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TEN CENTS

Law School Fund Plans Money-Raising Program

The Roscoe Pound Room of Langdell Hall was the scene of the Ninth Annual Meeting of the Harvard Law School Fund last Saturday morning. A nation-wide gathering of almost 100 alumni attended the meeting, headed by Edward S. Pinney, LL. B. '21, of New York City, National Chairman of the Fund.

The purpose of the meeting was to explain the fund raising program for the year and to discuss tried techniques and new methods and ideas to improve the Fund's operation.

According to Assistant Dean Wesley E. Bevins, Jr., Director of the Fund, the Fund hopes to raise between \$225,000 and \$250,000 to underwrite this year's financial aids program for students. Some of the money, however, is expected to be permanent endowment, rather than current use money. The Fund also hopes to raise about \$200,000 for current construction and renovation work at the Law School.

The Harvard Law School Fund was inaugurated in November of 1950. Its fiscal year extends from July 1 to June 30. During its first abbreviated fiscal year it received \$64,000. Last year (the year ending on June 30, 1958) it received \$410,700, from 7,119 contributors (43% of the Law School graduates). This number of contributors is a record high, although the amount contributed during the fiscal year 1957-58 declined 6.6% from the preceding year, perhaps partially due to the impact of the current \$82,500,000 solicitation campaign for Harvard College, unusual gifts during 1956-57, and the recession.

The cumulative efforts of the Fund during its 8 years of existence has succeeded in bringing to the Law School \$2,278,075. Of this amount, \$1,171,946 has been given without restrictions of any kind. The sum of \$536,867 has had some kind of restriction attached (e.g., for financial aid to students, for building renovations and construction, to be used currently, etc.). And \$569,261 has been given for endowment purposes, mostly to provide income for the School's financial aids program.

The Law School has received many other gifts during this period which are not included in the Fund's figures, including considerable Ford Foundation aid.

This year, although the Fund did no formal soliciting until mid-

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Dance

The Law School Dormitory Association will hold the second in its series of dances on Saturday evening in the North Dining Room of Harkness Commons (second floor) from 8:30 p.m. to midnight. George Graham's orchestra will provide the music.

Defenders Select 13 New Members

Thirteen second year students have been selected as members of the Voluntary Defenders, from a record number of more than 70 applicants, according to Thomas W. Wiley, 3L of Hutchinson, Kan., president of the organization.

Although the bulk of the work done by the Defenders is interviewing clients in various jails in the Boston area, president Wiley states that there has been an increase in the number of cases that the office handles for clients presently incarcerated in prisons outside the State of Massachusetts. Future plans call for the organization to assist Boston counsel in preparing briefs for criminal cases on appeal.

The following are the new members:

(See DEFENDERS on page three)



Wesley E. Bevins, Jr.
Director
Harvard Law School Fund

Dorm Council Loses Officers

Failure of a majority of Dormitory Council representatives present at their second meeting, Tuesday, October 28th, in the Gray Room of Holmes Hall, to approve a resolution confirming the constitutionality of continued tenure in office of three principal officers of the Council has resulted in vacancies for President, Secretary, and Treasurer.

By a vote in favor of confirmation of only 7-6, with 3 abstentions, (9 votes being required for a majority) the Council decided that officers who, though properly elected, move out of the dormitories before the expiration of their terms of office, thereby disqualify themselves as members of the Dormitory Association and, consequently, as officers of its Council.

As the meeting grew late, however, a motion to consider conferring honorary membership on the three stu-

(See DORMITORY on page three)

Concerts

A series of Sunday morning recorded concerts in the Wheeler Room of Holmes Hall, for the benefit of students and other listeners, lasting from 10:30 until 12:30 will begin this coming Sunday morning, according to the Dormitory Council's Buildings and Grounds Committee. The first program will include the following selections:

Falla: Concerto for Harp-sichord
Ibert: Divertimenti
Lobos: Folk Songs of Brazil
Villa-Lobos: Quartet #6 in E.

German Lawyer Confers Here

Reaction to the experience of World War II has resulted in a strong emphasis on indoctrination of all German military personnel in the requirements of international law in war, according to Dr. Gunther Moritz, Assistant Director, Office of the General Counsel of the German Defense Ministry, in a talk with Major Richard R. Baxter, U. S. A. R., Assistant Professor of Law, held in Austin West, Tuesday evening, October 28th, before the three assembled classes of the U. S. A. R. Judge Advocate General Staff School.

Dr. Moritz explained that the Office of the General Counsel consists entirely of civilian (non-uniformed) lawyers. (In the United States, the comparable legal staffs are composed both of military and non-military personnel.) Furthermore, he added, ordinary German courts administer the German code of military justice.

The visitor, a specialist in the law of war, co-authored an illustrated pamphlet, in color, for general military distribution in Germany, on the prohibitions of the four Geneva Conventions of 1949 relating to protection of civilians and prisoners of war. With Major Baxter and members of the third year class, he discussed several specific problem cases, relating to identification of spies, truce violations, and the permissible limits of belligerent power to expropriate.

Dr. Moritz, who has an American security clearance, had just completed a visit to the Naval War College in Providence. He is especially interested in the ways in which officers who have received formal training in the international law of war use their background to instruct enlisted men.

Commons Eaters Sign Off; Harkness Feels Recession?

Fewer and fewer students are regularly eating their meals at the Harkness Commons Dining Hall. Over 37% (235) of the students who were signed on on September 30 have already signed off. Sign-ons now number 127 persons less than last year at this time. Four hundred and eight (183 law and 225 graduate) students are now signed on at Harkness. This compares with 535 (249 law and 286 graduate) students one year ago.



W. J. Dennis
Manager of Harkness Commons

Almost one-third (123) of the Law School students who were signed on at the Dining Hall on September 30 signed off during the first week in October. Another 81 (along with 19 graduates) signed off this week, dropping the law student total from 386 on September 30 to the present 183.

A reported \$12,000 loss in operations last year, together with increased food and labor costs (All non-student help at the Dining Hall is unionized. These workers have received a wage increase every year since 1946), made necessary the installation of new policies at Harkness, raising the price of meals and limiting second servings. A plan to improve the quality of the food served was adopted in partial compensation for these changes.

Another economy move made was to transfer all food purchasing to the University's central purchasing office, which now purchases in mass quantity for all University dining halls, including the Business and Medical Schools and the College houses.

W. J. Dennis, manager of Harkness Commons, has stated that figures for the 15 operating days in September show that during this period the Dining Hall operated "much better than last year." But, he cautioned, when the final figures for the month of October are tabulated, a much clearer indication of the status of the Dining Hall's operations will be received.

The financial status of the Dining Hall as reflected in the October figures may determine the advisability of or necessity for any further changes or innovations in the meals program.

The upstairs grill in Harkness Commons has been subject to a decline in business this fall corresponding to that of the Dining Hall. Prices were raised 5 cents this year on 3 items: hamburgers, cheeseburgers, and ice cream. But Mr. Dennis has expressed the view that this is not a major reason for the decline in business.

— Binder

Attorney's Office Seeks Students

Vice Dean Livingston Hall's office is now accepting applications from second and third year law students for part-time positions in the United States Attorney's office in Boston. Students selected will be employed about ten hours a week beginning immediately and lasting until the end of March, with time out for the Christmas vacation and mid-year examinations.

This plan, a unique one for the U. S. Attorney's office in this state, is patterned after the program initiated in 1953 by Paul W. Williams, LL.B. '29, then United States Attorney for the Southern District of New York. Its purpose is two-fold: (1) to encourage law students to give serious consideration to careers in public service, and (2) to contribute to legal education by making available to a number of law students the opportunity for practical

(See JOBS on page three)

Majority Avoid Military Service; 'Universal' Training a Misnomer

by
JOHN GRAHAM

The Fund for the Republic recently issued one in a series of Occasional Papers on the role of government in the Free Society, entitled *The Universal Military Obligation*. It was written by John Graham, a member of the District of Columbia bar who has recently completed his own military service.

The following is part of that Paper:

There are about sixty ways for a young man to fulfill his military obligation. The sixty-first way is to avoid it completely. No discussion of conscription can be adequate without an examination of its universality. Since the 1951 act, it has been accepted canon (as the title of the act indicates) that compulsory peace-time service can be permanently accepted only if it is universal and non-discriminatory. The total mobilization of World War II achieved that goal automatically but even then there were inevitable exemptions and deferments. Today these have been so greatly inflated that more than one half of all young men will never see

any military service under the present application of the laws.

It was a minor national scandal that the rate of rejection for military service in World War II was 35.8 per cent. More than one out of three men of military age at that time were not able to meet the minimum physical, mental, or moral standards when this country was scraping the bottom of the manpower barrel. In early 1957 the pool of draft-age men was about 5 million, of whom 2.3 million were physically or mentally unacceptable; that is, 46 per cent were 4-F, even though the standards were frozen by statute at the minimum levels established near the end of World War II. In addition, 1.4 million of the 5 million were fathers who, by Executive Order and not by the terms of the draft law, are indefinitely deferred. Figures are not available to indicate how many of these fathers were physically and mentally qualified, but, applying the overall percentage, it would appear that about 800,000 fathers were deferred on that ground alone. Therefore, because of either disability or fatherhood, more than 60 per cent of all non-prior-service men in the draft-age range were avoiding it as of early 1957. There is

no reason to believe the picture has changed since, or will change in the future.

More Exemptions

There are additional grounds for escaping service. By Executive Order promulgated in January of 1956, men 26 and over, still liable because of past deferments, were nevertheless insulated from the draft by the provision that they would be inducted only after the entire manpower pool (down to the 18½-year-olds) had been exhausted. Conscientious objectors are excused and, in contrast to World War II when they were assigned as medical corpsmen or in some other governmental humanitarian work at military-pay scales, no comparable civil disabilities are laid on them. Sole surviving sons in families that had one or more other sons killed in military service are exempt. Special exemptions are also available for certain men in occupations vital to national defense. Elective officials are exempt during their tenure in office. Deferments are granted to college students provided a certain standing is maintained and to men who can

(See MILITARY on page four)

Law Wives

"The Law Wife's Lot is Not a Happy One" will be the title of Professor Robert Braucher's informal talk to the Law Wives on November 12 at 8 p.m. in Harkness Commons. Professor Braucher will give his impressions of the plight of the law wife now and after her husband is out of school.

Gilday Lectures On Probate Law

Probate Practice and Procedure in Massachusetts will be the subject of a series of three lectures to be given by Walter H. Gilday, Register of Probate of Plymouth County, at the Law School this fall. The introductory lecture will be given on Friday, November 14, at 4 p.m. in Langdell North Middle. It will cover probate rules and forms, and procedures for administration of intestate estates. The last two lectures will be delivered on November 21 and December 5. Sponsored by the Student Bar Association, the lectures are open to all students, with the purpose of providing preparation for bar examinations and to supplement estate planning courses for those intending to practice in Massachusetts and states with similar procedures. Each lecture will be followed by a period of questions from the audience.

Harvard Law Record

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Justice and the Court

We are under a Constitution, but the Constitution is what the judges say it is.
 — Charles Evans Hughes

On August 23, 1958, the Conference of Chief Justices of the States, meeting at Pasadena, California, by a vote of 36 to 8, passed a resolution which approved a report of the Committee on Federal-State Relationships as 'Affected by Judicial Decisions.' This unprecedented report criticized the Supreme Court of the United States for disregarding the Constitutional allocation of powers between the federal and state governments, and for unduly limiting the powers of the states.

The report expressed "grave concern as to whether individual views of the members of the court as from time to time constituted, or of a majority thereof, as to what is wise or desirable do not unconsciously override a more dispassionate consideration of what is or is not constitutionally warranted."

Clause 5 of the resolution passed by the Chief Justices, in part, urges the Supreme Court to "exercise . . . the power of judicial self-restraint — by recognizing and giving effect to the difference between that which, on the one hand, the Constitution may prescribe or permit, and that which, on the other, a majority of the Supreme Court, as from time to time constituted, may deem desirable or undesirable. . . ."

Much of the criticism of the State Chief Justices appears justified, for the Supreme Court of the United States seems, indeed, to be neglecting, at times, the philosophy of government set out in the Constitution, and the individual views of the members of the Court as to what is right or desirable appear to be the real foundations for some Supreme Court decisions ostensibly based upon Constitutional provisions. This is particularly true in cases decided under the "due process" and "equal protection" clauses of the 14th Amendment.

Good or Bad?

But what the report of the Chief Justices fails to do is to make a convincing argument showing just how and why this is particularly bad. For it may be well and good that the Constitution is sometimes neglected when the Supreme Court resolves Constitutional questions, and that cases are decided on the basis of what a majority of the Court deems just and desirable.

The decision of the Supreme Court in any particular case must be based upon (1) the sense of justice of the present members of the Court, or (2) the sense of justice of others (i.e., the framers of the Constitution, when Constitutional issues are involved), or (3) some consideration other than justice.

Assuming that justice is the goal of our judicial system, then alternative (3) will not be satisfactory. As between alternatives (1) and (2), why should the original drafters of the Constitution or of any of its Amendments be better qualified to determine the just solutions for problems which face the Supreme Court in 1958 than its present members? Not only could these drafters rarely have foreseen the concrete problems which the Court now faces, but often they could not have anticipated even the types of problems presented.

Product of Bygone Age

The United States Constitution, formulated in the 1780's, with 11 short Amendments added since the 18th century, is a product of the philosophy of an age long gone, an age of individualism, when the fear of strong central government dominated political thought, and laissez faire economic theory, an age when the republic was young and expanding and the troubles and cares of the Old World

were far removed and of comparatively small concern, an age of the pioneer and the open west, of the farmer and the small merchant.

But the United States, in the mid-20th century, is a great World Power, an industrial giant, the protector and benefactor of a large sector of the planet, and the enemy of another large sector. The day of the simple economy in America has been superseded by the age of giant corporations and powerful labor unions, of state economic regulation and supervision. Big government and many facets of the welfare state are no longer feared, but are generally accepted, and a simple society and economy have been replaced by the most complex.

The Constitution is today, in many ways, a legal anachronism. Much of the thought it embodies, the principles it expounds, are no longer in vogue. Written in an era of great dread of strong central government, it was adopted as a pact between independent and sovereign states who surrendered a part, and a part only, of their sovereignty to the federal government. The Constitution, it is quite evident, was fashioned as an extremely strong "states' rights" document. But a great Civil War has come and gone and almost another century has passed and the case for the priority of "states' rights" has long since been lost.

Enumerated Powers

The United States government was established as one of enumerated powers only, and "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." (10th Amendment). But the concept of "enumerated powers" and the 10th Amendment are no longer taken so seriously by the nation's judiciary.

Charles Austin Beard, indeed, has written that "The Constitution was essentially an economic document based upon the concept that the fundamental private rights of property are anterior to government and morally beyond the reach of popular minorities." (Beard, *An Economic Interpretation of the Constitution of the United States*, page 324).

Is it reasonable to expect the United States in the second half of the 20th century to remain fettered by, and be successfully governed by, rules laid down in a document written in the latter 18th century by men whose political and economic philosophy has so long been abandoned?

Criticism

If the Supreme Court, then, when resolving Constitutional issues, sometimes relies more upon its own judgment as to what a just decision should be, rather than on the provisions of the Constitution itself, it should not be unduly criticized. But it may well be criticized for the opinions it renders in explanation of these decisions.

For the decisions of the Court of late do not appear to be as well written, as carefully worded, as clear and concise, as professional as they might be. Dean Griswold has suggested that the quality of the Supreme Court's opinions may suffer because the Court is overburdened with work, and cannot spend enough time on each individual case.

This may be true, but trouble also may stem from the fact that while many of the Court's decisions are based upon what the individual members feel is just and desirable, the Court often, in its opinions, sees fit to declare that the results are reached because specific imperative provisions of the Constitution require that result. The Court is fond of declaring that "due process" demands that this case be decided this way, or that "equal protection" demands that that case be decided that way. But it never informs us that it reaches a particular result just because it feels that it is the only just result.

Seek and Ye Shall Find

Dr. Albert Schweitzer has observed that modern Christian theologians tend to pride themselves on their ability to look into the Bible and find there just what they want to find, and to interpret away anything that appears to be out of harmony with it. May it not be that the members of the Supreme Court, like the theologians that Dr. Schweitzer complains of, sometimes determine what they want to find in the Constitution before they go looking? And that they unconsciously become oblivious to or brush aside any inappropriate or unharmonious ideas or phraseology encountered in their path?

For the Constitution, like the Bible, is much more a product of its time than it is generally treated as, and a lot of modern 20th Century philosophy and thought and moral principle are interpreted into it, rather than actually found residing there.

Constitutional lawyers today, when seeking to determine the constitutionality of a particular action, habitually look not to the Constitution itself, but to decisional law, to past expressions of opinion by members of the

Current Cases

The highest courts in two states located in diametrically opposite corners of the nation recently handed down significant decisions concerning adequate grounds for the disbarment of lawyers.

In the State of Florida, membership in or allegiance to the Communist party is now a legally sufficient ground for disbarment from the practice of law.

In *In Re the Integration Rule of the Florida Bar*, 103 So. 2d 873 (1958), the Supreme Court of Florida, by a unanimous decision, in an opinion written by Justice Terrell, stated that "lawyers in Florida are officers of the court . . . We do not think they can consistently become members of the Communist party or lend their sympathy or allegiance to any communist front, cell or other communist sympathizer known to be operating in this country without forfeiting their membership in the bar."

Two Petitions

The Florida Supreme Court was ruling on two separate petitions, one by 27 members of the Miami Bar and one by the Board of Governors of the Florida Bar, to amend the Integration Rule of the Florida Bar.

The petition by the Board of Governors would have made the invocation of the 5th Amendment by an attorney under investigation in any official proceeding "prima facie evidence that he is unfit to continue to exercise the privilege of practicing law."

But the Florida Supreme Court, citing *Slochower v. Board of Higher Education of City of New York*, 350 U. S. 551, 76 S. Ct. 637 (1956), held that it would be a violation of "due process" to punish an attorney for asserting his 5th Amendment privilege. It defended the right of a lawyer "to decline to give evidence that will incriminate him as contemplated by the Fifth Amendment."

The court commented that although a proceeding to disbar an attorney is disciplinary rather than criminal, "the seriousness of it entitles the accused to due process."

The Supreme Court of Florida then approved the following amendment to the Disciplinary Rule of the Florida Bar:

Any member of the bar of this state, who joins the Communist party, allies himself with or in any way lends his allegiance to the

Supreme Court. And since these opinions change with the membership of the Court, the lawyer turns, especially in the field of federal-state relations, to fairly recent decisions, for the older cases, by and large, cannot be relied upon.

But even recent decisions of the Court cannot always be depended upon as authority. Judge Learned Hand, when delivering the Oliver Wendell Holmes Lectures at the Law School last March, on the subject of "The Bill of Rights," observed that the Court has been assuming and exercising what are primarily legislative powers. But he expressed inability to "frame any definition that will explain when the Court will assume the role of a third legislative chamber."

Segregation Decision

The decision in *Brown v. Board of Education* has been termed by Chief Justice Charles Alvin Jones of Pennsylvania "the principal cause of the present-day criticism of the Supreme Court." The report of the State Chief Justices, it is true, fails to mention the case, but it is all the more conspicuous because of this fact.

In *Brown v. Board of Education*, reargument was largely devoted to the circumstances surrounding the adoption of the 14th Amendment in 1868. Yet it does not seem that the Court was inordinately interested in the history of the 14th Amendment. It seems, on the contrary, that the Supreme Court decided the case the way that it did primarily because the members of the Court believed that segregated schools are wrong and undesirable and unjust to the Negro. The Court utilized sociological, not Constitutional data, to substantiate its decision. But the opinion of the Court rests the decision firmly on the ground of Constitutional necessity, upon the uncompromising dictates of the phraseology of the 14th Amendment.

If it be true, however, that the Supreme Court decides many cases on the basis of subjective standards of justice, while feeling compelled to tell the world at large that it is deciding them on the basis of objective commands contained in an infrequently amended 18th century document, this may explain why the Court's opinions sometimes appear to be shadowy and ambiguous, not quite candid, and even, on occasion, misleading. This may explain why some of the Court's opinions seem to shelter a little tongue-in-check reasoning, and do not radiate quite the professional flavor that they might.

This may be the reason that the Court's decisions are being subject to so much criticism today, even by those who, generally, have no real complaint with the results being reached.

— Binder

Communist party or any subsidiary of said party . . . and refuses or neglects to resign from the bar shall subject himself to disciplinary action and the Board of Governors of the Florida Bar is hereby authorized to institute proceedings against him for that purpose. Such proceedings . . . may be instituted on complaint of the state attorney, the complaint of any reputable lawyer or lawyers, or it may be predicated on any investigation made as to the accused's communist activities by any court of which he is an officer or by other recognized governmental agency, state or national. The evidence taken by such court or agency may be introduced and accorded such weight as the Board of Governors may deem proper to give it and the punishment may be disbarment, suspension from the practice for a definite time or such lesser punishment as the Board of Governors may see fit to impose. An action by the Board of Governors is subject to review by this court in the same manner that other disciplinary orders are reviewed.

Honest Tax Evasion

Meanwhile, in the great Northwest, the Supreme Court of Washington has ruled that an attorney who refused to pay Federal income taxes, but who was honest about it, should not be disbarred.

In *In Re Molthan*, 327 P. 2d 427 (1958), the Board of Governors of the Washington State Bar Association had recommended that attorney James J. Molthan be disbarred from the practice of law in the State of Washington. It listed two reasons for its recommendation:

(1) Attorney Molthan had pleaded *nolo contendere* in the United States District Court for the Western District of Washington to charges of willfully and knowingly failing to file a federal income tax return for the year 1951, a violation of section 145 (a) of the Internal Revenue Code, which makes such conduct a misdemeanor. Molthan was accordingly fined \$500 and sentenced to six months imprisonment at the United States penal camp on McNeil Island, Washington.

(2) Attorney Molthan willfully and knowingly refused to file Federal income tax returns for the years 1949, 1950 and 1951, "and has failed and refused to pay income taxes for the said years and subsequent years in violation of the revenue laws of the United States."

Trial Committee

In a disciplinary proceeding instituted against Molthan, a trial committee had found these facts:

(a) In 1950, James J. Molthan notified the United States Treasury Department by letter that he did not intend to file an income tax return nor pay any tax. In 1951, he again notified the Treasury Department by letter of his intentions and invited prosecution.

(b) Attorney Molthan filed a United States Treasury form No. 1099, disclosing \$21,000 in income in 1951, but he refused to make or file an income tax return or pay any tax thereon.

(c) Molthan filed income tax returns for the years 1952, 1953, and 1954, but refused to pay taxes thereon.

(d) Molthan's reason for these actions: "he maintained he was a second class citizen of the United States by virtue of the fact that he had been, without trial, denominated a security risk, and that such a finding denied to him his usual employment as an attorney."

Reprimand

The Supreme Court of Washington agreed with the recommendation of the trial committee that Attorney Molthan be reprimanded for his conduct, but not disbarred. It utilized the familiar criterion of "moral turpitude" to guide its decision.

An opinion by Justice Weaver, speaking for a unanimous court, said that "The record is devoid of anything which indicates that Mr. Molthan entertained a corrupt or criminal motive. There is nothing to indicate that he intended to defraud or deceive the government. On the contrary, he notified the tax authorities of his intention; he kept adequate records; there is no complaint of lack of co-operation. Fraud or deceit are not inherent in his conduct, which the trial committee aptly described as evidencing 'a lack of good judgment and a puerile adolescent attitude.' We agree with the conclusion of the trial committee that Mr. Molthan's conduct did not involve moral turpitude."

The Washington Supreme Court distinguished Molthan's conduct from that of an attorney who submits a fraudulent return, in violation of section 145 (b) of the Internal Revenue Code, and which is a felony. Fraud, the opinion said, does involve moral turpitude.

Motives

The court emphasized that it was not so much concerned with Molthan's actions, as with the motives that inspired them.

The opinion cited, in support of its decision, *Kentucky Bar Association v. McAfee*, 201 S.W. 2d 899 (1957), a similar case, in which the defendant attorney had been convicted of willfully and knowingly failing to file an income tax return under section 145 (a) of the Internal Revenue Code. He was there, too, reprimanded, but not disbarred.

— Binder

Error Causes Alarm

Many members of the Harvard Student Bar Association were surprised this week to receive bills for dues already paid at registration. "Our printer mixed the lists," explained Treasurer Roy Hammer, 2L of Windermere, Fla., "and our biggest job is returning the many checks received from those who had already paid in cash."

Prison Industries Sets Sales Mark

Federal Prison Industries, Inc., set a new sales record during the past fiscal year, Attorney General William P. Rogers has announced. Sales to federal government agencies totaled \$31,134,239, an increase of nearly \$4.5 million over the fiscal year ending in 1957.

A wholly owned government corporation established in 1934, Federal Prison Industries, Inc., provides training and employment for prisoners in federal penal institutions. All goods and articles manufactured in the corporation's shops are sold only to departments and agencies of the federal government.

Net industrial profit of the organization amounted to \$5,272,137, an increase of more than \$700,000 over the prior year. This was the corporation's second best year in earnings. The fiscal year ending in 1952, during the Korean Conflict, was its top year.

Two million dollars of the industrial profit were paid as dividends into the federal treasury. A total of \$36 million has been paid into the treasury as dividends since the corporation was organized.

Among Federal Prison Industries' facilities are factories manufacturing brooms, brushes, canned foods, canvas goods, chairs, clothing, wood and metal furniture, mattresses, shoes, cotton and woolen textiles and parachutes. In addition, the corporation's plants include laundries, print shops, a foundry, a sawmill, a machine, die and tool shop, and a tire reconditioning plant.

DEFENDERS

(Continued from page one)

Holland Capper of Manistee, Mich.; Howard Fink of Chicago, Ill.; Robert Gelber of Los Angeles; Roy Hammer of Windermere, Fla.; Alan K. Illig of Rochester, N. Y.; Henry Kensing of Mount Kisco, N. Y.; Stanley Loeb of Forest Hills, N. Y.; Francis Meaney of South Braintree, Mass.; John Milano of Irvington, N. J.; William Peer of Ann Arbor, Mich.; Alex Seith of Aurora, Ill.; John Samuel of Galveston, Tex.; and Ray Van Raalte of Princeton, N. J.

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FUND

(Continued from page one)

October, it has already recorded \$30,000 in contributions.

The Fund, organizationally, is divided into 2 parts:

(1) A group of class agents. They correspond with their classmates on a nation-wide basis.

(2) Seventy-two district organizations, including chairmen in Hawaii and Puerto Rico. There is no chairman in Alaska because, at last count, only one alumnus was residing there.

The 11 members of the National Committee of the Fund are: Edward S. Pinney, LL. B. '21, National Chairman; John Richardson, LL. B. '11, and George E. Hale, LL. B. '38 c.l., National Vice Chairmen; Daniel James, LL. M. '31, Scholarship Chairman; Squire R. Ogden, LL. B. '23, and Leighton H. Coleman, LL. B. '22, Scholarship Vice Chairmen; John G. Buchanan, LL. B. '12 c.l., and Henry L. F. Kreger, LL. B. '20, Associate Scholarship Chairmen; John M. Dry, LL. B. '32, Library Chairman; Wilkie Bushby, LL. B. '21, Ex Office; and Wesley E. Bevins, Jr., LL. B. '48, Director.

On Saturday afternoon the alumni and their wives retired to Soldiers Field to witness the Harvard-Pennsylvania football game. They were later joined by members of the faculty for cocktails and a buffet supper in the Root Room.

— Binder

DORMITORY

(Continued from page one)

dents involved, Jerome J. Sussman, 3L of Brooklyn, N. Y., ex-President; Robert L. Brenner, 2L of Minneapolis, Minnesota, ex-Secretary; and Leslie A. Todd, 3L of New York, N. Y., ex-Treasurer; in recognition of their past services to the Council, was tabled. It will be acted upon at the next Council meeting, set for Monday, November 10th, at 10 p.m. in the Gray Room. Elections to fill the vacancies will presumably be held at that meeting, also.

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JOBS

(Continued from page one)

experience while they are still in law school.

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In New York the program is divided into two parts: (1) a summer program beginning in mid-June and ending in late August, and (2) a winter program which begins in late September and ends in late April. As yet the Massachusetts office plans no summer program. Approximately 50 students will be selected, most of whom will have completed at least two years of law study.

Each student selected will share the room and work of an Assistant United States Attorney, and will be closely associated with him on many of his cases. After a general briefing on a particular case the law assistant begins his work by researching specific points of law. Memoranda are then prepared which often become the basis of the government's trial and appellate briefs.

Often the assistant will sit at the counsel table during a trial and aid in the government's conduct in the proceedings. There are, however, limitations on his activities. He may not enter the Grand Jury room; he is not permitted to handle matters involving national security, nor may he appear as attorney for the government.

Dean Hall emphasized that grades will not be the only basis of selection. Extra-curricular activities, general background, personality, and interest in trial work will weigh heavily. Preference, however, will be given to students who are residents of Massachusetts or who intend to practice here.

— Rosenberg

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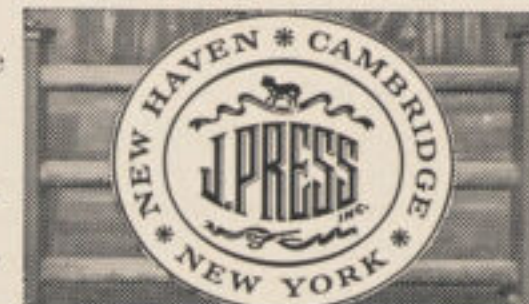
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(Continued from page one)

prove that induction would work exceptional hardship on persons who are wholly dependent on them. This list of exemptions or deferments does not pretend to be exhaustive.

Each of these exemptions and deferments can find some justification in apparent military necessity or social policy. That is why they exist. But when their total impact is to excuse more than half of all men in the eligible age group from any form of military service, the whole becomes more than the sum of its parts. Is it enough to justify an exemption or deferment merely on the ground that it seems rather more desirable not to require military service of a given group? If so, the conscription laws must forfeit all claim to universal and non-discriminatory coverage, and if that default is generally recognized they cannot long continue in their present form. No compulsory system which is not universal and non-discriminatory can long survive in a free society.

Necessary?

Even if there were compelling need for the present exemptions, a system which visits such enormous disabilities as substantial loss of earning power, separation from home and family, and sacrifice of personal liberty on only a portion of a peer group, with no compensating disabilities for the remainder, would be suspect. In addition, uncertainties about the draft make it impossible for young men to plan ahead and as a result discourage them from getting the advanced training in the sciences or professions that the country is needing increasingly. The truth is that there is not enough reason for the open-handed policy of exemptions now in effect, other than that a liberal exemption policy is an effective way to control the size of the manpower pool while preserving the illusion of universality.

In the case of disability exemptions dramatic cases of professional athletes who were classified as 4-F but could perform in their vocations far beyond the physical capacity of the average inductee have highlighted the unrealistic physical standards applied now and in the past. The justification offered by the military is that a man with a trick knee, for example, would be a great liability if his leg buckled in a combat situation and that men with punctured ear drums are particularly vulnerable to gas (which was not used in World War II or Korea). The theory implicit in the establishment of these physical standards is that every soldier must be competent to perform a combat function. The idea pervades military thinking and it is a costly, dangerous, and antediluvian idea. The ratio of support troops to troops actively in combat ranged as high as 20 to 1 in World War II. The technology of modern warfare, combined with the obsolescence of massed combat forces, will do nothing to decrease this ratio, even if many support functions are delivered over to civilians.

The fact of the matter is that the military is society in microcosm; it is so immense that any person who can be productive in civilian life can be equally so in uniform. Yet, to prepare for another Stalingrad situation when the cooks and typists were sent out to fight, every man in staff, intelligence, and supply missions must be physically qualified for combat. The result is uneconomic, since costly combat training is given every entrant into the armed forces; inefficient, since soldiers are transferred back and forth from combat to support units; and highly discriminatory, since men are excused from the draft solely because they are unsuited for only one of the countless military duties.

Fathers

Draft exemption for fathers has no firmer foundation in social policy than the 4-F exemption has in military necessity. Induction might work a greater hardship on men with children, especially since the lower ranks

cannot take their families with them overseas. Moreover, induction of fathers is more expensive because of the family allowance they receive. But men who become fathers after they are inducted are not protected from assignment overseas (although such a measure might well be implemented). And if inequality of liability for compulsory military service can be rationalized solely on the basis of a minor saving in defense costs, democratic principles are being denied for a handful of silver. It has been known ever since the 1951 act that military service would be universal and continuing. When men choose to ignore the dislocating effects which their military service would have on a family, and marry and have children just the same, they should not be rewarded with a draft exemption. It is unfair to those who recognized the obligation and postponed marriage and children until they had completed their military service. Inherent in the exemption, moreover, is economic discrimination, because husbands who can afford to have children young see no military service, while those who cannot are drafted and, often, must further postpone starting a family after their separation in order to save some money, an impossibility at the pay scales for entrants into the armed forces. Finally, the exemption favors those who marry while deferred on scholastic or other grounds, and then have children before their draft call comes up.

26 Year Olds

The administrative provision which practically terminated the draft liability of men 26 or over (by shifting them from the top to the bottom of the manpower pool) was the result of military concern with the rising age of the average inductee. This reform may have been a military necessity, but it presents a particularly fertile opportunity for draft evasion through continuance in a draft-deferred status, such as post-graduate education, until the age of 26. Again, economic discrimination is potentially present, because those who can afford advanced education (or those whose parents can afford it for them) are excused from the draft, whereas those who must take time away from school in order to work and save money for further education are drafted. The termination of the GI bill, along with other veterans' benefits such as life insurance, home loans, mustering-out pay, etc., in January of 1956 compounded the inequity.

Similar arguments can be made against every other exemption. The point is not that there are, or are not, sound reasons for exempting a given group. The significant fact is that the cumulative effect of these exemptions, regardless of their individual merits, is to undermine completely the universal basis of the draft. And once it is frankly recognized that the incidence of compulsory military service does not approach substantial universality, the inequities of the present system must be ameliorated, if the system is to be retained at all.

Alternatives

THE 1955 ACT, as previously stated, established two separate ways of discharging the military obligation for those not fortunate enough to qualify for a total exemption, either at the moment or prospectively. Adolescents (up to 250,000 per year) under draft age (18½) could enlist directly in the reserve, serve six months on active duty, and another seven and a half years in drilling units. Draftees were to be inducted for two years and then required to serve three more years in the Ready (drilling) Reserve, plus a final year in the Standby Reserve. Enlistment for more than two years of active duty carried with it the same six-year total obligation. Ready Reserve men were subject to Executive recall in the event of emergency; the Standby Reserve could only be activated by Congress. The older group was thus subjected to at least four times the active duty obligation of the younger, although decreasing active-duty time would seem more

important for those old enough to become productive and settled in a civilian capacity. In addition, the draftees and Regular Army enlistees were saddled with an active reserve obligation on completion of active service which had not been exacted of their predecessors under the 1951 act, and they were denied all the veterans' benefits which had existed previously. Nonetheless, if nothing further had been done to alter the situation, the legislatively declared necessity for effective reserve forces might have been enough to justify the provisions of the act.

Unfortunately, the six-month provision of the 1955 act soon proved an utter failure. In order to guard against completely drying up the source of manpower supply, Congress had placed an annual ceiling of 250,000 on enlistments for the six-month program. Its concern proved misguided. Despite an intensive recruiting campaign (principally by the Army, although all the other services except the Navy offered the program), eligible teenagers showed nearly total disinterest, presumably because they were unwilling to mortgage their future for eight years and were increasingly aware of the problematical character of the draft. Enlistments in the program for its first year of operation were under 50,000. As a result, expensive training commands and facilities prepared in anticipation of a 250,000-man annual influx were going to waste, there was no substantial strength added to the drilling reserve, and, most important of all, the manpower pool (to control the size of which had been the primary purpose of the program) kept on swelling.

Drills Cut

Drastic action was needed, and on April 1, 1957, it was taken. By administrative directive and without special Congressional sanction, the drilling time of the teenager was cut from seven and one half years to three years as an inducement to enlist. No longer would the 18-year-old have to wait until he was 26 to take his first summer vacation (one of the frequently voiced complaints about the eight-year term of weekly drilling and annual two-week summer training). He now had less total time of active duty and drilling reserve than the draftee, and only one-quarter as much active service.

Discriminatory as this abandonment to expediency was, it did not compare with the other administrative revision of the six-month program. To insure full subscription, the limitation of the program to those under 18½ was dropped, and it was opened to every draft eligible who had not yet received his induction notice. The program became popular overnight, as reserve units were swamped with applications from draft eligibles about to be called. Although the period of drilling time for these men was five and one half years, the reprieve from a two-year abandonment of home, career, and earning power at the cost of a mere six-month interruption in life made the extra reserve time seem inconsequential. Moreover, a precedent for reducing the term of the obligated drilling now existed. An additional attraction was that the six months of field training could be deferred for up to two and a half years, with a free choice during that period as to the most convenient time to take it, in contrast to the draft call which had to be answered when it came.

Limitations

This alternative to the draft proved so popular that it was limited in mid-summer of 1957 by the requirement that reserve units could not enlist men beyond their authorized strength. Despite the emphasis of the 1955 act on reserve strength, neither the Army reserve nor the National Guard were allocated funds to expand (in drilling status the authorized strength of the former is about 300,000 and the latter about 400,000). However, it appears to be still possible for a draft eligible to join a reserve (in any service except the Navy) or Guard unit (which offers the same terms) and do the "six-month hitch."

The only sop to the draftee and enlistee in the face of these preferments for his juniors and contemporaries was a one-year cut in the Ready Reserve obligation, from three to two years in the case of the draftee.

There was no diminution in the two-year active duty tour, and inductees were given no opportunity to extend their reserve obligation — in order to equal that required of six-month reservists — in return for an early release from active duty. Even when the Department of Defense announced in the fall of 1957 that extensive manpower cutbacks would take effect by June 30, 1958, no consideration was given to reducing the term of service for inductees and initial enlistees then on active duty. Instead, draft calls were reduced, thereby permitting numbers of men to evade military service altogether by passing the upper limit of the draft age.

Quality Declines

The second major administrative revision of the draft laws in 1957 introduced an equally significant distortion in their application. The Department of Defense had long been concerned about the rising proportion of so-called "Category IV" inductees. Category IV is comprised of those men whose score on the Armed Forces Qualification Test, an objective test administered during the draft classification process, ranged between 10 and 30. It is the lowest "passing" score; those below 10 are rejected for the draft as illiterates. The profile of all draft eligibles indicates that 27 per cent are Category IV, yet 40 per cent of the inductees in the first half of 1957 were Category IV personnel.

Emphasizing the fact that the manpower pool, even after all the existing exemptions, was growing by 200,000 annually, the Defense Department sought to have Congress amend the 1951 act to permit the indefinite deferment of all Category IV personnel. The effect of this would have been to exempt from the draft at least an additional 25 to 40 percent of the men who were still eligible despite all of the already existing exemptions. The argument was that the increased complexity of weapons and warfare made Category IV men untrainable. No mention was made that this measure would destroy the last pretense of the draft to universal coverage. No consideration was given to the inadequacies of a written test for plumbing the potential of a man to discharge the many military duties that require no more than bare literacy. The long-range social effects of "penalizing" comparative mental superiority went unremarked. This Defense Department recommendation never passed into law because the Senate Armed Services Committee failed to report out the bill after a public hearing, in August of 1957. In the same month, however, the Army implemented a policy which was designed to achieve a comparable result for inductees (all of whom at present are assigned to the Army).

Tests

Shortly after induction the Army administers a battery of nine objective tests, two of which measure reading comprehension and arithmetical ability, the rest much more specialized abilities such as knowledge of automotive mechanics. The Job Performance Potential Program, as the new policy was called, established a score of 90 in at least two of these nine tests as a prerequisite for retaining inductees in the Army. Below that level, immediate discharge, with no further military obligation, active or reserve, was mandatory. As of March, 1958, all inductees in the "inadequate" class had been discharged and the implementation of the policy at Army training centers was resulting in the immediate discharge of all trainees lacking "performance potential" as soon as their test scores were tabulated.

This administrative program is open to the same objections as the proposed amendment to the draft law raising the minimum qualification score. There is no provision for weighing empirical evidence of the job performance potential of inductees and enlistees. The test scores

are conclusive, even though it is easily possible, for example, for a man to have a knack with engines without being able to answer written questions on mechanics and equally possible for a man to fail the tests purposely. The result is a serious distortion in the coverage of service obligation, based on two highly questionable premises:

1) that manual and mechanical aptitude can be accurately measured by written test scores, in which the degree of literacy is likely to be as significant as the amount of specialized skill;

2) that there is an incentive to excel in the tests.

The obvious economic waste in operating this program — the administrative costs of inducting, maintaining, and then discharging a man instead of determining his ineligibility for service before induction — has led the Defense Department to continue pressing for an amendment to the draft law which would raise minimum qualification scores and achieve substantially the same result as at present. Another Senate Committee hearing was held in April of 1958 but there has as yet been no committee action, probably because of the dislocating social effects anticipated in the South where the lower average educational level of the Negroes would leave them disproportionately draft-exempt.

Responsibility

It is not entirely fair to assign to the Defense Department all of the responsibility for the perverting influence these administrative measures have had on the equitable distribution of the burden of compulsory military service. The Department has been caught between the Scylla of a flooding manpower pool (in which it was necessary to keep the Congressionally enacted reserve program afloat) and the Charybdis of the long-range need to tailor the military to the increased technological demands of warfare in a nuclear age. Its mission is to make the national defense establishment as efficient as possible, and not primarily to concern itself with weighing individual rights and freedoms against society's requirements. But too much deference can be paid to this mission. Congress must necessarily depend very heavily on the Defense Department for advice, because of its expertise and exclusive possession of the facts as to the requirements of national defense. Precisely because its assessment of military needs cannot be challenged, the Defense Department cannot abdicate its responsibility for the impact on society involved in the policies which it proposes and executes.

The purpose of the draft law is not only to supply the military with manpower but to see that it is done in an equitable and non-discriminatory manner. If changing times make the latter impossible, the laws should be openly amended and not perverted *sub silentio* by administrative action. Traditional American principles demand this. It is also the most expedient course for the long-range development of national defense. If it is true that the military must be more selective, that only a minority can be absorbed and used productively by the armed forces, that the obligation is neither universal in scope nor uniform in application, then the present system, with the heavy civil and financial restrictions it imposes, must be changed. We are headed in the direction of "from each according to his abilities, to each in inverse proportion to his needs." Quality is not obtained for nothing. Competent people alone can be inducted. But competent performance cannot be compelled and, unless manpower policies are completely reformed, it will not be forthcoming.

(Ed. note: Slightly more than one-third of *The Universal Military Obligation* has been here published. Single copies of the entire Paper may be obtained free of charge by writing to The Fund for the Republic, 60 East 42nd Street, New York 17, N. Y. Additional copies cost 15 cents each.)

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