

The Harvard Law School Record

VOL. 3 NO. 9

CAMBRIDGE, MASS., WEDNESDAY, APRIL 16, 1947

PRICE TEN CENTS

AMES SEMI-FINALS TO END THURSDAY

Casner, Taney Clubs Make Last Argument

The concluding argument in the first semi-final round to be held in the Ames competition since 1942 will take place tomorrow night at 8:00 p.m., when counsel for the Casner and Taney Clubs will argue the constitutionality of the controversial anti-Petrillo bill.

Winners of the first semi-final argument, George I. Meisel of Painesville, Ohio, and Paul N. Temple, Jr., of Denver, who represented the Thorpe Club, will meet tomorrow night's winners in the finals this summer.

The bench for the argument will be composed of The Hon. John P. Hartigan, United States District Court Judge of Providence, The Hon. Charles E. Wyzanski, Jr., United States District Court Judge of Boston, and Charles B. Rugg, Esq., of the law firm of Ropes, Gray, Best, Coolidge and Rugg.

Oral advocates for the Casner Club will be Malcolm R. Wilkey, of Louisville, Ky., and Clendon H. Lee, of Jacksonville, Fla. Speaking for the Taney Club will be James L. O'Dea, of Wilmington, Mass., and Robert W. Culbert, of Collingswood, New Jersey.

The case to be heard, *Weber v. United States of America*, is an appeal by petitioner from conviction of a violation of the 1946 amendment to the Federal Communications Act commonly known as the Lea Act, or the Anti-Petrillo Act. The legislation is directed at the "make work" provisions which the head of the musicians union insists upon inserting in labor contracts with radio broadcasters. The part of the statute pertinent to this particular appeal forbids anybody, by express or implied threats to coerce, compel or constrain a licensed broadcaster to employ or agree to employ "persons in excess of the number of employees actually needed by such licensee to perform actual services."

On May 28, 1946, station WNEW in Langdell, Ames, discharged three musicians no longer needed because of increased use of transcriptions and recordings in its broadcasts. After unsuccessful negotiations for the rehiring of these three men, Weber, the union chief, called the other two musicians in WNEW's employ out on strike, refused to allow any other members of the union to accept employment with the station, and had its place of business picketed. For these acts, Weber was convicted under the statute.

Petitioner makes two main points on appeal. He first charges that in classifying picketing as a coercive activity the statute denies to the union the right of free speech guaranteed by the First Amendment to the Constitution. Secondly, he states that the due process clause of the Fifth Amendment is violated because the statute defines a crime in terms that are excessively vague.

Counsel on the brief for the Casner Club tomorrow night will be Robert J. Cahall, Gambier, Ohio; John R. Carr, Elkhart, Ind.; Mitchell K. Disney, Washington, D. C.; Clyde O. Martz, Lincoln, Neb.; and James H. Walker, Raleigh, N. C.

The Taney Club counsel on the brief will be James F. Lovett, of Detroit, and Leonard K. Simmer, Ottumwa, Iowa.

SQUASH TOURNAMENT GETS UNDER WAY

With 64 entries, the Harvard Law School squash tournament began on Friday of last week in Hemenway Gymnasium. This tournament is the beginning of what the Phillips Brooks Committee hopes will be an extensive program of sports competition among the law school students. George M. Burditt Jr. and E. Thayer Drake are in charge of this tournament and have announced that they are going to attempt to provide prizes through the committee for this and other events.

The first round of the tournament must be finished by tomorrow and plans are that the finals will be played on the second of May. Since this weather is not typical squash weather, the matches up to the semi-finals will be two out of three games. Those favored in the tournament include four men who previously played in the Boston "A" league for the Lincoln Inn team.



O'DEA CULBERT

Above are the pictures of two of the advocates in the semi-final argument. Pictures of Wilkey and Lee were unavailable.

HOUSING AID TO BE GIVEN

Agencies List Aid To Students Seeking Homes

For the convenience of prospective June law grooms and for the information of married law students who contemplate a change of living quarters, the Record presents a short survey of conditions on the Cambridge housing front. More detailed data are available at the Harvard University Housing Office located in the Phillips Brooks House and at the office of Hunneman and Co., 1416 Massachusetts Avenue, near the Coop. Since applications for June vacancies are activated as of the 15th of this month, the Record and these agencies advise students seeking accommodations to act at once.

I. The first office to visit is the Hunneman agency where Mrs. E. R. Andrews, Jr., Miss R. Kuhnhard, and Miss A. Weber can summarize quickly the current housing possibilities afforded by Federal Public Housing Administration units, the Harvard Housing Trust apartments, and other miscellaneous apartment vacancies. Aid in obtaining accommodations offered by this office is based on priority of application.

Heading the list of available locations is Harvarddevens Village, Fort Devens, Mass. Here there are comfortable one, two, and three bedroom apartments ranging in price from \$41 to \$55 a month for all students and from \$38 to \$44 a month for veterans on the \$90 a month payroll. These prices include utilities such as light, heat, water, etc.; furniture can be rented for moderate sums. Chief drawback to Harvarddevens from the standpoint of the law student is the time consumed in commuting. From Shirley

(Continued on page three)

PEPPER DEPLORES TRUMAN DOCTRINE

By-passing U. N. A Necessary Expedient Says Pres. Wriston

The proposed United States aid to Greece and Turkey was attacked because of its military aspects by Senator Claude Pepper at the Harvard Law School Forum last Friday night, and defended by Henry M. Wriston, President of Brown University.

Abraham H. Feller, General Counsel to the United Nations, preceded the two disagreeing speakers on the program entitled "How Strong is the United Nations?", and outlined the accomplishments of the U.N. since its inception in 1945. Professor Milton Katz acted as moderator.

"Robbed of its military aspects, this measure would never have had any opposition in Congress, for we all favor Greek relief to the utmost," Senator Pepper said.

"What has deeply moved and disturbed the American people and people all over the world, is the unprecedented proposal, first that we send a military mission to Turkey, second that we give Turkey 100 million dollars for the equipment and support of her army for the

President Truman's Loyalty Order Criticized By Six Faculty Members

(The following views were contributed by faculty members in response to a request by the RECORD for comments on the President's Loyalty Order. The contribution signed by Professors Chafee, Griswold, Katz and Scott appeared in the "Letters to The Editor" column of the New York Times, Sunday, April 13, 1947.)

CHAFEE, GRISWOLD, KATZ, SCOTT

The moral and political validity of the Executive Order, "prescribing procedures for the administration of an employee's loyalty program in the Executive Branch of the Government" will be measured by its efficacy in achieving its twin purposes. As stated, these are: (1) to afford "maximum protection" to the United States against infiltration of disloyal persons into the ranks of its employees, and (2) to afford "equal protection from unfounded accusations of disloyalty" to the loyal employees of the Government. It is possible so to administer the Order as to miss genuine culprits, victimize innocent persons, discourage entry into the public service, impair the quality of governmental administration, and leave both the government and the American people with a hang-over sense of futility and indignity.

The nature of the administration will hinge upon the procedures to be followed. This is the nub of the business. Here, as so often in our history, moral and political issues come to focus in a question of procedure. Although the Order purports to prescribe a procedure, the prescription is shadowy and incomplete. Conceivably, the silences of the draftsmen may be redeemed by wisdom in execution. At this time, however, we can only appraise the Order according to its terms. The procedure actually described is quite inadequate. It fails to take due account of the gravity of the sanctions invoked against a person to whom the prohibitions of the order may be deemed to apply. It fails to draw upon the cumulative experience of courts and administrative agencies, embodied in the steady progress toward maturity of administrative law. It fails also to give effect to the conception of sound administration procedure reflected in the very recently enacted Administrative Procedure Act.

It is imperative to keep clearly in mind what a dismissal under the Order means. Far more is involved than the loss of the particular job. It means that (1) the person dismissed will be denied all opportunity for employment anywhere within the federal government, (2) as a practical consequence, he will

encounter special difficulties in obtaining employment in private organizations. Consider the case of one who, for twenty or thirty years—his entire mature life—has worked in the Forestry Service, or the Bureau of Animal Industry, or the Department of Agriculture, or the Postal Service, or the Bureau of Standards, or the Tennessee Valley Authority. To deny him all opportunity for employment in governmental service (federal, or state, or municipal) is to deprive him of the only means of livelihood for which he has any training or experience. It is analogous, in its effect, to the disbarment of a lawyer who has been practicing for twenty years, or the cashiering of an army or naval officer after twenty years of service, or the revocation of a security dealer's license to do business after twenty years.

The tested wisdom of our tradition and national experience dictates that no sanction so drastic shall be applied save after adjudication of wrong-doing based upon a full hearing before responsible and impartial public officers, who are not themselves in fear of losing their own jobs. The Executive Order provides for a hearing of sorts, before a "loyalty board" in the particular department or agency, whose members are to be appointed by the departmental or agency head from the personnel of the department or agency. Since cabinet officers and assistant secretaries and other senior personnel are unlikely to have either the time or the taste for such service, the membership will tend to be drawn, in the ordinary case, from third- or fourth-line employees, who will themselves feel none too secure in their own jobs.

And the nature of the hearing? The suspected "officer or employee" shall be served with a written notice of such hearing in sufficient time, and shall be informed therein of the nature of the charges against him in sufficient detail, so that he will be enabled to prepare his defense. So far, good. But—"The charges shall be stated as specifically and completely as, in the discretion of the employing department or agency, security considerations permit." The accused is also given a "right to reply to such charges in writing," and a "right to appear before such board personally, to be accompanied by counsel or representative of his own choosing, and to present evidence on his behalf."

There the prescription ends. There is no provision that the accused shall be confronted by such evidence as there may be to support the charges against him, so that he may undertake to rebut it. Indeed, there is no requirement that the evidence against him shall be introduced at the hearing at all. No provision is made for a detailed record of the hearing, or, for that matter, for a record of any kind. There is no requirement that the findings of the loyalty board must be supported by the evidence. In fact, there is no requirement that the loyalty board make any findings whatever. After the "hearing," the loyalty board makes its recommendation to the head of the department or agency. If the recommendation is for removal, and is accepted by the departmental head, his decision is subject to an "appeal" to the "Loyalty Review Board of the Civil Service Commission," which, after review makes an "advisory recommendation," presumably to the department head. Since there is no provision for a record, it is by no means clear what the Loyalty Review Board of the Civil Service Commission will review, or on what basis. The Order is, moreover, wholly silent as to the procedure to be followed by the Loyalty Review Board upon such review. The membership of the Loyalty Review Board is to be appointed from "officers or employees of the [Civil Service] commission," presumably by the commission.

This tells its own tale, but the tale is not yet complete. The charges against the suspected public officer or employee will derive their significance from the standards of wrong-doing defined by the Order. The governing standard is explicit. "The standard for the refusal of employment or the removal from employment" shall be that "reasonable grounds exist for belief that the person involved is disloyal to the Government of the United States." [Italics added.] Even in the most mature and most careful and fairest of hearings, it

CLAUDE D. PEPPER

next 15 months, third that we send a military mission to Greece, fourth that we give Greece 150 million dollars to equip, train and support a Greek army of 125 thousand for the next 15 months," the Senator asserted.

"What deeply frightens the American people," he said, "is that if Congress adopts this measure, it will make the United States, the principal founder of the United Nations, repudiate its solemn

(Continued on page three)

SACHS ELECTED TO HEAD REVIEW



MORTON

SACHS



DUNLAP

RICHARDSON

Above are the pictures of the newly elected and retiring presidents of the Law Review and the Legal Aid Society.

SCHOOLS PLAN CONFERENCE

Students Prepare For Legal Education Meeting

A committee of twelve men is now engaged in preparing a paper to be presented at the National Law Student Conference on Legal Education which is scheduled to be held in New York on July 11 and 12. Sponsored jointly by Columbia, Harvard, Pennsylvania and Yale Law Reviews, and endorsed by the respective Deans, the Conference aims to give expression to students' ideas on current methods of teaching and to students' judgment of how well the schools fit the lawyer for his place in society.

An agenda has been prepared and sent to all accredited American law schools, inviting them to participate.

Leading the local committee and serving as a member of the national committee is Walter H. Glass, 3L, of the Legal Aid Society. David B. H. Martin 1L is working as Secretary. Among the members of the Harvard Committee are: K. Brewster 2L, J. W. Perkins 3L, J. A. King 2L, P. C. Sheeline 2L, J. L. Rappaport 2L, and T. J. O'Toole 3L.

At the request of the Record Chairman Glass has issued the following statement indicating what the Harvard Committee hopes to accomplish:

"We have undertaken to participate in this Student Conference because we believe that a great deal is to be gained by stimulating the interest of law students everywhere in the over-all aspects of what they are learning and how they are being taught. We believe that a student can get more out of his courses by keeping in mind the question just why a particular slice of legal knowledge is being offered to him and in what manner the instructor is trying to put it across.

Dean Pound Recounts Memories of His Former Students From Britain

One of the pastimes of a law professor, shared by Dean Roscoe Pound, is to indulge in memories of students who have been here in years gone by and to note with pleasure the successes which they have achieved.

In the case of Dean Pound, these memories often extend to foreign students, as evidenced by the chain of recollections set off by a letter recently received from a student who came here from England to study in 1935.

While some of the English students came here to obtain degrees, an equal number came to take courses of their own selection. Dean Pound remembers a number of them from his courses on Jurisprudence and Comparative Law, and their careers have been watched by him with special interest.

The 1935 student, Ronald Graveson, received his S.J.D. degree from Harvard, and is now a Reader (assistant professor) of Law at University College,

Morton Chosen As President Of Legal Aid For Next Term

Albert M. Sachs was elected president of the Harvard Law Review and George T. Morton, Jr., was elected president of the Legal Aid Bureau at elections held last week, the organizations have announced.

The Review also announced the election of a new treasurer, and Sachs, following his election, named his selection of editors to head the various departments of the Review under him. In addition to the election of Morton, the Legal Aid Bureau also chose a full slate of other officers, who will take over their posts immediately.

Sachs, who replaces Elliot L. Richardson as president of the school's most distinguished activity, comes from New York City, and was graduated from the College of the City of New York in 1940. He is now in his fourth term.

Morton, a fifth term, is a resident of Omaha, Nebraska, and was graduated from Grinnell College in 1941. He replaces Davison F. Dunlap as president of the Legal Aid Bureau.

The new treasurer of the Review is Kingman Brewster, Jr., fourth term, of Cambridge. He received his A.B. degree from Yale in 1941.

The editors of the Review appointed by Sachs are:

Book Review Editor—David M. Amberg, fourth term, Grand Rapids, Mich., A.B. Princeton University, 1941.

Note Editors—Leonard Joseph, fifth term, Philadelphia, Pa., A.B. University of Pennsylvania, 1941, now serving as Note Editor; and Joseph B. Creighton, fifth term, Woodstown, N. J., A.B. Oberlin College, 1941.

Case Editor—Jerome E. Hyman, sixth term, Cleveland, Miss., A.B. College of William and Mary, 1944.

Article Editor—James Lowell Oakes, sixth term, Malvern, Pa., A.B. Harvard University, 1944; formerly Book Review Editor.

In addition to Morton, the Legal Aid officers elected were:

Vice-President—Wilfred G. Howland, fourth term, Concord, N. H., A.B. Bates College, 1940.

Secretary—Frank Norton Kern, fourth term, Seymour, Ind., A.B. Ohio Wesleyan University, 1941, M.B.A. Harvard University, 1943.

Treasurer—Francis D. Murnaghan, Jr., fourth term, Baltimore, Md., A.B. Harvard University, 1941.

Senior Director—Carroll Hament, fifth term, Baltimore, Md., A.B. Johns Hopkins University, 1941.

Junior Directors—Theodore A. Bruinsma, third term, Paterson, N. J., A.B. Washington and Lee, 1941; and Walter M. Robinson, Jr., third term, Nashville, Tenn., A.B. Vanderbilt University 1942.

London. The post-war difficulties at the London University, mentioned by Graveson in his letter include the housing shortage and the shortage of text books, with the added difficulty that the center wing of the college was destroyed during the war.

Another Harvard student recalled by Dean Pound, who has risen in the English legal field is Henry A. Holland, who studied here in 1914. He is now Rouse-Ball Professor of English Law at Cambridge University.

Numbered among the deans of English law schools is Charles E. Smalley-Baker, who as Dean Pound recalls, received his LL.B. here in 1915. He is now Dean of the Law School at the University of Birmingham.

A 1921 student, John William Morris, was recently named to the High Court of Justice, according to another letter Dean Pound has received from one of his former English students.

The Harvard Law School Record

Published weekly on Wednesdays for twelve weeks of each term by The Harvard Law School Record Corporation, Austin Hall, Cambridge 38, Massachusetts. Subscription price: \$2.00 per term mailed, \$6.00 per year mailed; student subscription, \$1.50 per term mailed, \$1.00 per term distributed at the Law School. Business and Editorial Offices, Austin Hall, Cambridge 38, Massachusetts. Telephone KIRKland 7600, extension 133.

THOMAS J. O'TOOLE, President
HERBERT BERMAN, Editorial Manager
MARSHALL J. DEUTSCH, Business Manager

DAVID KALLMAN, Circulation Manager
SEWARD B. SNELL, Promotion Manager
THOMAS N. BANTIVOGLO, Advertising Manager
LOREN E. JUHL, News Editor
R. W. CULBERT, Articles Editor
NATHAN C. FITTS, Alumni Editor
SEYMOUR S. EUSTICE, Current Case Editor
NATHANIEL TAPP, Opinion Editor
HARVEY KARLIN, Feature Editor
SAM SCHWARTZ, Calendar Editor
RICHARD H. WOLFORD, Secretary
BYRNE LITSCHGI, Treasurer
CHARLES O. PORTER, Associate Editor

Staff: Mitchell Aarson, William Barnes, Bancroft G. Davis, Jr., Eugene Flanagan, John E. Hess, Charles A. Lord, Robert Maier, Walt Myskowski, John F. McKenna, Jr., Bernard W. Nimkin, James L. O'Dea, Joseph P. Logan, Kenneth G. Weinberg, Larry Corbett, Stanley R. Evans, Milton P. Kayle, Elliot S. Gross, Vincent L. St. John.

*Entered as second class matter November 18, 1946, at the post office at Boston, Massachusetts, under the Act of March 3, 1879.

Editorials

The examination and evaluation of our present legal education is a project which has been extremely popular with bar associations and faculties in recent years. Completing the picture is the National Law Student Conference on Legal Education which is scheduled to be held in New York this summer and whose purpose is to present "the consumer's viewpoint."

In its plan the Conference is an ambitious undertaking whose agenda calls for a study of the curriculum in relation to the various tasks which face lawyers in different types of law practice as well as in business and public life. It also proposes to examine teaching techniques, admission policies, placement problems, education costs, and various other matters concerning the administration of legal education.

It might be said that the Conference is over-ambitious, both in the amount of material which it seeks to review in a two-day session, and in many of the questions on which it seeks to give answers based on students' knowledge and experience. However, certain aspects of legal education are more susceptible of valid student criticism than are others. The student who has not yet engaged in practice is not in a strong position to criticize the content of the curriculum in relation to professional needs, but he should be able to shed some light on the effectiveness of various teaching methods. If limitations of this type are kept in mind the work of the Conference may yield results worthy of the consideration of those charged with administering legal education.

T. J. O.

Letters to the Editor

To the Editor of the RECORD,

Your correspondent "Bathless" complains with reason that we might provide a little soap in the lavatories.

This is a nice problem. The reason we stopped providing soap was simply and purely because it was stolen just as fast as it was put out. At that time, and now, soap was extremely hard to get, and we simply could not provide it for the entire community. Probably there were only a relatively few students who removed the soap, but they were enough so that we could not maintain a supply for the others who did not abuse the opportunity. I cannot refrain from noting that your correspondent's signature—"Bathless"—leaves the inference that his interest in the soap is because he is unable to take it for use elsewhere.

This is only a small instance of a problem which has troubled us a great deal, and more during the current period than normally. Particularly with respect to the library we seem to find an abnormal abuse from some parts of the student body. Books are stolen and books are mutilated, and Law School property is damaged through cigarettes and otherwise, much more than should be, and we therefore find ourselves unable to provide some facilities for students which otherwise might be desirable. Do you think there is any way in which this situation can be remedied, for the common good?

ERWIN N. GRISWOLD,
Dean

To the Editor of the RECORD:

I would like to advise that I am greatly in favor of annual refresher courses for law graduates, as discussed in the article in your issue of January 8th.

Very truly yours,

HASKELL C. FREEDMAN.

Off the Record

SONG OF THE LAW (with apologies to Hood)

With body weary and worn,
With eyelids heavy and raw,
A first term sat in a boarding room,
And studied the books of Law—
Case! Case! Case!
Wading through pages of rot,
Seeking to find a glimmer or trace,
Is it murder or is it not?

Case! Case! Case!
While the sun is shining aloof!
And case—case—case,
'Til the stars shine through the roof!
It's oh! to be a clerk
Or a sailor a-roaming far,
Or even a slave in the land of the Turk,
If this be the way to the Bar!

Work—work—work—
'Til the brains begin to swim;
Work—work—work—
'Til the eyes are heavy are dim

Lien and chattel and writ,
Writ, and chattel, and lien,
'Til over the cases I fall asleep
And brief them out in a dream.

Work—work—work!
From weary chime to chime,
Work—work—work!
As prisoners work for crime!
And what are its wages? For all the days,
The weeks, the months, and the time,
And the worry so great, I'll thank my fate
For a measly fifty-nine.

Oh, but to breathe the breath,
Of the cowslip and primrose sweet,—
With the sky above my head
And no books beside my seat!
For only one short hour
To feel as I used to feel,
Before I knew the woes of Law
And the Cases that make me reel!

Oh, but for one short hour,
A respite, however brief!
No blessed leisure for love or hope,
But only time to brief!
A movie seen, some music heard,
Would ease my weary mind,—
But I cannot stop, for fear I drop
In Torts, a case behind!

(We might add that we found a far easier road to the bar, but dropped a few cases behind in Torts en route.)

A LEGAL PRIMER

The Trustee

Look at the Trustee sitting in his large office with a happy smile on his face. He is Investing. Children. Look at him sticking a pin through the Wall Street Journal. In the outer office is a pood Widow, (who is Life Beneficiary), and her starving little Remaindermen and Remainderwomen. Their Portfolio consists of shares in a defunct Gold Mine, the Brooklyn Bridge, Hiroshima Power and Light, International Match, Eureka Perpetual Motion Machines, and some Kingdom of Bosnia Consols. The Trustee keeps it in a Kennel. They cannot surcharge him because all his Friends know that he is a Prudent Man. Come, let us hook on our Miner's Lamps, and follow the Res.

PUBLIUS II

The Book Shelf

PRESIDENT AND CONGRESS, Wilfred E. Binkley, Knopf, 312 pages, \$4.00.

When a Republican majority was elected to both houses of Congress last November, it was seriously suggested by one senator that the President dismiss his Democratic secretary of State, appoint a Republican to that office, and then resign from the presidency, whereupon the newly chosen Secretary of State would succeed him according to the succession law on "statute books." The purpose of such a proposed procedure was of course to have the country's chief executive officer a member of the same political party as the majority of the legislative body and thus to avoid an unproductive tug of war between those two branches of our government at a time when the country could ill-afford such a struggle.

This vividly pointed out a problem which has long puzzled many thoughtful citizens in general and political scientists in particular—the problem of achieving cooperation between the executive and legislative arms of the Federal Government when there is an inherent conflict between them because of the constitutional separation of powers. After contemplating the apparently wasteful results of such a conflict, several scholars have advocated the adoption of a parliamentary system in the United States as the best method of getting sufficient concerted action of the President and Congress to accomplish the ever-pressing tasks confronting the national government.

Dr. Binkley confesses that he too was once fascinated with what he calls "a romantic misconception of the parliamentary system." When he gave serious thought to whether such a form of government should be used in this country he decided he had better first examine closely what our experience had been with the system under which we had operated for over 150 years. The result of that inquiry is this book in which the author presents a chronological description of the relationship between each of our presidents from Washington to Truman and the Congresses with which each had to deal.

(Continued on page three)



—Harris B. Steinberg, '35

"C" MAN—TWENTY YEARS AFTER

Gallery

HENRY MELVIN HART



Professor Hart journeyed from Spokane, Washington, to attend Harvard College, where he graduated with the class of '26. While in the College, he was active in student activities and was elected Editorial Chairman of the Harvard Crimson. Students who did their undergraduate study at Harvard will be interested to know that Professor Hart was a member of the committee appointed by the student council to investigate student living conditions. The committee recommended the house system, which was inaugurated several years later.

At Harvard Law School, Professor Hart became President of the Law Review. After graduating, he did further work under Felix Frankfurter on a fellowship, and received the S.J.D. degree the following year. The next year was an exciting one, Professor Hart moving to Washington as secretary to Mr. Justice Brandeis. Pointing out that much depends upon the working relationship a judge sets up between himself and his clerk, Professor Hart recalls with pleasure his term with Mr. Justice Brandeis. "Although some judges keep the clerk very much in his place, Brandeis had a way of making the clerk feel himself a full-fledged collaborator." A natural result of this attitude was work of a more responsible nature for the clerk, making the task more interesting and satisfying. During this time Brandeis wrote a number of his brilliant dissents, characterized by exhaustive mastery of the legal and policy questions involved, in such cases as *Crowell v. Benson* and *New State Ice Co. v. Liebmann*. In connection with the latter case, Professor Hart was given a unique preliminary task when told to "Go down to the Library of Congress and find out all there is to know about the ice business!" He complied, pondering the devious path of legal research.

The following year Professor Hart joined the faculty of the Law School. From American Legal History his principal interest turned to the general field of public law. Those were the early years of the New Deal, and there was increasing interest in problems arising out of new legislation. Students became interested in government service, and there was a great upturn in the demand for courses on Constitutional and Administrative Law.

In 1937 Mr. Hart took time off from his teaching and served as a head attorney in the Office of the Solicitor General of the United States. This office, sometimes called "the best law office in the United States," represents the government in appellate litigation, particularly cases before the Supreme Court. During the time Hart was there, he worked on, among others, a large number of cases concerning the National Labor Relations Board. The National Labor Relations Act had recently been declared constitutional, but there was a steady flow of cases testing and defining the powers of the NLRB. During this period there were also a number of cases important in the general field of administrative law, such as the *Electric Bond and Share* case and the *Morgan* cases. In a relatively short period, Professor Hart worked under two different Solicitors General, Stanley Reed and Robert Jackson.

As a result of his knowledge and experience with the problems of administrative agencies, Hart was selected as one of three men asked to prepare a report for Secretary of Labor Perkins on the procedures used in the Immigration Service. In the course of this work he learned a great deal about the Immigration Service and its distinctive problems. Still working on the general problem of administrative agencies, he served on the Attorney-General's Committee on Administrative Procedure appointed by the President early in 1939. This committee, under the chairmanship of Dean Acheson, published a large number of monographs, an interim report, and a Final Report, published in 1941. The Final Report was a major contribution to the complicated questions involved, which at that time were the subject of much heated, but less judicial, discussion.

In 1940 the Immigration and Naturalization Service was transferred from the Department of Labor to the Department of Justice. Great numbers of refugees were knocking at America's door, fleeing Hitler's drive through France, and the United States, while anxious to provide refuge, was concerned with avoiding any fifth column danger of the type so recently witnessed in Europe. In an attempt to set up adequate screening procedures and guard against allowing dangerous persons to enter this country, the matter was turned over to the Department of Justice. It was only natural that Professor Hart, already familiar with both the problems of administrative procedure and of immigration, was called upon for help. Working as Special Assistant to the Attorney General (Robert Jackson), he helped organize the Service in its new Department, revised the procedures and regulations for admissions and deportations, set up the Board of Immigration Appeals, arranged the program for bringing English children to this country, and organized a screening procedure which was strict enough even for the State Department.

In the fall of 1940 he continued these activities and also taught one day a week at the Law School. In addition to all of this, he was for three months acting administrative head of the Service, which added a multitude of administrative details to his already crowded schedule. Students will be interested to hear that of all these activities, Professor Hart found teaching the most demanding of his energies. "When I got back to Washington the next day I was usually completely worn out, and it took a day or two of my government activities before I was back to normal."

TIME ON MY FEET * * * *

The Bulova Watch Company, whose time signals have blanketed the radio lanes for years, was engaged in the manufacturing and selling of watches for over fifty years. They had registered their trade mark under the Federal act of 1905. Defendant, a shoe manufacturer, registered the name "Bulova" for his shoes and was advertising and selling his shoes under the name "Bulova" the shoes themselves containing the gold imprint, "Bulova Fine Shoes." Upon learning of this, the watch company, through their attorneys, wrote defendant a letter requesting that he cease using the name. Defendant stopped but having a remaining stock of 2,000 shoes with the above described stamp the watch company consented to permit the shoe manufacturer to dispose of his stock in return for his commitment to discontinue the use of the name. Plaintiff further agreed to take no legal proceedings at any time. Defendant refused to sign the stipulation because it called for cancellation of his registered trade mark. The watch company, a New York Corporation, then filed this bill in the Federal court in Massachusetts against defendant, a Massachusetts corporation, seeking relief from trade mark infringement and unfair competition and an injunction as well as cancellation of defendant's trade mark and damages. The evidence revealed that the name "Bulova" was an unusual family name and there was no evidence of any other family in America having that name. In addition it was shown that the name was well advertised, the advertising budget running from one to three million dollars yearly; that the product was recognized for quality and that defendant's product was of a cheap grade retailing at no more than \$4.95.

The Court refused to grant relief on the count for trade mark infringement on the ground that "watches and shoes do not contain the same descriptive properties." The count for unfair competition was held to be a not "plainly unsubstantial" claim for relief under the act and the injunction was issued. The Court ruled that the doctrine of the Erie case did not apply since this was a federal question involving patent and trade-mark law and therefore Massachusetts definitions of unfair trade practices were of no controlling weight. Then on the merits the court held, "In the instant case the trade mark 'Bulova' is not fanciful but its use for over fifty years without interruption is sufficient, . . . particularly since Bulova is a unique family name and defendant can claim no relation to anyone named Bulova. . . . 'Watches and shoes while non competing, are not so remote as to foreclose the possibility that they come from the same source.' *Bulova Watch Co., Inc. v. Stolzberg*, 60 F. Supp. 543 (D. C. D. Mass. 1947).

THE GOOD IS OFT INTERFERED—

The Supreme Court of Kentucky recently made an interesting discourse on dying declarations. Decedent had made a dying declaration that defendants "shot me and took my money." Defendants were convicted of murder and voluntary manslaughter respectively and the one convicted of manslaughter appealed. The question before the court was whether the evidence was sufficient to support the verdict. In Kentucky the trial judge is not permitted to comment on the evidence or admonish the jury as to the consideration they shall give to any evidence.

The court, after outlining the historical reasons for making dying declarations an exception to the hearsay rule went on to say "Yet we know that a dying man sometimes retains his passion and prejudices, his motives of malice and revenge, which may pervert his perception or affect the trustworthiness of his accusations and the same influence, as well as sympathy and fallibility of memory and disposition may also affect the witness in relating the statement." . . . "So this court has often commented upon the caution with which a dying declaration would be received and regarded though still holding paradoxically, the jury should not be thus counseled." Judgment was reversed on the ground that the evidence was insufficient. *Allen v. Commonwealth*, 199 S.W. 2d 453 (Ky. 1947).

For the next two years he was back at Harvard, conducting seminars in such courses as Federal Jurisdiction and Procedure, Legislation, and Federal Administration. In the spring of 1942 he went to Washington again, this time as consultant to the OPA. The legislation setting up this agency had been passed in January and it had begun by administering selective control of prices. It was now to be changed over to general price control, and the instrument which effected this change was the General Maximum Price Regulation. This presented an interesting drafting job, since it was essential that the regulation be understandable by millions of persons without legal training. Professor Hart acted as a consultant in drafting this regulation which, although not foolproof, represented a significant advance in the direction of simple, clear expression in legal instruments. After the school year ended, he joined the staff of OPA, soon becoming Associate General Counsel for Price. In this post he exercised general supervisory responsibility over a group of about 160 lawyers drafting and issuing price regulations. For a professor of Legislation, this experience of drafting regulations and forestalling litigation which might result from inept regulations was of particular interest.

Leaving the OPA in 1945, Professor Hart moved to the Office of Economic Stabilization as General Counsel. That agency, set up to co-ordinate other agencies and provide general economic policies, changed names and administrators several times, and after V-J day Professor Hart found himself working again with Chester Bowles, with whom he had worked in the OPA. Remaining with the Office of Economic Stabilization until the price control interim, Professor Hart returned again to the Law School to resume his much-interrupted teaching. This term finds him with a full schedule, with one class every day of the week.

Professor Hart believes that the lawyer, in or out of government, can make an important contribution to peace and progress. Pointing out that law in general is concerned with the process of organizing the affairs of society for the common interest, and finding a common ground on which people can live together satisfactorily and effectively, he says, "There usually is a solution to most problems, even when there appear to be strong conflicting interests. The lawyer is the expert at finding this middle ground."

S. R. E.

The Witness Stand

Alumni Notes

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

Reports have been received from 49 former students who graduated from the Law School this past February indicating their current employment status. This group, the most recent graduates of the Law School, consists of 1 recipient of an S.J.D., 3 LL.M.s, and 107 LL.B.s. The following tabulation accordingly represents information from 44% of the class. A geographical break-down reveals that 18 men have gone to New York City, 9 to Boston, 3 to Washington, D. C., and the balance are scattered.

Jackson G. Akin, Jr.: Rodey Dickson & Sloan, First National Bank Bldg., Albuquerque, N. M.; **Lee W. Alberts:** Defrees Fiske O'Brien & Thomson, 105 So. LaSalle St., Chicago, Ill.; **Martin C. Barrell:** Cleary Gottlieb Friendly & Cox, 52 Wall St., New York, N. Y.; **Norman D. Blotner:** Spiro Felstiner & Prager, 270 Madison Ave., New York, N. Y.; **James Bruce, Jr.:** White & Case, 14 Wall St., New York, N. Y.

Peter A. Campbell: American Airlines Inc., New York, N. Y.; **Rinaldo A. Capone:** Robert E. Kline, Jr., 701 Munsey Bldg., Washington, D. C.; **David B. Carlson:** Debevoise Plimpton & Page, 20 Exchange Place, New York, N. Y.; **Eugene H. Cavin:** Univ. of Texas, Austin, Tex.; **Farley C. Childs:** Root Ballantine Harlan Bushby & Palmer, 31 Nassau St., New York, N. Y.

Frank M. Coffin: Fred Lancaster, Lisbon St., Lewiston, Me.; **Charles J. Cole:** Robinson Robinson & Cole, 750 Main St., Hartford, Conn.; **John R. Curley:** Radio Corp. of America, Victor Division, Camden, N. J.; **Charles W. Davis:** Johnson Clapp Ives & Knight, 50 State St., Boston, Mass.; **Joseph M. Devine:** Maurice F. Devine, 922 Elm St., Manchester, N. H.

Leon Dicker: Glass & Lynch, 170 Broadway, New York, N. Y.; **Clarence H. Dicus:** Stinson Mag Thomson McEvers & Fizzell, 201 First National Bank Bldg., Kansas City, Mo.; **Daniel C. Draper:** Rathbone Perry Kelly & Drye, 70 Broadway, New York, N. Y.; **John C. Early:** McCanless & Early, 31 Nassau St., New York, N. Y.; **Louis F. Eaton, Jr.:** Hutchins & Wheeler, 49 Federal St., Boston, Mass.

Joseph H. B. Edwards: Bingham Dana & Gould, 1 Federal St., Boston, Mass.; **Samuel M. Fahr:** State Univ. of Iowa, College of Law, Iowa City, Ia.; **Thomas P. Ford:** Shearman & Sterling & Wright, 20 Exchange Place, New York, N. Y.; **William S. Green:** Dudley W. Orr, 4 School St., Concord, N. H.; **William C. Hardee:** Ropes Gray Best Coolidge & Rugg, 50 Federal St., Boston, Mass.

Harman Hawkins: Duer Strong & Whitehead, 15 Broad St., New York, N. Y.; **Robert S. Ivie:** Noxon Hargrave Middleton & Devans, 31 Exchange St., Rochester, N. Y.; **Charles B. Johnson, Jr.:** Shearman & Sterling & Wright, 20 Exchange Place, New York, N. Y.; **William K. Kerr:** Fish Richardson & Neave, 20 Exchange Place, New York, N. Y.; **Charles B. King:** Dwight Newman, 30 Federal St., Boston, Mass.

Charles J. Kickham, Jr.: Lee & Graham, 73 Tremont St., Boston, Mass.; **Daniel Kraemer:** Joseph Kraemer, 790 Pine St., Newark, N. J.; **James S. Lanigan:** Chadbourne Hunt Jaekel & Brown, 70 Pine St., New York, N. Y.; **Dean J. Lewis:** C. C. Moore, 179 Thames St., Newport, R. I.; **Victor Marans:** Seandrett Tuttle & Chalaire, 30 Pine St., New York, N. Y.

Henry A. Moran, Jr.: Henry A. Moran, 31 Elm St., Springfield, Mass.; **Alonso G. Moron:** Hampton Institute, Hampton, Va.; **John G. Moskovics:** Clark Carr & Ellis, 120 Broadway, New York, N. Y.; **Robert L. Park:** American Security & Trust Co., 15th & Pa. Ave., N. W., Washington, D. C.; **Howard R. Patch, Jr.:** Simpson, Thatcher & Bartlett, 120 Broadway, New York, N. Y.

William F. Quinn: Robertson Castle & Anthony, 312 Castle & Cooke Bldg., Honolulu, Hawaii; **William C. Rittman:** Mudge Stern Williams & Tucker, 40 Wall St., New York, N. Y.; **James D. St. Clair:** Hale & Dorr, 60 State St., Boston, Mass.

BOOK SHELF—(Continued)

He begins by showing why as an original question the framers of the constitution desired an independent executive rather than one who was a prime minister of the legislature. The presidency was frankly created as a bulwark against the concerted drive of democratic elements which most of the delegates at Philadelphia had by then identified with unfettered state legislatures. To forestall a similar situation in the national government they fashioned the chief executive as an office of independent leadership tailor made for General Washington.

However, the power soon began to gravitate in the other direction. Although Jefferson managed to control the Congress effectively by adroit use of his personal influence, after his departure from the political scene, congressional sovereignty was so complete for the next quarter of a century that the President was by election or nomination the choice of Congress.

And so it went with the pendulum of power swinging from the executive to the legislative with occasional stops in dead center when it seemed that no branch of the government could effectively exercise authority. The author describes the process, sometimes in great detail, but precious little of his effort is spent analyzing the reasons for the shift of governing influence from Congress to such men as Jackson, Lincoln, Theodore Roosevelt, Wilson, and Franklin Roosevelt.

The main body of the work is mostly a recital of facts illustrating that such shifts did take place several times in our history. It is not until the last 18 pages of the volume—the summary and conclusions—that Prof. Binkley commences to ask why it has happened. And even then he takes only brief though suggestive glances at the underlying causes: e.g. "Ever since the days of Andrew Jackson the business interests of the United States have always been uncomfortable when a popular, aggressive leader has reached or even threatened to reach the office of President. Every 'tribune of the people' from Jackson to Franklin D. Roosevelt has looked like a potential if not an actual 'rabble rouser' to the capitalistic interests. Such an Executive, fearless both in initiative and in the use of the veto power, puts the control of government quite definitely beyond their power."

But these "tribunes of the people" did not just appear from the lower depths. There were certain social and economic conditions at various times in our history which made it possible for these men to wield great power and subordinate Congress to a secondary role in the law making process. One wishes there had been a more thorough examination of those conditions by the author.

Finally the writer states his conclusions on the problem of integrating the executive and legislative branches of the government. He concludes that it has not been satisfactorily solved and goes on to reject the adoption of the parliamentary system as a panacea for our governmental ills. He reasons that our society is so complex that the conflicts inherent in it "are not to be resolved by a simple shift in the mechanics of government." The society shapes the constitution and not vice versa. The parliamentary system works in England because it is the product of many centuries of evolution. In the countries to which it has been transplanted, the results have not been very heartening.

Dr. Binkley has been a Professor of Political Science since 1921. His book would be good as collateral reading for an elementary course in political science. It would be more valuable if it had undertaken a more incisive analysis of the facts set forth and had given a more definite answer to the problem with which it is concerned.

ROBERT MARKS, 3L

Ernest J. Sargeant: Ropes Gray Best Coolidge & Rugg, 50 Federal St., Boston, Mass.; **Nelson Schwab, Jr.:** Graydon Head & Ritchey, 1616 Union Trust Bldg., Cincinnati, Ohio.

Mallery R. Smith: Sutherland Tuttle & Brennan, 1631 K St., N. W., Washington, D. C.; **Jacobus ten Broek:** Univ. of Calif., Dept. of Government, Berkeley, Calif.; **Louis A. Toepfer:** Harvard Law School, Cambridge, Mass.; **James H. Wilson:** Sutherland Tuttle & Brennan, First National Bank Bldg., Atlanta, Ga.

HOUSING—(Continued)

Station near the village to Porter Square in Cambridge there is adequate train service but the running time totals an hour and 10 minutes each way and a month's supply of tickets amounts to \$17.35. Many students have formed car pools which considerably reduce expenses and diminish the running time of the railroad by 15 to 20 minutes. General comment about Harvardens is, "It's fine for the family but rough on the husbands."

Furnished suites at the Brunswick Hotel in Copley Square, Boston, range in price from \$35 to \$80 a month with the average family paying \$65 monthly. It takes about twenty minutes to go via subway from Copley to Harvard Square and the monthly fares amount to \$5.60. At the main dining room of the Brunswick, families may contract for weekly meals, breakfast and dinner, for \$9.00 per person.

For families with two or more children, Harvard offers the 198 F.P.H.A. units located in Cambridge. Unheated and without furniture, these houses rent at \$30 or \$35 a month. Again basic training at Harvardens or the Brunswick is required, and at present, there are 250 families waiting for vacancies. However, the housing office expects to have between 30 and 40 available openings this term.

II. The next office to survey is the Harvard University Housing Office at the Phillips Brooks House. Here Mrs. W. A. Lowry, Harvard Law wife, and Mrs. S. Neilsen, Harvard Business School wife, handle applications for suites, summer sublets, and single rooms. Suite in the sense in which it is used by the housing office refers to furnished or unfurnished rooms accompanied by kitchen privileges. A few of these accommodations are reported to the housing office and they are offered to those whose applications have been longest in the active file. Prices range from \$50 to \$85.

In an effort to assist the housing office, the Harvard Chapter of the American Veterans Committee has appointed some of its members under the direction of John Quisenberry to canvass all apartments occupied by students in the law and graduate schools who expect to be graduated in June. Letters enclosing return-addressed penny post-card questionnaires have been mailed to these prospective graduates requesting that the recipients furnish the office with information which may make it possible to keep the housing space within the Harvard family. Listings of these returns are available at the housing and A.V.C. offices in the Phillips Brooks House.

III. In addition to the further suggestion that apartment seekers hustle around Cambridge ringing door-bells between case studies, the RECORD offers a few miscellaneous leads. There's a possibility that Mrs. Ryan of the Harvard Student Employment Office at Weld Hall or Mrs. Baker of the Veteran's Administration at Longfellow on Appian Way may receive requests, as they have in the past, for married students who will serve as caretakers of a Cambridge home while the owners are summering at the seashore or in the mountains. Finally, mention is made in the December Housing Bulletin of trailer camps. The bulletin points out that conditions are not so propitious for that mode of life in rugged New England as they are in Florida and California, and it suggests rather pointedly that your next-door neighbor is unlikely to contribute much by way of discussion to your understanding of "Perpetuities in a Nutshell."

(A forthcoming issue of the RECORD will contain housing information for single students).



FORUM—(Continued)

covenant to act through the United Nations for the prevention and removal of threats to the peace and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

"The effect of this proposal, if enacted, is officially to brand the United Nations as a failure, and of no force or power to achieve the sacred functions for which it was granted—the protection of the security of peoples and the preservation of the peace of the world. It has disappointed the American peoples' hopes for peace more than any other single event since the establishment of the United Nations.

"It is not true that the United Nations is incapable of meeting the present problems of the Eastern Mediterranean unless the United States makes it so.

"If we rob the United Nations of the stalwart support of the strongest nation in the world and then condemn it as being incapable of acting, the fault is on us, not the United Nations. We shall have to bear upon our hearts and consciences the immeasurable consequences, not only of this new doctrine which we propose, but the mortal blow that we strike at the United Nations which is our one great gain from all the blood and treasure the war has just cost us."

The proper course of action would have been to submit the problem to the U.N. for settlement, and if the need for funds became too pressing before action could be taken, then this country would have been entitled to administer relief to the stricken countries, according to Senator Pepper.

Mr. Wriston pointed to the fact that military alliances have always disintegrated after war has ceased. Thus, he maintained that, while he had hope for the future stability of the world organization, the present state of disintegration precluded the possibility of effective action by U. N.

He stated that the U.N. is not the only weapon for maintaining peace, and that action as proposed by President Truman could effectuate peaceful designs as well as action by the U.N. Further, he cautioned that the "Truman Doctrine" is a mere catchword; that it is an extravagant generalization much like Neville Chamberlain's "peace in our time." In the first place, it is not an accomplished fact, depending upon approval by Congress. Secondly, it is not a policy which offers a final settlement of the problems, because it can be tempered by time and perhaps even be taken over by the U. N. as it grows to

a position in which it can assume such responsibilities.

As precedents for such action, if it should become a fact, Mr. Wriston pointed to the loans to Britain and France and the position taken by our government in sending Gen. Marshall to China.

Finally, Mr. Wriston brought up the fact that nothing which Congress does now will possibly preclude the assumption of administering relief by the U.N. at a later date.

Mr. Feiler said he is confident that the United Nations organization will grow increasingly stronger with the passing of time. He stated that one of the principal achievements of the U. N. is the fact that major issues, such as the control of the atomic bomb, have been discussed openly and not behind closed doors.

As specific instances of effective action by the U. N., Mr. Feiler pointed to the work of the commissions on world health, on economic rehabilitation of Europe and the Far East, and on international labor problems. However, he said that the principal function of the U.N. is the maintenance of peace, which he declared will be more efficiently performed once the bases of a peaceful world community are laid in peace treaties.

New & Used Law Books

Bought, Sold & Exchanged

HARVARD BOOK STORE

19 Boylston St.

---naturally YOUR BANK

HARVARD SQUARE OFFICE

HARVARD TRUST COMPANY

ATTENTION 6TH TERMERS

Place your orders now for

The Harvard Law School Ring
(Designed by Dean Pound)

In order to Guarantee delivery before graduation

Phone — Write — Contact

J. J. KALLED, L48

J. A. SUOZZI, L48

Ellot 9537 — 1 Perkins Hall
Cambridge

HARVARD LAW SCHOOL FORUM

INVITES YOUR PRESENCE TO HEAR

• HON. OWEN J. ROBERT

Former Justice, U. S. Supreme Court

AND

• CLARK M. EICHELBERGER

Director, United Nations Association

DISCUSSING

WORLD GOVERNMENT

Is the United Nations too slow?—

WITH

Erwin Griswold, Dean, Harvard Law School

As Moderator

ON

Friday, April 25, 1947 7:45 P.M.

AT

RINDGE TECH AUDITORIUM

(Located at Broadway, corner Irving—3 blocks east of Sanders Theatre)

Seating for membership will be reserved until 7:30 P. M.

RACKETS RESTRUNG

ONE DAY SERVICE
Air Pressure Machine
TENNIS & SQUASH SHOP
67A MT. AUBURN ST. CAMBRIDGE

CUSTOM MADE SUITS

\$65.00 up

Imported and Domestic Fabrics

TAILOR MADE SPORT JACKETS

\$32.50 up

Guy's Shop

1611 MASSACHUSETTS AVE.

100% WOOL SLACKS

\$12.50

Two Blocks from Langdell

Calendar

LEGAL WORLD

Holiday

This Saturday, April 19, is Patriot's Day, in observance of which there will be no classes. However, note that on Monday, April 21, classes scheduled on Saturday, will replace those scheduled for Monday morning. Monday afternoon classes will be held as usual.

Law Wives

By popular demand, there will be an evening of duplicate bridge in Kendall House tonight (April 16) at 8 p.m. Roger and Helen Stokes will supervise. Husbands are invited.

UNIVERSITY WORLD

Lectures

The Graduate Advisory Council sponsors a forum tonight (April 16), 7:30 to 9:00 p.m. in Littauer Auditorium. The subject is *The World of the Physicists*. Participating will be Gerald J. Holton whose topic will be *New Thinking in Physics*, Winston S. Lucke who will discuss *Electronics in Action*, and Leo S. Lavatelli who will talk on *Why Cyclotrons?* There will be a quiz board composed of David MacEachron, a student in the Government Dept., and Arthur Nelson, law student. Richard D. MacCann will be chairman. This forum is a graduate student project attempting to explain in layman's terms the contributions to knowledge in the various fields of specialization.

Mario Baccelli, painter and former lecturer at the Institute of Fine Arts in Florence, will give the last in a series of lectures on *The Development of the Knowledge of Perspective in the History of Painting* this Thursday, April 17, in the Large Lecture Room of the Semitic Museum, 6 Divinity Avenue, at 4 p.m. The title of this last lecture is *The Discovery of Perspective*.

Continuing its series of talks on the works of E. M. Forster, Kirkland House will present Professor I. A. Richards on Thursday, April 17, in the Common Room, at 7:30 p.m. He will discuss *A Passage to India*.

The Harvard Zionist Society and the Radcliffe Zionist Organization present a talk by Dorothy Thompson, the newspaper columnist, on *These Crucial Days*. She will speak Thursday, April 17, in the New Lecture Hall, at 8 p.m.

Professor W. E. Hoeking continues the William James Lectures in Philosophy on *Issues in Contemporary Philosophy of Law*, with special reference to the *Foundations of International Law*. He will speak Monday, April 21, in Room D, Emerson Hall at 4 p.m. on *International Law: Non-justifiable Issues*.

On Monday, April 21, the Fogg Art Museum will present Professor Ulrich A. Middendorf, of the University of Chicago, who will give an illustrated lecture on *Italian Medals of the Renaissance*, in the Small Lecture Hall of the Museum, at 4:30 p.m.

On Tuesday, April 22, Professor Oswald Siren, of the National Museum, Stockholm, will give an illustrated lecture on *The Chinese Garden*, in the Fogg Art Museum, at 4 p.m. The talk is sponsored by the Department of Landscape Architecture of the Graduate School of Design and the Fogg Art Museum.

Concerts

Mrs. Elizabeth Sprague Coolidge sponsors a concert of Bach's monumental *Art of Fugue* Friday, April 18th, in the Germanic Museum, at 8:15 p.m. E. Power Biggs will play this work on the baroque organ and will be assisted by Phillip Kaplan, flute, Louis Speyer, oboe, Emil Kornsand, viola, and Raymond Alard, bassoon. The concert is free.

On Wednesday, April 23, The Pierian Sodality of 1808 will present the Harvard and Radcliffe Orchestras, Malcolm H. Holmes conducting, in a concert in Sanders Theatre. Admission will be by ticket \$1.85 to \$2.00, available at the Harvard Cooperative or at the Music Building.

Play

The Radcliffe Idler Dramatic Society presents *Is Life Worth Living?* by the Irish playwright Lennox Robinson. Performances will be held on Thursday, Friday and Saturday (matinee and evening) April 17, 18 and 19. Tickets may be purchased at the Coop, Phillips Brooks House or Agassiz Hall.

Dances

The Harvard Food Relief Committee sponsors a square dance, Friday, April 18 in Memorial Hall, 8 p.m. There will be singing and entertainment. Music will be by The Trail Blazers. The admission price will be 85c.

On Saturday, April 19, the Harvard Chapter of the A.V.C. will hold a Patriot's Day dance in Memorial Hall, from 8 to 12 p.m. Tickets will be \$1.80 per couple.

OUTER WORLD

Dance

The Massachusetts Student Council of the United World Federalists sponsors a Square Dance Party on Friday, April 18, at 48 Boylston Street, (next to Hotel Touraine), 8 p.m. Admission price will be 60c.

Loyalty Order

(Continued from page 1)

would be sufficiently difficult for the defendant to come to grips with so palpable a standard. In the kind of "hearing" provided by the Order, it is hard to see how he could do more than flounder earnestly and hope with all his might.

Unanswered Questions

But even this is not all. The "Activities and associations of an * * * employee which may be considered in connection with the determination of disloyalty may include one or more of the following: * * * Membership in, affiliation with or sympathetic association with any foreign or domestic organization, association, movement, group or combination of persons, designated by the Attorney General as totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means." Here we swim in a sea of ambiguity. Is the Attorney General's designation to be taken as final? May the defendant undertake to show that a group with which he is sympathetically associated is not subversive, or must he limit his defense to an attempt to show that he has no connection with the organization? If he concedes his membership, and is foreclosed by the Attorney General's characterization of the organization, will this be taken as "proof" that he, as an individual, is likewise subversive, or at least as "reasonable grounds for belief" that he is disloyal? Where is the burden of proof? Is it on the accused? These are questions which can be answered, and answered in such a way as to maintain both the integrity of our free institutions and realistic possibilities of control. The task is arduous, but does not lie beyond the reach of legal and administrative imagination and technique. There is an implication of surrender in the apparent abandonment of the elementary requirements that charges be supported, that issues be clearly defined, that the burden of proof be clearly assigned, and that an adjudication must be based upon evidence with which the defendant has been confronted.

Possibilities Of Abuse

As has already been indicated, the order embodies a novel variation of a familiar system of control: licensing. In effect, the public service is made a licensed activity, and a public officer or employee dismissed under the Order is in the position of one whose license to pursue his calling has been revoked. The settled practice of many administrative agencies, judicial decisions without number, and a variety of federal and state statutes have developed a well-established procedure for the revocation of licenses. There is a complaint, which specifies the charges; there is an opportunity to answer; on the issues thus defined, there is a public hearing before the licensing authority; at the hearing, the defendant is confronted by all the evidence against him, and is given full opportunity to introduce evidence in his own behalf; the licensing authority must find that the charges have been sustained by the evidence in the proceeding, and no other evidence may be considered; a record of the proceeding must be kept; the order of the licensing authority must be supported by the findings, and the findings must be supported by the evidence; and the order of revocation, if issued, is subject to judicial review.

The Department of Justice and the Congress have lately been much concerned about the possibilities of abuse

in administrative procedure. Their concern has been given effect in the investigation and report of the Attorney General's Committee on Administrative Procedure, and in the Administrative Procedure Act which became a law on June 11, 1946. These now stand as a somewhat ironic commentary on the misty procedure so indistinctly sketched in the Executive Order.

The situation can be redeemed. The order does state that its expressed requirements as to procedure "shall be considered as providing minimum requirements," which may be supplemented by the heads of individual departments or agencies. This affords some possibilities for relief here and there, but is plainly inadequate, and devolves and disperses responsibility. It must also be remembered that the Order will serve as a model, likely to be followed by legislation or gubernatorial action in many of the states. If guidance is thus given, it should be sound, comprehensive and explicit.

It is for the President and his law officers to make the correction. In default of adjustment by executive action, the correction may be imposed by the courts, but piecemeal, slowly, and after much clamor and confusion.

ZECHARIAH CHAFEE, JR.
ERWIN N. GRISWOLD
MILTON KATZ
AUSTIN W. SCOTT

(Professor Chafee is an outstanding authority on Civil Liberties. His book *"Free Speech In The United States"* is a classic in the field. He is Vice-Chairman of the Committee on Freedom of the Press. He was recently appointed United States member of the Sub-Commission on Freedom of the Press of the Commission on Human Rights of the United Nations.)

(Dean Erwin Griswold was for five years a member of the staff of the United States Attorney-General, rising to the position of Special Assistant to the Attorney-General. His acquaintance among government officials is wide.)

(Professor Katz, who is now teaching Administrative Law and whose casebook *Administrative Law* is being published in May, has had wide experience in public service. During the war period he served as Solicitor of the War Production Board; U. S. Executive Officer of the Combined Production and Resources Board; and as a Lt. Commander. Prior to the war, he served, at various times, as Special Assistant to the Attorney General, Executive Assistant to the Chairman of the Securities and Exchange Commission, and as an attorney with the Reconstruction Finance Corporation and the National Recovery Administration.)

(Professor Scott is one of the foremost legal scholars in the United States. He is an authority on Legal Procedure and is co-editor of *"Scott and Simpson's Casebook on Judicial Remedies."*)

FIELD

It is certainly proper for the government of the United States to try to keep from having disloyal employees, assuming, of course, a sensible standard of "disloyalty." In seeking to avert such danger as there may be of infiltration of disloyal persons into the ranks of government employees, the President's executive order sets up procedures which will in my judgment inevitably lead to a deterioration in the quality of the civil service. As a purely practical matter, I am convinced, there are greater hazards to the federal service in the

remedy than in the disease. The possibility has been suggested of the Order being so administered as to achieve its purposes. I think that possibility is very slim indeed. Its sketchy procedure not merely fails to provide rudimentary safeguards of individual rights, it virtually invites oppressive administration.

There has been a lot of talk in Congress and out to the effect that the government is honeycombed with disloyal employees. Those who hold this view will expect the machinery set up by the order to produce results consistent with their preconceived beliefs. But suppose the "loyalty boards" should turn up a mere handful of "disloyal" employees? If due regard were had for the rights of the persons accused, this result would not be surprising, for most government officials in the best position to know the true situation are satisfied that the amount of disloyalty in the federal service is inconsequential. But would confirmation of this fact by the boards lead those who have been charging that subversion is epidemic to confess error? I think not. Myths are not so readily exploded. Far more likely would be charges that the "loyalty boards" were whitewashing their fellows and hence were tolerant of disloyalty. Faced with the prospect of such attacks the boards would be all too likely to piece out what few clear-cut cases they might find with enough cases of "reasonable grounds for belief" of disloyalty to make a convincing showing that they were really doing their job.

Nor could the heads of the agencies and departments be fairly counted upon to furnish their employees with greater safeguards than the "minimum requirements" of the executive order. Intolerance of unpopular opinions is running high, and the "Communist" label is being indiscriminately applied to views of men of such varying philosophies as Henry Wallace and Senator Taft. In such a setting, beset by the fear of slashed appropriations or restrictive laws, the agency heads are bound to be peculiarly sensitive to charges that they are harboring subversive elements. In actual operation the "minimum standards" will, I predict, tend to become maximum standards.

Government Employees Made Second Class Citizens

What will all this mean to the government service? The consequences to the individual of dismissal under the order are obvious. The career man who has chosen government service as his life work will in most cases remain in the service and abstain from any connection with any organization which the wildest witch-hunter could conceivably find to be subversive. But the good public servant must have pride in his calling and enthusiasm for his work. He will also have a lively interest in public problems and a natural desire to participate in their solution. Inevitably he will resent being made a second-class citizen by executive order.

Since the announcement of the order I have talked with several government employees of unquestionable loyalty and a degree of ability the government cannot afford to lose. Their attitude was without exception one of indignation. If the mere promulgation of the order had this effect, it is safe to assume that instances of oppressive administration will greatly intensify the feeling.

TENNIS RACKETS

ALL MAKES ALL PRICES
Sneakers - Shorts - Balls - Shirts
TENNIS & SQUASH SHOP
67A MT. AUBURN ST., CAMBRIDGE, MASS.

UNIVERSITY TYPEWRITER CO.

HARVARD SQUARE KIRKLAND 2720

Sales - Service - Repairs - Rentals - Lamps - Stationery - Ribbons - Carbon Paper - Gifts

WE BUY TYPEWRITERS

Delicious Pastrami Sandwich!!

SOUND GOOD??

Just try one at:

"WURSTHAUS"
Famous Restaurant & Delicatessen
Over 18 Years in Harvard Square

4 Boylston Street
ELI. 8557Open 7 a.m.—2 a.m.
(Sundays, too!)

HOTEL CONTINENTAL

"One of New England's Best Hotels"
Cambridge, Mass.

The perfect place for your Law Club luncheons,
Tea Dances and other Club functions.
Delicious food at moderate prices

Chauncey Depew Steele, Jr., General Manager

CALL: KIRKLAND 6100

Consequences to Public Service Serious

Moreover, the consequences may be very serious so far as the attractiveness of government employment to young men and women is concerned. Government salaries are so inadequate that experienced civil servants of established competence are constantly being drawn away by private industry. The government's capacity to perform effectively its manifold exacting functions will be seriously impaired unless there is a steady flow of able people into the civil service. I am fearful that this executive order will dangerously curtail that essential flow.

Finally, government agencies like to avoid trouble. In screening applicants for employment they will probably resolve every doubt against engaging an applicant who might conceivably become involved in loyalty proceedings. Thus, whatever standard of loyalty may be developed, in practical operation a margin of safety will be super-imposed on the standard, and many persons who would make first-rate public servants will be denied employment.

Accordingly I believe that the self-interest of the government as an employer calls for the prompt amendment of this Order so as to provide on the one hand an adequate check against disloyalty, if indeed any executive order is necessary to supplement the already existing machinery, and on the other hand adequate assurance of procedural safeguards for the rights of individuals.

RICHARD H. FIELD

(Professor Field was Regional Attorney, New England Region OPA, 1942-1943 and General Counsel of the Office of Price Administration, 1943-1946.)

CAVERS

Under the conditions of modern life, freedom of association for the advocacy of public causes is almost as vital to the preservation of democracy as freedom of speech itself. Hence, there is reason to view with serious concern the provisions of the recent Executive Order which authorize the Attorney General to designate any association, group, or other "combination of persons" as "totalitarian" or "subversive," to mention but two of the six broad criteria of disloyalty which the Order lists in the disjunctive. Names of associations thus designated are to be sent to the Civil Service Commission's Loyalty Review Board and by it disseminated to all departments and agencies of the Government.

"Membership in, affiliation with, or sympathetic association with" any group stigmatized by the Attorney General is a fact which "may be considered" by a "loyalty board" in determining whether "reasonable grounds exist for belief" that a Federal employee is disloyal. Presumably, the same fact would also be weighed in determining the eligibility of an applicant for Federal employment.

JIM'S PLACE

30 DUNSTER STREET

FAMOUS FOR CHOPS
STEAKS, SEA FOOD

Complete Dinners .50 - 2.00

Visit our new Cocktail Lounge

Complete Air Conditioning

There is no requirement that the questioned relationship should have been in effect when the loyalty proceedings were instituted or even when Federal employment began.

So far as appears from the text of the Order, the characterization of an association is to be made without hearing and perhaps on the basis of a secret investigation. It is not clear whether the names of the stigmatized groups will be publicly disclosed or left to "leak" to columnists and commentators, as such secrets, when confined to all departments and agencies of the Government, are certain to do. Whether judicial relief can be sought by members of stigmatized associations independently of loyalty actions against employee members is at the least very doubtful; indeed, it is uncertain how far the accuracy of the Attorney General's designation can be questioned even in loyalty proceedings.

The impact of these provisions will extend well beyond the 2,200,000 Federal employees directly subject to the Order. Nothing could be better calculated to discourage persons with any interest in future Federal employment from joining or remaining members of protest organizations or even from contributing to their causes. Moreover, once official black lists become common knowledge, business organizations are likely to consult them. And so effective a technique will almost certainly be adopted by state and local bodies which may concoct supplementary lists of their own on the basis of less information than that available to the Attorney General.

Active and knowing participation in any group engaged in disloyal activities is certainly a proper ground for dismissal from the Federal service. But proof of that fact by procedures such as those outlined by Professor Katz should be the basis for the Government's action if effective exercise of the constitutionally guaranteed freedoms of speech, petition, and assembly are to be preserved from dangerous indirect encroachment.

DAVID F. CAVERS

(Professor Cavers was Legal Consultant to the Department of Agriculture in 1933, Special Counsel to the T.V.A. in 1933, Special Assistant to the United States Attorney General in 1938, O.P.A. consultant, 1942-1943, Assistant General Counsel for Price, OPA, 1943-1945, and Associate General Counsel for Price, OPA, 1945-1946.)

UNIVERSITY THEATRE

HARVARD SQUARE KIR. 4680

Thurs. Fri. Sat. Apr. 17, 18, 19

Eddie Bracken - Cass Daley

"LADIES' MAN"

Margaret Lindsey

"HER SISTER'S SECRET"

* Starting Sunday

John Wayne - Gail Russell

"ANGEL AND THE BADMAN"

Lynne Roberts

"THE PILGRIM LADY"

CONTINUOUS DAILY FROM 1:30

Imported and Domestic Wines, Liquors, Cordials

HARVARD PROVISION COMPANY, Inc.

92-94 Mt. Auburn St., Cambridge — KIR. 6684

Hours: 9 A.M. - 9 P.M. - Fridays and Saturdays

9 A.M. - 7 P.M. - Monday thru Thursday

SPECIAL — FIFTHS OF SCOTCH AND FIFTHS OF BONDED BOURBON

SPORT COATS

Tweeds and Shetlands

\$25 to \$35

AND SLACKS

Light - Medium - Dark

\$12.00 to \$17.50

The COOP