

MAR 27 1958

LOCATION



Harvard Law Record

America's Oldest Law School Newspaper

VOL. 26, NO. 8

CAMBRIDGE, MASS., THURSDAY, MARCH 27, 1958

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TEN CENTS

Ousted Investigator of FCC To Address Friday Forum

Bernard Schwartz, LL.M. '45, removed last month as chief counsel for the House Committee on Legislative Oversight amid a storm of controversy, will address the Harvard Law School Forum tomorrow evening at 8 p.m. in the James Barr Ames Courtroom. His subject will be "Fact and Fiction in Administrative Law."

Professor Schwartz' brief tenure as chief counsel for the House Committee investigating the conduct of the FCC was marked by an increasing amount of friction between the mem-

holds a Ph.D. from Cambridge University.

Clark Byse and Phil C. Neal, Visiting Professors of Law, will serve on a panel which will enter into a discussion with Professor Schwartz following his address. Associate Dean David F. Cavers will serve as moderator for the program.

Tickets may be purchased at the Forum office or at the door for 95 cents apiece.



Bernard Schwartz

bers of the Committee and himself about the manner in which the probe should have been conducted. Professor Schwartz favored, in an outspoken manner, a no-holds-barred type of investigation which would have summoned before the Committee high officials in the executive branch of the Government along with members of both houses of Congress to explain certain evidence of influence and pressure upon FCC members.

Professor Schwartz' troubles reached a high point when, without authorization, he released certain documents containing information he had gathered to Senator Wayne Morse (D) of Oregon, who promptly returned the documents to the Committee. It was shortly after this incident that he was dismissed as chief counsel to the Committee.

Professor Schwartz received his LL.B. from New York University where he is now Professor of Law. He

Sussman Elected By Dorm Council

Jerome J. Sussman, 2L of Brooklyn, was elected president of the Harvard Law School Dormitory Council at a recent meeting.

Also elected for one-year terms were the following: James W. Jackson, 2L of Lake Forest, Ill., vice-president; Robert L. Brenner, 1L of Minneapolis, secretary. Leslie A. Glassman, 2L of New York, was reelected treasurer.

The council by unanimous resolution thanked the outgoing administration of president Edmund R. Schroeder, 3L of New York City, for its work.

Dems Elect

At a meeting held on March 18, the Law School Democratic Club elected its officers for next year.

Incoming officers will be: President, Charles L. Edson, 2L of University City, Mo.; Vice President and Treasurer, Roy A. Schotland, 1L of East Orange, N.J.; Recording Secretary, Elizabeth M. Woodruff, 1L of Saranac Lake, N.Y.; Corresponding Secretary, Marilyn G. Rose, 2L Chelsea, Mass.; and Member-at-Large of the Executive Committee, Carl M. Levin, 2L of Detroit.

Ewing Elected

The new chairman of the Board of Student Advisers for the year 1958-59 will be Ky Pepper Ewing, Jr., 2L of University Park, Md. Carl Angeloff, 2L of Rochester, N. Y., has been elected vice chairman.

The two new officers have appointed the following committee chairmen (all 2L): Martin B. Louis of Trenton, N. J., Williston Competition; Louis Begley of Cambridge, First Year Facts Committee; Frederic K. Becker of West Orange, N. J., and David J. Smalley of Larchmont, N. Y., First Year Administrative Committee (co-chairmen); Robert M. Buchanan of Cambridge, Second Year Facts Committee; David Shayne of Chicago, and Alice V. Stroh of St. Louis (vice chairman), Second Year Administrative Committee; and Alice V. Stroh, Special Projects Committee.

Atwater, Venman Lead Club; Win Final Ames Competition

The Griswold Equity Club defeated the Chayes Club last Friday evening in the finals of the Ames Competition. The decision, a unanimous one from a bench of three judges, was announced to an overflowing James Barr Ames Courtroom by Felix Frankfurter, LL.B. '06 *cum laude*, the presiding justice. The case was argued in the Supreme Court of the United States of Ames.

The successful oralists were Julian W. Atwater, 3L of Batavia, N. Y., and James W. Venman, 3L of Bridgeport, Conn. Their opponents were William B. Mallin, 3L of New Kensington, Pa., and William Schurtman, 3L of New York City.

The two associate justices, Robert B. Williamson, LL.B. '23, Chief Justice of the Supreme Judicial Court of Maine, and George T. Washington, Associate Judge of the United States Court of Appeals for the District of Columbia Circuit, joined with Justice Frankfurter in praising both clubs for an extremely well presented argument. Justice Frankfurter particularly congratulated the oralists for not reading their arguments to the court, as many lawyers who appear before the Supreme Court, he said, have an unfortunate habit of doing.

The case argued, *Van Cleef et al. v. Digby et al.*, concerned a Congressional enactment providing for financial aid to states which agreed to establish special programs of education emphasizing science for "superior" children within the state, and a New York statute establishing such schools for "superior" children in the state, thus qualifying for the federal aid. The statute defined "superior" children as all those with an IQ of 150 or more and made attendance at the "superior" schools compulsory for these children.

Attorneys Atwater and Venman defended the constitutionality of these statutes and argued that the plaintiffs (four children designated "superior" and their parents) had no standing to sue, in the state court where the action was originally brought, to enjoin enforcement by federal officers of the federal statute.

Attorneys Mallin and Schurtman had argued that the statutes violated the "due process" and "equal protection" guaranteed by the 14th Amendment. The argument was punctuated by a sporadic firing of questions at the oralists by Justice Frankfurter, in his characteristic fashion. These questions were handled, by and large, in an unusually competent manner.

The court rendered no decision on the issues of law involved in the case.

Counsel on the brief for the Griswold Equity Club included Gordon G. Busdicker of Winona, Minn., John French III of New York City, Robert A. G. Monks of Cambridge, Charles A. Morrison of Mount Vernon, N. H., Edmund R. Schroeder of New York City, and William H. Thigpen of Evanston, Ill.

Counsel on the brief for the Chayes

Club included Donald E. Biederman of Rockville Centre, N. Y., Robert E. Fleck of Cuyahoga Falls, Ohio, Emil W. Herman of Pittsburgh, Pa., Donald Hirsch of New York City, Carl M. Selinger of Oakland, Cal., and Zita L. Weinshienk of Denver.

—Binder

Law Wives

At the next meeting of the Law Wives on Wednesday, April 2, Mr. Charles Christopher of Sage's Florist Shop and Mr. Jack Flannery from Brookline will demonstrate attractive floral arrangements for the home. The meeting will be held in the large meeting room of Harkness Commons at 8 p.m.

New Law School Catalogue Reveals 1958-59 Program

Faculty teaching assignments for 1958-59 will be announced with the publication of the Law School Catalogue on April 1st. No startling changes in courses are planned, but retirements and leaves of absence have caused a number of shifts in assignment. The Tabular View listing the schedule of hours and classrooms will be released within a few weeks after publication of the Catalogue.



Samuel E. Thorne

Professor Paul A. Freund begins his teaching schedule as Carl M. Loeb University Professor with one section of Constitutional Law and his traditional seminar in Constitutional Litigation. Professor Freund will not be teaching a section of Conflict of Laws.

Visiting Professors Elliot Cheatham and Ronald Graveson will present the third year courses in Conflict of Laws. Professor Cheatham will give the one year course and Professor Graveson both the fall and spring three hour sections.

Professor Benjamin Kaplan returns after a year at Yale. He will teach one section of Civil Procedure. Copyright and Unfair Competition will be given by Professor Kaplan in the fall. He will offer Equitable Remedies in the spring.

Second year students will have a slightly broader choice in the fall electives. Although English Legal History will not be given in Professor Thorne's absence, additional sections of American Legal History and Jurisprudence are scheduled. Professor Mark DeWolfe Howe will survey Church-State relations in American Legal History (b). Visiting Professor Graveson will take over a section of Jurisprudence.

Real Estate Transactions will be taught as a third year course for the

(See SCHEDULE on page four)

Professor Thorne Leaves for a Year

Samuel E. Thorne, Professor of Legal History, will be on leave of absence from the Law School during the 1958-59 school year. Professor Thorne will leave for England in late August to work on his translation of Bracton's *De Legibus*, the great medieval English treatise on law, to be published by the Yale University Press in seven volumes, and to complete his edition of Y.B. 6 Richard II (1383), to appear in the series of Richard II Year Books printed by the Ames Foundation.

Although Professor Thorne will spend most of his time in libraries and at the Public Record Office in London, he will give a number of lectures during the year.

(See THORNE on page four)

Three Graduates Return to Teach

Three young lawyers from Washington, D.C., will join the faculty of the Harvard Law School this summer. Derek C. Bok, LL.B. '54, and John H. Mansfield, LL.B. '56, will become Assistant Professors of Law. Roger D. Fisher, LL.B. '48, will become Lecturer on Law. All three graduated with high honors from the Law School and served on the board of the *Harvard Law Review*.

Mr. Bok will teach the full year course in Labor Law as well as Antitrust Law in the spring. Mr. Mansfield will give sections of Torts and Trusts during his first year of teaching. Mr. Fisher will offer one section of Civil Procedure and a seminar on Atomic Energy Problems.

Mr. Bok, currently on Army duty at the Pentagon, has been assigned to legal duties in the U.S. Army since 1955. He assisted in studies of executive privilege and loyalty and security matters, and recently has served as defense counsel in courts martial. A native of Philadelphia, he received his A.B. from Stanford University in 1951. On a Fulbright Fellowship in Europe during 1954-55, he wrote a book on the Schuman Plan.

Mr. Mansfield, law clerk for Justice Felix Frankfurter, served previously as law clerk to Judge Traynor of the Supreme Court of California. A native of Morristown, N.J., he received his A.B. *m.c.l.* from Harvard in 1951.

Mr. Fisher is presently a member of the Solicitor General's staff. An authority on common law and international law, he was associated with the firm of Covington & Burling before joining the Justice Department staff in 1956. A native of Chicago, he received his A.B. from Harvard in 1943, then was in military service during World War II, returning to the Law School at the end of the war. After graduation he served for a time in the Paris office of the Economic Cooperation Administration.

Dean Urges Understanding For Universal Rule of Law

"If only we could extend the rule of law to nations, we would have found the means to world-wide peace," Dean Erwin N. Griswold said as he addressed the Colorado Students Forum at the University of Colorado, Boulder, Colorado, yesterday.

"The best thought and effort of all of us," he told his audience, is required to develop the opportunity for law to become effective in world

do far more than we have been doing to bring to ourselves more knowledge and appreciation of the Russian people, the Russian society, their background, their problems, and their aspirations. With better understanding should come more tolerance. . . ."

"We can also do far more than we have been doing to make it plain to the Russians that we are worthy of their confidence and respect. . . . Suppose, for example, that the Russians had a ring of bases in Canada and in northern South America. Would we be sure that their intentions were friendly or merely defensive? I do not advocate giving up our bases, but I do advocate trying to understand the Russian reaction to them. What about the reaction to 'massive retaliation' and 'brink of war'? . . . Is it not understandable that ordinary Russians are left in considerable doubt about our intentions?"

" . . . Russian troops have never been on our soil, but American troops have been sent to Russia. That was in 1919, at Archangel, and in Siberia, and the purpose was essentially hostile. The action was ineffective; and it was a mistake. But it has left a lasting impression on the ordinary

(See PEACE on page four)



Erwin N. Griswold

measure of mutual trust, confidence, and respect."

"We will not be doing our part towards better understanding until we

Letter to the Editor

TO THE EDITOR OF THE RECORD:

I should like to add a dissenting footnote to the interesting gloss written by Mr. Justice Musmanno on Judge Learned Hand's text of the 1958 Holmes Lectures.

My purpose is to call attention to the many "Unpublished Opinions of Mr. Justice Brandeis" recently collected by Alexander M. Bickel. These were opinions — many of them dissents — which the Justice saw fit not to file and publish. Judge Hand's point is reinforced by a thoughtful comment by John Frank (formerly on the faculty of the Yale Law School) in his recent review of Mr. Bickel's book (10 *Journal of Legal Education* 403-404) as follows:

A problem which intrigues Mr. Bickel and will interest any reader is why Brandeis did not publish some of these documents. Particularly in respect to those which would have been dissents, why did he sometimes merely note dissent, or on occasion go along with a majority opinion with which he disagreed? Mr. Bickel offers many intriguing suggestions, as that, for example, at the beginning of his service, Brandeis was hesitant to proclaim his differences; or that in later years, he feared that the effect of dissent would be to maximize his losses by dramatizing them; or that they involve points of statutory interpretation which did not seem to him worth his shot.

I hope that there is more to the Brandeis motivation. For Brandeis to abstain from publishing some of these documents was a great thing. There is nothing harder for the literate and voluble man to do than to keep quiet, except to throw away perfectly good published work when it is set for the printer. Law professor readers of this *Journal* better than almost any other class in the community will know what the temptation is to use what has been created; most of these readers would throw away a child approximately as willingly as they would throw away a completed article. For Brandeis to have plowed many of these papers into his files displays an almost superhuman asceticism.

The reason, I think, is because Brandeis was a great institutional man. He realized that the Court is not the place for solo performance, that random dissents and concurrences weaken the institutional impact of the Court and handicap it in the doing of its fundamental job. Dissents and concurrences need to be saved for major matters if the Court is not to appear indecisive and quarrelsome, and the appearance of indecision and quarrelsomeness are drains on the energy of the institution, leaving it in weakened condition at those moments when the call upon it for public leadership is greatest. Taft's usual high regard for Brandeis, after the two had recovered from antipathies antedating their respective confirmations, was in part because Brandeis "thinks much of the Court and is anxious to have it consistent and strong, and he pulls his weight in the boat." To have discarded some of these opinions is a supreme example of sacrifice to strength and consistency of the Court. And he has his reward: his shots are all the harder because he chose his ground.

In this as in many other matters, he who would be heard when he has something especially important to say, must remain silent at other times.

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Published weekly on Thursday for twelve weeks of each term by *The Harvard Law School Record Corporation*, 23 Everett St., Cambridge 38, Massachusetts. Subscription price: \$2.00 per term, \$4.00 per year (24 issues) mailed; student subscription \$1.50 per term mailed, \$1.00 per term distributed at the Law School. Individual copies 10c each at the Law School, 20c each mailed. Business and editorial offices, 23 Everett St., Cambridge 38, Massachusetts. Telephone KIRkland 7-7600, extension 447.

Entered as second-class matter November 19, 1946, at the post office in Lexington, Massachusetts, under the Act of March 3, 1879.



"Where are the Alumni Notes?"

The preoccupied subscriber pictured above is Garth Kant, who has just received his weekly copy of the *Harvard Law Record*. His proud parents are Mr. and Mrs. Harold S. Kant of 204 Holden Green, Cambridge. Mr. Kant is a third year student at the Law School.

Sub Judice

Judge Herbert W. Christenberry declared a mistrial last Monday in a suit brought in a Federal District Court in New Orleans, La., against the R. J. Reynolds Tobacco Company and the Liggett & Myers Tobacco Company by a widow who alleged that cigarette smoking caused the lung cancer which resulted in her husband's death.

This is believed to be the first case to be brought in this country where the plaintiff, in order to win a verdict, must establish a causal relationship between lung cancer and cigarette smoking. Damages of \$799,500 are being sought from the two tobacco companies.

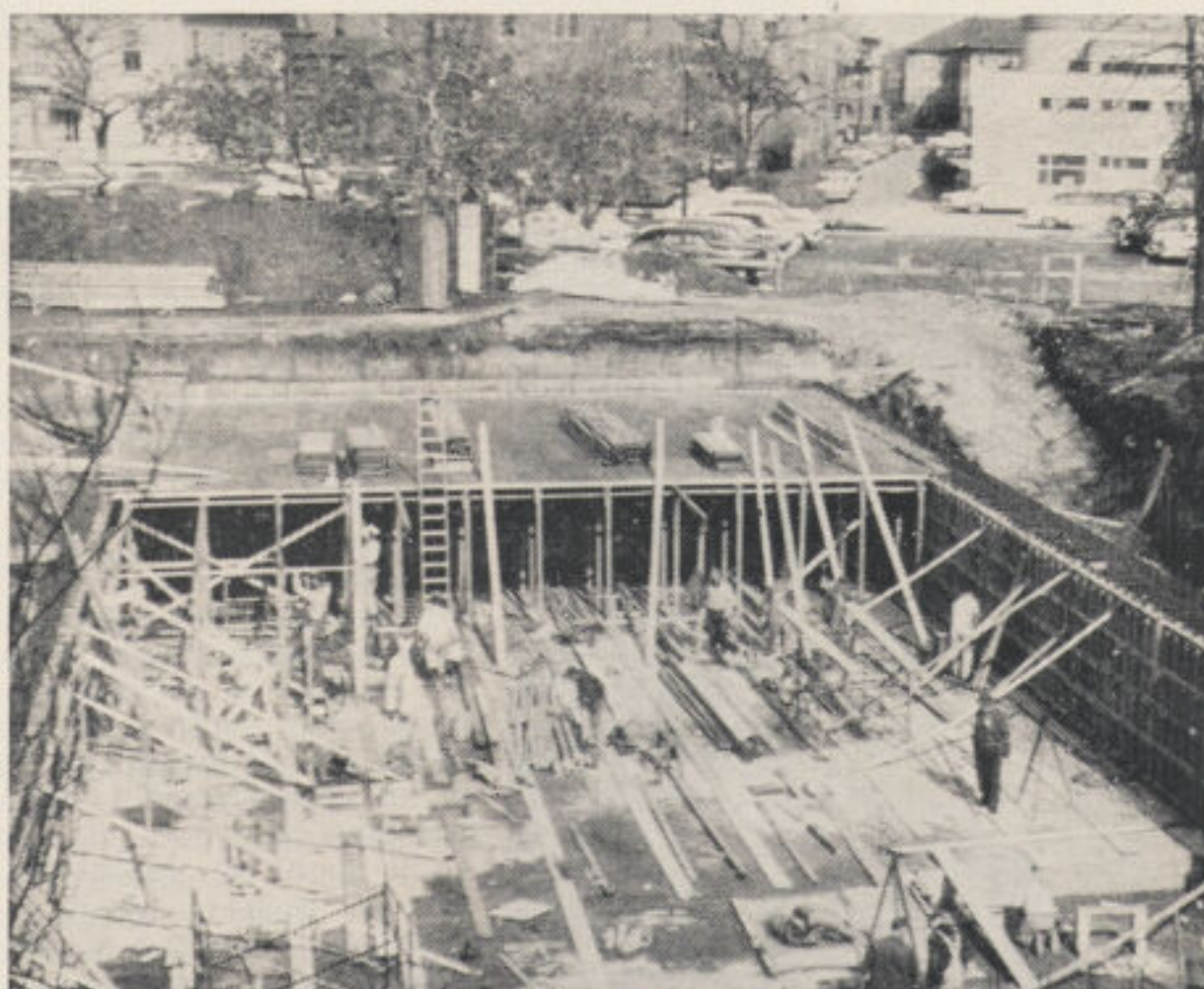
The complaint states that the plaintiff's husband began smoking in 1899. He customarily smoked two packages of cigarettes a day, using King Bee tobacco and Picayune cigarettes. Several years before his death he had switched to Camels. He died on July 13, 1955, in the Veterans Administration Hospital in Houston, Texas, at the age of 64. The complaint charges negligence for advertising and selling cigarettes without any warning of the dangers involved in smoking them, in giving false assurances of safety, and in the improper use of certain ingredients in the manufacturing and processing of them. It also charges breach of an implied warranty of wholesomeness.

The mistrial was declared after the examination of prospective jurors had been under way only about two hours, when it was disclosed to the court in private that some members of the jury had received telephone inquiries concerning their smoking habits.

Earl James Dominguez, a private investigator from Baton Rouge, voluntarily testified that he had been hired by H. Alva Brumfield, an attorney for the plaintiff, to check on the background of prospective jurors through their neighbors. Brumfield had specifically instructed him, he said, to avoid any contact with the 70 members of the jury panel. He asked a sister in New Orleans to question neighbors of the jury panel, but he stated, when the questioning of the prospective jurors was disclosed in court he discovered for the first time that his sister had questioned the panel members themselves.

Judge Christenberry termed Dominguez' story "incredible."

Attorneys Melvin M. Belli of San Francisco and H. Alva Brumfield of Baton Rouge, La., are representing the plaintiff in her pioneer suit. The case is expected to be called again for trial sometime next fall.



The picture at the left shows what is to be the new International Legal Wing to Langdell Hall when it was still an International Legal Hole. The excavation has now been filled in, as the picture at the right shows, and work is rapidly progressing.

Course in Securities Regulation Is Explained by Prof. Louis Loss

In this, the fourth of a series of articles explaining selected third year courses currently being published by the RECORD, Professor Louis Loss describes *Securities Regulation*. This is an optional two-hour course offered to third year students in the Fall term. The textbook used in the course is *Securities Regulation*, authored by Professor Loss.

by

LOUIS LOSS

One thing the course is guaranteed not to teach is how to make money in the stock market. Another is how to draft a registration statement for a security issue. The best way to learn how to draft a registration statement is to draft one. Some knowledge about the organization of the exchange and over-the-counter markets, as well as underwriting methods and what goes into a registration statement, should be obtained by osmosis. But this is merely to say that law and lore in this area do not occupy watertight compartments. The fact remains that this is a law school and the course is a law course.

A Combination

The course, as I like to think of it, is essentially a combination of Advanced Corporations, Advanced Administrative Law, and Legislation. It is Advanced Corporations in the sense that the SEC statutes have created what is coming to be a body of federal corporation law — a body of law which overlays the traditional state law. It is Advanced Administrative Law in the sense that the specialized study of the substantive law administered by a single important federal agency, without particular emphasis on its administrative law aspects as such, is perhaps the best way to complement the formal course in Administrative Law by conveying a sense of what goes on at the administrative level as distinct from the level of judicial review. And it is Legislation in the sense that this course, perhaps more than any other except the tax courses, should develop the technique (not easy to come by for law students quite properly steeped in the common law) of working with complex statutes and regulations; the course is, I hope, more than a mere exercise in finding one's way about in a mass of legislative material, but it is at least that.

Today the corporation lawyer can no more afford to ignore the question, "Does this matter have an SEC or blue sky angle?" than the question, "Does this matter have a tax angle?" Indeed, the best solution pedagogically might well be to integrate Advanced Corporations, Advanced Taxation and Securities Regulation into a single third-year course. Actually a good deal of thinking has already been done along those lines.

Course Is Practical

Moreover — and this is equally true whether Securities Regulation is taught separately or as a part of a broader course — it is fallacious to assume that the subject matter is of no concern except to "Wall Street lawyers." One need not represent national corporations which do public financing or list their securities on a stock exchange in order to become

involved with the exciting developments in the law of "fraud" and civil liability under the federal and state securities statutes. He need only have a client who thinks he was "taken" in the purchase or sale of a security, or represent a corporate officer or director



Louis Loss
Professor of Law

who bought some of his own company's stock and (so far as the federal statutes are concerned) dropped a letter in a mailbox during the process.

Eleven years ago, when I first began giving a seminar at the Yale Law School under the grandiloquent title, "SEC Aspects of Corporate Finance," it was feasible to cover substantially the whole subject of the SEC in one term. It is an index of the newness of this entire field of law that this is no longer remotely possible. We concentrate, therefore, on four general areas: (1) the historical background and the state blue sky laws, with some consideration of the comparative regulatory philosophies; (2) the registration, prospectus, reporting and proxy provisions, which are essentially the disclosure aspects of the basic statutes of 1933 and 1934; (3) the statutory "fraud" concepts which have been developing; and (4) the various civil liabilities attendant upon the purchase and sale of securities, especially by "insiders." Somewhere we also manage to squeeze in a session on the intricate problems involved in defining corporate "control."

Case Method Not Used

So far as teaching method is concerned, we use my book on *Securities Regulation*, which is supplemented by pamphlet copies of the major SEC statutes and rules and an occasional mimeographed opinion. Let the record show that the pillars of Langdell Hall have survived this limited return to instruction from a treatise — though I must immediately add, having been reared in the disclosure philosophy, that we could not very well ignore the cases if we wanted to.

Any student who wants to know how we pull all this together will have to see the show. But the third-year student at Harvard Law School faces an abundance of riches. Before he invests in common stocks, he should be sure to have a paid-up home, adequate life insurance, and an E Bond or two.



The new wing, which is costing about \$1,000,000, will house the Law School's programs of International Legal Studies. It will provide stack space for approximately one-quarter of the Law School Library's 880,000 volumes, a reading room, faculty of-

fices, four classrooms, and suitable work space for research and for the individual work of advanced students.

Financial support for the addition has come from the Ford Foundation and more than fifty other corporations.

California Plans for Atom Threat to Cities; Government to Function During War Disaster

California has taken the lead among state governments in making legislative provision for the continuity of civil government in the event of serious disruption of normal political and economic life by an attack with nuclear weapons, according to Charles Fairman, Professor of Law. Professor Fairman addressed both houses of the California Legislature on the problem of "Maintaining Continuity of Government in Event of an Atomic Attack," earlier this month.

An Assembly subcommittee on the impact of enemy attack on the economy and constitutional government in California, under the chairmanship of the Honorable Vernon Kilpatrick of Lynwood, Cal., has studied the problem and reported favorably on six Assembly Bills and an amendment to the California Constitution. [Cal. Assembly Interim Committee Reports, Vol. 13, Nos. 10 & 17 (1957)] Four of the bills have already been enacted by the Legislature.

Local Government

Of the legislative acts, the principal one is the insertion of §§ 1550-1550.1 in the Military and Veterans Code [See James W. Beebe, *Local Government and the H-Bomb*, 44 A. B. A. J. 149 (1958)] which is designed to provide for the continuation of local government in the event of a public disaster. The act recognizes that during an actual atomic attack and in the subsequent reconstruction period "law and order must be preserved and so far as possible government services continued and restored." It furnishes a means by which the continued functioning of local agencies will be assured and is designed to authorize the selection of officials to replace any legislative and executive personnel that become unable to fill their normal duties in municipal and county governments.

The statute authorizes local agencies to select three stand-by officers for each member of its legislative branch and three stand-by officers for the elected chief executive. Stand-by officers will replace officials that become unavailable through death or serious injury. As soon after the disaster as possible the legislative branch is to meet, fill all its vacancies, and proceed to restore governmental services. If there is only one member or one stand-by member left, he has power to reconstitute the legislative body. If all officers and stand-by officers are unavailable, then the county supervisor is empowered to reconstitute the local government. If he is unavailable the local government will be reconstituted by the county supervisor of the nearest and most populated county within a radius of 150 miles or by the mayor of the nearest and most populated city within a radius of 150 miles.

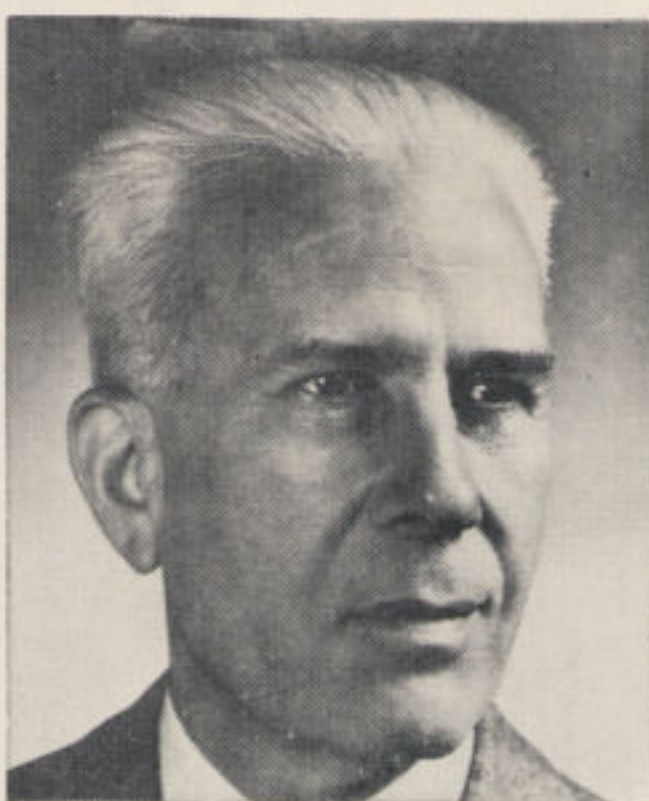
In his address to the California Legislature, Professor Fairman said

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Charles Fairman

that local government units "need authority to carry on their functions extraterritorially. Cities in target areas should have alternate headquarters in some appropriate place, to which operations would be shifted in time of emergency. It should be possible for a city administration, operating in the field, to assemble and care for its own people pending their resettlement. City dwellers may not be left to roam over the countryside, like locusts, devouring the substance of those among whom they come. Their own city administration would be the normal means of caring for them." He said that "preparation should be made for continued operation of cities in exile."

Constitutional Amendment

In addition to this Act for the reconstitution of local governments, Mr. Kilpatrick's subcommittee proposed an amendment to Article IV of the California Constitution in order to give special powers to the state legislature "to provide by law for the temporary preservation and operation of the state and local governmental agencies," after the occurrence of a war-caused disaster. The amendment also would empower the legislature to fill vacancies in either house without normal elections during a war-caused disaster period.

In addition to the problem of the continuity of government, the subcommittee also turned its attention to the preservation of important public records without which the difficulties of the revivification of civil and economic life would be multiplied. On the recommendation of the subcommittee, the Probate Code § 350 was amended so as to permit the proof of a will destroyed by public calamity after as well as in the lifetime of the testator. The legislature also passed a bill enabling the governor to create a commission to conduct an election in the event that voting records are destroyed.

Record Depositories

Two other proposals of the subcommittee are that the state establish branch depositories outside the capital city for the preservation of records and that records, "essential to the functioning of the State Government" be selected and reproduced, on microfilm or otherwise, for storage in a safe place to be selected by the secretary of state. These two proposals, each of which carries an appropriation of funds, have not yet been passed. But a related bill, which presumably will reduce the cost of record storage, has been enacted. It is an amendment of the Government Code § 12465 providing for the destruction of certain records when they are obsolete after they are five years old.

It is understood that a new group of measures is being prepared for submission to the legislature.

Professor Fairman drew the attention of the legislature to the importance of the preservation of probate

records and records of title. He cited the example of the records of the State Department of Employment which might become very important to the emergency allocation of manpower. Similarly, he noted that an analogous problem confronts corporations and public utilities. [See David F. Cavers, *Legal Planning Against the Risk of Atomic War*, 55 COL. L. REV. 127 (1955).]

The importance of the provision for continued operation of the judicial system was emphasized in Professor Fairman's address. "This involves arrangements whereby the courts could sit at places and at times other than those now appointed by law. It involves authority to shift judges to courts other than their own, and to designate attorneys to sit as temporary judges. It involves a tolling of statutes of limitations, and a power to extend the normal periods within which steps must be taken. In the main these ends would be best attained by a statute vesting a large order- and rule-making power in the state's highest court."

New Legal Problems

He indicated that the dislocation of legal relationships would produce new kinds of legal problems for the courts to decide. As an example, he explained, a nuclear attack would render many contracts impossible of exact performance. He suggested that provision should be made whereby, on the civil side, "all but the exceptional case" could be tried by a judge alone, because of the dearth of jurors. He recommended that the legislature examine British statutes designed to adapt the administration of justice to the unusual circumstances of war [Acts of Parliament (1939): Courts (Emergency Powers) Act, 2 & 3 Geo. 6, ch. 67, and Administration of Justice (Emergency Provisions) Act, ch. 78].

Professor Fairman concluded, "Much legislation will be needed, and sometimes constitutional amendment. Our constitutions and our basic statutes were not framed in contemplation of an atomic peril; they do not speak directly to that problem." He said that the responsibility to provide for the continuity of civil government under war-caused disaster conditions "has been left right on the state's doorstep." The armed forces are not prepared to assume responsibility for cities that may be destroyed by nuclear weapons. "In this matter of the impact of atomic attack upon the fabric of government, it is the state legislature that holds the key."

— Manley

179 Students Write Trial Practice Exam

179 students took the examination based on the book, *Trial Tactics and Methods*, authored by Robert E. Keeton, in order to qualify for a chance to become a member of one of the four regular Trial Practice sections scheduled for the spring semester next year.

120 students will be selected by lot from those making a "satisfactory" grade on the examination and placed in the four sections. It is planned to have 32 students in each of these sections. Eight places are being reserved for graduate students.

A new section to be taught jointly by Professors Field and Keeton next year will be open to those who took the examination and failed to place in one of the four regular sections. This special section will be unlimited in number and will be open also to all others who subsequently apply for the course.

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Jurisdiction of 'Labor Dispute' Is Topic of Ames Argument

The Frankfurter Club will oppose the Sacks Club in the second argument of the quarter-final round of the second year Ames Competition at 8 p.m. Monday evening, March 31, in the James Barr Ames Courtroom. The two clubs will argue the case of *Keene Construction Company, Inc. v. Carpenters Union et al.* before the United States Court of Appeals for the Ames Circuit.

The plaintiff-appellant will be represented by oralists Jesse D. Miller of Los Angeles, Calif., and Elliott M. Lyon of Cambridge, both members of the Frankfurter Club. For the Sacks Club, representing the defendant-appellee, the oralists will be Ansel B. Chaplin of Truro, Mass. and John H. Demmler of Pittsburgh, Pa.

Presiding over the court will be the Hon. Frederick van Pelt Bryan of the United States District Court for the Southern District of New York. Associate Justices will be Albert L. Goldman, LL.B. '43 (46) of the Boston Bar, and Edward Schneider, LL.B. '33 c.l., also of the Boston Bar.

The case to be argued involves a dispute between a construction company and a Carpenters Union, its affiliated local unions, and officers of the union.

Employer Selectivity

The Building Contractors Association of Southern California, of which plaintiff is a member, signed a Master Labor Agreement governing rates of pay and working conditions of the carpenters who are employed by the association. There is a provision in the agreement allowing for limited employer selectivity in the hiring and transferring of employees from job to job.

When plaintiff began a new job in Palmdale, Calif., it attempted to transfer workers from other locals to perform the work because it stated that the union would not supply it with enough competent workers in the jurisdiction of a certain local. The union would not allow the transfer, claiming the plaintiff was a "labor contractor."

An arbitrator stated that plaintiff was not a "labor contractor" and even if it were, the agreement between the parties did not prohibit "labor contractors." The union struck on all of plaintiff's jobs.

Plaintiff filed a complaint in the Superior Court for the State of California asking for specific enforcement of the terms of the agreement as to hiring and transfer of workers, and a peaceful settlement of disputes by arbitration; also to enjoin defendants from striking or acting in violation of the terms of the agreement.

Removal to Federal Court

The defendant moved to have the case removed to the federal district court, and this motion was granted. When plaintiff then moved to remand on the ground of no diversity of citizenship, nor any federal question involved, that motion was denied. Following such denial, defendant successfully moved for dismissal of the complaint because the case was a "labor dispute" within the Norris-LaGuardia Act which prohibits injunctive relief. Plaintiff is appealing from the denial of the motion to remand and from the order of dismissal.

The claim of federal jurisdiction is based on the terms of sec. 301 of the Taft-Hartley Act. The problem is whether under the terms of section 301 there is a contract between an employer and a labor organization, and whether the federal court has jurisdiction.

Since sec. 301 deals with industries affecting commerce, can it be relied on even though interstate commerce has not been pleaded by the plaintiff? Defendants claim that the section is ap-

plicable and the case thus could not have been tried in the state court.

Another issue arising is whether the district court must be bound by the Norris-LaGuardia Act and thereby dismiss the complaint. Plaintiff states that the doctrine of *Lincoln Mills* allows specific enforcement of provisions of a collective bargaining agreement; whereas the defendant alleges that under sec. 4 of the Norris-LaGuardia Act injunctions against peaceful strikes are prohibited.

In addition, there is a dispute about whether Section 301 of the Taft-Hartley Act overrides the prohibitions of the Norris-LaGuardia Act; plaintiff seeking to prove the affirmative.

—Finley

SCHEDULE

(Continued from page one)

first time in the fall semester. Assistant Professor David Westfall will convert the seminar into a course to accommodate the demand which is usually channeled into two seminars. Since Professor Haar will take a leave of absence, the change is necessitated.

Three new Agency professors will take over the course which has seen a variety of teachers in the past few years. Professors Cox, Turner, and Braucher are scheduled to teach sections of the course.

Professor Donald Trautman replaces Professor Robert Keeton as Supervisor of the Group Work Program. Professor Trautman will serve in this capacity for one year.

With the retirement of Professor Baker, a slight change in the schedule of Corporations II sections has been made. Assistant Professor Abram Chayes will teach the usual full year course. Only one section of the shorter course, Corporations II A, will be given. Professor David Herwitz will teach this course in the spring; however, it has been lengthened to a three hour course to cover more material.

Extra Section

An extra section of Trial Practice will be scheduled to meet the demand after registration in May. The extra section will have an unlimited enrollment. The materials and problems will be similar to those of the small sections. Professors Robert Keeton and Richard Field will preside jointly over the course. Students taking Trial Practice will be required to take one of the following: the fall section of Evidence with Professor Field; the full year Evidence with Professor Turner; or the seminar in Evidence Problems with Professor McNaughton. An additional section of Evidence will be taught by Professor McNaughton in the Spring.

Professor Albert Sacks will teach a course entitled State and Local Government Law, which was formerly given in one form by Professor George Gardner, who is retiring this year. Professor Mark DeWolfe Howe will take over Professor Gardner's course in Admiralty in the spring.

Professors Milton Katz and Kingman Brewster will offer a new course in the International Legal Studies program. The new course — Law of International Transactions and Relations — will be the basic introductory course for students in this field. It replaces International Law, which will be given by Assistant Professor Richard Baxter as a two hour fall semester course dealing primarily with the public areas of International Law.

Professor Stanley Surrey receives the award for the heaviest schedule in one semester. He will participate in courses totaling nine hours in the fall semester. Although Professor Surrey will not teach the basic course in Taxation, he will teach Advanced Taxation in the fall as well as a second year elective — Legislation.

Dean Erwin Griswold is also taking a year off from the basic tax course. He is scheduled for a leave of absence



John W. Weiser

Weiser to Head Research Bureau

John W. Weiser, 2L of New York City, has been elected president of the Student Legislative Research Bureau. He is a 1953 graduate of College of the Holy Cross.

Nicholas J. Coolidge, 2L of Washington, D. C., is the new vice president in charge of client relations. A 1954 graduate of Harvard College, he will be responsible for public relations and the acquisition of new projects. John F. Fritts, 2L of Chester, N. J., is the new vice president in charge of research. He is a 1956 Princeton graduate and will take over responsibility for the content and editing of Bureau drafts and memoranda. All other officers in the Bureau are appointed.

The three new officers were installed at a banquet on March 10 at the Midget Restaurant, when the Bureau paid tribute to their faculty advisor, Professor Albert Sacks, for his contributions over its six year history. Mrs. Vernon Whatmough, who recently completed an index of past Bureau projects, was awarded a plaque giving her honorary membership in the organization. Professor Ralph J. Baker was the principal speaker at the banquet.

and will teach no courses next year. Visiting Professor J. Nelson Young will take over two of the sections of Taxation.

The Closed Corporations seminar, which was offered for the first time this year, will be given in two sections next year to meet the demand. They will be taught by Professor Herwitz and Assistant Professor Chayes.

Professor A. James Casner will present a new seminar — Estate Planning. The seminar will include the drafting of a comprehensive estate plan from start to finish.

The seminar in Legal Education will be taken over by Visiting Professor Cheatham in place of Associate Dean Cavers, who will take a leave of absence. In addition Professor Cheatham will offer a new seminar on the Legal Profession.

Second year section assignments are: *Accounting*: Herwitz (1), Trautman (2), Braucher (3); *Administrative Law*: Sacks (1), Jaffe (2), Byse (3); *Commercial Law*: Sutherland (1), Braucher (2), Berman (3); *Constitutional Law*: Brown (1), Freund (2), Sutherland (3); *Corporations I*: Chayes (1), Loss (2), Herwitz (3); *Taxation*: Young (1), Young (2), Brown (3); *Trusts*: Mansfield (1), Scott (2), Scott (3).

First year section assignments are: *Agency*: Cox (1), Turner (2), Braucher (3), Loss (4); *Civil Procedure*: McNaughton (1), Fisher (2), Kaplan (3), Field (4); *Contracts*: Dawson (1), Byse (2), Fuller (3), McCurdy (4); *Criminal Law*: Brett (1), Hall (2), Fairman (3), Baxter (4); *Property I*: Casner (1), Leach (2), MacLachlan (3), Leach (4); *Torts*: Katz (1), Magruder (2), Keeton (3), Mansfield (4). —Cottrell

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PEACE

(Continued from page one)

Russian. Are we aware of this. . . ?

Dean Griswold noted reports that the shift of voter sentiment in England away from the Conservative party, which has worked rather closely with the United States in the conduct of foreign affairs, is largely due to "a fear that our intransigent policy with Russia will cause a war in which England, though really a helpless bystander, will almost surely be destroyed." He asked if this is not a situation "where we have failed to make our meaning clear to our best friends. . . ."

Bad Impression

Dean Griswold explained that "Americans often create in other countries the impression that they are condescending or arrogant." What kind of impression, he asked, do our "huge, wasteful, gaudy, extravagant automobiles" create on people whose annual income is of the order of eighty dollars a year?

He called for an objective, critical appraisal of ourselves. ". . . How far are we law-abiding? What about gangsters, and graft, and the great increase in juvenile delinquency? What are we doing effectively about these things? . . . Some of the excesses of Congressional committees in the past have made much of the world feel that our standards are pretty low in this respect. Our great and deep-seated problem of race relations is a desperate load for us to have to carry as far as our relations with much of the rest of the world are concerned. . . . Little Rock was worth many divisions to the Russians, and will be for many years to come. . . ."

Dean Griswold deplored the fact that when Private Girard was surrendered to a Japanese court last summer American newspapers, which are reprinted widely abroad, screamed that "this was a great outrage, turning an American boy over to barbarians." He recalled the result, "the painstaking, thoughtful, wise judge, the lenient, probably too lenient sentence. . . . The Japanese handled this matter considerably better than we handle many of the criminal trials in this country."

Great Accomplishment

Regarding Sputnik, "Would it not . . . have been a fine and well-warranted thing if President Eisenhower had issued a statement on behalf of the American people congratulating the Russians and gracefully acknowledging their achievement. . . . In the annals of man's work with nature, it was a great accomplishment. Why could we not have recognized and acknowledged it? Was it because we were simply acting like Americans?"

The speaker quoted Sir Percy Spender who said that much of the misunderstanding of the United States by the rest of the world today is caused by three attributes of the general American character: religiousness, idealism, and generosity. Sir Percy observed: "The conjuncture of religion and idealism makes it difficult for you to compromise with anything you believe to be evil. This presents hardship when you are dealing with other governments who may not necessarily share your beliefs. We live in a world where one must sometimes compromise."

In regard to Communist China, Dean Griswold lamented that "most Americans have developed the non-historical and unnecessary notion that if we recognize a government, that means that we approve of it morally. For the time being, I would not recognize Communist China, particularly in view of clear obligations we have to Chiang Kai-Shek and his followers in Formosa. But we should be willing

Hoop Champs

The 1957-58 season of the intramural basketball league concluded last week. As a result of a 49-41 victory over Bill Weitzel's Feoffs in the playoff game, the Bankrupts, captained by Joe Crowley, have emerged victorious in the "A" division. The playoff was necessary to decide the championship after both teams finished the regular schedule with identical records of eight wins and one loss. Bill Tatlock's eighteen points were high for the winners, while Norm Kasparson hit for the same number in a losing cause.

In the "B" League the Tarmigans took the title. They were captained by Mark Joelson. "C" League champions were John Meyer's Causa Mortis five.

THORNE

(Continued from page one)

ing his year abroad. He has agreed to speak at Cambridge and Oxford, and the Universities of Heidelberg, Perugia, and Athens.

Professor Thorne was Visiting Fulbright Professor of Legal History at Cambridge University in 1951-52 and has lectured on his specialty before many universities and learned societies.

An authority on the law of medieval and Elizabethan England, he has written numerous papers on legal-historical subjects. He was the editor of *A Discourse Upon the Exposition and Understanding of Statutes; A Catalogue of the Library of Sir Edward Coke*.

At Harvard he holds a joint appointment by its law school and history faculties.

to acknowledge that we will recognize China some time, and that it might lead to better understanding and better relations with a people traditionally friendly to us if we do it sooner rather than later."

He continued, "to deny American newsmen the opportunity to go to China, at their own risk, as we did for so long a time, seems to me to have been most unwise." Dean Griswold hit hard at the type of thinking characterized by "this rigidity, this inability to compromise, to adjust, to yield. . . ."

The speaker commended the United States for taking "a clear stand in favor of peace and law" in international affairs at the time of the Suez crisis. However, he said, we did nothing at the time to provide "an affirmative sanction to make the rule of law effective to establish and vindicate international rights."

"We never denied that England and France were in the right. What we said was that they used the wrong means to vindicate their rights. But we provided no other means to make their rights effective. . . . Either we must work out some way to handle these matters in accordance with a rule of law, or we will be likely to revert to force. . . ."

While mutual understanding and tolerance are lacking in the international sphere, Dean Griswold emphasized, "it will be hard to develop an effective regime of law. It is my suggestion that this lack of tolerance and understanding is to an appreciable extent our fault." We must create "an atmosphere in which our affairs with other countries can be controlled by law," he declared, else "we or our descendants will almost surely perish."

—Binder

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