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TEN CENTS

Clinic for New Mass. Code To Enlighten Local Lawyers

The first session of a three-day Legal Clinic on the new Massachusetts Uniform Commercial Code will be held tomorrow beginning at 9 a.m. in the John Hancock Hall, Boston. The clinic is sponsored by the New England Law Institute in cooperation with the American Law Institute and the American Bar Association.

A total of eleven lectures will describe in detail changes made in Massachusetts law by passage of the Code by the Legislature last September. In addition the series will serve as a

into effect on October 1, will be included in a 1000-page Code Book which all registrants will receive. The Code Book, published by the Lawyers Cooperative Publishing Co., also includes the official comments prepared by the national sponsors of the Code, and a set of annotations relating the new statute to existing Massachusetts law.

Crucial Changes

Sponsors of the clinic have stated that it is vital that all Massachusetts lawyers become aware of the changes made in the previous laws. "The Code retains most of the fundamental principles and basic rules of business law, but removes inconsistencies, fills gaps, eliminates overlapping, and codifies some new areas. It also clarifies and updates the rules and definitions relating to this field of business law, and changes terminology to fit modern conditions. The Code also introduces some new and important

(See CODE on page four)



Robert Braucher

thorough refresher course covering virtually the entire field of general business law.

Several representatives of the Law School will deliver lectures at the sessions. Arthur E. Sutherland, Bussey Professor of Law; Professor Robert Braucher; Peter F. Coogan, Lecturer on Law; and William E. Hogan, Ford Foundation Fellow, are scheduled to participate. Mr. Hogan is a Professor of Law at Boston College Law School.

The program begins tomorrow with three sessions. A half-day program on Saturday, February 15, includes a like number of meetings. On Friday, February 21, four sessions will conclude the clinic.

The 175-page statute, which goes

Law Wives

The Law Wives will give their annual cocktail party for the faculty this Saturday from 4 until 6 p.m. in the large meeting room of Harkness Commons.

The next regular meeting of the Wives will be on Wednesday, February 19 in Harkness when the guest speaker will be James H. Nicholson of the Federal Bureau of Investigation. Mr. Nicholson will speak on "Inside Work on Outside Jobs".

Greener Pastures Sought By 28 First Year Men

An unusually large number of first year students have withdrawn from the Law School. Louis A. Toepfer, Director of Admissions and Secretary of the Law School, reports that 28 of the 516 first-year men have left.

Annual first year withdrawals during the past seven years have ranged from last year's low of 17 to a high of 38 in the '52-'53 school year.

It appears that many of the students who withdrew had no purpose in mind except to get away from the Law School and the law student's way of life. Of those who had definite plans, a large percentage intended to do graduate study in Arts and Sciences, either at Harvard or in other universities. Graduate study in English attracted several.

Only one left for financial reasons. A few left because of illness or family problems.

Mr. Toepfer attributes withdrawals to the fact that a great many people come to the Law School without any idea of what the law and legal study is like. After they discover that they don't like the law, they leave. He confesses puzzlement over how to spot, before they are admitted, these persons who will find legal study

distasteful. In cooperation with other law schools, psychological studies are being made, but Mr. Toepfer reports that no reliable guide has been found.

Last year an experimental test was given to one first year section in an effort to establish some correlation between personality traits and drop-outs. But Mr. Toepfer expects no practical fruits of these studies for a long time.

Mr. Toepfer said that there is no indication that the students left because of inability to do the work. On the contrary, the number who went into graduate studies for doctorates indicates that those who left were better than average for the Law School.

—Manley



Sargent College

Ship BU Girls Down River

Harvard University will open its first dormitory for women graduate students next fall. The dormitory will be what is now Lennox Hall of Sargent College of Boston University, pictured above, which was purchased by Harvard last year. Sargent College will move into new quarters on the Charles River campus at B. U. this summer.

The building will provide accommodations for 80 women graduate students in the graduate schools of design, divinity, education, law, medicine, public administration and public health. Some 285 women are enrolled in the seven graduate schools.

The new dormitory will provide reception, lounge and game rooms as well as living quarters. A kitchenette on each floor will provide for snacks and tea. The women graduate students will continue to take their meals at Harkness Commons in the Graduate Center nearby.

Loss Co-authors 'Blue Sky Law'

A new 503-page book entitled *Blue Sky Law* has been written by Professor Louis Loss and Edward M. Cowett, LL.B. '54. It was published last Monday by Little, Brown and Company.

The book contains a comprehensive treatment of state regulation of



Louis Loss

securities keyed to the recently promulgated Uniform Securities Act.

Blue Sky Law is one of the two end-products of the Harvard Law School Study of State Securities Regulation, which was initiated early in 1954 at the request of the National Conference of Commissioners on Uniform State Laws and financed by grants from the Merrill Foundation for Advancement of Financial Knowledge, Inc.

The other end-product is the Uniform Securities Act, which has already been adopted in substantial

(See LOSS on page four)

Senator Gore Will Address SBA on A-Energy Tonight

Senator Albert Gore (D) of Tennessee speaks tonight at 8 in the James Barr Ames Courtroom on "Nuclear Energy Tomorrow." The Senator is at the Law School under the auspices of the Student Bar Association. He has served for the past several years as a member of the Joint Committee on Atomic Energy. This summer he traveled to the Soviet Union to familiarize himself with that country's advancement in the development of atomic energy.

The Senator has been generally regarded as a liberal in Congress. He was first elected to the House of Representatives in 1938, winning the seat once held by Cordell Hull, and continued in that position until 1952 when he sought the Democratic nomination for Senator. His opponent was Senator Kenneth McKellar, who had served since March 4, 1917, the longest term by any senator. Although Mr. McKellar was supported by "Boss" Ed Crump, Senator Gore won by a large margin.

Early Life

The Senator's childhood was spent on farms in Tennessee. When he was two years old his family settled on a 186 acre tract at Possum Hollow. He finished high school in 1926, but lack of funds forced him to double as a teacher in country schools while attending college. He received a degree from the State Teachers College at Murfreesboro in 1932.

Though he was obliged to drive more than 100 miles each night, Mr.

Gore graduated from the YMCA Night Law School in Nashville in 1936. While studying the law, he



Albert Gore

served as a county school superintendent at Carthage.

While still a law student Senator Gore met his wife, who was then a student at the Vanderbilt Law School. She graduated in 1936, and they were married the following year. The couple have two children, Nancy and Albert.

During his years in the House, Mr. Gore was in the forefront of the battle for the Tennessee Valley Authority, and was in favor of ironclad price controls before World War II.

Immediately following his election to the House in 1944 for the fourth time, Senator Gore went into the

(See GORE on page four)

Biederman Chosen Forum President

The new president of the Harvard Law School Forum for the spring term is Donald E. Biederman, 3L of Rockville Centre, N. Y.

Other new officers are Robert A. Seidenberg, 2L of New York City, first vice president; Lawrence E. Doozee, 2L of West Hartford, Conn., second vice president; Jerome W. Breslow, 2L of Bloomfield, N. J., Treasurer; and Roberta J. Slobodkin, 1L of Quincy, Mass., Secretary.

Other members of the board of directors are Antonio J. Amadeo, 2L of Hato Rey, Rio Piedras, Puerto Rico; Anthony Atwell, 1L of Dallas, Texas; David F. Binder, 2L of Beaver Falls, Pa.; Gail Erickson, 3L of Glendale, Cal.; Robert H. Kubal, 2L of Crown Point, Ind.; Richard B. Leather, 3L of Port Washington, N. Y.; John S. Samuels, III, 1L of Galveston, Texas; Paul S. Turner, 3L of Los Angeles; Hubert T. Weinshienk, 3L of Denver; and Saul A. Wolfe, 3L of Newark, N. J.

Editorial:

Trial and Error

Places in the four Trial Practice sections being taught at the Law School this spring were sought by 270 third year students. Only 136 were accepted, almost an even one-half.

Despite the large unsatisfied student demand for the Trial Practice course this spring and the fact that demand for the course has increased rapidly and progressively in the four years it has been offered, again only four sections will be taught next year. In order to cut down the demand, however, students who wish to take the course next year have been advised to read the textbook to be used and will be required to pass an examination to be given on March 22 to qualify for a chance to take the course. The privileged few will then be chosen from the number passing the examination, perhaps by lot, perhaps by the submission of memoranda explaining why they think they should be granted the opportunity of taking the course, perhaps by some other means.

By the placing of these unprecedented procedural impediments in the path of prospective Trial Practice participants it is expected that many will not, like Christian, persevere and hold steadfast to the road, but will become disheartened and turn off upon an easier byway to some other course which may be had for the asking. The surviving it is hoped, will be the hard core of men who really desire the course, men willing to devote enough time and make enough sacrifices to win the opportunity to take it.

Thirty-four students per section is felt to be the maximum number permissible in order to assure the optimum benefit to be obtained from the course by the individual student.

Why, then, is not the number of sections expanded in order to meet the needs of the increasingly large number of students who must be turned down

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Editorial

(Continued from page one)

each year? The administration has advanced three major reasons:

School's Answer . . .

(1) The Law School cannot find any more qualified instructors with the available time to devote to teaching the course. Dean Griswold has announced that two practicing lawyers in the Boston area were approached but have been unable to find the necessary time to teach the course.

(2) Many third year students are applying to take the course just for, in Dean Griswold's words, a "lark." They consider it somewhat similar to a college dramatic production and are not really serious about taking it. As proof of this, Dean Griswold has pointed out that of the 136 students selected last year, 17 voluntarily dropped out of the course this fall. He feels that the four sections now offered adequately meet the "real demand for the course." The administration's problem, he states, is to sort out the people who genuinely desire Trial Practice from those third year men looking for a "lark."

(3) Trial Practice at Harvard is still in the "highly experimental" stage. This is but the fourth year in which it has been included in the curriculum. The administration is not satisfied, despite the heavy demand of students, that the course is of a real enough value, that Trial Practice is not something which should preferably be learned outside the Law School by experience after graduation. The Law School, therefore, feels "no obligation to make Trial Practice available to all who desire to take it."

Qualified . . .

The RECORD cannot but feel that the first reason given is not really an answer but an excuse. There are undoubtedly members of the faculty who have had adequate trial experience, who would be not only capable but willing to teach the course if it were given the proper emphasis and support by the administration, if it were taken out of the "highly experimental" category and given equal recognition with other third year elective courses.

The administration is to be commended for approaching two lawyers in the Boston area about teaching the course. The RECORD senses, however, that there may be more than two lawyers in the area who would be qualified to teach the course. It would not be unheard of, either, to look outside the faculty or the Boston area for instructors.

Suggestion . . .

We suggest that the Law School consider hiring an instructor, experienced in the handling of trial work, on a full time basis, to devote his time to teaching the three or four more sections necessary to meet the unsatisfied student demand for the course. The money which is to be spent on the qualifying examination and the rest of the Trial Practice screening and elimination project could be used to help pay his salary.

In regard to the second reason, the RECORD feels that the students who applied for this course are not irresponsible, that their de-

mands for courses reflect their needs. If third year men at the Harvard Law School are not competent to determine what will benefit them, if they are demanding to take subjects just for a "lark," then there is something wrong with the admissions system.

If the motive of third year students applying to take courses is to be suspect, the RECORD wonders why there is no attempt to sort out the people who "really want to take" other courses from those not really serious about it. Why are examinations not required before students are permitted to take Evidence, or memoranda submitted as a prerequisite for Corporations II or Conflict of Laws? Then these courses, too, should benefit by an attendance limited to the hard core of devoted students who possess a sufficiently strong desire to study the subject.

One might ask, too, if the ability to do well on a written examination is a reliable indication of a student's capacity for trial work. Is there any other subject for which it would be less reliable? Yet Trial Practice is the only course in the entire curriculum for which one must pass a written examination to qualify.

Policy Question . . .

The RECORD believes that the third reason advanced for not expanding the Trial Practice sections is the real reason. It is a matter of policy, a policy of emphasizing legal research, brief-writing and appellate argument; of accenting the ability to recognize, utilize and argue technical points of law to the exclusion of any treatment of the handling of facts or instruction about the conduct of a trial. This policy, which is typical of many leading law schools in the country, has been a cause of increased concern to many important members of the legal profession in recent years.

The noted New York trial attorney Emile Zola Berman told the student body of the Law School last year that "you are learning to be great craftsmen well versed in the science of law, but you have no concept of the use of the forum that is the courtroom." The celebrated trial lawyer went on to say, "The heart of the case is in the preparation. . . the law frequently is the simplest element. The whole investigatory system, which is the backbone of the entire trial system, has not received sufficient attention in the classroom."

Judge Samuel S. Leibowitz, when he spoke at the Law School in the fall of 1956, condemned the country's leading law schools for ignoring the importance of trial work. They are training students, he declared, "not for life in the courtroom, but for life in the library." He criticized the law schools for not giving their students sufficient training in the handling of facts. Moot courts such as Ames are no answer, he stated, because they deal with canned facts.

Model Trial . . .

The one 'model trial' which Harvard conducts for the benefit of first year students is presented at a stage in their law school careers when their ability to fully comprehend the meaning of the machinations involved is yet limited.

The Law School's Ames competition, upon which a large amount of time and money is spent, is devoted exclusively to appellate work. Arguments take place in The Supreme Court of the Commonwealth of Ames, etc. Ames is certainly a worthwhile endeavor, for the ability skillfully to conduct legal research, write briefs and handle appellate argument should be developed to the greatest extent possible. But why should fact handling and trial courts be ignored?

Many graduates from Harvard Law School have learned, and many more will learn, that trial courts do exist and, in practice, cannot be ignored. They are much more prevalent, in fact, than appellate courts. It must be recognized that not all graduates who expect to, or want to, will be able to find jobs with large departmentalized law firms in the big cities and may well find themselves in general practice. Many graduates, indeed, will prefer such work. These men should all find law school training and instruction in the area of trial practice invaluable in their early years, and the lack of it a serious handicap.

Students Alert . . .

The student body seems to have recognized this, since well over 50% of this year's graduating class applied to take the one course offered them in which they might gain this sort of training. It is the Law School administration which has refused to recognize it and sees no wrong in denying to half the students desiring to learn something about trial work in law school the opportunity to do so. Indeed, Dean Griswold, when informed of student discontent about the handling of the

Professor Sees Challenge In Metropolitan Growth

By Norton E. Long

(Norton E. Long is serving this year as Visiting Professor of Government at Harvard College, on leave from Michigan State University. He received his A.B. from Harvard in 1932, M.A. in 1933, and Ph.D. in 1937. From 1942-45 Professor Long worked in the Office of Price Administration. He served as assistant to Chester Bowles in the OPA in 1945. The following year he was an Associate Administrator of the National Housing Authority. His fields of interest include a study of the structure of leadership in Metropolitan Boston. Mr. Long is also an Honorary Life Member of the Cleveland City Council.)



Norton E. Long

The United States, already an overwhelmingly urban country, is fast becoming an overwhelmingly metropolitan country. In the coming years we can expect the great bulk of our people to live in metropolitan areas, places with central cities of fifty thousand or more, and of these metropolitan areas the bulk of the population will inhabit less than a score. There seems reason to expect that these will snowball as an increasingly market-oriented industry takes advantage of the possibility of eliminating transportation costs by settling near markets whose size permits all the economies of sale possible elsewhere.

Increasingly the problem of local government in the United States becomes the problem of metropolitan government. Metropolitan areas, while bound together by common problems, are "fractionated" politically. No common government short of the state possesses adequate authority to act. Indeed many metropolitan areas extend across one or more state lines and in at least two cases the problem becomes international.

Political Balkanization

Traditional political jurisdictions overrun by population present a pattern of political balkanization in which the solution of area-wide problems such as transportation, sewerage and water, air and stream pollution, the rational use of land and the prevention of its waste, the inequities of fiscal resources for

Trial Practice situation, suggested abandoning the whole program.

The criticism voiced herein is directed not at Harvard Law School alone but at most of the major law schools in the country. The RECORD, in fact, commends the administration of the Law School for possessing the courage and insight to inaugurate the Trial Practice course four years ago, overcoming a deficiency of over 130 years standing, and for expanding it from two to four sections two years ago. But this is no time to look backward.

Duty to Fulfill . . .

The offering of this course by the Law School should not now be considered as a privilege conferred upon the students. The Law School is wrong, the RECORD feels, in believing that it has "no obligation to make Trial Practice available to all who desire to take it." The Law School has a duty to satisfy, or at least to make a sincere and a wholehearted attempt to satisfy, the needs of its student body. These needs include some sort of training in the handling of facts, some sort of instruction in the conduct of a trial.

Nor does the RECORD wish to slight in any way the importance of being able to conduct legal research efficiently, to write a first-rate brief, and to manage appellate argument with skill. But it seems patently unjust to deny to a student, in his three years of law school, one opportunity to take a one-semester elective in which he may gain a little knowledge of fact finding and fact handling and the proper conduct of trial work.

school and other necessary public requirements become ever more difficult. The difficulty of overcoming political jealousies developed in the course of a long history of municipal rivalries frequently exacerbated by peculiar patterns of ethnic and religious settlement have led the impatient to compound the confusion of existing governments with an overlay of special districts and authorities.

Frequently these *ad hoc* solutions have given a measure of relief in the cases of urgent problems. From a long run point of view they have compounded the difficulty of providing needed overall coordination and planning by adding to an already unbearable complexity.

While the metropolitan problem is most frequently seen as one of physical discomfort and failure to make optimum use of economic resources it is in a real sense a crisis in our capacity to maintain meaningful and effective local self government. The disintegration of the central city is not only a phenomenon of blighted housing, blighted stores and blighted industry, it is even more the erosion of civic leadership and citizenship on which effective local self government depends.

The flight from the central city of the middle and upper classes in a very real sense removes the very basis of responsible democracy. Condemning the central city to becoming a slum of unskilled low income labor, minority ghetto and the aged, jeopardizes the enormous capital investment still sunk there and turns over the political future to the tender mercies of upward mobile hungry types who exploit the apathy, ignorance and impotence of the remaining inhabitants. On the other hand, the flight from political responsibility of the suburban upper and middle class condemns them to the triviality of suburban politics, the politics of the one class town, the country club. This lack of challenge not only produces an uneasy conscience among a natural and artificial aristocracy that have become free loaders on the body politic, it debilitates their capacity for political action and reinforces the already dangerous tendency to buy political action through the use of mercenaries and fixers. The process of natural selection is at work here too and the loss of political capacity in the species has survival consequences.

The civic personality split between the central city compound of office and slum and the suburb with its trivia of home and relaxation is further aggravated by the tendency of both office and factory to migrate out into the ring of the city and for the suburbs of the wealthy to scatter. The easy cooperation through face to face meetings of a civic and business elite become ever more difficult. The number of jurisdictions and the consequent number of civic committees become beyond the psychological energy of a tiring and diminishing group of civic leaders who stagger from one committee meeting to another counting their achievements in newspaper publicity and the realities in frustration.

Management Needed

The metropolitan problem is one of making the civic and economic management of an emerging territory with common problems feasible on a democratic and locally self governing basis. It requires the structuring of institutions for which a top civic management can be recruited from the presently dispersed reservoir of civic talent. It requires the making of jobs that are sufficiently interesting to enlist this talent and that are sufficiently functional for peoples life careers to be open to others than the fanatical or the hungry. We need to retool our private economic organizations, principally the utilities but probably the larger banks, to recognize that metropolitan areas are territories for development, territories which will be better served if private enterprises have a rational enlightened self interest in so developing them.

In short, for the metropolitan area we need a new governmental concept similar to the T.V.A., but one which recognizes the need for a partnership between government and industry. If we recognize the metropolitan area as a territory for development we can begin exploring how to structure and restructure private and public institutions to bring this about. Our strongest appeals to the inhabitants of the balkanized area is that they are all economically in one boat, that they are in competition with other metropolitan areas for a better future and that they had better pull together. Beyond the economic appeal lies the further and more challenging possibility that our emerging metropolitan areas properly led may produce a richly varied autonomous urban culture of their own rather than the anemic side show to Hollywood and New York that now obtains. The challenge of structuring the new metropolis is fundamentally a challenge to a rich and virile civic life.

New Restrictions on NAACP Imposed by Southern States

By Robert B. McKay

Professor of Law, New York University School of Law

(This is a condensation and partial revision of portions of an article to appear in the *Howard Law Journal* under the title, "The Repression of Civil Rights As an Aftermath of the School Segregation Cases".)

Like all organizations which support unpopular causes and challenge existing patterns of society, the National Association for the Advancement of Colored People has had a stormy history; and it has been soundly praised and roundly condemned. In one respect, however, and perhaps in that connection only, friends and foes agree: The NAACP is now and has long been the single most effective catalytic agent in breaking down existing patterns of segregated society, in the North as well as in the South. Its legal record has been truly phenomenal, having won more victories in the United States Supreme Court than any other single organization.

Senator Herman E. Talmadge, no admirer of the NAACP, has conceded its impact. When governor of Georgia he wrote: "The leader, director and field general in the fight to break down all forms of racial segregation is the National Association for the Advancement of Colored People." It is small wonder then that much of the current effort to preserve segregation takes the form of attacks, more or less overt, upon the NAACP. It is, indeed, a kind of compliment, grim and unwelcome though it may be.

Principal Source

These attacks date essentially from the 1954 and 1955 decisions by the United States Supreme Court that the segregated public schools affected by those decisions should be desegregated "with all deliberate speed."¹ With each additional instance of desegregation, whether voluntary or done in compliance with court orders, further ingenuity is displayed in techniques of resistance. Thus, a number of states have adopted resolutions of so-called interposition and elaborate school-assignment plans which more or less openly seek to preserve segregated school systems.² A more recent manifestation of this program of resistance has been that which seeks to destroy or at least to frustrate the functioning of the NAACP. It is this effort, whose outlines are now fairly clear, which is the subject of this discussion, particularly in relation to limitations on the exercise

of the first amendment rights of freedom of speech and association.

The central objective of the programs of harassment, legislative, judicial, and economic, seems to be to compel public identification of NAACP members and contributors who can in turn be subjected to other legal and economic pressures, and perhaps even to physical hazard; to force the NAACP and its lawyers to terminate their sponsorship of litigation to enforce racial equality; and to have the NAACP defined as a profit-making organization operating in violation of state revenue laws.

By statute, judicial decision, or executive decree a number of Southern states have sought disclosure of local membership lists of the NAACP. In part, these requirements represent simply a strict enforcement of laws calling for registration of foreign corporations doing business within



Thurgood Marshall
General Counsel, NAACP

speech issue was promptly reached when the state attorney general sought an injunction in a state court to restrain the NAACP as a foreign corporation from doing business in Alabama. At an *ex parte* proceeding a temporary restraining order was issued broad enough in effect to prohibit the continuance of activities of the NAACP in the state during its pendency. Later the state filed a motion to require the NAACP to produce certain books, documents, and other papers, significantly including its membership lists. Over defendants' objection production was ordered, and the NAACP was adjudged in contempt of court. The punishment was fixed at \$10,000, to be raised to \$100,000 if compliance was not effected within five days. The Alabama Supreme Court denied certiorari. Although the NAACP offered to produce some of the demanded records, its refusal to give up membership lists brought an order from the trial court confirming the fine at the \$100,000 level. After the state supreme court again denied certiorari, the United States Supreme Court agreed to review the case; and argument was scheduled for early this year under the caption, *NAACP v. Alabama*.³ The principal constitutional problems of this and related cases⁴ involve the first amendment rights, as incorporated into the fourteenth amendment. These are briefly discussed below.



Hugo L. Black

the state. Typically these statutes call for a copy of the charter of the foreign corporation, the address of its principal office in the state, the name of its agent, the nature of the business, and the names and addresses of officers and directors. The NAACP has in a number of cases complied with such requirements;⁵ and, indeed, there appears to be no adequate justification for its refusal to do so. Unless such an organization is constitutionally protected against any disclosure of its purposes, officers, and directors — which is surely not the case — there appears to be no first amendment objection to the disclosure of this minimal amount of more or less routine information.

Very different, however, are the common requirements that the entire membership list (or the list of financial contributors, which may be the same thing) be disclosed. The first amendment issue is fundamentally raised in view of the fact that such statutes sometimes specifically require this information of corporations "principally engaged in the activity of influencing public opinion and/or legislation."⁶

The problem is most acutely raised in Alabama. Although the foreign corporation registration statute in that state does not call for full disclosure of membership, the free

amendment. Mr. Justice Roberts (with the concurrence on this point of Chief Justice Hughes and Mr. Justice Black), relying on the privileges and immunities clause of the fourteenth amendment to protect the individuals' rights of peaceful assembly and freedom of communication, nevertheless specifically excluded corporations from that protection: "Natural persons, and they alone, are entitled to the privileges and immunities which §1 of the Fourteenth Amendment secures for 'citizens of the United States.'"⁷ Justices Stone and Reed rejected the privileges and immunities argument, but found the ordinances violative of the due process clause. However, the opinion continued:

"As to the American Civil Liberties Union, which is a corporation, it cannot be said to be deprived of the civil rights of freedom of speech and of assembly, for the liberty guaranteed by the due process clause is the liberty of natural, not artificial, persons."⁸

Despite this apparently unequivocal holding that corporations are not persons within the protection of the first amendment as incorporated into the fourteenth, the Supreme Court has been somewhat ambivalent on this issue. First amendment protection has been accorded newspaper corporations and moving picture companies.⁹ And of course, as demonstrated in the *Hague* case itself, the Court finds no difficulty in recognizing the free speech protection due individuals who act in behalf of unincorporated associations, or presumably those who act in behalf of corporations. Moreover, as already noted, although a non-profit corporation may not be protected against

deprivations of liberty, it is guaranteed against denial of property without due process.¹⁰

The apparent state of the law now would permit an officer or other agent of a corporation to complain of a denial of freedom of speech or assembly as to himself when acting on behalf of the organization, but deny the corporation any right in its own behalf. This inversion of the law is one of which the NAACP can avail itself by joining with it as plaintiffs in each suit individual members who claim invasion of first amendment freedoms. Moreover, the corporation can raise the issue directly if it is hit in the pocketbook (through loss of members or contributions). Such sinuities in the law, however, encourage new and unwelcome fictions

¹⁵ *Pierce v. Society of Sisters*, 263 U.S. 510 (1923).
¹⁶ *Joint Anti-Racism Comm. v. McGrath*, 341 U.S. 123 (1951).

(See NAACP on page four)

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NAACP

(Continued from page three)

at best, and downright evasion at worst. If corporations are persons as to property rights and equal protection of the laws, they should be entitled to no less security in connection with liberty, the most cherished right of all.

Identification of Members

Some of the statutes requiring disclosure of membership lists date back to anti-Ku Klux Klan legislation, as in Louisiana; at least one, North Carolina, is essentially a lobbying registration statute; others have enacted special legislation directed primarily at the NAACP, as in Virginia; and in Alabama and Georgia the direction to produce membership lists was not based on any statute, but on court order pursuant to motion by a state official. The precedent in favor of disclosure appears at first impression to be strong. Thus, in *Bryant v. Zimmerman*¹⁶ the Supreme Court upheld New York's requirement of disclosure of membership lists by oath-bound organizations. There was no doubt that the law was aimed at the Ku Klux Klan. Nevertheless, the restricted nature of the class at which the statute was directed was not found to violate the equal protection of the laws, even though other oath-bound organizations were specifically exempted from the provisions of the statute. The Court took judicial notice that the exempted groups "have a recognized lawful purpose," leaving for penalty under the statute only those whose activities tend "to the prejudice and intimidation of sundry claims of our citizens,"¹⁷ such as the Klan.

Although this decision supported state control in these special circumstances, the precedent hardly seems applicable to the NAACP, whose objectives and methods have been recognized as worthy and not criminal. Indeed, it is at least implicit in the *Bryant* ruling that a similar exaction of membership lists from benevolent orders, labor unions, and college fraternities would have been unconstitutional.

Stresses Registration

Surprisingly, the Court did not mention the free speech issue as such in the *Bryant* case. In subsequent rulings, however, the Court has emphasized the constitutional problems involved in the requirement of membership registration of any kind. Even when the Court has given approval to statutes which require some form of membership identification,¹⁸ it has been clear that the approval was reluctantly given and with conviction that the registration provided for was made necessary by some compelling national consideration and was carefully safeguarded.

It is now plain that the lack of concern over first amendment rights evidenced in the *Bryant* case is no longer characteristic of the Court. Even minimal and indirect restraints can be justified only if there is a sufficiently vital public interest which can not otherwise be effectively protected. It seems unlikely that the Supreme Court will find that suppression of the NAACP and its activities in the Southern states is a sufficient public purpose to justify such a limitation on free speech¹⁹ and assembly.²⁰

There can be little doubt in fact that a requirement that the NAACP disclose its membership lists in some of the Southern states will subject members to fear of reprisal and may make prospective members reluctant to join. There should similarly be little doubt in law that such restrictions, absent sufficient public purposes, are violative of the Constitution.

¹⁶ 278 U.S. 63 (1928).
¹⁷ *Id.* at 75.
¹⁸ *American Communications Ass'n v. Douds*, 339 U.S. 382 (1950); *United States v. Harris*, 347 U.S. 612 (1954).
¹⁹ See also *Thomas v. Collins*, 323 U.S. 516 (1945); *Murdock v. Pennsylvania*, 319 U.S. 105 (1943); *Thornhill v. Alabama*, 310 U.S. 88 (1940); *Lowell v. Griffin*, 303 U.S. 444 (1938); *Stromberg v. California*, 283 U.S. 359 (1931).
²⁰ *DeJonge v. California*, 299 U.S. 353, 364 (1937).



Richard R. Baxter



Louis B. Sohn

Baxter, Sohn Completing Draft On Legal Responsibilities of States

Professors Richard R. Baxter and Louis B. Sohn are now completing the sixth draft of a *Codification, with Commentary, on the Law of Responsibility of States for Injuries to the Persons or Property of Foreigners*. This project was undertaken by the two professors at the request of the Secretariat of the United Nations for submission to the International Law Commission.

The work, which will comprise a volume of approximately 1200 pages, will consist of a proposed codification of the law together with both a historical and analytical commentary thereto. About one-fifth of the historical and one-third of the analytical commentary are now completed. Professors Baxter and Sohn expect to have the entire work completed by the end of 1958.

The codification is divided into three major parts. The first part treats of the proposed substantive law of the responsibility of states and contains a definition of wrongful acts, including tort, breach of contract, confiscation of property, etc.

The second part deals with procedural problems. It explains when, where and how a suit may be brought for one of the violations defined in the first part.

The third part deals with the measure of damages to be awarded. The problems associated with war and war reparations are not included in the work.

The project is being carried on under the auspices of the International Legal Studies Program. Professors Baxter and Sohn have been assisted by an advisory committee of professors and practicing lawyers including Professor Philip Jessup of Columbia and Arthur Dean of the

New York firm of Sullivan and Cromwell.

An extensive discussion of the draft and commentaries will take place at a meeting scheduled for the spring of 1959 at Geneva, Switzerland, where an official report by Dr. F. V. Garcia-Amador of Cuba will also receive careful consideration.

Professors Baxter and Sohn have received much student assistance on the project and expect to employ several students to aid them in completing the historical commentary this summer.

GORE

(Continued from page one)

army as a private, later to spend some time under fire in Europe. He had volunteered and had been sworn in as a private in 1943, after having waived his Congressional immunity, but because of the slight Democratic margin in the Congress at that session, he returned to that body at the request of President Roosevelt.

As a member of the House of Representatives the Senator was active on the Banking and Currency Committee for four years; and from 1942 until 1952 served on the House Appropriations Committee, being chairman of its Independent Offices Subcommittee for the last four years of his term. He was also a member of the House Armed Services Subcommittee.

In the Senate he became a member of the Public Works Committee and chairman of its Roads Subcommittee. He has also served on the Finance Committee and, of course, the Joint Committee on Atomic Energy.

—Finley

Bull & Bear . . .

O. Kelley Anderson, president of the New England Mutual Life Insurance Company, will address the Bull and Bear Club tomorrow in the large meeting room of Harkness Commons at 1:40 p.m.

The topic for the meeting will be "Investor's View of Insurance," with emphasis on the advantages of life insurance as an investment, and the investment policies of New England Mutual.

Mr. Anderson is a director of several large corporations, including the Gillette Company and the United Fruit Company. He is a graduate of the Harvard Business School and a former president of the CIT Finance Company.

Uniform State Laws as well as a coordinator of the 1956 Code revision.

Professor Sutherland presents his views on Article 3, Commercial Paper, on February 21 at the seventh session. He is serving as a member of the Legislative Recess Commission on the Code, which will review the law before it takes effect in October.

A registration fee of \$25.00 covers admission to all sessions of the three day clinic as well as the cost of the Code Book. A similar school will be held in Springfield on March 21, 22, and 29.

—Cottrell

QUA

(Continued from page one)

too interested in the case," stated Justice Qua. All work carried out for the appeal must be done with care and concern.

After the filing of all necessary papers, including the brief, the case is then in line to be heard. It is to be decided whether or not there will be an oral argument or the brief allowed to stand alone. Since in Massachusetts the appeal judge will hear the oral argument before he reads the brief, Justice Qua advises, "Don't give an oral if you are going to give a lackadaisical presentation." The judge must not be pushed into a biased position over your case.

The appealing party has, of course, the advantage in court because he speaks first. However, one of the great errors constantly being made is that "We don't get an adequate presentation of the facts from the appealing counsel." He is too interested in arguing his case, with the consequence that the judges simply do not know what is going on. The Justice further warns, "Make a clear statement of the case. Don't drag in every detail because every detail is not important. But be sure to let the judges know what the case is all about. Never forget that when you do skip over the facts, the opposing counsel has the opportunity to put them to his own advantage."

"Reading the brief aloud in the courtroom is never effective. It is always better to use a separate oral argument, even though it may be halting and uncertain. The worst offenders in this respect seem to be young women lawyers who rely to a great extent on the written word."

Lengthy Briefs

Questioned about the approach given by the appellate court to those briefs that run to tremendous lengths, the speaker stated that the court couldn't remain in business if it had to read the full brief. Justice Qua mentioned the time he appointed the present Chief Justice, Raymond S. Wilkins, LL.B. '15, to read the record of a telephone case. Justice Wilkins had to remain through the summer in order to finish the task.

In the brief "be a little reasonable about the cases you bring in," he suggested. If the question has been well decided in your own jurisdiction, it is not necessary to bring in those of others. Then too, in the oral, don't bring in a lot of new cases not cited in the brief: "Talk about your own case, not a lot of others."

One member of the audience said he was puzzled about the many decisions wherein the majority seems so certain of its position and the dissenting side seems equally sure on its part. How, he asked, could there be so much certainty in the decisions on both sides? Justice Qua merely stated that the courts must always appear to speak with authority even though some hesitancy might be present.

A final question involved the apparent lack of dissenting opinions in Massachusetts. It has been the desire of the court in this Commonwealth, said the Justice, to discourage dissenting opinions on the ground that the majority statements are going to be the law and the dissents merely detract therefrom. In addition, he explained, "The majority opinion is usually the best despite some piquant remarks that may catch the popular ear."

Another reason is, he said, that states have more cases involving "old-fashioned law," while the United States Supreme Court has before it much wider problems which often necessitate the expression of separate opinions.

Justice Qua became a member of the Supreme Judicial Court of Massachusetts in 1934, after having served for many years on the Superior Court. In 1947 he was appointed Chief Justice, in which capacity he remained until his retirement from the bench in 1956.

—Finley

Alumni Notes

LL.B. '31 — Hyman J. Cohen has announced the removal of his law offices to the Second National Bank Building, Eighth Floor, Washington 5, D. C.

LL.B. '50 — Coleman L. Bornstein has recently been elected a vice president of the National Young Democrats of America.

LL.B. '54 — Richard L. Barovick has recently become engaged to Joan Blackman. Mr. Barovick is with the legal staff of the Music Corporation of America and was formerly with the law firm of Nordlinger, Riegelman, Benetar & Charney.

LOSS

(Continued from page one)

part in six jurisdictions (Colorado, Hawaii, Kansas, Missouri, New Mexico and Virginia.) Individual provisions have been adopted in four more. The Act, together with the official commentary of the Conference (drafted by Professor Loss) and the lengthier commentary of the draftsmen on each section, appears as Appendix I of the book.

The Study was conducted and the Act drafted by Professor Loss and Mr. Cowett, who worked under an appointment as Research Associate in Law.

Professor Loss has declared that the area of blue sky law is now one of pointless complexity, badly in need of both uniformity and simplification. The greatest difficulty encountered in the Study project, he stated, was the staggering amount of detailed material that had to be dealt with concerning 46 different state statutes (Delaware and Nevada have no blue sky laws), the Hawaiian statute and federal law on the subject. In the area of exempted securities and transactions, for example, more than 2800 classifications were required in order to analyze the existing state statutes.

The authors held frequent consultations with a special Advisory Committee, consisting of representatives of government, the securities industry and the Bar. This Advisory Committee was active, Professor Loss has emphasized. "It was no letterhead group."

The primary purpose of the book, he explains, is to present a survey of blue sky law as it is administered and practiced throughout the country as a whole. It pieces together a pattern of fundamental similarities in state statutes and keys the existing state law to the Uniform Securities Act to provide a correlation between the present law and the Act as it is adopted by state legislatures.

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