

The Harvard Law School Record

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March Review Features Cary, Butters Article Radio Defamation Laws Starts New Series

Featured in the forthcoming March issue of the *Harvard Law Review* will be an article dealing with the way in which the conflicting desires of buyers and sellers affect the form of corporate mergers. The article, *Motives Affecting Form of Sales and Purchases of Businesses*, was contributed by Professor William L. Cary of Northwestern University School of Law and Professor J. Keith Butters of the Harvard Business School.

Recognizing the tremendous and growing significance of statutory law, the *Review* presents in this issue the first in a group of studies, made by the Legislative Research Center of the University of Michigan Law School, entitled *Recent Legislative Trends in Defamation by Radio*. This article is the first of a contemplated series to be known as "Current Trends in State Legislation" which includes this and a dozen or so similar studies of other recent state statutes.

An interesting comment on "Inconsistency" in *Government Litigation* has been contributed by Robert L. Stern, co-author of the book *Supreme Court Practice* and presently the first assistant to the Solicitor General. The comment examines three situations where the Government may be said to have taken a position in the Supreme Court inconsistent with that taken below.

(1) Where the Department of Justice decides that the stand taken below was erroneous and now adopts a different position. (2) The Department disagrees with the position taken by an agency in those cases where the agency may, by statute, appear independently of the Department. Here the inconsistency occurs when the agency insists on presenting its own views to the Court. (3) Again the views of the Department and the agency conflict, but the Department has complete control of the litigation. Nevertheless, it allows the agency to appear in the interest of having all views presented to the Court.

The author concludes that since these inconsistent positions occur in relatively few lawsuits, it is better policy to allow the airing of agency views than to force upon the agencies the views of the Department of Justice.

Also included in this issue is an interesting comment on *Teaching Comparative Law* by Angelo P. Sereni and a section entitled *Developments in the Law* which is devoted to an exhaustive study of the Taft-Hartley Act.

Monitor Editor Canham Talks Thursday Before Coffee Hour Audience

The *Present Crisis* will be the subject of a talk by Mr. Erwin D. Canham, editor of the *Christian Science Monitor*, at the Coffee Hour tomorrow afternoon at 1:30 p.m. in Harkness Commons.

Last Wednesday, Robert Chapman of the Harvard English Department, co-author of the recently produced Broadway play *Billy Budd* spoke on *Billy Budd, Genesis and Fruition*.

The first version of the play was produced in 1949 for the Experimental Theater, entirely in verse. It has, however, been published as prose because many feel that poetry is not popular with the theater public.

Mr. Chapman felt rather strongly on the subject of the theater public and what they like. His conception of good theater is that which makes the audience work. He deplored the fact that such plays are now and often have been financially unsuccessful. On the other hand, plays which amuse, which have no meaning will more often make money.

Lawyer's Role In ECA Administration Reviewed By Former General Counsel

This article was written especially for the *RECORD* by I. N. P. Stokes, LL.B. '33, Special Assistant to the U. S. Special Representative to Europe and formerly General Counsel for E.C.A. operations in Europe.

Handling the ECA's legal problems in Europe has one dubious advantage from the point of view of a busy lawyer: there are few if any precedents, so not much time is devoted to looking for them. Thus, most of our legal problems merely involve interpreting the specific legislation under which the Marshall Plan operates: The Economic Cooperation Act



I. N. P. STOKES

of 1948, as amended, and the accompanying appropriation acts for the respective fiscal years. So far, we have heard of no court decisions interpreting any of this legislation and it would not be surprising if there never were any, since very few of our operations are of such a nature as to lend themselves to litigation.

The process of statutory interpretation in the case of a governmental operation such as the Marshall Plan is by no means a purely legal one. We often have occasion to examine the legislative history, including committee reports, debates, transcripts of hearings and, in some cases, memoranda as to discussions held

Profs Face Recall To Military Duties

Harvard Law School professors who are members of the armed services reserves are sharing the same problems that have been bothering student reservists, a recent survey discloses.

Professor Robert Amory was the first professor to be recalled to active duty. He is now on duty with the Army at Command and General Staff School, Ft. Leavenworth, Kansas.

Professor W. Barton Leach has been serving for some time as special consultant to the Secreary of the Air Force as director of the Korean Evaluation Project of the Air Force. He has been acting in his civilian status but he expects to see active duty this summer as a Brigadier General in the USAFR, returning to school in the Fall.

Professor Robert Braucher, a major in the USAFR, has been notified that he will be called in March for processing preparatory to recall to active duty. His unit has been notified that it will be recalled in May; however, he feels he will be able to complete the school term.

Other active reservists who have not been notified and who are awaiting developments include Assistant Professor W. C. Hardee, Lt. Cmdr., USNR; Assistant Professor Kingman Brewster, Jr., Lt., USNR; and Assistant Dean Louis A. Toepfer, Lt., USNR.

On the inactive reserve lists are Professor David E. Watts, Capt., MIS; Professor A. James Casner, Col., USAFR; Professor E. J. Brown, Capt., USAR; Professor Mark D. Howe, Col., USAR; Professor Benjamin Kaplan, Lt. Col., AUS; and Vice Dean Livingston Hall, Lt. Col., AUS.

by ECA officials with members of Congress. But considerations of policy frequently tip the scales. Nor can these considerations always be confined to what seems best from the purely administrative point of view. The Marshall Plan depends on wide political support in the United States. Not only must we get an annual appropriation from Congress, but even the authorization of this appropriation must be renewed every year. In passing the Economic Cooperation Act in 1948, the Congress expressly provided that the authorization of funds was "limited to the period of twelve months in order that subsequent Congresses may pass on any subsequent authorizations."

Under these conditions, our interpretations of the law must not be merely what a court would uphold in applying the accepted rules of statutory construction, not merely what seems administratively wise, and not always just what we think a majority of the Congress would consider above criticism. In borderline cases, our interpretations must, so far as possible, be such as will not invite serious criticism even from a minority of the Congress.

(Continued on page four)

Admissions Office Adopts Draft Rule

Students admitted to the Law School next fall who are "unavoidably detained" by military service will have to re-apply when they again become available, the admissions office announced this week. In the past, accepted applicants could register at anytime after discharge.

The law school will attempt to give previously accepted applicants a priority, but this cannot be guaranteed.

The number of applications are flowing quite normally, running about equal to the rate in 1949 but just slightly below the level of last year. Few women are applying. Two have been accepted.

The admission office indicated that the difficult problem concerning the entering class is that approximately 85% of the applicants are "draft-bait," 1-A, 2-A, or unclassified. Very few are veterans, married, or over 26. How many of those accepted will show up on registration day is anyone's guess. There is a probability that more than the usual number will be accepted as compensation for those who will fail to register.

NEWS IN BRIEF

CLASS OF 1951 MEETS

There will be a brief, but important meeting of all third year law students Monday at 2 p.m. in the Courtroom in Langdell Hall. Permanent class organization and possible class functions will be discussed. The temporary class organization committee appointed by Mr. Dimmitt will submit a proposed election procedure plan.

TALKS ON MILITARY LAW

Mr. Warren Farr, LL.B. '30 of Boston, delivered the first of four lectures on military law last Friday afternoon in Langdell North Middle. Basing his lectures on the new uniform military code adopted by Congress to become effective May 31, 1951, his first lecture gave background information on the subject.

To be given at 4:10 p.m. for the next three weeks, he will discuss *Offenses, Non-judicial Punishment and Types of Court Martial; Pre-trial and Trial Procedure; and Sentences and Methods of Review in Army and Civilian Courts.*

FIEDLER SPEAKS

Arthur Fiedler, conductor of the Boston "Pops" Orchestra, will speak to the Law Wives tonight at 8:00 p.m. in the Harkness Commons lounge.

STATE BAR EXAMS

Men planning to take the New York Bar Examination are specifically requested by the Secretary of the School to leave with the Receptionist their application forms for insertion of necessary information by the Law School. New York applicants should take special notice that applications "must be filed at least thirty days and not more than sixty days before the examination." The examinations at the close of the academic year are on July 2 and 3, 1951.

All others who plan to take State bar examinations this spring or summer are reminded by the Secretary that they should write now to the State Board of Law Examinations, requesting necessary application blanks.

NYU ALUMNI

All NYU Alumni at the law and graduate schools are invited to a Party and Dance in the Wheeler Room, Holmes Hall this Saturday at 8:30 p.m. Set-ups provided, punchbowl full of sea-breeze.

FRAENKEL SPEAKS

Mr. Osmond K. Fraenkel will speak Friday afternoon at 4 p.m. in Longdell (Continued on page three)

Dean Griswold Refuses To Ban Harvard Guild

Letter Answers Sears' Demand That Guild Be Disbanded; Calls For Reasoned Approach

"Harvard should not be a sounding board for an organization that is anything but one hundred per cent American in ideals and principles," said Mr. Sears, Massachusetts Bar Ass'n president, in a letter last night renewing his demand that the Lawyers Guild be disbanded. The text of this reply appears on page 2.

Dean Griswold, in a reply to Mr. Samuel Sears, LL.B. '21, had announced that the Law School would not force the Harvard Lawyers Guild to disband since "the local activities of the group do not seem to warrant such drastic action."

38% Of Graduates "Off The Market" Says Dean Toepfer

Placement prospects for the third year students look about twice as good as they have in past years according to Assistant Dean Louis A. Toepfer. Harvard Law School's placement chief told the *RECORD* this week that 97 of the June class have already been placed, while last year at this time only about 45 had jobs.

Since approximately 85 men will go into military service, about 38% of the class of '51 are already off the market. This is especially significant, says Dean Toepfer, because most job-getting takes place in the summer and fall, after students are out of school. This is true because firms hire men when the need for them actually arises, not when they graduate.

"It still takes effort and ingenuity to land a good job, however," cautions Mr. Toepfer. "Job-seeking is life merchandising; the package is often more important than the contents."

Law firm interviewers, like others, are interested in the man's personality as much as his ability, he stressed.

In addition to an increased demand for law graduates, the beginning salaries have risen in most places. The larger New York firms, for example, now start men at \$4,000, rather than \$3,600, as last year, and the government agencies now pay beginners \$3,825. Furthermore, some government agencies are accepting men who have not yet been accepted to the bar.

The greatest demand is for men experienced in federal taxation, but there is also great need for engineers with law degrees.

Mr. Sears, in an earlier letter to the Dean setting off the controversy, demanded that "it is about time Harvard cleaned house and stopped encouraging and playing host to the Communist Party." His attack on the National Lawyers Guild, based on the report of Un-American Activities Committee, termed the Guild "the foremost legal bulwark of the Communist Party." He requested that the Law School "disband the Harvard Lawyers Guild and bar any activities of the Guild on the school premises . . ."

Asserting that he spoke only for himself, he announced that as president of the Massachusetts Bar Association he planned to present the matter at the next Association meeting for action by the members. The demand was occasioned by the scheduled appearance on Friday of Mr. Osmond K. Fraenkel.

Dean Griswold, in answer, reiterated the policy of the University in permitting student groups to invite such speakers as they would.

The text of Dean Griswold's letter follows:

Your letter of March 2, 1951, reached my office late last Saturday morning. I regret that you released it to the papers before I had any opportunity to send you a reply.

The problems you have raised in your letter are very serious ones indeed. I have long given thought to these matters. I am not a member of the National Lawyers Guild, and never have been. I am not in sympathy with many of its actions.

In October, 1946, just after I became (Continued on page three)

B. S. A. Announces Names Of Judges

The Board of Student Advisers has announced the list of judges for the present Drafting Competition.

The Program consists of four problems:

1. The preparation of an estate plan for a resident of Massachusetts, to be judged by: Walter A. Edwards of Edwards & Angell of Providence, Rhode Island, Calvin P. Bartlett of Hill, Barlow, Goodale & Wiswall of Boston and Charles W. Blood of Carter & Blood of Boston.

2. The redrafting of a distributor's contract used by a whiskey distiller with headquarters in Massachusetts, for which the judges are: Harrison F. Lyman, Jr. of Nutter, McClennen & Fish of Boston, Harry S. Streeter of Ropes Gray Best Coolidge & Rugg of Boston, and Roger F. Hooper of Warner, Stackpole, Stetson & Bradlee of Boston.

3. The drafting of a statute to unify the law of Massachusetts on the designation of beneficiaries of life insurance, bank accounts, pension funds, and other obligations of established financial institutions, to be judged by: Mark E. Gallagher, Jr. of Boston, F. M. Dearborn, Jr. of Bingham, Danna & Gould of Boston, and Judge Frank R. Kenison of the Supreme Court of New Hampshire.

4. The drafting of a uniform state statute to cover interstate aspects of workmen's compensation, for which the judges are: Edward L. Schwartz of Peabody, Arnold, Batchelder & Luther of Boston, Professor Paul A. Freund of the Harvard Law School, and Samuel B. Horowitz of Boston.

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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.

Indiscriminate Indictment

"The moving finger points, and having pointed, moves on . . ."

Thus, might the famous lines of Omar Khayyam be rephrased to mirror the taint and fear left in the wake of one of America's dreaded spectres—indiscriminate indictment.

The recent letter by Mr. Sears to Dean Griswold, which was released to the press before an opportunity was given to explain privately the policy followed by the Administration, is, indeed, an unfortunate and regrettable disservice to the school and to the student body. The RECORD is in basic accord with the Dean's scholarly and mature manner of disposing of these allegations. Harvard Law School is proud of its academic tradition based upon the American freedoms of speech and assembly. This institution has always emphasized the exchange of ideas, no matter how controversial or unpopular they may be. To prove the wisdom of this policy one needs only look to the "success" of the Guild at the Law School. Out of an enrollment of 1500 men, only 18 are members of this organization, of whom 13 are third year students.

Any attempt arbitrarily to force the Harvard Law School into a pattern of action within which it can neither traditionally nor conscientiously operate will be earnestly repulsed. Such an attempt will be recognized as but another example of the awesome power and influence of the spectre of indiscriminate indictment.

Off the Record

"PASSING THE BAR"

(With apologies to all, especially to
Alfred Lord Tennyson)

One-half who tried last year!
These next six terms I'll cram;
And may there be no moaning of the bar
When I take my exam.

But such a sigh as indicates relief
Too deep for false "Farewell!"
When he who gave the Faculty such grief
Heads home with his B., LL.

A few brief months' hard toil
And after that the Test!
Three years I'll have spent as the teachers' foil
And luck must do the rest.

For tho' one-half from HLS failed Mass '50 race
And fell below the par,
I hope to see my license face-to-face
When I have passed the bar!

G. J.

"The following predesignate postulates, found in the authorities and statutes cited thereafter, will assist a logical demonstration and solution of the proposition involved." (Judge Morgan, *People v. Palmer's Estate* 25 Colo. App. 450, 451).

How's that again?

Text Of Sear's Reply

(The following is a copy of the letter which Mr. Sears has sent in reply to Dean Griswold's letter published in this issue of the RECORD.)

Thank you for your prompt reply to my letter. I gave the matter of release serious thought and came to the conclusion that matters of this kind need the impact of publicity on both sides and that belated publication of exchanged letters does not receive the attention and consideration they might deserve. I assure you no discourtesy was intended.

At the outset let me assure you that I have no misgivings about your good citizenship and high purpose. I join my fellow alumni in the respect they have for your office and your contributions to the Law School. What I am criticizing and condemning is the green light that the Law School is giving to meetings held under the auspices of an organization which our House of Representatives has branded as the bulwark of the Communist Party in this country. I agree with you that "the question when free speech goes beyond proper limitations is an extraordinarily difficult one to answer," but I do not find that question difficult in the case of the National Lawyers Guild. The report of the Congressional Committee is convincing enough for me; the action of the Board of Governors of the American Bar Association, which we can assume was not taken without due deliberation, is also convincing enough for me. Your statement that the Attorney General has not acted, and that there has been no judicial review does not impress me. I must assume that the findings of fact made by the Congressional Committee were made in good faith and based on reliable information. In declaring that a state of war existed following Pearl Harbor, the President did not wait for an edict from the Attorney General or for judicial review.

The National Lawyers Guild is an association dedicated to the task of undermining our judicial system and making a mockery of our Courts. The Harvard local group is an affiliate of that Guild. The whole set-up is antagonistic to and inconsistent with the great and noble traditions which the alumni of Harvard wish to preserve. In my opinion Harvard should not be a sounding board, in this critical time in our history, for an organization that is anything but one hundred per cent American in its ideals and principles.

I do not suggest that members of the local organization be dismissed from the school. What I do ask is that the school authorities announce that the National Lawyers Guild and any affiliate of it is not compatible with the ideals and purposes of Harvard Law School, and any student insisting upon membership in the organization can go elsewhere. I am inclined to believe that those who go will be no loss to Harvard or to the legal profession.

As I see it, it is not a matter of suppression, which, I agree, is drastic action. Rather, it is a situation which demands that a group of young men, who shortly will begin their careers as lawyers, should be given to understand that men from Harvard are for America, for American decency, and for American justice.

In closing I should like to quote, in part, from Massachusetts General Laws, Chapter 71, section 30:

"The president, professors and tutors of the University at Cambridge . . . shall exert their best endeavors to impress on the minds of . . . youth committed to their care and instruction the principles of piety and justice and a sacred regard for truth, love of their country, humanity and universal benevolence, sobriety, industry and frugality, . . . and those other virtues which are the ornament of human society and the basis upon which a republican constitution is founded; and they shall endeavor to lead their pupils, as their ages and capacities will admit, into a clear understanding of the tendency of the above mentioned virtues to preserve and perfect a republican constitution and secure the blessings of liberty as well as to promote their future happiness, and also to point out to them the evil tendency of the opposite vices."

I suggest that this statutory directive is more pertinent today than ever before in our history, and requires action on the part of the school in the situation confronting it.

CAN YOU BEAT IT?

A contractor appealed a decision against him for the moving of a fully furnished dwelling. The misadventure consisted in a futile attempt to raise the structure with only three moving jacks. The late E. D. Armour, K. C., of the Toronto Bar, upon opening, was asked by the late Chief Justice Moss what the appeal was about. Mr. Armour tersely said that the trouble arose over an attempt to raise a full house with three jacks. (*The Advocate*, Vancouver Bar Association).

Latest and most topical reaction to the World Tree comes from Dean Erwin N. Griswold: "It should make a good defense against an attack by paratroopers."

Gallery

GUY GABRIELSON
Republican National Chairman



In an office forty-five stories above Wall Street, the swivel chair of Guy George Gabrielson, corporation lawyer, business executive, and Republican National Committee chairman, is flanked by autographed photographs of Oscar of the Waldorf and Herbert Hoover, among others, and is confronted by two miniature elephants, one a belligerent-looking bronze tusk, the other a Dumbo-like stuffed cloth caricature.

Though nominally a man with three positions, since his appointment as chairman of the Republican National Committee in August, 1949, Mr. Gabrielson has devoted himself almost solely to the destinies of the G.O.P. He spends perhaps five days out of every week at his suite in the Mayflower Hotel, Washington, and if he can appear on Wall Street one day a week he considers himself fortunate. His success in business and in law is uncontested; how well he has been manipulating political affairs will not be known until late in the evening of the second Tuesday of November 1952. After that, rain or shine, Mr. Gabrielson plans to return to full-time practice of business and law, activities for which, unlike the chairmanship of the Republican Party, he is paid.

As is usually the rule with "politician's politicians", many years of experience as a businessman and as a legislator provided the apprenticeship for his present position. A native of Sioux Rapids, Iowa, he graduated from the University of Iowa in 1914, and from the Harvard Law School in 1917. Mr. Gabrielson's post-graduation activity is now being mirrored by the HLS class of 1951; he entered the AEF in 1917 as a private and was discharged with the rank of second lieutenant in 1918.

Member of New Jersey Legislature

Going east following his discharge, Mr. Gabrielson passed the New Jersey Bar exam in 1919 and opened a law office in East Orange, near Newark. After seven years of practice, he was elected to the New Jersey House of Assembly on the Republican ticket, for four successive one-year terms. Mr. Gabrielson began to attract attention when, after being elected majority leader by his Republican colleagues in his third term (1928-29), he participated in an investigation of the Newark Clearing House Association, and he introduced a bill creating "a commission to study the relation between Rutgers University as an official State University and the State." Rutgers University was later to be almost entirely taken over by the State.

In the era of "a chicken in every pot and two cars in every garage" Mr. Gabrielson energetically devoted much of his time to business, both as counsel and executive. Wealthy by the early 1930's, he was able to guarantee full payment to depositors, at a cost of over \$170,000 to himself, when a small national bank in the Corn Belt, owned by his father, failed. Since 1930 he has been a director of corporations in the mining, oil, seed and fertilizer, rug and manufacturing industries. He became president of Carthage Hydrocol, Inc. in 1946, a company which manufactures gasoline from natural gas. Carthage Hydrocol, Inc. is financed at \$41,000,000, \$18,500,000 of which was granted by the RFC.

Rapid Rise in GOP

Mr. Gabrielson took on the first job in the line which led to the chairmanship of the Republican Party in 1936, when he became chairman of the New Jersey Republican State campaign. Four years later, as chairman of the New Jersey campaign committee, he supported Wendell Willkie. In 1944 he became a member of the Republican National Committee. Not a delegate to the 1948 convention, Gabrielson was known as a Taft man, and in 1949, after Dewey's second defeat, he became National Chairman, with the backing of two previous incumbents, Carroll Reece and Harrison Spangler.

Incident to his party work, Mr. Gabrielson participated in the organization of the Young Republican groups, the local branch of which is

Sub Judice

ALL'S WELL THAT ENDS WELL

Stella Grant was divorced from her husband Frank in 1931. The decree ordered Frank to pay ten dollars a week for the support of their three young children. Frank paid very little of this and spent a total of 78 days in the county jail as a result of various contempt proceedings from 1931 to 1944. He never visited his children and (except for the fact that he was their natural father) was almost a complete stranger to them.

In 1933 Stella married Joseph Kwasmieski. He was an ideal husband and father. Except for a nominal amount which he kept for spending money, he turned over his entire weekly police officer's salary to his wife. He treated the children as his own, supporting them, taking them to ball games, picnics and outings and over-indulging them with numerous gifts.

In 1943 one of the children enlisted in the U. S. Army and died in service on March 25, 1944. His \$10,000 life insurance was payable in 120 monthly installments to his mother as principal beneficiary and his step-father as contingent beneficiary. The mother died six months later.

For some time prior to her death, she developed a habit of drinking to excess, frequenting bars, and consorting with other men. One night Joseph received an anonymous telephone call to the effect that he could find his wife in a certain bar. He went to the bar and saw his wife leaving with two men in an automobile. He followed them to a house in the neighborhood. After waiting a while for the three to come out, he walked around the side of the house and peered through a window. He saw his wife in a compromising position with one of the men, whereupon he crashed through the screen, pulled out his gun, which he always carried with him as a police officer, and fired several shots. His wife died from the bullet wounds. His defense at the murder trial was temporary insanity on which he was acquitted.

Since he was named as contingent beneficiary in his step-son's insurance policy Joseph informed the Veterans Administration that he was willing to assign all his rights, title, and interest in the insurance proceeds to his two remaining children, sisters of the insured. However, Frank Grant, the long lost natural father, appeared and demanding the proceeds claiming that the step-father forfeited all of his rights under the insurance policy because he took the life of the principal beneficiary. He claims that, when none of the other named beneficiaries are capable of taking, the statute gives the proceeds to "the parent or parents of the insured" who last bore that relationship.

The United States brought an action in the nature of a bill of interpleader, asking the court to determine the rights of the adverse claimants.

Held: 1. The step-father has no claim as contingent beneficiary because he took the life of the primary beneficiary (the fact that he is willing to assign his interest to the sisters of the insured is of no significance). 2. The natural father has no claim under the statute to the insurance proceeds because he was not the parent "who last bore that relationship." 3. Since no "parent" is eligible, the proceeds go to the sisters of the insured.

Koscinski, District Judge:

"It is a fundamental rule of common law that no man shall be permitted to profit by his own wrongful act. . . . Although murder by an insane person is an exception to the rule against permitting recovery of benefits to a person who kills another and to whom such benefits would accrue only upon the death of the victim, there appears to be no authority for exempting from the operation of the rule a case involving a killing during temporary insanity, induced by emotional disturbance. . . . At the time of the killing, although he was under a mental and emotional strain caused by the misconduct of his wife, he was not an insane person." *U. S. v. Kwasmieski*, 91 F. Supp. 847 (E. D. Mich., June, 1950).

the Harvard Young Republicans. "When I went to Harvard, while there was much interest in politics, there were no specially organized political groups at the school. One of the faults of my generation is that we have not taken the time or exerted the effort to properly educate our children in their responsibilities as American citizens."

Mr. Gabrielson believes that Young Republicans (and even Young Democrats), whether or not residents and voters of the area in which they campaign, should feel free to discuss and participate in the molding of public opinion on local issues. "The function of political parties is to educate; as long as that is being done, no matter by which side, the future of our democratic way of life is being strengthened."

BERNARD BERNSTEIN, LL

Alumni Notes

INDIANA H. L. S. A.

The annual meeting of the Harvard Law School Association of Indiana was held in conjunction with the mid-winter meeting of the Indiana State Bar Association recently in Indianapolis. Thirty-six members from all parts of Indiana attended.

William Cullen Dennis, '01, of Richmond, the vice president of the Association, presided at the luncheon. Among the guests were Judge James A. Emmert, '23, of the Indiana Supreme Court, Richard P. Tinkham, '28, of Hammond, president of the Indiana State Bar Association, Roger D. Branigan, '26, of Lafayette, president-elect of the Bar Association, Robert D. Coleman, '24, of Indianapolis, secretary of the Bar Association, and Harold H. Bredell, '32, of Indianapolis, treasurer of the American Bar Association.

The following officers were elected: president, Gustav H. Dongus, '35, Indianapolis; vice president, Joseph A. Bruggeman, '31, Fort Wayne; secretary, John G. Rauch, Jr., '41, Indianapolis; assistant secretary, Robert S. Ashby, '41, Indianapolis; treasurer, Robert S. Justice, '43, Logansport; and assistant treasurer, Carter B. Tharp, '42, Indianapolis.

LL.B. '26 — Keith Kane, wartime special assistant to the Secretary of the Navy and recent special advisor to Presi-

dent James B. Conant, has been elected a Fellow of Harvard College.

LL.B. '34 — Stuart T. Saunders, assistant general counsel of the Norfolk and Western Railway, has been elected the new president of the Virginia State Bar.

LL.B. '37 — Bertram H. Loewenberg will deliver the lecture on Business Organizations, one of a series of six lectures sponsored by the Massachusetts Joint Committee on Legal Education of the Bar. The Joint Committee includes representatives of eight Bar Associations and the American Law Institute. The lecture will be given on March 12, 1951 at the Suffolk Law School Auditorium in Boston.

Mr. Loewenberg is a partner in the Boston law firm of Sherburne, Powers & Needham and has been teaching Corporation Law at Northeastern University School of Law since 1947.

LL.B. '41 — Irving Ronald Storch has removed his office to 131 West 30th Street, New York.

LL.B. '40 — Eugene J. Beneduce former labor mediator and arbitrator for the New York State Board of Mediation, has returned to his offices at 140 Cedar Street, New York, where he will continue to act as an arbitrator and labor relations consultant.

LL.B. '47 — Sander L. Johnson has been elected president of the Los Angeles Council of Young Democrats at the organization's annual election meeting to succeed Henry P. Lopez, LL.B. '48.

LL.B. '49 — Felix H. Kent, former special representative with the United Nations International Refugee Organization in Frankfurt, Germany, is now working for the Legal Department of the Columbia Broadcasting System in New York.

LL.B. '50 — David S. Wine was recently elected a County Supervisor of the second largest county in the state of Arizona. As a member of the three man board, Mr. Wine will have responsibility for all county matters, including roads, schools, welfare, and health facilities.

GUILD—(Continued)

dean, I made a speech to our graduates at a meeting of the American Bar Association at Atlantic City, in which I said:

"I am a conservative. When I cannot find something better to do, I am likely to vote the Republican ticket. My instincts are cautious."

I am still cautious. I believe that the problems you have raised must be approached with care. It is easy in this area to do far more harm than good by hasty or ill-considered action.

The organization which you have questioned consists of a small group of students who are affiliated with the National Lawyers Guild. The Harvard Law School has not had any part in planning the programs of this group or in inviting its speakers. Within rather broad limits, the Faculty has always allowed groups of students to bring in speakers whom they wish to hear.

In my speech five years ago, I went on to say:

"I believe in free speech; in free press; in academic freedom, and in the free commerce of ideas. Many of the ideas are no good, but ideas are elusive things and the only way to evaluate them is to set them free to see how they stand up in the midst of controversy."

I feel that it is of great importance that the fullest information should always be available to students and others with respect to organizations bringing programs to them. The report of the Committee on Un-American Activities in September, 1950, was widely printed in the newspapers, and I think our students generally are familiar with it.

The question when free speech goes beyond proper limitations is an extraordinarily difficult one to answer. You would have us act to suppress the local organization, by refusing to allow it to use Law School rooms for its speakers, and, as I read your letter, by dismissing its members from the School.

Suppressing an organization is a very serious step to take. The local activities of this group of students do not seem to warrant such drastic action. The report of the Committee on Un-American Activities raises questions to which we have been giving serious consideration here. But we do not feel that we should suppress this local group because that Committee, without notice or hearing, has issued a report attacking the national organization with which the student group is affiliated. The United States Attorney General, with the resources of the Federal Bureau of Investigation at his disposal, has not seen fit to list the National Lawyers Guild as a subversive organization.

Moreover, there now exists a procedure, under the McCarran Act, to determine and publicize the subversive character of organizations. This is intended to establish a public and orderly method for taking such action. This procedure calls for an investigation by the Attorney General, with conclusions to be reached by an impartial commission after a full hearing, and with a right to a judicial review.

On the basis of our knowledge of the activities of the local group, and in the absence of any official action under the McCarran Act against the National Lawyers Guild itself, we have felt that it would be an improper interference with the legitimate freedom of our students to take any action towards suppressing this group at the Law School.

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Congressmen Differ About Prospects Of Parties' Realigning At Forum Talk

Agreeing that the topic for the evening the *Realignment of Political Parties* was important, the three speakers at the Harvard Law School Forum last Friday night, Senator William Langer (Rep., N. D.) and Representatives Jacob Javits (Rep., N. Y.) and A. Clayton Powell, Jr. (Dem., N. Y.), found hardly any other common meeting ground.

Speaking first, Representative Javits pointed to the recent election of "modern Republicans" as evidence of the "golden opportunity" within the Republican Party today for control by the liberal wing. In such hands, the Republican Party, he said, could proceed with a program that would enact much of the needed legislation of the day.

He despaired of the Democrats ever passing the Civil Rights Program and insisted that only the Republican Party could assure its passage.

Senator Langer had no such optimism about the Republican Party's future. He roundly denounced the failure of the Republican controlled "Eightieth Congress" to live up to any of its campaign pledges. His disillusionment was not confined, however, to the Republican Party alone, the Democrats being equally guilty according to the North Dakota Republican.

Senator Langer could see only a coalition of independents within an organization such as the "Non-Partisan League" as the means of protecting the "poor people" and realizing their wishes.

Representative Powell also dismissed the two major parties as controlled by "senility alone." The need of the people for leadership that would provide a

political philosophy not revolving solely about anti-communism has been cursed with the "blight of mediocrity" he said.

Neither could Rep. Powell find anything to praise in the bi-partisan foreign policy. He accused it of being tied inextricably with a "Jim Crow domestic policy." However, unlike Senator Langer, he could not at present envision a means whereby a broad base could be found to form the necessary instrument of political power.

NEWS BRIEFS—(Continued)

South in the second of the Harvard Lawyers Guild series. His topic will be *Searches and Seizures*.

SIGN BACK ON

Vice Dean Livingston Hall announced yesterday that men who have cancelled their agreement to eat meals at the Harkness Commons dining hall may now sign back on. This decision to allow men who once signed off to return to the weekly rate was necessitated by the decline in the number using the dining facilities.

Students desiring to sign for the term may do so by seeing Mr. Dennis in the Harkness Commons. An effort is being made to increase the number using the dining hall in order to increase the volume thereby holding down possible cost increases.

DALTON-ELCOCK BAR REVIEW

The next Massachusetts Bar Examination will be held July 10 and 11, 1951. The Dalton-Elcock Bar Review, preparing candidates for this examination, will be held at The Republican Club, 46 Beacon Street, Boston, Massachusetts, beginning June 1 and ending July 6. Classes will be held Monday through Friday from 9 A.M. to 12 Noon and from 1 P.M. to 3 P.M.

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DEVELOPMENT IN THE LAW THE TAFT-HARTLEY ACT

In an exhaustive study of the effect of this hotly debated legislation, the Editorial Board of the Law Review has sought an objective analysis of the extent to which Taft-Hartley has fulfilled the hopes of its sponsors and justified the fears of its critics. This 70 page project examines every significant change made by Taft-Hartley and gathers together all the most recent decisions by the courts and the NLRB. The Development focuses upon the effect of Taft-Hartley on NLRB administrative practices, the effect on union organizing activities, and the effect on the negotiation and administration of collective bargaining contracts. This work is a "must" for student and lawyer alike.

Single copies of the March issue: \$1.00

HARVARD LAW REVIEW

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Calendar

UNIVERSITY WORLD Near Eastern Studies Lecture

Aziz S. Atiya, Professor of Medieval History, Farouq I University, Alexandria, will speak on *New Orientations in Crusading History* in Junior Common Room, Kirkland House at 8 p.m. on Wednesday.

Discuss U. S. Higher Education

The fourth in a series of six discussions on higher education in the United States will be led by Dean Francis M. Rogers of the Graduate School of Arts and Sciences on Tuesday evening, 8-9:30 p.m. at Phillips Brooks House. The two subjects to be discussed will be: *Professional Training in American Colleges and Universities*, and *The University Library in the United States*. All foreign students are especially invited. There is no charge.

OUTSIDE WORLD

Lowell Institute Broadcasts

America at the Crossroads: How Must Communism Change if the World is to Live at Peace? will be the subject under discussion sponsored by the Lowell Institute on Friday evening, 10 p.m. over WEEL.

Gardner Museum Concert

The Northeastern Conservatory Chorus will be heard at 2 p.m., Sunday, at the Isabella Stewart Gardner Museum, 280 The Fenway, Boston. Admission is free.

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ECA—(Continued)

One of the most colorful aspects of our legal work is provided by the information program. I do not know of any other Federal Government agency which is expressly authorized by the Congress to engage in "publicity." There is a general statutory prohibition, 5 U.S.C. 54, to the effect that "no money appropriated by any act shall be used for the compensation of any publicity expert unless specifically appropriated for that purpose."

In the case of ECA's operations in Europe, however, the Congress has expressly directed us to utilize such amounts of local currency, available for administrative expenses, "as may be necessary, to give full and continuous publicity through the press, radio, and all other available media, so as to inform the peoples of the participating countries regarding the assistance, including its purpose, source, and character, furnished by the American taxpayer."

Counterpart Funds

Perhaps our most difficult problems from the technical point of view involve the proper use of what we call "5% counterpart funds." Congress provided that whenever a Marshall Plan country receives a grant of aid, it must deposit an equivalent amount of its own currency into a special fund. Ninety-five per cent of this may be released from time to time by agreement between the ECA and the Government of the country for purposes of promoting the country's economic recovery. The remaining 5% is to be used for administrative requirements and "other local currency, requirements of the United States," including the information expenditures mentioned above. It is not easy to determine what is a proper administrative expenditure incident to operations under the Act. The General Counsel's Office has become more or less the watch dog of this 5% fund.

We have most of the routine administrative problems of a U. S. Government agency, often with added complexities due to the application of foreign law. Leases of office space and, in some countries, of residence quarters for ECA personnel have involved us in the real estate law of several countries. We sometimes find we are getting beyond our depth and have to retain local counsel.

Purchase of Materials

The use of the 5% fund for the purchase of materials of which the U. S. supply is deficient presents many interesting problems. So far, these purchases

have all been for the stock pile which is being built up in the United States under the Strategic and Critical Materials Stock Piling Act, as amended, 50 U.S.C. 98.

When we make spot purchases of materials already in existence, the contracts are fairly simple. But most of them involve advances to finance the development of mining, milling or refining projects, for which repayment is to be made in the form of strategic materials for the stock pile. These contracts raise the usual problems involved in complicated loan transactions, including questions of authority to contract, security, requirements of regulatory authorities, and default provisions. In addition, they raise a number of special problems involving exchange rate provisions where two or more currencies are involved, pricing provisions sometimes extending over a period of many years, and terms governing the servicing of the contracts after ECA ceases to exist. Here again, we have frequently found it necessary to consult local counsel.

Restraints On Competition

One question to which the General Counsel's office has given considerable attention is what can and should the ECA do about cartels and other restrictive business practices in Europe? To many lawyers and business men who are brought up in the tradition of the American anti-trust laws, it comes as somewhat of a shock to learn that such laws are virtually non-existent in Europe. Restraints on competition, such as price fixing, division of markets, production quotas, and arrangements to keep newcomers out of business are not only tolerated as being legal: they are often actively encouraged by governments. The idea that there is anything unethical about such practices hardly ever occurs to a European.

It would be interesting to know how much the absence of anti-trust laws in Europe contribute to the discrepancy between industrial productivity in Europe and in the United States. Output per man-hour is roughly three times as great in the United States as in the Marshall Plan countries. Statistically it cannot be proved, but it seems highly likely, that one of the major reasons for this discrepancy is the fact that cartel practices of one kind or another shield European business enterprises from competition so that they do not have compelling incentives to modernize their plants, revamp their assembly lines, and look for big low cost markets rather than small high cost protected markets.

It isn't ECA's job to reform the business ethics of Europe. It's interest in cartels and related restrictive business practices is based simply on a belief that, for the reasons I have just mentioned, they offer a substantial obstacle to complete economic recovery. The Congress has recognized this by specifying, among the means to be used in achieving the purposes of the Economic Cooperation Act, "promoting industrial and agricultural production, increased productivity, maximum employment, and freedom from restrictive business practices in the participating countries."

Coordination of Activities

Substantively, our problems are new because the Marshall Plan itself is unprecedented. Administratively our set-up is also unique. Traditionally, United States civilian missions abroad, whether regular diplomatic Missions or Missions set up by temporary agencies like those of Lend-Lease and the Board of Economic Warfare during the War, have reported directly to and received their instructions from the head office in Washington. In the case of the ECA, however, the ECA Missions to the Marshall Plan countries have their activities "coordinated," to use the terminology of the statute, by the United States Special Representative in Europe. His office, which is generally known as the "OSR," operates as a sort of theatre command for all the European operations of ECA.

As far as legal problems are concerned, our office in Paris handles the legal work of each of the ECA Missions except two or three which have lawyers working

closely with us. On any question of interpreting United States law, the General Counsel's office in Washington must, of course, have the last word—the last word, that is, as far as ECA is concerned. Occasionally it is necessary to get a ruling from the Office of the Comptroller General, the Department of Justice or the State Department. So far, as indicated above, we have had no court decisions.

Work of the General Counsel

The General Counsel's office of the Office of the Special Representative got off to a flying start under my predecessor, Professor Katz of the Law School, now Ambassador Katz, United States Special Representative in Europe and, as such, director of OSR. Much of the interest of the work is due to the central position which the Office of the General Counsel automatically assumed when he headed it.

The definitive piece of paper with a signature on it which determines the taking of action by the Office of the Special Representative is nearly always a cable to one of our Missions instructing it to pursue a particular course. These cables are cleared before dispatch with the interested Divisions in the OSR.

Often it is doubtful whether a strictly legal problem is involved, but the opinion of our office is nevertheless desired. In all these cases we have tried to stick by one fundamental rule: if the cable is going to take a negative position discouraging a proposed course of action, and this position could be based either on policy rounds or on legal grounds, we insist that it be based on the policy aspects of the problem. There is sometimes a tendency to try to get the lawyers to say that something cannot be done legally so as to avoid an argument on the policy. We have resisted this

strenuously for a very simple reason: if a negative decision is based on policy grounds, it is relatively easy to follow a different course the next time the question comes up. Once the position has been taken that something is illegal, however, we may wish we had reached an opposite conclusion when the question comes up again under slightly different circumstances.

ECA and Korea

The developments in Korea and the consequent acceleration of rearmament in Europe have naturally given an increasingly military rather than economic emphasis to U. S. aid to Europe. As this is written, we have a distinct Mutual Defense Assistance Program for military aid to our partners in the North Atlantic Treaty and also to Greece and Turkey. This is administered by the State Department and, as regards the North Atlantic Treaty, U. S. headquarters are in London under the U. S. Deputy, Ambassador Charles M. Spofford.

The distinction between straight economic assistance and assistance to build up the economy for defense purposes—such as building plants for armament production—is fast becoming increasingly obscure. The current legislative program in the U. S. Congress will inevitably involve a re-examination of the respective roles of ECA and our program for military assistance. By the time this is published, the fate of ECA for the remainder of its scheduled life (through June 30, 1952) will, I hope, be a good deal clearer than it is at the time of writing.

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