

The Harvard Law School Record

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Coffee Hour Hears About Fine Arts; 'Corporation Democracy' Is Next Topic

Features Lewis Gilbert Museum Chief Speaks

Mr. Lewis D. Gilbert of New York City, shareholder in numerous corporations and "policeman" of corporate activities in the interest of small investors, will speak at the Coffee Hour on Feb. 17. His topic will be "Corporation Democracy In the Annual Meeting." George D. Coupounas, 2L of Scotia, N. Y., will introduce the speaker.

In assuming the duties of attendance at stockholders' meetings, Lewis Gilbert, together with his brother John, contribute a service which no federal or state regulatory commission could perform, that of reminding the board of directors and top management that the company is owned and operated for the benefit of the investor in stock. The 13th annual report of stockholders' activities, "published for and in the interests of American Stockholders by Lewis D. and John J. Gilbert" presents in detail the results of their continuing efforts at yearly meetings.

Under the standard, "Divided, management rules—United, stockholders participate," Mr. Gilbert has battled management vigorously on the problems of conveniently located stockholders' meetings, auditors elected or approved by stockholders, salary limits for management, requirements that directors own stock, pre-emptive rights for shareholders, and especially the cumulative voting system. Much of the detail now present in the annual reports of corporations to their shareholders stems from the objections of Gilbert to biased and

(See STOCKHOLDER on page three)

Mr. J. T. Coolidge, Director of the Fogg Museum, delivered an address on "Why the Study of Fine Arts," at the Coffee Hour this past Tuesday.

As his major theme Mr. Coolidge stressed the importance of the study of Fine Arts. He pointed especially to the better and broader understanding of the cultures of different peoples and nations which such study inculcates. Mr. Coolidge also noted the deeper appreciation and more critical attitude towards the arts that is developed through the examination of Fine Arts.

In developing his discussion Mr. Coolidge included with the Fine Arts only sculpture and painting and not literature and music. Historically sculpture and painting have developed in a distinct manner from the other arts.

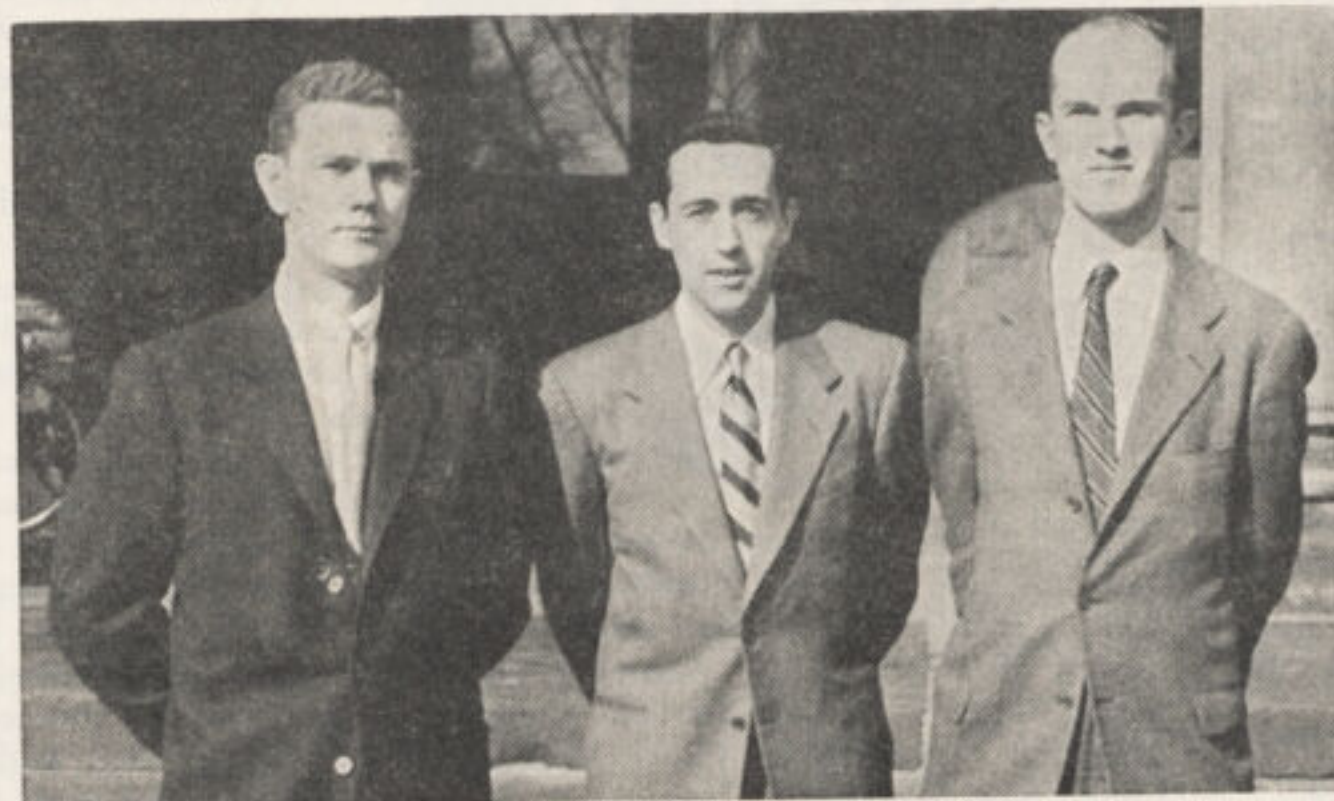
Arts Neglected

Recognizing the fact that there is a general neglect in the study of Fine Arts, Mr. Coolidge attempted to analyze the causes. His major explanation lay in the Anglo-Saxon cultural tradition which has never placed the emphasis on the Fine Arts that the various continental European countries have. Further, he stressed the failure of the Fine Arts to adapt themselves to a good survey course of study.

In discussing the advantages in having Harvard College expand its Fine Arts course, Mr. Coolidge contended that the study of history and literature by themselves was not sufficient to a true understanding of the course and development of nations.

Story-Powell-Webster Club Wins In Drafting Competition Sponsored By Student Advisers

Story-Powell-Webster Club has been named the winner of the first annual drafting competition sponsored by the Board of Student Advisers. Third-year men Donald W. Conley of Oak Park, Ill., Robert W. Fuller of Scarsdale, N. Y., E. Parker Hayden of Brookline, and Cornelius J. Kiley of Peabody represented the club.



Left to right: Parker Hayden, Donald Conley, Robert Fuller. Not pictured: Cornelius Kiley.

In second place was the Seavey-Wilson Club, represented by Edgar H. Booth, and Bernard Bernstein, both of Brooklyn, Herrick A. Drake of Chatham, N. J., Martin M. Friedman of Newark, N. J., Benjamin J. Kreitzberg of Maplewood, N. J., and Walter J. Landergan, Jr. of Lynn.

Each competing club was required to draft a limited partnership agreement in accordance with Massachusetts law, and to draft selected portions of a corporate charter in accordance with the Delaware corporation statute.

Finally, the contestants had to draft a memorandum explaining the relative advantages of the two forms of business association to each of the three prospective parties to the association.

Three Boston attorneys, Fred B. Lund, Jr., LL.B. '21 of Ropes Gray Best Coolidge & Rugg; Grafton L. Wilson, LL.B. '19 of Hale & Dorr; and Charles B. Newhall, LL.B. '26 of Nutter McClennen, acted as judges for the competition.

Judges Praise Entries

The judges remarked that the work submitted was of high quality and compared favorably with material received in actual practice.

Speaking of the problem they said it was basically an excellent problem, realistically presented, but that it was a little too complicated and involved the really difficult problem of compressing

(See DRAFTING on page four)

Cox Suggests Commission To Rewrite U. S. Labor Law; Denham Asks Repeal

Creation of a commission composed of members of Congress, representatives of labor and management, and disinterested persons of experience, to study possible changes in the Taft-Hartley Act, was the solution urged by Prof. Archibald Cox, LL.B. '37, to the Harvard Law School Forum question, "What to Do With Taft-Hartley," at Rindge Tech Auditorium last Friday evening.

Cox attributed much of the controversy over Taft-Hartley to labor's justifiable fear that along with the attempt to correct certain abuses, there was an underlying attempt to weaken and undermine the strength of organized labor and partially its unjustifiable fear that it would have to be subject to limitations not placed by society on all its members.

Evidence of this first purpose, Prof. Cox said was found in the Act's continual choice among several alternative equally effective solutions, of the one most disadvantageous to labor. It is this characteristic, the separate office of General Counsel, and the extension of the government's ability to regulate and fix the terms of the actual collective bargaining agreement which Cox felt should be considered in amending Taft-Hartley.

"Abolish it, appeal it, and reenact it"

in most of its present form was the explosive advice of Robert N. Denham, former General Counsel of the National Labor Relations Board.

Denham justified this course on the grounds that the major trouble with Taft-Hartley was a failure to administer it, rather than any of its substantive provisions, and that since it was built on the "ruins of the Wagner Act," a piece of "social class legislation meant to ad-

(See FORUM on page four)

The Status of Public Utility Regulation: Its Relationship To Economic Realities

This article was written exclusively for the RECORD by William A. Hill, LL.B. '17. Currently engaged in private practice, specializing in the utility field, Mr. Hill has participated in all phases of the build up and dissolution of utility holding companies. In the period 1932 to 1935 he represented one of the larger holding companies in the Congressional investigation carried on by the Federal Trade Commission which resulted in the enactment of the Public Utilities Holding Company Act of 1935. For another decade, he was almost completely engaged before the Securities and Exchange Commission in matters affecting the dissolution of these same companies

classifications but more often it was left to the utility.

This method of regulation worked out well. The interests of the consumer were given due regard. The reductions chosen usually fitted management plans and stimulated efforts to increase sales which in due course produced more revenue. In those days the Commission was akin to the respected policeman on the beat who seldom had occasion to be tough.

Sometimes the conference method broke down and a "rate case" resulted when the utility rejected the suggestions that it reduce rates. As rate cases consume months it often happened during

(See UTILITIES on page four)



William Hill

under Section 2 of the Act. At present he is counsel for several utilities throughout New England.

Thirty or more years ago the adjustment of rates involving gas and electric utilities was seldom a matter of great public interest. The public utility commissions generally "requested" conferences with management which resulted in a reduction of rates in certain classifications of service. Sometimes the commission dictated the selection of these

Letterhead Recalls Past

An old, battered, and faded letterhead, one of those used by the Harvard Legal Aid Bureau in its earliest days, has been returned to the offices of the Bureau in Gannett House after 38 years.

The letterhead was recently discovered by Judge Raymond S. Wilkins, LL.B. '15, who forwarded it to Dean Erwin N. Griswold. The Law School Library, accustomed to renewing ancient manuscripts, cleaned and bleached the historic memento, and now the relic, mounted and framed, hangs in the offices of the Legal Aid Bureau.

The Legal Aid Bureau was organized in 1914. At that time, it had offices in Central Square. Its letterhead included the names of all of the officers and members of the original Board.

At the top is the name of Charles B. Rugg, LL.B. 1914, Chairman. Mr. Rugg is now a partner in Ropes Gray Best Coolidge & Rugg in Boston. The next name is that of Clarence B. Randall, LL.B. 1915. Mr. Randall is now president of Inland Steel Corporation. Among the names of other Board members included on the letterhead are the following:

Thurman Arnold, LL.B. 1914. Mr. Arnold, since leaving Law School, has been a mayor, professor, author, Assistant Attorney General, and United States judge. He is now a partner in Arnold, Fortas & Porter in Washington.

(See LETTERHEAD on page four)

HARVARD '50 REUNION

Before the Harvard-Yale hockey game on Feb. 28, the Harvard College class of 1950 is planning an informal get-together. Graduates of that year will meet for dinner and cocktails at the Harvard Club, 374 Commonwealth Ave., Boston.

Cocktails will be served at 6 p.m., and dinner begins at 7. The charge will be \$2.50, payable at the door and will include all expenses (except tickets to the hockey game, which will be \$1.50 and \$3.00.) Wives and guests are invited.

The Committee requests that members of the class who plan to attend the meeting inform M. Zurier, 17 Everett St., Cambridge 38, Mass.

Boston Security Analyst Will Address Bull & Bear Meeting Tomorrow Noon

Mr. William W. Wolbach, President of the Boston Security Analysts Society, will speak to the Bull & Bear Club tomorrow at 1 p. m., in the Mallory Smith Room on the topic "The Lawyer As An Investment Adviser."

Mr. Wolbach, who is Vice-President of the Boston Safe Deposit & Trust Co., has had considerable experience in dealing with lawyers who were acting in the capacity of investment advisers. He will describe the prerequisites and methods of operation of a security analyst and will then show in what respects a lawyer essentially differs from a security analyst in giving financial advice.

Mr. Wolbach is also Chairman of the Board of the West Point Manufacturing Co. and a director of Dixie Mills, Columbus Manufacturing Co., Equinox Mill, Wellington Mills, Cabin Crafts, Inc., Wellington Sears Co., and Lanett Bleachery & Dye Works.



William Wolbach

In addition, he is Vice-President of the Corporate Fiduciaries Association of Boston, Treasurer of the Family Society of Greater Boston, an Incorporator of the Boston Five Cents Savings Bank and of the Brookline Savings Bank, and a member of the Corporation of the Massachusetts Memorial Hospital.

Club President Leonard Weinberger announced that members would be permitted to make changes in portfolios in the Club's \$10,000 investment contest at the meeting.

Rutgers Prof. Hits Chafee, Sutherland

Professors Zechariah Chafee, Jr., and Arthur E. Sutherland's recent letter to the Harvard Crimson, in which they asserted that the citizen has a duty to testify before legislative groups, has been attacked by Leopold Kohr of Rutgers.

Mr. Kohr, who is an assistant professor of economics, alleged that in a totalitarian state this view would enslave the individual.

"The characteristic feature of democracy is not cooperation but opposition which in the eyes of government always looks like obstruction."

Prof. Sutherland replied that the statement was meant to apply only to the contemporary United States.

Sutherland's rebuttal went on that one of the responsibilities of citizenship "is participating in the administration of justice by serving as witnesses; and in making of laws by testifying before legislative bodies."

"Sometimes that duty is an unpleasant one; and testifying against friends must be one of the saddest things a man is called to do. Still . . . if a man . . . feels that some obligation higher than the law requires him to keep silent, he must expect legal punishment."

Prof. Chafee could not be reached for comment.

Prof. Kohr's attack on the Chafee-Sutherland letter was an outgrowth of the firing of two Rutgers professors for refusing to answer questions before the Senate Internal Security Committee.

(See RUTGERS on page three)

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Investigation of Colleges?

Several Congressional investigating committees, and, in particular, the House Committee on Un-American Activities have announced plans of an investigation of Harvard and several other major university campuses. Senator McCarthy has described his project as an investigation among the college faculties for "subversive influence or Communist thinkers." Rep. Velde, Chairman of the Un-American Activities Committee, has declared, "suspected Communists must be ousted from all fields of education." Such investigations deserve the serious consideration of every faculty member and student.

The dangers in these projected investigations were clearly indicated by Dr. James B. Conant in his final report as president: "It would be a sad day for the United States if the tradition of dissent were driven out of the universities. For it is the freedom to disagree, to quarrel with authority on intellectual matters, to think otherwise, that has made this nation what it is today. . . . The colleges of the United States have nothing to hide, but their independence as corporate scholarly organizations is of supreme importance."

The stated objectives of these investigations is to ferret out "Communist thinkers" and "Suspected Communists." Such an aim, directed at ideas and individuals under suspicion, would be nearly all-inclusive in an area founded upon the study of different ideas and populated by individuals who have always felt a social responsibility to participate in the world outside the campus confines. The very appearance of a Congressional committee in the campus community, directed to investigating the political and social beliefs of members of that community, necessarily implies an established orthodoxy which should and must be followed.

This fact leads us to join with Dr. Conant in opposing any such Congressional investigation. We rest on the same grounds: the freedom of the academic community. Especially we, who are engaged in the study of law, have observed that the progress of human knowledge and beliefs is one of change and development. Often have we seen yesterday's dissenting opinion become today's rule of law.

In an editorial last term (Nov. 13, 1952) we declared: "We . . . are proud of our School, and much of this pride stems from the fact that our School has never restrained the free expression of ideas. It has never offered us as an ideal the symbol of the three monkeys, who shielded their eyes, their ears and their mouths lest they utter or be exposed to unsound ideas." We reaffirm this.

We do not touch on the subject of the behavior of witnesses before any such committee, the privilege against self-incrimination, and such. It is the general environment of the campus, within which is conducted our legal education, that concerns us here. To stifle the air of the free market in which ideas must circulate would not only harm a whole body of legal policy but would damage the practice of legal education.

There is a need for all of us to join together in creating public pressure—pressure strong enough to discourage and neutralize any attempt to restrict the freedom which is so necessary for the healthy functioning of the Academic community. It is our hope that the American student community will measure up to this challenge.

Gallery

DAVID E. FELLER
Assistant General Counsel
Congress of Industrial Organizations



David Feller represents the younger Harvard Law graduate who has already and will continue to render valuable legal services to varied aspects of American life. Currently he is Assistant General Counsel for the Congress of Industrial Organizations (C. I. O.) and the United Steel Workers—C. I. O.

Upon graduation from Harvard College in 1938 Mr. Feller entered the Law School. He was a two-year-member of *Law Review* and received his LL.B. in 1941. After graduation he went on to the University of Chicago Law School where he was a lecturer in courses on Economics and Risk in the Business Enterprise, "really a mixture of Agency and Corporations," during 1941 and 1942.

Army Service

Called into uniform, Mr. Feller spent three and a half years in the Army. He was a member of the Americal Division, "a division which never set foot in the United States. It was formed in New Caledonia and disbanded in Yokohama."

After discharge from the Army he went to the Department of Justice, Office of Alien Property, appeals and legislative branch. This office handled thousands of cases involving property of enemy nationals.

During the October 1948 Term of the Supreme Court he was Chief Law Clerk to Chief Justice Vinson. The following year he became Assistant General Counsel for the C. I. O.

Has Two Jobs

In this capacity he has "two hats on the job." One hat deals with C. I. O. matters and the other hat with matters involving the United Steel Workers—C. I. O.

In Mr. Feller's estimation, his "most interesting case is always the last one." In this instance it is the highly publicized *United States v. United Steel Workers and American Locomotive Co.* Pursuant to the Taft-Hartley Act an 80-day injunction was issued against the union. The District Court upheld the injunction. The case was presented before the Second Circuit on February 2.

The Union's argument is based on two major points. It is challenging the constitutionality of the 80-day injunction procedure on the basis that it confers "on the courts duties which are not judicial and are not connected with any case or controversy, there being no legal duty or standard set out for the Union to follow." The second point of the argument rests on the non-applicability of the 80-day injunction procedure to this strike which "does not come within the National Emergency provisions of the Act."

Worked On Steel Case

Mr. Feller has engaged in several other "big cases," including preparation of the steelworkers' brief in the Steel Seizure case. But, much of the most important work that he does involves the small local case which never receives notoriety.

"Where there is a critical situation in a local area and the local counsel and the International Union requests help, the C. I. O. Legal Department will render help. Such an occasion came about recently in Mississippi."

Water Valley, Mississippi is a very small town. The city owns the plant, giving full use to a company upon the condition of keeping it in production, and the not-too-unspoken condition of "no union."

The Amalgamated Clothing Workers—CIO organized the plant, won the election, and was certified by the NLRB. In the subsequent collective bargaining an impasse was reached and a strike ensued. After some minor violence the National Guard was called in and an ex parte

injunction against all picketing and congregating was issued.

When the National Guard arrived they allowed six pickets, but under their supervision and direction. A short time later the company attorney informed the National Guard officer that this was a violation of the injunction. The National Guard prohibited this limited picketing also. Yet, the plant stayed shut, "the ex parte injunction had failed to break the strike."

The company moved for a contempt citation because of the limited picketing, naming all the members of the local union and the union organizers as respondents. Meanwhile the judge, on application, refused to hold a hearing on a motion to dismiss the injunction. He set down a hearing on contempt proceedings.

Judge Against Unions

When the hearing took place and the evidence was entered, the judge delivered a speech in which he stated that as far as he could see nothing would keep the organizers from going to jail; as to the members since they were just dupes they would get a fair trial. "At this point there was no evidence against the organizers." The judge went on to lecture the members assembled on the sacrifices the city had made to erect the plant, on the evils of unionism and the neighborly spirit they should show. He continued the contempt proceedings for a week.

The C. I. O. legal office now entered the picture. The General Counsel wrote a letter to the U. S. Attorney General claiming violations of the Civil Rights Acts. The Senate Labor Committee sent down an investigating team. The union filed a counterclaim for damages.

"We had the case removed to the Federal Court getting an injunction against further proceedings in the State Court until the question of jurisdiction was settled."

The net result of all these factors was that even though the case was promptly remanded to the State Court four days after removal, the State Court judge had become reluctant and had found his docket crowded. With the judicial problem out of the way the company and union sat down and reached a fine agreement. As a result the legal proceeding was washed out."

As to the composition of the C. I. O. Legal Department, Mr. Feller pointed out that of the four men in the Department "there is one Harvard man, one Yale man, one Columbia man, and the General Counsel, Arthur Goldberg, is a graduate of Northwestern Law School."

Helps In Bargaining

Mr. Feller's activities are not confined to legal cases. He has participated in various negotiations between the union and management. Assisting the General Counsel and in his capacity as Assistant General Counsel for the Steelworkers he has participated in the bargaining with the major steel companies of the nation.

In these negotiation sessions he is "always under the jurisdiction of the man who heads the bargaining committee. The lawyer is there to offer technical advice which many times will become vital, but he is always subordinate to the head of the elected representatives of the workers."

In his "C. I. O. capacity" he has participated in the negotiations between the Insurance Workers Organizing Committee and John Hancock Life Insurance Co. The company had made threats that it would never bargain with the C. I. O. But, after sitting down with Mr. Feller and negotiating, the company stated it "had never met a more reasonable person to bargain with."

Mr. Feller is married and has two children. His wife is a Radcliffe graduate whom he never met while at Harvard. Their first meeting was after the war in Washington, D. C.

D. L.

Sub Judice

STICKS AND STONES

The alleged defamation in this case was uttered in an alleyway in Brooklyn. The plaintiff alleges that in the presence of others the defendant said: "You are a Communist. The whole neighborhood knows that you and your husband are Communists. Some investigator came to my house recently and I gave him the whole story about your being Communists."

The defendant moved to dismiss.

Held: Motion granted with leave to amend. Inasmuch as the complaint did not plead special damages, it had to stand or fall on whether it was sufficient to sustain an action for slander per se.

"To hold that calling one a Communist is slander would unwittingly entrap the unwary, for nothing would please Communists better than to enable them to institute suits for damages promiscuously, regardless of the outcome. . . ."

Quoting from *Lumley v. Gye* the court said: "Judges are not necessarily to be ignorant in court of what every one else, and they themselves out of court, are familiar with."

It then went on to say: ". . . the court will take judicial notice of the cold war now existing between our government and Communism. . . . It is far better . . . to allow free play of our emotions in dealing with persons whom we believe to be Communists rather than seal the lips of people who might be frightened into silence and suppression lest the use of the word communist shall per se force upon them costly litigation."

Keefe et al v. O'Brien, 116 N.Y.S. 2d 286 (N. Y., Sept. 1952.)

THE SPIRIT'S WILLING

Plaintiff set forth six causes of action of slander per se. The defendant moved to strike out the second, fourth, and fifth causes.

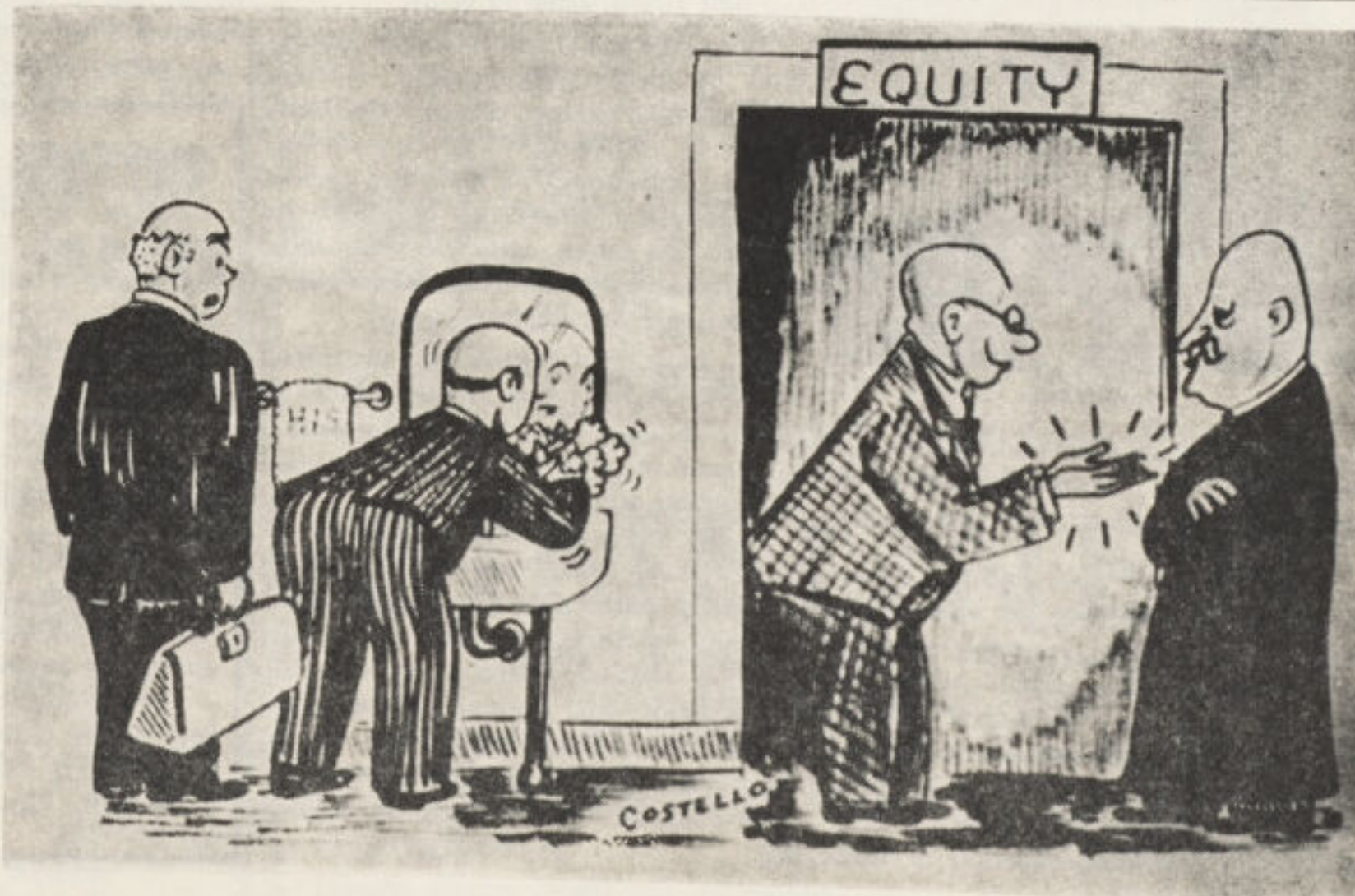
Held: Motion granted as to the second and fifth; denied as to the fourth cause.

The second cause of action alleged that the defendant said that the plaintiff "lives only for the pleasures of the flesh." The court said that to hold this statement to be an attack on plaintiff's chastity would ignore the fact that the flesh has many weaknesses and pleasures, "perhaps too frequently indulged in, such as gluttony, intemperance, vanity, etc., all of which are human failings not condemned by the Sixth Commandment."

In the fifth cause the defendant is alleged to have said that the plaintiff was "responsible for her son's crimes." The court dismissed this cause saying that this could not mean that plaintiff was a criminal because if the son committed crimes the plaintiff would not be held for them.

The fourth alleged utterance was that the plaintiff "is the lowest type of woman." The court in refusing to dismiss this cause stated that it had no idea as to what standards by which either of the parties measured perfection in a woman. "Consequently, a reading of this cause does not tell whether the defendant . . . meant that the plaintiff was low in social position, low in financial standing, low in mental capacity or low under any other standard that could normally be applied to a woman. We all know that all women have a share of the same virtues and a share of the same human frailties. Kipling well expressed it when he said that the Colonel's lady and Judy O'Grady are sisters under the skin."

Luft v. Hoffman, 116 N.Y.S. 2d 343 (N. Y. Dec. 1951.)



STOCKHOLDER—(Continued)

inadequate statements, once the accepted product of an unopposed board of directors.

Now 45, Mr. Gilbert has been active in stockholders' meetings since 1933. Proceeding without a college education and with a background in such occupations as Christmas clerk in a retail store, and reporter for several weekly papers in the 1920's, he attended his first meeting in 1933, to offer his suggestions.

To that board, the directors of Consolidated Gas Company, now a part of Consolidated Edison, must go the credit for beginning the career of Lewis Gilbert as a most prominent figure in corporate policies. They summarily refused to hear his proposals, a course of action now thought hazardous by corporations.



Lewis Gilbert

Outstanding in his legal wars has been the case of Securities and Exchange Commission v. Trans-America Corporation in which four proposals offered by Mr. Gilbert were considered by the Federal Courts. The Trans-America case resulted in the acceptance by the corporation of two of the four Gilbert resolutions.

During World War II, Mr. Gilbert was stationed in the Pacific Theater of Operations. With him was the ever-present Wall Street Journal, stacks of Corporation reports, and mail containing voting proxies. All these he continued to process as the absentee manager of the Gilbert Enterprise.

In 1948, with the assistance of his brother, John J. Gilbert, over 100 meetings were attended. At that time, Lewis Gilbert owned an average of 31 shares in 300 corporations.

In his advance notice for the year 1953, Mr. Gilbert indicates that approximately 124 meetings will find either himself or John present with their proxies for absent stockholders and their suggestions for the improvement of director-stockholder relations.

Tobacco Road Banned By Police As Immoral

Constitutionality of a Rhode Island law empowering municipalities to license stage performances is being tested as a result of the banning of a road-show version of "Tobacco Road" in Providence.

Producer Edward Gould has been supported in his effort by the National Council on Freedom from Censorship. In a telegram to Gould, Elmer Rice, chairman of the group, and Clifford Forster, executive secretary, stated:

"Your courage in standing up to intimidation and unreasonable criminal proceedings seeking to censor a recognized play should be an example to all other producers. We are prepared to support the public's right to view and your fight for freedom of theatrical expression in any appropriate manner."

The affair began when Producer Edward Gould was refused a license to put the play on during the week of Jan. 5 by Providence's Bureau of Licenses on the grounds that the play is indecent. Gould countered by getting a court order restraining the police from closing the play because it had no license.

On Jan. 9, however, police arrested Gould for producing an "indecent, immoral show." He was released on \$300 bail. Superior Court judges said that the original restraining order didn't bar police from closing the show if it violated laws against obscene productions.

Gould is fighting the 1838 state statute, which empowers the Providence police to close the play, on the grounds that it violates the free speech and due process clauses of the Constitution. The statute is invalid, according to Gould's counsel, because it provides for "prior restraints on freedom of speech." A further charge is that the law is "vague and indefinite."

Other Protests

The National Council on Freedom from Censorship protested two other censorship developments. One protest went to the Inaugural Concert Committee in Washington, D. C. for the elimination of an orchestral work, "The Lincoln Portrait," by composer Aaron Copland on the ground of alleged association with Communist-front groups.

The Council said: "We have no knowledge of Mr. Copland's associations or beliefs nor do we think, for the purposes of our protest, that they should be determining factors."

"We must, however, strongly condemn your action in eliminating an artist's work, already selected, solely on the grounds of the composer's alleged political affiliations or opinions. If the newspaper reports are correct as to the reasons for the elimination of the Copland work, we see no difference in principle with the requirements of the rulers of the Soviet Union that only the works of politically pure composers may be published and performed."

The second protest was addressed to Nichols M. Schenck, president of Loew's Inc., and George Bowser, manager of the Fox West Coast Theatre Corporation, for cancelling the exhibition of the Charles Chaplin film, "Limelight" on the threat of picketing by the American Legion.

SQUASH RACKETS

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NEWS IN BRIEF**BRIDGE**

The Harvard Law School Duplicate Bridge Club will hold a monthly Masterpoint tournament tonight at 7:30 in the Wheeler Room of Holmes Hall. This will be the last time to enter the February series, the Club announces.

VALENTINE DANCE

On Saturday evening, Feb. 14, the Law Dormitory Council will present a Valentine's Day Semi Formal Dance in Harkness Commons.

Two bands will be provided, so that there can be dancing on both the upper and lower levels. Two punchbowl will be kept flowing, one with ordinary punch and the other with a somewhat more potent mixture. Setups will be provided for those who don't care for punch.

A queen of the dance will be chosen; her prize will be a bottle of champagne iced and ready to open.

Admission will be by dormitory card and a 75 cent fee. The dance was not originally planned as a formal, which is the reason for the admission fee.

LAWYERS GUILD

The Harvard Chapter of the National Lawyers Guild has extended an invitation to law students to attend the Twelfth Annual Convention of the National Lawyers Guild to be held at the Park-Sheraton Hotel in New York City on the weekend of Feb. 20, 1953.

One of the highlights of the convention will be an address by Justice Jesse W. Carter of the Supreme Court of California. He will speak at a Sunday night banquet on the subject of "Challenges to Freedom." Robert W. Kenney of the California Bar will be toastmaster for the occasion.

Included among the panels which will constitute the bulk of the work of the convention are panels on trial techniques in a personal injury case, the domestic economy, and special problems facing labor. This last panel will, in particular, direct itself to the proposed amendments to the Taft-Hartley Act now before the 83rd Congress.

Mr. Louis L. Redding, LL.B. '28, and one of the counsel in the Segregated Education cases, will be a panel leader in the Sunday afternoon, Feb. 22, panel on Civil Rights and Liberties. Also participating in this panel will be Judge Herbert T. Delaney of the New York Domestic Relations Court. The scope of this panel will include an examination of the advocacy of ideas, the Smith Act, the McCarran-Walters Act, the right of lawyers to exercise their full rights as citizens, and the present Civil Rights laws, stressing the need for new legislation.

The convention will open Friday evening, Feb. 20, with a forum on Academic Freedom, arranged by the Student Division of the National Lawyers Guild. A forum is projected for Saturday evening on present American foreign policy. There will be a luncheon address Saturday by Earl B. Dickerson of the Illinois Bar, President of the National Lawyers Guild.

Students interested in attending the convention or any of its panels and forums should contact Thomas L. Roberts, 3L.

RECEPTION FOR TWO PROFS

The Graduate Students Association will honor Professors Freund and Sutherland at a reception this afternoon at 5 in the Wheeler Room of Holmes Hall.

Prof. Freund, permanent chairman of the Committee on Graduate Studies will be on leave for the spring semester, and Prof. Sutherland will act as chairman of the committee.

Robert McKercher is chairman of the social committee and is being assisted by John H. Bustamante and Pablo de Guia, Jr. The reception will begin promptly, according to Mr. McKercher.

LAW WIVES

Approval of the club's revised Constitution and By-laws will be the chief item of business at next Wednesday's meeting of the Law Wives, which will begin at 8 p.m. in the Wheeler Room of Holmes.

A quorum must be present to vote on the changes which have been proposed by the constitutional committee. Members of the committee include Mrs. Joseph Carney, Mrs. John Barnett, Mrs. John Zech, and Mrs. Champe Fisner.

Bridge and canasta will follow the business meeting.

P. B. H. MIXER

The Law School Committee of Phillips Brooks House will hold its first mixer dance of the year in Harkness Commons on Feb. 13 from 3:30 to 6. The Committee says it hopes to fill Harkness with girls.

Refreshments and live music will be provided. The cost of tickets will be 75 cents.

RUTGERS—(Continued)

At Rutgers, faculty members and student groups were vociferously protesting the ouster of the two professors by the school's board of trustees. At other universities where professors have been fired for refusing to testify, protests have been unavailing.

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Coupon Books \$5.50 for \$5.00**Profs. Howe And Bundy Clash Over New Cabinet**

President Eisenhower's Cabinet "clearly represents a limited segment of the American people" and may bring "an arrogant and self-satisfied attitude toward foreign affairs," Prof. Mark DeWolfe Howe charged Sunday night.

Prof. Howe was debating with McGeorge Bundy, associate professor of government, before about 300 people in Jordan Hall on the subject "The Eisenhower Administration — Hopes and Fears."

Mr. Bundy praised the new administration for taking such a strong sense of direction so soon. He felt that Eisenhower had captured the "confidence of government employees and the American people."

Conant Leaves

Meanwhile, Harvard and the new administration were beginning other contacts, as President James B. Conant left this country Monday to resume his duties as High Commissioner to Germany.

President Conant had been in Cambridge on a one-day stopover after confirmation of his appointment Friday night and taking of the oath Saturday.

In a statement to the press, the retiring president made his first public admission that he declined an offer of the German post made 18 months ago by ex-President Truman. He explained that he had rejected the earlier offer because he felt then that the appointment would be a short term one only and he couldn't ask for a leave of absence on those grounds.

6-2 Vote

Confirmation of President Conant's appointment came by a 6-2 vote of the Senate. The Committee report was unanimous in support of the appointment.

The two opposing Dr. Conant were Dworsak (R.), Idaho, and Case (R.), of South Dakota.

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UTILITIES—(Continued)

the trial period that increased usage produced increased revenues to an embarrassing extent and the case would be settled in conference.

During this period the Commission generally balanced regulation so that the consumer enjoyed good service at reasonable rates and the utility was assured satisfactory earnings. Rate litigation was reduced to a minimum. The proper results were obtainable on each side without expensive and long drawn out hearings.

Some Suits Necessary

There were, however, certain disputes involving such large interests that they could be settled only by recourse to the courts. In these controversies earlier cases from *Smyth v. Ames* on were invoked, sustained, distinguished and overruled.

However, it was still true that litigation in utility cases was not substantial throughout the country—and due to this fact it is still true that only a relatively small number of the legal profession devote most of their time to this branch of the law. The American Bar Association, through its Section of Public Utility Law, has done a great deal to disseminate current information as to development of the law in both the federal and state fields of regulation, as a result of which many lawyers who are not active in utility work are nevertheless informed.

Young lawyers and law students undertaking selection of a field of practice ought to give serious consideration to the possibilities here. In this connection it should be stated that something more than a passing knowledge of accounting is essential.

Inflation Hits Utilities

The effect of economic changes instituted twenty years ago, of the Second World War and of the present cold war have seriously affected the position of utilities. The cost of labor and materials has increased materially. Taxes have been increased tremendously—city, state and federal. This monetary inflation has had an effect upon both operation and investment. The laissez-faire type of regulation so generally satisfactory and fair in prior years has given way in many jurisdictions to a political approach which has tended to protect the consumer against increased rates reflecting the economic change in price levels. This of course could only be successfully accomplished by ignoring the impact of these changes on the utility. Meanwhile other industries, being free from regulation yet dealing with the same public, have been able to protect themselves from the inflationary forces.

Utilities accordingly suffer from this discrimination and often in many ways not readily apparent to the casual observer. Replacement of worn out equipment is an example. Let us take a pole; it was installed twenty years ago and now must be replaced; it cost \$20 when installed and during the intervening period proper depreciation accounting has provided this amount for its replacement. However, a new pole of the same size and style now costs \$40 due to recent inflationary price rises. Who provides the additional \$20? If it is taken out of revenue the stockholder provides it and by so doing sacrifices its availability for dividends. But, in fact, provision for the pole is a capital item. New capital must therefore be obtained. Assuming a \$10 par stock two new shares must be issued and sold to provide the additional \$20. The utility has a new pole, no more productive of revenue than the one replaced, but its capital investment therefor has increased from \$20 to \$40. Whenever a regulatory authority fails to allow the utility increased earnings under these circumstances confiscation has occurred.

Investors Lose Ground

The attitude of the investor toward the utilities as a class is most important. He has the whole investment field from which to choose. He has recourse to a very considerable volume of expert analysis. Remember that the investor's dollar goes where it is treated best.

Standard & Poor's index of 365 industrial stocks with 100 as a base for the period 1935-39 rose from an average of 97.6 for 1939 to 198.3 for 1951. Thus

with a 50c dollar the average stock purchaser of industrials would have been kept whole. If it was a 59c dollar he made a good profit. But the utility investor found his average in 1939 at 105 and in 1951 at 115. He had not had his investment restated in 50c dollars. Regulation had ignored or refused to consider his plight. Regulation must adopt the realistic viewpoint or find equity capital preferring other fields of investment leaving debt financing as the only available means for financing the constant expansion which is required of utilities.

Another important factor in maintaining the ability to attract new capital is the necessity of maintaining the integrity of capital already invested. I recently used the following example in a brief: a man went into the trucking business investing \$10,000 in two trucks and issued 100 shares of the par value of \$100 each. Later he wanted to expand and found another man who was willing to invest the money for another truck. By this time, due to inflation, the new truck cost \$10,000. The new man of course received 100 shares for his investment of the necessary \$10,000. Although he contributed only one truck, or a third of the earning capacity of the business, he owns one-half of the earnings of the three trucks. The original owner probably will not care to further expand the business under these circumstances.

Utilities Must Expand

A utility has no choice. It must expand to meet the always increasing demands for its service. New capital can be attracted only on a basis which protects the existing stockholders against dilution of earnings and confiscation of their investment.

Ordinarily in a democracy such as ours relying upon the incentives of individual enterprise to promote social welfare, competition is the instrument expected to induce increased production with lower prices and higher wages. Experience has shown that competition in utility services results in increase in costs and decrease in value of services. This has led to the conception of granting limited franchises and providing for regulation of prices and services, such regulation being intended as a substitute for competition to lead to lower prices and wider expansion of service. This combination of competition and regulation could have been expected to achieve favorable results had we at the same time been able to achieve under all circumstances a stable price level. Instead, utility regulation is being used as a restraint against utility prices adjusting themselves to general price levels and against utility investors receiving the equal treatment, which courts have said they should have, with investors in other enterprises.

More Capital Needed

The possession of a public utility franchise creates a public duty to provide the service required by the inhabitants of the territory covered by the franchise. In an expanding economy such as ours, therefore, the discharge of this public duty requires increasing amounts of capital to meet increasing demands for service. With an increasing price level, however, substantial increases in capital are required merely to continue to render existing service, to say nothing of expansion. Again consider the example of replacing the pole which cost \$20 when installed twenty years ago with a pole performing no substantially greater function, at a cost of \$40 today. The new pole will provide no additional income but does create additional charges against existing income in the form of higher taxes and higher depreciation costs.

To discharge their public duty, therefore, utility managements must find capital at the lowest possible cost. The investors to whom they must appeal are under no compulsion to invest in public utility securities. They must be convinced that it is to their advantage to make such an investment or they will choose an alternative investment.

Two Types Of Capital

The capital structure of a utility company is divided between debt and equity securities. Ordinarily short-term indebtedness is not considered a part of the capital structure, particularly as good management would avoid using it to finance property additions other than during the construction period. Debt capital is usually in the form of bonds or long-term notes, sometimes called debentures, and equity is in the form of preferred and common stocks. Earnings retained in the business which otherwise would have been available for dividends add to the dollars provided by the equity investor.

Importance Of Stockholder

We should consider the equity investor first, for on him rests all the risks of the enterprise. If costs go up, diminishing total income, the interest on debt must still be paid and if there are both preferred and common stocks the preferred dividends must be paid before dividends on the common and, therefore, the holder of the common equity is the one who suffers if there is a reduction in total income. Under these circumstances how can he be attracted to provide his capital for a utility business? The basic attraction is, of course, the relative income which he can obtain at a relative risk. If the income available falls too far below the level of other investments, especially if this is accompanied by indications of increased risk, then the flow of common equity capital stops. It will only be resumed when the utility company has by the promotion of additional business, by the improvement of its efficiency, or in times such as these, by an increase of its rates, restored a level of income which convinces the individual investor that the utility investment is a good one for him to make.

Borrowing Disadvantageous

Capital can be borrowed and there is a tax advantage in that Federal income taxes are payable out of income after payment of interest. Lenders, however, require even greater security than buyers of preferred stocks. For the lowest rate of interest they insist on pledges, usually in the case of utility companies in the form of mortgages on the entire property owned, with provisions that all after-acquired property shall become subject to such mortgage. Additional bonds may be issued on such after-acquired property only under severely prescribed conditions. Usually the maximum that can be borrowed on after-acquired property is 60% of the net additions. A purchaser of common stock (or in some instances common and preferred stock) must be found for the other 40%. Other forms of debt require collateral security or negative pledge covenant agreements not to mortgage property unless equally securing the debt in question. The availability of such debt capital is also dependent upon the extent of the cushion provided by the holder of common equity.

With the low interest rates which have been in vogue in this country in the last two decades the principal purchaser of debt securities of public utility compa-

nies has been the life insurance company. In the years 1945-50 about 75% of all bonds issued by public utility companies were bought by life insurance companies. However, in 1951 this proportion fell to 45% because life insurance companies were finding investments in industrial bonds and in real estate mortgage type securities more attractive. Their representatives say that their relative lack of interest in utility investments will continue except in regulatory jurisdictions where (a) the lag in granting rate increases is held to a minimum, and (b) the regulatory commission indicates a willingness to allow a more liberal return than heretofore on the equity investment (meaning, of course, a better ratio of coverage of the interest on the debt).

Preferred Stocks Weak

The present market for public utility preferred stocks is not too good. Insurance companies feel that the dividend rate is not enough higher than available interest rates to compensate them for the difference in risk involved and other investors do not find coverages for preferred dividends on existing utility preferreds sufficiently attractive to make them anxious to acquire such stocks in lieu of available investments in other fields with better dividend rates or less risks. This places the burden on the common stock investor. There will be a field for absorption of utility common stock investments if they can be made sufficiently attractive. A great deal of work must be done, however, to offset the effect on utilities of the depreciated purchasing power of the dollar before they can again rely on this source for any substantial amount of capital and with any assurance that the capital will be available to them to meet their needs.

It must be remembered that capital is not synonymous with money. The facilities to generate and distribute electricity are capital. Investors who have provided the money for them must be convinced that the money invested will not lose its relative purchasing power compared with money invested in facilities used by other industries; otherwise they will stop providing the money.

LETTERHEAD—(Continued)

Leo Brewer, LL.B. 1914. Mr. Brewer is a practicing lawyer in San Antonio, Texas.

Parker McColester, LL.B. 1914. Mr. McColester is a partner in Lord, Day & Lord in New York.

John B. Dempsey, LL.B. 1915. Mr. Dempsey is a partner in Squire, Sanders & Dempsey in Cleveland.

At the lower right-hand corner of the list of names is that of R. S. Wilkins, the donor of the letterhead, who is now a Justice of the Supreme Judicial Court of Massachusetts.

DRAFTING—(Continued)

the documents drafted within the prescribed word limit.

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FORUM—(Continued)

vance the interest of only the lower two-thirds of the population at the expense of the rest of the country," we should make a new start using the purposes of Taft-Hartley as a framework.

These purposes, Mr. Denham said, were to require unions to assume the



Archibald Cox

responsibilities and obey the rules that all other components of the society assume and comply with.

David E. Feller, Assistant General Counsel of the C. I. O., objected to Denham's analysis of the problems of Taft-Hartley as being merely one of administration. Feller asserted that the entire act operated on a "basic false premise." He said that the purpose of the Wagner Act was very simple: to ensure employees the right to choose their representatives at the bargaining table without the interference of the employer. Accepting this purpose, Taft-Hartley added a host of restrictions on the employees and their chosen representatives, the unions, relating to the manner in which they could act and what they could ask for, without putting equal restrictions on the employer. Instead, the act permitted the employer to intrude into the process of selecting employee representatives, according to Feller.

Pointing out that legislation is only one of many factors which affect industrial relations, Leslie E. Woods, director of Industrial Relations at Raytheon Manufacturing Company said that the Taft-Hartley Act has been successful in achieving its purposes, seen by Mr. Woods as stabilizing relations between employees and employers and achieving industrial peace: this despite the criticisms of its provisions as being unfair to labor.

He pointed out that notwithstanding the enforcement of the disputed provisions of the act, he had not seen labor suffer any great setback since 1947, when the act was passed.

Prof. Donald H. Wollett, Visiting Professor of Law, served as moderator of the forum.

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