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TEN CENTS

Ersatz 'Brain' For Attorneys Is Discussed

Dr. G. A. Oettinger of the Harvard Computation Laboratory spoke Tuesday afternoon at the Coffee Hour in the Harkness Commons meeting room on the subject of "The Obsolete Lawyer: Computers, Language Translation and Legal Research Possibilities."

After reassuring his audience that technological unemployment was not imminent for lawyers, Dr. Oettinger went on to describe the two basic uses of electronic computers: (1) the storage of data in theoretically limitless amounts, although as a practical matter, he said, this would not be economically feasible; (2) the manipulation of the stored data at tremendous speeds.

Human Plan

To utilize these machines someone must program the material to be dealt with and this is often a laborious and time-consuming process. But once the basic instructions are programmed the particular figures in question may be substituted with relatively little effort.

One problem in adopting computers to perform legal research is the uncertainty of the original topical classification of decisions, or, in other words, the incompleteness and obsolescence of such classification. This problem is also encountered in using computers to process material in the physical sciences. Thus programming is a task on one hand requiring the exercise of discretion by highly competent persons and on the other is exceedingly dull and laborious. But possibly this dreary work, he added, may also be largely eliminated by the use of electronic devices some day.

In response to a question about the use of machines to think in what may loosely be called a "creative" way, Dr. Oettinger stated that some rudimentary attempts have been made at developing such a machine, but so far there has been little progress in this direction. Thus it would appear that the use of machines to exercise discretion or judgment is now but a remote possibility.

In fact even smooth mechanical translation of language is far from actuality at present. For instance, (See BRAIN on page four)



Felix Frankfurter

Frankfurter Talks To 'Med' Students

On the afternoon of March 21 at the Harvard Medical School Justice Felix Frankfurter, LL.B. '06 *c.l.*, delivered the 22nd annual George W. Gay Lecture on Medical Ethics. The subject of the lecture was, "A Lawyer's Dicta on Doctors." Justice Frankfurter emphasized that doctors should rise above the narrowness and specialization of their profession through "pertinacity and patience." He warned that today there is too great a tendency to let the lawyer absorb the man, just as there is a tendency to let the doctor absorb the man.

Overflow Audience

Justice Frankfurter addressed an overflow audience which was composed primarily of students and faculty of the Harvard Medical School.

To illustrate how it is possible for a doctor to go beyond the limitations and restrictions which may be imposed upon him, Justice Frankfurter sketched briefly the careers of four great doctors: Isaac Ray, William Beaumont, William Gorgas, and Bailey Ashford.

Dr. Ray settled in the small town of Eastport, Maine. As a young and not too thriving doctor he read widely in his spare time. Being dissatisfied with the prevailing treatment of criminals suffering from mental troubles, he went on to do much to change the law, based on Seventeenth Century precedent, dealing with the insane by means of his book, *Medical Jurisprudence of Insanity*. Later he went on to become the head of a men-

Candidates

The following will be candidates for the third year class offices in the April 7 election.

Marshal: Arnold N. Enker of Brooklyn; Ralph R. Ferney of Idaho Falls, Idaho; Herbert P. Gleason of Cohasset, Mass.; Charles A. Morrison of Mont Vernon, N. H.; and Benjamin L. Zelenko of Forest Hills, N. Y.

Secretary: Peter L. Malkin of New York City; Alan S. Novick of New Bedford, Mass.; Karl H. Spaeth of Philadelphia; and Michael L. Weissman of Highland Park, Ill.

Committee (4): Charles Bechhoefer of Washington, D. C.; Irving S. K. Chin of Worcester, Mass.; Betty Ann Cooper of Anchorage, Alaska; H. E. James Finke of Cambridge; Robert E. Guilford of Shaker Heights, Ohio; William L. Knecht of Shrewsbury, Mass.; Kenneth Lewis of Brooklyn; William F. Looney, Jr., of Roxbury, Mass.; Warren G. Miller of Brookline, Mass.; Stephen D. Moses of Elkins Park, Pa.; Bruce M. Ramer of Hackensack, N. J.; Harry R. Schumacher of New Hyde Park, N. Y.; Hubert T. Weinshienk of Denver; and Saul A. Wolfe of Newark, N. J.

Hart, Griswold Clubs Argue; Meet in Ames Court Tonight

The final two rounds of second year quarter-final Ames Competition will be held this evening and Tuesday evening, April 8 at 8 p.m. Arguing in Round III will be the Hart Club and the Griswold Law Club; in Round IV the contestants will be the Kent Club and the Casner Law Club. Both arguments will take place in the James Barr Ames Courtroom. This evening, before the United States Court of Appeals for the Ames Circuit, the case of *Grace Lines Inc. et al. v. Panama Canal Company* will be argued. Attorneys for the Hart Club, representing the plaintiffs-appellants, will be Paul A. Renne, 2L of Minneapolis, Minn., and Ronald J. Stein, 2L of New York City. The Griswold Law Club, representing the defendant-appellee, will have as its attorneys Frank H. Finch, Jr., 2L of Burling-

ton, Mass., and Johannes R. Krahmer, of Slingerlands, N. Y. Serving as Chief Justice will be the Hon. J. Joseph Smith of the United States District Court for the District of Connecticut. Paris Fletcher, LL.B. '27 of the Worcester (Mass.) Bar and Franklin T. Hammond, Jr., LL.B. '25 of the Boston Bar will serve as associate justices.

Twelve Against One

In this case twelve shipping corporations brought suit against the Panama Canal Company, a United States agency, in the Federal District Court for the Southern District of New York. Plaintiffs sought to have the defendant prescribe new tolls in accordance with the provisions of Public Law 481, which provided for six months notice of proposed changes in toll rates and for public hearings during that period. They charge that defendant took no action on this.

Defendant's motion to dismiss the suit on the grounds that the court lacked jurisdiction over the subject matter and that the complaint failed (See AMES on page four)

Dr. Gorgas was the third of the Justice's exemplary doctors. He was an Army doctor assigned to Cuba where he spent much time working on the Yellow Fever problem. Although another man discovered that (See FRANKFURTER on page four)

Speaker

Arthur H. Robertson, LL.M. '38 *c.l.*, S.J.D. '39, clerk of the Consultative Assembly of the Council of Europe and author of the book, *Council of Europe*, will visit the Law School on April 9. He will talk on various problems connected with European integration in the seminar on International Administration at 2 p.m.

Professor Sohn has announced that all interested students will be welcome.

'Headless Fourth Branch' Denounced by FCC Prober

Bernard Schwartz, ousted investigator for the House Committee on Legislative Oversight, delivered a bold, blunt, scathing denunciation of the federal administrative agencies before a capacity audience in the James Barr Ames Courtroom last Friday evening. Mr. Schwartz' speech, delivered in what seemed often bitter tones, was a stinging, sweeping indictment of what he termed "the headless fourth branch of the government," and, in particular, the FCC.

These agencies have become a "political dumping ground for lame-duck congressmen," for people the President or his friends owe a political obligation to, he charged. The manner in which they function is "a terrible thing, a shocking thing." Their decisions "are not based on the law or the facts, but on how heavy a pressure is brought to bear" upon them.

In an address sponsored by the Law School Forum the New York University Professor of Law attacked the idea that the powers granted to these agencies are not really legislative, executive and judicial, but are only quasi powers. When a trucker is convicted of violating a quasi-law, he asked, is he put in a quasi-cell? The

laws made and enforced by the administrative agencies are as real and as effective, he emphasized, as are the



Bernard Schwartz

laws made and enforced by Congress and the courts. It is a delusion to think otherwise.

Mr. Schwartz assaulted four fictions which, he declared, dominate the field of public administrative law.

(1) Congress can give broad, wholesale powers to the agencies it authorizes and these agencies will develop proper standards to limit their own powers.

(2) Administrative agencies regulate in the public interest.

(3) Fair procedure, full adversary hearings, impartial examiners, and lengthy, learned opinions protect the public from administrative decisions based on political pressure and the dominating influence of the large industries which the agencies are supposed to regulate.

(4) Agency heads are "experts" in the field in which their agency operates, and "you can trust the experts."

The former chief investigator spoke primarily of what he called the "big six" federal administrative agencies: the CAB, ICC, SEC, FTC, FPC, and, particularly, the FCC.

Congress, he stated, has unwisely granted these agencies wholesale powers "not canalized to keep them from overflowing their banks." This "skeleton legislation" gives the agencies "a carte blanche" enabling them "to write their own law." The statute setting up the FCC, for example, lays down the standard of "public interest, convenience, and necessity." This, Mr. Schwartz declared, tells the Commission, in effect, "to do as it darn pleases." Lacking Congressional guidance it makes wholly arbitrary decisions, influenced by pressures from many sources, especially the big, financially affluent networks.

Although the FCC has announced (See SCHWARTZ on page three)

Disarmament

Commander Sir Stephen King-Hall, a leader of the group advocating unilateral nuclear disarmament in England, will speak at the Law School Coffee Hour Tuesday at 1:30 p.m. in the Harkness Commons meeting room.

Sir Stephen is a former Independent Member of Parliament and author of several books on world affairs and defense problems. He is Chairman of the Hansard Society for Parliamentary Government and served on the staff of the Royal Institute of International Affairs for several years.

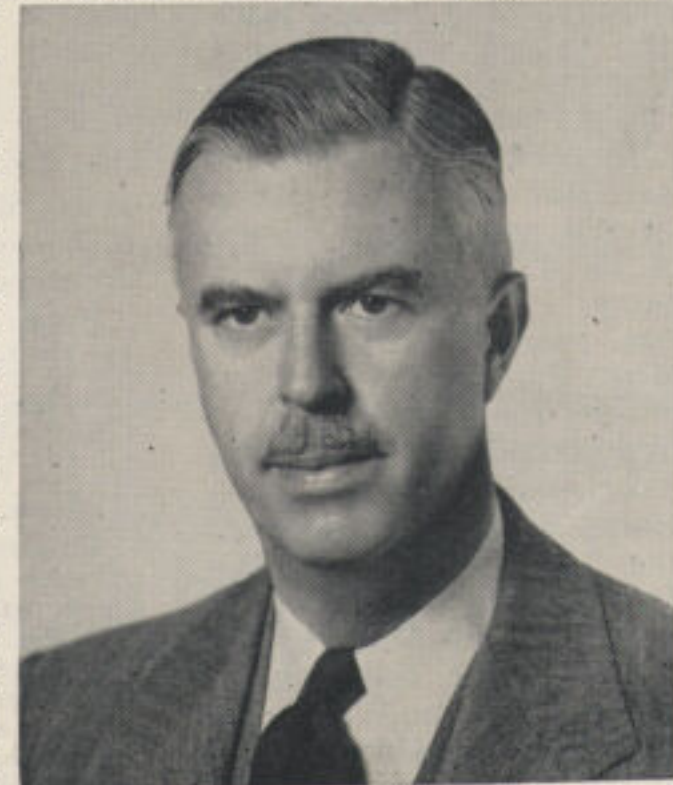
Cavers to Study at Stanford; Will be on Leave Next Year

Associate Dean David F. Cavers has accepted an invitation to become a Fellow of the Center for Advanced Study in the Behavioral Sciences, located at Stanford, California (It is not a part of the University).

The Center was created by a grant from the Ford Foundation in 1952 and began operations in September, 1954. It brings together authorities in about 50 of the behavioral sciences for a year's study and work together. This year (1957-58) is the first year in which the field of law has been included.

Professor Cavers, who has long been interested in the interrelationship of law and the social sciences, stated that he has no particular project in mind, but that what he finds and the people he meets when he gets to Stanford will determine the course of his study. He hopes to gain, during his year's sojourn, an improved conception of the contributions to legal education and research that may be made by the behavioral sciences.

Professor Cavers will leave for Stanford in September. He will be gone for a year and will resume his teaching at the Law School in the fall of 1959. He is Fessenden Professor of Law and has been Associate Dean at the Law School since 1951. Professor Cavers teaches a section in Conflict of Laws and Seminars in Atomic



David F. Cavers
Energy Regulation and Legal Education.

Current Case

The United States Court of Appeals for the District of Columbia Circuit has recently handed down another interpretation of its "Durham Rule," originally set forth in *Durham v. United States*, 214 F.2d 862 (D.C. Cir. 1954). By a 6-3 vote last fall the court, sitting en banc, reversed the conviction of a defendant who had introduced evidence of his insanity at the time of the commission of homicide. *Wright v. United States*, 250 F.2d 4 (D.C. Cir. 1957).

In 1951 Wright was indicted for first degree murder in the fatal shooting of his wife on a street corner in downtown Washington before numerous witnesses. He admitted his guilt to the arresting officer, and quickly signed a full confession. At his first trial two years later he raised the defense of insanity at the time of the crime. A verdict of guilty was later set aside by the trial judge, not on the basis of any evidence at the trial itself, but because examinations made subsequent to the trial showed that Wright had been mentally incompetent when he was being tried.

Second Trial

In 1955 the Superintendent of St. Elizabeth's Hospital, where Wright had been committed, said that Wright was now able to stand trial. At the second trial that year the fact of the homicide was quickly proved by the Government without difficulty. But the defendant again sought to prove that he was insane at the time he had committed the homicide. In the federal courts when a defendant introduces some evidence to raise the issue of insanity, the Government must then undertake to prove his sanity beyond a reasonable doubt. If the Government does not sustain its burden or (in the District of Columbia) if reasonable jurymen cannot conclude that the act was not the product of the defendant's mental illness or defect, then the court must direct a verdict of not guilty by reason of insanity or set aside a verdict of guilty and order a new trial.

In reviewing Wright's second conviction, the Court of Appeals said that the nature and quantum of evidence of sanity which the Government must introduce to carry its case to the jury will vary according to the evidence which the defendant has introduced tending to show his insanity. Wright had presented the testimony of eleven psychiatrists who had examined him during his four years' committal. The court summed up their testimony as follows: "[We] observe that (1) five or six of the eleven psychiatrists who testified were of the opinion that he had been mentally ill at the time of the shooting; and (2) several of them stated, with varying degrees of certainty, that the shooting was the product of the illness." (250 F.2d at 8.)

The Government sought to uphold the jury's verdict of guilty by pointing out that several of the doctors had been unable to say whether Wright had been mentally ill at the time of the shooting; but the court replied that this did not detract from the testimony of those who affirmatively testified that he was. The court noted that only one doctor had said positively that the shooting was the product of mental illness, and only three others were able to give testimony that it probably was the product of such illness; but the majority felt that such opinions need not be phrased in terms of mathematical certainty.

On the other hand, one doctor who had declined to express an opinion on the causal relationship between the defendant's mental condition and the crime stated that he could attempt to do this only after an intensive investigation and examination. The court strongly suggested that the Government was at fault in not having this done, since it had pressed a prosecution where the sanity of the accused would clearly be a major issue.

Appeared All Right

The only evidence which the Government offered to counter Wright's evidence of insanity was the statement of two policemen who had seen him shortly after the shooting, and had said that he appeared to be all right to them. The court brushed this aside as a casual observation, insufficient to prove beyond a reasonable doubt that Wright was sane in the face of Wright's evidence to the contrary. The conviction was reversed, and the case remanded for a new trial if the Government wished; or, in the alternative, for entry of acquittal by reason of insanity, notwithstanding the verdict.

The court went on and made some further rulings for the benefit of the lower court in the event a new trial should be held.

"The terms 'disease' and 'defect,'" Judge David L. Bazelon wrote, "are not so self-explanatory and our definition of them in *Durham* is not so definitive as to make elucidation always superfluous. . . . Where there is evidence to support a finding that the accused suffered from some other form of mental disease or from a mental defect the jury should be instructed that it may make that finding, especially when a juror has indicated by a question that the general instruction, as given, is ambiguous, confusing, or inadequate. Here, in addition to the evidence of schizophrenia, there was testimony from two doctors that Wright was a victim of 'psychomotor epilepsy' or 'psychomotor seizures' at

the time of the shooting. There was also evidence that tests had shown Wright was a moron. In view of this evidence and the juror's question, merely reciting the sample *Durham* instruction did not accomplish what we said in that case was the function of the instruction—to 'provide the jury with guides for determining whether the accused can be held criminally responsible.'" (250 F.2d at 11, 12.)

During the trial two psychiatrists had testified that Wright could not distinguish right from wrong at the time of the shooting. The trial court refused a request of the defense to instruct the jury that if it believed this to be true, then Wright must be acquitted. Judge Bazelon held this to be error. "While capacity to distinguish right from wrong is no longer the earmark of legal sanity, the lack of that capacity is one of the earmarks of legal insanity." (250 F.2d at 12.)

Judge Wilbur K. Miller wrote a dissenting opinion in which he was joined by Judges Bastian and Danaher. Judge Miller said that the fact that six psychiatrists could not testify as to the state of mind of the defendant at the time of the shooting does detract from the testimony of the others who claimed to be able so to testify; if six could not, said the Judge, the jury might well wonder whether the other five really could.

"It seems to me," Judge Miller wrote, "that, instead of being without conflict, the medical testimony in its totality was confused and contradictory, calculated to cause the jury to give little credence to the testimony of the five doctors who claimed rather remarkable power of 'antegnosis'—if I may coin a word to describe their action in forming an opinion as to a condition in the past. About all the medical testimony in its entirety proved to a certainty is that psychiatry is not an exact science." (250 F.2d at 15.)

Sanity Presumed

Judge Miller felt that a defense of insanity which, as here, turns out to be unsupported should not cast upon the Government the burden of proving sanity. Unless the defendant has overcome the legal presumption of his sanity by producing proof tending affirmatively to show his insanity, a verdict of acquittal should not follow by default when the Government produces little or no evidence of sanity. "I suggest that the jury should not be told that it may acquit if it negatively concludes—without evidence—that the defendant was insane simply because it thinks sanity was not sufficiently shown." (250 F.2d at 18.)

The dissenter further said that explaining the meaning of "any mental disease or mental defect" in terms suggested by the majority would only confuse the jury; Judge Miller criticized the whole manner in which the court had handled the appeal as "another example of what I regard as an alarming judicial tendency to magnify the rights of criminals at the expense of the public interest in the strict enforcement of the criminal laws." (250 F.2d at 16.)

Unless the United States Supreme Court rules on the matter, the question of whether or not to accept the *Durham* Rule will probably harass the federal courts for many years to come. Doubtless the state courts will be forever divided.

Under the older and prevailing M'Naghten Rule (enunciated in England in *M'Naghten's Case*, 10 C. & F. 200 [1843]) the test for legal insanity is whether or not, at the time of the commission of the offense, the defendant was able to distinguish right from wrong. This rule, though it may be subject to criticism on scientific grounds, at least has the virtue of being the simpler. As was revealed in *Wright*, the *Durham* Rule involves two questions: (1) was the defendant, at the time of the act in question, suffering from a mental illness or defect? and (2) was his act the product of this mental illness or defect? In determining legal sanity the element of causation is introduced. It is still uncertain whether or not this causation must have been a compulsive one.

Leaving aside the merits of one rule as opposed to another, the *Wright* case once again throws a spotlight on the difficulties which face a jury in passing upon the sanity of an accused. Eleven learned psychiatrists come before it. Some say the accused was suffering from mental illness at the time of the offense; an approximately equal number say that this cannot be determined. One says the shooting was the product of mental illness; three say it "probably" was; the rest say they do not know. Assuming that all these doctors are of unquestioned veracity and ability, on what basis is a jury expected to resolve the question? Unless the accused himself testifies on the issue of his sanity, it can hardly enjoy first-hand evidence.

Obviously, these expert witnesses will give the jury more than mere naked conclusions. They will state the basic facts upon which their conclusions are based. But can a jury of twelve laymen really be expected to understand the learned jargon of eleven psychiatrists? And even if the jury can comprehend psychiatric terminology and reasoning, should these laymen in any case be allowed

Professor Cox Describes Courses in Labor Law

In this, the fifth in a series of articles explaining selected third year courses, Professor Archibald Cox describes Labor Law and Collective Bargaining. A newcomer to the faculty, Assistant Professor Derek C. Bok will teach Labor Law. Professor Cox will teach the one-semester Collective Bargaining course in the fall.

by
ARCHIBALD COX

The Law School offers alternate courses in labor law—Labor Law, which is given two hours a week throughout the year, and a



Archibald Cox

half course called Collective Bargaining Law intended for students unwilling to take time to cover the subject.

Labor Law covers the basic materials in the law of labor-management relations. Commencing with the judge-made law of strikes and picketing, we trace the evolution of current doctrines through the Sherman, Clayton and Norris-LaGuardia Acts to the National Labor Relations Act and the Taft-Hartley amendments. Thenceforward the course follows the normal progression of events in an industrial establishment.

During the organizational stage of labor relations one is concerned with employer unfair labor practices and representation proceedings. Negotiations of the collective bargaining agreement follows next. We examine the process chiefly through the legal obligation of the employer and union to confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, but I try also to introduce the students to the conventional clauses of labor agreements. In discussing their administration we focus upon grievance arbitration both as a procedure for administering justice and as a source of "industrial law." The problems of relating griev-

ance arbitration to the conventional legal systems complete this part of the course.

to substitute their conclusions for those of men who have spent many years in the study of mental defects and aberrations? Yet psychiatrists disagree, as they did in *Wright*. Although it would impertinent to suggest that the courts are shirking their duty, it does seem that here the final decision on a most complex and difficult question is being tossed to those who are least qualified to make it. It is one thing for a jury to decide whether A is lying when he says the gun was loaded, or B is lying when he says it was not. Judging the credibility of such witnesses is well within the experience of most men. It is quite a different matter for the jury to be asked to decide whether Doctor A is correct in diagnosing the defendant's act as having been the product of mental illness, or whether Doctor B is correct in holding that it was not. When Doctor C claims that nobody can possibly tell anyway, the jury's task becomes even more difficult.

A different situation arises in civil litigation involving medical or other expert testimony, for there the expert witnesses are ordinarily retained by one side or the other, and the jury may weigh that fact in crediting their testimony. In a criminal case, on the other hand, the fact that a psychiatrist is presented by either the prosecution or the defense should not be a crucial factor in crediting his testimony.

A solution is not readily apparent. It might be that there are Constitutional objections to taking the question from the jury. Few judges are psychiatrists, but at least they have more experience in such matters than laymen. Perhaps a board of psychiatrists should make legal findings on the sanity of defendants—though *Wright* would indicate that the verdict even of this group might depend upon a chance selection of participants. But just because no ideal solution presents itself, the task of making a finding on the legal sanity of one accused of a crime should not be thrust upon those least qualified to carry out that duty.

— Oliver

ance arbitration to the conventional legal systems complete this part of the course.

Towards the conclusion Labor Law returns to the law of strikes and picketing with emphasis upon the union unfair labor practices under the National Labor Relations Act and the extent of federal preemption of the field against State regulation. The remaining hours are given to discussion of the mutual obligations of the individual and the union.

There are five reasons for placing so much emphasis on the law of labor-management relations:

(1) The American people have sought to solve the problems which affect wage earners in every industrial community developing a strong labor movement and collective bargaining. The rules which are made by the negotiation and administration of collective bargaining agreements affect employers and employees more significantly than other labor legislation.

(2) To study the legal framework of collective bargaining as an institution of industrial self-government emphasizes the special aspects of labor law. It deals with groups of people rather than individuals and aggregations of property—with an on-going yet changing relationship rather than a single transaction.

(3) Unions and collective bargaining have become significant institutions since 1900. Study of the law's effect upon these institutions and of its response to the social and economic developments should give an appreciation of the interplay between law and life which is less observable in other contexts.

(4) Many law students have an exaggerated notion of the extent to which human relationships can be organized by law. Labor-management law raises sharp questions concerning the relationship between law and private adjustment.

(5) With time and patience a student may learn the truth of George Bancroft's remark:

The feud between the capitalist and laborer, the house of Haves and the house of Wants, is as old as social union, and can never be entirely quieted; but he who will act with moderation, prefer fact to theory, and remember that everything in this world is relative and not absolute, will see that the violence of the contest may be stilled.

Perhaps it is the value which I attribute to this goal which makes me skeptical of the course in Collective Bargaining—at least when I am the instructor. The course was developed as part of a program for relieving pressure on the third year student's crowded hours by offering popular subjects in alternate full and half year courses so that he could obtain some acquaintance with typical problems in each field. Thus Collective Bargaining Law covers the negotiation and administration of collective bargaining agreements—with only a nod towards employer unfair labor practices, representation proceedings and the law of strikes and picketing. The cases can be read and the legal doctrines stated. The weakness is that twenty-eight hours hardly gives time to dig beneath the loose generalities and preconceptions with which most of us approach issues of labor policy. It takes time and patience to clear them away. Nor is this a matter of pursuing abstruse refinements except in the sense that a basic issue cannot be intelligently resolved without painstaking analysis of its impact and implications, for only then do the difficulties appear.

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SCHWARTZ

(Continued from page one)

various criteria which supposedly guide its decisions, Mr. Schwartz continued, the Commission "does not follow any objective criteria . . . it does as it wishes."

He decried the fact that the FCC commissioners are "treated like clients, not like judges," by the important communications interests. They are "wined and dined, given color TV sets, paid vacations," and treated to nothing but the best. And the decisions rendered by the Commission, he charged, show a "constant orientation toward the large networks. . . . Can you name one case [of the disputed allocation of a television channel] in which a network station lost," he asked?

The public interest and the interests of the large networks cannot be equated, he asserted. "The Commission has often acted upon the opposite assumption."

That the Commission members should favor, consciously or unconsciously, the moneyed network interests is only natural, Mr. Schwartz continued, for the only real future the average commissioner has is with the big networks, "either directly or by way of some law or engineering firm which counsels them."

All a Fiction

Apparently adequate procedural safeguards have been set up to insulate agency functioning from political pressures. But "the whole procedure is a fiction," he charged. Hearings are held, briefs are submitted, reports are written and thousands of pages of material are accumulated for the ostensible purpose of aiding in the just allocation of a TV channel license. But all this, the ousted investigator declared, is window dressing. "The Commission doesn't mean it. The parties don't mean it." The decisions "are not based on the law or the facts." They are "governed by political pressure." And everyone acquainted with the workings of the FCC knows it.

The commissioners don't even have to read the record, the briefs, or the reports of the examiner, don't have to listen to the oral arguments, or give any explanation or reason at all for their decisions. In the FCC the only responsibility a commissioner has is to vote. If you are a commissioner and "if your friend White comes to you and says, 'vote for X,' you can do it and you don't have to explain to yourself, much less to the public," he stated.

Most of the men who make the decisions in the federal agencies don't write their own opinions, and many don't even read them. In the FCC, for example, agency decisions are ex-

plained in an official opinion written by an "Office of Opinion and Review."

After his formal address Mr. Schwartz was questioned by a panel consisting of John M. Gaus, Professor of Government, and Clark Byse and Phil C. Neal, Visiting Professors of Law.

Professors Byse and Neal disagreed sharply with Mr. Schwartz on the validity of his general condemnation of the agencies, declaring that he had greatly "overstated his case." Professor Neal charged that Mr. Schwartz



Clark Byse

was "building a very large pyramid of sin upon the head of a single pin." He suggested that Mr. Schwartz' damning remarks may well be limited to one agency, indeed, to one commissioner. Professor Neal stated that he teaches "skepticism of experts" to his classes, and among these experts he includes Schwartz.

But when Professor Neal asked if the FCC had not done a creditable job in disposing of the color TV controversy between CBS and NBC the ousted investigator had a ready reply.

When a CBS-oriented chairman headed the FCC, the CBS color system was approved by the Commission, he said. As soon, however, as a new NBC-oriented chairman was appointed, the Commission reversed its stand and approved the NBC system. Soon after this decision, he explained, the chairman resigned his job with the Commission and accepted a position as vice president with NBC at a great increase in salary. "This may be a coincidence," he added.

CBS Superior

Mr. Schwartz told the audience that many engineering authorities favored the CBS color system because they believed it gave a superior picture. The system would require a converter to adapt it to black and white receivers, he continued, but these converters could be produced at an average cost of about \$20 per set by the manufacturers, a rather mild sum when compared to the high cost of producing the NBC process.

But RCA (which owns NBC) has an almost complete patent monopoly in the TV receiver manufacturing industry, he declared. Every receiver produced uses at least one patent owned by RCA, which stubbornly opposed the production of these converters.

This is "one of the most blatant examples . . . where the experts were overruled by the industry," he asserted.

When asked why the FCC recently approved a trial for pay TV, in the face of a militant network opposition, if it were dominated by the industry as he had charged, Mr. Schwartz answered that pay TV, in the present climate of opinion in Washington, has no chance of adoption. The Commission knows it; the networks know it. So it doesn't matter what the Commission does on this particular matter.

When Professor Byse suggested that he had gone overboard in his condemnation of the federal agencies, that they could not all be guilty of the wrongs he had listed, Mr.

Schwartz stated that the difference in the amount of corruption present in the various agencies was largely a question of degree, not of kind. Taking direct issue with Professor Byse, he expressed "grave doubt" about the proper functioning of the SEC.

Mr. Schwartz declared that the best way to attack the problem that the administrative agencies present is to raise the calibre of the men appointed to the commissions. "Can you name even one outstanding appointment to any of the important agencies in recent years," he asked? Nobody named one.

Penal Sanctions Needed

We should not regard procedural safeguards as a myth, he cautioned. The enactment of a legislative code setting up standards for the heads of agencies as high as those set up for judges is needed. And penal sanctions must be provided. Rules adopted by the agencies themselves are "nothing, because there is no sanction, nobody to enforce them."

In answer to a question from Moderator David F. Cavers, Mr. Schwartz stated that he didn't feel that it was necessary or practical to divorce the legislative from the judicial functions performed by the agencies.

Mr. Schwartz was strongly criticized by Professor Byse for leaking a confidential report which he submitted to the Committee on Legislative Oversight to *The New York Times*, three weeks after the Committee had voted to bury it. He defended himself by explaining that excerpts from this report had already appeared in the column of a national newspaper columnist, which gave a distorted picture of the report. The only feasible way to correct this, he said, was to get the report in its entirety before the people through a widely distributed newspaper.

Professor Byse took Mr. Schwartz to task for going over the head of the Committee he was hired by and was supposed to serve. He had no right to do this, Professor Byse asserted. While his ends may have been laudable, they certainly did not justify his means. The methods he used, Professor Byse declared, did his cause more harm than good.

Mr. Schwartz replied that the relationship between a Committee Counsel and a Committee is not like the familiar lawyer-client relationship. For in the former a public interest is involved, and not only the Committee but also the public must be considered by the Counsel and, when possible, served. It was in order to fulfill his duty to the public that he brought the FCC scandal out into the daylight, he stated.

Refused to Whitewash

Members of Congress have been among the worst offenders in attempting to exert influence upon the administrative agencies, he charged, and they have been all too willing to blind themselves to what has been going on under their very noses. He was hired by the Committee to investigate the agencies and he did not feel compelled to participate in a whitewash of them.

When investigating, "if you stumble over some garbage, what are you supposed to do," he asked? "Walk around it?" Richard Mack, Schwartz asserted, would still be sitting on the FCC if he hadn't gone over the head of the committee and named names. He could have done no greater disservice, he continued, than to let the FCC "remain as it was, or as it may still be."

In answer to a question from the audience Mr. Schwartz stated his opinion that Congress has a legitimate purpose to further public education, to expose improper activities, to ventilate public grievances. It should not merely "grind out laws as a sausage-maker grinds out sausages."

Action by Congress is needed, he emphasized, and you will not get corrective Congressional action unless you crystallize public opinion. This can best be done by exposing "horrible examples." The public and the press are not interested, he added, unless there is a scandal involved.

— Binder

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Faculty Publications

The following articles by members of the Law School faculty were published during the past month:

Harold J. Berman — *The Devil and Soviet Russia*, THE AMERICAN SCHOLAR (Spring, 1958).

Louis L. Jaffe — *The Right to Judicial Review II*, 71 HARVARD LAW REVIEW 769.

Louis B. Sohn, with Grenville Clark, (book) — *World Peace Through World Law*, Harvard University Press.

AMES

(Continued from page one)

to state a claim upon which relief could be given was granted by the court. Plaintiffs appealed. The court stated that Public Law 481 was permissive so that defendant corporation could not be compelled to comply with it, thus plaintiffs were not entitled to judicial review. In addition, the court held that the tolls were subject to Presidential approval and not subject to review.

An issue arising in the appeal is whether the applicable sections of Public Law 481 are mandatory, and if so whether or not they have been violated. Plaintiffs claim that it had been the intent of Congress to create an affirmative duty in the defendant corporation to establish tolls, whereas defendant attempts to prove that the Congressional purpose was to allow for discretion in changing the tolls.

The other important issue in this case is that of the availability of judicial review. Plaintiffs claim that Public Law 481 and the Hay-Pauncefote Treaty have recognized certain legal rights of the plaintiffs which, they say, have been violated; therefore, it is within the court's power to grant the necessary relief. Defendant maintains that no private legal right has been conferred on plaintiffs and they thus have no standing to sue. In addition, the suit is in substance a suit against the United States, which, says the defendant, has not given consent to be sued.

For the purposes of this suit, the rules of the Second Federal Circuit will be followed by the Ames Court.

The final round in the quarter-finals, to take place Tuesday evening, will be argued before the Supreme Court of the Commonwealth of Ames. The case at bar will be *The Commonwealth of Ames v. Melvin Grit*. Defendant-appellant Melvin Grit will be represented by the Casner Law Club whose attorneys in this action are Charles R. Collins, 2L of Pittsburgh, Pa., and James R. Modrall, 2L of Albuquerque, N. M. Oralists for the Kent Club will be Edward S. Davis, 2L of Brookfield Center, Conn., and Charles Cheney Humpstone, 2L of New York City.

Judges

Presiding at this session of the court will be the Hon. Vincent Brogna, LL.B. '41 of Superior Court, Boston. Sitting as Associate Justices will be Wilbur Hollingsworth of the Boston Bar and Lawrence B. Urbano, LL.B. '50, also of the Boston Bar.

This is an appeal from a conviction for attempted robbery under the Ames Penal Code. The owner of a gas station identified the defendant at a police lineup as the man who had attempted to hold up his gas station. On the day following the identification, while in police custody, the defendant complained of stomach pains and requested a doctor's aid. The doctor administered an injection of phenobarbital and hyosine, and also left some phenobarbital pills with Grit. Not long after that the defendant confessed to the crime.

At issue in the case is the validity of the confession, defendant alleging that it had been obtained while he was under the influence of the drugs. The defendant's motion to have the confession suppressed as being "wholly involuntary" was denied by the trial judge. The admission of the confession was reversible error, stated the defendant, because, among other rea-

Bull & Bear

The Bull and Bear Club will hold its annual evening meeting and cocktail party next Wednesday at 8 p.m. in the Harkness Commons meeting room. The featured speaker will be John Harriman, financial writer for the Boston Globe.

Winners of the "ticker-tape" contest will be announced and awards distributed to the winners of all contests, including the investment contest.

FRANKFURTER

(Continued from page one)

it was a type of mosquito which spread the dread disease, Dr. Gorgas made a valuable contribution of another nature. He concluded that the mosquito must be exterminated to rid Cuba of the disease. Surprisingly, Justice Frankfurter noted, Dr. Gorgas found great opposition to his project. Only through "patience and pertinacity" was he able to get his ideas across and finally exterminate the carrier.

Dr. Bailey Ashford went to Puerto Rico and succeeded in isolating the hookworm virus. Dr. Ashford, according to Justice Frankfurter, was a man of great intellectual awareness.

The speaker concluded his address by listing three shortcomings which he had noted in lawyers, stating, "I leave you to decide to what extent they apply to doctors." (1) Too many lawyers pursue their calling too narrowly. There is a tendency to stick close to their immediate concern, (2) They live too exclusively within the profession. A profession should not absorb a man, (3) They do not cultivate enough intellectual detachment.

Justice Frankfurter ended by warning his audience that, "specialization is the 'mutilization' of the whole."

—Boal

BULL & BEAR

(Continued from page one)

Merrill Lynch, Pierce, Fenner and Smith. Mr. Dusossoit spoke on new opportunities for the speculator in commodities. He turned first to the factors that the careful commodity speculator should take into consideration when contemplating taking a position in the market. Since the commodity markets deal mainly with raw materials, he said, major factors are projected supply and demand, action of government support prices, and effect of weather on crop production.

International Scene

Another major but often overlooked factor is the international scene, the speaker said. Even localized military actions may often drastically restrict imports of certain commodities into this country, creating sudden rises in the futures market for these commodities; conversely, commodities whose price levels are sustained by exports also suffer if customer countries are involved in military actions.

The investor preparing to enter the commodity markets for the first time must take certain precautions, Mr. Dusossoit warned. Chief among these is to investigate and absorb knowledge of what may be done on the commodity markets, which are strictly regulated by the Commodity Exchange Commission. A second wise precaution, he went on, is for the investor to enter his first transaction cautiously, setting a stop loss order at about a quarter of what the expected or possible profit might be.

—Cover

sons, it violated the "due process" clause of the Fourteenth Amendment and Article 5 of the Ames Constitution. The jury should not have been allowed to decide the issue of the voluntariness of the confession. However, since the evidence as to the effect on defendant of the medication has been contested, plaintiff asserts that the question should have been sent to the jury for determination.

There are several other issues involved in the case at bar. They include a problem of whether the testimony of the defendant's wife should have been admitted in the trial court. Plaintiff claims that the testimony did not reveal anything of a confidential nature, therefore its admission violated no privilege defendant might have under Rule 215 of the Ames Code of Evidence. Defendant denies this assertion, however, and states that the admission of the testimony is reversible error.

Finally, defendant asks for reversal on the grounds that one of the jurors had been prejudiced at the time of trial. During the *voir dire* examination, the juror failed to reveal his recent experience as a robbery victim under similar circumstances as existed in this case. Defendant's motion for dismissal not withstanding the verdict was denied prior to sentencing. Plaintiff states that there was no mistrial because the juror was not challenged at the proper time, nor was there a showing that there had been actual bias caused by the juror having been a robbery victim.

—Finley

Ames

The Holmes Club and the Sacks Club have earned places in next year's semi-final round of Ames Competition. On the evening of Tuesday, March 25, the Holmes Club, represented by oralists Joseph H. Head, Jr. of Cincinnati, and J. Wallace Hopkins, Jr. of Cambridge, defeated the Toepfer Club in Round I of the Quarter-Finals. Monday night, March 31, the second of the semi-final berths was decided when the Sacks Club triumphed over the Frankfurter Club in Round II. The victors were represented by attorneys Ansel B. Chaplin of Truro, Mass., and John H. Demmler of Pittsburgh, Pa.

Alumni Notes

LL.B. '17 — Paxton Blair has been appointed Solicitor General of the State of New York. His office address is Department of Law, The Capitol, Albany, New York.

LL.B. '49 — Norman D. Katz has formed a partnership with Steven I. Victor for the general practice of law under the firm name of Katz & Victor, 3408 Guardian Building, Detroit 26, Michigan.

LL.B. '54 — David B. Goldberg, formerly trial attorney with the United States Department of Justice, has announced the opening of an office for the general practice of law at 185 Devonshire Street, Boston 10, Massachusetts.

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BRAIN

(Continued from page one)

he pointed out, the proper correspondence of words in every context and the interpolation of words to accord with the respective syntaxes of the languages involved still present very difficult problems.

Dr. Oettinger agreed with an observation made by Professor Abram Chayes to the effect that until basic analytical and logical patterns are discovered, with particular reference to the law, the use of computers for legal analyses or decisions is impossible. He felt, however, that an important by-product of the research being done on such computers is the discovery of just such patterns. He acknowledged that most criteria for making judgments could be articulated, but, he continued, some must remain inscrutable.

Dr. Oettinger noted that, even with regard to many of the functions that computers are now capable of doing, as a practical matter their commercial application for these functions is at present economically out of the question.

—Duke

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