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TEN CENTS

Teachers Awaiting Decision In Strike Injunction Appeal

The Teachers' Guild of Manchester, New Hampshire, has petitioned the Supreme Court of that State to reverse a lower court ruling which enjoined a short-lived teachers' strike.

City Solicitor J. Francis Roche ('32-'34) supported Superior Court Justice Robert F. Griffith's action in issuing the back-to-work order. Mr. Roche said: "teachers are public employees and do not have a right to strike."

Dissatisfied teachers at all primary and secondary levels had stayed away from their classrooms when long negotiations for a wage increase seemed to be checkmated.

"There is nothing inherently illegal about a strike of public employees for higher wages," said the guild in its brief, filed by Kenneth F. Graf ('29-'32).

Schools Forced to Close

The city, forced to close its twenty-four public schools, had applied for an injunction which would permit the return of over 9,000 children to their classrooms.

Judge Griffith's action seems likely to establish a judicial precedent—not only on the issue of rights to strike, but also on whether any public employee can strike against the government. A ruling is expected within a month.

New Hampshire has a statute which permits cities to bargain with labor unions, but the law is silent on the issue of strikes by municipal employees.

The teachers, who now receive salaries ranging from \$4,014 to \$4,414, are asking a 17% increase which would boost the pay scale to a maximum of \$5,300. Just prior to the walk-out, the guild rejected the city's offer of an immediate 10% increase with the remainder spread over a four-year period. The city in turn rejected the teachers' offer to submit the dispute to arbitration.

Views of Guild

In a telephone interview with the RECORD, Mr. Graf, guild attorney, said "The issues in the case are clear cut. The judge found as a matter of law that the teachers were not eligible to strike because of their position as municipal servants. We strongly challenge this position."

"Every group of people should have the liberty to collectively refuse to work, no matter what the basis for that refusal is. The test should not be whether they are public or private employees. Courts should not interfere in labor disputes without the

Plans for Parking In Tentative Form

The University is considering converting a piece of property it has acquired on Sacramento Street into a parking lot. The decision rests on whether there is enough interest by potential users to make it worthwhile.

The lot, now empty, is on the north side of Sacramento, between Massachusetts and Oxford Streets, three blocks north of the Law School. The 40,000 square foot area would provide space for about 130 cars, with a twenty foot right of way to the street. It would cost from \$5,000 to \$10,000 to convert it to a parking area, according to Vice Dean Livingston Hall. The lot would have to earn back the cost of conversion quickly to be feasible, Dean Hall stated. But the cost to users would be near the rate for present on-campus facilities, which is \$15 per term.

As a means of enabling the administration to gauge student response, all who would be interested in obtaining a space in the new area may sign a roster which has been placed at the main desk in the Langdell reading room. Signing the roster, Dean Hall said, will involve no commitment.

clearest showing of imminent danger to the community. Here this certainly is not the case."

The city's position, outlined by Solicitor Roche, is: "Such a strike is illegal in its inception. Both public policy and common law deny public employees the right to strike against government."

The guild in its brief, filed for the state's highest court, said "If a line must be drawn between permissible and non-permissible strikes," it can only be "drawn between those services which are so essential to the community that even momentary interruption places the community in grave danger rather than between public and private employment."

Public Strikes

"Strikes by public employees should be recognized as the normal result of existing maladjustments in public employment. Such strikes may be productive of some waste and inconvenience, but they are beneficial in stimulating improvements."

(See TEACHERS on page four)

Suit Fails

The \$3,000,000 suit brought against Dean Erwin N. Griswold and the Law School last spring has failed. Judge George C. Sweeney of the United States District Court for the District of Massachusetts granted a motion for summary judgment for the defendants at noon last Tuesday. Dr. J. Irizarry y Puente, the plaintiff, had alleged infringement of his idea for a foreign tax service when he brought the suit.



Raymond S. Wilkins



William J. Brennan, Jr.

Justice Brennan to Preside At Ames Final on April 10

Associate Justice William J. Brennan, Jr., LL.B. '31, of the United States Supreme Court has been named Chief Justice for the final round of the 1957 Ames Competition. The argument will take place on April 10 in the James Barr Ames Courtroom, when the Kaplan Club will meet the Griswold Club.

Chief Justice Raymond S. Wilkins, LL.B. '15, of the Supreme Judicial Court of Massachusetts, and Judge William L. Henderson, LL.B. '19, of the Court of Appeals of Maryland, will sit as Associate Justices.

Among the oralists at the final is Daniel J. O'Hern, 3L of Red Bank, N. J., who has been selected as one of Mr. Justice Brennan's law clerks for next year.

Federal Appeal

The case to be argued is *Blair v. United States*, on appeal from the United States District Court for the District of Ames to the Court of Appeals for the Ames Circuit.

The record on appeal discloses that Frank H. Blair, a civilian, was indicted for wilfully and maliciously setting fire to a dwelling house located on the Ames Air Force Base, so that the life of one William March was put in jeopardy; and, in the second count,

for unlawfully and maliciously killing William March in the perpetration of the arson as set forth in the first count.

The jury found defendant guilty of arson as charged in the first count, but only of second degree murder on the second count. The Court of Appeals reversed the verdict and remanded for a new trial, on the grounds that an improper confession extracted from the defendant had been read to the jury.

On remand, the defendant moved for an order amending the indictment so that defendant would not be in jeopardy of conviction of first degree murder because of the reversal of the prior trial; and that testimony relating to a sample of his blood taken on the night of the fire be suppressed. Both motions were denied.

Objected to Evidence

Conflicting testimony was produced at the trial as to the happenings on the night in question. Defendant's objections to the introduction in evidence of his refusal to answer certain questions before the grand jury were overruled.

The jury found the defendant guilty of arson and murder in the first degree. The appeal from this verdict will be heard on April 10.

The Kaplan Club will argue on behalf of defendant-appellant. W. John Kennedy, of Plandome, N. Y., and Mr. O'Hern will deliver the oral arguments. Counsel on the brief are: Arthur F. Abelman, of Scarsdale, N. Y.; Philip A. Brooks, of Longmeadow; (See AMES on page three)

SBA Has Altered Method of Voting

Elections for the Student Bar Association will be conducted by mail under the group's newly ratified constitution, according to Sidney A. Stutz, 3L of Urbana, Ill., SBA president.

The former procedure of holding elections at a meeting of the membership has been abandoned because of difficulty in assembling sufficient members during the busy spring semester, Mr. Stutz said.

March 9 has been announced as the closing date for nominations. Ballots will be mailed to members on March 12, and March 23 will be the last day for return of the ballots.

The Executive Committee has appointed Mr. Stutz chairman of the Nominating Committee, and Bruce L. Balch, 3L of Joliet, Ill., as election commissioner.

Review Elects R. N. Goodwin As President

Richard N. Goodwin, 2L of Brookline, was elected president of the *Harvard Law Review* for volume 71 at 7:30 a.m. last Sunday after fifteen hours of balloting. The final poll followed an all-night session of voting by the *Review* editors assembled in Phillips Brooks House.

Mr. Goodwin, who is twenty-five, graduated from Tufts College in 1953. He completed his first year at the Law School as a member of the Class of 1956, but was called to active duty with the Army in 1954. In the interval between his separation from the armed forces in the late spring of 1956 and his return to the Law School last fall, Mr. Goodwin was administrative assistant to a committee of the Massachusetts Legislature investigating discrimination in state college fraternities and sororities.

Assisted Governor

More recently, Mr. Goodwin assisted Governor Foster Furcolo in the formation of a committee to investigate the possibility of bringing atomic industry to Massachusetts.

On Sunday afternoon, the president-elect chose additional officers to assist him in the editing of the nation's oldest law school periodical. He was advised by the retiring third-year editors of volume 70.

William V. Kane, 2L of New York City, and Peter M. Fishbein, 2L of Mt. Vernon, N. Y., were chosen note editors. Mr. Kane received his undergraduate degree from Holy Cross (See REVIEW on page four)

Seavey Completes Teaching at NYU

Warren A. Seavey, Bussey Professor of Law, Emeritus, has recently returned to the Law School after teaching torts at New York University Law School during the fall term.

Professor Seavey retired from active teaching in 1955, forty-nine years after he began his career in legal edu-



Warren A. Seavey

cation by organizing the law school of Pei Yang University in Tientsin, China. He is currently engaged in revising the *Restatement of Agency*. He is also editing a comprehensive book of law examination questions and answers, *Ballantine's Law Problems*, for which he has written the torts section. Professor Seavey is collaborating with W. Page Keeton, S.J.D. '36, Dean of the University of Texas Law School, and Professor Robert E. Keeton, S.J.D. '56, of the Law School on a new torts casebook, *Seavey, Keeton & Keeton on Torts*.

Professor Seavey has announced that as usual he "will be glad to see students at any time and for any purpose." His office is on the second floor of Langdell Hall.

Forum Brings Atom Experts To Speak on Radiation Peril

Radioactive fallout and other effects of nuclear explosions will be discussed at the Law School Forum on March 1, scheduled to begin at 8 p.m. in the New Lecture Hall.

Dr. Shields Warren, former medical director of the Atomic Energy Commission, will deliver the main address and will then be subjected to cross-examination on his views by Dr. Victor Weisskopf, theoretical nuclear physicist at the Massachusetts Institute of Technology; Dr. Walter Selove, associate professor of physics at the University of Pennsylvania; and Dr. Louis Osborn, director of the Synchrotron Laboratory at MIT.



Shields Warren

Associate Dean David F. Cavers, who teaches a seminar on Atomic Energy Regulation at the Law School, will moderate the program.

Dr. Warren is a professor of pathology at Harvard Medical School and

at the New England Deaconess Hospital. In the summer of 1946 he was executive officer of the naval medical research section of "Operation Crossroads," the Bikini atomic test. From 1947 to 1952 he was director of the Division of Biology and Medicine of the Atomic Energy Commission. In 1955 he was the United States representative on the United Nations Scientific Committee on the Effects of Atomic Radiation. In 1955 and 1956 he acted as chairman of the National Academy of Sciences' Committee on Pathological Effects of Atomic Radiation.

Wartime Theoretician

Dr. Weisskopf has been a professor of physics at MIT since 1946. During World War II he was a group leader in the theoretical division of the Manhattan Project at Los Alamos.

Dr. Selove, now in the physics department at the University of Pennsylvania, was formerly an assistant professor of physics at Harvard. He is now chairman of the Committee on Radiation Damage of the Federation of American Scientists.

Dr. Osborn, besides his work as research physicist at MIT, is chairman of the Radiation Hazards Committee of the Federation of American Scientists.

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Letters to the Editors

The Arab View

TO THE EDITOR OF THE RECORD:

The plea of Professor Louis B. Sohn in the RECORD of February 7 merits support. The plea is ancient. It is a call for justice in the affairs of nations. The modern advance of the power of destruction only underlines its timeliness. The violent history of humanity is an ever-present evidence of its necessity. But then there remains the perennial question: "What is Justice?" — and unfortunately also the perennial fact, which it is always easy to lose sight of when the "rule of law" is invoked — the fact that law can never be metamorphosed into some kind of a metaphysical entity — an abstract embodiment of justice — divorced from the interests, prejudices, ambitions of the peoples of governments of the world.

Consider for a moment — if there is a lingering doubt — the fate of the Arab people of Palestine, whose tragedy is at the root of the Arab-Israeli conflict. There is a people — an ancient people counting among its ancestors the Philistines and the Canaanites who settled the land long before the original Hebrew invasion of around 1000 B.C. It is not possible to imagine the feeling in its intensity, the terrible spirit of a member of this people — who, having awakened one day few decades ago in a land he considered his since time immemorial, found aliens claiming his own heritage, and lived to see the cattle he tended, the groves he nursed, the lands he tilled for thousands of years all gone, and he, his womenfolk, and his children thrown — human rubbish — into a pitiless wilderness? What could the "rule of law" mean to this man but an idle fancy in the mind of the scholar.

But had not the Arabs brought all this upon themselves — as you suggest in your editorial — by their obstinate refusal to accept the U.N. Resolution of 1947? Had you taken the pains to probe into the latter resolution as little as you probed into the present U.N. resolution you could have discovered for yourself that no people — knowing what we know of the ways of men — would have acquiesced in an arrangement which, in violation of the principle of self-determination, assigned away without their consent 56.47% of their country with its most fertile plains

to a Jewish minority of largely recent immigrants who owned only 5.67% of the land!

When we come to the events of the more recent years how much remains of the caricature of a provocation and belligerent Egypt and of Israel as an aggrieved avenger when we compare it with the following facts conspicuously absent in both Professor Sohn's article and your editorial:

1. Egypt's serious efforts in the months before February, 1955, to rally other Arab states behind a peaceful approach to Israel — efforts which were halted by the unprovoked Israeli raid on Gaza of February 28, 1955, that cost the lives of more than 50 Egyptian soldiers. This was not a regular retaliatory raid. It was a political raid: its purpose to embarrass Nasser with his people and to demonstrate in a humiliating way his complete impotence. It was also Ben-Gurion's fashion of announcing that he has assumed the Israeli ministry of defence. This raid marks a turning point in Egyptian thinking. It is only after this raid that the fedayeen were organized as a reprisal force and that Egypt began thinking seriously of approaching the U.S.S.R. for arms.

2. Egypt's acceptance and Israel's refusal of Prime Minister Eden's compromise proposals on Palestine of November 9, 1955.

3. Egypt's acceptance and Israel's refusal of the September, 1955, proposal of the U.N. armistice commission to establish a one-mile neutral zone along the whole length of the Egyptian-Israeli frontier to be policed by U.N. units.

4. Egypt's repeated statements of her willingness to sign peace with Israel if the latter implements the U.N. resolution on the repatriation of the Arab refugees. If Israel removes the barriers against the return of the refugees — said Egypt in effect — I shall remove the barriers against the passage of her ships through the Suez Canal.

5. Ben Gurion's statement of September 25, 1955, to Kennett Love of *The New York Times* at Sde Boker that "in one year or less" when port facilities at Elath are completed Israel's armed forces will force their way through the gulf of Aqaba and "we can do it by air, by land, or by sea." This was two days before Egypt decided to accept the Communist arms offer and a year before the formation of the Arab military alliances with which Professor Sohn seems to relate Israel's decision to take "security measures" against Egypt on October 29, 1956.

6. Dag Hammarskjöld's warning of October 18, 1956, to the Security Council that Israel was jeopardizing the Palestine Armistice by dealing with border incidents without U.N. supervision.

7. In view of your conviction that Israel intended only to take "security measures" in Sinai how do you interpret Ben-Gurion's intimation in the Knesset of Israel on November 7, 1956, that the "liberated" Sinai is not part of Egypt but part of the sacred heritage of Israel?

In the light of the foregoing I am curious to know whether you still think that Israel needed legalistic encouragement in her defiance of the almost unanimous will of the entire world community.

HANNA BATATU, 5G

A Reply

TO THE EDITOR OF THE RECORD:

No one appreciates more than the Jews the plight of the dispossessed. As a people forced again and again to leave familiar surroundings and seek a new life in strange environs, Jews everywhere concur with Mr. Batatu's great concern for those "thrown into a pitiless wilderness." However, we respectfully take issue with Mr. Batatu's assertion that "their tragedy is at the root of the Arab-Israeli conflict."

When, indeed, were the Arabs "thrown" from their "immemorial heritage"? Were they dispossessed between 1917 and 1947, before the establishment of the state? During this period, Jewish settlers made Palestine so attractive a land that many an Arab left the "cattle he tended, the groves he nursed, and the lands he tilled," and emigrated to Palestine — so many, in fact, that Palestine's Arab population doubled in thirty years. Were Arabs dispossessed when Jewish pioneers reclaimed unwanted desert (not Arab homesteads) and developed fertile farmland and modern cities. Or when the Jewish National Fund paid Arab landowners or the Mandate government for all land settled by these pioneers?

Or does Mr. Batatu refer to May, 1948, when the State of Israel declared its independence? If so, let him remember that Jewish leaders, before and after the establishment of the state, offered full citizenship to all Arabs who would stay in their homes and simply remain neutral. Those 200,000 Arabs who did remain now enjoy all privileges of citizenship, including public education and representation in the Israeli Parliament. The Arabs who fled from Israel did not do so because of Israeli pressure. On the contrary, they left in response to the urgings of Arab leaders who promised a triumphant return after Israel had been swept into the sea.

Far from violating the principle of self-determination the Partition Plan supported that doctrine by granting separate nationhood to those sections of Palestine where Jews were in the majority. Mr. Batatu's statement that Jews owned only a small percentage of Palestinian land in 1947 is correct. However, Arabs also owned a small percentage; most of the land was owned by the Mandate Government.

Let us examine the seven "facts" cited by Mr. Batatu:

1. Close examination of newspaper files has revealed no indication of peaceful intent by Egypt or Syria before the period cited. On the contrary, statements and deeds of Arab leaders show intransigent hostility toward Israel.

2. Eden's offer of the "good offices" of the British Government was not a formal proposal, but part of a speech delivered to a London audience. The plan involved a substantial reduction in Israel's territory as a basis for negotiation.

3. Contrary to Mr. Batatu's assertion, Israel did not reject the plans of the U.N. Armistice Commission. Israel voiced "full support" of Major General Burns' proposal to establish a demilitarized zone marked by a heavy barbed wire fence all along the Gaza border. By contrast, Arab leaders were reported to have opposed such a barrier because it would give legal sanction

to Israeli territorial claims. (See *New York Times*, September 4 and 11, 1955.)

4. We are glad to hear that Egypt is willing to "sign peace" with Israel, an offer which Israel has yet to hear from Nasser or other Arab leaders. The proposal to which Mr. Batatu refers was the *price* Nasser demanded in advance before he would sit down at the conference table. So bitter was the anti-Israeli feeling worked up by Arab propagandists among the refugees that Israel would, in effect, have been admitting hundreds of thousands of potential spies.

And what of the 450,000 Jewish refugees expelled from Iraq, Yemen, Egypt, and North Africa during the past several years? These were the *real* refugees, forced from their homes by Arab oppression or expulsion, not lured by propaganda.

5. The Gulf of Aqaba is an international waterway to which all nations, including Israel, should have free access. Ben Gurion's statement offered no threat, but was merely a declaration of intention to exercise what was Israel's by right. That force might be necessary was a reflection upon the nation whose guns prevented free passage.

6. Dag Hammarskjöld's warning of October 18, 1956, also referred to at great length to the non-compliance of Arab nations to the armistice agreements which they had signed, and warned that the situation was getting out of hand. Here, again, is a case where the United Nations proved incapable of dealing with clear violations of international law not marked by "a breach of the peace." In his article, Professor Sohn wrote that the inability of the United Nations to do more than "make recommendations with respect to settlement of disputes" has created a situation where "as long as a nation can violate its obligations to other nations without committing an armed attack, other nations are not entitled to resort to force in self-defense."

Because of the long-standing blockade of the Suez Canal and the Gulf of Aqaba, and the recently stepped-up fedayeen raids, Israel's actions were necessary to defend the security of her citizens.

7. Israel has left the Sinai peninsula, as requested by the United Nations. Contrast this with Nasser's continued threats, broadcast all over the Middle East, to drive the Jews into the Mediterranean Sea at a time and place of his choosing.

These are the "conspicuously absent facts," which Mr. Batatu feels are so damaging to the Israeli cause. We wonder why Egypt refuses to end the state of belligerency which it maintains in spite of United Nations decisions that this is not the proper interpretation of the concept of "Armistice"? Has Egypt offered any plan such as Ben Gurion's suggestions in December 1955 to internationalize the Israeli port of Elath, giving Egypt access to other Arab nations; to grant Jordan the use of Haifa for an oil pipeline; to finance the resettlement of Arab refugees in Arab countries; and to support the proposal by Eric Johnston for Jordan River development which would give to Arab nations 60% of the water supply?

A. HARVEY BAKER, 3C
CHARLES WEISS, JR., 2C

Caryl Chessman: A Layman in the Courts

By FRANK A. OLSON

Frank A. Olson, LL.B. '56, a member of the Illinois bar, is associated with the Chicago firm of Kirkland, Fleming, Green, Martin and Ellis. Mr. Olson gathered much of the material for this article through personal interviews with the California prosecuting attorneys, Chessman's lawyers, and Chessman himself.

Mr. Olson, who will shortly enter the Air Force as a legal officer, is a former president of the RECORD.

Like the proverbial lawyer with a fool for a client, Caryl Whittier Chessman, San Quentin's famous author-convict, insisted not only on trying his own case but on appealing it as well. Today, nearly eight and one-half years after he was sentenced to death, he still remains in active control of the litigation which has brought him an unusual collection of dissenting opinions in both the state and federal courts, but no final victory to date.

Chessman, a 35-year-old middle class intellectual of New England descent and a distant cousin of the poet John Greenleaf Whittier, wrote two best-selling books, *Cell 2455*, *Death Row* and *Trial By Ordeal*. The first book, which is now translated into 20 languages and which captured the second literary prize in Italy in 1955, made the author a world known figure. Chessman's life has been portrayed on the radio and in a movie. Parts of the case itself have been widely debated in newspapers and magazines.

Waiting to Die

Chessman is not a murderer, but is a robber caught within the terms of California's Little Lindbergh Law — a statute which was amended before

the defendant's appeal was decided, but under which he is still waiting to die in the gas chamber. This particular question is one of almost pure law and, unlike some other issues in the case, does not depend for its resolution upon the credibility of the defendant or an appraisal of the prosecutor's conduct.

The Chessman Story

In preparing this article the writer is especially indebted to J. Miller Leavy and William Bennett, counsel for the state, and George T. Davis and Miss Rosalie Asher, counsel assisting the defendant, and to other persons (including Mr. Chessman) whom he interviewed. Understandably, to do full justice to every argument and counterargument would require hundreds of pages. Here is presented a short summary of a few of the more important issues in the case.

Crimes and the Capture

The story begins in January, 1948, when a strange individual was prowling Los Angeles County in a Ford coupe equipped with a red spotlight, hence his name "Red Light Bandit." Posing as a policeman he approached couples in cars on lonely roads, robbing and terrorizing them, sometimes

committing acts of a sexual nature on the females.

A 26-year old parolee named Caryl Chessman was captured after a chase on January 23, 1948, in a car of the same year and make as that reportedly used by the Red Light Bandit, together with a penlight and gun resembling those of the bandit, and also containing clothing stolen from a store two hours earlier. He and his passenger, David Knowles, were charged with the clothing robbery and Chessman alone with the Red Light crimes. They were tried separately and both convicted.

Admitted Profession

When he came to trial in the spring of 1948, Chessman was already a self-admitted veteran of armed robberies, gun fights, thefts, and a prison escape. He had been twice to the reformatory and twice to prison. Gun in hand, he had boldly held up gasoline stations, stores, bawdy houses, and bookies' establishments without discrimination, using stolen cars (sometimes even police cars) for transportation.

Chessman chose to try his own case before Judge Charles W. Fricke and a jury of eleven women and one man. Mr. J. Miller Leavy prosecuted, and Mr. Al Matthews, then a deputy public defender, sat with Chessman as "legal advisor" (not counsel). Chessman examined witnesses and made his own argument to the jury. He was convicted of seventeen felonies comprising five Red Light transactions, the theft of the Ford coupe, and two

store robberies. He won an acquittal on one burglary count.

California's controversial Penal Code §209 (sometimes referred to as the Little Lindbergh Law) at that time provided that kidnapping (mere detention of the victims was enough) for the purpose of robbery where the victim suffers bodily harm was punishable, at the discretion of the jury, by either death or life imprisonment without possibility of parole. In two of the Red Light episodes Chessman received death sentences where, after having robbed or attempted to rob the couples, he took each of the women to his car and molested her in violation of Penal Code §288a. He received a life sentence without possibility of parole for his part in the Redondo Beach store robbery, in which his accomplice, David Knowles, severely struck a clerk on the head. There being a detention of the victims with intent to rob them, the Section 288a sex crimes and the battery of the clerk constituted the necessary bodily harm.

The State's Case

Here is the state's case on the Red Light crimes: The Red Light victims, with varying degrees of certainty, adequately identified Chessman and the Ford coupe at trial. Chessman was captured while driving the Ford. The car was linked to the crimes by the presence of semen stains and strands of hair consistent with the hair of victim Mary. Chessman orally admitted to the police his role in the

Red Light robberies except for acts of molesting the women.

Chessman built his defense around three main points. First, he argued that the police reports and original stories of several victims showed that the Red Light Bandit was a man several inches shorter than himself, a 190-pound six footer. To show how victim Mary might have changed her story since the municipal court hearing Chessman elicited from her the following testimony on cross-examination at R. 410:

"Q. . . . The next question was, 'Could he possibly have been 6 feet tall?' Your answer was, 'I doubt it; no.' The next question was, 'Your answer to that question, after thinking, is no, is that right?' and your answer was, 'That is right.' Do you remember that?"

"A. Yes.

"Q. As far as your memory serves you, directing your attention back to this January 22nd date, in the morning, is that still the correct impression you have?"

"A. Yes, that is the impression." Secondly, Chessman argued that the Red Light Bandit was a habitual sex criminal, totally unlike himself. (In response to an inquiry, Warden Harley O. Teets and Dr. William Graves, a former prison doctor who (See CHESSMAN on page three)

CHESSMAN

(Continued from page two)

had attended Chessman, stated to this writer that there was no instance of sexual irregularity in Chessman's institutional record. Chessman said there was an instance or two of statutory rape (with consent) when he was a teen-ager, and that was all. Prosecutor Leavy said he knew of one further, more sinister incident in the defendant's background.)

Thirdly, Chessman argued that his oral confessions were prompted by the secret brutality and threats of some of the policemen who held him. About this there was conflicting testimony at trial.

Questionable Decision

Whatever the true facts may be, Chessman has always maintained his own innocence and persisted in his refusal to help locate the true bandit whose identity he claims to know, assigning as reasons the difficulty of producing proof and the possible harm that might befall his own friends. (Trial By Ordeal, pp. 262-264.) This morally questionable position contrasts sharply with the personal reformation which has been taking place within the defendant in recent years, and this attitude has undoubtedly dismayed many persons who might otherwise sympathize with him on one or more issues in the case. Nevertheless, even a sinner, perhaps especially a sinner, is entitled to a fair trial and appeal under our system of law.

Did Chessman Get A Fair Trial?

Did Chessman get a fair trial? The judges of the California Supreme Court were unable to agree among themselves. Here is the majority opinion:

"Regrettably, the prosecuting attorney presented his case in an overzealous manner, both in addressing the jury and in improperly bringing in evidence of misconduct of defendant for which he was not on trial. But the improprieties of the prosecuting attorney could have been corrected had there been objection thereto in the trial court. Defendant now complains that the trial court of its own motion should have interposed objections and, in effect, undertaken defendant's representation. But defendant deliberately (and not naively) determined to represent himself; part of the technique of his representation appears to have been the studied omission to interpose objections, the frank admission that he was a criminal, and the argument that the crimes charged were committed by a blundering person rather than by a clever professional such as the evidence indicates he was; he followed this technique while requiring a skilled defense attorney to sit silently at his side. We are not disposed to permit a defendant who thus develops a record to claim prejudice from it, although the cumulative instances of misconduct might in other circumstances constitute ground for reversal..." *People v. Chessman*, 38 Cal.2d 166, 177, 238 P.2d 1001, 1008 (1951).

CHERCHEZ
LA FLAMME
BARBER SHOP

• EIGHT EXPERT BARBERS
21 DUNSTER ST. EST. 1898

S.C. No. 117964

CT. I - JAN 17TH 1948 MARY TARRO
8:00 P.M. (BURGLARY)

2 blks. defendant's home

CT. II - JAN 18TH 1948 THOMAS B. BARTLE - R
4:35 A.M. (ROBBERY) MALIBUCT. III - JAN 18TH 1948 FLOYD C. BALLEW - 7:30 P.
LAINE BUSHAW - 7:00-8:00

(ROBBERY) West Side - Rose Bowl

CT. IV - JAN 19TH 1948 JARNIGAN LEA
8:30-9:00 P.M. (ROBBERY)

FLINTRIDGE - Overlook - Rose Bowl

CT. V - JAN 19TH 1948 REGINA JOHNSON

9:00 P.M. (288a Penal Code)

FLINTRIDGE - Overlook - Rose Bowl

CT. VI - JAN 19TH 1948 REGINA JOHNSON

9:00 P.M. (ROBBERY)

FLINTRIDGE - Overlook - Rose Bowl

CT. VII - JAN 19TH 1948 REGINA JOHNSON

9:00 P.M. (KIDNAPING)

OF ROBBERY - WITH

FLINTRIDGE - Overlook

CT. VIII - JAN 20TH 1948 GERA

12:10 A.M. (ROBBERY)

Mulholland Drive

Caryl Chessman points to a list of crimes for which he has been arrested.

Among the footnotes to the majority opinion on the same page the following appears: "The prosecuting attorney on voir dire examination of the prospective jurors said, 'I do not believe the evidence will show that the defendant has murdered or killed anyone yet.' On the voir dire examination and in argument he emphasized his belief that the defendant should receive the death penalty. He commented that defendant was representing himself in order to gain the sympathy of the jury."

Prosecutor's Remarks

In addressing the jury the prosecutor said in part: "... I can think of some other crimes which he has committed such as assault with a deadly weapon. We did not charge it. I would have to stop some place or we would be talking here all day. I do not want to do that. Don't let those things bother you too much." A third footnote deals with improperly admitted evidence.

One of the two dissenting judges observed: "A reading of the majority opinion, however, convinces me that many flagrant errors were committed during the trial which would ordinarily be held to be prejudicial and require the reversal of a judgment of conviction. In fact, the only way I can rationalize the majority opinion is that those concurring therein feel that a person charged with seventeen felonies of the character of those charged against the defendant, and who represents himself, is not entitled to a trial in accordance with the rules applicable to the ordinary criminal case. I cannot subscribe to this doctrine." 38 Cal.2d 193, 238 P.2d 1018.

According to the majority opinion affirming the conviction, "The prosecuting attorney argued that 'punishment for life imprisonment without possibility of parole does not mean

what it says. Those are the words used in the statute defining the punishment, but that is not what it means,' because of the possibility of pardon commutation or the Legislature's changing the penalty. Furthermore, he repeatedly commented that defendant 'hasn't much to lose if you convict him of robbery. Robbery doesn't mean a thing to him. No. To convict him of robbery is just like you going home. Time means nothing to him.'"

"The jury were apparently impressed by this argument, for after they had deliberated for a time they returned into court and requested instruction as to the meaning of life imprisonment without possibility of parole. The court said, 'that primarily means that the person committed to prison under such a sentence will be required to serve life imprisonment in prison and cannot be paroled,' and explained that a person sentenced to life imprisonment for murder, for example, could be paroled. It went on to say further, however, as the prosecuting attorney had in his argument, that there was always a possibility of commutation, pardon, or a legislative change in punishment. A juror asked whether, if the punishment of life imprisonment without possibility of parole were imposed, 'would there be any assurance that that party would never be free again?' and the court again pointed out the possibility of action by the governor or the Legislature."

"This insistence of the trial court in emphasizing such possibilities

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operated to his prejudice, defendant says, and resulted in the imposition of the death penalty. . . ." 38 Cal. 2d 189, 238 P.2d 1015.

In the litigation about the disputed transcript (discussed below), Chessman contended that because of the prosecutor's alleged tampering with the record the trial judge's full remarks in allegedly adopting the prosecutor's argument urging the jury to bring in the death penalty do not appear in the transcript. To date, however, Chessman has not successfully proved this charge in a court.

What Happened
To the Transcript?

At the trial Judge Fricke denied Chessman's motion for a daily transcript, but the prosecutor was able to obtain apparently without a court order certain parts of the transcript for use in his argument to the jury. (238 P.2d 1007) Ironically, the court reporter died a short time after the trial, leaving a substantial portion of his notes untranscribed. A different reporter was called in to prepare a substitute transcript with assistance from the trial judge and the prosecutor. Judge Fricke held a hearing to pass on Chessman's written objections to and corrections of the completed transcript, but did not permit Chessman (acting as his own counsel) to appear in person.

Before his appeal came up on the merits Chessman filed a special action contesting the preparation of a substitute transcript as unwarranted by California law. The decision against him stated in part: "Inconsequential inaccuracies or omissions in a record cannot prejudice a party; if in truth there does exist some consequential inaccuracy or omission, the appellant must show what it is and why it is consequential." *People v.*

AMES

(Continued from page one)

Richard J. Cravens, of Whiting, Ind.; Frank N. Gallagher, of Mt. Carmel, Pa.; William P. Moyles, of New York City, and Daniel J. Sweeney, of Yonkers, N. Y.

Oralists for the Griswold Club, representing the respondent, will be Edward G. Bauer, Jr., of Greensboro, Pa., and Clark L. Wagner, of Hammond, Ind. Counsel on the brief are George W. Beatty, of Grosse Pointe, Mich.; Stephen E. O'Neil, of Bronxville, N. Y.; Paul 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. All participants in the final round are third year students.

Chessman, 35 Cal.2d 455, 462, 218 P.2d 769, 773 (1950).

The dissent replied: "It is unreasonable to place upon a defendant sentenced to death the burden of showing wherein omissions and inaccuracies in the record vitally affect his rights. This is particularly true of the evidence in the present case relating to the question of identification. Chessman asserts that portions of the cross-examination of three witnesses who identified him as the robber are not included in the transcript. He also claims that all of the cross-examination of another witness has been omitted. It may be that if the missing testimony were presented upon appeal, Chessman's guilt would not be so clearly established as to enable this court to say that such errors as may be relied upon as grounds for reversal did not result in a miscarriage of justice." 35 Cal.2d 473, 218 P.2d 779.

As time went on Chessman's investigators helped him build his case. Here is his position: Through no fault (See CHESSMAN on page four)

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CHESSMAN

(Continued from page three)

of mine I was denied a daily transcript, and the court reporter died. The very same judge and prosecutor whose oppressive conduct at trial which I wanted reviewed in the appellate courts took it upon themselves to supervise the preparation of a substitute transcript in my absence by a method unknown to California law, when they should have granted me a new trial. The dead reporter's notes were in a confused state in many places because of the man's illness and his uncommon system of notation. Yet the prosecutor, in pretending that such notes could be read accurately and in getting his incompetent relative appointed special reporter so that the notes would be read, was responsible for preparing a fraudulent transcript. At the time of preparation he did not inform the judge of his relationship (nephew by marriage) with the substitute reporter. With the prosecutor's knowledge, that reporter consulted with two prosecution witnesses about points of their testimony. Moreover, deletions or revisions were made in critical places, especially in connection with the trial judge's remarks to the jury about the death penalty.

No Right to New Trial

Here is the state's answer: Errors or losses in a transcript, even if proven, do not entitle a party to a new trial as a matter of right. The substitute transcript was prepared in a right and reasonable manner. The trial judge considered the defendant's written objections and even adopted some of his proposed corrections. The substitute reporter, although a relative of the prosecutor, was appointed in an impartial manner because of his experience in working with the dead reporter and reading his notes on other occasions. The defendant's charges of fraud on the part of the prosecutor are untrue and cannot be proven.

(The contentions of the parties are found scattered in various court opinions, Chessman's petition set forth starting at 274 P.2d 655, Judge Goodman's latest opinion at 138 F. Supp. 761, and the briefs on appeal following that opinion.)

Turned to Federal Courts

Turned down in the state courts, Chessman went to the federal courts on the transcript question. In 1955 the federal district court found against him for the fifth time. Judge Louis E. Goodman held: "The same claim of impropriety of the transcript on appeal has been before the State Courts, commencing as far back as 1948. It is the same claim again in the instant petition; the previously tendered facts are again set forth, plus some additional facts of the same general character. . . . When does the wheel stop turning? What must the citizen think of our 'nickel in the slot' justice?" *In re Chessman*, 128 F. Supp. 600, 602 (1955), *aff'd sub nom. Chessman v. Teets*, 221 F.2d 276 (1955).

Then Chessman scored a victory in the Supreme Court when that tribunal held that a fraudulent transcript, if proven, would violate the Fourteenth Amendment and that the petitioner was entitled to a hearing on the merits

of his claim. *Chessman v. Teets*, 350 U.S. 3 (1955).

In January, 1956, Judge Goodman held a hearing at which Chessman, the trial judge, prosecutor, substitute reporter, two jurors, and other witnesses testified. The court made eleven findings of fact against Chessman and held that, "There is not a scintilla of verity in the allegations made in the petition," and that the petitioner's statements concerning the trial judge's alleged remarks to the jury "are false and perjurious." *Chessman v. Teets*, 138 F. Supp. 761, 765 (1956).

Contents Judge Erred

In his brief on appeal Chessman contended that Judge Goodman erred in not permitting the accuracy of the substitute transcript based on the dead reporter's notes to be tested, a point basic to a proof of fraud in the way the prosecutor and substitute reporter handled those notes. The brief quoted the court as saying at R. 248: "I don't think the Supreme Court of the United States intended me to spend in this court days or weeks of time in determining the accuracy of this transcript. Whether they did or not, I am not going to do it."

Chessman's brief also contended that Judge Goodman (who had already sat on the case three times) should have granted petitioner's motion to disqualify himself because of a "personal and fixed bias against appellant," citing a July 1, 1955 article in the *San Francisco Chronicle* as reading in part as follows: "A move to outlaw the bulk of Federal Court writs filed by convicted state felons such as Caryl Chessman, San Quentin's condemned author-convict, was unanimously endorsed by Federal Judges of the Ninth Circuit yesterday. . . . The recommendation for the change in the law was presented to the conference by Judge Louis E. Goodman." (See also Goodman, *Use and Abuse of the Writ of Habeas Corpus*, 7 F.R.D. 313.)

On October 18, 1956 the Ninth Circuit Court of Appeals affirmed Judge Goodman's decision by a two to one vote, leaving Chessman with still another dissenting opinion. But it will take more than dissenting opinions to save the intellectual robber-litigant from the gas chamber. Whether the Supreme Court will review the case is anyone's guess.

Is the author-convict a litigating crank whose case is without merit? Are those judges who have issued dissenting opinions or granted him stays of execution shaking public confidence in the administration of justice? Did the trial judge shamefully neglect his judicial duty in letting the prosecutor abuse the defendant, violate the rules of evidence, and influence the preparation of the transcript? Did an unfortunate coincidence of a prosecutor's fraud and a federal judge's bias operate to deny Chessman his day in the appellate courts?

These same hard questions remain — questions to which there may never be any final answers.

(In the second half of his article, to be published next week, Mr. Olson will develop the legal problems raised by the Chessman case.)



Mrs. Charles M. Haar (left) and Mrs. John T. McNaughton (right) are shown in the creations they will model at the Law Wives' "Mardi Gras" fashion show in Harkness Commons next Tuesday.

Law Wives Reveal Styles for Spring

The Law Wives will present their spring fashion show, "Mardi Gras," in Harkness Commons on Tuesday, March 5 at 8 p.m. Ensembles will be furnished by two Cambridge fashion studios.

Faculty wives modeling in the show will be Mrs. Charles M. Haar and Mrs. John T. McNaughton. Student wives who will model are: Mrs. Edward G. Bauer, Mrs. Jay Brett, Mrs. James Bridgeland, Mrs. Truman S. Casner, Mrs. Malcolm Lazarus, Mrs. James R. Modrall, Mrs. John N. Scales, Mrs. Charles G. Schulz, Mrs. Alan C. Sundberg, and Mrs. Harry Weil.

Betty Jean Oestreich, 1L of Montclair, N. J., a former Conover model, will also appear on the program. Children of law couples will model latest fashions for the pre-school set.

Tickets may be obtained from the receptionist in Langdell Hall, the Coop, or by calling Mrs. Robert M. Royalty, KI 7-1871, or Mrs. Peter L. Malkin, UN 4-3870.

Polio Shots...

Free polio vaccine is still available at the Law School Clinic for the use of students, faculty, employees and dependents and will be dispensed on a first come, first serve basis. When the current supply of vaccine is exhausted, \$1 will be charged for student, faculty and employee inoculations and \$2 for each dependent.

Injections will be given on March 5, April 2, May 7, 14, 21, 28, and June 4. Students, faculty and employees may receive their shots in the afternoons between 2 and 4 p.m. Dependents will be inoculated on the same dates from 4:30 to 5 p.m.

The free vaccine is made available under the Massachusetts Polio Vaccination program.

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REVIEW

(Continued from page one)

in 1955, while Mr. Fishbein graduated from Dartmouth the same year.

Arnold N. Enker and Arthur R. Miller, both 2L of New York City, were selected case editors. Both men received their undergraduate degrees in 1955: Mr. Enker from Yeshiva, and Mr. Miller from the University of Rochester.

Daniel J. Gifford, 2L of Utica, N. Y., and Richard J. Medalie, 2L of Minneapolis, were designated as case editors for volume 71. Mr. Gifford is a 1953 alumnus of Holy Cross. Mr. Medalie received his A.B. from the University of Minnesota in 1952, and was awarded his A.M. by the Harvard Graduate School of Arts and Sciences in 1955.

As developments editor, Mr. Goodwin chose Jack H. Friedenthal, 2L of Denver, a 1953 graduate of Stanford. Thomas B. Leary, 2L of Orange, N. J., who graduated from Princeton in 1952, will be book review editor. Loyd M. Starrett, 2L of Coral Gables, Fla., a 1953 alumnus of Harvard, will be treasurer.

In addition to Mr. Goodwin, four other new officers are veterans. They are Messrs. Gifford, Starrett, Friedenthal, and Leary. The new editorial board will gradually assume its responsibilities during the remaining months of the spring term, under the guidance of the third-year officers of volume 70.

Library Institute...

The first annual Institute of the Law Librarians of New England was held here last Friday, according to Earl C. Borgeson, Harvard Law Librarian.

Sixty delegates representing eighteen member institutions of the American Association of Law Libraries heard an opening address by Professor Charles Fairman, chairman of the Harvard Law Library Committee.

The one-day institute considered a number of the broad problems indigenous to the development and maintenance of extensive law libraries.

A special guest and observer of the sessions was Chien Chang Lan of the library of the National University of Taiwan.

Harvard Acquires Sargent Buildings

The buildings and grounds of Sargent College of Physical Education have been purchased by Harvard University, according to a recent announcement by President Harold C. Case of Boston University. As of July 1, 1958, Harvard will take possession of the main building at 6 Everett St., which contains classrooms, lounges, and three gymnasiums; Lenox Hall, a five-story dormitory at 1595 Massachusetts Ave.; and a residential dormitory for seniors at 3 Sacramento St.

New Sargent facilities are being set up on the Boston University Charles River Campus. Proceeds from the sale are expected to cover one-third of the cost of the new plant.

TEACHERS

(Continued from page one)

"The strike was peaceful, was not for an unlawful purpose, was reasonable conduct under all of the circumstances, and a weighing of the equities in the case clearly establishes that a great harm and injustice has been done the teachers with a little or no injury to the city."

The city's case is predicated on a number of federal and out-of-state decisions, and upon a 1947 statement by former New York Governor Thomas E. Dewey in which he said,

"Public service is a public trust not only for elected officials, but for all employees. It is a trust in behalf of all the people. A trustee cannot strike or falter in the performance of his duties."

"A public employee has as his employer all the people. The people cannot tolerate an attack upon themselves."

Solicitor Roche adds that it "would be unthinkable that the court doesn't have a right to issue an injunction against employees striking against the very government which employs them."

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85% of those students from N.Y.U., Fordham, and Columbia Law Schools who attended this course passed both parts of the exam in June, 1956.