

The Harvard Law School Record

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COMPLETE QUARTER FINALS TOMORROW

Ames Argument Set For 8 p.m.; Cardozo, Gardner Clubs Meet

With last Thursday's results assuring the Holmes and Grotius Clubs places in this summer's semi-finals, the quarter-final round of the Ames Competition moves into its last argument at 8 p. m. tomorrow in Langdell Court Room. The Cardozo Club and the Gardner Club will be pitted against each other in the case of *Shepherd v. Handbook, et al.*, before a bench composed of Justice Douglas of the Massachusetts Superior Court, Arthur E. Whittemore, Esq., of the firm of Nutter, McClellan and Fish, and Charles M. Storey, Esq., of Boston.

The result of the quarter-final argument last night between the Story and J. Smith clubs was not available in time for this issue of the Record.

Adjudged the most able oral advocate in last Thursday's argument was Gordon F. Bloom, of Buffalo, a member of the Landis Club. The Grotius Club's Gale A. Christopher, Wabash '42, a resident of Winona, Minn., placed a close second. Bloom, by virtue of his place as best oral counsel in the first argument, is out in front for the Sheldon Prize, which is awarded to the outstanding advocate of the quarter-final round.

Presenting the oral argument for the winning Grotius Club with Christopher was Charles S. Bridge, Harvard '42, a native of Franklin, Ohio. Of counsel on the brief were William C. Brunzell, Wisconsin, '43, W. Robert Chandler, Oberlin '42, Richard H. Garner, Wisconsin '41, Irving C. Paul, Dartmouth '41, and Robert P. Yeomans, Wisconsin '41.

The Holmes Club, which shared top honors in the unique four-party argument, was represented in the courtroom by Charles F. Choate, Harvard '41, a Bostonian, and Henry A. Preston, Yale '41, of Lake Forest, Illinois. Of counsel on the brief were Arthur L. Bartlett, Harvard '41, Roger A. Derby, Jr., Harvard '40, Charles N. Foster, Harvard '42, William P. Homans, Harvard '42, and Wilmot T. Pope, Yale '41. The court gave no opinion on the merits of the controversy because of the complicated nature of the facts.

In *Shepherd v. Handbook, et al.*, which comes up tomorrow night there are two main issues, both involving corporation law. The first question concerns the liability to a corporation of two members of its board of directors where they buy and sell debenture bonds of the corporation at a profit to themselves without first giving the corporation an opportunity to purchase the bonds. The other problem posed is whether these two directors commit a

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Dean Pound Says Livelihood Just An Incident In Legal Profession

As guest speaker at the Phillips Brooks House last week at the fourth of a series of lectures devoted to a discussion of Jewish-Christian Ethics in the Professions, Dean Roscoe Pound stressed three essential ideas in the legal profession—organization, learning, and a spirit of public service. "The remaining idea," he said, "that of gaining a livelihood is incidental."

In his introduction, Mr. Pound noted that the distinction between the words "professional" and "amateur" in their sports contexts had done much to make a profession connote a money-making activity. In the face of modes of thought engendered by sport, it is not easy to impart to this generation the conception of men pursuing a common calling as a learned art and as a public service—no less a public service because it may incidentally be a means of livelihood. "A trade," Professor Pound says, "aims primarily at personal gain; a profession at the exercise of powers beneficial to mankind." The lawyer is not bartering his services as is the artisan, nor exchanging the products of his skill and learning as the farmer sells wheat or corn. The professional man does not measure out his service in proportion to reward, even if, when he can do so, he measures his honorarium by the extent of service rendered. His best service is often rendered for no equivalent, or for a trifling equivalent, and it is his pride to do what he does in a way worthy of his profession, even if done with no expectation of reward. It would be idle to assert that there is nothing of selfishness in the pursuit of a profession, but its ideal is not one of individual success in competitive acquisitive activity. And because ideals operate powerfully to shape action, professional activity, even at its worst, is restrained and guided by something better than the desire for money rewards.

It is true that today almost every calling is organized in some sort or trade association. Also, it is true that lawyers in some of our most important states have no all-inclusive or responsible organization, Dean Pound said. In half of our jurisdictions there is no bar in the sense of the Bar in England or the Faculty or Advocates in Scotland, or the Colleges or Societies of Advocates in continental Europe.

This want of organization with us was a remnant of a general attempt to deprofessionalize the traditionally professional callings, and put them in one category in all respects, which was characteristic of the formative era of American institutions. Even without formal organization, the legal profession in this country has, on the whole, preserved a tradition of solidarity and traditional incidents of professional organization which have been of much value for our administration of justice. But the ideal of the profession involves an inclusive and responsible organization, and a movement back to that ideal has been gaining in strength.

In dealing with the unprofessional activities which grew up in large cities in the latter part of the 19th century and in the present century, the work of the American Bar Association has been notable. "It has succeeded in establishing sound conditions of general education, professional education, ad-

mission to the profession . . . codifying professional ethics . . . developing unified and consistent interpretation of codes . . . improving procedure . . . and promoting uniform legislation."

Having emphasized that an unlearned profession is a contradiction of terms, Dean Pound said, "Professions are learned not only from the nature of the art professed but because they have historically a cultural, an ideal side which furthers the effective exercise of that art." He pointed out the need for skill, experience, knowledge, and common sense in the administration of justice whether exercised by an advising counsel, by an advocate in the courtroom, or by a judge on the bench.

He then spoke about a number of misconceptions of the lawyer's function and the ethics of his profession. "Very commonly it is assumed that the lawyer will take bad cases and exert himself to win them knowing them to be bad. This assumes that every case is either good or bad, and that its goodness or badness is apparent to the lawyer when the case is stated to him. It must be remembered that ascertainment of facts is often very difficult. The client does not come to the lawyer and say, 'I have a bad case which I expect to sustain by perjury or trickery and you are expected to win it for me.' He comes protesting vigorously that he has the most righteous case in the world and usually conscientiously believes that the facts are as he states them. Often the lawyer by examining him carefully and thoroughly can disentangle the facts from his inferences. Very often, however, he cannot. Where on the client's statement of the facts it is obvious that on the law he has no case, the lawyer will so advise him at once. A great many cases which ought not to be brought are headed off in this way, saving the time of the courts and expense to litigants. Where the lawyer is satisfied that the matter is doubtful he will advise a settlement if possible. Even in such cases, however, it not infrequently turns out that the facts when all the witnesses have been carefully examined and cross-examined prove to make a better case for the client than he made in his own statement. All the lawyer can do is to bring out fully and fairly the client's case and leave it to the court or the jury to determine upon the evidence."

L. C.

LAW CLUB NOTICES

The Record will carry official law club notices in the Calendar column, beginning with the next issue, April 9. These notices should be as brief as possible and should be turned in at the Record office by 3 p. m. on the Friday before the date of publication.

LIBERAL CREED IS SUBJECT OF FORUM

Soule Hits Laissez Faire Policy; Eliot Fears For Liberty



GEORGE SOULE

The two basic tenets of true liberalism are that human beings must be regarded as an end in themselves and not as a means, and that the test of reason in the approach to all problems is basic. Mr. George Soule, an editor of the *New Republic*, declared at the Harvard Law School Forum last Friday night.

Mr. Soule, with Mr. Thomas H. Eliot, counsel for the Civil Liberties Union, participated in a discussion entitled, "A Restatement of the Liberal Creed." Moderator for the discussion was Professor Thomas R. Powell.

Although there are some human beings who are not worthy of the first of the principles he named, Mr. Soule believes that if such persons are treated in the manner outlined, they will become so.

So far as a specific program for liberalism is concerned, Mr. Soule stated that any program promulgated as a liberal program must constantly be re-evaluated and changed to conform to existing conditions and new discoveries. He said that experience has taught us one fundamental lesson, and that is that *laissez faire* or "Manchester liberalism" can no longer be regarded as being conducive to the greatest good of all. The classical economic belief, that self interest is natural and to our best interests and that nature is benevolent, has been thoroughly exploded and has been abandoned in most countries.

According to Mr. Soule it is more natural for people to conspire and co-operate than to compete, and proof of such a tendency lies in the repeated attempts to break huge concentrations of economic power. Furthermore, the belief in the benevolence of nature is contrary to all scientific learning.

Studies of industrial statistics and business cycles for a period of 100 years in the United States, Great Britain, Germany and France have shown the recurrence of boom and depression in *laissez faire* economies on an average of every three and one-half years. In addition, these investigations indicate that the depressions have become increasingly severe as our economic system becomes more highly integrated.

From these facts Mr. Soule concluded that the retention of the *laissez faire* type of economy must inevitably lead to a continuation of these cycles, and there-

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BUST OF HAND GIVEN TODAY

Presentation Ceremonies At 4 p. m. in Langdell

A bronze bust of Judge Learned Hand, one of the law school's most distinguished graduates, will be formally presented to the school in ceremonies at 4 p. m. today in Langdell Court Room, Dean E. N. Griswold has announced.

Judge Hand, considered to be one of the nation's foremost jurists, is a member of the class of 1896, and is on the bench of the United States Circuit Court of Appeals, Second Circuit.

The bust, which was done by Miss Eleanor Platt, is being presented to the school by Judge Hand's former law clerks and the Harvard Law School Association to mark the occasion of his seventy-fifth birthday. It is intended as a tribute to his long years of devoted service as a member of the federal bench.

The presentation address will be made by Judge Thomas D. Thatcher of the New York Court of Appeals.

Although a large number of formal invitations to the ceremony have been sent out, Dean Griswold has stated that this does not mean the attendance will be restricted, and he has extended an invitation to the general public to attend.

Three Non Rational Elements In Legal Systems Set Forth By Philosophers Discussed In Hocking Lecture

After discussing the role of reason in the law, Professor Hocking turned to the element of the non-rational, for even those who have made reason the essential element in their system—from Plato to Stammler—all admitted an element of the non-rational.

The three kinds of non-rational elements are Specification, which is chiefly numerical, e.g., length of punishments, statutes of limitations; Convention, where it is necessary that there be a rule but where the matter is indifferent, e.g., seventh day holidays, valid forms for contracts, and local traits, having a traditional history, e.g., caveat emptor, ceremonial procedures. So far as law contains these elements it must be studied empirically because it is factual and they become, also, the provinces of two opposing conceptions of law: analytical and historical. Both agree in their opposition to the rational, but the former takes specification and convention, while the latter takes tradition. On analysis, Hocking concludes, it will be found that this opposition is unnecessary.

Custom is not necessarily opposed to the imperative. The union is found in positive law as the coinage of custom. This is not an off-hand invention; there is a national spirit, an "externalization of conviction in custom."

Further, their opposition to the rational is more apparent than real. Custom is accepted as such because it is at

least not contrary to right, e.g., first come, first served. Induction is not contrary to deduction for both imply a relation of general to particular. The actual relation may be seen in an illustration: the law of "general average" or "jettison," which has the advantage, for our purpose, of being on the border between domestic and international law.

As it has developed, the law of jettison represents a union of reason, custom and enactment. The principle that all shall contribute to make good for loss caused to one whose goods are thrown overboard to lighten ship is as valid in Boston today as it was in ancient Rhodes. Subordinate rules, based on experience and special knowledge have been found necessary. And law in these matters has taken its cue, for most part, from private enterprise and custom; Lloyd's opinion is often sought in difficult situations. The necessity of accepted and understood conditions under which shippers and insurers can accept the risks of shipping led to a demand for a code by businessmen and lawyers, not legislators.

In Hocking's opinion, the law of jettison is a good example of how a general idea, which has some marks of "universality and necessity," has stood the test of time, is consistent with both the historical ingredient in law—maritime usage has always been a factor in building maritime codes—and the imperative element—since divergent usage has to

be reduced to singleness by a stroke of will. It is not only consistent with these non-rational factors, but actually requires them.

Once we see this, the hostilities of natural law, historical, and analytical theories become superfluous unless one claims to have the whole truth. A part of the work of philosophy is done when we see that such hostilities are due to misconceptions and the work in jurisprudence can consign them to history.

Before considering the manner in which Hegel's philosophy encompassed these three elements, Professor Hocking pointed out that calling positive law the coinage of custom is not all-inclusive. It merely expresses a common relationship in which one passes self-consciously into the other. Often, enactment has to choose between contending customs, more often, it rebukes a custom that has become obsolete or pernicious, e.g., dueling. These toughly-persisting customs show that custom has a core of reason of a sort, whose psychological force law must seek to enlist, not to destroy. In England, law had to enter into the reason-of-honor of the duel before it could be displaced; when Queen Victoria said, "We accordingly acquit you of disgrace" (if you refuse to accept a challenge), the custom abruptly ceased.

As there is a core of reason in custom, the same is true of the imperative element—

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Editors Complete Yearbook Despite Acute Help And Material Shortages

With one last mad rush of alphabetical listing, picture identification, and copy cutting, four Fourth Termers have just finished a three-month period of nervous frustration known as Putting Out the Yearbook. Now that all copy and pictures have been sent on to their publisher in New York, these members of the Yearbook Committee are turning their attention to the unfamiliar pages of neglected casebooks, hoping that nothing will happen to prevent the book from being distributed on May 15, as scheduled.

The Law School Yearbook is identified in the minds of present students as that program of names and numbers which came out last August long after many of the pictured students had been graduated. Jack Hennessey, Paul Mishkin, Wes Bevin, and Jack Madden, four stalwart citizens of the community, thought that it could not be that hard to put out a yearbook, and volunteered for the job last fall after grades came out. When these men had been given the nod by last year's Yearbook Committee and Phillips Brooks House, which underwrites the enterprise, they began to find out about the problems involved in their enterprise. A professional "yearbook doctor" (regularly em-

ployed by publishers to finish up the construction of a book after the regular staff flunks out of school in the middle of the year) warned them that they would need \$15,000, and so much time that their grades would drop 20 per cent. The new committee, hoping to realize the modest stipend allowed to them by Phillips Brooks House providing they make a profit, and not wishing to trade their chances on an L.L.B. for experience in the publishing field, were somewhat alarmed by this prospect, but went on with its plans.

Finding a publisher was the first step. Local publishing houses had already contracted for all the yearbook work they could carry by the time Wes Bevin was appointed business manager in November. In the normal routine for school Yearbook publication, the staff is chosen during the spring, contracts let during the summer, and work begun immediately upon the commencement of the fall term. Our boys had a slow start to overcome. Finally, Bevin found a house in New York which was willing to take on the publication in consideration for a number of pounds of flesh.

Pictures were the next big problem to

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QUALIFYING ROUND ARGUMENTS BEGIN

Twenty-two clubs will be arguing in the qualifying round of the Ames Competition, with cases scheduled to be heard from April 3 through April 16, according to John Delaney, Chairman of the Second Year Committee of the Board of Student Advisers.

In order to be eligible for the qualifying round, which comes up in a student's third term, he must have argued in both his first and second terms, unless officially excused. Clubs which put up men who do not meet this requirement will be disqualified. In qualifying round arguments the various clubs are paired against each other, with two-man teams representing each club. The cases are tried before benches composed of three judges, one of whom is a practicing lawyer, another a law school professor, and the last a third year student.

Prizes are awarded in each term to the winning individuals as well as to the clubs which make the highest scores.

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Editorials

In a letter which the RECORD published in last week's issue a reader raised the question of how far this paper assumes responsibilities for the views taken in its columns. The item which evoked this enquiry was an anonymous contribution to "Off the Record." In order to clarify this matter we shall give a summary of what has been the RECORD's practice since its inception.

In general it is our policy to insist that contributions to the RECORD be signed by their authors and that the signature be printed when the item is published. For such articles and features the responsibility rests on the author, and the RECORD does not act as an endorser. On controversial matters effort is made to obtain expression of conflicting views.

We do, of course, assume full responsibility for whatever appears in our news columns. These can be distinguished by the absence of a signature, or of the initials by which staff members indicate their personal work.

In order to stimulate expression of opinions, especially on parochial matters, we withhold publication of signatures in our letter column when so requested by the writer. However, no letters are published unless the author identifies himself to the RECORD.

With respect to the items published in "Off the Record" it has never been our practice to publish the name of the author. Intending these items to be comical, we have published them for their form rather than for their content. If poetical style has been used to express contentious thoughts while avoiding personal responsibility, we regret the occurrence, and shall strive to limit the column in question to patently inconsequential matters.

T. J. O.

Letters to the Editor

To the Editor of the RECORD:

The author of an article about the writer has invited a response thereto. Accordingly, please print the following:

Though the article repeats the author's paper about the courts of Hamilton County, Ohio, I can conceive no reason for his slurring remarks about me, in particular, except that he resented my attempt to impress upon him that his former article should have included good government in courts. This was omitted from his former paper. Such good government, which universally prevails in my court and that of my colleagues, is that neither clerk, bailiff nor messenger ever express any opinion about the merits of any case. I tried to impress upon the author that this was an absolute essential of good government and should have been included in his thesis.

Appointment of referees, commissioners, masters and receivers by the writer and his colleagues has been made of those in whom the court had confidence and that the purpose was to attain justice without favor to either party. Despite the author's access to our court records he failed to find a single instance in which such object had not been attained.

Those reading the author's articles about our courts and the writer hereof should weigh the young law student's remarks with kindness due to one who never having tried a case is unfamiliar with legal procedure. Instance this by his statement that I sit "beside the foreman of the jury." For information let me advise the student that until all evidence is completed, arguments of counsel made and the jury receives the court's instructions as to the law and has retired to the seclusion of the jury-room to elect a foreman and agree upon a verdict, no one knows or can know who is the foreman of the jury.

If the author's article intended to suggest that I have outlived my usefulness upon the bench, permit the statement that without conceit but with just pride the writer can remind that the leading and most experienced lawyers on both sides of cases have selected and still select me to hear cases of first impression in our courts. Among such cases are those that arose under the Fair Labor Standards Act, the Ohio Intangible Tax Law taxing income from a foreign trust, the extent to which interstate pipelines are subject to the Interstate Commerce Act or to labor laws, the United States Code with reference to the liability of interstate transportation companies, Zoning laws, the new Ohio Arbitration Act and many other important statutes. So I shall still continue to administer justice without respect to persons but in accordance with my training under Dean Langdell and his associate masters of legal education.

ALFRED MACK

To the Editor of the RECORD:

Congratulations on your very fine book review of Mr. Justice Jackson's "The Nurnberg Case." Ably-conceived and well-written, the review was very enjoyable indeed.

May the RECORD continue to show us how it should be done.

J. LOWELL OAKES
Book Review Editor
Harvard Law Review

To The Editor Of The Record:

I try not to miss an issue of your periodical and always accumulate them until I can get the time to read them. I have just finished the January 8th issue and read with interest the suggestion of Mr. Bert Harmon about an annual refresher and reunion plan. I think it is an excellent idea and know of a number of men in this city who would be delighted to attend such a session.

Very truly yours,
M. J. SHAGAN

To the Editor of the RECORD:

It would be interesting, not so many years from now, to see Mr. Bracken faced with the task of telling ten million unemployed that they and their families must quietly go home and starve, because "planning leads to bloodshed and persecution." Or would he modify his stand enough so as to be known as "Breadline Bracken"?

Sincerely,

JOHN H. BASS, JR.
2nd Term.

The Book Shelf

TOTAL WAR AND THE CONSTITUTION Edward S. Corwin, Knopf, \$2.50, 182 pp.

The Constitution of 1789, even though not originally designed as such, early became primarily a Constitution of Rights and hence structurally a Constitution of checks and balances. But the present-day Constitution is by contrast a Constitution of Powers, with a concentration of power in the National Government and in the President and administrative agencies.

Prof. Corwin seeks, in this volume, to review and interpret the trend away from a Constitution of Rights towards the present-day concept as shown in proclamations and acts of the executive, in legislation and concurrent resolutions of Congress, and in decisions of the Supreme Court, for the period before, during, and immediately after World War II.

To the student of Constitutional law, of Federal Jurisdiction, and of Administrative Law, this book will prove most instructive. Mr. Corwin has cited and analyzed the modern leading legal decisions to support this thesis, while that portion of the monograph devoted to the post-war period and looking towards the future will prove of great interest to the general reader. The practicality of his approach is refreshing.

The United Nations Organization and our participation therein present interesting constitutional problems with which we will be faced for some time to come. Under the Constitution the war-making power is invested in Congress, while the President is designated the commander-in-chief of our armed forces. The use of coercion by the United Nations when necessary for the maintenance of international peace and security has been provided for in the Charter. Thus the division of power between the President and Congress becomes of special importance in the efficient performance of our obligations to that organization and at the same time in the maintenance of the division of powers provided for by the Constitution to insure our democratic form of government.

The question then arises whether the President in his position of commander-in-chief could supply the forces called for in the Charter, or whether Congress should provide such forces, or whether Congress could authorize the President to take such steps as necessary to implement the agreement to contribute armed forces without unconstitutionally delegating its war-making power. Prof. Corwin points out that in the field of foreign relations the "cognate powers" of the two departments are so broad, so indefinite, so overlapping, that the Court could not disentangle them if it wished, which, of course would be necessary to say whether Congress had or had not delegated power in a particular instance.

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Off the Record

A LEGAL PRIMER

The Gourmand

See the poor plaintiff lying on her stretcher. She is a Quick Lunch Artist. Every day, for the past few years, she has eaten blueberry pie and beans. She has swallowed Stones, Tacks, Hairpins, Shoe Polish, Nitro Glycerin, Half a Roach, and a Copy of the Daily Racing Form. She now has Ulcers, Perforated Tonsils, and Emotional Harm. Will she recover? No, children, her Lawyer is suing in Ejectment, and the Statute has just run. If he had taken Judicial Remedies he would have known that his Proper Action was Quasi-Replevin.

—PUBLIUS II.



—Harris B. Steinberg, '35

"The Prisoner stood on his constitutional right not to incriminate himself."

Gallery

ROBERT R. BOWIE



Robert Richardson Bowie, who came to Harvard last July as Professor of Law, has some definite ideas on what kind of training is most valuable to law students. These ideas are based upon his unusually wide range of experience in the various aspects of law practice.

After graduating from the Law School, where he was editor of the *Law Review* for the year 1933-34, Professor Bowie (rhymes with Louie)

worked until 1942 in his father's law firm (Clarence K. Bowie, LL.B. '07), Bowie and Burke, in his home town of Baltimore, Maryland, handling general and corporate practice. During this period, however, he also held positions in public service which gave him a wider appreciation of legal problems than he could have gained in private practice. In 1939 Professor Bowie was named Reporter for the Committee on Practice and Procedure of the Maryland Court of Appeals. He served as legislative draftsman for three sessions of the Maryland legislature, and in 1939 was also Assistant Director of Research for the Legislative Council. During 1941 and 1942, as Assistant Attorney General of Maryland, he received experience in the relations between government and business, a subject to which he is now devoting study and research.

During the war, Professor Bowie worked on procurement matters in the War Department for three years, spent a short period with the Office of War Mobilization, and then went to Germany for a year with A.M.G. In March 1946, he returned to Washington where he worked in the office of the Assistant Secretary of War until his release from the army in July with the rank of Colonel. He wears the Legion of Merit with Oak Leaf Cluster.

Professor Bowie is especially interested in government regulation of the national economy. In his opinion our most important domestic problem is how to maintain full production and employment within the framework of our traditional freedom.

One aspect of the problem, as he sees it, lies in the tremendous concentration of economic power in the hands of large corporations within the last fifty years. The other side of the picture is the corresponding growth of government power to meet it. Bowie thinks such concentrations of power must be kept to a minimum in both government and private industry if we are to maintain our inherited ideals.

The solution of such a complicated problem is not easy. Professor Bowie's desire for a chance to study government regulation was the primary reason he accepted his present position at Harvard. He believes that lawyers must contribute to a workable solution. To do so they must receive training in understanding the economic and political background of modern law. It isn't enough today to be merely a competent lawyer technically. While much of this training must be received before entering the law school, the law school can help greatly by emphasizing the political and economic content of many legal problems of today.

In line with his interests, Professor Bowie's main course is Government Regulation of Business, which he taught last fall and will teach again next fall. This term he is teaching Business Associations I.

Professor Bowie is a pleasant mannered ex-Princetonian, 37 years old, of medium height and stocky build. His manner of speaking is clear and concise, but his lecture hall voice has not been loud enough in the past to satisfy some of the back-benchers who were nurtured on the more aggressive styles of Professors Scott and Casner. By popular demand he now uses the public address system. Professor Bowie enjoys such active sports as golf and tennis, and is an amateur photographer. He was married in 1944 to Theodosia Chapman, of Baltimore.

Students who began Professor Bowie's course in Business Associations last fall were a little confused until they learned what to expect in class. Those who relaxed with pen in hand to wait for the "cold dope" soon learned that they would get no doctrine in B. A. I. And neither would they find out "what Bowie thinks." Class begins with a, "Now, suppose . . ." and after an hour of, "Now, Mr. Jones, you are counsel for the stockholders," and, "Mr. Smith, what do you have to say for the directors?" The student's notes will consist only of an outline of what Professor Bowie believes to be the material issues—derived from a record of his leading questions.

Bowie believes that the classroom period should be spent in developing students' abilities to analyze problems, to work out sensible solutions, to formulate arguments and to present them in a persuasive manner. You can find the doctrine in the treatises, but you must develop this skill and judgment for yourself.

Professor Bowie points out that the largest part of most lawyers' work is not in the courtroom, or in the preparation of briefs, but rather in advising clients as to their best course of action, in negotiating agreements between parties, in drafting instruments, etc. He believes that if a lawyer can see the material issues readily, explain them clearly to interested parties, and help to develop workable answers, the business at hand is completed with dispatch and the lawyer is worth his fee.

Students ordinarily agree with Professor Bowie upon the value of this question and answer method of classroom discussion (the general idea often being referred to as the "Seavey Method"), but some feel that a professor should evaluate the arguments expressed by students upon a certain point.

"If I attempted to say whether a particular solution to a question was right or wrong I would destroy the whole effect of this method of teaching," he says, "Instead of a student's considering for himself which of the arguments presented are most persuasive, he would wait patiently until the end of the discussion and write down my opinion

Sub Judice

JUSTICE IS AS JUSTICE DOES * * * *

Shapiro, while in the armed forces in the grade of second lieutenant, was appointed to defend before a court martial an American soldier of Mexican descent who was charged with assault with intent to rape. The soldier vigorously maintained his innocence and Shapiro, in order to demonstrate the mistake in identification by the prosecuting witnesses, substituted for the accused at the trial another American soldier of Mexican descent. This substitute "defendant" was identified at the trial by the prosecuting witnesses as the attacker and was convicted. Lieutenant Shapiro informed the court of the deception. The real defendant was then brought to trial. He also was identified as the attacker, convicted and sentenced to five years at hard labor.

Several days later Lieutenant Shapiro was arrested. A day or two after his arrest he was charged with violation of the 96th Article of War, in that he had effected, "a delay in the orderly progress of said General Court Martial which had tried the woman's attacker." This was at 12:40 P.M. He was notified that he would be tried at 2:00 P.M. the same day at a place forty miles distant from where the papers were served on him. Shapiro could not obtain the counsel he requested and was forced to select two officers, then available, neither of whom was a lawyer. At the trial his motion for a continuance was denied and he was tried, convicted and sentenced to be dismissed from the service. The conviction was approved by the convening authority and by the President. He was later re-inducted as a private and several months later received a medical discharge.

Shapiro brought suit in the Court of Claims for his salary as a second lieutenant for the period of enlisted service claiming that he was illegally deprived of said salary since his dismissal was based on an illegal verdict.

The government demurred to the complaint and the court overruled the demurrer stating, "A more flagrant case of military despotism would be hard to imagine. It was the verdict of a supposedly impartial judicial tribunal; but it was evidently rendered in spite against a junior officer who had dared to demonstrate the fallibility of the judgment of his superior officers on the court—who had, indeed made them look ridiculous. It was a case of almost complete denial of plaintiff's constitutional rights. It brings discredit upon the administration of military justice." The court went on to state that the fifth and sixth amendments applied as well to military tribunals as to civil ones.

Shapiro had received a pardon by the President at the request of the Secretary of War. The Chief Justice of the Court of Claims dissented stating that unless the verdict of the court martial was set aside the Court of Claims had no appellate jurisdiction and that his redress was from Congress. *Shapiro v. U. S.*, 69 F. Supp. 205 (Ct. of Cl., 1947).

"SNAPPER CHARLIE" LOSES ONE * * * *

Pic magazine, published by the defendant, ran an article in its January, 1946 issue, on gambling, describing in colorful and far from savory terms some of the practitioners of the "art" and also describing collaterally related pastimes involving the crimes of common cheat and false pretenses. Among those named as employed in these "vocations" was one "Snapper Charlie" who had acquired that sobriquet from a habit he had of constantly snapping his fingers.

Pic's publisher suddenly found itself served with the papers of a libel suit instituted by one Charles Voris who alleged that he was known as "Snapper Charlie"; that he was a person of good repute and name; that he was deservedly held in high esteem in the City of Chicago, County of Cook, State of Illinois and throughout the U. S.; that he was at all times "and for a long time prior thereto," known throughout divers states "throughout the U. S." as "Snapper Charlie." He further alleged that corporate defendant . . . maliciously composed and caused to be published and circulated the above described items which he claimed libeled him and he prayed judgment for \$100,000.00 as compensation for damage to his reputation.

The complaint was full and well counseled but the defendant moved for and got a dismissal on the ground that no allegation was made that there were any members of the public who read the article and knew that it referred to the plaintiff and that there was no certainty of person. Plaintiff appealed and the court sustained the dismissal stating, "It is not enough to constitute libel that plaintiff knew that he was the subject of the article, or that defendants knew of whom they were writing. It should appear on the face of the complaint that persons other than these must have reasonably understood the article was written of and concerning plaintiff, and that the so-called libelous expression related to him." "The gravamen of an action for libel is not the injury to plaintiff's feelings but damage to his reputation in the eyes of others . . ." *Voris v. Street & Smith Publications*, 71 N.E. 2d 338, (App. Ct. of Ill., 1947).

YES, A BROKEN JAW IS A SERIOUS INJURY * * * *

One night in May, 1946, W. B. Letts was in Kelly's restaurant talking to friends. Davis entered and invited Letts to come outside stating that he wanted to talk to him. Davis asked Letts where his brother Jim was. Letts told him he knew but wouldn't say. When Letts turned to walk away Davis hit him in the jaw, breaking the jaw bone and also kicked Letts as he lay on the sidewalk until he was finally restrained. Davis was convicted of the crime and aggravated assault and battery and appealed contending the injuries inflicted on Letts were not serious.

The court was well satisfied that a broken jaw was a serious injury but held, nevertheless, that it was a jury question and that the jury verdict must stand unless unsupported by the evidence. The conviction was affirmed. *Davis v. State*, 199 S.W. 2d 167 (Texas, 1946).

as law on the subject. When a client asks you to advise him or defend him in a law-suit, he doesn't want to hear about the issues involved and the various arguments which might be effective. This client wants you to figure out his chances of winning and then tell him whether to fight the suit or settle out of court. Law School is the place for you to mature in your ability to evaluate opposing arguments. You can't do this if I make the evaluations for you.

J. P. L.

The Witness Stand

Question: Should U. S. occupation troops be withdrawn from Japan at an early date, as Gen. MacArthur advocated recently?

1. Jan Bove, Wilmington, Delaware, 4th term.

General MacArthur's suggestion seems to conflict with State Department views. Though the General may be more familiar with the Japanese situation, I take it that the State Department is well acquainted with the pros and cons and has a broader picture of the entire international aspects of the occupation of Japan. Since I have scanty information about Japan and about the international situation, I must rely on the State Department's policy as being the best solution.

2. M. J. Browne, Gloversville, N. Y., 4th term.

No. Although the Japanese have held elections, and set up a framework upon which to reconstruct their economic and governmental system, it hardly appears likely that this will meet with any marked degree of success in the immediate future. In a country wherein the national economy, manpower and resources have been directed toward the waging of war since 1931, the dislocation certainly cannot readily be adjusted. The Japanese need the assistance and co-operation and leadership of men who are trained in military government and rehabilitation, if their nation is to assume a position of responsibility in the management of the world.

A self-sufficient, united and organized Japan, educated to a free way of life by our own effort and example, is the best means of insuring that the Far East, and what have been called "our outer perimeter defenses," do not fall within the increasing area of the Soviet sphere.

3. Morris T. Johnson, San Antonio, Texas, 4th term.

No. In view of America's new foreign policy I don't think it is desirable at the present time to remove U. S. forces. Why protect the West and leave the East unprotected? If America is to check the expansion of Soviet-inspired Communism, she cannot do so effectively by bolstering her line in one place and leaving it unsupported in another. Japan, with over ten percent of her population on relief, is economically weak and her military strength is even weaker. The presence of U. S. forces, of course, will not cure the weakness of Japan's deficient economy, but it will replace her military failings. Their mere presence might stave off any outside pressure until Japan has the economic and military strength to protect herself or other protection is provided.

It has been suggested that non-military control be substituted by the United Nations. The suggestion raises two questions: (1) Is the U.N. able to assume non-military control? (2) If so, is non-military control enough? Unless both questions can be answered in the affirmative, I think America's foreign policy compels the retention of U. S. occupation forces in Japan, and I don't think that the U.N. at present is able to assume such control.

4. Burns Stanley, Charlottesville, Va., 4th term.

Whether we should withdraw our troops from Japan following an early peace treaty is to be answered according to one's faith in the efficiency of the United Nations.

MacArthur would leave to the U.N. the job "... to watch, control, and guide" Japan during an indefinite post-treaty period.

The General believes the Japanese now appreciate the dignity of man, that they have experienced a solemn spiritual revolution, and that all possible of accomplishment from the "outside" to set up the democratic framework has been done.

Our government does not believe the U.N. now sufficiently strong to guard against a possible coup by undemocratic elements. But by treaty-signing time, we may believe Japan's handling to be a U.N. job.

It would be folly to withdraw all supervision. This is not proposed.

The treaty negotiations should begin. If within a reasonable time the U.N. has overcome the veto impotence, we should withdraw, leaving the international body in control. If the U.N. remains subject to arbitrary Russian action, we should nevertheless complete the treaty, but must leave American personnel in charge.

Alumni Notes

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

LL.B. '33—President Truman has accepted the resignation of L. Metcalfe Walling as administrator of the wage and hour and public contracts division of the Labor Department. Walling is returning to private practice after nearly ten years of government service, first as administrator of the Walsh-Healy public contracts act, and for the last five years the fair labor standards act.

LL.B. '42—The engagement of Miss Gail Sharpe, of Rockland, Me., and Hervey Allen, Jr., has been announced. Allen is with the New York law firm of Burlington, Veeder, Clarke & Hupper.

Ex. '42—Harry P. Edwards has become associated with Dane & Howe, Boston, Mass.

LL.B. '46—Alan Neil Schneider is associated with the firm of Selligman & Greenbaum, Kentucky Home Life Building, Louisville 2, Ky. He was admitted to the Kentucky bar last month, having received second honors in the state bar examination. While at the Law School, Schneider was Feature Editor of the Record.

FRANCIS B. SAYRE TAKES U.N. POST

Francis B. Sayre, LL.B. '12, S.J.D. '18, was elected chairman of the United Nations Trusteeship Council at its first meeting on March 26. The initial meeting was marred by the unexpected failure of the U.S.S.R. to send a representative. The Soviet abstention may well be indicative of the problems facing chairman Sayre in his new post, and he characterized the job as one of "headaches and difficulties that must be overcome."

This latest assignment is one for which Mr. Sayre is well-fitted by virtue of his past experience in international affairs. After graduation from Harvard Law School in 1912, he served for a brief period in the District Attorney's office in New York county. In 1914 he returned to Williams College, from which school he had graduated in 1909, and he served as instructor in Government until 1917. He returned to Harvard in 1917 as Thayer Teaching Fellow in the Law School, and successively held the posts of assistant professor and professor until 1934.

While absent on leave from the Law School in 1923 to 1925, Mr. Sayre served as Envoy Extraordinary and Minister Plenipotentiary from Siam, and also as an advisor to the Siamese Ministry of Foreign Affairs from 1925 to 1930. During this period he negotiated new political and commercial treaties on behalf of Siam with France, Great Britain, and other European nations. He was active in the abolition of extraterritoriality in Siam in 1925.

He served as Director of the Harvard Institute of Criminal Law between 1929 and 1934, and held the post as State Commissioner of Correction for Massachusetts in 1933. An appointment as Assistant Secretary of State in 1933 took him to Washington where he served in that capacity until 1939. In the latter year he became U. S. High Commissioner to the Philippines, and in 1942 he escaped from Corregidor by submarine.

On return to the United States, Mr. Sayre was appointed as special assistant to the Secretary of State and deputy director of foreign relief and rehabilitation. He became diplomatic advisor to the Director-General of the U.N.R.R.A. in 1944, and at the time President Truman nominated him as American representative to the United Nations Trusteeship Council, he was en route to Mexico heading an U.N.R.R.A. mission seeking relief supplies.

Mr. Sayre has been decorated by the governments of Siam, the Netherlands, Denmark, Spain, Portugal, Norway, and France. He was a member of the Permanent Court of Arbitration at the Hague representing Siam during the period 1925 to 1934.

Original plans called for the Trusteeship Council to meet from five to eight weeks, possibly twice a year. A 10-nation agency was authorized by the charter of the United Nations and formally set up by the Assembly of the United Nations in December, 1946. Its primary task is to supervise former mandate areas with some 15,000,000 inhabitants. The Soviet failure to attend the initial meeting of the Trusteeship has left their seat vacant; the other council members include five administering powers, namely Great Britain, France, Belgium, Australia, and New Zealand, and four non-administering countries (plus the U.S.S.R.), namely the United States, China, Mexico, and Iraq.

BOOK SHELF—(Continued)

Congress solved these constitutional difficulties through the passage of the United Nations Participation Act, the theory of which is that "American participation in the United Nations is a matter for departmental collaboration and not departmental rivalry." Thus provision was made for joint action by the President and Congress. This Act authorized the President to negotiate special agreements with the Security Council, subject to Congressional approval, making available armed forces as provided for in the Charter, but reserving to Congress the duty of authorizing the President when additional forces are needed. This retains the legislative power as it was originally intended to be, as the predominant power.

The creation of a joint Committee with representatives of both major political parties to replace of the Senate Foreign Relations Committee and the House Foreign Affairs Committee, and the reformation of the Senate rules of procedure for the handling of foreign matters, are concrete creative suggestions by Prof. Corwin meriting consideration for facilitating the association of Congress with the President in the conduct of our foreign relations. He also advocates the reorganization of Congress in order that it may recover its due importance in the Constitutional system as well as make more effective our participation in the United Nations Organization.

Mr. Corwin, in his final chapter points out that our peacetime constitutional law was based on the doctrines of dual federalism, of separation of powers, and of judicial review. On the basis of *United States v. Darby*, Mr. Corwin states that the doctrine of dual federalism—that the states and the federal government are each sovereign in their respective jurisdictions—has been practically rejected and no longer is capable of obstructing through judicial review the continued centralization of governmental power in the National government.

The doctrine of separation of powers has also felt the impact of centralization through the growth of Presidential initiative in legislation, the delegation by Congress of legislative powers to the President and to the various independent administrative agencies during the war because of the need for "functional totality"—the politically ordered participation in the war effort of all personal and social forces, the scientific, the mechanical, the commercial and the economic.

Judicial review as a restraint on the political branches of the national government has also become greatly impaired, through the use of the concept of "emergency" to justify legislative interference with constitutional safeguards on individual liberty and the distinction between "jurisdiction," which Congress can, in the case of national inferior courts, regulate, and "judicial power" which the courts receive from the Constitution itself.

Prof. Corwin's practical and politically sound approach should provide interesting reading.

D. K.

FORUM—(Continued)

in lies one of the chief dangers of that system. He indicated that if the United States suffers another depression such as in 1933, not only will foreign countries turn away from whatever type of economy we have, but also the lack of security on the part of our own people will seriously threaten our democracy, for any system of government is dependent upon its social and economic environment.

Mr. Eliot called attention to the manner in which fundamental liberties, and therefore the whole field of liberal thought, was being threatened by measures adopted by some governmental groups. Specifically, he called attention to the recent order, issued by President Truman, to eliminate all disloyal Americans from government employment. While communism is the force which the order ostensibly is attempting to eradicate, the use which can be made of the President's decree will have much broader implications.

The loss of a government job for disloyalty places a man on a blacklist which will make it virtually impossible for him to be hired in private industry, according to Mr. Eliot. And yet the test of disloyalty is certainly indefinite and subject to perversion by any person who is in a position to administer it. The order says, "A person is disloyal because of ... sympathetic associations with any group determined by the Attorney General to be subversive."

Mr. Eliot concluded by saying that the fundamental purpose of liberalism was to stand eternally hostile to tyranny over the minds of men, a purpose defined by Thomas Jefferson.

HOCKING—(Continued)

ment in positive law. This is seen when we consider that an idea has no vitality, is not a living force until it enters the stream of behavior. It enters through the gateway of decision, i.e., an act of will incorporating an idea. For this transition from the general to the particular, there is never a sufficient reason, there is something non-rational about a decision; but it is irrational to refuse to act, hence, you must be non-rational in order to be rational! So the idea of law has to be given the stamp of community decision. Such law, even if imperfect, has the great virtue of existing; it establishes a way of action which is the right way until some authority changes it. And until the authority has decided, no way is "right." Hence, Walter Bagehot could say that "it is more important that there be law than that there be good law."

Hocking would make one exception to this general rule of requiring the stamp of enactment on a "cake of custom." Where the principle of action concerns only two persons, reason can regulate action as right or wrong without the intervention of an authority, i.e., reason as the implied platform of all direct conversation. This exception becomes important in respect to international law in which, for most part, we cannot hold there is no right until there is positive law, nor can we demand for it a preceding "cake of custom."

So the effect of our position so far is that where there is a background of tradition, and an accepted authority, the element of reason incorporates these two elements into itself. Where these other elements are not present, the fundamental legal principle of Kant holds good, the Kantian law "that there be law."

HEGEL'S PHILOSOPHY OF LAW

Hocking considers Hegel the first nineteenth century thinker whose theory of law naturally united these elements. His whole position is that of the historical position—history is the life of the Idea in time—yet he strongly denounces the "historical school" which refuses to admit that the reason in history could be grasped by ordinary reason, e.g., opposition to codes. (Since those who did oppose codification in the nineteenth century derived from Hegel philosophically, this proposition implies a profound misunderstanding of Hegel by the "historical school.") Professor Hocking explains that Hegel's philosophy of law and history proceed to expound, in the form of the dialectic, the explicit meaning of the historical gropings of the Weltgeist for self-expression. All of social life, for Hegel, is precisely "incorporation of idea" in positive, non-rational material; however, having pointed out the omnipresence of the non-rational he proceeds to extract the reasonable elements, and takes the positive material for granted. But the body, the non-rational is never forgotten, for property is, to Hegel, the first incorporation of freedom!

It was long before western Europe realized the significance of this radical proposition; Manchester economy never realized it. It is only yesterday that the Webbs, reading to British society the meaning of the Industrial Revolution, made effective the proposition that without means a man is not free. Sir Henry Maine, in the same direction, saw liberty embodied in contract, but Hegel saw contract as only a fulfillment of the idea of property, through which it is stamped with social approval. It was because Hegel traced the lineage of the free idea through the physical medium of matter, i.e., Property, that his thought made connection with the growing material concerns of a disappointed age. Feuerbach, Marx and Engels understood that the meaning of history, and therefore of law, is to be read, first of all, in the entanglements of human liberty in the meshes of the economic system.

FREEDOM OF MAN

Professor Hocking pointed out that Marx missed Hegel's second point—that the freedom of man in property requires also the freedom of man in contract. As shown above, property, at first a private claim, receives the stamp of social approval through contract.

Hegel's theory has a defect also, Hocking pointed out. Engrossed in the tremendous concept of the incorporation of the idea in time, from which we extract it by the inductive process Hegel calls the dialectic, Hegel failed to observe that reason has another source: it keeps coming into human affairs from the outside. There is a sense of value in human life which is also a form of reason; it is a reason already imbedded in law, but it operates in independence of its history and working on human will and feeling it renews or changes the goal of the law. Our opposition to euthanasia is not defensible by reason in the Hegelian sense.

J. L. O.

Harvard Carousel

By Droup Hearsom

Wanna hear something so exclusive it's been kept out of all papers edited by men of good taste?

This columnist, who is accurate in his predictions and reports 117% of the time, recently attended the banquet in honor of the 60th anniversary of the *Buncum Journalism Journal*, the distinguished literary magazine of the Buncum University Journalism School. It was a gala affair, attended by the present editorial staff, distinguished graduates, professors, and large quantities of liquor. Gaiety was the keynote of the affair, at which the assemblage gathered around the open fire, and roasted hot dogs, and each other.

The principal address, "How to Avoid Blackening of the Eye-at-the-Keyhole When the Door Opens Outward," was delivered by your correspondent, an honor accorded to him in recognition of his mastery of the latinogram litany. Now, all of you who have read the *Carousel* know that your columnist has at times exasperated people who could qualify for Calvert advertisements. Remember the recent poll conducted by Dr. Canter's Institute, which shows that with independent experts, with men who hate their columnists most, it's the *Carousel* two-to-one?

It came, therefore, as no surprise at

all, when two professors of Buncum U., Theodore Parnell and Richard Bracket, began to heckle the speaker, just as he was dealing with his most interesting digression, the liberality of Buncum in admitting its students. He had just mentioned that even managing editors of the staid New York Times would be admitted to classes, if they desired to matriculate in mendacity. (Menda City, you know, is the site of Buncum U.)

At this point, Prof. Bracket, in shining armor, astride a black horse (the White Horse had already been consumed by the group), shouted, "No girls," to point out that the sex-line had been drawn, albeit curvaceously. Prof. Parnell, misinterpreting his colleague's words, thought he had said, "Go! Girls!" and dashed off in quest of the females, tripping on the doorstep as he went out.

With a few well-chosen words (117% accurate), your correspondent masterfully disposed of the duo.

Prof. Parnell, rather than being unhappy, was sustained and upheld—sustained and upheld by gay spirits. Prof. Bracket was reversed and remanded—reversed astride the horse, and remanded to the Junior College.

Now that your little eavesdropper has reported the occurrence with complete, unswerving accuracy, his percentage has risen to 119%—58% common and 61% preferred, of which 89% is watered.

—N. B. T.

YEAR BOOK—(Continued)

be solved. The last *Yearbook* staff had believed that the same photographs could be used again this year, but this year's committee found that it would cost less to have the pictures retaken.

Normally, a yearbook containing 1800 portraits is a target for all photographers in the area. They are glad enough to give one glossy print of each subject to the yearbook for the privilege of making that many sittings with a potential market of a dozen finished pictures of each student to satisfy fond mothers who want to supply the family with junior's likeness at the age of 18. There doesn't seem to be the same demand for a record of how son looks at 25 plus, and last year the photographers found that they could not afford to provide the *Yearbook* with pictures at the contract price since they sold very few finished portraits to students. This year the bids showed that the extra market was too small to induce the photographers to take the job. The one-shot photograph system was the best solution possible, and those persons who walked across in front of the lens a bit too fast during their "sitting" were photographed again when the cameraman came back to take the pictures of the incoming class this February.

When Jack Hennessey, chairman of the committee, sent out the call for people to help on the *Yearbook*, he soon discovered that he could not operate in the traditional manner of a similar college publication. Instead of a host of young hopefuls wanting to work on the book and win the headline positions next year in order "to keep the job in Sigma Chi," the answer to Jack's call was, "What's in it for me?" The offer of 75¢ per hour brought out a few public-spirited individuals, most of whom soon decided that work on the *Yearbook* infringed upon their complete enjoyment of Cases on Future Interests, and so retired shortly to the peace and quiet of the Langdell Reading Room. The committee found that it was necessary to hire four full-time secretaries to handle the endless filing, typing and cataloguing, and, during rush periods, to hire two more part-time helpers.

Jack Madden, advertising manager, set out to convince local merchants that *Yearbook* advertising was just what they needed to increase sales, a job akin to selling iceboxes to Eskimos. Madden

had to assure his advertisers that this book would be out in the spring, so that advertisement showing a smart line of summer sports togs would not appear in the fall, as happened last year.

After the general layout of the book had been decided upon, the committee started collecting the material to fill it. Feature articles, dedication pieces, etc., were solicited from prominent members of the bench and bar. Informal and candid photographs of life around the "Campus" had to be collected and the people in them identified. Cartoons based on familiar law cases were requested from well-known artists (there was a *warm* response from Milton Caniff and a promise by Whitney Darrow). In collecting this material the committee was dependent upon men finding time who had very little of it to spare. Self imposed deadlines had to be pushed back when the promised copy failed to materialize. Often a manuscript of several hundred words would arrive in response to a request for a short note, and the editor, Paul Mishkin, was faced with the problem of redesigning the book or cutting down the copy (with resulting great pain to the authors). It also often happened that a bit of copy, written by the staff and carefully trimmed to fit the space available, was submitted to the proper person to be checked for accuracy. After "certain small changes" by the party responsible the articles might be expanded threefold by the addition of *whereases* deemed necessary to its absolute veracity.

J. P. L.

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Genuine wing tip of selected Cordovan with full, double, black leather sole and heel. A great pre-war favorite.

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\$8.95

Other Mansfield \$8.95 to \$9.95 including brown and white saddles \$8.95

The COOP

Calendar

THE LEGAL WORLD

King's Bench
A dance will be held Saturday, April 5, at 7:30 p. m. in Kendall House for members of King's Bench and their guests.

Yearbook Pictures

Pictures that were taken at the formal dance on Friday, March 21, for the Yearbook are on exhibit in the Yearbook office in Gannett House until Saturday, April 5.

Ames Competition

A quarter-final round argument in the Ames Competition will take place Thursday, April 3, at 8 p. m. in Langdell Court Room.

Law Wives

Tonight (Wednesday) at 8 p. m. in Kendall House, Mrs. Frederick Wyatt, child psychologist and phonetic expert will speak on "Emotional Problems in Early Childhood."

There will be a trip to the Boston Fine Arts Museum on Tuesday afternoon, April 8. Transportation will be provided from Kendall House at 3 p. m.

Equity

There will be a make-up class in third term Equity, section 2, on Monday, April 7, at 10 a. m. in Langdell South.

Influenza Vaccine

The Hygiene Department is giving influenza vaccine to students who wish to take it. There is no additional charge for it. Students who wish to take advantage of this may make an appointment with the secretary in the Medical Office in Austin Hall.

THE UNIVERSITY WORLD

Dance

All students are invited to the Carlton Club Dance in the Hotel Commander, Saturday, April 5, at 8 p. m.

International Student Association

Every Sunday: Open house and tea from 4 p. m. to 5 Phillips Pl., Cambridge. Buffet supper (40 cents) at 6:30; special program at 8. On April 5, Dr. Asirvatham of Boston University is to be the featured speaker.

Graduate Students Club

The Graduate Students Club, 18 Apian Way, is open to all graduate and law students on weekdays, 7:30 to 11:30 p. m. and on Sundays, 5:30 to 10:30 p. m. Refreshments are available at reasonable prices.

THE OUTER WORLD

Art Exhibition

At the Institute of Modern Art, 138 Newbury St., Boston, there is an exhibition of the works of Louis Sullivan. The exhibit, open weekdays (except Mondays) 11 to 6, and Sundays 2-6 p. m., will continue through April 27.

Ford Hall Forum

Moshe Shertok, chief of the political department of the Jewish Agency for Palestine, will speak on the topic, *What Next for Palestine?* at Jordan Hall, Sunday, April 6 at 8 p. m.

Concerts

Gardner Museum Concerts: Thursday, April 3, Marion Hawkes, contralto, Cynthia Brown, pianist, and Dolores Rodriguez, accompanist; Saturday, April 5, Mariam Burroughs, violinist, and Kalman Novak, pianist; Sunday, April 6, English Duo, soprano and contralto. Weekday concerts begin at 2:45 p. m. The Sunday Concert begins at 2 p. m. Admission is free. However, tickets for the Easter Concert (April 6) must be applied for by mail, accompanied with a stamped, addressed envelope.

AMES —(Continued)

breach of fiduciary duty in buying on their own account a business which supplies a large proportion of a scarce commodity to their corporation, without first giving the corporation notice of the transaction, or an opportunity to gain control of the business itself.

Arguing for the plaintiff-appellee, Shepherd, will be Chester L. Smith, Chicago '42, of Kansas City, and Paul Mishkin, Michigan '44, who comes from Brooklyn, N. Y. Other members of the Cardozo Club who will be of counsel on the brief are Gerald W. Brownstein, a Yale graduate, William P. Cunningham, of Harvard, Morton H. Feder, Brooklyn College '44, Elmer J. Harris, Bucknell University, and Sumner S. Koch, New Mexico '38.

Albert J. Moorman, Jr., Minnesota '42, a native of St. Paul, and Francis M. Wheat, Pomona '42, of Washington, D. C., will argue in behalf of the defendant-appellant for the Gardiner Club. Of counsel on the brief will be Stephen G. Lax, Swarthmore '41, Herrick K. Lidstone, Harvard '42, Albert Byrne Litschgi, Florida '41, George D. McClintock, Jr., Dartmouth '42, Ray F. Myers, Jr., De Pauw '41, and Paul H. Roney, Pennsylvania '42.

Each side will be limited to 45 minutes for the presentation of its argument. Briefs and records are now available at Langdell and Austin Reading Room desks. They will also be distributed to those in attendance at the hearing.

Legal Service Offices

This is the concluding half of an article dealing with the problem of establishing legal service facilities for the general public.

It is desirable that the Legal Service Office handle its cases at low cost but that must be subordinated to doing correct, competent, lawyer-like work. There is a widely held notion that the Legal Service Office will have so much business that it can achieve economy through "mass production methods." I shall be delighted if that is true, but I fear that it is, to a large extent, a mirage.

All mass production economies are based on standardization. Two finished automobiles of the same make are as identical as two peas in a pod because they are made out of exactly the same materials and parts, with the same standardized tools, and following identical processes on the assembly line. There is not much you can standardize in the field of law. In collecting bills or wages, you can devise standard form letters that get progressively tougher, you can standardize some of the simplest corporate forms, and parts of mortgages. But the field is limited. A "standard" will form would cause any conscientious lawyer to shudder.

Standardization fails in law because human beings refuse to conform to pattern. No two cases are exactly alike. Even if the facts were the same, no two plaintiffs are alike. If by a miracle they were, the two defendants would not be. In three apparently identical cases, one defendant might settle, a second force you to trial but pay the judgment, a third fight, lose, and then appeal. The cost of each case will be totally different from each other case. Domestic relations disputes are so numerous as to be common, but every experienced lawyer knows that no two tangles are ever quite the same.

What "mass production" does make possible, however, is specialization. That reduces costs sharply because the expert handles a case in his own field so much more rapidly than his less experienced (though equally intelligent) brother. Economical operations in the Legal Service Office will result chiefly from specialization by members of its staff. They will be able to work fast. This is no new discovery. It is this stubborn economic fact that has forced lawyers to associate themselves together in large firms, and it is the same fact that has enabled the partners, year after year, each to earn more than the individual practitioner without charging more.

This is the reason law agencies have been able to encroach. Each type limits its field sharply and becomes expert in that field by doing the same things over and over again. Banks handle the property in estates and trusts but do nothing else pertaining to the legal field; if a legal problem arises in their commercial banking operations, they at once refer it to their law firm. Collection agencies collect bills, tax bureaus make out income tax returns, corporation service companies register Delaware corporate papers and "mother" the artificial entities; title insurance companies search titles and prepare conveyances.

There is nothing the lay agencies can do that the Legal Service Office in its own field cannot do as well, and should be able to do far better. To specialized skills the staff of the Legal Service Office will add the priceless ingredients of the professional attitude and fiduciary spirit.

One special feature of the Legal Service Office may help to reduce costs sharply. That will be so if men seeking admission to the bar devote two years, after graduating from law school, in apprenticeship training as junior members of the staff of the office. That is the time-honored system in medicine. It cuts the operating costs of every hospital. Professor Sidney Post Simpson

feels that medical internes have been greatly underpaid and that the bar should not go to the same extreme. Even so, the postgraduate can afford some temporary sacrifice if in the long run it is no sacrifice at all. Obviously it will be a benefit to him if he can learn in two years as much about the art and the actualities of practice as he could learn in five years (if at all) in any other way.

Apprenticeship and Legal Education

The third of the four factors which, in combination, have forced our problem into the foreground has been a growing awareness of, and unease about, the great gap between legal education in law schools and actual practice in law offices. That chasm has not been bridged because the law school does not serve flesh-and-blood clients and so cannot teach how it is done; and the law office is not, and does not purport to be, an educational institution.

No one, not even the state, has found a solution for the existing paradox. Bar examinations are geared to discover not whether a law school graduate knows how to interview a client and present his case in court, but whether he has absorbed a fair amount of the theoretical legal content of his courses in school. If he can give suitable written answers to written questions (exactly as he has been doing for three years at law school) he "passes the bar" and the sovereign state then licenses him as a full-fledged, fully qualified practitioner. (Here Mr. Smith reviews the treatment of lawyer-veterans under the veteran-apprenticeship program and concludes that the decision to deny on-the-job allowances to lawyer-veterans is an unfortunate result of the habit of considering a man who has passed the bar to be a full-fledged lawyer.)

The system worked in a crude way. The law school graduate, after admission, painfully and slowly learned how to practice. Sometimes he incurred bad scars in the process and sometimes it was the client who was scarred. Some, finding themselves unable to practice, became desperate and succumbed to unethical conduct. There was no public outcry because, while the damage wrought by a bungling lawyer can be as great as that by the unpracticed hand of a surgeon, it is less obvious.

The only way to learn to practice is by practicing. And the right way to learn is by actual practice under supervision. (Mr. Smith goes into a detailed discussion of the continuing references to such an idea and uses quotations to reinforce his contention of the degree of importance to be attached to apprenticeship training. He then presents the Legal Service Office as the answer to the problem.)

The plan, in my opinion, if it is to be effective must require two years of apprenticeship training by men after law school graduation. During these two years they will devote all their time and energies to serving the Legal Service Office clients and to learning practical procedures under instruction.

One year will not do. Of the total skill that two years can yield, the second year will account for 90%. During the first year the neophyte cannot do much more than get acclimated and learn the ropes. The change from law in books to law in action is an abrupt and sharp transition. To read a case intelligently and to interview a client successfully are utterly different things. The quality of the clinical material will be exactly of the type needed for the purpose. It will consist of the average legal problems of average Americans. It will be the

legal problems of human beings. It is the raw stuff out of which the common law grew. Every case starts with a living client—a man, a woman, or a child.

Effect on Professional Ethics

One final observation about the plan is pertinent. It needs no elaboration because it is self-explanatory. No medical intern can see the pain and suffering in a hospital and strive to alleviate it without coming to understand the Hippocratic Oath and whether he has the inherent aptitudes required of a good doctor. The apprentice-intern in the legal aid or Legal Service Office will learn his own aptitudes and he will absorb through his pores the ethical concepts which make the legal profession a noble calling. When he applies for a warrant in behalf of a deserted wife and her hungry children in order to apprehend the deserting husband and father, he sees the law not as a bag of tricks, but as an instrument of social righteousness.

He will come clearly to see what is too often obscured, that the law office is an integral part of the administration of justice in our country because more than ninety per cent of all the legal problems that people have in all their lifetimes are dealt with, settled, adjusted, and disposed of not by judges in courts but by lawyers in law offices.

The objective of his arduous years in law school will become manifest. There instructors devoted to the science of the law disciplined his mind, taught him the austerity of reasoning from legal principle to conclusion, and gave him the indispensable tools of learning. He will understand that as an apprentice he is acquiring in the only possible way the knowledge of how to place the law at the service of the human being who needs the protection vouchsafed by law. He finds that there is a reciprocal interaction between theoretical and practical training which illuminates and vivifies both.

"Socialization" Versus An Independent Bar

The last of the four factors which, in combination, have pushed our problem into the foreground comes right out of the heart of the times in which we are living. Every man knows and feels that a great deal is going on, that new currents are sweeping around the world, that millions of peoples are struggling towards freedom, that there is a universal yearning for peace and justice on earth, that all institutions are being tested, and that none is sacrosanct.

All this ferment is expressed by each man in his own way, and I can only state my own interpretation.

For selfish and unselfish reasons we hope that the new world will be attracted by our form of government and the American way of life so that, in other nations, free peoples will set up democratic regimes and institutions. In order that our general system may make

its maximum appeal, and because we are not hypocrites, we are engaged in re-examining our own institutions. We want to keep what is good, and add what is found needed.

Law is the foundation of our whole structure. We are determined that it shall be strong. We know that law is not self-enforcing, and that lawyers are essential. There being cumulative evidence that a vast section of our population finds access to lawyers so difficult as to be impracticable or impossible, we have put our minds on that problem. There appear to be two solutions, which are not inconsistent but complementary, so that we should give both a thorough tryout. They are the *Lawyers Reference Plan* and the *Legal Service Office*.

When these ideas were first broached, the cry of "socialization" was heard. That, we must assume, was more than just an attempt to "smear" the projects. I believe it originates in a complete misunderstanding. This issue is one of the greatest in the world today, and proponents of anything new should be prepared to face and deal with it squarely. (Here Mr. Smith quotes from leaders of the bar, judges, essayists, etc. to the effect that such proposals are not "socialized law," concluding with the following quotation:)

The *American Bar Association Journal* published an editorial entitled "Legal Service Policies" in its December 1946 issue which said in part: "As to the organization of legal services for persons of moderate means . . . the profession is confronted with an early choice as to whether it will maintain its historic prerogatives and position by itself fulfilling the new needs, or will stand by while these essential forms of legal service are taken over by institutions, by labor organizations, or by bureaus of government." The alternatives have been clearly presented to the bar. In its own field of service to the poor, legal aid has proved to be not the entering wedge for socialization but a great force adamantly holding back the pressure for socialization and abating the pressure by the extent to which legal aid offices have been created, properly staffed, decently supported, and honestly maintained. Legal aid offices and legal service offices are much better when entrusted to bar associations rather than to governmental bureaus; but legal aid offices and legal service offices conducted by the government are much better than nothing.

Conclusion

Why is the control of legal service offices by bar associations to be preferred? For the answer, "let us," as Jefferson liked to say, "have recourse to fundamentals."

Our forefathers knew that the greatest and most pervasive danger of tyranny comes from government itself. That is why they insisted on a Bill of Rights and a written constitution providing for a judiciary that should be independent of the executive and legislative departments. The guarantees to the individual in the Bill of Rights are printer's ink on paper until an independent lawyer draws a writ of habeas corpus and presents it to the court of appropriate jurisdiction. If the lawyers representing individual citizens are more and more transferred to the public payroll and appointed by political influence, they will not dare to be independent when the citizen needs protection against the government—the lawyer's paymaster.

An independent bar is even more important than freedom of religion, freedom of speech, and a free press, in the sense that those freedoms depend on law. They can have no other protection. Without an independent bar, habeas corpus vanishes. The government can then arrest any man, however unjustly, with impunity. That is the Gestapo. That leads to the totalitarian state, which necessarily denies that a human being has an immortal soul because that would be more important than government, and which is finally driven to substitute the State for God.

This result is the contravention of all that we hold dear and sacred. Yet it has come about in other lands and the pattern of its happening has more often been a failure by the people's leaders than intent by the people themselves. In the field of law in America, the people look to the organized bar for leadership. That places responsibility on us. The issue is not whether we shall do something or do nothing. The demand for ordinary everyday legal justice is so great and the moral nature of the demand is so strong that the issue has become whether we devise, maintain, and support suitable agencies able to satisfy the demand, or, by our own default, force the government to take over the job, supplant us, and ultimately dominate us.

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The fee for the course and a comprehensive set of notes on Massachusetts Law is \$50.00. Lecturers will be Mark Dalton (LL.B. Harvard 1941) and Joseph H. Eleock, Jr. (LL.B. Harvard 1941).

The course is limited to 100 qualified applicants. Submit applications to the Dalton-Eleock Bar Review, 114 State Street, Boston, Massachusetts, by May 1, 1947. Each application must be accompanied by a statement of the applicant's average grades attained while in law school certified by the proper official of such school together with an application fee of \$5.00. The application fee will be credited to the fee for the course for those applicants who are accepted and will be refunded to those applicants who are rejected.

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