

ounced that
international
e made a
000 to the
World Tax
on national
the world.
ken by the
international
sponse to a
Economic
the United
g the pub-
rvice of in-
admi-

ool faculty
es in close
of the Unit-
and tax ex-
To date,
search and
ree nations,
Brazil, and

ld said that
ssing on re-
den, Colum-
In making
unk and the
Corporation
ed that the
benefit the
legal profes-
ies general

ge one)

After citing
the Geneva
that Great
and Czecho
parley.

ng without
nce by limit-
minutes and
ers to quer-
his proposals
floor, which
ness, elicite

l of the Ke
Central Eu
t the Soviet
ia or Germa
frustrate dis
is belief that
the American
result in
ore interna
people.

—Page

CKETS

England
h Shop
CAMBRIDGE
TR 6-5417

ican

is

E'S

St.

al Sq.

midnight

erm...

er (age 30)

children got

Term Insur-

month, less

the lowest

nd. By buy-

ect over-the

selling costs

savings. Asi

folders.

GE

ANK

Square

ass. Ave.

1st Floor

00000000

IENT

empt service

lenses and

Society

TR 6-3000

00000000



Harvard Law Record

America's Oldest Law School Newspaper

VOL. 26, NO. 6

CAMBRIDGE, MASS., THURSDAY, MARCH 13, 1958

Copyright, 1958,
Harvard Law School Record, Inc.

TEN CENTS

Mrs. Roosevelt Discusses Conditions in Soviet Union

Mrs. Eleanor Roosevelt, who has recently returned from a visit to the Soviet Union, told a capacity audience in the New Lecture Hall last Friday evening that the success of communism in Soviet Russia cannot be interpreted or judged by free world criteria. The great mass of the Russian people, she explained, were peasants and suffered under the rule of the czars. They never experienced anything akin to what we call "freedom."

Today "everyone dates every good thing that has happened from the time of the Revolution."

The former first lady, in an address sponsored by the Law School



Eleanor Roosevelt

Forum, said that in the age of the czars only a scant 10% of the Russian people were literate. Now probably no more than 10% could be considered illiterate. Under the czars life was cheap. There was "little concern for the peasants."

Today, she explained, a vast number of people in Russia feel that the first important freedom is the "freedom to eat." While attempts to raise living standards and confer benefits upon the people appear small when judged by Western standards, they appear much greater in the eyes of the Russians, who appreciate the change in attitude upon the part of the government since the time of the czars. The "little bit of economic security" now possessed by a great many people in the Soviet Union is thought by them to be "the beginning of freedom."

"Everything in the Soviet Union is done under compulsion," Mrs. Roosevelt emphasized. Yet the set-up of compulsion "does bring some good results." For example, a woman who works (and most women in Russia

do) is required to spend a certain number of days at home before having a baby, eight days in a hospital if birth is normal, and 57 days at home after the baby is born, for which period of time she continues to receive her normal pay.

Efforts are being made to alleviate poor housing conditions in the cities. One apartment house per day is being constructed in Moscow. Crowded conditions remain, however. "You and I would call it the worst kind of slum living."

Among the remarkable results produced by the discipline in a compulsive society, she pointed out, are exceptionally clean apartment houses and streets. People are taught not to litter them up, and don't. She told of observing men lighting cigarettes and, when they were finished, carefully placing the burnt match back in the box. The discipline of Russian children is "extraordinary," down to those but six months old.

Preventive medicine in the U.S.S.R. "is compulsory but good," the former first lady said. And much of their science, of course, is far advanced, due to a heavy concentration in that field. It is a "great mistake" to underestimate the intellectual capacity of the Russians, she warned.

Mrs. Roosevelt pointed out that she found very few young people in the churches. There are plenty of churches in Moscow, she continued, but it is mostly the older people that attend them.

What of the younger people? "Most people have to have something to work" (See RUSSIA on page three)

Chancery

Robert M. Shea, 2L of Los Angeles, was elected Chancellor by the Chancery Club in an election held March 5. Other officers elected were John B. Burroughs, 2L of Niagara Falls, N. Y., vice president; William H. Cowles, 2L of Spokane, Wash., secretary; and Stephen B. Goldberg, 2L of Fall River, Mass., alumni secretary. Elected members-at-large were Brian P. Burns, 1L of Belmont, Mass., and Charles V. Henry, III, 2L of Lebanon, Pa.

Cheatham, Graveson, Young To Teach Here Next Year

The names of three visiting professors and a teaching fellow for the academic year 1958-59 have been announced by Dean Erwin N. Griswold. Elliot E. Cheatham, Ronald H. Graveson, J. Nelson Young and Peter Brett will join the faculty next year.

Elliot E. Cheatham, Charles Evans Hughes Professor of Law, Emeritus, at Columbia, will become a Visiting Professor. He will teach Conflict of Laws and a seminar in Legal Education. Mr. Cheatham was born in Savannah in 1888. He graduated from the University of Georgia in 1907, and received his LL.B. cum laude from the Harvard Law School in 1911.

After graduation from law school Mr. Cheatham practiced law in Atlanta until 1924 except for a period of four years when he was an attorney in the Department of Justice and an assistant United States Attorney. From 1921 until 1924 he was a professor of law at Emory University. He then taught at the University of Illinois for two years, and at Cornell for three. Since 1929 he has been a member of the faculty of the School of Law at Columbia University.

Professor Cheatham was president of the Association of American Law Schools in 1942. He is best known, however, for his learning in the conflict of laws. He is co-editor with William M. Reese, Herbert F. Goodrich, and Dean Griswold of *Cases on the Conflict of Laws* (4th ed., 1957), which is now used in the courses on that subject at the Law School. Professor Goodrich also edited *Cases on the Legal Profession* (1938), and wrote *Some Problems of Private International Law*.

Ronald H. Graveson is Dean of the Faculty of Law at the University of London, King's College. He will also be a Visiting Professor and will teach courses in Conflict of Laws and Jurisprudence. Mr. Graveson is a Barrister-at-Law who received his LL.B. from the University of Sheffield in 1932, and his LL.M. from the same institution the next year. He obtained his S.J.D. from the Harvard Law School in 1936.

Professor Graveson has written numerous articles in both fields which he will teach here. *The Movement*

(See FACULTY on page four)

East-West Jurists Analyze Legal Obstructions to Trade

After a week-long conference in Rome on the legal aspects of trade between planned and free economies, Professor Harold J. Berman returned to his desk in the Law School Monday, and has begun preparation for the publication of papers delivered at the conference by legal scholars from both sides of the Iron Curtain. The conference was sponsored by the International Association of Legal Science under the auspices of UNESCO.

The 14 conference members set out to explore legal problems which arise between countries whose international trade is conducted on the basis of state monopoly under central economic planning, and countries whose trade is conducted primarily by private firms on the basis of market conditions.

Mr. Berman reports two points of major significance in the discussions. First, they "agreed that what the economists call the techniques of trade, what the lawyers might call the institutional framework or structure of trade, between planned and free economies can be improved to the mutual advantage of both kinds of economy." Second, they discovered that "law professors and jurists from Communist and non-Communist countries can discuss certain questions together under the auspices of UNESCO which it would be very difficult for them to discuss if they were representing their governments. They can



Harold J. Berman

disagree with their government's policy within limits. In short, the community of scholars is a universal one, transcending national boundaries."

This was probably the first meeting since World War II at which legal scholars from both sides of the Iron Curtain came together to discuss questions of mutual interest, Mr. Berman reports.

Each Communist country, following the example set by the U.S.S.R., normally conducts its trade through state organizations which are directed and administered by government officials. While this system of "state trading" is used partially by some non-Communist governments to deal in special categories of commodities, (See BERMAN on page four)

Curran is Named Institute Director

William J. Curran, Professor of Legal Medicine at Boston University and Lecturer on Legal Medicine at Harvard Law School has been named director of a Law-Medicine Research Institute, the first of its kind to be established in the United States, at Boston University.

The Institute, working cooperatively with the Boston University schools of law and medicine, will establish a program of research and training in the interdisciplinary areas of law, medicine and the behavioral sciences. It will also act as a clearinghouse for information on activities in the medico-legal area.

This semester the Institute began conducting courses in medico-legal areas and will regularly sponsor a lecture series for the practicing members of the profession.

Mr. Curran, who conducts a seminar in medico-legal problems during the fall and spring terms at the Law School, has explained that the as-

(See CURRAN on page four)

Student Bar Hears Hogan Describe GM Legal Work

A rundown of some of the many functions of a General Motors lawyer was offered to students in Harkness Lounge when Henry Hogan, Vice President and General Counsel of that giant corporation, spoke to the Student Bar Association on the topic, "Work of the General Motors Legal Staff."

There are 36 divisions of General Motors that must be serviced by Mr. Hogan's staff, meaning that the work

of some of the many anti-trust and restrictive practice cases to handle since, in the field of government regulations, "The larger you get, different rules apply." Mr. Hogan then added, "You are in a fish bowl." There is under way at the present time a suit against the corporation concerning an alleged monopoly of the manufacture and sale of buses. The Government insists on confining the interpretation of the term "buses" to those used for inter- and intra-city public transportation, and not to such things as school buses. General Motors has produced about 3,000 of the former category — or 80% of the market of which no one else seems to want a piece, commented the speaker. If school buses were to be included in the category, then General Motors would have but a small portion of the field.

The office has four lawyers who devote their time to real estate problems. For instance, when workers are transferring jobs and need new homes elsewhere, the General Motors attorneys do the necessary work for them. Last year there were 350 instances of this. Naturally the corporation is still buying real estate, much of it being for parking space around plants. There is an interesting method of searching titles when a new plant is being built, asserted the General Counsel, whereby it is determined



Henry Hogan

where the most important part of the plant will be located. If that portion of the land had no plot on it then, "we consider the rest must be okay too." So far the system has worked out very well, he stated.

Surprisingly, General Motors lawyers also can be considered constitutional lawyers, Mr. Hogan declared. Auto dealers have caused to be passed in certain states so-called "dealers protective laws." In two cases last

(See HOGAN on page four)

Record to Feature Musmanno Article

In next week's RECORD, Michael A. Musmanno, Associate Justice of the Supreme Court of Pennsylvania, will reply to the statement made by Judge Learned Hand in his third Oliver Wendell Holmes lecture that dissenting opinions are "disastrous because disunity cancels the impact of monolithic solidarity on which the authority of a bench of judges so largely depends."

The recent conviction of Msgr. Pietro Fiordelli, Roman Catholic Bishop of Prato, Italy, for criminal defamation, and the subsequent excommunication of the plaintiffs, the three judges, the public prosecutor and counsel for the prosecution, will be the starting point for a two-part feature article, the first section of which will discuss the extent to which a clergyman in the United States may slander a particular individual, if his statements are true according to the doctrine of his church, and remain immune to liability in a civil suit for damages.

The companion piece will deal with the Church-State question of the jurisdiction of ecclesiastical courts ac-

(See FEATURES on page four)

Freund Raps 'Jenner Bill'

Paul A. Freund, Royall Professor of Law and present visiting Pitt Professor of American History and Institutions at Cambridge University, declared last week, in an address at the London School of Economics, that recent Supreme Court decisions on the powers of congressional investigating committees and the constitutionality of state laws dealing with subversive activities, together with the controversial line of desegregation decisions, have led to the introduction into the United States Senate of the "Jenner Bill."

Although this bill does not purport to deal with the segregation question at all, Professor Freund expressed his opinion that Court decisions in this area were a moving spirit behind the bill. He registered his unqualified disapproval of the proposed legislation.

In the carrying out of the desegregation decisions, Professor Freund indicated that integration throughout the South was proceeding somewhat slowly, but nonetheless surely, with the greatest progress being made in the "border states." One of the biggest problems to be overcome in this area, he stated, is the basic fear of miscegenation throughout much of the South. This, he feels, will be dispelled gradually.

Professor Freund has recently been appointed Carl M. Loeb University Professor, the appointment to take effect this summer.

Letters to the Editor

TO THE EDITOR OF THE RECORD:

I read with interest the lengthy editorial on the Trial Practice course in your issue of February 13.

This is a situation where the School is confronted with a problem because of its own initiative and success. We might have made no effort at all in the field of Trial Practice. We have tried to develop such work, and have had some success. We have been well aware of the problem resulting from that success and have tried hard to find a satisfactory answer.

It is the Faculty and not "the administration" which has final responsibility for the teaching program of the School. As one step toward a solution of this problem, the Faculty has approved a recommendation from Professors Field and Keeton under which for next year, in addition to the four existing sections of the Trial Practice course, Professors Field and Keeton will offer an additional section which will not be limited in numbers of students. This will treat some aspects of the material differently, but it is hoped that through this section any student who does not obtain admission to the usual sections will be able to get substantial training in the field. It is recognized that this is not a wholly satisfactory solution to the problem, but it may have some merit as at least a further experiment in the area.

This action may put the immediate controversy to rest. There were some aspects of the matter, however, which were not, I think, fully treated in your editorial, and which deserve consideration.

The School has, of course, an obligation to meet the requirements of its students and to prepare practitioners at the bar. This is not an obligation which has been or should be lightly weighted. But the claims upon the School's resources do not end there. It has obligations as well to prepare teachers and public servants; to the law as an ongoing discipline; to legal scholarship and research in a variety of directions; to the service of public ends; to its program of graduate studies; and additional obligations imposed by its membership in a great university.

This roll of claims must be met out of resources which are by no means unlimited. The primary resource of the school is the time and energy of its faculty. And, with deference, it cannot be seriously asserted that the preferences of students in their third year are the sole guide to the ultimately most useful allocation of a faculty member's effort. Nor is the case made any different by the suggestion that additional part-time or full-time faculty be hired, for it is quite apparent that funds to hire faculty for this purpose must be diverted from other uses.

Third year preferences are, of course, one of the factors to be considered in the decision to do so, but that they should determine it seems to me patently untenable. This is especially so since, as I think is plain, the imminence of their departure from these sheltered halls and the concomitant necessity of finding a job distorts the judgment of third-year students in the direction of courses which are, or appear to be, immediately related to the practical demands of the great outer world.

In seeking the proper allocation of resources, the "experimental" character of the Trial Practice course should not be ignored. It is true, to be sure, that in one sense, the

TO THE EDITOR OF THE RECORD:

Thirty years of active trial work may justify me in expressing my opinion as to the value of a Trial Practice course at the law school. I believe every student should participate in a trial at least once before he leaves law school. He should become aware, at least to a slight extent, of the pitfalls which a trial lawyer must avoid in order to do a good job. He must be made to realize the tremendous importance of factual preparation, and how a good case may be lost by one wrong answer on the part of his witness.

An office lawyer who never goes to court must, from time to time, advise his client whether to go to trial or to settle. How can he give proper advice without himself having some familiarity with the risks inherent in a trial?

While the crowded curriculum at the law school militates against the giving of such a course, there is a serious question whether it might not be of more ultimate benefit than some other courses which the student takes.

For example, I can recall a year spent on the law of partnership. A fellow classmate tells me he has never had a partnership case in thirty years. He recalls that a lay on a whaling voyage was not a partnership, but this knowledge has been useless to him. On the other hand, he was in court on one occasion as a witness while a student, and the job done on him on cross-examination has never been forgotten by him. He uses this experience constantly in talking to his clients.

Joseph B. Abrams*
LL.B. '27

*Mr. Abrams is a past president of the Massachusetts Trial Lawyers Association.

course is no longer experimental. The materials to be employed, the subject matter to be covered, the techniques to be used have all been fairly definitely decided upon. It has been in the curriculum for four years, more than a student generation, and, therefore, for a time beyond which the mind of man runneth not to the contrary. It has been uniformly popular. But, in a larger sense, this course and others like it are still experimental. Members of this faculty and the law teaching profession generally are not prepared yet to make final judgments on how effective or useful they are in the training of lawyers.

In this sense, the RECORD is probably correct in identifying the central issue as one of policy, although it begs the question to say that the present policy reflects an emphasis on "legal research, brief-writing and appellate arguments; . . . the ability to recognize, utilize and argue technical points of law . . ." that is, one bundle of legal skills as opposed to a different set, "fact finding and fact handling". It is certainly arguable, as the conventional defense of the case method of instruction holds, that that method emphasizes not a particular legal skill, but those qualities of intellectual rigor and integrity which distinguish the standards of a profession from the tricks of a trade.

Be that as it may, there has been a growing movement in legal education to bring a wider sampling of the skills used in everyday practice of the law into the curriculum. In this movement, as the RECORD recognizes, this School has not been behindhand. Every phase of the curriculum, from the Group Work Program in the first year, to Problems of Doing Business Abroad in the third, reflects this movement. Yet it has to be said that the returns are not in. It is not yet possible, I think, to reach a sound judgment on how much of permanent and lasting professional value in practical skills can be transmitted through the medium of law school courses. Less still is it possible to say what pedagogical arrangements and techniques are best suited to these subject matters. Again, with all respect, it seems to me untenable to argue that these questions should be settled upon a showing of popularity among third year students.

With the situation in this fluid state, it strikes me that a wide variety of experimentation on a more or less limited basis is desirable to develop ideas and experience (in which of course is to be included the student response), in light of which the Faculty may be better enabled to make an overall judgment as to the portion of the curriculum and the School's resources to be devoted to this kind of teaching effort. A policy predicated on the notion that if the School offers such a course it must offer it to all comers, seems to me calculated to discourage the desired experimentation rather than to foster it.

The foregoing considerations are obviously not unrelated. What weight they should have had in resolving the issue about Trial Practice, I leave others to say. In my view, however, they are obviously relevant to the discussion and to similar ones which are likely to develop in the future.

Abram J. Chayes
Assistant Professor of Law

Professor Casner Explains Course in Estate Planning

With this issue the RECORD begins a series of articles by members of the faculty about the courses of the third year. With an embarrassment of riches in the third year it is difficult adequately to represent the courses in these columns. But we hope to provide a sample of the varied offerings by having members of the faculty describe the materials, methods, and goals of their courses. These analyses, of course, are not intended to be market reports for prospective students but rather statements intended to inform the alumni of the Law School about the present third year curriculum and how the courses relate to the actual practice of law.

With one exception the third year student elects his entire program. The single required course is Property II — Estate Planning, which is given in three sections each year. Professor A. James Casner, Editor in Chief of the American Law of Property and noted authority in the field of estate planning, begins the series with an article on Property II. This year Professor Casner is teaching one section of the course. Assistant Professor David Westfall gives the other two sections.

By A. James Casner

Property II is a course in estate planning and is required of all third year students. The course is designed to provide a substantive law background in the fields of intestate succession, wills and future interests and to require students to use in their consideration of estate planning problems the background previously or concurrently acquired in trusts, income taxation of trusts and estates, federal gift and estate taxation, state inheritance taxes, life insurance, employee death benefits, partnerships, corporations (particularly the closely held corporation) and conflict of laws.

The course is practical in the sense that it confronts the student with problems of the type currently presented to practicing lawyers in a field of the law that probably concerns as many lawyers as any other field. But the most important aspect of the course is not its immediate usefulness in estate planning. A much more significant function is the contribution it makes to the student's over-all intellectual growth, by developing in him a broad-gauged approach to legal problems generally and an ability to bring all relevant factors to bear in their solution. To an ever increasing extent, the primary emphasis in the work of the legal profession is shifting from the lawyer's traditional role of representing clients in adversary proceedings to new areas of wider scope in planning and counseling. Such added responsibilities require an ability to analyze a problem in its entirety in the light of all of the legal and non-legal considerations pertinent to its solution. Estate planning problems typically cut through many fields of the law and involve non-legal factors as well, so that a thorough consideration of them tends to develop the breadth of vision and sense of relevance which is necessary for this purpose. Such an approach in one field is a transferable technique which should prove a source of strength in any area of a lawyer's work.

Course Changes

The development of the course has paralleled this shift in emphasis in the legal profession, starting in 1948 when Property II was a required course in the second year dealing largely with wills and future interests. At that time Taxation was given in the third year. The broadening of Property II to include all the facets of estate planning was seriously hampered by the complete lack of student background in Taxation. Furthermore, it was difficult to draw on the Trusts and Corporations courses effectively because they were taken concurrently with Property II. The need for a general knowledge of taxation on the part of students as an aid to other courses made it apparent that a second year course in taxation was highly desirable. Thus Property II and Taxation exchanged places, the former becoming required in the third year and the latter in the second year.

The book which has emerged for the course after years of experimentation has been prepared by Professor Casner and is entitled ESTATE PLANNING, CASES, STATUTES, TEXT AND OTHER MATERIALS. The second edition of this book was published in 1956 and it is kept up to date by annual supplements. A substantial part of the book is textual in nature with some three hundred problems interspersed as a basis for class discussion and as a test of the student's understanding of this material. Cases are employed to develop the subject of future interests. A complete estate plan (including the memoranda of the attorney, an irrevocable inter vivos trust, a short-term trust, a present interest trust, a charitable trust, a revocable inter vivos trust and wills for the husband and



A. James Casner, Professor of Law, came to the Law School in 1938. He had received his LL.B. from the University of Illinois in 1929. His teaching experience began at Illinois the next fall and was followed by a stint at the University of Maryland. After receiving his S.J.D. from Columbia in 1936, he returned to Illinois. In 1935 he was made adviser for the Restatement of Property. In that Restatement he wrote chapters on Class Gifts and Restraints on Alienation. Professor Casner served as Editor in Chief of The American Law of Property. He presently teaches Property I and II as well as a seminar entitled Property III. He will offer a new seminar in estate planning next year.

wife) is set forth in an appendix, together with two other summarized estate plans to further illustrate the range of problems which may arise.

Comprehensive Plan

Various aspects of estate planning are considered separately and with respect to each aspect the relevant income, estate and gift tax material is examined. Furthermore, each aspect is related to the comprehensive estate plan in the appendix to ascertain how the particular problem under study was dealt with there. The final examination in the course is based on the estate plans in the appendix so that the final review by the student requires him to put together the various points which have been the subject of separate study and understand their relationship to one another.

The lawyer engaged in estate planning first must assist the client in reaching sound conclusions as to the disposition of his property and then must make certain that the client's desires are effectuated in the instruments that are executed. The constant examination by the students of the documents in the comprehensive estate plan in the appendix is designed to give the student both a basis for evaluating alternative plans of disposition and an appreciation of the difference between adequate and inadequate draftsmanship in giving effect to the plan which is finally adopted.

Book Review

POLITICAL POWER AND THE GOVERNMENTAL PROCESS. By Karl Loewenstein. The University of Chicago Press, 1957. 442 pp. \$6.00.

It has been said that law is the strumming of society on the fiddle of power in an imperfect attempt at harmony. Here then is one of those "bedrock" studies which should be called to the attention of lawyers generally.

In this book Professor Loewenstein analyzes the political institutions and techniques of contemporary society from the viewpoint of political power as the core of all government. In the author's words, "It should be considered a contribution to the reality of the process of political power."

Discarding the socio-psychological behaviorism current in American political science, Loewenstein derives from the actual operation of the governmental process a set of general categories into which all governmental structures, past and present, can be fitted. Within this frame, the two over-all "political systems" of constitutional democracy and autocracy and the "patterns of government" they include are held up to the yardstick of how, in each of them, political power is gained, how it is exercised, and how it is controlled. The result is a fully developed and integrated theory of the state — a rarity in American political science.

In support of his thesis, the author, a strong believer in the historical continuity of man in society, marshals a mass of comparative data ranging from ancient time to the present.

—Nader

Harvard Law Record

DAVID F. BINDER President
WILLIAM F. COTTRELL Editorial Manager
ROBERT W. OLIVER Business Manager
RALPH NADER Senior Editor
JOSEPH A. PAGE Executive Editor
ROBERT E. MANLEY News Editor
ROBERT G. FINLEY Department Editor

Harry R. Schumacher, Contributing Editor; Alan S. Novick, Photographer; Bennet B. Harvey, Jr., Cartoonist; Alan K. Illig, Advertising Manager; Mrs. Truman S. Casner, Secretary.

Staff: Robert M. Borden, Hartley J. Chazen, Andre R. H. Chognard, Frederick H. Condon, E. McIntosh Cover, Donald S. Dowden, George F. Duke, Daniel M. Hall, William J. Lawlor III, Edward M. Levin, Jr., Jacob Todd, Eleanor R. Voss.

Published weekly on Thursday for twelve weeks of each term by The Harvard Law School Record Corporation, 23 Everett St., Cambridge 38, Massachusetts. Subscription price: \$2.00 per term, \$4.00 per year (24 issues) mailed; student subscription \$1.50 per term mailed, \$1.00 per term distributed at the Law School. Individual copies 10c each at the Law School, 20c each mailed. Business and editorial offices, 23 Everett St., Cambridge 38, Massachusetts. Telephone KIRKland 7-7600, extension 447.

Entered as second-class matter November 19, 1946, at the post office in Lexington, Massachusetts, under the Act of March 3, 1879.

Juveniles Being Denied Basic Rights, Stetson Professor of Law Writes

By Jack J. Rapoport

Last June the National Council of Juvenile Court Judges, an organization comprising 1500 of the 3000 Juvenile Court jurists in the country, met at Milwaukee to discuss important problems pertaining to troubled and neglected youth in America. At that time it had the feeling that not many persons taking the Bar Examinations were familiar with juvenile court procedure or philosophy and passed a resolution which suggested (1) that law schools throughout America include in their curriculum adequate courses in these subjects, and (2) that Bar Examiners add questions on these subjects to their admittance examinations. Copies of this resolution were later directed to be sent to all members of the Bar Examining committees of each state.

This is one of the most important steps yet taken to point up the need to stimulate interest in the teaching of juvenile court philosophy and procedure to lawyers and law students and for an adequate teaching tool. It is now realized that the law of juvenile delinquency cannot develop in a vacuum. Lawyers must work together with experts in other disciplines to arrive at methods of treatment and programs of prevention, including the use of predictive devices. What is needed to bring these disciplines together are materials, not only directed to lawyers and students in schools of social work, but also psychiatrists, psychologists, psychiatric social workers, and others interested in the behavioral implications of mental hygiene. In short, there is a great need for the sort of teaching tool which would afford a panoramic view of the entire subject of juvenile delinquency.

Workers in the field are convinced that it is an error to limit preoccupation with these problems to practitioners of any single profession. Research in juvenile delinquency dealing with all aspects of the problem, including the function of juvenile courts, has been conducted at the Harvard Law School under the direction of Professor Sheldon Glueck and Dr. Eleanor T. Glueck over the past twenty-five years. Professor Glueck is in the process of completing a unique work on juvenile delinquency, bringing together outstanding articles and legal materials on all the major problems involved. While there are several textbooks in this field, no one book presents source materials involving so many approaches to causation, therapy and prevention, or includes



Jack J. Rapoport, who is currently studying for an S.J.D. degree at the Harvard Law School, is a Professor of Law at Stetson University Law School. He is author of an article on Family Law published in the RECORD in Vol. 24, No. 4.

as thoroughgoing a collection of legal decisions as does this work.

In the course of the statutory growth and development of a new field of law — particularly a revolutionary one like that of juvenile court law, beginning with the statute setting up the first juvenile court in Cook County, Illinois — certain legal problems in the categories of constitutional protections, jurisdiction, proof, and disposition, have been disclosed.

Not only in its early years, but more recently, the juvenile court movement has been subjected to criticism because some of its advocates assert that the efficient administration of juvenile court hearings demands both a denial of procedural safeguards and a scrapping of the customary rules of evidence. For was not the original purpose of the juvenile court laws to give minors additional protection, rather than to take away the rights they already had?

Concepts Conflict

Is there really a conflict between the clinical, or sociological, viewpoint, which sees the anti-social act as *symptomatic* of deeper personal disharmony, and the legalistic concept, which emphasizes proof of a particular criminal act? To what extent, if any, is a subordination of one concept to another, or adjustment between them required? Actually, each has its particular function in all cases, regardless of the age of the offender. The legal approach is applicable to problems of proof. The sociological approach is applicable to problems of disposition, after the finding of guilt. Clinical studies, which do not readily lend themselves to the type of definition and proof necessary in a legal proceeding, may be used to implement individualized treatment, but delinquency must first be established in a fair legal process.

It is the prevailing tendency of juvenile courts to view their proceedings as more in the nature of a clinical process than a technical trial. This has led to a preoccupation, not with whether the juvenile should be treated at all, but rather with *how* the juvenile should be treated. The desire to achieve informality in their proceedings has impelled many juvenile courts to deny one or more of the procedural safeguards constitutionally guaranteed in adult criminal trials. Yet, to maintain the semblance of judicial proceedings, they have insisted that findings be based on "competent evidence." However, the competent evidence has not been precisely defined. As a matter of fact, in practice, the customary evidentiary rules are often greatly relaxed or discarded. This may result in an unreliable de-

termination of factual questions upon which the right of the state to intervene is based.

If the federal and state constitutions guarantee a privilege against self-incrimination, a right to employ counsel, to face one's accuser, to summon witnesses, a trial by jury, and an indictment in the case of criminal offenses, upon what legal principle are these safeguards withheld from juvenile offenders in a purely social trial? Are the constitutional guarantees afforded to an accused to be taken away from the child merely because he is in court for protection and therapy, rather than retributive punishment, on the rather tenuous basis of a legislature having decided that crimes committed by juveniles are not criminal?

One of the more flagrant denials of constitutional safeguards now common in juvenile courts is the denial of the right to counsel. Many juvenile courts assert that they most definitely do not deny this basic right; they merely do not implement the right either by advising the youthful defendant of his right to counsel, or by offering to furnish him counsel, if he is unable to do so himself. And, it is submitted, this judicial qualification of a right makes the right dependent upon (1) the child's I.Q. or (2) the economic position of his family, possibilities which were unthought of when this right was first set forth in the Sixth Amendment to the Federal Constitution, or in its various counterparts in the state constitutions.

How can a child denied the aid of counsel competently decide whether or not he should exercise such other rights as may be afforded him by the juvenile court acts and the Federal and State Constitutions? There is certainly no reasonable basis for assuming that a child understands the rules governing the sufficiency of an indictment, the admissibility of evidence, or the burden of proof. It is practically meaningless for a court to say, as it did in the *Holmes* case (*In re Holmes*, 379 Pa. 599, 109 A.2d 523 (1954); *cert. den.* 348 U.S. 973, 75 S.Ct. 535 (1955)) that hearsay admitted without objection may be given its natural probative force, for how can a child without counsel be in a position to object? Or, if a trial by jury is demanded, a child can hardly be expected to exercise peremptory challenges, prepare written requests for instructions, or make written motions for new trial or in arrest of judgment.

Voidable Contracts

We all know that an infant's contracts, except for necessities, are voidable at common law, not because of an inherent want of capacity, but because the law desires to protect the infant from the consequences of his own immaturity. Moreover, when the property rights of an infant are the subject of litigation, the law requires the court to appoint a guardian *ad litem* for him, and also, if in the court's opinion, his interests require that he have counsel, the court must assign him counsel, regardless of the child's wishes in the matter. If the law is so solicitous of the child's property rights, should it not, for the same or stronger reasons, aid the child in fighting for his liberty?

This is no mere figure of speech or melodramatic exaggeration. For the appearance and meaning of a reformatory to a child may not correspond with the judicial label of "protection". Most reform schools are no more than junior prisons, with the same restraint of action as is found in a number of adult penal institutions, both state and federal. Moreover, it is well known that when the child returns to society after a period of "treatment" in a reformatory, his opportunities are definitely jeopard-

dized. Hence, it is to the interest of the child, society and the court that no unjust commitments to reformatories be made, or predicated on misinformation. And who is better qualified to insure this than counsel educated in the problems of juvenile delinquency and acting in the interests of the child?

The ramifications of the often unwitting abuse of a juvenile's rights by failing to implement his right to counsel are too complex to be fully dealt with here. However, much of it can be avoided by setting all juvenile hearings within a framework of formalism. The development of the juvenile court movement in the United States has stressed the harm done to the child during the process of trying him. There has been much concern with the detrimental aspects of what is assumed to be a "traumatic experience." As a matter of fact, a more formal, orderly hearing, far from being "traumatic," may actually be a constructive factor in anticipatory preventive technique. That is, the very formality of the hearing may well have a sobering, educative effect on the child, as well as his parents, acting as an effective deterrent to future delinquency.

Within this "framework of formalism," designed solely for the protection of the juvenile, there would be limited flexibility. This flexibility would take the form of an absence of those technicalities not essential



Sheldon Glueck

to justice, which merely tend to confuse and intimidate the child, but would guarantee to the juvenile all of the constitutional and procedural safeguards afforded in regular criminal trials. Or serious juvenile cases might be referred to criminal courts for trial and, after a finding of guilt, according to the customary rules of evidence, be referred back to the juvenile court for sentencing, on the theory that the juvenile courts could better implement the disposition of such cases, because they have superior clinical (diagnostic and treatment) facilities.

The writer is aware of the argument against having attorneys participate in juvenile proceedings. Judge Paul W. Alexander of the Toledo Juvenile Court has said, "We seldom see a lawyer in Juvenile Court — and when we do, we have to tell him what to do and how to do it." (*Virtue, Survey of Metropolitan Courts, Detroit Area*, 116, 1950). More bluntly,

JAZZ CONCERTS

Every Nite
Featuring
Mel Dorfman
CRIMSON CAFE • Harvard Square

The COOP OPTICAL DEPARTMENT



New Location
Third Floor
Take Elevator

Offers you accurate and prompt service on all prescriptions. Broken lenses and frames replaced.

Harvard Cooperative Society
1400 Mass. Ave., Cambridge TR 6-3000

RUSSIA

(Continued from page one)

ship," so the youthful worship Lenin. The two persons that are held in the highest esteem in Russia, she declared, are Lenin and Pavlov. Some of the results of Pavlov's experiments on the subject of the conditioned reflex, she feels, are being utilized by the Soviet leadership to discipline the Russian people.

The challenge that the Soviet Union offers the United States today is "not purely a military one," she asserted. "The Soviet Union is the showcase for what you can do under compulsion. The United States is the showcase for what free people can do for themselves."

A struggle for the allegiance of the uncommitted areas of the world is reaching a crucial stage, Mrs. Roosevelt declared. The Soviets have been saying to these nations, "Forty years ago we faced the same problems you face today. We overcame them. We can help you to overcome them. We understand them. The United States does not."

She denounced the idea that "freedom stems from free enterprise." When we try to equate freedom with any particular type of economic system, we lose the sympathy of a good part of the world, she stated. Each country faces its own peculiar problems and many nations are unable to develop an economy akin to that of the United States.

The Russian government has been very adept at the art of psychological warfare, she asserted. The best seats at Moscow theaters and playhouses go to foreigners. Visitors are guests of the government and it is seen that they get the best. This, she said, is part of a "well thought-out plan."

In answer to a question, Mrs. Roosevelt stated that although there is some grumbling among the people in Russia, particularly among students, it is "wishful thinking" to believe that there will be a revolution in Russia in the near future.

The challenge presented by the Soviet Union should not discourage us, she emphasized. "If we can understand the challenge, we can win it." With the proper use of imagination, vision and courage "there is no question but that the free world can remain free."

— Binder

the argument is that such attorneys are often uninformed pettifoggers, an assertion which is unfortunately well-founded in many cases. However, pettifogging is a matter for the control of the courts. Adequate understanding of the aims and procedures of the juvenile courts is the responsibility of legal education. That this latter fact has been well-recognized, even outside the field of legal education, is implicit in the recent resolutions of the National Council of Juvenile Judges, who appreciate the fact that informed personnel can add substantially to their proceedings.

THE POET'S THEATRE

Back of the Coop

Denis Johnston's New Play

of the Irish Rebellion

THE SCYTHE & THE SUNSET

March 14-April 3

TR 6-3964

SQUASH RACKETS

Largest Variety in New England
Tennis & Squash Shop
67A MT. AUBURN ST. CAMBRIDGE
Opp. Lowell House — TR 6-5417

Why It Costs Less

SBLI To get the benefits of low-cost Savings Bank Life Insurance, you have to take the first step. Inquire at your savings bank. There you will get full information and help in selecting the right policy to fit your needs and budget. By buying Savings Bank Life Insurance over-the-counter, you help cut selling costs . . . and you get the savings. The results? Low premiums, reduced even further by yearly dividends, PLUS — guaranteed cash and loan values beginning the first year which GROW every year. So take the first step — let us show you how to get more protection at lowest cost.

CAMBRIDGE SAVINGS BANK

Right IN Harvard Square
Cor. Dunster St. & Mass. Ave.
Insurance Dept. — 1st Floor

OUR FINE SELECTION WILL ADD MUCH TO YOUR ENTERTAINMENTS

As the first and finest store in Harvard Square, we are stocked with the proper beverages to serve on all occasions

HARVARD PROVISION COMPANY

92-94 MOUNT AUBURN STREET

THE STORE WITH THE FRIENDLY SERVICE

FREE DELIVERY

BAG ICE

TELEPHONE: Kirkland 7-6684 - 5

OPEN MON.-FRI., 9 A.M. TO 9 P.M.; SAT. 9 A.M. TO 10 P.M.

CURRAN

(Continued from page one)

sumption of these new responsibilities does not mean that he will abandon his teaching here. "In fact, I hope that it will enable me to enrich the program at Harvard with the greater experience I will obtain and with the staff I will have to work with me."

Mr. Curran, trained in both law and public health, has been teaching in medico-legal fields at Boston University, Boston College, Harvard Law School, Harvard Medical School and the Harvard School of Public Health for the past five years.

FEATURES

(Continued from page one)

cording to the Canon Law of the Roman Catholic Church, and the risk of excommunication which a Catholic who involves himself in law suits instituted against clerics may face. The emphasis here will be on the American aspect of this problem.

In addition Professors Milton Katz and Kingman Brewster, Jr., will describe the new third year elective, "The Law of International Transactions and Relations", which will serve as the basic introductory course in the International Legal Studies Program, and which may be substituted for Commercial Law by second year students.

BERMAN

(Continued from page one)

such as vital foods and raw materials, Mr. Berman says the bulk of trade conducted by non-Communist countries is done by individual firms.

Mr. Berman cautioned that the categories of planned and free economies are not "black and white," because non-Communist countries have extensive governmental control over their foreign trade, despite the fact that it is principally negotiated by individual firms. Controls used by the free countries include tariffs which raise prices on foreign goods, quotas to limit the quantities of imports, special restrictions on strategic goods, licenses, and embargoes. Most free countries also employ various methods of exchange and currency control, with which they can accomplish much that direct controls are intended to do, through manipulation of exchange rates and allocation of foreign currency to firms that intend to use it for government approved purposes.

Among the problems discussed at the conference was whether sov-

HOGAN

(Continued from page one)

year the company attorneys managed to have the statutes declared unconstitutional. The result in these cases was surprising to the speaker, because "most other cases had been decided on police power, and in most cases against us."

Nuisance Cases

Another type of case that frequently comes up is the nuisance case. There have been innumerable instances of people bringing suit against the corporation for what they consider invasions of their privacy and injury to their property as a result of General Motors' activities. Mr. Hogan cited one occasion when a plant was built in an uninhabited area with no one living within eight miles. Within three years, he said, homes were up next to the gates. "Why anyone would want to locate next to a plant, I don't know."

Above all, Mr. Hogan advised his listeners, put a lot of effort into your cases. Do as the General Motors lawyers do and overprepare your case so that you cannot be surprised by anything that may come up in the course of the trial. Do a job on the preparation of the law and the facts since the plaintiff's attorney will so often do a sloppy job. "It is a wise idea to get a deposition from the plaintiff

eign immunity should be extended to a planned-economy country's state trading organization in its dealings with independent firms from other countries. Also attention was given to the question whether in the arbitration of disputes between private traders and state traders, the foreign arbitration tribunals of planned economies can be impartial in a legal sense since they are part of a state trade system to which one of the disputants also belongs.

It was agreed that the planned economies no longer are insistent that governments with which they negotiate should agree to make firm commitments to buy or sell stipulated quantities of the goods exchanged. Formerly the Communist countries had insisted that their national plans demanded that these firm commitments be made. The free countries have insisted that they could not guarantee that their merchants would deal in the stipulated quantities; the best they promised was that they would issue trade licenses equal to the quantities negotiated in the trade pacts.

The Communist countries still insist on bilateral barter agreements instead of multilateral agreements, because of the dictates of their national planning system. Free economy countries normally seek multilateralism in trade agreements, according to Mr. Berman.

Another area of agreement among the representatives of the two kinds of economies at the conference was that the standard "most favored nation clause" in trade agreements tends to give greater advantage to the planned economies than to free economies. The clause is designed to prevent discrimination by each party's agreement that it will extend no less favorable treatment than the treatment it extends to any other country. It was argued by Western jurists that this effort to remove discrimination is meaningless as far as a free economy is concerned when it deals with a Communist country, because under state trading, discrimination is a matter of administrative discretion, not a matter of the establishment of standard artificial trade barriers such as tariffs or quotas.

The professors agreed that "the general principle of non-discrimination is worth keeping in trade treaties between planned and free economies, though it is only symbolic, an expression of good intentions," Mr. Berman reports. However, they saw greater advantage to be derived from particularized anti-discrimination clauses with regard to measures such as access to ships, admission of merchants and trading organizations to markets, issuance of visas to foreign traders, and access to courts.

—Manley

Bar Exams

Harvard Law School graduates have had greater success in passing the California Bar Examination than the graduates of any other law school in the country, including the California Schools, during the period from March, 1955, through September, 1957, statistics reveal. During this period 50 out of 56 Harvard Law School graduates passed the examination, or 89.3%. The University of California School of Law at Berkeley passed 89% for a close second.

In the fall of 1957 Harvard Law School passed 19 out of 21 candidates (90.5%) who took the examination for the first time and 2 out of 2 on their second try. This compares to an average of 53.9% for all who took the examination.

before he has a chance to get together with his lawyer on their story," he suggested. Some further advice was offered to the effect that, "If you work hard enough you might be able to find something to discredit the other party so that he won't be a proper party in court."

Mr. Hogan mentioned many other of the tasks of his department, such as handling stock transfers, tax refund claims, and attending legislative hearings. He claimed that a young lawyer working for a corporation like General Motors could get training every bit as good as he could obtain in most large law firms.

Carter Gore, 3L of Staunton, Va., President of the Student Bar Association, introduced the speaker.

—Finley

Rackets Restrung

One Day Service

TENNIS & SQUASH SHOP

67a Mt. Auburn St. Cambridge
Opp. Lowell House — TR 6-5417

FACULTY

(Continued from page one)

from Status to Contract appeared in 4 MOD. L. REV. 261 (1941). *The Spirit of English Law*, 60 JUR. REV. 83 (1947), was his inaugural lecture at King's College delivered in October, 1947. *The Bases of Modern English Law*, 61 JUR. REV. 242 (1948), was delivered as a lecture at the Mansfield Law Club of the City of London College in March, 1949.

J. Nelson Young of the University of Illinois Law School will be the third Visiting Professor; he will teach a second year course in Taxation and a third year seminar on State and Local Taxation. Mr. Young received his B.S. and LL.B. from the University of Illinois in 1938 and 1942; he is also a Certified Public Accountant in that State. Among his published articles are *Insurance, Taxes and Estate Planning*, 29 TAXES 980 (1951); *Principal Tax Considerations in the Sale of Real Estate*, 17 MO. L. REV. 117 (1952); and *Airport Zoning*, 1954 U. ILL. L. FORUM 261.

Peter Brett, of the Faculty of Law

DALTON-ELCOCK BAR REVIEW

8 Beacon Street

Intensive Review for Massachusetts

Bar Exam

Begins May 26th

EUROPE

by Charter on KLM
(a regularly scheduled
IATA carrier)

by CONSTELLATION
June 21 NYC — London
Sept. 12 Amsterdam — NYC

Tel.: CA 7-8759
for further information

at the University of Melbourne, Australia, will be Ezra Ripley Thayer Teaching Fellow. He will teach a first year course in Criminal Law. Among Mr. Brett's articles are *Compulsory Purchase and Covenants Affecting Land*, 15 CONVEY. (n.s.) 8 (1951); *Civil and Criminal Defamation in Western Australia*, 2 U. WESTERN AUSTR. L. REV. 43 (1951); and *Manslaughter and the Motorist*, 27 AUSTR. L.J. 6, 89 (1953).

—Oliver

NOW \$3.45 GETS YOU \$5,000

SBLI For years we've advertised that "\$3.95 a month gets a man age 35 \$5,000 of Savings Bank Life 5-Year Renewable Term Insurance." But now the premiums have been reduced to \$3.45 monthly for \$5,000. The new, lower monthly premium per \$5,000 for age 20 is \$2.25; age 25 — \$2.50; age 30 — \$2.85; age 35 — \$3.45; age 40 — \$4.35. Yearly dividends reduce the cost even further. By buying Savings Bank Life Insurance direct from this bank, you help lower selling costs . . . and you get the savings. Get free folders and rates today.

CAMBRIDGE SAVINGS BANK

Right IN Harvard Square
Cor. Dunster St. & Mass. Ave.
Insurance Dept. — 1st Floor

Exclusive for students, faculty of
Harvard and Radcliffe and members
of their immediate families.

\$184 one way

Fly in full luxury on a Constellation with first class configuration — 49 seats. This means reclining seats, with plenty of leg room and leg rests, pillows and blankets. Full course meals and free drinks are part of this economy package. Up to 66 lbs. of baggage allowed.

Apply to:
Olivier Martin or Robert Williams, HBS '59
20 Eaton St., Boston, Mass.

Made - to - Measure SUITS

for the cost of ready-made

\$79**Regular Price \$100****3-Month Payment Plan Available**

Regular Weight—Worsted
Regular Weight—Tweed
Regular Weight—Cheviot
Regular Weight—Flannel
Tropical Weight—Worsted
Tropical Weight—Dacron-Wool

Take your pick of many fine patterns and excellent fabrics . . . choose the style you want . . . then let us expertly tailor the suit to your measurements . . . at this very low price.

Store Hours 8:50 to 5:30**THE COOP****Harvard Square's Largest Store****CHERCHEZ LA FLAMME**

BARBER SHOP

• EIGHT EXPERT BARBERS
21 DUNSTER ST. EST. 1898

at The Midget Restaurant

1712 Mass. Ave., Cambridge

Sunday Breakfast Specials

served till 3 P.M.

Lox & Eggs, 2 Bagels, Cream Cheese.

Coffee — 95c

Fresh Orange Juice, 2 Bagels.

Cream Cheese, Lox, Coffee — 75c

CRONIN'S

30 DUNSTER ST.

Famous for Steaks

Chops & Sea Food

Porter House Steak for Two

\$4.60

— SAMPLE DAILY SPECIALS —

Soup or Juice

Chicken Salad Sandwich

Pot. Chips — Chefs Salad 80c

Roast Rump of Beef

French Fries — Tossed Salad 99c

Rolls & Butter — Beverage

Dessert

BEERS — WINES — LIQUORS

Tel. EL 4-1366

Jim Cronin, Mgr.

Second Hand Lawbooks

LAW SCHOOL AIDS

HARVARD BOOK STORE

1248 MASS. AVE. CAMBRIDGE
OPP. LAMONT LIBRARY TR 6-9069