

The Harvard Law School Record

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ADOPT NEW TECHNIQUE FOR AMES

Quarter-Final Uses Four Party Argument On Trusts Question

For the first time in the history of the Ames Competition, a four party argument will be used in the quarter final case to be tried on March 27 in Langdell Court, according to Albert L. Goldman, Faculty Assistant in charge of the Ames Competition. Since in actual practice suits very often arise with more than two parties involved, the Board has decided to modify its traditional two-party trials technique, and if the argument on the 27th is successful, expects to use other multi-party suits, such as corporate reorganizations, or ICC appeals, in future quarter and semi-finals.

The case of *Johnston v. Ambler, Wardwell, Sumner, et al.*, which will come up on the 27th, involves the construction of a trust with many limitations, as well as complex future interests questions. Goldman states that there is a large area of possible conflicts, with the two main issues being the questions of the interests taken and the propriety of certain investments by the trustee. The trustee and three possible takers will be represented in court.

The clubs arguing the case are the Landis, with Gordon F. Bloom and John S. Welch representing Johnston; Pow-Wow, with Francis D. Murnaghan and Donald Vail counsel for Ambler; Grotius, with Charles S. Bridge and Gale A. Christopher as lawyers for Wardwell; and the Holmes Club, with Charles F. Choate and Henry A. Preston representing Sumner. Judging the appeal will be Justice John V. Spalding of the Supreme Judicial Court of Massachusetts, Judge Jacob Kaplan, of the law firm of Nutter, McClennen and Fish, and Professor A. James Casner, of the Harvard Law School. Two of the four clubs arguing this case will be picked to enter the semi-finals next semester.

Goldman has also announced that the two other quarter-final arguments will be held on April 1st and April 3rd. A Bills and Notes case will be argued on the 1st, with the Jeremiah Smith Club pitted against the Story Club. The Gardiner Club will argue a case in Business Associations against the Cardozo Club on the 3rd.

In the semi-finals this semester, a case under the Federal Gift Tax Law will be argued on April 10th between the Thorpe Club and the Scott-Pow-Wow Club. Also in the semi-finals, a Labor Law and Constitutional Law case will be argued by the Casner and Taney Clubs on April 17th.

Layman Visiting Legal Sanctum Is Overwhelmed By Technical Jargon

My lawyer called me up and he said "well, we're all set to go. Will three o'clock in Mr. Waite's office at Choate, Hall and Stewart by okay with you?" I said yes, it will be fine. "You got the money?" I said yes, I had the money. "In the form of a certified check?" Yes, it is certified, I said. "Okay then," he said, "it's a very simple procedure taking maybe 20 minutes or so. All you have to do is hand over the check, pay off a few adjustments in cash and sign a couple of papers. By the way," he added mysteriously, "we'll do the talking."

So promptly at three o'clock we—my lawyer and myself—were ushered into Mr. Waite's inner legal sanctum. There was a greenish carpet on the floor of the long, narrow office, and to one side a bookcase covering the entire wall from floor to ceiling and filled with sinister sounding books like "MVX2—Bankruptcies," "Sequestrations, Garnishments and Executions, Vol. CVIII," and "Cases on Afterborn Children, Sec. III, 1938." Mr. Waite rose affably, shook hands, and introduced us to another chap who had followed us in. We all laughed when somebody made a joke about the chair situation, while the three lawyers looked each other over in that careful manner employed by all lawyers looking each other over. We chatted for a moment about the weather, the politi-

Student Explores Precedents In Recent Bilbo Exclusion Case

This is the first of a series of two articles analyzing the problems created by the "Bilbo incident."

"I am not speaking for Bilbo . . . I am speaking for the rights of sovereign States of the Union. . . . Now, here comes a man from a sovereign State . . . with his credentials, without there being any question as to their validity. He presents himself at the door of the Senate and without any inquiry on the part of any regularly constituted committee of the Senate . . . he is to be barred from having a seat. . . . That is not only unfair, it is unconstitutional. The Constitution declares what the qualifications of a Senator are."—Senator John Overton of Louisiana.

"In my research . . . I found that the Senate has 29 times accepted the credentials of a Senator-elect and investigated afterwards; but 18 times the Senate has refused to seat a Senator-elect while the prima facie case was being investigated. The right of the Senate is clear—it may seat before investigating or investigate before seating. In this case, where a senatorial investigating committee has declared there is proof of corruption and disqualification, seating must be denied. The oath must not be administered to one who has deliberately and flagrantly flouted and mocked it."—Senator Glen Taylor of Idaho.

With these statements on the floor of the Senate when the new session opened in January, the controversy over the seating of Theodore G. Bilbo of Mississippi finally came before the "court" for decision. Organization of the Senate was delayed for two days, so heated was the debate, and was made possible at

the end of that time only by a unanimous consent agreement which suspended the entire question until Bilbo should return from receiving emergency surgical care.

The debate on the Senate floor was the climax of a controversy which had aroused great interest and high feelings during the preceding six months, ever since the opening of the primary campaign in Mississippi. Indeed, considerable curiosity about the case existed abroad. Senator Ellender of Louisiana who was a member of a Senate group which made an official round-the-world inspection trip last summer, stated (apparently with some heat) in the Senate that the local newspapers at every stop-over were filled with pictures and reports of the Bilbo campaign and the subsequent investigations. Senator Ellender implied that there was some plot to stir up trouble over what was an ordinary Mississippi primary, as an initial move to oust by subterfuge those Senators who opposed anti-poll tax and FEPC legislation.

Whatever may be the explanation for outside interest in Bilbo's campaign, the struggle to deny Bilbo a seat raises an important constitutional issue as to the qualifications the Senate may require of a member-elect and the procedure to be followed when the right to a seat is questioned. This issue has ramifications involving free speech and free elections, and is complicated in the Bilbo case by sectional pride and to some extent by partisan politics. It is the aim of this article to examine briefly the constitutional question and its complications, but to try to avoid the extraneous complications.

Background of the Case

Some understanding of the factual background of the Bilbo case and of how the question of seating Bilbo arose procedurally may serve to point up the issue. In 1944 the U. S. Supreme Court in *Smith v. Allwright*, 321 U.S. 639, 64 S. Ct. 757, held that to deny a person a primary vote because of his race or color violates the 15th amendment of the Federal Constitution (the right of citizens to vote shall not be denied by any State on account of race or color) if the primary has been established by state law and, together with the general election, forms "a single instrumentality for the choice of officers." This decision, plus the fact that the Mississippi legislature had forgiven poll taxes for all veterans, opened the possibility of a heavy Negro vote in the hotly contested Democratic Senatorial primary. In order to exclude Negroes from the primary, and in order to gain the support of voters who also favored such exclusion, Bilbo harangued his audiences about the necessity of "advising" Negroes to leave the Democratic primary to the white voters; and in public statements he repeatedly counseled election clerks to enforce the literacy and party-loyalty requirements in such a manner that Negroes would not qualify to vote. The exact language Bilbo used in urging these measures is in dispute. At any rate, there was some violence and many Negroes who attempted to vote were

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PLANS COMPLETED FOR FORMAL DANCE

Soft lights, music by Chappie Arnold and his orchestra, and clinking ice cubes will highlight the annual spring formal dance of the law school on March 21 at the Hotel Somerset.

Since this is one of the few social events open to the entire law school and a large attendance is expected, Jud Leatham, chairman of the law school dance committee of Phillips Brooks House, advises that tickets be purchased early so that additional space can be engaged if needed. Tickets at \$4.20 per couple will be available in Gannett House and in the corridor in Langdell South until the supply is exhausted. Mr. Leatham advised that table reservations should be made at the time tickets are purchased and that persons wishing to sit together should indicate a desired seating arrangement as early as possible.

Owing to the fact that there remains a sellers' market in men's evening wear, the former stringent rules as to what constitutes formal dress have been relaxed to include tuxedos and military uniforms.

LAWYERS RETARD LABOR LAW; LEWIS DECISION DISCUSSED

Cox, Wirtz Indicate Probable Effect of Opinion In The Case

COX

It is difficult, without having had an opportunity to read all the opinions, to state any firm opinions about the *Lewis* case. Two points, however, strike me as worth attention.

First, apart from its impact on the operation of the coal mines, the most important aspect of the *Lewis* case may turn out to be the court's holding that wherever it is seriously contended that the Norris-LaGuardia Act (or corresponding state act) is inapplicable, a court of first instance may, without complying with the Act's procedural safeguards, issue an order restraining strikes, picketing, and other peaceful labor activities, which will be effective during the litigation even though it is ultimately determined that the Act does apply and the activities should not have been enjoined. This ruling is applicable to suits by private employers as well as to suits by the government. It will doubtless influence the state courts in interpreting state anti-injunction laws. Although one hesitates to forecast on the basis of a single decision that this will happen, the decision would seem, therefore, to open the way for a revival of the practice of using judicial process to break strikes. The success of that tactic does not depend upon the final decree but on the temporary restraining order; such an order will effectively break a strike for by the time the case is decided on its merits, the occasion for the strike has long since passed; indeed, this was one of the strongest factors leading to the enactment of the Norris-LaGuardia Act. And since the inferior federal courts and the state courts have read a number

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PAPER IS PLANNED AT COLUMBIA LAW

Reports from Columbia Law School indicate that the Record may soon have to relinquish its title as the nation's only law school newspaper.

According to a letter, requesting information, recently received from a student representative at Columbia, the students there are contemplating the formation of a paper with purposes similar to those of the Record.

The present plans at Columbia call for a five or six column tabloid size paper of four pages, with one page, less advertisements, for alumni news.

The Record, now in its third term of publication, was able to give information considered by the Columbia students to be helpful in the formation of their paper.

AVC LOOKS FOR LEGAL ADVISORS

The Harvard Chapter of the American Veterans Committee is interested in contacting students in the graduate and undergraduate schools who would be interested in working for the Legislative Committee of AVC which will review and report on and testify for or against bills submitted to the Massachusetts Legislature. The work would be concerned with bills in which AVC has an interest, and the job of the committee would be to gather the facts and make the analyses that will make it possible to testify before the various committees of the House and Senate. In the American Legion, VFW, and the other older veterans groups, this work is done by men and women paid and trained for such activity. AVC lacks the funds to supply such service for its members at the present time, but the work of this committee is to be under the direction of men who are experienced in this field and are volunteering their time so that it may be done as effectively as possible. Names and addresses of those persons interested should be left in Record Mail Box in Langdell South and they will be notified of times of meetings. For further information call at Phillips Brooks House; the AVC office is on the second floor and open 10 to 4 on weekdays.



WILLARD WIRTZ

STRIKES, NEXT FORUM SUBJECT

Donald Richberg, Jesse Freidin Main Speakers

"How Can We Mitigate Industrial Strikes?" will be the subject for discussion in the next meeting of the Harvard Law School Forum in Sanders Theatre at 7:45 P.M. on Friday, March 14, in the last of a series of sessions designed to examine the field of industrial relations.

Donald Richberg, attorney and co-author of such well-known labor legislation as the Railway Labor Act, the Norris-LaGuardia Act and the proposed Federal Industrial Relations Act, and Jesse Freidin, former Public Member of the National War Labor Board, will be the principal speakers.

The moderator for the evening will be Professor Lon L. Fuller of The Harvard Law School.

Discussion of this topic should provide an interesting contrast to the previous meeting on "The Causes of Industrial Strife" in which the speakers, Professor Leo Wolman, and Mr. Clinton Golden, not only differed widely in their emphasis on the causes of strikes but also presented conflicting proposals for avoiding them. Some of the proposed remedies will come in for close attention from Mr. Richberg and Mr. Freidin, both of whom have played important roles in the efforts by the government in recent years to establish a firm basis for relations between labor and management.

One of the bills now before the Senate Labor and Education Committee, the Federal Industrial Relations Act, sponsored by Senators Hatch, Burton, and Ball, was co-authored by Mr. Richberg and its provisions will no doubt form some of the background for Mr. Richberg's proposals. As a member of the National War Labor Board, Mr. Freidin was constantly in close touch with the particular problems on which he will speak.

Second Hocking Lecture Discusses The Law's Non-rational Elements

In his second lecture, Professor Hocking discussed the non-rational elements in law, the relation of reason and the, not irrational, but extra-rational. This is still the chief battleground of divergent systems of jurisprudence and philosophy and is the most difficult problem in the field of international law and peace.

Professor Hocking began by outlining the view of the Middle Ages of reason and law. St. Thomas defined law as "an ordinance of reason for the common good, made by him who has the care of the community, and promulgated." This formula is not inconsistent with Kant's solution of the problem of mutually compatible freedoms, since it operates within a general rule and must be thought out and promulgated. St. Thomas also recognizes, as clearly as Austin, that law must have an authoritative source; the medium in which law operates is will—

Forum On Labor And The Law Criticizes Legal Profession

Fortified with an extensive background of experience in labor questions, Professor Willard Wirtz, in a discussion under the auspices of the Forum held Friday afternoon, March 7th in the court room, strikingly indicated three ways in which lawyers have retarded the practical development of labor law.

Mr. Wirtz, a graduate of Harvard Law School in 1937, former member of the War Labor Board and the Wage Stabilization Board, and now Professor of Law at Northwestern University, said that there is a tendency of lawyers to substitute precedent and legalistic thinking for an understanding of the social problem; that the legal processes are just not fitted to labor disputes because by the time that they function the dispute is over; and that, there is a complete failure to recognize the public interest in labor law.

Culminating in the above criticisms of the development of labor law, Mr. Wirtz first attempted to give the audience a picture of the present labor law both common and statutory, which laws he said were "whispering pines and hemlocks but most of them saplings." In order to give this picture four hypothetical circumstances were assumed and the laws that governed these situations were outlined broadly but with apt illustrations.

The first situation was that in a plant where the employees were entirely unorganized. In introducing us to this situation Mr. Wirtz gave us a definition of terms and stated that the law in the United States has never approached what he called the "nuclear problem" except in an incidental and indirect manner. The "nuclear problem" is that of wages and hours and other such basic issues. Russia and the Latin American countries approach the labor management issue by seeking a solution to this problem, said Mr. Wirtz. Our control of wages and hours are only incidental to protecting established rights or prerogatives.

In discussing the second case where the employees decide to organize, the Professor stated that the law takes the form of a virtual guarantee to the workers of a right to organize and places the services of the government behind the workers in determining the administrative mechanics.

Negotiation and the conclusion of a collective bargaining agreement was the third situation and Mr. Wirtz said that the law which provides that management must bargain with the union but that the union does not have to bargain with the employer makes little practical difference because the union like the Red Cross is organized for a specific purpose and no law is necessary to make the union carry out that purpose. He saw no foundation in any argument against a law because it was too one-sided but viewed the situation as a horse-race where the question was what weight was to be placed on each horse so that the

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Editorials

A few months ago the Dean of Harvard Law School expressed the opinion that the present group of students is excessively concerned over grades. He considered this emphasis unfortunate and hoped that it would change. A similar opinion has just been published by the Dean of Harvard College, who sees in this trend a sacrifice of many of the things most valuable in university life, particularly group association and discussion. In the case of undergraduates the situation is aggravated by the struggle to get the high grades which alone give an entree to the crowded professional schools. These statements emanating from responsible quarters suggest that the widely proclaimed academic seriousness of the veterans does not itself indicate maximum exploitation of educational opportunities.

If the condition is an undesirable one, attempts should be made to remedy it. But admonitions by the faculty that "after all, grades aren't important" will fall upon stony ground so long as schools make their decisions as to admission, retention, and placement of students solely upon the basis of the magic arithmetical index. The students are not in a position where they can safely take the first step in the de-emphasis of grades.

It may well be that the university administrators are also not in a position to alleviate the situation. The convenience of three digits and a decimal point as the mark of a man's worth must be particularly persuasive when admission applications are numerous and classrooms are crowded. But it should be recognized that both logically and practically the burden of coming forward with a de-emphasis is on the Faculty rather than on the students.

T. J. O.

Letters to the Editor

To the Editor of The Record

Next term Dean Pound will teach a class at the Law School for the last time. No one familiar with the School needs to be told what a loss this will be; no one familiar with law today needs to be told of the importance and pre-eminent position of Dean Pound, as a jurist and a teacher. His writings will speak for him, assuring his position in Jurisprudence, long after those of us fortunate enough to study under him are gone.

But would it not be a fine thing if, in a way, Dean Pound could speak for himself? It would be a fairly simple matter to make a recording of those final lectures; it could be done without disturbing his class and with the minimum of trouble once the technical arrangements had been made. Dean Pound would be the last to assert that the words he speaks are Eternal Verities, yet even he would hardly deny that it would be worthwhile to preserve those words as spoken if only because many classes to come will be interested in what he said, and that interest might be to an extent gratified if they could hear as well read his words.

We respectfully suggest that the RECORD urge that such arrangements be made to preserve for those who follow us the voice of one of our truly great teachers of the Law.

JOHN MOSKOVITS
HENRY LOPEZ
JACK BACKMAN
PAUL N. TEMPLE
MELVIN J. SYKES
SUMNER SILVER
VINCENT C. DE MAIO
HENRY A. MORAN
JOHN K. GRANFIELD
DANIEL C. DOOFEN

To the Editor of The Record:

It is not a fair practice for an instructor to alter future assignments when the class is only one day's work—four cases—from the page where the alteration is made. This is particularly true if the original assignment was made at the beginning of the year, ostensibly for the entire semester.

It is not argued that no changes should be made to compensate for adjustments made necessary by the rate of progress of the class. Such changes are inevitable. It is argued, however, that adequate preparation by the instructor would ensure that such changes were announced at least one week before the class reaches the deviation.

To maintain jocularly that doing such unnecessary work is "good for you" is simply to attempt to shift attention from the instructor's delinquency to the laugh-provoking plight of the prepared student.

SECOND TERMER

To the Editor of The Record:

In war, business, or college, I have never seen so many intelligent people so worried as here in Harvard Law School.

GEORGE SPIEGEL, 1st Term.

Off the Record

MINIVER HARVARD

Miniver Harvard, child of Coke
Grew lean while he assailed the seasons,
He cursed the modern laws which choke
The ancient reasons.

Miniver loved the days of old
When deeds were long and wills entrancing,
The memory of a fee-tall bold
Would set him dancing.

Miniver sighed because he knew
The past was gone—beyond his labors,
He dreamed of Baron Montague
And Bridgmans neighbors.

Miniver mourned the ripe renown
That made so many a name so fragrant,
He mourned for Trover seldom found
And Case a vagrant.

Miniver loved the Chancellors
Albeit he had never seen one,
How counsel would have feared his snores
Could he have been one.

Miniver damned the common phrase
Of art the legal trade depriving,
He missed the medieval grace
Of "him surviving."

Miniver served the gold he sought,
(A fleeting sneer for him without it),
Miniver thought and talked and thought
And talked about it.

Miniver Harvard, born too late
Read his books and kept on musing,
Unmindful of man's present state
And A-bombs fusing.

—By one who thinks a little more of the "social approach" would be a good thing.

The Book Shelf

THE NURNBERG CASE: as presented by ROBERT H. JACKSON, Alfred A. Knopf, \$3.00.

The most dynamic member of the present Supreme Court has presented what the publisher modestly calls "history's greatest criminal trial." If by "greatest" is meant most precedent shattering there is little to do but agree. Professor Sheldon Glueck, in an earlier book, discussed the juridical basis of the trial and Mr. Jackson in another earlier edition outlined the case and indictment against the Nazi War Criminals. The volume under review summarizes the previous accounts and gives a rounded picture of the whole affair which relieves some of the tedious presentation by the newspapers and periodicals contemporary with the trial.

One aspect of the book, probably little dreamed of by the author, reveals the method and workings of Mr. Jackson himself. The book, ostensibly written for laymen, will undoubtedly produce in the legal profession, which includes law students according to no less an authority than Dean Erwin N. Griswold, a keen insight on the legal character of the Justice. He is essentially a prosecutor. His years as Solicitor General and Attorney General must have been far happier than his more controversial ones on the bench. If anything is needed to support that proposition his present day strongly worded opinions, be they dissenting or concurring, should suffice. His opening statement for the United States in the war crimes trial coldly and methodically places before the tribunal the background and underlying basis for the criminal acts being prosecuted, briefly characterized as "The Lawless Road to Power."

Carefully documented, brilliantly and forcefully presented are the Nazi campaigns against the working class, the churches and the Jews. A summation is given to the Tribunal, of German terrorism and experiments in aggression; the waging of aggressive war and the conspiracy with Japan are likewise touched upon. Chiefly emphasized is the "Law of the Case." It is here that the book spells out why this is "history's greatest criminal trial." It is here that Mr. Jackson points out the revolution that is being consummated in International Law. The lack of judicial precedent is explained away, not arbitrarily or on mere declaration of faith, but by able argument and presentation; by analogy and by background; by a recounting of international negotiation up until the waging of this war. By charging crimes against Peace; by recognizing a law of individual responsibility and by introduction of the view of criminality of political, police and military organizations Mr. Jackson sets the stage for this new cornerstone in world wide acceptance of a law which will fix responsibility and provide punishment for waging aggressive war.

There were four counts in the Indictment; the First and Second dealt with crimes of plotting and waging wars of aggression and the Third and Fourth with specific war crimes and crimes against humanity.

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—Harris B. Steinberg, '35

OVERRULED

Gallery

ALFRED MACK
Judge

If Mr. Justice Holmes had gone to do research among the courts of Hamilton County, Ohio, last Fall, instead of the writer, he would have been interested to see that Alfred Mack still sits on the Court of Common Pleas, located in the Cincinnati Court House. Alfred, known familiarly as "Alfie" or "Old Bushy-Beard," by his own admission is the last surviving student of Holmes, who was an Associate Professor at Harvard Law School in 1882, the year before Judge Mack took his degree. Holmes would have admired the bristly white beard on the face of the Judge, his quick mind, his zest and energy. But what Holmes would have thought about his penchant for nepotism and his political subservience in a patronage-supported, boss-controlled machine is another matter.

Not long ago Mack was wheeled into the operating room of a Cincinnati hospital for a minor operation. He lay, swathed in sheets, fuming at the delay. After waiting a while, he arose and climbed down from the stretcher. "I can't waste any more time here," he said, departing never to return. This impatience is characteristic of the Judge. His charges to juries are models of compactness, simple and forceful. He treats dallying lawyers like "Bull" Warren handled first year men. At least fifty lawyers who practise in the Common Pleas court, and this figure was set by Mack's companion judge, refuse to practise in his court. "He tries the case for you," say these lawyers who hanker to ask the questions themselves and shy away from the mental maltreatment Mack can hand out.

This desire to get to the heart of a case without delay makes the Judge a strong advocate of pre-trial procedure, which in capable hands can result in the settling of many cases without trial, in the paring down of pleadings to essentials, and in obviating the calling of juries. Such a procedure is provided for in the Rules of the Court and the Judge is darkly resentful of the indifference of his brothers with respect to this technique.

"I intend to stay on the bench until I am 100," he states. He is 85 years old, likes his job and puts in a full day's work—when there is a full day's work to do. This qualification is necessary because litigation has fallen off tremendously and the judges are often hard put to appear busy. (This may explain their neglect of pre-trial.) Mack invariably arrives in his chambers before nine o'clock. He has his faults, but laziness, neglect of duty and stupidity are not among them. It is significant that the Hamilton County Republican Organization or "gang" determines the nominees for judicial (and other) positions and that those nominations, which are in the control of the boss, are tantamount to election.

The present presiding Judge, a former "gang" chieftan, not only practices nepotism but defends it. Mack's repeated appointments of his grandson-in-law, who is an assistant in the City Prosecutor's office, as an appraiser in partition suits is no isolated example. Sons and sons-in-law have come in for their share of these gratuities by the grace of three or four of the other judges. Mack frequently importunes his colleagues to make appointments personally satisfactory to himself. He saw fit to appoint a certain lady lawyer as counsel for indigent prisoners in nine different cases in the last few years, apparently disregarding the fact that the lady was employed as a "full-time" stenographer for the Ohio Court of Appeals (District One), the offices of which are in the same building.

No one accuses Mack or his colleagues of deciding cases to please the gang, at least not in the last twenty years. This is not surprising because any such case can be satisfactorily fixed so that it never comes to trial. The offices of the Sheriff and the Prosecuting Attorney are solidly staffed with "gang" stooges both elective and appointive. Old Boss Cox, asked once by Lincoln Steffens how he could be the Boss when the city had a mayor, councilmen and judges, replied, "Yes, and I've got a telephone." The Sheriff and the Prosecutor have telephones and so does the present Boss who is a Cox-man from the old days.

He is more than a little deaf. There have been instances in court when his behavior or comments or questions show that he has missed complete portions of testimony or argument. Ohio has no substantial retirement provisions for judges. A few of the other aged judges have evidenced their senility in more harmful ways. Until a few years ago a blind judge sat on the Municipal Court. Mack makes no attempt to hide his deafness, often forsaking the bench for a chair beside the foreman of the jury so he can hear the attorneys better.

Industrious, efficient and alertly intelligent, Judge Alfred Mack is a credit to the Law School and the Class of '83, and possibly to some extent to Holmes himself. But to what corrosive influence or institution one should debit the decidedly unethical aspect of his judicial character in respect to playing ball with the political machine is not at all clear. Holmes and Harvard Law School can hardly be blamed for his policy of appointing machine workers, his friends and relatives to workless posts in the courtroom or in connection with cases.

Nor did Holmes and Harvard Law School teach him to vote in the Joint Sessions of the Court of Common Pleas according to the dictates of the machine regardless of the merits of questions presented. For example, not long ago when cost of living raises were being given to public employees, there was a move to increase the salaries of the court constables, almost all of them being political workers who are privileged to sup at the public trough because they produce the votes on election day. The Ohio Code stipulates that their salaries shall not be increased beyond a certain figure unless in payment for extra work. The judges voted them their raise, each solemnly attesting that these worthies were doing extra work for the additional compensation but knowing full well that the contention was false and but a pretense to raise their salaries. The Joint Session readily ratifies appointments for vacancies in the Clerk's office, the names having been selected by the Patronage Committee of the Republican party. Not long ago, the judges in Joint Session were empowered to appoint building commissioners. A number of able men volunteered to serve without compensation but the judges, Mack included, appointed less able men on a fee basis because the politics involved counted for more than civic virtue.

Mack, upon reading an article written by Murray Seashongood, '03, leading Cincinnati lawyer and ex-mayor, for the RECORD last Summer, called Seashongood on the telephone and congratulated him. The point of the article was that the young lawyer should avoid selling out to a political machine and should maintain his integrity by fighting for good government. Ultimately, Seashongood wrote, he will derive more satisfaction from life—and will also attract many clients.

C. O. P.

Sub Judice

EXCLUSION OF THE WEAKER SEX IS NOT A GROUND FOR REVERSAL****

The I AM movement was being fostered in that haven of cults, California. Petitioner was indicted and convicted for using and conspiring to use the mails to defraud in promotion of the movement. He had been found guilty by the trial judge who excluded certain factors from the jury's consideration. The Circuit Court of Appeals reversed the conviction and the United States Supreme Court reversed the CCA and remanded the case to the CCA for a rehearing and then certiorari was granted. Petitioner alleged, and it was conceded, that women were not included in the jury panel of the grand or petit juries in the Southern District of California where the indictment was returned, and trial held. He claimed that they were intentionally and systematically excluded from the panel.

The Court Splits on the Various Issues

A majority was for reversal of the CCA's decision and for dismissal of the indictment. However only four of the Justices found that exclusion of women jurors from the panel was fatal error. The majority, who were in fact the minority on the women jurors issue, cited the point that Congress had provided that jurors in Federal Courts should have the same qualifications as those in the highest court of law in the State. California made women eligible for jury duty. Mr. Justice Jackson, who concurred in the majority opinion held that the petitioner had either abandoned the jury contention or else that it was silently ignored by the Court in its prior decision and should not be revived.

The dissent wrote two opinions, one by Mr. Justice Frankfurter and the other by Mr. Justice Burton. Mr. Justice Burton disagreed with the majority and stated that there was no constitutional or statutory ground nor any court rule or policy requiring women to be placed on federal jury lists and California by general practice did not call women for jury duty, though eligible, which in effect granted women a substantial exemption. He felt that the only error in federal practice would be a failure to require listing of women and not the exclusion from the panel. *Ballard v United States*, 15 U.S. Law Weekly 4049.

YOU MAY HASTEN! YOU MAY HURRY, BUT YOU MAY NOT SPEED****

Young Ranollo was driving the Hon. Trygve Lie, Secretary-General of The United Nations at what the information claimed, was an excessive speed. As many probably know from personal experience the Hutchinson River Parkway in Westchester County, New York is no place to play Barney Oldfield. At any rate the case came on for hearing in the City Court of New Rochelle, N. Y. The plea was, immunity of the chauffeur under the rules of International Immunity and Presidential proclamation pursuant to an act of Congress. The judge, after what appears a fastidious search of precedent, held that in most cases where diplomatic immunity is granted in criminal cases the miscreant is generally punishable in the courts of his own country. Here, however, the United Nations has no tribunal capable of punishing such acts. [This cruel anomaly has patent reflections on the international scene itself.] The court points out that to allow immunity here would carry the principle out of bounds and "flouts the very basic principles of the UN itself. . . ." The opinion further states that the immunity should be held down to those personnel whose activities are such as to be necessary to the active execution of the purposes and deliberations of the UN as distinguished from those household servants and personnel who merely serve the personal comfort, convenience or luxury of the delegates or Secretariat. Defendant was required to plead to the information. *Westchester County v Ranollo*, 67 N.Y. S. (2d) 31 (1946).

The case had all the ammunition necessary for an appeal and perhaps an eventual determination of the issue in the U. S. Supreme Court but like the barrister Professor Scott describes who left a will which contained all the trust and real property questions not yet decided by the House of Lords in the hope that his will would eventually determine them and who even in death was frustrated when his heirs and next of kin settled out of court, here too there is little hope of decision. The fine was paid and the opinion here cited is the present state of the law.

THE DAMON RUNYON BOYS HIT THE COURTS****

1940 was a hot election year. A classmate at the Law School, evidently in the know, informed us that a certain gentleman in New York named Sam Boston was "laying heavy sugar on Wilkie—to win!" When Roosevelt was re-elected a query on "what happened to Sam Boston?" brought the retort, "There was a double cross!" In 1942 a character, now a guest of the State of New York at one of its free hotels, took a couple of shots at Sam Boston missing him but killing two companions. Boston, of course, was the well known gambler of the Broadway sporting fraternity.

In January 1943, a certain Samuel Solomon was arrested in his luxurious New York apartment where police charged he was taking bets on the Willie Pep-Allie Stolz boxing match over the telephone. When he was found guilty in Special Sessions the following November, the police said the verdict marked their first success in thirty years of effort to prove legally that he was a common gambler. Solomon was, of course, the well known gambler referred to above—Sam Boston. The court sentenced him to one year in the penitentiary as a common gambler and he was denounced from the bench as a "confirmed gambler." The Appellate Division reversed the conviction but he was convicted at the second trial and sentenced to six months in the workhouse. He carried his appeal to the highest court in the state and in a unanimous opinion won a reversal. The Court of Appeals stated that "since 1920, boxing and sparring matches or exhibitions had been allowed in New York within limits fixed by the Legislature. The popular name of these statutes are the Walker Law. The prizefight here in question was sanctioned by the Walker Law and so the provisions of the penal law relative to gambling were without application to that particular fight."

The broad language of the court was contained chiefly in a statement in the opinion that, "In general, casual betting or gaming by individuals—as distinguished from betting or gambling as a business or profession—is not a crime in this state." *The New York Times*, Feb. 27, 1947.

The Witness Stand

The Question: Should teachers have the right to strike for higher wages?

1. *Saul G. Marias*, Brooklyn, N. Y. 5th Term.

Teachers should have higher pay because: (1) it will raise their standard of living; (2) it will make the teaching profession more attractive; (3) in many cases it will eliminate the necessity of a teacher's doing odd jobs in order to augment his income, and will result in greater teaching efficiency; (4) it will give teachers that security to which every employee is entitled under the national labor policy.

Giving the teacher the right to strike will enable him to obtain his legitimate demands in many cases without striking, since the right to strike itself will be a valuable implement in bargaining. Public policy demands an improvement in our educational system and this is one way of achieving it.

2. *Benjamin J. Gantt, Jr.*, Cincinnati, O. 3rd Term.

Almost without exception, high school and grammar school teachers are the most underpaid persons in this country. If there is no other way for them to impress on the people their genuine need for more money, they should have the right to strike. Public school teachers occupy a very important place in the general advancement of our society. If teachers continue to be grossly underpaid not only will our schools be understaffed, but they will also be taught by inexperienced and untrained personnel. In as much as teachers hold jobs of high responsibility in the community, they should receive a just compensation for their efforts. Surely, when the janitors and charwomen employed in a school get higher pay than the teachers in the same school, there is a just grievance. Higher wages will attract better, younger teachers and will allow school boards to retire and fire the deadwood that often clutters up the public school system.

3. *John M. Metzger*, Williamsport, Pa. 5th Term.

An answer to this question can only emphasize the need for enlightened legislation and law, long overdue, with respect to all workers' organizations. On principle, I cannot see why teachers, or policemen or firemen, should have their bargaining power questioned by denial of the right to strike. Indeed, I do not think it is possible to provide a successful remedy even if you do deny persons in public employ the right to organized abstinence from work. I believe that in the Buffalo teachers' strike, counsel have advised the teachers that they no longer have any legal claim to their jobs. But, does anyone doubt that all of them who want to, will continue to be employed after major concessions have been made to their demands?

I do believe that the right of all organized workers to strike needs to be redefined, so that the right to strike is not synonymous with the right to imperil the community welfare or destroy the nation's economic structure. There is not ample justification for the nationwide tie-ups that have resulted from over-centralization of union power in certain industries. But since all strikes are symptomatic of social and economic gears improperly meshed, I hesitate to say that one group or another should be deprived of this method of expression.

4. *Martin Horvitz*, New York City, N. Y. 5th Term.

Both on principle and for practical reasons, I disagree with any attempt to deny the right of teachers to strike. To date, we have been satisfied with the theory that the basis of our society is the individual and that the state serves him. We have allowed infringement on this principle only under extreme circumstances, times of war, national emergency, etc. To deny the teachers the right to strike is to place their disputes into the class of national emergency. It is but a small step from this to denying the right to strike in other industries.

Is it not strange that there was not much din and roar during the recent strike of big business against government? The American people by an overwhelming, spontaneous poll, initially backed the continuation of the OPA. Refusal of business to release vast quantities of goods until the OPA was repealed brought about its final destruction. This was a strike against government and the people—in a more serious situation. Why, then, the huff when a handful of teachers in Buffalo strike for higher wages? Why does the spectacle of strike against government become so serious when conducted by a handful of teachers, but comparative sanity when the bulk of big business sits by and coldly holds out

Alumni Notes

Ex. '87—*Edmund D. Codman* died February 19 at Westwood, Mass.

Ex. '00—*Samuel T. Frost* died February 22 at Dorchester, Mass.

LL.B. '12—*Irving F. Carpenter* died in Fort Lauderdale, Fla. on Feb. 26. After graduation from the Law School, he practiced law in Boston, Mass. and Barre, Vt. until 1924. From 1924 to 1927 he was editor and publisher of the *Barre Gazette* and prominent in other activities in that town. Other interests included his Vermont farm where he maintained a large orchard and specialized in the raising of sheep and horses.

LL.B. '13—*Norman Armour*, former Ambassador to Spain, received an honorary degree of Doctor of Laws from Princeton University on February 22.

LL.B. '25—*Sylvester P. Meyers*, former Assistant Chief of the Civil Rights Section of the Criminal Division, Department of Justice, and former attorney in the Solicitors Office, Department of Agriculture has formed a partnership with Victor W. Rotnem under the firm name of Rotnem and Meyers. The firm specializes in matters before the U. S. Government, and in international property and financial problems. Their offices are at 307 the LaSalle, 1025 Connecticut Ave., N. W., Washington 6, D. C.

LL.B. '26—*Richard S. Bowers*, former Mass. State Senator, has been appointed president of the Massachusetts Civic League.

LL.B. '27—*James C. Forsyth*, formerly a partner in the New York City firm of Wherry, Condon & Forsyth, has announced the formation of the firm of Condon & Forsyth. Offices are at 30 Broad Street, N. Y. 4, N. Y.

LL.B. '28—*Thomas P. Rogers* has returned from duty with the armed forces, and has announced the reopening of offices for general practice located at Suite 725, 68 Post Street, San Francisco 4, California.

LL.B. '30—*Charles E. Hammett, Jr.*, died February 24 at Weston, Mass.

LL.B. '36—*Frank J. Kockritz* has opened an office in Los Angeles for the San Diego firm of Gray, Cary, Ames & Driscoll.

LL.B. '36—*Miss Priscilla A. Nelson* and *Robert Mason Estes* were married in Manchester, N. H., on March 2, Estes, who served as a lieutenant colonel in Chemical Warfare during the war, is now a member of the legal staff of the General Electric Co. in Bridgeport, Conn.

LL.B. '36—*C. Clark Stover, Jr.*, formerly an associate in the New York City firm of Speir & Kerbeck, has become a partner in that firm, and the firm name has been changed to Speir, Kerbeck & Stover.

LL.B. '39—*Boyd F. Goldsworthy* has announced the opening of an office for general practice in association with Chester L. Anderson. The address is 907 Central National Bank Building, Peoria, Illinois.

LL.B. '39—*Wright Tisdale* has become a member of the firm of Hughes, Hubbard & Ewing, One Wall Street, New York City.

LL.B. '40—*O. C. Beakes* has announced the opening of Law offices in the Barnett Bank Bldg., Jacksonville, Fla. He is engaged in general practice.

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BOOK SHELF—(Continued)

The most interesting and perhaps least technical of the reading is in the excerpts from the Cross-examination of the Defendants. Now it is pudge Goering who responds remarkably well to the probing of the examiner. One is almost swept to sympathy for this man. He admits all he has done. He recounts much more and makes revelations of the baseness of the Nazi ideology, at all times apparently sincere in what he says and believes. It is only after considering that the very things so proudly being acknowledged by him are beyond the logical comprehension of reasoning human beings that one can realize that the sympathy felt is toward a sick man. Sick he must have been; sick in the sense that his brain functions were lacking in what man has been striving to attain since he moved into a cave for shelter. Poor Goering! His testimony figuratively affixed about his once big neck the very noose he succeeded in cheating the hangman from tightening.

The piece de resistance is the testimony of Hjalmar Schacht. This slippery weasel is the Talleyrand of his age. He will serve any master of the German State. How he ever managed to be acquitted is one of the mysteries of the case. More than one commentator has alluded to the integrity of the court, which hardly seems fair. The Russian member dissented so vigorously that it amounted to a warning to the slimy character that he had best retire from public life once and for all. Recent intelligence reveals that Franz von Papen, likewise acquitted has been found guilty by a German People's court and some small measure of satisfaction may be taken from that. Schacht is presumably next on the list. The error here, however, is significant in a larger way. It amounts to a refusal to recognize that there is, was or can be such a thing as total war. It is defined. It is decreed. But when the chips are down the man who made it financially possible is not considered a member of the conspiracy.

With the acumen of a jackal he saw the handwriting on the wall a little earlier than some of the others and seemed to prepare for just such an eventuality as this trial. That he was able to suck in the rest of the Tribunal is a tribute to his nefarious infamy.

It is the Schachts we have to fear far more than the Goerings. It is the Schachts who pollute our own national scene operating to foster such things as the Ku Klux Klan, the Columbians and criminal syndicalist groups from which the Communist party so loudly dissociates itself with protestations which are perhaps too loud, too vehement and too phony to be believed. A Goering may be laughed out of existence or more soberly placed out of harm's way. We have just witnessed such a proceeding in Georgia where the Columbian leadership in an attempt at native fascism, was convicted and sentenced. But can it be doubted that lurking in the background of that group is a "Schacht?" Who he is we do not know; that is what makes him so dangerous.

At Nurnberg, when there was a chance to make the necessary judicial precedent for the world, the Tribunal failed, failed so miserably that one can begin to de-

WIRTZ—(Continued)

race was made as close as possible. He doubted that courts would refuse to recognize unions as parties defendant and said that this whole issue was a "tempest in a tea pot" because there were very few collective bargaining agreements where the unions agreed to do anything and very few law suits where the plaintiff and the defendant have to live together afterward. Again he placed great emphasis upon the fact that the law does nothing affirmative as far as outlining what must be included in a collective bargaining agreement.

In the fourth situation the collective bargaining agreement breaks down. Professor Wirtz felt that quite a problem was posed in connection with the question of how far legislatures should be regulated in attempting labor legislation. Citing a case in 1940 where picketing was held to be "a means of advancing the public knowledge" and therefore within the constitutional safeguards provided for freedom of speech, Mr. Wirtz said that this was going too far and he seemed to feel that it was to the best interests of the labor-management problem to have as little regulation of legislatures as possible.

Striking analogies dotted Mr. Wirtz's discussion, but none was more impressive than the one which he drew as an approach to a conclusion. This was between the international problem and this one most important domestic problem. Professor Wirtz said that just as the atomic bomb is forcing the nations of the world to set up a workable international organization for settling disputes, so atomic energy would force action to settle labor disputes by using practical approaches.

spair. Already the reports filter from Germany that they are looking for a "strong man" to lead them out of chaos. One can almost see him rising like a phoenix from the ashes counseled by the devil's own advocate—Hjalmar Schacht.

The Case is now in the books. To dip into our own American history, it was once said, "John Marshall has made his decision, now let him enforce it." Whether the Nurnberg Case will rest as a stopgap to lull the immediate postwar temper or whether it becomes a keystone of a new world rests as much with the success of the United Nations and an international police force as does the question of war itself. Perhaps the true measure of success will be determined when an aggressive nation is brought before a permanent world tribunal and its leaders indicted. The Nurnberg Case may be considered successful then, if the opening address of the prosecution starts, "The Crime of Planning the Waging of Aggressive War is charged. That this is a crime punishable by this tribunal is no longer in doubt. See *The Nurnberg Case*, (United Nations Law)." S. S. E.

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INTERVIEWS—(Continued)

of exceptions into anti-injunction acts, it should not be difficult in a variety of situations for a competent attorney to draw a bill raising a serious question as to whether the Act applied. Moreover, in such a situation it is not necessary for a court to comply with the Act's requirements of an open hearing where testimony is taken, but it may issue a temporary restraining order on the employer's affidavits alone.

The second problem may be more fundamental. In the *Lewis* case the basic dispute concerns the right of the United Mine Workers to re-open the Krug-Lewis Agreement and negotiate a new wage scale and other changes in working conditions. The government rested its case exclusively on its allegation that the United Mine Workers were not entitled to re-open the issue of wages and working conditions. This question has not yet been decided, and probably no final decision can be reached under our present procedures for another year and in the meantime the miners must accept the government's view. This means that if the United Mine Workers are correct in their interpretation of the Krug-Lewis Agreement—and many of those who have studied it believe that they are—then the dilatory character of judicial proceedings will have deprived them for over a year of a right to open such negotiations which they have had continuously. Relations between management and employees cannot be held static for so long a period while the courts are reaching their decisions hence it would seem that if the judicial process is to be of any value in assisting management and labor to co-operate with each other, ways will have to be found to reach decisions at the time they are needed instead of 12 or 18 months later.

WIRTZ

The Supreme Court decision in the *John L. Lewis* case has its broadest application in the holding that a court can issue an effective temporary injunction to preserve the status quo while it is deciding whether the Norris-LaGuardia Act applies, according to Mr. Willard Wirtz, who was here last Friday in connection with the Law School Forum on "Labor and the Law."

For example, the Norris-LaGuardia Act does not apply in the case of strikes called for an illegal purpose. This requires a determination by the court whether a strike against which an in-

junction is demanded falls in this category.

While this determination is being made, the court could, under the *Lewis* decision, issue a temporary injunction. Since a temporary order is frequently enough to break a strike, the possibilities opened up by this side of the decision are very broad in the opinion of Mr. Wirtz.

The other aspect of the decision, that the Act does not apply to strikes against the government as an employer, is very narrow in its application, and the number of cases in which it can be applied can be increased only through the seizure by the government of more industries.

However, Mr. Wirtz thinks that government seizure is not likely to be increased because of the decision, in view of the strong public feeling against government operation.

Another consequence of the decision, according to Mr. Wirtz, will be its soft-pedalling effect on extreme labor legislation, since the government now has an effective remedy against strikes considered to be against the public interest, through seizure and injunction.

Mr. Wirtz does not think the decision will destroy Lewis's standing in the UMW.

The negotiations between the government and the union to arrive at an agreement before the mines are turned back to the private operators on June 30 will likely be impaired, Mr. Wirtz said.

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Calendar

THE LEGAL WORLD
Ames Competition

Qualifying round: Schedules of third term arguments are now posted on the bulletin boards. Facts will be issued tomorrow (Thursday).

Law School Forum

Donald Richberg, attorney and co-author, N. R. A., and National Railway Act, and Jesse Freidin formerly, a public member of the National War Labor Board will discuss *How Can We Mitigate Industrial Strikes?*

Law Wives

On Wednesday, March 19, 8 p. m., in Kendall House, Shreekan A. Palekar, of Calcutta, will play and explain native Indian musical instruments.

Law School Formal

The formal spring dance will be held on Friday, March 21, 9 p. m. to 1 a. m., at the Hotel Somerset, Boston.

Administrative Law

There will be a make-up class, for the one omitted today, Friday, March 14 at 4 p. m. in Langdell South Middle.

THE UNIVERSITY WORLD
Lectures

The Council for Planning Action is sponsoring a lecture on *Planning and Politics* by George A. McLaughlin, tonight in Hunt Hall, at 8 p. m. Mr. McLaughlin is president of the Cambridge Civic Association.

The Philosophy Club will have as its guest speaker Dr. Dickinson S. Miller on Thursday, March 13, in Phillips Brooks House, at 8 p. m. His topic is to be *Intelligence, Genius, and the Passions*.

William James Lectures in Philosophy: Professor W. E. Hocking's topic this Monday, March 17, at 4 p. m., in Emerson Hall, is *A System of Rights: Right to Do; Liberties*. This series of lectures on *Issues in Contemporary Philosophy of Law*, with special reference to the foundations of International Law is given on successive Mondays, except March 31, through April 28.

As the third of a series of four lectures on *Hebrew-Christian Ethics in the Professions* Professor Robert Ulich will examine this subject from the standpoint of the teaching profession on Monday, March 18, in Phillips Brooks House, at 7:15 p. m. On March 25, Dean Pound will do the same for the legal profession.

Kirkland House is presenting a series of discussions on the works of E. M. Forster. The first will be tonight in the Kirkland Common Room, at 7:30 p. m., and Professor Israel J. Kapstein, Brown University, is to talk on *Where Angels Fear to Tread*.

Dance

All students are invited to the Carlton Club Dance in the Hotel Commander, Saturday, March 15 at 8 p. m.

International Student Association

Every Sunday: Open house and tea from 4 p. m., at 5 Phillips Place, Cambridge. Buffet supper (40c) at 6:30; special program at 8.

Harvard Dramatic Club

The Harvard Dramatic Club presents two one-act plays *Waiting for Lefty*, by Clifford Odets, and *The Ping-Pong Players*, by William Saroyan, on March 13, 14, 15, in Sanders Theatre. The Thursday and Saturday performances are at 8:30 p. m. The Friday performance is at 3:00 p. m.

THE OUTER WORLD

Ford Hall Forum

Professor Arthur M. Schlesinger will speak on *Sizing Up Our Presidents* at Jordan Hall, March 16, at 8 p. m.

Concerts

Gardner Museum Concerts: Thursday, March 13, *Uni Sprengling*; violinist, and *Kalman Novak*, pianist; Saturday, March 15, *Mildred Mueller*, soprano, and *Lise Vagerchian*, pianist; Sunday, March 16, *Margaret Kurkjian*, pianist, and *Wesley Copplestone*, tenor. Weekday concerts begin at 2:45 p. m. The Sunday concert begins at 2 p. m. Admission is free.

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BILBO—(Continued)

threatened with physical harm. Most of those who appeared at the polls were rejected. Of the maximum possible 500,000 Negro voters, of whom there were 65,000 veterans, not more than 3000 cast a primary ballot. Bilbo was nominated by a majority of 4000 votes and was unopposed at the November election.

The events of the campaign and charges made against Bilbo during the campaign led to two separate investigations. The Special Committee to Investigate Campaign Contributions (whose general investigative powers include authority to examine non-financial features of a campaign) conducted hearings in Mississippi respecting alleged intimidation of voters and Bilbo's violation of his constitutional oath. A majority of this Committee reported that election violence was the result of prevailing conditions in Mississippi and not the responsibility of Bilbo; and the Committee found that Bilbo's nomination and re-election was "proper and legal and expresses the will of the qualified electorate of Mississippi." The minority stated that they believed Bilbo had violated the Constitution, the Federal Criminal Code and the Hatch Act and was guilty of "such acts and conduct as are contrary to sound public policy . . . and taint with fraud and corruption the credentials . . . presented . . ."

The second investigation of Bilbo was conducted by the Special Committee to Investigate the National Defence Program (once known as the Truman Committee), which looked into Bilbo's dealings with war contractors. This Committee reported that evidence presented to it "clearly indicates that Senator Bilbo improperly used his high office . . . for his personal gain . . ."

It should be observed that no investigation of Bilbo had been made by the Committee on Privileges and Elections when the Senate opened on January 3, Bilbo's certificate of election, signed by the Governor of Mississippi, was presented; and Bilbo was called in his alphabetical turn to be sworn. Senator Taylor of Idaho, using the argument quoted at the beginning of this article, then offered a resolution that Bilbo's credentials be referred to the Committee on Rules and Administration for examination of his right to a seat, and that in the meantime Bilbo be denied a seat. Senator Overton countered with a resolution that Bilbo be seated "without prejudice to Senator Bilbo or the Senate to determine all issues respecting his right to a seat."

The official Republican position was contained in the resolution of Senator Taft that the question of Bilbo's prima facie right to be sworn be deferred for full debate until after remaining newly elected senators, who followed Bilbo on the alphabetical list and about whose election there was no question, could be sworn and the Senate organized.

The Constitutional Problem

The problem of constitutional interpretation raised by these resolutions involves three separate clauses of Article I of the Constitution:

"No person shall be a Senator who shall not have attained the age of thirty years, and been nine years a citizen of the U. S., and who shall not, when elected, be an inhabitant of the State for which he shall be chosen." (Sect. 3, para. 3.)

"Each house shall be the judge of the elections, returns, and qualifications of its own members . . ." (Sect. 5, para. 1.)

"Each house may . . . punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member." (Sect. 5, para. 2.)

(A provision in the 14th amendment regarding ineligibility to hold office of any who "shall have engaged in insurrection or rebellion" is not material to the present case, except in an indirect manner mentioned hereafter.)

Three specific questions now arise. (1) Does the word "qualifications" in Sect. 5, para. 1, refer only to the requirements of age, citizenship and residence set forth in Sect. 3; or does it include such other qualifications as the

Senate by majority vote may decide to require?

(2) Whatever the qualifications imposed, may a duly certified Senator-elect whose qualifications are questioned be barred at the door; or is he entitled to be sworn and have all questions as to his qualifications acted upon afterwards?

(3) Once a Senator is seated, can he be removed only by a two-thirds vote; or can a majority unseat him by the expedient of declaring his seat vacant?

It may be best to answer the last question first so that we can concentrate on the questions of qualifications and procedure. The answer seems to be that a majority can unseat a Senator who has been sworn and seated. This seeming negation of the "two thirds to expel" provisions has been practiced, however, in a special situation where most people agree to such a step—namely, where fraud or duress in the nomination or election has been found, thus invalidating the election under the rule that fraud vitiates any transaction. The most recent instance of such action was the case of Senator Lorimer of Illinois in 1912. It would seem clear, too, that a member found to be below the proper age, or without the residence or citizenship qualifications, could be removed by the same means. An example of this is the case in 1794 of Albert Gallatin, removed by majority vote when it was learned he had not been a citizen the required nine years. And by extension, the lack of other qualifications—if other there be—would be grounds for unseating a member by majority vote when the lack is discovered.

This possibility, i.e., that a Senator may be unseated by majority vote if he is found to lack a qualification, makes it doubly important that there be serious thought on the interpretation of the word "qualifications" as used in Art. I, sect. 5.

Meaning of "Qualifications"

As to the first question—namely, whether the word "qualifications" refers only to the requirements as to age, citizenship and residence or whether it includes any qualifications the majority may see fit to impose—it will be no source of wonderment to law students to learn that the precedents and authorities are widely divided. My brief study leads me to believe that the weight of authority and reason support the view that eligibility qualifications for a Senator should be limited to those stated in the Constitution. (Exclusion of traitors and insane persons can be accomplished, if the need arises, by confining such persons to the proper place of detention.)

The argument for limiting the qualifications to those listed in the Constitution was never more eloquently stated than by Senator Taft in 1942. The situation was that Senator Langer, who had been seated in 1941 although his fitness and qualifications had been seriously questioned, was recommended for removal on ground of moral turpitude. The majority of the Committees on Privileges and Elections believed that certain of Langer's actions as a practicing attorney and as governor of North Dakota in the years preceding his election to the Senate, rendered Langer totally unfit as of the date he had claimed his seat. Coming out strongly for Langer (a Republican), Taft said:

"If the Senate can say that the absence of moral turpitude is a qualification, it can impose qualifications based on the morals, the religion or lack of religion, or the philosophical or political view of any person elected. This would be such a dangerous power that it certainly should not be implied unless entirely clear. The existence of such power would give to the majority of either

House the ability to exclude those who disagreed with opinions of the majority." The Senate then overrode the recommendation of the Committee and Langer retained his seat.

There have been departures, perhaps, from the rule as contended for by Taft, in the cases of Smith of Illinois, and Vane of Pennsylvania. Both cases arose in the 1920's, and both concerned the expenditure of enormous sums of money to secure nomination and election. Long debates took place on the question whether the Senate could demand qualifications of Smith and Vane which were not specified in the Constitution. Both of them were barred at the door by majority vote and later declared not to be entitled to a seat. The exact grounds for their exclusion were never clearly brought out; but both cases can be supported on the ground that the expenditure of the sums there involved constituted not only moral turpitude but such corruption and bribery that the elections themselves were invalid (as in the Lorimer case). Indeed, the resolutions adopted in the Smith and Vane cases stated that the expenditures "tainted with fraud and corruption" the respective elections. On the whole, the Senate and the House have refused to examine into charges against a member or member-elect where the charges were, respectively, that he had committed perjury, embezzlement, seduction, or other criminal acts not connected with the election.

(To Be Concluded)

LAYMEN—(Continued)

is the inter alia of petition or other exclusive jurisdiction, which, with certain exceptions as noted thereon is in effect a conveyance for other than parties or privies in fee simple.

LASSEN (pacing up and down): Am I to understand the replevin is in equity unless otherwise noted?

HAMLET (throwing his shoulders back defiantly): No, on the contrary, the affidavits or ante-nuptial conveyance is in a state of defeasance.

WAITE (lighting his pipe): How about the writs and other processes?

HAMLET: You have those don't you, Mr. Elie?

ELIE (jumping as tho punctured): Huh?

HAMLET: Yes he has, Mr. Waite. I'll vouch for him.

LASSEN: There are certain adjustments here in a state of transfer to the decedent's title. What shall we do about those, gentlemen?

HAMLET (aside): Better get your dough out, Mr. Elie, this is where you hand it over.

WAITE: Is there any other tangible property, ships excepted, for the devise requiring a stay of execution?

HAMLET: No, sir, the escrow is in fee double. Shall we carbon that?

WAITE (crisply): Yes, and assign it back to the mortgagee or, in case he's gone off to Thompson's for a coke, the interpleader is provided for a pledgee.

HAMLET (whispering hoarsely): Okay, hand over the dough, quick.

WAITE (examining the check through a large hand glass): Thank you. Shall we check our watches, gentlemen? It is now 3:14:47. Right?

ALL: Right.

SIGN HERE AND HERE—12 pt caps.

WAITE: Now sign her, please. And here, and here, and also here. That's fine. Now, Mr. Elie, you are in a state of escrow.

ELIE (nervously): I am?

HAMLET: It's all right, though. You'll only be in it about 20 minutes. Won't he, gentlemen?

WAITE: Maybe even less. Well, gentlemen, a very simple procedure, everything all in order and no sequestrations to speak of. And now shall we garnish the intestacy or put it in escrow with Mr. Elie?

HAMLET: Let's do it another day, Mr. Waite. My client seems to have fainted.

Reprinted with permission from Rudolph Elie's column "The Roving Reporter," Boston Herald, Nov. 4, 1946.

HOCKING—(Continued)

implanted in men by God and thereby participating in the character of changelessness, is a subordinate element. The natural law is made up of "general and indemonstrable principles which human reason needs, to proceed to the more particular determination," such as do good and avoid evil, shun ignorance and avoid offence to others.

Now, to proceed from divine law and natural law to human law, which is St. Thomas' equivalent of positive law, there are two ways: by deduction or by specification.

By deduction, we conclude that one must not harm another. This gives us the "ius gentium," the law of nations, a body of principles common to the customs of many nations, without which social living would be impossible.

By specification, we attach a definite punishment that could not be discovered by deduction, from the principle that crime is punishable. This gives us "ius civile," the civil law, and this phase of human law will vary from place to place since the specifications have an element of arbitrariness in them.

Professor Hocking adds another "reason" to the case, the citizens' reason, the "natural reason" of the human subject meets the law halfway. The "citizens' reason" is a trait concerned with the fact that every man has two views of himself: an egocentric view in which the world is divided into two equivalent parts, the self and the not-self, and a universal vision, as a particle lost in infinity. This latter is the citizens' reason Hocking refers to. In precept form it can be expressed in the Golden Rule, or, count yourself as one and only one. This takes the technical form of a doctrine of equality. The elementary ingredient of justice is this willingness to consider oneself as from the outside.

Although this kind of reasoning is presented as an achievement, the capacity for it is a part of the original mental endowment in the sense that thought, as distinguished from perception, is an outgoing apprehension which discounts one's personal position. In brief, egoism as a principle is unnatural; the habit of the human mind is that "I put myself in my place" by the externalizing impulse of thought. This universal vision gradually supersedes animal self-regard as the individual matures and positive law is the completion of the incipient beyond-selfishness of human maturity.

General rules are impossible without this trait of mind for the generality of the rule implies that the members of a class are equal in respect to that rule. Thus, there can be justice in the existence of a rule, though the substance of the rule may be neither just nor unjust, but merely conventional, for example, drive on the right side of the road.

Professor Hocking reaches the conclu-

sion that, so far as there is reason in the law, it is the same reason the individual achieves in his own growth; he recognizes in the law his own reason, coming to him from the outside.

Subsequent articles will discuss the non-rational element in law, and the view that no system of law can be deduced from reason alone.

The following editorial comment on the first Hocking lecture, discussed in last week's issue, was deleted from that issue because of a space shortage.

From the viewpoint of jurisprudence, Hocking's theory of the nature of law seems open to serious question today. Even with the "warming" influence of nationalism and the addition of the importance of custom, it is still the theory of 19th century individualism which was found to fall far short of the goal of individual freedom promoted through law. It seems apparent that the direction of law today is not toward the ideal of the maximum of free individual self-assertion, but towards social ends regarded as more likely to promote the welfare of the people in an industrial society. It is unnecessary, it would seem, to adopt this definition of law in order to show that men are freer under law than without it. The principal objection to this opening would seem to be that it is tailor-made for a theory of settling the problem of peace. And a theory which seems to encourage, not merely recognize, both nationalism and a discredited, or at least disappearing theory of liberty is of doubtful value.

Professor Hocking takes issue with those who feel that world government is a necessary prerequisite to international law, since it alone would have all the apparatus of a mature law. In fact, he considers this the reverse of the actual situation. His argument rests on the analogy of the importance of custom in "domestic" law, what Austin called "habitual obedience." This disposition to conform to law as expressed in custom without either promulgation or enforcement is in existence before the structural anatomy of developed law is present and is, indeed, the foundation of the latter. And, in the world of states there is no such custom and not even the foundation for such a custom, namely, world opinion. This statement can be both modified and explained by the two examples that do exist of private international law: the law merchant and maritime law. It is even clearer that there is no such thing as world opinion. Dr. Gallup has a limited ambit.

In enumerating and discussing these difficulties in the way of international law, it seems that Professor Hocking is attempting to assign too great a role to law as a solution. This would seem to be particularly true from the viewpoint of the sociological school of jurisprudence. Law is recognized as but a means of social control, although the dominant means today. Even today, the growth of administrative bodies is a recognition of the limitations of law in the sense of actions before a court. Opinion in the community is itself an important agency of social control apart from this opinion in its relation to the influence of custom on decisions. Not even the advocates of immediate world government seek a total solution through the agency of courts alone. The difficulty in defining units seems not insuperable, in fact the UN is a good starting point for further development here.

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DEAN GRISWOLD EXPLAINS REASONS FOR REMAINING ON TERM BASIS

March 12, 1947.

To the Members of the First and Second Term Classes, and Other Students in the Harvard Law School:

For some time there has been a considerable amount of discussion among students, particularly in the present second term class, about the possibility of shifting instruction, after their first year, to the old basis of academic years, with their second year to begin in September, 1947, their third year to begin in September, 1948, and their course to finish in June, 1949. If this could be done for the present second term class, a similar arrangement could presumably be made for men now in their first term, who would then complete their first year in September, 1947, and shift to the academic year basis for their last two years, likewise finishing in June, 1949.

This matter has been carefully examined and considered by the Faculty, and the Faculty has voted that a program of the sort indicated should not be adopted. I would like to make it plain that this was done carefully and thoughtfully. It is the purpose of this communication to undertake to explain to you the reasons for this action.

First, I want to thank the men who have raised this question with me, and have helped us to come to a solution even though we did not reach the solution they want. These men not only made their point and made it well, but they also helped us to get information which was very valuable in our consideration of the question.

The Term Plan

In examining this problem, we must start quite a while ago. In normal years, the Law School course consists of about one hundred and five weeks of courses and examinations. This is made up of three years of thirty-five weeks each. During the course of the war there was great demand not only for an accelerated program, but also for an arrangement which made it possible for students to enter the School, or to resume their studies, at various times during the year, instead of having an entering class only once a year, as is customary in normal times. In order to meet these demands, the Faculty developed the system of term operation. Three terms a year were provided, each occupying somewhat less than four months. Each term was planned to have fifteen weeks of classes and examinations. In order not to reduce the overall requirement for the degree, seven terms are required for graduation, thus making up the total of 105 weeks, as in the pre-war program. (As a matter of fact, the three terms beginning in September, 1946, February, 1947, and June, 1947, are only fourteen weeks long. This reduction was necessary to bring the Law School schedule into some agreement with that of the rest of the university.)

This is not an ideal arrangement. In the case of men who are not impelled by their age or family obligations to commence their professional careers at the first possible moment, a longer period of training would be preferable. But many men who had lost large amounts of time

in military service were anxious to resume or enter upon their professional education, and to complete that education as soon as possible. The Faculty, therefore, developed and offered the continuous program as the best solution of a difficult problem.

It is clear, though, that the program of continuous operation puts a severe strain on the Faculty, and on the facilities of the School—and the students as well, we know. It was plain to me when I became dean that the School simply could not continue to operate on that basis indefinitely. Within the first month of my deanship, I proposed to the Faculty that we resume the normal plan of three academic years with the first year class which will enter in September, 1947. However, we recognized that we should continue the accelerated program for men who entered before that time. Those were the men who had lost the most time during the war. It was they to whom we felt a real obligation to provide professional education in the briefest possible time consistent with maintaining high standards. This we undertook to do through the seven term continuous program.

Proposal For Change

Early in January of this year, the suggestion first came to my attention that a considerable number of students, most of them now in the second term, would like to be able to take off both of the next two summers, and have their second and third years on a regular academic year basis. When the proposal came to me, my first reply was that we should not undertake it, for two reasons: (1) that there would not be substantial demand for it, and (2) that it would not be physically possible to arrange it within the manpower available on the Faculty. I authorized the men who came to see me to get an informal show of hands among the students in their term. This showed that my first reason was wrong, and that there were, in fact, a substantial number of men, apparently more than half of the men in the term, who would like such an arrangement.

This still puzzles me, and I wonder how far men have really been aware of the implications of the plan. There are several reasons why I thought it would not be desired. These include: (a) the fact that graduation for this group would be postponed from February, 1949, to June, 1949. This means not only a four months delay in graduation, but also a probable increased difficulty in getting jobs, because the jobs which have been taken by men getting out in February, 1949, will not be available in June, 1949. The difficulty of getting jobs in 1949 cannot be ignored. We are working very hard at it, with two men on our staff spending their full time on this matter alone. But the fact that we will have 1,000 graduates during the calendar year 1948 should be enough to show that the offices will not be frantically grasping for law graduates when 1949 rolls around. Other difficulties that I saw were: (b) housing, and (c) government aid. Men who have rooms might not find it desirable to give them up, and

then have to hunt space again in crowded Cambridge some months later. And men who are relying on government aid, might not find it desirable to have that interrupted during a period when they were not in School even if they were eligible for unemployment compensation. Finally, (d) there is a real problem about bar examinations. In many states, including New York, these will be given in June, 1949. Men who graduate in June will have a difficult time preparing for these examinations. Men who graduate in February, 1949, will have an adequate opportunity for this preparation, and should find themselves in the best possible position to clear this last hurdle before admission to the practice of our profession.

Physical Difficulties

However, the preliminary investigation made last January showed plainly enough that there were a substantial number of men who would like to have us undertake the new program. My first reason was plainly knocked out. So I immediately undertook to investigate the second reason, the question of our physical capacity to undertake such a program. I put this problem into the hands of Vice Dean Hall. He spent practically all of his time for a week on it, writing a very careful twelve-page memorandum in which he undertook to lay out a program along the lines wanted by this group of students. Mr. Hall's memorandum showed that the plan could be done, but only with such an added burden on the Faculty that I came to the conclusion, after very careful consideration, that I should not recommend to the Faculty that they should adopt it. Mr. Hall's memorandum was considered at a Faculty meeting; there was considerable discussion of the matter; and the Faculty voted not to undertake the program.

Under the plan as worked out by Mr. Hall, the adoption of the program would have involved a 50% increase in the teaching hours of a number of Faculty members. In addition, it would have required several Faculty members to teach three different courses at the same time. Neither of these consequences of the plan seem to me to be desirable. It was chiefly because of these and other related facts that I came to the conclusion that I should not recommend the program to the Faculty.

Two questions may be asked: Why is this so, and why should we not get additional teaching personnel in order that this load might be carried without undue strain on any individual? I will try to answer these questions, taking up the last one first.

We are now operating a school about 50% above normal size, for reasons of which you are all aware. We have already enlarged our Faculty very greatly since the war, but we cannot increase it in any such proportion. We have every expectation of getting the School back to normal size in the reasonably near future. When that time comes we cannot carry a large number of extra Faculty members. Neither can we make temporary appointments to the Faculty

to carry the big load. Persons of the capacity and ability that we want, and you want, would not be interested in coming here on a full time basis for a year or two. The result is that we must get along as best we can with our permanent, or prospectively permanent, staff.

Visiting Professors

The one thing that we can do is to get visiting professors from other schools. Last fall I arranged a program which will bring to Cambridge for the summer term in 1947 a number of distinguished professors from other law schools. These men will, I believe, not only add variety to our offerings but will bring high quality to our work. The arrangements had to be made in advance; an enterprise such as ours requires a large amount of planning, and while I do not think that we should freeze our schedules for as long as three years in advance, this planning must be done and carried out considerably in advance of the actual offering of courses. The arrangements made last fall for the summer of 1947 were made on the assumption, well grounded in our experience, that a large proportion of men in the School were anxious to save time in their professional training, and that they wanted to continue their legal studies during the summer to the end that their graduation date might come at the earliest possible moment. Our past experience has been that not many men have dropped out under the accelerated program, not even for a term. The number of men who did not attend the summer term in 1946 was really negligible.

Thus we have provided manpower to teach the full third term class in the summer of 1947—that is, the men who are now in their second term. If large numbers of that class do not attend in the summer of 1947, that manpower will be partially wasted. The waste will have to be made up at a later time, partly by increasing the number of men in later sections and partly by increasing the teaching hours of the members of the Faculty. Even this can be arranged as long as everyone stays on the term basis. But if the two plans, the accelerated seven-term plan, and the academic-year plan, were put into effect at the same time, the difficulties become very great. For we cannot arrange to bring visiting professors from other law schools here in the winter or spring terms; they are engaged at their own schools, many of which face problems similar to ours.

Complicating Factors

This brings me to the second question. Why is it impossible to undertake the proposed program with the manpower we have? If we could shift everyone in the present second term class to the new plan, we could work it out. In fact, it would not be too difficult, and it would have some advantages. But we are clearly committed to provide the accelerated seven-term program, with graduation in February, 1949, to any man in the second term class who wants it. The recent written poll shows that there are about ninety-nine men in this

his average from 60 to 63.

Although the number of failures understandably fell off at the end of the second year, the number of men who passed the examinations remained about the same. At the end of the first year, 225 men out of 278 passed the examinations and 53 failed; at the end of the second year, 218 men out of 223 passed and five failed.

A comparison of the 225 men who passed the first year and the 218 men who passed the second year shows that the number of men who achieved an A average dropped from five at the end of the first year to two at the end of the second year. The number of B's increased from 30 to 42, the number of C's increased from 136 to 144, and the number of D's dropped from 54 to 30.

Out of the five men failing at the end of the second year, two failed for the reason that they failed one course and had an average below the required 58. Three men failed because they received two or more E's.

Rank lists for men completing terms other than the second and fourth have not been compiled. However, it has been disclosed that three men out of the fifth and sixth terms made A averages, and 17 men out of the same group made B's.

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DONALD RICHBERG

Richberg Calls For Compulsory Settling Of Labor Disputes

The advisability of legislation requiring compulsory arbitration in major labor disputes was discussed by Donald Richberg, co-author of the Ball-Burton-Hatch Bill, and Jesse Freidin, former counsellor to the War Labor Board, at the Harvard Law School Forum last Friday night in Sanders Theater.

Moderator Lon L. Fuller, Harvard Professor of Law, introduced the topic "How Can We Mitigate Industrial Strikes?" by asking whether legal reform is necessary and if so, what type of legislation is in order.

Mr. Richberg urged that compulsory arbitration be required as a means of settling major disputes which are not resolved through normal collective bargaining procedures, and which are dangerous to the public health or safety. Mr. Freidin, on the other hand, asserted that compulsory arbitration, with the government making the ultimate decisions, is bound to impair the effectiveness of collective bargaining even though an attempt is made to limit such procedure to major disputes.

Contending that existing federal legislation is responsible for Labor's present powerful position, and that abuse of this power is "today's menace to freedom," Mr. Richberg recommended immediate remedial legislation as the best means of protecting the interest of the general public. He ridiculed the idea that education and time alone will solve the problem. "Civilization cannot wait on the slow education of mental mules," he argued that it is silly to endure abuses of power on the theory that freedom is being preserved, and pointed out that in the past, legislation has often been necessary to prevent abuses of power by groups which achieved privileged positions: business monopolies, utilities, financiers, and employers have all been guilty of abuses and in each case the public interest has required regulatory legislation. Reactionaries who oppose such laws as unnecessary restrictions on freedom, he said, fail to realize that no true freedom is possible unless powerful minority groups are effectively prevented from furthering their own interests at the expense of the rest of society. "Unrestrained freedom is simply anarchy."

Mr. Freidin, declaring that there is too much willingness to sell collective bargaining short, cautioned against basing permanent legislation on the abnormal 1945-46 period. He pointed out that when the Wagner Act was passed in 1935 only two and a half million workers were organized, and that between 1937, when the act was held constitutional, and 1940 the first real organization of the mass production industries took place. Then came war. Today with fifteen million organized workers, most of them in the mass production

(Continued on page four)

Liquor Plays Role In Providing Stimulation For Judge's Decisions

This is the first of two articles by Frank W. Grinnell, LL.B. '98.

Lord Northington was the first of a line of port-wine-drinking judges that may at the present time be fairly said to have come to an end. But, before he died, the jovial Chancellor paid the penalty which port exacts from all her fervent worshippers, and he suffered the acutest pangs of gout. It is recorded that as he limped from the woollack to the bar of the House of Lords, he once muttered to a young peer who watched his distress with evident sympathy—"Ah my young friend, if I had known that these legs would one day carry a Chancellor, I would have taken better care of them when I was at your age." Unto this had come the handsome legs of young Counsellor Henley, who, in his dancing days, stepped minnets to the enthusiastic admiration of the belles of Bath.

From the many stories told of Lord Thurlow and ebriosity, one may be here

taken and brought under the reader's notice—not because it has wit or humor to recommend it, but because it presents the Chancellor in company with another port-loving lawyer, William Pitt. "Returning," says Sir Nathaniel Wraxall, a poor authority, but piquant gossip-monger, "by way of frolic late at night, on horseback, to Wimbledon from Addiscombe, the seat of Mr. Jenkinson, near Croyden, where the party had dined, Lord Thurlow, the Chancellor, Pitt and Dundas found the turnpike gate, situated between Tooting and Streatham, thrown open. Being elevated above their usual prudence, and having no servant near them, they passed through the gate at a brisk pace, without stopping to pay the toll, regardless of the remonstrances and threats of the turnpike man, who, running after them, and believing them to belong to some highwaymen who had recently committed some depredation on the road, discharged the contents of his blunderbuss

(Continued on page three)

trip to the west coast that he was probably the only man in the country who was both dean of a law school and dean of a nursery school. In a year or two, newly enrolled youngsters of the first grade in public schools may claim to have had their previous training at Harvard Law School.—Nursery Branch, that is.

The nursery school is held every week-day morning in the basement of Hastings Hall where a special room has been prepared for the children with all furniture and equipment built on a miniature scale. The tables are about a foot high, and the little individual wooden benches look like small footstools. The room also has low shelving along the walls for the storage of toys, games, dolls, and other miscellaneous nursery equipment. A thermometer is placed near the floor so that it will indicate the room temperature at child-level.

At nine o'clock these small students are brought to school, often by fathers bound for Langdell, and are stripped of snowsuits, mufflers, and mittens, and turned over to the charge of Mrs. Philip Ewing, a Business School wife who has a degree in child psychology and who worked in a large nursery school in New York City for almost a year while

and Piling Up Blocks. Shortly after ten o'clock operation bathroom is executed by all hands, followed by a morning lunch of fruit juice and cookies. At eleven o'clock, when father is grabbing a quick smoke in the halls of Langdell, the nursery school also takes a ten minute break for the morning nap. From nap until noon games are played and picture puzzles are worked, the general routine being highlighted from time to time by individual performances of seeing how many benches may be stacked on top of one another and how far a small "choo-choo" may be heaved across the room. Particularly dangerous or belligerent activities are skillfully diverted into more constructive channels by Marion Ewing who seems to be able to watch all her extremely active charges at once.

The school has an enrollment of twelve youngsters and this is all that can be taken care of for the time being. Any law school parents who are interested in sending their child should see Mrs. Ewing, or Mrs. Richard H. Wolford, who supervises the school, and be placed on the waiting list. Children from the ages of two to four are eligible, and no transcript of previous record or entrance examination is required.

(Continued on page three)

to call the attention of first and second year men to the rules for the competition.

No second term man is qualified to compete unless he has completed a first term argument, and no third term man can qualify to compete unless he has completed both a second and first term argument. In cases where a man has an excuse for not participating in the first or second term arguments (such as lack of time because he is working his way through school), the requirements of prior participation will be waived upon application to the Board.

The rules announced above have their most important application in the case of third term men who are members of clubs participating in the qualifying round. When the winners of the qualifying round have been determined, the winning clubs will be checked to determine if all members have complied with the rules of prior participation. A club which contains unqualified members will be barred from advancing in the competition even though it has won the qualifying round, and the next highest club will advance. According to Delaney, therefore, it is advisable that all the clubs in the qualifying round police their membership now before the qualifying round begins.

Calendar

THE LEGAL WORLD
Ames Competition

Qualifying round: Schedules of third term arguments are now posted on the bulletin boards. Facts will be issued tomorrow (Thursday).

Law School Forum

Donald Richberg, attorney and co-author, N. R. A. and National Railway Act, and Jesse Freidin formerly, a public member of the National War Labor Board will discuss *How Can We Mitigate Industrial Strikes?*

Law Wives

On Wednesday, March 19, 8 p. m., in Kendall House, Shreekan A. Palekar, of Calcutta, will play and explain native Indian musical instruments.

Law School Formal

The formal spring dance will be held on Friday, March 21, 9 p. m. to 1 a. m., at the Hotel Somerset, Boston.

Administrative Law

There will be a make-up class, for the one omitted today, Friday, March 14 at 4 p. m. in Langdell South Middle.

THE UNIVERSITY WORLD
Lectures

The Council for Planning Action is sponsoring a lecture on *Planning and Politics* by George A. McLaughlin, tonight in Hunt Hall, at 8:15 p. m. Mr. McLaughlin is president of the Cambridge Civic Association.

The Philosophy Club will have as its guest speaker Dr. Dickinson S. Miller on Thursday, March 13, in Phillips Brooks House, at 8 p. m. His topic is to be *Intelligence, Genius, and the Passions*.

William James Lectures in Philosophy: Professor W. E. Hocking's topic this Monday, March 17, at 4 p. m., in Emerson Hall, is *A System of Rights: Right to Do; Liberties*. This series of lectures on *Issues in Contemporary Philosophy of Law*, with special reference to the foundations of International Law is given on successive Mondays, except March 31, through April 28.

As the third of a series of four lectures on *Hebrew-Christian Ethics in the Professions* Professor Robert Ulich will examine this subject from the standpoint of the teaching profession on Monday, March 18, in Phillips Brooks House, at 7:15 p. m. On March 25, Dean Pound will do the same for the legal profession.

Kirkland House is presenting a series of discussions on the works of E. M. Forster. The first will be tonight in the Kirkland Common Room, at 7:30 p. m., and Professor Israel J. Kapstein, Brown University, is to talk on *Where Angels Fear to Tread*.

Dance

All students are invited to the Carlton Club Dance in the Hotel Commander, Saturday, March 15 at 8 p. m.

International Student Association

Every Sunday: Open house and tea from 4 p. m. to 5 Phillips Place, Cambridge. Buffet supper (40c) at 6:30; special program at 8.

Harvard Dramatic Club

The Harvard Dramatic Club presents two one-act plays *Waiting for Lefty*, by Clifford Odets, and *The Ping-Pong Players*, by William Saroyan, on March 13, 14, 15, in Sanders Theatre. The Thursday and Saturday performances are at 8:30 p. m. The Friday performance is at 3:00 p. m.

THE OUTER WORLD

Ford Hall Forum

Professor Arthur M. Schlesinger will speak on *Sizing Up Our Presidents* at Jordan Hall, March 16, at 8 p. m.

Concerts

Gardner Museum Concerts: Thursday, March 13, *Unit Spangling*; violinist, and *Kalman Novak*, pianist; Saturday, March 15, *Mildred Mueller*, soprano, and *Luise Vosgerchian*, pianist; Sunday, March 16, *Margaret Kurkjian*, pianist, and *Wesley Copplestone*, tenor. Weekday concerts begin at 2:45 p. m. The Sunday concert begins at 2 p. m. Admission is free.

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BILBO—(Continued)

threatened with physical harm. Most of those who appeared at the polls were rejected. Of the maximum possible 500,000 Negro voters, of whom there were 65,000 veterans, not more than 3000 cast a primary ballot. Bilbo was nominated by a majority of 4000 votes and was unopposed at the November election.

The events of the campaign and charges made against Bilbo during the campaign led to two separate investigations. The Special Committee to Investigate Campaign Contributions (whose general investigative powers include authority to examine non-financial features of a campaign) conducted hearings in Mississippi respecting alleged intimidation of voters and Bilbo's violation of his constitutional oath. A majority of this Committee reported that election violence was the result of prevailing conditions in Mississippi and not the responsibility of Bilbo; and the Committee found that Bilbo's nomination and re-election was "proper and legal and expresses the will of the qualified electorate of Mississippi." The minority stated that they believed Bilbo had violated the Constitution, the Federal Criminal Code and the Hatch Act and was guilty of "such acts and conduct as are contrary to sound public policy . . . and tainted with fraud and corruption the credentials . . . presented . . ."

The second investigation of Bilbo was conducted by the Special Committee to Investigate the National Defence Program (once known as the Truman Committee), which looked into Bilbo's dealings with war contractors. This Committee reported that evidence presented to it "clearly indicates that Senator Bilbo improperly used his high office . . . for his personal gain . . ."

It should be observed that no investigation of Bilbo had been made by the Committee on Privileges and Elections

When the Senate opened on January 3, Bilbo's certificate of election, signed by the Governor of Mississippi, was presented; and Bilbo was called in his alphabetical turn to be sworn. Senator Taylor of Idaho, using the argument quoted at the beginning of this article, then offered a resolution that Bilbo's credentials be referred to the Committee on Rules and Administration for examination of his right to a seat, and that in the meantime Bilbo be denied a seat. Senator Overton countered with a resolution that Bilbo be seated "without prejudice to Senator Bilbo or the Senate to determine all issues respecting his right to a seat".

The official Republican position was contained in the resolution of Senator Taft that the question of Bilbo's prima facie right to be sworn be deferred for full debate until after remaining newly elected senators, who followed Bilbo on the alphabetical list and about whose election there was no question, could be sworn and the Senate organized.

The Constitutional Problem

The problem of constitutional interpretation raised by these resolutions involves three separate clauses of Article I of the Constitution:

"No person shall be a Senator who shall not have attained the age of thirty years, and been nine years a citizen of the U. S., and who shall not, when elected, be an inhabitant of the State for which he shall be chosen." (Sect. 3, para. 3.)

"Each house shall be the judge of the elections, returns, and qualifications of its own members . . ." (Sect. 5, para. 1.)

"Each house may . . . punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member." (Sect. 5, para. 2.)

(A provision in the 14th amendment regarding ineligibility to hold office of any who "shall have engaged in insurrection or rebellion" is not material to the present case, except in an indirect manner mentioned hereafter.)

Three specific questions now arise. (1) Does the word "qualifications" in Sect. 5, para. 1, refer only to the requirements of age, citizenship and residence set forth in Sect. 3; or does it include such other qualifications as the

class who say that they want to continue on the present basis. It is clear that we have to continue to offer the seven-term plan for them. If we do, we cannot offer the new program for others without carrying on the two at once. Doing this would not be simply a matter of the shifting of one section to the new basis while the old section continues on the term plan. The difficulties begin to appear when it is recognized that terms on the present basis and semesters on the proposed plan are not interchangeable. Since the terms are fifteen weeks long and the semesters would have to be eighteen weeks long, they cannot begin and end at the same time. We would have to provide work at the same time, therefore, on both the term basis and the semester basis and that raises serious confusion and difficulties in both the second and third years. I mention two as illustrations.

Third Year Program

Even if half the present second term class and the entire first term class were to shift to an academic year basis in September, 1947, we should have to provide all third year work on a term basis through February, 1949, when the other half of the present second term class would graduate. Under the proposed arrangement we should have to offer the same courses on an academic year basis at the same time. Thus, under the present arrangement we can probably meet the needs of the students by offering such courses as Admiralty, Creditors' Rights, Federal Jurisdiction, Insurance, International Law, Jurisprudence, Labor Law, Legislation and Property III, in one section in one or two out of three terms between February, 1947, and June, 1949. (Under the present arrangement such courses would not have to be offered on an academic year basis until September, 1949.) But if the proposed plan were put into effect, these courses and others, would also have to be given on the academic year basis beginning in September, 1948, during the same period. Plainly this would greatly increase the number of classroom hours, and would require a corresponding amount of extra work in preparing for courses on the part of the instructors concerned.

The second illustration of the difficulties in the proposed plan is one not so easily explained, but one which I hope you will understand. One of the burdens which the accelerated program imposes on the Faculty is that of correcting examination papers two or three times a year. Some men have 350-400 books to grade, yet for some time more there will be pressure to get the marks out promptly at the beginning of the following term. The present program frees most members of the Faculty from classroom teaching during the examination period, and the week intervening between terms, and in that period it is possible to concentrate on the examination papers and to grade a large proportion of them. Under the proposed arrangement this would often not be possible. Since the terms and semesters must be of different length, men on a term basis would be taking examinations while men on the semester basis would be continuing classes; similarly when men on the semester basis would be taking examinations, men on the term basis would be in classes. This means that a large proportion of the Faculty would be required, under the proposed arrangement, to carry a normal teaching schedule while they were attempting at

the same time to grade a large number of examination papers. This appeared to me to be a burden which a wise administrator would not ask.

Choice of Electives

A somewhat different difficulty with the academic year plan which may be of particular interest to students is that it would seriously restrict the freedom of election of third year courses. Under the term plan, there are three third year terms, and men have a very considerable choice of third year courses. They have thirty-six term hours of third year work. Under the academic year plan there would only be a single third year. There would be two semesters, and men would have twenty-four semester hours of third year work. It is obvious that the range of third year work and the freedom of choice, would be seriously restricted. The Committee on Legal Education, of which Professor Fuller is Chairman, is now actively at work on the matter of revising the School's curriculum. But there is no possibility that the revised curriculum can be put into effect until the regular academic year program is resumed, with the men who will be entering in September, 1947, and who will reach their third year in September, 1949. Under that program, it is possible that means will be devised for increasing the amount of third year work which will be available to men on the academic year basis. But that cannot be worked out for men now in the School, since it necessarily will involve changes in the second year work. The only way that the present freedom in third year work can be maintained for these men is by continuing on the present term plan.

Closely related is the fact that under the present rules, any man after his fourth term may take up to six hours work for credit in the Business School, the Littauer School, in some other part of the University, or elsewhere. A number of men have already taken advantage of this opportunity. This chance for increased flexibility could not be made available under the academic year program, simply for lack of time.

Now I turn to another aspect of the problem, which we have not overlooked. A considerable number of men have said that they understood when they entered the School in October, 1946, that they would be free to skip terms when they wanted to, and in effect go through the School on a non-accelerated basis. There was no statement to that effect in the catalog which was issued just before their entry in August, 1946. However, there was a sentence which was reasonably susceptible of such an interpretation in the catalog which was issued in 1945. I do not want to question at all the good faith of the men who say they had such an understanding. However, I can speak with real feeling when I say that the demand upon us in 1945 and through the most of 1946 was for acceleration. We got hundreds of letters asking how quickly it would be possible to get through the Law School. Indeed, I have already received a considerable number of letters from men not yet in the School complaining because we are terminating the accelerated program. But we concluded some time ago that we had to start to get back to normal. And getting back to normal, as I have already pointed out, necessarily involves this transitional program, where the old term system tapers off, and the new one begins.

In all of this discussion, it should of

course not be overlooked that it is possible for any man now in the second term to take off the summer of 1947, and graduate in June, 1949. Therefore, the only question is one of taking a second term off without loss of additional time. That was never promised to anyone, directly or indirectly, as taking another term off under the term system would necessarily have involved loss of time. Thus there can be no claim for the proposed plan on the basis of estoppel or promise. Nevertheless, I am sorry that we cannot arrange a way to adopt that plan; but the disadvantages to the men who would like it seem to me relatively small compared with the manifold disadvantages of the plans of all of us during the past seven years. Moreover, while it is not possible to make any definite commitment now, I think it is very probable that we can find a way to offer a term or semester of third year work in the fall of 1949, at the end of which men may take examinations on that work and receive their degree. This might in any event be necessary because there will be men who drop out for a term on account of illness or other personal problems, and we would have to devise some way to enable them to graduate in February, 1950. If this can be arranged—and I hope it can—then men in the present second term class can take every summer off and graduate in February, 1950. This would give them their option of going continuously and graduating in February, 1949, or taking one term off and graduating in June, 1949, or of taking three terms off and graduating in February, 1950. That seems to me to afford a remarkable amount of flexibility, and I hope that you will agree that it is not unduly harsh, in view of our physical capacity, to limit the second term men to those choices.

Financial Problems

Another point is made that a considerable number of men feel that they must drop out of School for one or more terms for financial reasons. Without for a moment failing to recognize the financial problems of many men, I think that the School can help them to reduce this problem to such an extent that it is not a valid reason. Practically all of the men in the School are now here with government aid, and consequently, the amount that has to be made up in any particular case is not as great as in normal times. I am sure that almost every one of these situations could be easily taken care of by use of the Law School Loan Funds, which are entirely ample for any problems which are now foreseeable.

I know that there are men who feel that they do not like to borrow, and I can fully understand that feeling. Nevertheless, the borrowing involved here would not be large. It would enable a man to get through School sooner, and thus to be in a position to earn money in the profession at an earlier date. If a man insists that he will work, and not take a loan, when loans are available on easy terms, and the money has been provided for that purpose, it has seemed to me that he has little ground for asking the School to alter its program to suit him. If there is any man who is presented with a financial problem because the present teaching program of the School does not allow him as many terms off as he had expected for the purpose of earning money, I will be glad to see him in my office, and give him full details about getting a loan. These

loans do not have to be paid until a considerable time after graduation. They have in the past aided thousands of men in getting through the School. I have no doubt that the funds available are entirely adequate to take care of any men who are presented with a problem because they will not have the freedom to take time off for earning money which they had anticipated.

Finally, I have one last thought. That is that it would greatly help the School, and to a considerable extent the men in it, if men now in the second term would plan to attend the summer term next summer. I do not want to put any pressure on them. They are free to do as they want. But we will have the facilities here for them. We have planned it that way beyond the possibility of changing now, because we thought that was what they wanted. If they do not come next summer, they will come at later terms. In that event, the later sections will be more than ordinarily crowded, with resulting disadvantage to the men regularly in those sections as well as to those who come into them after being out a term. If there is a really good reason why you should stay away next summer, do so with a clear conscience. But if it actually makes little difference to you, and is simply a matter of individual preference without much necessity or advantage involved, you will help all of us by planning to attend the 1947 Summer Term, and continuing your course through to normal graduation. Then you can really take a long vacation if that is what you want when that time comes!

Conclusion

Whether you agree with the conclusions which I have tried to summarize above, or not, I hope that you will believe that they have been reached carefully and thoughtfully. I have lost a lot of cases in my life, and it is never unduly pleasant. But I find that you can take it without too great difficulty if you can feel that the judge has understood your argument, considered it carefully, and actually dealt with it in his decision. I would like to have you feel that that has been done here. As a matter of fact, the Administration and the Faculty of this School are terribly anxious to do things right and thoughtfully and considerately. We recognize that the School is not now an ideal place, because of the unusually large number of students. But we are proud of the service we think we are rendering in making it possible for these men to get legal education who lost their normal opportunity to get it through service in our country. We have taken only a small proportion of those who have applied to us, and although the number who are here now is large, and the result is to leave no extra Faculty manpower available, it may well be that we have admitted about the right number of students, considering the pressures and responsibilities which were upon us. At any rate, we are doing a serious job earnestly. We have never had a better group of students, despite all of the difficulties of the times. We are glad that you are here, and hope that you share that feeling, despite our inability to do all that you want. If we can judge by the reactions of thousands of men who have preceded you, we think that you will look back upon these days with great satisfaction.

Faithfully yours,
ERWIN N. GRISWOLD, Dean

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