

Harvard Law School Record



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Faculty Honor Seavey, Cavers For Services To Law School

On Monday night the faculty honored Professor Warren A. Seavey and Associate Dean David F. Cavers at a dinner in Harkness Commons. Prof. Seavey, who retires from the faculty this spring, was presented with a handsome plaque on behalf of the Faculty of the School by Vice Dean Livingston Hall.

Vice Dean Livingston Hall reviewed Prof. Seavey's teaching career and then presented him with the plaque on behalf of the Faculty. Prof. Seavey has been teaching law for nearly 50 years, Dean Hall pointed out; he founded two law schools (Pe Yang, Tiensin, China and the A.E.F. University law school after the first World War) and has been dean of a



Warren A. Seavey

third (Nebraska). Furthermore, he taught at four other law schools before joining the Harvard faculty permanently.

After the presentation of the plaque, Mr. Seavey replied. He stressed the importance of faculty members being available to give advice and help to students.

President Nathan M. Pusey of Harvard University was present at the dinner.

Dean Erwin N. Griswold talked about Dean Cavers' work in securing the recent Ford Foundation grant to the Law School for international legal studies. After World War II the School had to find a suitable way to use its large collection of books dealing with international law. Dean Cavers' suggestion was that the

School make its collection the basis for an expanded program of international research.

He worked on plans for this new program over a period of five years. The Ford Foundation approved Mr. Cavers' proposals and gave the School \$2,050,000 to carry them out. The grant is the largest single gift ever received by the Law School.

The plaque presented to Prof. Seavey carries the following inscription:

Presented by his colleagues on the Faculty to WARREN ABNER SEAVEY, A.B. 1902, LL.B. 1904, Bussey Professor of Law, to commemorate nearly thirty years of teaching at the Harvard Law School.

He has been a friend to generations of students and teachers, who have been trained by his searching mind. Through his work on the Restatement of the Law, he has revitalized Torts, sorted out the tangled principles of Restitution and Judgments, and given new shape to ancient concepts in Agency. As Chairman of the Committee on the Curriculum in 1934-36, he had a major share in refashioning legal education at the Harvard Law School.

March 7, 1955

SPEAKER



—Chase Ltd., Photo

Ralph H. Demmler, Chairman of the Securities and Exchange Commission, will address the Bull & Bear Club on Monday, March 14 in the Meeting Room of Harkness Commons at 1:40 p.m. He will speak on "Current Problems in the Administration of Securities Regulating Acts."

Mr. Demmler was born in Pittsburgh and studied at Allegheny College. After obtaining his LL.B. at the University of Pittsburgh Law School in 1928 he joined the Pittsburgh firm of Reed, Smith Shaw & McClay. In June, 1953 he was appointed SEC Chairman by President Eisenhower.

The Record Reviews:

"The Fifth Amendment Today"

The 5th Amendment Today, by Erwin N. Griswold. Harvard University Press, Cambridge, 1955. Cloth, \$2; paper, \$50. 82 pp.

Seventy-one individuals who appeared before Senator McCarthy's famous Permanent Sub-committee on Investigations during its hearings in 1953 invoked the Fifth Amendment privilege against self-incrimination by refusing to answer the ultimate question of Communist Party membership. To one of them the Senator said:

"... That is normally taken by this committee and the country as a whole to mean that you are a member of the Party, because if you were not you would simply say, 'No,' and it would not incriminate you. You see, the only reason that you have the right to refuse to answer is if you feel a truthful answer would incriminate you. An answer that you were not a Communist, if you were not a Communist, could not incriminate you. Therefore, you should know considerable about the Communist movement, I assume."

A special committee of the American Bar Association in 1953 concluded in a unanimous report that as to a lawyer who refuses to testify for fear of incrimination "... in asserting this right he himself has thereby disclosed disqualification for the practice of the law." But in the same year a strong majority of a standing committee of the New York City Bar Association, in reporting upon a proposal for disbarment of lawyers who refuse to testify on this ground, said: "The frontal assault on the privilege has gotten nowhere because ... the privilege is regarded by most persons as one of the fundamental civil liberties." Lawyers of mature experience are divided on some of these issues and the lay public has become thoroughly confused. All of us are called upon under the pressure generated by our fear of communism to re-examine the standards and the procedures which constitute the balance between the security of our society and the right of the individual citizen to freedom of opinion and belief, even to wide variations from communal orthodoxy.

It is against the more general background of the arresting problems of which the foregoing incidents are typical, that

Dean Griswold in 1954 delivered the three short addresses which now comprise this slender volume on the Fifth Amendment. A single hour's reading of this offers a sketch of the origin and development of the Amendment and of its essential place today, chiefly in the field of loyalty and security investigations, especially by legislative committees. The book is an introduction to the principles of constitutional law and public morals in this area that should be especially helpful to law school students.

The first and third of these address-essays should be read together for their provocative, temperate analysis of the moral function of this Amendment in a (See AMENDMENT on page four)

Toland Team Takes Title In Drafting Competition

The winners of the 1955 Drafting Committee have been announced by the Board of Student Advisers. The best entry in the contest was submitted by the team of Joan E. Toland of Grand Rapids, Mich.; Lester L. Ward of Pueblo, Colo.; Richard Rodwin of New York City and John F. Bok of Belmont, all third-year students.

The contest was judged by George Fingold, Attorney General of the Commonwealth of Massachusetts. The subject on which the teams drafted laws was movie censorship. Parts of Fingold's opinion are printed below:

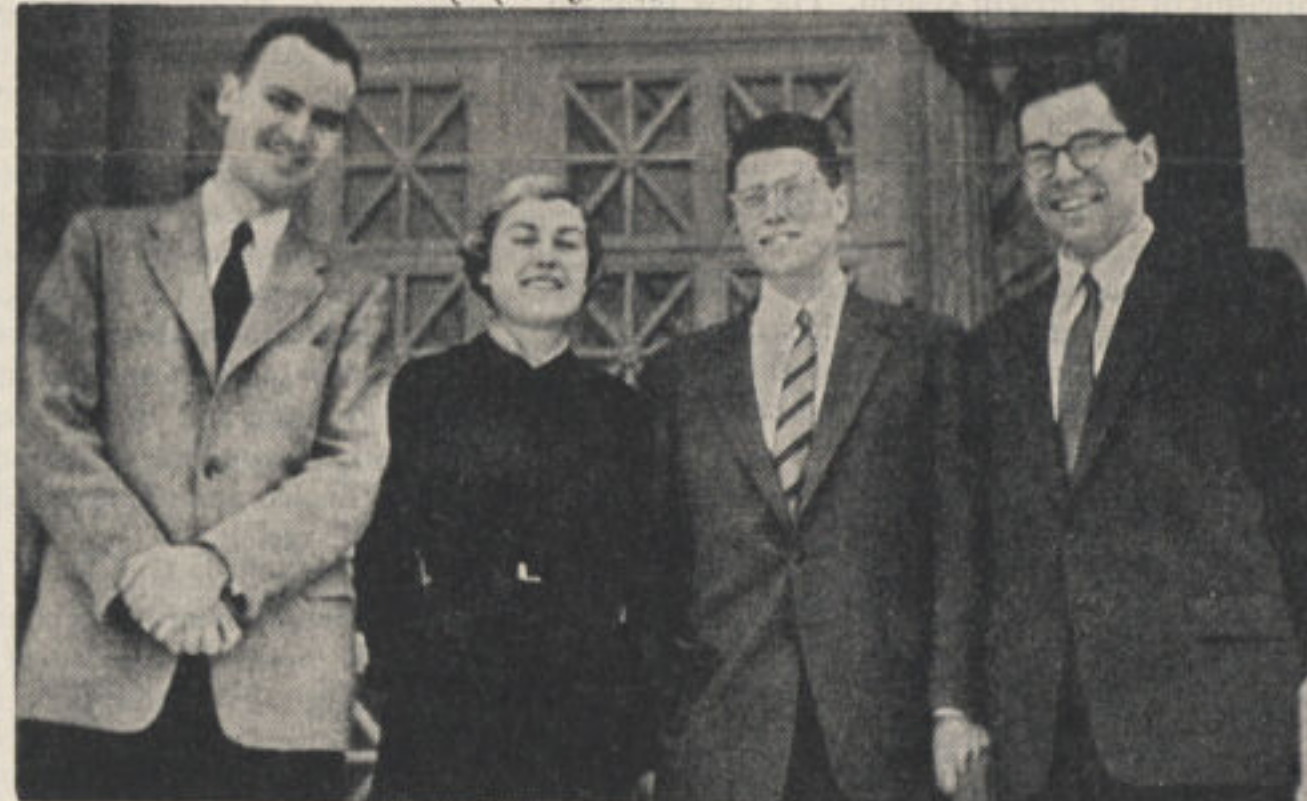
Although, as I shall later suggest more at length, the proposed bill prepared by the staff of Toland, Bok, Rodwin, and Ward should, before its final submission to the General Court, be redrafted in part by counsel to the senate or house under G.L. c. 3, §52, it is, in my opinion, the best of the three drafts which you have sent me. I shall discuss it more fully in later paragraphs, referring to it, for convenience, as the Toland Bill.

The proposed bill filed by the group of Smith, Brewster, Neiditz and Wittenburg (hereafter sometimes called the Smith Bill) is principally objectionable, in my opinion, because, by removing the power originally to license motion pictures from the mayors and selectmen of the Commonwealth (see §9 of Bill), and by making no provision for that power to be exercised otherwise, it would permit any motion picture, however objectionable, to be shown at least three weeks (see §5e of

Bill) before action against it could be taken; indeed, were the exhibitor to seek all the rights of review open to him under the Bill, and to continue his exhibition meanwhile, the picture could be seen for a far longer period. I do not believe that §8 of the Bill would fully remedy this defect, and while existing criminal statutes might be invoked against the exhibitor of such a motion picture, it seems to me that the principal purpose of the desired legislation—the constitutional "prior restraint" of improper motion pictures—has not been attained.

The proposed Bill filed by Messrs. Berry, Sammond, Sherill and Smith (hereafter sometimes called the Berry Bill) comes closer, in my opinion, to the result which you want to reach. However, certain of its provisions are objectionable.

In my opinion, the Toland Bill is sound in principle, and (aside from the minor technical defects noted) well drawn. If, in its wisdom, the general court enacts it into law, I do not believe that any court will, without difficulty, be able to hold it invalid.



DRAFTING COMPETITION WINNERS
Lester L. Ward, Joan E. Tolman, Richard Rodwin, John Bok

Middle East Crisis Up For Discussion

The Arab-Israel dispute will be discussed at two programs, to be presented by the Law School Forum next Friday and Saturday evenings, March 18 and 19.

On Friday, Dr. Stringfellow Barr and Abdul Monem Rifa'i will speak. Dr. Barr, a leader in the Quaker movement, is president of St. John's College in Maryland. Mr. Rifa'i is the Jordanian ambassador to the United States.

The next evening, Abba Eban, ambassador from Israel to the United States and the United Nations, will present his country's point of view. Dr. Rev. Benjamin Nunez, Costa Rican representative to the UN, will speak "for the independent view of the smaller nations," the Forum said.

The situation in the Middle East has been critical since 1948, when Israel won her war for independence by defeating the armies of six Arab nations who opposed the UN partition plan. Recently, Israel soldiers assaulted an Egyptian army base in what Israel termed retaliation for constant border attacks.

Moderators for the sessions will be Prof. William Langer, director of Harvard's Center for Middle Eastern Studies, who (See MIDDLE EAST on page four)

Prospects For JAG Commissions Poor, Dean Toepfer Discovers In Washington

Prospects for third-year students seeking army commissions in the Judge Advocate General's office are poor, Assistant Dean Louis A. Toepfer told the RECORD this week. Dean Toepfer told the RECORD this week. Dean Toepfer went to Washington in late February to talk to Major General Eugene M. Caffey, Army Judge Advocate General, about the opportunities available to graduating seniors.

Last year JAG was permitted to commission 200 men as first lieutenants directly from civilian life. About 27 were members of this law school's graduating class. The situation this year has materially changed due to the intended reduction in the strength of the army. At the present time the number which JAG will be permitted to commission is uncertain. At best, 200 will receive commissions, but it is believed that the number will be substantially less.

Although tentative plans call for 50 September appointments, June graduates will not be considered. Men wishing to apply for commissions must graduate, pass the bar, and be admitted to practice before their applications will be accepted. It is hoped that another class of 50 can be appointed next January. If so, June graduates will be eligible.

Men who have been admitted to practice

may obtain the application forms from the appropriate office in the military district where they live. After applying, the candidates are interviewed by a panel of civilians and officers in their district, the panel determining whether or not a particular applicant has the personal qualities necessary for a commission. If approved, the application is forwarded to Washington, D. C., where it is considered by officers in the JAG office.

Of primary concern here are academic grades and recommendations of professors. Last year, when 200 were selected, virtually no one was appointed who was below the top seven percent of his class. With fewer openings this year, it is clear that only those with the highest academic standing will qualify. In occasional instances, the department permits outside activities and responsibilities to compensate for lower academic standing.

Successful applicants are commissioned first lieutenants and serve three years. Training consists of several weeks of an indoctrination course in elementary military subjects, followed by a course in military justice at JAG school at the University of Virginia. Men who are drafted before they are commissioned will be transferred to JAG and commissioned when their commissions are approved.

LAW WIVES

The Law Wives meeting will be held on Wednesday, March 16 at 8 p.m. in Harkness Commons. The speaker will be Mr. William Templeton Christie, who is an interior decorator. His topic will be "Decorating for You."

Chancery Selects Chancellor Larson

The Chancery Club held its annual election of officers on Monday evening, March 7. Those elected to the Board of Governors were: Chancellor, Robert L. Larson, 2L of Rockford, Ill.; Vice Chancellor, Thomas W. Crockett, 2L from Jackson, Miss.; Secretary, Raymond F. Dacek, 2L of Shaker Heights, Ohio; Treasurer, Richard E. Haesemeyer, 2L of Rockford, Ill.; Alumni Secretary, David Hall, 1L from Oklahoma City, Okla.; Member-at-Large, David E. Clinkenbeard, 2L of Seattle; and Member-at-Large, Hilton H. (Spike) Dier, Jr., 2L from Lake George, N.Y.

On next Wednesday evening, March 16, the Chancery Club will have the annual spring formal banquet, at the Hotel Continental in Cambridge. The Honorable Raymond S. Wilkins, of the Massachusetts Supreme Judicial Court, will be the guest speaker, introduced by Judge Calvert Magruder.

The Harvard Law School Record

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Fairer Play

On March 5 the Eisenhower administration released an exchange of letters in which Attorney General Herbert Brownell suggested, and President Eisenhower approved, some important changes in the present security program for Federal employees. The question immediately comes to mind, do these changes meet all the valid objections that sober critics have raised to the present system?

Harold Riegelman concludes a two-part article in today's issue of the RECORD with seven major criticisms of the present system. The new program deals with four of the problems raised by Mr. Riegelman and leaves three in their present position. In addition, Mr. Brownell proposes two other changes of some importance in the system.

Riegelman (as well as other critics) points out that investigations of employees dredge up a share of untrustworthy derogatory material—gossip, distortions, and malicious lies. He suggests evaluation of such information by the data-gathering agency. Brownell proposes no changes in this aspect of the security program.

Charges against employees have been vague; sometimes the security panels decide cases on the basis of charges not made known to the employee at all. Brownell says that charges should be made as specific as possible and should be drafted in consultation with the general counsel of the agency or department concerned. On paper this reform gives promise of meeting the problem of amorphous charges.

Suspension without pay is an undue hardship on the suspected Federal worker, Mr. Riegelman suggests. His remedy would be to pay the employee until he is found unfit. Brownell proposes that decisions on suspension should be made at a high level after talks with the employee. Furthermore, advice of department legal officers should be secured before suspension.

Mr. Riegelman notes three points in connection with hearings before the security board: the accused has no right to subpoena witnesses or to confront primary accusers, and the panels do not adhere to the rules of evidence (especially about hearsay). Now the government proposes to make "every effort" to produce witnesses against the accused and to permit adequate cross-examination.

Brownell proposes to have a legal officer present at all security hearings to advise the panel and the accused, if need be, on procedural matters. The purpose of this proposal is as yet unclear.

There is no effort in the revised security system to provide an appellate security board, although critics believe a system of appeals is necessary if justice is to be done.

Mr. Riegelman has suggested that employees recover costs after they are cleared. The Attorney General's revision does not (as it could not) make such a reform.

Mr. Brownell's revisions will require department heads to assess periodically the membership serving on security boards; board members must have "the highest degree of integrity, ability, and good character."

It is encouraging to see so many important and necessary changes being made by the executive branch of the government. Mr. Brownell has made an excellent start in the necessary job of revising the security system to offer the maximum justice to Federal employees.

Gallery

KENNETH O. SHATWELL
Dean
University of Sydney Law School



Kenneth Owen Shatwell, Challis Professor of Law and Dean of the Faculty of Law at the University of Sydney, Australia, has just completed a month's stay at Harvard Law School. In America with his wife and two children since last Oct. 1, Dean Shatwell has visited law schools at the Berkeley campus of the University of California, Stanford, the University of British Columbia, George Washington University, and the University of Virginia, and will visit Yale, New York University, and Columbia before proceeding to Great Britain and the Continent. With the assistance of a Carnegie general grant, he is spending a year considering with lawyers and law professors the broad question of what constitutes an effective legal education and what the requirements for admission to the bar should be. He is paying special attention to the teaching and curricula in American law schools.

Emigrated from England

Dean Shatwell, a man of thoughtful mood and genial disposition, was born in Cheshire, England, in 1909, attended King Edward VI Public School, and took his Bachelor of Arts and Bachelor of Civil Law at Oxford. After teaching law two years at the University College of Hull, he emigrated to Australia in 1934 to become Dean of the Faculty of Law at the University of Tasmania, where he taught a wide range of subjects including Contracts, Torts, Jurisprudence, and Legal History, and where he even managed to find time to play rugby on the team for Southern Tasmania. During the war years the Dean, commissioned in the Australian Royal Navy, served first with the British fleet in the North Sea and in the North and South Atlantic and Indian oceans. Soon after the outbreak of the Japanese war he saw service in the Pacific, commanding mine sweepers and similar small vessels.

In 1947 the little law school at Tasmania, which has an enrollment of about 40 students, lost Shatwell to the University of Sydney, which includes Australia's most famous law school. Sydney, the only law school in the populous state of New South Wales, has about 600 students, including a number of women. Under Dean Shatwell are two professors of law, three readers, four senior lectures, a dozen teaching fellows, and over 20 part-time lecturers. It is to be noted that a professor is the equivalent of a department head, Dean Shatwell commented. Furthermore, proposals for establishing two assistant professorships have been advanced.

A legal education at Sydney, consisting of 23 courses spread over either a four-year or five-year program, is an arduous one with its "fearsome battery" of tests each year. The marks are kept confidential, and at the end of the program a small number of the graduating students emerge with first-class or second-class honors.

In New South Wales lawyers are divided into barristers and solicitors, the latter being required to serve a three-year apprenticeship if they have a degree from Sydney, but a five-year apprenticeship if they wish to pass the exams without a law degree. The situation is a complex one, but in general most lawyers are solicitors and a few are also barristers. In New South Wales, where the English common law procedure prior to the Judicature Act of 1873 still obtains, the time is yet to come when a woman will distinguish herself as a barrister.

Supports Consideration

Dean Shatwell is the author of several important articles in the field of contracts, of which "The Role of Consideration in the Modern Law of Contract" in the current issue of the *Sydney Law Review* is an example. In analysing several possible solutions to the problem of what ought to constitute a contract, he said, "I have come to a position which looks conservative." The English doctrine of consideration is both fundamental and sound. Its great merit is that it furnishes a workable definition of a contract: "Any bargain otherwise legal is binding without categorization" of promises by such difficult and elusive criteria as subject matter

of the promise or the intent of the parties when they made the promise.

The Dean's experiences are by no means confined to the law. From 1950 to 1952 he served as the Australian member of the six-nation Pacific Commission, a body which does research and exchanges views on economic and social matters concerning the islands of the Pacific. Beginning March 14 he will give a lecture on "Australia's Role in the Pacific" in eight Canadian cities.

The Dean candidly expressed his views on the present world situation. In the first place, "Australia is completely committed to the UN as an instrument of peace and security to the extent that it is capable of providing for our security." Secondly, Australia is rendering its share of economic aid to backward Asian countries which request it, to the extent of some \$70,000,000 over a six-year period under the Colombo Plan. This aid is in the form of goods and technical assistance. Moreover, the Australian way of life is having a profound effect on Asia inasmuch as literally thousands of Indian, Indonesian, and other Asian students are studying in Australia. Thirdly, Australia is lending full support to the ANZUS and SEATO pacts. "At the present time of threat from aggressive Communism we rely on regional defense pacts."

It is a curious fact not often realized by Americans that Australia and New Zealand side with the American point of view on cold war strategy as opposed to the milder, more Europe-oriented view of Great Britain and France. Three years ago, Dean Shatwell observed, the Australian Labor Party was in sympathy with the foreign policy of the British Labor Party, but this position has altered so much that most Australian Labor people "received Attlee with marked coldness" after his recent trip to Communist China. "The fact that we live in the Pacific compels us to rely on our Pacific neighbors."

Should Hold Formosa

As to Formosa, the Dean feels the fortress should be held as an essential part of the island defense chain stretching from the Aleutians to Australia. The question of defending Quemoy and Matsu islands is entirely a strategic one. He feels the indefinite separation of Formosa from China is more justifiable than the Communist-imposed partitions in Korea and Indochina. The Indochina peace affords no real security unless "the pattern of militant Communism changes." India's neutrality is "her own business," but events will tell "whether she is putting over successfully the policy of Switzerland."

Dean Shatwell said it was too early for him to express any conclusions on the question of legal education or what changes, if any, he might make at Sydney. He did express the opinion that courses in Taxation and Labor Law should be established there soon.

F.A.O.

Letters to the Editor

TO THE EDITORS:

Harvard University Law School is called a national school because it draws students from all the states. Yet the January 1954 *Harvard Law Review* indicates that the percentage of the student body coming from the Southwest has decreased from 4.7 per cent in 1933 to 4.2 per cent in 1943 and to 2.1 per cent in 1953. The comparative figures for the Rocky Mountain Region are 1.8 per cent in 1933, 1.7 per cent in 1943 and 1.0 in 1953. Perhaps this trend could be reversed by offering courses in mining law, water law, and oil and gas.

Surely a prospective student from the West or Southwest would be more inclined to come here if he could get instruction in these "bread and butter" courses. Those of us who are already here would be better prepared to practice in our local communities if we could get such instruction before we leave.

With the present overlapping and possible duplication in course offerings such as corporations, corporate reorganizations, regulatory aspects of corporate finance, securities regulation, labor law, and collective bargaining law, would it be too much to ask for a third-year course in natural resources? Without such a course, it looks like our sole exposure to this interesting and essential field is *Ewing v. Burnet* (gravel mining).

CHARLES CONVIS, 2L

* * *

TO THE EDITORS:

Students using the Library the afternoon of Feb. 26 were treated to a fantastic display of rudeness on the part of the Board of Visitors, the faculty, and the administration. It seemed that practically no man present for their meeting, and there must have been 50 or 60 participants, could approach the Elihu Root room at the south end of the reading room without conversing in a loud voice through the whole length of the reading room. At least three members of the faculty were seen smoking all the way through the reading room. As more and more gathered their conversation and laughter became so loud that others approaching had to raise their voices above normal levels to hear each other, to the mounting anger and indignation of all those trying to use the library for its proper functions.

If future meetings are to be held in the same room during study hours, and we are to anticipate a repeat of this inconsiderate performance, the library might better be announced closed so that the students might make plans to study elsewhere.

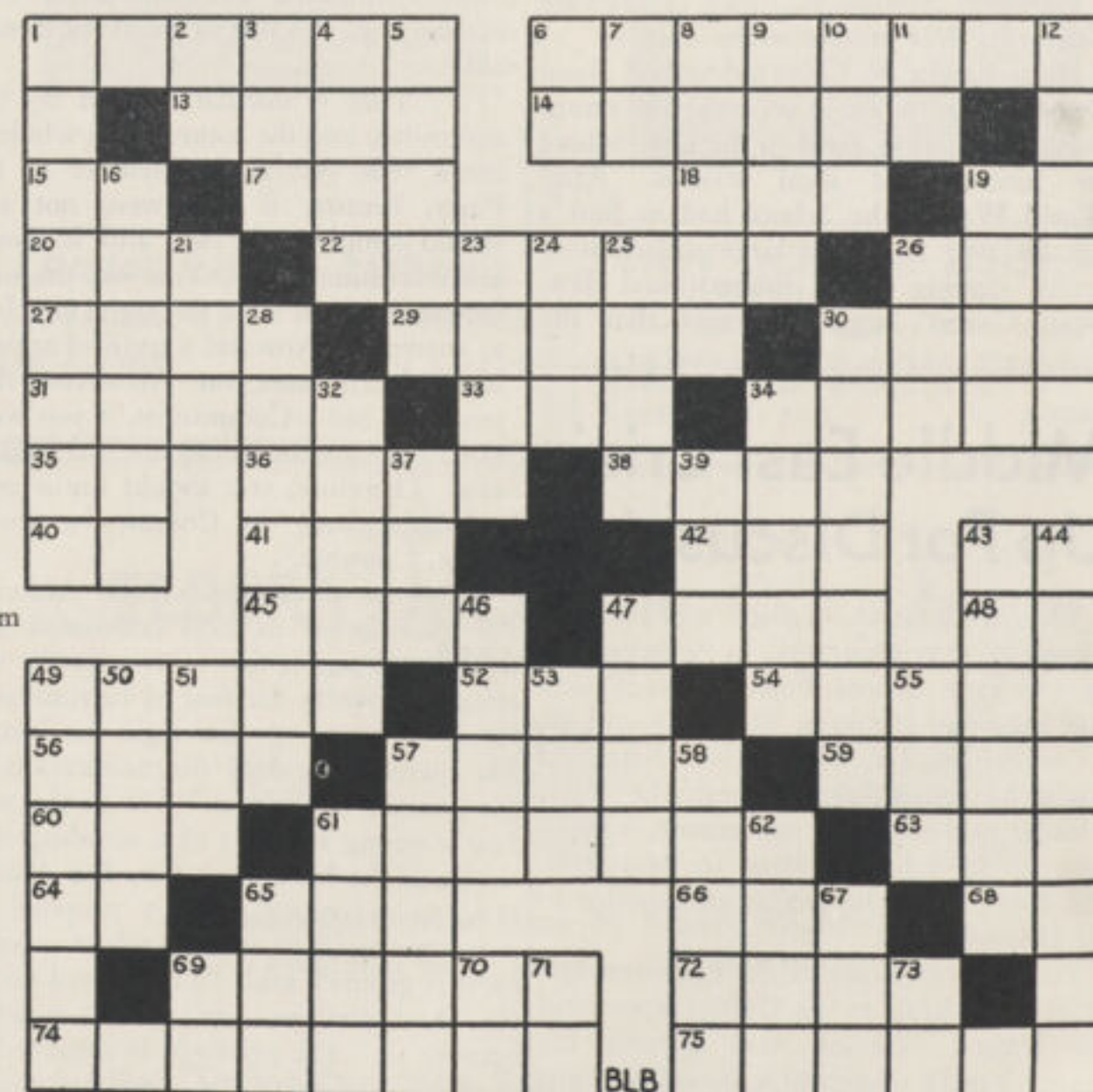
LEWIS A. RIVLIN, 1L

Puzzle

Those definitions designated as anagrams may have the letters scrambled in the solution. For example, the answer to the first definition across is "Austin," which has been scrambled into "nitsau." All other definitions are solved as in a standard crossword puzzle.

ACROSS

1. HLS Building (Anagram)
6. HLS Building (Anagram)
13. Grains
14. Copper-zinc alloy
15. Preposition
17. To know
18. Beverage
19. Lava
20. Definite article
22. Egyptian dynasty
26. Wing
27. Tickets
29. Magruder's course (Anagram)
30. Turn over
31. Positive pole
33. Electrically charged atom
34. Himalayan state
35. All right
36. Trees
38. British Arabian colony
40. Be
41. Adapted
42. Ancient
43. HLS Classroom
45. Greenland settlement
47. Voiced escutcheon
48. HLS Classroom
49. Rock
52. Shade tree
54. Cox's course (Anagram)
56. Long past
57. Large
59. Rancid
60. Historical period
61. Defamatory utterance (Anagram)
63. Combine
64. Governmental bureau (Abbr)
65. Southern state (Abbr)
66. Mend
68. For example
69. Climbing plants
72. Catch
74. Maguire's course (Anagram)
75. HLS Dormitory (Anagram)



DOWN

1. Surrey's course (Anagram)
2. Toward
3. Cutting tool
4. On the summit
5. Fiduciary (Anagram)
6. Behold
7. One who (Suffix)
8. Soils
9. Flower
10. Soft drink
11. Electrical Manufacturer (Abbr)
12. Contracts professor (Anagram)
16. Gratitude
19. Other things
21. Self
23. Elevator manufacturer
24. Card game
25. Sicilian volcano
26. Mountain
28. Justification
30. Collision guards
32. Socially superior
34. Criminal law professor (Anagram)
37. Local streetcar operator
39. Joke
43. Refer indirectly
44. HLS Dean (Anagram)
46. At this spot
47. Persian poet
49. Retiring HLS professor (Anagram)
50. Roman garment
51. Metallic earth
53. Guided
55. Snake
57. Secreting organ
58. Aesthetic preference
61. European racial type
62. Roman emperor
65. Fish limb
67. Used to be
69. Chinese linear measure
70. Electrical current
71. Compass point (Abbr)
73. Afternoon

Riegelman Criticizes 'Security' Procedures As Violating Rights of Accused Individuals

(Last week the RECORD printed the first section of an article by Harold Riegelman, in which the author analyzed our present Federal security system. Mr. Riegelman's first installment examined the rationale behind the security program, and pointed out ways in which Federal employees may be harmed in the first three stages of the process of discharging an employee as a security risk. The second half of the article, printed below, concludes the analysis of the discharging process and suggests certain reforms to make the process fairer to the employee.)

Hearing: The Hearing Board consists of three officials from an agency or department other than the one which employs the respondent. All are selected from a panel considered well fitted for their delicate responsibilities. Suggestions that boards consisting of citizens selected for their judgment, integrity and discretion should be substituted, are based upon the opinion that these would be less influenced than Federal officials by the possible effect of their determinations upon their own careers. On the other hand, it is urged that the very fact of Federal employment of board members creates a sympathetic understanding of the problems of Federal employees, useful in weighing the evidence.

The present practice does not involve a denial of justice. But the preoccupation of members of the Board with their normal duties may and often does result in undesirable delays and postponements of hearings. This can cause out-of-town witnesses considerable inconvenience and expense which the government does not reimburse. Some delays could be prevented by giving the hearings appropriate priority over routine duties of the board members.

The respondent goes before his hearing board, with or without counsel of his own choosing. Counsel may be assigned by the employing agency to give advice to the board regarding the conduct of the proceedings when requested and to be helpful to the respondent by asking clarifying questions. His function is frequently served by tepid participation or none at all.

The permitted vagueness of the charges has already been noted. Respondent must be prepared to meet all inferences that can be drawn from the sometimes amorphous allegations. Having no access to the basic confidential file which is open to the Board, respondent may safely assume that the charges are based upon reports, verified or unverified, in that file. But he may not safely assume that the charges served upon him exhaust the unfavorable implications of all those reports. Therefore, he should present evidence touching all the criteria sanctioned by the Executive Order.

Must Prepare Many Defenses

If the charges, for example, are based upon association with reportedly subversive individuals or organizations, he had best be prepared to meet not only those allegations, but also the potential that the reports also indicate dereliction in the performance of his duties, even though no such dereliction is charged. He does well also to show affirmatively that his morals are good by general repute, he is free from suspicion of sex deviation, excessive use of alcohol, drug addiction and unseemly companionships; that he is emotionally well adjusted and not loose-tongued. In short, he may be dismissed for causes embodied in the charges or for causes on which the charges are silent and of which only the Board has knowledge and respondent has none. This would seem a kind and degree of injustice not required by the national security.

The hardship is aggravated by the denial of opportunity to respondent to confront his accusers. There is persuasive argument that this is necessary to prevent the sources of government information from drying up or being sealed or removed. A question remains concerning the extent to which denial of opportunity to confront is necessary in each security case, to avoid the danger of blocking fruitful channels of pertinent intelligence.

Hypothetical Shows the Danger

A case in point: A, a congenial informer and a government clerical employee, reported orally to B, his supervisor (who is also respondent's supervisor), that C, D, E and F, who are local officials responsible

for application of certain Federal policies to public works in their respective municipalities, had stated to A that respondent's activities in their localities indicated sympathy with Communism. B passed this information on to the F.B.I. in writing.

By sheer coincidence, respondent asked B to testify in his behalf at his loyalty-security hearing. B's testimony was favorable to respondent. At its conclusion, B was confronted by the Board with his contradicting statement to the F.B.I., recanted it and explained how he had got the damaging information, which, he declared, he himself did not believe. Inasmuch as the charges made no reference to respondent's activities in the areas served by C, D, E, and F, respondent was unprepared at the time to prove A's report false. The hearing was recessed a few days and when resumed, the testimony of C, D, E, and F was made available to the Board. And A's oral report to B was proved wholly without foundation.

Protect Information

Consider what would have happened if respondent had not invited B to appear. B's report to the F.B.I. would have been unknown to respondent and unanswered. Yet it might easily have controlled the Board's determination. Assuming that the interests of national security required A or even B to be immune from confrontation, it is difficult to perceive why the damaging allegations had not been embodied in charges or why C, D, E, and F should not have been made available to respondent for cross-examination. Protection of channels of information can, and in this case, except for an accident, would have carried much further than national security required, and could have resulted in a great and unnecessary injustice to the respondent.

The case also shows the hazards of hearsay testimony and of "hearsay twice removed." The exigencies of our national interests may exact these and other radical departures from traditional rules of evidence. In those instances where departure is found to be needful, at least a respondent should be given every practicable opportunity to expose the falsity of inaccurate or meretricious reports of "what was said" or "said to have been said" by persons identified or unidentified. More effective effort by the investigating agency to verify reports of hearsay would reduce the hazard.

Hidden Evidence Assailed

In the case in point, there was no sound reason for violating the rule against hearsay. C, D, E, and F were available and should have been called by the Board. In fact they should have been interviewed before the file was sent to the agency head. This points up another unnecessary hardship. Consider what would have happened if B had declined respondent's invitation to testify. The circumstances to which B's testimony was the key would have remained forever locked in the minds of the Board, unknown to respondent, and might well have influenced an unfavorable determination of the case.

It would appear elementary that both respondent and the Board should be able to compel witnesses to attend, on a showing that their appearance and testimony would not be prejudicial to the interests of national security, and could have a material bearing upon the issues before the board. The power of subpoena subject to every proper limitation should be available to respondent and the hearing board.

Appeal: The right to appeal from the determination of a tribunal of original jurisdiction is a valuable one. While the subjective nature of the determination in a security case, may lessen the value of appeal, the right of appeal is a useful check against possible bias, prejudice or other intangible and inappropriate influences. However, in these cases, the appeal would not lie directly from the determination of the board. That determination is merely advisory. Under existing circumstances, it is not likely that the head of the employing agency would ignore an unfavorable determination. He has, however, the power to ignore a favorable one.

In either case, it would seem proper and not harmful to national security if an appeal could be taken from the action by the agency head to an impartial body

whose members are not officials of the agency employing the respondent. This might be a proper function of the Civil Service Commission or a board operating under its jurisdiction, a Court or an independent Commission of qualified citizens. An amendment of Public Law 733 of 1950 would be necessary to accomplish this.

Reimbursement: The cost of respondent's successful defense is likely to be heavy. His proper expenses include counsel fees, travel expenses of witnesses and himself, and the many miscellaneous disbursements necessarily incurred in preparation for the hearing. Though respondent may be wholly cleared and the charges wholly proven to have been based upon error or malice, he must pay the entire monetary cost though this may saddle him with a lifetime burden of debt.

Here again, the handicaps which the very nature of these cases impose upon innocent respondents would seem to justify a reciprocal obligation upon the nation to compensate for those handicaps wherever it may do so without prejudice to national security. Reimbursement in whole or substantial part to a respondent who is cleared of the charge falls within that obligation. And the reimbursement should not be niggardly, considering the exquisite mental agony suffered by the respondent who ultimately clears himself and his family.

In reviewing the security processes, the conclusion is inescapable that their main avoidable defects lie in investigation without evaluation; charges without precision and without definition of the risk involved; suspension without pay; hearing without right of subpoena, confrontation of primary accusers, protection of traditional rules of evidence, or appeal; and, in the case of those cleared of all charges and unfavorable inferences, punishing costs without reimbursement.

Allegations Should Be Revealed

Mitigation of these defects along the lines suggested in the foregoing discussion is warranted not only by our concern for the protection of individual rights within the paramount interests of the national security, but by our very concern for the national security.

That objective cannot be gained by impairing the morale and dignity of the civil service. Feelings of insecurity, distrust and fear, on the part of Federal employees, stemming from unnecessary departures in security cases from traditional judicial procedures may, in the end, undermine the very security we seek to conserve. Certainly, such departures are factors operating to dissuade competent and loyal citizens from entering upon careers involving exposure to so many and such extreme deprivations.

Review and revision of the security process merit every encouragement by all who truly understand and love the genius of America and would protect it against its enemies.

Draftsmen Stress Greater D. C. Plan

Research into the means for setting up a Greater Washington, D.C., Authority heads the list of new projects on which the Legislative Research Bureau is currently working.

The draftsmen are also taking on a project to establish a state agency to acquire and maintain historic sites and buildings in Missouri. Another project is to make revisions in the Massachusetts partition laws.

Projects which have been recently completed or are nearing completion include: a code of ethics for lawyers practicing before administrative agencies; revisions in the Massachusetts criminal code; amendments to the Massachusetts rent control legislation; a bill providing for presidential primaries in Michigan; amendments to the Ohio corporation code; and amendments to the Massachusetts adoption code.

The Washington, D.C. project, sponsored by the American Planning and Civic Association in Washington, involves setting up a central authority to handle the problems of the Greater Washington community, which of recent years has been spilling over into several counties in Virginia and Maryland. This community has common problems as to urban redevelopment, highway construction, park planning, and utility and transportation rates. Currently these problems are being dealt with in a somewhat disjointed way by the three political entities involved.

The Bureau's first problem is to determine what form a potential solution might take. The most plausible choice so far seems to be setting up an interstate compact, but solutions such as reciprocal legislation between the three areas of federal jurisdiction are also being explored.

The rent control bill which has just reached completion involved amendments to current law which would give landlords the chance to command hearings for their requests to de-control rents. Under present law, the decision to re-examine rent controls is left to the discretion of the local boards.

The Massachusetts criminal code project is a matter of putting in statutory form Professor Sheldon Glueck's plan to transfer the sentencing power of judges in criminal cases to an expert tribunal. (See RECORD, Vol. 20, No. 3) The draft of the bill sets up a new authority which coordinates a prisoner's confinement, rehabilitative treatment, and parole.

Moynihan To Talk On Lawyer's Role

Cornelius J. Moynihan, LL.B. '29, Professor of Law at Boston College Law School, will be the featured speaker at a communion breakfast to be held by the St. Thomas More Society on Sunday morning, March 13.

Professor Moynihan is the author of "A Survey of the Law of Real Property" and is a contributor to "The American Law of Property." His topic at the communion breakfast will be "The Lawyer in Society," according to W. F. Orme, 3L of St. Paul, Minn., president of the St. Thomas More Society.

Members of the Society will attend the nine o'clock mass at St. Paul's Church, Bow and Arrow Streets, and have breakfast at 10 o'clock in the Mallory Smith Room of Harkness Commons.

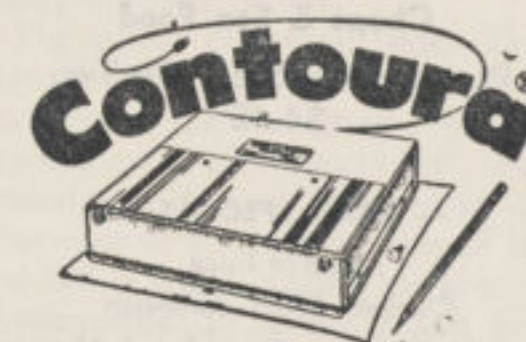
Griswold's Speech Printed In J. L. Ed.

Dean Erwin N. Griswold's address at the dedication of the new building at the University of Richmond's T. C. Williams Law School has been reprinted by the Journal of Legal Education.

In his talk, Dean Griswold covered many aspects of the legal profession. He compared the American with the English bar, appealed for greater financial aid for law schools, and stressed the importance of buildings to legal education.

The dean emphasized the job that the law school should do, saying "the task and the opportunity of a university law school, such as this, may be not merely the teaching of the law to expectant lawyers, but also the fostering and supporting of a professional feeling and spirit among those who are actively engaged in practicing the law."

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The Great Chief Justices:

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When Melville Weston Fuller was appointed Chief Justice of the United States in 1888, the Philadelphia Press remarked that he was the most obscure man ever raised to that position. Twenty-two years later when Fuller died in office that same newspaper noted that he had left behind him fewer opinions in landmark cases than many of his associates. In great measure this is the mark of his success; for the court was full of prime donne. Fuller was to demonstrate his talent in other ways.

Justice Field, keen, doctrinaire and intense, and the ranking Democrat on the court, had with some justification wanted the position of Chief Justice for himself. Thus one lawyer, referring in part to Fuller's diminutive stature, was heard to remark, as Fuller left Chicago for Washington, "Field will eat him in one bite." Justice Miller, too, having been on the court for 26 years was considered by many its leading light, had strong claims to the Chief Justiceship.

But Fuller knew how to handle men. He had great talent of leadership and the poison of power never infected him. The court and the country came to know, respect, and admire him. Of his centennial speech on Washington, Justice Lamar wrote, "It is admirable even for a Chief Justice."

Lamar had once advised Fuller not to "give away" a case—the Bell Telephone case—the first of major importance to come before the court under its new chief. Yet Fuller, instead of writing the opinion himself, did assign the case—to Justice Miller. So it was throughout his entire career on the court; he gave to others those cases that had attracted national attention. His own opinions, which number 840, decided difficult and uninteresting cases such as those involving questions of jurisdiction and practices in the federal courts. "They contain no lofty phrases, no grandiloquent passages, no personal conceits to betray a hungry ego in their author." Yet time and again he was to

convert the court to his position. In 22 years he was forced to write but 30 dissents.

When Fuller came to the court the docket was four years in arrears. By bearing more than his share of the writing, and by securing the passage of the Circuit Court of Appeals Act, he brought the calendar up to date. He labored the rest of his life to keep it so. For over two decades he led the court and brought harmony and progress to its dispatch of duty.

Holmes, who sat under him for eight years, declared, "As a presiding officer, Fuller was the greatest Chief Justice I have ever known."

The source and secret of this success lay in Fuller's character. His colleagues, at first resentful of his elevation, came to struggle for his good will. "He had a strong habit of command," yet the touchstone of his personality was ever his deep humility. Thus Holmes, writing to Judge Putnam on Fuller's death, also said, "The Chief has outlived most of his contemporaries and I think the public will not realize what a great man it has lost." (Based on the biography by Willard L. King.)

THOMAS R. MOORE, LL



Stringfellow Barr
MIDDLE EAST

(Continued from page one)

will preside Friday, and Prof. George Smith, who will chair Saturday's forum, is economic adviser to the Middle Eastern commission.

Friday night's program will be held at the New Lecture Hall, Kirkland and Oxford Streets. The Saturday forum will take place at the Rindge Tech School auditorium, at Broadway and Irving Street. Station WHDH will broadcast both programs. Tickets, at 70 cents for each forum, will be on sale at the door.

Bulls And Bears Romp In Boston As Club Tours The Stock Exchange

Members of the Bull & Bear Club visited the Boston Stock Exchange on Wednesday, March 2. The group learned how stocks are bought and sold in this specialized market. The Exchange allowed the visitors to enter the floor where the trading was being conducted.

It was explained to the group while they were in the midst of the busy traders that stocks on the New York Stock Exchange are traded on the Boston Exchange along with local stocks. There was a ticker tape projected high up on the far wall parading its strange hieroglyphics across the screen. This told observers exactly what was happening on the floor of the exchange in New York at any given moment. All sales of stock listed on the New York exchange made in Boston were at prices based on the last sale consummated in New York. In order to keep the record straight as to when sales were made in New York, a tape corresponding to the one projected on the screen was spewing forth from a machine on a high bench in front of the specialists. A clock mechanism stamped this tape with the correct time every six seconds. Thus there could be no question as to when and at what price the last sale was made. Both the buyer and the seller want to get the best possible price, therefore the exact time at which the sale is consummated becomes crucial.

One whole wall of the room contained information on most of the stocks listed on the New York Stock Exchange. This board was divided into sections and each specialist on the exchange was assigned a section. All the stocks that he dealt in most frequently were listed under the name of each specialist. Thus he could tell at a glance what price each stock opened at,

what its high price for the day had been, what its low price for the day had been, and what price had been paid for it on the most recent sale.

The visitors were also shown what happened to the buy and sell orders after they left the floor of the exchange. These were processed by clerks in an adjoining room minutes after the transactions were completed. The tour was concluded when the visitors were allowed to enter the Boston Stock Exchange Clearing House and there witness the final step in a stock transaction, which was the preparation of the stock certificate for the new owner.

DEMOCRATS MEET MARCH 16

There will be a meeting of the Democratic Club of the Harvard Law School at 4 p.m. on March 16 in the Associated Harvard Clubs room of Holmes Hall. Prof. Mark DeWolfe Howe will speak on the subject "The Democratic Party and the Communist Control Act of 1954."

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AMENDMENT

(Continued from page one)

free society. The author's examination of the privilege against self-incrimination is a particularly valuable contribution. Accepting the legislative inquiry as a working tool of the legislature and the legal power to ask the sensitive questions which invite the assertion of the privilege, Dean Griswold portrays vividly the psychological dilemma of the witness, as to his disclosure of his own past acts and associations and of the identity of his former associates. The Dean holds that the frequent refusal to "tell on his friends" "may be both contrary to valid law and unwise" and "a serious error of judgment for an academic person"; but that "nevertheless it may be based on strong grounds of conscience."

The Dean demonstrates beyond effective challenge the fallacy of the brittle conclusion so freely bandied about that he who refuses to answer the §64 question thereby demonstrates either that he is a Communist, or if not, that he is therefore lying when he asserts his answer may tend to incriminate him. The first of these papers is a particularly forceful argument against the basic assumption of the now common label of "Fifth Amendment Communist," buttressed by well-chosen excerpts from the court opinions of "conservative" judges.

Mr. Griswold invokes two distinctions: one in the nature of the questions asked and their relation to the First Amendment protective area of opinion and belief. The second distinction lies in the nature of the tribunal, the inevitable (and necessary) political flavor of legislative investigations as distinguished from courts of law.

The second of these papers discusses certain reforms needed in the conduct of such legislative hearings: abolition of the one-man sub-committee and of deliberate leaks to the press from the "executive session," the right of the witness to effective counsel and the surrender of the function of exposure as the "sole or basic purpose." For myself, I would add the right of one against whom serious charges have been made in some prior hearing to call his own witnesses in rebuttal and to cross-examine the accusers.

This brief reporting of mine can mention but a few of the many aspects of the Fifth Amendment which are here so forcibly and clearly analyzed. The reader will profit by going on to other essays—by Elmer Davis and Chamberlain, and particularly to the very recent more expanded study of Congressional investigations by Telford Taylor, all conceived in the same respect for constitutional liberties and orderly process.

Mr. Henry L. Delatour, President in 1954 of the New York State Bar Association, said in commenting on the current proposal to abolish the Fifth Amendment: "... Abolish one of two of our strongholds of liberty [the other reference being to trial by jury] and it would take very little more to destroy the rights and the dignity of the individual man which has been centuries in arriving at its present high level in this country and is higher here than any place in the world, even with the restrictions that are daily placed upon us."

ERNEST ANGELL, LL.B. '13

(Mr. Angell, a member of the New York bar, is chairman of the Board of Directors of the American Civil Liberties Union.)

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Bull & Bear Told:

Futures Trading Is Misunderstood

"Lack of public understanding of futures markets is the principal reason for the failure of the public to participate in futures trading on a larger scale," declared Eugene M. Grummer in an address before the Bull & Bear Club in the Wheeler Room on March 3. Mr. Grummer, who is the manager of the Textile Fibers Department of Merrill Lynch, Pierce, Fenner & Beane, spoke on "Commodity Futures Trading" and showed the film "Marketplace U.S.A.," which described the process of hedging.

Uninformed persons often regard futures trading as gambling, Grummer pointed out, when in fact the futures markets are an essential part of our economic system. Thousands of food processors, manufacturers, wholesalers, and other industrial concerns must use commodity futures to obtain bank loans and to reduce the risk of loss due to price fluctuations in the commodities which they use in their business. The speculator plays a valuable role by providing a liquid market for futures contracts. He assumes the risk which the grower or user of the commodity is unwilling to assume. "Gambling creates a risk," he stated, "but futures trading merely distributes a risk which is already necessarily present."

Important to Lawyers

Mr. Grummer asserted that virtually all lawyers would come in contact with commodity futures at some time in their careers. He cited several recent court cases which were lost because counsel just did not understand futures trading. He pointed out that only through the use of a straddle in commodity futures is it possible to convert a short-term capital gain in a security to a long-term capital gain for tax purposes, though many lawyers and investors do not realize this.

In Grummer's opinion, perhaps one or two persons out of every 20 speculators make considerable money in commodity futures trading. Three or four more make a little money, and the other 14 lose money. This is because it is human nature to do precisely what it wrong in futures trading. Speculators do not like to admit they are wrong after they have taken a position in a commodity. Therefore they let their losses run much farther than they should, and they also tend to take their profits too quickly. Moreover, many small speculators try to trade commodities about which they know very little. The first principle of futures trading is to know your commodity.

Abuses Eliminated

Grummer pointed out that abuses which existed many years ago in futures trading have been eliminated both by stricter rules imposed by commodity exchanges and by the regulations of the Commodity Exchange Authority.

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