and locked.

Smoking is not permitted in the Court Room and class rooms. It is permitted in Kendall House, but we request all students using Kendall House to take the utmost care in disposing of cigarettes because of the very real danger of fire in this building.

Dean's Office.

LL.B. '32—Edward B. Burling, Jr. was married on October 24 to Mrs. Ella K. P. Cotton. Burling is a partner in the law firm of Covington, Burling, Rublee, Acheson & Shorb, Washington, D. C.

Ex-'35—Reverend Frederic B. Kellogg has welcomed nearly 6000 young people to Cambridge during the last year, most of them students at Harvard. He is chaplain of the Bishop Rhinelander Foundation, and sponsor of the Canterbury Club of Christ's Church in Cambridge. Mr. Kellogg set out to study Criminal law, but he abandoned criminology in order to try to prevent crime. He explains his philosophy of religion as a group institution, which teaches people how to live together.

LL.B. '36—John E. Lawrence headed the Greater Boston Community Chest drive, which collected nearly six and one-half million dollars in this year's campaign. Lawrence was presented with a citation on behalf of all the fund workers at a recent dinner at the Hotel Statler in Boston.

LL.B. '38—Announcement has been made of the engagement of Miss Irma M. Phorylles, of New York, to Charles Torem.

After serving four years in the Naval Reserve as a lieutenant commander he has been placed on inactive duty, and is now with the Paris office of Coudert Brothers, a New York law firm. The wedding will take place in Paris.

LL.B. '40—The engagement of Miss Frances S. Perkins and Howard Kellogg has been announced.

QUALIFYING—(Continued)

Cox (Hess-Lord) 142, Casner (Aspell-Bove) 133.

Frankfurter (Kreske-Rubinton) 138, Freund (Kronenberg-Tsuchida) 129.

Gardner (Wheat-Myers) 135, Griswold (Stone-Shattuck) 130.

Grotius (Bridge-Yeomans) 143, Hall (Pennish-Vaas) 142.

Holmes (Choate-Derby) 135, Hamilton (Renswick-O'Byrne) 134.

Landis (Perkins-Burditt) 141, Kent (Hooper-Darling) 138.

Ex parte victory: Dodd (Spaeth-Skreber).

Results of arguments held last Thursday:

Marshall (Fizal-Mathews) 131, Morgan (Kuh-Reith) 127.

Parsons (Hoban) 133, Pitney (Griffen-Young) 132.

Powell (Horton-Potts) 140, Pound (Bronston-Shames) 133.

J. Smith (Grant-Munson) 141, Scott (Acheson-Cole) 137.

Story (Clarke-Hannah) 133.5, Stone-Thurston (Johnson-Wolford) 121.

Ex parte victory: Pow-Wow (Murnaghan-Gillette), J. Swift (Mercer-Smyers).

Results of arguments held last Friday:

Casner (Grab-Kern) 137, Braucher (Bouvier-Rogers) 135.

Cox (Fisher-Juhl) 139, Cardozo (Mishkin-Harris) 137.

Frankfurter (Kalman-Marmorstein) 126, Blackstone (Hickey-Crane) 124.

Gardner (McClintock-Moorman) 138, Grotius (Marshall-Brusell) 127.

Hall (Winter-Wendover) 130, Griswold (Thompson-Weil) 129.

Kent (Herter-Wagner) 140, Hamilton (Klien-Clark) 119.

Blackstone (Shipley-Siegesmund) 136, Holmes (Foster-Bartlett) 133.

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Confessions of a Law Wife

"Should I open my husband's mail?" Adelaide Assumpsit went into consultation with Conscience. She and Arthur had made it a rule when they first married that neither would open the other's letters, unless there were an extraordinary situation.

Adelaide toyed with these thoughts as she held in her hand a white envelope addressed to Arthur, return address: Harvard Law School. She placed it on the desk, and tried to continue with her football lesson. The Harvard-Yale game was approaching, and Arthur was determined to have her act intelligently at that contest. She never had understood before why only the receiving team could run with a punt; after all, if the men from the other side ran down there fast enough, why shouldn't they benefit thereby? But, Hubby had laid down The Law, and she was spending the week reading pamphlets dealing with the sport, and diagramming an imaginary game.

There was a flanker out on the T-formation . . . and Adelaide Assumpsit glanced at the letter. Of course, there was a possibility that it was a new insurance, a bill, or an advertisement for the Forum. But, she felt that it was the long-awaited Sales mark.

Should she open it? Curiosity, concern and nervousness clashed with the loyalty to the Assumpsit agreement and they cancelled out each other. "The ego and I," she remarked wryly.

Adelaide turned back to football, but the cardboard gridiron seemed to take on the color and size of a gigantic envelope. It was no use. She just couldn't absorb the intricacies of the game. It was ten in the morning, and Arthur wouldn't be home until mid-afternoon. Adelaide could never last that long, and she admitted it.

Webster was grabbed from the shelf in a hurry. It defined "extraordinary" as: "Beyond or out of the common order or method; not ordinary . . ."

Well, there was only one course named "Sales"; it was different from all other courses, in some degree at least. Arthur would be getting only that one mark this term; so the mark was out of the common order. The Assumpsits had only rarely gotten mail from the Law School before, so this was not ordinary. "Okay," said Adelaide Assumpsit to herself, "it's 'extraordinary'!"

She dumped the makeshift gridiron into a wastebasket, took in a deep breath and ripped the envelope. The sheet looked very impressive, listing all those technical subjects. Her eyes dropped down to the line which read "Sales" . . . and her heart dropped down to her feet! There it was—"32.5!"

Adelaide Assumpsit wobbled weakly into the kitchen and took a vitamin pill. She decided to cancel her bridge-date. She just couldn't leave Arthur here to

see that minus quantity alone. He had thought he'd slipped up in a few places in that exam. But, golly, at least he could have received a 50!

There was the problem of passing the time until Arthur came home. All sorts of weird thoughts vied for attention in her head. The paramount idea was: "Pack up, go home and have Arthur go into the newspaper business with his Dad."

Somehow it was one-thirty, and in dashed Arthur. He came home as soon as class let out, having heard from the fellows that the marks had been issued. Adelaide quickly smeared some brilliant lipstick on, to give her courage, and, with a sympathetic smile on her lips, she walked into the living room.

Arthur was relaxed. Adelaide thought he was hysterical.

"Well," he said, "a 65 is nothing to boast about, but neither is it too degrading a mark."

"Sixty-five!" Adelaide sobbed. "Oh, my poor darling, you're seeing double!" "Why of course," he replied. "Sales is a half-year course, and so you have to double the mark to get the equivalent of a full-year mark."

Don't you think there should be some instructions given, so we poor Adelaides can tell at a glance whether a figure on a Law School sheet is to be considered all of a full-year grade, half of a one-term mark, or our husband's golf scores for nine holes?

—NORMA PIKE TEPP

PROFESSORS—(Continued)

was in the Army, ending his service with the rank of lieutenant colonel. From November 1942 until May 1945, he served as an instructor in the Military Justice Department in the Judge Advocate General's School, Ann Arbor, Michigan. Later he was Director of that department. In 1945, and early 1946, he was on the staff of Mr. Justice Jackson in connection with the Nuremberg Trials. In that capacity, he prepared for prosecution the case against the S.S. and presented that case before the International Military Tribunal. He is associated with the firm of Ropes, Gray, Best, Coolidge & Rugg in Boston.

Mr. Ewing will teach a section of Equity during the spring and summer, and Mr. Farr will teach a section of Business Associations I during the same two terms.

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Calendar

THE LEGAL WORLD

New York Jobs

Mr. John F. Reddy, Jr. who is in charge of the Harvard Law School Association's placement service in New York City, will hold a meeting in LSM at 3 P.M. Tuesday, December 17 for those members of the third year classes who are interested in practicing in New York. Although the meeting is primarily for men who will graduate either in February '47 or June '47, other students, interested in meeting Mr. Reddy and in learning of opportunities in New York City are welcome. Mr. Reddy will make periodic visits to the Law School so that men who do not meet him this coming Tuesday will have other opportunities to do so.

Cleveland Jobs

Mr. Dimmitt would like to see any men graduating in February '47 who are interested in practicing in Cleveland, Ohio.

Law School Forum

James M. Landis, Chairman of the C.A.B. and ex-Dean of the Law School will speak in Langdell Courtroom this Friday afternoon at 3 P.M. on *Critical Issues in Antitrust Policy*. At 7:45 P.M. the same day, in Sanders Theater, he will discuss with Mr. Robert M. Benjamin the role of the administrative tribunal and the problem of judicial review, the title of the Forum meeting being *Bureaucracy And The Legal Order*.

Yale Game Dance Pictures

Photographs of the Law School Dance held after the Yale Game are on display at Gannett House and are being sold for \$1.00 each by the Yearbook Committee. Each print is numbered for convenience in ordering.

Law Wives

Mrs. Mercie Fogg of the Garland School will speak on *Entertainment on a Limited Income* at the regular Law Wives meeting next Wednesday evening December 18, at 8 P.M. in Kendall House.

Nursery School

The Law School Nursery operated under the supervision of a trained nursery teacher is open from 2:00 P.M. to 5:00 P.M. Mondays through Fridays in Hastings Hall.

The charge is 25c per day and children may attend on a daily basis. It is not necessary to sign up in advance.

Unless the school becomes overcrowded, the attendance will not be restricted to the children of Law School students.

6th and 7th Term

The Record is sending return post cards to all men about to graduate. Please indicate your preference as to a job location and return the card promptly. Returns will be published in our issue of Jan. 8, and will reach a large number of prospective employers.

THE UNIVERSITY WORLD

Open House

The International Student Association is holding a special Christmas tea and open house at the International Student Center, 5 Phillips Place, Cambridge, on Sunday afternoon, December 15, at 4 P.M.

Lectures

Jan Masaryk, Foreign Minister of Czechoslovakia, will give an address on *East and West and One World* in the New Lecture Hall, tonight, Wednesday, December 11, at 8 P.M. Admission is \$25.

Professor G. Ledyard Stebbin, Jr. of the University of California, will talk on *New Evidence on the Nature and Origin of Species*, in the Main Lecture Room of the Biological Laboratories, on Friday, December 13, at 5 P.M.

Dr. Otto Kinkeldey, Horatio Appleton Lamb Visiting Lecturer on Music, will speak on *Music and the Universe*, in Paine Hall, Music Building, Wednesday, December 11, at 5 P.M.

Robert S. Van Atta will deliver a lecture on *Christian Science, The Science of Life and Healing*, in Paine Hall, Music Building, on Thursday, December 12, at 8 P.M.

Concert

The Harvard and Radcliffe Music Clubs sponsor a concert devoted to chamber music, featuring compositions of contemporary composers, in Paine Hall, Music Building, tonight, December 11, at 8:30 P.M. No admission charge.

THE OUTER WORLD

Plays

Tallulah Bankhead stars in a new poetic drama, *Eagle Rampant*, at the Plymouth through Saturday, December 21.

The Boston Tributary Theater presents *Macbeth* this Friday evening, December 13, and *Romeo and Juliet* on Saturday, December 14 at the N. E. Mutual Hall.

Charles Dickens' *A Christmas Carol*, as dramatized by Eliot Duvey, will be presented at the N. E. Mutual Hall this Saturday afternoon, December 14.

PUNISHMENTS—(Continued)

of piling weights upon the prisoner who stood mute and would not plead was the law's remedy for its own technicality that he must plead guilty or not guilty. The diet of the decedent in his last days under the pile invites description: on the first day a crust of bread, the second, three mouthfuls of water from the stagnant pool nearest the goal door, the third, the bread, and so on.

Maryland, too, had a witchcraft trial which ended fatally for the alleged witch; one Rebecca Fowler was hanged on 9 October 1685, after being convicted of using sorcery against a laborer who "became very much worse, consumed, pined, and lamed . . ."

More disturbing to the modern mind than the frequency of the death sentence, the manner of its execution, or even the publicity attendant to the occasion, is the slight nature of certain offenses deemed capital in the Colonies and the actual taking of life for such. Adultery, still carried on the books as an offense, occasionally punished and finding its way into the reports chiefly as a cause of action in divorce today, was to our ancestors a grave wrong. Three persons were executed for this act; one was a miserable old creature from Weymouth whose death even Cotton Mather saw fit to mention. The other execution, double, was the last act in the age-old triangle of the elderly husband, the young wife, and her lover, in this instance a professor named Britton. They were condemned on the wife's evidence and hanged, an occurrence which gave Winthrop occasion for extended passages.

In Connecticut, as Judge Riddle points out, blasphemy was punished capitally, but in French Canada only by riding the wooden horse. In Virginia, in the early days, "blasphemy was punished by boring the tongue with a red hot bodkin; one offender was thus punished and chained to a tree to die."

Perhaps not the least unfortunate among the punished were those whose last hours were eased by a special sermon from Cotton Mather; it was his custom to hold discourse with the condemned just before the end. This was particularly true, when, as was often the case, the victim was an unwed mother who had done away with her child.

Whipping Post and Lash

The lash was the most frequently utilized means of punishing the offender by inflicting pain on his person and public disgrace to his reputation. Contemporary pictures and cuts show an approving throng attending the performance at the whipping post, and Earle regards as characteristic the "amusement" with which the onlookers viewed a woman who resisted while being beaten. Whipping was the conventional punishment of all crimes not capital. The largest number of lashes awarded seems to have been 370; a Quaker in Puritan New England being the recipient. This was apparently insufficient to convince him of the error of his theological ways.

The whippings administered in Boston in 1630 are a good illustration of the class of offenses for which this penalty was utilized. In that year persons were publicly whipped for stealing bread, shooting fowl on Sunday, leaving a boat without a pilot, striking a mother, lying, swearing, and selling rum to the Indians.

In Salem, during the witchcraft trials, the magistrate had a witness (the accuser evidently) who was given 20 lashes for "unsatisfactory testimony."

In Pennsylvania poor women were publicly whipped for having an illegitimate child and were charged six shillings for the service. Most of the women seriously punished for sex offense, especially bastardy, were servants, and in Calvinistic colonies it was quite difficult to know where economics and Godliness parted company.

Class Distinctions

Persons of quality, that is, gentlemen as opposed to goodmen, not merely free persons, were to be fined or imprisoned rather than beaten. One Mr. Plaistowe and his servant fraudulently obtained some corn from Indians. He was sentenced to be called "Josiah" (his Christian name) from henceforth; the servant, who had no rank to lose, was whipped.

The stocks were a device for keeping the prisoner in place, either for custody or exhibition, by holding his legs fast, leaving him in a sitting position, unable

to retract his feet. The purpose of the instrument was not to inflict pain but to present the offender for disgrace.

Excessive drinking, cursing, and interrupting the minister, are typical of the wrongdoing which could and did lead to the stocks. Occasionally sexual offenders were placed in the stocks, but this was normally done only if mitigating circumstances were present.

George Palmer, having committed folly with Margery Rugg through her allurements, and because he confessed voluntarily, was only placed in the stocks. When no regular stocks were at hand the custom was to lift the corner of a rail fence and thrust the legs through between the two lower rails. The stocks were clearly a punishment for the lower classes. For instance, the New Plymouth Code of 1671 set forth that cursing would be punished by fine or stocks in fixed amounts, according to the quality of the person.

The stocks were plebeian compared with the pillory, which at one time or another stretched the neck of some very distinguished men. The victim was placed standing up with his outstretched hands and head thrust through apertures in the horizontal bar of a "T" shaped board, which was then closed down to insure his remaining in place. The neck was curved to make the face a target for accumulations of stale eggs which seem to have been preserved for the occasion.

The Boston papers of the period, in fact even up to the time of the Revolution, were full of sentences involving the pillory, and evidently accepting it as normal at that late time. It was very commonly associated with the offenses of counterfeiting, forging, perjury, and passing counterfeit money—all rather suaver types of crime than the average rogue or vagabond would be apt to commit. Several times in New England, business men had both hands and a head in the pillory for buying up all the cargo of an incoming ship for profitable resale after achieving a corner.

Public offenses were commonly expiated in the pillory. For felony in 1783 one John Smith was lashed 39 times, pilloried for an hour, and had his ears cut off and nailed to the pillory. "At common law every passer-by might cast one stone at the projecting head."

Branding of Initials

No account of corporal punishment would be complete without mention of mutilation and branding, both of which were extensively practiced during the colonial period. Most frequently to be separated from the criminal were his ears. In 1685, to make identification doubly secure, Bay Staters branded Uriah Clements with a "B" on his forehead (for burglary) and cut off his right ear; his appearance became doubly marred when he again that year committed burglary and received a second "B" and lost the other ear.

From the wide-spread use of purportedly appropriate initials, it seems that this punishment was, like mutilation of ears and nostrils, designed to warn the world of the villainy of the brandee. This wasn't very specific, as "B" stood for burglar, blasphemer, and bastard.

The confusion of misdeeds could be avoided by affixing to the culprit a placard announcing his offense and placing him upon public exhibition therewith. So persons stood at the pillory, in the stocks, on the ducking stool, in the market place, bearing placards announcing, "I here stand for an example to all others for committing the most wicked and notorious sin of fornication"; or, with exquisite simplicity, "whore."

Another form of exposure to the public for censure was the cucking stool, which must be distinguished from the ducking stool. The cucking stool was a small backless chair, to the legs and up-rights of which a malefactor might be tied, so that he could be set out in the street on exhibition.

Forced Labor As a Punishment

Imprisonment was uncommon in the colonial period. Although our primary weapon against crime today, it was not favored then because it was costly. Private servitude as a bondsman was much more common. This life was not much better than prison.

The poor widows of Wareham were auctioned off annually to the highest bidder to reimburse the town for money advanced and debtors commonly and even compulsorily bought their way out by selling their indenture. All were treated as if crime were the cause of their status. In a sense all these were fines, payable by the poor man in the only way he could, with his labor. The practice, it might be noted, is one we have not yet wholly outgrown in the United States.

We should view the penalties inflicted in the colonial period as a long laboratory test of the deterrent theory of punishment. The stocks, pillory, whipping post and the like were all, by their intent and nature, public, open, and notorious. Private servitude furnished almost every community with a living, working embodiment of the adage that crime does not pay. How deeply the philosophy of punishment was retributive and vengeful is hard to say, but evidences of those unpleasant human characteristics have appeared from time to time in the execution of sentences here reported. The modern devices to help the offender regain a decent place in society are notably absent; where imprisonment was resorted to, it was based on the theory of caging tigers.

Of the success of the colonial methods little can be said. Even today, with the problem defined, our aims fairly clear, and the tools of psychology, psychiatry, social work and propaganda at easy hand, we are not doing too well in eliminating crime. It is small wonder that our ancestors could not do with their crude methods what we cannot achieve with our scientific ones.

The main lesson to be learned, and which seemingly was learned, from colonial experience with punishment, is that publicity to punishment, horrible and degrading punishments, and reservation of especially unpleasant punishments for the lower classes do not combine to make a satisfactory answer to the problem of preventing crime.

CHARLES C. SWEET

CHINA—(Continued)

the maintenance of peace and security in the Far East.

Dr. Chen made only passing reference to the Chinese Communists, expressing surprise that they now claim to represent the principles of Sun Yat-Sen after fighting his followers for so many years and also expressing disapproval of the Communist plan to support the development of a capitalist economy today so that the inevitable revolutions will have something worthwhile to overthrow. He emphasized that the Kuomintang government is progressive and democratic.

Professor Fairbank criticized American policy toward China for seeking to further what we regard as our own interest without proper regard for the interest of the Chinese people, for the influence of the American military mind, which believes that we should support any regime abroad which will oppose Russia, and for the presence of our troops in China. He also pointed out the legal impasse we face in attempting to act as a mediator at the same time we are sending relief supplies to only one of the parties. Since according to international law we can only deal with the sovereign government of China, Professor Fairbank sees no way out of the difficulty except by making a strong effort to lend moral support to neither party.

Professor Fairbank faced the Communist-Kuomintang problem and stated that any sound solution in China must combine certain good features of the two sides and try to minimize certain bad features. The Central Government has a near monopoly of trained and experienced administrative personnel, while the policies and programs of the Communists have reached down into the lives of the masses more effectively, particularly in their program of agrarian reform.

The right wing of the Kuomintang was especially condemned by Professor Fairbank since their solution is to wipe out the Communists by force and enlist American aid in so doing. In his opinion there can be no solution in China unless we can avoid extremism and encourage the people on both sides who are interested in some kind of settlement.

Professor Seavey preserved his unique platform record during the question period when a hopeful law student put a problem to him only to receive the familiar double-barrel interrogatory in reply. Unfortunately Mr. Priddy was not present.

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QUARTER FINALS—(Continued)

The bench for this argument will include The Hon. Stanley E. Qua, Massachusetts Supreme Judicial Court justice, who will serve as Chief Justice, and Mr. John Burns and Mr. Abram Berkowitz, Boston attorneys, who will be the Associate Justices.

In the Langdell-Thorpe argument next Monday night, the Langdell Club counsel on the oral will be Marshall L. Buckalew and Harry W. Baughman, and George I. Meisel and Paul N. Temple will argue for the Thorpe Club.

The Langdell Club counsel on the brief will be Robert E. Bard, John M. Metzger, Norman E. Stephens, Francis E. Silva, Guy A. Bondi, and Harold L. Bernstein. On the brief for the Thorpe Club will be Paul E. Ayers, W. Powell Bland, Lawrence C. Dargan, Hamilton M. Hoyer, Robert Kroner, and Saul Marias.

The case to be argued by these clubs, which involves a problem in sales, includes three major issues. The first concerns the interest acquired by a buyer of a bill of lading paid for by a bad check. The second involves the rights of a holder of a "trust receipt" as against a bona fide purchaser of goods thereunder, and the third concerns the effect of a retail price agreement on the measure of damages when the goods are marketable under an inflationary current price.

The Hon. Abraham E. Pinanski, Massachusetts Superior Court Justice, will serve as Chief Justice for this argument. Associate Justices will be Mr. Harvey Bundy and Mr. R. Ammi Cutter, Boston attorneys.

Details of the Root-Scott-PowWov argument on December 19 will be given in next week's issue of the Record.

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