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### The Suffolk Law Reporter, Spring 1960

Suffolk University

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## The Suffolk Law



Reporter

SPRING 1960

### OFFICE OF HUB MAYOR AGAIN HELD BY ALUMNUS

"They said it couldn't be done," but last November, the people exercised their democratic right, that of voting, and elected as the Mayor of Boston John F. Collins, 40, of Jamaica Plain . . . despite predictions of the pollsters!

Purely as an incident to this, they also put into office, for the second consecutive time, an attorney who was educated at Suffolk Law School.

Mayor John B. Hynes, who chose not to seek the office again, after a decade of service as Mayor of Boston, won his degree from Suffolk University Law School in 1927.

His actual service to Boston, however, began back in 1920, when he went to work at City Hall as a \$25-a-week clerk.

John Hynes was born 62 years ago in the South End, the son of Irish-born parents. But Boston was his city — and he served it well.

And Suffolk was his alma mater — and he brought it pride and respect.

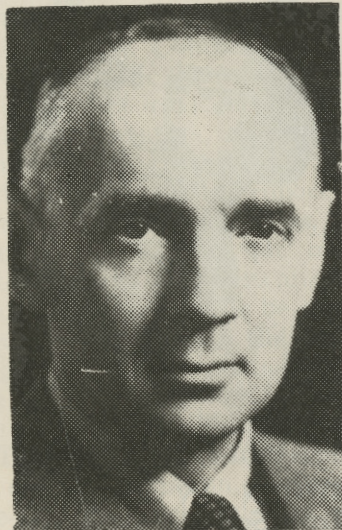
Suffolk's latest "gift" to its mother city — in the form of the top city official, that is — John F. Collins — took his LL.B. from the law school in 1940 — with honors! He was a mere 21 years of age when he passed the Bar. Mayor Collins had been register of probate for Suffolk County since February

(Continued on page 5)

### Law Alumni Will Hear Expert On Constitutional Law June 9

The Bussey Professor of Law at Harvard, Arthur Eugene Sutherland, who is regarded as one of the nation's leading authorities on constitutional law, will be principal speaker at the annual commencement dinner of the Suffolk Law School Alumni Association June 9 at the Parker House.

He will speak on some phase of the critique of the United States Supreme Court, according to Paul T. Smith of Brighton, prominent Boston trial lawyer and president of the law alumni.



Prof. Arthur Sutherland

Born at Rochester, N. Y. in 1902, Prof. Sutherland was educated in public and private schools in the United States and Switzerland and took an A.B. from Wesleyan University at Middletown, Ct. in 1922 and his LL.B. from Harvard in 1925.

#### Practiced in Rochester

He was associated with the American Commission for Near East Relief in Asia Minor and Thrace in 1919 and in 1926 was admitted to the New York State Bar. He practiced in Rochester in 1926-41 and was secretary to U. S. Supreme Court Justice Oliver Wendell Holmes in 1927-28.

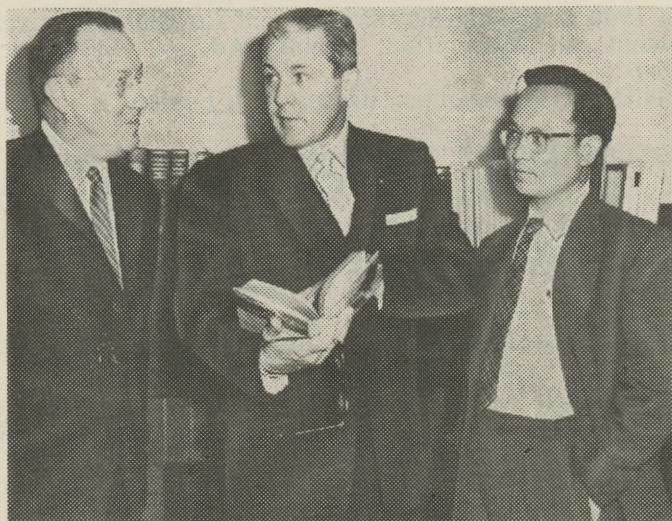
Prof. Sutherland was commissioner of the Uniform State Laws of New York in 1948-50 and served as professor of law at Cornell University in 1945-50, when he returned to his alma mater.

The Bussey Professor of Law at Harvard since 1955, he served as a Fulbright lecturer at Oxford University in 1956 and was a delegate to the New York State Constitutional Convention in 1938.

A trustee of Wesleyan University, he served with the Army in 1941-45 and saw duty with the Office of Under Secretary of War, headquarters, 1st infantry division; headquarters, 5th Army, head-

(Continued on page 7)

## Students Hear 'King of Torts'



(Photo by duette)

"KING OF TORTS" — Melvin M. Belli, center, internationally-known trial lawyer, on lecture visit to law school. With him are Dean Frederick A. McDermott, left, Needham, and student Paul L. Wong of Brattleboro, Vt.

### Famed Atty. Belli Presents Views On Cutter Lab, Chessman Cases

The Salk vaccine case of Cutter Laboratories, Inc. and the Caryl Chessman case, were two of the provocative topics for discussion by the noted San Francisco attorney, Mr. Melvin Belli, on his recent lecture visit to Suffolk University Law School.

Mr. Belli, well-known as "The King of Torts," was introduced to the student body by Mr. Joseph Schneider, past president of the Massachusetts Bar Association and currently a trustee of Suffolk University.

The audience was soon treated to a manifestation of the art of trial practice technique. Mr. Belli vividly discussed the Cutter Laboratory case, the Caryl Chessman case, and the developing law of breach of warranty.

In reference to the latter topic, he demonstrated the legal relations among the manufacturer of goods, intermediary parties and the final purchaser of such goods. Mr. Belli stated emphatically that he is a disciple of the doctrine that there need not be any privity of contract shown to maintain an action based on breach of warranty. His sketches on the blackboard of the lecture room indicating the relations among parties in a warranty suit prompted the lecturer to review his method of computing damages in personal injury suits.

Mr. Schneider, in his introduction of Melvin Belli, spoke of the compassion this attorney has for his clients. Many who heard him at Suffolk University Law School were inclined to agree with Mr. Schneider that Melvin Belli is a "20th century apostle laboring in the vineyard of the courtroom for equality and justice on behalf of the individual degraded by the torts of others."

### NEW SUFFOLK LAW TEAM FOR NAT'L MOOT COURT COMPETITION IS NAMED

A panel of five seniors, Bruce Carpenter, Armen Der Marderosian, James Jung, James Lalime and Charles Olney, have undertaken the difficult task of selecting representatives for next season's National Moot Court Competition. Their decision was based upon written briefs and oral arguments. The panel considered each participant's analysis of the problem, clear and concise legal reasoning and argument, oral delivery and responsiveness to questions asked during oral presentation.

It was the panel's unanimous opinion that all participants performed outstandingly. Unfortunately only three could be selected. After some "conflict," the panel reached a final decision. Participating in the Eleventh Annual National Moot Court Competition will be Peter Monahan, Alan Refkin and Richard Smith.

### S. B. A. Names 1960-61 Leaders

The Student Bar Association recently held its elections for the 1960-61 year. The following were chosen as officers of the Association and representatives to the Board of Governors:

James Trodden, President  
James Longolucco, Class Representative and A. L. S. A. Representative  
John Bush, Vice-President  
John McLaughlin, Representative of the second year (Day Division)

Michael Breen, Chairman of the Board;

Edward Parker, Representative of the fourth year (Evening Division)

John T. Sweeney, Treasurer  
Dean Tomlinson, Representative of the third year (Evening Division)

Bernard McManus, Secretary  
Frank Caprio, Representative of the second year (Evening Division)



## Suffolk Law Reporter

VOLUME I, NO. 1

Founded in 1960 as the official newspaper of the Suffolk University Law School Student Bar Association. Faculty Advisor: Professor David J. Sargent, Esq.  
Address: Suffolk Law Reporter, Beacon Hill, Boston

Board of Editors: Louis M. Bell, Bruce K. Carpenter; Armen Der Merdrosian; James G. Jung, Jr., James L. Lalime

Contributors: Michael Breen, Alexander Cella, Robert Cox, Ron D'Avolio, Joseph Hachey, Herman Hemingway, Russell Mahoney, Jordan Ring, Richard Smith, James Trodden

### Suffolk Law Dean's Message

This issue of the Suffolk Law Reporter marks the first printed publication of the Student Bar Association of Suffolk University Law School, a fitting climax to its first year of existence. Its circulation among the Alumni as well as the student body will serve to strengthen the ties which bind us all to Suffolk University Law School.

Initial social activities of the Association, informal receptions for the first year day and evening students, were highly successful, and the first Student Bar Association Dance was a well attended and thoroughly enjoyable affair. The Association's assistance to the undergraduate Appellate Moot Court program, through counselling and judging by the members of the National Moot Court Competition team of the Law School and others, was invaluable. Organization of The Prelaw Club for students in the University was another important project. An earlier intramural mimeographed issue of the Legal Memo informed the students of developments in the Association.

In summary, during its first year of existence, the Student Bar Association has made sound beginnings in the development of a program of constructive activity, which will in the future, it is hoped, be of increasing benefit to the School as a whole. Professor David J. Sargent, the Faculty Adviser, was of course available for consultation and advice. However, the members of the Association were left largely to rely upon their own initiative, and the student body, and particularly the Officers and Class Representatives, are to be congratulated upon their pioneering efforts.

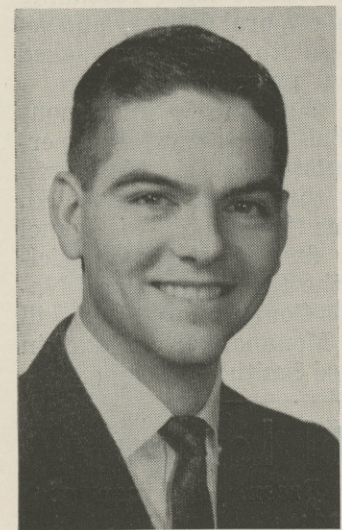


Dean Frederick McDermott

*Frederick A. McDermott*

### Student Bar President's Message

The academic year of 1959 and 1960 is swiftly coming to a conclusion. The memories experienced during it will always be remembered by the graduating class and carried in their hearts for many years to come. The accomplishment has been tremendous and the numerous "firsts" extensive. We have witnessed the establishment of the Student Bar Association; the acceptance into the American Law Student Association; our membership in the National Moot Court Competition; the participation of the student body in the varied social activities; and last, the publication of the first law school newspaper. Many wonderful "seeds" have been sown, and with your assistance and cultivation, these seeds will not fall upon rock to wither up and die, but will continue to grow, as they have in the past, through your ardent co-operation.



James L. Lalime

The office of President of the SBA has been held by me with the greatest of pleasure and the deepest humility. The pleasure being the materialistic honor that accompanies a position of this nature; the humility is the spiritualistic feeling one acquires when men of equal status and position have selected you to be the individual whom they deem qualified to fulfill the obligations of this office. This in itself will give me great confidence and incentive for the future.

The only regret that I possess in writing this message is that it will be the last time I will address you from this office. My one desire is that you give the cooperation extended me to your newly elected President in the forthcoming year. It is through your endeavor alone, as the student body of Suffolk University Law School, that will promote the success of this organization.

*James L. Lalime '60*

## S. B. A. Highlights

The closing of the spring semester marks the first anniversary of the Suffolk University Law School Student Bar Association and of the Association's membership in the American Law Student Association. Much credit is due 1st Circuit Vice President Steve Koplin of Boston University Law School for his aid in the "blueprinting" of our S. B. A., and also for his help in setting up the machinery necessary for the Association's becoming a member of A. L. S. A.

An enjoyable time was had by the evening freshman students who attended a coffee and doughnut hour at the student lounge sponsored by the S. B. A., for the combined purpose of orientation and informal discussion with the members of the faculty.

President Robert J. Munce was kind enough to allow the S. B. A. to make use of his office for the same purpose for the daytime freshmen.

It is hoped that in the coming school year this program will be extended to include at least a full day of activity.

The entertainment committee, headed by Neil Driscoll and James Lalime, did a magnificent job in planning and staging the S. B. A. dance which was held at the Brighton Municipal Hall. The success of the dance is evidenced by the many requests for another such event.

From the many suggestions and advice of the different S. B. A.s in attendance at the workshops at the A. L. S. A.'s 11th Annual Convention held at Miami, one of the first programs set up by the Board of Governors was the formation of a Pre-Legal Club. It can be stated that this organization — made up of Pre-Legal students — is functioning quite well as of this date.

The students who attended the joint 1st and 2nd Circuit Convention held at Boston College Law School received much information

concerning the functions of the S. B. A.s there present.

Congratulations are extended in advance to those soon to be elected officers of the S. B. A. for the coming school year.

Although the seniors may be crowded for time due to the coming Bar Exam, an evening of gaiety is planned for them by way of a banquet to be held in the early part of June.

Good Luck to the seniors who will be taking the Exam. . . .

### Note of Appreciation

The students of the Law School express their gratitude to the outgoing officers of the Bar Association. Particular thanks are afforded to Dean McDermott, who undertook the task of supervising the drafting of the Constitution of the Association, and to James Lalime, who will be remembered as the great first President of the Student Bar Association of Suffolk University Law School.

The students offer congratulations to the newly elected officers and continued success to the outgoing Board of Governors.

## Wig & Robe News

The annual Spring banquet of the Suffolk University Law School Wig & Robe Society, one of the oldest law school student groups in the nation, was held Tuesday (May 10) at 7 p. m. in the Casino Room of the Hotel Fensgate in Boston. Senior Russell Mahoney of Chelsea, president, presided.

Guests of honor for the event included Dean Frederick A. McDermott of Needham, Massachusetts Superior Court Associate Justice Frank J. Donahue of Hyde Park, chairman of the trustees' committee of Suffolk Law School; Massachusetts Land Court Judge John E. Fenton of Lawrence, vice-president of Suffolk University, and Atty. Paul T. Smith of Brighton, president of the Suffolk Law School Alumni Association.

Atty. John V. Colburn, assistant professor of English in the college and director for its student activities, was toastmaster.

The primary purpose of the society is to foster a closer unity between students, faculty and alumni and to encourage its fellow members in future undertakings. The Annual Dinner-Dance has been most successful in expressing this fraternal spirit.



**SWORN IN** — Suffolk Law School's attractive young registrar, graduate in the Class of 1958, now working on an LL.M. degree evenings at Suffolk, and a member of the Mass. Bar, and who was recently sworn in before the Federal Bar. She is, of course, Catherine T. Judge of West Roxbury.



## THE MASSACHUSETTS BAR EXAMINATION

In order to acquaint applicants for admission to the Massachusetts Bar with essentials of bar examination procedure the following information is submitted.

### Why Bar Exams Are Given

A bar examination is necessary to find out, as accurately as practicable, whether or not the applicant is now ready to practice law. Dean James E. Brenner of Stanford University Law School stated:

"The primary objectives of a Bar Examination should be to test the applicants' ability to reason logically, to make an accurate legal analysis of the problems included in the examinations, and to demonstrate thorough knowledge of the fundamental principles of the law and their application. Bar Examinations should not be designed primarily for the purpose of testing information, memory or experience."

The examiners try to draw questions the answers to which will disclose, or at least cast some light on, each applicant's ability to analyze facts; to grasp the important issues of law raised by those facts; to perceive the fields of law involved (unlike law school examinations bar examination questions carry no labels, indeed most of them could not because they are not confined to a single field); to recognize the points on which the law is settled beyond argument and those on which there is still room for intelligent difference of opinion; to reason intelligently; to use common sense; and to produce a well-organized statement that shows some ability to think and to express one-self like a lawyer.

### The Questions

There are two written examinations a year, one in early July, the other in late December. Each is held on two days, each day divided into two three-hour sessions.

The rules of the board, approved by the Court, provide that the examinations be on some or all of these subjects: Administration of Estates, Agency, Business Organizations, Conflict of Laws, Constitutional Law, Contracts, Criminal Law, Domestic Relations, Equity, Evidence, Federal Income, Estate and Gift Taxation, Negotiable Instruments, Massachusetts Pleading and Practice, Real Property (including Mortgages), Sales, Torts, Trusts, and Wills. (It may be noted that the board has announced that equal credit will be given to answers based upon the Uniform Negotiable Instruments Law and the Uniform Commercial Code in the July 1960 Bar Examination.)

There are twenty-four questions on each examination. Following a pre-arranged schedule by which each of the board's five members prepares questions, the examination will consist of four questions drafted by the chairman and five drafted by each of the other members.

After the members have drafted their questions, each question is discussed and scrutinized by the entire board critically. Every endeavor is made to eliminate ambiguity and to phrase the questions

so that the applicant has a fair opportunity to answer the issues raised within the average thirty minutes of allotted time. Every examination is a product of the board as a whole.

### Taking the Examination

The board has made the following suggestions on the taking of the Bar Examination:

1. *Think before you write.* Read each question carefully. Understand the facts, and their necessary implications, thoroughly and accurately. Out line in your own mind the issues or problems; state to yourself your tentative conclusions; test each conclusion from the standpoints both of the law and of common-sense; and revise them if necessary. Then decide on a logical, orderly, and convincing arrangement for the statement of your views. *Until you have done all that you are not ready to write the answer.*

2. *Do not restate the facts.* The examiners know what the facts are; and you have no time to waste.

3. *Do not state abstract or irrelevant propositions of law.* It is usually undesirable to begin an answer with a legal proposition. If the proposition in applicable it will be more appropriate later in the answer, in order to indicate the reason for your conclusion. Although it is seldom necessary to state any applicable rule of law in full detail, make a sufficiently detailed reference to it in your answer so that the examiner will not be left in doubt as to your knowledge of it and of the conditions which make its application proper. Do not, by speculating on what the case would have been if the facts had been different, nor in any other way, work into your answer some point of law with which you happen to be familiar, but which is not called for by the question. The examiners are not interested in knowing how many rules of law you have learned, but in the way you apply the applicable rules to the facts stated.

4. *Discuss all the problems that are raised.* A grasp of all the issues is essential. If there are, for example, three issues in a given question, a discussion of only one of them, no matter how masterly, if coupled with an omission to touch on the other two, could not result in full credit for that question.

5. *Express yourself clearly, and as a lawyer should. Write as legibly as possible.* If you commit any of the following faults you run the risks of obscuring your own thought, of failing to demonstrate your ability, and of wasting your limited time. Avoid: ambiguous, meaningless, and rambling statements; verbosity, and long, involved sentences; undue repetition; flippancy, slang, and colloquialism.

### The Marking of Answers

The members of the board correct, or are responsible for the

correction of, the answers to the questions which were written by them respectively. Since 1931 the board has had the assistance of "readers", qualified lawyers appointed by the members, with the approval of the Supreme Judicial Court (Opinion of the Justices, 279 Mass. 607, 613.)

There is no such thing as an exactly correct answer to any bar examination question in the sense that any other phraseology or approach would be unacceptable, or "wrong". Each member of the board carefully prepares and furnishes to his reader or readers, a guide for the correction of the answers, which indicates the elements to be looked for in the answers to the questions which he drafted. The guide covers all the points in each question. Usually the member has his own idea of the law on each of those points; but (except in instances in which the law is prescribed by a basic statute or settled by familiar leading cases) an intelligent discussion which leads the applicant to a different conclusion from the examiner's may nevertheless receive full credit.

On each question the maximum credit is 10 points, but the marks on the 24 questions are reduced by a commutation table to a grading in which perfection would be 100%.

Each applicant is given a number, which appears on his answer book. No examiner or reader, while correcting any set of answers, knows the name of the applicant; nor do the examiners themselves know, until the marking has been completed, which applicants have which numbers.

There is no "quota" of any kind, — not in respect of number or proportion to pass, nor of place of residence, law school, sex, age, race, religion, or any other category. The bar examination passing mark has been set at 50%. Anyone who obtains that grade will be recommended for admission, unless some valid objection is made on character grounds.

In the case of every applicant whose first marking falls between 48% and 50%, all his answers are reread by the examiners or under their supervision. This practice results in the increase of a few marks to the passing grade.

### Further Investigation

All candidates who have attained passing grades are interviewed orally by at least one member of the board. The board inquires into such matters as criminal records, intention to practice or teach law, residency in Massachusetts, Communist affiliations, and the ability to speak English correctly or intelligibly. The purposes of the oral interview also include establishing a friendly contact with the lawyers-to-be, and the opportunity to extend to them a sort of official congratulation and welcome into the profession.

After the oral interviews a list is prepared of recommended candidates and distributed to all Boston papers and some others outside the city; and personal notice is given by mail to each applicant that he has, or has not, been successful. A "legal notice" is then published stating the names and date on which the recommendation is to be filed. This notice is required to be published at least 15 days before the board is to report to the Court. Its principal purpose is to enable any member of the public to bring forward any information he has detrimental to an applicant's character or fitness. After the expiration of the 15 day period, unless some reason to the contrary has appeared, the board files in Court a separate report on each successful petition. A separate report has previously been filed on each unsuccessful petition.

The applicant's petition for admission, and the papers filed with it, usually make out a *prima facie* case in favor of his moral character. If a serious complaint is made against an applicant, the board investigates fully, giving a hearing to the applicant, and, if necessary, to the complainant and witnesses. If the board decides adversely to an applicant on the issue of moral character or "qualifications", it files with the Court (unless the application is withdrawn) a special report stating the facts on which it bases its recommendation that the applicant not be admitted.

Applicants who are recommended are usually sworn in on a group motion made by the chairman to a single justice of the Supreme Judicial Court.

### Further Information

The general subject is covered by the Supreme Judicial Court's "General Rules. I. Attorneys"; by the "Rules of the Board of Bar Examiners"; by General Laws (Ter. Ed.) c. 221, §§ 35-39; and by Opinion of the Justices, 279 Mass. 607, Opinion of the Justices, 289 Mass. 607, Keenan, Petitioner, 310 Mass. 166, 171, and Matter of Keenan, 313 Mass. 186, 196.

The information contained herein are extracts from "Bar Examination Procedure in Massachusetts" by Walter Powers, Chairman, Board of Bar Examiners, Boston Bar Journal, September 1957.

### SENIOR CLASS ELECTS OFFICERS

The Class of '60 recently held elections to select class officers. After a great deal of debate, nominations were made. Thereupon the voting commenced, and out of the smoke came the four class officers:

President — Gerard Doherty  
Vice-President — Armen Der Marderosian  
Treasurer — Richard J. Walsh  
Secretary — Bruce K. Carpenter



## CAPITAL PUNISHMENT AS A DETERRENT TO THE COMMISSION OF MURDER

*(Suffolk University Law School student Alexander J. Cella gained his seat in the Massachusetts House in 1956 — with the biggest vote ever given to a first-time candidate from Medford's 26th District!)*

*The youthful Democrat, who was a teaching fellow in the department of government at his alma mater, Harvard, when he was first elected to the House, holds a master's degree from the Harvard Littauer School of Public Administration.)*

by Alexander Cella,  
member of the General Court

No single issue of modern criminal law and penology has received more critical attention since the end of World War II than the controversial issue of capital punishment. Where once the death penalty issue had been quietly relegated to the relatively comfortable and innocuous status of a collegiate and high school debating topic, increasingly in recent years the spotlight of public interest in many sections of the nation and the world has been uneasily focused upon the troublesome question of whether or not capital punishment should be abolished. The reasons underlying the groundswell of public interest in this heretofore relatively dormant issue are many and complex. Undoubtedly, however, the major impetus to the present reconsideration of the role of capital punishment in our modern society is the growing malaise produced by the steady accumulation of evidence, statistical and otherwise, from all over the civilized world which tends to cast considerable doubt upon the social efficacy of the capital penalty. In this article, however, I do not propose to retrowel the familiar ground generally covered by abolitionists in their arguments against the continuation of the death penalty. Instead, I propose to re-examine the dialectics of the retentionist position on the critical issue of the deterrent effect of capital punishment with respect to the commission of murder both in the light of its inherent logic and in the face of available scientific evidence.

Traditionally, social punishment has been recognized to have three major purposes — retribution, deterrence, and rehabilitation. Society has sought from time to time to justify particular punishments in terms of one or more of these purposes, placing a greater or lesser degree of emphasis upon one or another at various stages in its historical development. Retribution, the rendering of punishment in accordance with the just deserts of the offending individual, always bordered on outright vengeance or retaliation. Society or an individual had been wronged; the state was, therefore, justified in exacting a commensurate punishment — or, as this view has come to be commonly, yet nonetheless inaccurately, expressed in terms of a biblical injunction, "an eye for an eye and a tooth for a tooth."

In its more positive, less vengeful expressions, retribution connoted the social desire to censure or disapprove a particular act by a punishment roughly proportionate to the seriousness and severity of the offense committed. While retribution in the reprobative sense still plays an important part in intellectual theorizing about the objectives of punishment, and capital punishment in particular, retribution in the sense of sheer vengeance and retaliation has receded into the background or been completely eliminated. A heightened awareness of the dignity of human life, combined with a perceptible increase in social consciousness, has made it unfashionable to argue for punishment in terms of a blind emotional desire to even the score. Yet, as psychologists have long realized, the emotional urge to avenge, to punish in the worse sense of retribution, often underlies many of the elaborate argumentative structures which have been erected to support particular punishments. Retributive punishment is thus rooted to some extent in human temperament — in the mysterious, hidden longings and dimly understood emotional needs of many individuals.

In marked contrast to the general weakening of the retributive aspect of punishment, the emphasis upon the rehabilitative objective of social punishment has steadily increased to the point where today it constitutes the major purpose of an enlightened penological system. Reformation of the individual offender, and his subsequent release and return to a socially useful life, are recurrent themes in the writings of modern penologists. In this respect, it should be observed that capital "punishment," so-called, is not really punishment at all. Human extinction by the state obviously affords the offender no opportunity to mend his ways and return to a socially productive life. Accordingly, the very existence of the death penalty, and its infliction, directly abrogates the strongest social objective of an enlightened penal system — rehabilitation of the wrongdoer.

By the inherent logic of their situation, supporters of capital punishment — the retentionists — have been forced to rely primarily upon the deterrence aspect of punishment in order to justify the continuation of the capital penalty. Generally unwilling and unable to rest their case upon an outmoded or socially unpopular desire for retribution or vengeance and clearly precluded from asserting any rehabilitative commitments for the criminal sanction which they advocate, they have had to argue, of logical necessity, in terms of the uniquely deterrent force and effect of capital punishment. In the great debate which has been waged on the capital punishment issue, the inherent dialectics of the retentionist position have made the deterrence issue the determinative issue far overshadowing all others in its importance and significance.

If the death penalty as social punishment is to be justified, then clearly it must be conclusively demonstrated that its existence and its use operates to prevent individuals in our society from the commission of murders that otherwise would be committed. In other words, it must be conclusively demonstrated that capital punishment as a deterrent is absolutely necessary for the protection of individuals in society and that no other penalty exists as an effective alternative which will grant the members of society the same degree of social protection against potential murderers. For certainly where we are dealing with a criminal penalty whose very imposition is final, ultimate, and irreversible, and where inevitably the social deprivation of human life is involved, no lesser standard of justification can be permitted to suffice. Consequently, the burden of argumentative proof rests squarely upon the shoulders of the retentionists to establish beyond a reasonable doubt that society's continued reliance upon the use of the death penalty is a sine qua non of social protection and preservation.

In attempting to maintain this burden of proof which the dialectics of their position have inexorably thrust upon them, the retentionists have consciously avoided or minimized the importance of statistical evidence and have largely relied upon a common sense, a prior understanding of human psychology or upon unsystematic examples of personal experiences, primarily of law enforcement officials, where the consciousness of the death penalty has allegedly served to deter the commission of a murder. Perhaps the classic formulation of many of the assumptions upon which the retentionist view of human nature depends were forcefully stated close to one hundred years by Sir James Fitzjames Stephens when he wrote:

"No other punishment deters men so effectually from committing crimes as the punishment of death. This is one of those propositions which it is difficult to prove, simply because they are in themselves more obvious than any proof can make them. It is possible to display ingenuity in arguing against it, but that is all. The whole experience of mankind is in the other direction. The threat of instant death is the one to which resort has always been made

when there was an absolute necessity for producing some result. . . . No one goes to certain inevitable death except by compulsion. Put the matter the other way. Was there ever yet a criminal who, when sentenced to death and brought out to die, would refuse the offer of a commutation of his sentence for the severest secondary punishment? Surely not. Why is this? It can only be because 'All that a man has will he give for his life.' In any secondary punishment, however terrible, there is hope; but death is death; its terrors cannot be described more forcibly."

In general, the retentionists postulate the instinct for self-preservation or, conversely, the individual's fear of the loss of his life, as the single most important factor in the determination of human behavior. In a sense, man in retentionist theory is a complete and unabashed utilitarian continually engaged in a hedonistic calculus of the pleasure to be gained and the pain to be avoided by his every act. Since man will cling to life itself at all costs, cherishing it above all pains and pleasures, the existence of capital punishment, so the retentionists argue, clearly must be a deterrent to the commission of murder.

The utilitarian foundation which underlies the retentionist theory of human nature is obviously not without some merit. Yet, as modern psychology and sociology have recognized, it is curiously inadequate and unsatisfactory as an explanation of the way in which man in fact does think and act. It exalts reason over emotion, the cognitive factors over the impulsive factors in human behavior. It elevates the natural human desire for self-preservation to a position of supreme, transcendent importance and, in so doing, is directly opposed to a significant range of commonly observable human experience in which an individual readily sacrifices his life for an ideal or principle, or for the love of another person or group of persons. Just as the consistent utilitarian is hard pressed to explain the phenomenon of the Christian martyr willingly embracing violent, painful death for the preservation of the ideals of his faith, so too, the thorough-going retentionist, operating on the same basic premises, has difficulty in explaining why, if life is dear above all else, a soldier suddenly throws himself upon a hand grenade to shield his comrades from the explosion by sacrificing his own life. Obviously, while the normal individual will struggle desperately to preserve his life, there are times and circumstances in human affairs when life itself will be willingly given up if necessary. Not only is utilitarian-retentionist thinking unable to cope adequately with this wide range of human phenomena, but it is even more particularly at a loss to explain and justify the even wider range of criminal violations of law, including murder, which are the direct result of noncognitive, emotional, habitual or impulsive action with no consideration whatsoever of the punitive consequences involved if the transgressor is apprehended.

Murder statistics from all over the world have pointed up the fact that a high percentage of murders are committed by individuals handicapped by poverty, ignorance, and prejudice, by persons mentally deranged or deficient, or by persons overcome by the heat of passion or by temporary, uncontrollable emotion. In all of these cases, it is ridiculous to assert that the existence of the death penalty, or, for that matter, any other particular punishment, was a rational factor in the deliberative process which preceded the ultimate decision of any of these individuals to commit a murder. As a matter of fact, a more realistic view of human nature in the light of experience would seem to indicate quite clearly that the actions of most people are not primarily, or even largely, motivated by the pain-pleasure rational calculus of the results attendant upon such action, but by other non-deliberative, non-rational factors.

Apart from arguments based upon utilitarian assumptions about the nature of human psychology, the retentionists have buttressed their position considerably by examples of personal experiences and individual case histories. Such subjective experiences are usually, though not exclusively, the province of law-enforcement officials in the performance of their police duties. In general, they involve particular situations where a potential murderer, reminded of the fact that he would suffer the death penalty for his crime, ceased and desisted from the commission of a homicide which he would otherwise have committed. While the sincerity of those who relate these incidents cannot be challenged, their honest conclusions that their experience attests to the efficacy of capital punishment as a deterrent to murder is undoubtedly open to question. Could not the same result have been achieved had the potential murderer been reminded that he would face the grim prospects of life imprisonment, or some other harsh punishment, were he to go ahead with his proposed killing? Was it really the severity and the finality of the possible punishment or the certainty and swiftness of apprehension and conviction which really caused the change of mind? Certainly these conclusions are entitled to as much weight in evaluating the significance of the testimony of law enforcement officials as the conclusions which they have honestly chosen to draw.

The deterrent argument which law enforcement officials raise on the basis of their subjective experiences would necessarily mean that the life of a police officer is better protected in the carrying out of his necessary duties by the existence of the death penalty. Yet, here too, available statistical data of the relative safety of police officials in abolitionist and retentionist communities clearly rejects the validity of this assertion. In his conclusions based upon a carefully documented study of the comparative safety of the State Police in states that have and states that do not have the death penalty, Father Donald Campion, S. J., declared that his data "do not lend empirical support to the claim that the existence of the death penalty in the statutes of a state provides a greater protection to the police than exists in states where that penalty has been abolished." Father Campion's conclusion is further supported by the empirical studies which have been made by Professor Thorsten Sellin and others.

### Conclusion

We have seen that the retentionists are forced, by the dialectics of their position, to rely primarily upon the assertion of the uniquely deterrent effect of capital punishment in order to justify their views. Because of the final, ultimate, and irrevocable character of the penalty which they advocate, as well as the inherent danger of an erroneous conviction resulting in an irremediable miscarriage of justice, the retentionists have the burden of proof of establishing beyond a shadow of doubt that the death penalty, and the death penalty alone, is absolutely indispensable to the protection of the members of society. Such a burden of proof, to be objectively maintained, logically and necessarily require that statistical and other empirical evidence be presented to establish conclusively that, all other factors being equal, the incidence of murder in an abolitionist community is greater than in a retentionist community.

To be sure, statistical evidence alone and by itself is not sufficient to sustain an argument in favor of the abolition of capital punishment. For while we know that every murder in a retentionist community is striking confirmation of the inability of the death penalty to deter in that particular case, we cannot know for certain how many more murders might have been committed were it not for the fact that some potential killers were deterred by the existence of the death penalty. But where the burden of argumentative proof rests so heavily upon the retentionists, their lack of statistical evidence and empirical data constitutes a fatal weakness in the retentionist case which cannot be adequately overcome by a priori theorizing about the nature of human psychology or by isolated, unscientific examples of improperly or insufficient-

(Continued on page 5)



# Collins Second Consecutive Suffolk Mayor for the Hub



(Photo courtesy of The Boston Globe)

**TALKING IT OVER** — Former Mayor of Boston John B. Hynes, who stepped down from the post after a decade of service, discusses the intricacies of running big city government with John F. Collins, Boston's new mayor and Suffolk Law School's latest "contribution" to its mother city.

## Mayors

(Continued from page 1)

of 1957 at the time the people let it be known that they wanted him to be their top city official last November.

He previously served in the House from 1947 to 1950; Senate 1951-54; and in the City Council in 1956-57. A captain with Army Intelligence in World War II, he became a victim of bulbar polio in 1955 and has been confined to a wheelchair since.

Prof. John F. X. O'Brien of the law school recalls John Collins as an extremely active person as a student — and indeed he still is!

## CARPENTER TOPS ESTATE PLANNERS

The winners of the 1960 Estate Planning and Drafting Contest, sponsored by The Boston Safe Deposit & Trust Company, were announced recently at a dinner given the participants at the Harvard Club.

For Suffolk, first prize went to Bruce K. Carpenter; second to Charles E. Olney; third to James G. Jung, Jr.

## Capital Punishment

(Continued from page 4)

ly analyzed personal experiences. On the crucial question of the statistics of deterrence, it surely is not without major significance that the British Royal Commission on Capital Punishment, which from 1949 to 1953 made the most comprehensive and searching inquiry into this subject which has ever been made, reached the conclusion that the incidence of murder was not dependent upon the presence or the absence of capital punishment, but seemed to be affected by other factors completely unrelated to capital punishment.

While the deterrence argument which occupies such a crucial point in the whole retentionist position cannot be scientifically substantiated, either by reliance on statistics or other carefully analyzed empirical data, it is not to be expected that many determined retentionists can be dissuaded from the continuing advocacy of the retentionist cause. For the deterrence argument has become a social myth, consciously used to mask or conceal other less popular arguments about the objectives of social punishment or unconsciously serving to satisfy basic, unmet emotional needs in particular individuals or groups of individuals. As a social myth, it has transcended reason, logic, and science itself and acquired an independent validity all its own. Its continued existence no longer depends, therefore, upon any claim it might make to truth or objective reality. It persists and will continue to persist, regardless of its demonstrable falsity, because in an elaborate argumentative superstructure firmly rooted in utilitarianism, it is supremely useful, lending a significant measure of social acceptability to what would otherwise in this day and age be socially unacceptable — the unqualified expression of the desire for vengeance and the urge to punish.

## A Suggested Placement Service

After overcoming such obstacles as graduation and a bar examination, the goal of the vast majority of present-day law students is to find employment in the legal profession. It is with this goal in mind, and the intention of making its achievement less difficult, that the S. B. A. has undertaken to establish a legal placement service in conjunction with the already existing placement service of Suffolk University.

Present operating procedures of the undergraduate placement service require the registration of any student seeking employment by his filing with the employment bureau the following information: 1) a photo, 2) an employment form and progress sheet, 3) a personal data sheet, 4) recommendations from two professors, 5) academic transcript of grades.

Such information will serve as a reference file for preliminary screening purposes, as well as source material for recommendations. It is further hoped that the applicant will receive individual job counselling, in order to obtain a job suitable to his abilities and interests.

Another service of the intended placement bureau will be to obtain any and all job information which might be helpful to the forthcoming graduates of the law school. By making such information easily accessible to the student, many opportunities, heretofore unknown, would be brought to the attention of the employment seeking law student. An example of this function is the recent letter received by the S. B. A. from the American Law Student Association. The letter stated that any law student so desiring might receive the publication of this association entitled, *1960 Federal Government Job Opportunities For Young Attorneys*, by sending twenty-five cents to A. L. S. A., American Bar Center, 1155 East 60th Street, Chicago 37, Illinois. At present, it is necessary for each individual student to send for such information on his own, but it is hoped that in the not too distant future this function will be assumed by the Placement Bureau of the S. B. A.

## Suffolk Law School Enters

### National Moot Court Competition

This year Suffolk Law School took another step forward in its drive to provide the best legal education possible.

For the first time an appellate moot court program was inaugurated at Suffolk. The program is in and of itself voluntary, but it is mandatory for any law student who desires a well-rounded legal education. Those students who partake of the course soon learn that hard work, a desire to learn, and a keen sense of competition are prime requisites for participation.

The manner in which the program came into being may not have been orthodox, but it was effective. Last year Suffolk offered a course in appellate brief writing, and as will happen, two members of this class became deeply embroiled in an argument on a point of law. The students took the problem to Dean McDermott and asked him to resolve it for them. The Dean in conjunction with Professor Sargent decided that the students should resolve the question themselves, through submission of appellate briefs. The students worked diligently and soon had prepared excellent briefs on the problem. Arguments on the briefs were held before a panel chosen from the law school faculty. The gallery was packed with inquisitive students, only half realizing what was going on. By the time this question was decided there were many students feigning problems of law, so that they too could submit appellate briefs before our distinguished Moot Court.

Although we didn't realize it at the time, this seemingly accidental furor concerning appellate moot court competition was not in reality accidental, but rather part of a well-laid plan devised by Dean McDermott and the law school faculty. The administration knew that such a program, no matter how beneficial, would be valueless unless the students themselves were deeply interested in it. Upon this premise the plans were made.

In order to understand fully why the administration would go to such lengths to organize this program, it is necessary to know ex-

actly what the program consists of and what students may gain from it.

The main purpose of the program is to acquaint students with the procedures involved in bringing cases before a court of last appeal.

At the very outset the participants must acquaint themselves with an appellate brief, its form, its content and its purpose. Once this initial step has been taken, the real work begins. The case at hand must be analyzed to the "N"th degrees, and general issues formed.

Now comes the long drawn-out process of research through the Encyclopedias, the digests, the codes and many diverse legal and lay periodicals. Once this is done new issues must be formed and research done on these. This process is continued until the basic issues have been found and research done upon them.

All the information thus gathered must be put into written form, that of an appellate brief. The brief must be extensive enough to cover the case fully, and yet be concise as its name would imply.

The task is not complete with the writing of the brief. There remains an oral argument to be prepared. The oral argument must not be a memorized regurgitation of the brief, but rather must evolve from a complete knowledge of the case and the law involved. The speaker must in his own words explain his position to the court. He must be ready to defend this position against questions hurled at him by a panel deeply interested in the case and which wishes to do justice.



## THE CONGRESSIONAL INVESTIGATING COMMITTEE

(Senior Jordan Ring, author of this article, is top student in the law school and plans to do graduate law work at Harvard next year, under scholarship.)

by Jordan L. Ring, '60

Power and the constitutional right to exercise a particular power are two distinct considerations in the philosophical concept of governmental scope and function. One endeavoring to categorize contemporary congressional investigatory practices in one of the two categories can find persuasive arguments in mass for his favored position thereon. But it shall not be the purpose of this particular analysis to pursue the justification of either abstraction. Rather, the ultimate consideration, herein, focuses narrowly upon the jurisdiction aspect that confronts one who must deal defensively with an investigating committee's asserted authority on the plane of jurisdiction over the person, and the matters closely related thereto.

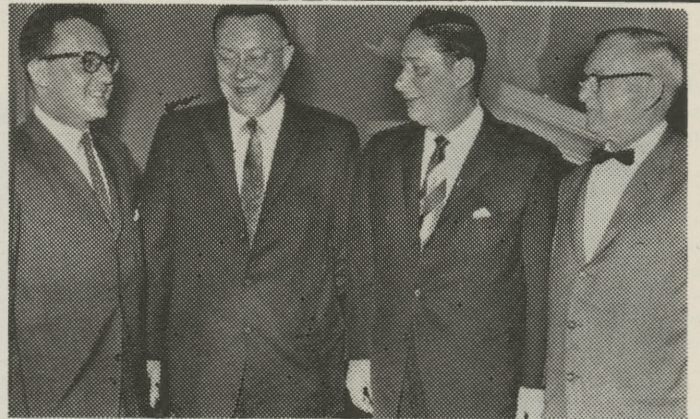
Basic generalities of constitutional law have no little importance in this regard. Fundamentally, our national government, in dealing with the internal aspects of their particular functions, is one of delegated powers, which power is either specifically enumerated within the four corners of the Constitution or found to be a necessary and proper power implied therein. Therefore, every function of our Congress is directly dependant for its constitutional legality upon the adherence to the aforesaid principle. It is axiomatic that a federal investigating committee has no greater authority over a person or persons than the sum total of its creators' authority . . . Congress. If, therefore, Congress has exceeded its authority in the establishment of a given committee, then we have an ultra-vires body . . . a nullity. In a related sense, the jurisdiction of a particular committee to compel the appearance of an individual before it is directly dependant upon congressional authorization in the main, which congressional authorization is directly dependant by way of justification upon the Constitution. Hence, initially at least, the basic and logical challenge of a committee's jurisdiction over a person can be leveled at its very right to constitutionally exist, although it may be submitted at the very outset that this fundamental challenge is broader in theory than in practical application in the light of contemporary legislative and judicial liberalism in this particular field of thought.

The general power of Congress to create and vest a committee with capacity to compel obedience to its jurisdiction is a firmly established concept. *McGrain v. Daugherty*, 273 U.S. 135; 71 L. Ed 580; 47 Sup Ct. 319; 50 ALR 1. It is vitally important, however, to consider carefully the general authority of Congress in order to analyze whether in any particular instance a given committee is beyond the borders of constitutional concern. [Thus, the question to be carefully considered is where does this general authority come from and what are the reasons for its basic justification.]

*McGrain v. Daugherty*, supra, precisely points out that nowhere in the framework of the Constitution is there specifically enumerated authority giving to Congress the power to create legislative investigating committees. Nevertheless, from the standpoint both of English and Colonial history and from the view of practicality, the Court held such authority to be a necessary and implied power of congressional function. Specifically, in order that any type of intelligent legislation may result from the sessions of Congress, there is an obvious need for specific information relating to any particular matter under consideration by either House. Obviously, it would be sheer fallacy to assume Congress, broad as it may be in membership, could possibly have within itself at all times such a fund of information as would permit it to judge the particular merits of every act, nor to understand the need for certain legislation in matters over which it must protect and regulate. Hence, the need for factual information from without. [Congress, in order to effectuate fruitful results, delegates to a relatively small group of its membership the authority it possesses as a whole to investigate. And from this reason found by the Court to necessitate the existence of such implied authority, we find therein the crux of the limitation of its power to investigate and therefrom the right to compel obedience to its jurisdiction.]

Because of the breadth of the Congressional powers . . . [the power to legislate, to judge the qualifications of its members, the obligation to maintain within the States a Republican form of government, to provide for the common defense, to perpetuate its very existence, etc . . . it may seem that it would be practically impossible for Congress to select a field for investigation which would not be related to some proper area of congressional concern. Actually, however, there has been one occasion when the Supreme Court failed to find such relevance. That was in the 1880 case of *Kilbourn v. Thompson*, 103 U.S. 168; 26 L. ed 377, testing the legitimacy of a House investigation into the bankrupt firm of Jay Cooke & Co. and its interest in a District of Columbia real estate pool. The Supreme Court ruled that this was not a subject on which Congress could legislate and therefore had no authority to investigate. This case represents the only restrictive decision upon the power to investigate. Mr. Justice Miller said, "We are sure that no person can be punished for contumacy as a witness before either House, unless his testimony is required in a matter into which that House has jurisdiction to inquire, and we feel equally sure that neither of these bodies possesses the general power of making inquiry into the private affairs of the citizen." The matter under investigation did not come within the range of congressional legislation. While the facts of this particular case are of a minimum of importance, since a similar inquiry today under the Supreme Court's broad concept of the congressional function would certainly be authorized, the principle expounded from that case, nevertheless, clearly sets forth the proposition that Congress has no authority to investigate per se. It cannot launch an investigation from the stand-point of constitutional power merely to expose for the sake of exposure or to delve into the private affairs of citizens merely to bring to light undesired, although legal, courses of conduct and persuasions over which it has no power to legislate or is prohibited by the Constitution to abridge. For an analysis of the *Kilbourn* Case and the implications thereof see *Congressional Investigation*, 37 Cal. L. Rev. 556(1949); 40 Hvd L. R. 153(1926). In order therefore for a congressional investigating committee to have authority over a person the "PURPOSE" of the investigating committee is of a prime concern; for the purpose of the committee must have some connection with prospective legislation or congressional function or else have no jurisdiction over the person. But how close must the purpose be connected with prospective legislation? As will be hereinafter indicated, very little actual connection seems necessary.

All recent cases dealing with this subject matter have had some relation to security investigations, and while it can never be doubted that these security cases have to a large degree been pressured by the emotional complexion of the nation, nevertheless, they do outline the basis of judicial philosophy regarding the general topic under consideration. So far as the issue of the Un-American Investigating Committee is concerned, obviously no matter is of a greater importance to Congress than the internal security of the nation and the protection of its independence and integrity against conspiratorial or subversive attacks. For these clearly proper Congressional concerns it is scarcely necessary to cite such expressly stated legislative functions as to "provide for the common defense", "to raise and support armies" and the like. But this security committee seems to have dissipated somewhat the strong Constitutional support by being so largely uninterested in making legislative recommendations to Congress. The mere fact that the House had stated in setting up the committee that it was for a "Legislative Purpose" was generally regarded as binding on the Court. Mr. Justice Clark dissenting in the case of *U.S. v. Josephson*, 165 F2nd 82, 333 U.S. 858, said that upholding the committee's power over the person on this basis made the Congressional investigative power limitless for "the dram of good must always sanctify the dubious remainder." As a simply stated proposition, the language of the majority seems to lay down the rule that if Congress claims a particular investigation to be for a legislative purpose the court will not say that that is not so.



(Photo courtesy of The Boston Globe)

**WIG & ROBE BANQUET** — principals at the annual Spring event of the organization were, left to right, senior Russell Mahoney of Chelsea, president; Dean Frederick A. McDermott; Atty. Paul T. Smith, president of the Suffolk Law School Alumni Assn., and Mass. Superior Court Associate Justice Frank J. Donahue, chairman of the trustees' committee for Suffolk Law School.

There seems little reason to doubt that Clark's conclusion is actually the correct one to draw from these appellate court decisions, for all the grounds on which limits might have been based were rejected in the *Josephson* Case. Justices Douglas and Black took essentially the same position in their concurring opinion in *U.S. v. Rumely*, 73 S.C. at 547. "Inquiry into the personal and private affairs is precluded and so is any matter in respect to which no valid legislation could be had. Since Congress could not by law require of respondent what the House demanded, it may not take the first step in an inquiry ending in fine and imprisonment." In *Barsky v. U.S.*, 167 F2nd 241, it was said by the Court that the fact constitutional legislation "might" ensue from the information derived by an inquiry upon the subject described in the House resolution is sufficient to sustain the committee's jurisdiction. "The potentiality is the measure of the power of inquiry" and this be so even though the legislation that might ensue from such an investigation has a strong possibility of being found unconstitutional, and the mere fact that very little legislation has resulted from a given inquiry is immaterial in considering the committee's constitutional justification. But what if we discharge syllogisms and advance judgments and concentrate rather on the charge that the committee had actually and deliberately sought to get, by publicity and exposure, results which could not constitutionally be secured by legislation. Judge Edgerton in the *Barsky* Case, supra, said that the committee had intentionally inflicted punishment on certain witnesses by bringing about their dismissal from employment and subjecting them to notorious publicity and held that this met the bill of attainder test in *U.S. v. Lovett*, 328 U.S. 303. The majority felt otherwise and completely disregarded substance, looking merely to form. Justice Clark dissenting in the *Josephson* Case, supra, concluded that the committee was merely investigating for exposure's sake, and this had been proved by the committee's questioning of the witnesses appearing before that body. But the majority of the Court rejected the Clark position by again looking solely to the purpose for which the committee was established and not into the objective mannerisms. Clark went beyond this point and contended the committee's persistent questioning of witnesses as to whether they were members of the Communist Party violated a right to privacy and to freedom from inquiry about political beliefs established by the first amendment and upon which Congress had no right to exact prohibitive legislation, let alone inquire. But both in the *Josephson* and *Barsky* Cases the Court disposed of these points by reminding that Congress can curtail freedom if justified by the clear and present danger test and that Congress need not wait until there is a clear and present danger before it can inquire into these matters. All that is required is a possibility of a clear and present danger and that the court cannot assume in advance that Congress will pass unconstitutional legislation. From what has been set forth above it may well be that legislative investigating committees will have an area of sanctioned inquiry as broad as Congress deems necessary by merely asserting within the enabling act of the committee that the purpose of the said committee is to inquire for proposed legislation and have some broad basis upon which to rest thereon. For it now appears that the Court will not look beyond this point. Thus the original concept of legislative investigation under our system of government appears to have become an obsolete limitation or at least a limitation in form only.

Now, assuming in any given instance the constitutionality of a committee, what is the immediate power over the person to compel compliance with its request to appear? For a contempt of Congress there is no doubt that either House has the inherent power to punish through its own processes outside of the courts. *Marshall v. Gorda* 243 U.S. 521; *Anderson v. Dunn* 6 U.S. 204. In *McGrain v. Daugherty*, supra, it was clearly stated that either House, through its own process has power to compel a private individual to appear before it or one of its committees and give testimony needed to enable it effectively to exercise the legislative function belonging to it under the Constitution. However, the power of Congress to punish for contempt of its own process is limited to imprisonment and the duration to the time of the adjournment of Congress. See 50 ALR 21. Not only may Congress itself punish for the failure to answer a proper question when appearing but in *Jurney v. MacCracken*, 294 U.S. 125, the Supreme Court upheld the right of Congress of punish for a past and completed action. In this case the defendant had destroyed records which the committee requested to be brought before it. Thus the fact that the obstruction to the legislation function is removed or is impossible to be removed is completely immaterial in considering the authority to punish. Such a power to punish for past and completed obstructions was exerted by Congress as early as 1795 and is a well settled principle of legislative power. Today, by statute, (2 U.S.C. sec. 192; F.C.A. 192) Congress has supplemented the inherent power to punish for contempt. It is to be noted that this statute does not exclude Congress from still rendering punishment through its own process. The constitutionality of this statute was upheld in *In Re Chapman*, 166 U.S. 661. Section 192 makes it a misdemeanor for one properly summoned before a committee of either House as a witness to refuse to appear or to appear and refuse to answer or produce material papers or records. It now seems entirely possible, based upon the language in *In Re Chapman*, supra, that a party in contempt could be punished both under the statutory procedure and in addition by either House. Of course, a summary refusal of one duly called by a committee to appear before a committee could legally result in the physical removal of a witness to the situs of that committee. Therefore, any attack on a committee's jurisdiction, as a practical matter of concern, should be made at an appearance before the committee. The question of remedies is somewhat dubious and leaves in doubt the question of injunctive relief in a Federal Court. However, one wrongfully taken into custody has a right of recourse against the officer but not against the membership of the committee, due, of course, to a congressional members immunity under Article 1, sec. 6, cl. 1.

(Continued on page 7)



## HARVARD LAW PROFESSOR TO ADDRESS ALUMNI



**MOOT COURT IN ACTION** — at the "Trial of Jacob Druker," senior Bruce Carpenter, attorney for the defense, argues his case. At Carpenter's immediate left, seated, is Elaine Cocotas, a student at Bryant & Stratton Commercial School, who was stenographer for trial. Presiding is Hon. Walter F. Levis. Immediately in front of His Honor is Albert Fadoul, serving as clerk of the court.

**Sutherland** (Continued from page 1)  
quarters, U. S. Forces in Austria in the Mediterranean and European Theater of Operations. Discharged as a colonel in 1945, he now serves with that rank in the Officers Reserve Corps.

### Served with Army

For his war service he was awarded the Legion of Merit with Cluster and Bronze Star Medal from the U. S.; Order of the British Empire; Cross of War (twice by France); Czechoslovakian War Cross; Oussiam Alaoulte from Morocco, and the Volontari della Liberta from Italy.

Prof. Sutherland is a Fellow of the American Academy of Arts and Sciences and a member of the American Law Institute and American and New York State Bar Associations.

### Author

He is author of "Cases and Materials on Commercial Transactions" (with others), 1951, and "Constitutional Law — Cases and Other Problems," 1952. He is also editor of "The Law and One Among Many," 1956, and has been a contributor of articles to numerous legal publications.

Prof. Sutherland, who resides in Cambridge, is the father of two daughters and the same number of sons.

### The Congressional Committee

(Continued from page 6)

On the issue of what a witness before a committee must answer and what he need not reply to, both section 192, the fifth amendment and the committee's authority are the direct essentials to be considered. The most basic defense here is the fifth amendment . . . the right to refrain from answering a question amounting to compulsory self-incrimination. As to this particular civil right of the individual, the Court has been liberal in the application of it and conservative to narrow its borders of protection. This amendment is one of such vast scope that it could not be adequately dealt with in this paper in total. But of interesting note here is the recent Supreme Court decision of *Blau v. U. S.*, 340 U. S. 159, which stated in substance that one may refuse to testify if his testimony will "furnish a link in the chain of evidence against himself" and the answer need not be of such a nature as to amount to a crime itself. However, in order to invoke the privilege, the issue of statutory immunity must be considered. In the past Congress has from time to time provided for immunity or protective clauses thereby rendering testimony given before a committee as inadmissible in subsequent trials of a witness by either the federal or state courts. Such a blanket of protection extended to a witness is binding upon the states as well as the federal government. *Adams v. Maryland*, 347 U. S. 179. In *Ullmann v. U. S.*, 350 U. S. 422, the Supreme Court held in dealing with an immunity clause passed by Congress, that once the reason for the privilege ceases, the privilege itself ceases. Thus the Court has laid down the proposition that one may not rightfully refuse to answer a material question without the danger of punishment if Congress has rendered testimony coming within the definition of the statute inadmissible in evidence against the witness at a subsequent trial by federal or state authorities. For the individual is not than bearing witness against himself. However, it is now incumbent for the witness to determine whether or not he is within the statutes protection, for it is only when you come within the language of the statute that the immunity prevails.

Also a prime importance is the principle that one before a committee need not answer any and all questions directed to him by the committee. It is well established by both judicial decision and expressly set out in section 192 that a witness need answer only those questions pertinent to the question under inquiry by the committee. In order to judge whether a particular question directed by the committee to the witness is pertinent to the question under inquiry, the witness has a constitutional right to know the purpose under investigation. Either House in creating a particular committee must set forth with reasonable certainty the purposes that the committee is to inquire into. Hence, the uncertainty of the committee's scope may well be a ground of attack on the basis of unconstitutionality. The witness may also inquire as of right, from time to time, while before the committee of the relation that a particular question has to the purpose under inquiry by that committee. *U. S. v. Rumely*, 345 U. S. 41. In the *Rumely* case the Supreme Court asserted that a committee may not ask a question outside the scope of the resolution creating that committee. There the committee created to investigate lobbying activities asked of the witness a question regarding the publication of books. The Court found no relevancy; thus the question was held to be improper and the conviction for failure to answer was overturned. And in 136 F.2d 791, the court said in substance that if the committee has no authority to ask the question because it is outside the scope of the committee's purpose, even if Congress subsequently tries to cure the defect by amendment, one who refused to answer a question before Congress amended the purpose of the committee would be guilty of nothing. If the scope is enlarged, the question must be asked again at another committee session. The crux . . . has the committee authority when the question is asked. In addition to the aforesaid, section 192 provides that the fact an answer to a committee question would tend to disgrace a witness or render him infamous is not a proper ground for the refusal to answer.

The preceding pages give some slight indication as to both the wide breath of Congressional power and the heavy burden placed upon counsel for a witness before a committee. Counsel involved with an appearance before one of the many committees of our national government must give careful and concise attention to the variety of matters discussed. Not only should he consider whether a committee has the constitutional right to exist but he must of necessity become extremely well versed in the scope and purpose of a committee, as well as any immunity clause that may be relevant or become relevant during an appearance before the committee. For if an individual's rights are to be protected against this vast authority of Congress no amount of consideration can be deemed too great. And while the philosophers of governmental authority may find valid criticism for this new form of national power, nevertheless, it does exist and must be dealt with in its existing form.

## Scholarships

A number of scholarships are available to Suffolk Law School students, both entering and upperclassmen. Certain of the Trustees' Scholarships, covering full tuition charges, are awarded to students upon their initial entrance to the Law School. These are limited to students who have graduated from specified schools and have obtained the nomination of the Presidents of the respective institutions. Each recipient holds the scholarship for one year, and its continuance is based upon the student's maintaining a satisfactory average in the Law School.

Present Trustees' Scholarships awarded on an annual basis are: the *David I. Walsh Scholarship* to a graduate of the College of the Holy Cross; the *Louis D. Brandeis Scholarship* to a graduate of Brandeis University; the *Charles Doe Scholarship* to a graduate of Dartmouth College; the *Merrimack College Scholarship* to a graduate of Merrimack College.

Another of the Trustees' Scholarships is the *William F. A. Graham Scholarship*, which is awarded annually by the Faculty to a student who typifies the high ideals exemplified by the life of the late William F. A. Graham, Esq., of the class of 1924, long a Trustee of Suffolk University. This is awarded to a student already in school.

In addition, the Trustees have established the *Suffolk University Scholarships* which consist of four full scholarships awarded annually to graduates of Suffolk University who have maintained high scholastic standing in their college work.

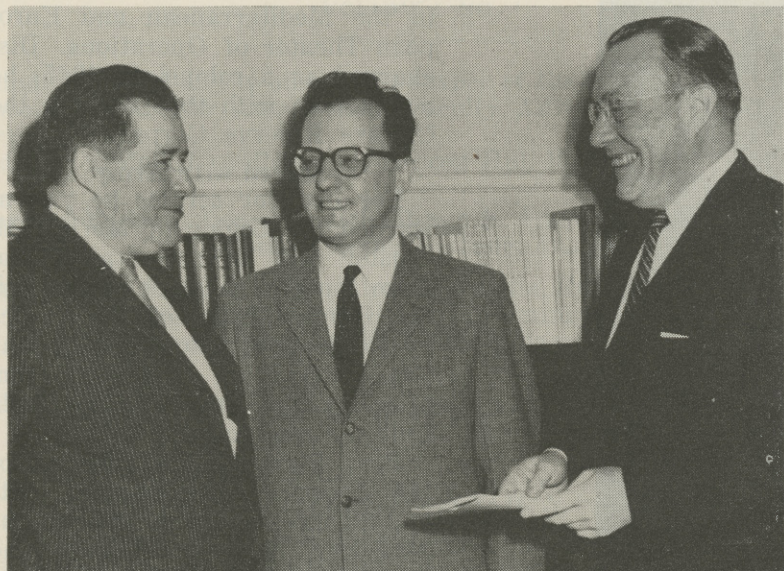
The third group of scholarships is that entitled *Alumni Fund Scholarships*, which are awarded principally to upperclassmen of the Law School by the Faculty Scholarship Committee on the basis of achievement, character and need. A limited number of these scholarships are also available to outstanding applicants for admission to the Law School. As the name implies, these awards owe their existence to the interest and generosity of Suffolk Law School alumni and other friends of the Law School.

Included in the *Alumni Fund Scholarships* are the *Class Leader* awards which are given primarily on the basis of the student's academic achievement, although, where necessity demands, other factors are also considered by the Scholarship Committee. These awards are presently held by: Richard E. Smith of the second year day class; Frederick A. Bazley of the second year evening class; Armen Der Marderosian of the third year day class; David J. Lessels of the third year evening class; Albert M. Newell of the evening class which commenced in January, 1959.

In addition to the preceding five full scholarships, there were 37 other Alumni Fund Scholarships of varying amounts awarded to students on the basis of merit and need.

There are two other scholarships which merit attention, and they are the *Steinberg Scholarship* and the *Fairchild Scholarship*. The *Steinberg Scholarship* was established by Louis H. Steinberg, a graduate of the Class of 1925, and consists of the income of certain stock. It is awarded annually to the senior in the evening division who has the highest average for the three preceding years. The present holder of the Steinberg Scholarship is Francis X. McDonough. The *Fairchild Scholarship* was established in 1926 by Mrs. Julia D. Fairchild in memory of her late husband. The income is awarded at the end of the freshmen year to a student on the basis of scholarship, character and need.





(Photo courtesy of The Boston Globe)

**LAW DAY** — Albert West, left, executive director of the Massachusetts Bar Association, addressed students on "The Significance of Law Day-U. S. A." at Suffolk's recent observance of the event. With him are senior Russell Mahoney of Chelsea, center, president of the Wig & Robe Society of Suffolk Law School, and Dean Frederick A. McDermott.



### DAY DIVISION

Within the day law school may be found students of varied backgrounds and ambitions. Among them are:

*Murray Duncan Harris*, Colonel, U. S. A. Ret., was born at Marquette, Michigan fifty-six years ago. He received an Engineer of Mines degree from Lehigh University in 1926, and did post-graduate studies in business administration. Murray also attended several military schools during his thirty years of active army service. He is distinguished by many awards which include the Legion of Merit, the Bronze Star and the Medaille de la Reconnaissance. He has served as chairman and professor at Northeastern University in the Department of Military Science and Tactics. His present objective? — "To live long enough to build and enjoy a second career."



Harris

*Terrance F. Perkins* was born forty-two years ago in Ipswich, Massachusetts where he resides today with his wife and children. As part of his early naval career, Ted has studied at the University of South Carolina and the School of Naval Science at Newport, Rhode Island. He served in the South Pacific and in 1958, after twenty-one years of active service, retired from the navy as a lieutenant commander. Dedicated to civic activities, Ted has been elected School Committeeman of Ipswich; his only compensation for many hours of working out school problems is the satisfaction of knowing that children will derive maximum educational benefits for minimum cost. Ted's objective in studying law? — "To enter a profession dedicated to the service of my community."



Perkins



Wong

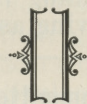
*Paul Lawrence Wong* was born in China thirty-eight years ago; has studied, for four years, at the National Peking University Law School in China; and plans to specialize in tort law in the United States. The well-known trial lawyer, Melvin Belli, has shown some interest in engaging Paul when he has completed his studies of American law. Paul's previous legal studies were geared to code law in China's no jury, judicial system.

*Bruce K. Carpenter* was born twenty-seven years ago, has done everything from feeding elephants and pounding stakes, while travelling with a circus, to teaching Latin, Greek and philosophy. He has served in the Marine Corps in Japan and as a Massachusetts Correction Officer at Norfolk Prison. A graduate of Brown University and a family man, he has actively participated in the National Moot Court Competition while at Suffolk Law. Bruce is truly an unusual student; he has the manner of Clarence Darrow and the stature of Daniel Webster. His recent admission to the Washington, D. C. Bar — before graduation — is but another of his unusual accomplishments.



Carpenter

## Student Close-ups



### EVENING DIVISION

Evening law students are a heterogeneous group, they include public officials, civil servants, accountants, insurance adjusters, engineers, druggists, bankers, salesmen, teachers, and others. All have different reasons for studying the law, for is it not true that the future attorney will be engaged in various types of work.

The "typical" evening law student is in his middle to late twenties, married with two children, a college graduate, and a white collar worker. Although differing in background and employment, the students have a great deal in common. All have an insatiable thirst for knowledge of the law. All hope to become successful, practicing attorneys. All realize that requires time, study and sacrifices.

"Perseverance" is the keynote of evening law students, who, for four years, attends classes three nights a week, three hours a night; studies on Saturdays; and must maintain full time employment. Sundays are usually spent "reacquainting" themselves with their families after six days of work, classes and study, but time being so precious even these hours are budgeted.

Predicated upon their mutual interests, students, among themselves and with faculty members, form associations which often develop into close friendships. These friendships and their wives' understanding bolsters their morale and encourages them to strive even harder to reach their goal — graduation and, eventually practice.

Sketches of two evening students:

*Frederick W. Kinsley*. Bill, as he is called by his classmates, resides in Marblehead with his wife and two children. In 1930 he was graduated from Marblehead High School, and in 1935 from the U. S. Naval Academy. Bill is still on active duty with the Navy as a Commander attached to the Boston Group Atlantic Reserve Fleet. During his naval career he has served in both the Atlantic and Pacific areas in various capacities — from ensign gunnery officer of a cruiser (Marblehead CL12) to commanding officer of his own ship, the USS Alcon AK 259. Bill has the distinction of being the only officer in the Navy today who was present at Tsingtao, China in 1938 at the commencement of the Japanese occupation and was present when the Japanese occupation forces surrendered in 1945. Bill plans to practice law when he retires from active duty.



Kinsley

*Alexander J. Cella*. Al, a bachelor from Medford, is serving his second term as State Representative to the General Court. In 1947 he was graduated from Medford High School, in 1951 from Harvard College and in 1953 received a master's degree in Public Administration from Harvard. Except for his thesis, Al has completed the requirements for a doctorate degree. From 1953 to 1956 he was a Teaching Fellow at Harvard. Al plans to practice law in his community. Al's interesting article on capital punishment may be found on pages 4 and 5.



Cella