



Harvard Law School Record

E. Borgeson
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PRICE TEN CENTS

Library Lighting Change Will Be Ready Next Fall

The fluorescent lighting in the north end of the reading room in Langdell Hall will be revised during the summer, according to Dean Erwin N. Griswold. Careful studies have been made under the direction of James Ingraham, Assistant Superintendent of Buildings and Grounds for the Law School area. Following Mr. Ingraham's recommendation, substantial changes will be made in the fixtures. The engineers expect that this will eliminate the noise which is produced by the fixtures at present. At the same time the fixtures will be raised six feet, making them somewhat less conspicuous in the room.

The estimated cost of these changes is \$6,500. A grant for a little more than this amount was made by the Council of the Harvard Law School Association at its meeting held in Cambridge on April 10, 1954.

The change will be regarded as a further experiment. Should it prove successful, consideration will then be given to extending similar lighting to other parts of the library reading room. Dean Griswold says that such a change would cost an estimated \$30,000.

Will Take Two Weeks

It was hoped that the changes in the north end of the reading room could be carried out during the spring vacation. Mr. Ingraham advised, however, that the changes could not be made in less than two weeks. Dean Griswold felt that it was undesirable to have scaffolding in the reading room, and work going on with some inevitable noise, not only during the spring vacation but also for the following week, so close to the end of the year. Accordingly the work is now scheduled to begin in late June or early July, and the alterations will be completed for the opening of school in September.

FINAL ISSUE

This is the final issue of the Harvard Law School RECORD for the academic year 1953-1954. Students and graduates alike can appreciate from experience those forces which make it impractical to continue publication at this time of year.

Foreign Investments Studied By International Tax Report

A plan to provide tax incentives to foreign income is presented in a report just published by the Harvard Law School's International Program in Taxation.

Research was conducted chiefly through detailed interviews with the policy-making executives of about 40 companies. Both companies with and without foreign investments were consulted. The most surprising result of these interviews was the conclusion that United States taxation has very little to do with the amount of foreign investment.

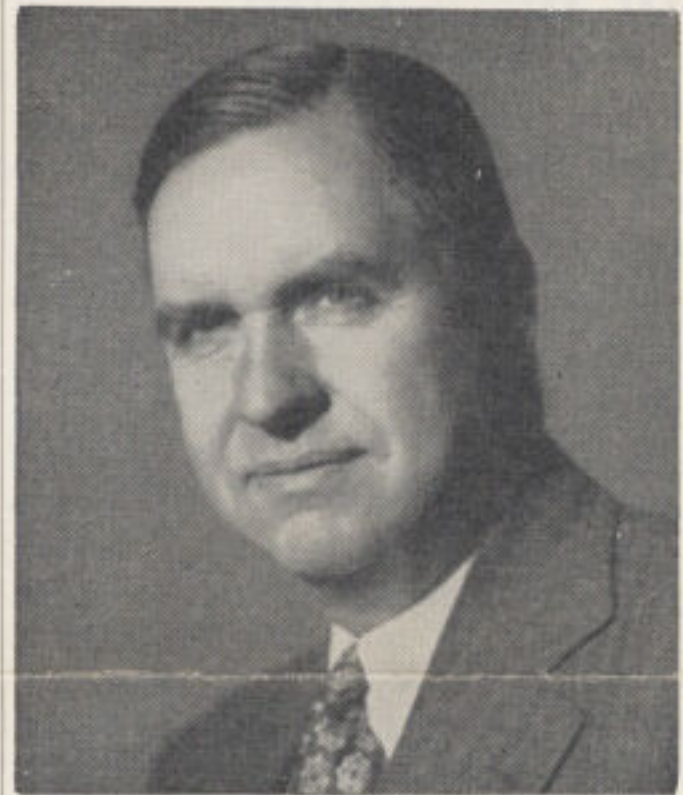
The resulting plan would adapt the United States tax structure to prevailing business views of foreign operations. It is an alternative approach to the taxation of foreign income that differs substantially in method though not in cost from H. R. 8300, the proposed Internal Revenue Code of 1954, which the report examines in detail.

The plan recommends as an improvement that a tax program be drawn up so as to stimulate increased investment in these fields, particularly by establishing for tax purposes a special class of United States corporations, called Foreign Business Corporations. United States taxes would be imposed upon them the same as upon domestic corporations, but the payment of the tax on the income would be deferred until that in-

Griswold Answers Student Criticisms

"We're not going to abolish classes," Dean Erwin N. Griswold told a coffee hour audience Tuesday; "we're not planning any world-shaking changes."

The only surprises in the Dean's talk and the question-and-answer period that followed it were the announcements that



Erwin N. Griswold

93 full-tuition scholarships have been given by alumni for 1954-55, and that scholarships were awarded to students with 68 averages this year.

For most of the session the Dean stood his ground against a barrage of "Why doesn't the school . . . ?" questions. The Dean spoke favorably of the large enrollment and defended competition "as long as it isn't bloodthirsty or dishonest."

'57 Class Has Less Women, Many Veterans

With the May 1 deadline for filing applications close at hand, the Admissions Office reports that next year's entering class will be almost completely formed within the next three weeks. The new class of 500 students will be chosen from the 1,800 applications which have been received.

During the current year the number of applications has been greater than in any other recent year. The 1953 entering class was chosen from among 1,600 applications, while the four preceding classes saw about 1,370 applications each year.

Unique Class

According to Assistant Dean Louis Toeffer, Director of Admissions, the class which will begin its work next fall is unique in several respects. He believes that there is a wider geographical distribution than is usually the case, and he attributes this partly to the increased scholarship funds available to entering students. There will also be many more veterans of military service, with a consequent increase in the average age of the entering students, as well as a greater number of married students.

158 Korean Vets

With the class about two-thirds formed at this writing, 158 Korean War veterans have already been accepted. Of this group 90 are men who applied for admission in 1951 or 1952 and were accepted for one of those years, but who couldn't come because they entered military service. Although no promise for future admission was made to these candidates, the Admissions Committee has so far found it possible to accept all who have reapplied this year.

Despite the increase in total applications, fewer women have sought admission this year and to date the Committee has accepted only six. According to the Admissions Office there is little likelihood that the new class will have more than a half-dozen women students, which is somewhat less than one-half the usual number.

Scholarships

While the Admissions Committee is working hard to form the entering class, the Administrative Board is busy with applications for entering scholarships. About 80 such scholarships are available. More than 200 of the entering students have survived an initial scholarship screening and are now being considered for these awards.

Annual Record Banquet Features Otto Zausmer

Tonight, April 29, the Harvard Law School RECORD will hold its annual banquet. The RECORD staff will have as their guests members of the faculty and several prominent alumni. The principal speaker for the evening will be Mr. Otto Zausmer, whose subject will be "Will Germany Go Nazi Again?" Zausmer will be introduced by Judge Calvert Magruder.

Vienna Graduate

Zausmer is a graduate of the University of Vienna where he received his Ph.D. in 1934. He came to this country in 1938 and joined the staff of the Boston Globe. During the war he was given a leave of absence to work with the O.W.I. and in that capacity was Chief of Intelligence in London. Later, he covered the trials at Nuremberg and Dachau and the trial of Marshal Petain. Zausmer returned to this country and the Globe in 1946 and since 1951 has been director of the editorial page.

Jaffe, Keeton And Parry Write Articles For May Law Review

All three articles in the May issue of the Harvard Law Review are written by Harvard Law School professors. Louis L. Jaffe, Byrne Professor of Administrative Law, deals with "Effective Limits of Administrative Process: a Re-evalua-



Louis L. Jaffe

tion." This article examines expectations held about administrative agencies in the 1930's and the extent to which actual operations of these agencies have differed from these expectations, as well as the various general factors that have op-

erated to make agencies behave the way they do.

Robert E. Keeton writes on "Liability Insurance and Responsibility for Settlement." The article will deal with the problems raised by insurance company responsibility for settling claims against those whom it has insured against liability. He discusses the possibility of the insured recovering damages against the insurance company for its failure to settle. Mr. Keeton considers the responsibility of insurance company attorneys and suggests the possibility of giving the insured the right to sue under certain conditions. He concludes with problems raised by settlement above policy limits and by reinsurance.

The third article in the issue, by Visiting Professor Clive Parry, is entitled "A Conflicts Myth: the American Consular Marriage." His topic is the so-called consular marriage, which really doesn't exist. Consuls have no right to perform marriages, but for about a century confusion has existed. The article also discusses problems that would be raised if a consul were to perform a marriage in violation of consular regulations. This is Parry's second article for the Review this year. Earlier he discussed legislatures and secrecy.

This issue of the Review will include what may be the longest Student Note ever published in the Review. It is entitled "From Judicial Grant to Legislative Power: The Admiralty Clause in the 19th Century."

Forum Recordings Slated For Europe

Six recordings of the broadcasted portions of Law School Forum programs will be played at the Salzburg Seminar this summer.

The Salzburg Seminar is conducted in the town of Salzburg, Austria, and permits European students to associate with faculty members from colleges and universities in the United States. During June of this year the Seminar will deal with law, and the Forum recordings will be played then.

The six Forums, which were selected by Fred Mulhausen, administrative directors of the Seminar, are:

- Limitations on Free Expression
- Liberalism Reappraised
- The Political Machine: Use and Abuse
- Is Jazz Serious Music?
- Ethics for Modern Man
- Man and Morals

Collias And Baron Lead Mock Investment Race With Big Capital Gains

The Bull and Bear Club will hold its annual meeting at 1 p. m. today in the Mallory Smith Room in Harkness. Officers will be elected for the coming school year, and prizes will be awarded to the winners of the Club's Investment Contest.

The Club began an investment contest in October, in which each contestant was given a hypothetical \$50,000 to invest in the securities of his choice. Of the 80 entrants in the contest, only 12 had lost money when the contest ended on April 2. The two most successful contestants were Peter Collias, 1L of Fall

(See BULL & BEAR on page six)

The Class Of 1925 Is Leader In Law School Fund Giving

A total of \$195,759 has been received to date by the Harvard Law School Fund, according to Assistant Dean Wesley E. Bevins, fund director. Coming from 4,130 contributors, this figure compares with \$194,501 received from 3,802 contributors at this time last year. The goal for the year, ending in June, is \$250,000.

The class of 1925 is the current leader in total contributors, and has given \$8,700. They are followed closely by the class of 1922, with \$8,300. Last year's list was headed by the 1917 class.

A significant increase in the number of contributors is noted in Dean Bevins' report. The winning total last year of 107 contributors of the class of 1922 has already been surpassed by four classes. The class of 1930 leads with 130 contributors. Tied, at 108 contributors each, are the classes of 1926, 1929, and 1932.

Four of the graduating classes since 1948 have more than 130 contributors,

but they are not included in the above figures; since class enrollments have increased considerably since the end of World War II, the more recent classes are included in separate listings.

'22 Has 42%

The class of 1922 boasts the highest percentage of contributors, 42% of the graduates of that class having already submitted their donations. The class of 1908, last year's leaders with a 44.2% mark, is second at 40.2%. The final figures for this year will include contributions made in May and June.

From the totals received to date, \$73,400 is earmarked for scholarship fund purposes, with \$13,736 going to the library and other restricted purposes. The remainder may be used as needed.

With the increase in tuition, many alumni who had given contributions of \$600 per year in the past, have increased their donation to \$800 to cover the new tuition rate.

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They Are Listening

Today's issue, the last of this academic year, features an article on page one dealing with a proposed new lighting plan for Langdell Library. Perhaps this will mean that in the future, optometrists will find the Law School a less ready market. Complaints from students, as well as our own observations, have given rise to editorials and cartoons in the RECORD over the past several years dealing with the subject. However, action to remedy that situation was not taken by our student readers, but rather by that group which is always concerned with our welfare—the Harvard Law School Alumni Association.

This organization functions with the support of 7,850 active members throughout the world. Those of us still at the Law School are perhaps not cognizant of its many contributions to our community. This is the group which has responded time and time again to the needs of the undergraduate. Among the achievements to which it may point are the large part it played in the construction of the graduate center, the efforts it has made in supporting and maintaining our library as the largest law school library in the world; also its contributions make possible many of the student extracurricular activities. This group further supports the expanding financial aid program; it has undertaken an ambitious national scholarship program, and is becoming more active in trying to influence superior students to apply to Harvard. Of special interest to the forthcoming graduate is the work of some local branches which aid the applicant in finding employment. The New York Association operates its own placement office.

All those graduating are eligible for admission into the Alumni Association. Dues for the first five years after graduation are but three dollars a year, with an increase to six dollars annually thereafter.

We wish to thank the members of the Alumni Association for their continued interest and support. True, words of appreciation are often thrown off lightly. We can best show our thanks by becoming active in the association and giving in kind to our successors what we have been fortunate enough to receive.

Gallery

FRANCIS S. WYNER
Lawyer, Judge,
Community Leader



Judge Wyner's interest in government and civic affairs was conceived during his instructorship at Harvard College in 1911, and has led him along a distinguished path of social-service activity for over 40 years. However, though he graduated from the college in three years and taught in the government department, the Judge feels that his intellectual activity found its culmination and inspiration in the *Harvard Law Review*, with which he was associated until his graduation from law school in 1913.

While suggesting that an enthusiastic response to the law is vital to a lawyer's academic success, he cited his distinguished associates at law school and on the *Review* as a major factor in this response, and attributes much of his interest to the independent thought and intense self-confidence best exemplified by two of his close associates while at Harvard, Owen Brewster and the late Bob Taft.

While at law school, Judge Wyner felt that the method of instruction enabled one to reach his own conclusions as to the adequacy of justice dispensed by the courts, and part of his efforts were concentrated on the foundation of the Harvard Legal Aid Society, which has given valuable practical experience to many of the law school's graduates while providing able counsel to the financially needy. In this endeavor, civic service and the law found a mutually advantageous meeting ground.

Civic Activities

For several years after his graduation, Judge Wyner was associated with Choate, after which he founded his own extensive general practice. The activities of a young lawyer leave little time for outside interests, but as soon as spare time became available, he once more resumed his activities in the community. During the ensuing years, in following his interests, he served as president of the Brookline Civic League, and after directing the Red Cross drive in Brookline, became a member of the board of directors of the Boston branch. He also served on the Brookline Municipal Court.

Because the future of our country lies in the training of our youth, Judge Wyner cites as one of his more significant activities the formation of the Society for the Daily Preservation of the Golden Rule. With the cooperation of Prof. Brynne of Boston University and the Rev. Walton Cole of Emerson's Church, the organization achieved a membership of approximately two hundred, the majority of whom were former newsboys. It was founded in honor of Luis Orenberg, a former newsboy who was considered the prime exponent of this maxim. Awards are made

to members in high school to enable them to continue their education. The tenets of good government existing in Brookline and like communities can only be continued if the principles promoted by organizations of this kind are inculcated in the young, and to this end Judge Wyner devotes much of his time.

Preserve Safeguards

Much of the country's attention today is focused on the use of the Fifth Amendment in the Congressional investigation. This topic is the particular concern of the lawyer, for the safeguards to liberty manifested in the Constitution are an integral part of our law. The judge feels that these must be preserved at all costs, and that a major factor militating toward their destruction is the investigations. These safeguards were created to protect the innocent, not to confuse issues and conceal the guilty. However, he is confident that public pressure will shortly resolve this problem, for the people will insist upon knowing the truth.

Judge Wyner has shown an abiding interest in law school activities. Recently he took time from his community and professional activities to judge one of the Ames Quarter-final arguments. On April 5, he was one of three judges presiding when the Baker-Smith Club defeated the Kent Club and qualified for the semi-final rounds.

In parting, Judge Wyner stated that he considers the present Supreme Judicial Court of Massachusetts one of the finest courts ever to sit in this country, and he looks to the future with confidence.

Letters to the Editor

TO THE EDITOR:

In your April 8th issue I notice you had the name of Arthur Garfield Hays LL.B. '05 speaking on Civil Liberties.

I wish we could claim him as a member of the Harvard Law School Class of 1905, but as Class Secretary I realized that some mistake had been made. When I could not find his name in either my class records or in the Harvard Law Quinquennial, my suspicions were confirmed. Finally, in "Who's Who" I discovered that he was a Columbia B.A. 1903 and Columbia LL.B. 1905, which explains why I could not find him in the other publications.

E. H. LETCHWORTH
Secretary, Harvard Law School
Class of 1905

(Our apologies to Mr. Hays and to the Class of 1905.)

* * * * *

TO THE EDITOR:

In commenting on what it termed the "intriguing addition" to the Public Utilities Seminar of problems relating to "the private development of atomic power," the RECORD correctly observed that "as yet no private atomic-energy plants are in operation anywhere . . . nor are any under construction." Lest the problems to be considered in the seminar appear too remote, however, I should perhaps add that last month the Atomic Energy Commission announced that it was negotiating a contract with the Duquesne Light Co. of Pittsburgh, Pa., for the construction of a 60,000 k.w. electric generating plant at Pittsburgh, the steam to be provided by a nuclear reactor to be operated by the company. The Duquesne proposal was considered the most favorable of nine major proposals submitted to the Commission.

Though widespread private development seems a number of years away, the legal and economic problems it will present are already under study by a number of industrial groups and by both national and local bar association committees. Perhaps in this instance the law will be ahead of technology.

DEAN DAVID F. CAVERS

POETRY

(The following is one of the entries received by the RECORD in its poetry contest of March 11 which we feel is worthy of publication.)

SLAUGHTERHOUSE CASE

By giving a twist to the English tongue
There's a lot of new language that can be wrong.
To wit, when a lawyer wants to express
The havoc, jumble, wreck or mess
That is left by the bull in the china shop
(I said "china," not "butcher"—of blood not a drop),
He's apt to get off the beam so far,
Getting befuddled with brambles and scrambles,
That he calls his jumble an abattoir,
A—neat and tile-lined, maybe—SHAMBLES.
Here's a bit of new English that's being wrong
By a heedless twist to our mother tongue.

W. T. FISHER '17

Sub Judice

JURY FROLICS

Doris Crocker was tried for the capital felony of first-degree murder of her husband, John. Doris pleaded "Not guilty, and especially by reason of Transitory Insanity," and was heard before the Wilson County Court, North Carolina, with a jury. The jury of twelve, together with an alternate or thirteenth juror, were "duly" selected.

The court recessed at the close of each day on Tuesday, Wednesday, and Thursday afternoons. The jury, during each recess, were held together by an officer and occupied rooms in a hotel. But, on Friday morn, the judge ordered one of the jurors withdrawn and ordered a mistrial.

It seems that the jury had quite a ball for themselves that Thursday evening. In the early hours of the morning, after 2 a.m., a complaint was made with the Police Department of the Town of Wilson as to disorderly conduct in the Briggs Hotel, where the jurors were being kept. The officers soon observed at least three jurors in an intoxicated condition and moving about in their underwear along the halls of said hotel. They were unable to quiet one of these jurors and requested the intervention of J. W. Thompson, Sheriff of Wilson County. At his arrival he observed one of the jurors in the state of intoxication, which he believed due either to alcoholic beverages or narcotic drugs.

Sheriff Thompson found it necessary to threaten arrest of this juror before he would consent to become quiet and re-enter his hotel.

On Friday morning, the Court proclaimed that " . . . the proper administration of justice and the securing of a fair, just and impartial trial on behalf of the defendant and on behalf of the State of North Carolina, and the ends of justice require that a juror be withdrawn and mistrial ordered."

But alas, Doris was not to rejoice, for only four months later, she was again to be tried for the murder of her husband in the same court.

The Court overruled her plea of former jeopardy, and the trial progressed, resulting in a verdict of voluntary manslaughter. Doris then appealed to the Supreme Court of North Carolina, again claiming double jeopardy.

Held: Decision for the defendant, as to her plea of former jeopardy was wrongfully overruled. The Court looked to the "facts relating to the time, nature and duration of the misbehavior or disability of certain of the jurors so as to warrant the order of a mistrial over the objection of the defendant." They found such conduct not sufficient, as the juror was not shown to be incapable, physically or mentally, of functioning as a competent juror. They distinguished this case from *State v. Tyson*, 138 N. C. 627, where a juror was in a drunken condition which incapacitated him from further service, as he had been drinking secretly throughout the trial. Unavailing efforts were made to render him fit. *State v. Crocker*, 80 S.E. 2d 243, Supreme Court of North Carolina, Feb. 24, 1954.

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NEW YEAR'S RESOLUTION

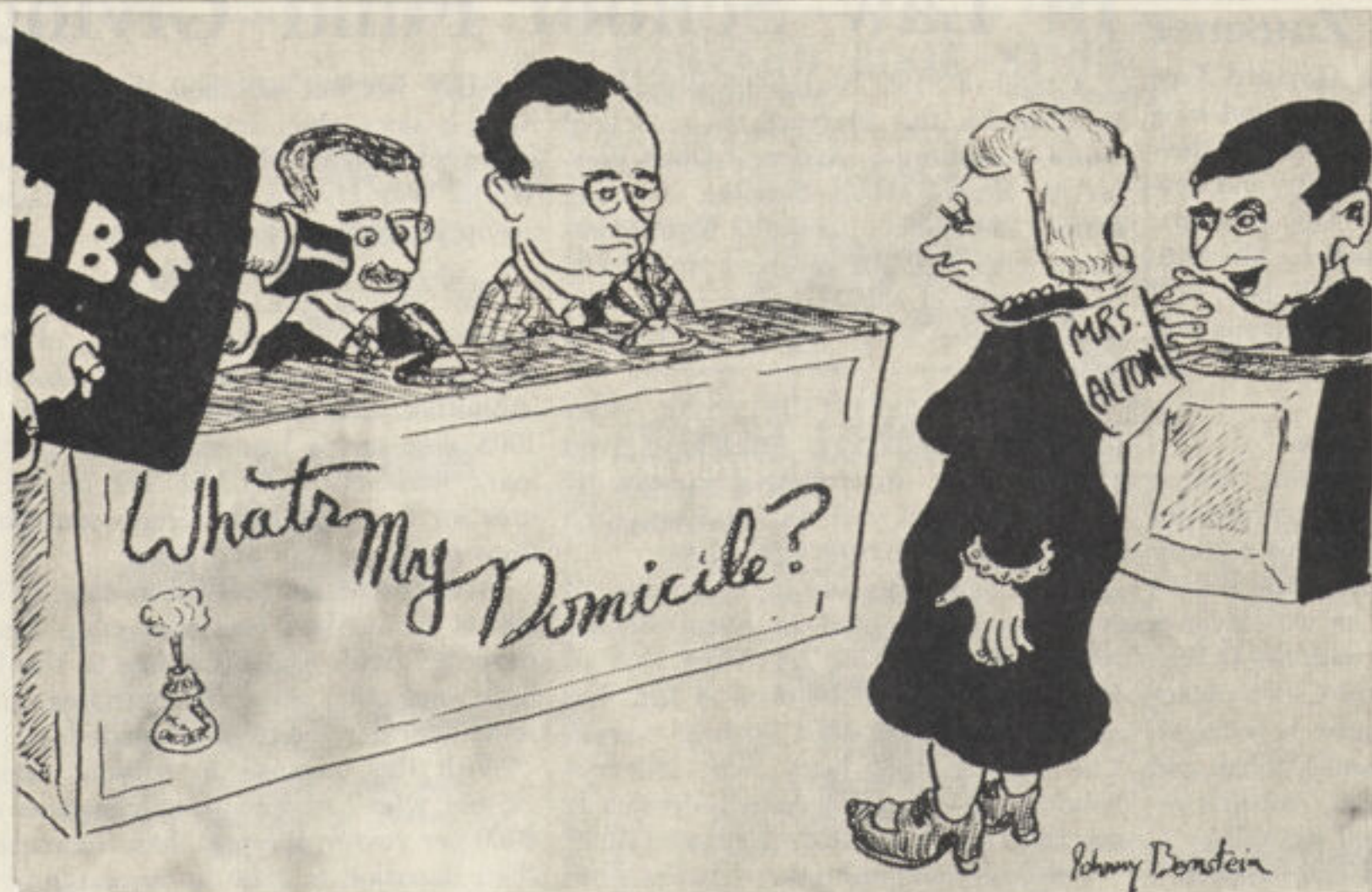
James was often described as a happy-go-lucky type of guy. It was the last day of the year of 1953, and James was planning his resolutions for the New Year. These he proudly recited to his landlady, Mrs. Walsh, when she came to straighten out his room just before dinner. He was going to get a job and cut out drinking.

And James was also in the habit of heavily indulging in the aforementioned pastime. Mrs. Walsh claims, " . . . there was an odor of alcohol there, and I wouldn't know what else . . . I had seen him getting over drunks . . . He would just go out and get drinking and come back and lay down, so when he took a notion to sober up he would just lay down and sober up and that was all there was to it . . . I told him he had to move, you know, if he didn't stop drinking."

The landlady further testified that he had his clothes and everything laid out to go to work on Monday. James also added to his New Year's list that he was going to get married when he got his first pay. He even asked Mrs. Walsh to fix a room up for him and his wife.

Yet, James was unable to have these wishes materialize, and his happy world never became reality, for James died on New Year's eve. The law suit that followed was a claim for \$500 life insurance on a policy James had taken out for "accidental" death. The suit was brought by his brother.

Held: James' estate could not recover on the policy. James had been taking paraldehyde to stop his drinking and nervousness, and his death was due to an overdose. Such was not accidental under the policy, where the insured knew of the potentiality of an overdose. *Murphy v. Western and Southern Life Insurance Co.*, 262 S.W. 2d 340, St. Louis Ct. of Appeals, Nov. 17, 1953.



"and remember . . . anyone can play our new quiz game!"

"World Organization" A SECOND YEAR ELECTIVE

This course starts with an introductory statement outlining the history of efforts to establish an efficacious international government, the present structure of the United Nations and of its specialized agencies, and the relation of the constitutional law of the world community to other branches of law, in particular to international law.

Throughout the course, the emphasis is on growth and on the multiplicity of methods by which a paper document develops into a living system of law. Despite the limitations contained in the Charter, despite the timidity of some of its chief supporters, the United Nations is daily increasing the powers grudgingly conferred upon it.

During the five years since the San Francisco Conference, the new Organization has developed more than the United States did during a comparable period in the early days of the Republic. The cases considered in the course permit the student to study a system of law in its gestation period, not a primitive law—as some people contend—but a very

young law, where the emphasis is still on the basic Charter itself and not on decisions which interpret older decisions, re-interpreting some prior decisions entirely apart from the original instrument which formed the basis of the first decisions.

Students are asked to trace the evolution of the functions of various organs of the United Nations as well as the constant shift in the distribution of powers (e.g., the eclipse of the Security Council by the General Assembly). Settlement of disputes, peaceful change, protection of human rights and fundamental freedoms, supervision of colonial and trusteeship administrations—all these fields of successful accomplishment are given their due place in the framework of the course.

Areas of Failure

Attention is also paid to those areas in which the United Nations has not yet succeeded. Disarmament and control of atomic energy belong in this category, but even here there is some measure of success in view of the fact that the main

Suggested Techniques For Taking Exams

(This is a reprint of an article by Dean Erwin N. Griswold which appeared in the RECORD for May 3, 1950. Since almost none of the students now in school were here then, it has seemed appropriate to reprint the article at this time.)

The following remarks are purely personal. They do not represent any Faculty action or consensus. Nor do they deal with the substance of blue-book answers. They are designed to help students put the substance forth in the most effective manner. For the most part, there is nothing suggested here which is not reasonably obvious. It is the sort of thing one would expect a careful student to do anyway. It is surprising, however, how many students in the past have ignored many or most of these rather simple suggestions. For that reason these observations are designed as much for second- and third-year students as for those in the first year.

1. Write your answers in ink, and use black or blue ink. Do not write with a ball pen. The varying line such ball pens produce is often highly illegible. Do not write in pencil. Do not use red, green, orange or other odd-colored inks.

2. Answer the questions in order. At least put them in order in the blue book. If you feel you must write the answers out of order, skip enough pages so that you can go back and put the answer in the right order. No one minds blank pages between questions, in case you do not fill all the pages you left.

3. Do not use private abbreviations or shorthand. In certain courses there are more or less standard abbreviations which are quite all right. But do not write anything which the instructor will have to puzzle over to try to figure out what you mean.

4. Write legibly. Use time and effort to write legibly. There is no need that the handwriting be pretty, but it should be legible. If your handwriting is bad, take time to be careful. There is simply no excuse for some of the alleged handwriting that is turned in. Remember you are playing for keeps. No instructor is going to mark you down for poor handwriting, but he may not be able to give you all your mind deserves if he is unable to perceive your thought through the mists you create with your handwriting.

5. Do not restate the facts. Do not start out: "In this question it appears that"—and then follow with all the facts. The minutes spent in doing this waste your own time. When the instructor gets to your blue book, he will know the facts thoroughly. He will simply be annoyed if he has to read through the facts again. What he wants to know is what you have to say about the facts. Don't waste your time. It is precious in the examination period.

6. Think through your answer, and organize it, before you write. Do not simply read the question, and then start

a mad scramble to write whatever comes to your mind. Make an outline on scratch paper. To a very real extent, legal capacity is affected by the ability to organize legal problems. The examination appropriately tests this ability, and lack of organization in the answer casts doubt on the existence of that ability.

7. Do not include extensive irrelevant discussion. For example, do not say: "If this fact appeared, then we would have the Clifford problem"—followed by a long statement of what the writer has memorized about the Clifford problem, which is all irrelevant as the fact in question did not appear. This does not mean that you should exclude alternative treatments in your answers. It is quite all right to say (and indeed desirable or essential) "If I am wrong in the above analysis, then" followed by a treatment of an alternative view, or "If the court does not accept this conclusion, then" with a similar alternative discussion. Do not omit anything that is relevant. But do not include long discussions of fields of law that are clearly irrelevant or not involved. It is of course quite all right to narrow the issue, or outline the field of discussion, by stating that such and such is not involved without discussing it in any detail.

8. Do not worry about crossing things out if you think you have started out on a wrong track, or if you want to improve something that you have written. Speaking for myself, I never read anything that has been crossed out, nor try to read what is under the cancelling lines. There is too much remaining for me to read for me to have any time or care for what is crossed out. If you do cross things out, do it neatly. A single line is enough. Do not make a mess of your blue books. You would be surprised how often that is done. If you have thought through your answer before you write, and made an outline, you won't have to cross things out, or change your mind in mid-answer—or at least you won't have to do it so often.

9. If you type your answers, take pains to do it neatly. This does not mean that it must be letter perfect. It is all right to "ex" out errors or misspelled words. Write on one side of the paper only and do it double spaced. If you wish to make corrections or additions in ink, that is quite all right, but do it neatly.

These suggestions are not advanced for the purpose of making you think that grades are based upon neatness rather than on the substance of the answers written. To the best of their ability instructors seek to get at the legal ability of the student. But blue-book reading is an arduous task, and instructors are human. You can hardly harm yourself by trying to put your best foot forward. Would you file a sloppy brief in court?—or send out a sloppy letter to a client? Why file a sloppy blue book? And should the instructor be blamed in some cases if he feels that the careless, messy way in which your answers are presented is some evidence that the legal materials are not too clearly ordered in your mind?

On the merits, remember that what you should try to show is understanding, not merely how much you know. Careful analysis of the precise problems presented by the question, with relevant discussion of the issues raised, are what you should seek to present. There is no magic in answering examination questions. Nor is there any approved or preferable form or way in which they should be answered. There are many ways to answer a question well.



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difficulties have been explored and detailed solutions have been prepared. Students study the merits of the various proposals, the possible ways of bridging the remaining gaps, and the role played by lawyers in the procedure of drafting plans and conciliating differences. Various world-government plans are carefully weighed, both with respect to their advantages and disadvantages and the probabilities of their realization in the foreseeable future.

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CONGRESS, BOTANY, AND LAW:

[The following was written this winter by Frank C. Newman, Visiting Professor from California. We think our readers may find it interesting. Eds.]

"QUESTION. Senator McCarthy, isn't your investigation of communism in schools and colleges creating an atmosphere of fear in the minds of educators?"

"ANSWER. . . . [O]ur subcommittee is not investigating communism in education. That is being done by the Senate Internal Security Subcommittee and the House Committee on Un-American Activities. . . . Let me make it clear, however, that I feel that both the Jenner Internal Security Subcommittee and the Velde Un-American Activities Committee are doing a good job. The only freedom that their investigations endanger is the freedom of Communists to poison the minds of American youth."

The above interrogatory is from a news release entitled "Senator McCarthy Answers Questions" in the *Congressional Record* for June 11, 1953. People have asked whether the Senator's views are not too sanguine, and for contrast we set forth the transcript of a spurious broadcast on WGVH, The Station for Thoughtful Listening. Professor Roger S. Milde, a botanist visiting at Harvard while on leave from a midwestern university, is being interviewed on the Current Affairs Program. Because of his distaste for politics he had originally refused to appear. But various friends argued that the matter was terribly significant, that he would be persuasive because (unlike most of them) his predilections and prejudices were unknown in the Boston area, and therefore, that his academic duty was clear.

Q. Professor Milde, are you generally familiar with the problem of legislative investigation of our universities?

A. How could I help but be familiar with it?

Q. You mean, Professor, that there has been a good deal of comment in the press and on TV and radio?

A. Not only that. It's now steady diet at the Faculty Club, and at meetings of academic societies.

Q. In brief summary, Professor, what is your personal opinion regarding these investigations?

A. I refuse to answer on the ground that it may incriminate me.

Q. Come now, you're joshing.

A. Maybe. But don't forget the Velde Committee's pronouncement a few months ago that many of the people who criticize Congressional investigations are thus "aiding and abetting the Communist conspiracy in the United States."

Q. Is that really a quote? I hadn't realized the Committee took such an extreme view.

A. I don't like footnotes, but you can find the item on p. 2 of a document called "Organized Communism in the United States," released by the Committee in August, 1953.

Q. I gather you do have some doubts as to whether education should be investigated.

A. That's putting it mildly.

Q. Do you feel that the university people who have appeared before the committees are a credit to the teaching profession?

A. No. Too many of those who have made headlines seem to be dishonest, disreputable, or boobs.

Q. Strong words, Professor.

A. I'll explain. A teacher has no more excuse for perjury than anyone else, and I personally have little patience with the lying witness. Nor do I think it honest to assert that your answer might incriminate you when in truth you do not believe it might incriminate you. For instance, if for their sake a man feels he must withhold information regarding his friends, I don't think he ought to pretend he's relying on the Fifth Amendment.

I assume that the teaching profession—like the legal, the medical, and most other professions—has had a few subversives, just as most professions have also had thieves, adulterers, and drunks. I cannot assume that among the teachers who have refused to cooperate with legislative committees none, in fact, was guilty of any wrongdoing.

By boobs I mean those who seem to have dreams of glory, or martyr complexes. Or who argue that "Teachers are different from other witnesses." Or who

are so presumptuous that they sally forth from their own zones of expertise into Constitutional Law, proclaiming that Congress has no power to investigate subversion in the universities, or that committees have no power to ask questions not relating to proposed legislation, or that dishonestly invoking the Fifth Amendment is a noble way to give meaning to the First Amendment.

Q. Do you think these professors should be summarily fired?

A. Of course not.

Q. Why not, if they are a discredit to the teaching profession?

A. I happen to believe that Mr. McCarthy and some of his colleagues are a discredit to the Senate, but that doesn't mean they should be expelled.

Q. How about those who are dishonest, disreputable, and boobs?

A. Senators or teachers?

Q. You don't really think any senators are dishonest, do you, Professor?

A. Is it honest to call General George C. Marshall a "front man for traitors," and a "man . . . steeped in falsehood, who has recourse to the lie whenever it suits his convenience"? And how about this senatorial gem: "I couldn't conceive of anyone sending children to Harvard University where they would be open to indoctrination by Communist professors?" Or (to a non-Harvard witness) "You can get a letter of recommendation from your Communist cell and get a job from Mr. Pusey?"¹

But I'm here to discuss teachers. In the first place, I don't think a professor should ever be "summarily" fired, as you suggest. As a minimum he should have an opportunity to be heard. Assuming fair procedure, when should he be fired? I think only when he has been proved guilty of grave misconduct. Not all who seem dishonest or disreputable or boobs before committees are guilty of misconduct grave enough to require their expulsion. If we show that they gave secrets to the Russians, or engaged in criminally subversive activities, or peddled narcotics that's one thing. If they were merely misinformed, or stubborn, or careless in their former associations, or persistent in traffic violations, that's something else.

Q. But isn't it pretty serious not to cooperate with a legislative committee?

A. Of course it's serious. But it's not *per se* wicked, and sometimes it's not even censurable. My law school friends tell me the United States Supreme Court, a year or so ago, agreed unanimously that a right-winger named Rumely was justified when he refused to tell a Congressional committee the names of his book buyers. Some of the judges said the question wasn't pertinent to the inquiry; the others said he had a "free press" right not to answer. Should he have been fired, if he was a professor?

Q. I suppose not. But how about a professor's refusal to testify on the ground that it may incriminate him?

A. As I said before, I don't think a professor or a Senator or anyone else should be fired merely because he does not always act sensibly, or even lawfully. I do not believe that use of the Fifth Amendment, alone, is grave misconduct. But if it looks as if a man knowingly perjured himself, or if a "yes" answer to the questions asked would indicate he has been guilty of grave misconduct, then I think his university should investigate immediately. If after a hearing the facts indicate that the inference of guilt resulting from his refusal to testify is in truth correct, or if other grave misconduct is proved, then I believe he should be punished, by dismissal if appropriate. But if the facts indicate, say, that his refusal was due to erroneous legal advice (which I understand is not uncommon), or to honest confusion on the limits of the Fifth Amendment (which I know is not uncommon), then I don't see why punishment is necessary.

Q. Professor Milde, our talk thus far

¹ Compare President Pusey's remarks before the New England Association of Colleges and Secondary Schools, reprinted in the *Harvard Alumni Bulletin* of Dec. 12, 1953 (p. 257); and see Vice-Dean Livingston Hall's article, "The Furry Case", in the *Bulletin* of Nov. 28, 1953 (p. 211).

suggests to me that you have no overall complaints about investigation of the universities.

A. I was afraid you might infer that. You led me astray with those questions about the people who have already been witnesses. Lest there be any doubt let me state: I think the harm caused by legislative investigations of higher education outweighs all the good that might ever conceivably come from them.

Q. Are you an anti-"Anti-Communist"?

A. Hol! That's what McCarthy called President Pusey (mistakenly, in my opinion). It happens that I am *not* against exposing subversive activities (unless, of course, the investigators foul up the U. S. counterespionage program). If you want a label, I am an anti-"Anti-Communist Sympathizer."

Q. What do you mean by that, sir?

A. I mean this: One trouble with these investigations is that the men conducting them, in general, have shown no talent for distinguishing between (1) activities that are or ought to be criminally subversive, and (2) activities they just don't like, for political or other reasons. And "Communist sympathizer" is typical of the phrases they use to pillory people they don't agree with. For example, some Senators would have us believe that all the Far Eastern scholars who criticized Chiang's China were Communist sympathizers—and also all the scholars who joined or attended meetings of organizations like the Joint Anti-Fascist Refugee Committee, or the Council of American-Soviet Friendship. Groups like these may legitimately be on the Attorney General's list, but a lot of fine people worked with them, for good and patriotic reasons. To this American-Soviet Friendship group, for instance, President Eisenhower wrote in November 1945: "As an American soldier and lover of peace I wish your Council the utmost success in the worthy work it has undertaken."

Q. But Professor, isn't what you describe just a problem of civil liberties, and does it really hurt education?

A. You bet it hurts education.

Q. To illustrate, Professor, when you teach botany does a fear of investigation influence your lectures?

A. Certainly not.

Q. And how about your research work: Has it been hampered?

A. No.

Q. Then why are you so sure your colleagues are less resistant than you, because isn't that what you must assume?

A. It happens that I am neither crusader nor iconoclast. And my botanical interests tend not to be world-shaking. But the Americans of this half-century can be grateful that not all scholars have been as conservative as I, and that other researchers have concerned themselves with world-shaking problems.

One thing to keep in mind is that anti-intellectuals with very selfish goals are among those who exploit the investigations. They have been alarmingly successful in promoting what President Pusey called a "vague, amorphous and insidious distrust" serving to "bring the honor and integrity and loyalty of the whole educational enterprise into question." Consider, for instance, this excerpt from a recent, nationally-syndicated newspaper column:

"As students, instructors and clamorous claimants for unnecessary degrees, they [the subversives] lingered pathologically long in academic cloisters. They could have obtained far more education in business and industry. But they did not have the guts to step out of school and go to work. That observation applies to every subversive listed in the FBI files. College was their escape from bread-and-butter reality."

Do we dispute that many scholars are beginning to tread gingerly, and are skirting controversy? That organizations and meetings are shunned when they seem "questionable," whether or not they seem subversive? It used to be that a man could bore from within, and help reform a group that seemed leftist-influenced. But now? It is safer to let others

SOME COMMENTS ON INVESTIGATIONS

OF HIGHER EDUCATION

do *that* educating, and thus avoid all suspicion.

Q. But are you sure this hurts education in the broad sense?

A. How could it help but hurt? If scholars become timid, and if they limit their teaching and research experiences to what government officials regard as orthodox, all students will suffer; and as



Frank C. Newman

citizens the rest of us will benefit from far fewer inventions and discoveries and analyses than were our gain under the system of free inquiry.

Q. But do professors have to be timid?

A. Of course they don't. And happily, many of them have altered their course not one whit. But to restrict the zone of academic freedom to those who are aggressively courageous is a luxury this country can't afford, I think. I have seen the transcript of a hearing where a professor was asked these questions, on a charge that his participating in government work was not clearly consistent with the national security:

- (1) "What activities do you take part in in the community so far as the political life is concerned? [Answer: "Strictly Democratic."] And that consists of what?"
- (2) "In your contacts with [certain friends] . . . , do you discuss political ideologies and aspects of the world situation? Do you know what their political ideologies are?"
- (3) "What is your own political ideology?"
- (4) "What about your religious life?"
- (5) "Have you ever traveled outside this country?"

Q. Are you saying those questions were illegal?

A. No. I'm saying that if questions like that become routine we are likely to endanger the strength of this nation.

Q. But you indicated those questions were asked of a man doing government work, in addition to his university work.

A. Agreed. But don't forget that thousands of scholars are now engaged in government work, and I want to be sure their scholarship stays objective. Even more important: The inquiry here was whether a man's activities were "clearly consistent with the national security." If questions involving political and religious affiliations and one's travels are customary in all inquiries regarding "national security," I wonder whether too many of us won't hew the line of respectability even more slavishly than we do now. For example, wouldn't it be best to speak guardedly about creeping socialism, or the need for dispersion of industry, or the Harry Dexter White controversy, or Bishop Oxnam? And if I were to undertake research work abroad, wouldn't I be well-advised to avoid not only Russia and the Iron Curtain satellites, but also Yugoslavia and maybe even India?

Q. Professor, do you have any facts showing how the nation might be harmed by what you fear?

A. One fact that disturbs me, more as a citizen than as botanist, is that too few of our graduates are interested in civic and political work, and too few of our young scholars interested in the social sciences. To me it is obvious *first*, that unless we man our governments with the best men available we're due for trouble; and *second*, with respect to scholarship, that what we know about atoms and rockets and germs is dangerously ahead

of our knowledge about cities, and people, and how their facilities and talents can best be tapped. One of the reasons men shun politics and the social sciences, I believe, is that they prefer channels where they will be freer from pernicious heckling.

I'd like to conclude with quotations from two Senators who are not generally regarded as McCarthyites. At an appropriations hearing last year one of them, a leading Democrat, stated that if the Army, Navy, and Air Force "have not sense enough to know how to counteract Soviet propaganda without hiring a bunch of college professors . . . this defense establishment is in one darn bad shape in my opinion." He argued that granting \$450,000 to Harvard's Russian Research Center was "simply throwing money away". The other senator, a leading Republican, claimed that the grant was "a form of insanity". He added: "I think it is one of the terrible examples of what the agencies are doing, to go to an institution, of all institutions, Harvard, to find out a working model of Soviet thinking when they have criticized Congress for trying to get really at the roots of the thing, under oath, as to how a Communist thinks."

I won't comment now on the senators' myopia concerning the work of the Russian Research Center.² Nor will I any more than note the dangerous implication that U. S. research grants should be restricted to universities whose professors (whether or not involved in the research) refrain from criticizing Congress. What I want to stress is this: the need of our country for accurate information about Russia and its peoples surpasses most other needs. We can get that information not just from Congressional investigating committees, and from our diplomats and spies, but also from a host of men who engage in activities such as chasing down rare manuscripts and weird dialects and exotic butterflies. Historians, linguists, entomologists, psychologists, geographers, and many others have a role in this gigantic business that was demonstrated dramatically during World War II, in the OSS and other intelligence agencies. The one thing we *must* not do is scare people out. Harvard, perhaps, is not easily frightened. But too many colleges and universities are, because they cannot rely upon their repute alone to protect them from political ravages. If as a result of these ravages our force of men who concern themselves with things Russian is whittled down, the consequences will be tragic. Yet that is exactly what will happen if we do not eradicate this growing suspicion of scholars who are helping to find out what our enemies are really like. The consequences will be worse than tragic if there is any hint that the men who do manage to peep behind the Iron Curtain should see what our ivory-tower politicians assume is there to be seen.

Q. Professor, do you have any proposals for improving legislative investigations?

A. I like what many of our Congressional leaders say about the need for reforms of committee procedure, and I've noted that most impartial observers of government constantly stress party responsibility. But I'm no expert here.

My strongest hope is that before plunging in, our statesmen will define for us (1) just exactly what they want to learn from the scholars they choose to investigate, and (2) just exactly when they can sensibly conclude that a scholar has become a menace to his government.

Q. Thank you, Professor Milde.

² Compare the series of editorials in the *Boston Herald* beginning on Oct. 15, 1953. The senator's remarks are quoted from the *Boston Post* of Sept. 28, 1953.

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The Spring Review, preparing candidates for the Massachusetts Bar Examination to be held in July, will begin June 1, 1954 for five consecutive weeks.

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Council Elects New Officers

The Dormitory Council has amended its constitution to provide for the annual election of officers as the beginning of the spring term, rather than at the beginning of the fall term as had previously been the case. The first group of officers elected under the new procedure, who will serve until February, 1955, are Paul F. Glenn 2L, President, Samuel Pringle 2L, Vice President, Michael J. McNulty 1L, Secretary, and Edmund Schroeder 1L, Treasurer.

Explanation

Under the new amendment officers of the Council will not be representatives from any floor or entry in any dormitory, but will during the spring term be residents of the dormitories who are members at large of the council. The new procedure was adopted to provide greater continuity for the Council and to facilitate its organization in the fall and the planning of social activities for the coming year. It will, in addition, give Council members an opportunity to work with each other for an entire semester before electing officers, rather than electing men with whom they have not previously worked. In moving its elections to February the Council followed the procedure which has been adopted by the Graduate Student Council.

Spring Formal

The Law School Dormitory Council will conclude its activities for the year on Saturday, May 8, when it will sponsor a semi-formal Spring Dance in Harkness from 8:30 until midnight. No corsages will be permitted, and tuxedos are optional. Bob Norris' orchestra will provide music for dancing.

Bridge Club

The Harvard Law School Bridge Club has finished up its third club championship of the school year. The tournament was won by a dark-horse team of four graduate students from M.I.T. This guest team was invited in order to make the tournament a little more cosmopolitan. To everyone's surprise they recently defeated two veteran law school teams to put themselves in the finals. There was a play-off match between two law school teams and the winners met the M. I. T. contingent in the final match.

Previous Winners

Lou Robbins, 3L of Washington, D. C., and Al Moody, 2L of New York City, won the pair championship last December. Dave Baker took the individual championship last February.

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B. S. A. Announces Drafting Winners

Five out of 19 participating groups have been picked as winners of the drafting competition to enter the semi-finals next fall. In the first round 76 people participated in five problems.

The winning teams were: Champe Fisher, Cambridge; Alexander Holland of Lynbrook, N. Y.; John Daily of Albion, N. Y.; James Pressey from Hanover, N. H.; Seward Brewster of East Waterford, Me.; David Neiditz, of West Hartford, Conn.; Lucia Pierce of Portland, Me.; James Wittenberg of Minneapolis; Robert Alderdice from Pittsburgh, Pa.; Lewis Baron, Chicago; Frank Jones, Clairton, Pa.; Lawrence Hiller, New York City; Samuel Gilliland, Pittsburgh, Pa.; Robert Cesari of Elmira, N. Y.; Paul Harriton, Philadelphia; Harry Downs from Greene, Iowa; John Bok, Belmont; Joan Tolland, Grand Rapids, Mich.; Richard Rodwin, New York City; Lester Ward of Pueblo, Col.

A sixth winner will be announced when the judges reach a decision. The semi-finals will take place the second week of the fall and the finals in December.

P.B.H. Group Observes 45th Year Of Service

The Law School Committee of Phillips Brooks House observed its 45th anniversary this year by continuing its quiet, constant, and imaginative services.

Since 1909, the Committee has seen as its task providing for needs which are not otherwise met. This has meant a wide and frequently shifting range of activity—everything from soup (given to the needy helped by the Charities Drive) to blood (donated through the committee to the Red Cross).

In between, the committee has been instrumental in initiating some activities which now operate independently at the law school, including the Forum, the RECORD, and the Legal Aid Bureau.

During the present year, there have been services through the committee's book loan library, helping over forty impecunious students, and affording hospitality and aid for foreign students as well as providing recreational functions in organizing an athletic league and mixers during the early part of the school year.

But perhaps the PBH committee's most unusual role of all in the law school community is in providing the Directory each year—free.

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Alumni Notes

LL.B. '41—Mark J. Dalton is a candidate for the Democratic nomination for United States Senator from Massachusetts. Dalton was a Naval Intelligence Officer during the war. He has been engaged in the private practice of law since the conclusion of his war service and is a director of the Dalton-Elcock Bar Review.

LL.B. '45 ('48) — Edward Robertson McHale, an Assistant United States Attorney for the Southern District of California for the past five years, was made Chief of the Tax Division of that office on January 1, 1954.

LL.B. '47 — Robert H. Wyshak was appointed an Assistant United States Attorney for the Southern District of California in November 1953, and has been assigned to the Tax Division.

LL.B. '48—M. Roland Nachman, Jr., and Walter J. Knabe have formed a partnership with offices located in Montgomery, Alabama.

LL.B. '50—Lewis C. Green, formerly with the National Labor Relations Board in Washington is now associated with the firm of Green, Hennings, Henry & Evans in St. Louis, Missouri.

NEWS IN BRIEF

EXHIBITION

An exhibition of paintings and drawings by Lea Majaro-Mintz of Israel, who is a special student at the Law School, will be held from April 15 to May 5 at the Boston Book and Art Shop, 657 Boylston Street, Boston.

FORUM ELECTIONS

The Forum has chosen its officers for the coming year. Herbert Paul, 2L of New York City was chosen president; Charles Rippey, 2L Elmhurst, N. Y., first vice-president; David Swartz, 2L of Merrimac; second vice-president, William Stringfellow, 1L of Northampton, secretary; and Arnold Goldman, 1L of Rochester, N. Y., as treasurer.

STUDENT BAR ASSOCIATION

This afternoon at 5 the Harvard Student Bar Association will present Rudolph Halley, former counsel for the Kefauver Committee. He will speak in Langdell South Middle and his topic will be "The Role of Counsel for a Legislative Investigating Committee."

BULL & BEAR—(Continued)

River, who increased the value of his investment to \$72,825, and Lewis Baron, 2L of Chicago, whose portfolio increased to \$72,700. Collias will receive a subscription to the *Wall Street Journal* for the next school year, while Baron will receive an appropriately inscribed copy of "Securities Regulation" by Professor Louis Loss, the Club's faculty advisor.

William H. Vogt III, 2L of Rochester, N. Y., has been nominated for President of the Club. Other nominees include Robert A. Belmonte, 2L of Framingham, First Vice-President; Charles L. Convis, 1L of Lansford, N. D., Second Vice-President; Leonard B. Boehmer, 2L of Malvern, Iowa, Secretary; and Howard J. Marsh, 2L of San Leandro, Calif., Treasurer.

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