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David F. Cavers

Harvard Law School

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JOSEPH LAUFER: SOME MEMORIES

DAVID F. CAVERS*

The Duke University School of Law in the 1930's had a very small student body—106 in 1938-39—but it was an able one, drawn, surprisingly, from twenty-nine states and the District of Columbia and from two foreign countries. Two students came from Cuba, and one, Joseph Laufer, came from Germany (by way of the British Mandate of Palestine). Laufer, who had completed his legal studies in Germany before emigrating in 1933, had found the prospects for a legal career in the Mandate discouraging, and, aided by a kinsman living in this country, had decided to emigrate once more. On board an America-bound steamer, he met a senior member of the Duke law faculty, Professor Malcolm McDermott, who encouraged him to enroll at Duke. Happily for Joe, Duke combined a liberal scholarship policy with low living costs.

As a law teacher then at Duke, I am sure I soon became acquainted with Joseph Laufer, though I taught no first year course. Early in his stay, he was marked as a phenomenon. Though his English was still imperfect and he took on a heavy tutoring load to eke out a very modest allowance, he early evidenced the abilities of a first-rate law student. The quality of his classroom performance was attested by his examination papers: he stood first in his class of fifty-two students.

Writing of Laufer's student days, I find the compulsion to call him "Joe" irresistible. I confess, however, that I have no recollection of Joe's performance in either the second or the third year classes that I was then teaching. I came to know him best in a tutorial type course entitled "Current Decisions," in which I supervised students’ comments on recent cases of interest, hopefully with a view to publication in a small semiannual periodical, the Duke Bar Association Journal. In his second year, Joe wrote the lead comment, Acceptance by Silence: A Critique.¹ Not only did it deal very capably with the common law, but it also drew on French and German authorities.

In his third year, Joe was chosen as the Editor-in-Chief of the Journal's Current Decisions section with a board that included two

* Fessenden Professor of Law, Emeritus, Harvard Law School.

¹ 7 Duke B.A.J. 87 (1939).
other editors who later became law professors. His new post often brought us together. That experience made it easy for me to write warmly in support of his application for a graduate fellowship at the Harvard Law School. This was granted, an award soon followed by one of Duke's three Coif awards in 1940.

As I recall it, Joe found disappointingly little stimulation in his translation from the intimacy of Duke to the impersonality of a Harvard that was only beginning to emerge from long-established patterns of instruction. When he returned to Durham, impending war was casting its shadow on the law schools. He was employed by Duke as a teaching fellow in 1942 and then clerked for a time with a North Carolina law firm. In 1943 he went to Washington, first, to the Office of the Solicitor of the Department of Labor and thence, in 1944, to the Office of Alien Property in the Department of Justice.

Few posts could have been better suited than Alien Property to Laufer's legal talent, his knowledge of civil law systems, and his linguistic ability. Moreover, he was working under lawyers of top-notch ability. They gave him an excellent postgraduate education in federal litigation.

It was in 1951 that I renewed my association with attorney Laufer, still Joe to me. It came about this way. Newly appointed as Associate Dean of the Harvard Law School, with special concern for the emerging field of international legal studies, I joined with a number of my colleagues in entertaining at luncheon an official of the new State of Israel, Uri Yadin, Deputy Attorney General and Director of Legal Planning in the Ministry of Justice. Mr. Yadin was visiting a number of American cities to interest lawyers and law professors in helping Israel to modernize the legal system that had prevailed under the Mandate.

Israel had succeeded to a legal hodgepodge derived in large part from Turkish law: a code based on Islamic law, overlaid in a number of areas by special codifications drawn mainly from French sources. For family matters, the religious law of the individual involved was applied in courts maintained by religious bodies. In criminal law and in civil and criminal procedure, the pre-mandatory law had been largely superseded by rules modeled on English lines. Where questions arose for which this patchwork provided no answers, the courts were referred to English common law and equity. Some judges and lawyers in Israel were trained in the English law; others, in civil law systems. Moreover, the law
of Israel was not simply lacking in unity; many of its provisions were clearly outmoded.

Mr. Yadin’s division in the Ministry of Justice was charged with presenting proposals for legislation to the Knesset. He hoped to submit draft laws to interested lawyers and legal scholars over here and to get their reactions and suggestions. Needless to say, his goal struck our group as a challenging one, looking to a highly constructive and equally difficult exercise in comparative law. But was his quest for aid practicable? After the luncheon, I was joined in my office by a few of my colleagues—I remember, in particular, Harold Berman and Kingman Brewster. They said Yadin could never get results by correspondence with individual consultants scattered across the country. What was called for was a center over here with which Yadin could keep in contact and which in turn could reach out when help was needed. Clearly, they added, the ideal place for such a center was Harvard.

I thought their objection to Yadin’s plan was well taken, and I agreed that, with its great foreign law collections and wide contacts, Harvard was an excellent site for a center. However, a center would not be self-operating. It would need as its director an able lawyer who knew Hebrew and one or more European languages, and who was learned in both our own and civil law systems. Obviously, few persons could meet such specifications, but, fortunately, I knew one: Joseph Laufer. I said that, if he were willing to join the venture, I should be glad to attempt to organize a center here, both Harvard and the Ministry consenting. As for Yadin, when we broached the idea to him, he greeted it with enthusiasm.

Plans for a project embodying a scheme of cooperation were formulated and were approved by Dean Erwin N. Griswold of the law school and the Israeli Minister of Justice, Dr. E.F. Rosen, and his successor, Dr. Dov Joseph. The plan looked to a small research staff at Harvard, with Joseph Laufer as its director, to which the Ministry would send one or more lawyers. Draft bills submitted in Hebrew by the Ministry would be translated and comments sought from lawyers expert in their respective fields. Occasional conferences would be held in other cities. From time to time, Laufer would go to Israel to sharpen his appreciation of legal developments there relating to his undertaking. Fortunately, the plan appealed to Laufer.

Once under way, the Program—entitled the “Harvard Law
School-Israel Cooperative Research on Israel’s Legal Development—developed momentum. The first draft bill to arrive was an important, much needed Succession Law (enacted some years later). Its translation was the Program’s first task—to be repeated, over time, for several other voluminous measures. Among the draft bills received was a Family Code dealing with such matters as capacity, domestic relations, marital property, adoption and guardianship, maintenance, conflict of laws and jurisdiction. Drafts of an evidence bill, a companies bill, the General Part of a new Criminal Code, and a Code of Criminal Procedure followed. Meetings on the succession and evidence bills were held in New York in 1952 and 1953; a round table on the draft Family Code was held at the University of Chicago Law School in 1957. Interspersed among these large-scale undertakings were drafts on somewhat narrower matters such as jurisdiction over extraterritorial offenses and judicial review of administrative decisions.

Needless to say, as director, Laufer could not bury himself in research. He had to enlist associates, few in number but possessing unusual competencies. He had to handle a considerable volume of correspondence: collaboration with Ministry lawyers became very real, a stimulating relationship which, I was sometimes assured, could be as valuable to the participants as the legal assistance the Program offered.

The Program attracted a number of visitors—one was the then Minister of Labor, Golda Meier. Some visitors came for longer stays, among them Mr. Justice Yoël Sussman of Israel’s Supreme Court (now the Court’s President) and Attorney General Haim Cohn, now a Justice of the Court, each of whom spent several weeks in Cambridge.

A very demanding—and, for Laufer, an uncongenial—task was money raising. The Program’s financial needs were not great, but it had almost continually to struggle to meet them. Needless to say, there was much competition from good Israeli causes, and, when it comes to money raising, law has never exhibited much attractive power. Moreover, one of the handicaps to fund raising was the fact that we could not point to specific results. Few of the bills the Program tackled were adopted in its lifetime. From time to time, to meet exigencies that called for action, portions of a given bill would be extracted from the draft and enacted separately. However, it became evident that, in most instances, basic legal changes, often
with parts that were quite controversial, could not soon command the Knesset's attention.

A compensating aspect of Laufer's role at Harvard was, in a sense, extracurricular. His role, his background, and even the location of his office facilitated contact with Harvard's graduate students, both from this country and abroad. He enjoyed their company, and many of them turned to him for counseling. His hospitality was appreciated by these students as well as by his more distinguished guests—a hospitality that owed a great deal to his very capable and outgoing wife, Lily, a Viennese émigré whom Joe had met in San Francisco.

It was in 1956 that Laufer, who was also serving that year as a Lecturer in Comparative Law, received an offer from the Buffalo Law School. It opened opportunities he could not ignore. The work of the Program he had developed so impressively could be carried forward if financial support were found for it, and Harvard could not ask him to do more.²

I felt a real sense of loss when Joe and Lily left Cambridge with their sons, but, as a native Buffalonian, I was pleased that Buffalo should be his destination. Moreover, I felt confident that we would keep in touch with one another, and so we have. It has been enheartening to observe the very promising student of those early years at Duke becoming a productive scholar in both domestic and comparative law, as well as a law teacher who, I have no doubt, continued to be as interested in his students as in his courses. He and Lily are entitled now to relax and observe the success of their own sons in the practice of law.

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². Even before Laufer's departure, an arrangement had been worked out with Brandeis University pursuant to which it became the Program's co-sponsor. The Program's name became the "Harvard-Brandeis Cooperative Research on Israel's Legal Development." Harvard was fortunate to enlist Norman Abrams as Laufer's successor. Editor-in-Chief of the University of Chicago Law Review in 1954-55 and an Associate in Law at Columbia in 1955-57, Abrams came to Harvard in 1957 as Research Associate in Law and Secretary of the Program, roles in which he served until the Program became inactive in 1959. A member of the U.C.L.A. law faculty since 1959, Professor Abrams has been a Visiting Professor at both Hebrew University and Bar-Ilan University in Israel.

For further information concerning the Program, see Laufer, Cooperation Between Harvard and Israel in the Field of Legislative Drafting, 41 A.B.A.J. 969 (1955); Abrams, The Harvard-Brandeis Cooperative Program on Israel's Legal Development: Its Operation and Method, Report on Current Research on the Middle East 1958, at 23.