

The Harvard Law School Record

VOL. 2 NO. 9

CAMBRIDGE, MASS., WEDNESDAY, DECEMBER 18, 1946

PRICE TEN CENTS

YEAR BOOK DEDICATED TO STONE

Printers Guarantee May 15 Publication Without Price Rise

After much deliberation, the staff of the 1946-47 Law School Yearbook has decided that the coming edition of that publication will be dedicated to the late Chief Justice Harlan F. Stone. Invitations have been extended to Justices Frankfurter and Douglas, and a member of the Columbia Law School Faculty to write dedicatory messages in his honor. Although the late Chief Justice was not directly allied with the Harvard Law School, his influence on the legal profession will long be felt, and the staff decided that the practice of selecting only individuals affiliated with the Law School can be reversed on this occasion.

The distribution date of the seventh edition of this publication has been guaranteed for May 15. Many improvements in the general content of the Yearbook have been planned, but there will be no rise in price, and a definite probability that the charge will be lower than that for last year's edition.

In conjunction with the publication of the Yearbook, the Placement Bureau plans to produce a series of booklets composed of photographs of and information about members of the individual classes. These booklets will be distributed to various legal firms and Alumni Associations throughout the country. The photographic plates used in printing the Yearbook will be employed in the production of the album, and it is necessary that individuals desirous of appearing in that publication be photographed during Yearbook Picture Week.

Because the make-up of the various classes has altered greatly since press time a year ago, employing the old plates once again is not feasible. However, a substantial saving, which will be passed on to the students, will be realized through the employment of the Wilson Studio, whose less costly photographic process has been successfully used in the past.

Yearbook Picture Week will follow immediately after the approaching Christmas Recess. Schedules will be announced later in the Record, and on the bulletin boards. The cooperation of the students is requested during that "Week" to insure the production of a Yearbook which will be of satisfaction to all.

GOVERNMENT AID

The office of the Counsellor for Veterans has issued the following advice for men who expect to graduate in February:

Subsistence Payments

Men who are receiving a degree in February may apply for their accumulated leave pay if the application is received by the Counsellor for Veterans office before the end of the term. Leave is accrued at the rate of 2½ days per month of training. No more than 30 days leave is allowed by the Veterans Administration. You will receive subsistence payments for the number of days of leave to which you are entitled.

Change of Address

If you will not be at your present address to receive your February 1 or March 1 check you should report to the Counsellor for Veterans Office to file a change of address with the Veterans Administration. This must be done a month before you desire the change of address to take effect. Remember . . . government checks cannot be forwarded out of the postal zone by the Post Office.

Supplemental Certificate

If you have eligibility time left after completing your course at Harvard and wish to enroll at another institution you must make application for a supplemental Certificate of Eligibility at the Counsellor for Veterans Office before the end of the term.

Transfers within Harvard University

If you wish to enroll in another school of Harvard University you are not required to obtain a Supplemental Certificate, but you must inform the Counsellor for Veterans Office of your plans to avoid unnecessary delay in your government aid.

SANTA PREVIEW

The Law Wives have arranged with Santa Claus for a visit to the Nursery School in Hastings Hall tomorrow afternoon, December 19, at 3 P.M. Children of law school students and their friends are cordially invited whether or not they are in regular attendance at the Nursery School. Because of the shortage of materials and labor, Santa requests that the parents of the children attending bring along a 10c gift to swell his depleted supplies. While the age-group is not strictly limited, it is suggested that children between two and five would most enjoy the opportunity of seeing Santa Claus.

CHAFEE WRITES BUGLE ARTICLE

Discusses New Remedies For Publishers' Errors

An article by Professor Chafee, *Possible New Remedies for Errors in the Press*, will appear in the forthcoming issue of the *Harvard Law Review*, the article to be printed by permission of the University of Chicago Press. Professor Chafee discusses ways to approach the problem of mistakes in publications, with their attendant harm to individuals and to matters of public interest.

Professor Chafee feels that the real purpose of any approach to the problem is to develop the proper spirit in publishers, so they will be desirous of presenting the truth to the public. Any remedy should thus be calculated to bring about this result, not to antagonize the parties in such a way that they would be tempted to go to the limit of their legal rights, at the same time thwarting the entire purpose of the corrective legislation.

Professor Chafee points out that rather than attempting to solve the problem by criminal statutes, a better remedy would be a provision for the correction of mistakes by giving the complaining party a right to reply or requiring the instrument of publication to correct its own mistakes under threat of penalty. This sort of remedy would be desirable for the reason that many persons would prefer a clearing up of the mistake to a collection of damages, and also because criminal proceedings would entail the difficult issue of truth, perhaps capable of proof when facts alone are concerned, but quite unsatisfactory when interpretations and opinions are involved.

Professor Chafee's article will be included in a book, "Government and Mass Communications," to be published by the University of Chicago Press in the spring of 1947.

AMES THIRD TERM ARGUMENTS END

The 29 law clubs competing in the qualifying round of the Ames Competition went into the home stretch this week, with each club having its final argument of the series on either Monday or Tuesday night.

Standings of the clubs at the end of the arguments held last week showed that four clubs (Gardner, Landis, J. Smith, and Story) had perfect records of three victories against no defeats, while two clubs (Dodd and Webster) had two victories and no defeats. Bunched closely behind the undefeated clubs were 11 with records of two victories and one loss.

Since eight clubs will compete in the quarter finals next term, it appeared at the end of last week's arguments that the Board of Student Advisers would have to use the total scores of the clubs to break a number of ties. The final results of the qualifying round will appear in the next issue of the Record.

Results of the arguments held last week are given below. In each case, the winning club is listed first, the names of counsel are given in parenthesis, and the score for each club is given immediately after the names of counsel.

Results of arguments held on December 9:

Scott (Mayfield-Gray) 132, Stone-Thurston (White-Barroll) 127, Pitney (Davis - Montgomery) 135, Powell (Bery-Loring) 129, Parsons (Gettler-Lampert) 126, Marshall (Seidman-King) 124, J. Smith (O'Boyle-Belser) 135.5, J.

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TWO MORE LAW CLUBS ADVANCED

Argument Tomorrow To End Quarter-Final Competition

The fourth and final argument in this term's quarter finals of the Ames Competition will be held tomorrow at 8 P.M. in the Court Room, with the Root and Scott-PowWow clubs as participants.

Three clubs have already won quarter-final victories and a chance to compete in the semi-finals next term, and the fourth spot in the semi-finals will be at stake tomorrow night. The victorious clubs to date (names of counsel in parenthesis) are: Casner (Wilkey-Lee), Taney (O'Dea-Simmer), and Thorpe (Meisel-Temple).

In the case to be argued tomorrow night, two main issues are involved. The first concerns the liability of an agent who defrauds both his principal and third parties by misrepresenting the amounts they are entitled to pay or receive, and pockets the difference. Is the agent liable to both for his fraud, i.e. are his liabilities double his profits?

The second issue involves the question of whether creditors for small amounts who are usually paid periodically are accountable in bankruptcy proceedings.

The Root Club will be represented in the oral argument by Charles D. Aldrich and Edward J. Ford, Jr., and the Scott-PowWow argument will be presented by Mac Asbill, Jr. and John P. MacMeekin.

Of counsel on the brief for the Root Club will be Almon S. Pinney, Howard C. Alphonson, Irving Constant, Gordon L. Potter, and John A. Dolan. On the brief for the Scott-PowWow club will be Thomas E. Bennett, Francis E. P. McCarter, John O. Platt, Jr., William Stanley, Jr., Thomas A. Quintrell, and Samuel C. Waller.

The Chief Justice for the argument will be The Hon. George C. Sweeney, Federal District Court Judge. On the bench with him as Associate Justices will be Mr. Arthur Black and Mr. Daniel W. Lincoln, Federal bankruptcy referees.

YULETIDE

To our student, faculty and alumni readers, and to our advertisers, the entire staff of the Record sends its best wishes for a MERRY CHRISTMAS and a JOYFUL and PROSPEROUS NEW YEAR.

Publication of the Record will be suspended during the Christmas vacation. Our next issue will appear on Friday, January 3rd.

AMES COSTS RULED OUT BY VA OFFICE

Students will continue to pay for the typing of briefs used in the Ames Competition, according to a ruling made this week by the Veterans Administration.

Efforts had been made by the faculty to have the typing paid for under provisions of Public Law 346. After a refusal by the Boston office to approve payment, an appeal was made to the Washington office. The letter received in reply is printed below.

Dear Sir:

Reference is made to your letter dated November 5, 1946, relative to payment for typing briefs, Ames Competition, Harvard Law School.

It is understood that large percentages of the first, second and third-term men participate in the Ames Competition, which is considered an essential part of the Harvard Law School training. It is further understood that participation is on a voluntary basis and scholastic credit is not granted for the work.

While it is agreed that the Ames Competition may be one of the most important and valuable parts of the Harvard Law School training, such Competition is not a required part of the Law School course. It is considered therefore, that payment of expense for typing of briefs for the Ames Competition may not be authorized by the V.A. under Public Law 346. If the Harvard Law

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FORUM HEARS LANDIS SPEAK ON AVIATION, BUREAUCRACY

Aviation Questions Feature Address At Afternoon Session

Speaking in Langdell Court at an afternoon session of the Law School Forum, last Friday, former Dean James M. Landis discussed "Critical Issues in Aviation Policy." Problems both national and international were discussed along with possible solutions, some of which have actually been made and some of which are still tentative.

Mr. Landis pointed out that considerations of a political and military nature as well as those based on economic need were especially important in the field of international aviation. In view of these factors routes have been opened and will be opened which are economically unsound but which perform the necessary functions of binding together politically interdependent nations or maintaining bases which would be vital to future military operations. Almost all critical issues of any nature must be met in the implementation of what Mr. Landis called the "five freedoms" of international air travel.

National security and sovereignty are involved in the first two of these freedoms: the right to transit another's territory and the right to land for non-traffic purposes. While the theory that a landowner owns his land up to the sky no longer is true in domestic law, it remains a principle of international law, and it is employed to preclude foreign flights over a nation, in some instances on the grounds that such flights could be used for military purposes even though the belief that they would be militarily effective has been largely exploded.

Third and fourth among the "five freedoms" are the rights to debark and to embark passengers destined to another country. Here arise many of the knotty problems that are of economic and diplomatic significance. The solution is less difficult in the case of negotiations between the United States and Canada, for here agreements have been made that American lines will fly the routes between New York and Montreal and between Boston and Montreal while Canadian airlines have exclusive rights to carry traffic between New York and Toronto and between Boston and Halifax, and this type of arrangement can be made across the

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JAMES M. LANDIS

PRIZE ESSAYS WIN AWARDS

Two Authors And Group Honored For Legal Work

Three awards of endowed prizes for essays on legal topics have been made by the faculty of the Harvard Law School, it was announced this week by Dean Erwin N. Griswold.

The James Barr Ames Prize "for a meritorious essay or book on some legal subject" has been awarded to two authors, Charles Cheney Hyde and Randolph Everghim Paul. The initial award of the Gerard C. Henderson Memorial Prize was made to the Attorney General's Committee on Administrative Procedure, together with its Director of Research.

Mr. Hyde received the honor for his "International Law Chiefly as Interpreted and Applied by the United States" (1945), and Mr. Paul for his "Federal Estate and Gift Taxation" (1942). Both of these works were published by Little Brown & Co., of Boston.

The Henderson Prize is made to the committee which prepared the final report of the Attorney General's committee. It consists of Dean Acheson, present Undersecretary of State, who was chairman, Francis Biddle, Ralph F. Fuchs, Lloyd K. Garrison, D. Lawrence Groener, Henry M. Hart, Jr., Carl McFarland, James W. Morris, Harry Shulman, E. Blythe Stason and Arthur T. Vanderbilt. Walter Gelhorn was Director of Research.

The Ames Prize is awarded from the income of a fund established in 1898 by Julian W. Mack, LL.B., '87. A prize of \$500 and a bronze medal are given the

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Stresses Need For Restricting Scope Of Judicial Review

Frank appreciation of the increased need for administrative boards and tribunals in modern government marked the discussion of *Bureaucracy and the Legal Order* at the Harvard Law School Forum last Friday night. The speakers were James M. Landis, former dean of the Law School, now Chairman of the Civil Aeronautics Board, and Robert M. Benjamin, author of *Administrative Adjudication in the State of New York*. Dean Erwin N. Griswold was the moderator of the meeting, which was held in Sanders Theater.

The failure of the courts to cope with the complex problems of modern industrialism, was emphasized by ex-dean Landis. He urged greater autonomy and recognition for administrative officials, and decreed the lawyer-fostered idea that only courtroom techniques could bring about just administrative decisions. Benjamin took the more conservative stand that while judicial rules of procedure should not be literally applied, they have merit as a standard for the conduct of quasi-judicial tribunals. In the field of judicial review of administrative findings of fact he argued that New York's "substantial evidence" rule is best suited to the demands of justice.

The decadence of the position of the consumer, due to high-pressure modern advertising, is a primary factor in the growth of the need for bureaucracy, according to Landis, who spoke first. The destruction of the consumer as an individual with a sense of price and value, has forced government control of industry. The need for bigness and the associational drive of our society result in disadvantage to both small business and the individual. Hence a growing necessity for a regulated economy characterizes our society.

Lawyers' conservatism and the inadequacy of remedies available in court made it imperative to find some new solution to the problem of industrial controls, said Landis. In Europe, many nations took refuge in dictatorship, but America has tried to evolve a system of administrative law to deal with the issues.

Bureaucracy, in the sense of administrative law, is thus a system of justice other than through the courts. It creates

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Record Reporter Discovers Hastings Hall Nursery Story Too Much For His Study Saturated Brain

"Listen you lambrains, who ever told you that you knew anything about a newspaper?"

The feature editor at the Record Office was getting hysterical again. He had been a second lieutenant in the army and he was still inclined to be over-emotional in a crisis.

"What are you guys anyway, law students or newspaper reporters? Here they've been running a nursery for the children of graduate students in the basement of Hastings Hall and not a word about it from any of you. Downstairs—the happy, laughing voices of tiny tots; upstairs the tortured anguished sobs of suffering, sweating law students. What drama! what pathos; what human interest! All this going on right under your noses and none of you smart enough to see a story in it."

"You," he barked, pointing at me, "run over to Hastings, nose around a bit and come back here with a feature on that nursery."

I checked my note-tablet to see if it was loaded, picked up a box of K-Rations, saluted smartly and headed for Hastings Hall.

Now I don't know whether or not you've ever been in the basement of Hastings Hall, but the place gives me the creeps. Maybe it's because I was once frightened by a Dracula movie, but everytime I walk through those musty catacombs I half expect to see a dried up hand come thrusting out of the wall at me, or a vampire bat go swooshing past my ear. In fact, I only get up enough nerve to use this subterranean entrance

toward the end of the month when I would be running the risk of seeing too many of my creditors if I used the front door.

I was thinking that this was a strangely incongruous place for a nursery when I saw a beam of light coming out of a doorway up ahead. Suddenly a voice that seemed to come out of the walls froze me in my tracks. And it was no happy, laughing voice of any tiny tot, either. It was firm and resonant, and I recognized it at once as belonging to Al Davis, who sits next to me in Property 11.

But it was the things that voice was saying that caused me to shudder and brought little beads of perspiration out on my forehead. I crouched back against the wall, in the shadows, to listen.

"And then the big, bad, naughty plaintiff sued the poor little defendant in replevin."

"Good God," I gasped, "poor Al has cracked! I told him he was studying too hard. And now the poor fool's gone stark, raving mad and he's crept down here in the dungeon to shout some abacababra and probably to perform some paranoiac ritual over a skull and cross-bones."

Only for a second did I consider the possibility of flight, and then, taking out a small monkey-wrench that I always carry for such purposes, I screwed up my courage and turned the corner into the room.

You've probably guessed what I saw. There was Al, just as sane as I am (alright then, just as sane as you are) telling legal fairy tales to seven enchanted

little children. A young lady of about 22, whom I shall call Miss Jones (I told the editor she preferred to remain anonymous, but actually I forgot to get her name) was enjoying a brief respite from her charges while Al was entertaining them with his stories. I had never known that Al was so fond of children. I'm still not too sure that he is, because Miss Jones is quite cute.

A peal of delighted, innocent laughter signalled the end of Al's story and one little cherub pleaded:

"Now tell us the one about the traveling salesman and the undisclosed principal."

I was touched by the homeliness of the scene. I shed a few tears as I thought of how these same smiling, happy faces once belonged to those miserable wretches upstairs before they came to law school.

My trained reporter's eye (which I picked up at a sale at Filene's Basement —2 for \$1.98. Untrained Reporters' Eyes—2 for \$1.25) told me that the best approach to this story would be from the viewpoint of the unhappy grinds upstairs.

Bursting with zeal for my job, I bounded up the steps two at a time—a good reporter always has sturdy legs—and posted myself at the doorway of entry No. 3.

I had not long to wait for my first interviewee (sometimes I wonder how I ever managed to speak intelligibly before I came to law school and learned what miracles of speech could be wrought simply by taking a verb and

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Editorials

IN THE SPIRIT OF CHRISTMAS

At this Christmas season, it seems appropriate to recount some of the advantages we have received over the years with a view toward determining what we can and what we should plan to do with our future years.

We are receiving one of the finest of professional educations. We have met and profited by our association with many interesting fellow students, some of whom have become our fast friends. For the majority of us the rigors and demands of a ruthless war have touched us deeply but not too adversely. In many ways, our good fortune has been purchased through the sacrifices of long and cherished friends. Their unfinished jobs, their hopes, aspirations and determinations have imbued us with a confidence and courage which can be the beginnings of a fuller and less selfish life than we should otherwise know. Many among our number are well embarked along the road of family life with all its cares and responsibilities, as well as its more than compensating joys and contentment.

With these receipts accounted for, we turn the ledger to see what the debits and credits of future years might hold in store for us. We find that a happy home, a family, reasonable security, a respected place in the community, and at least moderate success in the legal profession are objectives toward which much of our energy should be directed. Yet even with all of these no satisfactory balance will have been attained for most of us. And, perhaps, this is as it should be.

Looking for the equalizing factors, we realize quickly that duties must not be forgotten. Great public responsibility has been thrust, almost prematurely, upon the shoulders of our generation. Those who are being equipped to take over positions of leadership and trust can never arrive at a satisfactory life balance until they accept and discharge to the best of their ability their fair share of this responsibility. The world in which we must live and which we will pass on to succeeding generations will be better or worse according to the degree of acceptance and manner of discharge of this public duty.

Many there are who are hoping and expecting that those who are capable of assuming leadership will do so willingly and unselfishly. And many there are who are not with us this Christmas who would gladly devote their lives to the benefit and welfare of their neighbors, but whose lives have already been claimed in the name of and in support of this same public responsibility. Let us not assess too lightly our endowment nor minimize our obligations.

Our thoughts and our appraisements justly made, should therefore lead us to the conclusion that the only true balance in the picture of a successful life can be reached by the devotion of at least some of our energies and capabilities for the benefit and service of others than ourselves. And this is just another way of saying that in determining the course of our destiny, we should plan to live our whole life in the true spirit of Christmas.

P. F. H.

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 recent article on the Harvard Law Review of the past provoked some serious reflections about the Review of the present and future. In particular, my conclusions question the wisdom of the Review's "personnel" policy.

None will dispute the excellent quality of content, nor deny the well-earned position that the Review holds as a leader among legal periodicals. But I wonder if this position could not be continued with a more democratic and humane policy. Each student on the Board at present works more hours each week on the publication than the average layman spends at an occupation from which he derives his livelihood. Such a policy of necessity restricts the scope of the members' activities so that they cannot participate advantageously in other essential, broadening experiences available at Harvard which contribute to the well-rounded lawyer. But in addition, such a policy also deprives them of adequate time to prepare and absorb to their satisfaction the regular curriculum—the pursuit of which was the ostensible purpose for which they entered law school.

In view of the alleged fact that some prominent faculty members consider that one cannot get a legal education without being on the Review, would it not be advisable to increase the number of those who serve so as to expose the maximum number of students to this undeniably beneficial experience? Seemingly the Board should include all those whose ability is such that the quality of the Review would not suffer because of their participation in its preparation. Certainly the argument cannot be advanced that men with averages lower than the magical 75 would be unable to contribute satisfactorily to the

Review for at least two members of the present Board have never earned that average, and for many issues during the war years the Review was staffed by many with an average closer to 70 than 75. And it should not be forgotten that several members of the faculty, past contributors of articles to the Review, were never on the Board as undergraduates. Three professors—Chafee, Powell, and Seavey—are admittedly outstanding national scholars in their fields.

By providing for an enlarged board, with a possible maximum of 20-25 hours of work per man per week, the result would be seemingly that the present few would profit by having hours to devote to other worthwhile pursuits, without losing the benefits of Review training; a much larger group would be sharing in these benefits; and the quality of the Review would not be materially affected. In order to insure competent direction of the Board, it might be advisable to require that the President, at least, shall hold, or shall have held the coveted 75 average.

One might attempt to answer by claiming that those receiving between 70 and 75 are already compensated by being on the Board of Student Advisers and Legal Aid. Despite the obvious merit in such participation, none will seriously contend that the training and experience compares in kind with that which the Review provides. Finally, I submit the fact, with its obvious implications, that in the academic year of 1939-40, the Yale Law Journal's Board was composed of 34 men, while the Harvard Law Review Board consisted of 37 men; Yale Law School is at best one-third as large as Harvard Law School. Could it be that Yale has a disproportionate monopoly of men of Review calibre, or that the quality of its Journal is proportionately inferior? I think not.

I submit that the present policy of honoring the few with the distinction of being a Review man should be seriously weighed against the policy of serving the interests of the most consistent with the basic and fundamental purpose of perpetuating the unsurpassed quality of the present publication.

A reply from any interested student, faculty member, or alumnus, in defense of the present policy of the Review would be welcomed by this correspondent, and perhaps by the student body as a whole.

Respectfully submitted,
"Around 65"

To the Editor of the RECORD:

Your interview with Ralph Hodgson in the issue of Dec. 4, 1946 was good.

I wonder if you would be good enough to send me his address I am sure the Brandeis Lawyers' Society would like to hear him. The only address you give in the article is "a wooded farm near Minerva, in northeastern Ohio." I do not know how that would look on an envelope or if the address is sufficient.

Yours very truly
ARTHUR W. A. COWAN
Philadelphia, Pa

Off the Record

LEGAL PRIMER
The Professor

Behold the Law School Professor. Is he not pretty? He has just finished giving a Student Forty Lashes for getting a 62 in his course. Now he will send him to the Vice-Dean who has the Salt. Is that not Equitable? The naughty Student has only studied 22 hours every day and Deserves it. Do not pet the Professor, Children, or he will bite your arm off up to the Axilla. Run, little Children, run, or the Professor will Smile at you and turn you all to Stone.

—PUBLIS

Repercussions from Professor Leach's remarks on the quality of Off the Record's verse continue with an open letter to our friendly critic:

ON LEACH ON VERSE

Professor Leach:
Do you think each
Of us should follow regimented schemes of verse with
blind devotion while one man alone, when he has
the notion, is free to make one line like this—
Then this?
"Tain't Nashist.
It's fascist!"

N. B. T.

Issue No. 3 of the RECORD was sent to 14,000 alumni requests for subscriptions. Among the replies received was one too unusual for our Letters To The Editor column.

To the Editor of the RECORD:

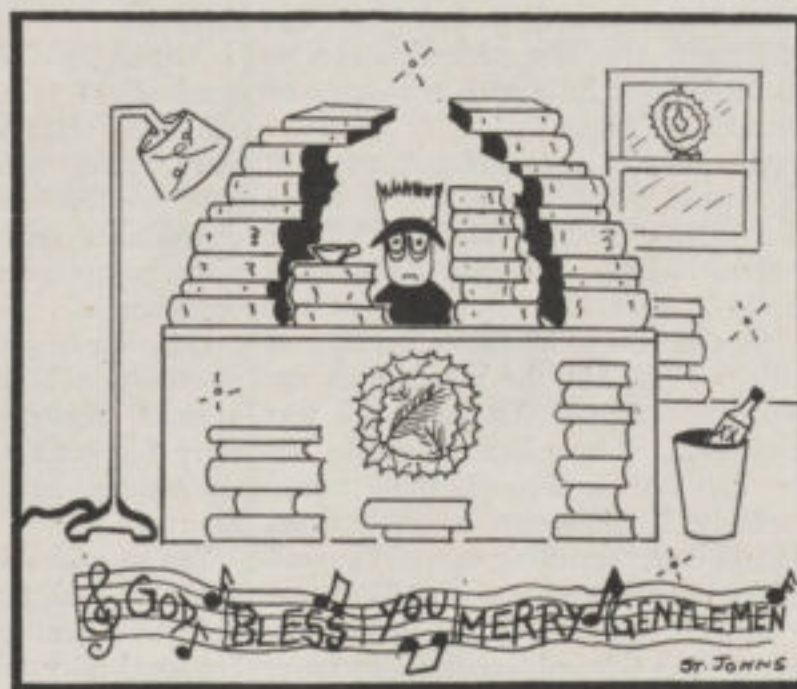
I haven't the remotest idea how my name got on your mailing list. I have been interested in science all my life, and have been teaching chemistry for forty-five years. All my spare money I give to the University of ——— for helping build new laboratories and additions to our Science Library. So save the postage and apply it to the Harvard Law Library, in which I haven't the slightest interest.

We close with best wishes of the season to all, and a gentle reminder:

EXAM DAZE

The fear of those impending tests
Impells the Yuletide grind to yell:
"Unless I study, scornful rest,
No A, no B, no C—Noell!"

N. B. T.



Gallery

PAUL A. FREUND



Professor Freund's classroom sessions are a carefully compounded prescription of brilliant case coverage interspersed with sparkling wit plus the precise amount of straight lecturing necessary to cover the required ground and to fill in the gaps in the case method. His well modulated voice and superbly correct enunciation reach all corners of the classroom without hurting the eardrums of those who occupy the front seats. Freund's examinations are fair, subtle, and rather difficult to obtain a high mark in. In any opinion poll of students his name would be found at or near the top of the list.

Professor Freund was born thirty eight years ago in St. Louis, Missouri. In 1928 he was graduated from Washington University in St. Louis and three years later from the Harvard Law School where he was President of the Harvard Law Review. After a fourth year here at the Law School the coveted S.J.D. degree was conferred upon him.

During the October 1932 term of the Supreme Court of the United States Professor Freund was secretary to Mr. Justice Brandeis. The highlight of this term from the secretary's point of view was the Florida chain store case of *Liggett v. Lee*, 288 U.S. 517 (1933). For six weeks Mr. Freund labored to help Justice Brandeis produce his brilliant dissenting opinion in the case. Working for Brandeis was always a challenge and a stimulating experience because the Justice fostered the illusion, as Mr. Freund describes it, that the law clerk was participating in the judicial process. The Justice encouraged his secretaries to embody their research in draft opinions which generally became unrecognizable in the Justice's tireless process of construction and revision.

In 1933-34 Mr. Freund was with the Treasury Department. The Reconstruction Finance Corporation, then one of the largest law factories, claimed him 1934-35 to work on the briefs in the Gold Clause cases (294 U.S. 240). When Stanley Reed became Solicitor General in 1935, Mr. Freund went with him and remained in that office until the opportunity to teach at Harvard came in 1939.

The first case argued by Paul A. Freund of Washington, D. C. before the Supreme Court of the United States was *White v. Aronson*, 302 U.S. 16 (1937). This case involved the earthshaking question of whether a jig saw puzzle was a game and hence taxable under section 609 of the Revenue Act of 1932. Mr. Justice McReynolds, for the Court, took a dim view of the notion that a jig saw puzzle could be a game. Ouija boards were distinguished by the Court.

During the oral argument Mr. Freund, who had been granted permission to argue the case prior to being admitted to the Supreme Court bar, urged upon the Court that if games required rules, so did jig saw puzzles, though the rules could be waived in the same manner that the Court could waive its own rules. Mr. Chief Justice Hughes, entering into the spirit of the case, then observed that the Court would take a recess under its rules as it was not a game. Mr. Freund replied, "Perhaps it's a puzzle!" This interchange caused a reporter who was short on filler to attempt to persuade our advocate that he should pose for a picture while holding a jig saw puzzle. This publicity was prudently declined as Mr. Freund did not wish to court disbarment on the day of his special admission.

During his stay in the Solicitor General's office Professor Freund worked particularly on PWA and TVA litigation. The fruits of this later experience provided a rich background for the course he gave in Federal Jurisdiction last summer.

In 1939 he came back to Harvard as a visiting professor and received his permanent appointment the following year. Ever since his appointment he has taught his favorite course, Conflict of Laws. He has filled in at various times in other courses where needed and will teach Equity next summer. A course which has interested him very much was a seminar on Constitutional Litigation. In that course students examined records and briefs in selected groups of cases and followed them through from beginning to end. Last summer during Professor Powell's vacation Professor Freund supervised the work of the graduate students.

During the war years Professor Freund went back to the Department of Justice in the War Division and the Solicitor General's Office. During this period he participated in the cases involving the Public Utility Holding Company Act and the constitutionality of Rent Control.

Many present members of the School will remember Professor Freund's participation in the model argument held in Langdell Courtroom last spring before Judges Magruder, Wyzanski, and Hammond. Few of those present will ever forget the superb exhibition of oral advocacy and brief writing which Professor Freund presented for the guidance of future Ames practitioners. Professor Freund's ready wit served him well when, in criticizing the reasoning of Judge Edgerton of the United States Court of Appeals for the District of Columbia in a torts case, he remarked that Judge Edgerton was a converted torts professor. Judge Magruder, himself a former torts teacher, pricked up his ears and demanded to know if that was considered a serious drawback. The crowded courtroom was delighted when the answer came back: "Perhaps I can say what the Court cannot. Some judges surmount the handicap better than others."

Professor Freund feels that sheer advocacy is less effective in constitutional cases of great moment than in the ordinary small case. In the former, the decision depends pretty much on the philosophy of the judges, although counsel can be of great help in delimiting the issues. In the small case there is usually presented something of a legal puzzle the very solution of which may

turn on the effectiveness of oral advocacy.

In Professor Freund's view there seems to be entirely too much tension among students about examinations and grades. Also there is too much self consciousness about methods of study. What is needed is more reflection on the material being studied. He feels it regrettable that the storming of the Law School has made it necessary to curtail third year written work. He likes to lay some emphasis on a man's written work because it reflects the thoroughness and persistence of the writer which the examination with its emphasis on quick judgment cannot test. Professor Freund has not been a prodigious writer for the hungry law review mills. In large measure this is due to his reputation among students for being the most approachable member of the faculty. There is a steady stream of students moving in and out of his office seeking his comment and advice on their Law Review notes or other papers. He is ever ready to encourage a student to do some profitable research and bring forth reasoned conclusions based thereon.

In 9 *Law & Contemporary Problems* 77 Professor Freund has an article on "The Constitutional Issues of the Emergency Price Control Act of 1942." Some indications of his feeling on constitutional law may be gained from its opening sentence: "Constitutional law in the realm of national power is compounded of equal parts of economics and procedure." His most recent contribution to periodical literature is "Chief Justice Stone and the Conflict of Laws" in the current *Harvard Law Review*.

Last summer Professor Freund taught Federal Jurisdiction for the first time. In classroom demeanor he ranks well between the poles of the late and beloved E. H. Warren and Williston, characterized by Warren as "the mildest mannered man who ever slung a student on the horns of a dilemma." His patience was well exemplified last summer when a faltering student remarked, in response to a question, that he didn't know exactly. "Well, inexactly what is it?" queried Freund. His temperament is well suited to the teaching of Conflict of Laws which, to borrow from his own quotation from Justice Frankfurter, must partake of the nature of a course in jurisprudence. It is a tribute to Professor Freund that his student popularity extends uniformly through all segments of the grade strata.

C. W. D.

Sub Judice

RADIO LICENSES****F.C.C. has power to refuse station license because of concealment of ownership information.

The Federal Communications Commission refused to renew respondent's license because of misrepresentations as to the ownership of the applicant's stock. A large block of respondent's stock was owned by the family of a nationwide network executive. This stock was obtained by the principal holder on the assurance that he would obtain network affiliation and free engineering service from the network. To keep this information from other executives of the network various officials of the respondent testified before the F.C.C. that this stock was owned by others.

The Court of Appeals for the District of Columbia reversed the Commission on the ground that the F.C.C. had failed to find the concealment was of material facts, or had influenced the Commission's decision, or that the Commission would have denied the license had it known the true facts.

On certiorari the Supreme Court reversed the Court of Appeals and sustained the Commission. *F.C.C. v. WOKO*, U. S. Supreme Court, December 9, 1946, CCH-U.S.S.Ct. Bulletin 199.

Because the Commission had condoned similar practices in the past, apparently without results, it is not required to refrain from more drastic measures now in order to protect the integrity of its reports. Denial of a license is not a penalty because such action on account of false information lawfully required to be furnished is not a penal measure. Failure of the Commission to weigh the public service rendered by the respondent is not fatal because it is up to the F.C.C. to determine whether the public interest outweighs consideration of false information.

DUE PROCESS & RIGHT TO COUNSEL****Reviewing court need not go beyond the scope of the review provided for in the method selected by a defendant.

Petitioner had been convicted of murder and sentenced to ninety nine years imprisonment. In 1945 he brought a writ of error in the Supreme Court of Illinois to review the original conviction. That court on the basis of the common law record before it ruled that there was something to show that the right to counsel had been violated when the defendant pleaded guilty to the indictment and also waived his right to have a counsel appointed by the court. Judgment affirmed. *Carter v. Illinois*, U. S. Supreme Court, December 9, 1946, CCH-U.S.S.Ct. Bulletin 241.

The Court divided five to four on this case with the new Chief Justice siding with the so called "conservative" wing of the Court made up of Justices Frankfurter, Burton, Jackson, and Reed. Mr. Justice Frankfurter for the majority held that the petitioner had chosen a form of review under which the state court was not bound to go outside the common law record or inability to make an intelligent decision on how to plead. That could be considered if the petitioner availed himself of other remedies.

Mr. Justice Murphy dissented on the ground that the record itself along with a transcript of testimony which had been sent up showed that petitioner was unable to understand that the indictment which he was shown could have resulted in a conviction for lesser degrees of homicide and assault. These possibilities required the presence of a skilled lawyer to analyze the pitfalls of a particular plea.

Mr. Justice Douglas (with whom concurred Justices Black and Rutledge) took the position that the judgment of the majority was correct if the state court was right in its view that the matters which agitated Mr. Justice Murphy could not be reviewed on a common law writ of error. They felt, however, that the opinion of the state court did not make it clear whether this was its ground. The very least that should be done in their view was to remand the case and vacate the judgment.

The Witness Stand

The Question: Should Congress pass legislation to require labor to meet specific responsibilities?

1. E. H. Kendrick, Springfield, Mass., 3rd Term

Labor has to be made responsible to the people of this country to prevent one man from throwing a nation into disorder in defiance of a court order. It is apparent that labor's leadership is irresponsible and legislation is necessary to require union incorporation, to forbid strikes in essential industries, and to prevent strikes against the government.

2. Robert J. Mooney, Plainfield, N. J., 2nd Term

Without knowing just what "specific responsibilities" are intended by the question, an unconditional answer is difficult. Some legislation I believe desirable, in a vein similar to that of the Barnes Bill recently voted in by the people of Massachusetts. I further wholeheartedly agree with those who contend that no one man, or group of men, whether their grievances be real or imaginary, should possess the unqualified power to bring to a halt those productive industries which are basically essential to our society, as exemplified by the just-ended affair of Lewis v. United States. I believe, however, that the real and immediate danger lies not in the lack of restrictive labor law, but rather in the possibility that the new Congress, by sweeping anti-labor legislation, may completely erase these deserved gains made by unionization during the past several decades.

3. Bernard J. Fieger, Brooklyn, N. Y., 2nd Term

It is not clear in my mind what "specific responsibilities" mean. While I believe that breaches in specific contracts should be actionable, I also feel that when the contract is signed, no matter what the terms, capital should not be heard to yell, "Now you can't leave work even though the contract allows you to." While certain reforms are necessary they must be reforms, not attempts at destruction, and not colored by the country's and most of labor's hatred of one man.

4. Clarence V. Akley, Lyndonville, Vt., 4th Term

I do not believe that any so-called labor legislation should be passed at the present time, because the attitude of Congress in general would be influenced to too great an extent by the crisis just ended. No legislation which deals exclusively with the responsibilities of labor should be passed. Are we merely trying to make the pendulum swing the other way again? We must have long-range legislation which formulates the rights and responsibilities of both labor and capital, and which will make either party liable for arbitrary conduct which endangers the public.

5. J. V. Gonzalez, Manila, P. I., Grad. Student

I certainly do. The results of labor's irresponsibility have been too patent to be arguable. They have weakened the internal structure of the U. S. and also the foreign standing of the U. S. in the eyes of the world. Labor has done a great disservice to democracy in the eyes of foreign countries as may be seen in the recent elections in France and other countries where the struggle between communism and democracy is raging. Labor's showing of democracy's weakness has tipped the scales in communism's favor. The U. S. may be big enough to withstand such losses but smaller countries can't and that is a big point in communism's argument.

6. S. M. Redstone, Boston, Mass., 6th Term

There are loopholes in labor legislation which exist because all labor legislation in the past 15 years was passed in the spirit of reform *pro* labor. The National Labor Relations Act and the Norris-La Guardia Act loopholes allow the more unscrupulous element in labor to capitalize on the public for selfish gain to the detriment of labor as well. They are no different than the same unscrupulous types who preyed upon the public in previous years with a resultant detrimental effect on big business. Labor legislation should be modified so as to give organized labor its proper responsibility to society but no spirit of vindictiveness should be evinced in formulating such measures. If done in a vindictive way not only labor but all social progress would be set back fifty years.

7. H. K. Lidstone, Pelham, N. Y., 3rd Term

There should be mutuality between labor and business. Labor should be liable for the same things that business is held for. I think the Wagner Act has fulfilled its purpose and has brought

Alumni Notes

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

Charles C. Cabot, LL.B. '25, of Dover, Mass., and Francis Kernan, LL.B. '27, of New York City, were among the speakers at the sixth Boston Dinner of the Milton Academy Graduates Association, held Dec. 6. Judge Cabot is president of the school's board of trustees, and chairman of the 150th Anniversary Fund.

Edwin C. Johnson, '04, and Daniel J. Lyne, '12, were presented with silver plaques by the Boston Latin School in recognition of their services to the school. Both men are past presidents of the Boston Latin School association.

LL.B. '01—Langdon P. Marcin recently resigned as president of the New York Hospital, a post which he occupied during the war. Former president William Harding Jackson, LL.B. '28, has returned to the presidency after an absence of 4½ years during which he was in the military service.

LL.B. '04—Arthur Holdredge Morse died October 26 at Boston, Mass.

LL.B. '05—Frank Melvin Sautell died Nov. 1 at Chestnut Hill, Mass.

LL.B. '07—Edwin F. Meyers of Broken Bow, Neb., is a director of the Nebraska Taxpayers' League, which publishes the monthly "Nebraska Taxpayer."

LL.B. '09—At the 22nd annual conference of the New England Council on November 21 in Boston, F. Winchester Denio was re-elected as Council secretary. Denio is a vice-president of the First National Bank of Boston.

Ex. '09—William Chisholm Macdonald died November 19 at Halifax, Nova Scotia.

LL.B. '10—Winthrop W. Aldrich, chairman of the board of the Chase National Bank of New York, received the Order of Orange Nassau in The Hague, The Netherlands, on Nov. 29. The Dutch honor was conferred for his "leadership of American Relief for Holland."

LL.B. '10—The appointment of Sydney M. Harrison, head of the Boston Dun & Bradstreet office, as regional vice-president of the agency for the New England states, was announced on November 22. Harrison taught government at Harvard for a year before starting work for Dun & Bradstreet in 1912, at the Cleveland office. He was appointed district manager of the Rochester office in 1920; and in 1931 he was made regional manager at Boston.

LL.B. '11—Edward R. Burke has resigned as head of the Southern Coal Producer's Association. He has held the post since 1942. His resignation follows a controversy with the board of directors over the policy to be followed in dealing with John L. Lewis. Burke was one of the organizers of the solid Southern coal front. His successor was not immediately named.

Ex. '13—The Rev. Dr. Norman Burdett Nash, elected on December 11 as Episcopal Bishop of Massachusetts, studied at the Law School for a year before transferring to Theological School. Dr. Nash, who has been rector of St. Paul's School in Concord, N. H., since 1939, will succeed the Rt. Rev. Henry Knox Sherrill, who has been elected presiding bishop of the Protestant Episcopal Church in America.

LL.B. '15—William Goll Helfrich died in Baltimore, Md., in October, 1946.

LL.B. '15—Basil O'Connor was reappointed by President Truman on December 10 to another one-year term as chairman of the American Red Cross and head of the reorganization central committee.

LL.B. '16—Paul V. McNutt, Ambassador to the Philippines, was sworn in on Nov. 22 as a member of the bar of the State of New York. Mr. McNutt is also a member of the bar in Illinois.

Ex. '18—Ira Dudley Farquhar died Nov. 24, at Long Island City, N. Y.

LL.B. '22—Warren Lee Pierson, president of the American Cable and Radio Corporation, has been elected a director of the Cuban Vertientes-Camaguey Sugar Company. Pierson formerly

served as president of the Export-Import Bank in Washington.

LL.B. '23—George H. Sibley, vice-president, general attorney, and a director of E. R. Squibb & Sons, has been elected a trustee of the Greenwich Savings Bank, Greenwich, Conn.

LL.B. '28—Charles A. Perlitz, Jr. has been elected executive vice president of the Continental Oil Company, thus becoming one of the youngest senior executives of a major oil company in the United States.

After graduation he became a member of the law firm of Fulbright, Crooker & Freeman, in Houston, Texas. He remained there until 1938, when he became associated with Strake Petroleum, Inc., Houston. For the past year he has been general attorney for the Continental Oil Co.

LL.B. '29—Trustees of the Carnegie Endowment for International Peace have named Alger Hiss as president of the board. Hiss is now director of the Office of Special Political Affairs of the State Department.

LL.B. '29—Miss Helene M. Davidson was married in New York on Nov. 30 to Stewart Watson Richards. Richards is member of the New York law firm of Beer, Richards & Haller.

LL.B. '32—Frank L. Dewey has joined the faculty of New York University as a lecturer on business law. Dewey has been a member of the legal staff of the Western Electric Corporation.

LL.B. '33—In Maine's non-partisan municipal elections December 2 Atty. Raymond E. Jensen, of Portland, won a five-year race for councillor-at-large.

Ex. '34—At the close of their four-day national convention in St. Louis on Nov. 24, the American Veterans of World War II elected J. Raymond Sawyer, of Arlington, Va., as national commander.

LL.B. '36—Charles R. Denny, Jr., who has been acting chairman of the Federal Communications Commission since July, has now been named permanent chairman.

LL.B. '38—Announcement has been made of the engagement of Mrs. Doris Payson Beck and Curtis Mason Clark. He served overseas with the 2nd Division for three years.

LL.B. '38—W. Lawrence Minnick, with Glenn L. Bean, has formed a partnership for the practice of law, under the firm name of Bean & Minnick. Offices are in the Drumheller Bldg., Walla Walla, Washington.

LL.B. '38—The engagement of Miss Jean R. Kaufman, of Scarsdale, N. Y., and Adolph Weil, Jr., has been announced. Recently he was placed on inactive duty as a captain, after four and a half years' service.

Ex. '39—Commr. Charles B. Carroll, USN, who entered the service in 1939, has become engaged to Miss Deborah Dorsey, of Baltimore, Md.

LL.B. '40—Paul E. FitzSimmons, upon separation from the Armed Forces joined the faculty of the St. Louis University School of Law, and on September 1, 1946, was appointed Dean of the School. In addition, he is a member of the Missouri Commission on Uniform State Laws.

After graduation FitzSimmons became Assistant U. S. Attorney for the Eastern Judicial District of Missouri. He was drafted in March, 1943, and after obtaining his commission, went overseas as the Executive Officer to the

Officer in charge of Army publications in the ETO. Subsequently he spent two months as liaison officer between the Headquarters of General Ben Lear and General Solbert of the Army Information and Education Service. For the next year he was a member of a United States Claims Team operating in Belgium, France, and Holland.

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QUALIFYING—(Continued)
Swift (Bowen-Beckley) 130.5.

Landis (Stokey-Bloom) 143, Morgan (Hull-Garrity) 133.

Results of arguments held on December 10:

Kent (Houghteling-Stearns) 128, Morgan (Soupias-Snell) 105.

Griswold (Skelly - Franklin) 133, Hamilton (Aldrich-Donnelly) 130.

Gardner (Roney-Lax) 138, Hall (Reavley-McCaffrey) 134.

Holmes (Preston-Pope) 138, Marshall (Berton-Kilgore) 135.

Cardozo (Hansberry-Koch) 137, Frankfurter (Newman-Goodman) 123.

Blackstone (Crabb-Emery) 126, Cox (Maier-Wagner) 124.

Grotius (Garner-Paul) 139, Freund (Crinkley-Cromer) 129.

Results of arguments held on December 11:

Webster (Atkinson-Logan) 126, Stone-Thurston (Beardsley-Gaeb) 124.

Pound (Beeson-Worrel) 143, Pow-Wow (Vail-Crolius) 139.

Dodd (Malatesta - Manuelian) 131, Braucher (Bevins-Seddon) 130.

Story (Crary-Kirkpatrick) 132, Casner (Kimmel-Madden) 130.

Pow-Wow (Perry-Webb) 140, Pitney (Poffinberger-Forrister) 135.

Landis (Cunningham-Welch) 140, Parsons (Goldschlager-Streit) 128.

Calendar

THE LEGAL WORLD Written Work

The requirement of written work during the third year has been suspended temporarily. The suspension does not apply to students graduating in February and June of '47.

State Department Jobs

Mr. William P. Maddox, Chief of the Division of Training Services, Department of State, will meet students finishing school in 1947 who are interested in the Foreign Service as a career. The meeting is in S.R. 4 at 4 P.M. tomorrow, Thursday, December 19. In addition to the regular opportunities, some appointments are authorized for qualified men over thirty years of age who have had military or government experience during the war.

Prentice-Hall Jobs

Prospective graduates interested in editorial specialization in taxes, labor, or other government regulatory fields should see Mr. Dimmitt for information concerning Prentice-Hall, Inc. Those who will be in New York during the vacation may apply to Mr. James J. O'Donovan, Manager, Employment Department, at 70 Fifth Avenue, Room 705, from 9 A.M. to 5 P.M.

Vacation Job

Anyone interested in reading first year law to a blind law student for four or more hours a day during the period from December 22 to January 1st should call Miss Evelyn Davis at HAN-cock 4766. The student is from the University of Illinois and will be spending the vacation in Somerville.

Law School Pins

Harvard Law School lapel pins are now on sale in Kendall House, Monday through Friday, from 12 noon to 2 P.M., at \$1.25 each.

THE UNIVERSITY WORLD

Lectures

Problems in Political Philosophy will be discussed by Dr. Louis Hartz on Friday, December 20, at 4 P.M. in the Phillips Brooks House. The lecture is sponsored by the Harvard Philosophical Club.

Dean Pound will speak to the Harvard Classical Club, Friday, December 20, in the Adams House Upper Common Room, at 730 P.M. His subject will be *Line and Column in Greek Military Tactics and in the Nineteenth Century*.

Chanukah Festival

The Harvard-Radcliffe Hillel Foundation Chapter is sponsoring a Chanukah Festival on Wednesday, December 18, in Phillips Brooks House at 8 P.M. One of the features will be the singing of *Jewish Folk Songs* by Ruth Rubin.

Concert

E. Power Biggs, organist, will give a concert of Christmas music at the German Museum, at 8:15 P.M. on Thursday, December 19. He will be accompanied by a consort of viols from the Boston Society of Ancient Instruments. The program will include *Livre de Noels* by Daquin and *Chorale Preludes* by Bach.

International Student Center

The International Student Center, 5 Phillips Pl., Cambridge, will be open during the Christmas vacation for all students who are remaining in Cambridge.

On Sunday, December 22, there will be an open house and tea from 4 to 6 P.M., followed by a buffet supper at 6:30 P.M. and an informal program of music and carol singing.

On Christmas Day there will be open house from 4 P.M. through the evening. On Sunday, December 29, there will be open house and tea from 4 to 6 P.M. and a buffet supper at 6:30.

On Tuesday, December 31, there will be a New Year's Eve Dance at the Center from 9 P.M. to 1 A.M.

THE OUTER WORLD

Plays

Tallulah Bankhead will be at the Plymouth through Saturday, December 21, in Jean Cocteau's new play, *Eagle Rampant*.

Claire Trevor and Philip Dorn are opening in *The Big Two* on Monday, December 23 at the Plymouth.

For those who will remain in these parts during the holidays—the hit revue, *Call Me Mister* will continue at the Shubert at least through Saturday, January 4. Something advertised as a "Carnival of Gaiety, Romance, and Music," called *In Gay New Orleans*, will open Christmas Night at the Colonial. Victor Herbert's *Sweethearts*, with Bobby Clark, will start a two week stand at the Opera House on Christmas Eve.

Ice-Capades

The Ice-Capades of 1947 will open at the Boston Garden on December 27 for a two-week engagement.

Movie

The Best Years of Our Lives, the widely advertised Hollywood effort on the subject of post-war readjustments,

Yale Forum Discussion On Teaching Law

Following are excerpts from three of the speeches delivered at the first meeting of the Yale Law School Forum on December 4th. Professor McDougall of Yale, having presented what was intended as a comprehensive statement of his views on legal education, was unwilling to be quoted except at prohibitive length.

W. Barton Leach, Harvard

"... Of course, any treatment of contracts, sales or business organizations will involve very serious excursions into business and economics, any study of evidence requires some knowledge of psychology, and criminal law without psychiatry and sociology is pretty sterile stuff. The question is: How much of the three years which students spend with us can profitably be spent with materials whose primary impact is non-legal and under instructors who are not primarily qualified in the analysis of problems as they are presented to lawyers? ... My present judgment is that we are well advised to give the student lawyers as instructors and to deal with legal materials, pointing out, with appropriate frequency and force, the type of excursion into related social, physical and medical sciences that may be relevant from time to time."

"It is clear to me that lawyers must assume direction of all phases of those areas of controversy which are inherent in the fact that large numbers of men are living and working together. They must be advocates, negotiators, advisers, administrators, judges, arbitrators and executives. And their training must be such as to enable them to perform those functions with a clear understanding of what they are doing and a disciplined vision as to what they seek to attain."

"These men (lawyers who played active roles in military operations during the war) shared certain qualities:

- "a. A wise and imaginative appreciation of what the real objective was and a tailoring of measures to attain that objective.
- "b. An insistence upon knowing the facts—not opinions about the facts, but the facts themselves—and a willingness to be persistent and ingenious in getting the facts out.
- "c. An appreciation of the forces which may tend to further or frustrate a hypothetical solution.
- "d. A recognition that ideal solutions must be tempered to the capacities of human beings to carry them out—that a foolproof method 85% efficient is probably better than a delicate and intricate method with a theoretical efficiency of 100%.
- "e. A foresight as to the long-term effects and possible undesirable by-products of any suggested course of action.
- "f. A conviction of the effectiveness of discussion and a willingness to abandon a position in favor of a better idea suggested by someone else.

"It is these qualities of leadership which, apart from the skills of our lawyers' trade, we seek to inculcate. As at present advised, I do not think that we are wise enough or have time enough to place at the disposal of students the social and economic data which will be relevant to the future problems that they will have to solve. And so I am inclined to think that adding non-legal courses to the curriculum and bringing assorted social scientists onto the law faculty is not the way to salvation."

will have its Boston premiere at the Esquire Theater on Christmas Day at 8:15 P.M. There are two performances daily after that, at 2:15 P.M. and 8:15 P.M. Seats run to \$1.80.

Music

The Boston Symphony Orchestra, with Richard Burgin and Darius Milhaud conducting, presents its tenth regular concert series, this Friday afternoon, December 20, at 2:30 P.M. at Symphony Hall, with a repeat performance Saturday evening at 8:30 P.M.

Lecture

Robert Nathan will speak on *The Economic Outlook for 1947* at the Ford Hall Forum, Jordan Hall, Sunday, December 22, at 8 P.M.

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"... Having this (a course in some phase of the law) as a theater of operations, I hope to be able to deal with it in such a way that my students, without ever having the word 'leadership' or the words 'social science' tossed at them, will, when they leave my course, be advanced several long steps along the road that will make them adequate and skilled supervisors of the conflict areas of our society and, in time of more drastic public need, will equip them to perform whatever tasks of leadership and at whatever level a need arises."

Eugene V. Rostow, Yale

"I take it that there is no disagreement between Mr. Leach and me as to the function of lawyers, or of law schools. We both believe that lawyers play an important, perhaps a decisive role in policy making, and that the job of law schools, in the phrase of Holmes, is to prepare them 'greatly' for that task. If we differ, it is on the subject-matter of their law training. Mr. Leach puts great emphasis, and so do I, on training lawyers to think vigorously, to analyze carefully, and to be prepared to understand and master new bodies of knowledge as need arises. That kind of training is a matter of method, not of subject-matter. It can be taught as well in Roman Law or Legal History as in Torts, Future Interests or Labor Laws."

"But we both agree that lawyers must be prepared to deal imaginatively and creatively with the deep tensions of the modern world. The great challenge of our life is the threat to freedom. We shall need to devise new procedures, and new policies, for the peaceful and orderly solution of far reaching conflicts. The structure of our world is changing. We no longer live in an oligarchy, in which a small group of rich men had overwhelming authority. The balance of power in our society has shifted, and there is now far greater equality than ever before in the distribution of power between social groups. At every level of life, there are pressing problems to be solved. In local and national government, in corporate affairs and labor relations, in the realm of international law and of national economic policy, we need new law."

"It is not enough that solutions be devised which serve the minimal function of keeping the peace. We need not only order, but progress—the development of legal institutions in ways which fulfill the promise implicit in our legal tradition."

"To prepare men to deal effectively and greatly with the complex and technical issues which underlie many of these issues, they must in law school deal systematically and thoroughly with the social studies which bear on the problems of law. One could have an opinion of the desirability of Spendthrift Trusts without studying much economics. It is impossible, however, to deal seriously with the problems which arise under the Sherman Act or the Employment Act of 1946 without large doses of social science."

"It follows, in my opinion, that the content, though not the rigorous discipline, of law teaching needs radical change. We need more public law, more social science, and more sustained analysis of our main social tensions than was possible in the old private law curriculum. That is what we are trying to do, course by course, at Yale. If I can

sum up Mr. Leach's position rather maliciously, what he seems to be saying is that at Harvard they understand the need—indeed they have always understood it—but that they don't believe in doing anything about it."

Lon L. Fuller, Harvard

"In the field of labor relations, there often seems to be an irreconcilable conflict between two interests: the interest of management in industrial efficiency (which is also an interest of society), and the interest of the worker in human dignity and the right not to be pushed around. (This interest is also one of society as well as the worker.) ... The worker can be protected against indignities in ways that do not reduce, too much, industrial efficiency; there are ways of promoting industrial efficiency which do not involve pushing the worker around."

"This is the kind of job in which the lawyer, properly trained, excels. He it is who has the detachment that is the first essential for the task. With this he combines the imagination and the capacity for analyzing the factors in the situation that are really indispensable. Lawyers representing both management and labor have made important contributions to this task."

"If we compare the work of the legal profession in 1900 with the tasks it performs today, I think we can make the generalization that the scope of the lawyer's responsibility has greatly expanded."

"In 1900 the lawyer was typically an advocate, or a strictly legal adviser. As an advocate, he was dealing with facts not the way an administrator does, but with forensic facts, with facts as they get into a written record. When he gave advice, he was usually permitted to hedge against any responsibility for facts. His formal opinion letter started out by stating that on the assumption that the facts were X, Y, and Z, then legal consequence A would follow."

"In the intervening half-century a change has occurred in the responsibility typically assumed by the lawyer. Today, whether he is in private practice or a government lawyer, his responsibility for facts is generally that of an administrator. He is no longer dealing with forensic facts, but with managerial facts."

"Yet, by and large, legal education centers on the facts of a written record, or worse still, the tendentiously reported skeleton of the facts found in an appellate decision."

"... the lawyer today has, typically, a responsibility for what may be called 'the total decision'. Almost any decision, whether arrived at by private interests or government agencies, involves a synthesis of legal and extra-legal factors. In simpler days, when interests were less complex, the lawyer had ingenious ways of ducking responsibility for 'extra-legal' considerations. These he no longer has. Today he has to be capable of making his own synthesis of legal and extra-legal considerations; he must be able to make a responsible contribution to the 'total decision'."

"... We do not give the student training in this process by which the total decision is arrived at."

"The general formula I would prescribe for bringing American legal education up to date would read something as follows: We must retain the problem method implicit in the case method. We must continue to concentrate on real issues, as they arise in real human contexts, and not get lost in abstract theories. At the same time, we must expand these issues in two directions:

First, so as to include live facts, and not the frozen facts of a written record; second, so as to include the 'extra-legal' considerations that bear on the final decision."

BUREAUCRACY—(Continued)

two main problems. First is the question of how to deal with arbitrariness on the part of administrative tribunals, and second is the problem of checks on the evolution of policy by administrative tribunals.

The legalistic solution to these questions, according to Landis, is based on the lawyer's faith in courts. He tries to introduce mechanical procedural devices in order to check bureaucratic arbitrariness, while at the same time increasing the scope of judicial review of administrative tribunals in order to curb policy making on their part.

Landis urged, as the better approach to the problems of bureaucracy, a greater public concern with the quality of men in government service. Moreover, there should be greater respect for their function of arriving at independent judgments, and less pressure from outsiders put on administrative proceedings. Methods for the disposition of business so as to expedite proceedings, yet insure that smoothness of administration which is the essence of justice, is the central problem of administrative law.

Robert M. Benjamin emphasized that the question of how to satisfy the concept of fair play, while at the same time getting the government's business done, was the crux of administrative law. Courtroom techniques are admittedly not suited to quasijudicial proceedings. As to the hearsay rule, for instance, all evidence not downright prejudicial should be admitted. But as a matter of practice, hearing officers should apply the rules of evidence, as a starting point, at least, in their conduct of their adjudications. The central consideration should always be what is fair in the particular circumstances.

If factual determinations of boards are rationally supportable, they should be upheld by reviewing courts, according to Benjamin. This is analogous to the test for upholding a jury verdict, and has been adopted in New York as the "substantial evidence" rule. Resting responsibility in this fashion on the adjudicator will increase the quality of his decisions, as well as allow him to go ahead on a rational basis without the danger of being constantly upset by the courts. The legislature should define the scope of a board's power over policy. How far Congress intended to leave to an administrative board the decision on questions of law, should be brought out in the statute. Had such been the case in the past, many present conflicts might have been avoided, asserted Benjamin.

The evening's best questions were submitted by Stanley Evans, of the

2nd term, and Howard Monderer, a 1st term. "How can we avoid tendencies of administrative boards to crystallize and mechanize procedure?" and "To what extent should policies of the executive branch influence administrative decisions?" were the two winning questions.

NURSERY—(Continued)

putting an OR or an EE on the end of it. Try it yourself if you don't believe me. Take a verb—any old verb. Go ahead, take one. Now put an OR on the end of it. Now scratch it off and put an EE on. See what I mean?). My subject's worried look and tired eyes told me at once that he was at least a third term.

"Pardon me," I said, "I'm from the RECORD. Have the kids downstairs affected your life at Hastings in any way?"

"What kids?", he growled, shoving me so forcefully out of the way that I decided not to press the point.

My second victim came bouncing up the walk swinging his book-bag. His head was held high and he was whistling a merry tune as much as to say that it was a great world and he was glad to be in it.

"Hmmm, a first term man," I mumbled to myself as I stepped in front of him to get his opinion of this nursery business. "For the past two months, one of the rooms downstairs has been used as a nursery for children of graduate students. Have the kids ever interfered with your studying?"

"What studying?", he bellowed cheerfully, hitting me over the head with his book-bag.

"Perhaps the children's angle would be the best way to get at this story after all," I said to myself as I started back downstairs. I went more slowly this time. These spot interviews take a lot out of one.

I cornered the first child I saw as I re-entered the nursery. He was a chubby little lad of about 5 and taking out my pad and pencil, I asked him what he thought of Al's stories.

"They're o.k., but you should hear some of the ones daddy tells mummy at night," he said, winking slyly at me.

I blushed and hurried upstairs to do some Bills and Notes. I could see that this whole thing was too big for me. If the feature editor still wants a story on the Hastings Hall Nursery he'll have to write the damn thing himself.

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