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Senators Visit To Investigate Views on Arms

Associate Dean David F. Cavers, Professors W. Barton Leach and Louis B. Sohn, and faculty specialists from Harvard's Graduate School of Public Administration, Boston University, and MIT are among the experts who will testify before the Senate Subcommittee on Disarmament in the James Barr Ames Courtroom next Monday.

The Senate group, meeting under the chairmanship of Senator Hubert H. Humphrey (D-Minn.), will hold two open hearings—one at 10 A.M. and the other at 2 P.M. Both will be televised and broadcast by local stations.

The hearings in Cambridge are the first of a series which Sen. Humphrey and his subcommittee plan to hold in various parts of the country to gather the views on disarmament of experts in the field and the man in the street.

Professor Sohn will testify at the Monday morning session along with other specialists and with representatives of the general public. Students who wish to appear at the morning hearings may arrange for an appointment by contacting Sen. Humphrey in Washington.

Afternoon Testimony
Dean Cavers, the Law School's specialist in atomic energy, and Professor Leach, director of Harvard's Defense Studies program, will testify at the afternoon session. Mr. Leach's topic will be "The Character of the Modern Armaments Race."

Among the others who will take part in the hearings is Dr. Carl J. Friedrich, Eaton Professor of the Science of Government at Harvard College and a member of the faculty of the Graduate School of Public Administration. He will tell the committee of "The Effect of Disarmament Negotiations and Agreements on European Politics."

Arrangements for the special panel of expert witnesses who will testify Monday were made for the Senate committee by Dean Cavers and by Professor Max T. Millikan, director of MIT's Center for International Studies.

Going West



Erwin N. Griswold

Griswold to Travel On Speaking Tour In Spring Vacation

The spring recess will be no vacation for Dean Erwin N. Griswold. He will fill the week's respite from classes with an intensive schedule of speaking and lecture engagements which will take him from one end of the country to the other.

While on tour, the Dean will address alumni groups in Los Angeles, Denver, Albuquerque, and Philadelphia and will deliver the annual John Field Simms Memorial Lecture at the University of New Mexico.

The Dean will fly to California towards the end of next week and will make his first appearance on Friday, April 13 at a luncheon meeting of the Harvard Law School Association of Southern California in Los Angeles' Biltmore Hotel. Dana Latham, LL.B. '22, president of the Southern California group, is in charge of arrangements. He has appointed John T. Binkley, LL.B. '39, as chairman of the luncheon committee.

After a weekend in California, Dean Griswold will fly east to address a luncheon meeting of Colorado alumni at the University Club in Denver on Monday, April 16. Floyd K. Haskell, LL.B. '41, (See GRISWOLD on page six)

Keever Heads HVD

Charles J. Keever, 2L of Hutchinson, Kansas, is the new president of the Harvard Voluntary Defenders. A 26-year-old Korean veteran and alumnus of Harvard College, Mr. Keever succeeds Thomas R. Remington, 3L of Rochester, N. Y., as president.

The Defenders also elected James R. Bridgeland, Jr., 2L of Akron, Ohio, as secretary, and Peter R. Jones, 2L of Pelham, N. Y., as treasurer.

Alumni Fund Donations Exceed Last Year's Sum

Contributions to the sixth annual drive of the Harvard Law School Fund are running well ahead of comparable figures for last year, and they are expected to reach an all-time high by the end of June, according to a report last week by Assistant Dean Wesley E. Bevins, Jr.

Gifts through the first of April totalled \$333,426; and less than \$22,000 is needed to better the results of last year's record campaign, which raised \$354,293.34.

As in the past, the lion's share of the contributions will be earmarked for supporting the Law School's ambitious scholarship program. More than 305 alumni have given \$189,586 for that specific purpose.

About 40 per cent of this money will be used during the academic year 1956-7, and \$116,000 will be added to the Law School's scholarship endowment.

The current drive is expected not only to raise more money than ever before, but to reach more alumni than any previous campaign.

Expect Best Year Yet

More than 4600 alumni have given so far, and with donations flowing in at the rate of more than 200 a week, it is an-

Wallace Proposes Committee Weigh Presidential Incapacity

A specially selected nine-man committee was suggested by former Vice President Henry A. Wallace last week as the most effective means to find out when a President lacks the physical capacity to carry on in office.

Mr. Wallace presented his solution to the problem, which has aroused national interest since President Eisenhower's heart attack, in the course of a debate with Professor Mark DeWolfe Howe before the Law School Forum.

Mr. Wallace suggested that in the event of an emergency caused by the disability of the President, the Secretaries of State, Defense and the Treasury should decide whether or not the emergency could be handled by the White House staff.

If two out of the three thought that a new Chief Executive was needed, then they would call in the senior Democratic and Republican members of the Supreme Court, of Congress, and the heads of both the Army and Navy hospitals in Washington.

A vote of six out of nine members would allow the Vice President to temporarily assume control over the affairs of state. A unanimous vote would be necessary for permanent succession by the Vice President.

Professor Howe traced the evolution of the selection of the Vice President from the choice of the second best man of the party to the picking of a man who would sway the most votes. He also pointed out that the Vice President's assumption of the office of the Presidency is a matter of accepted tradition, rather than one of constitutional law.

Until President Tyler's accession to the Presidency on the death of President Har-

Code Group Meets, Drafts Aliens' Law

The Advisory Committee working on codification of the Law of Responsibility of States for Injuries to Aliens met at the Law School late last month to consider a draft convention on the subject which had been prepared by Professor Louis B. Sohn and R. R. Baxter, rapporteurs for the project.

The members of the Advisory Committee who attended the meeting were Professor Quincy Wright of the University of Chicago, Professor Clyde Eagleton of New York University, and Roger Fisher, LL.B. '48.

Professors Participate

Dean George F. Curtis of the Law School of the University of British Columbia, a visiting professor at Harvard, Professor Charles Fairman, and Dr. Yuen-li Liang, sp. '30-'31, director of the Codification Division of the United Nations Secretariat, also participated in the discussions. The chairman for the meetings was Professor Milton Katz, director of International Legal Studies at the Law School.

The preparation of a draft convention on the Law of Responsibility of States has been undertaken by the Harvard Law School in order to assist the International Law Commission of the United Nations, which has this subject on its agenda.

The work being done at the Law School will consist of a draft convention and an accompanying commentary, which are expected to be ready in the spring of 1957.



Wesley E. Bevins, Jr.

icipated that the 1956 drive will better last year's record of 6,016 separate gifts.

Dean Erwin N. Griswold, in an interview last week, hailed the impressive accomplishments of the present campaign, and said that efforts of the Fund solicitors and contributors play an important part in the Law School's efforts to maintain its national leadership.

"The Fund provides us," Dean Griswold declared, "with the resources which are essential if the Harvard Law School is to continue to perform its historic mission of training the future leaders of the American bar."

Large Regional Gains

Several states and regions contributed more by the end of February than they gave during the entire 1954-5 campaign. Among those making the biggest advance over last year are the Northern District of California, Colorado, the Hartford District of Connecticut, Michigan, New Hampshire, the Cleveland District of Ohio, the Western, Northeastern and Philadelphia Districts of Pennsylvania, Tennessee, Wisconsin, Wyoming, Canada, and Other Foreign Countries.

The Florida alumni, contributing for the first time this year through three district associations, have also made important contributions. The New York City alumni have given the most—more than \$90,000—with the Boston area second with almost \$40,000.

The Class of 1906, assembling this year for its fiftieth reunion, has raised over \$50,000, including several gifts to the Class of 1906 Memorial Fund. The Class of 1921, meeting soon for the thirty-fifth anniversary of its graduation, has donated well over \$15,000.

Argument Tuesday at 8

Morgan, Scott Clubs in Ames Final; Last Second-Year Case Argued Tonight

The Ames Competition for the Class of 1956 will draw to a close in the James Barr Ames Courtroom next Tuesday night when the Scott and Morgan Law Clubs, the last survivors of the 34 teams which started out a year and a half ago, meet for the final round.

A first prize of \$300 and an honored place in the annals of the Harvard Law School will be at stake when the two teams argue their case before a three-man court headed by Associate Justice John Marshall Harlan of the United States Supreme Court.

Mr. Justice Harlan will share the bench with Sir Leslie Knox Munro, New Zealand's ambassador to the United States and United Nations, and Chief Judge Henry W. Edgerton, LL.B. '14, of the United States Court of Appeals for the District of Columbia Circuit.

The two teams, arguing in the United States Supreme Court, will take opposing sides of the case, *Mastercrafters, Inc. v. Jaeger-LeCoultre, Inc.*

The facts are borrowed in large part from an unfair competition case recently



John Marshall Harlan

decided in the Second Circuit, 221 F. 2d 464 (1955). That case has been rewritten by Monroe H. Freedman, Faculty Assistant in charge of the Ames Competition, to in-

(See AMES FINAL on page six)

With three teams already chosen, the last semi-final round bracket for the Ames Competition of the Class of 1957 will be filled tonight when the Field and Kaplan Clubs clash in the James Barr Ames Courtroom of Austin Hall.

They will oppose one another in *Ames Historical Museum v. Oliver*, a case involving the alleged misappropriation of a \$1,200,000 trust fund. The argument will be heard by a three-man court headed by Justice Edward J. Lampron, LL.B. '34, of the Supreme Court of New Hampshire.

Justice Lampron will replace Judge Ernest W. Gibson of the United States District Court for Vermont, who was unexpectedly forced to cancel plans to preside at the argument.

The winner of tonight's case will enter the semi-final round and compete with the Blackstone, Casner Law, and Griswold Clubs.

The Blackstone Club became the first to enter the semi-finals when it defeated

(See QUARTER-FINALS on page six)

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400,000 Americans

The 400,000 American Indians are by far the worst fed, worst clad and worst housed group in the United States. These people, recipients of the poorest educational and medical services in the country, are in a state of social and psychological maladjustment.

This is a situation of which the American public is only dimly aware. The terrible poverty of the peoples of Asia and Africa prevails today on the Indian reservations. It is the relative insignificance of the Indian minority position which obscures from the public the fact, for example, that the infant mortality rate of our Southwest Indians is 139.4 per 1000 live births as compared with 33.2 per thousand for non-Indians in the same geographical area.

Present federal policy offers the Indian little solace. The termination legislation adopted by Congress in 1953 is designed to accomplish, in the words of Indian Commissioner Glenn Emmons, "three specific purposes: (a) terminate Federal trusteeship over tribal and individual property; (b) terminate special Federal service and (c) give Indians the same status as other citizens in the states in which they reside." On the surface this policy seems in accord with our democratic professions; it is rationalized on the grounds of giving the Indian his full freedom and citizenship and finally solving the Indian problem.

Unwise Federal Policy

However, this precipitate legislation harbors two serious defects. Emancipating the Indian would be an admirable objective, if he suffers under restrictions denying him full citizenship. Such is not the case. The Indian already has legal equality with his white neighbors and enjoys all the rights of full citizenship. According to the late Professor Felix Cohen, the mistaken notion of Indian inequality has proceeded from a somewhat blurred conception of (a) the trusteeship relationship with the Federal Government and (b) the fact that Indians receive Federal services rather than state services. The discredited concept of wardship, nevertheless, still persists to plague the Indian.

Second, the proposed rapid abandonment of Federal responsibilities toward the Indian will mean divestment of their lands and resources and the end of the Indian as a cultural group. In short, termination as envisioned will turn the Indians into the slum dwellers of Western towns and cities. Ample historical evidence substantiates this view; for termination enactments date back to the General Allotment Act of 1887, though none possessed the scope of present bills.

Federal-Indian law, though frequently violated, has served to protect the tribes in the states where they are situated. Indians were

weak, defenseless and poor. They had neither the means nor the knowledge to cope with the unscrupulous exploitation of their persons and property. It is certain that without Federal protection, however imperfect, the Indian would have vanished long ago.

Those conditions of weakness and poverty still prevail today. Cattle, timber and mining interests are pressuring for rapid termination. If the Federal Government withdraws its educational and welfare services, there is little likelihood that the states having fewer funds and a more hostile popular attitude will step in to fill the gap. Ending the trust status of Indian lands will seriously threaten their existence. Widespread alienation will result from land sales by Indians without the capital or knowledge to manage their now taxable lands as efficiently as the whites who desire to purchase them.

The policy initiated by the Indian Bureau in May, 1955, providing for more liberal issuance of individual fee patents only affords, as so often in the past, an opportunity for white interests to buy out potentially valuable Indian lands cheaply and quickly through a key tract purchase.

Of course, the eventual withdrawal of Federal participation is desirable. The issue, however, is when and under what circumstances. An abrupt end of Federal safeguards and services will not remedy the wide-spread Indian poverty, ill health and ignorance that constitute the real Indian problem. Before withdrawal is considered, the particular tribe should first achieve a satisfactory economic position and an adjustment to the white institutions that confront it.

The conditions which make Federal protection necessary must be remedied before termination. Indians should not be forced to alienate their lands because of economic pressures.

Indian Rehabilitation

Recently, the Indian Bureau has been placing its greatest emphasis (to the extent of \$47 million in 1954) on education and health services. On the other hand, Bureau appropriations for forest, soil and water, road, and technical aid in 1954 totaled only \$18 million. This imbalance between education and economic aid may have tragic consequences. The combination of education and poverty can lead only to social frustration and exploded aspirations.

A balanced rehabilitation program for each reservation, similar to that drawn for the Navajo and Hopi tribes in 1950, is necessary in order to build up the tribal economy and develop a self-reliant and self-sustaining Indian people. Such programs have not yet been drafted.

As a result of such a program, the long history of "palliative" federal expenditures will end and a period of "curative" aid with accelerating economic effects will begin. Such a program would clearly be in accord with President Eisenhower's recent proposal of a domestic Point Four program for the nation's chronically depressed areas. But the success of any program demands not only the sincerity of disinterested purpose but also a knowledge of the Indian and his physical environment.

A Moral Appeal

In a democratic state there is nothing irregular in the Indians' desire to retain their land base and preserve their heritage and customs. It is quite possible to be both an Indian and an American. As the Indian people develop, the exigencies of modern living will undoubtedly compel them to come to terms with the social and economic realities of American life. However, this does not mean that the Indian must lose his identity completely. In order for the Indian to have some measure of free choice, he must be helped to create conditions necessary for the exercise of freedom of choice.

An enlightened Federal policy cannot come into existence through the urgings of Indians unable to employ political or economic coercion. Neither expediency nor pressure is capable of being utilized to generate a "new look" in Indian affairs. The only appeal the Indians have is to our moral and humanitarian impulses. It is this kind of challenge which tests the ultimate stamina of a democracy.

Gallery

EDWARD J. DIMOCK
District Court Judge



Earnestly concerned with and actively participating in the development of the judicial process is Judge Edward J. Dimock of the United States District Court for the Southern District of New York. Judge Dimock, 66, has been a member of the Federal Bench since 1951.

Attacks Public Defender System

His latest work points out the dangers inherent in the public defender system, a proposed plan to provide counsel for indigent persons charged with criminal offenses. His article, "The Public Defender: A Step Towards a Police State?" in the March issue of the *American Bar Association Journal*, expresses his belief that government-paid lawyers, in the capacity of public defenders, would represent a shocking infiltration by the government into a field where it least belongs.

Judge Dimock maintains that the advantages of the public defender system, without its dangers, can be achieved. He recognizes the inadequacies of the time-honored system of appointing members of the Bar to defend indigents, but argues that direct government intervention is not the answer. He suggests public funds be made available for special assigned counsel or, preferably, that privately supported legal aid societies be created on a large enough scale to perform the task.

The major objection to the proposed public defender system, according to Judge Dimock, is that a government lawyer, with the same relationship to the court as a prosecuting attorney, would be ill-inclined to display the vigorous par-

Letters to the Editor

TO THE EDITOR OF THE RECORD:

I was surprised by the remarks of Professor Paul Freund on the steel seizure case as reported in the March 8 issue of your fine paper.

Professor Freund in his remarks to the Law School Democratic Club considered the court's summary action in the steel seizure unfortunate and said it would have been better 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."

My company was seized and was a party to the legal proceedings. I can fully appreciate Professor Freund's characterizing the steel seizure as a "burning political question," but I am surprised that he feels the illegal seizure should have been allowed to continue even for a short time while Congress deliberated ratification of the illegal act. It strikes me as somewhat akin to the argument that we may in this country jail an innocent man until the legislature passes a law making criminal the action for which he has been jailed.

GEORGE E. FLACCUS, JR., LL.B. '40

TO THE EDITOR OF THE RECORD:

I have read in the HARVARD LAW RECORD that a committee has been appointed to study means of reducing pressure on students. I take this opportunity to express my opinion that this so-called pressure, which I prefer to call competitive spirit, is the most outstanding and most valuable characteristic of the Harvard Law School.

The effect of this spirit is that most students tend to exercise to the utmost whatever abilities they possess. If this involves hard work and self-discipline, so much the better. It is true that a competitive spirit engenders pressure and that the degree of pressure varies directly with intensity of the spirit. But it is also true that the salutary effect is greater or less according to the intensity of the spirit.

Without this spirit and without the pressure which necessarily accompanies it, the Harvard Law School might well become just another good law school instead of the finest law school in the country.

J. ASA ROUNTREE, LL.B. '52 ('54)

tianship each defendant deserves. Even if this relationship could be minimized, and the attorney could be objective about his client's interests, the system is still inadequate. A defendant should not be tried first by his attorney, then by the court; it is the duty of a lawyer to see that his client is accorded every right and protection the law affords.

Judge Dimock is amazed that anyone seriously faced with the prospect of the public defender system and its implications could support the plan. Not only is it necessary to educate the public, he believes, but also lawyers, and even the National Legal Aid Association which has been willing to adopt the plan. Judge Dimock feels certain that adequate information on the subject will point out its pitfalls and harmful repercussions.

Judge Dimock's interest in the American Bar Association is not limited to writing articles in its *Journal*. He has held numerous state and New York City posts in the Association, is a former member of the Board of Governors, and since 1944 has been a member of the Board of Editors of the *Journal*.

Deplores Apathy Toward the ABA

Speaking of the Association's current drive to double its membership, Judge Dimock deplores a prevailing attitude among some lawyers to shun the Association because they "don't get enough out of it." He maintains that while there are numerous benefits to membership too often overlooked by an outsider, the Association is not a guild or a trade union. Membership in the Bar Association should be like membership in church, says Judge Dimock, it is not a question of what it can do for the individual member; it is a duty that every lawyer has to his profession.

Judge Dimock himself has served the profession in many varied capacities since acquiring his LL.B. from Harvard in 1914 after an undergraduate career at Yale. A member of the New York law firm of Hawkins, Delafield and Longfellow from 1918 to 1941, he later served as State Reporter, editing official law reports for New York from 1942 to 1945. He then served a term as chairman of the Appeal Board of the Office of Contract Settlement from 1945 to 1948, sitting as a member of the Board until his appointment to the Federal Bench in 1951. He also lectured on Municipal Corporations at the Yale Law School from 1941 until 1946.

Judges Moot Court

Still taking an active interest in student work at the law schools, Judge Dimock each year acts as a judge for moot court arguments at Yale, Columbia, and the national Moot Court Competition as well as the Harvard Ames arguments.

As this brief recitation of his activities suggests, Judge Dimock wastes little time and has no sympathy for procrastination in others. As a demonstration of determined action by a handful of earnest men, he refers to the elimination of the bottleneck in his own Southern District of New York, once the shame of the Federal judicial system. Since the fall term, tremendous improvements were achieved and the bottleneck is now history.

The resolute performance of Edward J. Dimock throughout his career has earned him, as well as the court he represents, the admiration and respect of the legal profession.

—E. Levin

Recent Articles

RIGHT TO A PUBLIC TRIAL

Charles W. Quick, Associate Professor of Law, Howard University School of Law, "A Public Criminal Trial," 60 Dickinson L. Rev. 21 (1955).

There is a conflict in the cases as to the meaning of "public trial" and as to the nature of the right. The majority view is that the general public must be admitted, and the court must justify any exclusion. The minority hold that the trial must not be "secret," and the court may exclude the public within reasonable limits. By the latter view the accused must show a harm before he can get a remedy. For this reason the majority view seems better, since one does not condone violation of a right because of failure to show damage—the violation of the right itself constitutes the damage. The right may be so fundamental that the accused cannot waive it.

STATE LABOR REGULATION

Maurice C. Benewitz, Lecturer, Department of Economics, Michigan State University, "Nature and Effect of State Right-to-Work Laws," 1 Wayne University L.R. 165 (1955).

Many states have passed statutes that affect the closed shop, union shop or other varieties of union security agreements with employers. The effect of these laws will be to increase union strife by relaxing the pressure against union membership defection. Collective bargaining—the aim of federal labor legislation—will be impeded rather than promoted. Legislation which permitted union security but which prevented abuses against individual workers would be more beneficial. Massachusetts has an act providing for appeal to the state industrial commission by any worker who claims unfair labor disciplinary action.

American Indians: People Without a Future

By RALPH NADER

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"We are people who are better known for what we were not than what we were, for what we are not than for what we are."

—A Crow Indian, 1955

American historical and fictional writing have instilled in the American public a misinformed and highly inaccurate view of the American Indian.

What our forefathers conquered, according to the writers, was an almost empty land whose tranquility was disturbed by a few scattered groupings of wild savages whose chief vocations were scalp-collecting, pottery-making and dancing. These primitives, so the myth goes, steadily receded before the onrush of "civilization" and have now become the "Vanishing American" of novel and poem.

There developed a voluminous history of the American idea of the Indian as a savage, a concept indispensable to a righteous and ethnocentric people appropriating a continent. Even today, on the screen and in cheap fiction, the "bloodthirsty Indian" has too often been used as an ugly background against which the virtues of our pioneers may be projected.

In more recent times a more refined concept of the "savage" Indian performs another function. It provides a readily-available rationalization for those who covet Indian lands and resources. Bureaucrats promote programs to "liberate" the Indian under the mistaken notion that Indian culture and misery go together.

There is also a strain running through our literary heritage which has depicted the "noble" side of the aborigine. At times this noble savage theme has done the Indian more harm than good.

Countering the common belief, Jack Schaefer, author of "Shane", wrote: "These natives, on the whole, were not as savage as the Europeans who called them savages. They had a distinct and in some respects highly developed civilization. . . In the fundamentals of human decency, the simple amenities of daily life, in the relationships between man and man and between man and his God, they were easily as refined as the Europeans. But from the conquerors' point of view they were guilty of two sins: They were different; they were in the way. So they were called savages."

The Legacy of Indian Culture

Our historians have been almost exclusively concerned with influences emanating from Europe. A comprehensive study of the impact of Indian culture on American society would reveal some important insights into the contributing cultural elements that make America what it is today. The material and institutional impact of Indian culture remains inadequately understood and largely underestimated. Space limitations necessarily require only a superficial statement of such contributions.

Material Contributions

The changes that American Indians wrought in the life of our pioneers were far more impressive and less destructive than any changes "white" teachers have yet brought to Indian life. Early settlers recognized that Indian modes and methods were functionally adapted to their physical environment. Four-sevenths of our national farm produce consists of plants domesticated by Indian botanists of pre-Columbian times. Indian agricultural

products also had a tremendous impact on the European economy. The story of the potato in Europe need not be retold. Methods of planting, irrigation, cultivation, storage and utilization were also acquired by settlers from the Indians.

In medicine, as in the production of food and textiles, the conventional picture of the Indian as an ignorant savage is far removed from the truth. Cocaine, quinine, cascara sagrada, ipecac, arnica and other drugs were developed and used by the Indian before Columbus landed. In the four hundred years that physicians and botanists have been examining and analyzing the flora of America, they have not yet discovered a medicinal herb unknown to the Indians. The social signifi-

fast routine of American families. A classic study of Cheyenne law by the anthropologist E. Adamson Hoebel and Prof. Karl Llewellyn provided insights into our own jurisprudence. Indian methods of child training have caught the attention of psychiatrists and pediatricians, who are now comparing these methods with the rigid schedules and formulas that have molded our antiseptic babies of recent decades.

Second, recognition by legislators, administrators and the American public of the true nature of our Indian heritage has great importance in freeing the Indian from a contemptuous and grotesque stereotype. It also may diminish the persistent themes of pity, superiority and the white man's burden,

Land Purchased From Indians

American children are taught that we bought our land from France, England and Spain. But historical research reveals the falsity of this belief. Practically all the land in the United States was purchased not from Napoleon, etc., but from the original Indian owners, albeit under considerable duress. All we bought from Napoleon was the power to govern and tax; but not the land, which was not his to sell. A conservative estimate would put the total price of Indian land sold to the United States at \$800 million. This fact is of more than academic interest.

Part of the consideration for this Indian land was the promise of goods and services, which today comprise a substantial part of

The court (with Chief Justice Warren and Justices Douglas and Frankfurter dissenting) held that only when Indian title has been recognized by treaty or act of Congress is a taking of land or natural resources by the Federal Government constitutionally compensable. Although Tee-Hit-Ton title was not recognized, this decision does not affect the majority of Indian tribes who have treaty recognition of original title.

The Tee-Hit-Ton holding, however, reveals two significant factors. Although the general recognition of original Indian title remains unimpaired for most tribes, the rights derivative from this basic right are still in a highly unsettled state and are likely to be subject to indeterminable distinctions and interpretations in the future. Even a reasonably clear court attitude cannot be culled from the history of Indian cases regarding the finer meanings of original title.

Second, as the Court noted, the question of Indian title "extinguishment" is to be decided not by the courts, but by Congress. *U.S. v. Sante Fe Pac. R.R.*, 314 U.S. 339, 347 (1941). Furthermore, Congress, by terminating, as it already has in some tribes the Government's trustee relationship to Indian land, can, as we shall see, set in motion forces rendering the discussion of original Indian title academic as far as the retention of the tribal land is concerned.

Indian Survival Based on Land

Acknowledgment of the right of Indian tribes to reserve portions of their original domain for themselves was the one thing that made it possible for many Indian tribes to regroup their members and survive as an ethnic group. To most Indians, the reservation is all that stands between him and the spiritual and physical destruction that most non-reservation tribes have undergone. The fact that original Indian title, which played so great a role in the past in preserving Indian land, is again thrown into confusion demonstrates the uncertainty of this legal safeguard. At this point we must review the history of Indian Affairs.

Government Rule's Discouraging Past

After the Civil War an explicit federal policy of Indian assimilation was begun. This was supposedly a far-sighted protective policy to make the Indian over in the white man's image so as to render him more capable of protecting himself.

As outside pressure on Indian lands increased, the inclination of Indians to withdraw became apparent. White farmers and cattlemen



Cliffs of New Mexico mesa overlook village on Zuni reservation. Pueblo villages are frequently situated on top of these mesas where the famed Kachina ceremonials take place each year in the winter.

cance of such material contributions is impressive.

Institutional Influences

As is being illustrated in "underdeveloped" countries today, a change in material living standard inevitably influences, destroys, and creates institutional patterns and modes of behavior. The impact of Indian material culture undoubtedly has had important repercussions on our society from our economy to the homestead system, and in land use, athletics, our boy scout movement and our national worship of sun, air, and water.

But the Indian gave more in the realm of the intangible. The distinctive political ideals of young America owed much to a rich Indian democratic tradition—a debt often recognized by statements of our leading colonists. The pattern of states within a state that we call federalism, the habit of treating chiefs as servants of the people instead of masters, the insistence that the community must respect the diversity of men and their dreams—all these things were part of the American way of life before 1492.

Freedom of Indian Society Praised

Franklin carried his admiration for the great Iroquois Confederacy to the Albany Congress, and Jefferson made numerous references to the freedom and democracy of Indian society which achieved the maximum degree of order with the minimum degree of coercion. The late Felix Cohen, noted legal scholar and Indian authority, remarked: "those accustomed to the histories of the conqueror will hardly be convinced, though example be piled on example, that American democracy, freedom and tolerance are more American than European, and have deep aboriginal roots in our land."

Ingenuity Still Vital

At this point the reader may well ask: "Of what relevance is this buried legacy to the present and future?" First, there is still much that the Indian can contribute to our cultural enrichment. Indian ingenuity in agriculture, government, medicine, sports, education and craftsmanship is not at an end.

Let a few examples do for many. Not long ago, the rediscovery of an old Indian dish, toasted corn flakes, revolutionized the break-

fast routine of American families. A classic study of Cheyenne law by the anthropologist E. Adamson Hoebel and Prof. Karl Llewellyn provided insights into our own jurisprudence. Indian methods of child training have caught the attention of psychiatrists and pediatricians, who are now comparing these methods with the rigid schedules and formulas that have molded our antiseptic babies of recent decades.

Legal Relations With Government

The history of federal Indian law has displayed an increasing recognition (due mainly to an exemplary record by the courts) of the principle that Indians are entitled to the same legal rights and responsibilities as non-Indians. The legal status of tribal Indians, although in some respects different from, is not inferior to that of their countrymen. By Act of Congress, June 2, 1924 all Indians born within the territorial limits of the United States were declared citizens.

Restrictions on Indians' legal capacity to sue, make contracts, vote, hold public office, and purchase liquor have been swept away. In practice, however, full citizenship rights of Indians are subject to the abuse of discrimination and the limitations of prevailing economic and social conditions.

The unique aspect of the Indians' legal status is their membership in special political bodies, tribes, which largely take the place that states and municipalities occupy for other American citizens. However, their dependency on and control by, the Federal Government is much greater than state political bodies due to the trusteeship relationship between the Government and the tribe.

Tribal and Federal Sovereignty

That an Indian tribe is a political body with powers of self-government was first enunciated by John Marshall in *Worcester v. Georgia*, 6 Pet. 515, 559-560 (1832). Since that time, the Supreme Court has held that tribes have self-governing powers except as those powers have been modified or repealed by act of Congress or by treaty. Though legislative and executive orders have often been reluctant to accept this principle of tribal self-government, the laws, customs and decisions of tribal governing authorities still have legal effect over large fields of civil and criminal law (major felonies excepted) and intra-tribal affairs in general. However, Indian Bureau authority has often been used in an over-ruling capacity.

This historic exemption from the operations of state law derives from the fact that the Constitution vests in the national government, rather than in the states, the three powers upon which our law of Indian affairs is primarily based—the war-making power, the treaty-making power, and the power to regulate commerce with Indian tribes.

The practical effect of federal sovereignty over Indian affairs has been to protect the Indian from oppression and extermination by local interests. In *United States v. Kagama*, 118 U.S. 375, 384 (1886), Justice Miller wrote: "Because of the local ill-feeling, the people of the states where they are found are often their deadliest enemies." Echoing this warning repeatedly, the federal courts have intervened to restrain the increasingly subtle attempts of local interests and authorities to infringe upon Indian rights.

Federal aid to tribes. Also stipulated in these land sales was that certain property taxes on land be held in trust by the Government. It was primarily to furnish these services that the Indian Bureau was established.

No one expects these services to continue in perpetuity, but the promises did imply the achievement of a certain standard of living. Indians believe that the sudden termination of these services, as proposed, would be a serious breach of trust. Opponents of federal services to Indians should note that the per capita sum of these services is substantially less than Federal and state services provided their "white" neighbors.

Original Indian Title

Federal Indian property law strongly tends to recognize that the Indians' right to their land is not a right derived from our government, but a right which they held prior and maintained subsequent to the discovery of this continent.

Federal relations with Indians were regularly handled as part of our international relations. Our concept of Indian title derives only in part from common law concepts. As in other phases of law which turn on international relations, common law concepts have become heavily overlaid with principles of continental jurisprudence.

Though recognized as far back as a Congressional ordinance in 1787, Supreme Court decisions held that Indians could own land without having received a grant from a European king or the United States Government and that Indians were the true owners, both from the public and private viewpoint. *Johnson v. McIntosh*, 8 Wheat. 543 (1832); *Worcester v. Georgia*, 6 Pet. 515, 543 (1832).

Indian land rights were often honored in the breach by both settlers and administrative agencies. Federal court decisions frequently compensated Indians for violations of property rights. However, the real opportunity for Indians to recover for intrusions on their lands was not provided until the creation of the Indian Claims Commission in 1946 enabling tribes to present claims against the United States without obtaining prior Congressional approval. Since that time, several tribes have collected millions of dollars.

Indian Title and Federal Power

The relation of Indian land title *vis-a-vis* the Federal Government presents a difficult problem of interpretation of whether and when Indian rights can prevail over the sovereign.

Supreme Court holdings range from the statement that Indian title is "as sacred as the fee simple of the whites" and any Federal purchase should be based on Indian consent *Michel v. United States*, 9 Pet. 711, 745, 746 (1835) to the view that the exclusive power to extinguish original Indian title by purchase resided in the Federal Government. The latter view is more in consonance with the realities of Federal power over Indian land. What is undeniably clear is that Indians can neither alienate individual nor tribal lands without prior Federal approval—the Federal Government being the trustee of Indian lands.

The subject of original Indian title came up again in the recent case of *Tee-Hit-Ton Indians v. United States* 348 U.S. 272 (1955).



Ancient pueblos, with some modern changes, remain home for the Zuni.

supported assimilation, seeing in it a chance to acquire more of the rapidly diminishing reservation. "Melting pot" evangelists were irritated at the continuance of a geographically isolated ethnic group.

It was believed that the tribal ownership of land and the maintenance of tribal sovereignty constituted the chief bulwarks to Indian assimilation. The legislative panacea designed to assimilate the Indian was the General Allotment Act of 1887. This Act authorized the division of tribal land holdings into individual parcels which were to be held in trust by the Government for 25 years, and then patented in fee simple and made alienable. Thus a reservation suitable for agriculture or grazing would be divided into 160 acres per family. The remaining land was to be sold to white settlers with proceeds deposited in the U.S. Treasury to the credit of the tribe.

The Allotment Act found the Indians in 1887 owning 138,000,000 acres. By 1933, 91,000,000 acres of this land, generally the most productive, passed from Indian to white ownership. The Indian Bureau rushed

(Continued on page four)



Indian dwellings in the Southwest with well in foreground—a man-made oasis in a severe environment. Kinship groups live in these apartments.

(Continued from page three)

beyond the law and forced the acceptance of fee patents upon Indians. This drew the land onto the local tax rolls and forced the poverty-ridden Indian to sell.

Also, the Indian land that remained on allotted reservations was dotted with white holdings controlling strategic water rights or means of access to other lands. Purchase of a key tract forced more Indians to sell. It was not until 1934 that Congress finally forbade the further allotment of lands.

The period from 1887-1929 was characterized by other measures imposing assimilation without any understanding of the cross-cultural problems involved in such a transition. Whether it be attributed to corruption, evil design, or lack of knowledge, this policy was the harshest culture bullying in American history.

Government rations were often withheld to starve Indians who would not forswear their religion and tribal customs and loyalties. Tribal leaders who would not serve as puppets of the Indian Bureau or the Army were stripped of all authority.

The onslaught against Indian religion took the form of a criminal code forbidding religious practice. John Collier, Commissioner of Indian Affairs from 1933 to 1945, wrote of this era: "... it may be that the world has never witnessed a religious persecution so implacable and so variously implemented."

To break the relationship of the generations, many Indian children were placed in boarding schools where the use of native languages and everything reminiscent of Indian life was excluded. The children were compelled to join Christian churches. The education they received had little relevance for the life they would lead on their reservations.

These assimilatory measures disrupted the internal order of the tribes. Very often, only superficial aspects of white culture were accepted by the Indians and there developed dysfunctional patterns created by Indians in an attempt to comply with white demands and still avoid assimilation.

Legislative Reform Brings Improvement

The impending destruction of tribal cultures was finally halted by the Indian Reorganization Act of 1934 (IRA). This legislation was in response to a demand for a new Indian policy which arose in the late Twenties.

The philosophy of the IRA was predicated on the belief that Indian culture should be regenerated to promote Indian well-being. Fundamental to this program were the preservation of the land base, organization of tribal self-government, the elimination of remaining legal restrictions and the recognition that people once freed must be freed for something.

In this spirit, Indians were given the right to establish corporations. Two-thirds of the tribes took advantage of this opportunity. Tribal societies were empowered and aided in undertaking political, administrative and



Navajo women in native dress holding their papooses, Canyon Chelly, Arizona. The artistic blanket made of coarse wool and the silver necklace adorned with coral and white shell are products of Navajo craftsmanship.

However, the interpretations of many of these policies by later legislative order and by administrators down to the reservation level often resulted in serious discrepancies between the stated goals of policies and the actual consequences—a situation often leading to Indian disillusionment with Government programs.

The IRA was a daring excursion into the field of Federal treatment of ethnic minorities. At once it violated the hallowed "melting pot concept". It enunciated the belief that an Indian could own a car, volunteer for the Army, pay his taxes and still continue being an Indian. Patriotism, ethnic preservation and participation in the American social and economic milieu all in one package!

The theory of the IRA has not been universally accepted by any means and, as we shall see, it is undergoing a complete reversal at the present time. Critics of the IRA have inveighed against its undue extension of Indian isolation and non-assimilation which they consider harmful to the goal of Indian adjustment.

But it was not the theory of the IRA which caused the partial failure of the program; rather it was the inability fully to implement all the program. In any field of human relations, one-sided emphases result in failure to promote the whole. For example, to promote an educational program without solving the employment problem produces serious frustrations and defeats overall objectives.

Then too, policies were never carried out with sufficient personnel, funds and the quality of information necessary to cope with the prevailing social situation. The salient feature of Indian administration and legislative action has been the failure to take into account the implications of nice sounding policies. Objectives cannot be achieved by decree, whether it be the assimilation or the preservation of autonomous Indian tribes.

When parts of a way of life are destroyed or undermined, something must take their place to prevent moral and social dissolution. Since its establishment, the Indian Bureau has failed to follow through beyond appealing but potentially deadly policies.

Dillon Myer Takes Over

With the appointment of Dillon Myer as Commissioner of Indian Affairs in 1950 the hopeful atmosphere began to change rapidly. "The erosion of Indian rights" was the phrase which Mr. Cohen applied to the Myer regime (1950-1953).

During this period, interference with Indian voting rights, tribal elections and the right of certain tribes to select their own legal counsel increased. This latter infringement prompted the American Bar Association to appoint a commission which rebuked the Indian Bureau for over-reaching its authority. Personal customs and religions were again interfered with. Telling Indians when to go to bed and when to get up is not just a whimsical bit of paternalism, but has deep roots in a long tradition of Indian Bureau policy.

Consultation with Indian tribes regarding policies or legislation affecting their welfare virtually ceased. Restrictions on the use of property were imposed. Arbitrary standards of Indian qualification for civil service employment were established. Experts in Indian affairs were not consulted. A shroud of secrecy hung over the Bureau. Commissioner Myer withdrew from public scrutiny

facts upon which public appraisal of his administration must largely rest.

Before discussing present Federal Indian policy which has caused many to label these days as the "mounting crisis in Indian affairs", it is appropriate to glance at the contemporary situation of the Indian.

Present Status Of the Indian

The American Indian is at the bottom of the nation's income ladder. Compared with other minorities in the same locality, he fares badly. Data on Indian income is incomplete. However, figures from the Navajo tribe (pop. 75,000) show that out of 14,950 families only 450 earn more than \$1500 a year. The median family income from agriculture is \$730 and those earning their livelihood from other sources including wages, the median is \$855.

This abysmally low income is bolstered somewhat by "indirect income" from the tax-free status of property held in trust and free medical and educational services. Other tribes such as the Klamath (Oregon) and the Menominee (Wisconsin) have higher income levels. There are, however, smaller bands of Indians with even lower family income than the Navajo.

Indian consumption habits have a detrimental effect on the proper use of income. Partially influenced by traditional customs and partially affected by the "emulation effect" characteristic of underdeveloped areas, Indians often spend their money on "white" symbols of prosperity.

Reservation Resources

The land area of the Indians from which they derive their livelihood constitutes 56 million acres unequally distributed among the tribes and situated for the most part in unfavorable climatic belts. As many as 100,000 Indians are landless and for many others the land base is insufficient. Accurate generalizations about tribal lands are difficult since there are great differences as to the quantity and quality of land from one reservation to another.

For example, the Klamath Indians of Oregon possess some of the finest timber lands in the country, while the Papago reservation consists of some three million acres of Sonoran desert where 270 acres are needed to feed one cow. Most reservations are between these two extremes, but the tragic situation is that grazing lands and minerals are not being utilized by Indians due to lack of capital and technical knowledge.

Health—Lowest Level

With the transfer of the Indian Bureau's Branch of Health to the Department of Health, Education, and Welfare in 1955, a full-scale and adequately financed program for the prevention and cure of disease among Indians has been pursued.

A somewhat conservative description of Indian health is the following summary from the 1954 report of the Commissioner of Indian Affairs: "Death and disease among the Indians continue to decline. Yet the health of the Indian people, although improved, remained at a level below that of the general

population. Proportionately, the Indian population during 1953 had twenty times as many deaths from measles as did the non-Indian population, nine times as many deaths from tuberculosis, four times as many deaths from pneumonia and influenza and three times as many infant deaths".

Education: A Start

There has been a gradual improvement in the amount and quality of education received by Indian children. Each year, a higher percentage of Indian children are in school and a higher percentage enter upper levels of education. Total school enrollment of Indian children, ages six to eighteen was estimated in 1954 as 104,000. This can be compared with the 60,000 Indian children enrolled in 1947.

The great present weakness in the educational attainment of Indians is the low percentage of high school graduates and, consequently, the small number that can get additional training. Notwithstanding the improvements in Indian education, the school day is often extraordinarily short, the quality of teaching is inferior and there are still many children not enrolled.

Indians' Dilemma: Between Two Worlds

Social workers, missionaries, administrators and law enforcement officers have failed to appreciate and understand the problems of cultural maladjustment affecting the Indian and resulting in deficient social control and disorderly behavior on and off the reservations. People working with the Indian pay much attention to this disorderly behavior. They assume that the value orientations and motivations, rewards and punishments composing the "working structure" of social control in our society also applies to Indians. Thus Indian violators of accepted modes of behavior and law are thought to be the product of individual deviation rather than the product of social and cultural deviations. It is this inability to understand the cultural and psychological background of Indian truancy which accounts for the greatest failures of Indian administrators and private groups working for his well-being.

The difficult adjustments demanded by the acculturation process involve an uncomfortable conflict of value systems. The dissolution of traditional systems of social control without the acquisition of the equivalent structures of "white" society has produced a condition of social disorganization demanding the utmost in guidance, knowledge and patience for its treatment.

In his study of the Navajo, Professor Clyde Kluckhohn of Harvard has described the cultural position of many Navajos as "between two worlds". Most of the Navajos living on the reservation live in a world which is neither "white" nor Navajo in the traditional sense,

are seldom received on terms of social equality and learn to expect employment inequality. Those same groups of whites who had goaded them to give up "ignorant Indian ways" now say: "You can never trust these school boys. Give me a long hair any time." "Educated Indians are neither fish nor fowl. They give me the creeps."

Rejected by the white world they have made so many emotional sacrifices to enter, some attempt a bitter retreat to the Navajo reservation. Others, in sour disillusionment, abandon all moral codes. Still others achieve a flat and empty adjustment.

Leading Navajos surrounded by powerful pressures to change know that indifference and withdrawal can no longer serve as effective responses. They are conscious of the need to initiate change, but as the way is not yet clear, anxiety and suspicion permeate Indian-white relations. Finally, the fact that Navajos are surrounded by several sub-cultures (Mexican, Negro and White) which are changing at a rapid rate has added enormously to Navajos' difficulties.

Tribal Government

Since the passage of the IRA, the Indian Bureau and the various tribes have had joint responsibility for reservation affairs. The scope and degree of authority granted by the Federal Government to tribal governments varies from tribe to tribe with the shift of responsibility being greater in larger tribes like the Navajo. Although tribal powers are limited, frequently by-passed by the Bureau, and emasculated by bureaucratic red tape, the fact remains that the tribes have come a long way since 1934.

Indian leadership has been developed and tribal councils have taken an active interest in tribal affairs. However, political consciousness among the tribes-people is still at a low ebb and does not provide the Council with strong grass roots support.

This political apathy is not only due to the low educational level of most Indians but also to a fatalism engendered by the frustration by the authority of the Bureau of the aspirations and demands of generations of Indians.

In the economic field, a number of enterprises initiated by the tribal councils have failed and have made Indian leaders hesitant about proceeding in this area. The difficulties attendant upon an Indian political body operating in the business field are easy to understand: unfamiliarity with modern business practices and lack of capital. The basic objective of tribal enterprises should be the creation of employment openings on the reservations. Profitable operation is not to be the primary consideration.

As things stand now, the development of self-government, though not too successful as yet, must be encouraged if self-reliant growth and well-being is to be fostered. The heritage of paternalism which has bred such dependence on the Bureau by the Indians must be cut off as soon as possible.



Two-story adobe pueblo helps to lessen the heat of the desert sun. The walls are 20 inches thick and are made of stone cemented and plastered with adobe mud. These terraced apartment houses are irregularly grouped into streets and plazas.

a world where values are shifting and where rules of conduct are in a state of chaos.

Professor Kluckhohn writes: "Most of the heavy stresses and pressures for readjustment to white ways have come to the bilingual generation of Navajos, particularly the school children; yet even those who speak English cannot escape all the frustration and conflict introduced by the impact with white society."

Painful Dilemma

It is the English-speaking generation which must make painful choices. They are separated by a deep cultural gap from the older generation, having been educated at a boarding school or having served in the army. When they settle off the reservation they are cut off from their kindred and traditional customs. They are torn between the psychic satisfaction of the old culture and the material comforts of modern life. This no man's land of cultural maladjustment is an extremely difficult one to live in.

Educated Navajos attempting to assimilate find themselves in a difficult position. Rewarded as children in school for learning "white ways," as adults they are shunned for acquiring skills which make them competitors of their white neighbors. They

The Off-Reservation Indian

Rapid population increase and underdevelopment of reservation resources are primarily responsible for the presence of about 100,000 Indians in American cities and towns. Gov'ts at their optimum development will not provide a decent living for more than 60% of the present resident population. Such a prognosis should be treated with extreme caution since adequate reservation surveys are non-existent.

At any rate some of the Indians leaving the reservation find permanent agricultural employment but most gravitate toward urban areas where they settle in slum districts. The situation of Indians near such towns as Tucson, Arizona and Rapid City, South Dakota is affected by the usual factors of exploitation, discrimination, resentment, and exploded aspirations.

During the post-war period, Indian Bureau officials recognized the need to provide a better framework for the integration of off-reservation Indians into white communities. A formal program of relocation was instituted in 1951.

(Continued on page five)



Ten year old Zuni boy twirling a home-made lasso.

economic self-government. Land allotments were stopped and purchase of more land was provided for by a special credit fund.

A system of agricultural and industrial credit was established under which the repayment record of the tribes was excellent. Useful education for children and adults was accompanied by a program promoting self-help in developing the tribal economy. Research, considered essential to the program, was employed as a basic tool of action.

Substantial Improvement

As a result of this program, an atmosphere of hope and optimism spread over the Indian reservations. For the first time in 80 years Indian holdings increased—from 48 to 52 million acres. Indian real income doubled. The death rate was cut in half. Cultural and religious liberty was restored.

Federal Policy-- Misguided Zeal, Private Pressures

The central feature of Congressional policy in the 82nd and 83rd Congresses has been aimed at the solution of the "Indian problem" through termination of federal responsibilities for Indian tribes. This general policy statement (enacted as House Concurrent Resolution 108, Aug. 1953, is given local application when specific acts are passed regarding particular tribes. Termination bills for six Indian tribes have already been passed.

The general intention and procedure for accomplishing termination may be summarized as follows:

(1) End all federal relationships with the tribe, including trusteeship of tribal and individual property, all supervision of tribal assets and tribal government and all federal services;

(2) Transfer to the state the services formerly provided by the federal government. Bring the tribe and all its members under the laws of the state (P.L. 280 enacted July 1953). Cancel all provisions for tribal self-government, except the self-government allowed any community under state laws. Cancel federal corporate charters;

(3) Transfer tribal assets to individuals, partnerships, corporations or to a trustee as the tribe elects: allow tribal members to sell their undivided share in tribal assets;

(4) Distribute tribal money on deposit in the U.S. Treasury on a per capita basis. Along with this policy of federal withdrawal is a small increase in appropriations to give the larger and less acculturated tribes better facilities for health, education and economic development.

Finally, the Indian Service's "voluntary" relocation program for relieving overpopulation on the reservations by locating Indians in major cities is being pushed vigorously.

Termination Attacked

The most critical attack on the present termination of federal government services has come from Oliver La Farge of the Association on American Indian Affairs. Supported by many Indian leaders, he believes that a realistic investigation of recent policy trends show a concentrated program to solve the "Indian problem" by doing away with the Indian.

Mr. La Farge sees three deadly factors working in unison to support present Federal policy—impatience, ignorant good intentions and greed.

Impatience—Over the fact that a hundred years of Federal guidance has still not enabled the great majority of Indians to be able to take care of themselves without "special help". He remarks that the amazing thing is not that the Indians did not make more progress, but that they were able to survive and retain so much of their integrity.

Greed—On the Navajo reservation are valuable minerals; certain Alaskan tribes lay claim to excellent salmon fishing areas; on the northern plains and in the Northwest there are valuable grazing and timber lands. Employing legal counsel, Indians no longer allow predatory interests to rent their lands for a pittance and to overturn their rights.

Cattle, fishing, timber and mining interests are now pushing for rapid termination. Shouting the slogan of liberty and equality for the Indian but significantly deleting the third part of this trinity—brotherhood—they are prevailing on the impatient and uninformed to annihilate the Indian land base for their own commercial advancement.

Concern Voiced

What specifically do Mr. La Farge and the Indians fear? Basically it is that termination and concurrent policies will spell the end of the tribal land base and leave Indians homeless, hapless and destitute. Terminating the trustee status of Indian land immediately places them on the property tax roll. They are free to alienate their share of tribal lands but too poor or unknowledgeable to work the land profitably. Indians will be tempted by the quick cash offerings of white men. The specter of the "key tract" will appear with ever-increasing frequency. It has happened in the past and will be stepped up rapidly under termination.

Once Indians become landless do they have other employment opportunities? Lacking employment skills, having little or no command of English, despised by neighboring communities, thrown into strange cultural environments and situated in the poorer economic areas in our country, the Indian is not likely to acquire an adequate livelihood.

Governed by state and local authorities hardly sympathetic to Indian needs and more easily influenced by local pressure groups than is the Federal Government, Indians rightly fear that necessary welfare services will not be forthcoming.

The Relocation Program—Glossy Veneer
Does the relocation program provide a par-

tial answer to Indian misery? If administered wisely and gradually one can expect some Indians to benefit from it. Some 5000 Indians have been relocated in the past two years and with appropriations nearly doubling this year to \$900,000, the number of relocations is expected to increase.

There are, however, serious flaws in the Bureau's relocation program. The screening process for relocation application has not been adequate. Too often aged, physically handicapped and wholly unacculturated Indians have been relocated.

The relocation agencies in large cities are doing, in many respects, a woefully inadequate job. The function of these agencies has really been to "place" the Indians and then forget about him. Perhaps this may explain why Indians, tempted to leave their homes by Bureau propaganda of the "land of sunshine awaiting them", are bitterly disillusioned and are returning to the reservations at an alarming rate—a statistic conspicuous in its absence from Bureau figures.

The second and more fundamental criticism of the program is that the Bureau is placing too great an emphasis on relocation and not attempting to build up the reservation economy thus promoting a type of squeeze operation. For example, considerable amounts of funds were recently transferred from the Welfare and Relief funds of the Bureau to finance relocation.

Responsibility Delegated

With adequate development many reservations could support most of their population. It is interesting to see what the Bureau has done in this respect. The drafting of comprehensive rehabilitation programs—in which lies the only real hope for Indian welfare—has been delegated to a proposed private non-profit corporation which is supposed to secure the necessary funds from private foundations. These economic surveys are basic to any proposed program of reservation rehabilitation. It does not seem wise for the Bureau to delegate such an important part of its work to a private committee which has not yet established the corporation since the idea was conceived two years ago.

It is difficult to see how the Bureau can place so much hope on relocation even if administered wisely. From the Bureau's own figures, it can be seen that the cost of expanding the program is practically prohibitive. The relocation of 2,553 Indians in fiscal year 1954 cost \$589,600. It is the practical result of termination which makes mass relocation appear to be a necessity.

If the Bureau would consult with the Indians themselves they would discover that these people desire a vigorous program of reservation development where acculturation comes gradually and the frustrations of maladjustments are minimized.

Negative, Fearful And Unenthusiastic

A democratic administration of Indian affairs should know the attitudes of those administered in order to be able to predict and evaluate the "success" of any program. Too often in the past the Indian Bureau has proceeded on the assumption that objectives could be achieved by fiat. This belief is predicated to a considerable extent on the largely valid assumption that Indians are powerless and fatalistic enough to accept any Government policies.

It is revealing how decades of federal programs have affected and formed some basic Indian attitudes. Anthropologists whose information about the Indian is voluminous, though rarely if ever used by the Bureau, generally agree that the following assumptions are held by most Indians today (June 1954, *American Anthropologist*):

1. "The Indian in the foreseeable future will remain a series of separate and identifiable groups despite absorption of some individuals."

This is in sharp contradiction with Federal policy and the American history of cultural absorption. This two pronged tenacity accounts for much of the failure and frustration in Indian-white relations.

2. "Over the years, the Indian can expect no consistency in policies regarding him."

3. "The interest of the dominant society will take precedence over Indian interests in any policy decision: Indian interests will be considered only when they coincide or at least do not contradict 'white' interests."

While this dominance of interest is often

Bibliography

The Record will be pleased to send, on request, its mimeographed bibliography on the legal, social and economic aspects of Indian affairs. Free introductory material is available from the Bureau of Indian Affairs, Department of the Interior, Washington 25, D. C., or from the Haskell Institute, Lawrence, Kansas.

the inevitable product of uncontrollable social forces; there are today many instances where the predatory hand of vested interests deserves severe condemnation.

4. "That the Indian can do little to affect decisions concerning Indians and that sympathetic non-Indian groups are virtually powerless."

5. "The turning over of Indian Affairs to the states is inevitable and will result in increased hostility and incapacity to render the requisite health and welfare services."

Indian thinking is further complicated by their long history of real or imagined dependency upon federal protection and assistance. The result is a clash between their need for "security" and their desire for self-reliance. Indian leaders agree that the only path to cultural and economic progress is self-reliance.

The Indian Bureau has a difficult task in clearing the Indian suspicion and distrust of white intentions. What Indians want can be stated simply. They want to keep their lands, acquire the means to develop and use the land and its resources for the benefit of the Indian people that their lives and the communities surrounding them may be improved, that their culture and their viewpoints be respected and that more voice in determining their own affairs be granted them.

A positive program for Indian rehabilitation directed to specific reservation conditions was recently presented to Congress by the Indians' own organization, the National Congress of American Indians (NCAI), devoted to the promotion of their legitimate interests. Unfortunately, comprehensive rehabilitation programs fall on deaf ears in the Indian Bureau.

One of the important activities of NCAI has been the American Indian Development program. Though yet operating on a small scale, this is an attempt by Indians to stimulate community interest, leadership and self-reliance through the "work shop" method.

Development Needed Before Withdrawal

Indian leaders recognize that the perpetual federal responsibilities embodied in the treaties must end sometime. But rapid federal withdrawal would lead, they feel, to the annihilation of the tribes. In this connection, Clarence Wesley, an Apache tribal leader, said "... Indians are in favor of a modified withdrawal system which would provide a gradual assumption of activities now administered by the Indian Bureau."

The central problem, so far as the Indians are concerned, revolves around the preservation of their established rights, as defined by federal laws; the full development of their reservation resources and the establishment of adequate schools, hospitals and other institutional services.

The Government's legal and moral responsibilities toward the Indians was a recognition that they were unprepared to enter an aggressively competitive white society. That unpreparedness still prevails today. That federal programs have failed so miserably over the years is no excuse to abandon the Indian today. Indians are too weak to hold on to what they have if termination is realized. Federal responsibility should end only when the conditions necessitating that responsibility be eliminated.

A recent conference of anthropologists concluded that "... as adequate skills, techniques and leadership are developed among them, and as the tribe's economic situation improves, Indians can and will assume responsibility for financing and operating many community and other services formerly provided by government, and in some cases will eventually be able to assume the entire burden."

An important factor in success is likely to be personnel at all levels who are not only competent, but understanding of the Indian point of view, non-authoritarian, and 'people-oriented'...

Challenge to the American Credo

The American Indian is the greatest test to our professed humanitarian and moral impulses in the treatment of ethnic groups here and abroad. The reason for this is simple. Programs for improving the Indian's condition cannot be justified, as Point Four programs can, on the grounds that the Indians will turn communist or revolt. Neither can one urge that in the absence of such programs, the Indian will wield his voting power or provide embarrassment for the United States in foreign countries like larger minorities can in this country.

The Indian has none of these "advantages" to spur programs designed to benefit him. The Indian is small, weak, expendable. He poses no threat to our security. Helping the Indian will not "pay" in the sense that foreign aid "pays". The impulse to better the Indian's livelihood can only come from a sense of our moral obligations and our humanitarian sense. Moral satisfaction and a healthy and vigorous Indian people will be the fruits of equitable treatment of the Indian.

The instances are rare when the Government has responded to a legitimate desire based only on hope and not on votes, lobbies and other power factors. That is why the Indian is our greatest challenge.

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QUARTER-FINALS

(Continued from page one)

the Gardner Club on March 27. Then Casner Law Club won over Toepfer last Thursday, and Griswold defeated Casner Equity on Tuesday night.

The case of *Gottlieb v. McKay* was argued last Thursday evening before a court presided over by Judge Edward J. Dimock, LL.B. '14, of the United States District Court for the Southern District of New York. The decision was awarded to Casner Law, after an able oral argument by Mark L. Crane, 2L of Glencoe, Ill., and Sam Goeckjian, 2L of Shaker Heights, O. Counsel on the brief were Thomas R. Moore of Duluth, Minn., John J. O'Grady III of Port Washington, N. Y., George S. Abrams of Newton, David A. Goldberg of New York City, Joseph E. Imbricco of Union, N. J., and Gerald Rosenzweig of Minneapolis; all 2L.

Blair L. Perry, 2L of Williamstown, and Henry Shepard, Jr., 2L of West Newton spoke for the Toepfer Club. The brief was written by Charles D. Hawley of Ottawa, Kansas, Norman Hyman of Detroit, Mich., Robert B. Kunkel of Wantagh, N. Y., George J. McCormack of New York City, Frederick S. Paulsen of Belmont, and H. Preston Thomas of Logan, Utah;

The Griswold Club, representing the defendant-appellee in the case of *United States v. Patrick*, gained a decision over Casner Equity on Tuesday.

Speaking for Griswold were Edward G. Bauer, 2L of Greensburg, Pa., and Clark Wagner, 2L of Hammond, Ind.

Will G. Barber, 2L of Lockhart, Tex., and Robert P. Moncreiff, 2L of Kenilworth, Ill., argued for Casner Equity.

On the brief for Casner Equity are John T. Ballantine of Anchorage, Ky., William V. Caplan, of Peekskill, N.Y., Donald R. Doulong of Washington, D.C., Eugene L. Levy of New York City, Zelig Robinson of Baltimore, and Sidney Todres of Lakewood, N.J.

The Griswold Club brief was written by George W. Beatty of Grosse Pointe, Mich., Stephen E. O'Neil of Bronxville, N.Y., Paul D. Paganucci of Waterville, Me., Peter G. Powers of York Harbor, Me., Sidney H. Schneck of Lawrence, N.Y. and John B. Snyder of Winnetka, Ill.

Candidates Seek Class of '56 Office

The Class of 1956 will vote in Harkness Commons tomorrow and on Saturday to choose its five permanent class officers. Balloting will take place on each day between 12:10 and 1:55 P.M.

The third-year students will choose a class marshal, a class secretary who will also act as treasurer, and three committeemen. Twenty-two students are candidates and have filed nominating petitions for the various offices.

The candidates are:

For Marshal—Robert S. Jones of Buffalo, N.Y.; Allan R. Lipman, also of Buffalo; Paul F. Marx of Beverly Hills, Calif.; and Donald A. Scott of Philadelphia.

For Secretary—Clive J. Davis of Bayside, N.Y.; John H. Goewey of Pittsfield; Lawrence Y. Goldberg of Providence, R.I.; Nancy H. Goldring of New York City; E. Donald Shapiro of York, Pa.; and Elliott H. Stone of Boston.

For Committeemen—John R. H. Blum of Manhasset, N.Y.; Martin Kramer of New York City; Allan L. Miller of Roxbury; Ralph Perlberger of New York City; Hamilton F. Potter, Jr. of Smithtown, N.Y.; Kenneth J. Robinson of Detroit; Arthur Rose of Leonia, N.J.; Allan R. Roth of New York City; Philip S. Winterer of San Francisco; and Benjamin R. Wolman of Baltimore.

GRISWOLD

(Continued from page one)

heads the committee planning this event. From Denver, the Dean will proceed to Albuquerque for another alumni meeting on April 17, under the direction of Pearce C. Rodey, LL.B. '15, and for the Simms Lecture later that evening at the University of New Mexico.

At the University, Mr. Griswold will speak on "The Fears Around Us." The lectures, established in 1954 and now in their third year, are designed to present to students, lawyers, and the general public "the basic concepts and principles of law and ethics which have proved to be the bulwark of justice and liberty among civilized men."

Mr. Griswold will conclude his trip with a luncheon address on Thursday, April 19, before the Harvard Law School Association of Philadelphia, headed by Lewis H. Van Dusen, Jr.

Brookline Elects...

Carl M. Sapers, 1L of Brookline, was elected to a seat in its legislative Town Meeting during recent voting in the suburban community.

Mr. Sapers, a graduate of Harvard College and a member of Lincoln's Inn, served with the Eighth Army in Korea before entering the Law School last September.

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Dean Barnes Plans
Speeches in South

Assistant Dean William S. Barnes will fly to Miami today to represent the Law School at the annual three-day meeting of the Associated Harvard Clubs opening tomorrow.

From Miami he will proceed to Dallas for the ninth convention of the Inter-American Bar Association from April 16 to 20. En route he will meet alumni groups in New Orleans, Houston, San Antonio, and Austin.

A specialist in Pan-American affairs and private international law, Dean Barnes will participate at Miami this week-end in a panel discussion on "Working with Latin America—A Harvard View."

He will serve on the panel along with representatives of other Harvard faculties and with alumni from Latin America. He will describe the work of the Law School on the problems of investment in Latin America.

At the Inter-American Bar Association meeting, Mr. Barnes will read a paper on the proposed revision to the Bustamante Code of Private International Law and comment on the recent critique of this revision by the Inter-American Juridical Committee.

Mr. Barnes discussed this topic in early March at the meeting of the Inter-American Academy of International and Comparative Law at Havana. The Academy meets in Cuba for two weeks each year with a student body of about 75 representatives drawn from various countries in the Western Hemisphere.

Dean Barnes was one of three American lecturers to take part in this year's sessions. The others were Professor Hessel E. Yntema of the Michigan Law School and Professor Quincy Wright of the University of Chicago.

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WALLACE

(Continued from page one)

rison, in 1841, doubt had often been expressed as to whether or not the Vice President assumed only the duties of the Presidency but not the office itself.

Expressing strong doubts that the parties would ever change the custom of having political expediency dictate the choice of the second position on the national ticket, Prof. Howe declared that radical reform was necessary. He suggested that Congress, by joint resolution, make the Vice President's succession temporary, and provide for new elections if a considerable portion of the President's term remained to be served.

Both speakers agreed that the power of the Presidency should not be diminished by law. Mr. Howe took issue, however, with Mr. Wallace's strong declaration that there should be "no more deals, no more balancing of the ticket" and that the Vice President should always come from the same wing of the party as the President.

Professor Howe cited President Eisenhower as an example of a Chief Executive whose strength is derived in part from the fact that he does not represent any wing of the Republican party. Mr. Wallace countered by pointing out the difficulties between Presidents and Vice Presidents who differed in policies and personalities, such as McKinley and Theodore Roosevelt, Coolidge and Charles Dawes, and FDR and John Garner.

Mr. Wallace described some of his political experiences, particularly those of 1944, when he was denied renomination for Vice President by the Democratic convention. He charged that a "cabal" of party treasurer Edwin W. Pauley, Bronx boss Edward J. Flynn, party chairman Robert Hannegan and Chicago mayor Edward Kelly had prevailed on President Roosevelt to suggest alternates to Wallace to the convention.

"As a practical matter," he told law students planning to enter politics, "you should know just how slimy politics can be." The former Vice President did not confine his remarks to one particular party, saying that "all parties have their seamy sides."

—Page

AMES FINAL

(Continued from page one)

clude a jurisdictional issue and a problem of anticipatory pleading.

Oralists for the Scott Club are Richard F. Newell, 3L of Berkeley, Mich., and Hal F. Reynolds, 3L of Brecksville, Ohio. Appearing for the Morgan Law Club will be Roger A. Moore, 3L of Sherborn, Mass., and Michael C. Van Beuren, 3L of Newport, R. I.

Of counsel on the brief for the Scott Club are Scribner L. Fauver of Elyria, Ohio; James A. Foltz of Memphis, Tenn.; Frank C. Gardner of Miami, Fla.; Bengt Kjellgren of Chagrin Falls, Ohio; Karl C. Lemp of Oak Park, Ill.; and Arthur W. Mudge of Hebron, N. H. All are third year students.

Preparing the brief for the Morgan Club are John F. Bohman of York, Me.; Craig Emerson of Milwaukee, Wis.; Howard M. Fry of Wyomissing, Pa.; Charles Kannel of New York City; and William E. Wiggin of Wilmington, Del.; also all 3L.

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