



Harvard Law School Record



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PRICE TEN CENTS

Menon Speaks On Indian Role In Peace Quest

The Honorable V. K. Krishna Menon, Indian Ambassador to the United Nations, spoke last Monday evening before a capacity audience in the New Lecture Hall.

Mr. Menon roundly criticized Western alliances such as NATO and SEATO and expressed his own government's unwillingness to enter such pacts because, as he said, "there are only pacts among equals." The topic of Mr. Menon's talk was, "Toward World Peace." He also suggested that Formosa be returned to its 1949 status, i.e., be returned to China. He did not feel, however, that the Kashmir problem could be as readily solved without future negotiations despite the fact that Pakistan is threatening "Holy War" against India if a plebiscite is not allowed in Kashmir immediately.

India is Uncommitted

The Ambassador characterized India's part in world affairs, not as a mediator, but rather, as being "uncommitted." He said that world peace could not be established or maintained by the principles of balance of power. Such principles lead only to arms races, fear, and suspicion. "There is a competition for the means of destruction today," he continued. "In the light of the history of other weapons, present-day atomic armaments cannot remain the exclusive property of only highly industrialized large nations," he pointed out.

Ambassador Menon characterized the "illogical" breakdown of international relations in the following terms: "There is enough room for everybody in the world to live. Every day, our abilities to control the means and our capacities to produce increase. Despite this fact, our whole thinking and acting is dominated by a fear of war. A future war, like past wars, will accomplish and solve nothing. 'But the question remains,' he continued, 'can we trust the other fellow?'"

Not Isolationist

He characterized the "most explosive area in the world," as Asia and Africa. "Not because they are war-like," the Ambassador observed, "but because of serious unresolved social and economic problems in these areas." India does not stand detached from the problems of world peace and general disarmament, he pointed out. "Our country is not following an isolationist policy, as did America after she achieved her independence," he said and went on, "Instead we are uncommitted. We in Asia can offer the powerful nations of the world nothing because we are not armed and trained. We can offer only our territory and our people—that is to say—for all practical purposes, cannon fodder."

Law School Cagers Take to the Courts

Two intramural basketball leagues sponsored by the Law School Dormitory Council went into action Tuesday, but it's not too late for interested men to join.

Anyone with college varsity or intramural experience is urged to try out for one of the "A" League teams, according to League Supervisor Marshall Harris, 3L of Miami Beach, Fla.

Those who are a bit rusty at the sport may sign up for teams in the "B" League. Men enrolled in any graduate branch of the University are eligible.

These two leagues (divided with the intention of promoting more balanced play) occupy Hemenway Gymnasium on Tuesdays, Wednesdays, and Thursdays, starting at 7 p.m. Normally, a team will be scheduled for only one game a week.

With the exception of a break during examination period in January, the teams will play regularly until late March.

McIntyre Makes It

James R. McIntyre, 3L, was elected to the City Council of Quincy, Mass., in balloting in the South Shore city early last month.

Mr. McIntyre placed third among 14 candidates and was one of seven to be elected to office. He is a member of Bull and Bear.

The only candidates to run ahead of Mr. McIntyre in the voting were an incumbent member of the Council and a former mayor of the city.

Forum Offers Political Talk Next Friday

With its successful meeting on the jury tapping problem now a matter of record, the Law School Forum will shift its sights this month and offer a double-barrelled program on the contemporary political scene.

Professor Robert Braucher and Rep. Torbert H. MacDonald, LL.B. '43 ('47) Democratic Congressman from Malden, will start things off on December 9 with a debate on "Political Issues and Prospects in 1956."

They will be followed to the Forum platform a week later by William F. Buckley, Jr., author of *God and Man at Yale* and *McCarthy and His Enemies*.



Torbert MacDonald

The format of Mr. Buckley's program has not definitely been determined, according to Forum President Gordon Werner, 3L of New York City, but it is expected that Mr. Buckley will discuss conformity in political thinking.

At the meeting next week, Professor Braucher, an active Republican campaigner in suburban Belmont, will outline GOP prospects in the 1956 Presidential and Congressional campaigns. Rep. MacDonald, a former captain of the Harvard varsity football team, will do the same for the Democrats.

Mr. Buckley, a graduate of Yale, where he was chairman of the *Yale Daily News*, is now the publisher of *National Review*, a conservative journal which will make its first appearance on newstands soon.

—Schumacher

Hors d'Oeuvres Offered At Law Wives Meeting

"Smart But Easy Entertaining" will be discussed at the next meeting of the Harvard Law Wives, to be held Wednesday evening. Leslie C. Browning of S. S. Pierce, the food concern, will speak. According to the Wives, Mr. Browning will come armed with trays of hors d'oeuvres, which will be distributed to the crowd. The meeting will be held in Harkness at 8 p.m.

Dorm Policy ...



Wesley E. Bevins, Jr.

Due to a new Dormitory Office policy concerning room exchanges some men may have been overcharged on their room rent, Assistant Dean Wesley E. Bevins, Jr., has revealed.

In order to discourage students from holding onto a dormitory room without serious intention of taking it in the fall, the Dormitory Office set up the new policy of charging a student for the time he has the right of occupancy of a room whether or not he actually occupies it. It is unfair for a man to keep a room as a kind of insurance pending finding a better one while men on the waiting list cannot make their plans, Dean Bevins explained. Moreover, it is impracticable for the Dormitory Office to contact all men late in the summer to find out whether they plan to take up their rooms.

Both Men Now Pay

Under the old system whenever there was a room exchange before October 2 (or a similar date) the new occupant paid the full year's rent while the old occupant paid nothing. Under the new system the new occupant is still charged the full rent while the old occupant must pay for the time during which he has the right of occupancy, which is usually the period up to the date when the new man signs his contract. Under both systems for all exchanges after October 2 or thereabouts the old and new occupants are charged on a pro rata basis.

As a result of the new policy some men who, having taken dormitory rooms with an intention to occupy them in good faith, made exchanges before October 2 may have been overcharged. These men should see Dean Bevins in the near future for an adjustment on their term bills.

—Olson

Democratic Poll "Poor Index" Republican Chairman Believes

While the Law School's Young Democrats still were busy adding up the votes in their Presidential Preference Poll of Tuesday, the leader of the local Young Republicans took dead aim at the results, whatever they might be, and said they didn't prove a thing.

Dana Coggins, 3L of Vineyard Haven, Mass., chairman of the Law School branch of the Harvard Young Republican Club, attacked the poll yesterday as a "poor index" of national sentiment. The ballot, for one thing, did not include the "right candidates."

In their poll, the Democrats asked Law School students to choose from among Adlai Stevenson, Gov. Averell Harriman of New York, Sen. Estes Kefauver of Tennessee, Chief Justice Earl Warren, Vice-President Richard M. Nixon, and Senator William Knowland of California.

Mr. Coggins was indignant that the Democrats' sample ballot did not include the name of President Dwight D. Eisenhower. He also felt that the inclusion of three California Republicans and the omission of former Gov. Thomas E. Dewey of New York and Milton Eisenhower was a clever Democratic trick to win support among Easterners, who are in a large majority at the Law School.

Meanwhile, the Democrats were too busy sorting papers and counting ballots to fire back at their Republican critics. Young Democratic President Ralph Pagter, 2L of Washington, D.C., was content, for the time being, to express his appreciation to Law School students for their enthusiastic participation.

Over 800 students voted in the poll, which showed Governor Stevenson and Chief Justice Warren as easy winners of their party nominations. At the last minute, the Democrats avoided criticism by changing their poll to include Governor Dewey.

The Republicans will hold their annual election meeting this afternoon in Wheeler Room of Holmes Hall at 4:15. They will hear a discussion of the Geneva meetings by Professor Milton Katz, Director of International Legal Studies. Then they will drink some beer and choose their officers for the coming year.

Gardner and Scott Clubs Clash in Ames Semi-final

The first semi-final argument of the Ames Competition will take place on Friday, December 9, in the James Barr Ames Courtroom before the Hon. J. Edward Lumbard, LL.B. '25, Judge of the Court of Appeals for the Second Circuit, and Boston attorneys Raymond W. Ellis, LL.B. '38, and John R. Hally, LL.B. '49.

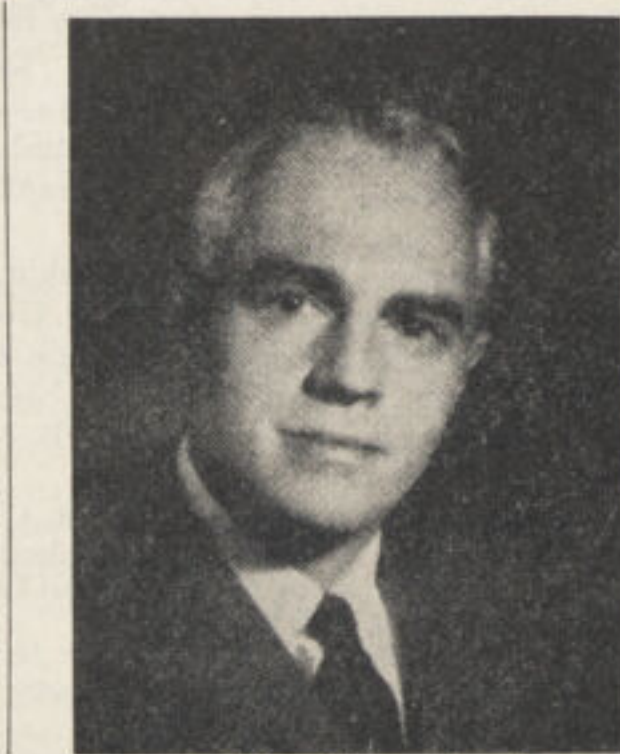
The Gardner Club, as counsel for the plaintiff-appellants, will be seeking to enjoin discrimination against Negroes in the sale of homes by a development company, represented by the Scott Club.

The plaintiffs allege that they were prevented from purchasing homes in Canaan-town, Ames (stipulated by the record to be the equivalent of Levittown, Penna.) a self-contained development which plaintiffs claim to be in all respects like a city or town, solely because of their race. The case is now in the Ames Court of Appeals, judgment having been given for the defendants in the United States District Court for the Eastern District of Ames on the grounds that the federal questions involved could not be determined before the State Supreme Court had passed upon certain other questions which might avoid all necessity for the consideration of the federal issues.

Agencies Involved

Besides defendant Hitt & Sons, the builders (stipulated to be the equivalent of Levitt & Sons), officials of the FHA and the VA are defendants, individually and as government officers. These agencies are involved because of the financial aid given Hitt & Sons in the development of Canaan-town and the sale of property therein. By Federal law, mortgage insurance is to be written by FHA only where there is no discrimination such as is here alleged in the sale of homes.

Among the points to be argued on appeal are: (1) the question of Federal jurisdiction, diversity of citizenship being present, but the presence of the requisite jurisdictional amount of \$3,000 seriously disputed, due in part to the problem of the evaluation of the civil rights alleged to be infringed and (2) the question of the propriety of the District Court's deferring to future State Court determination of the questions raised; (3) the problem of the relationship between Hitt & Sons and the Commonwealth of Ames, i.e. whether the development firm's actions are "under color of State law" or the equivalent thereof so as to bring into play the provisions of the Fourteenth Amendment; (5) the question of the validity of the claim stated against Federal officers for failure to enforce the non-discriminatory requirements of Federal mortgage insurance.



J. Edward Lumbard

force the non-discriminatory requirements of Federal mortgage insurance.

The case is one of unusual current interest, in view of the recent decision in the similar case of *Johnson v. Levitt & Sons, Inc.*, 131 F. Supp. 114 (E.D. Penna., 1955). That decision was in part the ground for the District Court holding for defendants in the present case.

Appearing for the Gardner Club as oralists will be Robert S. Jones, 3L of Buffalo, N. Y., and Curtis W. Poole, Jr., 3L of Des Moines, Iowa. They will argue against Richard F. Newall, 3L of Berkeley, Mich., and Hal F. Reynolds, 3L of Brecksville, Ohio, oralists for the Scott Club.

Counsel are Listed

Of counsel on the brief for the Gardner Club are John R. Alger, 3L of Middleboro, Mass., William D. Gaillard, III, 3L of Scarsdale, N.Y., Wallace M. Kain, 3L of Yonkers, N.Y., D. Kenneth MacDonald, 3L of Albany, N.Y., Dacis H. Roenisch, 3L of Calgary, Alberta, Canada, and H. Simmons Tate, Jr., 3L of Clemson, S.C.

The Scott Club counsel on the brief are Scribner L. Fauver, 3L of Elyria, Ohio; James A. Foltz, 3L of Memphis, Tenn.; Frank C. Gardner, 3L of Miami, Fla.; Bengt Kjellgren, 3L of Chagrin Falls, Ohio; Karl C. Lemp, 3L of Oak Park, Ill.; and Arthur W. Mudge, 3L of Hebron, N.H.

The argument takes place in the Courtroom in Austin Hall at 8 P.M. On the following Wednesday evening, December 14, the second semi-final argument will be heard; the winner of the first semi-final will argue in the Ames Competition final against the winner of the second semi-final, which pairs the Morgan Law and Hardee-Sacks Clubs.

—Grossman

Elihu Root Room Offers Suggested Reading List

A new *Suggested Reading List*, containing notations to law review articles about past and present justices of the United States Supreme Court, is now available to students in the Elihu Root Room of the Law Library.

The *List*, the second published by the Library this term, is the work of Assistant Librarian Philip A. Putnam and of John M. Stadter, 2L of Cambridge.

The *List* contains articles about 42 justices, including Felix Frankfurter, LL.B. '06, and Harold H. Burton, LL.B. '12.

The late Oliver Wendell Holmes, one-time justice of the Supreme Judicial Court of Massachusetts and an associate justice of the Supreme Court from 1902 to 1932, is represented by 25 entries, including several articles by Mr. Justice Frankfurter.

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Two Wise Decisions

The shocking extent to which governmental administrative action has menaced the liberties of individuals is illustrated by two court opinions just handed down.

First, Judge Luther W. Youngdahl of the Federal District Court for the District of Columbia held that it is unconstitutional for the State Department to deny an American citizen a passport without revealing to the applicant the evidence upon which it bases its decision.

We agree with Judge Youngdahl when he says in his opinion: "It must now be accepted that travel abroad is more than a mere privilege accorded American citizens, which may not be infringed upon or limited in any way unless there be full compliance with the requirements of due process. . . More and more the courts have become aware of the irreparable damage which may be, has been, and is wrought by the secret informer and the faceless talebearer whose identity and testimony remains locked in confidential files."

Second, Federal District Judge David N. Edelstein stated, in a preliminary ruling, that the army cannot constitutionally give a soldier anything less than an honorable discharge on account of pre-induction Communist Party membership or association.

We approve Judge Edelstein's opinion: "The exercise of military jurisdiction to inflict painful and injurious consequences, if not 'punishment,' upon a serviceman for prior civilian conduct would be a shocking perversion of the elementary canons of due process."

That such decisions as these *can* be written is a tribute to our judges and our Constitution. That such decisions *have* to be written is a reproach to our legislators and administrators. We do not quarrel with laws legitimately aimed at the spies and saboteurs of foreign powers, including Communist states. We do object, however, to repressive laws and practices which harass and injure the individual: for example, denying passports without revealing to the applicants the evidence upon which the decisions are based, granting less than honorable discharges on account of activity before the commencement of military service, dismissing disloyal government employees without adequate hearings at which the employees are confronted with the evidence against them, and the browbeating of witnesses by some legislative committees.

"Ye shall know them by their fruits." Communism and Fascism are condemned by their own excesses and failures. We do not need repression, whether grand or petty, to refute these ideologies or to protect ourselves against them. We dare to hope and believe that the decisions of Judges Youngdahl and Edelstein are signs that the postwar wave of fear and hysteria is at last beginning to recede into history.

Gallery

MAC ASBILL, Jr.
Attorney



Seven years out of the Law School, Mac Asbill, Jr., is now a partner in the Washington law office of Sutherland, Asbill and Brennan. The Asbill in the firm name stands for Mac Asbill, LL.B. '17, but, unlike the usual case, the son was the first in the family to join the firm.

Doing the unusual, however, is nothing new to Mac Asbill, Jr. While at the Law School, for example, he turned down membership on the *Law Review* in order to spend more time with his family.

The family included his wife and their two-year-old son, William. Asbill, a 1942 graduate of Princeton, had served two years as a marine officer in the Pacific theater, acting as flag secretary to Lt. Gen. Holland M. (Howlin' Mad) Smith.

Asbill's abstinence from participation on *Law Review* probably had a beneficial effect on his class average, since he was graduated in 1948 *magna cum laude*. But the president of *Law Review* at the time, James H. Wilson, Jr., has achieved the same legal eminence as has Asbill. He too is a partner in the Washington firm of Sutherland, Asbill and Brennan.

Clerked for Reed

After graduation, young Asbill struck out for Washington, D. C., and landed a job as clerk to Supreme Court Justice Stanley F. Reed. The following year, he went to work for his present firm.

In the fall of 1950, Mr. Asbill was called by Dean Erwin N. Griswold and asked to perform a public service. Princeton University was running a pre-law forum and Mr. Asbill was asked to speak to the Princetonians on legal education. On the train from Washington to New Jersey, Mr. Asbill met Frank Pace, Jr., LL.B. '36.

It was shortly thereafter that President Truman appointed Mr. Pace Secretary of the Army. Francis Shackelford, LL.B. '36 was named Counselor of the Department of the Army, and Mr. Asbill came along as Mr. Shackelford's assistant.

The office of Counselor of the Army was the first civilian legal office in the Pentagon. Prior to its establishment, all legal matters had been handled by the Judge Advocate General's Office. The Counselor of the Army has responsibilities in connection with the army budget, and it was on that subject that Mr. Asbill worked.

Waste in Budget

There is "inevitable waste" in the military budget, Mr. Asbill says. This is because of the size of the spending operation, some ten billion dollars a year. Some waste of funds is caused by Congress, Mr. Asbill said, when it insists that army bases be kept up after they have outlived their usefulness.

After a year in government service, Mr. Asbill rejoined his law firm, and went into the field of taxation. Today he is an assistant secretary of the American Bar Association's Tax Section. This Section is a group of some 5000 attorneys who consider proposals for changes in the tax laws and recommendations to Congress.

Tax work is very "intellectually challenging," Mr. Asbill says, because "there are no easy cases." Other areas of law present "fact problems, and Civil Aeronautics Board work consists of economics problems, but there are tough legal problems in the tax field, especially with the changes in the new code."

In Marshall Conference

In September 1955, Mr. Asbill again returned to the Law School—as a participant in the Marshall Bicentennial conference on "Government Under Law." He commented on a paper on "Separation of Powers in the time of Crisis," prepared by his old boss, Mr. Shackelford. The paper discussed the checks and balances of our constitutional system, and their probable operation in the event of national emergency.

Mr. Asbill is critical now of the Department of Defense. He disapproves of the inconsistency between the Army and the Air Force in treatment of Korean War prisoners who collaborated with the Communists under duress. The Army was severe in its attitude toward prisoners, sentencing many to prison terms, while the Air Force has not court-martialed any of its men who were held by the enemy in prison camps.

—Stern

Current Case

BOXING, THEATER ARE HELD
SUBJECT TO SHERMAN ACT

Early this year the Supreme Court decided that professional boxing and the legitimate theater are subject to the Sherman Anti-Trust Act. *U.S. v. International Boxing Club of N.Y., Inc.*, 75 S. Ct. 259; *U.S. v. Shubert*, 75 S.Ct. 277. The Court said that its previous rulings that baseball was outside the provisions of the federal anti-trust statutes did not immunize boxing and the theaters from these laws. The effect of the decisions is that the Government may now press anti-trust suits against the Shubert theatrical interests and the International Boxing Club and other defendants, including Madison Square Garden. The complaints had been dismissed by the District Court for the Southern District of New York on the strength of *Toolson v. New York Yankees*, 346 U.S. 356 (1954), and *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922), which held that professional baseball fell outside the scope of the Sherman Act.

Overrules Precedent

Mr. Chief Justice Warren, writing for the majority in each of these cases, was able to reach his conclusions by holding that the *Federal Baseball* and *Toolson* decisions were restrictive in their effect, being authority for the immunity of baseball only, not of other kinds of amusement or athletic presentations. In the *International Boxing Club* opinion he said:

"... The Shubert defendants argue that *Federal Baseball* and *Toolson* immunized all businesses built around the live presentation of local exhibitions. The defendants in the instant case argue that *Federal Baseball* and *Toolson* immunized only such businesses that involve exhibitions of an athletic nature. We cannot accept either argument."

"... We have held today in the Shubert case that *Toolson* is not authority for exempting other businesses merely because of the circumstance that they are also based on the performance of local exhibitions. That ruling is fully applicable here."

"... *Stare decisis* cannot help the defendants here; for, contrary to their argument, *Federal Baseball* did not hold that all businesses based on professional sports are outside the scope of the antitrust laws. The issue confronting us is, therefore, not whether a previously granted exemption should continue but whether an exemption should be granted in the first instance. And that issue is for Congress to resolve, not this Court."

Warren then pointed out that in 1951 four bills were introduced in Congress forbidding the application of the antitrust laws "to organized professional sports enterprises or to acts in the conduct of such enterprises," and were unanimously

opposed, after extensive hearings, by the Subcommittee on the Study of Monopoly Power of the House Committee on the Judiciary. "Yet the defendants in the instant case," he said, "are now asking this Court for precisely the same exemption which enactment of those bills would have afforded. Their remedy, if they are entitled to one, lies in further resort to Congress. . . For we agree that 'Such a broad exemption could not be granted without substantially repealing the antitrust laws.'"

Frankfurter's Argument

Mr. Justice Frankfurter dissented in the boxing case on the ground that boxing, insofar as the Sherman Act is concerned, is indistinguishable from baseball; thus the doctrine of *stare decisis* compels a dismissal of the complaint:

"It would baffle the subtlest ingenuity to find a single differentiating factor between other sporting exhibitions, whether boxing or football or tennis, and baseball insofar as the conduct of the sport is relevant to the criteria or considerations by which the Sherman Law becomes applicable to a 'trade or Commerce.'"

"... The Court decided as it did in the *Toolson* case as an application of the doctrine of *stare decisis*. That doctrine is not . . . an imprisonment of reason. But neither is it a whimsy. It can hardly be that this Court gave a preferred position to baseball because it is the great American sport."

"... Since, in the light of all the circumstances, *Federal Baseball* was left undisturbed by *Toolson*, I cannot bring myself to construe the respect that was thus accorded to *stare decisis* to be narrower than that all situations identical with what was passed on in the *Federal Baseball* case should be covered by it. I cannot translate even the narrowest conception of *stare decisis* into the equivalent of writing into the Sherman Law an exemption of baseball to the exclusion of every other sport different not one legal jot or tittle from it."

Minton Dissents

Mr. Justice Minton also dissented, on the ground that a boxing match, with the arrangements incident to it, is not different, in a legal view, from a baseball game. He examined boxing itself and found it not to be trade or commerce.

Although we shed no tears for professional boxing, it does appear that the majority of the Court made a very strained constriction of the doctrine of *stare decisis*, while Frankfurter's opinion, of the three noted, takes the most logical approach to the case. The legal effect of the boxing decision, apparently, is that only baseball is immune from the Sherman Act, that any other professional sport against which a complaint may be lodged in the future must stand an individual examination.

—Friedman

Letters to the Editors

CONFLICT OF COURTS

TO THE EDITOR OF THE RECORD:

Your issue of November 10th carried a thoughtful account of the important decision rendered by the Supreme Court of the United States in *Williams v. Georgia*, 349 U.S. 375 (June 6, 1955). There the majority remanded a capital case to the Supreme Court of Georgia for reconsideration of the question whether, under the exceptional circumstances presented, the defendant's post-trial attack upon a now admittedly unconstitutional system of jury selection warranted further review of the conviction. In so holding, the majority rejected the State of Georgia's vigorous contentions that the state court judgment clearly rested on an adequate non-federal ground (allegedly, that the jury objection was irrevocably waived if not asserted before the trial) and hence that the Supreme Court of the United States lacked jurisdiction.

Your readers may also be interested in the sequel. On July 15, 1955, the Supreme Court of Georgia, on remand, decided to adhere to its prior judgment affirming the conviction. 211 Ga. 763, 88 S.E.2d 376. The Georgia court's opinion begins by quoting the Tenth Amendment and goes on to say:

"Even though executives and legislators, not being constitutional lawyers, might often overstep the foregoing unambiguous constitutional prohibition of Federal invasion of State jurisdiction, there can never be an acceptable excuse for judicial failure to strictly observe it. This Court bows to the Supreme Court on all Federal questions of law, but we will not supinely surrender sovereign powers of this State."

The court then states that the jury question sought to be raised "must be raised before trial and not otherwise"—although no effort whatsoever is made to discuss or distinguish the prior Georgia cases which were relied on by the Supreme Court of the United States to show that under Georgia law this has by no means invariably been true. The opinion concludes:

"Not in recognition of any jurisdiction of the Supreme Court to influence or in any manner to interfere with the functioning of this court

on strictly State questions, but solely for the purpose of completing the record in this court in a case that was first decided by us in 1953, and to avoid further delay, we state that our opinion in *Williams v. State*, 210 Ga. 665 (82 S.E.2d 217), is supported by sound and unchallenged law, conforms with the State and Federal Constitutions, and stands as the judgment of all seven of the Justices of the Court."

Needless to say, another petition for writ of certiorari has recently been filed on behalf of Williams (No. 328 Misc., October Term 1955) and is awaiting disposition by the Supreme Court of the United States. The petition contends that instead of following the mandate the Georgia court has openly flouted the jurisdiction and authority of the Supreme Court; that the Georgia court has in effect destroyed Williams' right under the Fourteenth Amendment; and that since further remand of the case would appear to be useless, the Supreme Court should determine substantively that Williams' constitutional rights have been violated. The response filed on behalf of the State of Georgia takes a diametrically opposite view and, incidentally, offers the argument that "since it clearly appears that the Georgia Supreme Court adhered to the mandate of this Court, the fact that in so doing it may have announced disagreement with this Court over the interpretation of the Tenth Amendment is just about as constitutionally irrelevant . . . as disagreement over who should have won the World Series."

BENNETT BOSKEY, LL.B. '39

Recently Published

RATIFICATION

Warren A. Seavey, Professor of Law, Harvard Law School, "Ratification by Silence," 103 U. of Pa. L.R. 30 (1954).

Cases of ratification logically fall into three groups. In the first case the principal voluntarily becomes a party to an obligation which would have arisen had the transaction been authorized by the principal. In the second case the inconsistent conduct of the principal amounts to ratification. The third case is estoppel. Although many decisions rest in part on other grounds, it is now clear that there may be ratification through acquiescence alone.

New PLI Book Gives Advice On Building a Law Practice

The problems of entering practice, particularly those practical difficulties for which budding lawyers are seldom prepared by the academic Law School curriculum, are the subjects of some helpful advice in a monograph recently reissued by the Practising Law Institute.

Entitled "Building a Practice," the monograph was prepared by Mr. Harold P. Seligson, founder and Director of the Institute, and the present edition has been completely revised, according to the Institute, to meet the current demands of the field.

Objects of the work are to help recent Law School graduates enter practice, find employment, deal with clients, and generally become efficient practitioners. Thorough coverage is given such topics as obtaining clients, making employment contacts, fixing fees, and managing a law office.

Drawing upon his own law office experience of some thirty years, Mr. Seligson often emphasizes his points with illustrative anecdotes. Opening his discussion of fees, he tells of an early case in which he charged a client \$50 for 20 hours' work in collecting \$5500. The client's check was accompanied by a box of fine cigars. It was not until he offered one of these to an experienced attorney that he learned that, through his failure to consider all the factors involved in the setting of a fee, the box

had cost him at least \$100. The section then goes on to explain these factors in detail, giving illustrations from practice.

Included in the range of the monograph are such varied subjects as the necessity of good techniques for collecting facts as well as analyzing them, the advantages of a human approach and a confidence-inspiring personality, and the importance of keeping abreast of public opinion as well as new developments in laws and business regulations.

One section of the work analyzes the advantages and disadvantages of working for private firms, corporations, and the Government. It points out that larger firms usually pay better than those with two to five partners, but the experience a beginner gains in a large firm often is too specialized to form a solid foundation for later general practice. In a smaller firm, a novice is likely to receive closer supervision while handling a greater variety of problems.

Mr. Seligson suggested several ways of looking for employment. From his own experience and talks with other attorneys, he tells what qualities employers seek when they interview prospects for their firms. He also sets out a form of personal resume and describes how it can be used effectively.

"Building a Practice" is one of 18 monographs in the Practising Law Institute's series on General Practice. Copies of it, priced at \$1.50, may be obtained for a ten-day trial by writing the Institute at 20 Vesey St., New York 7, N. Y.

—Coy

Harvard Publishes Periodicals Index

The tenth triennial volume of the *Index to Legal Periodicals*, covering the period from August 1952 to July of this year, was published by the Law School last week for the American Association of Law Libraries.

The massive compendium of articles appearing in 249 different periodicals is the work of two members of Harvard's Law Library staff—Miss Dorothea A. Flaherty, the executive editor, and Mrs. Fanna M. Lovinger, the assistant editor.

The indices have been edited at Harvard every three years since 1925. Publication of the *Index* began in 1908, and work on the project was shifted to Harvard three decades ago at the request of the late Professor and librarian, Eldon R. James.

"Like its predecessors, the new *Index* will be of great value to lawyers and law students," said Assistant Librarian Philip A. Putnam last week. "Some of the most important legal writing appears in the law reviews of this country, and an index to this great wealth of material will assist everyone concerned with problems of legal research," he said.

Christians Meet

The Committee on Christian Vocation and the Legal Profession will hold an open meeting on Monday, December 5 at 7:00 p.m. in Seminar Room #1 of Langdell Hall. The meeting will consist of a discussion of Plato's and Aristotle's concepts of natural law in the light of Christian affirmations. Interested students and faculty are invited to attend.

Bulls & Bears Hear Analysis Of Speculation

The commodities market was described last week as an area where risks are great, but where a lawyer's knowledge can pay rich dividends.

Speaking before the Bull and Bear Club, Gene Gummer, a partner in the brokerage firm of Merrill Lynch, Pierce, Fenner and Beane, stated that most attorneys know far less about commodity trading than they should.

The futures market is an explosive one, Mr. Gummer said. It is one where skillful speculation can yield quick profits—as much as 100 per cent in a matter of days, sometimes hours. But for the same reasons, faulty judgment can mean equally disastrous losses in a short period of time.

Commodities traded in the futures market often grow in foreign countries, Mr. Gummer said, and delivery is subject to many contingencies, some of them beyond the knowledge and control of the trader. As a result, the market in these goods is no place for a person without the necessary expertise.

Bull and Bear will conclude its speakers' program for the fall with an address by George Anson, securities analyst, in Harkness Commons next Friday.

Law School Host to NATO Leaders; Visit to Strengthen Atlantic Alliance

Eleven parliamentary leaders from Canada and North Atlantic Treaty Organization countries in Europe visited the Law School last Friday under the sponsorship of the State Department.

The visitors, drawn from France, Italy, Norway, Denmark, the United Kingdom, and Canada, are traveling in this country as participants in the State Department's "NATO Leaders Project."

The project is part of a continuing program by the NATO nations to strengthen cultural ties within the Atlantic Community in accord with the goals laid down in Article 2 of the North Atlantic Treaty.

While at Harvard the guests met with Professor Milton Katz, Director of the

Program of International Legal Studies at the Law School, and attended a number of classroom sessions in different subjects.

"The visit to this country has been a tremendous experience," one of the European guests observed. "It is important that we realize NATO is more than a military alliance."

"It is also a vehicle by which the nations of the Atlantic Community can share among themselves their great cultural and spiritual resources," he said.

The Law School also is acting as host this month to one of India's leading legal scholars, Dean Sivasubramanian of the Law School at the University of Delhi. He is visiting law schools in various parts of the country and will remain at Harvard through December 11.

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Lawyer and Cameras Barred By Local Registry of Deeds

By NORBERT WEISSBERG

The Middlesex County Registry of Deeds has for years extended a cordial invitation to all investigators of sundry titles to utilize the Registry's records in their respective searches. The doors have been eternally closed, however, to Albert W. Wunderly, Boston attorney, as long as he steadfastly insists upon bringing his camera along on each of his visits.

The persistence of this erstwhile Middlesex County Assistant District Attorney turned photographer has been so exaggerated as to initiate a minor furor in local legal circles. His exploits thus far have resulted in at least two previous lawsuits, while a host of actions remain pending.

Mr. Wunderly's habit appears, on the surface, rather innocent. His purpose is to make photostats of the instruments recorded on the register, and to sell them to his clients. Of course, this particular type of photography, due to the diminutive print of the records and the lighting in the Registry office itself, necessitates a substantial amount of photographic paraphernalia to assure clear and accurate pictures.

Accused of Carelessness

Hence, Mr. Wunderly, much to the chagrin of the Registry officials, could, many times, be found in the Registry office with his camera in hand, his batteries and bulbs strewn carelessly about the room, and his plugs running every which way into all available sockets, (and often sockets which seconds before were unavailable), snapping away at page after page of deeds and mortgages and other assorted instruments.

This same venture led to a court action in Suffolk County, Massachusetts, restraining Mr. Wunderly from using his particular camera with all its attendant trimmings, in the Registry office. In this same county one month ago, a policeman attempted to escort our frustrated entrepreneur out of the building after the judge had threatened to throw him in jail if he returned with his camera. The offended Mr. Wunderly promptly began an assault action against the astounded policeman, and a false arrest suit against the non-plused Judge.

Thereafter, a trifle piqued yet undaunted and determined, Wunderly, armed with a new type camera and a less bulky

battery, returned to the Middlesex County Registry and promptly began anew to snap his shutter at the recorded material.

An irate registrar, William B. Bailey, argued that since this was the busiest Registry in the area, Wunderly's copious instruments deny the use of much needed space to others with more important reasons for employing said space. Bailey pointed out that smoking and tape recorders were not permitted in the Registry and Wunderly, it was made plain, was welcome to copy the records in longhand but cameras should not be allowed either. He was to be denied the use of a camera.

Immune to any criticism, Wunderly continued his antics until the patience of the Registry officials was finally exhausted. The Registry of Deeds Association unanimously voted to prohibit Wunderly and his reproducing machine from employing the records in a manner, which threatened to harm their utility. Further, registrar Bailey filed a complaint in Middlesex Superior court requesting a restraining order to prevent Wunderly from using his camera to copy the records.

The frustrated Wunderly claims the Registry is preventing him from earning an honest dollar by forbidding him the use of the records, merely, he alleges, because he happens to sell the copies he makes.

The date of the hearing concerning the Registry and the photographer has been set for December fifth. Supporters and opponents of laissez faire economics sit tensely by their receiving sets eagerly awaiting the decision.

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SBA to Study Divorce Laws

Members of the Student Bar Association will participate in two important research projects of the American Law Students Association, it was announced by Student Bar President Benjamin Wolman, 3L of Baltimore.

The ALSA has undertaken to bring up to date its nation-wide survey of divorce laws, first published five years ago, and to compile a list of bar review courses in all parts of the country.

The SBA and the ALSA chapters at Boston College and at Boston University will study changes in the divorce laws of the states and territories included within the First Circuit.

Mr. Wolman will review the recent developments in New Hampshire, and Charles T. Albert, 3L of Fallston, Md. will do the same for Puerto Rico. Students at the other Boston schools will cover Massachusetts, Rhode Island, Maine, and the Virgin Islands.

For the bar review study, the Harvard group will gather information about courses in the state of Maryland. The individuals who will perform the actual research are to be designated in the near future.

David L. Cole, Arbitrator of Disputes, Honored for Aiding Industrial Peace

David L. Cole, LL.B. '24, arbitrator of labor-management disputes, has received the American Arbitration Association's "Gold Medal for Distinguished Service in Advancement of Industrial Peace through Mediation and Arbitration."

Mr. Cole is permanent arbitrator of disputes at the International Harvester Corporation and in many other industries, and is chairman of the Secretary of Labor's Advisory Committee on Procedures in Atomic Energy Disputes. In 1954, he was named by the American Federation of Labor and the Congress of Industrial Organizations as arbitrator of jurisdictional conflicts during crucial months of planning for the merger of the two labor bodies, to take place during the first week of December.

The medal was presented by Sylvan

A Fable

By HARTLEY CHAZEN

Professor Warren A. Seavey, in a talk before a Coffee Hour several weeks ago, cautioned the new graduate about the possible pitfalls of entering a big law firm in the city of New York. This story envisions some of the problems that may be encountered. If you find it unreal, remember that it is only a fable.

Once upon a time there was a young man named Thomas J. Walters who graduated from the College in '22 and from the Law School in '25. He came from a fine old Columbus, Ohio family (if any family in Columbus can be considered old). Instead of returning to Columbus to practice, he decided to accept a position with a large law firm in New York City.

Those were the "good times." New York was gay and full of light and color. Tom's job was restricted at first. They said that he would see more of the law as his association with the firm continued. He settled down in a small apartment in respectable 125th Street—a bit uptown, but starting salaries weren't too high.

He began at first in the research department. His firm acted as advisor to several

the legality of the issue regarding its legal foundations, regulating local and state laws, confidential reports on the administrators, and a variety of other problems. It was the firm's job to investigate. At first, the work seemed a bit boring to Tom, but he realized that it would not remain like this. He kept plugging, always competing with the other young men.

After the first year, the firm "rotated" Tom into the municipal law and ordinance section. Here his duties required him to review the statutes and ordinances of several southwestern cities. The purpose of this was to have an expert available in case any litigation concerning the firm's clients involved these statutes. He concentrated on statutes during the period 1861-1890. One day he was asked to state his opinion regarding the interpretation of a property statute. Tom wrote a brilliant analysis which helped materially in winning the case. The firm's senior partner personally congratulated him, and in the third year at the firm he was not "rotated" but began specializing in this field of the law.

Love and Marriage

Tom had not yet been before a judge and jury, and although he probably would not have made a very good trial attorney, he remembered the enjoyment he had derived from his Ames arguments in Law School. It was during his third year at the firm that Tom met Mary Hughes. She was a very fine girl and he fell in love with her. He took her home to Columbus that Christmas to meet his mother. A week later they eloped. The firm gave him two weeks off with pay for his honeymoon. With a staff of 75 partners and associates, one of the senior partners joked, they could afford to miss him for a few days.

Tom loved married life, but he had a growing dissatisfaction with his specialized job. He was going to discuss his plans for leaving his job and starting anew with Mary, but before he had an opportunity, she told him that he would soon be a father.

By January 1930, a few months after the arrival of his daughter, Tom realized that a major business recession was on its way and so he started to work harder at the office. Several of his friends, who were also in large offices, had lost their jobs. One day, one of the partners called him in and told him that it was the decision of the firm that several associates would have to be dropped but that since Tom had been doing such a fine job, he was to be retained. However, the partner continued, it would, of course be necessary for Tom to assume an additional workload. Tom thanked him and assured the partner that he would do his very best. Thus it was that Tom became a specialist in the municipal law of twelve southwestern and far western cities for the periods 1861-1920.

Specialization Pays

His dissatisfaction with the job did not decrease. His desire to appear before a judge and jury were alleviated to some extent by visiting courts on his day off. It had always been his ambition to be a lawyer and now he was only a "specialist." But, what could he do? With two children (there was a boy now) and not too many jobs available, he was lucky. He kept telling himself, "I'm lucky."

By 1942 business started to pick up again. He was made a partner and was prepared to send his son and daughter to private schools. This required considerable money. He had also acquired a new home out on the Island. This too required considerable money. He had become a specialist in his field and was a respected authority.

Tom never stopped going to court on his day off. He always wanted to be a lawyer.

Senators Eastland and Jenner Denounce Tapping of Juries

The RECORD has given extensive coverage this fall to the U. of Chicago's Law School's Jury Project. Our editorial on October 13 stated the RECORD's position, and an editorial on October 20 voiced our disapproval of the manner in which Sen. James O. Eastland's Senate subcommittee conducted hearings on the Jury Project. Our November 17 issue carried excerpts of a statement made by Dean Edward H. Levi of the Chicago Law School before the Senate Subcommittee. Prof. Llewellyn's defense of the project which he presented before the Harvard Law School Forum was reported in the RECORD of Nov. 25. To enable our readers to appraise the arguments on both sides of the question, we are printing below a statement by Senators James O. Eastland and William E. Jenner, made at the conclusion of the subcommittee's hearings.

The facts revealed before the Internal Security Sub-Committee in two days of hearings on the "bugging" of the deliberations of certain juries in civil cases in the Federal District Court in Kansas would be almost unbelievable if they had not been subject of testimony under oath.

What was done in this Kansas Court constituted, in our separate judgments, a flagrant abuse of authority, a violation of the constitutional guarantee, under the Seventh Amendment, of the right of trial by jury, and a serious threat to such right for the future so long as there is no guarantee that the incidents of this nature will not again occur.

We believe the best way to provide such a guarantee, so far as Federal Courts are concerned, is by the enactment of legislation making it a crime to eavesdrop on the deliberations of a jury or to record such deliberations in any way.

We consider beside the point the claim that this violation of the sanctity of the jury room was intended for research purposes only, and that efforts were made to keep the whole matter a closely held secret. The impossibility of achieving success in such efforts has been well demonstrated by the way in which the facts have been shown to have leaked out in this case. Furthermore, it seems obvious that if there was no intention ever at any time to make public use of the material obtained by recording the juries' deliberations, there was no reason for arranging these recordings at all.

We consider it immaterial also whether this eavesdropping on juries was done with the consent of judges or lawyers. Perhaps it could not have been done so readily without consent. But that it was done at all, and that it has become known it was done, is what poses the threat to free deliberation in all subsequent cases. A juror must know that within the walls of the jury room he may speak freely, if his true and proper function as a juror is to be performed. This is a right which may not be transgressed by either attorneys or judges; it rests on a constitutional guarantee.

We were appalled to learn, through testimony before us, of the extensive steps taken by the University of Chicago representatives to learn the exact identity of each juror whose deliberations were recorded and to establish exactly what each juror said. That such a record was made at all, and that this record has been carefully preserved, is one of the most reprehensible aspects of this whole matter.

In a situation such as this, where freedom of jury deliberation has been tampered with, where the very integrity of the jury system has suffered a severe blow, it was important to know who was responsible and, if possible, why. The committee has sought answers to these questions.

The jury system is a fundamental of our judicial structure, and is basic to a free society under law as we know it. If the jury system is destroyed or substantially weakened, a bitter blow will have been struck at the liberties of the people.

As individual members of the Judiciary Committee of the Senate and of its Internal Security Sub-Committee, we propose to collaborate in the preparation and introduction of legislation to provide severe punishment for any person or group invading the privacy of the jury room for the purpose of eavesdropping upon or recording a jury's deliberations.

LAW WIVES

Ideas for Christmas gifts were discussed last night at the Law Wives meeting in Holmes Hall. Miss Phyllis J. Gillman, saleswoman at the Personal Book Shop, spoke to the group on books that were suitable as gifts. Miss Gillman also reviewed some of the books that have recently been published.

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