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Ames Tribunal Gives Decision For Griswold

"Reversed and remanded" was the disposition of the case of *Brumbaugh v. Aircraft Pictures, Inc.* by the Supreme Court of the Commonwealth of Ames Monday night. The case was heard by a capacity audience in the James Barr Ames Courtroom.

The decision to send the case to a new trial in the Law School's annual model appeal was based on three grounds. The opinion stated by Calvert Magruder LL.B. '16, Chief Judge of the United States Court of Appeals for the First Circuit, who presided, ended the moot litigation.

Judge Magruder said that the advertisement published by Aircraft did constitute an offer for a unilateral contract capable of acceptance, sustaining the ruling of the lower court in favor of Brumbaugh, plaintiff-appellant.

Further, concerning an illusory scene dangerous in appearance but not in fact, the court held that it was a mistake to exclude the factual question from the jury.

Third, the court discussed the question of whether the offer could be revoked under the circumstances of this case. There was doubt about whether Brumbaugh had adequate proof available on an initial telephone call to Aircraft, in which the firm's public relations director, told him that the offer was revoked. Judge Magruder declared that since Brumbaugh had a willing witness available at the time, the offer might not then have been withdrawn.

Wrote Brief

Dean Erwin N. Griswold argued the case for the appellant, with Sander M. Levin, 3L of Detroit, and Harry D. Martin, 3L of Pittsburgh, as counsel on the brief. Professor Henry M. Hart, Jr., was the appellee's attorney; counsel on the brief were Norman Hyman, 3L of Detroit, and Robert P. Moncreiff, 3L of Kentworth, Ill. Visiting Professor Herbert L. A. Hart and Alfred Gardner, LL.B. '22, of the Boston Bar sat with Judge Magruder on the tribunal.

Dean Griswold, mixing quips with his answers to pointed questions by the court, defended the trial court's ruling that the offer constituted an offer to contract, attacked the instruction that the defendant had a right to revoke after receiving part performance, and stated that the court erred in instructing that "daring" meant daring in fact.

Legal Talent Short In Business Fields

According to Sidney Rabb, chairman of the board of Stop and Shop, Inc., many businessmen in the 1930's bemoaned the oversupply of lawyers. Speaking at the Bull and Bear Club's meeting last Friday, he added that this situation has now changed radically, as he outlined the reasons why many executives have voiced a need for more legal talent in industry.

Mr. Rabb advanced two reasons for the increased need. First, business is more complex today, as illustrated by the problems of labor relations, the ever-growing circle of regulatory power, the increasing decentralization of industry. Second, he said, legal training is an excellent background for business.

The next meeting of the club is scheduled for the evening of December 7th, with a cocktail party to follow. Louis Gilbert and Wilma Soss, the famous "professional stockholders" will be the speakers. While the public is invited to the meeting, the cocktail party will be restricted to members of the club.



Erwin N. Griswold

Election Contest

Final tabulations of the Record's election contest show that no entry forecast the exact result. Alfred E. Lawson, 3L of Pittsburgh, came closest to estimating the vote by percentage when he predicted that President Eisenhower would receive 57 per cent. Actually, the General received about 57.7 per cent of the popular vote, on the basis of unofficial returns.

In the electoral tally, the closest forecast was that of Bruce L. Balch, 3L of Joliet, Ill., who predicted that the President would be re-elected with 426 electoral votes. Mr. Eisenhower won 457 electoral votes while Adlai E. Stevenson obtained 74 votes.

New Antitrust Plans for '57 Discussed Before N. Y. Bar

Speaking recently before the Association of the Bar of the City of New York, Assistant Attorney General Victor R. Hansen discussed three legislative changes in the antitrust field which the Department of Justice plans to recommend to the next session of Congress.

The major proposals outlined by Mr. Hansen were (1) pre-merger notification, (2) amending Section 7 of the Clayton Act to cover acquisitions of bank assets as well as stocks and (3) empowering the Attorney General to issue a civil investigative demand compelling production of documents by corporations, partnerships, and associations (but not individuals) during the investigative or pre-complaint stage of civil proceedings without having to invoke grand jury proceedings. These revisions of antitrust legislation were recommended in the President's January 1956 Economic Report to Congress, pp. 78-79.

Pre-merger notification, according to Mr. Hansen, would ease substantially the investigative burden since no longer would the staff of the Antitrust Division be required to scan in the same manner

the variety of financial periodicals reporting mergers and acquisitions. And more important, such a procedure would bring to the attention of the Antitrust Division many mergers not presently publicized in advance of consummation.

Mr. Hansen believes that pre-merger notification will benefit the business community as well. Lawyers representing merging companies have stated that business plans are least disrupted when Department action is taken before merger completion. Finally, Mr. Hansen appeared convinced that notification before merger would systematize the process by which mergers are sifted and thus enable more prompt action if it is merited.

Lack of Understanding

He attributes the lack of widespread support for this proposal among the business community to its not being fully understood. This state of affairs is due principally to the misleading description given its legislative embodiment, H. R. 9424, by a survey sent out to 500 industrial corporations. This poll mistakenly interpreted the bill as providing, in addition, for pre-merger approval—a stipulation opposed by the Justice Department. (See HANSEN on page three)

Must Warn Sheep Before Atom Tests

A shepherd may recover damages from the Government under the Federal Tort Claims Act when his flock is harmed by fallout from nuclear tests of which he has not been warned, according to a decision of the United States District Court for the District of Utah rendered on October 26.

The Tort Claims Act, 28 U.S.C. § 2674 et seq., imposes liability on the United States for the torts of its agents and employees. Among those excepted is "any claim . . . based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused." 28 U.S.C. § 2680 (a).

No Warning

The plaintiff, who herds sheep, claimed that the Atomic Energy Commission had failed to warn herders of the danger. Although denying recovery in this case because the plaintiff failed to prove that the harm actually was caused by radioactive fallout, Judge A. Sherman Christenson intimated that otherwise the plaintiff might have prevailed.

"[It] was not disputed by counsel for the government," he wrote, "that its responsibility was to so conduct the tests as not to intentionally, wantonly, or negligently endanger human lives or private property. Certainly, there was no evidence from which it might be inferred that to do so was within the discretion vested in any officer or agent of the United States." *Bullock v. United States*, 25 U.S. Law Week 2209.

Responsibility Cited As Key To Brandeis' Way of Life

"The distinctive quality of Brandeis is that with immense resourcefulness he found ways to build our ancient ideals into the structure of twentieth-century America," Professor Paul A. Freund declared last week. Professor Freund, who served as law clerk to the late jurist after receiving his S.J.D. here in 1932, delivered a Centennial Memoir on Justice Louis D. Brandeis at Sanders Theater, Memorial Hall.



Louis D. Brandeis

Professor Freund divided the lecture into three sections. The first dealt with a gift of substantial segments of his library to the University of Louisville, his native city, in the nineteen-twenties; the second, with the issue of responsibility, and the third with his judicial life.

"There was in Brandeis a deep sense of attachment to the small community, more a rationally held obligation than an emotional bond," the speaker said. He then told of the means the justice took to affirm his Kentucky origins in his later years.

Justice Brandeis presented a series of gifts to the library of the University of Louisville between 1924 and 1929. Professor Freund used contemporary documents which passed between Brandeis and the members of the family then living in Kentucky to show the meaning and feelings which the Justice put into his gift.

Professor Freund then delved into the roots of the Brandeis philosophy, and found it to be based on the issue of responsibility. He spoke of the interwoven themes of the diffusion of responsibility, the assumption of responsibility, and identification of responsibility.

Size and Efficiency

"It is impossible to speak of diffusion of responsibility without coming to grips with 'the curse of bigness,'" Professor Freund said. "It has been charged against Brandeis that he undervalued the blessings of efficiency."

The lecturer's answer was three-fold: that he was no scorn of efficiency, that he was concerned with preserving the values of size while minimizing its vices, and "even if the correlation of size and efficiency were clearer than it is, the price in many realms would be too great."

On assumption of responsibility, Professor Freund emphasized the Justice's belief in the opportunity to serve one's community and fellow men, the actual duty of taking part in public affairs.

Mr. Brandeis was not troubled by philosophic doubts about human responsibility, the speaker said, but employed a robust common sense toward the subject. His standards of assessing praise and blame were examined by Professor Freund in connection with the identification of responsibility.

"Many of his opinions were labors of (See BRANDEIS on page four)

Brandeis Material In Treasure Room

The Treasure Room of the Law Library is commemorating the centennial of the birth of Justice Louis D. Brandeis with an exhibit of seven display cases of material.

The display includes thirteen of his well-known opinions, material from his days at the Law School, and a number of tributes, including one from President Woodrow Wilson. In addition, four memorandum notes from Justice Brandeis to Justice Oliver Wendell Holmes and one of the medals struck by the United States mint in honor of the Centennial are featured.

Most of Mr. Brandeis' published writings are on display. Perhaps the highlight of the exhibit is the famous "Brandeis Brief," submitted in the case of *Muller v. Oregon*, 208 U.S. 412 (1908).

The case in the south colonnade of the reading room contains further material on Justice Brandeis, including student notes taken from his course in Evidence in 1882.

Different Outlooks Underlie Views on Educational Ills

"Under our educational systems of today, William Pitt would still be in law school," Chuter Ede, former Home Secretary and co-author of the British Education Act of 1944, declared at the Law School Forum on "Education for the Future" last Friday evening. Calling for "the encouragement of individuality" by teachers, Mr. Ede said this should be done by relating education to the student's own capacities and the life he will lead.

Mr. Ede contended that aptitude tests could help children realize their potential and their capacity for complete and useful lives. He concluded that British education will probably be concerned during the next forty years with "spirit" rather than "formality."

Professor Howard Mumford Jones of Harvard took a more pessimistic outlook, "for any improvement then becomes encouraging." The thrust of his argument was that the world is changing so rapidly it is impossible for educators to know for what future their charges should be educated. He decried the inertia of society, which he summed up in the phrase "What was good enough for the father is good enough for the child."

Specifically, Professor Jones cited the

military draft as a factor which adversely affects the psychology of many people planning their education. He also noted the increased emphasis on vocational education. In addition, he felt that the increasing dependency of educational systems upon politicians and taxes would have debilitating influences. Mr. Jones declared that "mass education will result in real education for no one."

Professor Jones said that we are producing practical minded rather than theoretically minded persons, stressing leadership and sacrificing individuality of purpose and accomplishment. Viewing the situation as a whole, he concluded that "The best we can do is hang on and wait for the 'breaks.'"

Nancy H. Goldring Dies in Auto Crash

Nancy H. Goldring, LL.B. '56, was fatally injured last Friday evening in an automobile accident in New York City. A taxicab collided with the car in which Miss Goldring was riding at Ninety-sixth Street and Central Park West. She died shortly thereafter in a hospital.

Miss Goldring, who was 24 years old, was the daughter of Dr. William Goldring, associate professor of medicine at New York University. She was graduated from Radcliffe College *summa cum laude* in 1953.

While at the Law School, Miss Goldring was a member of the Board of Student Advisers and an editor of the *Harvard Law Review* for Volume 69. Since graduation, she had been law clerk to Judge Lawrence E. Walsh of the United States District Court for the Southern District of New York.

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Specialization

The first half of the Twentieth Century has been described as history in a hurry. In his illuminating work, *Adventures of Ideas*, Alfred North Whitehead has written: "The point is that in the past the time span of important change was considerably longer than that of a single human life. Thus mankind was trained [by the intellectual heritage from Plato down to the end of the past century] to adapt itself to fixed conditions. Today this time span is considerably shorter than that of human life, and accordingly our training must prepare individuals to face a novelty of conditions."

Conversely, non-recognition of this truism has been evidenced by man's resistance in facing up to the problems which radical change has imposed on society. Customary methods appear safe because they have been tried and tested.

This desire for certainty and rigidity, fear of change and the consequence which change might entail coupled with lack of knowledge of what can be done and lack of adequate machinery to do it comprise the professional apathy of the legal profession so bluntly described by Chief Justice Arthur T. Vanderbilt and others. The growing role of laymen in the initiation of reform programs dealing with judicial administration is only one example of this professional lethargy.

The growth of big business, big government and big labor, reflected in the multiplication of statutes, court decisions, establishment of administrative tribunals and the development of an unprecedented claim consciousness have extended and immensely complicated the area for the lawyer's work.

Slow Response

Division of labor within the profession to deal with these new fields came slowly. James W. Hurst has written that "... in 1940 the bar was organized just about as it was in 1840" and that "it was still a profession of highly individualistic practitioners." (*The Growth of American Law*.)

This reluctance paved the way for quasi-professionals specializing in tax and labor law and the accounting and other problems involved to do the work as well as lawyers and at a lower cost. Only when the lucrative nature of the business was demonstrated did the Bar become interested and only then did the unauthorized practice of law (in such fields as taxation, real estate and trusts) become an actively publicized issue.

Specialization in specific areas of the law came fast after 1940, though not fast enough in the opinion of some who point out that in New York City, the alleged capital of law factories, 70 per cent of practicing lawyers are solo-practitioners, mostly of the general kind.

The need for specialization is rarely challenged. The public demands specialized services and will not long tolerate having the specific task at hand done in an experimental and costly manner. Division of labor resulting in an improved product at a lower cost operates as well in the legal profession as in manufacturing.

The words uttered in 1941 by Walter T. Fisher of the Chicago Bar, are still true today:

"In the long run, lawyers must rely on the effectiveness of their own methods rather than on the negative approach of punishing violations of ethical rules and rules defining unauthorized practice." The lack of demand which made difficult the publication in 1940 of Dean Erwin N. Griswold's casebook on Federal Taxation cannot be allowed to persist even in a less acute form. As late as 1955 the Dean remarked that lawyers in the field of taxation "are still open to the charge that they are Johnny Come Lately..."

The Bar's attitude has not only hurt its volume of business but has resulted in a distinct disservice to the public and also to efficient judicial administration. Many judges believe that congestion in the courts would be cut considerably if only competent lawyers were practicing before them.

Supervision Needed

But as in other fields of human endeavor, an adaptation to a need usually breeds new problems. Specialization often produces narrow and inlooking lawyers who cannot see the woods for the trees. This result necessarily affects his personal self-development along with the quality of his advice shorn as it often is of broad and wiser judgment and perspective. Although in part inevitable and in part a matter of ethics, this problem can be tackled in the manner suggested by Professor Charles Joiner of the Michigan Law School. He recommends an *ad hoc* partnership, a joint venture in the services of the client by two lawyers who co-operate to give the judgment of the generalist and the expertise of the specialist.

A more serious problem is that specialization is growing without control, without the establishment of standards for those professing to have special qualifications. For the protection of the public and the reputation of the Bar, it is time that the profession recognize the simple fact that admission to the bar is not, in actuality, a free pass for a lawyer to perform almost any legal operation that an unsuspecting client may request.

The present system, whereby a lawyer acquires a reputation as qualified to handle specialized legal problems by virtue of membership in some local bar association section or some voluntary interest and social group which sets no standards of proficiency, offers the chance of misrepresentation which undermines public confidence and reliance.

The most comprehensive study of this situation was that undertaken (though never approved) by the Special Committee on Specialization and Specialized Legal Education of the ABA in 1954. The Committee recommended the organization of a permanent Board within the ABA "to define in what fields of practice [voluntary] specialization should be recognized and specialty groups approved." Such groups would establish membership standards of education, practice and proficiency subject to the approval of the permanent Board. In addition the Committee resolved "to encourage law schools and other educational agencies to give lawyers the special education necessary for membership in the approved specialty groups." Permitting the genuine specialist to announce himself as a specialist to his fellow lawyers, but not to the public, was also advocated.

Impact Beneficial

If such a program were implemented so that expertness be evidenced by some sort of certification, there would be a greater number of well qualified lawyers identifiable as such by other lawyers, especially general practitioners, who need assistance with problems in which a high degree of skill is required. Expert practitioners will bring more business to the Bar, thus benefiting not only themselves but also the generalist because a part of the new activity will be appropriate for handling by each group under controlled specialization. Finally, the public will not have to turn to laymen to get the service which it needs and to which it is entitled from the Bar.

There is a danger that such a program may promote a fragmentation of the profession and over-specialization in education and practice. Dean Roscoe Pound has also cautioned against elaborate machinery and power in the hands of any group of men.

These are legitimate apprehensions. But to hesitate to change because change presents new problems is to succumb to defeatism. Progress creates problems and in so doing continues to grapple with them more successfully and on a more acceptable level. The Bar, so agonizingly immutable in this area, must cease lagging and begin leading.

Gallery



WILLIAM L. BRUCE
 Assistant Dean,
 Harvard Law School

That a legal education is worthwhile even though the graduate does not devote his full time to the practice of law is generally conceded. It follows that many graduates find their way into fields somewhat unrelated to the immediate practice of law itself. William L. Bruce, LL.B. '51, an assistant dean of the Law School, is a case in point.

The duties of Mr. Bruce, who joined the administrative staff of the School last January, are primarily to assist in the area of alumni relations. He prefers this type of administrative work to law practice. And he is qualified to make the choice, for he was engaged in the general practice of law for five years with the Providence firm of Edwards and Angell.

Current Case Comments

Deciding *Gayle v. Browder* in a *per curiam* opinion on November 13th (C.C.H. Supreme Court Bulletin 6-343), the United States Supreme Court upheld a 2-1 decision of a three-man federal district court (24 U.S. Law Week 2583) that an Alabama statute and a Montgomery city ordinance requiring segregation on interstate buses violated the equal protection clause of the Fourteenth Amendment.

The Fourteenth Amendment provides that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person the equal protection of the laws.

By the *Gayle* decision, the Supreme Court seems to have dealt a death blow to the "separate but equal" doctrine expressed in *Plessy v. Ferguson*, 163 U.S. 438 (1896). There the Court adopted the doctrine that the equal protection clause of the Amendment was deemed to be satisfied if equal, although separate, facilities were provided for Negroes and whites. This doctrine prevailed until 1954 when the Court held in the *Brown* case that the doctrine of "separate but equal" was no longer tenable in the field of public education.

In its terms, the *Brown* decision was based on rather narrow grounds, uniquely adapted to evidence that segregation in the public schools denied equal protection to Negroes. The Court determined that segregation generated a feeling of inferiority in Negro students, and that as a result of this psychological maladjustment the Negroes were unable to profit equally with whites, from similar educational experience. The lower courts appear to have interpreted the *Brown* case as overruling *Plessy*, and later Supreme Court action has justified this position.

Recreational Facilities

In the case of *Dawson v. Mayor and City Council of Baltimore*, 350 U.S. 877 (1955), the Supreme Court upheld a Fourth Circuit ruling (220 F.2d 386) that enforcement of racial segregation in the enjoyment of public beaches and bathhouses maintained by public authorities of a state or city is a denial of equal protection of the laws.

Interpreting *Brown* broadly, the *Dawson* opinion struck at the heart of *Plessy* by stating that segregation was no longer justifiable as a proper means of preserving the public peace. The Court went on to say in *Dawson*, "It is obvious that racial segregation in recreational activities can no longer be sustained as a proper exercise of the police power of the state. For if that power cannot be invoked to sustain racial segregation in the schools, where attendance is compulsory and racial friction may be apprehended from the enforced commingling of the races, it cannot be sustained with respect to public beach and bathhouse facilities, the use of which is entirely optional." (At 388).

Although only an Alabama statute was involved in *Gayle v. Browder*, the opinion is generally regarded as outlawing segregation in all intrastate transportation. Other states with similar laws are Arkansas, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

The action of the Court in this case may have

Anyone entering one of his three offices (one at 23 Everett Street, one in Hastings Hall, and the other almost hidden amid the stacks of Langdell—"look for the row with the Oklahoma Reports!") soon realizes that here is a man who enjoys his work. Mr. Bruce, a member of both the Massachusetts and Rhode Island bars, still manages to keep his hand in legal practice, though to a limited degree.

Although he was born in Lowell in 1924, William Bruce considers his home to be Cape Elizabeth, Maine, for he spent his youth and attended the local schools there. When the time came for higher education he journeyed south to Cambridge in 1942. After three years in the Navy, serving in both the European and Pacific theaters, he received his A.B. from Harvard in 1948, one year after his marriage to Katharine L. Fenn of Newton Centre.

Mr. Bruce has many interests outside his multifaceted job. The Bruce family (Jeffrey, 8; Thomas, 7; and Beverly, 5) comes first on the list. The call of the outdoors also reaches him, and he responds with as much hunting and fishing as a busy schedule permits. He belongs to the American Bar Association, and is a Mason. Husband and wife are both active in community affairs and local Republican politics. While living in Barrington, R. I., before returning to Harvard, they were co-chairmen of the town's United Fund.

Although in his placement work Mr. Bruce deals with graduates, he ventures some advice for current law students, who, he feels, should try to take the "long-term view," and study for permanent knowledge rather than marks. They should "strive for mastery of the material which they are studying, to keep reminding themselves that they are here to build the foundation of a professional career. If they do this, the marks will take care of themselves," he says.

—Wethly

effect shortly on the prolonged bus boycott in Montgomery, which has continued for nearly a year. Four Negro women, one of whom was Aurelia S. Browder, who were arrested last year for refusing to comply with the municipal and state bus segregation laws brought this suit in order to test the constitutionality of the enactments.

On appeal, the Alabama Public Service Commission and the Montgomery Board of Commissioners asserted that the Supreme Court had never specifically overruled *Plessy*. They urged that the Court take a clear stand and settle the issue once and for all with a full exposition of its reasons. But no formal opinion was forthcoming; the Court merely granted the motion of attorneys for the Negroes that the district court's decision be affirmed.

The decision is operative as soon as it reaches the United States District Court at Montgomery. Generally, such an order would take two or three weeks to reach the district court. Under these circumstances, it appears that the problem of enforcing the Supreme Court's decisions against segregation will be brought to a head in the near future.

Pagnani

Sub Judice

The recent case of *Plum Orchard v. Tornado IX*, 16 Spiral 482, involved a class action demanding damages for felonious assault with intent to uproot. Defendant pleaded lack of jurisdiction but on being collared by Sheriff Aeolus set up assumption of risk and moved for summary judgment citing *In re Repetition*, 14 *Weather Warnings* 29. Volatile, C.J. granted the motion and dismissed the action.

Letter to the Editor

TO THE EDITOR OF THE RECORD:

The decision *In re Carol, Diane, et al* (1954) 357 *Weather Report* 685, reported in the "Sub Judice" column of your November 1, 1956, issue was obviously wrong in holding that there was no cause of action for oceanic restraint. While the *Canute*, *Xerxes* and *Dikes* cases which you cite (to which *Moses v. Pharaoh and the Red Sea* (?) 14 *Exodus* 26-29 and *Caligula v. English Channel* (39 A.D.) 1 *Mad Rom. Emp.* 1 can be added) are analogically in point, they are concerned with seas, not oceans. If learned counsel had cited the all embracing case of *Noah v. The Flood* (?) 7 *Genesis*, the court would surely have ruled in favor of the action.

The same type of action has even been recognized in the Soviet Union—see *Lysenko v. Plant Life* (1952) 4 *Russ. Bull.* 21. But see *The Mountain v. Mohammed* 1 *Kor. Ann.* For current reports see the trade publication "Pravda."

I hope you can induce the court to reverse its decision in time for the 1957 season.

ALAN N. LITTMAN, LL.B. '52
 Larkspur, California, November 14, 1956

Courts Administer Criteria For Disbarments Flexibly

Although there are still a few people who consider all lawyers to be liars, tricksters, cheats, or unprincipled rogues who would sell their souls for a price, by far the majority of people seems to have a more considered opinion of the legal profession and of attorneys generally. "There are good lawyers and there are bad lawyers" is the common attitude of the public. The opinion is generally held that one will probably find the same proportion of honest and dishonest, of saint and sinner among attorneys as in other professions, and, indeed, in most walks of life.

Can a harsh condemnation of the lawyer be justified? Are the high moral principles contained in the "Canons of Professional Ethics" adopted by the American Bar Association only so many words on paper? Or are the restrictions laid down by these canons enforced upon members of the bar? What is the likelihood that an attorney will be punished for reprehensible conduct? How common is disbarment and, more important, what, specifically, are the acts for which disbarment is the penalty?

Courts Have Power

In England, since early in the 15th century, internal government of the bar has been vested in the courts by parliamentary enactment. In the United States, although statutes specifying grounds for disbarment are valid as far as they go, the courts are regarded as having "inherent" power to regulate the profession and to disbar unfit attorneys. The courts in the United States, although displaying noticeable reluctance, have exercised their power to disbar in a number of cases and for a variety of reasons.

A violation of the criminal law is by far the most common ground for disciplinary action by the courts. Conviction of a felony is a generally recognized ground for disbarment. Forgery, arson, extortion, wrongful conversion, grand larceny, and use of the mails to defraud have been the bases of various proceedings. "Many crimes including felonies, however, do not reflect so unfavorably on an attorney's fitness as to warrant the loss of livelihood ensuing from disbarment." Note, 52 Col.L.Rev. 1049. The note mentions, among others, involuntary manslaughter, statutory rape, and violation of liquor laws.

Grounds for Disbarment

Offenses which, without regard to criminal liability, have been held to evince such immorality as to justify disbarment include operating a bawdy house and selling opium and beer therein, *In re Marsh*, 42 Utah 186, 129 P. 411 (1913); causing pregnancy in a female dwarf of unsound mind, *In re Hicks*, 163 Okla. 29, 20 P.2d 896 (1933); and participating in a lynching, *Ex parte Wall*, 107 U.S. 265 (1882). In this case the court held that discipline would be limited to a temporary suspension because the attorney was excited.

Payment of bribes to judicial officers or jury members is a ground for disbarment. So is suppression of testimony or the falsification or destruction of records. Fraud or misrepresentation in applying for admission to the bar is a cause for disbarment in many states. Alaska and Washington make incompetence a ground for disbarment. Georgia makes "want of a sound mind" ground for mandatory disbarment.

Disciplinary measures may be imposed in most states for breach of a client's trust,

conversion of a client's money, failure to inform clients fully about a serious loss of their funds, disclosure of a client's confidences, representing conflicting interests, assuming a contractual status directly opposed to a client's interest and prolonging litigation for personal enrichment. The *Columbia Law Review* reports two cases in which "charging excessive and unreasonable fees for services rendered has been held ground for disbarment." 52 Col. L. Rev. 1045.

Attorney's Obligations

Attorneys have an obligation to use truthful means in maintaining their cause and never to mislead a judge by artifice or false statements of the law. The rules of ethics, according to the American Bar Association, prohibit attorneys from making offensive or discourteous personal remarks about opposing parties.

It is deemed wrong to counsel any proceeding which the attorney thinks to be unjust. The bench in California, along this line, announces "the right to practice law is subject to condition that the attorney shall possess blameless moral character, and the right is forfeited upon a breach of such conditions." *Bryant v. State Bar of California*, 21 Cal. 2d 285, 131 P.2d 523 (1943).

In a remarkably large number of disbarment cases, "moral turpitude" is mentioned as the grounds for court action. Judges, attorneys, legal writers have all found "moral turpitude" easier to condemn than to define. Despite the obvious nebulousness of the term, its use as a fundamental ground for the action of disbarment is increasing. For an example of the term's ambiguity, in *Rudolph v. United States*, 6 F.2d 487 (D.C. Cir. 1925) the court held that a violation of the national prohibition laws was "morally turpitudinous." In *Bartos v. United States District Court*, 19 F.2d 722 (8th Cir. 1927) another federal court, only two years later, held that the same offense was "non-turpitudinous."

Factors Influence Courts

Although courts generally incline to give the accused attorney the benefit of any doubt, a record of prior misconduct, persistence in unprofessional conduct during the course of the disciplinary proceedings, flight from the jurisdiction to evade execution of a court order and obstruction of the disciplinary proceeding by use of dilatory tactics are liable to influence the court to order disbarment.

It is often contended that when attorneys are disbarred it is notoriety rather than guilt which convicts them. For example, an attorney for the defense in the long and celebrated trial before Judge Harold R. Medina ending in conviction of eleven defendants for violation of the Smith Act, was disbarred for showing "an excess of zeal in representing his clients." *In re Sacher*, 206 F.2d 358, 359 (2d Cir. 1953). Later the United States Supreme Court reversed, holding that disbarment was unnecessarily severe. *Sacher*



Austin W. Scott

Scott Will Receive Yearbook Tribute

The 1957 Harvard Law School Yearbook will be dedicated to Austin W. Scott, Dane Professor of Law. Professor Scott was the unanimous choice of the Yearbook's editors announced editor-in-chief Stuart A. Jackson, 3L of New York City. Dean Erwin N. Griswold will write the dedication.

A special tribute will appear in the book to John M. Maguire, who is Royall Professor of Law. "The Yearbook is speaking for the entire law school community in paying tribute to Professor Maguire for his thirty years service to the School and to its students," Mr. Jackson said.

The tribute to Professor Maguire will be written by his friend and co-worker, Edmund M. Morgan, Royall Professor of Law Emeritus. Professor Morgan, who retired in 1949, is now on the faculty of Vanderbilt Law School. Professor Maguire will retire next June.

Orders for the Yearbook are now being taken from alumni and law firms, business manager David J. Kehoe, 3L of Providence, has reported. The price for books sent by mail is \$7.90, Mr. Kehoe said.

v. Association of the Bar of the City of New York, 347 U.S. 388 (1954).

It is generally recognized by the courts that attorneys, far from being the morally blameless individuals that California would require them to be, are instead only human after all. And the members of the bar association and the judges, too, are human. They hesitate to deprive a man of his means of livelihood except for a very compelling cause.

Idealized Attorney

The high moral principles and exalted ethical codes enunciated by the American Bar Association in the celebrated "Canons of Judicial Ethics" present merely a picture of how the ideal attorney, with his eminent position in society, his significant standing in the community, his important responsibilities, and his many public duties, should pattern his conduct. For the moral character of lawyers, on the whole, does not seem to be much better or much worse than that of any other professional group.

—Binder

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HANSEN

(Continued from page one)

Pre-merger notification, he stated, is essential for evenhanded enforcement. In Mr. Hansen's words: "With that requirement, no longer would the company that tries to obey the law and seeks advance approval watch its close-mouthed rival consummate a merger; and thereafter rely on the natural indisposition of an enforcement agency or a court to attempt to unscramble the omelet."

The Justice Department also plans to urge plugging of the loophole left by present Section 7's (as amended in 1950) failure to cover asset acquisitions by banks. The same conclusion was reached by a House Judiciary subcommittee. (Staff report to Subcommittee No. 5 of the Committee on the Judiciary, 82d Cong., 2d Sess., September 1952). As a result of this gap, Section 7 is for practical purposes useless to cope with what the Comptroller of the Currency has described as "this recent trend of [bank] mergers, consolidations, and sales."

No Different Standards

In view of the decision in *International Shoe Company v. The Federal Trade Commission* 260 U.S. 291 (1940), the Justice Department sees no need for standards different from Section 7 when considering bank mergers. In Mr. Hansen's words: "Thus we have not prosecuted mergers where, because of either inadequate management, obsolete equipment, or a failing market, the acquired corporation's prospects for survival seemed dim. Gauging the likelihood of future business success, of course, may involve different factors in different industries. Should pre-merger notification become law, let me assure you the Department of Justice would without doubt pay

great heed to each banking agency's judgment of a bank's chances to prosper."

Mr. Hansen also stressed the necessity for the Department of Justice to have some say in the enforcement of bank merger prohibitions. This procedure "is firmly rooted in enforcement realities for without this right to intervene, there might be as many different views of Section 7's standards and scope as there were agencies charged with its enforcement. The result could well be disparities in view, which in turn spell real enforcement inequities. Enforcement effectiveness likewise requires some procedure for this Department's intervention. Otherwise, in our over-all responsibility for Section 7's enforcement—and I refer here to responsibility entirely outside of the banking area—we would be bound by bank merger precedents we had no voice in picking or shaping."

Grand Jury Clumsy

Referring to the need for the Department to have the power of civil investigative demand, Mr. Hansen said that a resort to a grand jury investigation to obtain documents, even though only civil proceedings may be the likely outcome, entails extensive delay and expense.

Although the Government may resort to filing a complaint and then make use of discovery processes of the Federal Rules of Civil Procedure, he believes that effective enforcement requires comprehensive investigation before, rather than after, formal proceedings have been filed.

Since Section 7 has no criminal sanction and the Department cannot resort to grand jury to secure documents from companies under investigation, Mr. Hansen concluded that in pre-complaint merger investigations the civil investigative demand is vital to more effective anti-merger work.

—Nader

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Legal Aid Plans Expansion To Meet Growing Demand

By JOHN F. BYRNE

Legal Aid is "... the performance of a Constitutional and social obligation—an obligation which the whole community owes. The lawyers must initiate, organize and supervise, but all must give their moral support and, either through the community chest or otherwise, the necessary funds. Otherwise, there will be a failure of justice at a moment in history when it is essential that a democracy demonstrate its ability to assure equality before the law to all citizens."

These are the words of Harrison Tweed, LL.B. '07, former president of the National Legal Aid Association and one of the founders of the present Legal Aid development program.

In a sense, Legal Aid, the giving of professional advice and representation to persons unable to pay normal legal fees, is as old as the legal profession. This is especially true in the English and American courts where the Anglo-Saxon tradition of habeas corpus and right to counsel has resulted in an emphasis upon the individual's ready access to the judiciary. Lawyers in the past have been generous givers of their time to indigents. Unfortunately, the requirement to extend legal aid to all persons who need it often exceeds the generosity in a particular community. Organized Legal Aid is an attempt to channel the community's natural desire for equality before the law; an attempt to establish and consolidate the legal function as a responsibility of the whole community.

Legal Aid Recent

Organized Legal Aid is of recent date. Historically, the first attempt to provide legal counsel to indigents was made in 1876 when the "Deutscher Rechts-Schutz Verein" was incorporated in New York City. At best, its purpose was "to render legal aid and assistance gratuitously to those of German birth who may appear worthy thereof, but who, from poverty, are unable to procure it."

This was a long way from the present day situation with 166 Legal Aid offices, 71 volunteer committees, and 72 Defender organizations. Today there is no longer a strong opposition to the providing of legal advice to persons who cannot afford to pay because it is recognized that every citizen has a right to legal advice and representation. Today it has become a matter of deciding qualifications for indigents, the extent of the legal services, the sources of revenue to maintain the services, and the structure of the organization rendering the service.

Through the years, with the increase of population, the shift of population from rural areas to urban centers, and the resultant complexity of human relations, Legal Aid has made definite strides toward an eventual integration with the more established forms of social service, medical aid, child welfare, and rehabilitation of the mentally ill.

Requires Special Training

Records of existing societies show that Legal Aid is a specialized type of law practice; it requires training and experience not generally found in other kinds of legal practice. In Legal Aid work, there is often an emphasis upon social agency and state and federal agency contact. Further, Legal Aid practice varies from community to community. The experience necessary for a particular Legal Aid society depends often upon the structure of the society and the kinds of service offered.

On the civil side, much of the service consists in handling small claims, wage assignments, garnishments, evictions, child support and other matters involving debt problems and domestic difficulties. On the criminal side, someone must be available every day in the criminal courts, a lawyer with a special technique for interviewing and defending the rights of indigent offenders (youthful, first offenders as well as repeaters) many of whom are frightened and inarticulate.

More and more there has been the increasing realization that Legal Aid practice is a career worthy of a man's full time, often a lifetime. Such a concept, inevitable though it may seem, was a long time coming. With it Legal Aid enters its most mature period.

Legal Aid has made its most significant advances since 1949 when the National Legal Aid Association replaced the loosely confederated National Association of Legal Aid Organizations, established in

1923. The new association gave the movement more strength and continuity, and more representation in the national community and the legal profession.

In 1949 there were 87 Legal Aid offices, 73 volunteer committees and 27 Defender offices. NLAA with a small staff set as its main task a dynamic on-going program to assist local societies to achieve and maintain standards of competence. Immediate emphasis was placed upon service to members, consisting of research, field visits, surveys, directory and referral services, publication of an Association magazine, *The Legal Aid Brief Case*, collecting and publishing statistics, providing annual report forms, docket cards and other pamphlets for local distribution.

In 1953 an intense development program was launched by the NLAA with the following objectives:

Development Program

1. The establishment of Legal Aid societies in as many as possible of the 68 large communities without organized service.
2. The strengthening of service in 60 other large communities where facilities were so inadequate that less than 3 cases per 1,000 population were handled.
3. The improvement of long range financial support of NLAA to establish a continuing base of support for basic services.
4. The initiation of a national program for the improvement of representation of indigents in criminal cases.

This development program acted as an impetus for a basic structural change in the status of Legal Aid. A new emphasis was placed upon the criminal program, which meant that the concept of Legal Aid was broadened. A new financial structure was envisioned to stabilize Legal Aid activity. As a result, Legal Aid is growing in three directions: it is being organized where it has not heretofore existed; it is being improved where it exists with inadequate facilities; and it is being broadened where its present facilities do not include complete criminal or civil services. Operational funds for NLAA come from three principal sources: annual dues from member societies; dues from professional members (lawyers); and foundation grants.

The quota of dues from local Legal Aid services is fixed by the National Budget Committee of the Community Chests and Councils of America. The professional member's dues are \$10.00 per year. The Ford Foundation has recently provided NLAA with a generous three year grant for the expansion of the criminal side of the Legal Aid program.

Ties in With Other Groups

Legal Aid, because it is part of the community pattern, has developed various ties with organizations in the legal and social welfare fields. In order to successfully carry out a national program, it is necessary to share skills and resources in the modern community. The legal and social case-work professions have contributed substantially to the evolution of Legal Aid by making it an integral and essential unit in the family of welfare services found in most of the larger communities.

The American Bar Association, through its Committee on Legal Aid Work, the Conference of Bar Presidents, the Junior Bar Conference, the American Association of Law Schools, the American Law Student Association and many local and state bar associations, has demonstrated an increasing interest in Legal Aid and has helped greatly to broaden the services.

In February, 1956, the headquarters of NLAA was moved to the American Bar Center in Chicago. Here, with its status as an affiliate of the ABA, it works more closely with the Committee on Legal Aid Work and the other affiliates. It maintains

BRANDEIS

(Continued from page one)

love," Mr. Freund said in opening a discussion of his judicial phase. Often, "he labored mightily to explicate to his brethren,



Paul A. Freund

to the profession, and to the future the rational grounds of the legislation under attack. And so, on the Court as at the bar, he was able to transform the little case before him into an instance of a larger truth; he had the art of seeing, as Holmes would say, the general in the particular."

Professor Freund also dealt with Justice Brandeis' views on checking the powers of the Court. "So far from being, as some observers have argued, in contradiction to his spacious view of the powers of government, his concern for these limitations on the powers of the Court was in harmony with his deepest convictions about the allocation of responsibility, the fallibility of judgment and the wisdom of self-restraint."

The speaker quoted a favorite phrase of the Justice: "The most important thing we decide is what not to decide." Self-limitation, ironic in the sense that he undertook and carried through almost superhuman exertions as a matter of course, was one of the guiding principles of Brandeis' life.

—Footlick

Hastings Utilizes Reserve Of 'Retired' Law Mentors

Other law schools' losses are Hastings College of Law's gains, for this unique Law School of the University of California stipulates that sixty-five be the minimum age for full-time employment except in the case of administrative officers.

To this country's only Valhalla for elderly law professors come victims of chronologically arbitrary retirement rules of universities throughout the country. Situated at 198 McAllister St., in San Francisco, Hastings is not governed by California University's mandatory retirement at the age of 67.

The policy of compulsory retirement for age is described by Dean David E. Snodgrass, LL.B. '21, as a "clumsy device which deprives experienced and able men of the opportunity to continue work for which they are fitted. Chronological age is not the test of when a man should be retired. Biological age ought to be the consideration."

Usefulness Comes Late

"There are numerous examples throughout the world and history of men whose greatest usefulness came after they reached the age of 65." As one example, Dean Snodgrass refers to Benjamin Franklin who was 70 in 1776 and 81 years old in 1787 "when he saved the constitutional convention."

The origin of Hastings' "Over 65 Club" stemmed from a marked lack of professional talent in the early years of World War II. At that time, Dean Snodgrass was convinced that it would be better to get men who were retired, than to concentrate on attracting young professors who were only in their 30's.

This policy has alleviated the financial burden which otherwise would be imposed by carrying a conventional professorial staff. Hastings' faculty members draw pensions and do not demand high salaries. When they retire, Hastings does not have to pay them pensions. And thus it came to be in 1948, that no one under 65 was hired except to do administrative work. Only a youngster, Dean Snodgrass has still to wait three years before he joins the venerable elite.

Greats on Faculty

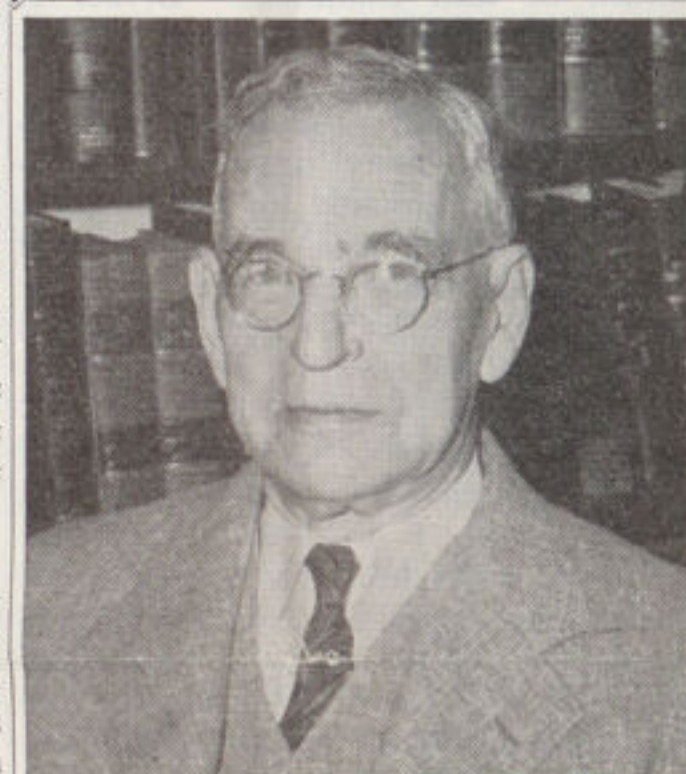
The sixteen members now on the full time faculty comprise some of the leading luminaries in the gallery of legal stardom. Everett Fraser, LL.B. '10, a former president of the Association of American Law Schools and professor of law at the University of Minnesota from 1917 until 1949, teaches property. Retirement,

an independent status but the close contact with the ABA allows for a more complete relationship with the legal profession.

Social agencies, realizing that Legal Aid is a community responsibility, make surveys to determine the need for Legal Aid and publicize its value to the community. Community Chests and United Funds have accepted the responsibility for contributing to the support of societies where the need is demonstrated.

Legal Aid as a force in the dispensing of Justice to all persons in the United States has had a heroic task in the past. But, because its evolution under a democracy is inevitable, its supporters take heart and carry the program forward.

(Mr. Byrne is associated with the National Legal Aid Association.)



Warren A. Seavey

he says, "should be based on capacity." Lawrence Vold, LL.B. '13, is well known as the author of a text and casebook on the law of sales. Mr. Fraser is 77; Mr. Vold is 70. George G. Bogart, former dean at Cornell, has begun his Hastings teaching career at 70. A veritable "babe in the woods" is Hartly Fleischmann, LL.B. '52, a member of the part-time faculty.

Hastings Performs Service

Hastings, in utilizing part of this great reservoir of legal teaching talent, is performing a distinct service to professors whose chronological age has outraced their continuing mental vigor. For as Professor Warren A. Seavey so movingly remarked last year, "retiring a professor who has given long service to his law school is like pulling a tree, roots and all, out of the ground." Adaptation does not come quickly in another environment except at Hastings where all hands are in the same boat.

—Nader

Basketball . . .

Play will begin December 11 in the intramural basketball program, sponsored by the Dormitory Council.

Games will be played Tuesdays, Wednesdays and Thursdays at 7 and 8 p.m. in Hemenway Gymnasium. The regular season will run from December 11 to March 21, with no games during Christmas vacation or during mid-year examination week.

Practice contests are slated December 4, 5 and 6, and the classification into A, B and C leagues on the basis of playing ability will be made from those results.

Deadline for submittal of rosters is November 30, according to Blair L. Perry, 3L of Williamstown, who is directing the program. They may be submitted at the desk in Hemenway, or to Mr. Perry at 218 Story Hall.

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