

The Harvard Law School Record

VOL. 16 No. 3

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PRICE TEN CENTS

KOREAN CONSTITUTION

At a tea hour for faculty and graduate students this afternoon at 5:30 in the graduate students lounge, Dr. Chin O. Yu, President of Korea University in Seoul, will address the group on "Main Features of the Republic of Korea's Constitution."

Dr. Yu was the draftsman of this document. In his talk he will trace comparisons between it and the United States Constitution, dealing especially with provisions in the former for separation of powers.

Dr. Yu is chief of the legislative department of the R. O. K. and was the chief legal adviser to the Korean delegation to the Peace Conference between Japan and Korea in Tokyo.

Announce Special Summer Program For Alumni Attending ABA Meeting

Law School alumni and other lawyers will be able to attend a special 10-day summer program from Aug. 10 to Aug. 21, just prior to the meeting of the American Bar Association in Boston. Assistant Dean Russell H. Peck has announced.

Folders describing the program were mailed to all the members of the Harvard Law School Association on Feb. 12.

Two alternative main courses will be offered in the morning, and 11 subjects have tentatively been planned for the afternoons.

The two principal courses will be "Estate Planning," taught by Prof. A. James

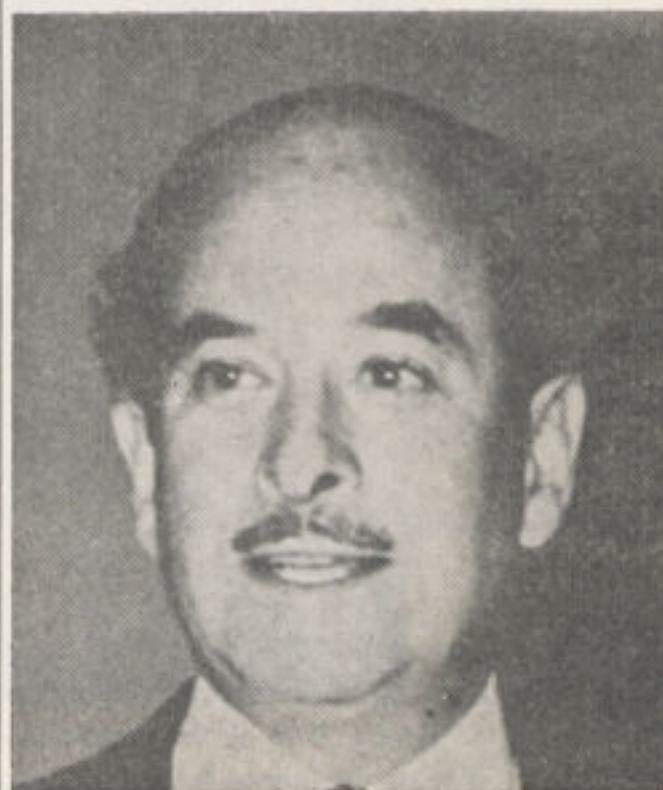
Casner, and "Federal Aspects of Corporation Law," with Prof. Louis Loss as instructor. Each of these courses will be for 20 hours, and will be held from 10 until 12.

In the afternoons, two or three alternative sessions will be held. The courses offered will be for one to five sessions, and cover fields ranging from "Atomic Attack and the Law," taught by Dean David F. Cavers, to "Basic Accounting," taught by Prof. W. Covington Hardee. The precise subjects to be offered in the afternoons may be changed.

The Law School will provide housing in Ames, Dane, Hastings, Holmes, Shaw, and Story Halls for \$21 per person. Those who take rooms in the Law School dormitories may hold them for the last week of the American Bar Association meeting for \$11 more.

(See SUMMER SCHOOL on page three)

SPECIAL SESSIONS JUDGE



Irving Cooper

Juvenile Offenders Topic Of Tonight's Free Legal Forum

Chief Justice Irving Ben Cooper of the Court of Special Sessions of the City of New York will be the speaker at a free Legal Forum in Langdell Courtroom tonight at 8, sponsored by the Harvard Law School Forum. His topic will be "The Prevention of Youthful Recidivism."

Judge Cooper will deal with the problems a court faces in handling and sentencing youthful offenders, especially those with good past records. He will also discuss the court's attempts to avoid giving criminal sentences and records to youthful offenders.

Other topics that will be discussed by the Chief Justice are "Types of Offenders," "Moral Re-education of Defendants," "Law As Community Will," and "The Importance of Probation."

Chief Justice Cooper was associate to Judge Samuel Seabury in the investigation of the Magistrate's Courts of New York City, and later in the Seabury inquiry into the administration of New York City.

He was prosecutor in the disbarment of J. Richard Davis in 1936 and in 1937 served in the office of the district attorney of New York County. In 1939 he was appointed by the late Mayor Fiorello H. LaGuardia to the Court of Special Sessions and was reappointed in 1949. He was named Chief Justice in 1951.

Three types of offenders that the Chief Justice will discuss are the determined offender, the youthful offender with one prior conviction, and first offenders.

Prof. Sheldon Glueck will introduce the speaker and relay questions to him from the audience.

Growth In Use Of Security Analysis Presented At Bull & Bear Luncheon

William W. Wolbach, President of the Boston Security Analysts Society, presented a complete description of the tasks of a security analyst before the Bull and Bear Club in Harkness Commons last Friday, and more than proved his point that "the best thing a lawyer can do as an investment adviser is to know to whom to send his clients for good advice."

Mr. Wolbach described the great changes which have taken place in security analysis in recent years, which have resulted in a change in the position of the security analyst from a mere statistician thumbing through Moody's Manual to a highly respected executive who holds great responsibilities in the financial world. One of the factors helping to accelerate this progress has been the development of the tools which make security analysis possible, by furnishing complete information about the financial community, such as the S. E. C., trade journals, complete annual reports, government agencies which publish statistics on the economy as a whole, and prospectuses governing new security issues.

The availability of this information makes accurate security analysis possible, but it also means that security analysis has become another specialized field in an age of specialization, for it is a full time job to study and analyze completely the data on just a few industries. The membership requirements

of the Boston Security Analysts Society reflect this fact. All members must have had a minimum of three years in security analysis itself, not just in the brokerage business. No securities salesmen are admitted to membership. There are 295 members in the Society at present.

Specialization

In describing how the security analyst goes about his work, Mr. Wolbach indicated that each analyst usually specializes in a few industries. He first studies the industry as a whole, examining the trends of sales, costs, and earnings, and whether the industry is declining or continuing to grow, whether a large amount of capital is required for entry into the industry, and how many companies are presently in the industry.

(See ANALYSIS on page three)



A. James Casner

Notes Judicial Review Denial Moyle Hits Excess Profits Exception

(The following article was written exclusively for the RECORD by Walter G. Moyle, sp. 1916-1917. Currently engaged in private practice specializing in corporate law and federal taxation, Mr. Moyle served as Special Assistant Attorney General of the United States, Dec. 1919-Feb. 1921, and as Special Assistant Legal Unit Office of Commissioner of Internal Revenue, Feb. 1921-March 1922. At present he is the senior member of the law firm of Moyle, Nelson & Cotten, Washington, D. C.)

A taxpayer unwilling to accept a determination of his income or excess profits tax liability by the Commissioner of Internal Revenue may appeal to the Tax Court of the United States for a redetermination of his liability. With the exception of one class of taxpayer, an appeal may be taken to the Circuit

criminal excess profits taxes levied during the World War II years. While such a taxpayer may appeal to the Tax Court from an adverse decision of the Excess Profits Tax Council (a quasi-independent organization within the Bureau which has final jurisdiction in passing upon Section 722 matters for the Commissioner of Internal Revenue), his

(See PROFITS on page four)

New Edition Of Sample Soviet Cases Aids In Understanding Legal Process

Soviet Law in Action (The Collected Cases of a Soviet Lawyer, Boris A. Konstantinovskiy.) Edited with notes and commentary by Harold J. Berman, Cambridge: Harvard University Press. 77 pp. \$1.50.

This recently published collection of Soviet cases is, in the editor's own words, 53 "candid snapshots of Soviet law in various poses." Prof. Berman, who teaches *Comparison of Soviet and American Law* at this School, has attacked the problem of supplying materials for analysis of Soviet experience with legal techniques in a manner almost as foreign to the student of our legal system as Soviet society itself.

As indicated in the subtitle, these cases are not official reports. The workings of the Soviet legal system are viewed from the admittedly limited vantage point of Mr. Konstantinovskiy's memory of the cases he participated in during the 1930's while chief counsel for the Odessa Bread Trust and a professor of law at the University of Odessa.

The book is arranged with four headings: The Struggle for Law, Official and Economic Crimes, Law and Plan, and Labor Law. The cases are short, informal fact situations, and as the editor points out, the court decisions lack the

spirit of opinion and read more like decrees. These "snapshots" are as interesting as they are varied; there are glimpses of the mysterious NKVD Special Section agent behind lead-reinforced doors, the factory manager whose free-



Harold Berman

dom depends on conformance to the Plan, and the courts that "lean over backwards" to favor the workers.

Prof. Berman has arranged the cases and his excellent commentary in a manner that supports his thesis that the legal

(See BOOKS on page three)

Memberships Open For Legal Bureau

At a special meeting of the Harvard Student Legal Research Bureau on Feb. 12, chairman Tedson Meyers, 3L of Bayonne, N. J., introduced the organization to 40 top-ranking second-year law students. Meyers outlined the history, purpose, and goals of the Bureau.

According to David Landau, 3L of Union City, N. J., the Bureau intends to increase its membership by 15 or 20, chosen from the second-year class. Interviews with candidates have been held.

The Bureau is a non-profit, non-political group of law students. It does a legal research for any organization or group in the New England area that has a worthy project. The Bureau does not help to get the legislation enacted.

At the present time the Bureau is working for the New England Crime Commission and is doing general research in the field of Geriatrics. Anticipated are projects for the New Boston Committee and the General Counsel of the State Legislature.

The Legal Research Bureau was organized last year as a part of Phillips Brooks House with the name Legislative Research Bureau. Last November the group became independent of PBB and changed its name to Legal Research Bureau.



Walter Moyle

Court of Appeals and in appropriate cases the Supreme Court may review the decision of that court.

The exception referred to is a corporate taxpayer with a claim, under Section 722 of the Internal Revenue Code, for relief from excessive and dis-

Flemish Professor Talks On Conflicts

Dr. Eg. O. L. Spanoghe, who will speak at the Harkness Commons Meeting Room Tuesday night at 7:30 is another of the outstanding foreign scholars to visit the school this semester.

Dr. Spanoghe, planning to discuss the future of Conflicts of Laws in the European legal community, is a professor of Private International Law at Ghent University in Belgium. He is here under the auspices of the Belgian-American Educational Foundation for the Spring semester to do research on problems of comparative family law and comparisons of the Anglo-American and Continental legal systems.

A graduate of the University of Ghent, Dr. Spanoghe received degrees in law and Germanic philology from that school in 1933. His linguistic knowledge, he speaks four languages fluently and has a reading knowledge of two others, has helped him in the study of comparative law.

Upon graduation from Ghent University Dr. Spanoghe spent three years as

(See SPANOGHE on page three)

BRATTLE THEATRE MOVIES

For several years the home of repertory dramatic groups, last Monday the Brattle Theatre opened as a foreign films house. Its first presentation is Carl Zuckmayer's comedy "Captain from Kopenick," a German production.

It is expected that a new film will be shown each week. Performances are continuous Mondays through Fridays from 5:30 p.m. On Saturdays and Sundays showings begin at 2:30 p.m. Tickets are 80c and there are no reserved seats.

In renovating the theatre for the presentation of films the management chose a new method of projection, whereby projectors are located behind a cellulose acetate screen.

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Fair and Open Trial

Although a criminal defendant is guaranteed a public trial under the Constitution, the right is limited by the interest of the public in not having its morals degraded and by a privilege in the defendant not to be unnecessarily held up to public ridicule for his offense. A witness has a similar protective cover, and discretion is in the trial judge to determine when the interests of the public or the individual would be best protected by a closed trial. Yet when New York Judge Valente decided to close the massive door of his courtroom upon the sordid disclosures of the Jelke vice prosecution, he was challenged for abuse of discretion and infringement of freedom of the press.

We fail to see a substantial free press issue in the controversy. Considering the two, the moral lesson the public draws from a prosecution is outweighed by the undesirable sensationalism and circulation-boosting of a trial like this. When the cry for a free press veils an interest in increasing publication and pandering to lascivious minds, it should not be heeded.

Letters to the Editor

TO THE EDITOR:

Judge Ploscowe's proposals as voiced in "This Week" and reported in the *RECORD*, are eminently sound, but it is a mistake to believe that they are novel and untried.

The Securities Act of 1933, and the other statutes thereafter entrusted to the Securities and Exchange Commission for administration, have all carried provisions permitting the Commission, in the course of its investigations, to compel a witness to testify even where he has refused to testify on the ground that his testimony might incriminate him. These provisions, of course, likewise provide that he may not thereafter be prosecuted by reason of the testimony thus extracted from him, except for perjury in the giving of such testimony.

In 20 years of administration of the securities acts, I have never heard any complaint about these provisions or their administration, and they have obviously not been destructive of civil rights.

The identical provision is also contained in Title XIII of the Second War Powers Act, which authorizes investigations of war contractors.

RICHARD H. WELS, LL.B. '36

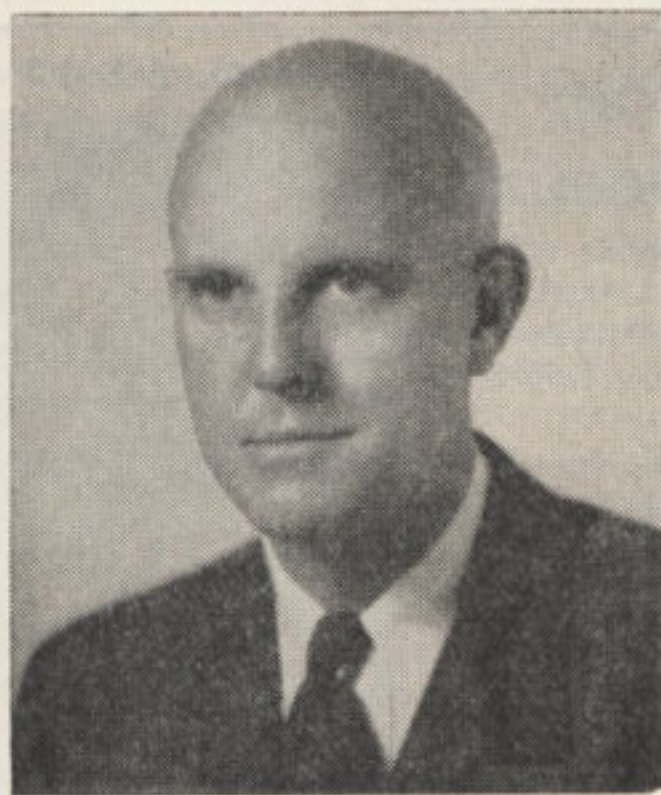
TO THE EDITOR:

The virtues of the privilege against self-incrimination are often called to task, for this privilege, like others, is often abused by people whom it was not intended to protect. Yet as Wigmore points out, on sober reflection, few names among jurists have ever appeared as challengers of the privilege. 8 Wigmore, Evidence 2251 (1940.) And this is so because the privilege is an essential part of the Bill of Rights, a necessary counterpart to the protections of freedom of speech, press, assembly, and religion. As Justice Bradley stated in 1886, "Any compulsory discovery by extorting the parties oath, or compelling the production of his private books and papers, to convict him of a crime, or to forfeit his property, is contrary to the principles of a free government. . . . *Boyd v. United States*, 116 U.S. 616 (1886.)"

In considering the place of the privilege in our law today it is necessary to distinguish its use in the area of ordinary criminal action from cases of political crimes. There is a direct con-

Gallery

W. BARTON LEACH
Law School Professor



In support of the proposition that the study of future interests is a fascinating subject one may cite the classes of W. Barton Leach. Though some may find him hard, there are none who find him dull. Where else would one debate the merits of the Truman-MacArthur controversy in learning the skills of an advocate? And where else would *Colburn v. Burlingame* come alive to every student because of the Battle of the Verses it inspired?

It is the bewildering paradox of poet yet scholar, general yet humorist that provide a key to the personality of Prof. Leach. Born in Boston in 1900, he graduated from Harvard College in 1921 and from the Law School in 1924, where he was Note Editor of the *Law Review*. The next year was spent in Washington as secretary to Justice Oliver Wendell Holmes, Jr., and in 1925 he returned to practice law in Boston and teach evenings at the Northeastern University Law School. In December 1929 he was invited by Harvard Law School to substitute for the remainder of the school year for Prof. Joseph Warren who was ill. Six months later he received a permanent appointment to the faculty. He has continued to practice law during whatever time he can find from his teaching duties.

The chapters on Powers of Appointment and on the Statute of Limitations in the American

nection between the use of the privilege to protect the individual from charges of religion heresy in the 17th century and political heresy in the 20th century. Legislative and executive investigations into political affiliation have become commonplace today, with guilt by association becoming more and more a part of our law. In 1947, 10 writers, the "Hollywood Ten," fought these investigations on the ground that they should be fought as infringements of the right to free speech and intellectual freedom, the same sentiment that President Conant has recently expressed in opposing any investigation of the University. The Circuit Court of Appeals disagreed, however; the Supreme Court denied certiorari; and the investigations move forward at an accelerated pace. They generally follow a pattern of examination on mere suspicion, without prior presentment or formal accusation, the essentials of the inquisitorial system.

As Wigmore states, preliminary inquisition of one not yet charged with an offense was historically the situation which gave rise to the privilege against self-incrimination: 8 Wigmore, Evidence 2251. (1940.)

Thus the privilege is historically a proper device to be used in resisting investigations of political loyalty.

If we are to maintain our system of due process of law, the fundamentals of grand jury indictments, confrontation of witnesses and protection against double jeopardy, we must protect individuals from such ordeals by defending them in their exercise of their constitutional rights. We must object to people being subject to loss of jobs and public disgrace for exercising the privilege. We must emphasize that such people are performing an important public service in restraining the threat to intellectual freedom.

As to the question of the immunity statute mentioned in last week's editorial (Feb. 5, 1953), when viewed in the light of the above discussion, the defects of such a statute becomes apparent. To the murderer, the robber, the thug, it is a boon; with glee they will reveal their sordid deeds and walk out free. On the other side, it will destroy an important legal weapon, the privilege to remain silent, being used in the fight to preserve the free spirit of inquiry we have always cherished.

HERBERT SEMMEL, 3L

Law Institute's Restatement of the Law of Property were both written by Prof. Leach. He is the editor of casebooks on Future Interests and on Wills. He is also co-author of the Property I casebook with Professor Casner, and co-author of "The American Law of Property" on the subjects of the Rule against Perpetuities and Powers of Appointment.

These casebooks are unique for the witty asides that often pop up during serious discussions of abstruse points of law. The author has a ready explanation for this phenomenon.

"Casebooks, like classrooms, are means of communicating information," he says. "There's no statute requiring a casebook to be dull. So I write casebooks as I would talk—mentioning, as the subject unfolds, those amusing human aspects of the cases which catch my imagination and stick in my memory and may do the same for the reader." The result is an eminently readable casebook on a highly involved subject.

Military Career

In June of 1942 Prof. Leach was commissioned a Major and attached to the Joint Chiefs of Staff in Washington to recommend how operational commands could use Analysis Teams, composed of scientists, lawyers, engineers, economists and others, to help meet tactical problems. In January 1943 he went to Headquarters, Army Air Forces to establish the Operations Analysis Division, which he headed until the end of the war. The last months of his service, prior to his release in June 1946 as a Colonel, were spent as legal counsel for the Army Air Forces, working on plans for the unification of the services. In September, 1949, he became a Brigadier General in the Reserves. A considerable amount of his time is spent as a consultant to the Chief of Staff of The Army Air Force.

In the course of his military career, Prof. Leach visited every theatre of operations except Alaska. On one trip his plane was weathered in at Bermuda for four days; it was there that he met his present wife, an English girl who was then working with the British Imperial Censorship. She was later transferred to Washington where they were married. They have a six-year-old son. Prof. Leach has two other children by a previous marriage.

Prof. Leach has a great deal to say about lawyers in the services. He spent most of the first class period after his return stating his convictions.

"One of the striking things in my war experience was the observation of the varied skills and talents that lawyers could develop quickly in non-legal fields where nobody had any prior training and where the requirements were to analyze what the problem was, develop a method of solving it and then drive ahead to the solution."

Close to Students

One of the closest to his students of any of the professors in the school, Prof. Leach does an outstanding job of teaching the difficult Property courses. His communication with his students is very direct even in the unusually large class in Future Interests. A tall, thin, immaculately clothed figure constantly in motion on the platform, pointer in hand he raps the railing for emphasis, thrusts and parries questions. He is very pleased when the right answers come up and disappointed when the clinkers drop.

In line with his belief that a good lawyer must be a precision worker in words, he insists on a meticulous word-by-word analysis of disputed instruments. Seeking to make the students extract every possible meaning from the words used, their relationship to each other and to the facts of each case, he assigns several students to different angles in the case, hears the arguments for each and then tries to make the class realize which is best and why.

Sparkling Wit

Prof. Leach's classes are conscious of a highly competent, urbane, relaxed personality. His wit sparkles through the lectures and the obviously enjoys the way the students reciprocate. This has stimulated a steady flow of comment on the cases taken, the professor and fellow students in the form of poems composed by students and left on Prof. Leach's desk. In 1938 Mr. Leach compiled the best of this verse in a little pamphlet entitled "Langdell Lyrics" with explanations and commentaries by the professor himself. He hopes eventually to publish another edition of the "Lyrics" composed of the offerings he has received since 1938.

Mr. Leach's hobbies are tennis and Contract Bridge. He claims that the lines of thinking needed for legal problems are much like those in Contract Bridge.

Both as teacher and scholar, and as a soldier W. Barton Leach has set a standard of service to his country and his profession that few could equal.

HARVEY KARLIN, '47

Sub Judice

THE LABOR MOVEMENT

Winkelman Brothers petitioned for an injunction restraining Local No. 299 of the International Brotherhood of Teamsters from picketing their business. It appeared that though Winkelman's employees were free to join the union, they had declined to do so. Testimony proved that the union had threatened to picket their employer unless the employees joined the union. This was held to be unlawful intimidation and coercion.

Held: Decree for the plaintiff.

The court recalled the history of the picketing in this case and noted that the union's business agents were paid at the rate of eight or 10 dollars a day. "It is worth noticing that the union scale . . . calls for a starting minimum of \$1.97½ cents an hour. Therefore, the union is paying its employees half its own union scale."

In response to defendant's claim that their picketing was merely an exercise of free speech the court answered: "The right of free speech is neither a social antiseptic which counteracts and makes harmless a social poison, nor a social antibiotic which destroys a noxious social virus. Rather, when mixed with illegal conduct, it becomes a part thereof and is vitiated thereby."

" . . . The rights to sell one's labor for an agreed price and to contract freely upon any lawful subject are property rights. . . . The only way they can be taken away is by due process of law. Defendants claim that they can be taken by the exercise of free speech. Free speech, therefore, must be due process of law. Therefore, there are upwards of one hundred million people who are constantly giving forth due process, and some are working overtime at it. If it were not tragic that such arguments are advanced by lawyers of skill and experience it would be as comic as to argue that two and two make 10, or that the law of gravitation has been repealed." *Winkelman Bros. v. Local No. 299, International Brotherhood of Teamsters et al*, Circuit Court, Wayne County, CCH Labor Cases, Paragraph 67,262 (Mich., Oct. 1952.)

(Thanks to EDWARD A. SMITH, LL.B. '42)

Sub-Sub Judice

CALLING PROF. SEAVEY

(The following case was recently decided in the Supreme Court of Mars. It is given below in substantially the same form as it appeared on the Neptunian Bar Examination last month.)

Gloppo was an average Arcturan, peaceful in spite of his rather horrendous physiognomy, and like all Arcturans, so introspective that he could not talk—though he was telepathic for a short distance.

Schmolo, the Centauran, was practically the direct antithesis: small and warlike, though inclined to have a few close friends. It was a unique trait of the members of his race that, in order to counter the attacks of their enemies, they had achieved the ability to transmit from their minds the exact opposite of what they were thinking. When they were being romantic waves of hate poured from their minds; when angry, goodfellowship filled the ether. They were not telepaths themselves.

In Marsport, Mars, the great galactic trading center, on one dark drizzly evening, Gloppo and Schmolo met at a corner. The latter had just said a long and lingering good-night to his girl, and was sauntering back to his hotel, radiating hate at top speed. Gloppo, on the other hand, had just come from a rather trying meeting of the Inter-Galactic Transport Company—he was the Arcturan representative—at which dire threats had been made by certain Venusians as to what might happen if things didn't go their way. As Gloppo was going along thinking his introspective thoughts, he sensed the hate-filled rays of Schmolo, and within a moment ran into him on the corner. Fearing for his life, Gloppo shot the Centauran, who was fortunate in being able to escape alive. Schmolo now sues for damages.

What are the rights and liabilities of the parties? (*Schmolo v. Gloppo*, 71 Mars Rep. 356; 12 Inter-Galactic Rep. 1.)

Off the Record

WHAT'S THAT CITATION?

Prof. Leach was explaining that Jacob could not possibly have consulted competent counsel or else he would never have given up his potage in return for Esau's birthright. As every good lawyer knows, an expectancy is not alienable.

No sooner had the venerable "General" uttered these words when a hand flew up in the rear of the room. After due recognition, the hand's owner declared, "But sir, if you will read that case further you will find that Jacob must have consulted counsel, for he never attempted to enforce his claim against Isaac, but defrauded the blind old man."

ANALYSIS—(Continued)

In addition one must examine the present capacity of the industry and its relation to prospective demand, as well as the availability of raw materials, the labor and transportation problems of the industry, as well as the degree to which the products of the industry are essentials of life and the degree to which they may be consequently subject to the fluctuations of the business cycle.

After examining the structure of an industry, the analyst then studies the individual companies. He looks at their capital structure, the merchandising ability of the management, and the degree to which the management strives to develop capable young executives. Manufacturing processes, accounting methods, and condition of plant and equipment must also be scrutinized, as well as the question of whether the stock is active enough to allow large blocks of stock to be bought or sold.

Corporations Visited

Mr. Wollbach emphasized that good security analysts do a lot of "field work," by which he meant visiting the corporations in which the analyst's firm has large holdings, becoming personally acquainted with the company (and particularly with its management), so reliable information may be quickly and directly secured about any new development in the company. In addition, many large firms either have their own economists, or subscribe to such consulting firms as the Econometric Institute. They also rely on Duff & Phelps Utility Service for information about public utilities, and on such firms as Arthur D. Little, Inc., for technical information about certain industries.

COFFEE HOUR —(Continued)

organization and stockholder participation in control require further development to meet greater standards of democratic management, he said. Most important, Mr. Gilbert thought, are changes in cumulative voting procedures, the location of annual meetings, and contents of proxy statements.

In reply to questions from the audience on the efficiency of his efforts, Mr. Gilbert pointed out that corporations and their boards of directors have begun to respect the right of the stockholders to suggest policy changes in management technique and to honor their suggestions.

These efforts were particularly effective in the area of pension payments and large salaries to company officials, Mr. Gilbert stated. He felt that they reflected a change in attitude apparent in the past twenty years regarding shareholder participation.

He foresaw more rapid growth in the area in the next ten years. The small shareholder, he predicted, will be the large factor in corporate activity, "the answer to America's problems is not reaction but more democracy."

Immigration Act Topic At HCLU Lunch Today

This afternoon at one o'clock in the Mallory Smith Room in Harkness Commons, the Harvard Law School Civil Liberties Union will present Mrs. Ann Ginger speaking on "Political Deportations." Mrs. Ginger is an experienced immigration lawyer and has participated in several political deportation cases. She will also discuss arbitrary procedures under the McCarran-Walters Act.

All students are invited to attend the talk, which is one in a series of luncheon discussions to be sponsored by the Civil Liberties Union. Another discussion will take place on Friday, March 13, with Prof. Jaffe speaking on the United Nations Loyalty Program.

On March 6 the Civil Liberties Union will present a forum on the topic, "What Are the Consequences in the Academic Community of Exercising the Privilege Against Self-incrimination." Speakers will be announced shortly.

In its first entry into litigation, the Civil Liberties Union is assisting in the preparation of the brief in a case brought by the ACLU to have the Gwin Amendment to the F.H.A. requiring loyalty oaths from tenants declared unconstitutional.

SPANOGHE —(Continued)

a legal apprentice, in the Belgian manner, before being admitted as a full-fledged lawyer. After several years of practice he was called into the Belgian army as a lieutenant just prior to the onset of World War II. During the German occupation of his country Mr. Spanghe was a part-time professor at the University of Ghent and subsequently was appointed a military magistrate. In 1947 he was appointed to his post as a full time professor.

He is also a member of the Roman Institute for the Unification of Private International Law, and a member of the Belgian Committee for the Revision of the Civil Code with respect to marital obligations and settlements.

BOOKS —(Continued)

process as a method of social resolution is least prominent in areas of instability. The logical conclusion to such reasoning would seem to be that as the Russian productive techniques become more refined and the threat of political unrest less immediate, law will achieve a more dominant position. However, in a work of this type it is for each reader to find his own analysis. This little book should be of value to all those wishing to learn more of the actual functioning of the Soviet system: a vital field in which there is all too much ignorance and misinformation. J. R. McINTOSH



AVAILABLE TO ALUMNI FOR SUMMER SESSION

SUMMER SCHOOL —(Continued)

Provisions will be made for families of participants in the program. Some persons will be assigned to a double room, and a list will be mailed to all applicants of those who have applied to allow those who would like to room together to make arrangements and notify Dean Peck.

Meals will probably be available in Harkness Commons for around \$25, but during the weekend of the 15th and 16th no meals will be served.

Priority To Alumni

Only 500 persons will be able to participate in the program, with priority being given to graduates of the Law School. All alumni who apply before April 1 will be accommodated (provided that not more than 500 apply); after April 1, other lawyers will be accepted in order of application. Dean Peck announced this week that the brochure sent out to alumni was erroneous in implying that only Harvard Law School alumni or members of the American Bar Association can attend the summer program. Any practicing lawyer may attend, he stated.

The charge for the program will be \$60. A \$25 deposit will be required at the time of applying; all but \$10 of this deposit will be refunded if the application is cancelled before July 1.

Because the schedule of afternoon classes is still tentative, and dependent on the interest shown by participants in the program, it is desirable that all applicants fill out the curriculum card to show the main course and afternoon sessions they wish to attend.

The course on "Estate Planning" will analyze a hypothetical estate plan. Some of the problems to be discussed will be taxes, inter vivos trusts, life insurance, concurrent ownership, future interests.

The course will be based on *Estate Planning Materials*, by Prof. Casner, which will be available in a temporary edition at the Coop.

The course on "Federal Aspects of Corporation Law" will deal mainly with legislation which the S.E.C. administers. Prof. Loss is expected to survey this legislation with emphasis (1) on civil liabilities imposed by statute on those concerned with corporations, (2) statutory fraud concepts, and (3) the fiduciary obligations of management and persons in a "control" position. The text for the course will be Prof. Loss' book *Security Regulation*.

A complete list of classes now planned for the afternoon session is given below: "The Administrative Procedure Act and the Future" Prof. Jaffe, two sessions; "Atomic Attack and the Law" Dean Cavers, one session; "Basic Accounting" Prof. Hardee, three sessions; "Civil Liberties" Prof. Howe, one session;

"Economic Freedom v. Government Control" Prof. Fuller, three sessions; "Labor Relations Law" Prof. Cox, five sessions; "Restitution" Prof. Seavey, one session; "Soviet Law" Prof. Berman, two sessions; "Tax Aspects of Investment Abroad" Prof. Surrey, one session; "Uniform Commercial Code" Prof. Sutherland, two sessions; "The Western Community" Professors Bowie, Parry, Sohn, three weeks.

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NEWS IN BRIEF

LIBERALISM FORUM

Prof. Kingman Brewster, Jr., of the Law School, will be one of the members of a panel discussing "Liberalism—1952-1956" this Saturday at 10 a.m., in the Kirkland Junior Common Room.

The panel, sponsored by the Harvard Liberal Union, will also have as members Arthur Schlesinger, Jr., Associate Professor of History and former aide to Adlai E. Stevenson, and Rupert Emerson, of the Government Department.

LAWYERS GUILD

The Harvard Chapter of the National Lawyers Guild takes partial credit for a recent Supreme Court decision. On Feb. 2, 1953, the Court unanimously reversed the decision in *United States v. Ward* on the basis of insufficiency of evidence to sustain a conviction.

Mr. Ward had been indicted and convicted for failure to notify his local draft board of a change of address. The Guild Chapter prepared an *amicus curiae* brief for the Circuit Court which Ward's counsel drew upon in oral argument before the Supreme Court.

LIBRARY EXHIBIT

The Treasure Room of the Law School Library is currently exhibiting various editions of *De Jure Belli Ac Pacis* by Hugo Grotius.

BASKETBALL

Two teams in each section of the Law-Graduate School Basketball League still have perfect records as the third week of league play ended Friday.

In Section A the Spartans (5-0) and the Spoilers (2-0) share the lead. Last year's champion Lakers were tied with the Assassins at 5-0 in Section B.

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PROFITS —(Continued)

remedy terminates there. Under existing law the decision of the Tax Court, in cases arising under Section 722, is final and not subject to review by any administrative or judicial body. (Section 732 (d) provides that determinations of the Tax Court in Section 722 cases shall be reviewed by a special division of the Tax Court. However, this review remains a mysterious process evidenced only by a line of type reading "Reviewed by the Special Division" at the end of the printed opinion of the Court, with no indication of the effect of such review on the decision.) This inequality of remedy has existed since 1941 and a change is long overdue in the opinion of many members of the Bar, including the writer.

A brief advertence to legislation respecting the World War II excess profits tax shows that the "excess" earnings of corporations were taxed at a rate as high as 95 per cent. The "excess" thus taxable was the amount over and above 95 per cent of "normal" earnings. (The taxpayer also had the option of computing the "excess" earnings as the amount over and above a specified percentage of the capital invested in the business, in the manner provided in Section 714.)

The standard of "normal" earnings for the excess profits tax years—1940-1945 both inclusive—was the average of taxpayer's earnings for the four years 1936-1939, designated the base period years. (For a taxpayer reporting on a fiscal-year basis, the base period consisted of the period commencing with the beginning of its first taxable year beginning after Dec. 31, 1935, and ending with the close of its last taxable year beginning before Jan. 1, 1940.) Thus a corporation's earnings for each of the years 1940-1945 were subject to excess profits taxes to the extent that the earnings for each year exceeded 95 per cent of the average of its earnings for the four base period years.

However, if the base-period years were not, because of certain specified factors, years of normal operation for the taxpayer and if the employment of such actual average base period net income would have resulted in excessive and discriminatory taxes, the taxpayer had the privilege, under Section 722, of establishing "a fair and just amount representing normal earnings to be used as a constructive average base period net income . . ." The constructive average base period net income was then substituted for the actual average base period net income in determining the portion of earnings subject to excess profits taxes.

Difficult Formula

Obviously, the concept of "a fair and just amount representing normal earnings" is difficult to grasp and even more difficult to apply. And the fact that computation of the "fair and just amount" is predicated upon the assumption of the existence during the base period of certain production, sales and other income factors which in fact did not exist or existed during only a part of that period, expands the area for the operation of discretion and judgment and thus almost assures a wide diversity of opinion as to the proper figures to be employed. It was therefore deemed essential at the outset that at least a one-step review procedure be provided to guard against the possibility of an excess of zeal or an abuse of discretion on the part of the Commissioner. This need was met by Section 732(a) of the Internal Revenue Code which endowed the Tax Court with jurisdiction to hear appeals in Section 722 cases.

No doubt the denial to Section 722 litigants of the right of appeal to the Circuit Court and to the Supreme Court was based on reasons of policy which appeared sound at the time, although contemporary legislative reports provide no explanation of the reasoning underlying such policy. But it is submitted that the history of the administration of

Section 722 by the Excess Profits Tax Council and by the Tax Court has demonstrated a clear need for amending the provision restricting appellate review. The statistics of Section 722 cases alone indicate the necessity for providing further appellate review.

At the close of 1952, more than 2000 Section 722 petitions had been filed with the Tax Court. (Five of these petitions were filed with the Board of Tax Appeals which on October 22, 1942, became known as the Tax Court of the United States.) There are also about 100 additional cases, involving very large claims, awaiting disposition by the Excess Profits Tax Council. It is altogether likely that a substantial number of these claims will result in petitions to the Tax Court. Approximately 700 cases are now pending trial or awaiting decision after trial. The Tax Court has published written opinions deciding 102 cases. (Approximately 1200 petitions have been disposed of by stipulation without trial or dismissed for lack of prosecution or lack of jurisdiction.)

Twenty-one of these decisions have been classified unofficially by the Excess Profits Tax Council as overruling (at least in part) decisions of the Council, in that the Court allowed relief greater than that offered by the Council or established some principle or rule of law contrary to that espoused by the Council. However, in only two of these 21 cases did the taxpayer obtain substantial relief. (*Dyer Engineers, Inc.*, 10 T. C. 1265 (1948); *Del Mar Turf Club*, 16 T. C. 749 (1951).) In the other 19 cases the taxpayers achieved Pyrrhic victories, the awards being scarcely large enough to pay attorney's fees and other expenses. These facts point at least to the possibility that full justice may not have been obtained in all cases and that the doors of some higher appellate tribunal should be opened to those so aggrieved.

Relief Proposed

Senator McCarran introduced into the 82nd Congress S. 3265, a bill to provide that decisions of the Tax Court respecting a determination of any question arising under Section 722 should "be subject to review by the United States Court of Appeals in the same manner as other decisions of the Tax Court." This measure, though strongly supported by the American Bar Association, never came to a vote and died with adjournment of the 82nd Congress.

S. 3265 was criticized on the ground that matters so intimately related to and dependent upon human judgment and discretion as Section 722 cases should be settled by the first competent authority taking jurisdiction (the Excess Profits Tax Council, in this instance) and that more than one appeal would be superfluous. The contention was that the errors of law, if any, made by the Tax Court were negligible in importance and that the only course open to the Circuit Courts would be for the judges

thereof to substitute their own discretion for the discretion properly exercised by the Tax Court. The author has heard the same argument as to the infallibility of the Excess Profits Tax Council. This, of course, is refuted by the fact that the Council has heretofore been overruled, at least in some degree, 21 times by the Tax Court.

A further charge was leveled at S. 3265 on the ground that it would impose a tremendous burden on the Circuit Courts. The theory of this attack was that the infinite complexities of reconstructing income under Section 722, and the educational process through which circuit judges must necessarily pass in order to reach a sound judgment, would consume an inordinately large portion of the time and facilities of the Circuit Courts.

The fact that the burden of the Circuit Courts of Appeals would be increased does not, however, justify the continuation of discrimination against this small but important group of taxpayers. These appellate courts have demonstrated the ability to review decisions of the Tax Court and the Federal District Courts in complicated tax cases in a manner which belies such contention.

However, an increase in the present heavy burden of the Circuit Courts could be avoided by the establishment of an emergency or special court of ap-

peals, with jurisdiction limited to appeals from the Tax Court in Section 722 cases. The judges for such a special court could be chosen from among the regular District and Circuit Court judges or members of the bar who have had long experience in tax practice.

Such judges, who would become specialists in this branch of the law, could be given jurisdiction over appeals in all excess profits tax cases arising under the World War II law. Precedent for the creation of a special Section 722 court may be found in the Emergency Court of Appeals created by Congress in 1942, which was vested with exclusive jurisdiction limited to questions arising under the Emergency Price Control Act of 1942, and later under the Defense Production Act of 1950.

In the interest of those taxpayers now subjected to discrimination, as discussed above, it is hoped that legislation comparable to S. 3265 will be reintroduced in the present session of the Congress and that such legislation may receive prompt action. The lawmakers may find that a special court of appeals is the preferable appellate tribunal to be provided in the circumstances surrounding Section 722 litigation, but in any event it is demonstrably important that a further appellate remedy should be afforded to eliminate the inequality separating Section 722 litigants from the so-called "standard-issue" litigants.

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