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Harvard Law Record

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TEN CENTS

Defenders Enter Courts; Vote to Accept Women

The Supreme Judicial Court of Massachusetts has announced a ruling that will permit, for the first time, third year members of the Harvard Voluntary Defenders to practice before any district court of the Commonwealth. Previously this right was limited to second and third year students in the Legal Aid Bureau.

The Harvard Voluntary Defenders is an adjunct of the Boston Voluntary Defenders Committee, a charitable organization which provides free legal counsel to indigenous defendants in criminal prosecutions. Until this ruling by the Massachusetts Court, the work of the Harvard group had been restricted to interviewing defendants awaiting criminal proceedings, investigating the law and facts of these particular cases, and aiding in the trial of such cases in the district courts of Metropolitan Boston.

The Defenders are now instituting a new program for providing assistance to persons under sentence in Massachusetts prisons who seek post conviction relief. This work, which will be done under the joint supervision of the United Prison Association of Massachusetts and the Boston Voluntary Defenders Committee, will consist of an interview with the prisoner requesting aid, the preparation of a memorandum on questions of law raised by his case, and a recommendation as to further possible courses of action.

If judicial proceedings are to be instituted, counsel from the Harvard Defenders will assist the attorney of record (either a member of the Boston Voluntary Defenders Committee or a lawyer selected by the United Prison Association from its volunteer panel) in the presentation of the case through its final disposition.

The text of the ruling handed down on October 28 is as follows:

Rule 11 — Legal Aid to Indigent Criminal Defendants
A senior student in an accredited law school in the Commonwealth with
(See DEFENDERS on page 3)

Jackson Heads Dorm Council

James W. Jackson, 3L of Winnetka, Ill., Rudolph V. Lutter, 2L of Philadelphia, John J. Moss, 3L of New York City, and Warren H. Greene, Jr., 2L of Bronxville, N. Y., were elected president, vice president, secretary, and treasurer, respectively, of the Dormitory Council at its meeting in the Gray Room of Holmes Hall, Tuesday Evening, November 18.

Their terms of office expire in February and span vacancies created by the non-dormitory residence this academic year of the former president, Jerome L. Sussman, 3L of Brooklyn; secretary, Robert L. Brenner, 2L of Minneapolis, Minn.; and treasurer, Leslie A. Todd, 3L of New York City, and by the elevation of Mr. Jackson from the vice presidency to the presidency.

A proposed amendment to the Dormitory Association Constitution which would have made the three former officers full legal officers in addition to their honorary status, conferred in recognition of their past services at a recent Council meeting, secured only ten of the fifteen affirmative votes required for a two-thirds majority of the twenty-two member Council, and failed of passage.

Winner

The Sacks Club, represented by oralists Ansel B. Chaplin of Truro, Mass., and Joseph L. Steinberg of Passaic, N. J., defeated the Kent Club, represented by oralists Edward S. Davis of Brookfield Center, Conn., and Charles C. Humpstone of New York City in the first semi-final argument of this year's Ames Competition on Tuesday evening, November 18.

The Sacks Club represented the Commonwealth in a murder case, *Commonwealth of Ames v. Bates*.

Few Negroes Enter Law School

Two Negroes are among the almost 1600 students studying at the Law School for an LL.B. degree. Two more Negroes are graduate students here.

The figures (unofficial, since no official separate records are kept for Negroes) are never very large (4 undergraduates last year), but this year the total is smaller than usual.

The reason that so few Negroes attend the Law School, according to Vice Dean Livingston Hall, is probably because so few apply for admission. The reason for this, he explained, is that a smaller percentage of the Negro population in the country attend college and receive the college degree necessary to qualify them for admission to the Law School than is true for the population as a whole. This, he suggested, is due to largely economic circumstances.

Negroes who have attended the Law School, he continued, have fared academically, on the average, no better nor worse than their fellow students.

One of the most outstanding Negro graduates of the Law School is William Henry Hastie, LL.B. '30, S.J.D. '33, former dean of the Howard University School of Law in Washington, D. C. (1939-46), Governor of the Virgin Islands (1946-49), and a judge of the United States Court of Appeals for the Third Circuit since 1949.

Bull & Bear

Paul C. Cabot, treasurer of Harvard University, a partner of State Street Research and Management Co., and director of several leading corporations, including J. P. Morgan and Co., Continental Can Co., and Ford Motor Company, will address the Bull and Bear Club tomorrow at 1:40 p.m. in the Harkness Commons Meeting Room.



William W. Goodrich

Goodrich to Give 1st Dunn Lecture

William W. Goodrich, Assistant General Counsel of the Food and Drug Division of the Department of Health, Education and Welfare, will give the first annual Charles Wesley Dunn Lecture, in the Ames Courtroom, on Wednesday evening, December 3, at 8 p.m. Mr. Goodrich will speak on "The Administrative Process, Exemplified by the Pure Food and Drug Act."

This lectureship was established by the American Pharmaceutical Manufacturers Association, in honor of Charles Wesley Dunn on the occasion of his retirement as General Counsel for the Association in 1958. The program will be presented under the sponsorship of the Student Bar Association.

Mr. Goodrich is an authority on Food and Drug law, having joined the Food and Drug Administration in 1939, shortly after graduation from the University of Texas Law School. He has been with the Food and Drug Administration since that time, except for a wartime tour with the Navy, and has witnessed the transfer of the division to the newly created Department of Health, Education, and Welfare. Mr. Goodrich assumed his present duties as Assistant General Counsel in 1952.

"There is no charge for admission, and all interested persons are invited," Student Bar President George A. Page, Jr., 3L of La Grange, Illinois, announced today.

Tunnel Nears Completion; Noisy Work Is Deferred

Lagoon Blue, Jasper Green, Cinnabar, and Pepper Gray Satin ceramic tile in an old-fashioned size specially made for the Law School are being laid in the final stages of work on the tunnel connecting Austin Hall and Harkness Commons by way of Langdell Hall, with a side passage leading to the International Legal Studies building. Louis A. Toepfer, Secretary of the Law School, expects the tunnel to be in operation shortly after the first of the year.

Mr. Toepfer explains that it has been necessary to revise the original estimate of the time of completion because remaining structural modifications require noisy cutting work which would disturb classes. Arrangements have been made with the general contractor to suspend the final noisy work until the Christmas recess when it can be completed without disrupting classes.

In discussing the tunnel, Mr. Toepfer explains, in a slightly defensive tone, that at least one *raison d'être* is an eminently practical one. Central heating and air conditioning facilities in Langdell Hall were to be connected to the new International Legal Studies building. To do this it was necessary to excavate for a considerable distance along the west side of Langdell Hall to provide a tunnel which would carry Langdell utility facilities to the new building. For a relatively small increase in expense, the Secretary states, it was possible to build a pedestrian tunnel on top of the one carrying the utilities. This explains why part of the new addition is what Mr. Toepfer describes as "the only tunnel in the world with windows."

Once this was conceived of, by a simple extension of logic, concrete and ceramic tile, the Langdell tunnel was connected at one end to Harkness Commons and on the other end to Austin Hall. The result is a dry and well-lighted, meandering thoroughfare from the graduate center dormitories and dining hall to all of the main buildings in the Law School complex.

Some unforeseen difficulties slowed the early construction of the tunnel. At the north end, steam pipes and utility lines from Harkness Commons were found at unexpected places and had to be rerouted. On the south end of the tunnel near Austin Hall, a layer of peat required more extensive

(See TUNNEL on page 3)



Students to go Underground

Ames Semi-Final Is Tax Case

On Monday evening at 8 p.m. the Holmes Club and the Griswold Law Club will vie in the second semi-final argument in this year's Ames Competition. Oralists for the Holmes Club are Joseph H. Head, Jr., of Cincinnati, and J. Wallace Hopkins, Jr., of Cambridge. Oralists for the Griswold Law Club are Thomas C. Clarke of Yonkers, N. Y., and Frank H. Finch of Urbana, Ill.

The case to be argued is *Commissioner of Internal Revenue v. Lester V. Anderpont*. The Commissioner is appealing from a Tax Court decision in favor of the defendant-appellee, Anderpont.

Anderpont's daughter, Jacqueline, a neurotic, possesses a support decree, entered by default, against her father. This decree, however, was obtained in a French court, which acquired personal jurisdiction over Anderpont while he was in France trying to persuade his daughter to come home to Boston. He never made any payments under the decree.

Jacqueline later wrote her grandmother that she intended to bring suit against her father in a United States court. So the grandmother set up a 20 year trust to provide her granddaughter with \$5,000 per year, in consideration for which Jacqueline agreed not to press any further charges against her father, who knew nothing of the agreement.

It is that part of the income from this trust which is being paid to Jacqueline that the Commissioner is trying to tax to her father. The major issue is whether the payment of this income to Jacqueline discharged a legal obligation of the taxpayer. The Tax Court ruled in favor of the taxpayer on the ground that the French judgment was not enforceable under Massachusetts law and, therefore, the taxpayer was under no legal duty to support his daughter.

R. Ammi Cutter, LL.B. '25, a member of the Supreme Judicial Court of

(See AMES on page 3)

South African to Speak

W. C. duPlessis, ambassador to the United States from South Africa, will address the Harvard Law School Forum on Friday evening, December 5, at 8:30 p.m. in the New Lecture Hall. The subject of his speech will be "South African Racial Policy," and a panel discussion will follow his main address. Dean Erwin N. Griswold, who visited South Africa last summer as an observer of the celebrated treason trial then in progress there, will participate in the program.

Tickets may be purchased at the door or at the Forum offices at 23 Everett Street.

Is Military Draft Necessary? Present Act Expires in 1959

The fund for the Republic recently issued one in a series of Occasional Papers on the role of government in the Free Society, entitled THE UNIVERSAL MILITARY OBLIGATION. It was written by John Graham, a member of the District of Columbia bar.

On November 6 the Record published a portion of that Paper. The following is its conclusion:

by
JOHN GRAHAM

THE MANDATORY drilling reserve requirement imposed by the Reserve Forces Act of 1955 upon all men separated from active duty did not begin to produce any reservists until August of 1957. At that time the two-year inductees taken in after the passage of the act (those on active duty when the act was passed were not subject to its terms) began being separated; they faced two additional years (originally three, but the April, 1957, administrative changes had reduced the active reserve period by one year) of forty-eight weekly night-time meetings and two weeks of summer field training each year. The influx into the reserves was not immediate because, under the terms of the law, each man was entitled to choose between a reserve unit or the National Guard. The Army (the only service

separating inductees) allowed sixty days in which to make the choice; if a man took no action, he was then subject to assignment to whatever local reserve unit had vacancies. There were relief provisions for those whose civilian occupations (traveling salesmen, for example) made reserve attendance at a given time and place a particular hardship; these were to be assigned to "control groups," with the same liability to recall as the Ready (drilling) Reservists and a summer training requirement, but with no weekly drilling obligation.

This was the system contemplated under the law as it was originally enacted, but the situation in the fall of 1957 indicated that the obligatory reserve requirement might be repealed unofficially by the Army's failure to enforce it. By that time the realization had been growing that it was most improbable that any future war, nuclear or conventional, would ever call for maximum mobilization of infantry and armored divisions, as in 1917 and 1942. Moreover, if we did attempt to mobilize on such a scale, we would have difficulty transporting the thirty-seven infantry and armored reserve divisions planned under the 1955 act and would be extremely vulnerable to nuclear attack at rail centers and ports. The dispersion of men and

(See DRAFT on page 4)

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Letters to the Editor

To the Editor of the RECORD:

I am still breathless about the editorial in your issue of November 6.

So "The Constitution is today, in many ways, a legal anachronism. Much of the thought it embodies, the principles it expounds, are no longer in vogue." Not for me. That "it may be well and good" that the Constitution should be "neglected when the Supreme Court resolves Constitutional questions, and that cases are decided on the basis of what a majority of the Court deems just and desirable" is the antithesis of everything that I believe and strive to support. In last analysis, "a government of laws and not of men," though it takes some sophistication to understand it, is the essential keystone of free government. Unless we eternally strive to that end, free government as we know it will surely collapse.

Your editorial might lead our friends outside to think that we here in Cambridge are now out-Yaling Yale — although our friends in New Haven never went as far as you did. I would like to think that the views that you have expressed are not widely held in Cambridge.

Yours, despite dyspnea,

ERWIN N. GRISWOLD
Dean

To the Editor of the RECORD:

I know you will not take offense if I bring to your attention what must be a mistake in the report of Mr. Buhse's speech before the Bull and Bear Club in the November 13 issue of the RECORD. The RECORD states in the fourth paragraph of its article as follows:

The spread between the price paid the company issuing the securities and the price at which the underwriters' group offers the securities to the public is relatively small — and regulated by the Securities Exchange Commission.

The spread may indeed be small in many cases, but it is not regulated by the Securities and Exchange Commission in any case, except where the issuer is subject to the Public Utility Holding Company Act of 1935, and to some degree where the security involved is issued by a registered investment company under the Investment Company Act of 1940.

In a negotiated deal, other than one subject to the Holding Company Act, the Investment Company Act, or to regulation by certain other governmental agencies, such as the Interstate Commerce Commission, the "spread" is purely a matter of agreement between the issuer and the underwriters. Fortunately in our free economy the SEC does not have any power to regulate this spread, and the only requirement under the Securities Act is that the public offering price, as well as the net price to be received by the issuer, be fully disclosed in the prospectus. Under Rule 1 of ARTICLE III of the Rules of Fair Practice of the National Association of Securities Dealers, Inc., as interpreted by the Board of Governors and advisory counsel of that Association, a member does have a moral obligation to make a *bona fide* public offering of securities at the announced initial public offering price as stated on the prospectus. This falls far short, however, of amounting to regulation by the SEC over the spread.

R. A. McDOWELL,
LL.B. '43 c.l.
New York City

To the Editor of the RECORD:

Both critics and defenders of the Supreme Court of the United States have recently echoed the high-principled aim of the founding fathers to keep ours "a government of laws and not of men." It seemed right to

Current Case

Can a dead man run for public office in New Jersey? You're darn right he can. See *McCarthy v. Reichenstein*, 50 N.J. Super. 501, 142 A. 2d 914 (1958).

On May 13, 1958, a municipal election was held in Newark, N. J. The plaintiff, McCarthy, was a candidate for ward councilman from the West Ward. To win the election a candidate had to receive a majority of the votes cast.

In this case no candidate received the required majority of votes, and, under N.J.S.A. 40:69A-55, the two candidates receiving the highest number of votes were scheduled to be the candidates in a run-off election on June 17. The plaintiff, regrettably, received the third highest number of votes in the election.

Death

However, the plaintiff's gloom lifted a little when Terrence F. Reilly, the candidate who received the second highest number of votes in the election, died suddenly on June 3.

The plaintiff promptly requested the defendant, Reichenstein, City Clerk for the City of Newark, to substitute his name on the run-off ballot for the name of the late Mr. Reilly. And the defendant just as promptly refused.

The plaintiff then brought an action in the Superior Court, Law Division, to compel the City Clerk to place his name on the ballot. But the court ruled against him. He immediately appealed to the Superior Court, Appellate Division.

Court Acts Fast

The wheels of justice turned rather swiftly for the ambitious Mr. McCarthy (his case was argued on the morning of June 9 and decided in the afternoon of the same day), but only to speed him on to a final disaster. For the appellate court affirmed the decision of the trial court.

The plaintiff had contended that the language of the statute governing the run-off election ("... the two candidates ... who received the greatest number of votes ...") implies that the "two candidates" be alive. But the court, per Justice Price, thought this to be a rash assumption, clearly unjustified. The statute merely said "two candidates." If these candidates were supposed to be alive it would obviously have said "two living candidates." It is not the court's function to re-draft legislation.

Why Not?

And so a dead man may run for public office in New Jersey. And, after all, why not? During the Hague era, dead men often voted. In this age of rapid extension of civil liberties and rights in so many legal areas, one must cultivate a broadminded and tolerant, and at times philosophical, respect for the law.

This tale lacks a fitting conclusion, I regret to report, for the deceased candidate, Mr. Reilly, due, perhaps, in part, to a relatively inactive campaign, failed to overtake his opponent, Mr. Addonizio, in the run-off election, and was defeated.

It could only happen in New Jersey. Or could it?

— Binder

hear it again stated in Mr. Justice Frankfurter's concurring opinion in last summer's Little Rock case. An appeal for respect for the Supreme Court as an institution was eminently appropriate to the unassailable thesis of the decision that violent defiance of the law establishing constitutional rights cannot be an acceptable reason for compromising such rights, especially when the resistance comes from public officials sworn to support the Constitution.

From this point of view, it is unfortunate that both the joint and the concurring opinions handed down by the Court at the August, 1958, special term, in *Cooper v. Aaron*, contain aspects which give one an itchy sensation. There is an excessive emphasis on the unanimity of the courts in this and prior school segregation cases and the joint opinion goes out of its way to mention that, by virtue of new appointments to its bench, it could count not nine (9), but twelve (12) justices in agreement. Despite its proper scorn of pollster-made-law as expressed by the justices on the argument, does the Court intend to imply that Governor Faubus should be impressed and the Arkansas legislature influenced by the concurrence of an extra three (3) men? For Mr. Justice Frankfurter to indulge his recent habit of ticking off the names of deceased judges who have agreed with him has much the same feel.

It is worrisome to contemplate the posture in which this sort of argument in court opinions leaves decisions, promptly rendered and to which there have been dissents. When he enlists respect for the Little Rock ruling as "the unanimous conclusion of a long-matured deliberative process," one may wonder just which of the past decisions of the Supreme Court of the United States Mr. Justice Frank-

Chronologically, Elliott E. Cheatham, LL.B. '11 c.l., Visiting Professor of Law, is one of the class of persons that modern usage has termed senior citizens. Intellectually, however, he is as alert as a young associate professor on the handball court, and it is not uncommon to retreat from an interview with him with preconceptions somewhat deranged.

Professor Cheatham, Charles Evans Hughes Professor of Law Emeritus at Columbia, wears the many distinctions that thinning white hair and a lifetime of intellectual service in the teaching of the law have given him with a studied ease that borders on disdain. Outside of his classes on Conflict of Laws and his seminar on Legal Education he is more unwilling to discuss what *has been* than what *can be*, but with some diligence it can be found that after graduating from the University of Georgia and attending Law School here, he practiced for several years in Atlanta, Georgia, and was then called to Washington for a post in the Department of Justice, "at a time when the Department was in a couple of old brownstone houses and there were only six men in the FBI."

Teaching Career

Emory University provided Professor Cheatham with his first chance to teach the law when he joined its faculty in 1921. In the years that followed, he taught at the University of Illinois and Cornell University Law Schools. Since 1929 he has been a member of the faculty of Columbia University Law School, with time off to be a visiting lecturer at the law schools of the University of Minnesota, the University of Virginia, the University of Colorado and the University of Istanbul, Turkey.

In 1955-56, Mr. Cheatham was Director of the Special Committee on the Federal Loyalty-Security Program of the Association of the Bar of the City of New York. Dudley Bonsal, LL.B. '30, was chairman. The committee made a fundamental inquiry into the need for and the appropriate nature of such a program. Its conclusions contributed to the abatement of public fear of Communist infiltration. The report recommended that the program be abolished completely as to two areas, international organizations and harbor workers, and that it be limited in other areas to sensitive positions.

The report also recommended that the program be more carefully administered, a change that has been largely effected by the government departments' encouragement at the change in public opinion.

Error

A deeply harmful error, Mr. Cheatham believes, has been the identification of "security" with the barring of communists and their sympathizers from government and industrial employment. Professor Cheatham says, "Our national strength includes military, industrial and scientific strength as well as the political and moral qualities which make unity and endurance in a people. The war we are in will be one of long duration; we do not need merely dash and spirit and the power to improvise, but endurance and sustained intelligence. In planning for the long pull we must give a major place to the essentials of our democratic inheritance which distinguishes us from our adversaries. These include full freedom for dissenters, fair hearings for the accused, and the limitation of preventive measures to the real needs of national security."

Last year Mr. Cheatham was a visiting

further would stigmatize as "the dubious pronouncement(s) of a gravely divided court." If one should come to believe he had discovered a case of the latter ilk, would the Justice think that open defiance to its command by a governor, a state legislator, or even a private citizen of any State of the Union was in any degree justified?

There is something meaching in the whole concept of the reliance on the prestige of individual judges or on the number of judges who concur which will not square with the lofty sentiments in favor of respect for the law, as such, elsewhere so nobly expressed in the Supreme Court's two opinions in this case.

ROBERT E. LAWTHORP
LL.B. '36
New York City

To the Editor of the RECORD:

I note that in the issue of November 6, 1958, (Vol. 27, No. 7) under the heading "Current Cases," you discuss *In Re Molthan*, 327 P. 2d 427 (1958) where the Washington Supreme Court refused to disbar an attorney for refusing to file his federal income tax returns. I would like to call your attention to *In Re Teitelbaum*, 150 N.E. 2d 873 (1958), where the Illinois Supreme Court refused to disbar an attorney who had been convicted of wilfully attempting to evade his federal income taxes, although he was suspended for three years.

Needless to say, I disagree with both decisions.

J. FREDERICK HOFFMAN,
LL.B. '47
Lafayette, Ind.

Gallery



Elliott E. Cheatham

professor in the University of Istanbul under a cooperative plan with Columbia and the University of Michigan. Professor Cheatham helped to plan and conduct a faculty seminar in Comparative Legal Education. He also conducted a seminar on Private International Law which considered, among other things, the outline prepared at Harvard on the international problems which may arise from the explosion of an atomic reactor which is producing energy for civilian purposes.

Case Method

A thoroughgoing description and explanation of the strength and weakness of the case method was one of the things that faced Professor Cheatham during his stay in Istanbul. He told the members of his seminars that the case method has as its essence "... the dominant ideal of self-education of the students and the development of their intellectual powers, that is, the capacity for continuing self-education in the years ahead."

"I realize this," says Mr. Cheatham, "because I was here at Harvard where it started in the first generation after the innovators of the case system." He points out that it was twenty years before the case method was adopted elsewhere, because "In the days of Ames, Gray and Smith there were no missionaries here. Odd though it seems to your Madison Avenue generation, this result came without propaganda or publicity; the creators of the case system wrote almost nothing about it."

In reminiscing, Mr. Cheatham mentions that "Dean Thayer came in when my class was here. Williston, Beale, and Bull Warren were in their prime. Also there was Austin Scott, whom we prided ourselves on bringing up in the classroom and who has taught more law students, or at least has taught more law teachers, than any other American law teacher. Two of my classmates have also been on the faculty here at Harvard: Jack Maguire and Sayre MacNeil."

Failures

Professor Cheatham recalls that in his generation at the Law School the rate of failures per class was often as high as one-third of the entering number. "A horribly wasteful system: A wiser attitude now prevails which perceives these failures as unnecessary humiliation and a grievous waste of human energy. Now every man who enters has the intellectual capacity to graduate, provided only he hits on the right methods of study and works hard. But for some reason, the sense of pressure and strain is still here, and gripes have grown."

Professor Cheatham is a co-author of the casebook on Conflict of Laws which is used in all sections of that course here and he has also authored *Cases on the Legal Profession*. In past years he has been a president of the Association of American Law Schools and has worked on the Restatements of Trusts and Conflict of Laws.

In discussing the present course offerings, Professor Cheatham becomes highly enthusiastic about the "depth and richness" of the curriculum. He cites as an instance, the development of the program of international legal studies which, he feels, is a timely means to meet the needs of the years ahead.

Important Change

But the most important change is the breadth and the intensity of treatment of subjects rather than their expansion. "There is communicated," he says, "a sense of perspective and of movement throughout the curriculum as a part of the change of intellectual climate and, it may be, the development of the social studies."

When asked to comment on the general level of student preparation in his classes, he cited a general "thinness of student preparation." He tempered his words with the suggestion that periodic reassessments by the students of their study methods with adjustments from course to course could make an impressive difference in the development of their intellectual powers.

Although he would lay most of his criticism on the students, he was willing to admit, in the slow accents of an expatriated Georgia gentleman, that at least a part of the problem focuses on the responsibility of the professor to make the presentation of a subject a challenge to the student.

— Mulroney

Law Wives

On Wednesday, December 3, at 8 p.m. in Harkness Commons, Mrs. Priscilla Dunn of the F.A.O. Schwarz Company will speak to the Law Wives on "The Importance of Toys." Mrs. Dunn will bring samples of some new educational toys to illustrate her talk.

TUNNEL

(Continued from page one)

footing and foundation work than had been anticipated.

The floor of the tunnel will be covered with an alternating tile pattern in Ebony, Ivory and Pearl Gray. The Secretary explained that the floor pattern was chosen in order to break the monotony of distance in the long, straight passageways.

At the main intersection of the tunnel proper with the side passage connecting to the International Legal Studies building, there will be set into the floor tile pattern a large replica of a mariner's compass rose with the directions north and south indicated. It will use white, gray, dark green and royal blue to contrast with the surrounding floor tile.

Mr. Toepfer says that he must take the responsibility for the compass rose and for the choice of colors to be used in the tunnel, but not for the names given to the colors by the manufacturer.

Just next to the compass rose at one side of the main tunnel underneath the West Wing of Langdell Hall is the new mimeograph distribution room. This facility is already in operation and from it all mimeographed material assigned in classes is distributed.

Other aspects of the Law School modernization program are also nearing completion. A new entrance to the West Wing of Langdell Hall has removed the necessity of first walking down a flight of stairs and then up two flights in order to enter the main floor of the building from the west. Mr. Toepfer explains that convenience is not the only reason for the change of the entrance. He hopes that the new approach will prevent the flooding of the basement which used to occur during exceptionally heavy rains when water would pour down the stairs and into the building.

Several new faculty offices have been completed and are now in use. The installation of faculty showers

provides a novel addition to faculty facilities. The renovation of the library offices with the addition of an entirely new fourth floor area is in its final stages.

New Elevator

Perhaps the most fascinating of the changes — at least in name — is the addition of a selective-collective elevator in Langdell Hall. Mr. Toepfer explains that it is "practically fool-proof." The selective-collective principle, he says, is merely that the elevator will not stop for a prospective passenger who wants to go down



New Steps Leading into West Wing of Langdell Hall

if it is on the way up. Instead it makes the up trip and then comes back for the down passenger. This is not too remarkable a feat until it is compared with the non-selective and somewhat spastic operation of the old Langdell elevator, which is still in operation on the other side of the building.

When asked how often renovation and improvement projects are carried out at the Law School, the Secretary indicated that they were a more or less constant factor in the operation of the School. The present building and improvement program is budgeted to cost slightly less than two million dollars. Part of the money for the new International Legal Studies building was received from the Ford Foundation with the proviso that the amount it donated be matched by the Law School. A committee headed

DEFENDERS

(Continued from page one)

the written approval of the dean of the said law school of his character, legal ability and special training, may appear without compensation on behalf of an indigent defendant in any District Court, provided that the conduct of the case is under the general supervision of a member of the Bar of the Commonwealth assigned by a court or employed by a recognized legal aid society or voluntary defender committee to represent an indigent defendant in a criminal case as a matter of charity. Such written approval for a student or group of students shall be filed with the Clerk of the Supreme Judicial Court for the County of Suffolk and shall be in effect for a period of twelve months after filing unless withdrawn earlier. The expression "general supervision" in this rule shall not be construed to require the personal attendance in court of the supervising member of the bar.

Following the Court's ruling, the Defenders, at a meeting on November 10, passed the following resolution:

RESOLVED:

That in the selection of new members any time after this meeting the applications of second year women law students will be received and considered by the Selection Committee. This resolution was passed, President Thomas W. Wiley, 3L of Hutchinson, Kan., has explained, because the Defenders felt that since male members may now practice in the district courts of the Commonwealth and will be working more extensively on post conviction cases, the resulting workload and diversification of activity will make it feasible to consider women applicants who will be able to work on research and similar projects.

— Rosenberg

by Milton Katz, Henry L. Stimson Professor of Law and Director of International Legal Studies, more than succeeded in meeting the stipulation. The funds for improvements in Langdell Hall have all come from alumni donations.

When asked what else should be done in the area of renovation and construction at the Law School, Mr. Toepfer tends to lean back a little in his chair, assume an air of wistfulness, build a castle of his fingertips and begin to talk of an additional dormitory for older foreign graduate students, of the need for room for research facilities and office space, or a student center or new classrooms with adequate lighting and air conditioning. "I love to spend money," he says.

— Mulrone

AMES

(Continued from page one)



R. Ammi Cutter

Massachusetts, will preside over the appeal. Associate Justices will be John Minor Wisdom, of the United States Court of Appeals for the Fifth Circuit, and Charles Jackson, Jr., LL.B. '35, of the Boston firm of Gaston, Snow, Motley, and Holt.

Counsel

Attorneys Head and Hopkins (Holmes Club) are representing the plaintiff-appellant, Commissioner. Counsel on the brief include: Decatur H. Miller III, of Baltimore; Jeremiah D. Newbury of Cambridge; Peter Parker of Cambridge; F. Herbert Prem, Jr., of Larchmont, N. Y.; A. Reading Van Doren, Jr., of Stamford, Conn.; and John E. Young of Denver.

Attorneys Clarke and Finch (Griswold Law Club) are representing the defendant-appellee, Anderpont. Counsel on the brief include: Robert M. Baxter of Cambridge; John G. Houser of Cleveland Heights, Ohio; Johannes Kramer of Slingerlands, N. Y.; John S. McGeeney of Manhasset, N. Y.; Barry C. Phelps of East Rochester, N. Y.; and Flora Schnall of Forest Hills, N. Y.

— Binder

Hi Fi Set . . .

William F. Cottrell, 3L of Chicago, Ill., and Byron J. Hayes, Jr., 3L of Temple City, Calif., have persuaded the Law School to replace certain components of the Wheeler Room Hi-Fi set by January, Mr. Cottrell, who last year was Chairman of the Buildings and Grounds Committee of the Dormitory Council, announced. The cost is expected to approach \$300, and the two, working through the present Buildings and Grounds Committee, hope to obtain a Council contribution of some \$30 additional for the purchase of new records. "The ones there now are essentially good, but scratchy and out of date," stated Mr. Cottrell.

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Erratum

It was erroneously stated in the Nov. 6 issue of the RECORD that the student internship program in the United States Attorneys' offices was initiated by Paul W. Williams, LL.B. '29, former United States Attorney for the Southern District of New York. In fact, this program was initiated in 1953 by Mr. Williams' predecessor in office, Judge J. Edward Lumbard, Jr., LL.B. '25.

Court Reverses Prato Conviction

The Florence Court of Appeals reversed the conviction of Bishop Pietro Fiordelli of Prato on October 25.

The court upheld the position of the appellant that the pastoral denunciation of a couple who married outside Church law dealt only with their "religious reputation" and not with their "civil reputation." The appellant argued that there had been no intent to harm, and that the bishop acted within the limits of his religious duties.

The conviction of the Roman Catholic Bishop in the Italian trial court aroused considerable interest in the United States and was the subject of two papers published in the RECORD, March 20, 1958.

Alumni Notes

LL.B. '49 — Edward J. Murtaugh has moved his office to 25 Market Street, Poughkeepsie, New York.

LL.B. '52 — Adolfo F. Luca has resigned as assistant counsel to the Waterfront Commission of New York to engage in the general practice of law in partnership with LL.B. '52 — Robert S. Persky. They are located at 150 Broadway, New York 38, N.Y.

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DRAFT

(Continued from page one)

event of hostilities the Regular Army units equipped with tactical atomic weapons would be committed. Even assuming that it was possible to mobilize the reserve, there could be no place for it on the atomic war ground. Finally, there was the pressure of economy; in the fall of 1957 the appropriations allocated to the reserve forces did not appear sufficient to maintain them at the levels already attained through voluntary participation, and any increase through compulsory participation seemed unlikely.

Despite all this, the program went forward. Perhaps this decision was affected by the first Sputnik, which was orbited immediately before the sixty-day waiting period expired for the initial separatees to decide on whether to join a reserve unit or the Guard. As of this date, all inductees are still being absorbed after separation into reserve or National Guard units. There has been no alteration in the requirement — drilling reserve time plus active duty time must total four years — except that those men assigned to "control groups" have a total obligation in active duty and Ready Reserve status of five, rather than four, years.

Enforcing Reserve Requirement

However, there are signs that the whole policy of enforcing the drilling reserve requirement of the 1955 act must shortly be reappraised. The military appropriations for reserve forces are not likely to be increased (at present they are sufficient to support an Army reserve of about 300,000 men, and this figure is rapidly being approached). The Secretary of the Army recently announced that many reserve units (principally separate specialist units) would be deactivated, although he did not say whether this would affect the mandatory reserve obligation of those already serving in the units, or whether voluntary reservists would be permitted to transfer from the deactivated units to others and thereby release some of the mandatory reservists. In August of 1958 the first group of three-year enlistees covered by the 1955 act will be separated from the active forces and eligible for assignment to the reserves. If the reserves are to remain limited in size, it seems only equitable to allow the involuntary reservists (inductees and enlistees) to resign, especially in view of the continuing influx of six-month trainees, upon whom the active reserve requirement has to be rigorously enforced in order to keep the scales of equity, already unbalanced, from tipping over.

Of course, many separatees from the active forces may wish to participate voluntarily in the reserves for social and economic reasons (pay for a two-hour night-time drill is equal to a day's pay on active duty). These voluntary participants will provide the leaven of experience necessary to the unit. The need for a few men with active duty experience is the only possible justification for compelling an active reserve obligation of those with two or more years of active duty, now that it is apparent that the reserves are not to be significantly expanded as contemplated by the 1955 act.

The alternative to making the reserve voluntary for ex-inductees and

ex-enlistees presents some hard problems. Under the 1955 act the sanction for missing mandatory reserve meetings was recall to the active forces for forty-five days via an official summons. Wilfully ignoring this would invoke court-martial. The forty-five-day recall has been used in the case of six-month enlistees who failed to attend weekly drills but as yet there have been no courts-martial for failure to comply with the orders. In the case of two-year inductees who ignore their reserve obligation, the local autonomy of the various reserve districts makes it difficult to know if there is any uniform policy, but in at least one reserve district there have been over 600 summons sent out, and not one has gone to an ex-inductee; all have been sent to men who enlisted in the six-month program. This presumably indicates a reluctance to enforce the reserve obligation of the two-year veterans up to the hilt, unless non-compliance becomes a major problem. In that case, the system would probably break down anyway because of the administrative cost of the forty-five-day recall and the lack of facilities to receive such men in numbers. In any event, the likelihood of courts-martial seems remote, since the Army is aware of the publicity that would be created by the arrest and trial of a man in civilian status who had completed his term of active service honorably.

Another problem arises even if attendance at reserve meetings can be effectively compelled. Under the Uniform Code of Military Justice, courts-martial have no jurisdiction over reservists not on active duty. There is reason to believe that weekly reserve meetings do not qualify as "active duty" for the purposes of court-martial jurisdiction. Under the 1955 act the only reason to recall a man (other than Executive recall of reserve units as a whole in emergencies) is as a penalty for non-attendance. Therefore, while the reserve units may compel attendance of reluctant ex-servicemen by the threat of recall, there is no way that discipline — through the threat of court-martial — can be enforced at the meetings. The completely voluntary nature of reserve participation until recently has prevented this problem from arising before. But compulsion of the involuntary raises disciplinary difficulties, and the total absence of any way in which the reserve units can enforce order at their weekly meetings is sure to become apparent soon.

Solution

IS THERE a solution to this whole military manpower obligation? Can we achieve a more equitable, more stable system that fulfills the basic manpower requirements of the defense establishment without discrimination and injustice? The answer to both questions is yes. First, however, we must recognize three things:

- 1) that we are not in fact exacting a universal military obligation,
- 2) that we do not need to exact a universal military obligation,
- 3) that the time has come to stop pretending that we can justify compulsory military service solely on the ground that it is a universal military obligation.

Professor J. K. Galbraith, in a letter to the *New York Times* on October 14, 1956, stated the case against conscription, even when universal, so well that it deserves quotation at length:

"The use of the draft to supply military manpower is based on two assumptions, both of which I believe we must agree are now obsolete. The

first is that military manpower must be procured cheaply; to do otherwise will make national defense infinitely expensive. The second is that the physical hazards of military service should be distributed equally among all members of the community and not confined to those who, for economic reasons, are led to seek a livelihood in the armed forces.

Historical Basis

"These assumptions were once above challenge. In the days when defense depended on mass armies and when governments were poor, military manpower had to be procured at low cost. Without the draft the armies of France, Germany or Russia circa World War I would have been economically quite out of the question. And one of the classic scandals of our own Civil War experience was that well-to-do young men were able to get out of the army by buying a substitute.

"But plainly these basic conditions no longer apply. While I support the view that we still need sizable land forces, we are not talking of mass armies. One cannot be certain what scale of pay and allowances would attract, say, the present numbers to the armed forces, but the amounts would not be astronomical. What is well within our capacity would have been far beyond the capacity of a European government of fifty years ago.

"The conditions of service have also changed. We are speaking of peacetime service, which is not more dangerous than ordinary civilian existence. Indeed it is by no means certain now that in the event of war service in the armed forces would involve much more risk of death than residence in Manhattan. In the last war London civilians faced dangers comparable to those of many members of Britain's armed forces.

"Thus the traditional justifications for compulsory service have disappeared. We could pay what is necessary for voluntary service. Danger is now widely distributed, anyway. As a result the draft survives principally as a device by which we use compulsion to get young men to serve at less than the market rate of pay. We shift the cost of military service from the well-to-do taxpayer, who benefits by lower taxes, to the impecunious young draftee. This is a highly regressive arrangement which we would not tolerate in any other area. Presumably freedom of choice here as elsewhere would be worth paying for.

"As an important added benefit a shift from compulsion to fully paid service would give us a better-trained force — something that modern weapons make most desirable. We would not, as now, have a force which consists of partly trained men who leave about as soon as their training is complete."

Discrimination

Professor Galbraith mounted this attack while proceeding on the assumption that compulsory service was a universal obligation for all men of military age. Even on that assumption, there is a rank discrimination between the group eligible for military service and other groups of the population. The case becomes infinitely stronger when the discrimination within the group eligible for military service is recognized. The scope and number of exemptions, the manpower

cutbacks, the administrative expansion of the eligibility requirements for the six-month program, and the efforts to apply the draft only to the mentally more advanced have introduced a tremendous distortion in the application of the "universal" obligation. Economizing on defense costs is a poor excuse for exercising compulsion on a group as a whole, but the effects on the individuals compelled are particularly pernicious when there is discrimination within the peer group. There is rough justice in assessing a disability generally, as was the case for those of military age in World War II; but a system which exacts considerable sacrifices in time and earning power from one man while exempting his contemporary from any comparable disability cannot long be countenanced.

The conversion of regular Army units to tactical atomic weapons, the manpower cutbacks already announced, and the continued reliance on the deterrent of the Strategic Air Force indicate that we are moving toward the concept of small, mobile, highly trained combat units as better suited to fight the wars of the future than the massive combat divisions of the past, with their staggering logistical demands. But much remains to be done, especially in personnel policies, to recast the military along these new lines. If massed manpower is a military archaism, then there is no need for broad-scale military training to produce large reserves ready for general mobilization, and the training centers and their cadres can be reduced. To increase military efficiency and mobility and eliminate the drag of administrative and service troops on the combat forces, civilian personnel can be used in construction, procurement, warehousing, and clerical functions, and civilian organizations can be put under contract to perform record-keeping, supply, transportation, and housekeeping duties. Such reforms would reduce the manpower needs of the military, increase its combat efficiency, and tend to give it professional long-service status by minimizing personnel turnover, an impossibility while conscription (or the threat of it) supplies any sizable portion of the total force.

Cordiner Report

The necessity for continuing the draft has been challenged most notably by Ralph J. Cordiner, president of General Electric, who headed a special committee of the Defense Department on the military pay structure. The committee recommended general pay increases for men with more than two years' service, and additional incentive pay for technical specialists. Cordiner stated that adoption of the committee recommendations would make possible, through reduced turnover and increased incentive, a further 10 per cent cut in the active forces and abolition of the draft. It is difficult to agree with him as to the draft. Continuing the pay of inductees and initial enlistees, as the committee proposed, at the present apprentice levels (\$78 a month at the start) will not encourage enlistments, regardless of the lure of future financial rewards. The rate of pay for initial service must be raised substantially before voluntary enlistments will be sufficient.

cient to permit the draft to lapse and before men of the calibre desired can be attracted.

Enactment of the Cordiner proposals, reliance on civilian organization for support functions, and raising initial pay rates would reconstruct the military system, convert it to a long-service, highly trained professional force, free to take only those men it really needs and can use in genuine military duty and free to design a reserve system which will meet the actual requirements; and not more than the actual requirements. National defense would be recognized for what it is: a governmental service, and not a law unto itself. It would be staffed and paid for in the same manner as all other governmental services, and not subsidized by compelling inductees to accept non-compensatory wages in addition to the sacrifices of their time and freedom.

Whether these reforms prevail and the draft and reserve acts are allowed to lapse when they expire in mid-1959 depends on popular, as well as military, acceptance of the fact that times have changed, that we do not have, and do not need, large armies and reserves, with a rigorous military obligation laid on the male citizenry to fill the ranks. Regardless of whether these strategic precepts are accepted, it must be recognized that the system of military conscription now in effect is both inefficient in satisfying our defense needs and so discriminatory as to be insupportable.

Selection by Lot

A return to the 1940 method of selection by lot among the eligibles would be preferable to the present practice. Men would remain eligible for selection while of military age. There would be no exemptions for fathers, or for any other reason except extreme physical or mental incapacity. The financial burden could be lightened by establishing a flat rate of pay (perhaps \$200 a month, with extra allowances for dependents) for inductees during their whole term of service, the increased cost to be met by a special levy (similar to that the Swiss assess) against the income of those not called. Such a system would insure that, while military service itself would not be universal because the active forces could not absorb all those eligible, at least the liability for military service would be universal and non-discriminatory.

In the last analysis, however, the proper question for free men is not whether conscription can be administered equitably but whether it need exist at all. Military leaders and the man in the street alike must bear the responsibility for the answer to that question.

(Ed. note: Single copies of the entire *Paper*, THE UNIVERSAL MILITARY OBLIGATION, may be obtained free of charge by writing to The Fund for the Republic, 60 East 42nd Street, New York 17, N.Y. Additional copies cost 15 cents each.)

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