

The Harvard Law School Record

VOL. 6 NO. 12

CAMBRIDGE, MASS., TUESDAY, MAY 4, 1948

PRICE TEN CENTS

NEWS IN BRIEF

CLASS OFFICERS

At a meeting last week, the Law School Class of 1948 elected Endicott Peabody, II (Harvard '42) of Cambridge, Mass. as Class Marshal and Ogden Williams (Princeton '42) of New York City as Class Secretary.



PEABODY



WILLIAMS

Peabody's duties as Marshal will be concerned with the commencement exercises in June. He will arrange the positions of the men in the procession and will inform them of the protocol of the occasion.

As Secretary, Williams will be in charge of the future organization of the class. It will be his duty to keep in touch with the members of the class, to arrange for class reunions, and otherwise take leadership in class affairs in the future.

COMMENCEMENT GOWNS

Men who plan to participate in the June commencement exercises are advised to reserve their gowns at the Coop immediately.

BOOK DRIVE

The Law School Committee of Phillips Brooks House is conducting a book drive to get casebooks for a lending library for needy students. All students are asked to turn over spare casebooks to help those students who will not have government aid, or who will exceed their G.I. allowance because of the recent tuition increase.

Book bins will be placed in the examination rooms so that men may donate books at that time. The Law School Committee also has voted funds to be used to purchase new editions.

SUMMER SOFTBALL

Softball managers will meet the first week of next term at a date to be announced later in order to arrange the summer league schedule. E. Thayer Drake 3L (EL 4-7293) of the P.B.H. Law School Committee is organizing the league and he urges all interested clubs and groups of players to send a manager to the first meeting.

The list of teams and managers already recruited is as follows: the Spanish Flyers with Don Lubick, Trover Boys with Martin Lubarsky, Legal Beagles with Bob Maynard, Sheriffs with Ed Murtaugh, 9 Old Men with Bob Kitchell, Tax Dodgers with Ross Traphagen, and the Schoolhouse Dragons with Dick Witt.

KENDALL CAFETERIA

The Kendall House Cafeteria will be in operation during the summer term, according to Mrs. Herbert E. Hansen, law wife in charge. The principal change in menu planned for the hot weather is the substitution of fruit juices for soup.

At present the cafeteria is running in the red. A rise in prices is not contemplated, although it may be necessary to serve smaller portions. A thorough study of the operations of the lunchroom is taking place in the hope of finding ways to improve the financial condition.

SUMMER SCHOOL

After a six-year wartime lapse, the Harvard Summer School will reopen for an eight-week term starting on June 28. Over 150 undergraduate and graduate courses will be offered by a faculty of more than 200. A catalogue listing these

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N. Y. ALUMNI ASSOCIATION AIDS SCHOOL

Placement Services Expanded This Year To Help Graduates

One of the most active alumni groups organized to aid the Law School is the Harvard Law School Association of New York. Incorporated in 1918 "to maintain the honor and dignity of the profession of the law, to promote the interests and usefulness of the Harvard Law School . . . and to cultivate social intercourse among the members," the Association still pursues its stated purposes.

The quality of its leadership has been of the highest. Among the New York Association's presidents have been Circuit Judges Augustus Hand '94 and Learned Hand '96 of the Second Circuit; Philip J. McCook, former New York Supreme Court Justice and Colonel in World War II; Francis G. Caffey, ex '95, District Judge of the Southern District of New York; Archibald G. Thacher '00, Judge of the New York Court of Appeals; and Robert P. Patterson '15, Circuit Court Judge in the Second Circuit and Secretary of War.

Present officers are John B. Marsh '10, president; Elihu Root, Jr. '06, Franklin E. Parker '22, Bethuel M. Webster '25, vice-presidents; Walter R. Mansfield '35, secretary; and William D. Gaillard, Jr. '29, treasurer.

The Placement Bureau of the Association, now administered by John F. Reddy, Jr. '35, periodically canvasses over 300 law firms in and about New York City to find openings for members of Harvard Law School graduating classes, and offers many suggestions to

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CLASS OF '23 TO HOLD DINNER

Elliott Is Chairman For 25th Anniversary Plans

The 25th anniversary of the graduation of the Class of 1923 will be observed June 8 and 9 by an anniversary dinner and luncheon to be held in Cambridge and Boston.

Tuesday evening, June 8, the class will hold a dinner at the Harvard Club of Boston. No schedule of addresses has as yet been prepared but expected speakers are class members David E. Lilienthal and James M. Nicely, vice-president of the First National Bank of New York. Other expected guests include Dean Erwin N. Griswold, Professor Samuel Williston, Professor Zechariah Chafee, Jr., and Professor Austin W. Scott.

Wednesday morning, June 9, the class will visit the Law School. At noon there will be a luncheon with faculty members at the Chancery Club at the Harvard Law School.

Chairman of the 25th Anniversary Committee of the Class is Byron K. Elliott, vice-president and general counsel of John Hancock Life Insurance Co., Boston. Committee members are Judge John V. Spalding, of the Massachusetts Supreme Judicial Court, Lucius E. Thayer, of Hale and Dorr of Boston, Judge Elias F. Shamon, of the Federal District Court in Boston, Leeds A. Wheeler, vice-president and general counsel of the New England Power System, and Charles Gaston Smith, Jr., Boston lawyer. The Secretary of the Class is Professor Malcolm P. Sharp, of the University of Chicago Law School, 5329 Greenwood Avenue, Chicago, Illinois.

Class members are expected to make their own reservations at the various Boston hotels.

Herzog Discusses Difficult Problems Facing NLRB Under Taft-Hartley Act

BY PAUL M. HERZOG
Chairman of the National Labor Relations Board.

From 1935 to 1947 the Members of the National Labor Relations Board were the trustees of Congress for the administration of the Wagner Act. Today, together with the General Counsel, we are Congress' trustees to administer Title I of the Labor Management Relations Act of 1947. Although the legislation has been substantially changed, the Board Members' responsibility remains the same: to do our utmost, as trustees, to effectuate the declared Congressional policy. Under the Wagner Act, the policy was simply to "encourage the practice and procedure of collective bargaining." The old Board devoted itself to implementing that mandate of Congress. Today the mandate is different and a broader one. Although the new legislation continues to stress the importance of encouraging collective bargaining, it no longer stops there. It also declares that certain practices of labor organizations have become matters of national concern, and require correction as much as collective bargaining requires encouragement. The Board's function is to enforce both policies with equal vigor, and to do so, not against management or against labor, but for the public good.

Two points should be made at the outset: First, the N.L.R.B. does not administer the entire Taft-Hartley Act, but only those sections that amend or reenact the Wagner Act. Those dealing with conciliation, political contributions, and—with one exception—national emergencies are the responsibility of other agencies of Government.

Second, the five Board Members do not initiate Board action. Our primary functions today are judicial in character. The prosecution of unfair labor practices and the preliminary investigation of election cases are in the hands of the General Counsel, an independent Board officer appointed by the President. The more conspicuous activities of the Agency during these early days, including applications for certain court injunctions, have therefore been his rather than ours. We pass only on those cases which have proceeded to that final stage where findings of fact or interpretations of the law are required. For this reason, and because the amended Act has been on the books only eight months, we have had few opportunities to render decisions applying its more novel or more important provisions. For this reason, also, we are not yet armed with sufficient experience to express an opinion as to how effectively the new law is working, or will work, in practice.

Duties of the Board

The Board's duties today are fourfold. We conduct two types of elections: Those to select or reject a bargaining representative, and those to authorize a union-shop agreement. We prevent and remedy two sorts of unfair labor practices, those by employers and those

2100 ALUMNI LIVE IN NEW YORK CITY

The greatest concentration of ex-students of the Harvard Law School is in New York City, where more than 2,100 Harvard Law men are now living, according to the geographical distribution shown in the Quinquennial Catalogue, which is now being mailed to active members of the Harvard Law School Association.

Boston is next with 1,250, and Washington, D. C. is third with 600. Other principal cities of the country have the following approximate Harvard Law populations: Chicago, 450; Los Angeles, 350; Cleveland, 280; San Francisco, 275; Philadelphia, 230; Providence, R. I., 200; Pittsburgh, 175; Detroit, 100; and St. Louis, 80. However, not all of these men are still actively practicing law.

RECORD SUSPENDS UNTIL NEXT FALL

With this issue, the RECORD suspends regular publication until the opening of the Fall Term. It is tentatively planned that several issues will be published this Summer, but publication during the Summer will not be on a regular basis.

During the current academic year, the RECORD has been sent to all active members of the Harvard Law School Association, and the Association Council is voting tomorrow whether to continue this plan during the 1948-49 academic year.

The Council has received more than 100 letters from a representative group of alumni in response to a request for their opinion on the value of the RECORD and the desirability of distributing it to the alumni. More than 85 per cent of the alumni polled have indicated their support of the distribution plan.

by labor organizations. Before the Board could handle many new cases on the merits, it had to construe and apply the new law's compliance provisions, which require unions to file certain financial statements and non-communist affidavits as a condition of using the Board's facilities. Realizing, perhaps partly from recent European experience, that Communist infiltration into trade-unions can lead to national disaster, Congress selected this weapon to discourage its happening here. The overwhelming majority of unions have long since satisfied these requirements, although their constitutionality is still at issue. [N.M.U. v. Herzog, decided by a three-judge Federal Court (D.C.) on April 13, 1948, upholding the constitutionality of Section 9(h), will shortly be appealed to the Supreme Court.] The administrative problems created by non-compliance are almost entirely out of the way so far as the Board is concerned, although they still plague those few unions that have chosen not to comply. Today the Board will not process any election petition or request for a union-shop referendum submitted by a non-complying union, or place one on the ballot in any case—except when individual employees seek to remove it as their bargaining representative through decertification proceedings. Nor may the General Counsel issue a new complaint based on any charge of unfair labor practice filed by a non-complying union, although the Board is still deciding cases in which we issued complaints in behalf of such unions before August, 1947.

The Board has rendered many decisions applying the substantive provisions of the new Act. Congress having de-

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YEARBOOK ELECTS TRAPHAGEN EDITOR

The officers for the 1948-49 Harvard Law School Yearbook were announced this week by John B. Hennessey 3L (Bates '43). They are Ross E. Traphagen, Jr., 2L (Yale '44), Editor; Robert C. Hawley, 2L (Colorado '43), Business Manager; and Thomas H. Murphy, 2L (Boston College '43), Associate Editor. Their predecessors are Hennessey; Paul Mishkin, 3L (Michigan '44), Editor; and Business Manager Wesley E. Bevins, Jr., 3L (Bowdoin '40).

An Associate Editorship, now vacant, will be filled by the new officers during the summer term from among second-year men, based on ability, past experience, and competitive tests. Applications may be discussed with Traphagen or Hawley at the Yearbook office in Gannett House.

This year's Yearbook is expected to be distributed at Gannett House starting May 15th. Notice of any delay will be announced so arrangements for mailing to home addresses may be made.

COMMITTEE ASKS ADVICE OF STUDENTS

Faculty Study Curriculum, Seek Opinions on School

About 1800 questionnaires prepared by the Committee on Legal Education of the Harvard Law School Faculty were sent to the student body this past week. Two different forms, evenly distributed among the students, are designed to provide a reliable expression of student critical opinion on various study techniques and methods in legal education.

The Committee is attempting to ascertain anew the purposes of legal education and to re-evaluate the methods with which the Law School is meeting these purposes. Organized in 1945, the Committee feels that student ideas and opinions are a necessary factor in its considerations. This is apparently the first attempt by a law school to take a comprehensive poll of student attitudes.

The questionnaires are the second series prepared by the Committee. The first, sent last year to the Law School alumni, was meant to appraise the needs and views of the profession as to the training of prospective lawyers. It solicited, among other things, their views on the function of the law school in training for advocacy, drafting, planning, and negotiation.

After an examination of the student and alumni views, the Committee will seek to prepare recommendations for a curriculum for Harvard Law School specifically designed to meet existing problems.

FORUM ELECTS 20 DIRECTORS

Board For Next Year Announced By Holman

Twenty new members have been elected to serve on the Board of Directors of the Harvard Law School Forum, President Richard A. Holman has announced. The newly elected members will bring next year's Board membership to a total of 24.

Those elected are: Marvin H. Shagam (Washington and Jefferson '47), who will serve as second vice-president in charge of public relations; Thomas C. Shepard (Georgia Tech '46), who will serve as secretary; Sheldon H. Braiterman (Harvard '48), Roland C. W. Brown (Harvard '47), Richard K. Fink (UCLA '47), Jack L. Goodstitt (Wisconsin '46), Harvey Greenfield (NYU '47), Frank A. Howard (Miami '47), Robert A. Kagan (Harvard '46), Fred M. Kecker (Penn State '47), Bruce Leeger (Dartmouth '46).

Donald Romm Levy (Harvard '47), Bertram Moll (NYU '47), William D. Patton (Princeton '45), Sidney D. Penney, Jr. (Amherst '47), Edward Pesin (Rutgers '47), Robert M. Rosenberg, Jr. (Vermont '46), Melvin Seifer (Harvard '44), Harold H. Smith (West Virginia '39), William R. Van Gemert (Harvard '44).

Current Board Members who will serve next year are President Holman (Cornell '43), First Vice - President (Planning) Karl Schmeidler (Cornell '44), Treasurer Francis J. Milligan, Jr. (Loyola '45), and President Emeritus Jerome L. Rappaport (Harvard '47).

President Holman also announced that the new Board solicits suggestions for next year's programs and welcomes criticisms of those held this year. These may be sent to the Harvard Law School Forum, Gannett House.

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CHANGES OF ADDRESS should be sent to the RECORD office, Austin Hall, Cambridge 38, Massachusetts, at least three weeks in advance to insure prompt delivery.

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Editorials

A letter to the Editor of the RECORD printed last week commented on the lack of intimate contact between faculty and students. The impersonal austere aspect of Harvard Law School has long been a favorite complaint of students while in school, and sometimes a matter of boast after graduation. Whether the complaints or boasts are justified or not it is undoubtedly true that friction areas often develop at the school because the faculty is unaware of problems and defects acutely apparent to the student. Machinery to reveal to the instructors the view of the instructed is a patent necessity long overdue.

To penetrate the cloud of fact and fantasy obscuring the student from faculty view an exceptionally praiseworthy project has been developed. A faculty committee on legal education has compiled and distributed a questionnaire in an attempt to produce accurate, reliable data on student opinions and study habits and to elicit constructive criticism. By now, each student should have received this lengthy detailed questionnaire which is the product of considerable thought and discussion by the committee and a selected cross-section of students. Time was pressing because the committee was eager for the more mature judgment of the present student body.

The undertaking is a sincere attempt by the faculty to ascertain student needs and desires and is a long step toward the improvement of legal education at Harvard. The importance of the responsibility on each student to devote sufficient time and thought in completing the poll cannot be overemphasized.

Undoubtedly the new curriculum planned for the Fall of 1949 will be modified in accordance with conclusions based on data produced by the project. The validity of those conclusions depend in large measure on full student cooperation. Reliable data will be an invaluable aid for a faculty interested in gearing its curriculum and methods to student study habits and preferences.

The poll is completely anonymous; only the personal view of the student is solicited; two completely separate questionnaires are being used. The student body can best commend the faculty for this excellent project by giving it complete support and assistance through prompt and adequate completion of each questionnaire.

R.A.H.

Letters to the Editor

To the Editor of the RECORD:

I, a Law Student Keeper, found your essay on said creature (April 27) most interesting, and accurate, as far as it went, but I do feel that the subject was not covered in its entirety. May I offer the following observations to complete the picture:

Behold the Law Student. He is both husband and father, but he knows it not. He arises in misery, eats in haste, and rushes from the House. Do not stand in his way, Little Children. He will run you down, which is bad, or miss his Train, which is worse. Cringe and keep silent. He is looking your way! Be patient, Little Children. This will not last forever. The Law Student will emerge again a Human Being. When the Battle is over he will look upon you and smile.

A LAW-STUDENT KEEPER,
Harvardens Village.

Gallery

MILTON KATZ

Byrne Professor of Administrative Law

Like Gilbert's Lord Chancellor, Professor Milton Katz embodies the law, although he would probably improve upon the Chancellor and say, "The Law can be the true embodiment of everything that's excellent."

It was not in the nature of a confession when he stated that after his family, consisting of his wife and two sons, his greatest interest was in being a useful part of the day-to-day life processes of America. He believes this can be done through the law.

"The Law, after all, is most important as a sort of social lubricant, changing with the people," he said. "It is a tremendous source of pleasure to be part of that force, helping not only to build the foundations of the Law for the future, but also to instruct the men who will be strengthening the structure in years to come."

His teaching method is to pose hypothetical problems based on the cases in the book, describing the situations in lively, human terms, so that even Parke, B. and Tindal, J. come out from under their powdered austerity into a more understandable reality. Instead of belaboring the labyrinths of logic and technicality which delighted our legal forebears, and continue to charm some of their modern counterparts—Mr. Katz occasionally reminds his students that "a page of history is worth a volume of logic."

Mr. Katz's wide experience has furnished him with a considerable fund of anecdotes which, together with his very keen, dry wit, daily serve to enliven his classes. A student's puzzled face, wrinkled in the obvious chaos of complete incomprehensibility, will seldom escape his eye, and after a patient "what seems to be troubling you?", Mr. Katz will relieve the suffering. His efforts to make the Law more alive and vital to the student can be appreciated even more when viewed in the light of his other activities on the Law School Faculty.

As a member of the Committee on Legal Education, of which Professor Fuller is chairman, Mr. Katz is deeply concerned with the problems of how the Law School program may be constantly revitalized, so that it not only keeps pace with the times but anticipates the state of the nation 15 to 30 years hence, when today's students will be approaching the peak of their professional powers.

He believes the Law School has a threefold responsibility: first, to the students—basic instruction in the use of the tools of their chosen profession; then, to the nation and individual communities—furnishing them with men aware of and equipped to assume their responsibilities of public service; and finally, to the Law—to be a source of creative endeavor, constantly reviewing the past and seeking to improve the present for the future.

"The major problems of the next few decades," Professor Katz predicts, "will be those of keeping world Peace, and of balancing the respective roles of Government and Business in a stable yet dynamic economy. The Law School will fail in its responsibility if it does not prepare the student of today to meet tomorrow's legal problem in the forefront of the nation's public—though not necessarily government—servants."

"This does not inevitably imply changes in the curriculum, as much as it does suggest changes in the approach to the existing courses. Few men realize when they come here that they are embarking on a way of life. Students must be aware of the need of looking ahead, of better understanding the framework within which they must be useful to society and at the same time achieve personal satisfaction. There is a definite opportunity for mutual cooperation between the students and faculty in imparting to legal education more than the fundamentals of the profession."

Professor Katz graduated from Harvard College in 1927, and, with two years on the *Law Review* to his credit, from the Law School in 1931. After a year as Legal Secretary to Judge Julian W. Mack of the Circuit Court of Appeals for the Second Circuit, he began his long and varied career in administrative agencies and departments, as attorney with the Reconstruction Finance Corporation.

In 1933 he became Assistant Counsel, Member of the Advisory Council, and Special Assistant to the Administrator of the National Recovery Administration. After two years under the Blue Eagle, Katz was appointed Executive Assistant to the Chairman and Special Counsel of the Securities and Exchange Commission, which positions he held until 1938. At that time he became Special Assistant to the Attorney-General in the anti-trust division of the Department of Justice. The Law School beckoned in 1939 when Mr. Katz came here as a lecturer. His appointment as Professor followed in 1940 and last week he was named to the Byrne Professorship succeeding Justice Felix Frankfurter and former Dean James M. Landis.

Professor Katz's specialty is his course on Administrative law and his casebook on the subject

Sub Judice

FRIENDSHIP TO SMALL ANIMALS * * *

Miss Mary Rennick, an aged spinster, had already made a will leaving her property to her brother Richard before she entered a convalescent home suffering from coronary thrombosis, arteriosclerosis and hypertension. While she was in the home, she was visited two or three times every week by her nephew Charles who performed many services for her. Thirteen days before she died, Mary sent him for a priest and a lawyer; the former to anoint her; the latter to make a new will in favor of her nephew. At the time this second will was made Mary's mind was wandering, and she was very weak. Richard attacked the will when it was offered for probate on the grounds of undue influence and fraud. Held: the evidence justified a finding of fraud. The court was especially satisfied that Mary's brother took the greater part of her small estate under the first will because "Richard seems to have been in genuine need of all the assistance he could get. He was 65 years old at the time of the trial, and for 26 years his only 'business' had been selling catnip which he prepared in the cellar."—*Duggan v. Rennick*, 77 N.E.2d 639 (Mass. 1948).

Notes on Recent Cases

TORTS—ALIENATION OF PARENT'S AFFECTION * * *

Taylor v. Keefe, 56 A. 2d 768 (Conn. 1947). Taylor lived happily with his mother until 1943 when Keefe "by his arts, blandishments and seductions alienated her love and affections and destroyed the happiness of the plaintiff's home." Taylor's parents were divorced as a result of Keefe's activities, and Taylor, still a minor brought this action. Held: for Keefe. Taylor's complaint stated no cause of action.

This is the fourth case in the United States in which a child has tried to sue for the alienation of his parents' affections. In two the child has succeeded; in two he has failed. The courts allowing the action do so because of the mutual rights and obligations possessed by all members of the modern family. The courts denying it are influenced by precedent and the difficulty of assessing damages, especially when there are several children. The present court pointed out: "Our decision accords with the view expressed by the only authoritative writer who to our knowledge has specifically dealt with the subject: Prosser, *Torts*, p. 937."

CRIMINAL LAW—CONTRIBUTING TO DELINQUENCY * * *

State v. Zaras, 78 N.E.2d 74 (Ohio 1947). Zaras sold beer to Paul Pepple, a 17-year-old boy, and was charged with contributing to the delinquency of a minor. Upon his plea of guilty, he was fined \$300. The statutes of Ohio provide that the sale of beer to a minor under 18 years of age is an offense punishable by a fine of not more than \$300, and that the term "delinquent child" includes any child who violates any law of the state. Held: the information does not set forth facts sufficient to charge Zaras with contributing to the delinquency of a minor, and he must be discharged. Although the sale of beer to a minor is an offense, the purchase by the minor does not violate any statute. Therefore, Zaras's sale to Pepple did not contribute to any "delinquency" on the boy's part.

JURY—HUSBAND AND WIFE * * *

State v. Wilkins, 56 A. 2d 473 (Vt. 1948). Wilkins was tried before a jury for the crime of drunken driving on a public highway. A certain Mrs. Waterman had already been chosen as a jurymen, and Wilkin's peremptory challenges had been exhausted, when her husband was also called and found generally qualified. Wilkin's attorney then challenged Mr. Waterman for cause both as a matter of law and of judicial discretion. As a matter of law, it was claimed, the Watermans constituted a "legal sole party"; hence there would be, in contemplation of law, but 11 persons on the jury. As a matter of discretion, the judge should exclude one of the Watermans lest their close relationship cause one to influence the other unduly. Held: for the State. "Since one plus one equals two, Wilkin's contention is without merit. The claim that husband and wife are one person has been characterized as the amiable fiction of the common law. In the case at bar we are dealing with facts, not fiction." But if the trial court had feared that the Watermans might exert such influence on one another as to deny Wilkins a fair trial, it should, in the exercise of its discretion, have excused one of them. There was no evidence of such influence in the present case.

is widely used. There are few who can draw upon as broad an experience and as distinguished a record in that field as he, not only from the theoretical point of view, but also from the everyday applications of balancing the roles and interests of business and government.

Alumni Notes

One hundred and eight of the 204 men who received law degrees in February, 1948, have reported on their present activity and location as follows:

Mitchell Aaronson, Clerk to Judge William C. Mathes, U. S. District Court, Los Angeles, Calif.; Josiah Knowles Adams, Jr., Bingham, Dana & Gould, One Federal St., Boston, Mass.; Charles Duane Aldrich, Palmer, Dodge, Chase & Davis, 53 State St., Boston 9, Mass.; Rea Hervey Allison, Merrill, Lynch, Pierce, Fenner & Beane, 70 Pine St., New York, N. Y.; Walter Phillips Arenwald, Gainsburg, Gottlieb, Levitan & Cole, 122 E. 42nd St., New York 17, N. Y.

Jack H. Backman, Dept. of Justice, Anti-Trust Divis., Washington, D. C.; Lemuel Bannister, Jr., Walton, Bannister & Stitt, 40 W. 40th St., New York 18, N. Y.; Robert Edward Bard, Wilson & McIlvaine, 120 West Adams St., Chicago 3, Ill.; Richard Shepard Barrows, Abstract & Title Guaranty Co., 735 Griswold St., Detroit 26, Mich.; Harry Wilson Baughman, Jr., New England Mutual Life Ins. Co., 501 Boylston St., Boston, Mass.; John Ransdell Baylor, Baylor, Bloss & Evnen, 1204 Sharp Bldg., Lincoln 8, Neb.; Thomas Edwin Bennett, c/o Phil C. Bennett, Mid-Continent Life Insurance Co., Oklahoma City, Okla.; William Phillip Bernton, Miller, Sher & Oppenheimer, 820 Woodward Bldg., Washington 5, D. C.; John Perry Bledsoe, Koerner, Young, Sweet & McColloch, 800 Pacific Bldg., Portland, Ore.; Vincent Lyons Broderick, Hatch, Root & Barrett, 25 Broad St., New York 4, N. Y.

George Harold Callahan, Emerson, Emery & Danzig, 744 Broad St., Newark, N. J.; Thomas James Carens, Francis T. Leahy, 31 Milk St., Boston 9, Mass.; Arthur Barnett Clark, Jr., Neill, Clark & Townsend, Indianola, Miss.; Irving Constant, Stroock & Stroock & Lavan, 61 Broadway, New York, N. Y.; George Knox Cracraft, Jr., Junior Partner with George Knox Cracraft, Phillips Nat'l Bank Bldg., Helena, Ark.

Joseph Riggs Creighton, McCutchen, Thomas, Matthew, Griffiths & Greene, Balfour Bldg., San Francisco 4, Calif.; Robert William Culbert, Northcutt Ely, 1201 Tower Bldg., Washington, D. C.; Bancroft Gherardi Davis, Jr., Webster, Sheffield & Horan, 15 Broad St., New York, N. Y.; John Arthur Dolan, Hale & Dorr, 60 State St., Boston, Mass.; George Henry Eckhardt, Jr., Pillsbury, Madison & Sutro, Standard Oil Bldg., San Francisco, Calif.

Samuel Leon Ellenson, Harry L. Nachman, 501 First Nat'l Bank Bldg., Newport News, Va.; James Henry Felt, Kix, Miller, Baar & Morris, 11 S. LaSalle St., Chicago, Ill.; Nathan Cheney Fitts, Goodwin, Procter & Hoar, 84 State St., Boston 9, Mass.; Thomas Francis Fitzgibbon, Hannan & Mayo, 25 Exchange St., Lynn, Mass.; Robert Bruce Fizzell, Jr., Stinson, Mag, Thomson, McEvers & Fizzell, First Nat'l Bank Bldg., Kansas City 6, Mo.

Edmond John Ford, Kleberg, Eckhardt, Mobley & Roberts, Jones Bldg., Corpus Christi, Texas; George Lower Ford, Baker, Hostetter & Patterson, 1956 Union Commerce Bldg., Cleveland 14, Ohio; Thomas Bittling Foster, Tanner, Garvin & Ashley, Smith Tower, Seattle 4, Wash.; James William Frey, Hoppe, Day & Ford, Second Nat'l Bldg., Warren, Ohio; Frank Joseph Hammond, Briggs, Gilbert, Morton, Kyle & Macartney, W-2162 First Nat'l Bank Bldg., St. Paul, Minn.

Stuart Edward Hayes, c/o C. W. & H. M. Hayes, Dover-Foxcroft, Maine.; Francis Cabot Lowell Head, Igoe, Carroll, Keefe & Coburn, 314 N. Broadway, St. Louis 2, Mo.; Kenneth William Hoehn, RCA, New York, N. Y.; Martin Horwitz, Cohen, Bernkopf, Grauman & Goodman, 1125 Tremont Bldg., Boston 8, Mass.; Wilfred Glenroy Howland, Nutter, McClellan & Fish, 220 Devonshire St., Boston, Mass.

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(Continued on page four)

Herzog Discusses Problems Facing NLRB Under New Act

(Continued from page 1)

clared that supervisors are no longer to be treated as "employees," election cases involving foremen are no longer processed. Professional employees, including attorneys, may always vote and bargain in separate units. Unions that represent rank-and-file employees are no longer certified as the representatives of guards or even of watchmen. Applying another new provision, the Board now invokes precisely the same remedy against independent unions as against AFL and CIO affiliates that benefit from an employer's unfair labor practices. If the employer's conduct is not serious, he will, in either case, merely be ordered to desist from it in the future; but if it reaches the point of domination, the company-dominated union—whether affiliated or unaffiliated—will be ordered completely disestablished.

The "Free-Speech Amendment"

The so-called "free-speech amendment" provides that the Board must refrain, not only from finding any uncoercive expression of opinion to be an unfair labor practice in and of itself, but also from considering such expressions as evidence of the commission of any other unfair labor practice. The first part was bound to have little effect upon the Board's decisions, for we had not for at least a year before the law was amended, held uncoercive anti-union statements by employers to be violations of the Wagner Act. The practical impact of the second portion of the amendment, barring us from even considering such statements in weighing the significance of other conduct by employers and unions, cannot be determined until the Board and the Courts have passed on several pending cases. Meanwhile, the Board has set aside an election that was immediately preceded by acts of employer interference so extreme that—even though they were not coercive enough to constitute violations of law—they nullified those controlled laboratory conditions without which no election can

be an accurate test of employees' true desires. (*Matter of General Shoe Corporation*, 76 N.L.R.B. No. 41, decided April 1948.)

Separate Craft Units

Since late 1946, the Board Members have tended to increase the opportunities for true craftsmen to break away from pre-existing large industrial units. This tendency will probably continue. We have not, however, construed the craft-proviso in the 1947 Act to mean that the Board must grant craftsmen a separate election every time that they ask for one. We believe that Congress still intends the Board to weigh all the factors present in a particular situation before deciding what unit is most appropriate, although we may no longer give controlling weight to our own past precedent. Discretion still being vested in the Board, we recently exercised it by declining to carve a small group of brick-layers out of a decade-old production unit in the basic steel industry. The evolution of these doctrines from November 1946 to April 1948 can be traced through the many opinions handed down between the *International Minerals* (71 N.L.R.B. 878) and *National Tube* decisions (76 N.L.R.B. No. 169).

In another decision in the same industry, but presumably less welcome to it, the Board has just held that an employer's obligation to bargain with his employees' representatives extends to the terms of a pension and retirement plan. (*Matter of Inland Steel*, decided April 12, 1948.) Such a plan can be as vital a matter to an employee as his wages and other conditions of employment. We realize, of course, that bargaining on a pension program raises certain serious difficulties not present elsewhere. We are confident that the employers of America are sufficiently resourceful to overcome these difficulties, and that the representatives of labor, aware of their existence, will bargain on this subject with suitable moderation.

The Need for Self-Restraint

Indeed, moderate conduct, by both employers and unions, is the crying need of our time. Those engaged in industrial relations cannot claim exemption from the doctrine of the golden mean. Men who resent the restraints that society, through law, has imposed upon them have only to manifest self-restraint to find that society welcomes the opportunity to loosen the reins again. The American people, who instinctively hesitate to repose great power in their government, only do so when they conclude that there is no other way to guard against excessive display of power by one or another element in the community. Today, as always, it lies within the power of both industry and labor to conduct themselves so that legislation which they consider unwelcome will be found by the American people to be unnecessary. If, we, the Members of the National Labor Relations Board, can work ourselves out of a job by accelerating such a trend, we will have achieved our deepest desire.

Cases Now Before the Board

At the moment the trend is the other way. The caseload is greater than at any time in the Board's history. In March alone, 6100 cases were filed. Some tendencies are beginning to become apparent. In one representation case out of every six, employers or individual employees are taking advantage of the new provisions which permit them to request elections when a labor organization that asserts majority status is itself unwilling to do so. Approximately one unfair labor practice case out of every four involves a charge that a labor union has violated the new Section 8(b) of the Act. The remaining three disclose that all employers have not yet discontinued practices that were prohibited by the Wagner Act and are still unlawful. Secondary boycotts are more commonly charged than any other union unfair labor practice. Jurisdictional disputes, also condemned by both President Truman and Congress, have been frequently alleged, but a happy arrangement for self-government, recently evolved by the building-trade unions and the principal contractor associations, makes it unlikely that the Board will have to pass on many such controversies.

They are the exception, however. The Board will have to deal directly with most other controversial issues. Moreover, the General Counsel and a majority of the Board have decided to process cases in many relatively local enterprises over which the old Board hesitated to exercise jurisdiction. (*Matter of Liddon-White Motors*, 76 N.L.R.B. 165, decided April 5, 1948), thereby increasing the scope of the Agency's operations. There is danger that all these factors will result in greater delays in handling the problems brought to us by industry and labor. Our task is to devise techniques to streamline the Board's processes, without neglecting the contentions of the parties to every individual case. So far we have not solved this dilemma; until we do, labor and industry must share its consequences with us. The best solution, of course, will be for them to deal so freely and so frankly with one another that they find diminishing need to seek the Board's assistance. That will be a benefit to them, and not only to us, for it will mean that collective bargaining has finally come of age.

This will take time and patience, as

everything must in a democracy. A world which, even by the most conservative estimates, was created in six days, cannot be remade overnight. But the time may come when collective bargaining will be so readily accepted by employers and so temperately conducted by unions—and each, incidentally, is a condition of the other—that the Board can play a comparatively inconspicuous role on the national scene.

Conclusion

Free collective bargaining between relative equals offers the best hope, the last best hope, perhaps, for a twentieth-century industrial society to escape the blight of totalitarianism, whether of the left or of the right. Such bargaining both assumes and assures the dignity of the individual; it distributes power and inhibits arbitrary action. In any plant, its purpose is to establish "the industrial constitution of the enterprise." (*N.L.R.B. v. Highland Park Manufacturing Co.*, 110 F. (2d) 632, 638. Parker, C. J.). Its premise, and its prerequisite, is the willingness of men to sit down and reason together. It generates habits of debate that strengthen a democratic society and can survive in no other. No dictator can ever begin to seize power as long as unshackled industry and strong trade-unions flourish and stand together. The weakening of either will lead to the destruction of both. Both, therefore, share the great responsibility of striving to discover the broadest possible area of agreement. No sacrifice in day-to-day bargaining is too great to stave off the polarizing tendency that has shaken Europe to its foundations. Americans must think and act to engender trust in one another.

A world so harried that a Winant and a Masaryk felt compelling need to escape is not a world that can afford the luxury of senseless bickering. The time is out of joint; if we are to set it right, we must build a foundation that permits individual men to feel so secure within themselves that they have no urge to bend others to their will. Only by strengthening the inner security of man can we assure security for mankind.

NEW YORK —(Continued)

graduates regarding the practice of law in New York. During the latter part of 1947, two lawyers representing the Association canvassed New York law offices and discovered many new opportunities for graduates. Of 558 groups contacted, 94 firms advised of one or more situations that were or would be available.

Another new development during the past year has been the formation by President Marsh of a panel of 50 Association members to assist in counseling Law School men about the practice of law in Greater New York, without regard to particular vacancies.

In addition to these activities, the Treasurer has been authorized from time to time to contribute to the Law School's revolving loan fund, which is used to make funds available on loan to needy students. The dues of the Association are \$2 a year for each of the 646 present members.

One of the outstanding functions of the Association is its annual dinner for its members held at the Harvard Club of New York City, where officers and trustees for the following year are elected. The Dean of the Law School usually informs the members of current events at the School, and another outstanding speaker addresses this meeting.

NEWS BRIEFS—(Continued)

courses will be available at University Hall.

The Summer School is coeducational and it is planned to house the men in college dormitories and the women in Radcliffe College houses. During the eight weeks, it is possible for students to complete one-half of a regular academic term by taking one full course, two half courses, or eight units.

WORLD LAW GROUP

The World Law Group will hold a short business meeting at 11 a.m. Friday in Seminar Room No. 2 to elect a new Committee and discuss future plans.

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William Henry Dorsey, LL.M. '48, Asst. Prof. of Law, George Washington Law School, Washington, D. C.

LL.B. '96 L. Ward Bannister of Denver, special lecturer in the Law School on western water law, has been reelected for a sixth term as a member of the Board of Directors of the United States Chamber of Commerce. He represents District No. IX comprised of eight of the western states.

Mr. Bannister will resume his usual two weeks of lectures sometime this coming fall.

LL.B. '98—George Hoague retired on May 1 as General Counsel of the New England Mutual Life Insurance Company, at Boston.

LL.B. '39—Rollin E. Woodbury was recently elected, in Los Angeles, Calif., to the office of Assistant General Counsel of the Southern California Edison Company.

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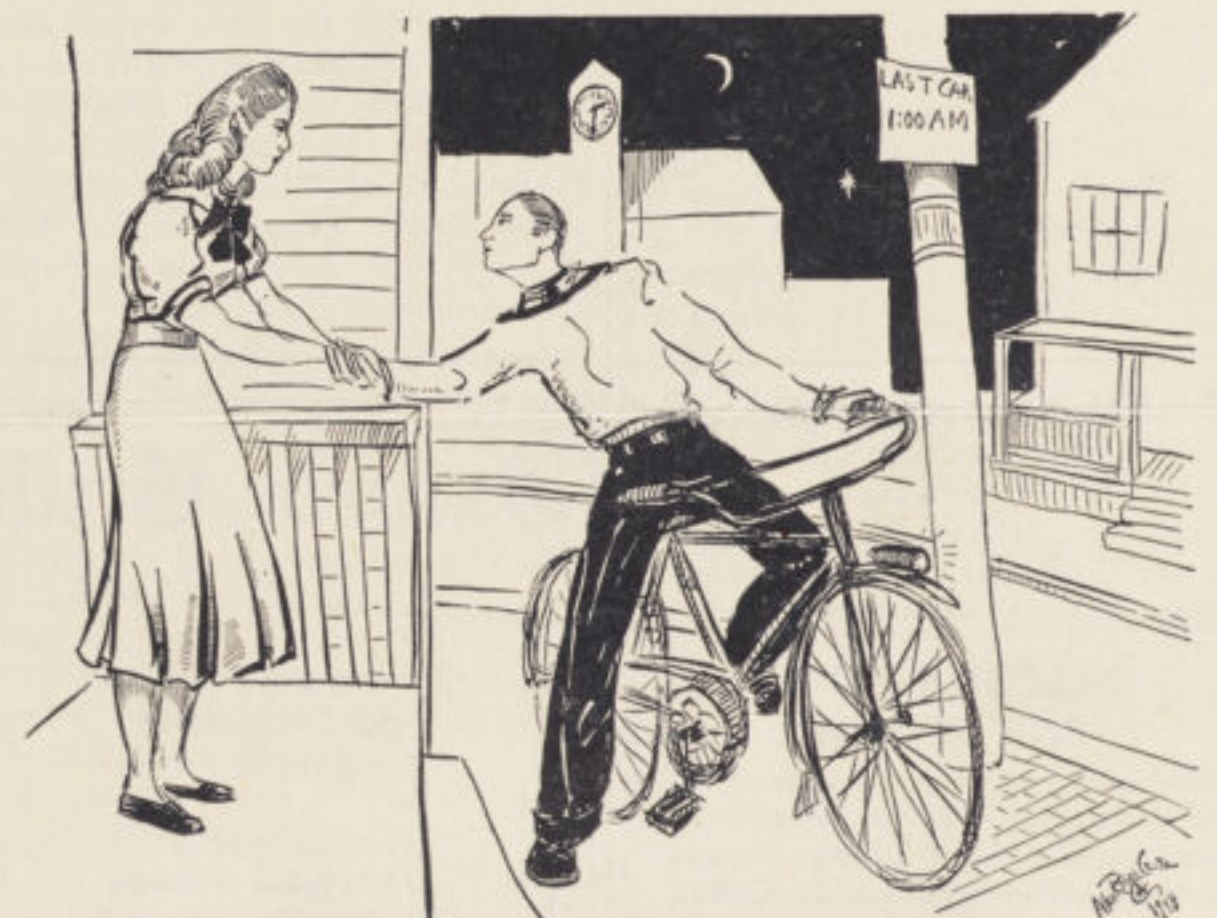
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