



Harvard Law Record

Ten Years' Service to the Harvard Law School Community

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Gala Program Listed in June For '56 Class

With Commencement for the Class of 1956 less than seven weeks away, the Law School has announced plans for a program of luncheons, receptions, and other events to be held at that time.

Opening event on the schedule is the annual Law School Day on Wednesday, June 13. Graduates and their families, together with all alumni, have been invited as guests of the School to attend a luncheon to be given jointly by the Law School and the Graduate School of Arts and Sciences.

Following the luncheon, which will be held on the lawn outside of Harkness Commons, there will be a short program. Speaking for the Law School will be Supreme Court Justice Felix Frankfurter, LL.B. '06, who will be attending the Fiftieth Reunion of his Law School class. Tickets for the luncheon will be available at the receptionist's desk in Langdell Hall after May 15.

After the Commencement exercises on Thursday, June 14, there will be another informal luncheon and reception under the trees in front of Langdell Hall for members of the graduating class and their guests.

Dean and Mrs. Erwin N. Griswold and other faculty members will be present, and the Dean has expressed the hope that the graduates will take this occasion to intro-



Felix Frankfurter

duce their families to him and the faculty. Diplomas for the graduating class will be available at the luncheon, and will be presented by the Dean to the students who call for them then. Tickets for this luncheon also will be available from the Receptionist after May 15.

Graduating students planning to take part in the Commencement exercises will receive instructions about the place and time of assembly from Class Marshal Paul F. Marx, 3L of Beverly Hills, Calif. Those marching in the Academic Procession will be expected to wear caps and gowns and dark clothes.

Families and guests of graduating students will need tickets to attend the Commencement exercises in the College Yard. Candidates for degrees who desire tickets for their families should give their names to the receptionist in Langdell Hall before May 15.

Normally there are sufficient tickets to allow two to each candidate applying, but (See COMMENCEMENT on page five)

Summer Solstice

With this issue, the Record suspends publication for the summer months, and its editors get back to the casebooks. The next issue will be published on September 27, 1956.

Scott Club Wins Ames Final

A new record was established by the Scott Club with its triumph over Morgan Law in the final round of the 1956 Ames Competition. This is the eighth victory for the Scott Club in the forty-four year history of the Competition. The club also won in 1921, 1923, 1924, 1927, 1932, 1936 and 1941.

The teams argued the case of *Mastercrafters, Inc. v. Jaeger-LeCoultre, Inc.*, before a bench headed by Associate Justice John Marshall Harlan of the United States Supreme Court. Sir Leslie Knox Munro, New Zealand Ambassador to the United States, and Chief Judge Henry W. Edgerton, LL.B. '14, of the United States Court of Appeals for the District of Columbia Circuit, acted as associate justices.

Oralists for the Scott Club were Richard F. Newell, 3L of Berkeley, Mich., and Hal F. Reynolds, 3L of Brecksville, Ohio. Arguments for Morgan Law were presented by Roger A. Moore, 3L of Sherborn and Michael C. Van Beuren, 3L of Newport, R.I.

The Board of Student Advisers has also announced the winners of the final round in the Drafting Competition. The winning team was composed of Charles J. Frisch of Minneapolis, Andrejs J. Gots of Dorchester, Thomas E. Withycombe of Eureka, Mont., and Erik P. Woit of White Plains, N.Y.; all 3L.

Judging of entries in the qualifying round for the Class of 1957 is still in progress.

Field and Ribicoff Emphasize Need of State Court Reform

Professor Richard H. Field, an outspoken champion of the court reforms recently suggested in Massachusetts by the Judicial Survey Commission, urged prompt action on the Commission's recommendations in a speech to the Northeastern Regional Meeting of the American Bar Association last week.

Applications Pass Last Year's Figure

Applications for admission to next fall's first-year class are arriving at the Law School at the highest rate in its history, Secretary and Admissions Director Louis Toepfer announced yesterday.

More than 1600 applications were on hand at the close of business Friday, and Mr. Toepfer expects the figure to reach 1850 by the deadline next week.

If Mr. Toepfer's estimate is correct, the total number of applications will exceed last year's count by more than 200.

From the record number of applications, the Law School, as in the past, will choose a first-year class consisting of about 500 students. The School has no plans for enlarging the size of the entering class.

Mr. Toepfer attributed the rise in the number of applications to a number of factors. Most important is the fact that the colleges are turning out graduates at the highest rate in history.

Meanwhile, the relaxation of international tension has reduced the pressure of the military draft so that more college graduates are free to attend law school if they so desire.

Governor Abraham A. Ribicoff of Connecticut also called upon the lawyers of his state to back his plans for replacing Connecticut's minor town and city courts with a series of district courts manned by full-time judges.

In his speech Mr. Field, the Law School's specialist in judicial administration and civil procedure, denounced the present congestion in Massachusetts courts as "a scandal."

He said that the administration of justice in Massachusetts is a \$15,000,000-a-year business and that the citizens of the state are not getting their money's worth.

To improve conditions, Professor Field urged that Massachusetts adopt one of the recommendations of the Judicial Survey Commission and create a Court administrator to "give a business-like administration to our courts."

He also favored giving the Supreme Judicial Court full rule-making power to eliminate unnecessary delays in litigation of cases before the courts of the Commonwealth.

Governor Ribicoff, a former Hartford police judge and Democratic Congressman from Connecticut's capital district, used the ABA meeting as a platform for renewing his campaign against the state's system of minor courts.

Tensions Panel Reports, Advocates Mild Changes

The nine-man student-faculty committee studying tension at the Law School has made a series of recommendations—over twenty in all—to faculty and student groups for changes in present Law School practices.

Proposed changes range from a recommendation for a complete revamping of the present proctorial system in the dormitories to suggestions for improving athletic facilities available to Law School students.

Although the committee has not officially disbanded, its chairman, George S. Abrams, 2L of Newton, indicated that it has virtually completed its work. The committee does not plan to issue a written report.

Chairman Abrams and Professor Donald T. Trautman, one of four faculty members on the committee, have, instead, made an oral report to Vice Dean Livingston Hall. Other recommendations have been made directly to the organizations affected by the proposals.

The committee did not consider any changes in grading methods or any changes which would affect the present academic system.

It is known that some of the committee's suggestions have already been approved and will go into effect next fall. Others are still under consideration but Mr. Abrams expressed confidence that most of the recommendations would be approved.

"We've tried to keep them all relatively practical," he said, "and I don't believe more than one or two will be rejected. The deans have been very cooperative throughout."

Some Details Secret

Neither Professor Trautman nor Mr. Abrams would list all the committee's recommendations. They indicated that the committee preferred to refrain from going into details until suggestions were either accepted or rejected.

It is known, however, that the following are among the recommendations that have already been accepted and are expected to go into effect within the next year:

- (1) Complete overhauling of the proctorial system so that proctors will function as semi-official advisors to first-year students.
- (2) Creation of a student committee to help reorganize the orientation program at the beginning of the school year.
- (3) Publication by the Placement Office of a booklet each year on job opportunities for distribution to third-year students and interested second-year men.
- (4) Expansion of athletic facilities and the fall and winter intramural athletic programs.
- (5) A series of faculty-student coffee hours designed to give first-year students a chance to meet faculty members on a more personal basis during the first year.
- (6) Increased medical and infirmary in- (See TENSIONS on page five)

Alumni Group To Meet Here



Raymond S. Wilkins

The Council of the Harvard Law School Association will meet in the Roscoe Pound Room Saturday to review the activities of the Association during the past year and to elect its officers for the year ahead.

About 60 alumni leaders, including representatives of more than 25 local and regional associations, will gather for the annual meeting under the chairmanship of the Association's president, Justice Raymond S. Wilkins, LL.B. '15, of the Supreme Judicial Court of Massachusetts.

While here the councillors are expected to re-elect Justice Wilkins to another one-year term as Association president and to re-elect or choose four other officers of the Law School's national alumni organization. The Committee of Five also will designate five new council members.

The alumni also will hear reports on the work of the Association's committees and see a showing of the Board of Student Advisers' new movie, *Case in Point*.

Vanderbilt Law School Publishes Reporter On Legal Aspects of Inter-Racial Relations

A new legal reporting service, dealing exclusively with developments in the area of race relations, has made its appearance during the spring at the Law School of Vanderbilt University in Nashville, Tenn.

Sponsored by Vanderbilt and financed, in part, by a grant from the Fund for the Republic, the service is making its reports available to the profession in the form of a bi-monthly magazine, the *Race Relations Law Reporter*.

Two issues of the *Reporter* have already come off the press. They contain the texts or summaries of all court decisions, legislation, regulations, and ordinances which have been published on the subject of racial segregation since the Supreme Court handed down its historic decisions in the *School Segregation Cases*, 347 U.S. 483 and 497, of May 17, 1954.

Once it is "up-to-date", the *Reporter* will print the opinions and other primary materials which have appeared in the two-months period prior to each issue of the

magazine. It also will include occasional interpretative and background articles written by members of its staff headed by Paul H. Sanders, or by faculty members of the Vanderbilt Law School.

Vanderbilt Dean John W. Wade explained the purpose of the *Reporter* in an introduction to its first issue in February. "Regardless of differences in points of view, there is," he said, "a widespread recognition among lawyers, educators, and others of the need for a systematic compilation of primary materials in this rapidly developing field of law."

Dean Stresses Objectivity

"The *Race Relations Law Reporter* is undertaking to provide these materials on a professional basis. It proposes to be objective and impartial in all respects. . . Its coverage will include decisions of the federal and state courts, legislation enacted or officially proposed, rulings and orders of administrative agencies, boards, and commissions, and opinions of state attorneys-

general.

"Unreported decisions of lower courts will be printed where available and representative ordinances will be included in the legislative section."

Primary emphasis of the magazine will be placed on developments in the field of public education in the Southern states, but the *Reporter* will cover other aspects of racial segregation and other areas of the country, as well.

The first two issues include, for example, opinions or summaries dealing with such diverse topics as the burial of an Indian in an all-white cemetery in Iowa, the failure to include Negroes in the membership of a general court-martial trying a Negro soldier, the ownership of land by a Japanese alien in Montana, and the admission of Negroes to a "private" beach club in Westchester County, New York.

Subscriptions to the *Reporter* are available at the rate of \$2.00 a year for six issues.

Grant-in-Aid Applicants Must File By May 15

Applications for financial assistance under the Law School's new grants-in-aid program are due in the office of Secretary Louis Toepfer by May 15.

Mr. Toepfer reminded all first and second-year students of this deadline in an announcement last week and said that the necessary application forms now are available in his office.

Under the new grants-in-aid formula announced a few weeks ago, upper classmen in need of financial aid will receive grants which are half loan and half gift.

The loans, which will draw interest at the rate of four per cent after graduation, are payable two years after the student leaves the Law School.

A Good Beginning

The student-faculty committee on tensions has done a creditable job in an important field. The proposals made by the group appear meritorious, and their adoption will probably aid to relieve needless worry by students.

Professors Kaplan, Keeton, Sacks and Trautman deserve the thanks of the Law School community for the work they have done on the committee. Students are genuinely appreciative when law professors contribute time and effort to a committee such as this.

The RECORD is somewhat disappointed at the committee's apparent avoidance of consideration of the competitive grading system, which is the principal source of tension among law students today. Either approval or disapproval of the grading system is absent from the report.

We also believe that a written report, rather than an oral message delivered to Dean Hall, would have been a more effective result of the committee's work. A written document could also be available for study by the faculty and by the student body, with the possibility of further suggestions to the committee.

Yet we appreciate the progress that has been made, and especially the interest shown by the faculty members who served on the committee. It seems unfortunate the committee is now about to disband. In our opinion, continued existence for the group would be a step forward, leading to enforcement of its recommendations, possible new proposals to reduce tensions, and a continuing check on the problems of the student body at the Law School.

Letters to the Editor

AMERICAN INDIANS

TO THE EDITOR OF THE RECORD:

Your provocative editorial titled "Four Hundred Thousand Americans" and the informative and disturbing article by Ralph Nader ("American Indians: People Without a Future") appearing in the April 5 issue of the HARVARD LAW RECORD illuminates what is indeed a challenge to the "ultimate stamina" of our democracy. The RECORD deserves congratulations for this presentation because it brings into bold relief a current crisis in the law of ethnic relations and in the moral judgments from which such law proceeds.

JOHN A. CURTIS, LL.B. '53

TO THE EDITOR OF THE RECORD:

Your issue of April 5 is particularly interesting, with its ample space devoted to the Indian problem. One who thinks of certain oil-rich Oklahoma Indians and skilled Winnebagoes and Mohawks, as well as of the poverty-stricken Utes and others, feels a certain reservation (isn't "reservation" a good word to apply to Indian affairs?) yet on the whole the exposition and editorial are excellent.

Your interest in social questions is appreciated—segregation, delinquency, criminal defense, etc. Future lawyers are certainly the people to be informed and intelligent in such matters.

EMMET RUSSELL, LL.B. '19

Book Review

THE BLESSINGS OF LIBERTY, by Zechariah Chafee, Jr. J. B. Lippincott Co., New York and Philadelphia. Publication date is May 9, 1956.

By MARVER H. BERNSTEIN

In discounting the influence of professors upon their students, Zechariah Chafee, Jr. remarks that "Life wears us all down." There is remarkably little evidence in this collection of eleven essays by the distinguished scholar of American civil liberties that his passionate devotion to the freedom of the individual under the Bill of Rights has eroded with the passing years. In these essays, much of them published previously in a variety of forms, Professor Chafee endeavors to alert Americans to the gradual deterioration of their individual liberties and to make them care more deeply about the ideals of fairness, sound judgment, and happiness "for our perplexing times." In discussing loyalty-security programs, recent efforts to control alleged subversive activities, and attempts by the United Nations to guarantee human rights, he aims to translate the fundamental constitutional freedoms of the individual into statutes and official actions in order to secure the blessings of liberty. He is rather confident that procedural rights that bear on the individual access to a fair trial are reasonably secure today, but he is apprehensive about the prospects facing our more subtle freedoms concerned

Mr. Bernstein is Associate Professor of Politics at Princeton University.

Harvard Law Record

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Current Case Revisited

In March 1955, the RECORD printed two articles on sentencing of criminals, in which I used as an introduction the case of Peter Makarewicz, a Norwood boy sentenced to life imprisonment for strangling to death a neighborhood girl. Here is the story of Peter's first year in prison.

Last week I went to the Massachusetts Penal Colony at Norfolk to meet Peter for the first time. (My acquaintance with this case is limited to the contemporary newspaper accounts, one visit with Peter, and an oral account of part of Peter's case history by Anthony P. Meleski, Head Social Worker at the Penal Colony.)

I recognized Peter at once as he came up the walk to the visiting room. Now 17, he is a fairly slender six-footer with light brown eyes and thick hair, neatly dressed in dark pants, sweater, and an open shirt. He is the oldest of three children. We spent two and a half hours together in the visiting room, where, incidentally, there are no fences or tables between prisoners and visitors.

Peter spent his first few weeks in the old prison at Charlestown. Then he came to the Penal Colony, an institution for the less hardened men and boys. Like other prisoners, he spent his first month in the Receiving Building (which has the only barred cells in the institution), next a probationary month, and finally he acquired the full privileges of living in the dormitory-type community located on spacious grounds surrounded by a wall.

Assigned to tailoring, Peter did not adjust to his job, and was put in a solitary cell for a few days when he finally failed to report for work. After a turn at library work and then upholstery, he found his calling as a sign painter for the institution. For recreation he paints still life in oils, tends a garden plot, and plays handball.

Mr. Meleski has taken a special interest in Peter's case inasmuch as he is doing a study on that class of juvenile murderers who, as he put it, "explode like a volcano" on a single occasion in the midst of otherwise apparently quiet, exemplary lives.

FRANK A. OLSON, 3L

with believing, thinking, and associating with others.

In his *Free Speech in the United States*, Chafee made a systematic presentation of the crises and issues of liberty of speech and press up to 1941. In this briefer volume, he outlines his reflections, at the close of 1955, about the significant problems of individual liberty since the end of World War II.

His thesis is that our liberties have been weakened since 1945 and that Americans in both their public and private capacities have promoted or permitted a whittling away of their freedoms.

Encroachments on Liberty

In the introductory essay, Chafee lists the principal encroachments on individual liberty since 1945 and deplores the zeal displayed by many persons to protect the nation from ideas they detest. He is under no illusions about the fundamental conflict between authoritarianism of the right and the left on one side and democratic conceptions of individual liberty on the other. Indeed, he reserves his sharpest criticism of recent official action to control "subversive activities" for those measures which, in his judgment, not only attack freedom of thought but also fail to protect the nation against organized subversion.

In the second essay entitled "Why I Like America," Chafee includes in his list of American virtues the land, our heritage of men from the past, the pooling of peoples to form a nation, family values, economic opportunities, leisure, freedom for the life of the mind and the spirit, a courageous response to crises, and an honorable role in international affairs. While each virtue is followed by a state-

Gallery

JOHN M. HARLAN

Justice, United States Supreme Court



The newest member of the Supreme Court of the United States, John Marshall Harlan, brings to his judicial office a wide range of experience in the legal profession. In addition to thirty years as a Wall Street lawyer, Justice Harlan has served his country and New York State in numerous public offices, and has been active in Bar Association affairs.

Born in Chicago in 1899, Justice Harlan is a grandson and namesake of Justice John Marshall Harlan (1833-1911), who was appointed to the Supreme Court in 1877 by President Hayes. Although today's Justice Harlan reached the Court forty-four years after his grandfather died, he has found that a few old-timers, including the court's robing clerk, still remember the first Justice Harlan.

After graduating from Princeton University in 1920, Mr. Harlan was elected a Rhodes Scholar, and spent the years 1921-23 at Balliol College of Oxford University. At Balliol, Mr. Harlan received a B.A. degree in Jurisprudence and later the M.A. degree. Last year, Balliol elected him an Honorary Fellow.

Returning from England, Mr. Harlan joined the New York firm of Root, Clark, Buckner and Howland. When he left for the Second Circuit in February 1954, the firm name was Root, Ballantine, Harlan, Bushby & Palmer; it is now Dewey, Ballantine, Bushby, Palmer & Wood. While an associate with the Root firm, Mr. Harlan attended New York Law School for one year, receiving the LL.B. degree in 1924.

Early Public Service

Mr. Harlan's first job in public life was assistant United States attorney for the Southern District of New York, where he served from 1925 to 1927 under the late Emory R. Buckner, LL.B. '07. In 1928, Mr. Harlan was appointed by Governor Alfred E. Smith as chief assistant special counsel in removal proceedings against the Borough President of Queens. After that job, Mr. Harlan worked for two years as special assistant attorney general of the State of New York, in connection with Queens County sewer prosecutions.

Back with the Root firm, Mr. Harlan was admitted to partnership in January 1931, and special-

ized in litigation. In his later years, Mr. Harlan was responsible for the hiring of new associates for the firm. In this connection, Justice Harlan now maintains that the field of law is not overcrowded for good people. Although there are many lawyers today, there is room in the field for people of real ability, Justice Harlan said.

In World War II, lawyer Harlan became Colonel Harlan, USAF. For two years, he was chief of the operations analysis section of the Eighth Air Force, and later served with the planning section for the occupation of Germany. Colonel Harlan has received the United States Legion of Merit, and the French and Belgian *Croix de Guerre* awards.

Justice Harlan has always been active in Bar Association and Legal Aid work. A member of the American Bar Association, New York State Bar Association, New York State and New York County Bar Associations, as well as the American Law Institute, Mr. Harlan has been most active in the Association of the Bar of the City of New York, where he has served as member and chairman of various committees, as well as vice president from 1948 to 1950.

A former chairman of the New York City Bar Association's Committees on Professional Ethics, Justice Harlan is an ardent advocate of high professional standards. Discussing what has been called the low public opinion of lawyers, Justice Harlan pointed out that "lawyers do not touch the lives of individuals in the community as much as doctors do. If lawyers live up to their professional standards, the public will respect them as much as anyone else," he said.

Praises Ames Competition
Justice Harlan is enthusiastic in his praise of moot court work. In addition to acting as chief judge at the 1956 Final of the Ames Competition at Harvard, the Justice judged the finals of the American Bar Association's National Moot Court Competition last December.

"You cannot overestimate the value of moot court participation," Justice Harlan said. "The capacity to present a client's case in its most favorable light is extremely important. Moot court teaches analysis and presentation of legal problems."

In November 1954, Mr. Harlan was appointed to the Supreme Court by President Eisenhower, but his nomination was held up in the Senate Judiciary Committee for several months. It was not until March 1955 that Justice Harlan was finally confirmed, although when confirmation came it was by overwhelming vote of the Senate.

As a member of the Supreme Court, Justice Harlan handles *ex parte* work from the Second Circuit, which is one of the busiest. Most of the court's jurisdiction is now discretionary, with many cases coming up on certiorari. Despite the large number of applications for certiorari, Justice Harlan said that he feels that all requests receive adequate consideration.

Justice Harlan's two clerks this year are graduates of the Law School, Wayne Barnett, LL.B. '53 and Leonard M. Leiman, LL.B. '54. Like Justice Harlan, Mr. Leiman was promoted from the Second Circuit, where he served as clerk to Learned Hand, LL.B. '06. For 1956-57, Justice Harlan has chosen Paul M. Bator, 3L of New York City, and Norman Schleier, a third-year student at Yale, as clerks. Messrs. Bator and Schleier are presidents of their respective law reviews.

—Stern

your legal obligation to testify; but even when the legal privilege is available, there are times when it is best not to exercise it. For one thing, although the law is plain that you do not admit guilt by claiming this right to silence, the law cannot control the effect on public opinion."

In the essay on "The Freedom to Think," Chafee discussed the dependence of the university upon freedom of thought. He is very critical of the recent attacks on the universities and on teaching. He deplores the "persistent probing of the patriotism of professors" and the obstacles placed in the way of free travel of scholars to and from this country. The real danger to American college education is not, according to Chafee, from radical—or conservative—teachers, but from uninspiring teachers.

These essays, written at various times in recent years, are at once sober and passionate. Combined in one volume, they lack the careful design of a book-length manuscript, and they inevitably overlap at several points. But they generate the light of reason along with the warmth of democratic commitment. We can only hope, along with Chafee, that they will help to persuade legislators and citizens "to minimize the dangers of heterodoxy and be ready, as Jefferson was, to take a calculated risk. We need to convince them of what they have forgotten—the importance of intellectual freedom, if we are to have the kind of country most loyal Americans desire. We need to make our fellow-citizens realize that freedom is not safety, but opportunity."

"The Fear Around Us"—An Address by Dean Griswold

THE HARVARD LAW RECORD reprints herewith the complete text of an address by Dean Erwin N. Griswold, "The Fear Around Us." The speech, delivered as the John Field Simms Memorial Lecture, was given at the University of New Mexico in Albuquerque on April 17, 1956.

(The John Field Simms Memorial Lectureship was established in 1954 as a memorial to the late John Field Simms, former Justice of the Supreme Court of New Mexico. Its purpose is to provide "for students of the law, members of the legal profession, and the public in general" a discussion of "the basic concepts and principles of law and ethics which have proved to be the bulwark of justice and liberty among civilized men.")

Several years ago, Rachel Carson published her best seller, "The Sea Around Us." Miss Carson has not yet written "The Fear Around Us." I am going to venture into that field, without prejudice to the much better work she could do if she cares to add this to her list.

Humanity has never had much respite from fear. For most of history, life has been uncertain, and filled with risks. Much of history, no matter how it is written, is necessarily devoted to campaigns and invasions, conquest and defense, the rise and fall of this tribe or nation, or that. Most men at most times have lived in a world of great physical uncertainty. It is obvious that this affected materially their lives and their actions.

Background of Isolation

In the United States, we knew a long period when fear of external aggression was very slight. From 1815 until 1940, a period of a century and a quarter, no American was seriously concerned about invasion by a foreign power. We did have a Civil War, but apart from that serious time, no one worried about the safety of his home or his family. We participated in the first World War, but it was entirely on foreign soil. In the second World War, we had blackouts, and we thought some about air attack, but there were only minor threats here at home. Nevertheless, we were slowly losing our isolation. Between 1945 and 1950, there came a change for which nothing in our history had prepared us. It should not be surprising that the task of adjusting to that situation has been a trying and a difficult one.

I

The one central inescapable dominating fact during the past ten years has been the threat of communism and communist aggression. Although it is all one piece in essence, this has been directed at us in two forms. There is first the threat of military attack against us and our friends, by Russia and its satellites. And there is second the internal communist threat, the threat of espionage and infiltration. For reasons which are still hard to understand, this latter threat comes not only from alien sources but also in some cases from natives of this country.

Fears Are Reasonable

The threat in both its forms has, naturally enough, caused deep concern. It is natural that persons in public office who have responsibility, of one sort or another, for safeguarding the country, have been moved to action. Some of these actions have, in retrospect, been better guided than others. But that we have all been subjected to deep-seated fears is a natural consequence of the situation in which we find ourselves; and that we should have reacted intensely to these fears is surely understandable.

It is important, I think, that we should all recognize that these fears have been real, and reasonable. It does not follow that all that has been done as a consequence of these fears has been sound or wise, or even reasonable. But the fears have not been imaginary. The Russians, and, among others, the Chinese, have shown themselves to be ruthless, both internally and externally. And one does not need to be much of a scholar to recognize and understand that this is a part of an historical pattern or movement, stemming back to Karl Marx but greatly extended and distorted since his day. One of the most dangerous things about communism is the essentially religious element in the present form of the movement. It is not rational. It calls for and receives blind devotion from many ranks of people. This



Dean Erwin N. Griswold at his desk in Langdell Hall.

element, this unreasonableness, is one of the many contributing factors to the uneasiness and concern which we all feel from the currently inescapable pressure from what is rightly called the communist movement.

It is not my purpose to discuss communism in detail, nor to evaluate its threat. My purpose now is to recognize clearly that the threat, both external and internal, is real. This is the generating source, and understandably so, of many of the fears around us.

II

Now let me turn to another matter, in many ways quite unrelated. This great country of ours has a cherished and unique history. It was first settled by immigrants who came here seeking religious liberty. A century and a half later, it achieved independence through the courage and leadership of men who sought political liberty. Long before the conception was known elsewhere, equality of opportunity was built into the structure of this country. Here were established freedoms and an "easiness" of living together which were not then known elsewhere; here the individual human being was recognized in a way he had never been recognized before. — "Give me liberty or give me death." Freedom of speech, press and religion. "The land of the free and the home of the brave." "Due process of law." — These and many other similar phrases have long been built into the education of every American. They have found continuing vitality in the form of government and the social system we have established and maintained here.

All of these things and many more are an essential part of America. America is not just another country. It is something different. Every one of us is either an immigrant or the descendant of immigrants. And those immigrants came here because they sought something which they could not find in the old world in which they had lived. One of the great things about America is that nearly every one found here much of what he sought. America has been and is the land of opportunity. It is the place where each one may be recognized for his own energy and ability, the place where power and privilege are held in check. In foreign lands, the government may be tyrannical or overbearing, or there may be the discrimination inherent in rigid class distinctions. These things have not been looked upon with favor here; and our govern-

ment is beautifully constructed to hold in check any excessive use of power. I do not mean to suggest that America is the only country in the world that is now free. But it was one of the first to achieve real freedom, and its example has furnished the standard and the inspiration for many other countries which have likewise achieved a substantial measure of real freedom.

Many citizens of this country — indeed most of the citizens of this country — believe deeply that individual liberties are an essential part of its heritage. Without them, this would be a portion of the land of the North American continent, but it would not be America. America is more than land and people. It also includes the spirit that infuses the people. This has always been an essentially moral country. Our peculiar history, our traditions, our political standards all join together to give great ethical content to our traditions and outlook. The American ideal is a precious heritage, of which each generation is a trustee. It is natural that we should feel deeply that what we have received in spirit should be preserved. These are the sources of that great love of country which we all feel; these are the well-springs of patriotism.

When things are done, sometimes by persons holding public office, which seem to many citizens to be inconsistent with the American tradition, it is natural that there should be concern. And this concern may at times lead to deep-seated fear. Over the past ten years, many patriotic Americans have found themselves afraid that actions taken in opposition to communism might in fact result in unduly impairing that peculiar heritage which is America. Persons who had these fears and who expressed them, with varying degrees of skill and vigor, have been subjected to attacks, and this has led to an increase of their fears, and of the fears of others. All of this has added appreciably to the aggregate of the fears around us.

III

Here, then, are two elements of fear — first, the real and legitimate fear of communist aggression, both external and internal, and second, the fear, also real and legitimate, that actions taken to combat the communist threat may impair the liberties which are the essence of America. Let us look a little further at these fears. Both are genuine. Neither should be minimized. But it is appropriate to put them in

perspective. When we act on the basis of fear alone we are likely to act unwisely. We do well in such a situation to give careful consideration to the elements of strength which may legitimately offset the fears. Here as elsewhere we may properly, as the popular phrase goes, "accentuate the positive." It is clear, I think, that when both of the situations with which we have been concerned are dispassionately examined, there is much that is positive in each of them.

We may first look at the fear of communist aggression, external and internal. As I have said before, this is real and substantial. It is undoubtedly the greatest single threat to civil liberties in this country, for it is quite clear that there would be no civil liberties as we know them now after a communist success.

Adequate Protection

But to meet the threat of external aggression, we have many defenses, and they have served us well. We have first and foremost our military forces. These are vast beyond anything we have known before. They are given strong financial support by the people through their Congress. They are ably led. And as Commander in Chief we have a man who has demonstrated his military competence as has no one else in our long history. In addition, we have many other sources of defense. Among these are our foreign aid program, and the many agencies and alliances which have been developed with other nations, through the continuing activity of our State Department and related offices of the Government. I do not mean to suggest that we can be complacent, or that it would be wise or safe to develop a Maginot Line complex. But it does seem clear that the best way to develop and maintain our defense against aggression from abroad is to support these military and other agencies of the Government. They have served us well for the past fifteen years. I know of no reason why we should not continue to rely on them now.

Is it not clear that military force and international negotiations are our best protection against foreign aggression? If we look at the threat, it is understandable that we should be fearful. If, however, we focus our attention on the protection that is available, we may be measurably reassured. We all know that this nation is not an aggressive nation. But it is not defenseless. There is no reason for being discouraged about our ability to defend ourselves if the need should arise. And in the meantime, the existence of our defenses may well be one of the best guarantees that the need will not arise.

F.B.I. Praised

The situation with respect to the internal threat of communism is not dissimilar. Here again, experience has shown that this threat was real, and to some extent still is. The communist virus has had a peculiar appeal to some of our people, and when they become badly infected with it, they lose all normal standards. But here too we have a real protection. The Federal Bureau of Investigation has shown itself to be a capable and resourceful guardian of the nation against treason, sabotage and conspiracy to overthrow the government by force and violence. The F. B. I. is ably directed. It has many trained and experienced and courageous agents. It has developed many cases. It has a great store of knowledge about the communist movement in the United States and the persons who have been active in it.

I know of no reason why any of us should play amateur detectives in this serious business, and I know of no reason to think that those who try to do so will do as well as the F. B. I. We have available an established, sound, and effective protection against the internal threat of communism. Should we not rely on it? Again, I recognize that we should not be complacent. The threat is real, and of course it cannot be disregarded. But it is not being ignored. On the contrary, it is closely watched. And our protection against it has been effective. Is it not appropriate then, and thoroughly sound, to form a balanced judgment about our safeguards against internal communism, and to rely on the agencies of Government which are appointed to provide us protection, namely the various agencies of the Department of Justice, and the Courts.

In summary, then: We are the subject of threats, both external and internal. But we are not defenseless. We have well conceived and substantial efforts to protect us against both the external and internal menace. These have functioned successfully for many years. Of course, we should not be complacent. But we need not be preoccupied with fear either. Taking a balanced view, there is surely adequate basis for reasonable reassurance.

IV

Now we may turn to civil liberties. Many citizens have been concerned about civil liberties. But what is the actual state of civil liberties in this country today? If we focus our attention on individual cases, or on particular problems, we can surely see much that is bad. There are a considerable number of cases where persons are suffering what appear to be severe injustices. The whole area of race relations has recently become inflamed. Yet even with this picture, it is wise not to lose our perspective. This is a vast and complicated country. It is inevitable that cases and problems will be arising at various places in it. This does not mean that we should be indifferent to these injustices when they do arise. It does mean that we should not be blinded by individual cases into losing our appreciation of the whole picture.

Liberties Defended

The important fact, it seems to me, is that the problems about civil liberties and the individual cases are constantly being pointed out and defended vigorously and fearlessly. The recent Annual Report of the American Civil Liberties Union is a fascinating document, not merely for the individual cases it describes but because of the impression it gives of the effect of thorough, thoughtful action by that carefully managed organization in righting the wrongs and in minimizing injustice. In the true tradition of this land, people still speak out against private and official excesses. The courts still sit. Cases which are brought before the courts are decided thoughtfully and dispassionately. The Fifth Amendment is still in our Constitution. There is controversy about it, and there is not full public understanding of its purpose and function. But I know of no case in which any person has been "compelled in any criminal case to be a witness against himself" — to use the words of the Amendment itself. Infringements of the Fourteenth Amendment still continue, but perhaps on balance to an extent rather less than that which we have tolerated in earlier days.

Earnest efforts have been made by some members of Congress to provide better procedures for the conduct of Congressional investigations. Although Codes of Procedure for investigations have not been adopted, these efforts have not been fruitless. It is a fact, I think, that investigations are generally being conducted more fairly and appropriately now than they were a while ago. There is surely a greater consciousness of the problem, both among members of the House and Senate and among the public generally. Here again the situation is not all that it should be, in some cases, but it is better than it was.

Academic Freedom

Another area is that of academic freedom. This is a subject about which there is widespread misunderstanding, even in academic circles. As far as I know, academic people do not have any freedoms which are not available to other members of the community, so far as actual violations of the law are concerned. If an action would be a crime if done by John Citizen, it is likewise a crime if done by Professor Doe. Academic freedom is important to free inquiry, but it is made effective by what is essentially an economic guaranty, applicable between the professor or teacher and his employing institution. The professor or teacher should be free to come to his own conclusions and to express them without being discharged from his position or subjected to any other penalty. In this sense academic freedom was virtually unknown in this country at the turn of the century. At the time of the first World War, a considerable number of teachers and professors suffered for their views. It is only since that time that the modern conception of academic freedom has taken firm root in this country. This has recently been thoroughly explored by

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Richard Hofstadter and Walter P. Metzger in their book entitled "The Development of Academic Freedom in the United States." To those who do not recall them, it may be a surprise to learn of the situation at Stanford University in the first decade of the century, where a number of faculty members lost their posts because Mrs. Stanford did not like their views — or the situation at Columbia in the years through 1920.

The conception of academic freedom, and an understanding of its importance is surely greater now than it was a generation ago. I do not mean to say that it has always been recognized in recent years. Of course there have been violations. Teachers have lost their jobs for their views, or for other inadequate reasons. I do not condone these violations. But there have also been staunch defenders of academic freedom, and a growing respect, I believe, for those institutions which have stood firm against pressures from outside. Many boards of trustees have shown great understanding of the values involved in this field, and have decided the questions which have come before them with courage and wisdom.

Rights Are Preserved

There are injustices in the country today. We lawyers who are especially interested in justice must continue to strive to minimize these as much as possible, and to rectify them when we can. It is not an adequate answer to say that there have always been injustices. But it is also possible to lose perspective in this area. Though there are injustices, there are also citizens who will fight against these injustices, lawyers who will take their cases, and many upright and courageous judges. In being concerned that civil liberties of all sorts should be maintained, and being outraged when they are violated, we should not overlook the fact that these liberties are actually being widely protected, and that they may indeed be flourishing now more widely than ever before simply because we are more alert to detect violations, and claims of violation are more freely vindicated.

These cherished rights and liberties, which are an essential part of the America we know and love, still stand. They have been subjected to strain, and concern about them has been well warranted. But they have not been lost, nor do I believe that they have been essentially impaired. In giving constant consideration to the state of our civil liberties, we should not forget this important fact.

V

So far in this talk I have tried to point out the two matters which have influenced our thinking in recent years, the concern for the security of our country, and the concern for the maintenance of freedom in our country. And I have tried to suggest that these two concerns, though wholly legitimate, are in fact about matters both of which are reasonably well in hand. There is concern for our security; and the country is tolerably secure, both externally and internally. There is concern for our freedom; and the country is tolerably free. Why then is there tension in the land?

The answer is in part that there is tension because there is fear. These are the fears around us, and it is inevitable that they should have their impact on our thoughts and on our feelings and on our actions. Senator Saltonstall recently observed that we are governed largely by our emotions, and current conditions have not always made it easy for us to keep our emotions under control. But we will act less emotionally if we can minimize the impact of fear. Since we are in fact tolerably secure, and are as a nation enjoying a large measure of freedom, it should be possible to reduce the influence of fear on our actions. Indeed, much of the fear appears to arise not from the basic threat, but rather from two causes, both of which, I think, can be considerably controlled. These are: (1) excesses on one side or the other, and (2) failure to communicate adequately what we think and are trying to do.

VI

In considering these two matters, it is important to bring out a point which we often overlook. Over the past several years there has been a large amount of controversy between the people who put their primary emphasis on security and those who are primarily concerned about freedom, or, to use the catch phrases that have been rather thoughtlessly applied, between the anti-communists and the anti-communists. There has been some

rather raucous name calling, and an appreciable amount of mutual concern.

Views Reconciled

Yet the significant thing is that both of these points of view are simply different ways of expressing the same thing, namely, patriotism and love of country. Those who are concerned about security want to preserve America. And it is equally clear that those who are concerned about freedom here want to preserve America, for this land without freedom would not be America. It would have lost the vital spark that brought this country into being and has preserved it through the years. We cannot have America without security; yet it is equally clear that we cannot have America without preserving freedom here, too. These two objectives are not inconsistent. They are simply two aspects of the great America, with its unique history and its unique promise, which we all love.

In some recent discussion, it has been said that those who are primarily concerned with security are "conservatives," while those who are especially concerned about freedom are "liberals." Indeed, there is a new journal called the *National Review* which is devoted largely to security and anti-communism, and which delights in calling itself conservative. By its lights, those who are concerned about civil liberties, and such things as the privilege against self-incrimination guaranteed by the Fifth Amendment, are "liberals," and that term is used as one of reproach. Yet I wonder if this is a sound or accurate view.

What Is A Liberal?

I am one who has felt that there was virtue in the Fifth Amendment and I have made some effort to explain it to my fellow citizens. Does this make me a "liberal"? It is hard for me to see that it should. After all, it is more than three hundred years since the privilege against self-incrimination was established through the stubborn courage of Free-born John Lilburne; and it is 165 years since it was written into our great Constitution as a part of the Bill of Rights of which we are all justly proud. A conservative, I would suppose, is one who wants to conserve the good things which had been developed for us by the great men and the great thinkers and the great events of the past. One who speaks in favor of the Fifth Amendment is, it seems to me, trying to maintain what we now have; he is not trying to tear down or reform. It is hard for me to think of a more truly conservative position for one to take in a matter of government than to argue with feeling that we should not change or fritter away one of the great guarantees of freedom which have come down to us through the fires of our own past.

VII

I will not dwell on what seem to me to have been some of the excesses of those who have been primarily interested in that aspect of our country which is represented by its security. Some of these are matters of history. Others are still matters of controversy. For example, our security and loyalty system has, it seems to me, gone much too far, and, without adding appreciably, in many areas, to our security, has definitely impaired our freedom. To say this does not mean at all that I am not concerned about the security of our country. It does mean that I am concerned about our freedom, too. In the use of informers to provide evidence in proceedings of one sort or another, it seems to me that we have also gone too far. Of course, every police and intelligence system uses informers, and many of the agents who have engaged in this work have proceeded with great courage and are entitled to our grateful thanks. The problem is not with the use of informers for the purpose of gathering in evidence or acquiring leads. What is wrong, it seems to me, is the use of the evidence on an anonymous basis in any sort of a proceeding where a person's rights are affected. It is far from clear to me that it has been necessary or wise to do this to as great an extent as has been done in recent years.

All of these things, and more, are important, and they have been much talked about. On the whole, I believe that we are slowly making some progress back to sound principles in these areas. This is actually a field in which the so-called "liberals" should be very cautious. In their zeal to protect our freedoms, and through a failure to communicate adequately the true basis of their position, they may in fact hold back the natural development towards sounder standards in this area which would occur because of the inherent

interest of all Americans in liberty and freedom.

Liberals have been concerned, and with good reason. Moved by their genuine fears, they have sometimes expressed this concern in rather strong terms. In order to dramatize the problems, they have been provocative. They have gone to extremes in asserting civil rights and in attacking those who are concerned with security. Logically, they may have been sound. A freedom is not a perfect freedom unless it will stand up in an extreme case. As a practical matter, though, when liberals are provocative, then conservatives react. And, perhaps of more importance, good moderate middle of the road Americans are likely to react, too, and to be unduly concerned about the rights which the liberals are asserting.

Those who are concerned about civil liberties would perform better, it seems to me, if they were to speak more thoughtfully and more softly, and with more understanding of the other man's point of view, and especially of the fears which play an important part in his thinking. In his recent lecture on "Doubt and Uncertainty in Science," J. Z. Young reminds us that "We are social creatures, depending far more than we realize on communication with each other." One important place where so-called liberals have often failed to communicate their real position is in not making it plain that they, too, are genuinely concerned about the security of our country, and are thoroughly aware of the communist threat, and of the fact that where the communists succeed civil

freedoms and our citizens will have no right if we do not preserve our national security. But in a far larger sense, it is important to assert and to recall that the two are not inconsistent at all. Our long history shows that we can have our security and our freedoms.

Security and freedom are not antithetical. They are both essential aspects of America. In human thinking it is relatively easy to deal in absolutes. The real achievement of the human mind and spirit is to find the proper balance, the basis on which two imperative needs may be harmonized. Our task here is to maintain the balanced view which will give us both security and freedom. With a handful of exceptions, I do not believe that there is any American who does not want to preserve both security and freedom. The fact is that while we have been verbally fighting one another, and calling names, we have actually been interested in the same thing. Both the so-called conservatives and the so-called liberals are interested only in preserving America. If we come to have a better understanding of this fact, perhaps we can work better together towards the common goal.

VIII

The problem is, in large measure, simply one of human relations. With more restraint, with more thought and care, with better communication, indeed, with better humor, on both sides, many of these problems could be worked out with ease, and we could all devote more time and energy to the basic problem of keeping America strong and free. It is not always necessary or wise to take the most extreme action possible, or to utilize all the powers one has. For example, we now know that an immunity statute, requiring a person to testify against himself provided he is given immunity from prosecution, is constitutionally valid. It does not follow that it is always wise to act under such a statute, thus going far to undermine the basic recognition of the individual which the Amendment was designed to protect. It may have been legal to padlock the Daily Worker. It does not follow that it was wise. Can one seriously think that the security of the United States was impaired by allowing this paper to be published? And if it was, should that have been dealt with by action under the tax statutes? The precedent, as applied to other publications, might well give us pause. Was enough thought given to the question whether this action was wise?

Needed: Restraint

Other illustrations could be given. What is needed may be a greater sense of restraint by governmental officials, a greater awareness of what is really useful in protecting our national security, and what on the other hand gives the appearance of protecting security but actually infringes too far on our traditional conceptions of liberty. Some thirty years ago Lord Moulton wrote a remarkable article in the *Atlantic Monthly*, entitled "Law and Manners." (*Atlantic Monthly*, July, 1924, p. 1.) In this he dealt with the importance of Obedience to the Unenforceable. He wrote that "the real greatness of a nation, its true civilization, is measured by the extent of its Obedience to the Unenforceable.... Mere obedience to Law does not measure the greatness of a nation. It can easily be obtained by a strong executive, and most easily of all from a timorous people. Nor is the license of behavior which so often accompanies the absence of Law, and which is misnamed Liberty, a proof of greatness. The true test is the extent to which the individuals composing the nation can be trusted to obey self-imposed law."

There is a middle way in this area, and we can all do better, it seems to me, in finding it, and explaining it to our fellow citizens. We may be helped in our endeavor if we keep in our minds the fact that our cherished freedom is one of our greatest sources of security. This is the land of individual initiative, of the free enterprise system. Our freedoms give us spiritual and economic strength which are important elements in our security. We could make much more effective use of our freedom in the conduct of our international relations. Foreign countries tend to think that we are materialists, because we talk about bathrooms and automobiles. We talk, too, about capitalism, without recognizing that to most foreigners, especially in underdeveloped countries, the word capitalism has a wholly different meaning than it does here. In many other countries, capitalism means a species of economic oppression through which a relatively small number of privileged people in substance regi-

ment and exploit the ordinary people. But in America over the past half century, largely because of the freedoms we have developed and maintained, we have revolutionized capitalism. It is now wholly different from anything that Marx ever dreamed of.

Progress of Capitalism

What we have done can best be seen. I think, by looking at what has happened to socialism in this country. For half a century we had an active socialist party here, with able and devoted leadership. Except for Milwaukee, and perhaps one or two other places, who hears of the socialist party now? Who in this country wants state socialism, that is, public ownership of the means of production? Over the past twenty years, we have come to see that state socialism means a species of economic regimentation which is at least as far removed from true liberty as the old-line capitalism. We have had over the past half century a great diffusion of ownership, and a great improvement in the relations between management and labor. There has been an enormous increase in the efficiency of production, with resultant increase in goods available and reduction in working hours. This has provided continuing incentive and reward for individual initiative. All of these developments have combined to produce not only more goods but also more essential liberty and freedom for the individual than was ever dreamed of by the advocates of state socialism. This is a wonderful story, and we should make more of it abroad, emphasizing the spiritual consequences of our economic system, the dignity and independence which it gives to every man, rather than the quantity and magnificence of the goods produced.

Similarly, we could make more abroad of our other liberties and freedoms, particularly if we were more consistent in maintaining them here at home. Our troubled problem of race relations has done us untold harm abroad. Padlocking the Daily Worker makes the people in India, or Japan, or in China or in Russia, think that we are just another authoritarian government, and that our talk of freedom is merely hollow. We know that that is not true, but why do we give these bases for others to think that it is true?

IX

In recent years we have been actuated too much by fear — all of us, and most of us much more than we have been aware. Some have been genuinely and understandably concerned about the security of our country, and have let that concern obscure the fact that American cannot be preserved unless it is free. Others have been concerned by what seemed to them to be the excesses of some of those who were concerned about security. People actuated from both points of view have been afraid for the things that were dear to them; and when we are afraid we do not always act wisely. It seems clear that the time has now come when we can recognize these fears, on both sides, and in a calmer spirit evaluate them and the situations out of which they arise. These fears have been real, and they have been understandable. It is understandable, too, that they have led to reactions, on both sides, which were too intense, and which did not really further the basic objective of all true Americans which is to keep America both strong and free.

Let us then approach these problems in a greater spirit of self-restraint and understanding. Some things are worth fighting for if that be necessary as a last resort. But nearly always there is a better way. We are most likely to maintain our security and our freedom by contributing to better understanding, by allaying fears of one another, by explaining, by persuading, by guiding and leading, by thoughtful conference and discussion. When we shout at people and call them names, they are not likely to see the light we bring them; nor are we likely to consider calmly whether there may not be something to their point of view which we have not sufficiently examined. We have been through a period of stress and strain. It has taught much to us all, and, among other things, has given us a new appreciation of the value and importance of our traditional liberties. I feel that it has, too, gone far to show us that we are all Americans, pursuing a common objective — to keep America the America we know and love. In this, there are no "conservatives" and "liberals", no security-firsters and civil libertarians. Out of the fears around us and our sober reactions to these fears may come new understanding, new tolerance for all, and a stronger and freer America.

Reprints

Reprints of Dean Griswold's address, "The Fear Around Us," are available to the public, and to church, school and discussion groups. Prices are:

1 - 9 copies	10 cents each
10 - 99 copies	8 cents each
100 - 499 copies	6 cents each
500 copies or over	4 cents each

Also available from the Record are reprints of Dean Griswold's earlier speech, "The Fifth Amendment". The same price schedule applies to these reprints.

Orders should be sent to the Harvard Law Record, 23 Everett Street, Cambridge 38, Massachusetts.

liberties perish. I know that people concerned about civil liberties are aware of this fact. They assume that others are aware of their awareness of this fact. But they assume too much. In this area of great concern, where fear is an element in everyone's thinking, such things should not be taken for granted. The civil libertarian should constantly make it plain beyond the possibility of misunderstanding that he has no interest in impairing our essential security; he is interested in preserving our essential liberties as, indeed, an important element in our ultimate security.

Long Range Task

The task of protecting civil liberties is not a crash program. It must always be viewed as a long range task. Our people cannot be forced or scared into protecting civil liberties. They must be led to want to preserve them, as our forbears always have. The task of preserving civil liberties is essentially an educational task. It will be better done through methods of information and persuasion than through assault and attack. There is much continuing education to be done in this area. It is easy to forget the basis and the reasons for our traditional liberties. And as times and circumstances change, it is desirable and necessary to interpret these ancient liberties in terms of our present situation and problems.

I believe deeply in the essential importance of these freedoms in giving meaning and dignity to the individual citizen. I believe that these freedoms can and should be preserved, and that they are wholly consistent with our national security. It is sometimes said that the rights of the individual citizen must yield to the overriding necessity of national security. In a limited sense that is perhaps true, for it is true that we will have no

Bricker Amendment Scored As Peril to National Security

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A sixth version of the Bricker Amendment, with a Section 1 trimmed down to 25 words, has been reported out of committee in the Senate. But the authors of the Senate Judiciary Committee majority report were careful to recommend the amendment only "as interpreted." The interpretation attempts to put back concepts long since discredited and withdrawn from the direct text of the amendment. The 25 words are:

"A provision of a treaty or other international agreement which conflicts with any provision of this Constitution shall not be of any force or effect."

So far as the requirement of Section 2 for a record vote on treaties is concerned, that is the practice today and it could easily be made a requirement of the Senate rules. No one contends that a Constitutional amendment is necessary here.

The wording of Section 1, on its face, is only a restatement of the proposition that the Constitution is supreme over treaties. In this case the amendment is unnecessary, as a treaty cannot now do "what the Constitution forbids" (*Geofroy v. Riggs*, 133 U.S. 258). The Constitution is the apex of our legal pyramid. A treaty can amend a law and a law can nullify a treaty, but each are subordinate to the Constitution. (*Chae Chan Ping v. United States*, 130 U.S. 581.)

Dangers of "Interpretation"

But the "interpretation" goes far afield from Section 1. The effect is equivalent to interpreting a statute to supply trucks to an armored division by stating in an accompanying report that the word "trucks" means ox-carts. The "interpretation" would make drastic restrictions upon powers of the President vital to the nation. In the constitutional world of the writers of the report, a Canadian regiment rushed through U.S. 20 in agreement with our President to help defend the West Coast would have to stop for every traffic light operating under State law unless Congress passed enabling legislation for the agreement (Report, page 17). If this enthronement of the Legislature had controlled General Washington in his cooperation with the French commander at Yorktown, chaos in the allied command would have been constitutionally imposed.

Proponents of Senator Bricker's amendment have sought to nullify the supremacy of treaties over state law in any area where the Congress was not given power to legislate generally. If they had had their way in 1789, British soldiers might still be stationed in Ohio and Michigan, where they stayed on to retaliate for our inability to enforce the treaty ending the Revolutionary War. The Constitution cured that (*Ware v. Hylton*, 3 Dall 197, 1796). If the proponents had had their way in 1920, migrating birds would have continued at the mercy of hunters, despite our treaty with Canada protecting these valuable species, and a supporting act of Congress (*Missouri v. Holland*, 252 U.S. 416). If they had had their way more recently, 12 of the 23 treaties ratified under the Eisenhower administration in 1953 would have been unenforceable and our traditional ability to enter into treaties of friendship and commerce with friendly nations of the free world would have been impaired. One reason we are a successful nation today is that our founding fathers wrote into the Constitution a provision that both treaties and federal laws overrode contrary state legislation. Thus was cured a cardinal weakness of the Articles of Confederation under which states could embroil us with foreign nations by flouting treaties.

Attack of Isolationism

The "interpretation" appears to retreat from the discredited "which clause" of earlier versions of the Bricker Amendment which would have made our treaties subject to the control of 48 state legislatures in important areas. But actually the report (page 14) sets up a concept that a provision of a treaty is void if it deals with matters of domestic concern. Yet treaties of commerce traditionally deal with matters of domestic concern so that our traders abroad may get reciprocal treatment (*Asakura v. Seattle*, 265 U.S. 332). Under this test such a treaty is unenforceable even with the consent of all 48 states. The report even indicates (page 13) that any delegation

of executive power to any international organization would fall under this ban. But NATO itself involves delegation of the power of the Commander-in-Chief to NATO commanders, some of whom are, believe it or not, foreigners serving the North Atlantic Treaty Organization. The treaty conferring judicial power on the International Court of Justice might fall under a similar ban.

The 10,000-word report stretches to the breaking point the doctrine of looking to the legislative history. Somewhere about this line it parts company with reality and is not a useful guide to the meaning of words. But there is no point in adopting an be used as a license to litigate the fundamental powers of the Republic. Yet the Constitution is in serious danger of unwise amendment because few persons have taken the time to read the fine print of the 10,000-word amendment. Unless people promptly write the President and Senators that the Bricker amendment must not pass, this back-door approach to the isolationist objectives of the proponents may succeed.

Quite aside from the niceties of phrasing, isolationist supporters of the Bricker amendment will certainly put forth a campaign of negative education for any text that is set forth. Such a campaign, swinging through the state legislatures, could hurt and hamper the many steps in the international field which the United States must take in order to hold the leadership of the free world and sustain the mighty coalition which helps protect our shores.

The Constitution has served our country for 167 years. In peace and in war it is a bulwark to the nation in international fields. Let's leave the Constitution alone.

COMMENCEMENT

(Continued from page one)

students may indicate if more tickets are desired. Upon request made to the receptionist, the Commencement tickets will be mailed in advance of the exercises. Candidates wishing this service should leave a stamped, addressed envelope with the receptionist.

Commencement tickets not called for at noon the day before Commencement, and which have not been specifically requested to be held, will be given out after 2 P.M., June 13, at the receptionist's desk to students who have asked for additional tickets.

Following the informal luncheon at the Law School, the Annual Meeting of the University Alumni Association will take place in the Tercentenary Theater in the Yard. At this meeting, some of the recipients of honorary degrees will make addresses.

Tickets to these exercises will be included with the Commencement tickets given or sent to members of the graduating class. It is requested that those who do not intend to attend this meeting return their tickets to the receptionist.

A smoker for member of the Law School Class of 1956 also is being planned by the recently elected class committee for a late afternoon shortly before examinations begin. The smoker will probably be held on the lawn outside Harkness Commons, with Judge Calvert Magruder, LL.B. '16, as the speaker.

Also planned during the weeks preceding Commencement are several Law School Class Reunions. The Class of 1911 will gather on May 4, while the graduates of 1931 have planned their twenty-fifth reunion for the weekend of May 12. The Fiftieth Reunion of the Class of 1906 will be held during Commencement Week.

Holmes Lecture

The Hon. Walter V. Schaefer, Justice of the Supreme Court of Illinois, will deliver the Oliver Wendell Holmes Memorial Lecture for 1956 in the Ames Courtroom of Austin Hall tonight at 8 P.M. His topic will be "Federalism and State Criminal Procedure."

The Holmes lectures are given at the Law School periodically and are supported by the income from a bequest to the University by the late Mr. Justice Holmes, LL.B. 1868.

TENSIONS

(Continued from page one)

formation and a clarification of the Law School's policy on serious illness occurring near or during examination time.

(7) Encouragement of participation by outstanding second and third-year students as Ames Club Supervisors.

(8) Publication by the Dormitory Council of an unofficial student booklet on Harvard Law School and its environs.

(9) Investigation of the possibilities of providing housing for the female law school students and the creation of a special committee of present female law students to help entering first-year women.

It is also understood that the committee made several recommendations involving the group work program, the Ames Clubs, and minor changes on the giving of grade information to prospective employers.

In addition to Mr. Abrams and Professor Trautman, members of the committee are Professors Benjamin Kaplan, Robert E. Keeton, and Albert M. Sacks; and Paul M. Bator, 3L of New York City; Calloway Cochran, 2L of Dallas, Texas; Alan D. Hakes, 3L of Longmeadow and Robert L. Larson, 3L of Rockford, Ill.

News in Brief

Gluecks Write Book

"Physique and Delinquency," a new book by Professor Sheldon Glueck and his wife, Dr. Eleanor T. Glueck, will be published by Harper's in June. The book presents the first systematic correlation of body types with psychiatric, psychologic and sociologic traits and factors.

Convis Wins Prize

The Wall Street Journal Student Achievement Award for 1956 has been won by Charles L. Convis, 3L of Lansing, N.D., retiring president of Bull and Bear.

The award, consisting of a silver medal embedded in a plastic paper-weight, carries with it a year's subscription to the *Wall Street Journal*.

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Griffin and Javits Debate Finishes '56 Forum Series

In the liveliest debate presented by the Law School Forum this year, Governor Marvin Griffin of Georgia and Attorney General Jacob K. Javits of New York exchanged views on segregation before an audience of 1500 in the auditorium of Rindge High School.

Associate Dean David F. Cavers, LL.B. '26, moderated the discussion and characterized his objective as leaning "neither to partiality on the one side, nor impartiality on the other."

Governor Griffin spoke first, and described recent acts of the Georgia Legislature which are designed to abolish public schools in any district where integration has been ordered by a federal court. He declared that Georgia will "go out of the school business" rather than integrate.

The Governor then turned to the recent "Interposition" Resolution of his state's General Assembly. Characterizing the United States Supreme Court's "usurpations" as "palpable" and "flagrant," he asserted the right of a state to declare objectionable decisions "null, void, and of no effect" in that state. Mr. Griffin referred specifically to *Brown v. Board of Education*, 347 U.S. 483 (1954), as "insulting to the intelligence of both races." After an

historical review of interpositions, the Governor concluded by warning that upon this issue, "Georgia and her people firmly will stand."

Attorney General Javits replied by criticizing Mr. Griffin for limiting his defense of interposition to events occurring before the Civil War and the passage of the Fourteenth Amendment. Mr. Javits proposed a bipartisan civil rights commission appointed by the President, if the Administration's current civil rights program should die in Congress.

Second, he suggested that a Bureau of Technical Assistance be set up in the office of the Federal Commissioner of Education to help school districts with prob-

lems involving integration.

A vigorous discussion period followed the prepared speeches, with most questions directed toward the Governor.

Seyoum Haregot, 2L of Asmara, Ethiopia, asked Governor Griffin how segregation can be condoned by a nation which holds itself out to the world as the exemplar of democracy, and what could he tell his

people that they had to gain from America? In reply, Mr. Griffin enumerated the economic gains of the colored people in his state under segregation. Mr. Haregot interrupted to ask if these "colored people" are not more commonly known in Georgia as "good niggers." Mr. Haregot then took his seat, and in the resulting confusion his question went unanswered.

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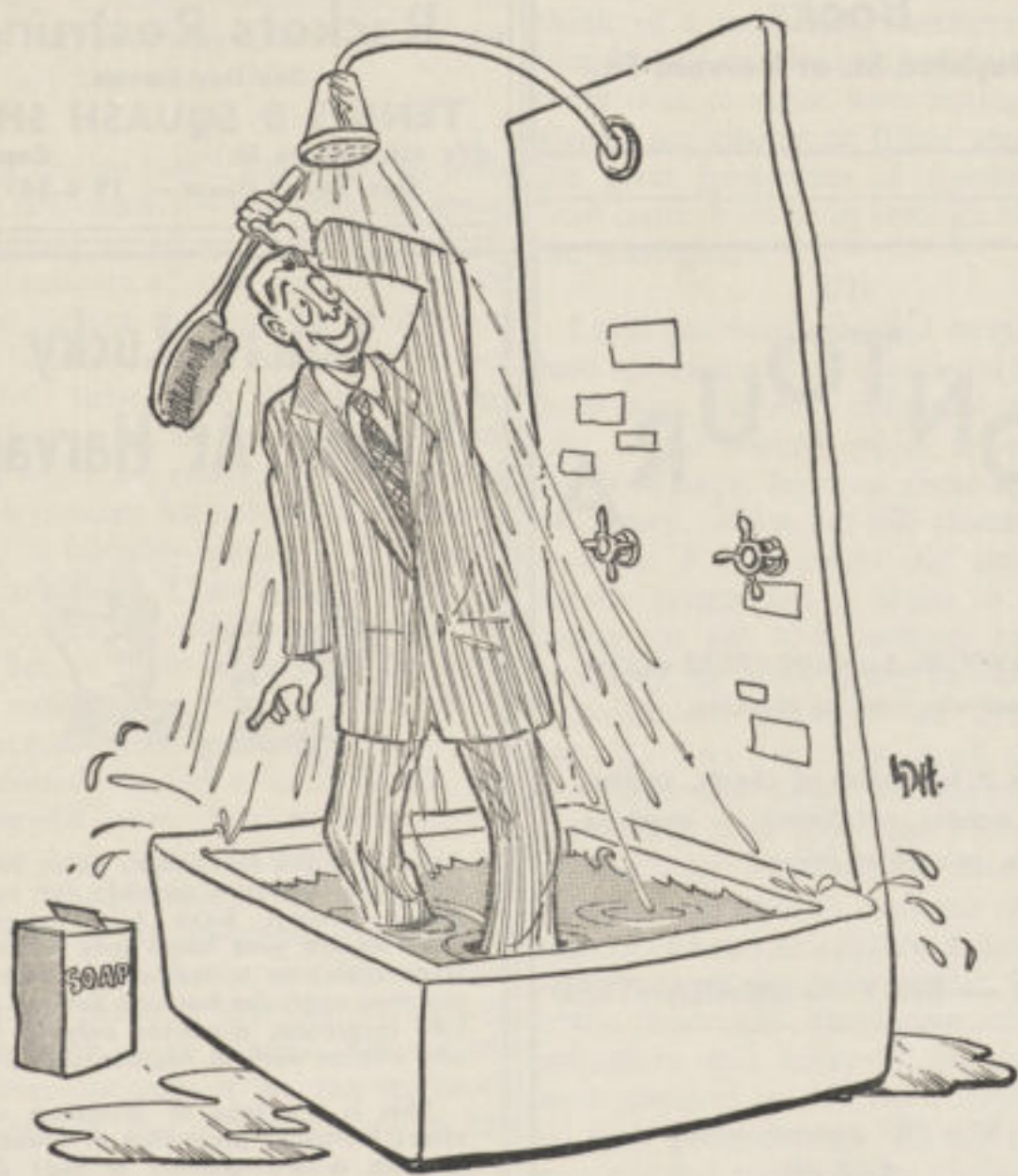
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