



Harvard Law School Record



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Pusey and Welch Will Speak At First Two Forum Programs

"Crisis in Education" will be the first program of the Harvard Law School Forum's 1954-55 season.

This discussion on current educational problems will feature Harvard's President, Dr. Nathan Pusey, and Dr. Robert Ulich, together with Mr. Frederick Weed, Headmaster of the Roxbury Latin School, and Mr. Lee Dunn from the Boston Latin School.

This program will mark Dr. Pusey's first appearance at the Forum.

Participants

Dr. Ulich is the James Bryan Conant professor of Education in the Graduate School of Education at Harvard. He is a native of Germany and held important educational posts, both with the German government and with other universities, before coming to Harvard in 1934. Dr. Ulich is the author of the forthcoming philosophical work "The Human Career—A Philosophy of Self-Transcendence."

Mr. Dunn is the Senior Counselor at the Boston Latin School, which was founded in 1685, and he is the school's adviser for college entrance.

Another of the Forum's speakers, Mr. Weed, a Harvard classmate of Dr. Pusey's, is now president of The Independent School Association of Massachusetts.

Some of the problems to be discussed are: the matter of public v. private education; the adequacy of secondary school education; federal aid to education; and the problem of selecting qualified teachers.

Inasmuch as our educational institutions, especially the secondary schools, have been the targets of much criticism of late, this program should be of particular interest to educators, as well as to the layman taxpayer.

Moderator for this forum will be Associate Dean David F. Cavers of the Harvard Law School.

This program will be held tomorrow evening in the New Lecture Hall in Cambridge, commencing at 8 p. m.

The second program of the year will

Six Teams Submit Drafting Solutions, B. S. A. Announces

Solutions to the problems in the semi-final round of the annual drafting competition have been submitted by the student contestants and have been sent to the judges for decision.

Judges for this year's competition conducted by the Board of Student Advisers, are a group of distinguished University alumni: Joseph N. Welch, LL.B. '17, John N. Calderwood, LL.B. '41, DeForest Billyou, LL.M. '49, and Edward C. Perkins, A.B. '48.

Six teams of four students each entered this semi-final round. They qualified by their success in the eliminations conducted last year. At that time all second-year students were eligible to take part in the competition.

The remaining six teams are divided into three groups in the next fall. Each group is confronted with a different fact situation for solution.

The three victorious teams will be paired against one another in December for the final round.

The three problems for solution in the semi-final round deal with the drafting of material for a proxy statement, policy problems dealing with estoppel in trademark infringements, and the composition of a letter of dismissal to

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be "Reflections on Army v. McCarthy" with Army counsel Joseph N. Welch, LL.B. '17, as principal speaker. Later, on the same program, Mr. Welch will discuss the implications of the hearings with a panel from the Harvard Law



Nathan M. Pusey

School faculty consisting of Professors Braucher, Field, and Leach. This program will be held on Wednesday, Oct. 27, 1954, in Sanders Theater at 8 p. m.

Tickets for both programs are \$7.00 and may be purchased at the door or at the Forum office, 23 Everett St., KI 7-7600, ext. 381.

Researchers Elect 14 New Members

The Legislative Research Bureau, composed of high-ranking members of the two upper classes in the Law School, recently elected its new second-year members. This announcement was made Friday by William D. Walsh, 3L of New Haven, Conn., President, and an official welcome was extended to the electees at an organizational meeting at which Prof. Albert M. Sacks addressed the Bureau.

The 14 newly elected members, all 2Ls, are John R. Allen of Pittsburgh, Pa.; Robert Arum of New York City; Herbert Barall of East Hartford, Conn.; Stanhope S. Browne of Cincinnati; Donald L. Crowley of Newark, N.Y.; Scribner L. Fauver of Elyria, Ohio; William D. Gaillard, III, of Scarsdale, N.Y.; and Charles J. Johnson of Darien, Conn.

Also: Rudolph Kass of Cedarhurst, N.Y.; John P. Maxwell of Fayetteville, N.Y.; Arthur W. Mudge, Jr., of Hebron, N.H.; David L. Rose of Gardner; E. Donald Shapiro of York, Pa.; H. Simmons Tate, Jr., of Clemson, S.C.; and Robert B. Willson of Brookline. The new members, from a group of high-ranking men in the Law School, were selected on the basis of a trial project in drafting and a personal interview.

They will undergo a brief training period and then will commence work on one or more of the Bureau's many projects, including the formulation of a code of ethics for lawyers practicing before an agency; an act regarding "lost shareholders" in Ohio; a project for the American Jewish Congress; a revision of the Massachusetts adoption laws; the Massachusetts housing problem; and a reworking of the Massachusetts Penal Code.

The Legislative Research Bureau drafts legislation and statutes for non-funded groups who request this service and who have worthwhile and interesting projects at hand. Members of the Bureau interview the "client" to determine exactly what his desires are.

Law School Fund Chairmen To Meet Here On Saturday

About 80 to 100 state and local Alumni Chairmen of the Harvard Law School Fund will meet here on Saturday, Oct. 23, to discuss operational plans and objectives for the fiscal year 1954-55.

Beginning with a business meeting in the morning, the group will relax in the afternoon by witnessing the Harvard-Dartmouth game after a luncheon in Harkness Commons. After the game an informal session with a number of faculty members will be held in order to exchange ideas for a more efficient fund-raising campaign. A light supper will conclude the meeting day, but will be only the beginning of nine months of intensive work by the Chairmen in their respective districts.

Purpose Of Fund

The Annual Giving Program of the Harvard Law School Fund, under the directorship of Assistant Dean Wesley E. Bevins, Jr., was initiated in the fall of 1950. It has as its basic purpose the raising of at least \$250,000 per year from gifts of alumni and friends of the Law School. The money is used to help meet both current and capital expenditures for items which otherwise would have to be excluded from the School's budget.

Some of the applications of the Fund have been to increase the support available to the Library, to supply funds for the teaching fellow program which was initiated to help orient first-year men, and to finance scholarships. Also, Fund income has been used to establish practical research projects which later have acquired private sponsors.

During the first and second years of the Fund, most of the money raised was used to pay for the newly completed dormitories. In the past two years, some of the resources have been applied toward balancing the budget, thus postponing the necessity for an increase in tuition until this year.

Thus far the Fund has been very successful. Last year over 5,000 persons contributed almost \$248,000.

Future Projects

For the coming year there are several special projects which will require Fund aid. One of them is the renovation of Austin and Langdell Halls to construct a courtroom in the former building and to convert the old courtroom in Langdell to library work space. This undertaking will cost about \$375,000. It is hoped that the Fund will be able to cover the cost in three years or less.

The Fund also hopes to augment the library budget so that equipment designed to make its resources more available for use by alumni and other members of the legal profession can be purchased. For example, the installation of microfilming apparatus would permit

(See ALUMNI on page three)

JOURNAL OFFER

By special arrangement, members of the Bull & Bear Club may obtain the *Wall Street Journal* for half price. The reduced rates are \$3 for three months or \$10 for the calendar year. Members desiring to subscribe should contact William H. Vogt III, President of the Club, at 201 Ames Hall (UN 4-6891).

The *Journal* is an official source of prices for the Club's investment contest, which began at the last meeting. Entrants must submit portfolios by the second meeting of the Club in November.

Teaching Fellows Stage Mock Trial Today At 5



Hon. Bailey Aldrich

Today at 5 p. m. in the New Austin Courtroom, the civil action of *Crane v. Sloane* will be tried before Judge Bailey Aldrich, LL.B. '32, Federal District Judge for the District of Massachusetts.

The trial is conducted as part of the first-year group work program. Admission will be limited to first-year students and faculty members. The courtroom, which is not yet entirely completed, cannot presently accommodate all those who might desire to attend.

Facts

Col. Sloane, a retired Army officer, is charged by Mr. Crane with slander, libel, and interference with an advantageous relation. The charges arise from an automobile accident during which the Colonel charged Crane with being a hit-and-run driver. Crane further alleges that, because of later defamations by the Colonel, he lost a valuable position as headmaster of the Foote School.

Both parties have made extensive use of depositions in the preparation of the case for trial. The pre-trial work was done by the first-year groups under the direction of the Teaching Fellows.

The names of the jurors have not been announced, but it is understood that they have been selected from outside the law school.

Counsel for the plaintiff will be Prof. Arthur E. Sutherland, Jr., while Prof. Richard H. Field will represent Colonel Sloane.

No matter what the outcome, the case will be appealed and later on in the semester a higher court of Ames will sit in review.

Griswold Defends Fifth Amendment

Dean Erwin N. Griswold was featured speaker on three occasions last week. On Oct. 14 and on Oct. 19 he spoke to professional groups on the subject "The Fifth Amendment As a Symbol." His speech on Oct. 14 to the Practising Law Institute of New Jersey, meeting at Newark, is reprinted in this week's *RECORD*. The Dean gave the same speech on Oct. 19 before the Connecticut Bar Association in Hartford.

He gave the convocation address at the University of Richmond on Oct. 5 as that university dedicated a new law school building. He was awarded an honorary degree of doctor of laws.

New International Tax Report Deals With Year's Operations

In late September the staff of the International Program in Taxation of the Harvard Law School released a comprehensive progress report covering the fiscal year 1953-1954.

A Ford Foundation grant of \$200,000 for a three-year period established the Program on July 1, 1952, but since the first year's activities were largely organizational, the present Report covers the first 12 months of full-scale operations.

Staff

These operations have been carried out by a full-time staff of three lawyers, two economists, and one member of the Business School faculty. Two foreign-trained lawyers have worked full-time on bibliography and translation work, and a number of lawyers, public administrators, and economists from the United Nations and other co-operating institutions have served as consultants from time to time.

Close co-operation with the UN is maintained by the Program in connection with many of its most important projects. Co-operative efforts of UN officials, Program staff members, and consultants have produced a draft manual on income tax administration for use in underdeveloped countries. A member of the Program staff has been sent by the United Nations to work with the government of Chile on the codification of its tax laws. A study of the taxation of land in underdeveloped countries is being carried out under co-operative arrangements with the UN and various universities both here and abroad. But the most significant single area of Harvard's co-operation with the UN is the Training Program.

Growing from an enrollment of three

UN scholars the year before, the 1953-1954 Training Program had nine full-time participants. Three graduate students and two visiting scholars of professorial rank also devoted the major of their time to the Program. These participants included tax officials from several countries in the Near East and Latin America, and scholars from India, the Philippines, Belgium and France. In addition to close co-operation with the Technical Assistance Administration of the UN and the United States Foreign Operations Administration, the Program has begun to work directly with foreign governments in selecting participants for the Program.

In planning training activities, the Program emphasizes the development of the individual. Programs of study are arranged on an individual basis, and the student is urged to keep thinking always of the new knowledge he is acquiring in terms of his own country's problems.

Program Of Study

After participation in the Law School Business School Introductory Program for Graduate Students from Abroad and a preliminary course in English, the trainees take courses in the Law School and the Littauer School of Public Administration, and participate in seminars arranged especially by the Program. Opportunities are arranged for the participants to observe tax administration in operation in offices of the Internal Revenue Service in Boston, Burlington, Vt., New York City, and Washington, D.C., and in several offices of the Canadian Department of National Revenue.

(See TAX REPORT on page three)

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Letters to the Editor

TO THE EDITOR:

Your comment on Oct. 7, that the court in *United States v. Durham*, 214 F.2d 862, "announced its new insanity test as obiter dicta" opens an interesting field of speculation. On the issues in this particular case, I wonder whether your position is tenable. On appeal, the court was "urged to reverse the conviction (1) because the trial court did not correctly apply existing rules governing the burden of proof on the defense of insanity, and (2) because existing tests of criminal responsibility are obsolete and should be superseded."

The court first held that "some evidence" of insanity had been introduced, and that therefore the trial judge had erred in ruling that "the usual presumption of sanity" prevailed. For this reason, the judgment was reversed and the case remanded for a new trial.

Your reasoning that consideration of the second point urged by the appellant was "obiter dicta" has been characterized by Professor Morgan as "too refined for practical purposes" since "the appellate court may very properly give the trial court instruction how to proceed on a new trial." See Morgan, "Introduction to the Study of Law" (1926) 110. The appellate court had three possible courses of action in passing on this second ground for appeal:

(1) It might have decided that the pre-existing tests, embodied in earlier decisions followed by the trial court, were still satisfactory criteria for determining criminal responsibility, and should continue to be used in the future. Perhaps you would regard this as "doing something unnecessary as a step towards its ultimate act" and therefore dicta. Yet as Professor Wambaugh has observed, "the argument is merely specious" since the "decision was of a judicial nature." See Vanderbilt, "Selections on Studying Law" (1945) 558.

(2) The appellate court might have overruled its earlier decisions and found that the test as applied by the trial court was no longer satisfactory. If such a decision is regarded as dicta, because the appellate court had already decided under the first point that the case had to be reversed, than any opinion assigning two or more grounds for a reversal contains nothing but dicta. Here again, under Professor Wambaugh's reasoning, it is preferable to regard all the points on which the court relied as "the basis of a general principle for which the decision is of imperative authority."

(3) The court might, as it did, find that the broader test should be adopted, but at the same time uphold the previous action of the trial court in following the earlier decisions. This decision avoids some of the difficulties inherent in both (1) and (2) above. Solution (1) does not permit a change of the law, while solution (2) would stigmatize as erroneous a decision of the trial judge, probably requested by the prosecution, which was merely following earlier

decisions of the appellate court, as he was legally bound to do. Since there was to be a retrial of the case, the court in following solution (3) above, and guiding the trial court in the instruction to the jury to be given on the retrial, was clearly "deciding" the very case before it.

At the risk of calling for more dicta, I would like to leave with you readers one hypothetical question. Suppose the Court of Appeals had found no error in either of the grounds of appeal. Would a prospective decision as to a new test for determining criminal responsibility be only a dictum?

Clearly the statement of the prospective rule does not help to decide the case at bar, since there will be no retrial. On the other hand, there are no hypothetical facts in the decision. Perhaps the answer depends on whether we ought to encourage courts thus to solve what Judge Frank has called "the problem of deciding cases so that the decisions will not be hurtful, as precedents to future litigants," in his dissenting opinion in *Aero Spark Plug Co. v. B. G. Corporation*, 130 F.2d 290 at 299 (1942). And in any event, as Professor Wambaugh further observed, dicta are "often extremely useful to the profession" (id. at 555).

LIVINGSTON HALL,
VICE DEAN.

TO THE EDITOR:

The Oct. 7 RECORD devoted your editorial column to the recent *Durham* case in which the United States Court of Appeals for the District of Columbia Circuit made a deliberate and substantial modification in the insanity test to be applied in criminal prosecutions in the District of Columbia. What you said about the case shows a commendable interest in this important phase of the criminal law. Perhaps your readers would also like to have, by way of amplification, some further information on two of the case's features which you referred to as "unusual."

You commented that, although this particular case involved a housebreaking charge, the insanity defense normally is raised only in murder cases. Whatever may be the experience in other jurisdictions, I think this would not be borne out here in the District of Columbia. Exact statistics probably are not readily available. But a recent and rather numerous group of insanity cases coming before our Court of Appeals shows how wide is the range of criminal offenses where the insanity problem can be expected. During the month of July alone there were five decisions by the Court of Appeals directly involving the question of insanity either at the time of the alleged crime, at the time of trial, or both. One, it is true, was a murder case (*Stewart*). The other four, however, involved housebreaking (*Durham*), forgery (*Wear*), armed robbery (*Contee*), and rape (*Gunther*). Several other cases involving the insanity plea are now pending before the Court of Appeals—two robbery convictions (*Kelly* and *Wigfall*), a conviction for assault with a dangerous weapon (*Williams*), and a conviction for larceny, robbery and housebreaking (*Taylor*).

You also note as one of the "unusual" features of the *Durham* case the fact that counsel had been appointed to represent the appellant in the Court of Appeals. But the appointment of counsel not only is not unusual here in the District of Columbia; it has become quite commonplace. Appeals on the criminal side of the Court's docket seem to bring with them a vast number of appellants who are indigent by the time of the appeal, even if they were not so at the time of trial. The Court of Appeals, with the co-operation of the bar, has been at pains to see that these indigent persons are adequately represented on appeal. Indeed, in all the criminal appeals mentioned above—and in many others as well during the past 12 months—appointed counsel have undertaken to see that the appellant's cause should not suffer because of any lack of funds to retain counsel to present the appeal. In a substantial number of the cases where appointed counsel have served, the outcome of the appeal has been a judgment in favor of the appellant.

BENNETT BOSKEY, LL.B. '39

Off the Record

Professor Freund, in his Conflicts class, was discussing the problems which come up in handling libelous statements which are printed in publications having a nation-wide circulation. He referred to one poor soul who was victimized by an X-ray picture of his stomach showing one of those annoying surgical sponges peacefully lying there. Naturally, upon recognizing his own insides in a national magazine, he fell victim of "that rare illness known as psychosomatic melancholia, the only known cure for which is a large green bonus."

Gallery

EARL C. BORGESON

Librarian

Harvard Law School Library



Earl C. Borgeson, Librarian of the Harvard Law School Library, is far more than a custodian of books and magazines. In the broadest sense the position of Librarian includes both administrative and educational aspects. Educated at the University of Minnesota Law School (Class of '49), Mr. Borgeson began training in his specialized field at the School of Librarianship at the University of Washington, in Seattle, the only institution in the country offering such training at that time.

Actually it was while working as a student clerk in the library at the University of Minnesota that Mr. Borgeson first became interested in law library work as a career. Before coming to Harvard in 1952, Mr. Borgeson was assistant reference librarian at the Los Angeles County Law Library. In July of this year he was appointed Librarian of the Harvard Law School Library.

Function of Librarian

Mr. Borgeson feels that law librarianship occupies an area between teaching and practicing law. The function of the librarian in a government law library, or in a law firm library is somewhat different than that of a law school library. In the latter, in addition to the usual responsibilities, there is the added responsibility to play a part in the educational functions of the School. Mr. Borgeson feels that the law library is an integral part of the law school, and that its function is three-fold: to make the student aware of the library resources available to him; to help the student locate particular materials from those resources; to help him use those materials quickly and efficiently. This vital role in a law student's education can be more generally stated: to help the student to develop good legal research habits. Thus Mr. Borgeson makes clear the educational aspects of a law school library.

Anticipates Student Needs

Mr. Borgeson feels that the greatest factor in running a library is to be able to anticipate the needs of the students.

The faculty assists the Library in this respect by submitting special assignments and requests for materials to be used in class.

The Librarian points out that the mission of the library is to serve first the students, faculty and alumni, and then all others engaged in some type of legal research.

Managing a library of over 811,000 volumes is never easy, and this is especially true of a technical library such as a law collection. The Harvard Law School Library is the largest law school library in the world. Upon Mr. Borgeson's shoulders fall not only the task of administering the numerous activities of the library, but also the responsibility of developing and making available special collections such as the Treasure Room. Here, among other rarities, are over 500 law books printed before 1500, as well as manuscripts going back to the 13th century. Mr. Borgeson emphasizes that the Library is not a "museum," and that the books in the Treasure Room are for use. However, this use will obviously differ from that made of the other works on the library shelves. Monthly exhibits of these rare and valuable volumes serve to stimulate interest and to let the student know that these unusual materials are available to him.

Visual Aid Method

An attempt is being made to illustrate the library's role in legal education by the use of exhibits as a "visual aid" adapted to legal bibliography instruction. The current exhibit is based upon the film, "Case in Point," and is an illustration of the steps taken in the search for a case in point. The student needing help in this field can learn of the variety of materials available, and trace the steps in their use by a study of this exhibit.

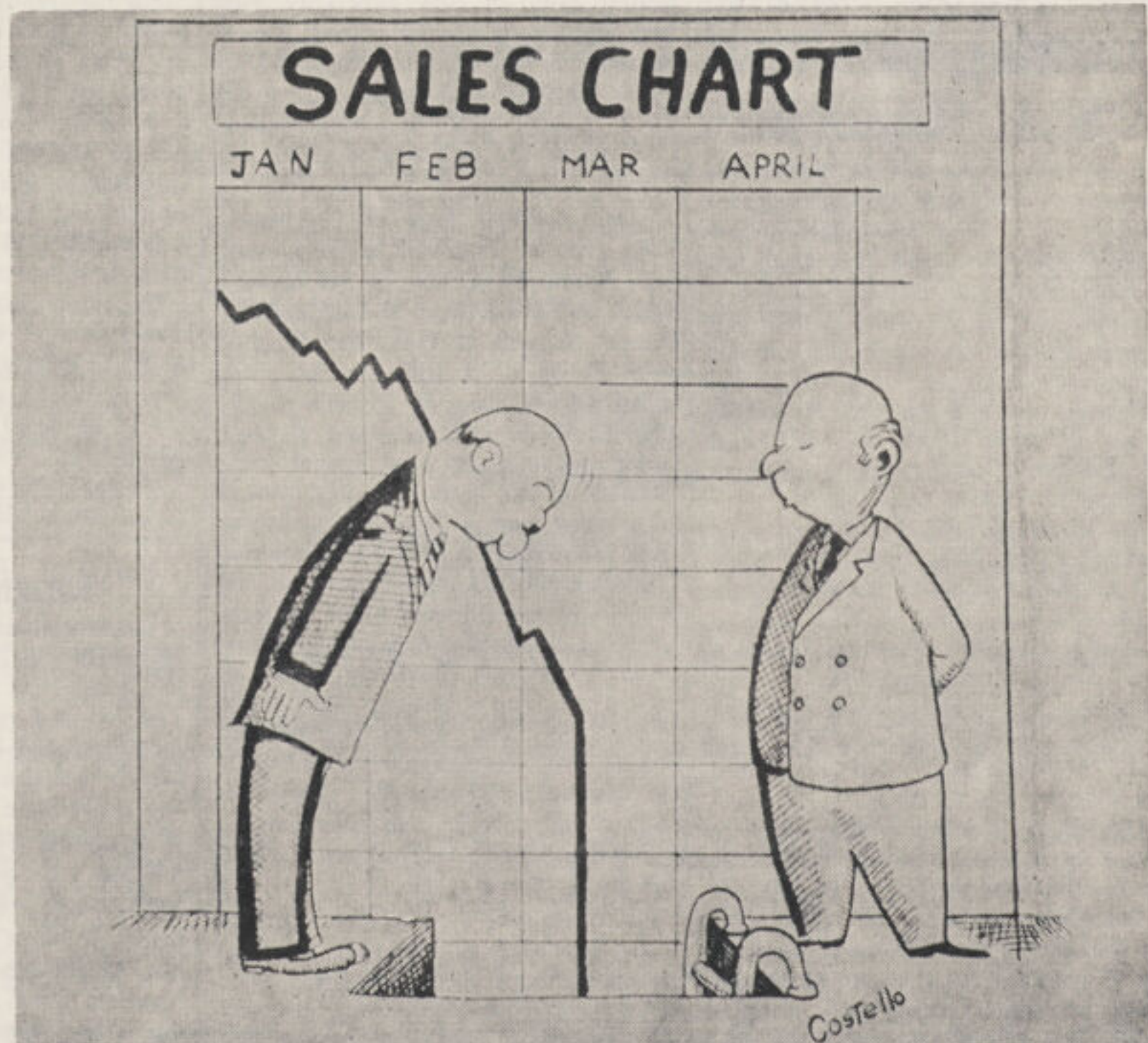
Welcomes Criticisms

To efficiently serve the law student Mr. Borgeson feels he must "keep his ear to the ground." Information comes from the praise or criticism of library service as it is expressed to staff members at the reading room desk. He stresses that considered criticisms are welcome and that he appreciates receiving them directly or through his assistants.

His attention to student problems has led to various experiments in aiding students to make the fullest possible use of library facilities. Among other things, library hours are now longer on Sunday evening during Ames Competition. Also various lighting projects have been undertaken in an attempt to satisfy all members of the law school community.

Beyond confessing to a love of football, Mr. Borgeson would list no major interests beyond his professional work in Langdell Hall. He is the father of three children and resides in Arlington. Mr. Borgeson is a member of the American Association of Law Libraries' Committee on the Index to Legal Periodicals which has its headquarters at the Harvard Law Library, and is also a member of the Corporation of the United States Book Exchange. His training, abilities, and especially his keen awareness of the true meaning and importance of the law school librarian and his relationship to the law student make Mr. Borgeson a most valuable member of the Law School faculty.

G. J. McC.



"I think it's about time we put the new Code in the tax service."

"The Fifth Amendment As A Symbol"

(The following speech was delivered by Dean Erwin N. Griswold before the Practising Law Institute of New Jersey, at Newark, N. J., on Oct. 14, 1954, and before the Connecticut Bar Association at Hartford, Conn., on Oct. 19, 1954.)

The Fifth Amendment provision that a person need not be a witness against himself has been much with us in recent months. Many people, I suppose, though not prepared to say that the Amendment should be done away with, are rather inclined to feel that they have heard enough of it for a while. It has been my lot to think about these problems a good deal over the past several months. A number of earnest and sincere people have written to me, often at some length, and I have considered their arguments carefully. But I have not found anything to change my view that this provision is one of fundamental importance in our legal and social system. Indeed, I have come to feel that it is important not only for itself, but as a symbol of our best aspirations and our deep-seated sense of justice. I am going to try to develop tonight some of the reasons which have led me to this conclusion.

In a speech which I made last spring, I outlined some of the history of the Fifth Amendment, both before and after our revolution. I showed how it arose, almost abruptly, out of the great political struggles in England in the seventeenth century. As a part of our common law heritage it was transplanted to this country, and incorporated into our Constitution with the amendments constituting our Bill of Rights. I stated my view that "the privilege against self-incrimination is one of the great landmarks in man's struggle to make himself civilized." There appears to be no reason to withdraw from that conclusion. Indeed, as I have indicated, this appears to me to be only the beginning, only the foundation, of the real importance of the Fifth Amendment.

As in the case of most matters where the emotions and the judgment may not be in immediate accord, it takes a while for judgment to prevail. Judgment on such matters is helped by full consideration and by better understanding. One of the reasons why it has seemed to me to be desirable to speak on this subject is because it may contribute to that understanding.

Before I turn to the symbolic importance of the privilege against self-incrimination, I would like to present some further discussion of problems raised by the privilege itself. As is the case with many basic ideas and problems in the field of human relations, the questions raised by the Fifth Amendment are far from clear. It is one of those things we take for granted in ordinary times. It is only in times of stress that we really find ourselves devoting thought and effort to the underlying issues. These issues are not fairly represented in terms of black and white. Like all serious problems meriting our close attention, these questions are ones in which there are factors tending both ways. There are questions of degree, and as has been wisely said of such questions, they are none the worse for it. But such questions do require more careful discrimination and analysis than is sometimes given them.

Many people have approached the Fifth Amendment in recent months in a rigid and mechanical way. They say: "A person claiming the privilege against self-incrimination under the Fifth Amendment, or under a similar provision of a State Constitution, is either guilty or else he is lying. Anyone can see that." They say: "It's as simple as two plus two equals four. There are only two ways. If he claims the privilege honestly, he must fear incrimination, which means that if he answers the question, he must admit that he has committed a crime. And if he claims the privilege dishonestly, of course he is lying, and since he is under oath, he has committed perjury. No other explanation is logically possible." That is what we are often told. And on either basis, the person claiming the privilege has condemned himself, and should be forthwith dismissed from whatever he has been doing, and generally blacklisted and deprived of his livelihood. Indeed,

this position has been taken (in entire good faith, I am sure, in a bona fide effort to resolve a problem which I have acknowledged is one of great difficulty) in a number of proceedings involving both academic and non-academic people.

In my previous speeches I have tried to develop some of the reasons why this conclusion may not be warranted in a particular case. It is not true that there are only two alternatives. A person may fear and honestly fear the risk of prosecution even though he knows he has committed no crime. He is entitled to claim the benefit of the privilege in such a case, and an inference that he has committed a crime is simply wrong. Similarly, I have previously tried to develop the confusing effect of the doctrine of "waiver" of the privilege and the influence it has had in many cases in inducing witnesses not to answer questions of the greatest gravity.

It may well be, as has been said by high authority, that the Fifth Amendment protects against prosecution for crime, but it cannot protect against the obvious inference which would be taken by any thinking person. (Cf. *Orloff v. Willoughby*, 345 U. S. 83, 91 (1953).) I would like to suggest again that in many circumstances that inference is not wholly obvious. A person who thinks a little further about the matter may find that there are many factors in some of these situations which must be taken into account before he reaches any conclusion about the inference he should take.

We are often given the example of the bank teller who claims the privilege against incriminating himself when he is asked whether he is the person who stole the missing \$1,000. We are told that such a bank teller would be immediately dismissed; and doubtless he would be, and very likely with great propriety. This example is often advanced as establishing the proposition that the same result should follow as a matter of course in all other Fifth Amendment cases. It is my purpose this evening to suggest to you that it is not as simple as that. The inferences to be drawn, and the consequences which should ensue in these cases may well merit our more careful attention and more discriminating thought.

Without any thought that this is put as effectively and clearly as I would like to be able to do, I am going to try to suggest and outline two distinctions which seem to me to be sound and relevant in our consideration of current problems.

The first matter to which I think we should give careful attention in all of these cases is the nature of the question which is asked, and which the witness refuses to answer under the shelter of the Fifth Amendment. Here again the problem is one of degree. There is no clear and sharply demarcated line. The question whether a bank teller stole funds entrusted to him is one sort of a question. But the closer the question asked gets to the area of opinion and political belief, the less significant, I suggest to you, is the refusal to answer questions. Or to put this another way—the more the interrogation gets into what might be called the free speech area of the Fifth Amendment, the more difficult it is to come up surely with a sound inference from the refusal to answer a question.

Now, I may well be asked: Isn't a conspiracy to overthrow our government by force and violence, using murder and all the other evil methods that the Communists have shown that they are capable of, at least as bad (to put it mildly) as taking \$1,000 from a bank? Of course, it is far worse. But putting the question that way does not help us to advance our thought. The question is not how bad these two things are, but what conduct the person we are considering actually engaged in.

The word "Communist" is used with many meanings. Some people automatically jump to the worst meaning. Yet people who have been Communists in the past, or who have allowed themselves to be used by Communist interests, may in fact have been tempted by the Communist lure while holding less sinister motives and intentions. Their approach may have been made, and

their actions taken, in terms which were to them purely political and innocent. They were, to be sure, quite wrong, and may well by now long since have concluded that they were wrong.

Now, many years later, with the benefit of much hindsight, we see the activities in which these people engaged in a very unfavorable light. But the persons who engaged in these activities, and who had the associations about which inquiries are currently being made, did not act themselves in that light. To them, the questions which are now asked often relate directly to matters which they consider to be their personal beliefs and political opinions. And they know from what they read in the papers, and from what their counsel tell them, that information which they now give about these past acts and associations can lead to criminal prosecution.

So they claim the privilege. This is of course frustrating to investigating or prosecuting officers. In many cases it is unwise from the point of view of the person who claims the privilege. I wish myself that these people would candidly testify as to what they have done, at least before a proper tribunal or agency. But it is easier to wish that someone else would be a martyr than it is to be one yourself. And the point here is that, under these circumstances, the privilege may be claimed without the person having in fact actually done anything criminal at all.

As I have said, it is a question of degree. I am not trying to give a simple or positive answer. I am trying to point out something that has usually been overlooked in recent considerations of this problem, namely, that there may in fact be far less basis for drawing any inference against a person claiming the privilege against self-incrimination when the question he refuses to answer is one which is, or which he feels to be, directed to his opinions or political beliefs. And this has been true of many of the unanswered questions in recent years.

In a proceeding in New Hampshire, a witness has been held in contempt because he refused to answer questions about a lecture he gave, as a guest, at the State University, and because he refused to respond to questions as to his meaning in a certain passage of a translation he had made—a translation, please note—of one of the books of Engels. He did not stand on the Fifth Amendment at all. He did not claim that he would be incriminated by his answer. His position was simply that an American is not to be subjected to questioning by public authority about his opinions or beliefs. If the guarantees of the First Amendment—free speech, free press, free religion—mean anything, and I am sure they do, do they not require protection here. In the New Hampshire case, the issue stands out clearly. I would suggest, however, that in a number of the cases in which the Fifth Amendment has been claimed, the underlying reason, and perhaps the sound reason, is more closely connected with the First Amendment than with the Fifth. In many cases, the Fifth Amendment has been used, perhaps erroneously, as a protection of free speech and free assembly. Where this is the real reason for refusing to answer a question, the inference which might be taken from the refusal may be quite unwarranted.

In this connection, we may recall the sentence with which Tacitus began his *History* more than 1800 years ago. "Rare and happy are the times," he wrote, "when we may think what we please, and express what we think." Tacitus, *The History*, Book I, 1. I have long cherished the deep belief that this is a simple expression of one of the great things for which America stands.

Now I turn to the second factor to which I wish to draw your attention. This, too, is a question of degree. I am referring to the nature of the tribunal which subjects the witness to questioning.

Our courts are for the most part well run. They are presided over by disinterested judges, and are bent on seeking the truth with careful regard for the rights of individuals. They have no axes to grind. They do not move on their own initiative, but only when they are

called upon to do justice. In various ways, through constitutions, through the common law, and through the traditions of the bench and bar, our judges are made, in the language of the Massachusetts Constitution, "free, impartial, and as independent as the lot of humanity will admit."

To a very considerable extent, this is true of administrative agencies and officials. In many areas, high traditions and standards have been developed here. From time to time, Congress has been concerned about the standards of justice maintained by administrative agencies, and statutes have been passed, like the Administrative Procedure Act, to improve that standard. One of the objectives of a number of these statutes is the separating of the prosecuting from the deciding function and the provision of a measure of independence for the person who is called on to decide.

When we come to legislative investigations, we have a wholly different situation. Here, nearly every safeguard which has been developed over the centuries by our courts is thrown out the window. We are told that a legislative committee is not a court, and that court rules do not apply. We are told too that a committee or subcommittee is only conducting an investigation, not a trial, and that Congress or a legislature would be severely hampered in its law-making function, if it was bound by cumbersome court rules. The situation is surely different. Indeed, experience has taught us that the risks are very great in legislative investigations, which might suggest that this was a place where even greater safeguards should be imposed. An any rate, none of the reasons given would seem to be an adequate ground for not recognizing that the rights of the individual, established after so long a struggle, are just as precious before a legislative body as they are in court.

It is of course true that most legislators are thoroughly conscientious and competent citizens. And many legislative hearings are properly conducted, and are of great assistance to the legislative body in the formulation of legislation and in the discharge of other legislative responsibilities. But no legislator is as independent as a judge. All legislators are necessarily and naturally engaged in politics. Why do we not recognize as a matter of course that many of the basic safeguards of individual rights are just as important in a legislative investigation as any place else?

A legislative committee conducting an investigation of an explosive problem inevitably is engaged in politics. I do not use that word in any slighting way. Politics is surely one of the most important activities in a democracy. But any person engaged in politics is constantly and naturally concerned about the effect his actions will have in attracting or repelling votes. This is true in the simplest and most carefully conducted proceeding. Now let us consider an investigation which is not so carefully conducted. Let us mix in a large measure of television, newsreels, radio, after-session press releases, and so on. In this atmosphere, why is it not obvious that disinterestedness retreats to the background, and that this is true with respect to many controversial legislative investigations?

Let me make it plain that I am not referring to a single committee, nor to the present time alone. The widely applauded committee which investigated crime some two years ago was a frequent violator. The large number of disapprovals of its actions by the courts which have followed in its wake should be better known.

And is there anyone who would say that political considerations were not involved in that committee's actions? Reference may also be made to the committee which recently investigated tax-exempt foundations. After developing the case against the foundations, this committee closed its hearing without giving the foundations a chance to present their defense. Such conduct is hardly calculated to foster confidence in the fairness of committee investigations.

And, as I have indicated, this is not a new or merely current problem.

Without going further into the past, there was much that was wrong about some of the investigations in the 1920's. I have been charged with not having criticized the committees of that time, but I can plead infancy until 1925, and youth for the remaining five years of the decade. I surely have no hesitation in saying now that the actions of committees in that period strengthen my belief that a Congressional committee is not a place where the highest standards of the protection of the individual can always be found. The same conclusion can also be rested on an examination of investigations conducted under the aegis of another party in the 1930's.

It is by no means too much to say that in this whole area history teaches us that this is an old problem. And history and careful analysis together show that it is an inherent problem. By rules and standards and other devices, procedure in legislative investigations can be improved over what we have often seen in recent years. But in legislative investigations of controversial subjects, they will be circumvented in one way or another.

At its best a legislative investigation is not too satisfactory a place to be concerned with individual rights, nor for creating confidence in the witness that his rights will be safeguarded and respected. As I have said before, I want to make it plain that individual legislators and many committees have shown that they can be scrupulous in their efforts to conduct hearings fairly and well. And many hearings which are not really on controversial matters are conducted well as a matter of course, and we want to be careful not to interfere with the legitimate and necessary rights of Congress to get information and opinions which will help it in passing laws and carrying out its other duties.

But at their worst, legislative investigations can be quite unsatisfactory, and we have seen some unfortunate examples in recent years. It has been difficult to get legislative bodies to exercise their collective responsibility in this area. Until very recently, each individual legislator has been pretty much a law unto himself. A committee of the Senate has now made a report with respect to a member of that body, and this deals with one instance of the violation of the rights of a witness. That is an important event. Had it been necessary, however, the committee could have found other fish in the same pond.

I have developed this question at some length—you may think at too great length. But it has to be spelled out, I think, because these facts have not been wholly clear, and the general public as well as legislative bodies have been loath to accept the facts and their natural consequences. What is the relevance of the inherent nature of the legislative hearing to the matter with which we are concerned?

Let us stop and think a moment about the situation of a witness who comes before a legislative body in a controversial matter. It may be very hard for you to do, but let me ask you to try to put yourself in the place of such a witness. What does a person do when he finds himself summoned before a legislative committee in which he has no confidence? In recent experience, this has often been a one-man subcommittee, where the witness finds presiding a legislator who is judge, jury, prosecutor, castigator, and press agent, all in one. Our witness is not a lawyer. He has not thought these things through in great detail. He has read about the Fifth Amendment in the papers, and he may have received advice about it from his lawyer—and is it not his lawyer's duty to give him such advice? The witness is frightened by the publicity to which he has been subjected, by the TV cameras and lights, by the noise and confusion, and especially by the excesses which he sees before him. He has no confidence in the proceeding. In this situation, he takes refuge in the Fifth Amendment. It will not do, I think, to say that this is not realistic. I suggest to you that this is a fair description of the situation which has confronted many witnesses over the past several years. It is not a matter of which either we as citizens or our legislative bodies can be proud.

In this circumstance, is it sound to take the inference that the man who refuses to answer questions, especially questions as to his past beliefs and opinions, on the ground of self-incrimination, is either guilty of something heinous or else a liar? I do not think that it is. I think that we should give more heed to the nature of the tribunal, and the character (or lack of character) of the proceeding it is conducting, before we decide what weight should be given to a claim of the Fifth Amendment privilege.

Let me make it plain that I am not seeking to lay down any absolutes. I am by no means saying that every witness who claims the Fifth Amendment's privilege is lily white. Many of them are surely quite black. All I am trying to say is that the determination of that question is, or may be, an extremely difficult one, and any conclusion which is reached automatically is likely to be a wrong one. In some cases, people have to decide what effect should be given to a claim of privilege. In that situation, careful investigation and consideration of all of the circumstances should be given. At the very least I suggest to you again that (1) the nature of the question asked and (2) the nature of the tribunal are matters which merit very careful consideration in evaluating a claim of privilege. There is no necessary relation between the effect which should be given to the bank teller's refusal to answer before a court, and the refusal of a witness to answer before a one-man legislative sub-committee, a question which the witness believes to relate to his past political beliefs.

Instead of decrying the Fifth Amendment, we may well feel satisfaction at the protection the Amendment has given to individuals standing alone, against abuses which for centuries would never be tolerated in any of our courts. The unfairnesses have by no means been confined to the hearing room. Indeed, much of the atmosphere in these matters has been produced by statements, press releases, and speeches made outside of committee hearings. People have often been branded as "Fifth Amendment Communists"—from which the less thinking portions of the general public conclude at once that it has been established that they are conspiratorial treasonous Communists, when there may be no evidence that they are Communists at all. Their claim of privilege may in fact be largely a reflection on the kind of hearing to which they have been subjected, and thus in reality something which should bear heavily against those who are branding them as Fifth Amendment Communists.

And then there is another phrase, which seems to me to reach one of the several low points in this whole area. This is the talk of "anti-anti-Communists," the cumbersome expression being used as if it was an honest way of describing something bad. Let us look at this concoction for a moment. Note that there is implicit in this dual hyphenation the assumption that any anti-Communist must ipso facto not only be good but beyond any sort of criticism. Now, that is an assumption that is surely un-American. Nothing in this country is beyond criticism, least of all the speaker this evening. A thing, an argument, a method, may be anti-Communist, and very bad. A method of anti-Communism may be wholly contrary to our Constitution and to the rights and liberties which we have inherited from our forefathers and which are one of the chief things which distinguish us from the Communists today. We will gain nothing in this country if we adopt essentially Communist methods to protect ourselves against Communists.

It hardly needs to be said that there are many grounds upon which a particular person claiming to be an anti-Communist may be opposed. Hitler was an anti-Communist, indeed a fanatical anti-Communist, and a great many loyal Americans were opposed to Hitler and what he stood for. I am opposed to the methods used by some other anti-Communists. It would be my thought that the intended meaning behind the phrase anti-anti-Communist is quite unfounded. Americans can well afford to see through the zealots who offer that kind of vacuous catchword reasoning to them.

In this connection let me quote a passage from an authoritative study of modern Russia which has just been pub-

lished. This is "The Soviet Regime" by W. W. Kulski, of Syracuse University. In his new book, he says:

"The totalitarian mind accepts all the means which promise the achievement of its ends. A political democrat is ready to compromise some of his ideal ends for the sake of renouncing means which would involve the sacrifice of human lives or freedom. This is the major moral issue dividing any totalitarian, be he Communists or Fascist, from a genuine democrat...."

One of our basic difficulties in this whole area has been our seeking after the illusion of certainty—in this case, in the form of a quest for absolute security. We have been frightened, badly and understandably frightened, by Communism. We have been frightened by an internal Communist menace as well as by a threat from beyond our borders. Indeed, the internal menace has been closer to home and has to some seemed more real and, I suppose, more capable of being actually dealt with. We have, I fear, allowed our concern with the internal threat, which I would not deny, to obscure the fact that the external threat is far more serious. Indeed, one of the great tragedies of recent events, I believe, is the fact that some of the things that have happened in our more ponderous attempts to deal with the internal Communist menace have greatly handicapped us in our efforts to build up our greatest defense to the threat abroad. Unless we are to stand alone, we must rally the free world to our side. Great efforts to that end have surely been undercut by a lack of confidence which our friends have developed in us, based very considerably on events which have occurred in the pursuit of local Communists.

Because we have been frightened, we have succumbed too readily to the thought that Communism could be wholly stamped out at home, and that the way to do it was to stamp, and to stamp without too much concern lest some of the stamping not be confined to Communists. Should it not be clear to us, though, that this quest for certainty, for complete protection, is the pursuit of an illusion? The human mind in many situations often seeks the satisfaction of certainty. Is this not a matter, though, in which we must constantly strive to balance competing considerations? Former Ambassador George F. Kennan, who surely knows much about the Russians and about Communism, said in his recent address on "The Illusion of Security":

"What we have to do is not to secure a total absence of danger but to balance peril against peril and to find the tolerable degree of each ... a ruthless, reckless insistence on attempting to stamp out everything that could conceivably constitute a reflection of improper foreign influence in our national life, regardless of the actual damage it is doing or the cost of eliminating it, in terms of other American values, is the one thing I can think of that could reduce us all to a point where the very independence we are seeking to defend would be meaningless, for we would be doing things to ourselves as vicious and tyrannical as any that might be brought to us from outside."

And there is another passage in that speech which seems to me to be worthy of our consideration as we examine these problems:

"In this personal existence of ours, bounded as it is at both ends by suffering and uncertainty, and constantly attended by the possibility of illness and accident and tragedy, total security is likewise a myth. Here, too, an anxious perfectionism can operate to destroy those real underpinnings of existence, founded in faith, modesty, humor, and a sense of relativity, on which alone a tolerable human existence can be built. The first criterion of a healthy spirit is the ability to walk cheerfully and sensibly amid the congenial uncertainties of existence, to recognize as natural the inevitable precariousness of the human condition, to accept this without being disoriented by it, and to live effectively and usefully in its shadow."

When we recognize that we cannot achieve absolute security, when we rec-

ognize that there are other values to preserve as well as fighting Communism if we are not to lose the very things we seek to protect when we oppose Communism, then we can see the Fifth Amendment in a new perspective. I believe the Fifth Amendment is, and has been through this period of crisis, an expression of the moral striving of the community. It has been a reflection of our common conscience, a symbol of the America which stirs our hearts.

The Fifth Amendment has been very nearly a lone sure rock in a time of storm. It has been one thing which has held quite firm, although something like a juggernaut has pushed upon it. It has, thus, through all its vicissitudes, been a symbol of the ultimate moral sense of the community, upholding the best in us, when otherwise there was a good deal of wavering under the pressures of the times.

The great contributions which have been made in recent months by such persons as, in the first instance, Joseph N. Welch, and later by Senator Watkins and his associates, have been, I believe, the mobilization of the moral sense of the nation to bear upon a related problem. That sense is often latent. It is deeply felt and tenaciously maintained; but it is not easily aroused. We do not in this nation wear our morals on our sleeve. They tend to be a personal matter, and though there may be a great common moral feeling, it is often not easy to bring it to bear upon a difficult problem. But these issues are, to a considerable extent, in last analysis moral issues. And we are a nation that is essentially moral. The Fifth Amendment has played a part in the process of crystallizing our moral sense. It has been a symbol of our moral striving, of our sense of the essential importance and dignity of the individual.

Let me read you a few words from a talk made by Mr. Welch at a recent meeting of Harvard Law School graduates in Chicago.

"It seems to me that we are measuring our reactions in this country certainly by our emotions and not by logic or reason. ... The two principal emotions now in evidence in this country in the area where I was acting are fear and hate, and fear and hate when fanned to a white heat are frightening to me, and anyone who fans these emotions to a white heat, I think, may be doing this country a disservice. ... It is not necessary for us to live in a steady atmosphere of fright and terror. It is not necessary for us to hate as much as it seems to me we do. I have always thought hatred a bad diet, and I must say that I think a steady and prolonged diet of fear and hate might well destroy us. ... It seems to me that in this lovely land of ours there is no problem we cannot solve, no menace we cannot meet, nor is it in any sense necessary that we either surrender or impair, any of our ancient, beautiful freedoms."

One way to evaluate a political instrument is to consider what the situation would be if it did not exist. We may better understand the importance of the Fifth Amendment by considering what not having it would mean. We usually think of the privilege against self-incrimination either in historical terms, in the light of past tyrannies, or in terms of the embarrassment that a witness at a Congressional hearing may experience as a result of the exposure of political mistakes. Let us look, though, at the reverse side of the coin in terms of the standard operating procedures of the police states which have brought the medieval techniques up to date. If we are not willing to let the Amendment be invoked, where, over time, are we going to stop when police, prosecutors, or chairmen want to get people to talk? Lurking in the background here are really ugly dangers which might transform our whole system of free government. In this light, the frustrations caused by the Amendment are a small price to pay for the fundamental protection it provides.

One of the functions of government, based on long experience, is at times to protect the citizen against the government. This function has been performed, to some extent, by the Fifth Amendment, although not always perfectly, and not always without some loss to legitimate government interests. While protecting

the citizen against the government, the Fifth Amendment has been a firm reminder of the importance of the individual.

The Fifth Amendment needs no defense. But if it did, a good way to make it would be to use it, in a sense, offensively, as a reminder of the necessity of maintaining constant vigilance for the protection of individual rights. As a symbol, the Fifth Amendment can be a guide to a number of things which we should be doing better, and which we, as members of the bar, might well be doing more to improve.

Let me outline five points where present practices in the safeguarding of individual rights and liberties often seem to me to leave much to be desired.

1. It has been said by people in a position to know that probably most of the violations of civil rights in this country are committed by the police. Police officers have a difficult task to perform, and they are subject to great pressures in their important work of protecting the community. We have done little that is effective towards developing and maintaining proper standards for the conduct of this work. "Third degree" cases are constantly in the courts. Some 25 years ago, an extensive survey was made of this problem under the auspices of the National Commission on Law Observance and Law Enforcement. The report which resulted was not encouraging. It is difficult to see, though, any improvements which have been made in this area since that time. Most of us simply shrug the problem off, and feel that there is little that can be done about it.

There is need for better standards and practices here, and we ought to be doing something about it.

2. Another problem comes a little farther along the chronological line. I am not familiar with the practices here, but in a good many states, including my own, prosecuting officers are much too free, it seems to me, in making statements to the press. We are often told that a person has confessed. Sometimes, the full text of a confession is printed in the papers, full of lurid details. Sometimes prosecuting officers issue statements or give interviews in which the case is discussed in detail. This seems to me to be not only an impropriety, contrary to the ancient traditions of the bar, but also wholly unfair to the defendant who is entitled to a fair trial in court without a pre-trial in the newspapers. But, in recent times at least, have disciplinary actions ever been taken in such cases? Do our bar associations pay any attention to it at all? I have seen no evidence that they do. It may merit their more careful attention.

3. Now we come to another matter relating to trials in criminal cases. This is a difficult and delicate question. Nevertheless it is an important one, and should not be allowed to go by default as it generally has in the past. I am referring to unbridled publicity in the newspapers both before and at the trial. Of course, we encounter here another principle of great importance, the freedom of the press. But all freedoms carry with them responsibilities; and the press should exercise more responsibility in this area than it has in this country in the past. If the press is unable to work out a way to meet this responsibility, then it should be given some help. As you know, the rules on this matter are very strict in England (and in Canada, too, for that matter) and no one would say for a moment that England and Canada do not have a free press, indeed a press as free as ours.

In this connection, there is a practice that seems to me to be particularly reprehensible, as to which the basic responsibility lies with lawyers rather than with the press. I am referring to the release of evidence to the newspapers, particularly evidence which has been excluded at the trial. It has been known that the jurors in a case read in the newspapers the evidence which the judge excluded from their consideration at the trial itself. Where this practice occurs it should be possible to deal with it by the court or through the bar association. Yet I have never heard of a bar association taking action in such a case.

4. Now we come to another matter. Although our constitutions generally guarantee a defendant the right to be represented by counsel, we often do very little to see that that right is made

effective. Many defendants in criminal cases do not have the means to retain competent counsel. In a great many states, including my own, the provisions for providing counsel in such cases are wholly inadequate. The Supreme Court of the United States has been moving slowly towards a rule that counsel must be furnished, but it has not prescribed such a rule for the states as yet.

But is it not shocking that a person can be charged and tried for burglary or robbery or rape without having the assistance of counsel to advise him and to see that his rights are properly safeguarded, and that what can be said for him is said to court and jury. In a few cities legal aid societies participate in some criminal cases. In a few other cities, there are Voluntary Defender organizations. In a few states, provision is made for a Public Defender. In still other cases, competent counsel are assigned in the more serious cases, while often nothing is done for many others.

Although the problem probably requires legislative solution, this matter is obviously one that is the responsibility of the bar. The bar should be doing more to help to meet that responsibility.

5. Another area in which we have, I feel, failed to live up to our best ideals of the rights of individuals is in the conduct of certain types of trials. Although I am not one who thinks that informers should never be used, there has recently been some rather indiscriminating use of informers. Particularly in loyalty and in immigration cases, and in such matters as the granting of passports and visas, secret evidence is utilized, often from persons unknown to the person who is making the decision. Lack of confrontation has become common practice in these cases. We have done many things in these areas of which we will not be proud in days to come, I verily believe.

We have had to deal with difficult problems in this area, and it may not be surprising if we did not immediately develop adequate procedures. But the time has now come when we should do better than we have been doing. This country was built on individual liberty. It will never be saved in the long run by submerging individual rights in the quest for absolute safety for the state.

There is another matter in connection with the Fifth Amendment which merits careful attention, but which is too large to deal with here. I am referring to the subject of immunity statutes, including the Compulsory Testimony Act which was recently passed by Congress and became law on August 20, 1954. Because I attach so much importance to the Fifth Amendment and the values which it symbolizes, I look with misgivings upon this statute. Experience may well show that my doubts are mistaken. I do not think though that we should take the present Act for granted, or as the final word in this area. Its operation should be carefully observed and objectively appraised.

In considering these problems, the Fifth Amendment can serve as a constant reminder of the high standards set by the Founding Fathers, based on their experience with tyranny. It is an ever-present reminder of our belief in the importance of the individual, a symbol of our highest aspirations. As such it is a clear and eloquent expression of our basic opposition to collectivism, to the unlimited power of the state. It would never be allowed by Communists, and thus it may well be regarded as one of the signs which sets us off from Communism.

I believe deeply in America and in the American people. They have weathered many storms in the past. I am proud of the part that lawyers have played in bringing them through these storms. In times like these, we may well recall an earlier time of stress. One of the great episodes in the history of the American bar came at a relatively early date, when John Adams and Josiah Quincy, Jr., defended Captain Russell and the British soldiers who had participated in the Boston Massacre. The history of the bar is studded with similar acts of courage, in modern times as well as in the past. This is the sort of courage that helps to make a great nation. The bar is slow to move, but it is usually staunch. Let us never forget the great tradition of individual liberty in this country. There are few clearer symbols of this tradition than the Fifth Amendment.

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TAX REPORT—(Continued)

Last year, in addition to the five staff members who provided the leadership for the training program, and the professors of law, economics, and business whose regular courses the trainees attended, 16 experts from this country and abroad took part in various phases of the instruction.

As an integral part of his work, each trainee was required to complete a research paper on a problem in his own country. "Taxation of Coffee in El Salvador" and "Taxation of Business Enterprises in Iran" were among some of the topics chosen. A mimeographed volume of summaries of these reports was prepared for the Program's future use and copies have been supplied to the United Nations and the Foreign Operations Administration. The full reports will be published in their own countries by some participants.

World Tax Series

One offspring of the International Program bids fair to outgrow its parent. Last year the United Nations sought Harvard's co-operation in the preparation for publication of a series of reports on national tax systems. The plan received the financial support of over 50 corporations with investments abroad, and a three-year program with a \$175,000 budget has been set up. Correspondents in 30 countries will co-operate with a central staff of experts on foreign taxes at Harvard in preparing this "World Tax Series," to be published in 30 separate volumes during the next three years.

Results of all the tax research carried out under the Program have been used in the development of several Law School courses and seminars in the field of international trade and investment. Members of the staff have co-operated with Law School faculty members in the planning and actual direction of seminars, and both have joined in the preparation of teaching materials based on the Program's work.

Other Projects

Space limitations prevent explanation of the studies of the relation of taxation to U.S. foreign investment, the Conference on Agricultural Taxation and Economic Development held here last January, and other projects being conducted by the Program. A statement accompanying the Report outlines the activities which will be pursued over the next five years provided additional funds are procured from interested governmental and private sources.

Offices of the International Program in Taxation are in Kendall House, near Langdell Hall, and the Program is under the direction of Professor Stanley S. Surrey of the Harvard Law School.

Democrats Choose Officials For Year

Alan H. Strauss, 2L of Utica, N.Y., was elected President of the Law School Young Democrats at a meeting held last Thursday. Robert H. Quinn, 3L of Dorchester, was chosen Vice President.

Elected to the other offices were: Robert L. Nessen, 2L of Brookline, Corresponding Secretary; Raymond A. Guenter, 1L of Buffalo, N.Y., Recording Secretary; and Theodore L. Kesselman, 1L of Youngstown, Ohio, Treasurer.

Class representatives to the Executive Committee were also chosen. These are: Donald Schwartz, 3L of Scarsdale, N.Y.; Lee Sylvester, 3L of Rochester, N.Y.; Frank Duffy, 2L of Dunmore, Pa.; Marvin Resnick, 2L of Worcester; Martin Seham, 1L of New York City; Ronald Solomon, 1L of Columbus, Ohio.

The newly elected officers announced their support of Democratic candidates for office in November. In addition, the group will present discussions of contemporary political issues by speakers "representing all facts of political thought within the Democratic party."

DRAFTING—(Continued)

an employee in terms that must fit the employment contract.

Thomas B. Bardos, 3L of New York City, Drafting Chairman, stated that this year's topics were drawn specifically with an eye to point up the dangers of poor drafting. The competition, he added, serves to give the contestant a practical education in the decisions and procedures which are implicit in the prelitigation stages.

Ames Judges

In its other capacity, the Board of Student Advisers has announced that second- and third-year students interested in judging Ames arguments will have an opportunity to do so if they submit their names to the Board offices. Student judges will compete for awards for the best written opinions.

The Board has also made known that 264 second-year students will participate this year in the qualifying round of the Ames Competition. For the first time in recent history, the Board has collected a sufficient number of cases so that every argument will be concerned with a different fact situation.

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ALUMNI—(Continued)

the library to send photographs of documents to lawyers requesting them.

From the students' point of view, perhaps the most important objective of the Fund is securing 100 gifts of \$800 for use as tuition scholarships during the next academic year. Last year over \$62,000 was given to the Fund to be distributed for this purpose. Substantial additions to the scholarship endowment of the School were made as well.

During the week following the Saturday meeting letters explaining the need for contributions will be sent to all alumni by S. Pearce Browning, Jr., LL.B. '25, the National Chairman. State and local chairmen will contact by mail or telephone those alumni who may have overlooked the first letter.

In the spring, class groups under the direction of National Vice Chairman Kurt F. Pantzer, LL.B. '17, will renew solicitations until the fiscal year closes in June. Vice Chairman Karl E. Seyfarth, LL.B. '25, will be concentrating on organizing the fund raising system in the middle west.

Methods

While all this is in progress, there will be three committees attempting to accomplish special objectives. The scholarship committee under the chairmanship of William P. Palmer, LL.B. '20, will try to obtain sufficient donations to provide the scholarships mentioned above. Assisting him will be Vice Chairman Henry L. F. Kreger, LL.B. '20, and Associate Chairman John C. Buchanan, LL.B. '12, the former Chairman of the committee.

The Library committee, led by John M. Dry, LL.B. '32, will endeavor to interest various corporations in supporting the library, especially in the area of foreign and special collections. Corporation attorneys who use the library will be approached first.

Non-alumni parents of present students, who are the immediate beneficiaries of the Fund, will be given the opportunity to contribute by the Parents' committee. Last year 209 parents donated approximately \$6000.

All activities will be co-ordinated by the central office of the Fund so that duplication in contribution requests will be avoided as far as possible by the various sub-committees, local committees, and class workers.

Alumni Notes

LL.B. '32—Robert L. Stern, formerly First Assistant to the Solicitor General of the United States, and for over a year Acting Solicitor General, has become a member of the firm of Mayer, Meyer, Austrian & Platt in Chicago. The second edition of Stern and Gressman, *Supreme Court Practice*, of which he is a co-author, takes account of the new Supreme Court rules and was published this summer.

LL.B. '42—Charles B. Garabedian is now engaged in the general practice of law in Boston.

James M. DeLoreto is engaged in the general practice of law in Santa Barbara, Calif.

Arthur L. Krenzien has entered the business world as a merchandise broker and manufacturer's agent in 17 mid-western states.

Ed Freutel is a partner in the firm of O'Melveny & Myers, Los Angeles, Calif.

LL.B. '49—William Allen Rahill announces the opening of his offices for the general practice of law in Philadelphia.

LL.B. '51—Edwin W. Tucker, presently on active duty with the United States Air Force, has received the Republican nomination for the New York State Senate from the 17th Senatorial District.

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Frustrated 'Pro-Americanism' Explains European Criticism Of Us, Says Gower

"Criticism of the United States in Europe is not evidence of anti-Americanism but of disappointed pro-Americanism," Visiting Professor of Law Laurence C. B. Gower declared at the Coffee Hour Tuesday.



Laurence C. B. Gower

"All Europe recognizes only two first-class powers in the world today," he continued, and "the slightest move of giants make their friends nervous." He added that almost all Europeans look to the United States as a potential savior from the U.S.S.R., but they feel that war is as disastrous an alternative as the expansion of Communism. Therefore, they criticize what they believe to be inept handling of certain situations as likely to effect adversely European chances for survival.

McCarthyism Hurts

Prof. Gower stated that American domestic policies, because they are so linked to foreign relations, should not be inviolate to criticism.

Communism, he said, is a religious as well as an economic force in Europe, and it must be countered with an idealistic appeal from the United States. Such an appeal could be summed up in the word "liberty," and when Europeans believe they see increasing encroachments made on the sphere of traditional liberties, they feel it their right to criticize. McCarthyism, he states, has done tremendous harm to United States prestige in Europe.

Other common causes for criticism of the United States, Gower added, are the race problem and the degrading restrictions on the entry of foreigners into this country. The latter, he added, is likely to be exploited by the U.S.S.R. as a contrast to her new "open door" policy toward foreigners.

Characterizing his viewpoints as that of "an average unintelligent European," Prof. Gower stated his political position as slightly left of center. "Some might call me a pale pink egghead," he said.

The United States, he stated, feels that Europe exaggerates this feeling at a place like Harvard, where you would not be thrown out of a job if you admitted that you were a Communist, he continued. But the Europeans hear about the cases of teachers being fired in other

places. Europeans feel that if a person is a Communist, then one may attack his views violently but one should also support his right to believe what he wants. Freedom for all to believe and speak the same thing is no freedom, in their minds.

Prof. Gower added that we are free to criticize Europe. He believes this criticism is not resented, but that it is sometimes unfair. For example, calling the British national health system "socialized medicine" is nothing more than labelling the program with a vituperative epithet—it is not a valid criticism.

Prof. Gower quoted from an article in *The Times* (London) "no nation ever came into such power for good or ill," and he added that no nation had exercised such power with such success. The fact that half of Europe is outside the Russian sphere is due almost entirely to the United States. Europe is grateful for that, but Europeans don't want their gratitude to require them not to criticize.

Civil Liberties Union Hears Howe Speak

Thirteen new members joined the Harvard Law School Civil Liberties Union at an organizational meeting held on Oct. 15, according to the Union's president, Lawrence E. Erbst 3L, of Flushing, N. Y.

Prof. Mark DeWolfe Howe was principal speaker at the meeting. He explained the role that law students can play in the fight to protect civil liberties, the advantages to students from participation in civil-liberties work, and the possible consequences of membership in the American Civil Liberties Union and such affiliates of it as the Law School group.

Students can help civil-liberties groups not only in research for briefs, but in the area of legislation. Howe said that as well as resitting efforts to pass laws restricting liberty, law students could participate in the drafting of legislation that would protect the rights of the people.

Howe noted that some people seem to believe that the ACLU defends only Communists; actually the ACLU defends no one. It leaves the defendant to secure his own counsel. But the organization argues as *amicus curiae* on particular points of law involving civil liberties. Furthermore, the ACLU appears in cases involving anyone whose rights seem to be in danger.

Still, said Prof. Howe, it is conceivable that someday membership in the Civil Liberties Union might be looked at askance when present members seek Federal employment. This remote possibility should be soberly considered before one joins such an organization, said Prof. Howe. There are two choices—to stay clear, or to join "to restore a little sanity to our society." Howe considers the latter course the wiser one.

Herter Will Attend HYRC Coffee Hour

On Oct. 21 at 2:45 p.m., Gov. Christian A. Herter of Massachusetts will address a Young Republican coffee hour in the Senior Common Room of Dunster House. The Governor's address, a discussion of his legislative program, will be open only to members of the Harvard Young Republican Club.

Election Rally

Governor Herter, Senator Leverett Saltonstall, and other Republican leaders will appear at a public election rally on Oct. 22 at 8 p.m. in the Hotel Commander. The function will be held in the Mt. Vernon Room.

Anyone interested in such phases of political activity as checking at the polls, campaigning for local candidates, or driving voters to the polls should contact John Stevens at EL 4-0256.

The Law-Graduate School Committee of the Harvard Young Republican Club announces that applications for absentee ballots and information about absentee voting in the various states can be obtained by contacting Edward Pincus, 3L, or John Luckson, 3L, at EL 4-4582. Absentee ballots must be filed with the appropriate state election officials by Oct. 26.

The yearbook picture of the Committee will be taken Thursday, Oct. 21 at 1:45 on the front steps of Langdell Hall.

Voluntary Defenders

The Harvard Voluntary Defenders today announced the selection of 13 new members. They were chosen on the basis of their response to a problem in the field and an oral examination. There were approximately 50 candidates from the second-year class.

New Members

The new members are: Philip M. Cronin, Cambridge; Robert B. Glynn, Passaic, N.J.; Stanley Hagendorf, New York City; James R. Hillas, Madison, N.J.; Griffith H. Jones, Montclair, N.J.; Rudolph Kass, Cedarhurst, N.Y.; Jerome L. Levinson, New York City; Arthur W. Mudge, Milledgeville, Ga.; Hamilton F. Potter, Jr., Smithtown, N.Y.; Thomas R. Remington, Rochester, N.Y.; V. Michael Scanlan, New York City; Frank E. Schwelb, New York City; and Gordon Werner, New York City.

NEWS IN BRIEF

KING'S BENCH

The first of a series of King's Bench faculty-speaker luncheons will be held this coming week. Announcements as to time and place will be on classroom blackboards.

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Friendly Addresses Bull & Bear Club; Blames CAB For Airline Stock Decline

The paradox of low investor regard for airline securities despite their record of high earnings and growth was chosen by Henry J. Friendly, LL.B. '27, as the topic for his address to the Bull & Bear Club last Friday. Mr. Friendly is a partner in the firm of Cleary, Gottlieb, Friendly & Hamilton of New York City, as well as General Counsel, Vice President, and a director of Pan American World Airways System, with which he has been associated since 1929.

Paradox

Establishing the paradox by statistical comparison of three leading airlines with industrial and utility growth issues, Mr. Friendly proceeded to discuss possible reasons for the disinclination of the public to invest in the air transport industry. Dismissing as unsatisfactory the most commonly advanced theories—overpricing in 1946, aggravated by the airlines' private depression of 1947, subsidies, and low dividend yield—he suggested other explanations.

A conservative depreciation policy based on obsolescence rather than physical deterioration has resulted in reported earnings reflecting the transfer of depreciation reserves to profit upon sales of equipment. Inflation has served to magnify this factor.

High Return

The possibility that the CAB may reduce passenger rates is suggested by a return on investment which is relatively high for a regulated utility. The chances of an adjustment seem faint, however, because the CAB dropped such an investigation last year and there seems to be no public clamor for a reduction. Moreover, the effect of a rate reduction on smaller lines would be very severe; cargo rates have recently been raised to assist this class of carriers.

The dual role of airlines as both utility and industry causes trepidation as to the effect of a general economic downturn. Although rates are regulated, airlines in time of depression could not expect a volume of business nearly so stable as that of an electric company, for example.

Lack of Confidence

Mr. Friendly concluded that the disfavor of airline securities reflects a lack of public confidence in government regulation. He cited laxity on the part of the Board, certification of too many air-

lines between many destinations (and the effect of this in a depression), absence of a definitive policy regarding unscheduled airlines, and reversals both of specific decisions and principles, often obtainable by sheer perseverance by a given interest.

Investors Aware

While investors may not be aware of specific infirmities in government regulation, a general awareness of them nonetheless permeates the investment market. It is upon this basis that Mr. Friendly explains the paradox with which he began his talk.

The next meeting of the Bull and Bear Club will be held on Friday afternoon, Oct. 29. As yet the speaker for this program has not been announced by the Club.

Law Wives Attend Mrs. Griswold's Tea

The number of married students enrolled in the Law School this year is 342. This means approximately that number of wives will be banding together to sit out the desolate stretches during Ames Competition, examinations, term papers, tax seminars, and interminable legal discussions. The official organization for these young women is the Harvard Law Wives Club.

Highlight of fall activities for Law Wives is the annual tea given by Mrs. Erwin N. Griswold. Held on Oct. 14 this year in Harkness Commons, the tea was well-attended by wives of faculty members, women law students, and law wives. Mrs. Griswold welcomed each guest and gave a short talk on the value of the Law Wives Club.

Meeting Last Night

The first Law Wives meeting of the year was held last night, with Asst. Dean Louis A. Toepfer as guest speaker. Among those present were Mrs. Griswold, Mrs. Louis Loss, and Mrs. Charles Haar, who will serve as sponsors for the group this year.

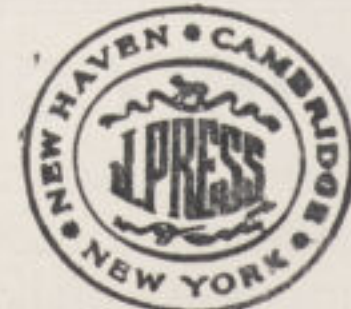
The next meeting will be held Wednesday, Oct. 27, at 8 p.m., in the large meeting room of Harkness Commons. Mrs. Ruth Wakefield, proprietress of the Toll House, will tell some of the interesting history of this famous restaurant and surrounding countryside.

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