



Harvard Law Record

Ten Years' Service to the Harvard Law School Community

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PRICE TEN CENTS

Board to Hold Contest, Give Drafting Prize

Registration of teams of Second Year students for the Qualifying Round of this year's Drafting Competition is now open, February 6th, it was announced last week said John R. Oleson, 3L of Hartford, Wis., chairman of the drafting committee of the Board of Student Advisers. Registration will continue until February 20, and the Competition will begin on February 27, with solutions to the problems due by March 13.

The Drafting Competition, open to all Second Year students who are not members of the *Law Review* or Board, and who are not members of teams in the quarterfinals of the Ames Competition, is designed to provide practical experience in legal writing and drafting. It is organized in three rounds, with a Qualifying Round this spring, and semi-final and final rounds during the student's third year. The problems, which involve drafting such instruments as service contracts, trusts and corporate forms, are judged according to the laws of actual jurisdictions and the judges are practicing attorneys in those jurisdictions. Emphasis is placed not on extensive research, but on visualization of contingencies that may arise, and the solution of such problems by proper use of the written word.

To Form Teams of Four

Students interested in entering the competition this year may do so by forming teams of four men each, and submitting their names to the receptionist of the Board of Student Advisers on the first floor of Austin Hall. Registration will also be accepted from groups of less than four or from single students, and in such cases teams will be formed by the Board. When registering, each student should indicate his preference as to the jurisdiction in which he would like to have his problem placed, and such preference will be accommodated wherever possible.

The emphasis of the Drafting Competition is on learning to draft "by doing." It provides virtually the only opportunity to obtain such experience that the student encounters in the Law School curriculum.

Winners Announced

The winning teams in the semi-final round of the Drafting Competition have been announced by Mr. Oleson. Winners on Problem No. 1, which was judged by James Vorenberg, LL.B. '51 of Boston, were C. Kenneth Orski, New York, John R. H. Blum, Belmont, David A. Watts Jr., Glencoe, Ill., and George H. Walker, Greenwich, Conn.

Members of the winning team in No. 2, judged by Paul G. Pennoyer, LL.B. '17 of New York, were William Cody, Holyoke, W. Brook Mitchell, New York, Dixon Stanton, New York, and Carl Zanger, New York. Winners of Problem No. 3 were (See DRAFTING on page three)

Dibble Sees Levelling Of 1956 Stock Market

Over one hundred members of the Bull & Bear Club heard Mr. Ralph B. Dibble, Account Executive with Merrill Lynch, Pierce, Fenner & Beane, speak in Harkness Commons on January 25. Mr. Dibble's topic was the Stock Market in 1956. He predicted a levelling off by June with predictions following June depending on political developments. Mr. Dibble also predicted that the 1956 gross national product would not exceed that of 1955. He based this on the decline in automobile production and an expected decline in steel production. Mr. Dibble felt that aluminum stocks, anti-biotic drugs, and aircrafts offered the greatest possibility for advancement at the present time.

No Raise

Despite the raise in tuition at Harvard College which was announced last month, the Law School plans no parallel boost at the present time. This means that the tuition charge, which was increased to \$800 just two years ago, is unlikely to rise further.

Since financially the Law School is a separate entity from the College, its income and expenses are calculated separately. Last year's operations reportedly resulted in a \$4,000 surplus.

Variety of Articles Published in Bugle In Next Two Issues

The February issue of the *Harvard Law Review* features three articles, *Rights Under a Labor Agreement* by Professor Archibald Cox deals with the *Westinghouse* case 348 US 437 (1955) and the rights of individuals, as well as unions, in enforcing collective bargaining agreements.

In *Legal Therapeutics*, George D. Hornstein, New York attorney, analyzes the "Salvage" factor in counsel fee awards and its role in encouraging individuals to bring actions on behalf of groups of shareholders.

The constitutionality of lie detectors and truth drugs in questioning persons accused of crime is discussed by Dr. Helen Silving in *Testing the Unconsciousness in Criminal Cases*.

Three Notes

The notes include a critique of the Supreme Court *per curiam* practice and a discussion of means of distinguishing ordinary income from capital gains where rights to future income are sold. The jurisdiction of arbitrators and state courts over conduct constituting both contract violation and an unfair labor practice is also discussed.

Professor Henry M. Hart Jr. reviews Hans Kelsen's *The Communist Theory of Law* in the book-review section. Mr. Kelsen, a well-known international legal thinker, examines Communist theories of law and finds them wanting in relation to Western values.

Memorial to Powell

The March issue of the *Harvard Law Review* will publish three articles on a wide (See LAW REVIEW on page three)

Justice Harlan Appointed CJ In Ames Final

John Marshall Harlan, Associate Justice of the United States Supreme Court, will preside over the Ames Final argument in April, in the James Barr Ames Courtroom. The names of the associate justices for the final have not yet been announced.

The case, the facts of which will be released next week by the Board of Student Advisers, will pit the Gardner Club against the Morgan Law Club. These clubs were victorious in the Semi-Finals held last December.

Justice Harlan was nominated for the position on the high court by President Eisenhower in November 1954. He was confirmed by the Senate and took his seat on the Court in March, 1955. His appointment filled the vacancy caused by the death of the late Justice Robert H. Jackson.

Previous Experience

Prior to the appointment Justice Harlan had been a judge of the Court of Appeals for the 2nd Circuit.

A graduate of New York Law School, Justice Harlan was a partner in the New York firm of Root, Ballantine, Harlan, Bushby, and Palmer; and had distinguished himself in private practice before his appointment to the bench. He has also served as chief counsel to the New York State Crime Commission, and as an assistant to the Attorney General of that state.

Justice Harlan's appearance here this spring as Chief Justice will mark the first time he has sat on an Ames court. Last year Justice Tom C. Clark sat on the Law School circuit as chief judge at the Ames final.

Pusey Talks Tonight On Ecumenical Movement

President Nathan M. Pusey of Harvard, a member of the central committee of the World Council of Churches, will describe recent developments in the ecumenical movement at an open meeting in the Christ Church parish house tonight at 8 P.M.

Dr. Pusey will speak under the auspices (See PUSEY on page three)



John Marshall Harlan

First Year Ames Has New Features, Tighter Schedule

The first day of February marked the beginning of the spring series Ames Competition with the issuance of facts to counsel in the first two rounds of the first year intra-club doubles. Operating under a tightly organized schedule, the series will be finished before the middle of March.

A major change from last year is the introduction of simultaneous brief exchanges. Previously the appellants filed their brief and the appellees countered with an answering brief. However, experience demonstrated that the appellees depended to a large extent on the appellants for the definition of issues and the bulk of the legal research. It was also found that appellees, being able to restrict their answers to the issues presented in the first brief, tended to have higher scores. The change is designed to correct these defects. A single fact-brief conference, scheduled for each team about halfway through the brief-writing period, will highlight the issues and insure that counsel clash squarely on the main questions.

In line with the change to simultaneous brief exchange, both sides will have opportunity to file reply briefs. The reply brief is optional, each team having to make the decision as to whether a reply would strengthen their argument. The Board of (See AMES on page three)

Dean Griswold Is Subject of \$3 Million Suit

A three million dollar lawsuit has been filed against Dean Erwin N. Griswold and the Harvard Law School by a Latin-American tax lawyer in the United States District Court for Massachusetts.

J. Irizzary Y. Puente claims that Dean Griswold stole his idea for a world tax series, and assigned the Law School's World Tax Service to carry it out.

An earlier suit by Mr. Puente, for one million dollars, was dismissed by a Federal court in Washington, D.C., last spring because of lack of jurisdiction. In this suit, Mr. Puente asks one million dollars in actual damages and two million in punitive damages.

According to Timothy J. McInerney, a Boston attorney who is representing Mr. Puente, Dean Griswold met Mr. Puente in 1950 and was told by Mr. Puente about his plan for a Latin Tax Research Law Institute. Some months later, Harvard announced its own plans for such a series, according to Mr. McInerney.

"Griswold can't just suck all the good juice out of a lemon and then throw away the rind," Mr. McInerney stated. "Before Harvard entered the picture, Puente had subscribers to his series, but many cancelled when Harvard announced that they were doing the same thing," he added.

A hearing scheduled for last Thursday in an attempt to temporarily restrain the Law School from publishing has been postponed indefinitely due to court scheduling conflicts.

Basketball League Begins Final Play

The Graduate School basketball league, sponsored by the Law School, swings into play next week.

The league brings together teams from the Divinity School, and the Graduate School of Arts and Sciences as well as the Law School which supplies two-thirds of the teams. There are three divisions: A, B, and C, based on ability and experience.

With two games remaining for the A division, the league lead is held by the Independents with a 4-0 record. They are followed by Chancery Red, 3-1. At the conclusion of play an All-star A division team will meet an All-star squad from the Business School.

Ferae Naturae Run Wild

The B division is led by The Second Story men with a 5-0 record. Also undefeated are the Remaindermen and the Testators, at 4-0 and 3-0 respectively.

Leading the C division are the Ferae Naturae, who have run wild in winning five straight games without a loss. Trailing the Ferae Naturae is the Harvard Law Review, 5-1.

There will be a playoff competition combining both the B and C division leaders at the end of the season. Since places will be determined by the total number of wins, no team in either league is really out of contention at this point. The play-offs will take place Feb. 21 and Feb. 27-29. A combined B-C All-star aggregation will then take on the winners of the Harvard College B-league competition.

The top scorers:

A-Division			
Player	Points	Games	Average
F. Ansen (Independents)	72	4	18
R. Lagueux (Crusaders)	58	4	14
J. Reap (Independents)	52	4	13
A. Weiss (Chancery Red)	39	3	13
B-Division			
C. Quirk (Heavenly Hosts)	79	4	19.15
C-Division			
G. Feit (Law Review)	88	4	22.0

Dos Passos and Thomas in Discussion On the Future of Socialism in America

The Harvard Law School Forum, which usually manages to feature sharply contested *pro* and *con* battles, presented somewhat inadvertently a rather cordial and free-ranging discussion of socialism and its relevance to the objective of a democracy. The participants, John Dos Passos and Norman Thomas, obviously disagreed, but it was difficult to pin down the exact nature of their disagreement.



Seated at the Forum last Friday night are (l. to r.): John Dos Passos, Francis A. Allen and Norman Thomas. Prof. Allen moderated the discussion on "The Future of American Socialism."

Commencing the evening's discussion, Mr. Dos Passos traced the rise and demise of his admiration for the socialist movement since World War I. He described himself during the Twenties as being thoroughly inculcated with socialistic aspirations for an equitable world order and with the socialistic appraisal of world problems and their remedies.

However, he remarked, today in China and the USSR where socialism is a reality, self-government has been defeated and even 'peace' is an aggressive word. Even the mild form of socialism in England has depressed incentive and individual impetus. The danger, as Mr. Dos Passos sees it, is that "the lean kine of Soviet socialism will eat up the fat kine of English socialism."

Mr. Dos Passos intimated that the *elan vital* of socialism impelled it in the direction of the Soviet extreme rather than to a milder plane. He emphasized that socialism as a theory of societal analysis "is no

(See DOS PASSOS on page four)

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Will Immunity Work?

"Only a nation which is rooted in sovereign abnegation of its own omnipotence may achieve moral eminence in the perspective of the history of civilizations. As a nation we approached this height with the adoption of the Fourth and Fifth Amendments, so often entwined in their protection of individual rights. Broad construction of their literal meaning by the courts has projected us closer to the ideal." So wrote Samuel H. Hofstadter, Justice of the New York Supreme Court, in his article entitled "The Fifth Amendment and the Immunity Act of 1954."

The Record has stood and does stand for a broad construction of the literal meaning of the Bill of Rights, including the privilege against the compulsory giving of testimony which might tend to incriminate the giver thereof in a criminal prosecution. That means all testimony at any federal proceeding—legislative, executive, or judicial. But, of course, it does not comprise testimony criminally incriminating one's friend or civilly incriminating oneself.

The privilege against self-incrimination is an ancient one. It is a part of that Constitutional heritage of which we Americans are justifiably proud. There is no Fifth Amendment to the Constitution of the Soviet Union.

In recent years the Fifth Amendment privilege fell on evil days. In 1953 alone 317 witnesses invoked it before Senate and House committees. The term "Fifth Amendment Communist" was used with mounting frequency and increasing bitterness. Many people—some of them, no doubt, thinking of the privilege merely as something a defendant in a courtroom would invoke to stay off the stand—wished to get rid of the Amendment.

However, we believe the action of the courts in preserving the full integrity of the privilege is both justified and courageous. For, of what value is a right suspended or severely limited in time of controversy?

In 1954 Congress, following the precedent of earlier statutes in regulatory body hearings, passed an Immunity Act authorizing a federal district court to compel a witness to testify on security matters upon application by either House or two-thirds of a full committee. The witness is immunized against prosecution in return for his testimony.

Beliefs and associations which are unrelated to any real subversion should also be respected by the immunizers. As almost any testimony given today by persons concerning alleged subversion results in public scorn and ridicule, even cooperative witnesses suffer economic injury.

As long as the Act is not abused, we agree with Judge Hofstadter that "an immunity statute, relieving the rigidity of the privilege, conserves it. For the statute insulates the right against disrepute, and perhaps discontinuance, at the instance of those who deride its use or as a reaction against those who use it improperly."

The Act is not intended to result in the granting of wholesale immunity baths. But possibly reckless Congressional committees may desire to use this new power unwisely. The test of the law will be whether its judicial safeguards can prevent such misuse.

Gallery

ADRIAN S. FISHER Newspaper Executive

A sparkling and varied career of government service and private practice lies behind the man who now serves as vice-president and counsel of one of the most influential newspapers in the United States. The paper is the *Washington Post and Times-Herald* whose prominence is added to by its ideal position in the nation's capital.

Adrian Sanford Fisher describes his present task as a "general purpose executive as well as a lawyer . . . in a most stimulating atmosphere." An office bedecked with Labor Relations Reports and volumes of the West system shows Mr. Fisher has made no retreat from his native profession.

Mr. Fisher hails from Tennessee but his legal career has centered but briefly there since he has entered the legal field. He received his bachelor's degree from Princeton and then came to the Harvard Law School. After receiving his LL.B. *magna cum laude* in 1937, he remained to do graduate work and to assist Justice Felix Frankfurter, then a professor at the Law School.

A year later, he began an exciting career in Washington. In 1938 Mr. Fisher served as clerk to Justice Brandeis, and when Justice Brandeis retired and Justice Frankfurter was appointed to succeed Justice Cardozo, Mr. Fisher became clerk to the new Justice. From there he entered varied legal positions with the Bonneville Project and the Tennessee Valley Authority. In Fall 1941 he was appointed legal assistant to Dean Acheson, then Assistant Secretary of State.

Advisor at Nuremberg

As World War II broke out, the lawyer became a navigator with the Pan American Air Ferries, flying cargo to Africa. The Army soon took over the Air Ferries, and Mr. Fisher was commissioned a First Lieutenant in the Air Transport Command, but was soon ordered back to Washington to serve as legal assistant in the War Department. In 1944 he was transferred to combat as a navigator with the 502nd Bombardment Group in Guam.

After the war ended, Mr. Fisher took part in the Nuremberg trial as a technical advisor to Judges Francis Biddle and John J. Parker, where he stayed until the sentencing of the Nazi war criminals in 1946.

Returning to private life, the thoughts of practice in Memphis were soon interrupted by a term as General Counsel of the Department of Commerce under Averell Harriman. There he remained until 1948, when he became General Counsel of the Atomic Energy Commission and subsequently the Legal Advisor to the State Department. While with Commerce, Mr. Fisher served as chairman of the loyalty board that cleared Dr. Edward U. Condon, then head of the Bureau of Standards.

Newspaper Lawyer

In 1949, Mr. Fisher left government service and began private practice in Washington. In this capacity he handled most of the legal problems for the *Post and Times Herald* until his appointment as vice-president and Counsel of the publication five years ago. This involves a myriad of legal problems and labor matters that a large metropolitan newspaper continually faces. The President and Publisher of the newspaper is Phillip L. Graham, LL.B. '39.

Mr. Fisher keeps close contact with the Law School and many of his friends in Washington are fellow alumni.

The tall, strappy lawyer makes two observations as far as government service is concerned: there is a continual need for articulate thinking in government and a clearer dividing line between those positions that are politically accountable and those that are not.

—Kramer



They haven't executed a man in this Commonwealth for seven years.

Current Case

A statutory interpretation of considerable significance was handed down recently by the Connecticut Supreme Court of Errors in *The London and Lancashire Indemnity Company of America v. Rose Duryea et al.* (October Term, 1955.)

Plaintiff brought an action for a declaratory judgment to determine whether an action for personal injuries and death caused by the intoxication of a person to whom alcoholic liquor was sold while he was intoxicated is within the coverage of an owners' and tenants' liability insurance policy.

Under Sec. 4307 of the Connecticut General Statutes, a cause of action against a vendor of intoxicating liquor is established if the following three essentials are proved: (1) a sale of intoxicating liquor (2) to an intoxicated person (3) who, in consequence of such intoxication, causes injury to the person or property of another. Proof of a causal connection between the sale of the intoxicating liquor and the injury is not required to impose liability.

Insurance Coverage

The question determined by the court was whether the liability imposed by Sec. 4307 is covered by the policy of insurance issued by plaintiff to Rose Duryea. The policy covered all sums which the insured may become obligated to pay by reason of the liability imposed upon her by law for damages "because of bodily injury including death at any time resulting therefrom, sustained by a person or persons, caused by the accident and arising out of the hazard covered in the policy." "Hazard" is defined as the "owning maintenance or use" of the described premises which includes, though not expressly so stated, the sale of intoxicating liquor.

Justice Raymond F. Baldwin, writing for the majority, stated that the decisive words, "caused by

accident and arising out of," modify "bodily injury including death . . . resulting therefrom." The bodily injury must arise out of the sale of intoxicating liquor. The words "arising out of" were taken to mean "caused by".

Having thus interpreted the insurance policy, Justice Baldwin wrote:

"The delict defined by Sec. 4307 is not the sale of liquor to create a condition of intoxication. It is rather the sale of liquor to one who is already intoxicated. Accordingly the damages for which it is claimed that Rose Duryea is liable are those resulting from injuries that were inflicted in consequence of the intoxication of Bennett which existed before Mrs. Duryea did any wrongful act and that therefore did not arise out of her delict (italics ours). The policy insures a liability that comes into being only if some delict on the part of the insured proximately causes an injury. It does not insure a liability, such as that stated in Sec. 4307, which eventuates without any causal connection between the delict and the injury."

Cause Required

In short, while causation is not necessary to impose liability under the Statute, a causative relation, not existing in the instant case, is required by the policy.

Dissenting from the Court's holding that Mrs. Duryea is not entitled to coverage by her policy, Justice Wynne declared that the language used in the policy under scrutiny clearly included the sale of intoxicating liquors under circumstances imposing liability under the Statute. He concluded:

"The dilemma facing insurance companies is an underwriting one rather than a legal one. And I believe that innocent people who are grievously injured through someone's intoxication, or the estate of one whose life has been snuffed out under similar circumstances, ought to have a cause of action that is not an empty sham."

—Nader

Recently Published

COMPARATIVE NEGLIGENCE

Albert Averbach, Attorney, Seneca Falls, New York, "Comparative Negligence Legislation: A Cure for Our Congested Courts", 19 Albany L. Rev. 4 (1955).

One of the most pressing problems in the administration of justice is the delay of adjudication due to crowded dockets. Where contributory negligence is an absolute bar to recovery in negligence cases, manifestly negligent defendants are tempted to try their cases in the hope of convincing the jury that the plaintiff was negligent. If the doctrine of comparative negligence were introduced, more out of court settlements would be effected. Jurisdictions that have passed such legislation have found that a decrease in litigation resulted.

SEARCH AND SEIZURE

Osmond K. Fraenkel, Attorney, New York City, "Search and Seizure Developments in Federal Law Since 1948", 41 Iowa L. Rev. 67 (1955).

Recent Supreme Court cases have clarified several problems in the search and seizure area. Exclusion of evidence obtained by an illegal search and seizure has been held to be a judicially created rule and not a constitutional right. While it is necessary to get a search warrant if time is available, evidence obtained during a valid arrest will be admitted if the search itself is reasonable. A search may be validated by consent, but consent must not be coerced nor inferred from a written statement made during illegal detention. Police tactics, such as breaking a door to obtain entry or use of a stomach pump, may result in a holding that the search was unreasonable.

FALSE IMPRISONMENT

William L. Prosser, Dean and Boalt Professor of Law, School of Law, University of California, Berkeley, "False Imprisonment: Consciousness of Confinement," 55 Col.L.Rev. 80 (1955).

Section 42 of the Restatement of Torts should be changed so that knowledge of wrongful detention would not be an element of false imprisonment. The three American cases that bear on the problem involve two young children and an idiot. These cases turn on incapacity to consent or submit and the necessity of consent of the parent or guardian. It is possible that unconscious, intoxicated or delirious people could be confined without consciousness of confinement and yet have a meritorious claim for damages.

HYDROGEN BOMB TESTS

Emmanuel Margolis, Member, American Society of International Law, "The Hydrogen Bomb Experiments and International Law," 64 Yale L. Jour. 629 (1955).

The use by the United States of a 400,000 square mile thermonuclear testing area over the open sea around Eniwetok and Bikini atolls involves violations of international law. Fencing off this area interferes with freedom of navigation of the high seas and adjacent air space. Fishing and other lawful maritime industries are impaired and interrupted. The responsibility to prevent pollution of international waters and air space is not fulfilled. Future experiments and tests should be conducted in areas completely within the jurisdiction of the United States or discontinued.

TIDELANDS DISPUTE

Aaron L. Shalowitz, Special Assistant to Director, U.S. Coast and Geodetic Survey, Department of Commerce, "Boundary Problems Raised by the Submerged Lands Act," 54 Col. L. Rev. 1021 (1954).

The Submerged Lands Act of 1953 raises many problems because the seaward boundaries of states adjacent to the open sea have not been delimited. Federal jurisdiction over the outer continental shelf lands begins at the states' seaward boundary. Effective administration of these valuable oil producing lands by either federal or state agencies is difficult until the state boundaries are drawn. The marginal belt in which the United States can control the movement of foreign vessels and nationals will be affected by the methods used to determine the baseline from which the boundaries will be measured.

Off the Record

Prof. Edward H. (Bull) Warren once asked a student his opinion about a case under class discussion.

"I can argue either side, Sir," the livewire Harvardman answered.

"Come, come," replied Warren, "this is no time to be congenial."

Errata

Last week the RECORD incorrectly stated that the Citizens' Advisory Council of New York "evaluates and then endorses candidates for judicial office." The Council does not pass on the qualifications of such candidates.

"The Capitall Lawes of New England" Topic of Display in Treasure Room

The first death-sentence laws of the Puritans—based on Old Testament texts—have been added to the Treasure Room collection of rare American documents in the Law School Library. The historic document was presented to Harvard by the West Publishing Company "as a mark of respect for the contribution which Harvard Law School has made to legal education."

The broadside, one of two known contemporary copies of "The Capitall Lawes of New-England" as printed in London in 1643, comes to the United States from the Lincoln Cathedral in England. The other known copy remains in England, at the British Museum.

The one-page document is a landmark in American history. It is a copy of the earliest known imprint of laws enacted in New England. It represents the Puritans' efforts to derive laws directly from Biblical authority, without reference to English statutory or common law.

The capital laws were ordered printed by the General Court in 1642, and were first printed in Cambridge, Mass. No copy of that edition remains. They were reprinted by Benjamin Allen of London in 1643, and it is the Allen reprint that now is in the Harvard Law School collection, and at the British Museum.

Broadside Discovered

A Boston lady, visiting England in 1937, located this broadside bound with other similar items in the Library of Lincoln Cathedral. At that time, it was appraised by Michael J. Walsh of Goodspeed's Book Shop of Boston. Years of patient waiting followed before the Bishop and the Trustees of Lincoln agreed to sell the broadside to Goodspeed's. Permission of the British government for the transfer of the document to the United States also had to be secured.

Fifteen offenses punishable by death are listed in the document, whose full title is: "The Capitall Lawes of New-England, as they now stand in force in the Common-Wealth. Printed first in New-England, and reprinted in London for Ben. Allen in Popes-head Alley 1643."

Old Testament texts were cited as authority for each law, rather than the legislative and judicial authority of England, except for two laws which cited no special authority. The cited texts came from Deuteronomy, Exodus, Leviticus, Numbers and Samuel.

Death for Witches

For instance, in ordering death for witches, the Puritans cited three Old Testament passages: Exodus 12.18 ("Thou shalt not suffer a witch to live.") Leviticus 20.27 ("A man also or woman that hath a familiar spirit, or that is a wizard, shall surely be put to death; they shall stone them with stones; their blood shall be upon them.") and Deuteronomy 18.10,11 ("There shall not be found among you any one that maketh his son or daughter to pass through the fire, or that useth divination, or an observer of times, or an enchanter, or a witch. Or a charmer, or a consulter with familiar spirits, or a wizard or necromancer.")

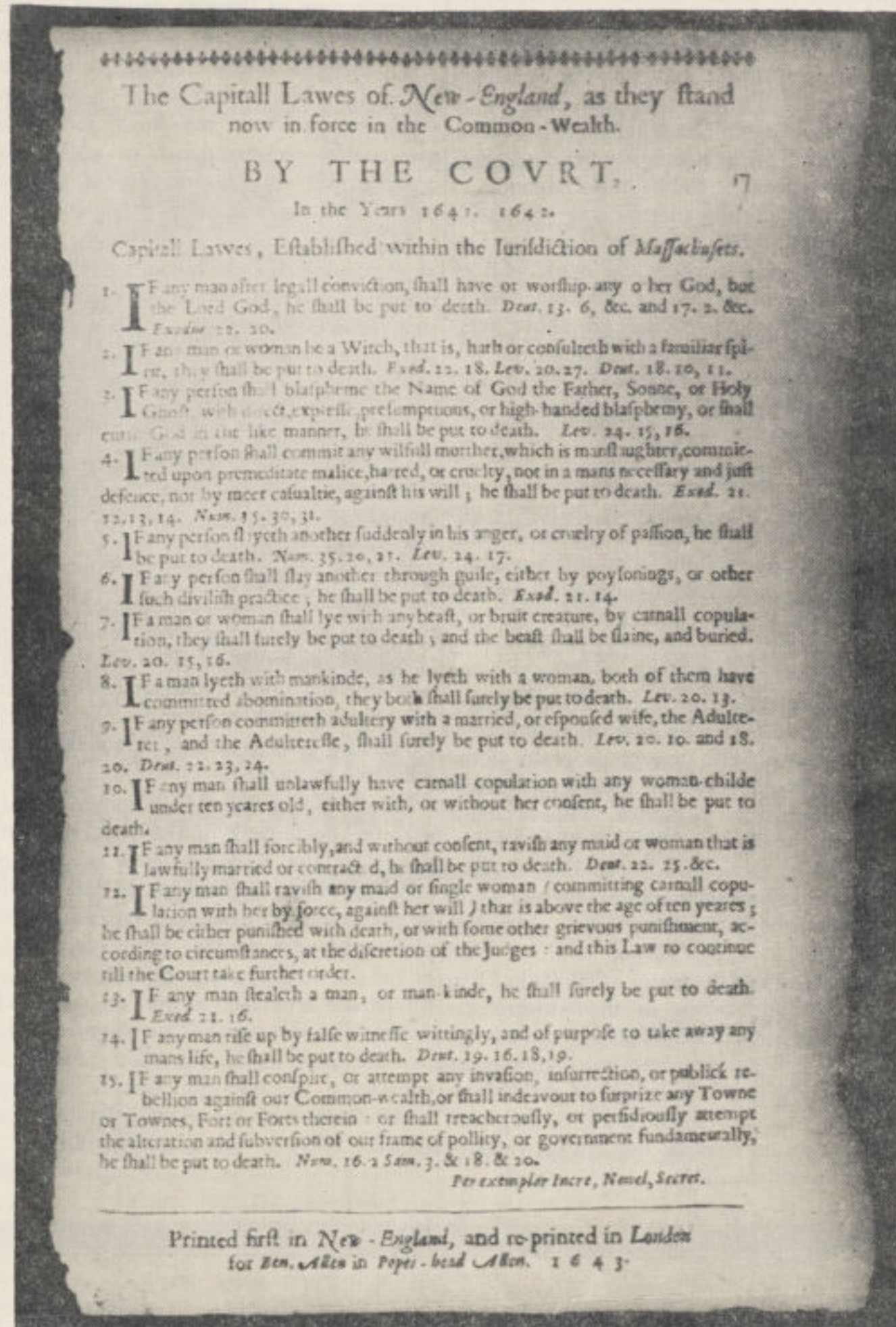
In providing the death sentence for kidnapping, the Puritans cited Exodus 21.16 ("And he that stealeth a man, and selleth him, or if he be found in his hand, he shall surely be put to death.")

Prof. P. G. E. Miller, historian of the Puritans, says: "This document represents the most extreme effort of the Puritans to base their laws on the Bible and to get away from the common law of England."

Unwritten Laws Preferred

That the Puritans did not print and distribute even their capital-punishment laws until 1642 was a result of their special circumstances. When they first came to America, their leaders resisted putting their fundamental laws into writing.

Richard Mather explained that written platforms were frowned on because Christians should find truth directly in the Bible. Governor Winthrop objected to codifying the colony's laws in 1634, according to Professor Miller, because some principles would have to be declared in writing which would run counter to English law.



One of Two Extant Copies of the Capital Laws of New England

Continued pressure from the citizenry, however, was not to be denied.

Many attempts were made to put the fundamental law into a code. It was Nathaniel Ward of Ipswich who succeeded in doing this. His draft, called The Body of Liberties, was enacted by the General Court in 1641, after being sent to the towns for revision and amendment. This draft contained 12 Capitall Lawes as part of the Code.

Prof. Mark DeWolfe Howe remarks, "Although these capital offenses were Biblical the bulk of the laws contained in The Body of Liberties had their origins in the constitutional history of England. It was, perhaps, a somewhat misleading suggestion as to the character of law in the Bay Colony to extract for British readers those portions of the code which were Biblical rather than English in origin."

The original Body of Liberties was not printed in full until the 19th century, after the text became known through the one

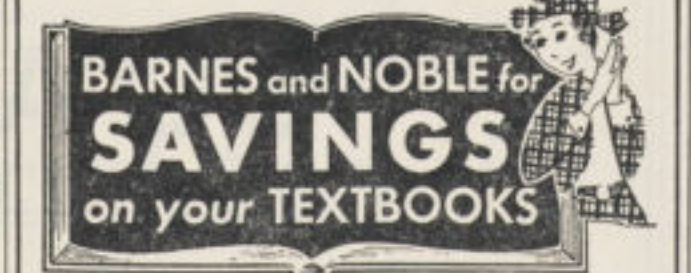
extant manuscript found in the Boston Athenaeum.

The document will be on exhibit at the Treasure Room in Langdell Library for the remainder of this month.

Also presently on display in the Treasure Room are the works of Bartolus de Saxeferrato, Fourteenth century commentator on the *Corpus Juris Civilis*.

The Harvard Law Wives will meet Wednesday Feb. 15 at 8:00 p.m. in Harkness Commons. Louis M. Lyons, Curator of the Nieman Fellows will address the group.

Mr. Lyons is a news commentator for radio and television. He conducts a news commentary every weeknight at 6:30 p.m. on radio stations WHDH and WHRB.



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LAW REVIEW

(Continued from page one)

variety of topics. In Memoriam: Thomas Reed Powell is devoted to the late Professor of Law and great authority on constitutional law. Dean Erwin N. Griswold, Justice Felix Frankfurter, Professor Paul A. Freund and Professor Henry M. Hart pay tribute to and discuss the work of Professor Powell.

Professor Alpheus Mason of the Department of Politics, Princeton University, analyzes the attitudes of Chief Justice Stone in *Inter Arma Silent Leges* (In War the Laws Are Silent). Chief Justice Stone's Views. Rule 56 (e) *A Case Study on the Need for Amending the Federal Rules* is the subject of an article by Charles A. Wright, Professor of Law at the University of Texas.

In the Comments, Harold Katz, a Chicago attorney, discusses the liability of automobile manufacturers for the unsafe design of a passenger car. The Notes comment on recent developments in the law of defamation.

PUSEY

(Continued from page one)

of the combined Protestant churches of Cambridge. In his talk he will pay particular attention to the progress of the World Council since its second World Assembly at Evanston, Illinois, in 1954.

Harvard's chief executive has been active in the work of the ecumenical movement for many years. He sits on the World Council's Central Committee as a lay representative of the Protestant Episcopal Church.

The recent upsurge in religious interest at Harvard and the expansion of the Divinity School have been attributed to Dr. Pusey's interest in religion.

AMES

(Continued from page one)

Student Advisors is scheduling reply brief conferences on an optional basis also. Counsel can discuss the mechanics and issues with Board advisors or strike out on their own as they wish.

The second-series arguments are a combination of Ames and single-jurisdiction cases. A number of cases laid in the federal courts or the courts of a particular state have been written this year and will be used for the first time this spring.

The series is again organized in eight rounds. Each club will argue two rounds, two appellants and two appellees being paired for each round.

—Moran

St. Thomas More To Sponsor Dance

An informal dance tomorrow evening in Harkness Commons heads the list of activities planned for the Saint Thomas More Society, announced President John K. O'Connor, 3L of Niagara Falls, N. Y. The dance, to be held in conjunction with the Harvard Catholic Club, will begin at 8 o'clock and will feature a small band and refreshments.

The school holiday on Washington's Birthday will provide the Society with an opportunity for a retreat at St. Gabriel's Retreat House in Brighton. The period of prayer, meditation and instruction will begin on the afternoon of Tuesday, February 21, and end early the following evening.

Pound Speaks on More

Dean Roscoe Pound will be the featured speaker at the Society's luncheon meeting in Harkness Commons on February 27. His subject will be "What the Lawyer Should Know about St. Thomas More".

March 18 is the tentative date for the Society's next communion breakfast, at which Father Robert F. Drinan, S.J., Assistant Dean of the Boston College Law School, will speak on "The Religion of Adopted Children".

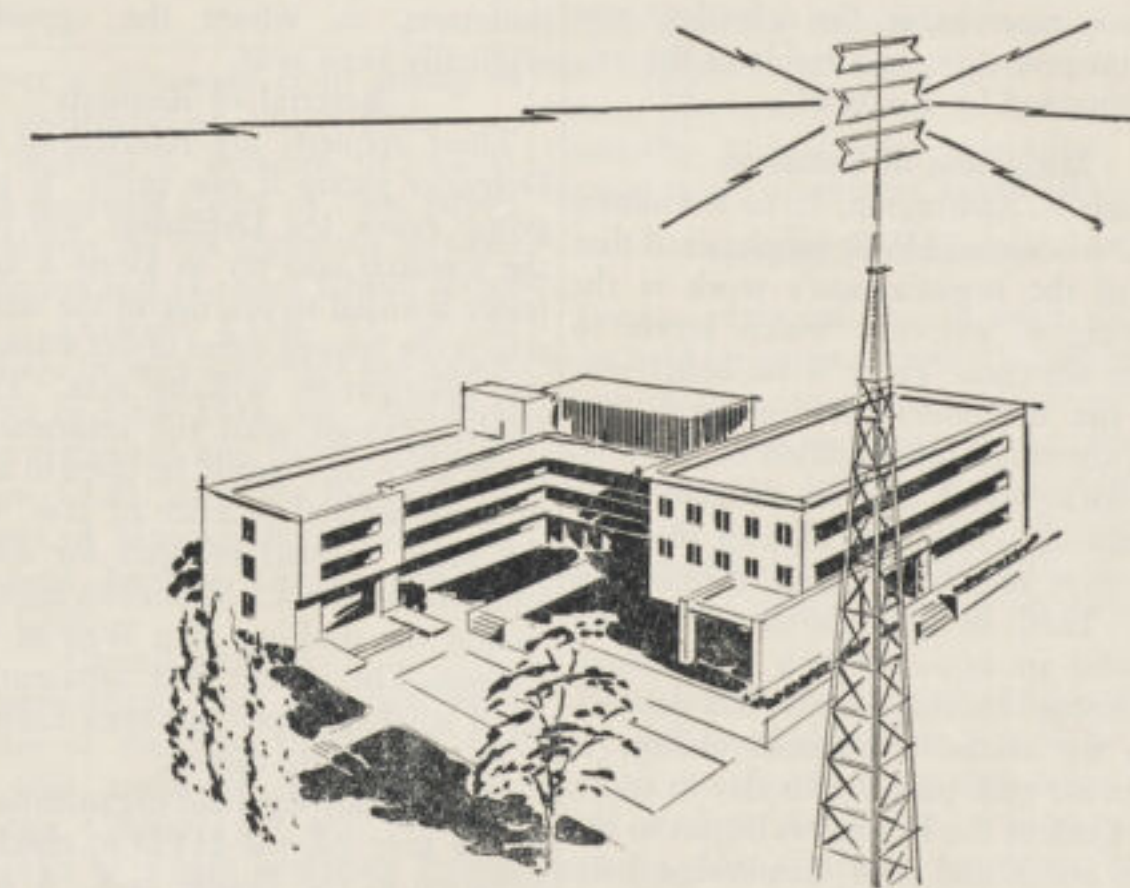
The next discussion group meeting, led by Monsignor Edward Murray, the Society's chaplain, is scheduled for April 9, and the final communion breakfast of the school year for May 6. Information on any of these activities can be obtained from George McCormack, 2L of New York City, Secretary of the Moremen, in 118 Story Hall.

DRAFTING

(Continued from page one)

Erick Wolt, White Plains, N. Y., Charles J. Frisch, Minneapolis, Andrejs J. Grots, Dorchester, and Thomas E. Withycombe, Eureka, Mont. Problem 3 was judged by Lewis H. Weinstein, LL.B. '30 of Boston.

These three teams of third-year men, survivors of the fourteen which entered the competition last spring, will compete in the final round of the competition. The final problem, prepared by Monroe H. Freedman, Faculty Assistant in Charge of the Ames Competition, will be distributed on Monday, February 13, and the solutions will be due by noon of Friday, March 2. The winning team will receive a cash award.



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Voluntary Defenders Aid Many Indigent Prisoners

By NORMAN E. SCULL

From a blackboard in a Gannett House storeroom shared with two other organizations, the Harvard Voluntary Defenders has expanded since 1949 into an efficient organization handling over 600 cases a year in a suite of rooms replete with a secretary.

The twenty-six member organization is an extremely important adjunct to the Boston Voluntary Defenders' Committee organized in 1935 by Wilbur K. Hollingsworth (Suffolk '32) with Community Chest funds to provide legal assistance for indigent prisoners. This is the sole legal aid available for those too poor to afford a lawyer and not accused of a capital crime, since only those indicted for murder have a right to assigned paid counsel under Massachusetts law.

A few of the more dramatic cases handled by the Defenders illustrate their varied activities. Last year a husky man was indicted for second degree murder following the death of a crippled man whom he had admittedly pushed down a flight of stairs. The case appeared too pat for the Boston Defenders. The entire membership of the HVD scoured the area in which the event occurred and turned up in addition to friends of them, some disinterested witnesses who reported that the accused's wife had been indecently approached by the decedent prior to the pushing. Further evidence showed that the decedent had suffered another fall subsequent to the pushing which could have caused his death. On the basis of this evidence, the accused was found guilty of assault and battery and given a six months suspended sentence.

Conviction Reversed

Another case with wide-reaching repercussions was one in which the defendant, accused of a rape in Boston, asserted he was in Chicago at the time. Lack of finances prevented the defendant from presenting any Chicago evidence and he was found guilty before any Defender organization came into the case. An appeal brief written entirely by the Defenders resulted in a reversal by the Supreme Judicial Court and the establishment of a requirement that the District Attorney must henceforth investigate facts known to him indicating the innocence of an accused.

A third case involved a statutory rape charge investigation in which the Defenders uncovered much evidence showing the couple had been very deeply in love with the knowledge and blessing of her parents. Marriage plans had met with their approval before the alleged rape occurred. Although this was no defense to a statutory rape charge, the defendant was placed on probation as a result of the evidence obtained by the HVD.

Mitigation of Sentences

Thomas R. Remington, 3L of Rochester, N. Y., President of HVD, emphasized that much of the organization's work is the uncovering of evidence which serves to mitigate sentence. There is no belief that all of the defendants are innocent, but often a thorough investigation of the prisoner's background and an evaluation of rehabilitation possibilities indicate that this person may still be a useful member of society. This, in addition to defending those who are innocent, is a large contribution towards making justice less dependent on the accused's financial ability. It provides for each prisoner his day in court.

The work of the Defenders begins in the Charles Street and East Cambridge Jails. The jailers hand out cards to the incoming prisoners on which they may indicate their lack of resources and their desire to talk to a Defender. The organization handles only crimes of a more serious variety, such as larceny, homicide, and sexual deviation cases. These cards are collected each day by a Defender who visits these jails. The number of cards at the East Cambridge Jail is often small, but Charles Street may always be counted on for a "fistful". The



Wilbur K. Hollingsworth

Defender then talks with the prisoner about the alleged crime, his background and his financial position. These stories are then dictated to the secretary and sent to the Boston Office.

The next action on these cases is taken at the request of the Boston Office and may include investigations of fact, preparation of law memos, and acting as assistants in court to the Boston Defender trying the case. Currently the Defenders do not appear in court alone. Frequently all the material used in the defense is supplied by the HVD. The HVD may also work on appeal briefs. Recently, a petition for certiorari was filed in the United States Supreme Court.

Another phase of the organization's activity consists of appeals for legal aid from prisoners outside of Massachusetts. These appeals are referred to the group from many sources; from President Nathan M. Pusey, the Fellows of Harvard College, Dean Erwin N. Griswold, or individual professors, to whom the appeals had originally been sent.

Referral of Requests

These requests are referred to a local Defender group if one exists. If no such group exists, the Defenders will perform the research and try to locate a law professor licensed to practice in the state from which the request came under whose name the information will be sent. The Defenders cannot send the information directly since they would be open to a charge of unauthorized practice of law. One of the most unusual requests for aid came from an inmate of a Minnesota asylum who sought the drafting of a Writ of Habeas Corpus. The inmate had apparently mastered legal concepts and even Latin terms to an astonishing degree.

Occasionally legal aid organizations elsewhere may ask the HVD to check a fact situation in the Boston area. A situation of this sort occurred recently in New Jersey where an accused rapist alleged his presence in Boston on the same day of the rape. A long search uncovered his name

on a payroll book for that day in a Boston cafeteria, which resulted in the withdrawal of charges.

The selection method used by the Defenders in choosing new members is simple. The organization has a meeting at which a scrambled fact situation is presented to the candidates, who are directed to put the story in order, indicate the kind of investigation he would conduct, and the questions he would ask the accused. Each candidate is then interviewed by the Membership Committee which questions concerning "on the spot solution of ethical problems." This is necessary because of the numerous problems which arise in the Defenders' work, which is privileged since they are agents of the Boston Defenders.

The HVD has placed little emphasis on grades, requiring only that the Defender be able to carry the work load of both the group's activities and his academic schedule. Statistics indicate an above average student usually does best in the admission process and that his grades will probably improve with his contact with the Defenders.

Training Program

After admission, the new members undergo an intensive eight to ten week training program in criminal law and procedure and in psychological aspects of the work. Other phases of this program include mock interviews with third year students and observation of third year students in action. Interviewing is a skill which requires several months to develop to a satisfactory level. The present program of the Defenders allows each member to interview three times a month. This need for constant practice combined with the limited load of work which the Boston office can handle has resulted in the present small size of the organization, twenty-six members.

Thus the HVD, one of a handful of law school organizations in the country devoted solely to criminal work, contributes substantially to the community and to the prisoners who otherwise might go without legal assistance. Their work is long and tedious, often routine, but always rewarding and stimulating.

DOS PASSOS

(Continued from page one)

longer the key to understanding the world." "It has ceased to be applicable to the realities and modern movements with which we are confronted."

Mr. Dos Passos did acknowledge that the socialistic ideal of applying self-government to an industrial society may suggest a new system of theories designed to control man's appetite for power over man.

Utilizing his forensic eloquence to great advantage, Norman Thomas noted two dominant trends in the world today—an inescapable commitment to collectivist organization and an increase of governmental intervention in economic activities.

These forces were the inevitable results of industrial complexity and the popular demand for welfare, he said. He contended that these political facts of life have been recognized by the Republicans in their substantial acceptance of the "welfare state."

Laments Anti-Intellectualism

Mr. Thomas, deploring the change of atmosphere between World War I and today, expressed his belief that the present state of relative prosperity is characterized by a dearth of moral courage and conviction. The absence of a strong undercurrent of dissent and of moral crusades goes along with the anti-intellectualism of the times. He pointed out the danger of an excessively pragmatic society unaccompanied by intellectual inquiry.

On other occasions Mr. Thomas has said that the great bulk of the programs proposed by the Socialist Party have been adopted by the Democrats in later years. In this respect the Socialist Party has been pleasantly undermined. However, he deplores the disappearance of minority political parties from the American scene. He viewed the function of the Socialist Party in American history as a catalytic agent constantly precipitating new alignments which combined individual planning and social welfare to achieve a desired end.

—Nader

Dewey to Speak Here Next Month

Thomas E. Dewey, former governor of New York and two-time Republican presidential candidate, will speak here March 21 under the auspices of the Student Bar Association, it was announced by SBA President Benjamin Wolman, 3L of Baltimore, Md.

Mr. Dewey will take part in the SBA's series of lectures on "The Lawyer in Public Service and Politics." It will be the third such meeting of the year.



Arenson

Cox

Gov. Theodore R. McKeldin of Maryland spoke here in December, and Joseph T. Arenson of the New York Bar and New York Supreme Court Justice Joseph A. Cox appeared at the Law School earlier this month.

The Bar group also conducts a series of luncheon meetings under the direction of Secretary Sidney Stutz, 2L of Urbana, Ill. J. Newton Esdoile, a Boston attorney, will speak at the next such meeting in the Malory Smith Room of Harkness Commons on Wednesday.

The Hon. Calvert Magruder, Chief Judge of the United States Court of Appeals for the First Circuit and lecturer in torts at the Law School, has been elected by the congregation of Christ Church, Cambridge to serve as an alternate delegate to the annual convention of the Protestant Episcopal Diocese of Massachusetts.

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