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Ten Years' Service to the Harvard Law School Community

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More Second Year Electives And Seminars to Be Offered

A broader selection of second year electives, as well as three new seminars, highlight the curriculum for 1956-57 announced by the Law School last week. The extensive course offerings will draw heavily on the specialties of the new and visiting professors who will join the faculty in September.

Returning to duty at the Law School will be Professor W. Barton Leach, director of the Defense Studies Program, who will again teach a section of Property I. Professors Milton Katz and Archibald Cox will teach Torts for the first time in many years, while Professor Harold J. Berman takes a one-year leave of absence.

Second-year students will choose their electives next fall from among nine courses. Missing will be one of the three sections in Legislation and the course in Soviet and American Law. In their place will be two new sections in Jurisprudence and a course in English legal history.

There will be a total of three courses in Jurisprudence—one taught by Professor Lon L. Fuller and the others by visiting Professors Herbert L. A. Hart of Oxford and Julius Stone of the University of Sydney. Each will approach the subject from a different point of view.

Mr. Fuller's course will be based, as in the past, on his text *The Problems of Jurisprudence*. Professor Stone will deal with notions of justice and social and economic facts in legal change while Professor Hart will treat some of the more detailed facets

Review to Publish Articles by Chafee, Bickel and Gibbons

The May issue of the *Harvard Law Review* will feature a discussion of an unpublished opinion by Mr. Justice Brandeis in *Strathearn v. Dixon*, 252 U.S. 348, 40 S.Ct. 350, 64 L.Ed. 1184, (1919), a case which involved an application of the Seamen's Act of 1915. The article was written by Alexander M. Bickel, LL.B. '49, a research associate at the Law School, who wrote *The Original Understanding and the Segregation Decision* in the November 1955 issue of the *Review*.

In "Tax Effects of Basing International Business Abroad," William J. Gibbons, LL.B. '55, points out tax advantages which businesses with subsidiaries abroad have been able to secure. Mr. Gibbons, who worked with the International Tax Program last year, lays special emphasis on the tax position of U.S. firms which have subsidiaries in Venezuela and Panama.

Assumption of Covenant

Professor Zechariah Chafee, Jr., comments on a 1955 New Hampshire case (*Pratte v. Balatsos*, 113 A2d. 492) involving a contract between a restaurant owner and a juke-box supplier. The restaurant agreed to keep a juke-box on the premises at all times during a fifteen-year period. After a few years, he sold the premises. The purchaser discovered in court that he had assumed the juke-box covenant along with the restaurant.

Notes in the May issue will include "Recovery of Contingent Fees for the Procurement of Federal Government Contracts," "The Uniform Post-Conviction Procedure Act," "Advisory Opinions on the Constitutionality of Statutes," and "Individual Pro Rata Recovery in Stockholders' Derivative Suits."

Kaplan Club Beats Field in Argument

The last semi-final round bracket in next fall's Ames Competition was filled Thursday night when the Kaplan Club won over the Field Club in a closely contested argument.

By winning its case, the Kaplan Club joined the Blackstone, Casner Law and Griswold clubs, the three earlier quarter-final round winners, in the penultimate round of the Competition.

The argument was heard by a three-judge court headed by Justice Edward J. Lampron, LL.B. '34 of the New Hampshire Supreme Court.

Kaplan Club overlords were Daniel J. O'Hern, 2L of Red Bank, N. J., and Daniel J. Sweeney, 2L of Yonkers, N. Y. The Field Club was represented on the orals by Harry D. Martin, 2L of Pittsburgh, Pa., and Leonard H. Moche, 2L of Cambridge.

Of counsel on the brief for the Kaplan Club are Arthur F. Abelman of Scarsdale, N.Y., Philip A. Brooks of Longmeadow, N.Y., Richard J. Cravens of Whiting, Ind., Francis N. Gallagher of Mt. Carmel, Pa., W. John Kennedy of Plandome, N.Y., and William P. Moyles of New York City. The Field Club's brief counsel are Robert Kreutzer of New York City, Stephen B. Lemann of New Orleans, La., Sander M. Levin of Detroit, Gery W. Sperling of Woodmere, N.Y., and Seth Waller of New York City.



Jacob K. Javits

Griffin, Javits Debate Friday

One of the largest lecture crowds of the year is expected to fill the Auditorium of Rindge Technical High School tomorrow night for a debate on segregation between Governor Marvin Griffin of Georgia and New York State Attorney General Jacob K. Javits.

The speakers are expected to disagree squarely on both the desirability and the "legality" of the recent Supreme Court decisions ordering an end to segregation in the public schools of the South.

Governor Griffin has indicated to the Harvard Law School Forum, sponsor of the debate, that he will base his speech on the recent manifesto of more than 100 Southern Congressmen attacking the Supreme Court's action.

On the other hand, Mr. Javits, a likely Republican candidate for United States Senator this fall, is expected not only to uphold the Supreme Court, but to suggest methods for implementing its decisions.

Chafee Traces Development Of "The Right Not to Speak"

Speaking before the Harvard Law School Coffee Hour on Tuesday, April 3, retiring University Professor Zechariah Chafee, Jr., discussed "The Right Not to Speak." Drawing on material which will appear in his latest book, *The Blessings of Liberty*, to be published next month, Mr. Chafee traced the birth and development of the right to silence.

Professor Chafee began by pointing out that the Fifth Amendment has been given a wider interpretation by the courts than a cursory and literal reading would suggest. He emphasized that it protects not merely the right to be silent when arrested on a criminal charge, but also prevents a witness in any forum from being compelled to divulge evidence which might be used to punish him for a crime.

Mr. Chafee presented arguments *pro* and *con* on the question of coercing witnesses. He recognized that "over and above the law, there is a moral obligation upon each witness to co-operate with his government." On the other hand, there are at least three reasons for caution. First, even though an occasional malefactor may be turned loose on society for lack of evidence, in the long run police efficiency is increased by making law enforcement officers go out and search for evidence rather than rely on interrogation to elicit it from the accused.

The second reason is closely related to the first. An even easier method than interrogation would be torture, a time-honored means of cutting investigatory legwork.

Finally, and more pertinent to our age, is the fear that citizens will be condemned by testimony given in response to roving questions under fear of punishment for contempt.

Turning to history, Mr. Chafee discussed at length the persecution of two men. The first was John Udall, who was brought before the Privy Council in 1589

Cavers, Leach Testify Before Subcommittee on Disarmament

A panel of experts from the Law School and from other institutions in the Boston area told the Senate Subcommittee on Disarmament Monday that effective disarmament is not impossible, but that the complexities of the problem defy a quick or easy solution.

The faculty and research specialists from Harvard, MIT, and Boston University delivered their testimony in the James Barr Ames Courtroom to Senators Hubert H. Humphrey (D-Minn.) and John O. Pastore (D-R.I.). It was the first of a series of public hearings which the Senators plan to hold in various parts of the country in order to receive from private citizens some new insights on an old question.

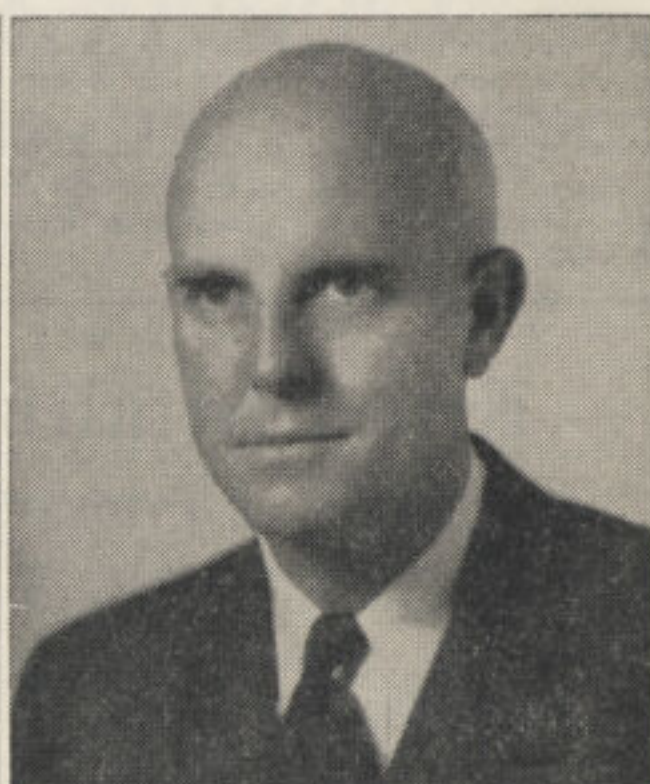
An analysis of the problems bearing on effective and realistic disarmament was presented to the Subcommittee by Professors W. Barton Leach, Louis B. Sohn and Associate Dean David F. Cavers.

Professor Leach described the armament race with the Soviet Union as unlike the armament races of the past. The present race is not one of quantity but of invention, development and production, he said. The "perpetual game of technological leap-frog" renders the approach of quantity limitation somewhat unrealistic in any proposed disarmament plan.

Since the race is conducted in a strict atmosphere of secrecy, a break-through may give a decisive, if temporary advantage to one side or the other. This type of technology advance is very difficult to control, Professor Leach maintained.

In addition, the unpublicized development of ancillary equipment mostly in the electronics field—the so-called "ground crew" of the more direct implements of war—can be just as decisive as the doubling of capital ships or ground divisions were several decades ago.

Professor Leach noted that the traditional struggles between similar armed units like ships vs. ships and divisions vs. divisions is rapidly changing into a new pattern when any given weapon does not



W. Barton Leach

necessarily fight similar weapons, *viz.*, the checking of Soviet divisions by the retaliatory threat of Strategic Air Command bombers thousands of miles away.

This change, he remarked, "means, in terms of disarmament proposals, that any numerical limitations must be based on a realistic set of categories on which the limit is imposed." Weapons must be examined in terms of their designated function, their ability to perform that function against opposition and the situational elements involved, rather than merely lumping similar weapons in a gross numerical comparison to see who is on top.

Professor Leach also declared that equal curbing on military personnel between the Soviet Union and the United States can result in an actual gross disparity of qualified manpower under the differing systems of incentives, priorities and political controls.

Realistically viewing the difficulty of enforcing disarmament upon a nation that is determined to arm, Professor Leach suggested "parallel lines of endeavor to remove the motivation of the potential aggressor and eliminate the reasons that make him want to increase or retain his armament."

This alternative to disarmament proposals lies in the reduction of the tremendous disparity of living "standard be- (See DISARMAMENT on page three)

Marx Wins '56 Voting, Named Marshal of Class

Paul F. Marx, 3L of Beverly Hills, Calif. was elected marshal of the class of 1956 in the class poll held on April 6 and 7. Mr. Marx is a member of the Board of Student Advisers. John H. Goewey, 3L of Pittsfield, was chosen as secretary.

The class also selected as committeemen, Benjamin R. Wolman, 3L of Baltimore, a former president of the Student Bar Association; Philip S. Winterer, 3L of San Francisco, Calif., treasurer of the *Law Review*; and Hamilton F. Potter Jr., 3L of Smithtown, N.Y., who was secretary of the Voluntary Defenders.

The officers will serve until 1961 at which time the class will elect new officers for a ten-year term of office. Committeemen are chosen for life. Next week the five men elected will choose four new committeemen.



Zechariah Chafee, Jr.

for penning an attack upon the Bishops of England. The other was John Lilburn, examined by the Star Chamber in 1637. Each was, in effect, required to condemn himself. When they refused to cooperate, they brought long terms of imprisonment upon themselves.

(See CHAFEES on page four)



Archibald Cox

of the subject, including theories of punishment, natural law, and the elements of municipal legal systems.

The course in English legal history will be taught by Professor Samuel E. Thorne, now of Yale, who recently was appointed a professor of legal history with teaching responsibilities in the Law School, Harvard College, and the Graduate School of Arts and Sciences.

Professors Thorne and Stone also will teach seminar courses in these subjects to third-year and graduate students. These (See NEW COURSES on page four)

Legal Aid Elects Lowry President for 1956-57

The Legal Aid Bureau elected John B. Lowry, Jr., 2L of Indiana, Pa., as its president at a meeting last Wednesday evening. Mr. Lowry, who was graduated from Princeton in 1952, started his one-year term of office Monday.

Also elected for year terms were Thomas J. Godfrey, Jr., 2L of Chicago, vice president; Thomas E. Weesner, 2L of Wabash, Ind., secretary; John F. McClatchey, 2L of Cambridge, treasurer; and Glenn R. Murray, Jr., 2L of Dayton, Ohio, as senior director.

Two junior directors who will serve until December were also elected. They are Charles D. Hawley, 2L of Ottawa, Kan., and Joseph A. Adelman, 2L of Teaneck, N. J.

Harvard Law Record

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Recent Articles

EXCLUSION OF EVIDENCE

John Barker Waite, Professor of Law, University of California, "Judges and the Crime Burden," 54 Mich.L.Rev. 169 (1955).

Judges interfere with the prevention of crime by imposing limitations on the conduct of the police. When the courts suppress evidence because of disapproval of the methods by which the evidence was obtained, the courts may be concealing the truth from the jury. If discovered criminals are protected from deserved punishment, the force of deterrence through fear of punishment is derogated. The deterrent force of community disapproval and declaration that punishment is deserved is lost when the wrong-doing of the criminal is minimized and the wrong-doing of the police emphasized.

SUING GOVERNMENT OFFICERS

Kenneth Culp Davis, Professor of Law, University of Minnesota Law School, "Government Officers as Defendants: Two Troublesome Problems," 104 Univ. of Pa.L.Rev. 69 (1955).

When government officers are defendants the problem of whether or not superior officers are indispensable parties is presented. The old rule was that the superior officer was indispensable if the decree granting relief would require him to take action either directly or through a subordinate. That rule proved unworkable and has been replaced. Considerations of geography and convenience now control the requirements of joining superiors. Another problem is substitution of successor officers. The rule here is that failure to substitute a successor will cause an abatement of the action.

GUARANTEED WAGES

William Papier, Director, Division of Research and Statistics, Bureau of Unemployment Compensation, Ohio, "Guaranteed Annual Wage Proposals: Their Implications for Unemployment Compensation," 8 Indus. & Labor Rel. Rev. 265 (1955).

Guaranteed annual wage plans will have great impact upon legislation. Employers will be induced to support liberalized state unemployment compensation laws. Provisions of private rates, duration and disqualification, would influence the content of state laws. In effect the legislative process would be shifted from the legislature to the bargaining table. A general overhaul of present state compensation plans would be desirable.

PRESIDENTIAL AGREEMENTS

Craig Mathews, Ohio Bar, "The Constitutional Power of the President to Conclude International Agreements," 64 Yale L.J. 345 (1955).

The scope of the President's power to conclude international agreements has never been defined. Nor is it understood how far Congress may constitutionally go in curtailing this power. In several important cases the President has entered into agreements committing our military resources abroad as part of the Commander-in-Chief's power. But his power to receive representatives of foreign powers, execute the laws, and act as Chief Executive are also supports for the agreement-making power. In practice, Congressional power over raising armies and granting appropriations tends to insure that a President will not abuse his authority in concluding agreements.

Gallery

ALI BOZER
Turkish Professor



Among the participants this year in the International Program in Taxation is Dr. Ali Bozer of Turkey. Dr. Bozer will study the American system of taxation during his stay of eight months in this country and then return to his duties as Associate Professor of Law at Ankara University.

Dr. Bozer was born and raised in Ankara. In 1947 he received his law degree from Ankara University. The next three and a half years he spent in Switzerland at Neuchatel University, where he received his Doctorate in Law.

Embarks on Judicial Career

Upon his return to Turkey three courses were open to him. One was to become an advocate. To receive an advocate's license in Turkey, one must spend six months as a clerk in an advocate's office and six months in the courts. The second alternative for Dr. Bozer was to embark on a judicial career. This requires one year's work as a clerk to a judge and then an appointment as an assistant judge. After a few years as an assistant judge, one becomes eligible for appointment to a full judgeship.

Dr. Bozer began to train for a position on the bench but soon decided upon a third path, an academic career. He passed the necessary examinations and was appointed to the faculty of Ankara University. Then he received a grant to study taxation at Harvard Law School and was given leave from the University.

Study of Taxation New

The study and teaching of taxation in Turkey is rather new since there was no comprehensive system of taxation until recent times. Revenue was raised by means of an estimated assessment on commerce, salaries, wages and imports. In 1950 the income tax system was revamped. The tax on individual incomes was made more inclusive and the rates were increased. They now range from fifteen to forty-five per cent.

A ten per cent levy on corporate income was

established in addition to the capital gains tax. The levy on capital gains differs essentially from that in the United States. It applies only if property is sold within a certain number of years after its purchase, varying from one to two years according to the type of property, and only if the profit realized is higher than a certain amount. Turkish Law also provides for an inheritance tax and for an excise tax, which in combination with the income tax produces a high proportion of the Government's revenue.

The farmers of Turkey, who constitute more than seventy-five percent of the country's population, are not subject to the income tax. Imposition of a levy on the earnings of the rural population poses a political problem, but Dr. Bozer believes that in the near future the income tax will encompass the entire country. He feels that this will be required by the Government's heightened need for revenue. Since 1950 the revenue of the national government has more than doubled, but inflation has undercut part of this increment and the demands upon the Government have increased in Turkey's new era of economic and social progress.

The new role and pattern of taxation in Turkey gives fresh significance to the study and teaching of taxation. Dr. Bozer believes that his work at Harvard in the International Program of Taxation will be of great assistance when he returns in November to his teaching position at Ankara University.

— S. Levin

Current Case

Is the attitude of great reluctance toward granting motions for summary judgment, as demonstrated by the Third Circuit, spreading to other jurisdictions?

Despite criticism by Professor Charles Alan Wright in *Rule 56 (c): A Case Study on the Need for Amending the Federal Rules*, 69 HARV. L. REV. 839, dicta in a recent Fifth Circuit case, *Slagle v. U.S. and Texas Air National Guard*, 228 F. 2d 673 (1956), indicate increasing unwillingness to allow summary judgment.

In this case, William Slagle, husband of the plaintiff, was an employee of the Lone Star Boat Manufacturing Co. in Dallas, Texas. On Feb. 2, 1954 he was fatally injured when a jet plane from Hensley Field, Texas, a federal base, crashed into the building in which he was working. His widow brought an action against the United States under the Federal Torts Claims Act, 28 U.S.C.A. sec. 1346, and against the Texas Air National Guard. The complaint charged that the jet belonged to the defendants, was maintained, controlled, and operated by defendants; and defendants, acting through their agents and servants were negligent in the maintenance and operation of the plane, such negligence constituting the proximate cause of the injuries sued upon.

The United States moved to dismiss the complaint against itself on the grounds that it did not state a cause of action upon which relief could

be granted (Rule 12 (b) (6), FRCP). The motion asserted that the pilot of the jet was not an officer or employee of the United States. Attached to the motion were affidavits which disclosed in general terms that the Texas Guard utilized a portion of Hensley Field, a government facility, under a right of entry (a usual provision when a State grants land to the Federal Government for Military purposes); that the Texas Air National Guard was completely administered, controlled, and supported by the State of Texas and not the United States, and is not under the command of a U.S. officer; and that the pilot's orders were given at the direction of the Governor.

Plaintiff Replies

The plaintiff replied by reiterating substantially what had been charged in the complaint and by asserting that the attached affidavits were not admissible since the information contained therein was exclusively within the Government's knowledge and control and could be available to the plaintiff only by legal process. They then asked for time to use the discovery processes available under the Federal Rules, but did not enter counter-affidavits.

The complaint was filed and served Nov. 1, 1954 giving the Government sixty days within which to answer (Rule 12 (a) FRCP). Instead of taking the full 60 days, the government filed its motion to dismiss on December 6th, the hearing to be held on December 20th. On December 9th, Plaintiff advised the court that it would not be possible for them to take the steps necessary to get ready for trial on that date. The court did not grant additional time, but rather sustained the Government's motion, dismissing the complaint with prejudice, on December 20th, 14 days after the Government's motion, but 50 days after the serving of the complaint. The court disposed of the complaint, not as a motion for summary judgment under Rule 56, FRCP, but as a motion under Rule 12 (b) (6). To this action the plaintiff expected and appealed.

Held: Reversed and Remanded

The Government did not intend that the motion to dismiss should be decided on the complaint alone, but on the complaint and the affidavits attached to its motion to dismiss. But, that is not permissible unless it be made so by invoking the last sentence of Rule 12 (b) (6) which calls for such a motion to be treated as a motion for summary judgment as provided in Rule 56, "if . . . matters outside of the pleadings are presented." But in the Court's Note 5, it is admitted that, "it is doubtful if the Government had, by its motion to dismiss, brought itself within the ambit of that procedure because it embraces only those cases where 'matters outside the pleadings' are presented by the affidavits." Here the affidavits supported direct contradictions of the facts properly pleaded in the complaint. The Court then quotes with approval the heavily criticized holding of the Third Circuit in *Farrall v. District of Columbia Amateur Athletic Union*, 153 F.2d 647 at 648 (1946) where it was said:

Such an affidavit cannot be treated, for the purposes of the motion, as proof contradictory to well-pleaded facts in the complaint. . . . Thus, if a fact be averred in the complaint and contradicted in the affidavit, the latter version cannot be accepted by the court for the purposes of a motion to dismiss.

In construing Rule 56 (c) (which provides that judgment shall "be rendered forthwith" if all the evidence before the judge, "show(s) that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law"), the court holds that the Government's affidavit taken together with the complaint shows, "the presence, rather than absence of, genuine issues of material fact, e.g. whether the Government did in fact own, maintain, control or operate the plane causing the damage." On motions for summary judgment, it went on to say, "it is no part of the court's duty to determine whether there are any such issues to be tried."

The court finally reaches the merits of the case by its discussion of Rule 56 (f). The Court holds that the trial judge had not allowed sufficient time to the plaintiff to determine the facts and enter counter-affidavits as provided by Rule 56 (f). "This rule must be applied in a spirit of liberality in granting time enough for the parties," the court declared.

It then went on to express its deep reluctance at the granting of summary judgments and again cited cases from the Third Circuit and some of its own recent decisions. It concluded saying:

The clearing of court dockets is one of the desiderata in the judicial function. But it should not be allowed to become a fetish for it does not rank with the *raison d'être* of courts—the administration of justice based on a full and fair disclosure of the facts.

The decision in this case appears to be correct. The plaintiff did not have enough time to make his investigation as provided by Rules 26-27, incl., FRCP. However, if the general tone of this decision is an indication of the Court's attitude toward the granting of summary judgments by trial courts, it may be that Rule 56 is dying in the Fifth Circuit.

—Chazen

Spring Vacation



Reprinted from the Record, April 13, 1949.

Student Fear Unfounded, Peck Sees Jobs for All

Grades and rank in class of all job applicants are provided to employers in advance of interviews, Placement Office Director Russell H. Peck told the Record yesterday.

This procedure is in sharp contrast to the Business School's method of revealing student's grades (see column below). But Dean Peck defended it as providing for employers an objective standard by which they can judge job applicants.

Any alternative ranking system, which would divide students into large categories, such as top, middle or low third, would bring objections from those at the top of each category, Dean Peck said. But he agreed that these complaints might be outweighed by the satisfaction of those in the middle or bottom of the category.

Although grades are only one factor in hiring, they assume undue significance in the absence of any other factor that can be reduced to objective terms, Dean Peck indicated. But he doubted that any steps could be taken at this time to reduce the importance of grades.

When minimum grades in class standards are set by law firms, the Placement Office will not send students with lower grades

does not depend on the firm with which the lawyer is connected, Dean Peck stated. The glorification of a few "glamor firms" as representing the pinnacle of legal accomplishment is simply a misstatement of reality.

The Law School has never been able to measure the success of its alumni because success is not measured by income alone, Dean Peck stated. A small-town practitioner can have more community respect and influence than a commuting Wall Streeter with a larger income.

About 50 per cent of the class will be placed by the time they leave Cambridge in June. There is a high correlation between grades and early placement, but eventually, Dean Peck maintained, everybody finds a job of one sort or another.

Worry about placement is exaggerated, Dean Peck said, because of lack of knowledge and apprehension at leaving the academic world. But the past performances of Law School alumni, and current rising economic conditions, show that there is little reason for students now enrolled to doubt that they can get jobs.

About fifty percent of the class will be placed by June. By March 27, 30 percent of the third year students had already been placed.

This year 521 firms and corporations requested the aid of the Placement Office. By the end of March, 173 firms had visited the law school and 2,918 interviews were arranged for students. Of the remaining students who have not reported jobs to the Placement Office, 132 face no military obligations and about 173 presumably do.



Russell H. Peck

to be interviewed, unless in the past the firm has been known to go below its advertised standard to pick a person. The reason for this, Dean Peck stated, is that it would be futile to send students for interviews who had no chance of being hired.

One widely-held but erroneous idea, Dean Peck said, is that success in the legal profession is tied to a career with a Wall Street firm. A happy and successful career

The B-School Way...

(This is quoted from an article in the February 24 issue of the *Harbus News*, student newspaper of the Harvard Business School.)

If you have been wondering whether or not your grades are available to prospective employers or others, you can be assured that they are not, except with your express approval. A check with the Registrar's office reveals that they will not disclose grades except on written or direct oral permission from the student.

Grades are also carried on record at the Placement office, but just as in the Registrar's office they are not given out unless the student has given permission. Although it is the policy of the Placement office to require such permission in order to participate in the program, marks are never revealed to prospective employers until after an interview has been granted. After the interview, if the employer is still interested in the student he may get a limited idea of the student's record. Numerical grades are not revealed, rather the employer gets a record of letter grades—pass, distinction, etc., as the case may be.

The Placement office indicates your standing in the class as being in one of two classes, upper third or satisfactory. The philosophy is that those who have achieved good grades should be given credit, but that anyone attending the Business School is considered to be in good standing. Some further indication of your rank is given the prospective employer by the inclusion of an approximate average distribution of grades for the first year courses.

The situation is best summarized by saying that grades are considered to be private information by the School unless the student has given specific permission for their distribution.

DISARMAMENT

(Continued from page one)

tween our own people and those upon whom we now look upon as potential enemies." It must be remembered, he stated, that the Marshall Plan in 1947 included the Soviet Union and its satellites. "Perhaps," Professor Leach concluded, "we had the right idea in 1942 and perhaps... the idea could be pursued further to the end that the causes will be removed that urge men to arm, fight, seize, and kill."

Associate Dean Cavers expressed his conviction of the feasibility of limited armament control if three conditions are met. First, the plan must provide a reasonable degree of military security for both sides by permitting an approximate arms balance and effective inspection and control machinery.

Second, the Soviet Union and the United States must view lasting arms control as being in their own respective best interests. In other words, they must see disarmament not as a propaganda move but as a proposal best filling their security needs. Third, that our adherence to the controls must be conditional on their observance by the Communist states.

"The pursuit of mutual advantage takes the place of enforcement and... may well exert a more lasting cohesive power than the fear of sanction," Dean Cavers added. He concluded by pointing out that economic and cultural methods of competition are starting to look a lot safer and at least as effective as an arms race which is breeding fear rather than security. This development he viewed as substantial grounds for optimism.

Professor Louis B. Sohn spoke of the relation of the disarmament problem to other problems of world order with emphasis on a strengthened United Nations.

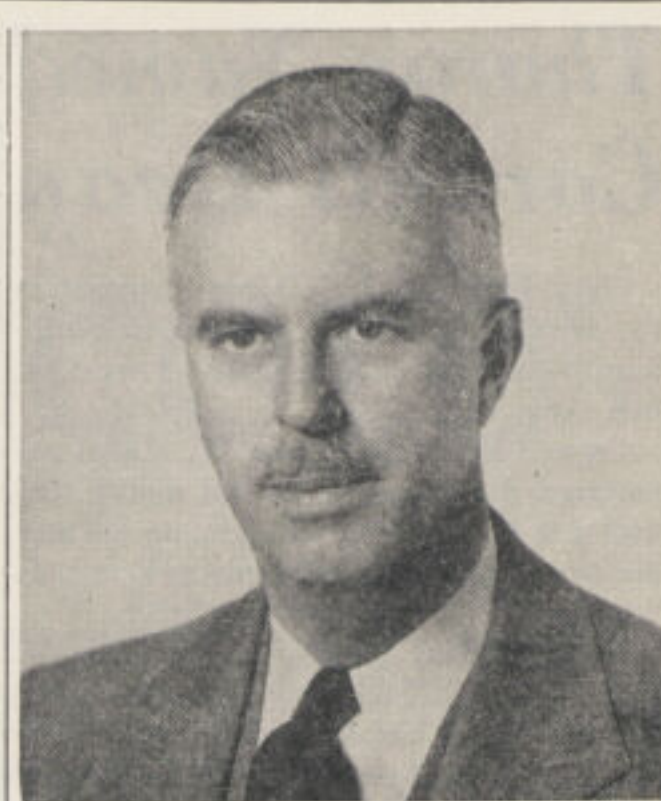
He characterized the solution of the disarmament problems as depending "on a

simultaneous solution of a least three other problems: guaranteeing the security of all the participating nations, providing effective methods for peaceful settlement of disputes, and establishing sufficient funds for ensuring the economic independence and more rapid development of the under-developed areas of the world."

Mr. Sohn stated that the disarmament problem cannot be solved by bits and pieces but by a simultaneous solution of all the problems involved in one global agreement, though this does not mean that the whole plan must be executed in one short period.

A staggered period of disarmament would have the advantage of minimizing the risk incurred by each nation in each annual period and would provide time for the necessary shift from military to civilian production. He concluded his talk by tracing in some detail the function of an International Inspection Service.

Senators Humphrey and Pastore have won praise for initiating such hearings, which not only allow the public to con-



David F. Cavers

tribute to the decision making processes of our government but bring the interested private citizens closer in touch with important issues in public affairs.

—Nader

Death Penalty Viewed as Part of a Larger Issue

Any discussion of capital punishment should give some space to a discussion of its alternatives. This is seldom done. Part of the reason for this omission is that little is known about capital offenders who do not pay for their crimes with their lives.

But there is some knowledge of possible alternatives to capital punishment. It is necessary to assess this knowledge in regard to the essential question which is the practical considerations of judicial administration.

The final answer to the questions that surround the utility of capital punishment cannot, of course, be answered in such an academic manner. If an alternative to capital punishment is preferred, it will be on moral grounds. It may, however, be useful to indicate in a rough way the alternatives that are used and the meanings these have in terms of social control and action.

A Moral Issue

Whichever side is taken on this issue, it is clear that the punishment so often debated is seldom used. Its relation to the extent and cost of crime in this country, the death penalty is of minor importance. Life imprisonment and long term sentences are used as punishment for all but the "hardened" and most serious offenders. Even more dangerous to the society, it would seem, are the legal and investigatory processes which permit serious criminal offenders to escape detection until they have committed a particularly horrible crime. Little consideration has been given to the identification of potentially serious criminals. Certainly the application of psychiatric knowledge could be better used to predict and prevent the acts for which the capital penalty has been designed.

By comparison with the infrequently used death penalty, what is more commonly done with our most serious offenders is an important consideration. Rather than a deterrent to murder, the capital penalty, as demonstrated in the statistics of criminal prosecution, has everywhere proved a hindrance to the efficient administration of justice. Courts hesitate to convict a man when the death penalty is mandatory. Substitutes for the death penalty would make the determination of guilt or innocence less a matter of emotion and more a matter of evidence.

Capital Punishment Illogical

Substitute procedures for capital punishment are adapted to the logic of modern legal and penological thought. Each has come to consider that treatment, or at least segregation, serves to protect society more than punishment. Moreover, each school of thought tends to emphasize the necessity of treating every criminal as unique.

It would seem unreasonable in the light of these prevailing ideas to insist that all who commit murder deserve twenty or thirty years, life or death, as it is to assume that all traffic fines must be five dollars.

Knowledge of human behavior clearly indicates that not all criminals require an arbitrary penalty. Most murderers are not the sort of people who would again commit that or any other crime. They are generally people who have been placed or who have found themselves in an abnormal sit-

uation and who have reacted abnormally: with violence that leads to death.

Good order of society. These are the very people whom even the proponents of capital punishment agree are not deterred by fear of the penalty. Most of these are people suffering from mental instability which, even if it does make them "legally" insane, removes or palliates the extreme moral blame generally imputed to murderers. These are people who would be best handled by segregation and treatment than by what often appears to be a desire for vengeance.

Those Horrible Murders

Those who propose to abolish the death penalty and substitute prison sentences instead are often met with the argument that parole will likely follow and that too many parolees have committed horrible murders to take the chance of mere life or term sentences.

This argument rests more on emotion than fact. It is true that many recidivists commit murders. But these criminals are often those who have been in and out of jails all their lives with no attempt made to treat them.

No alternative to capital or ninety-nine year sentences should be undertaken unless we are willing to pay the price of increased costs involved in rehabilitating men who have committed crimes. Even in terms of cost, treatment and parole would probably be much less expensive than a continuing accumulation of "lifers" in our prisons.

But the argument on the basis of the incidence of murderous acts among capital criminals has no factual support. In a survey covering twenty states for a period of twenty years, it was shown that of 197 capital cases paroled, only 11 committed new crimes. Needless to say, the crimes were not murders.

These arguments and the statistics which underlie them have been presented many times. There is little convincing reason for the continued use of capital punishment. In the United States, state after state has abolished capital punishment in fact if not in law.

A More Important Problem

The real problem before lawyers and laymen alike is not this narrow if important issue. Much more necessary is a re-evaluation of all criminal penalties. The need for this re-evaluation ought not to be forgotten in the arguments over capital punishment.

The whole process of criminal administration should be re-examined. Far too long the lives and freedoms of many people have been endangered by legislative irresponsibility, public ignorance and the obstinacy of responsible judicial and administrative officials.

Too often difficult problems have been obscured by the emotionalization of small problems. The crusade for abolition of capital punishment will little serve the interest of humanity which it so stridently promotes unless it goes beyond that appealing issue to those more difficult issues which involve the bases of community life and belief.

Library Has Large Collection Of Appellate Records, Briefs

Concealed by their own bulk, within the walls of Langdell lie countless appellate records and briefs. One and one-half miles of shelf-space are filled by these documents, many representing the fruits of long research and intensive thought.

"Viewed as a whole, there may be some question as to its value," stated Earl C. Borgeson, Librarian of the Law School, in describing the collection. He justifies its existence on the grounds that an examination of the arguments of counsel reveal both sides of the case as they were actually presented to the court.

Beginning students are not likely to find the collection of much use. But students doing research in a particular line of decisions should find it rewarding, though they are often ignorant of its existence. Practicing attorneys faced with overcoming unfavorable precedents may profit by learning what arguments have not impressed the courts.

Most briefs presented in the United States Courts of Appeals since the mid-twenties are available. The complete collection of United States Supreme Court briefs dates back to 1881, while advocates before the Supreme Judicial Court of Massachusetts are fully represented from 1904 to the present. In addition briefs considered by the New York Court of Appeals since 1921, and the Pennsylvania Supreme Court from 1933 are all on file.

Information on the miscellaneous col-



Earl C. Borgeson

lections is available at the Main Desk in Langdell Reading Room.

Since collections from some courts are incomplete, and other jurisdictions are not represented, the Library attempts to obtain copies or photographic reproductions from other sources through its Inter-Library Loan Service. A new service involves the production of instant-copy facsimiles at a nominal cost. Mr. Borgeson expressed the hope that this service will prove of special value to alumni throughout the country who require material which is available only in this Library, but are unable to obtain it in person.

Alumni Notes

LL.B. '17—Paxton Blair has been appointed Chairman of the Committee on Professional Ethics of the New York State Bar Association.

LL.B. '38—Sidney I. Roberts is now practicing under his own name at 230 Park Avenue, New York 17, New York.

LL.B. '41—Carter H. White, vice president and general manager of the *Meriden Record and Journal*, has recently been elected president of the Associated Dailies of Connecticut. The association is the organization of daily newspapers in Connecticut.

LL.B. '49—Stanley H. Levy has become a partner in the firm of Herrick, Feinstein & Rossman, 2 Park Avenue, New York 16, New York.

LL.B. '51—Ira S. Siegler has resigned from government service to engage in the general practice of law and has become associated with Guggenheimer, Untermyer, Goodrich & Amram, Ring Building, Washington 6, D. C. Mr. Siegler is a member of the bars of New York and the District of Columbia and was recently Attorney-Advisor, the Tax Court of the United States.

LL.B. '53—Milo Shadle and William P. Kennedy, LL.B. '53, have formed a partnership for the practice of law in Los Angeles with Alexander H. Pope, University of Chicago '52. The name of the firm is Shadle, Kennedy & Pope, with offices at 8703 La Tijera Boulevard, Los Angeles 45, California.

Thoron Named Cornell Dean

Gray Thoron, LL.B. '41, an assistant in the office of the Solicitor General in Washington has been named Dean of the Cornell Law School.

Cornell President Deane W. Malott announced the appointment last month and said that Mr. Thoron will take up his new duties on July first. He replaces Robert S. Stevens, LL.B. '13, who is retiring.

A specialist in corporation law and civil procedure, Mr. Thoron will teach at least two courses at Cornell—one first-year section and a third-year class in professional practice and office management.

A graduate of Harvard College as well as the Law School, Mr. Thoron entered private practice in 1941 with the firm of Sullivan and Cromwell.

During the Second World War he served with Fourteenth Armored Division, winning the Bronze and Silver Stars and the Purple Heart.

Town Meeting Chooses Field

Professor Richard H. Field, the Law School's specialist in civil procedure and judicial administration, was chosen a selectman of suburban Weston at a Town Meeting last week.

It was the first venture in elective politics for Mr. Field, who previously had served the federal government as war-time general counsel of the Office of Price Administration and the state government in various advisory capacities.

Mr. Field becomes one of three selectmen who share responsibility for the executive management of Weston's municipal affairs. He will serve for a three-year term.

Mr. Field was the unanimous choice of the Town Caucus, a open meeting of the village citizenry which met in February.

Library Hours

The Reading Room in Langdell Hall will be closed on Sunday, April 15, Thursday, April 19, Saturday, April 21, and Sunday, April 22. The Reading Room will be open on Monday, Tuesday, and Wednesday, April 16, 17, and 18, and Friday, April 20, from 9:00 A.M. to 5:00 P.M.

Elections

Bull & Bear . . .

The Bull & Bear Club, at a meeting April 6, elected David A. Goldberg, 2L of New York City, as its president for the next academic year.

Other officers chosen were Bradford S. Wellman, 2L of Topsfield, first vice president; Charles Higginson, 2L of Cohasset, second vice president; William H. Gorham, 1L of Wellesley, secretary, and David L. Weltman, 2L of Longmeadow. All four are from Massachusetts.

Alan H. Strauss, 3L of Utica, N.Y., was declared the winner of the club's annual investment contest and earned a first prize of \$15.

Southern Club . . .

Officers for the coming year were elected at the final meeting of the Southern Club last week. Maxwell B. Bloomfield III, 2L of Galveston, Tex., was chosen president, while Thomas L. Clark, 1L of Roanoke Rapids, N. C., was named vice-president.

Also elected were Harry L. Mead, Jr., 1L of Tampa, Fla., secretary-treasurer, and Calloway Cochran, 2L of Dallas, Tex., social chairman.

News in Brief

The Treasure Room in Langdell has on display an exhibit of the historical background of real property tax. Included are statutes from *De Donis Conditionalibus* to the Statute of Wills, and ancient treatises such as Littleton's *Of Tenures*.

The Law Review held its annual banquet last Saturday at the Harvard Club of Boston. Professor Benjamin Kaplan served as toastmaster. The speakers were George F. Kennan, former ambassador to the Soviet Union, and Professor Chafee.

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CHAFEE

(Continued from page one)

Lilburn suffered the further indignity of being publicly whipped through the streets of London, but finally gained his freedom shortly before the Long Parliament came to power and abolished the Star Chamber.

The stories of these men are of more than antiquarian interest. John Lilburn furnished a prime example of the unhappy results which follow the misuse of the power to punish those who invoke the privilege against self-incrimination. The issues at stake were different, for both Udall and Lilburn represented unpopular religious ideals, whereas today our concern in this area stems from political persecutions. But from abuses such as these, the Anglo-American abhorrence of compulsory confession arose.

After discussing some more recent examples, Professor Chafee highlighted the dilemma in which a witness may find himself when before a legislative committee today. When asked a question, he may invoke the privilege honestly believing that he is entitled to do so. If he is tried for contempt, only then does he learn whether he acted correctly. If he erred, he faces jail.

Professor Chafee would call upon members of Congressional committees to consider not only the legal aspects of a witness' refusal to answer, but to evaluate his whole conduct, "especially the strength and nobility of his reasons for keeping silent." He suggested that Congress might ask itself whether all the committees which have been examining Communism since 1938 have uncovered the kind of information Congress really needs in dealing with the dangers of internal Communism.

Griswold Leaves on Trip To West and Southwest

Dean Erwin N. Griswold departs today for Los Angeles where he will open a week-long speaking trip tomorrow with a luncheon address to an alumni meeting in the Biltmore Hotel.

From California, the Dean will continue to Denver for another alumni luncheon on Monday and to Albuquerque for an alumni meeting and an address at the University of New Mexico on Tuesday.

Mr. Griswold will conclude his tour on Thursday with a luncheon address to the Harvard Law School Association of Philadelphia. He will be back in Cambridge for the resumption of classes on April 23.

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Legislative Research Bureau To Study New Uniform Laws

A new policy of extended research on selected areas of the law will be undertaken by the Law School's Student Legislative Research Bureau, according to its President, John P. Manwell, 3L of Fayetteville, N. Y.

In the past the Bureau has worked only for clients who had specific legislation in mind. This will continue, but in addition the Bureau will devote part of its efforts to the consideration of uniform, constructive legislation on its own initiative.

NEW COURSES

(Continued from page one)

are among the more than half-dozen new courses which will be offered to upperclassmen next year. Others include Constitutional Problems of International and Civil-Military Relations, by Professor Charles Fairman; Taxation: General, by Professor John M. Maguire, and Federal Oil and Gas Taxation, by Charles O'Neill Galvin, Ezra Ripley Thayer Teaching Fellow for 1956-57.



John M. Maguire

Several established courses will be taught next year by different faculty members. Professor Benjamin Kaplan will take over retiring Professor Chafee's course in Equitable Remedies, and Associate Dean David F. Cavers will handle a section of Conflict of Laws while Professor Arthur T. von Mehren spends a year's leave of absence in Japan.

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