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TEN CENTS

Semi-finals to Match Griswold, Story, Chayes, Casner Clubs

The Casner Law, Story Equity, Chayes, and Griswold Equity law clubs have won places in the semi-finals of the Ames competition next fall.

The Casner Law Club defeated the Gardner Club in a patent case involving mandamus and change of venue. Oralists for the winning Casner Club were James M. Brachman of Milwaukee, and William C. McAuliffe, Jr. of Columbus, Ohio. Counsel on the brief were Joseph E. Bachelder of Princeton, N. J.; Truman S. Casner of Belmont; Paul B. Firstenberg of New York City; James S. Hostetler of Massillon, Ohio; Richard C. Kohls of Cambridge and Morton M. Winston of Newtonville.

Gardner Club oralists were Robert L. Crosby of Minneapolis, and Philip F. Zeidman of Birmingham, Ala. Counsel on the brief were Stephen M. Boyd of St. Louis, Mo.; Thomas L. Clark of Roanoke Rapids, N. C.; Kenneth W. Hergenhan of Leonia, N. J.; Andrew S. Meyer of St. Louis, Mo.; Walter R. Milbourne of Lansdowne, Pa., and G. Curtis Webber of Auburn, Me.

The Story Equity Club won a decision over the Casner Equity Club in a case where the issue was the duty of a labor union to bargain in good faith under the National Labor Relations Act. Counsel on the oral argument for the winning Story Equity Club were Donald H. Burnett of Pendleton, Ore., and Carl M. Sapers of Brookline. Counsel on the brief were Hugh Amory of Natick; Herbert P. Gleason of Cohasset; William H. Hazen of Wellesley Hills; William B. Hetzel, Jr., of Pittsburgh, Pa.; John C. Pittenger of Nottingham, Pa., and Daniel Steiner of New York City.

Oralists for the Casner Equity Club were Arnold C. Greenberg of

Hartford, Conn., and Paul G. Zerby of St. Paul, Minn. Counsel for the brief were Louis Altman of Englewood, N. J.; Paul H. Baris of New York City; Ralph S. Cunningham, Jr. of Atlanta, Ga.; Sheldon H. Elsen of (See AMES on page four)

Vacation Features Marathon, Musical

The annual spring vacation for the Law School will begin on Sunday, April 14, and continue for eight days. Because of the unfortunate position of this respite, many law students will remain in Cambridge to review for finals or to finish papers. These stalwart scholars will be seeking some diversion, so for their benefit the RECORD, which will not make its customary appearance next Thursday, has investigated the most promising local activities of the week.

The top distraction of the vacation will be the 61st annual BAA Marathon on Saturday, April 20. The runners are scheduled to leave Hopkinton at noon, pass Wellesley an hour later, and straggle into the BAA clubhouse on Exeter Street in downtown Boston sometime between 2:15 and 6 p.m. The classic distance of 26 miles and 385 yards is to be covered.

Foreign Domination

An international event which is more widely known in Europe and Asia than in the United States, the "bunion derby" will this year feature three entrants from Japan and three from South Korea. Other foreign runners are expected to enter. No American has won this race since 1945.

On Wednesday evening, April 17, the musical *New Girl in Town* will be unfolded at the Shubert Theatre for its pre-Broadway run. Based on Eugene O'Neill's *Anna Christie*, the show stars Gwen Verdon and Thelma Ritter.

On Thursday afternoon, April 18, the 1957 major league baseball season will open at Fenway Park, when the Boston Red Sox meet the New York Yankees. Mickey Mantle, Ted Williams, and the Harvard Band will (See VACATION on page four)

Ames Judge



Judge William L. Henderson, LL.B. '19, of the Maryland Court of Appeals, who sat as an associate justice at the final argument of the Ames Competition last night. An account of the proceedings will appear in the next issue of the RECORD, two weeks from today.

Seniors to Choose Six Class Officers

The Class of 1957 will elect its permanent class committee on April 25 and 26. The positions of class marshal, secretary, and four committeemen will be filled by class-wide ballot.

The elections are being conducted by an ad hoc class committee, consisting of Richard J. Cravens, 3L of Whiting, Ind., chairman; Calloway Cochran, 3L of Dallas; Ruth Joseph, 3L of New York City; John B. Lowry, Jr., 3L of Indiana, Pa.; Henry J. Stern, 3L of New York City, and Sidney A. Stutz, 3L of Urbana, Ill.

Nominating papers for the election are now being circulated by prospective candidates. The deadline for nominees to submit petitions with twenty signatures is Friday, April 12 at 5 p.m. The election rules are posted on the Langdell and Austin bulletin boards.

The duties of the class officers are to organize class activities after graduation and to assist in fund raising.

Faculty

Paul A. Freund has been appointed Royall Professor of Law, succeeding John M. Maguire, who retires this year. Henry M. Hart, Jr., has been appointed Charles Stebbins Fairchild Professor of Law, the position being vacated by Professor Freund.

Hall Defends M'Naghten Rule As Proper Test for Insanity

"A current wave of irrationalism, born of fear and defeat, threatens to engulf all rational thinking on the subject of criminal responsibility. The M'Naghten Rule is the rule of reason." These were the words of Jerome Hall, Professor of Law at the Indiana Law School, during a debate on Criminal Responsibility in the James Barr Ames Courtroom last Friday afternoon before an audience of 450 delegates and students.

The debate was part of the eighth annual Northeast Conference of the American Law Student Association. Others on the panel were Visiting Professor Herbert Wechsler, who is Reporter for the American Law Institute's Model Penal Code, and Assistant Professor Abram J. Chayes. Professor Chayes was author of an amicus curiae brief in *Stewart v. United States*, 214 F.2d 879 (1954) which advocated the Durham Rule as a test for legal insanity.

Louis L. Jaffe, Byrne Professor of Administrative Law, moderated the program.

Professor Hall said in his opening remarks that "Criminal responsibility makes sense only if human moral responsibility makes sense. New ideas are tending to wipe out the conception of man as a rational being." Mr. Hall criticized current psychological conceptions of human behavior and psychologists collectively, deploring what

he termed the "cult of the irrational," to whose discredit, he said, must be laid the "irresistible impulse" test for excusable criminal conduct.

The "irresistible impulse" test is wrong, Professor Hall declared, because it views volition apart from cognition. This forced separation is artificial, for man is an integrated personality. "There is no such thing as



Louis L. Jaffe

University Awards Go to Scott, Howe

Two members of the Law School faculty were named as recipients of University prizes this week.

Austin Wakeman Scott, Dane Professor of Law, received the George Ledlie Prize at a special meeting of the faculty in the Roscoe Pound Room of Langdell Hall last Tuesday. Nathan M. Pusey, president of Harvard, made the presentation.

The prize, which amounts to \$1,020, is awarded biennially "to a person in any way connected with Harvard University, who, in the judgment of



Austin W. Scott

said University since the last awarding of the said prize, has by research, discovery or otherwise made the most valuable contribution to science, or in any way for the benefit of mankind."

Professor Scott was honored in recognition of the publication of the second edition of his treatise, *The Law of Trusts*. He is the second recipient of the prize. The first award, in 1955, was made to Robert P. Woodward, now Morris Loeb Professor of Chemistry, in recognition of his work in synthesizing quinine and other materials.

Professor Mark DeWolfe Howe was named recipient of the Harvard University Press Faculty Prize for the best manuscript by a member of the faculty submitted during the year (See AWARDS on page four)

an irresistible impulse apart from serious cognitive defects or deficiencies."

"Man is a rational being; intelligence controls human behavior," Mr. Hall continued. Criminal responsibility should be determined by a rule of law recognizing this, rather than a rule predicated upon individual standards of justice. "A man is either sane or he is not sane. If he is, he should be punished for his crimes; if he is not, he should be placed under medical care and custody. The line has to be drawn somewhere."

Jury Must Decide

Expressing displeasure, distrust and disdain for modern psychiatry throughout his talk, Professor Hall said, "This line is for the jury, not the psychiatrist, to draw. That is the purpose of the jury. Experts should be on tap, not on top, in a democracy."

Professor Hall defended the M'Naghten Rule, which is in force in England and throughout most of the United States today. Explaining his conception of the proper test for determining criminal responsibility, he said, "The test should be simply whether the defendant knows right from wrong. Under the M'Naghten Rule the jury should be asked, 'Does the defendant understand ordinary actions and their consequences? Does he have competence to understand ordinary values?'"

Professor Chayes advocated adoption of the Durham Rule, under which actions which are the product of men (See DEBATE on page three)

Holmes Lecture

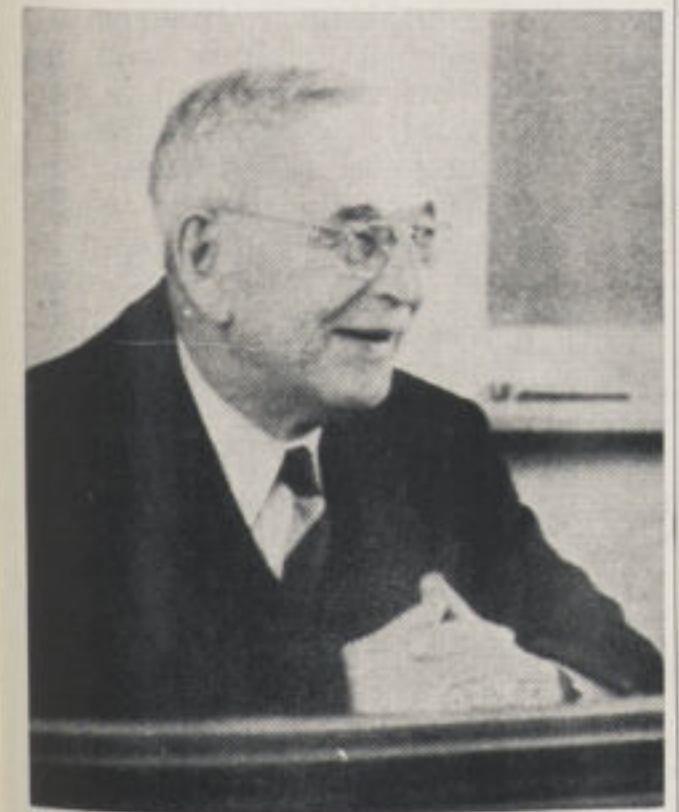
The Oliver Wendell Holmes Lecture will be given this year by Herbert L. A. Hart, Professor of Jurisprudence at the University of Oxford, and Visiting Professor of Legal Philosophy at the Law School. The lecture will be held at 8 p.m. on Tuesday, April 30, in the James Barr Ames Courtroom. The subject of Professor Hart's address will be "The Separation of Law and Morals."

Seavey Will Teach At BC Next Year

Warren A. Seavey, Bussey Professor of Law Emeritus, and Richard G. Huber, LL.M. '51, will join the faculty of the Boston College Law School in September 1957, according to Dean Robert F. Drinan, S.J.

Professor Seavey was retired from teaching here in 1955 under the University's compulsory retirement policy, forty-nine years after he began his career in legal education by organizing the law school of Pei Yang University in Tientsin, China. He is also a former dean of the University of Nebraska College of Law.

Professor Seavey will teach Torts at Boston College. The case book for



Warren A. Seavey

his course will be *Seavey, Keeton & Keeton on Torts*, written in collaboration 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.

Mr. Huber was formerly Associate Professor of Law at the University of South Carolina School of Law, and now teaches at the Tulane Law School, where he is faculty advisor of the *Tulane Law Review*.

March of Progress Rewriting Old Unintelligible English Law

A bill drafted by the Bar Association of the District of Columbia would change an early District statute which can be traced directly to an English law of 1225, according to Thomas M. Raysor, LL.B. '37, president of the association.

The bill concerns Section 201, Title 18 of the District of Columbia Code, which deals with dower and curtesy. Mr. Raysor indicated a reason for the change that "some of the language in there is hardly intelligible."

Section 201 reads in part: "A widow, after the death of her husband, incontinent, and without any difficulty, shall have her marriage and her inheritance . . . and she shall tarry in the chief house of her husband by 40 days after the death . . ."

"Or that the house be a castle; and if she depart from the castle, then a competent house shall be forthwith provided for her, in which she may honestly dwell . . ."

"And for her dower shall be assigned unto her the third part of all lands of her husband, which were his during coverture, except she were endowed of less at the church door."

Mr. Raysor, to explain in part the

language of the statute, said, "In the old days, if a man didn't want his wife to have dower interest in his estate, he could go through a special ceremony at the door of a church. This happened before they were married."

"If she went on and married him after that," he continued, "it must have been a case of true love."

The modernization of the statute will rephrase ideas dating from the time of Henry III in modern language, which will lend itself more readily to interpretation.

"Of course, it should have been done long ago," Mr. Raysor said, "but we don't like to rush into these things hastily."

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Postscript

Caryl Chessman, who taught himself law in prison, has finally argued his way into the Supreme Court. After eight previous rejections of his pleas, the Court on Monday granted him a hearing set for May 13 to determine the validity of his argument discussed in the RECORD issues of February 28 and March 7. Chessman claimed that the transcript of his trial, which had to be reconstructed from the uncompiled notes of the court reporter who died while it was in progress, was spuriously and incompetently completed. Even the most cynical can be assured that every man will have his day in court.

Letter to the Editor

TO THE EDITOR OF THE RECORD:

I have a good deal of sympathy with your editorial criticizing the NATO Symposium on March 23 on the ground that it was a "canned" performance based upon prepared questions with no audience participation and that certain crucial issues were not explained.

First, to dispel any doubts, this is *not* the way the Defense Policy Seminar is conducted. Earlier in that week the guest lecturer was Sir John Slessor (speaking as a private citizen) who seized the Mid-East nettle firmly, including the Suez invasion, and submitted to ninety minutes of very searching questions. And, as you may recall, last year's large session with Field Marshal Lord Montgomery was conducted with no holds barred.

But second, it might be well to bear in mind certain facts concerning the March 23 group of 13 senior officers. Each of the thirteen was the Military Representative of his country, speaking in public on matters having political overtones as well as military substance. It is not surprising therefore that the national governments required that they be allowed to approve the text of the questions and answers in advance.

The possibilities of a gaffe were inherent in national relationships and backgrounds familiar to us all. For example,

1. The Danes and the Norwegians are currently under heavy criticism from the Soviet Union due to plans to deploy missiles throughout NATO. An unguarded remark might have been the basis for a new blast from Moscow.
2. The Dutch, Belgians and French had been invaded by Germany, and a German officer was present. Spectres of the past could easily have been resurrected.
3. The Germans and the Italians were defeated in World War II by NATO nations who are now their allies, a situation fraught with possibilities of tension.
4. No British, Turkish or Greek officer could risk a question on Cyprus without getting into trouble.
5. The Suez-Egyptian crisis is hardly a matter upon which it would be wise for American, British or French officers to answer questions, particularly in view of the wound-healing recently undertaken in Bermuda.

It is one thing for the President or Mr. Dulles to conduct a wide-open press conference. It is quite another thing for officers without political authority or responsibility to place themselves in a position where, however innocently, they might embarrass either their colleagues or their governments.

Come around to one of our regular sessions sometime and we shall be glad to give you the floor for any question you care to ask.

W. BARTON LEACH
Defense Studies Program

The Legal Process, American Legal History Are Discussed by Sacks and Fairman

The RECORD today presents the fourth and fifth articles in the current series on the second year electives. Professor Charles Fairman discusses his course in American Legal History which will be given in one section in the fall. A more detailed summary of the topics covered in American Legal History may be found in Professor Fairman's article in the December, 1956 issue of the Harvard Law School Bulletin. Professors Henry M. Hart and Albert M. Sacks will give separate sections of The Legal Process, formerly given as The American Legal System. Professor Sacks indicates the goals of this course in today's second article. The series will be concluded in the last issue of the year with reports on three more electives.

By ALBERT M. SACKS

The perspective course which in the coming academic year is entitled "The Legal Process" and which is to be taught in two sections by Professor Henry Hart and myself might be called a course in search of a name. The course has been taught under the title of "Legislation," subsequently with the heading of "The American Legal System," and now under its new name.

Our difficulty lies in finding a word or phrase which conveys a full sense of the course and its aims. As the name of the course has been changed, so too has the title of the materials which we are developing in connection with it. Perhaps the best description of the course is contained in the sub-title of the 1957 edition of those materials. The full title is *The Legal Process: Basic Problems in the Making and Application of Law*.

The aims of the course are, first, to identify those broad problems that are basic to the law-making process itself, whatever the particular institution that may be involved. It examines, for example, the intrinsic difficulties and the dilemmas posed when one sets out to control by words the future conduct of large numbers of people.

Secondly, the course studies each of the major institutions engaged in the law-making process. It seeks to bring to light not only their individual characteristics, but the relations of the various lawmaking processes one to another, so that some sense of the over-all picture — call it legal process, legal system, legal order, or legal structure — may be had.

Order of Topics

The sequence of institutions studied follows a natural if not inevitable progression. After a general introduction (chap. I of the materials) we turn to the institution of private ordering (chap. II), the process by which most problems of our everyday existence get solved.

We then proceed to the common law role of the courts in dealing with problems that private persons have been unable to settle (chap. III).

This is followed by a study of the work of the legislature — its functions in areas where it has exclusive competence, as in appropriat-

By CHARLES FAIRMAN

Given half a dozen significant fragments from a volume of session laws, how close could one come to identifying the source and the year? A knowing eye may narrow the possibilities to perhaps a small group of states, and can come perhaps closer than five years in judging the date — as this year's examination papers showed. This is comparable to the process by which an archeologist, unearthing a few implements, can relate them to an entire civilization. The statutes are a faithful expression of the material and moral conditions of the community.

The mode of thought prevailing at the close of the American Revolution, the rise of "Jacksonian Democracy," the needs of life on the frontier, the powerful impulses released by the triumph of the Union — these and many other aspects of our national life left their peculiar marks upon the statute book. The legislation of one state would be adopted by others, perhaps along a path of emigration. Bentham's disciples carried through Parliament rational modifications of the common law, and many of these spread quickly to American statute books.

Law under Social Contract

The judicial reports tell a similar story. Thus when one reads [1 N.C. (Taylor) 65 (1799)] that the legislature may not penalize action outside though it produce hurtful effects within, for the reason that the actor had never given his consent to the law, one recognizes the conception of a social contract which dominated thought in the early years of the Republic. When one reads [39 Ohio St. 273, 279 (1883)] that a government's object in entering into an extradition treaty is to assure its citizens of a "right of asylum" against the government itself, one sees in this exorbitant notion the intense individualism that animated the judges well on toward the

ing funds and levying taxes; and its functions in areas where judicially-developed law is at least potentially available as an alternative to enacted law (chap. IV and V).

We then consider the institutional processes that follow legislative enactment: the work of executive and administrative agencies in administering the statutory scheme (chap. VI) and the role of the courts in the interpretation of statutes (chap. VII).

According to unfulfilled plans, this would then be followed by some characteristic problems in the making, amending and interpreting of constitutions (chap. VIII), and possibly by a final summary of the major interrelationships among the different legal institutions studied (chap. IX).

Incidental Questions

The course does not attempt systematic treatment of the special problems of allocation of activities among federal, state, and local governments, but when these questions arise in incidental fashion, as often they do, they are briefly dealt with.

With respect to each of the major legal institutions studied in the course, the recurring questions are in general the same. What special characteristics are identified with the particular institution? In light of those characteristics, what are its potentialities, its limitations, and its possible abuses? For what kinds of problems is it best suited and for what kinds least fitted?

These questions become the more meaningful as the various institutions can be compared by considering how each typically functions in solving the same problem. This can be posed in various ways, as for example by the question: When is the court justified in deciding that the issue before it is one that only the legislature may solve?

Values of Private Action

Similarly, a study of private ordering is not limited to consideration of the role of private counsel, important as that is. It extends to the question of how courts and legislatures can so execute their roles as to maximize the values of private action and minimize its defects.

In order to pose these broad issues, the materials have been organized in a series of concrete problems, selected because they present questions of a basic and recurring character. We seek, through presentation of specific situations, to raise issues relating to the lawyer's role in private ordering, the court's function in evolving a sensible technique of statutory interpretation, the significance of stare decisis, and the like. While class discussion focuses on the concrete situation, the student is supposed to come away from the whole with insight into the larger implications. Where problems alone are thought inadequate, they are supplemented by text.

Each problem places the student in a particular institutional setting, either as private counsel, judge or law clerk, legislator or legis-



Albert M. Sacks
Professor of Law

lative counsel, prosecutor or administrator. In whatever role he is given, the student is asked how he would decide a particular question or questions. To assist him he is given relevant background information as to facts and prior legal determinations. Often too, in order to narrow the issues for pedagogic reasons, the student is given a proposed solution, for his consideration.

Teaching by Role

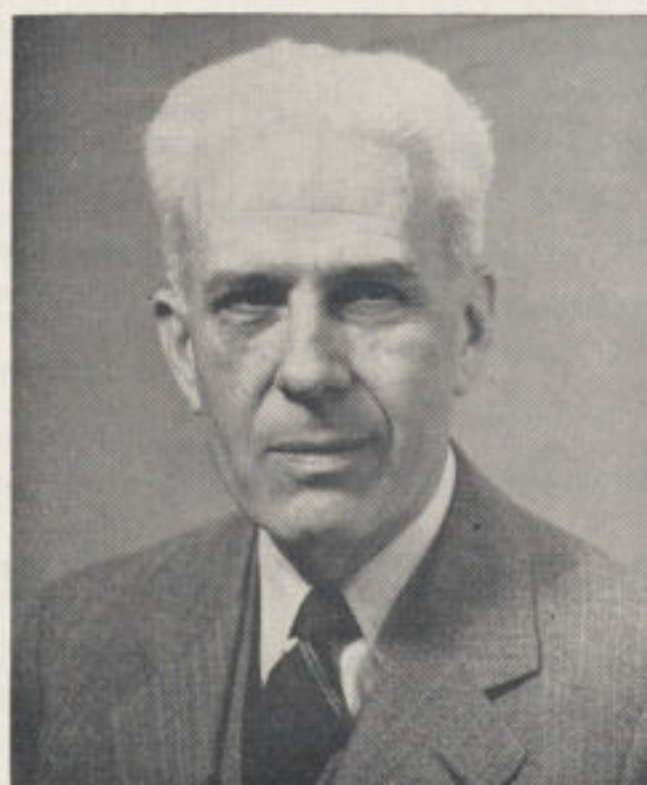
As applied to the judicial function, the problems are not greatly different from the case method of presentation. On the other hand, the materials relating to legislation and the legislative process are novel. Each problem presents to the student a bill or bills proposed as a solution to a described "evil." The student is given a particular legislative role, either as private lobbyist, Law Revision Commission staff member, legislative committee counsel, assistant to a floor manager, conference committee chairman, and so on. The aim here is not only to consider the statutory problems but through the variations in context to convey some sense of the legislative process and at least to take note of the political setting.

The question has at times been raised whether this course is most suitable for second-year teaching. We think it is. The materials can build on the students' first year experience, so that need to master new substantive law can be lessened. More important, the student is able even when taking the course to consider its application to his previous law school learning. Later, he can determine whether it helps him in understanding other second and third year courses. If the course has any real value, it must lie in giving such help. The course, properly conceived, is an auxiliary to most of the other courses in the law school curriculum.

leaf collection of 1259 pages includes a varied mass of documents, photographically reproduced. We dwell, rather longer than elsewhere, on the organization of the Federal judicial system; the change in direction when, in the late 1830's, Marshall's Court gave way to Taney's; developments in private law during Shaw's service on the Massachusetts court (1830-60); legal education in that period; constitutional problems arising from the Civil War and Reconstruction, and in particular from the adoption of the Fourteenth Amendment; the long struggle over railroad regulation, from the crude statutes of the early 1870's to the Supreme Court's assumption of judicial control in 1890; the professional work of Rufus Choate, William M. Evarts, and Joseph H. Choate — selected to represent the great practitioners. Toward the end of the course, some generalizations are attempted about the law and social change — notably, the process by which the law adapts itself to developments in technology.

History Needed in Briefing

It is familiar that of late great cases in constitutional law have involved elaborate historical inquiry; e.g., *Reid v. Covert* and *Kinsella v. Krueger*, now awaiting decision in the Supreme Court, to test military jurisdiction over servicemen's dependents overseas. It may be so in private litigation: e.g., *Wolfson v. Avery*, 6 Ill.2d 78, 126 N.E.2d 701 (1955), an important case on representation of minority stockholders, where counsel on the winning side showed enterprise in digging out the historical background. It is useful to a lawyer to have an understanding of how the law came to be what it is, of what appear to be the lines of its sound development, and of how relevant materials of the past may be brought to bear on the problems of the present. In American Legal History, it seems to me, the perspective and the practical go together.



Charles Fairman
Professor of Law

close of the nineteenth century. When Sir George Jessel, M.R., in 1875 [L.R. 19 Eq. 462, 465] with customary self-confidence declared "this paramount public policy," "that men of full age and competent understanding shall have the utmost liberty of contracting," he expressed an outlook shared by most American judges of his time.

Varied Mass of Documents

The perspective course in American Legal History comes down the main channel, from the beginning of government under the Constitution to the close of the nineteenth century. If you will look at the article in the *Harvard Law School Bulletin* for December 1956 you will see a list of weekly topics, with brief explanation of the content. The loose-

DEBATE

(Continued from page one)

tal defect or disease are not criminal. He said a recent study found that trial judges habitually charge juries with the M'Naghten rule verbatim, and that the average juror interprets this to mean that unless the accused had no cognitive capacity in regard to the wrongfulness of his act, he must be convicted. The M'Naghten Rule, he continued, actually delivers the defendant into the hands of experts, for the average juror defers to the opinions and studied conclusions of the professional psychiatrists concerning the defendant's mental condition.

Rule Deficient

The M'Naghten Rule is deficient in not recognizing the "irresistible impulse" standard, continued Professor Chayes. He gave as an example the case of an arsonist who enjoys setting fires, who knows it is wrong and readily admits that he knows it, but can't help himself. "Here," stated Mr. Chayes, "the irresistible impulse test should be applied to determine responsibility."

Professor Chayes defended the Durham Rule as giving to the jury wide discretion in deciding whether the defendant's act was the product of mental disease or defect. He said this standard is analogous to finding due care in a negligence case. "This is not a question of fact," he said, "but the highest kind of moral judgment that can be made. And the jury is the one who should make it. The jury is the expert on the moral sense of the community."

Professor Wechsler expressed agreement with the M'Naghten Rule "as far as it goes." But while the M'Naghten Rule considers the cognitive capacity of the defendant, he continued, it completely ignores his volitional capacity, something quite different and quite important. The Rule errs in not taking into account acts committed under a delusion, he said, and in this respect is deficient. He used for an example the man who believes himself to be acting in response to a direct command by God.

Substantial Capacity

"The substantial capacity of the defendant's self-control should be the test of criminal responsibility," Mr. Wechsler declared. This would include not only cognition, which the M'Naghten Rule recognizes, but also volition, which the Rule does not recognize.

Professor Wechsler emphasized the word "substantial" as used in the Model Penal Code. "Even psychotics in mental institutions have some capacity to conform to rules and regulations, and young children can verbalize a distinction between right and wrong," he said. The jury must determine the difference between "substantial" and "limited" capacity, he explained.

Professor Wechsler found the Durham Rule unsatisfactory because the word "product" is too vague and ambiguous. If it is interpreted as meaning a necessary product of mental defect or disease it would be too harsh, he said. If given a "but for the mental deficiency" interpretation, it would be too liberal. The ambiguity of the Durham formulation tends to confuse the jury members and give them too much freedom and too little guidance. The "substantial capacity" test is a clearer and more adequate guide, Mr. Wechsler concluded.

During a panel discussion after the formal addresses, Professor Hall suggested a modification of the M'Naghten Rule in the interest of clarity. He proposed substituting the phrase "appreciate the difference between right and wrong" for "know the difference

between right and wrong." The object of this change would be to bar the interpretation of the rule which permits a definite but inadequate cognitive capacity on the part of the defendant to establish his criminal liability.

The discussion emphasized a sharp conflict over the question of whether a man could retain the cognitive capacity to distinguish right from wrong, and yet lack the volitional capacity of self-control. Professors Wechsler and Chayes answered yes. Professor Hall's answer was no. A conflict over the normal judicial interpretation of the M'Naghten Rule today was also pointed out in the course of the discussion.

In a preliminary address, Dean Erwin N. Griswold advocated an expansion of American Bar Association participation in Student Bar Association activities. The Dean suggested a system which would permit law students to become associate or auxiliary members of the ABA, and proceed thereafter to full membership.

—Binder

Finances Discussed

"The Lawyer and Finances", a forum on the determination and collection of legal fees, was presented Saturday afternoon as part of the American Law Student Association meeting held here last week.

Edmund Burke, Jr., LL.B. '27, Paul B. Sargent, '26-'27, and Claude B. Cross, LL.B. '20, outlined their views and experiences on the subject. Rich-



Claude B. Cross

ard H. Field, Professor of Law, moderated the meeting.

Mr. Burke, managing partner of Hale & Dorr, Boston, described the system used in his firm to determine fees.

Each lawyer in his firm fills out a daily report as to the time spent on each case and the type of work done. This data is then transcribed onto a master sheet for each case. When the case is terminated, the master sheet becomes the basis for determining the fee.

Free Allocation

The system is used in reverse to allocate a portion of the fee to each lawyer involved. At the end of the year these figures will show what each member earned for the firm and for himself.

Statistics alone are not the only factors used to evaluate the work of members of the firm, but Mr. Burke indicated that it is largely due to such an impartial and argument-proof system that no partner has ever voluntarily left the firm.

A system of records and charges of this nature may prove invaluable if the firm is called upon to justify its

fee to a client or to a court, the speaker said.

Upon joining a new firm, Mr. Burke recommended that new lawyers carefully note what system of fee evaluation is used. Many offices, he stressed, operate on a haphazard basis with no empirical system of any kind.

Efficient legal office procedure was characterized as a relatively recent development. Literature began to be seen relating to the subject only about 1940 when Reginald H. Smith, LL.B. '14, a partner in Hale & Dorr, published the pamphlet *Law Office Organization*, today considered one of the leading works on the subject of law office management.

Rule of Thumb

To set the rate of an hourly fee, Mr. Burke proposed a basic rule of thumb. He recommended that projected net profit be added to probable office expenses and the total divided by 1600. This figure, calculated on the basis of a 32-hour week, represents approximately the maximum number of hours that a lawyer can expect to spend directly on fee-earning cases per year. The resulting figure will range from about \$50 per hour for a partner to about \$10 per hour for a junior. Office overhead will usually take about one dollar out of every three in gross fees.

However, Mr. Burke emphasized that these figures can only serve as a basic guide in determining the fee in any particular case because other factors may affect the final amount radically.

Department of Commerce statistics for 1954 show that the mean income of single legal practitioners was \$7,000; for each partner in firms with two partners, \$11,000; for each of three partners, \$16,000; for four partners, \$24,000; and nine or more partners earned an average of about \$36,000 apiece.

Mr. Sargent, a single practitioner, disagreed on the average hourly fee, especially in its application to small firms.

The size, importance, and outcome of the case as well as the type of work involved, are the most important fee determinants, he stated.

The courts, in adjudicating disputes over fees or in setting fees in certain fields, have considered these factors more important than any hourly rate, he said.

1932 Decision

Mr. Sargent noted that in 1932 the Massachusetts Superior Court approved a legal fee of \$5,300 for the collection of notes valued at \$160,000 when less than fifteen hours of work were involved. He expressed doubt that the lawyer would have asked for, or the court approved, such a fee if the collection had not been successful.

Mr. Sargent said that in probate work, his specialty, the court frequently awards the losing counsel the same fee as the successful one on the theory that probate lawyers are merely an aid to the courts in arriving at the correct disposition of a case.

He pointed out that the routine nature of real estate work makes low fees common in that area, but tort practice presents an entirely different picture, particularly in states where contingent fees are allowed.

Another flaw in the hourly fee system, Mr. Sargent contended, is the difficulty in determining the time actually spent on each case. The lawyer, especially the single practitioner, constantly carries his problems with him, making it difficult to establish the

exact time spent on any single case.

Mr. Cross, a trial lawyer and a recent nominee for president of the Boston Bar Association, dealt with the delicate problem of how and when to collect the fee.

The type of case involved, the custom of the locality, and personal knowledge of the client's financial responsibility were pointed out as the key elements in the problem.

Mr. Cross indicated that in criminal work it is best to attempt to collect the fee in advance if possible.

The practice of taking a retainer was said to be a matter of strict personal preference. Mr. Cross has used this method only seven times in his career.

Because corporations often prefer to be billed periodically on the basis of work performed in any given period, an hourly fee system was described as helpful in the calculation of such interim charges.

In presenting the bill, Mr. Cross prefers to talk the fee over with the client, enumerating the factors which have a bearing on the final calculation, and then presenting the figure to the client. The client, he finds, often readily accepts such a fee without complaint.

In a few selected situations a lawyer can safely permit the client to suggest a fair fee, Mr. Cross said, and added that the drawbacks of such a system seem readily apparent.

The speaker related a case in which the client suggested a fee of \$15,000 when the lawyer had intended to charge \$5,000. The lawyer involved, said Mr. Cross, bowed to the superior judgment of his client.

—Wethly

Alumni Notes

LL.B. '37 — Thomas M. Raysor is presently the president of the District of Columbia Bar Association.

LL.B. '39 — Milton I. Goldstein, Joseph L. Tucker, Jack M. Chasoff, and Elmer Price have formed a partnership for the general practice of law under the firm name of Goldstein, Tucker, Chasoff & Price with offices at 1830 Boatmen's Bank Building, St. Louis 2, Missouri.

LL.B. '52 — David B. M. Zaretsky has recently opened his own office for the general practice of law at 150 Broadway, New York 38, New York.

LL.B. '54 — Seymour D. Vishny, of the firm of Schneider & Vishny, has announced the removal of their offices to 19 South La Salle Street, Chicago, Illinois.

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Screen Industry Cooperation Is Aim of ABA Committee

The American Bar Association is in the process of developing a program of cooperation with the television and motion picture industries, according to Richard P. Tinkham, LL.B. '28, chairman of the association's Public Relations Committee.

The two-part program will be aimed at encouraging more authentic portrayals of courts, judges and lawyers on movie and television screens.

The Public Relations Committee has indicated that an arrangement has been effected under which a qualified representative of the association will, with the consent of TV and motion picture producers, review scripts prior to production. The committee urges that this is in no sense a censorship measure; the ABA representative is a former writer, director and producer who is known and respected in the film industry. He will act only as a consultant and adviser with respect to portrayals of members of the legal profession. He will make suggestions from the standpoint of fairness, the ethics of the profession, technical accuracy and public relations aspects.

The association's president, David F. Maxwell, will appoint a "Special Committee on Cooperation with Television and Motion Pictures," composed of a small number of lawyers in New York and on the West Coast who are well known in the entertainment fields. When asked, the committee will offer consultative counsel to writers, directors and producers on ethical and procedural problems arising in the course of film and TV dramatic productions.

These steps are in addition to plans now in the formative stage directed toward increasing ABA participation in national network shows which

would portray lawyers in authentic roles taken from actual case experiences.

Mr. Tinkham has indicated that the steps toward cooperation are "part of a long-range effort to raise the standards of legal profession portrayals."

"Our program has two basic aims," the chairman declared. "We hope first of all that the entertainment media, without in any way sacrificing their freedom of expression and the right to fashion plots as they see fit, will help us in our efforts to encourage a greater understanding and respect for law and our legal system."

"Second, we hope to furnish constructive help to these media in resolving technical and ethical problems so the public will gain a more accurate conception of the modern lawyer."

Psychiatrist Cites Narcotic Problem

Narcotic addiction should be treated medically rather than punitively, according to Dr. Karl M. Bowman, Professor of Psychiatry, Emeritus, at the University of California Medical Center.

Opium derivatives and their synthetic substitutes do not produce criminal behavior, the psychiatrist said, but in fact quiet the addict and suppress aggressive and sexual impulses.

Dr. Bowman emphasized that the illegal selling of narcotics should be vigorously prosecuted. But he praised the British system of narcotic control, under which addicts are encouraged to seek medical treatment and may even be given prescriptions for sustaining doses of narcotics where their physicians deem it necessary.

"It now seems time," Dr. Bowman said, "to turn to the medical approach as it is being used for alcoholism and sex deviation."

Williams to Speak

Governor G. Mennen Williams of Michigan will address the year's final meeting of the Law School Democratic Club today at 2:10 p.m. in the large meeting room of Harkness Commons.

After the informal talk, Mr. Williams will answer questions from the floor. The meeting will be open to all, and coffee will be served.

Brownell Requests Emergency Rules

Attorney General Herbert Brownell, Jr., has suggested the drafting of stand-by rules for convening federal courts in time of national emergency.

Speaking before the Judicial Conference of the United States, he urged that appropriate emergency rules could be promulgated and held in abeyance pending an extreme emergency.

The speaker pointed out that the United States Code provides that "Special terms of district court may be held at such places in the district as the nature of the business may require and upon such notice as the court orders, pursuant to rules approved by the judicial council of the circuit."

Mr. Brownell recommended that the provision include approval by the judicial council to insure uniformity among the courts.

"The premise underlying national defense emergency planning," the Attorney General said, "is to insure the availability and use of existing civil authority in the event of a national emergency to the maximum extent possible consistent with the factual situation presented. Unquestionably, the continued availability of the federal courts may be of the greatest importance."

"Yet it is possible to envisage a situation wherein the courts in a particular district might not be able to convene at their regular place of business."

In addition, the conference was told that the Department of Justice is in accord with the "omnibus judgeship bill," formulated at the conference, which is designed to provide additional district and circuit judgeships.

Sohn, Stone Talk At Ohio University

Louis B. Sohn, Professor of Law, Julius Stone, Visiting Bemis Professor of International Law, and William W. Bishop, Jr., '28-'29, Professor of Law at the University of Michigan Law School, were the featured speakers at a symposium on "The Middle East Crisis, the United Nations and the Rule of Law" at Ohio State University recently.

The symposium, sponsored by the College of Law and the Graduate School of Ohio State, was designed to present an exchange of views on the legal issues raised by the Middle East crisis.

Professor Sohn spoke on the applicability of the "Uniting for Peace Resolution" to the Middle East, the establishment of the United Nations Emergency Force, and the General Assembly's power to order sanctions.

Professor Stone outlined the concept of aggression and its relevance to events in the Middle East, while Professor Bishop discussed the expropriation of the Suez Canal and the freedom of navigation in the canal and the Gulf of Aqaba.

AMES

(Continued from page one)

Pittsburgh, Pa.; Kenneth Lewis of New York City, and David W. St. Clair of Denver, Colo.

The Griswold Equity Club defeated the Langdell Club in a case concerning a petition to set aside an order of the Federal Power Commission. Oralists for the winning Griswold Equity Club were Julian W. Atwater of Batavia, N. Y., and James W. Venman of Bridgeport, Conn. Counsel on the brief were Gordon G. Busdicker of Winona, Minn.; John French, III, of Watertown; Robert A. G. Monks of Cambridge; Charles A. Morrison of Mount Vernon, N. H.; Edmund R. Schroeder of New York City, and William H. Thigpen of Evanston, Ill.

Oralists for the Langdell Club were William J. Foote of Aurora, Ill., and Herbert M. Franklin of Milwaukee. Counsel on the brief were Philip P. Bowe of Berkeley, Calif.; Julius T. Getman of Cambridge; Richard L. Ocheltree of Elgin, Ill.; Ira Rabkin of Camden, N. J.; Alan J. Roth of Milwaukee, and George R. B. Schatzki of Belmont.

Chayes Club Wins

The Chayes Club defeated the Griswold Law Club in a case concerning the "Intra-enterprise Conspiracy" Doctrine. Oralists for the winning Chayes Club were Emil W. Herman of Pittsburgh, and William Schurman of New York City. Counsel on the brief were Donald E. Biederman of Rockville Centre, New York; Robert E. Fleck of Cuyahoga Falls, Ohio; Donald Hirsch of New York City; William B. Mallin of New Kensington, Pa.; Carl M. Selinger of Oakland, Calif., and Zita L. Weinshienk of Denver, Colo.

Oralists for the Griswold Law Club were Hugh Cannon of Cambridge, and William F. Looney, Jr., of Roxbury. Counsel on the brief were Malcolm H. Bell of New York City; William L. Higgs of Greenville, Miss.; William R. Johnson of Excelsior, Minn.; Ronald D. Jones of Cambridge; Alan L. Lefkowitz of Pittsburgh, and Louis Tiger, Jr., of Richmond Heights, Mo. All contestants were second year students.

—Mulroney

against the opposition's theory of the case.

On the premise that the land was suitable for industrial development, the owner's expert set the damages at \$49,000. The Government's expert, terming the land best adapted to residential use, fixed the owner's loss at \$33,000. The jury apparently favored the Government's theory and awarded the owner \$37,000.

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NEWS IN BRIEF

BULL & BEAR

The Bull and Bear Club has announced results of the election of its executive committee for the 1957-'58 academic year, and the names of winners of its annual investment contest.

Elected to the executive council were Valentine A. Weber, Jr., 2L of Janesville, Wis., president; William J. Lawlor, III, 1L of Winnetka, Ill., first vice-president; Gary O. Turndorf, 2L of Cambridge, second vice-president; Bennet B. Harvey, Jr., 1L of Chicago, Ill., secretary; and Chester R. Davis, Jr., 2L of Wayne, Ill., treasurer.

Winner of the investment contest was A. R. Van Doren, Jr., 1L of Stamford, Conn., who parlayed his original simulated investment of \$50,000 into \$69,124 over a period of five months.

Second prize was awarded to Mr. Lawlor who increased his original investment to \$59,580.91. Herbert F. Prem, 1L of Larchmont, N. Y., was third with \$56,525. More than half of the contestants finished the contest with less than their original investment.

LEGAL AID

Warren G. Miller, 2L of Brookline, was elected president of the Legal Aid Bureau for next year at the Bureau's spring elections on April 1. Others who will assume office next Monday are Martin D. Ginsburg, 2L of Rockville Centre, N. Y., vice-president; Paul M. Neuhauser, 2L of New York City, secretary; and Stephen Benjamin, 2L of New York City, treasurer.

Stephen H. Kelly, 2L of Cambridge was elected senior director; David B. Filvaroff, 2L of Janesville, Wis., and Mendel Small, 2L of Kansas City, Mo., were chosen junior directors I and II, respectively.

The junior directors will serve until next December, while all others will serve until April, 1958.

ST. THOMAS MORE

Edwin K. Daly, Jr., 2L of Bryn Mawr, Pa., was elected president of the St. Thomas More Society at the organization's annual elections last week. He succeeds George J. McCormack, 3L of New York City.

Others elected at the meeting were William B. Duffy, Jr., 2L of Andover, vice president; Walter G. Fenerty, 1L of Queens Village, N. Y., secretary; and William J. Lawlor, III, 1L of Winnetka, Ill., treasurer.

LAW WIVES

The next meeting of the Law Wives will be held on Wednesday, April 24, at 8 p.m. in the large meeting room of Harkness Commons. The guest speaker will be Miss Helen F. Kent, interior decorator and counsellor, who will describe "Personality in Decorating."

SOUTHERN CLUB

At a luncheon meeting on Friday, April 5th, the Southern Club elected Thomas L. Clark, 2L of Roanoke Rapids, N. C., its president for next year. Others elected were: William C. Higgs, 2L of Greenville, Miss., vice-president; Harry L. Mead, Jr., 2L of Tampa, Fla., secretary-treasurer; and Edward R. Hudson, Jr., 2L of Fort Worth, Tex. and John C. Mitchell, 2L of Vero Beach, Fla., social chairmen.

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Democrats...

The Law School Democratic Club elected Herbert P. Gleason, 2L of Cohasset, president of its executive board for next year at a recent meeting. Other members of the board elected were: William C. Higgs, 2L of Greenville, Miss., vice-president and treasurer; Charles L. Edson, 1L of University City, Mo., corresponding secretary; Carol A. Simon, 1L of Jamaica Estates, N. Y., recording secretary; and Gerald T. Sajar, 1L of Nanticoke, Pa., executive board member at large.

VACATION

(Continued from page one)

be on hand to enliven the proceedings. The fourth game of the Stanley Cup hockey "best-out-of-seven" finals will be played at the Boston Garden on Sunday evening, April 14, when the Boston Bruins face off against the Montreal Canadiens. The sixth game, if necessary, will be played at the Garden on Thursday evening, April 18. Tickets to these games will be at a premium because of the limited seating capacity of the Garden.

AWARDS

(Continued from page one)

1956. The work, published this spring by the Press, was the first volume of his biography of Oliver Wendell Holmes, Jr., *The Shaping Years*. The prize carries a stipend of \$2,000.

Next year, Professor Howe will teach a third year seminar on *The Legal Philosophy and Judicial Career of Oliver Wendell Holmes*.

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