

The Harvard Law School Record

VOL. 4 NO. 1

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PRICE TEN CENTS

LAW GRADS AWARDED DEGREES

Wilson Receives Summa Cum Laude; First In 11 Years

Law School commencement exercises took place last Thursday, June 6, in Harvard Yard. Approximately 40 of the 116 June graduates were on hand to participate in the first University commencement to mark the return to pre-war pomp and tradition.

The award of law degrees reflected the confusion due to wartime leaves of absence and acceleration. Degrees were formally presented to men who had graduated as far back as November, 1946. Moreover, the majority of men were listed as "out of course" in the commencement program, meaning that they were graduating anywhere from a few years to a few months late due to war service.

A small percentage of the men who have graduated over the past year received their degrees with honors. James H. Wilson, Jr., former president of the *Law Review*, received his LL.B., summa cum laude, last February. Those receiving their degrees, magna cum laude, include: William P. Bundy, Hubert J. Delynn, John M. Naff and Jack R. Pearce, all of whom graduated this June; William C. Hardee, Ernest J. Sargeant, Ralph P. Semonoff, Mallory R. Smith, and Ralph O. Winger, all of whom graduated last February; William T. Coleman, Jr., Charles E. Corker and Peter K. Morse, all of whom graduated last November.

Those receiving their degrees, cum laude, include Richard S. Lane, John DeJ. Pemberton, Elliot L. Richardson and Henry J. Smith, all of whom graduated this June; Lee W. Alberts, Martin C. Barrell, Thaddeus R. Beel, David H. Carlson, Frank M. Coffin, John G. Moskovics, and William F. Quinn, all of whom graduated last February; Fred Doppelt, Ernest L. Godshalk, Ward M. Hussey, Daniel A. Kramer, Richard L. Rykoff, Max Thelen, Jr. and Gordon M. Weber, all of whom graduated last November.

James Wilson's degree, summa cum laude, was the first such award in 11 years. The degree was last awarded to William Claytor, in 1936. Other recipients of the Law School's highest scholastic honors, the requirement for which is a general average of 80 or better, have been Henry J. Friendly in 1927, Dean Erwin N. Griswold in 1928, and Daniel M. Sandomire in 1931.

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Patterson Re-elected President Of H.L.S.A. At 61st Annual Meeting

At its 61st annual meeting held in the Root Room in Langdell Hall on June 3, the Harvard Law School Association re-elected the following officers: Robert P. Patterson, Secretary of War, Washington, D. C., president; Frank W. Grinnell of Boston, secretary; Reginald Heber Smith of Boston, treasurer; and elected the following to fill three new positions created by a new constitution adopted at the meeting: Calvert Magruder, Presiding Justice of the United States First Circuit Court of Appeals, 1st vice-president; Joseph N. Welch of Boston, 2nd vice-president, and Paul F. Hellmuth of Springfield, Ohio, assistant treasurer.

Three new members elected to the Council were Abraham H. Feller of the Legal Secretariat of United Nations, Robert Cutler of Boston, President of Old Colony Trust Company, and Charles O. Porter of Eugene, Oregon, first president of the Harvard Law School Record. Continuing members of the Council are: Albert F. Bigelow of Boston, John C. Buchanan of Pittsburgh, Chauncey H. Hand of New York, George W. C. McCarter of Newark, Robert N. Miller of Washington, D. C., Kurt F. Pantzer of Indianapolis, Edward M. Rowe of Cambridge, Murray Season-good of Cincinnati, and Judge Raymond S. Wilkins of Winchester, Mass.

The most interesting feature of the new constitution is the plan for local Harvard Law School Associations which may become affiliated with the parent

NOTICE TO VETERANS

The attention of all Law School veterans enrolled in the summer term is called to the following announcement:

Double postal cards from the Counselor for Veterans Office have been mailed to all veterans enrolled under the G. I. Bill and under Public Law 16 in the summer term at the Harvard Law School. These cards are to be filled out and returned immediately in order to provide the V.A. with the names of those veterans actually in attendance at the Law School and hence entitled to the resumption of their subsistence payments.

If you have not received your card in the mail, report to the receptionist in Langdell Hall to secure one before the deadline date Monday, June 16. If no card is filed the V.A. must be informed that you did not return for the summer term as planned, and therefore they will not recommence your subsistence payments.

HALF OF JUNE GRADS PLACED

Incomplete Report Shows Majority Work In East

Exactly one-half, or 58, of the 116 June graduates are known to have jobs, according to figures released this week by Louis A. Toepfer, director of placement at the Law School.

Massachusetts has claimed the largest part of this number, 14, or 24 per cent. New York City follows with nine, or 15½ per cent. Next in order come California with seven, or 12 per cent; Chicago with five, or 8½ per cent; Missouri and Philadelphia each with three, or 5 per cent.

The remaining 30 per cent are scattered throughout the country, and in addition there are two men in Europe. The distribution is as follows: two in Cleveland; two in Washington, D. C.; two in Scranton, Pa.; two in Vermont; two in Florida; two in Providence, R. I.; one in Baltimore; two in South Carolina, and one in Maine.

Four men in the group have clerkships. Elliot L. Richardson, president of the *Law Review* last term, is clerk to Judge Learned Hand in New York. Jack R. Pearce is clerk to Judge Augustus Hand, also in New York. Sumner Redstone is clerk to Judge Orr in San Francisco, and Alan T. Nolan is clerk to Judge Minton in Chicago.

Four of the men have gone into business: one into banking, one into wholesale drugs, one into textiles, and one into soap manufacturing.

Two men have started their own law offices, one in Maine and one in South Carolina.

Three of the group have chosen to remain in the university world. John

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NEW TERM FIGURES RELEASED

Fifteen Hundred Register; Majority Are Not Married

There will be approximately 1,536 students attending the Law School this summer, according to registration figures compiled by Mrs. Marion Tomlinson, assistant secretary. The approximate figure is given since there will be a few late registrations, and also a few students are likely to drop out before the term is well under way.

The 1,536 figure represents a drop from last term, when 1,907 students were registered, for the reason that there are no first term students this summer, and also because a number of students are taking a vacation this term.

The registration statistics further show that there are 308 students in the second term, 277 in the third, 312 in the fourth, 390 in the fifth, 198 in the sixth, and 19 in the seventh term. There are also 18 special and 14 graduate students. Again, these figures are approximate.

The 572 married students in attendance this summer account for 37 per cent of the student body, while 964 men, or 63 per cent, are single. The percentage of married students is up a little over last term, when only 34 per cent were married.

Veteran students are still very much in the majority, the 1,421 veterans in attendance this term accounting for 92.5 per cent of the student body, as compared with 92 per cent last term.

The breakdown of married and veteran students, by terms, follows:

Second term—20 per cent married, 94 per cent veterans.

Third term—30 per cent married, 97 per cent veterans.

Fourth term—34 per cent married, 85 per cent veterans.

Fifth term—45 per cent married, 93 per cent veterans.

Sixth term—52 per cent married, 86 per cent veterans.

Seventh term—58 per cent married, 53 per cent veterans.

Special students—39 per cent married, 67 per cent veterans.

Graduate students—57 per cent married, 64 per cent veterans.

PROFS LEAVE FOR SUMMER

Three Will Teach At Columbia Law School

Harvard will be well represented on the Columbia Law School teaching staff this summer. Professor Robert Braucher will teach Contracts; Professor Mark De Wolfe Howe will teach Conflicts and Constitutional Law, and Professor Warren A. Seavey will teach Torts.

Also taking a busman's holiday this summer by teaching will be Professor Austin W. Scott who will lecture for two weeks at the Rutgers University Graduate School of Banking.

In addition to these four men, twelve members of the regular teaching staff at the School will be on vacation during the summer term. This is in accordance with the policy of allowing professors to take a vacation every third term, whenever possible, during the continuance of the accelerated program, so as to make the teaching load correspond to pre-war years.

The complete list of those who will not be teaching here this summer includes: Dean E. N. Griswold, Ralph J. Baker, Robert Braucher, A. J. Casner, Zechariah Chafee, Jr., Archibald Cox, Sheldon Glueck, Mark D. Howe, Manley O. Hudson, Milton Katz, W. Barton Leach, William E. McCurdy, John A. Maguire, Thomas Reed Powell, Warren A. Seavey, and Austin W. Scott.

The book-writing field will claim part of the vacation of several professors. Professor Casner will work on a Property I casebook, which he is writing with Professor Leach, and will also spend time on a property treatise, of which he is editor-in-chief.

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Members of the new Record Board on the steps of Austin Hall, left to right, front row: Richard H. Wolford, Harvey Karlin, Marshall Deutsch; second row: Samuel Schwartz, Charles A. Lord, Robert W. Culbert, Nathan C. Fitts; third row: Charles O. Porter, Eugene Flanagan, Joseph P. Logan, Robert Maier, and Loren Juhl. Thomas N. Bantivoglio, also a Board member is not included in the picture.

Reporter Finds Job Of Judging In Ames Court Difficult, Confusing

One entire wall of my dreary little cell in Hastings Hall is completely covered with pictures of people that I think have, or had, some extra little thing that endears their memory to me always. Well, I've just taken down the photograph of John Marshall, former Chief Justice, United States Supreme Court, and replaced it with a beaming picture of Rodney Q. Smith, 6th Term Harvard Law School, former Chief Justice, Ames Competition.

It's not that Marshall has fallen from my favor, it's just that my wall is too small, and this thing that Smith has done deserves immediate recognition. So Marshall lies in my desk for the time being. I'm sure his ghost and his next-of-kin will be gratified to know that he'll be right back up there just as soon as I get a larger wall. But for the present Rodney Q. Smith sits in the place of honor—right between Oliver Wendell Holmes, Jr. and Betty Grable.

By this time, if I am to get my money's worth out of the book I bought entitled "How to Build Suspense in a News Story," you should be biting your nails and wondering just who this Rodney Smith is, anyway, and what he has done to deserve such a singular honor.

It seems that in a moment of weakness, born of desperation, the Board of Student Advisers called on Rodney to be Chief Justice in an Ames argument not knowing that sweating through three thousand cases in five consecutive terms had bred in Rodney a strong suspicion that judges were some sort of supernatural beings not quite of this world.

Poor Rodney's reaction bordered on bitterness. "Always so right, always so polite, always so pompous, always so positive." If I only had a chance to write an opinion, I'd show them how it should be done," Rodney was fond of saying.

So naturally when Rodney heard that

a prize was offered for the best written opinion by a student judge, he thought he'd have a go at it. "I think I'll have a go at it," was the way Rodney put it.

Rodney didn't win a prize, but he won my undying affection. Sizing up his problem at a glance, Rodney decided which way he was going, and plowed doggedly toward his conclusion—right through precedent, Latin, and Logic—in an opinion that will long live in my memory alongside of *Pierson v. Post*, *Falsgraf v. Long Island Railroad*, and *Dempsey v. Tunney*.

Part of the opinion is reprinted below: Smith, Ch. J. The facts of this case are singularly complicated.

So much so, that I'm not quite sure that I understand them myself. Nor was I helped much in this respect by counsel's briefs or arguments. I would like to be able to say something pretty about the briefs of counsel; that they were illuminating, or exhaustive, or enlightening, or in fact that they possessed any of the attributes that my brethren on the bench are always finding in the briefs of their counsel. Unfortunately, however, in the case at bar both briefs stunk.

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LAW SCHOOL NURSERY

The Law School Nursery has several openings this term. Children of law students who are between two and four years of age are eligible. A charge is made of twenty-five cents per day of attendance. The nursery is located in the basement of Hastings Hall, with a play yard in the rear of Kendall House. Hours are from 9:00 a. m. till 12:00 p. m. Monday through Friday. Those who desire to enter their children should contact Mrs. Richard H. Wolford at 50 Jarvis Court.

NEW BOARD CHOSEN FOR THE RECORD

Karlin Elected As President; Wolford Editorial Manager

With this issue, the Record begins its fourth term of publication, under the direction of the following board, elected at the end of last term:

President—Harvey Karlin (Pitt. '39), replacing Thomas J. O'Toole (Harvard '42). Karlin has been Feature Editor for the past two terms.

Editorial Manager—Richard H. Wolford (Harvard '43), formerly Secretary, succeeding Herbert Berman (N.Y.U. '44).

Business Manager—Marshall J. Deutsch (C.C.N.Y. '42), who retains the same position he held last term.

Advertising Manager—Thomas N. Bantivoglio (Princeton '45), who also is a holdover from last term.

Alumni Editor—Nathan C. Fitts (Amherst '39), who has held the same position for the last two terms.

Current Case Editor—R. W. Culbert (Drexel Tech. '41), formerly Articles Editor, in place of Seymour S. Epstein (Penn. State '39).

Articles Editor—Loren E. Juhl (Ill. '40), formerly News Editor, replacing Culbert.

News Editor—Robert Maier (St. Lawrence '43), in place of Juhl.

Opinion Editor—Eugene Flanagan (Yale '44), in place of Nathaniel Taft (Fordham '40).

Feature Editor—Joseph P. Logan (Dartmouth '42), succeeding Karlin.

Calendar Editor—Sam Schwartz (Wisconsin '45), who held the same position last term.

Secretary—Charles A. Lord (Colby '42), replacing Wolford.

Associate Editor—Charles O. Porter (Harvard '41), one of the founders of the paper and former president.

Other members of the staff for the coming term include: Mitchell Aaronson (Minnesota '43), Larry Corbett (Harvard '43), Bancroft C. Davis, Jr. (Harvard '41), Stanley R. Evans (Northwestern '46), John E. Hess (Bowdoin '43), Milton P. Kayle (Hamilton '43), Elliot S. Gross (Syracuse '46), Walt Myskowski (George Washington '42), Bernard W. Nimkin (Harvard '43), Vincent St. Johns (Pitt. '45), and Kenneth G. Weinberg (Miami U. '40).

The new board plans to make a more liberal use of student writings in future issues of the paper, in order to promote one of the Record's functions as a journal of student opinion.

World Law Group Reports On Completion Of First Year; Will Meet Regularly During Summer Term

In October 1946, William Barnes proposed in the columns of the Record the formation of a World Law Group to be composed of students interested in making their careers in world affairs. The group was formed shortly thereafter and has met weekly since. It now has about thirty members.

The meetings have been primarily devoted to an examination of the differences arising from conflicting legal systems and the means by which they may be solved. At almost every meeting a professor or leading authority on world affairs has spoken to the group.

Dean Roscoe Pound spoke at the first meeting. He told of his experiences in trying to reconcile the civil law and the common law.

Professor Lon L. Fuller spoke on the advantages of world law from the standpoint of international commerce.

Mr. Louis Sohn, Lecturer in Law, told of the problems encountered in the unification of Polish Law.

Professor Paul Freund discussed the importance of the study of the Conflict of Laws in solving the problem of world legal unity.

Professor Manley O. Hudson brought Mr. Walter Rogers, Director of the Institute of Current World Affairs, to one meeting. Mr. Rogers explained opportunities for international practice and work in the United Nations. He also outlined what the Institute has done to-

ward financing study by American law students in foreign countries.

Dean Payson Wild of the Harvard Graduate School addressed one session on the need for political development necessary before World Law is possible.

Professor Hart brought Mr. Chester Bowles to one meeting. Mr. Bowles had just returned from a trip to Europe with UNESCO. He discussed his ideas on a program for an international authority for the reconstruction of Europe. At this meeting, the Group appointed a committee to study what progress has been made in this field by the United Nations.

Reginald Heber Smith emphasized the essential role of the practicing lawyer in a world legal system. He also outlined what the American Bar Association has done and hopes to do in this field.

Philip Thayer, formerly with the State Department, told of plans which the Committee on Comparative and International Law of the Association of American Law Schools has been making for teaching of foreign law in American law schools.

The final meeting was addressed by Professor Warren A. Seavey. He discussed the obstacles and possibilities present in any attempt to increase understanding among law students of the world. He also spoke of his experience in teaching law in China.

One of the most important contributions to the Group has been that of the Corresponding Committee. It wrote to several institutions and corporations asking for information on the field of world law and how students could best equip themselves to take part in the solution of international legal problems.

Many replies were received. There were several interesting suggestions as to the courses of study to be pursued and opportunities in the field.

The Group has come to several conclusions for its discussions:

That it is necessary to gain some knowledge of the principles of the Civil Law in order to understand the point of view of those trained in the Civil Law.

That there are opportunities in World Law for those seeking careers in that field.

That much can be done now toward developing legal thinking along world lines, even though the political situation doesn't hold promise of world federation in the near future.

The Group will continue to meet weekly throughout the summer. It will be particularly interested in the extent to which the conflict of philosophies prevents a workable solution to world legal differences. Most of the time will be spent in studying and discussing past efforts to resolve these conflicts and what can be done in the future.



Robert P. Patterson, Secretary of War, who was re-elected president of the Harvard Law School Association at its 61st annual meeting June 3, shown here with Dean E. N. Griswold. The picture was made at the HLSA luncheon at Atlantic City, Oct. 28, 1946.

Association and elect a vice-president as its representative on the Council. Such local associations are now being formed in California, Indiana, and elsewhere. One of their most important activities will be in finding openings in their locality for men as they graduate from the Law School.

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Editorials

With this issue the RECORD begins its second year of publication. It has grown from its inception as a proposal by Charles O. Porter, Charles G. Sweet and Paul F. Helmuth, three law students, into a weekly newspaper which numbers over seven hundred alumni and one thousand students among its subscribers. In addition, it reaches over thirty law libraries. When plans now in process of formulation are completed, the RECORD will be sent to the four thousand members of the Harvard Law School Association. It is hoped that eventually circulation among alumni will exceed ten thousand weekly.

The RECORD has already demonstrated its ability to bridge the gap between the administration and the greatly enlarged student body. It has brought to the attention of the administration problems of the student body which merited its consideration, and the administration has generally acted promptly. In turn, the faculty administration has used the facilities of the RECORD to convey to the student body its attitude on many matters which otherwise might have filtered down through the medium of unsatisfactory bulletin board notices or the more usual series of vague rumors.

The RECORD now seeks to bridge the wide gap between the Law School and its graduates. Immersed for three years in the hard work necessary for a degree and enjoying limited acquaintance among fellow students and the busy faculty, the usual student fails to form those ties which make for a lasting interest in the Law School. As a result, the graduate almost immediately loses contact and interest in the School. The RECORD will seek to restore that contact and that interest between former students and the Law School by bringing to their attention weekly the news and views in the Law School.

The RECORD believes that Alumni are interested in the School and in its students, that they are especially interested in what the students think and what opinions they have on current events. The RECORD welcomes expressions of opinion from students and faculty, whether in the form of letters to the editor or of articles of varying length on any subject which they believe should be discussed. These expressions will reach a large and attentive audience of great influence in national and international affairs.

Conversely, we believe that the students and faculty are equally interested in the opinions of graduates of the School. We therefore welcome comments of any length on any subject of interest from alumni.

The RECORD hopes thus to refresh its alumni readers with the viewpoint of the young men about to enter the legal profession and to bring to the young men some of the results of the accumulated experience of the graduates. In this way, partially at least, it is hoped that the ties between the School and its graduates will be strengthened, to the advantage of both.

H. K.

Letters to the Editor

TO THE EDITOR OF THE RECORD:

On the walls of Langdell hang portraits of great and near-great men whose names mean something to students of law here and throughout the common law world. But under present conditions there is little connection between the names we read in the casebooks and the faces we see in the portraits. Nameplates on the paintings and photographs are too small, too distant and too dusty to read. Why not attach to each portrait a large, clearly-lettered wooden or cardboard nameplate with name, title and dates? There are enough students who stare at the walls during lectures to make this little experiment in visual education a fruitful one, and I believe students and visitors would appreciate the opportunity to learn the names of the judges and lawyers portrayed throughout the building.

Very truly yours,
WALLACE C. MURCHISON,
Cambridge, Mass.

Off the Record

THE REASONABLE MAN

Behold children this is the reasonable man. The world does not revolve around its axis, children. It revolves around the reasonable man. When the reasonable man went to Harvard he had a higher average than Justice Brandeis and Dean Griswold combined. Oh, no, children, you cannot see his face. Only Professor Seavey knows who the reasonable man is. Why won't Professor Seavey tell? Would Nora Prentiss tell?

PUBLIUS II

Prof. Cavers gave his fourth term equity classes a problem dealing with an ante-nuptial contract wherein the husband agreed to leave his property to his wife by will. The husband and wife separated, and he wanted to sell the land to pay for an operation. On learning that valid answers extended from damages at law for the wife for the years they spent together, all the way to complete freedom in the husband to dispose of the land as he wished, one bewildered student commented to our reporter: "Best reason I can think of for socialized medicine."

SUMMER TERM BLUES

When I was still in college,
I heard a wise man say,
Be a doctor, vet or clergy,
But keep from Law away.
And even bio-chemistry
Allows some time that's free
But I was still in college
No use to talk to me.

When I was still in college,
I heard him say again,
To study as a lawyer,
Is not an easy game,
But filled with work a-plenty,
And full of endless rue.
—And I am now at Harvard,
And oh 'tis true, 'tis true!

J. S. (IL)

The Book Shelf

A FREE AND RESPONSIBLE PRESS — Report of the Commission on Freedom of the Press. Un. Chi. Press, 139 pp., \$2.00.

This book is unlike the usual book published today. It is not intended to be merely interesting and informative. It is interesting and informative, but in addition, it is a tersely written report, replete with relevant facts, calling upon the press, the public, and the government to adopt thirteen recommendations suggested by the Commission to avert the present danger to one of the fundamental concepts of our society.

In most aspects this book is excellent. But in its emphasis that the job is chiefly for the press itself—the job of recognizing its responsibility and its accountability to the public, the report seems to be over-optimistic and a bit impractical.

The danger to freedom of the press today, the Commission states, is not, as formerly, from forces outside the press, but rather from those within it. The new technological developments, as well as the great amount of capital required to be invested in the communications units—news-paper, radio, motion picture, magazine and book publishing,—have caused a concentration of control in each of these fields by a relatively small group. News-gathering is concentrated in three great press associations. There are eight majors in the motion picture industry and but four national radio networks. Five to twenty-five big book houses do most of the publishing and there are only eight to fifteen giants among magazine publishers.

To fulfill its function, the press must meet certain requirements. These are: (1) a truthful, comprehensive, and intelligent account of the day's events in a context which gives them meaning; (2) a forum for the exchange of comment and criticism; (3) the projection of a representative picture of the constituent groups in the society; (4) the presentation and clarification of the goals and values of the society; and (5) full access to the day's intelligence.

The Commission after enumerating and explaining these requirements, proceeds to evaluate the performance. It points out that the mass communications industry is forced by the profit theory of private enterprise to seek an ever larger audience, so as to increase the sale of advertising or copies of their books or papers. Consequently "information and discussion (regarding public affairs) must be shaped so that they will pay their own way by attracting the maximum audience." Thus the criteria of recency, firstness, proximity, combat, human interest and novelty lead to scoops and sensations which are the exception and render an untrue picture of the life of the people and of our society. "The agencies of mass communications are big business and its owners are big businessmen." The press then usually reflects the bias of its owners. As an example of this, the Commission offers the 1935 action of the American Newspaper Publishers Association in condemning the proposed Child Labor Amendment.

Further examples of domination can be found in the radio field where the advertisers, rather than the owners, are at fault. "The great consumer industries—food, tobacco, drugs, cosmetics, soap, confectionery and soft drinks, which in 1945 gave the networks three-quarters of their income—determine what the American people shall hear on the air."

The lack of mutual criticism by newspapers and the effect of organized pressure groups is also pointed out.

The Commission believes that the press itself should accept responsibility for performance in the public interest. But then the Commission demonstrates the little success with which attempts at self-regulation have met in the radio and newspaper fields, while in the motion picture industry—the self regulation has been limited to those prohibitions necessary to allow films to circulate without censorship or boycott from state or municipal boards or organized pressure groups. Even the motion picture code does not set up standards of adequate or ideal performance,—nor accept the "responsibility to project pictures of the component parts of society to one another, with their ways of living, ideals, defects and special outlook." Rather, there is a limitation of the code to entertainment value alone.

Recommendations

The first five recommendations are devoted to suggestions for governmental action. One of them is "as an alternative to the present remedy for libel, we recommend legislation by which the injured party might obtain a retraction or a restatement of the facts by the offender or an opportunity to reply." The Commission asserts that this remedy ought to diminish lying in the press, but then goes on to state that it is opposed to the group libel laws now under discussion in several states, for fear that "if an individual may sue or initiate a criminal prosecution, because a group he belongs to has been criticized falsely, the law might be used to suppress legitimate public controversy."

It is on this point that the reviewer thinks the Commission has failed to reach the high level it has achieved in other parts of its work. Group libel is one of the worst of the present evils, and as shown by the Nazi rise to power in Germany and the various race riots fomented in various parts of our land by such libel, it is also one of the greatest dangers to democracy and society. Yet the Commission offers no suggestion for correction except to state that "a man who lies, intentionally or carelessly, is not morally entitled to claim the protection of the First Amendment." The remedy for press lying, however, must go deeper than the law can go.

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Gallery

ARTHUR C. PULLING

Librarian

For those of us who are undergoing, in Senator Pepper's apt phrase, "the three years of servitude at the Harvard Law School," the library, be it at Langdell or Austin, plays a major role in daily struggles with the "whys" and "wherefores" of things legal. A vast enterprise employing 80 persons (33 part-time, 44 full-time, 3 Corporation appointments), numbering 634,000 volumes as of April 17, 1947, and caring for the needs of a capacity enrollment at the Law School, it well merits the awe-inspiring title of "the largest law library in the world." Guiding the destiny of this important institution from his second floor office in Langdell West, Arthur Clement Pulling, Director of the Law Library, unassumingly goes about his tasks with a passion for anonymity rivaling that of the now historic New Dealers of the '30s.

The faculty of the Law School may boast of many former students who returned to the school as teachers in a well recognized cursus honorum. Mr. Pulling did not deviate from this path of success. His initial librarian experience was gained at the Harvard Law School Library where he began work as an assistant to John H. Arnold in 1907. Five years later, at the age of 25, Mr. Pulling left Harvard and his native-born Watertown, Massachusetts, to become librarian of the University of Minnesota Law Library, then in its embryonic stage of growth. Thirty years later in 1942 he was called back to Harvard as an associate librarian in charge of administration, to be named Director in 1943.

Fraternity Brothers

While at Minnesota, Mr. Pulling directed the development of the law library, lectured on Legal Bibliography in the Law School and in the Library, and served in various administrative capacities on the Minnesota Law Review from 1917 to 1942. These manifold activities brought frequent contacts with the students at the Law School and though not himself a lawyer, Mr. Pulling was given the unusual recognition of an honorary membership in the legal fraternity at Minnesota, Gamma Eta Gamma. Thus today he finds himself a fraternity brother of such national figures as former Governor of Minnesota Harold E. Stassen and U. S. Senator Wayne Morse.

Mr. Pulling recalls Stassen's impressive record at Minnesota. His almost straight "A" average at the Law School, gained while working three nights a week as a Pullman Conductor on the "Pioneer Limited," should cause amazement among those students who consider it a challenge to find time today to read a newspaper at anything but a headline pace. Moreover Stassen was a leading national debater and an expert rifleman (shooting buttons off sweaters of trusting friends)—qualities of unquestionable merit for a potential presidential candidate. In the light of these student contacts and his achievements on the faculty it is readily understood why Mr. Pulling recalls his years at Minnesota with particular satisfaction,—a thirty-year period that was broken only for one year in 1918 when, as a captain in the Judge Advocate's General Department in Washington, he made use of his particular administrative talents in reorganizing the J.A.G. library.

Return to Harvard

It was an indeed changed Harvard Law School Library to which Mr. Pulling returned in 1942,—at least four times larger in size and serving in 1945 over twice as many students as were here in 1912. You get some idea of the present scope of activity of the library from statistics showing that last year the staff added 23,254 volumes to the endless stacks, catalogued 23,572 volumes (excluding continuations), and filed 129,792 catalogue cards. If you think you have trouble with paper bound text-books, think of the library's additional tasks in binding the many such volumes it too inherited from the current publishing bottle-necks,—the total volumes bound or rebound last year numbering 13,019. And, for your information, every hour the number of students in reading room is recorded, as is the temperature count, to give the Administration a fairly accurate picture of student demand upon library facilities. The purchasing of new books, carried out under Mr. Pulling's direction, is a major undertaking in itself, with the Law School buying every Anglo-American legal periodical published in the world, not to mention the leading legal publications of all nations.

The world-wide reputation of the Harvard Law School is reflected in the daily requests for information received from lawyers, jurists, and research workers from all corners of the globe. Mr. Pulling recounts correspondence with the Australian High Court seeking special bibliographies, a professor of law in Edinburgh desiring a complete list of publications on U. S. Constitutional Law, a New York lawyer asking about the inheritance tax law in the canton of Geneva, Switzerland. Inter-library loans throughout the country keep the staff well occupied, and each week the United Nations Library at Lake Success, New York, requests additional loans from Harvard, for this is where the United Nations usually finds what the Law Library of Congress does not have on its shelves.

Treasure Room

Besides the enormous selection of legal publications housed in the Law School Library, vast collections of portraits, prints, early colonial writings, famous legal documents, and priceless incunabula give the library an additional claim to fame. These collections are of special interest to Mr. Pulling, but he hastens to explain that all such items are gifts from private individuals or are purchased today from special funds advanced by the society formed in 1944, The Friends of the Harvard Law School Library. Budgetary funds are used solely for the purchase of publications needed by the faculty or students in daily work. At present all of Mr. Justice Holmes' letters reside at the Library, where Professor Mark Howe makes use of them in preparation for his forthcoming Holmes biography. A more recent addition to the treasured items is the official sixty-volume mimeographed record of the Nuremberg Trials, a combined gift of Commander Ralph G. Albrecht and former Attorney-General Francis Biddle, two alumni of the Law School who played important roles in the historic trial proceedings. A major objective of the Library staff is the construction of a Treasure Room in the North Wing of the second floor in Langdell. The room, complete with special equipment to provide 50 per cent humidity and 68 degree temperature, vital in the proper preservation of written documents, will house the major portion of rare items and will afford students an opportunity to see much that is now kept behind the steel doors of a vault in the basement of Langdell.

Sub Judice

ASTHMA****

Colonel Crane, aged 50, was born in Florida and was the eighth generation of his family in that state. He owned a house and other property in the state and lived there with his family when not on duty elsewhere. He was in the army twenty-eight years and was overseas during most of the war. He returned on November 10, 1945 suffering from asthma and was sent, at his own request, to the Army-Navy hospital at Hot Springs, Arkansas. He stayed there three weeks and was advised to find the best climate for his condition. Acting on this advice he left Hot Springs December 5, 1945, bought a car and for the next two months, up to February 16, 1946, he visited Oklahoma (of musical comedy fame), Texas, Arizona, New Mexico, Nevada, Wyoming, Utah and California and found the climate gave him more relief in Arkansas than in any of the other states. Meanwhile he had instructed his attorney to file suit for divorce from his Florida spouse which suit was filed in Arkansas on February 11, 1946. Arkansas required a bona fide residence for two months next before commencement of the action. The wife appeared specially and challenged the jurisdiction. Upon denial of her motion to dismiss and the granting of the divorce the wife appealed.

The Court reversed, holding for the wife stating:

"Colonel Crane's testimony—while a tribute to the climate of Arkansas—does not prove he was a bona fide resident of Arkansas for sixty days prior to filing suit. In fact his testimony shows the contrary! It was only after Colonel Crane had visited all these other states that he reached the conclusion to reside where the climate best suited his asthmatic ailment; . . . Crane v. Crane, 199 S.W. 2d 316 (Ark 1947).

A SERVICE CHARGE ON LIFE TOO ****

The Parker Pen Co. extensively advertised its products and as the court put it, "Over one half of each advertisement was generally devoted to pictorial matter—of the pens themselves, and of their present or potential owners (such as graduates, brides, court reporters, etc.)."

The familiar Blue Diamond used by the company as a trade mark would be prominently displayed with the letters "Guaranteed for Life" or some similar phrase. In fine print, generally at the bottom, next to a very small Blue Diamond would appear the phrase that the Blue Diamond pens were guaranteed for life with a 35c service charge for postage, insurance and handling.

The Federal Trade Commission claimed that this was deceptive advertising and after the usual administrative hearing the Commission made findings supported by evidence that such advertising was deceptive and that Parker should cease advertising a lifetime guarantee. The company petitioned the CCA for review.

The CCA sustained the Commission and overruled the company's contention that it had explained the meaning of the lifetime guarantee in its ads and that the Blue Diamond acted as an asterisk and was repeated as such next to such explanation. The court did feel that the Commission's order was too harsh and that if the explanatory words appeared next to the words "Lifetime Guarantee" and were given the same prominence that the company could continue to so advertise. The court modified the order accordingly and provided for the parties to stipulate as to the terms and if unable to do so either party was to present to the court a proposed order, giving notice to its adversary of its action. Parker Pen Co. v. Federal Trade Commission, 159 F. (2d) 509 (CCA 7th 1946).

EXPERIENCE IS THE BEST TEACHER ****

Defendant was found guilty of violating the National Motor Vehicle Theft Act. Being indigent, the court had appointed counsel for him one minute before the case came on for trial. The defendant appealed the conviction contending among other things that he was not given sufficient time to prepare for trial and that the counsel assigned to him was inexperienced and took no substantial part in the trial requiring him, the defendant, to, in effect, conduct his own defense.

The court stated that, "Such a charge is not a difficult one to defend but in any event we cannot hold that lack of experience is the equivalent of incompetence for competent defense may be accomplished by inexperienced counsel."

The court did reverse and order a new trial on the ground that one minute was too short a period to prepare and violated the due process guaranteed by the fifth amendment. U.S. v. Helm, 159 F. (2d) 616 (CCA 3rd 1947).

Greater Efficiency

The pressure of the many administrative duties and policy decisions encountered in directing the activities of the library does not bring Mr. Pulling in contact with many of the students, but this does not result in his losing sight of what he sincerely feels is the primary objective of his organization—satisfaction of the needs of the students. His major gratification, he readily admits, comes from the correct anticipation of the demands of both students and faculty. A specialist in administrative techniques, he has done much to bring about greater efficiency from a somewhat smaller but better trained library staff. At present he is aided in his tasks by Philip A. Putnam, Assistant Librarian in charge of reference, Reading Rooms and stacks, and Theodore N. Treadwell, Assistant Librarian in charge of Bookbinding.

Since 1942 Mr. and Mrs. Pulling have resided in Cambridge in an apartment at the Hotel Commander. Their neighbors are Professor and Mrs. Edmund M. Morgan, whom the Pullings first met in Minnesota when Professor Morgan was on the faculty of the University of Minnesota Law School. It may well be that a special pact between Pulling and Morgan is what sends the first year Judicial Remedies students scurrying through the stacks, searching out those blessed footnote cases. But it is difficult to attribute ulterior motives to a man of Mr. Pulling's general disposition and character, as reflected by the opinions of those who work for him. "Our main objective is to provide for the needs of the students in all possible respects. The students are our first thought, and everything possible is done to anticipate their demands." A few minutes spent in Mr. Pulling's company convince you that he means what he says.

M. P. K.

Alumni Notes

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

LL.B. '91—**Wilfred Bolster**, former chief justice of the Boston municipal court, died May 3 at his Wellesley Hills home. While at Law School he was editor-in-chief of the *Harvard Law Review*. In 1902 he was appointed a special justice to the municipal court, and in 1906 he was made chief justice, retiring in 1939. Well-known for instituting many reforms and improvements in the procedure and jurisdiction of the courts, he once refused an appointment to a seat on the superior court, believing that he could be more useful to the public by remaining on the lower bench.

LL.B. '00—**Henry B. Patrick**, a specialist in probate and corporate matters, died in Newton, Mass. on April 26. He was a trustee of Eastern Utilities Associates, a director of American Tool & Machine Co., Brockton Edison Co., and vice-president and director of Massachusetts Cities Realty Co. and of Atlantic States Warehouse & Cold Storage Corp.

Ex. '03—**William Phillips**, who left the Law School after 2½ years to begin his diplomatic career as private secretary to the Ambassador to Great Britain in 1903, has been elected president of the newly formed India Institute, a division of the Asia Institute.

Following his initial career in London, Phillips served in the Far East and in the State Department until his return to London in 1909 as first secretary of the American embassy. In 1912 he served briefly as regent of Harvard College and secretary of the Corporation of Harvard University, returning to the State Department in 1914 to serve for six years as third assistant secretary of state and assistant secretary of state. Twice appointed under secretary of state, 1922 and 1933, he also held ranking diplomatic positions in the Netherlands and Luxembourg, Belgium, Canada, and in Italy for 6 years before becoming director of the Office of Strategic Services in London in 1942. More recently he served as the President's personal representative with the rank of Ambassador in Delhi, India.

Ex. '05—**Henry Ware Eliot** died May 3 in Cambridge, Mass.

Re-elected as chairman of the Boston branch of the Foreign Policy Association is **Judge Lawrence G. Brooks**, LL.B. '05. At the recent meeting **Malcolm Donald**, LL.B. '02 was named treasurer, and vice-chairmen included **Judge Manley O. Hudson**, LL.B. '10, S. J. D. '17, and **Judge Jacob J. Kaplan**, LL.B. '10.

LL.B. '07—**Daniel W. Lincoln**, Worcester lawyer, has been named by Gov. Bradford as an associate member of the Mass. state appellate tax board.

The Law School is well represented at current treason trial of Douglas Chandler, American expatriate accused of broadcasting Nazi propaganda. Federal Judge Francis J. W. Ford, LL.B. '06, is presiding at the trial. Defense attorneys, appointed by the court, are **Claude B. Cross**, LL.B. '20, and **Edward C. Park**, LL.B. '22. Among attorneys handling the case for the government are **Oscar R. Ewing**, LL.B. '13, and **Gerald J. McCarthy**, Ex. '25, assistant U. S. attorney in Boston.

The trial is taking place in Boston as a result of the law requiring that defendants in such cases be tried at the place where they re-enter the country. The Army plane returning Chandler from Germany was forced down at Westover Field, Mass. last winter. This is the third U. S. treason trial since the end of the war. Others were those of Ezra Pound and of Edward Delaney.

LL.B. '39—**Miss Elizabeth J. Beach** and **William Pickering Jones** were married in New York City on May 17. Jones served for five years in the Navy, as a lieutenant-commander, in charge of a destroyer escort in the Atlantic and Pacific.

BAR EXAMINATION

The RECORD has obtained the following statistics on the last Massachusetts bar examination: 37 Harvard Law School men took the examination, 26 of whom passed and 11 of whom failed.

It is hoped that in the near future statistics will be available from other states which attract large numbers of graduates.

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UNITARIAN AID TO EUROPEANS IS DESCRIBED

The afternoon meeting of the Harvard Law Wives last month featured a talk by Miss Helen Fogg, a member of the Unitarian Service Committee, who has recently returned from Europe. She described the work the Committee is doing to aid the homeless and the sick of Europe, emphasizing that they sought to give help in the form of services rather than direct relief.

These services include a model orphan home near Prague, to which observers come to learn methods which will be useful to them in the sixty homes established by the Czechs themselves; and a Medical Teaching Mission made up of fourteen top-notch American medical men who lectured to Czech doctors, gave demonstration operations, and travelled throughout the country showing how the modern apparatus and new medicines supplied by UNRRA should be used. The informal teaching methods of the Mission, according to Miss Fogg, were very popular with the Czechs, who were accustomed to didactic German professoria. This mission cost but \$15,000, and will more or less directly touch the health of ten million people—an example, Miss Fogg stated, of how the Committee seeks to make a little money do a lot of good.

In most of the occupied countries, medicine is in a pitiful state, Miss Fogg said. The Nazis closed medical schools, destroyed laboratories, shot the top doctors, and allowed no communication with countries in which research was going on. The situation in France is not as serious, but in Toulouse, where most of the Spanish Republicans live, the incidence of tuberculosis is appalling, as these exiles are allowed to work only at the lowest rates, and live in attics and basements where there is no heat or light. They are setting up preventoria here, where they attempt to build up the resistance of the still healthy children, but for every child they care for, six are doomed, sooner or later, to contract the disease.

Miss Fogg concluded her talk with a description of the dental clinics being set up to supply teeth, donated by American denture houses, to the men and women who have lost theirs during the war.

VACATIONS—(Continued)

Professor Cox plans to work on his casebook on Labor Law. Professor Leach has several projects, including the Property I casebook which he is writing with Professor Casner, a new manual for law students and those contemplating the study of law, and several chapters to be included in the property treatise which Professor Casner is editing.

Two of the professors will spend some time abroad. Professor Baker will visit England, partly on business and partly to see his daughter and granddaughter. Professor Hudson's tentative plans include lecturing at the Academy of International Law at The Hague, attending a meeting of the International Law Association at Prague, and also meeting with the Institute of International Law at Nauchetel.

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BOOK SHELF—(Continued)

Further, in its report, the Commission states that "deliberate falsifications and reckless misstatements of fact will be lessened by a new legal remedy compelling the publication of a retraction or reply." But if the Commission looks with disfavor on the civil process of libel, and also on the group libel laws prosecuted or initiated by an individual, who then is to initiate this new remedy?—the government? If so, is there not just as much, or more, danger of suppression of legitimate public controversy?

Consequences of Concentration

The Commission points out that "among the consequences of the concentration (through ownership of instrumentalities) the output of the press reflects the bias of owners and denies adequate expression to important elements in communities." To counteract this, the Commission has "urged that newspapers and other agencies of mass communication regard themselves as common carriers of information and discussion, that the entry of new units into the field be facilitated, and that the government prevent monopolistic control of outlets by the sources of production." Yet previously the Commission spoke of the huge investment in plant required today for the entry of new units. Furthermore the Commission states in a footnote at an earlier page that they do "not intend to suggest that the agencies of communication should be subject to the legal obligations of common carriers," thereby leaving to those in control the mere moral obligation of eliminating their biases and regarding themselves as common carriers.

However, recommendations that the government should inform the public of facts with respect to its policies and of the purposes underlying these policies, and that when private agencies of mass communication are unable or unwilling to supply such media to the government, the government itself may employ media of its own, or that the government employ its own media to supplement any deficiency in supply information about this country to a particular foreign country or countries, should meet with the approval of all interested in better relations between our government and its people and between our country and foreign countries.

Nor will there be disapproval of the recommendation that "the press use every means that can be devised to increase the competency, independence and effectiveness of its staff" or "that the radio industry take control of its programs and that it treat advertising as it is treated by the best newspapers."

Annual Report on Performance of The Press

A most important recommendation is for the establishment of a body, independent of the government and of the press, created by gifts, to appraise and report annually upon the performance of the press. This body would attempt to define workable standards of performance, make inquiries both at home and abroad concerning press evils and inefficiencies, appraise governmental action affecting communications as well as encourage "the establishment of centers of advanced study, research and criticism in the field of communications at universities." This last, is an effort to encourage the development of the members of the press into a genuine profession.

Thus to help overcome the frustration displayed by many able reporters and editorial writers—"the feeling that they were not allowed to do the kind of work which their professional ideals demanded, that they were unable to give the service which the community needs from the press."

Whether one agrees with the Commission in its program to improve the press, or not, the importance of a free and responsible press to the preservation of democracy, requires the attention of all citizens, and makes this report required reading, if only as a starting point for further study and thought on this crucial topic.

PLACEMENT—(Continued)

Def. Pemberton, Jr. is teaching at Duke University in South Carolina; William Barnes is working on a world law project in Europe, and John Naff has won a fellowship at Oxford.

For those who are interested in overall percentages, six localities account for 70 per cent of the jobs, and 81 per cent of the group are now working east of the Mississippi River.

Those men who have chosen to go into the legal end of business receive the highest salaries of the group, one man commanding \$5000 at the start. The group as a whole receives salaries ranging from \$2500 to \$3500 yearly.

Mr. Toepfer emphasizes that these 58 are positions specifically reported to his office, and that there may be more that have not been reported as yet. Many of the men planned to rest a few weeks before looking for a job.

GRADUATION—(Continued)

The degree, summa cum laude, was not established until 1927. However, previous to that time a small number of graduates had received a general average of 80 or better, although they were accorded no formal recognition of this high average in the award of their degree. Included in this group are such men as the late Justice Louis D. Brandeis and Professor Austin W. Scott.

One of the highlights of this year's commencement exercise was the award of honorary Doctor of Laws degrees to Secretary of State George Catlett Marshall, to Administrator of Veteran's Affairs Omar N. Bradley, to Senator James Wolcott Wadsworth, to Archaeologist George Henry Chase, and to Frank Leroy Boyd, Principal of Deerfield Academy.

AMES JUDGE—(Continued)

Still, one of the towers of strength of the common law has always been the separation of questions of fact from questions of law; the former being in the province of the jury, and the latter, of course, to be decided by the court. This obviously being a court and not a jury, we need not be concerned with the facts of the case at all, and can concentrate solely on the law. We cannot let our ignorance of the facts stand in the way of justice.

As near as I can make out, this case involves the validity of a trust, by the terms of which a certain sum was to be paid each year to the professor at Harvard Law School who succeeded in giving the highest marks. Were it the converse situation, viz: a sum to be paid each year to the professor who gives the lowest marks, there would be no question as to its validity. Several such trusts have been in operation for years, and have proved markedly successful. Each year the professors enter the competition with great spirit and zest, and some remarkably low marks have been the result.

The case can easily be narrowed down to one fundamental question, namely: which side is going to win? Plaintiff strongly insists that he is, and he offers four main contentions in support of that insistence. I will now proceed to examine, one by one, plaintiff's contentions:

1. Plaintiff cites *In re Aldrich* as be-

ing squarely in point and conclusive in his favor, but there is an obvious distinction which Plaintiff, in his zeal, has overlooked. The Defendant's name in *re Aldrich* was Aldrich; the Defendant's name in this case is Jones, so *In re Aldrich* is obviously not in point.

2. As to Plaintiff's second contention, all I can say is, Plaintiff, your hands are dirty. Nor does it help to come into Court wearing gloves. We will look through the form to the substance.

3. Plaintiff's third contention is too silly to even talk about.

4. Plaintiff contends that the Defendant is barred by laches, by the Statute of Limitations, by the Statute of Frauds, by waiver, and by estoppel. Prima facie all this appears to be true, and should be conclusive of the case, but were Plaintiff to win, an obvious injustice would result, so we can fall back comfortably on the maxim: *Omnia Gallia in tri Parte Divisa Est*.

Unfortunately, space limitations and the editor's good taste prevent my recording the rest of Rodney's opinion, but if you feel you won't sleep well till you've read the rest of it, drop up to see me at Hastings Hall. Bring your own whiskey—I have plenty of soda.

K. G. W.

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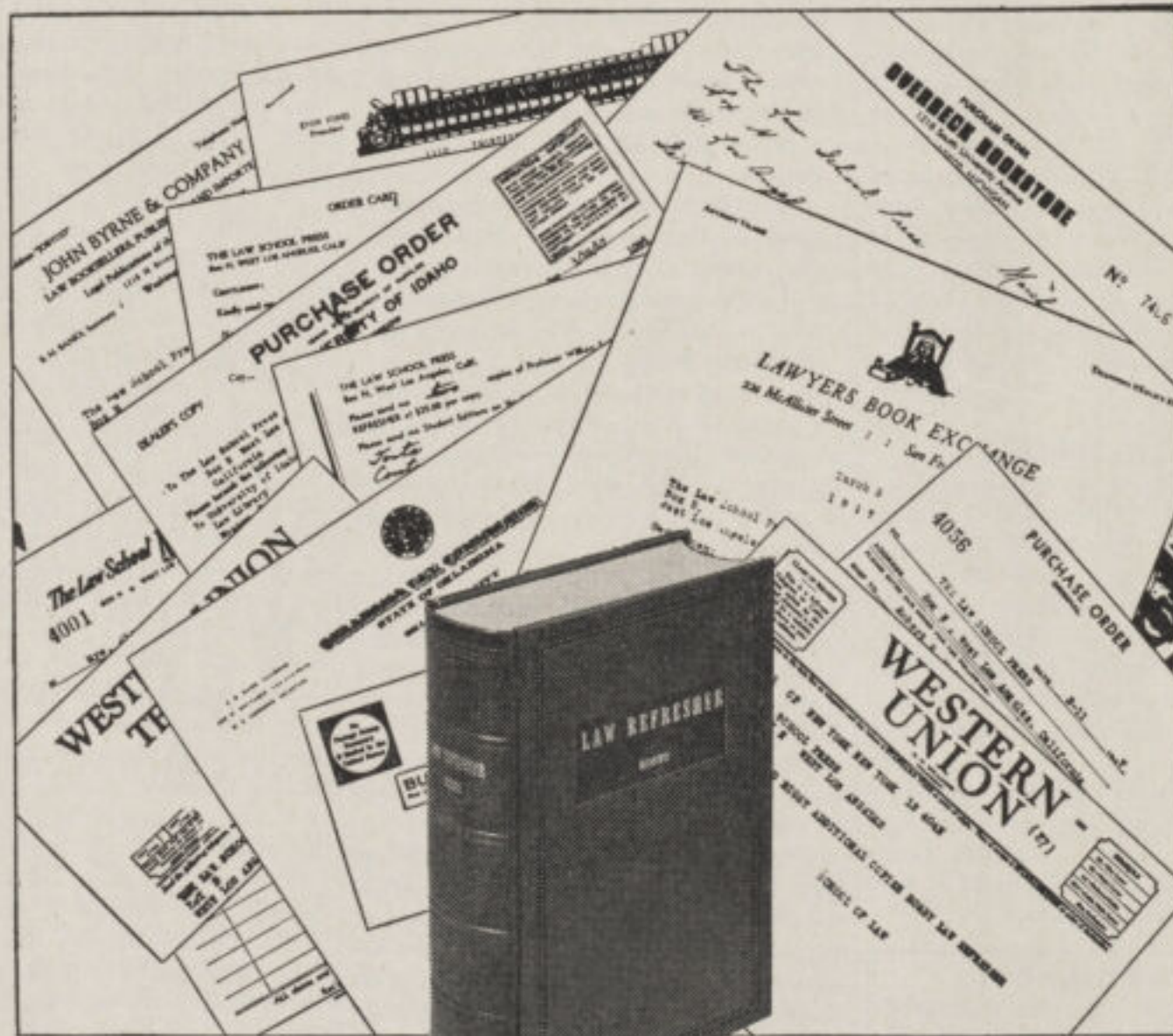
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Calendar

LEGAL WORLD

Law School Locker Renewal

The deadline date for renewing Law School lockers occupied during the February term is Friday, June 13. Lockers renewed by June 13 will be considered vacant and re-rented.

Ames Competition

There will be a meeting of second term clerks in the Ames Competition in Austin West at 3:15 p. m., today, June 11. Attendance at this organizational meeting by the clerk or his representative is imperative.

Law Wives

Miss Helen Kelly of the Cambridge Library will give monologue readings tonight, June 11, 8 p. m. in Kendall House.

Next Tuesday, June 17, there will be a tour of points of interest around Harvard conducted by a guide. Wives will meet at 3 p. m. at Kendall House.

Marks

According to Assistant School Secretary, William Bowe, marks for all classes will be issued sometime during the week commencing Monday, June 16.

OUTER WORLD

Foreign Movies

Old South Theatre, Washington St. opposite Milk St. station. Double feature. Andre Malraux' "Man's Hope" and "Extenuating Circumstances." Both pictures made in France.

Exeter Theatre, Exeter Street, off Copley Square. David Niven, Raymond Massey and Roger Livesey in J. Arthur Rank's "Stairway to Heaven." Made in England.

Kenmore Theatre, 777 Beacon St., off Kenmore Square. Tagliavini in the motion picture version of the opera, "Barber of Seville." Made in Italy.

Pops Concerts

Arthur Fiedler conducts Boston Symphony Orchestra players in Pops concerts every evening at Symphony Hall, Boston. Tickets sell for \$5.50 to \$2.00 and may be obtained at the box office.

Concert

Mary Becker, violinist, will give a concert at the Isabella Stewart Gardner Museum, Fenway Court, Boston, next Sunday, June 15, at 2 p. m. She will be accompanied by Theodore Walstrum at the piano and her program will include works by Vivaldi, Chausson and Wagner. The concert is free to the public.

Baseball

The Braves play a double-header with the Chicago Cubs this afternoon, June 11, starting at 1:30 p. m. in Braves Field. The Red Sox return to Boston on Friday, June 13, when they will play a night game with the Chicago White Sox, starting at 8:30 p. m. in Fenway Park. The Red Sox will play two more games with the White Sox on Saturday, June 14, at 2 p. m., and Sunday, June 15, at 2 p. m. On Monday, Tuesday, and Wednesday, June 16, 17 and 18, at 2 p. m., the Sox will play the St. Louis Browns. Tickets may be obtained at the ball park or at Filene's Men's Store, daily 9:30 to 5 p. m.

Fine Arts Museum

There are at present two special exhibitions at the Museum—the Annual Museum School Exhibition which is being shown through June 29 in the Special Exhibition Galleries, and the Mediaeval World, a photographic exhibition prepared by the Editors of *Life* magazine, which is being shown through June 20 in the Division of Education Corridor.

Also on exhibition are contemporary European paintings and etchings and lithographs by Goya. Museum hours are 9 a. m. to 5 p. m. daily, 1:30 to 5:30 p. m. daily, closed Mondays.

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Do We Need A Tax Appeals Court?

Several years back, a subject of considerable discussion was the need for a court of tax appeals. The need was outlined by Dean E. N. Griswold in 57 *Harv. L. Rev.* 1153 (1944). The Section of Taxation, American Bar Association, in the "Program and Committee Reports," published in December, 1945, refuted the plan.

Inquiries concerning the present status of the problem were recently addressed by the *Recom* to H. Cecil Kilpatrick, and Robert N. Miller of the Washington, D. C., bar and members of the ABA Section of Taxation which prepared the 1945 report. They were questioned as follows:

1. Do you believe that there is, at present, an unreasonable delay in getting reliable decisions on important tax questions?

2. Are the delays explicable, even justifiable, in terms of the complexity of the questions? Are the delays the result of bad judicial organization, or of the fact that the Treasury refuses to consider itself bound until the Supreme Court has ruled? What are the "administrative difficulties" which are, according to your Taxation Section report, the main causes of the longer delays?

3. Is there a chance that the *Dobson* doctrine can become clarified to the point that its application will be predictable by the lawyer anxious to know whether or not a certain Tax Court decision will stand up?

Their answers are printed below.

BY H. CECIL KILPATRICK

1. Is there an "unreasonable delay in getting reliable decisions on important tax questions?"

I assume at the outset that, when you say "reliable decisions," you mean decisions of the Supreme Court. Certainly, no decision short of that court may be relied upon as final, in view of the Treasury's litigation policy, hereinafter discussed. I may be assuming too much, since under that policy there is no assurance that the Treasury will follow even a Supreme Court decision if adverse, but unless I assume this much, I will not be able to answer your question at all.

(a) The question of what is a reasonable and what is an unreasonable delay in this field cannot be answered in terms of months or years. If what we want are prompt and final decisions, without regard to anything else, any one of the following drastic steps would speed up the process:

1. We could shorten the period of limitation to the point where administrative processing of tax controversies by the Commissioner would break down, and a mass of ill-digested and unnecessary law suits would be dumped on the courts.

2. We could make the Commissioner's determination final, and deny review by any court.

3. We could confine the jurisdiction to the Tax Court and make its decisions final.

(b) In determining what is a reasonable time, we must, therefore, weigh the advantages and disadvantages of allowing time for the administrative process of protest and hearing, and of allowing judicial review.

(c) It is obvious that a final answer to every conceivable dispute which might arise under a revenue law cannot be given by anybody—the Commissioner or a court—immediately upon the enactment of a revenue law. These questions cannot be decided in a vacuum; the answer, like that in every field of the law, is swayed by the detailed facts to which the law is to be applied. When and how such issues will shape up is usually unpredictable, in the tax field or any other field, and it may be years before a case arises in which the question is deemed by either party, worthy of a fight.

(d) When such an issue does arise, the first question (insofar as reasonable time is concerned) is, "How long shall we give the Commissioner to decide the question?" The present law says three years from the date the return is filed. Maybe this is too much, although that is a subject on which a volume could be written. With his present staff, the Commissioner finds it extremely difficult to begin the examination of the average return within two years from the time it is filed, so as a practical matter, since the statute of limitations is three years, his office has a year or less in which to decide such questions administratively. This time can be extended by written agreements (waivers) between taxpayer and Commissioner. In many complicated cases, both the Government and the taxpayer need considerably more time than this in order to dig out all the facts and to exhaust opportunities for administrative settlement. For this reason, waivers are used extensively, thus delaying further the final determination

of those cases which are not so settled. Of course, where settlements are eventually agreed upon, this procedure may and often does shorten the time required to dispose of a case, since litigation is avoided.

Over 48 million returns are filed annually, as compared with 3½ million in 1939! We know from bitter experience that, unless a reasonable time is given the taxpayer to prepare his proofs and to brief and argue his case before the Bureau's representatives, the courts will not be able to carry the load of hastily-decided questions. Nobody has seriously contended that this period should be shortened.

(e) After the Commissioner decides, if his decision is adverse, the deficiency notice then goes out—normally some 2½ or 3 years after the return was filed. The taxpayer then is given the choice, by law, of (1) appealing within 90 days to the Tax Court or (2) paying the tax and filing a claim for refund, upon rejection of which (or if the Commissioner takes no action on the claim in six months) he may file a suit for refund. He has two years after rejection in which to file suit. This suit may be filed in the United States District Court for his district or in the Court of Claims. From the Tax Court or the District Courts, these cases may go, by appeal as a matter of right, to the United States Circuit Courts of Appeals, but decisions of the Court of Claims are reviewable only by the Supreme Court on certiorari.

The proponents of the Court of Tax Appeals do not claim that an unreasonable time is taken up in the consideration of tax issues by the Commissioner, the trial courts or the Circuit Courts of Appeals. However, as we pointed out in the Committee report you mention, an analysis of a representative group of the tax cases discloses that from 85 per cent to 90 per cent of the time elapsing between the close of the taxable year involved and the final decision of the question is taken up by the procedures above discussed. In fact, as I understand Dean Griswold's argument, he does not criticize the length of time taken by any tribunal, administrative or judicial, or the aggregate time of all of them, in deciding a particular case.

In short, the unreasonable delay about which complaint is made is the time elapsing between decisions of two Circuit Courts of Appeals, namely (a) the first such court to decide the question and (b) the first such court to reach a different answer to the same question. The tenor of the argument for the new court is that, if this period of time could be reduced or eliminated, the "reliable" decision would come with "reasonable" speed, because there has to be a conflict between circuit courts before the case gets to the Supreme Court under the present system.

As you will have observed from our Committee report, we do not agree that such a conflict is a prerequisite to Supreme Court review, or that the period elapsing between conflicting decisions is unreasonably long. Statistical studies reveal that, in tax cases reviewed by the Supreme Court over a five-year period, conflict was not even alleged as a ground for certiorari in 31 per cent of the cases. In fact, in a study made by my office recently, we found that in only 35 per cent of such cases reviewed by the Supreme Court from October, 1941, to June, 1943 (i.e., the cases reported in Volumes 814 to 320, inclusive, of the United States reports) did the court state that a conflict of circuit decisions was the sole ground for granting review. In the 15 cases making up this 35 per cent, the average time elapsing between the conflicting decisions was 19 months. In only six of these 15 cases did this elapsed time exceed 2 years, and in 8 of the 15, it was less than a year. In 7 cases of this group the time between conflicts was six months or less.

With this sketchy outline of some of the things that must be borne in mind when expressing an opinion on what is an "unreasonable delay in getting reliable decisions on important tax questions," I now answer your first question categorically: Yes, I believe there is an unreasonable delay, but not that this delay is attributable to the considerations which Dean Griswold labors at such length and so eloquently.

2. Causes of these "unreasonable delays." If prompt and reliable answers to tax questions be desirable—as everybody agrees—then it should be obvious that a competent administrator of the law is under the duty of so directing the litigation to which he is a party that this desirable end shall be attained. Common sense would seem to dictate a course of (a) promptly issuing interpretative regulations and sticking by those regulations until they are held invalid, (b) carrying the questions he considers of general importance (and only those questions) to the court of last resort as

promptly as possible, (c) following the rules laid down in such cases, in letter and in spirit, in all other cases (unless, of course, he deems the matter important enough to ask for legislative correction of the law, in which event he should go to Congress with his problem and see if those who write the laws agree with him as to what is desirable), and (d) promptly articulating in his regulations the rules thus established.

In this, the Commissioner of Internal Revenue, in my opinion, has been most derelict. There has grown up in the councils of those who direct the course of tax litigation for the Government a policy of litigation for the sake of collecting the maximum tax in each individual case, as contrasted with a policy of pressing for a final decision of particular questions, to be used as a rule for administrative handling of every case involving that question. There is also the Treasury's policy of making up its mind as to what the statute ought to be, and then disregarding every court decision, even those of the Supreme Court, which goes the other way.

This criticism is justified, I believe, by the record of Government action and inaction, discussed in more detail below, and is shared by men who have had direct contact with this policy inside the Government. Mr. Eisenstein's article, *Some Iconoclastic Reflections on Tax Administration*, 58 *Harv. L. Rev.* 477 (1945), is perhaps the outstanding example of such confessions. Mr. Eisenstein aptly sums up at page 524 of his article by saying: "The courts, which have no technical competence, have generally become the administrators. The administrative, which has the technical competence, has substantially become a mere party litigant before the judicial administrators."

Mr. Randolph Paul, formerly General Counsel of the Treasury Department, in an address before the National Tax Association last year, remarked that the courts have been assigned virtually the entire job of interpreting our tax statutes "by default, more than by design," and said that "We have sunk into a mire of administrative inaction while we wait passively for their future instructions."

Space does not permit a complete bill of particulars, but the following examples may serve as typical:

(1) In 1940, the First Circuit rejected the Commissioner's contention that installment payments of life insurance included an "increment" taxable as interest. *Com'r. v. Winslow*, 113 F. 2d 418 (C. C. A. 1st 1940). Within the same month, the Second Circuit reached the same conclusion. *Com'r. v. Bartlett*, 113 F. 2d 766 (C. C. A. 2d 1940). Here was a constantly-recurring question, of great importance to the Government, but no application for certiorari was made. The Commissioner continued to litigate it in the lower courts, and after losing four more Circuit Courts of Appeals cases during the years 1941-1944 (*Com'r. v. Buck*, 120 F. 2d 775 (C. C. A. 2d 1941); *Allis v. LaBuddé*, 128 F. 2d 838 (C. C. A. 7th 1942); *Kaufman v. U. S.*, 131 F. 2d 854 (C. C. A. 4th 1942); and *Com'r. v. Pierce*, 146 F. 2d 388 (C. C. A. 2d 1944)), he waited a year and a half and then, nearly six years after the *Winslow* decision, promulgated T.D. 5515, amending his regulations to conform to these decisions.

(2) In *General Utilities & Operating Co. v. Helvering*, 296 U. S. 200, decided in 1935—twelve years ago—the Supreme Court held that a dividend paid in property which has appreciated in value since acquisition by the corporation does not result in taxable gain to the corporation. Yet the Commissioner still refuses to honor that decision. E.g., see *V. U. Young*, 5 T.C. 1257.

(3) In February, 1940—7 years ago—the Supreme Court decided *Helvering v. Clifford*, 309 U. S. 331, holding that the income of a certain type of short-term trust should be taxed to the grantor of the trust. The Commissioner thereupon embarked upon a campaign to tax to the grantor the income of nearly every conceivable type of limited-term trust (see *Tax Law Rev.*, Apr.-May 1946, p. 380), and did not until December, 1945, attempt to spell out in his regulations the scope of the new rules in this field. (See 58 *Harv. L. Rev.* 501.)

(4) In 1920, the Supreme Court in *Eisner v. Macomber*, 252 U. S. 189, held that a stock dividend of common on common did not result in taxable income to the stockholder under the Sixteenth Amendment. This rule was accepted by Congress and the Commissioner for twenty-two years, but in 1942 the Commissioner sought to tax such a dividend, and carried the case to the Supreme Court. *Helvering v. Griffiths*, 318 U. S. 371. This case, which involved \$9.60 in taxes, was pending in the courts for over a year before the Supreme Court finally adhered to its 22-year old decision.

(5) As examples which come readily to mind of the refusal of the Commissioner, for the sake of collecting a tax

in a particular case, to follow his own regulations, see:

(a) *Burnside Veneer Co.*, 8 T.C. No. 55 (Dissenting opinion).

(b) *Hans F. Wriedt*, T. C. Memo., Dkt. No. 8731, Feb. 18, 1947.

(6) The practice of abandoning a case lost in the Tax Court, and continuing to litigate the same question in other cases without appealing, is so well-known that it cannot be seriously denied. I am sorry that I do not have time to document this charge, but, if you are able to find any responsible Government official who denies it, I shall be happy to see that it is documented and proved to your satisfaction. For a recent example, see *Judson*, T. C. Memo., Dkt. No. 7365, March 4, 1947; *Converse*, 5 T.C. 1014; *Lahti*, 6 T.C. 7; *Mitchell*, 6 T.C. 159.

In short, the prevailing Treasury policy, which cannot fail to result in keeping the answers to tax questions in doubt for the maximum time, is (to quote from our report, p. 18):

"... to write ill-considered regulations or to delay the enunciation of rules while litigating on both sides of a question; to drop the appeal of a contest lost at a lower level, at the same time refusing to follow the precedent so established; to continue uncertainty by seeking a conflict despite agreement among two or more circuits; and to ignore adverse decisions of the Supreme Court itself except by trying, time and again, to persuade that Court to reconsider the question."

3. The *Dobson* case.

I am puzzled by the phraseology of your question, as well as its inclusion in a discussion of the Griswold Plan. While I would not say that there is not a "chance" that this doctrine will be so clarified as to permit its applicability to a particular case to be predictable, I would certainly be astonished if this happy day ever arrived. Cf. the remarks of Judge Learned Hand in *Brooklyn National Corporation v. Commissioner*, 157 F. 2d 450 (C. C. A. 2d 1946).

BY ROBERT N. MILLER

I think the best method of testing the success of a judicial system is to find out how well it deals with the great mass of its cases, rather than to concentrate one's attention on exceptional cases. Studies have yielded the following facts as to the working of the present appellate system in tax cases. More than 95 per cent of the civil tax appeals are being finally disposed of in the circuit courts of appeals, and well over 30 per cent of the rest of the cases reaching the Supreme Court are taken up for reasons other than any conflict of decisions.

The typical conflict-developed period (treating the median case as typical) was found a little less than 12 months,—this period being in sharp contrast with very long periods in a relatively few cases of slow-developing conflict. In the typical tax case that reaches the Supreme Court, at least two-thirds—probably more—of the total time between the tax year and final disposition

had elapsed before the case reached the appellate system at all. After it entered that system by appeal to a circuit court of appeals, the typical case was decided by the circuit courts of appeals in 9 months and 7 days. The typical tax case which reaches the Supreme Court takes only 4 months in that court, from granting of the petition to decision. These facts seem to indicate that the present appellate system is doing the major part of its work with very considerable success.

The instances cited by the proponents of the plan are exceptional, not typical. The complained-of delays, being due only in very small part to slow-developing conflicts, cannot be appreciably helped by setting up a plan which merely avoids conflicts. I consider further that it is the duty of the courts not to deal with the tax law as bodies of tax experts who are mainly interested in what Congress ought to have said, but to interpret the will of the people, so far as the facts of each case require, as Congress has expressed that will in the tax law. That being so, a taxpayer who finds it necessary to litigate his own tax liability in an appellate court has a right to have his case decided by judges of general rather than of specialized jurisdiction. Specialists below are proper, but it seems plain that a law enacted by Congress in the full current of the nation's political and economic problems can only be properly interpreted in the last analysis by judges who are themselves in the full current of judicial duty.

Carrying out the proposal for a specialized appellate court would not, in my view, bring about the finality promised for it; it would, on the other hand, do harm by substituting for the present appellate system one which could not do as well. Reasons for these conclusions were published in detail some time ago. These publications include Mrs. Remmlin's article in the June, 1945 issue of the *George Washington Law Review*, the report of a committee of the Taxation Section made in December, 1945, and an article of mine in the magazine *TAXES* for April, 1945.

Let me say that I consider the excellent services being performed by the *Recom* are in line with the present forward-looking attitude of the Law School under its able Dean.

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