

The Harvard Law School Record

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H. L. S. Forum Will Present Debate On 'Labor In Politics'

The political scene, somewhat muddled now, will next November return to the basic issue in the eyes of politicians—that of amassing votes. Organized labor will be a political target. The role of labor as a political force will be the subject of the next Harvard Law School Forum.

For informed discussion on this subject, the Forum has turned to the labor unionist, the newspaper columnist, and the informed observer of the political scene. Gus Tyler, Political Director of the International Ladies' Garment Workers Union, Vice Chairman of Trade Union Council of the Liberal Party, who has taught at various universities throughout the country, will be one of the panel members.

Another speaker will be Victor Riesel, Post-Hall syndicated columnist, whose column "Inside Labor" appears in various newspapers throughout the country, including the New York Daily Mirror and the Boston Record-American.

Robert C. Segal, counsel for the A. F. of L. in Boston and a graduate of the Harvard Law School is another Forum speaker. He has held many important positions in labor and related fields. He was formerly assistant to the President's Railroad Emergency Fact-finding Board.

The fourth speaker will be Al Barkan who is the Chairman of the Political Action Committee of the Textile Workers' Union of America, C. I. O.

Moderator for the evening's program will be Professor Louis L. Jaffe of the Harvard Law School.

The Forum will be held tomorrow evening, Friday, March 26, at 8:00 P.M. at the New Lecture Hall, Kirkland & Oxford Streets in Cambridge. Tickets are \$7.00 and are available at the door, or at the Forum office, 23 Everett St.

Lumbard, Hays To Address SBA

J. Edward Lumbard, Jr., LL.B. '25, U. S. Attorney for the Southern District of New York, and Arthur Garfield Hays, LL.B. '05 Columbia, former national director of the Civil Liberties Union, will deliver lectures under the auspices of the Harvard Student Bar Association during the week of April 12, 1954.

Mr. Lumbard will discuss general problems of the office of the U. S. Attorney, including the problem of evidence obtained by wire-tapping and a



J. Edward Lumbard

suggested solution of that problem. He will also comment on the recently initiated program of the Department of Justice, accepting law student volunteers in the U. S. Attorney's Office. Mr. Hays will deliver a lecture in the student bar series on public investigations, entitled "The Impact of Public Investigations on Civil Liberties." The date of Mr. Hays' address will be April 15, 1954; the date of Mr. Lumbard's address will be April 16, 1954.

(See SBA on page four)



Louis L. Jaffe

Record Will Discuss Perspective Courses

In 1949, a report made by the special committee on the curriculum of the Harvard Law School made a reference to "Perspective Courses." Since that time, the second-year students have been subtly subjected to these courses under the title, second-year electives.

It is only the best-informed student who realizes that these courses are part of a well-thought-out plan. In succeeding issues the RECORD will give abstracts of the courses themselves and show how they fit this plan. With this information the present first-year student may make an intelligent choice benefitting both himself and the class.

The original and still continuing concept of the committee was that the student was to be introduced to a course in which ends of law and government were to be made an explicit object of study. By thus examining the premises underlying the legal system, the student may obtain a larger perspective of the system's aims and its relation to the whole life of man in society.

The fact that the courses are divergent in subject matter allows the student to follow his own bent. People who prefer history, may choose American Legal History, while students whose inclinations are philosophical may choose Jurisprudence. The remainder of the courses may be said to be a mixture of history

(See COURSES on page four)

Record Elects New Officers Wasserman, Brawner, Belmonte Chosen

Herbert Wasserman, 2L, Harvard '52, of New York City was elected President of the Harvard Law School RECORD in elections held last Friday. Wasserman, completing his second year on the paper, has held the positions of gallery editor, features editor, and news editor in the past. He succeeds the outgoing Burton T. Gans, 3L, of Boston, as president.

Elected to the other two top offices on the RECORD Board for the next twelve issues are Philip L. Brawner, 1L, Princeton '53, of Wellesley Hills, editorial manager, and Robert A. Belmonte, 2L, Yale '52, of Framingham, business manager.

The new associate editor will be Marvin Stern, 2L, of Boston. He heads the editorial board and replaces Arnold F. Ciaccio, 3L, of Rochester, N. Y. The news editor will be Chas. H. W. Talbot, 2L, of Walla Walla, Wash. Also elected to the editorial board in business capacities are Matthew C. Kessler, 1L, of New Rochelle, N. Y., treasurer, and Robert S. Feder, 2L, of Newark, N. J., advertising manager.

Newly elected department editors are Robert H. Whitstock, 2L, of New York, N. Y., gallery editor, Martin Kramer, 1L, of Brooklyn, N. Y., current case editor,

Senior Class Elects Roumell And Bok To High Positions

Derek C. Bok, 3L, of Beverly Hills, Cal., was elected Chief Marshal of the Class of 1954 in the election held on March 19. He is a member of the Law Review, Chancery Club and Marshall Ames Club. As Marshal, Bok will preside at all class affairs in the future.

Officers

The Secretary is George T. Roumell, Jr., 3L, of Grosse Pointe, Mich. Mr. Roumell is past president of The Harvard Student Legislative Research Bureau and former treasurer of E. Warren Ames Club. The Secretary is responsible for reporting every five years on the activities of the members of the class.

J. William Doolittle, Jr., 3L, of Wheaton, Ill., was named Treasurer. He is presently treasurer of the Harvard Law Review; a member of Chancery Club, and Casner Ames Club.

Executive Council

The Executive Council will consist of seven members. Four of these were chosen by the members of the third-year class at large. Those elected were Robert A. Kelly, Jersey City, N. J.; Donald Rome, West Hartford, Conn.; Herbert P. Wilkins, Cambridge, Mass.; and Fred Wyle, Brooklyn, N. Y. This group, together with the top class officers chose three additional members of the Executive Council. The men chosen were Robert L. Frantz, Pittsburgh, Pa.; Louis Manderino, Monessen, Pa.; and John A. Moore, Denver, Colo.

The Executive Council will serve as a liaison group between the other class officers and the members of the class. They will also help in the preparation of future class functions, such as reunions and dinners.

LAW WIVES

The Harvard Law Wives will meet in the Wheeler Room on Wednesday, March 31, at 8 p.m. The speaker for the evening will be Dr. Amiya Chakravarty who will discuss the role of religion in politics, and comparative religions. Dr. Chakravarty is professor of theology at Boston University and was a disciple of the late Mahatma Gandhi. The Business Wives will be guests of the Law Wives on this evening.



Herbert Wasserman

elected to higher office. Former gallery editor, Edmund R. Rosenkrantz, 3L, of Scarsdale, N. Y., and cartoon editor John Bernstein, 3L, of Cincinnati, O., will receive their degrees in June.

Admissions Office Announces Big Increase In Applications



Louis A. Toepfer

With almost 1,400 applications already received, the Law School admissions office reports this to be the busiest year in its recent history. If applications continue to come at the present rate, it is expected that about 2,000 will be received by May 1st, the closing date for filing applications. Studies show that the number of college seniors is less than in previous years and applications for admission to most of the other graduate schools at Harvard are down somewhat. No one thing is credited for the increase in numbers of students who wish to study at the Law School.

Part of the increase can be attributed to the number of Korean veterans who are seeking admission, but their numbers fall quite short of accounting for the entire upswing.

The Admissions Committee has been meeting regularly to review the applications. Every effort is made to consider applications as soon as possible without giving priority to early applicants. The committee weighs the many factors of educational achievement when considering an application, putting its emphasis on the applicant's academic record and his performance on the Law School Admissions Test. If the applicant's record and Admission Test score are such that on a conservative basis it is clear that he will be accepted, the Committee admits him as soon as his application is complete. Likewise an applicant will be rejected as soon as it is clear that he stands no chance for acceptance. However, most of the applications must be held for consideration until after all of the applications have been received. This means that final action can not be taken in many cases until after May 1.

Scholarships

Along with the applications for admission are coming many requests for scholarship assistance. With the increased tuition, and the continued high cost of living, the demands on the scholarship funds are reported to be greater than ever.

Scholarship applications for entering students are processed by the Financial Aids Office and then referred to the Administrative Board for action. It is expected that between 75-100 entering scholarships can be awarded. The competition for these grants will be extremely keen, and it will be necessary for scholarship aspirants to have an outstanding academic record and Admissions Test performance as well as clear financial need before qualifying for scholarship assistance.

Accepted students who need financial aid but who fail to meet scholarship standards can often be helped in other ways by the Financial Aids Office.

Wheatley Explains Aim Of Channel 2

Last Tuesday afternoon, at the weekly Coffee Hour, Mr. Parker Wheatley, Director of the Lowell Institute Cooperative Broadcasting Council, gave an address on educational television. The council's membership consists of six colleges and universities in the Boston area; in addition to The Lowell Institute, The Boston Symphony Orchestra, Museum of Fine Arts, and The New England Conservatory of Music. Mr. Ralph Lowell, Trustee of the Lowell Institute, was largely responsible for its organization.

Contributors

The Council's purpose is to provide educational programs for public consumption. Two years ago it started a new FM radio station, WGBH, which has achieved great success and gained a large listening audience. The Council's activities are non profit and non commercial. Its latest and biggest project

(See COFFEE HOUR on page four)

Spartans Repeat As Basketball Winners

The basketball league intramural season came to a close last Thursday evening when the final playoff games in each division were run off. In the Law division the Spartans were victorious for the second consecutive year. It marked the first repeat performance by an intramural team in recent years. Thus, the Spartans added the playoff title to the division championship they won last week. They finished the overall campaign with a perfect nine wins and no losses.

Last Game

The final game with the Independents was a thriller. Behind seven to nothing midway in the first quarter, the winners fought back slowly, and it was not until the last quarter, with but little time remaining, that a basket by Captain Bob Fuller, 3L, of Montclair, N. J. put the Spartans into the lead.

The final score was 30-29, following a pattern of low-scoring, deliberate, and defensive-minded playoffs. Peter Labe 3L, of Rockville Center, N. Y. led the evenly balanced scoring for the Spartans with eight points.

Other members of the championship team are: Arnold Ciaccio, 3L, of Rochester, N. Y., Guido Salvatore, 3L, of Providence, R. I., Ronald Gagnon, 2L, of Saylesville, R. I., James Urdan, 1L, of Milwaukee, Wis., and Frank Duffy, 1L, of Dunmore, Pa. Ben Proctor, 2G, led the losers with 14 points.

In the other division, the third-place team in the final league standings won the playoff title by upsetting the Subpoenas, 41-24. Bruce McWhirter, 2L, of Chicago, and Harvey Barer 2L, of New York City led the winning "Big Ten" team, as they did throughout the year.

The League operated very successfully this season, the games being played at night. After overcoming the obstacle presented by the HAA early in the season, Maurice Downey, the league's secretary, did an exemplary job. An All-Star game was played with the Business school earlier in the season, and plans are now in the making for a game with the Yale Law School.

A complete set of statistics has been released by Downey. It shows scoring and foul shooting records for some 200 participants in the program. The leaders in the various departments were as follows: Derek Bok, 3L, of Beverly Hills, Calif. led the scorers in goals, free throws, total points and averages. He had a remarkable 26 for 32 record on free throws. John Anderson 2L, of Gary, Ind. and Robert Larkin, 1L, of Pelham, N. Y. had the dubious honor of leading in fouls committed. The Spartans were the offensive team leaders with a 49 point average while the Independents were the defensive leaders, holding the opposition to a mere 33 points. The Spartans followed with 34 points.

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Looking Forward

With this issue, the present RECORD Board concludes its term of office. The job of being law students and part-time newspaper editors has proven hectic, but interesting. We leave, resuming more normal pursuits, quite confident that our successors will prove equal to the task. The customary, but well deserved thanks are in order to those members of the faculty, student body, and alumni who have made our stay a pleasant one.

Letters to the Editor

TO THE EDITOR:

I read with interest your editorial entitled "Student Interest" in this week's issue of the RECORD. The tenor of the editorial seemed to be that the average law school student is just completely disinterested when it comes to discussions of the various major issues in the world, and that attendance at the Harvard Law School Forum programs is a reflection of this. I do not believe that this criticism is valid. The major trouble with attendance at the Forum rests with the Forum committee.

Your editorial deplores the poor attendance at the Forum on "Communism in the Churches." I attended that forum. There were three representatives of American clergy present, and each of them told us that Communism is a great menace to the world, and that it can only be met and overcome by positive faith. The most controversial topic during the entire evening was whether or not Communism was a religion. I do not think this was at all a startling revelation. It was not necessary to attend a forum to learn this. We were told that the Committee had tried to get someone who had attacked American churches for harboring Communists, or being pro-red. This speaker never developed, and so we had a discussion among three men of similar ideas addressing us. There was no "give and take" nor was there much ammunition provided for the audience to use in putting these men "under fire" during the question period.

The previous program was of a similar nature. Apparently, it was intended that Mr. Victor Lasky and Mr. James Wechsler would be there and present their opinions. I presume on the Wechsler-McCarthy feud. For some reason Mr. Wechsler did not attend, and substitutes were obtained. One thought that the topic for the evening was the "power of the press," another thought it was the "responsibilities of the press," and Mr. Lasky thought that he was going to debate with Mr. Wechsler. Again, little clash, little conflict.

If the Forum expects to draw crowds, and be of value, let alone interest, it is vital for them to present some diversity in views. Unless the Forum tries to accomplish this it will find that the audience will continue to dwindle. The Forum committee should recall their undergraduate days, when it was quite common to cut dull lectures and thus illustrate to professors that the presentation needed a degree of revamping. The fault with attendance at the Forum lies not in the student body, but in the failure of the Forum committee to present topics of interest, let alone conflict or controversy.

LAURENCE LEVINE, 1L

"Per Legem Terrae"—Dean Erwin N. Griswold

(The following speech was delivered by Erwin N. Griswold, Dean of the Harvard Law School, at the initiation of new members of Phi Beta Kappa, at Mount Holyoke College, South Hadley, Massachusetts, on March 24, 1954.)

This is one of the few sorts of gatherings where I could appropriately use a Latin title for a speech. "Per Legem Terrae" means, of course, "By the Law of the Land." I will come back in a moment to an explanation of why I have used the Latin phrase.

We are met tonight to welcome to an old but very informal society, a new group of students who have shown a capacity for scholarship and an interest in learning. Within some definitions of the word, this is an intellectual group; and it is through such groups as this, multiplied throughout the country and the world, that the lamp of learning is kept lighted, and passed from hand to hand down the long course of time.

It is appropriate that we should gather together in the interests of scholarship. We have been recently passing through what may be regarded as a period of anti-intellectualism in this country. In such times, it is fitting for scholars to meet and to consider their relation to the rest of the world. It is well for us now to remember that these periods of anti-intellectualism are recurrent in the history of our country and probably of the world. And it is well to remember, too, that they are not without a cause. Intellectualism is not the only useful or constructive factor in a society. Scholars are sometimes arrogant, and sometimes too withdrawn and aloof from the world to be useful, or at least to be understood. There are some lines from Mr. T. S. Eliot's current play, "The Confidential Clerk," which may be appropriate here:

"What's surprising, well-bred people
Are sometimes far from intellectual;
And—what's less surprising—intellectual people
Are often ill-bred."

Within wide limits, the capacity for scholarship may well be thought of as a public trust. Many scholars, in one way or another, devote their efforts to the common good, and contribute to the progress of mankind. And the scholar, beside being a servant of his fellows, should be a humble man, for he is in a position to know how little he knows, and how much more there is to be done just to hold our own—to say nothing of moving ahead.

Now I return to my title: "Per Legem Terrae." What is the significance of those words tonight? A few weeks ago, in a city not far from here, I spoke on the subject of the Fifth Amendment, and said that its embodiment of the privilege against self incrimination was one of the great landmarks in man's long struggle to make himself civilized. It is my plan tonight to talk about another fundamental idea which has its roots in the distant past and which has become a vital and pervading part of our Anglo-American legal heritage.

These words which I have chosen as the title of my speech go back to Magna Carta, the Great Charter of 1215, wrested from King John by his barons, and the source of ideas far more potent than they could have realized. For the barons were interested in protecting themselves against an overbearing King, and had little interest in the basic rights of common men. In the thirty-ninth article of Magna Carta, apparently taken from an earlier Continental source, they included the provision that "No freeman shall be taken and imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers and by the law of the land." "By the law of the land"—these are the words with which we now render the Latin of the original, "per legem terrae." The phrase has had an almost unexampled persistence and power. Professor McIlwain has said that "Chapter thirty-nine was in 1215 the most important chapter in the charter, as it is today." "Due Process of Law in Magna Carta," 14 Columbia L. Rev. 41 (1914).

Thus there was planted in the stream of English law and English history—a stream of which we are now the largest branch—the seed of a great idea, an idea which has made an incalculable contribution to the development of our institutions. Just a few words, but they have time and again arisen at critical moments of our history, and in one way or another have contributed to that long course of events through which we have sought to make ourselves civilized.

Do I not exaggerate? "By the law of the land"—can these words have such great significance? Are they not merely procedural at best? Historians have long debated the exact meaning of the various clauses in Magna Carta. A leading author has said that what the barons "wished to secure was justice and legality in all of the king's actions affecting private rights." Mott, *Due Process of Law* (1926) 36.

We have seen how and when the idea was planted. How did it grow? In the next century, Edward III, who has been called the "English Justinian," made it clear that the protection of the article applied to all men without limitation—"of what estate or condition that he be." 28 Edward III, c. 3 (1354). And it was this same statute of Edward III that first used the phrase which has become commonplace in our own history, for he said that no man should be harmed in any way except "by due process of law."

Over the next three hundred years, many men, at many times, appealed to the Great Charter and the conceptions which it embodied. For our purposes, we may move on to Lord Coke, the great figure of the first part of the seventeenth century.

In an outstanding event of the history of our liberties, Coke advanced "the law of the land" against the king. This was in 1608 when James the First asserted that he had power to take such cases as he might be pleased to determine and decide them as if he were himself a judge. Coke denied this, and the king was greatly offended, saying that this meant that he was "under the law, which was treason to affirm." To this Coke replied in words which he took from Bracton, that the king "ought not to be under men but under God and the law." *Prohibitions del Roy*, 12 Rep. 63b, 65a (1608). This was a crucial application of the basic idea which we are considering tonight. These words, I am proud to say, are inscribed in their original Latin—"Non sub Homine sed sub Deo et Lege"—over the portal of the Harvard Law School.

In 1628, Coke wrote a Commentary on Magna Carta, as a part of the work that is known as his Institutes. He showed the identity in meaning between the two phrases, "the law of the land," and "due process of law," and that the purpose of these provisions was to protect the subject from oppressive uses of authority. In his words: "Every oppression against law, by colour of any usurped authority is a kinde of destruction, . . . and it is the worst oppression that is done by the colour of justice." Coke, *Second Institutes* (1656) 48. In this and other passages from his Institutes, Coke interpreted Magna Carta not so much in the light of its own historical setting as in the light and for the purposes of his own time.

Coke was a member of the committee that drew up the Petition of Right, in 1628, and was probably its principal author. In this the House of Commons asserted itself against King Charles by condemning arbitrary taxation and imprisonment, and the billeting of soldiers, all as being contrary to the law of the land.

Out of all of these events there grew a great revival of the idea of protection of the citizen inherent in the phrases "law of the land" and "due process of law." This is perhaps most strikingly shown in the fact that the Act of Parliament which finally abolished the Star Chamber in 1640 recited that the actions of that body had not been in accordance with "due process of law," and were contrary to the "law of the land." Much of Locke's political writing was based on the ideas embodied in these two phrases. Both Coke and Locke had great influence on the development of the ideas of the colonists in this country a hundred years later.

These ideas came to America as a part of the heritage of our early English settlers, and we had here a soil on which they could flourish. When James Otis made his great argument in the "writs of assistance" case in 1761, he included an argument based on Magna Carta, with specific reference to the "law of the land" provision. Quincy 51 (1761). This argument had great influence on the colonial pamphleteers who had so much to do with the mobilization of public opinion in the period. John Adams was one of those who took up this idea. The argument that "Taxation without representation is tyranny" was simply an application of the basic idea of due process of law, thought by the colonists to be established by Magna Carta, and thus to be their birthright.

When, after the revolution, and the successful adoption of a federal constitution, it was decided to add a Bill of Rights to that Constitution, it was natural that this traditional right should be included. The Fifth Amendment, largely drafted by James Madison, includes a provision that "No person shall . . . be deprived of life, liberty or property without due process of law." Thus has the great provision of Magna Carta been carried forward to our own fundamental law. As Dr. Mott has said, "This portion of the Fifth Amendment may thus be regarded as containing phraseology of purest gold, mined under the stress of heated constitutional crises, refined by the fire of violent revolutions, proved by the acid test of centuries of struggle, and molded by the hand of one of America's greatest constitutional draftsmen." Mott, *Due Process of Law* (1926) 18.

And thus we have this ancient doctrine included in our Constitution—now in both the Fifth and the Fourteenth Amendments. What the barons did in 1215, what Coke and his associates did in the seventeenth century, what the American patriots did in the eighteenth century—all of this and much more provides a clear continuity, linking our present institutions closely with all the struggles for liberty in the past three-quarters of a millennium.

But is not the due process clause technical lawyers' stuff? Was it not on the basis of the due process clause that the Supreme Court held that New York could not fix the length of hours that bakers might work, and that Congress could not fix a minimum wage for women in the District of Columbia? What do such decisions have to do with the struggle to obtain and to maintain liberty? The answer I would give is: Very little. They are only eddies in the stream which carries on the great idea. For the idea of due process, of "the law of the land" is a great idea, and one of our greatest heritages from the past. It is something of the spirit, something that gives life to our political institutions. In very large

part we take it for granted in our day to day relations with our fellow men and with the several governments with which we deal. It is so deeply ingrained in us all that it is rarely violated; and many of the violations which do occur are naturally of the more or less technical sort with which courts deal.

In the long run, ideas are more powerful than more tangible weapons. And the idea of due process has been a very fruitful and pervading one in our history. What does it mean? Can it be defined? Many people feel the need for a rather precise sort of a definition of concepts with which they deal—but this is not that sort of an idea. This is an idea born out of the hearts of men. It has great capacity for development and growth, and yet a rather clear basic content. Perhaps it can be put by saying that it has some application wherever men feel a sense of injustice. Thus it becomes a chief source of support for individual liberties. What is liberty? Is it not freedom or protection of the individual against arbitrary or improper exercise of the organized power of the state? What is a tyrant? Is it not a man who exercises the collective power of the state in an arbitrary, capricious, or purely selfish manner? Such words as "arbitrary" and "capricious" are difficult words. They may not in fact mean much more than "unreasonable," and that in turn may mean in substance not "customary," or what we are not accustomed to. Perhaps it may be said that we are accustomed to decent treatment from our public officers, and that our hearts and minds recoil when that custom is broken. It is with this sort of thing that the idea of due process, of "the law of the land" is concerned.

Violations of cherished ideals and aspirations have often been overcome in our history by arguments based on the general idea of due process, of the law of the land. In recent times, the due process clause has been the basis of decisions on such questions as these: (1) That a judge cannot properly try a case if he is directly interested in the outcome (*Tumey v. Ohio*, 273 U. S. 10 (1927)); and (2) That a person cannot be subjected to a secret trial, with no chance to defend himself, *In re Oliver*, 333 U. S. 257 (1948).

Now let us turn to the question which has been constantly recurring in recent days. Does this basic idea have any application to legislative investigations? Do these investigations always measure up to our ideal of due process of law? I think it fair to say that a large section of the public has from time to time felt "a sense of injustice" with respect to some of these hearings; and if they have, then there is a situation where the ancient ideal of due process is involved. A failure to appreciate the intimate relation between sound procedure and the preservation of liberty is implicit, may I say, in that saddest and most short-sighted remark of our times: "I don't like the methods, but . . ." For methods and procedures are of the essence of due process, and are of vital importance to liberty. As Mr. Justice Brandeis wrote some thirty years ago, ". . . in the development of our liberty insistence on procedural regularity has been a large factor." *Burdeau v. McDowell*, 256 U. S. 465, 477 (1921). More recently Mr. Justice Frankfurter has put the same truth in these words: "The history of liberty has largely been the history of observance of procedural safeguards." *McNabb v. United States*, 318 U. S. 332, 347 (1943).

The complaint against the Star Chamber was chiefly one of bad procedures. Torture is a procedure, and inquisition without charge, forcing a witness to testify against himself, and the other things which were standard practice in the infamous Star Chamber would all fall into the category of procedure. Liberty is established and preserved by the development and maintenance of proper procedures. It is, in last analysis, only through procedural rules that the individual is protected against arbitrary governmental action. And, as we have seen, the very essence of liberty is the protection of the individual against arbitrary application of the collective power of the state.

Do not misunderstand me. I am not opposed to legislative investigations. They clearly have a proper place in our governmental structure. The fact, though, that they can be useful and necessary, does not mean that they should not be properly conducted, and under proper safeguards and procedures. Nor does it mean that when not properly conducted they may not violate our basic and fundamental conceptions of due process, rooted so firmly in Magna Carta. In my opinion, for what it is worth, some recent legislative investigations have been clear violations of due process. If so, why have the courts not so held? The answer is easy. The courts do not have the sole responsibility for the proper conduct of our government. As Mr. Justice Stone once said: "Courts are not the only agency of government that must be assumed to have capacity to govern." *United States v. Butler*, 297 U. S. 1, 87 (1936). At this point another important governmental doctrine comes into play—the separation of powers. The courts have their responsibilities, but so do the executive and the legislative branches of the government. All are sworn to uphold the Constitution, including the due process clause of so ancient and vital origin.

The responsibility for the proper conduct of legislative investigations is clearly in the legislature. In the case of investigations by the Federal legislature, the responsibility is clearly in Congress, and its two

Houses. Has this responsibility been fully met? It seems to me quite clear that the answer to that question is: No. Why has it not been met? What can be done about it?

Before turning to an answer to those questions, I would like to pause to make one important observation. It is wholly clear, I believe, that no Senator or Representative has any power whatever to make an investigation, to require the presence of witnesses and their answers to questions, or to do anything of this sort, merely because he is a Congressman or Senator. An election to the House of Representatives or to the Senate does not make a man any sort of a magistrate, nor does it vest him with any power at all over his fellow citizens except to cast his vote in the body to which he has been elected. The power of investigation is a power which is solely attributable to the collective body, the House of Representatives or the Senate.

Where there is an investigation being conducted, the power that is being exercised is that of the House or the Senate. No Committee of either body has any power to conduct any investigation except as a result of a delegation from its House of Congress. No sub-committee of a Committee has any power to investigate except on a delegation of the power delegated by the House or Senate to the Committee. If there is a sub-committee of one, the power exercised by that one is not any power that is his by virtue merely of his being a member of the legislative body. If he has any power, it is only because there has been a proper delegation or sub-delegation to him of the basic power of the House or Senate.

I mention this because it is important in the consideration of the questions which I have posed, and to which I want to suggest some answers. Since the power exercised by a Committee or a sub-committee, or a sub-committee of one, is the power of the House or Senate itself, responsibility for that power and its exercise rests not on the Committee or the sub-committee of one or more, but upon the House or Senate itself, acting, of course, by a majority vote of its members. One of the important steps which must be taken if we are to find a solution for problems in this area is, I believe, to focus attention on the fact that these hearings which are the occasion of concern are not merely private frolics of an individual member, but are an exercise of the power of a House of Congress for which every member of that House has a full and equal responsibility.

Clearly there is a problem here. Why has it not been dealt with long before this time? It is a difficult problem, and it would be too much to expect it to be completely solved in a short time. But the fact is that virtually nothing at all has been done about it. There has been some talk, and some indication in the past few weeks that something might be done. But the actual results so far are not impressive. Why is that? One reason, I think, is that only recently has it become a serious problem. It is clear that our legislative bodies include a very large number of able, high-minded men, who are just as much interested in the ideal of due process as you and I. Why have they not taken action to establish proper procedures in legislative investigations?

The answer is not simple, but there is one aspect of it which is, I think, perhaps insufficiently understood by the average citizen. The fact is that, for practical pur-

poses, the House of Representatives and the Senate are regarded by their members as clubs—of which the Senate is, of course, the more exclusive. Each member of the House or Senate has his own standards. And in a great many cases these standards are very high. But with almost no exception, no member seeks to impose his standards on any other member. Once you are in the club, how you act is up to you, and no member wants to undertake to interfere in the conduct of any other member—partly, I suppose, because he does not want anyone else to interfere with him. This is unfortunate, I think, though perhaps natural and understandable.

There is an important distinction here, which has, I fear, been overlooked, in the consideration of this matter of legislative investigations. For a Senator or Congressman who is conducting an investigation, either as a sub-committee of one, or in association with other members, is not acting as an individual. Everything he does directly involves the other members of his House, and they should share responsibility for the exercise of the power they have delegated, power which inheres only in the body as a whole. The problem can be solved by establishing by law, or by rule of each House, a proper standard of procedure for the conduct of legislative investigations, which will keep them wholly consistent with our basic and deeply felt notions of due process of law.

In the concluding portion of this talk, I would like to outline some provisions which, it seems to me, should be included in an established regulation of procedure of legislative investigations. I have in mind primarily the Federal scene. Before turning to that, though, I would like to point out that we are not wholly without precedents. This is, interestingly enough, an area in which the states have, on the whole, done a much better job than has the Federal legislature. In New York a Commission has recently made a promising report on this whole matter. Here in Massachusetts, the legislature, in establishing two recent recess commissions, one to investigate crime, and the other to investigate communism, has included substantial provisions designed to protect the rights of witnesses and to insure the proper conduct of these investigations. As a result, there have been no complaints about the activities of these commissions, and we have not been subjected to the spectacles which have so frequently been produced on the Federal stage. For these wise provisions we should give respect and thanks to the Massachusetts legislature and to its Committee on the Judiciary which was undoubtedly responsible for their first formulation. I am glad to pay this tribute to our local legislators. But why cannot the Federal Congress do as well?

Much work has been done over the past several years towards formulating a suitable and proper code of conduct for Federal legislative investigations. A number of members of Congress have devoted much thought and effort to this task, and a number of bills have been introduced. Recently President Eisenhower announced that he understood that Congress was going to establish such standards—and it is clearly the responsibility of Congress. Legislative leadership on this question is still not impressive, but it should come. Probably it would be more accurate to say that there has been leadership and good leadership, but it has been hard so far for the leaders to get an effective following. The matter is too important, too closely connected with our basic liberties, to be longer neglected.

These are some of the things, as I see it, which should be included in a proper

Code of Practice for legislative investigations. Of first importance is the elimination of the one-man sub-committee in any proceeding involving a witness who appears involuntarily. In our concern over recent events, we should not forget that there is much of the business of Congress which is not controversial, and there are many situations where a witness wants to appear. As long as he appears voluntarily, there may be little objection, as far as the witness is concerned, to his appearing before any sort of body, including a sub-committee of one. Even then there may be a public interest in having a member of the other party present so that more than one point of view may be represented. When a witness appears under subpoena, when he is compelled to testify against his will, the situation is wholly different. Then I say that the power of Congress against him should not be asserted by a sub-committee of a single member.

Closely related to this is the matter of the issuance of subpoenas. The practice with respect to subpoenas has come to be very loose; indeed it might be called lax. It is the standard practice, I believe, in many Committees, for the Chairman of the Committee to sign up a batch of subpoenas in blank, and hand them to the staff of the Committee. Then the staff fills in the name of a witness whose testimony is wanted, and the subpoena is served upon him. Such a practice seems to me to be highly improper.

There is here a close analogy with a search warrant which can only be issued by a judge. With respect to such warrants, Mr. Justice Jackson has said (*McDonald v. United States*, 335 U. S. 451, 455-456 (1948)), that the requirement of a search warrant is made "so that an objective mind might weigh the need. . . . The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals. Power is a heady thing; . . ."

No subpoena should be issued to compel testimony except as a result of the action of the Committee itself, not the Chairman alone, or its staff. There are few ways in which the organized power of the state is brought to bear on a citizen more sharply than through a subpoena to compel testimony. Such a power should not be exercised on the judgment or discretion or whim of a single man.

When a witness is summoned, he should be given several protections which have not heretofore been made available. He should be told in advance the subject and the scope of the inquiry. He should have the right to counsel, and counsel should be entitled to speak on his behalf as well as to advise him as to his rights.

In many Committees now, the right to counsel is formally recognized. But counsel, though present, is restricted to giving advice when called upon. He cannot address the Committee; and counsel who have sought to do so have been ejected from hearing rooms. The right should be a right to effective counsel, and not the mere shadow of that right that has been recently allowed.

If testimony is taken in executive session (which should never be done unless the witness is willing) no member of the Committee or of its staff should make available selected portions of the testimony, or summaries or incomplete versions of it. The Committee should not be allowed to say, through its Chairman or otherwise, that "We have evidence of" so and so, unless that evidence is produced in an open hearing.

Of very great importance, I believe, is a rule protecting the witness from having to submit to broadcasting, television, news-reel cameras, or any other form of recording or reproduction, except the ordinary stenographic transcript. Even flashing flash bulbs can be an indignity and a source of strain to a witness. It is high time that we recognized and accepted the fact that legis-

lative investigations are not a part of show business. Witnesses should not be required to testify in order to provide a spectacle for the public. Requiring testimony under such conditions is not compatible with any sound notion of due process of law, and I would expect our courts, as some have already done, to uphold a witness who refuses to testify for broadcast of any sort. We have even had Congressional investigations put on with sponsors, with advertising during the intervals. Can anyone possibly defend such a practice?

In this connection I would like to state my own view that a legislative investigation is improper when its sole or basic purpose is to "expose" people or to develop evidence for use in criminal prosecutions. We have had chairmen of legislative committees who have announced that that was the purpose of the hearings they were conducting. In my opinion, they have thus demonstrated the impropriety of the exercise of power which they are seeking to carry out, and I would hope that the courts, when properly invoked, would decide that there was no legislative power for such a purpose.

There are many other rights and refinements which should be established and recognized in connection with legislative investigations. For example, a person summoned should have due notice of the nature of the evidence that is wanted from him. A witness should surely be entitled to explain his answers, and he should have an opportunity to answer any charges made against him or any evidence against him produced by other witnesses.

Many Congressmen and Senators are aware of these problems and are trying to get them worked out. Reference may be made in particular to the work of Congressman Keating, to the chairman of a sub-committee of the House Judiciary Committee, and to Congressman Scott who has recently introduced House Resolution 447, which, if adopted, would go far towards resolving the problems as far as the House is concerned. The Senate should also go ahead with similar action.

Before leaving this matter it should be observed that it is of first hand importance not only to have proper procedures established but also that there should be appropriate sanctions to make these procedures effective. This is not easy. Probably the most effective sanction in the long run would be a provision which would relieve a witness from any obligation to testify, and thus from any punishment for refusal to testify, when the procedures are not followed. A sanction against the committee or its members is doubtless unrealistic. But the committee should lose its compulsory powers when it does not conduct itself properly.

Finally, it should be emphasized again that responsibility for working out proper procedures for legislative investigations rests upon Congress and its two Houses. Complaints against the President or others outside of Congress are misdirected. Congress has the power to provide proper procedures for legislative investigations, and it should meet its clear responsibility.

The spirit of due process of law, the law of the land, our ancient heritage of liberty, requires that we bring order and fairness into this field which has recently become so chaotic. We have been through struggles of this sort in the past, and justice and liberty have always eventually won out. Indeed we have been strengthened in

our liberties by each such struggle. In this connection, I think of a phrase which was used by our late Chief Justice Harlan F. Stone. He referred to "the sober second thought of the community, which is the firm base on which all law must ultimately rest." Stone, "The Common Law in the United States," 50 Harv. L. Rev. 4, 25 (1936). For myself, I have great faith in the sober second judgment of the people. The immediate reaction of the people, like that of any individual, may be hasty, emotional, irrational, or unsound. But when that phase is past, when we have had a real chance to think through our problems, I have confidence that the people will demand a better standard of conduct in legislative investigations than has been evidenced in the recent past. In making this statement, I want to pay due and deserved respect to the many members of both Houses who have not abused their powers, and have been scrupulous in the exercise of their authority.

Though we live in stirring times, we should not forget that many generations of our ancestors have lived through times which were for them more trying than ours. It was Aeneas who heartened his men by saying to them: "O passi graviores"—"Oh you who have lived through worse days . . ." It is not surprising that now, as in earlier times, there have been those who seek to exploit our fears. Nor should it be surprising that many people, at first, at least, respond to such exploitation. But it is the way of life to have to meet new problems; and, while doing so, we should not give up old values.

In protecting ourselves from the threat of communism, we should not adopt methods of oppression here which the communists themselves would use. After all, the essence of communism is the subordination of the individual to the state. And the essence of liberty, for which our ancestors fought, on both sides of the Atlantic, is the freedom of the individual from the arbitrary power of governmental authorities. When we see more clearly that our present problem is simply one of due process of law in its pervasive sense, so fundamental throughout more than seven centuries of history, we will have no difficulty in finding a satisfactory solution which will recognize and preserve the basic rights of individuals while providing ample protection for the state.

The problems of our day may be useful problems. It is good, I think, that we should have to bestir ourselves from time to time to protect our liberties, as our ancestors did on many occasions in the past. If we take these rights for granted, if we accept them as a matter of course, we may simply fritter them away, and end by losing them, and possibly deserve to lose them. And so I would suggest that you not be discouraged, nor even be unduly concerned if basic human rights are under attack. These are rights which thrive in vindication, and each generation better understands them and their significance if it has to think them through for itself. We are given a great opportunity today, to which I think we will measure up, if the past is any guide. Like the barons at Runnymede, like Coke and Locke and Otis and Adams and Madison, and many others whose names are lost to fame, we may be able to make our own contribution to that ancient concept which has rallied the spirits of free Englishmen and Americans for many centuries—the law of the land.

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S B A—(Continued)

dress is tentatively set for April 12, 1954, subject to confirmation.

Both speakers bring to their subjects unique classifications. Mr. Lumbard was admitted to the bar in 1925, a graduate of Harvard College and the Law School, and served in the U. S. Attorney's office in the Southern District of New York for two years. From 1931 to 1933 he again served in the U. S. Attorney's Office, this time as head of its criminal division. At other times he has served on special investigative commissions and as a special assistant to the Attorney General. From 1934 until his present assignment, Mr. Lumbard has been a partner in the firm of Donovan, Leisure, Newton, Lumbard and Irvine. In 1947 he was appointed to the Supreme Court of New York, where he served from June to December of 1947. He was appointed U. S. Attorney for the Southern District of N. Y. by President Eisenhower.

Mr. Hays was admitted to the bar in 1905, having attended Columbia College and its law school. Mr. Hays has been prominently identified with most of the famous civil liberties cases of the last half century. In 1922 he helped to open the closed towns during the coal strikes in Pennsylvania; in 1925 he was active in the Scopes Case in Tennessee, and the Sweet case in Detroit; he participated in the 1925 case of Senator Wheeler; the American Mercury Case of 1926 in Boston; and perhaps the most famous civil liberties case of all, the Sacco-Vanzetti case of 1927. Mr. Hays also appeared for the defense in the infamous Reichstag trials in Berlin and Leipzig in 1933. In 1937 he conducted an investigation of civil liberties in Puerto Rico. He has been for many years a national director of the American Civil Liberties Union, and is the author of a number of books, including *Let Freedom Ring* (1928), *Prejudice* (1933), *Democracy Works* (1939), and *City Lawyer* (1942).

The time for both lectures will be 5 p.m.; the place of the lectures will be announced.

The Student Bar held its election for officers on March 4, electing as president, Eugene M. Haring, 2L; vice-president, Lawrence A. Heller, 2L; and treasurer, Marvin A. Stern, 2L.

Retiring officers were: president, Edwin J. Carr; vice-president, Fred Wyle; secretary, Eugene M. Haring; treasurer, James M. Rose.

Alumni Notes

LL.B. '20—**Frederick W. Brune** has been appointed Chief Judge of the Court of Appeals of Maryland, the highest court in the state.

LL.B. '49—**Leon C. Baker** has resigned as Assistant General Attorney of Celanese Corporation of America. He is now President of American TCP Corporation, which manufactures gasoline additives.

LL.B. '50—**Stanley B. Cohen** is now associated with Leo Resnick in practice before the administrative agencies and departments of the federal government in Washington, D. C. He was formerly Trial Attorney, Broadcast Bureau, Federal Communications Commission.

LL.B. '52—**Robert C. Porter** has joined his father in the general practice of law in the firm of Porter & Porter in Cincinnati. He was previously on active duty as a First Lieutenant, Judge Advocate General's Department, United States Air Force.

LL.B. '53—**Ann Mathis Pfohl**, now with Sullivan and Cromwell, was a winner in Glamour Magazine's 1954 "Ten Girls With Taste" survey. While at Harvard she was a member of the Legal Aid Bureau, and received her degree cum laude.

CIVIL LIBERTIES UNION

Lawrence A. Erbst, 2L of Flushing, N. Y., was elected president of the Harvard Law School Civil Liberties Union on March 18. Gordon Scott, 1L of Philadelphia, is the new vice-president of the organization, and William Stringfellow, 1L of Northampton, was chosen secretary-treasurer.

The organization also elected Walter C. Carrington, 2L of Everett, Burton Reif, 2L of Chicago, and Chas. Talbot, 2L of Walla Walla, Wash., to be members of the Executive Committee.

Structure Explained

Between meetings of the full membership, the Union is governed by a seven-man Executive Committee, which consists of the three officers, three other members chosen by the organization, and one person either from the Law School faculty or the staff of the Massachusetts Civil Liberties Union. As yet this seventh member of the Committee has not been named.

The Union, which was organized last fall as an affiliate of the Massachusetts Civil Liberties Union is the successor to an earlier civil-liberties group here, which was not officially connected with the Massachusetts group or the ACLU.

It is currently engaged in legal research for the counsel of the American Civil Liberties Union. The Law School Union also plans to carry on a program of public discussions of issues in the civil liberties field.

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COFFEE HOUR—(Continued)

is its plan to operate a new TV Channel, Channel 2, for the Boston area. To date, the Council and its supporters have raised \$600,000 towards construction of a TV station, transmitters, and equipment, and \$200,000 for operating expenses. Outstanding contributors to the project are The 20th Century Fund, The Filene Fund, The Lincoln and Therese Filene Foundation Inc., and The Fund for Adult Education. The goal of the fund raisers is \$1,053,000. The F. C. C. has already granted the Council a building permit and it is expected that the necessary construction will be completed and the channel in operation sometime next September.

Michigan Center

Mr. Wheatley explained that the F. C. C. has set aside 242 out of a total of 1000 channels exclusively for educational broadcasting. Some colleges and universities are already operating channels. At Ann Arbor, Mich., an educational TV center has been established with a grant of \$1,500,000 yearly from the Ford Foundation. The function of this Michigan center will be to record and film telecasts by kinescope. These will, in turn, be sent to the numerous educational channels run by colleges and universities for transmission to the public.

Channel 2, when it commences operation, will reach about 1½ million TV sets within a radius of 40-50 miles. The Council's aim is a high intellectual standard of broadcasting, with the possible sacrificing of mass appeal. The station will also be a voice for minority views in debate over controversial issues.

COURSES—(Continued)

and philosophy, with Legislation (b) falling in a world of its own. Election is permitted among these various courses because the courses all seek to obtain the same general goal.

The student confronted by a choice at this time should remember that the insights covered by these courses will not only enrich the other subjects covered in the second and third years, but will also force a more explicit treatment of the larger aspects of the subjects to be taken, by providing a broader base of understanding between professor and student.

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Dean Griswold has announced that in light of the forthcoming tuition rise from \$600 per academic year to \$800, the usual charges for mimeographed materials will be discontinued.

BULL AND BEAR

Lewis B. Gilbert, often described as a "professional minority stockholder," addressed the Bull and Bear Club open meeting yesterday. The subject of his talk was "Corporate Democracy." A review of his remarks will appear in next week's RECORD.

RESEARCH BUREAU

William D. Walsh, 2L, of New Haven, Conn., was elected to the presidency of the Student Legislative Research Bureau at a meeting in which all second

and third year members participated. The new vice president in charge of research is Ralph E. Erickson, 2L, of Jamestown, New York. Kenneth F. Phillips, 2L, of New York City is now vice president in charge of client relations. The new treasurer is Frank H. D'Andrea, Jr. of Stamford, Conn., while Norman M. Goldberg, 2L, was elected secretary.

KING'S BENCH

David J. Swartz, 2L, of Merrimac was elected Chief Justice of King's Bench at a meeting of the organization held on March 12. The new Associate Justice will be Robert W. Costigan, 1L, of Philadelphia, Pa. The other two offices of King's Bench will be filled by Irwin Kimmelman, 2L of Newark, N. J., Chancellor of the Exchequer, and Neil LeRoy, 1L of Easton, Pa., Scrivener.

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