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Ten Years' Service to the Harvard Law School Community

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Coffee Hour Plans Immigration Talk, Schlesinger Speaks

Discussion of recent changes in Soviet foreign policy and of proposed amendments to the McCarran Immigration Act will feature Coffee Hour meetings during the next two weeks, it was announced by Coffee Hour President Sheldon J. Berens, 3L of Kew Gardens, N. Y.

Professor Marshall Shulman will offer an analysis of the Soviet Union's new diplomatic technique at a post-luncheon session next Tuesday afternoon. He will be followed the week after by Attorney William Maslow.

Mr. Maslow, a friend of Law School Professor Louis Jaffe, will discuss the McCarran Act. The Coffee Hour speaker has handled the legal problems of many groups seeking to aid the resettlement of refugees in the United States.

In the past fortnight the Coffee Hour also has heard informal talks by Professor Charles Fairman of the Law School and Harvard's Associate Professor of History Arthur M. Schlesinger, Jr.

Martial Law

Professor Fairman, who recently testified before the House sub-committee reviewing America's civil defense plans, discussed the role of martial law on the morrow of a thermonuclear attack by the Soviet Union.

He said martial law would not prove as effective in maintaining orderly government as a well-conceived emergency civil defense plan that would leave control of domestic affairs in civilian hands.

Dr. Schlesinger, commenting on the health of President Dwight D. Eisenhower as a possible campaign issue, anticipated the recent remarks of Democratic National Chairman Paul Butler when he said that many Americans would think twice before voting for "a 65-year old man who already has suffered a heart attack."

Hockey, Ping Pong Schedules Planned

Hockey and ping-pong will share the Dormitory Council's recreational schedule throughout the remainder of the academic year. The hockey team will be the Law School's first, and is under the supervision of Frederick Paulsen, 2L of Belmont. Practice sessions will be held at the Donald Watson Rink on Wednesday and Friday evenings, and the team will play comparable teams from other schools of the University. Interested students should contact Mr. Paulsen at 205 Dane Hall.

Martin Ozer, 2L of Edgemere, N. Y., is in charge of ping-pong. A round-robin tournament began Monday, but Law and Graduate students may still register with Mr. Ozer at 208 Story Hall.

More Sports Next Year

Next year will see an expansion of the Dormitory Council's athletic program, according to Mr. Ozer. Touch football and swimming will be introduced. A special league for beginning basketball players and swimming classes are also contemplated. "This expanded program is the result of the Dormitory Council's increased realization of the necessity for athletics to balance the curriculum," Mr. Ozer said. "We believe the participants will find they are benefited academically as well as physically."

Intramural basketball for the 1955-56 season concluded play last week on the courts at Hemenway Gymnasium. The Independents finished first in the "A" League while the Ferae Naturae took top honors in the "C" League. The "B" League was dominated all the way by the Second-Story Men, whose undefeated campaign was coached by Blair Perry, 2L of Williams-town.



Paul A. Freund

Freund Addresses Young Democrats On Supreme Court

Addressing the Law School Democratic Club Monday afternoon, Professor Paul A. Freund indicated a circumspect approach by the Supreme Court has proved wise in its handling of issues connected with burning political questions. Prof. Freund spoke on the Supreme Court and Political Questions.

Describing his topic substantially as a discussion of the Supreme Court in political crises or times of political excitement, he cited three recent examples of the Court's involvement in such issues: cases involving Congressional redistricting, which the Court declined to review; the case of the steel plant seizure by former President Truman, where it ordered the government to return the plants forthwith; and the contemporary segregation cases, in which the Court did act, but chose a gradual procedure in implementing its decision.

Professor Freund felt that the Court had acted wisely in refusing to review the redistricting cases, because of the superior ability of Congress to set criteria for handling the problem.

On the subject of the steel seizure he thought the Court's summary action had proved unfortunate, precipitating a long strike during the Korean War.

It would have been better, Professor Freund said, if the Court had waited (See FREUND on page four)

Grants-in-Aid Replace Scholarships, Loans; Plan Soundproofed Dorms, Rent Raised 10%

The Graduate Center dormitories, built five years ago, now require an extensive soundproofing job, according to Assistant Dean Wesley E. Bevins, Jr. The cost of this project, plus generally higher maintenance costs caused in part by aging of the buildings, will result in a 10 per cent rent increase next fall.

A mounting number of student complaints prompted Dean Erwin N. Griswold to authorize engineering studies to test proposed methods for reducing noise in the dormitories. Dean Griswold asked that improvements be made so that students could be provided with a more adequate place to live and work. Aside from the noise problem, student reaction to the dorms has been highly favorable.

Acoustic conditions in the new dorms are known to have deteriorated since 1950, when Ames, Dane, Holmes, Shaw and Story Halls were built at a cost of \$1,500,000. The increase in noise has been caused by the settling of cinderblock walls, which has resulted in wide cracks opening between walls and ceiling in some rooms. Insulating material originally installed within the thin metal panels which cover heating pipes has also settled, leaving gaps through which sound waves travel between adjoining rooms.

The original causes of noise in dormitory rooms, which have annoyed residents since 1950, include open spaces underneath doors, and the adjacent placement of adjoining awning-type windows. The open windows cause sound waves from one room to be reflected into the next room.

The porous quality of cinderblock has also resulted in noise transmission. These blocks must be completely sealed to be sound-tight, and different loads of blocks vary in acoustic qualities. The particular blocks used in building the new dormitories are not sealed. A paint job sufficient for decoration may not be thick enough to insulate against sound, Dean Bevins said.

Measures which will definitely be taken to check the noise transmission include caulking the open spaces caused by settling walls, and the addition of new insulating (See DORMS on page four)

Any student with a "C" or better average will be able to finish Law School regardless of financial need under a new Grants-in-Aid program, Dean Erwin N. Griswold said yesterday. The program will take effect next fall.

Under the new plan, financial aid to second and third-year men will be largely in the form of Grants-in-Aid. One half of the amount of each grant will be a long term loan, while the remaining half will be a direct award with no legal obligation for repayment.

But it is the Law School's hope, Dean Griswold said, that students receiving these awards will return a similar amount, or more, when they are financially able to do so.

Students now at the Law School who will need financial help during the coming academic year will apply for financial aid rather than for scholarships. Applications must be made by May 15, and the necessary forms will be available at the Financial Aids Office on April 1. The forms will be similar to the old scholarship applications, with parents' financial statements required.

All second and third-year men who make "a reasonable showing of need", and who obtain academic averages of 62 or better, will be awarded the new Grants-in-Aid, within the limit of available funds. Most grants will probably be for \$800, the amount of tuition, but awards may be more or less according to need. The entire Grant-in-Aid will be credited directly against University term bills for tuition, room and board, as was the case with scholarships.

Loans made under the program will bear interest at the rate of two percent until the borrower graduates from the Law School, and four percent thereafter. The notes will mature two years after graduation, but there will be no difficulty, Dean Toepfer said, in extending loans which have been kept in good standing by periodic payments of principal and interest, or by arranging a program of installment payments.

Students who apply for financial aid and who receive outstanding marks on their exams may receive all their assistance in the form of Prize Scholarships. Limited to students at or near the top of the class, these grants will not carry a legal obligation for repayment.

Prize Scholarships, like Grants-in-Aid, will be awarded only to students who apply for financial aid, and whose applications show a real need for assistance. They will be subject to the same moral obligation of repayment as in the case of the grant portion of Grants-in-Aid.

The plan will be administered by Law School Secretary Louis A. Toepfer, who is in charge of the Financial Aids Office. According to Mr. Toepfer, the new program will "distribute funds more equally" among law students on the basis of financial need. (See SCHOLARSHIPS on page three)

Yearbook at Printers; To Be Ready in April

Copy for the 1956 Law School Yearbook is in the hands of the printer, and the book will be ready for distribution in late April according to an announcement by Editor Sylvia A. Bacon, 3L of Watertown, S.D.

In addition to the usual individual and club pictures, the book will include, Miss Bacon said, several new features. Among these is a story about several members of the Law School's administrative staff.

Subscribers to the book who have not yet completed payments for the volume were urged by the editors to forward their checks as soon as possible.

The checks may be left at the Yearbook office at 23 Everett Street during normal business hours or mailed.



Erwin N. Griswold

Overseas Students Apply For Grants

Applications for scholarship aid by foreign students are reaching the Law School at a record rate, it was reported this week by John A. King, Jr., secretary of the International Legal Studies Program.

A committee of Law School faculty and administrative leaders will review the applications, Mr. King said, and award the grants to the most promising candidates later in the spring.

Harvard has long been recognized as one of the world's great centers for international legal studies, and the Law School's expanding efforts in this field are making it an ever more attractive place of study for overseas students.

Scholarship assistance to foreign students is provided, in large measure, by funds supplied to the Law School by the Ford Foundation.

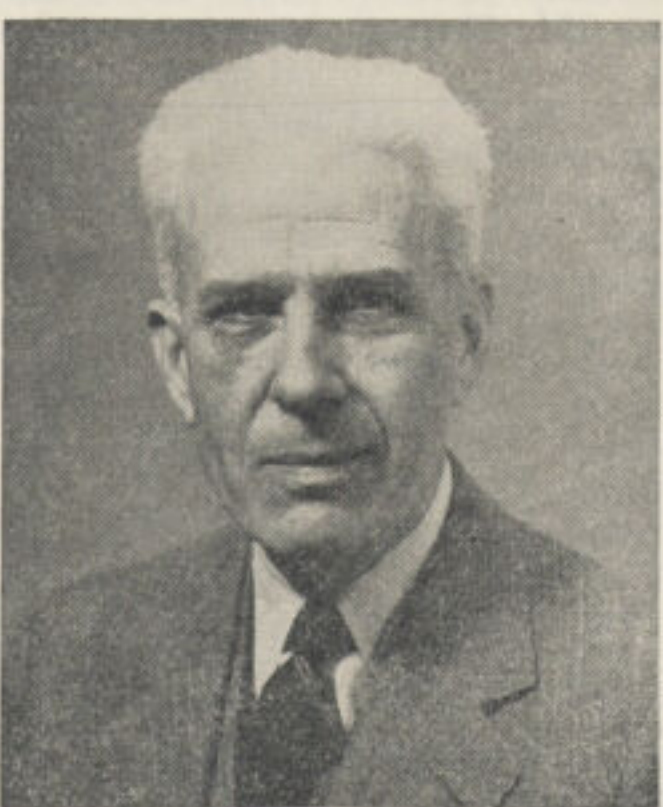
Fairman Testifies Before House Committee, Suggests Amendments to Civil Defense Act

Professor Charles Fairman warned a Congressional subcommittee recently that "martial law" is not a sound pattern for effective government in the wake of a nuclear attack on the United States.

In testimony before the House Subcommittee on Military Operations headed by Representative Chet Holifield (D-Calif.), on February 21, Professor Fairman suggested amendments which he said would strengthen the Federal Civil Defense Act of January 12, 1951.

That statute, he urged, is inadequate because it assigns primary responsibility for Civil Defense to State and local government. It has become evident, Mr. Fairman said, that the Federal Government must assume primary responsibility and must have statutory authority to direct the States and their subdivisions in their conduct of Civil Defense operations.

Mr. Holifield's group is reviewing America's Civil Defense system in the light of the enhanced capability of the Soviet Union to deliver a nuclear attack upon American cities. This subject was studied last year by the Senate Subcommittee on Civil Defense, under Senator Estes Kefauver (D-Tenn.). That inquiry led to



Charles Fairman

a brief Interim Report, and was then dropped.

Mr. Holifield's subcommittee, in addition to calling Professor Fairman, has heard Admiral Arthur W. Radford, Chairman of the Joint Chiefs of Staff; General Maxwell D. Taylor, Army Chief of Staff; General Nathan M. Twining, Chief of Staff of the Air Force, and representatives

from the National Research Council. It plans to carry its inquiry much further.

The great need, Professor Fairman told the subcommittee, is to assure the maintenance of effective civil government after a nuclear attack. This can best be achieved by establishing in each Civil Defense Region a center of Federal authority—a substation of the national government where there would be a cluster of representatives of those national Departments and Agencies concerned with Civil Defense.

If communication with the central government broke down, the regional office would carry on. It would convey the directives of the national authorities to the several States. There should be, Professor Fairman said, an integrated system of civil leadership and direction, running from the top down through the established and indispensable units of State and local government.

Operation Alert was based on an FCDA plan of March 1, 1955. It was assumed that more than fifty cities would be struck with nuclear bombs, that there would be millions of casualties, and that great areas would be affected by fall-out. Damage and (See FAIRMAN on page four)

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Excluded Again

Autherine Lucy has been "permanently expelled" from the University of Alabama by the Board of Trustees in the face of a second federal court decision ordering her admission.

In its editorial of February 16, 1956, the RECORD condemned President Carmichael's approval before a faculty meeting of the Trustees' first exclusion of Miss Lucy. We pointed out that this action of a distinguished man "gives the Trustees' act an aura of respectability." We do not imply that President Carmichael alone is responsible for continued segregation. We do believe that his failure and the failure of other Southern moderates to take a firm stand in favor of the law of the land as enunciated in court decisions is immeasurably strengthening the position of Southern extremists.

One need not look far to find examples of how the extreme segregationists have been consolidating their position in the brief time since the first exclusion of Miss Lucy. In Montgomery, Alabama, Negro leaders of the bus boycott have been arrested. Mississippi has passed legislation attempting to reverse the Interstate Commerce Commission's ban on separate waiting room facilities. Louisiana has brought suit in a state court to enjoin the activities of the NAACP in that state.

The trustees in their resolution were amazingly frank in their reasons for expelling Miss Lucy. Part of the preamble reads:

"Whereas the said Autherine J. Lucy has publicly charged in the said United States District Court for the Northern District of Alabama that her exclusion from attending classes on the university campus is a cunning stratagem adopted by the board of trustees of the University of Alabama for denying her the right to attend and pursue courses of study at the University of Alabama; and

"Whereas, the charges so made against the said William F. Adams, J. Rufus Bealle, Dr. O. C. Carmichael and the members of the board of trustees of the University of Alabama are wholly false and unfounded. . ."

In other words, Miss Lucy was expelled for asserting her rights in the federal courts. If there is any occasion on which a person should be privileged to allege whatever he pleases, surely it is the court pleadings of a lawsuit. And for the losing party to seize upon the allegations in the complaint as an excuse for defying a court order is the clearest case of contempt of court one could imagine. More is at stake here than the admission of one student to one university. The effectiveness and integrity of the federal judiciary have been put to the test—a challenge which we earnestly hope the courts, the federal government, and an enlightened public opinion will squarely face before it is too late.

Gallery

ABRAM J. CHAYES
Law Professor



With a freshness bred of youth and an amiable but penetrating gaze Abram Chayes returns to the Harvard Law School to join the professorial profession which he terms as "incurably optimistic." On meeting Professor Chayes one cannot help but sense a personality saturated with optimism and impatient with prophets of doom and dealers in fatalism.

Mr. Chayes' background evidences such an outstanding and brilliant record that one can only view it with the awed enui characteristic of reactions to the records of newly entering Professors at the Law School.

The admirable humdrum of grand slams commenced in 1943 when he became Harvard '43 and immediately slipped into khaki society where he became an instructor in the Officer's Candidate School at Fort Sill, Oklahoma. Later, shooting out at opposite tangents, he served with a Field Artillery Battalion in Europe and climaxed his service with the Occupation Army in Japan as a Captain.

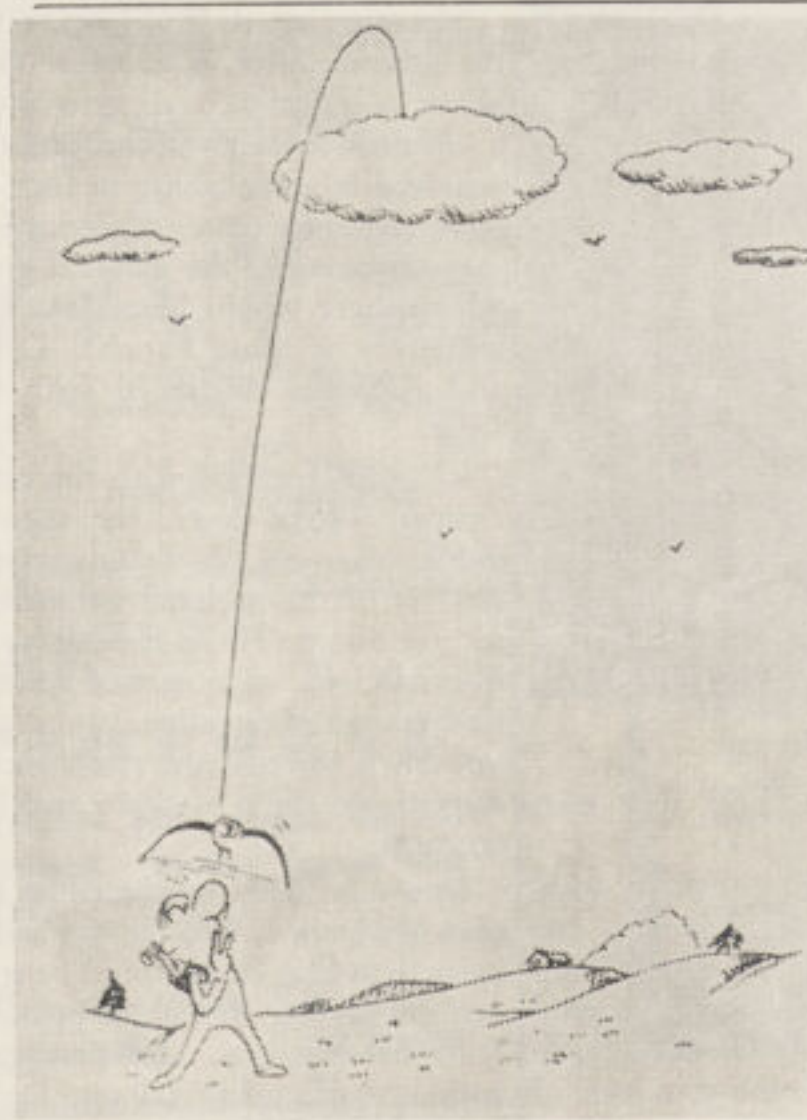
Entering the Harvard Law School in 1946, Mr. Chayes graduated in 1949 *magna cum laude*. The seeds for this honorific fruit were sown and nurtured as Note Editor and President of the *Law Review*, Volume 62. Unto him also went the renowned Fay Diploma as well as the Beale Prize for the highest grade in the enigmatic Conflict of Laws examination.

Varied Experiences

Diverting from the usual procedure of immediate post-graduation clerkship, Mr. Chayes became legal adviser to Governor Chester Bowles of Connecticut. Until October 1951, when he clerked for Mr. Justice Frankfurter, he was Associate General Counsel of the President's Materials Policy Commission.

After working for the nomination of Averell Harriman at the Democratic convention in June, 1952, he joined the firm of Covington and Burling in Washington, D. C. It was in this period of legal practice that he became moved by the call of the Tomes. Mr. Chayes believed that the practice of law was "disjunctive" in the sense that the constant shifting from one case to another did not give him the feeling of progressively achieving a concentrated and unified command of a body of law. This could only be pursued in an academic environment and this decision to enter academic life was not promoted by considerations of moral choice or nobility but by the urge of becoming a constructive scholar-teacher in an environment dedicated to the imposing of the ideal on the real.

Referring to his new role as a teacher, Mr. Chayes views it as a searching stimulant and a creative experience. He intends to concentrate in the field of international legal studies with special reference to "underdeveloped" countries. Mr. Chayes is married and has three children.



Book Review

BROTHERS IN LAW by Henry Cecil. Published by Harper & Brothers, New York, 275 pp., \$3.50.

This is an entertaining novel about the picturesque adventures of a young barrister named Roger Thursby. Young Mr. Thursby has an invincible innocence, which for his twenty-one years is a little shocking, and an all too familiar ignorance of the realities of practice. But his invincible innocence, undiluted ignorance and the good offices of an unambitious, slothful and knowing fellow barrister, Harry Blagrove, carry him through his grueling encounters with judges, counsel, solicitors, bookies, thieves, girl friends and their rich, indulgent uncles, and sundry other Pickwickian characters.

The novel is concerned with one year in which Mr. Thursby, recently called to the bar, is apprenticed to Mr. Kendall Grimes, a junior of many years standing with a substantial practice. For the privilege of working for Mr. Grimes for a year without pay he, or rather his mother, pays one hundred and ten guineas. The extra ten guineas go to Alec, Mr. Grimes' ingenious and ever present clerk. It is Alec and Harry Blagrove who teach Thursby the ins and outs of courts and practice not covered by the Latin mottos memorized for the barrister's exam.

A Lady's Leg

As the year progresses, Roger has a strange variety of experiences. He accompanies Mr. Grimes to court and discovers that he is left to argue a case he knows nothing about because his esteemed master has run off to keep another case in an appearance of motion. The destruction of the hero is postponed by a judge who decides to argue the plaintiff's side until Mr. Grimes arrives panting and stumbling to pick up the pieces of his case. Later young Mr. Thursby tries an undefended divorce action for a lady whose shapely legs and sharp tongue intimidate our hero into blushing silence.

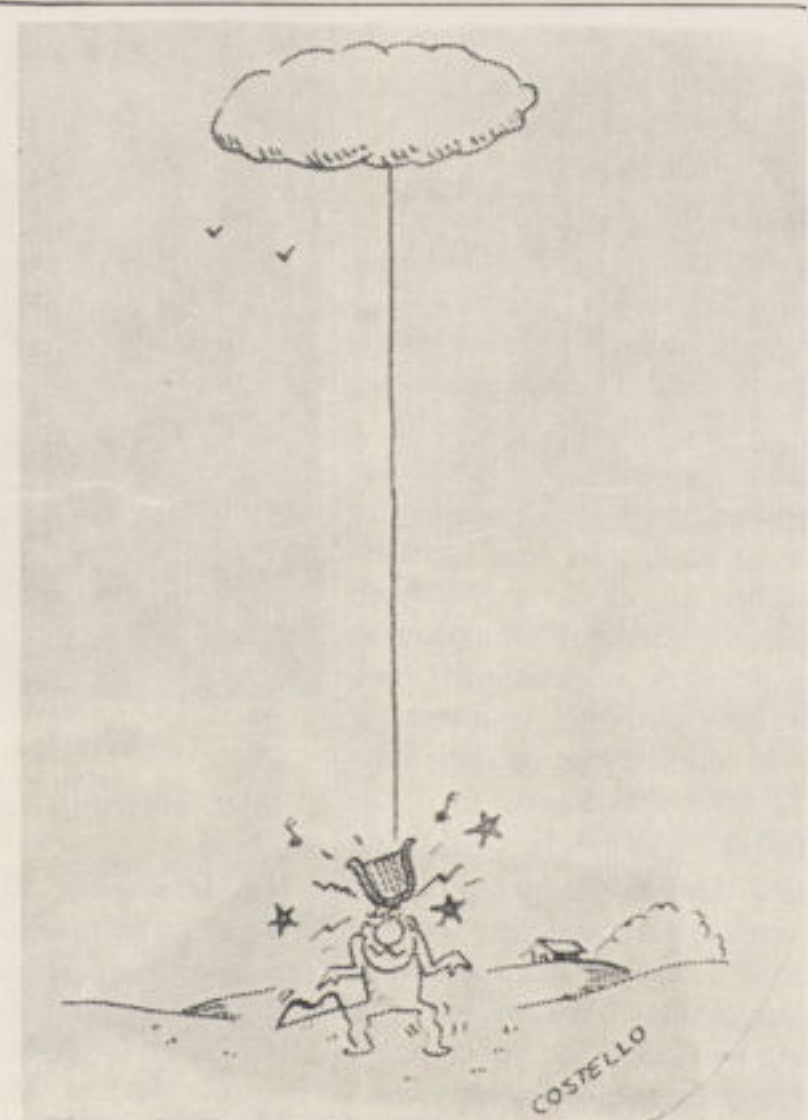
Recently Published

Ralph E. Becker, New York and District of Columbia Bar and Leo A. Huard, Professor of Law, Georgetown University Law Center, "Tort Liability and the Atomic Energy Industry," 44 *Georgetown Law Journal* 58 (1955).

As the peacetime uses of atomic energy increase, novel problems of tort liability will be presented. Many new and complex fact situations will be involved, but the established principles of tort law will be adequate to provide remedies for injuries due to the escape of radioactive materials. The problem of causation will be a difficult one because the radioactive fallout may carry many hundreds of miles. Time lapse will present questions of persons foreseeably within the risk and break in the chain of causation. Defendants may be liable under the rule of *Rylands v. Fletcher* where that rule is in force. Manufacturers might be liable under the *MacPherson* rule. The doctrine of *res ipsa loquitur* may be available to aid the plaintiff.

Edward D. Re, Professor of Law, St. John's University, "The NATO Status of Forces Agreement and International Law," 50 *Northwestern Univ. L. Rev.* 349 (1955).

The Status of Forces Agreement is a reciprocal compact that has been agreed to by allied sovereign nations. Jurisdiction is given to the "receiving" state (the territory in which the forces are located) to try and to punish offenders for criminal offenses committed by personnel of the "sending" state (the state to which the forces belong). In the cases where the receiving state has the right to exercise primary jurisdiction, sympathetic consideration must be given to a request by the sending state for waiver of jurisdiction. In cases where jurisdiction is not waived, adequate legal protection must be given by providing military counsel as well as counsel versed in local procedures.



He is finally overthrown completely by a judge on a frolic of his own and loses the case. In a criminal case in Old Bailey, the fates are kinder. Roger gets a client under indictment for selling toffee candy under false pretenses. Under the brilliant direction of his client, Roger distinguishes himself for the first time and wins applause from all sides. The client, it appears, has learned enough law in his countless appearances before the bench to be able to outwit prosecution, defense and court as well.

A Conflict of Law and Love

Along with Roger's professional adventures, he manages to conduct, or have conducted for him, two simultaneous love affairs with two lovely ladies at the spitting and scratching stage. One of these young ladies is not only ravishingly beautiful but is also the favorite niece of an important solicitor who is able to advance young Mr. Roger Thursby's career at a whirlwind rate. The other, it seems, is his true love. She joins a law firm as a secretary in order to throw cases to Roger. True love vanquishes all, even the unenthusiastic swain. But love must struggle against great and sometimes insuperable handicaps.

By the end of the book, Roger has learned enough assurance to be able to speak in court without blushing and has gained enough experience to let the judges, when they feel inclined, win his cases for him. The reader, too, has learned a great deal about the strange and confused judicial system from which our own purports to derive.

We learn that English lawyers are divided into solicitors and barristers. The solicitors are the leg men. It is they who get the clients, interview witnesses, gather documents, prepare the brief and engage the barrister. The barrister's fee is noted on the brief and is settled by haggling between the solicitor and the barrister's clerk.

In court the English judge is allowed wide discretion. He can hector and question witnesses. He can keep up a running commentary of an advocate's errors and give encouragement and instruction to one side or the other.

68,744 Disappear

In a comment quoted on the back of the book, Morris Ernst says: "Out of the 181,256 lawyers in the United States at least 250,000 of them should read this book." Mr. Ernst does not say what is to be done with the 68,744 extra copies. Perhaps Mr. Ernst's enthusiasm has run away with him. But if he means that this novel is well worth reading, is entertaining and enlightening, he will get no argument here.

—Langston

Letter to the Editor

NIETZSCHE ON WALL STREET

TO THE EDITOR OF THE RECORD:

Your March 1 article on "The Wall Street Lawyer" begins in a tone of damnation: "A biting and revealing commentary on the doings, morality, and organization of America's most powerful group of attorneys appeared in . . . *Harper's Magazine* . . ." It ends with a quote from the *Harper's* article: ". . . but this is the kind of hypocrisy that makes possible the rational organization of society." Somewhere in between, the motor falls out.

The items of damnation are exhibited one by one: fierce competition for place; firms run like factories; pinched specialization with high prices the reward; and hungry prostitution to the aims of the best-paying as the goal.

Yet, lost in a welter of detail, the moral tone of your article sinks steadily even as the damning facts pile up. It turns out that these things are, after all, needed—for the "rational organization of society."

Sold: Honor

Your article makes qualifications on these facts. Even then, I am not in a position to say what "facts" are true. But to whatever extent these are taken to be true, they deserve more than simple acknowledgement. You have depicted the successful Wall Street lawyer as a man whose life is the very "best."

He enjoys a large home, frequent entertaining, brilliant guests at dinner. You say that he moves in the highest circles of the cultured: theatre and opera, quite likely a collector of paintings, a familiar of the elite of London and Paris.

Some of those in this Law School are ready now to accept such a tableau no matter whose foot is in whose face. But, if the RECORD has tones of *Brave New World* to add to this Utopian scene, you must add them frankly. It is your job to inform the many others in this Law School who recoil from paying for any Utopia with their honor.

O homines, O mores!

Your economic, social and cultural statistics are impressive. Now the statistics in the morality column must be unveiled and made clear, or mistakes may be made. Mistakes once made are not easily undone.

Serving clients rather than the law may work out the destinies of free competition, and super-specialization may make possible "the rational organization of society." But moral hypocrisy has never been of much help to the rational organization of a man, and this should be frighteningly clear. I question whether warped men can truly make a rational society.

ROY L. PROSTERMAN, II.

Why Our Courts Protect Criminals

By J. Raymond Dyer

(Printed below is an article by J. Raymond Dyer, LL.B. '28, on "Why Our Courts Protect Criminals." Mr. Dyer is a practicing attorney in St. Louis, Missouri; The RECORD assumes no responsibility for the views expressed in this article.)

Professor John Barker Waite, former editor of the *Michigan Law Review* and his collaborator Karl Detzer, in their January, 1956 article in the *Reader's Digest* entitled "Why Do Our Courts Protect Criminals?" denounce what they call "legal technicalities" which allow the guilty to escape just punishment. They would sanction the use of incriminating evidence procured through search and seizure without a warrant, so long as the guilty are brought to book.

They say that "charging the police with 'unreasonable' arrests and 'unreasonable' searches is a common dodge used to escape just punishment when the evidence is undeniable." They say that the suppression of evidence obtained by search without a warrant, when that evidence clearly establishes guilt, "encourages lawlessness", gives "immunity to the most reprehensible of criminals", adds to the "nation's growing burden of crime", and is "used today to free dope peddlers, gangsters and killers, and to bring the courts into disrepute."

"Mere Flyspeck of Technicality"

Messrs. Waite and Detzer urge the public "to cry out against . . . every criminal turned loose on a mere flyspeck of technicality."

Before examining the "mere flyspeck of technicality" Messrs. Waite and Detzer cry out against, perhaps it would be well to state what they fail to state in their article—the provisions of the Fourth Amendment to the Constitution of the United States: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Brandeis Dissenting

Mr. Justice Brandeis, in his dissent in *Olmstead v. U.S.*, 277 U.S. 438, 485 (1928), the famous wiretapping case, observed: "If the Government becomes a law breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the Government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face."

Unfortunately, the U. S. Supreme Court has not resolutely set its face against that pernicious doctrine. Over strong dissents it has wavered and vacillated. In *Wolf v. Colorado* 338 U.S. 25, (1949) it sanctioned the use of a doctor's books, illegally seized by State officers without a warrant, to secure a conviction in a State court for abortion. It held that the Fourteenth Amendment does not preclude the use of evidence procured by methods that would render it inadmissible in the Federal courts under the Fourth Amendment.

Bookmakers and Microphones

In *Irvine v. California* 347 U.S. 128, (1953) it affirmed the conviction of a bookmaker secured through use of a microphone surreptitiously placed in a closet in defendant's bedroom. In each of these cases the Court paid lip service to the Fourth Amendment, but in each it held it inapplicable. Indeed, in 1953, Mr. Justice Douglas, in his dissent in *Irvine v. California*, characterized this trend as "part of the deterioration which civil rights have suffered in recent years."

Messrs. Waite and Detzer would have the U. S. Supreme Court go even further along that road, and resolutely set its face, not in the direction advocated by Mr. Justice Brandeis, but in the opposite direction, thereby completing the erosion of civil rights.

Let us examine some of the cases they refer to in their article, and with which they disagree. *Johnson v. U.S.*, 333 U.S. 10, (1948) involved the reversal of a conviction for the illegal possession of opium. The police, accompanied by federal officers who smelled the unmistakable odor of burning opium in the corridor, knocked at the door of defendant's room in a hotel, and gained admission. They had no warrant. Once inside they searched the premises and found a quantity of the forbidden drug hidden in the blankets of an unmade bed.

In reversing the conviction, Mr. Justice Jackson held that a warrant should have been procured, since the question of whether defendant's right of privacy should yield to the government's right of search should have been decided by an impartial judicial officer, and not by a

zealous policeman or government enforcement officer.

That is the very basis of the warrant requirement of the Fourth Amendment. What is to be searched, and why, and who or what is to be seized, must be stated, on oath or affirmation, to a judicial officer responsible to the judicial department of the Government, before a warrant may issue. That is one of the checks and balances provided for in our Constitution.

What Mr. Justice Douglas, who concurred in that decision in the *Johnson* case, said in his dissent in *Irvine v. California* is particularly applicable. "The search and seizure conducted in this case smack of the police state, not the free America the Bill of Rights envisaged." Yet Messrs. Waite and Detzer protest against the *Johnson* decision. They evidently prefer the police state, in their zeal for the conviction of all criminals . . .

People in this country have not known what the people of Germany knew all too well under Hitler. But as stated by Mr. Justice Frankfurter in *Wolf v. Colorado*, 338 U.S. 25, 28, (1949) "The knock at the door, whether by day or night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English-speaking peoples."

That knock at the door, which brought terror to the hearts of victims of Nazi tyranny, brings no terror to the hearts of Messrs. Waite and Detzer. They see nothing wrong with it, nor with unauthorized search, so long as it produced incriminating evidence. But it is something that the people of this country should be very much concerned with, under the present state of the law.

Lottery Tickets Inadmissible

The case which Messrs. Waite and Detzer describe as having started "the trend toward the frequent use of the 'unreasonable search' clause to escape just punishment" is *Weeks v. U.S.*, 232 U.S. 383 (1914). There defendant had been convicted of sending lottery tickets through the mail. Letters pertaining to the lottery, secured by the police and by Federal agents through search of defendant's room, without a warrant, were introduced in evidence against him. In a unanimous decision the U.S. Supreme Court held the evidence inadmissible.

It is perfectly true, as Messrs. Waite and Detzer state in their article, that the ruling in the *Weeks* case was "a judge made rule, not to be found in federal or state laws." That rule was "that no evidence against anyone whose privacy has been unreasonably invaded to get that evidence may be used, no matter how clearly it establishes guilt." That is, it may not be used in a Federal court.

Sixteen States Follow Weeks Rule

Before the *Weeks* case, only one State followed that rule. Now 16 States follow it. And Congress, in the 35 years that have passed since its promulgation, has not seen fit to abrogate it.

The reason that the *Weeks* case rule of exclusion is a salutary rule, essential for the enforcement of the Fourth Amendment, was stated very clearly by Mr. Justice Murphy in his dissent in *Wolf v. Colorado* 338 U.S. 25, 44, (1949). "The conclusion is inescapable that but one remedy exists to deter violations of the search and seizure clause. That is the rule which excludes illegally obtained evidence. Only by exclusion can we impress upon the zealous prosecutor that violation of the Constitution will do him no good."

Lawless Police Inconsistent with Democracy

No democratic community can long put up with lawless police and remain democratic. As J. Edgar Hoover, Director of the FBI, said in the *FBI Law Enforcement Bulletin* of September, 1952, page 1: ". . . when any person is intentionally deprived of his constitutional rights those responsible have committed no ordinary offense. A crime of this nature, if subtly encouraged by failure to condemn and punish, certainly leads down the road to totalitarianism."

The dissent of Mr. Justice Frankfurter in *On Lee v. U.S.*, 343 U.S. 758 (1952), provides a strong answer to the contention of Messrs. Waite and Detzer. There, after decrying the increasing judicial encroachment on civil

liberties, the very thing Messrs. Waite and Detzer want more of, Mr. Justice Frankfurter observed: "Few sociological generalizations are more valid than that lawlessness begets lawlessness. Suppose it be true that through 'dirty business' it is easier for prosecutors and police to bring an occasional criminal to heel. It is most uncritical to assume that unless the Government is allowed to practice 'dirty business' crime will become rampant or would go unpunished. . . . Such encouragement to lazy, immoral conduct by the police does not bode well for effective law enforcement. Nor will crime be checked by such means."

Missouri's Experience

Missouri was one of the States that switched its rule after the U.S. Supreme Court decision in the *Weeks* case. Previously, evidence procured by unreasonable search was held admissible in criminal prosecutions in Missouri courts. Now it is not, and the police investigations conducted in the large cities in Missouri are much more efficient. Crime is not thereby "abetted and encouraged", as Messrs. Waite and Detzer charge. Instead, as stated by Mr. Justice Murphy in his dissent in *Wolf v. Colorado*: "If a proof of the efficacy of the federal rule were needed, there is testimony in abundance in the recruit training programs and in-service courses provided the police in states which follow the federal rule. St. Louis, for example, demands extensive training in the rules of search and seizure, with emphasis upon the ease with which a case may collapse if it depends upon evidence obtained unlawfully. Current court decisions are digested and read at roll calls."

It is a question of balancing interests, the public's interest in convicting those who break the law, on the one hand, and on the other its interest in protecting itself, including law breakers, from unreasonable invasions of privacy. As Mr. Justice Douglas said in his dissent in the *On Lee* case at 343 U.S. 747, 765, "The controlling, the decisive factor is the invasion of privacy."

"Wiretapping is dirty business"

Messrs. Waite and Detzer protest the federal bar against wiretapping, successfully invoked by the defense in the *Coplon* case 185 F.2d 629 (1950). They evidently do not agree with Mr. Justice Holmes who, in his famous dissent in *Olmstead v. U.S.* characterized wiretapping as "dirty business". Mr. Justice Holmes pointed out that the court had to choose between two principles of policy, and stated that, for his part, he thought it "a less evil that some criminals should escape than that the Government should play an ignoble part." The force of Mr. Justice Holmes' reasoning brought on the subsequent enactment of the *Federal Communications Act of 1934*, which outlaws wiretapping by federal officers.

Messrs. Waite and Detzer state in their article that had state officers arrested Judith Coplon "it would have been legal. But because federal officers did it, Miss Coplon was turned loose." That is not exactly true. Chief Judge Learned Hand, of the U.S. Court of Appeals, Second Circuit, who wrote the opinion in the *Coplon* case, expressly held that "the conviction must be reversed; but we will not dismiss the indictment, for the guilt is plain, and it is possible on another trial that there may be more evidence . . . ; cause remanded." To be held over, for trial again, is scarcely being "turned loose."

Coplon Not Confronted with Witnesses

What happened in the *Coplon* trial was that the prosecution, after proof had been entered that defendant's telephone had been tapped, failed to make available to her the evidence secured by that wiretapping, or confront her with the testimony of the person who did the tapping. And the Sixth Amendment to the Constitution of the United States guarantees, in all criminal prosecutions, the right of the accused "to be confronted with the witnesses against him."

No wonder the Court of Appeals unanimously reversed the conviction and remanded the case. As Chief Judge Hand very properly observed in his opinion 185 F.2d 629, 638 "Few weapons in the arsenal of freedom are more useful than the power to compel a government to disclose the evidence on which it seeks to forfeit the liberty of its citizens. All governments, democracies as well as autocracies, believe that those they seek to punish are guilty; the impediment of constitutional barriers is galling to all governments when they prevent the consummation of that just purpose."

"But those barriers were devised and are precious because they prevent that purpose and its pursuit from passing unchallenged by the accused, and unpurged by the alembic of public scrutiny and public criticism. A society which has come to wince at such exposure of the methods by which it seeks to impose its will upon its

(See SEARCH AND SEIZURE on page four)

SCHOLARSHIPS

(Continued from page one)

Under the current plan, scholarships are awarded to men who stand in what is approximately the top forty percent of the class. Students with lower averages receive loan funds in cases of financial need. This system has been felt to increase pressure by emphasizing the dividing line, a 68 average being worth \$800 more than a grade of 67.

The new program will depend on considerable alumni support, Mr. Toepfer said. Although as funds are repaid, they will become available for new loans, the first few years of the Grants-in-Aid program



Louis A. Toepfer

will require a considerable outlay. Last year, the Law School spent about \$250,000 for financial aid, most of which was contributed by the alumni.

Long and short term loans will continue available to students who face unforeseen financial emergencies, or who need help to supplement a Grant-in-Aid or Prize Scholarship. There will be no change in the scholarship program for entering students, nor in the Graduate Student scholarships or fellowships.

Alumni Notes

Charles H. Weiland, LL.B. '45 ('48) and William B. Miller, Jr. LL.B. '49 have been admitted to partnership in the firm of Lord, Bissell & Brook, located at 135 South LaSalle Street, Chicago 3, Illinois.

James H. Felt, LL.B. '48, writes that he has left the Boston office of Arthur Anderson & Company and joined the law firm of Seyforth, Shaw, and Fairweather, 231 South LaSalle Street, Chicago, Illinois.

Dino Cerutti, LL.B. '52 and Norman M. Sheresky, LL.B. '53 announce the formation of a partnership and location of their offices for the general practice of law under the firm name of: Cerutti & Sheresky, 420 Lexington Avenue, New York 17, New York. Ray Duncan Nester, Jr., '53 has moved his law office from Marsh & Nester, 100 St. Paul Street to Suite 203, Title Building, Baltimore 2, Maryland.

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Search and Seizure

(Continued from page three)

members, has already lost the feel of freedom and is on the path towards absolutism."

Hence, when they state that "Moscow must have laughed merrily" at the decision in the *Coplon* case, Messrs. Waite and Detzer must have been referring, not to the people of Moscow, but to the Politburo. The people of Moscow would be very glad if they had similar protection against the abuses of their government.

Rochin the Morphine Swallower

In *Rochin v. California*, 342 U.S. 165 (1952), State officers, having information that defendant was selling morphine, entered his home and forced their way into his bedroom. They had no warrant. When they asked about two capsules lying on a bedside table defendant grabbed the capsules and swallowed them. The officers took him to a hospital, where the capsules were extracted through use of a stomach pump. They were introduced in evidence at Rochin's trial for illegal possession of morphine, and he was convicted. The U.S. Supreme Court, in a unanimous decision, held the capsules inadmissible, and the conviction was reversed.

Messrs. Waite and Detzer, though they did not refer to that decision in their article, would undoubtedly cry out against it. Rochin had the morphine capsules. He had possession of them even more securely than Anne Johnson had possession of the opium pellets, in *Johnson v. U.S.* He had them in his stomach. They were found there, not by federal officers, but by State officers. Surely, had Messrs. Waite and Detzer mentioned the *Rochin*

case in their article they would have protested against it. Defendant was not just a dope addict. He was a dope peddler. And he was turned loose by the U.S. Supreme Court, to peddle dope again.

But the decision of the U.S. Supreme Court in the *Rochin* case was unanimous. Not a single Justice was persuaded by the reasoning advocated by Messrs. Waite and Detzer. Instead, all concurred that the methods used by the State officers were "too close to the rack and screw". Even defendants who are caught with the goods may not be convinced on evidence procured by such methods.

The basis of the decision in the *Rochin* case was not unauthorized search and seizure, not even compulsory self-incrimination, though both were self-evidently present in the case. The case was a State case, and the Fourteenth Amendment, not the Fourth or the Fifth, was involved. The holding was that a State may not resort to methods that offend civilized standards of decency which are embodied in the concepts of fairness and justice held by English-speaking peoples, "even toward those charged with the most heinous offenses." 342 U.S. 165, 169.

Difference of Degree

Thus it is not only a question of "unreasonable" search and seizure, without a warrant, but a question of fairness, of decency, of "due process", that prompts courts to exclude evidence improperly obtained. It all depends upon difference of degree.

The guilt or innocence of the accused has nothing to do with it, as Messrs. Waite and Detzer mistakenly believe. As stated by Mr. Justice Frankfurter in his dissent in *Irvine v. California*: "This Court has rejected the notion that because a conviction is established on incontestable proof of guilt it may stand, no matter how the proof

was secured."

When the framers of our Constitution adopted the Bill of Rights they were concerned with preventing governmental tyranny. They were concerned with the basic rights of each individual, whether that individual was good, bad, or indifferent. They wanted to protect him in his life, liberty and pursuit of happiness, and they were as much concerned with spiritual values as they were with material values. They wanted to protect the individual in his home, whether he lived in a rented room, a barn or a castle, and they wanted to protect him in his person, and in his privacy, and in his papers and property and effects. So in order to do so they accorded him the right to be let alone.

Court Implemented the Right

It was only in order to implement that right that the U.S. Supreme Court ruled as it did in the *Weeks* case, and held that evidence procured by Federal officers in violation of the Fourth Amendment was inadmissible in Federal courts. The State courts in 32 states do not so hold, and until the U.S. Supreme Court rules that the guarantee of the Fourth and Fifth Amendments were carried over into the Fourteenth, illegally obtained evidence will continue to be used to convict criminals brought to trial by those States, except where the illegality offends civilized standards of justice. There, under the *Rochin* case, such evidence will be excluded, too.

And that is why our courts protect criminals. They do so in order that our Constitutional guarantees and American way of life may be preserved. There is not sufficient protection of our civil liberties as it is, under the present state of the law, but assuredly if the occasional protection of a few criminals will afford more, our society as a whole can afford that. The end, in such a matter, does justify the means.

Faculty Backs Broad Studies For Applicants

The Law School Admissions Committee will hereafter prefer a "liberal college education" to one which is "narrowly specialized". At a recent meeting, the Faculty approved a brief statement expressing its views on pre-legal education.

The statement points out that the foundations of culture must usually be obtained in college, and disapproves, with reservations, concentration in courses given as "vocational training". Business administration and engineering are cited as examples of the areas the Admissions Committee "rarely favors", but the Faculty noted that some technical and business schools have broad curricula.

The statement will appear in the 1956-57 Law School catalogue. The RECORD reports it below:

"The School desires its graduates to become educated and cultured lawyers, in the best tradition of their learned profession. It realizes that the foundation of liberal culture must usually be laid in college. Hence, while the School prescribes no fixed requirements with respect to the content of pre-legal education, its Admissions Committee takes into account the nature of college work done as well as the grades achieved.

"In general, the Committee prefers a liberal college education to one which is narrowly specialized. It recognizes with favor a showing of thorough learning in some wide cultural field of a student's choice, such as history, economics, government, science, literature or the classics. (This list is suggestive, not exhaustive.)

"But the Committee rarely favors concentration in courses given as vocational training in areas such as business administration, accounting, engineering, speech, drama, music and journalism. The Committee does not regard undergraduate studies of this type as being of themselves the best preparatory training for the legal profession. At the same time it is well aware that some schools of business administration and engineering plan their programs with attention to educational breadth, and it takes account of this in appropriate cases."

Fairman Opposes Martial Law In Event of Nuclear Attack

(Continued from page one)

casualty reports were prepared by the cities, in advance.

These reports were signalled at once at the assigned moment of attack. Reports of countermeasures being taken came through much more slowly. At the Emergency Capital—apparently on the advice of the Attorney General—the President issued a declaration of "limited martial law". The declaration ran as follows:

1. The Secretary of Defense and subordinate military commanders of the respective Army areas shall enforce law and order and shall carry out determinations and decisions of Federal agencies in the discharge of the regular and emergency authorities vested in them by law and the proclamations and Executive orders issued since the attack upon the United States including:

- (a) Civil defense proclamations;
- (b) ODM and stabilization proclamations.

2. Authority hereunder shall not affect the conduct of elections.

3. Authority hereunder shall not affect the functioning of civilian courts to the extent that the functions of such courts do not materially affect the war effort.

4. The writ of habeas corpus is suspended only with respect to Federal offenses.

Professor Fairman told the subcommittee that the proclamation was so hasty and unstudied that it did not merit a detailed analysis of the points of law involved. His testimony went rather to the impracticability of undertaking relief and rehabilitation through Army channels.

The Army is not now equipped with the specialists required for such an undertaking. In preparation for military occupation overseas during World War II, the

staff for civil affairs operations was obtained from men experienced in civil government at home.

But it would be foolish, Mr. Fairman said, to play "musical chairs" at home by inducing into the Army the people who were already functioning in their regular places in civil administration.

As a practical matter, Mr. Fairman asked, how could the Chief of Staff and the Army carry out a directive to restore and rehabilitate the country—in addition to all military operations on the morrow of a nuclear attack?

The Army, so far as available, could render important logistical support to Civil Defense operations. A sound pattern for civil-military relations in post-attack situations should be worked out. But the sudden decision to go to "martial law" got things started on the wrong foot.

Questions Raised

Another question raised by Professor Fairman was: Why suspend the writ of habeas corpus? The Emergency Detention Act of September 23, 1950, already authorizes the detention of any "person as to whom there is reasonable ground to believe that such person probably will engage in . . . acts of espionage or of sabotage."

Professor Fairman also suggested practicable measures for assuring general compliance with the mass of directives and orders that would have to be enforced after an attack. The functioning of the courts should be facilitated—not limited.

In conclusion, he urged the subcommittee to view its problem in a context that would consider the need for maintaining effective leadership notwithstanding Presidential "inability," and for assuring a representative Congress even though it might be impracticable to fill vacancies by election in the confusion following an attack.



Welsey E. Bevins, Jr.

DORMS

(Continued from page one)

material to stop the gaps around the heating pipes.

Tests will be conducted over the spring recess to show what decibel reduction will be secured by applying heavy coats of paint to the walls, and providing gaskets and thresholds for the doors. If these tests show substantial changes in the noise level, those improvements which will be made over the summer.

Dormitory rents were last increased in 1951, just one year after the buildings were opened. Rents now range from \$275, for a single two-man room, to \$390, for a three-room suite for two in Hastings Hall. A ten percent increase would bring the rent scale to \$300 to \$430 per year.

Increased maintenance costs due to wage rises for employees, and generally higher costs due to the buildings' age were cited by Dean Bevins as reasons for the rent increase, as well as the soundproofing program.

Legal Aid Bureau Holds Annual Fete

University Professor Sir Hamilton Gibb, Harvard's distinguished specialist in Arabic studies, told the Legal Aid Bureau of the work and role of the Orientalist at the Aid's annual banquet last week.

Speaking to an enthusiastic audience in the dining rooms of the Harvard College Signet Society, Sir Hamilton said knowledge of Middle Eastern culture was of increased value in today's world.

Sir Hamilton was introduced by Law School Dean Erwin N. Griswold, who headed a group of faculty leaders who attended the banquet.

Others on hand included Chief Judge Calvert Magruder, LL.B. '16, of the United States Court of Appeals for the First Circuit, Professor Paul Freund, and George Lordan, president of the Cambridge Bar Association.

Mr. Lordan, in informal remarks, also praised the Legal Aid Bureau for its important contributions to the Bar and citizens of Cambridge. The Legal Aid works closely with the Cambridge Bar Association in servicing the legal problems of needy citizens of the community.

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NEWS IN BRIEF

The Harvard Wives will meet next Wednesday at 8 p.m. in Wheeler Room of Holmes Hall. Mrs. Amos Wilder, director of the International Center here in Cambridge, will speak on "A Family of Letters of the Early Revolution."

The Student Bar Association will hold a luncheon in the Mallory Smith Room at 1 p.m. next Tuesday. Grafton L. Wilson, LL.B. '19 of Hale and Dorr, Boston, will speak on "Lawyers' Role as Corporation Counsel." Mr. Wilson specializes in corporation matters with his firm.

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FREUND

(Continued from page one)

Freund indicated, for the Court to have ordered the government to return the plants to the companies within a short time unless Congress meanwhile ratified the executive's action. In this connection, however, he pointed out that the blame was shared by Congress with the unions and the companies.

Turning to the segregation cases, Professor Freund expressed some fear that the Court has been saddled with a responsibility too exclusive in this field. He posed the question of whether Congress has been derelict in its duty, and asked whether the Court is not entitled to more help from various agencies.

"We must respect both the boldness of the Court in acting, and the caution it employed in making its decision," he said; "but we must also recognize the problems involved in carrying out these decisions."

Professor Freund characterized our civil rights laws as a truncated remnant of a patchwork of reconstruction laws. He adverted to the difficulty of handling all cases adequately through contempt proceedings, since injunctions must first issue as to particular parties, and suggested that our civil rights laws should be expanded to cover these situations.

Expediency Criticized

Looking at the situation from a historical standpoint Professor Freund expressed his feeling that the Court had been hurt as much by yielding to support expediency, as in the *Dred Scott* case, as by handing down decisions irrespective of the injured feelings of certain sections of the country.

He modified his remarks, however, by stating that it goes without saying that we must sympathize with the situation in those sections, with the delicate nature of the subject, and with the various other factors involved.

In conclusion Professor Freund called for more moral support of the Court from official Washington.

As a means of making this support effective he suggested a series of fireside chats, and a few more well-chosen interventions by the Department of Justice.

Nevertheless he stated that we must rely primarily on local effort, noting that it is precisely there that efforts at solution have been least successful.

He applauded the stand the Roman Catholic Church has taken on the desegregation issue in Louisiana, and said he hoped to see the two groups which he feels can do the most good take a strong stand, namely, church groups and the Bar.

Record Law Wife Gives Birth to Son

A possible infanticide was averted Sunday night when a son was born to Frederick H. (Pappy) Condon. The crime was threatened late last week, when Condon told reporters that "If my wife has a daughter, I'll drown her."

The boy, who will probably be named Stephen Michael, was born at 11:32 p.m. on 3-4-56 in Massachusetts Osteopathic Hospital. Mrs. Condon, the former Marcia Ann Harper, is resting comfortably.

On the last day of her pregnancy, Mrs. Condon drew a cartoon for the HARVARD LAW RECORD, of which her husband is Copy Editor. (The drawing appears on page 3 of today's RECORD.) After completing the cartoon, she was taken to the hospital by her husband.

Condon, a 1955 graduate of Yale College, is a first-year man at the Law School. He is 21 years old and a native of West Haven, Connecticut. His wife, a professional nurse, is a graduate of the Grace-New Haven School of Nursing.

When informed of the birth, Law School officials expressed pleasure and surprise. Louis A. Toepfer, secretary of the Law School and adviser to the Condons, said: "This is a blessed event. I can't wait to see the young man because I have some papers for him to sign."

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