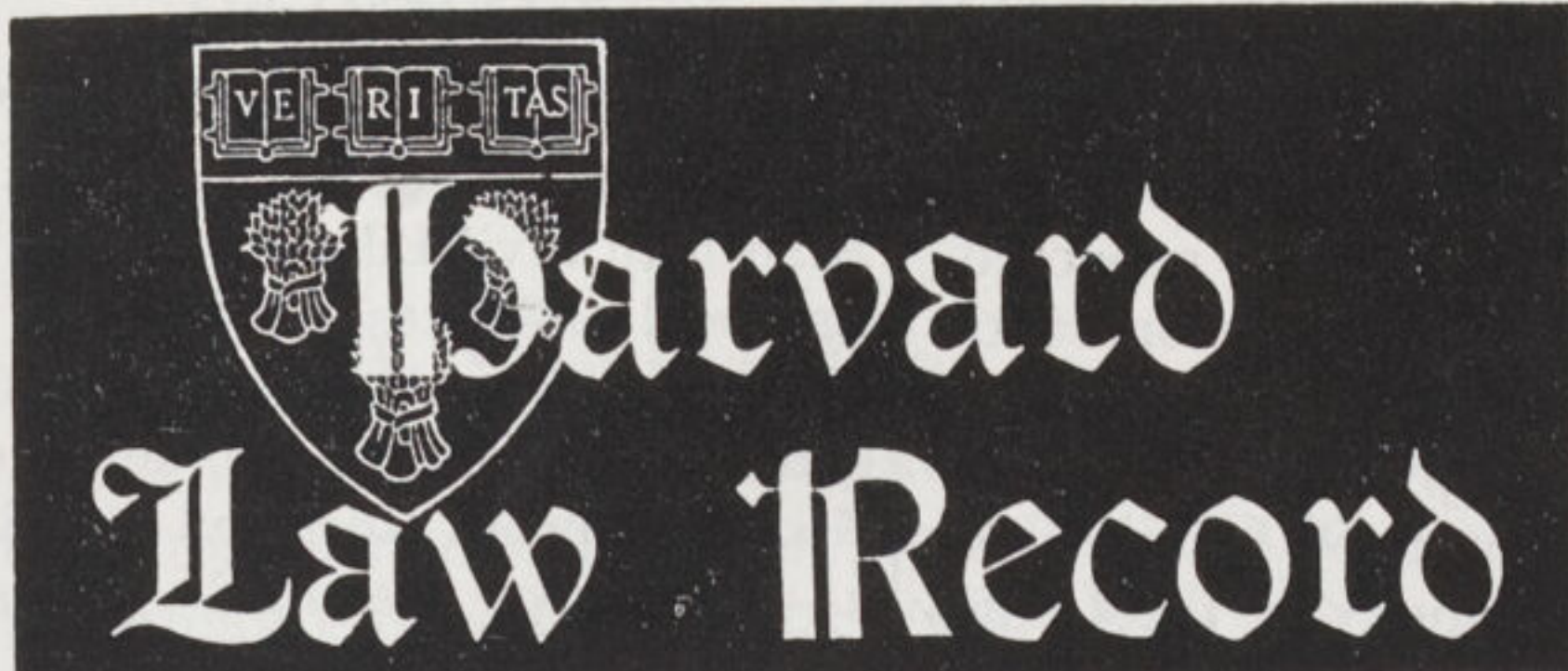


MAM



*"America's Oldest
Law School Newspaper"*

VOL. 32

CAMBRIDGE, MASS., MARCH 2, 1961

NO. 4

Wilson Elected Marshal

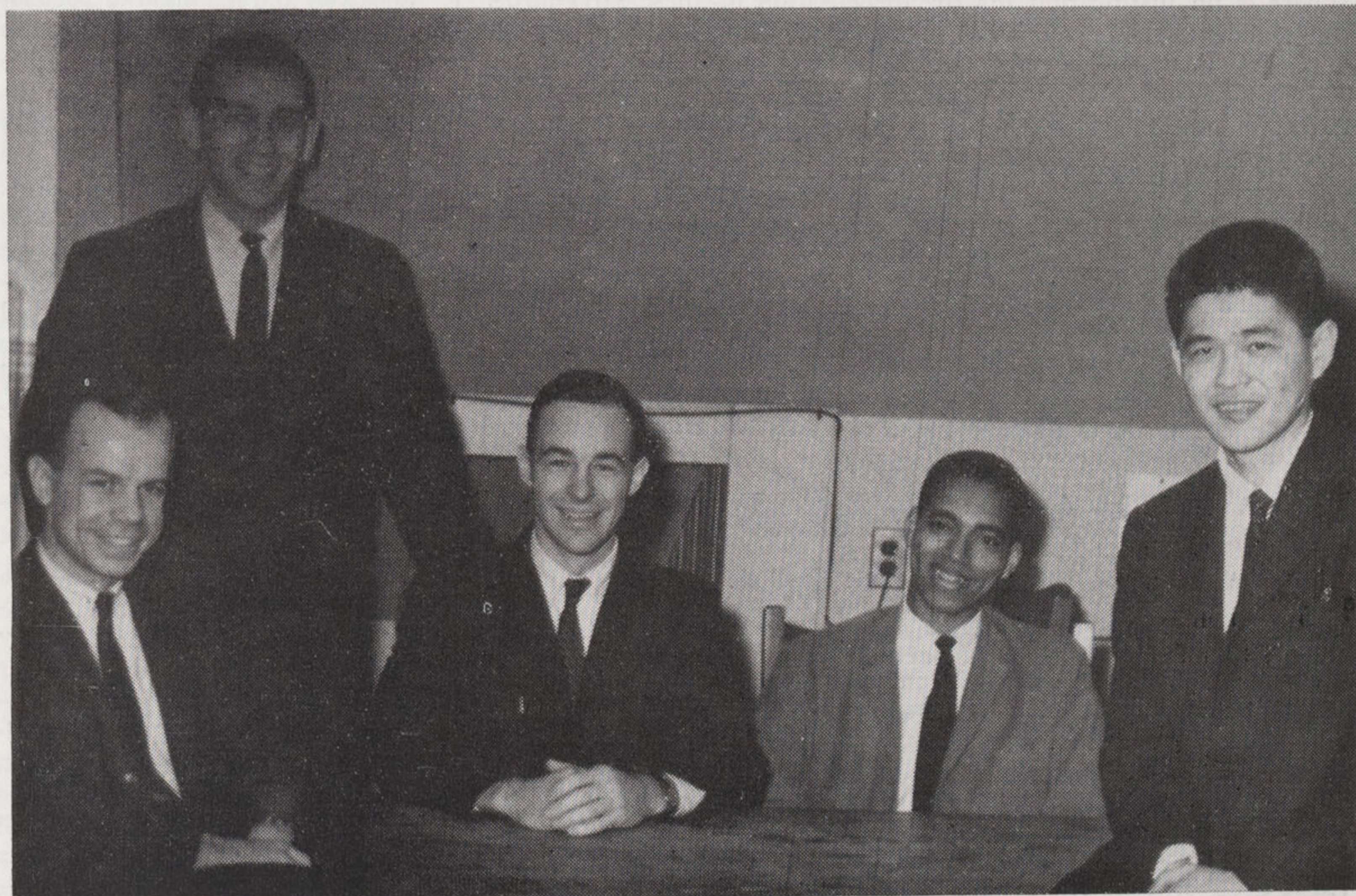
The Class of 1961 elected five members to its Class Committee last week. Herman Wilson, of Tyler, Texas, was elected Class Marshal, the titular head of the class. He is a graduate of Lincoln University and is a finalist in the Ames Competition.

John R. Quarles, Jr., of Wellesley Hills, Massachusetts, was elected Class Secretary.

He graduated from Yale University.

Committeemen elected are Stanley I. Mukai, Honolulu, Hawaii; Jerry F. Rotman, Dubuque, Iowa; and Thomas A. Skornia, Wheaton, Illinois. Mr. Mukai is a graduate of the University of Hawaii. Mr. Rotman is a graduate of Yale University and is a mem-

(Continued on Page 14)



The newly-elected officers of the Class of 1961 are, from left to right: Thomas A. Skornia, class committeeman; Jerry F. Rotman, class committeeman; John R. Quarles, Jr., secretary; Herman Wilson, marshal; and Stanley I. Mukai, class committeeman.

Hearsay

It seems impossible to prevent the construction of a fifteen story office building across from Littauer Center. The plan, as proposed by John Briston Sullivan, would build this towering edifice on stilts so as to raise the building up above the ramp that takes the trackless trolleys below the Square. Meeting with the approval of the State Legislature (since the ground is technically a part of Cambridge Common), it need only receive acceptance by a majority of the Cambridge City Council before Mr. Sullivan is permitted to purchase the land and proceed. This approval seems certain, the Cambridge Civic Association notwithstanding.

We at Harvard are opposed, and opposed strongly, to this plan. It would add to the already unmanageable traffic problems; it would interfere with and degrade a great historical area; it would satisfy no need for commercial property although commercial land itself is of a limited quantity; and it would entail some factors which are not in accordance with law. But perhaps the most selfish reason for our opposition is the fact that it will impinge on our "campus" and be a "pig in the parlor." From an architectural as well as from an academically-oriented viewpoint it does not belong here.

In its legal aspects it is at fault in that it does not provide for public hearings, nor is there a provision for open bidding or for a report by the Cambridge Planning Board before action is taken by the Cambridge City Council. This hovering monster will be thrust upon us without the safeguards which all of those factors would provide if they were followed.

There is no justification for the dispensation of these safeguards. If our forces could be mustered in the ranks of opposition, perhaps we could avoid the whole aberration.

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Published weekly on Thursday for ten 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 (20 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 UNIVERSITY 8-7600, extension 418.

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COMMENT

By Fenno

For those who still refer to the American Civil Liberties Union and its local affiliates as "pinko" the recent action of the New York Civil Liberties Union in its defense of George Lincoln Rockwell stands as a conclusive rebuttal of such charges. Although years ago the ACLU was given a clean bill of health by the House Un-American Activities Committee, there will always be those who equate a fervent defense of unpopular liberal causes with treason.

It would seem that an organization which purports to defend the "civil liberties" of any minority will end up defending many more leftist groups than rightist ones. This is so because there are more of them and because any minority which attempts to assert what it believes to be its "rights" is acting against the status quo and is therefore branded liberal.

Rockwell and his bund of pseudo-Nazi cranks comprise virtually the only extreme rightist political group functioning at present. When he was denied a permit to make a public speech in New York City, the NYCLU rose to Rockwell's defense. When the lower court refused to upset the administrative ruling which denied the permit, the NYCLU appealed and won a reversal on the Appellate Division level. The court said that mere contemplated incitement to violence was not sufficient grounds for denying the permit and that punishment for such a speech could only be administered after the fact.

The students who participated in the skirmish which prevented Rockwell from speaking in Boston may not have realized that by their rowdiness they were perhaps depriving him of his First Amendment rights; or if they realized it, perhaps they didn't care. It would seem that the ranks of the civil libertarians are filled partly by those who espouse just one cause—the "liberal" cause. These people should take a tip from the NYCLU.

Dean Discusses ABA Meeting

By Neil L. Chayet

The American Bar Association held its annual midyear meeting on February 21 and 22 in Chicago. In attendance were Dean Erwin N. Griswold, chairman of the Special Committee on Professional Relations, and Professor A. James Casner, a member of the Standing Committee on Legal Ethics.

Dean Griswold opposed a resolution sponsored by the Bar Association committee dealing with taxation which called for amending the tax law in order to grant automatic immunity from criminal prosecution to those who voluntarily disclosed the fact that they had been guilty of tax fraud. In an interview with the RECORD, Dean Griswold explained that the chief reason for his opposition was that the enactment of such a measure would have denied the Treasury Department the power to prosecute even in cases where the perpetrated fraud was of an extreme nature evincing a complete disregard for the law.

The proposal also called for a hearing in each case to determine whether there had been a full disclosure and whether this disclosure was completely voluntary. The Dean pointed out the difficulties of such "truth hearings," explaining that truth and objectivity could prove extremely hard to elicit and that such hearings could prove reminiscent of the recent controversial hearings in the federal district court in Boston.

The proposal was rejected and returned to committee by a vote of 104-81. Dean Griswold did suggest that the Treasury Department should have the right not to prosecute in individual cases of a full and voluntary disclosure of fraud, but this should be a discretionary decision on an *ad hoc* basis rather than a Congressional mandate encompassing all instances.

The 258-member House of Delegates approved a proposal that a panel of eleven federal circuit judges be set up from which to draw substitutes for the Supreme Court in case a regular Supreme Court justice was unable to participate in a particular decision. This would avoid the controversial 4-3 de-

cisions which sometimes occur when two of the justices are unable to sit or disqualify themselves for various reasons.

Dean Griswold remarked that the occasional 4-3 decisions were unfortunate and that he sympathized with the sponsors of this proposal, but that he did not feel that it offered an adequate solution to the problem. The panel of judges would be drawn from the federal circuits, and calling them away from their home circuit might seriously interfere with the disposition of pending litigation. In addition, people probably would not more readily accept a decision by a full but "composite" Court, feeling that the addition of two auxiliary judges to the Court would not sufficiently increase the validity of a decision.

An issue widely discussed at the meeting was the pending bill creating 59 new federal judgeships, the passage of which was urged by the Association, and the need for objectivity in the President's choice of men to fill these new positions. Deputy Attorney General Byron R. White addressed the Association and stated that he would not commit the Administration to a political formula for appointing federal judges, but that the Administration fully understands the enormity of the task. Dean Griswold expressed his hope that the President would live up to his promise to choose the best men for all positions and that practical politics would not play too great a role in the selection of federal judges.

Law Review Elects

Posner President

Richard A. Posner, 2L, Scarsdale, New York, has been elected President of the *Harvard Law Review* at a lengthy meeting of the Law Review members held February 19 to 20. All the new officers selected at this meeting immediately took over their duties and will serve until the next annual election, although their names will not appear on the *Review's* masthead until the first issue of Volume 75 in November, 1962.

James M. Murphy, 2L, New York, New York, and David M. Wishnick, 2L, Chicago, Illinois, were elected to serve as Article Editors. Bruce J. Havighurst, 2L, Shaker Heights, Ohio, and Stephen R. Barnett, 2L, West Hartford, Connecticut, are the Note Editors. The new Case Editors are Clay C. Long, 2L, Montgomery, Alabama, and Lloyd L. Weinreb, 2L, Lawrence, New York.

The position of Treasurer will be filled by Robert A. Gorman, 2L, Woodmere, New York. Michael S. Horne, 2L, Hopkins, Minnesota, is the new Developments Editor, and Stuart R. Pollak, 2L, San Francisco, California, will serve as Book Review Editor.

Preparations Made For Variety Show

By Joseph A. Broder

The Dormitory Council is hard at work in preparation for the Law School Variety Show to be held on March 25, 1961, time and place to be announced shortly. At one time it was customary for the Law School to put on an annual variety show, but in recent years the show has been absent from the Law School scene. The beginning of a new era is at hand.

Auditions were held last Wednesday, and a number of entertaining acts were selected for the program. The highlight of the show is expected to be an enlargement by the members of Lincoln's Inn of their laugh-provoking Christmas Show. There is still room for one or two acts on the program. Anyone interested in performing should contact Richard Glazer at EL 4-6860 or George Kelly in 204 Shaw.

Trial Tactics Discussed For Patent Law Club

By Neal L. Rosenberg

Mr. Melvin Jenney, partner in the Boston patent law firm of Kenway, Jenney and Hildreth, addressed the Harvard Patent Law Club last week on "The Trial Tactics of Patent Litigation."

From the outset Mr. Jenney emphasized that patent litigation was a costly matter. In most of the circuits the odds are high against a patent being upheld. Furthermore, once the patent is held invalid, the patentee

loses the opportunity to obtain even the small license royalties which he otherwise might have earned with a patent of dubious validity. Mr. Jenney noted that a large number of patentees still insist on litigation of very weak patents, frequently against advice of counsel.

Two essentials were postulated as normally requisite for a successful infringement suit: a clear and consistent picture of the exact contribution made by the patented invention to the art and a good measure of commercial success. Mere "paper patents" — patents that have achieved little or no commercial usage — have not fared well in the courts.

Mr. Jenney suggested that a patent suit is perhaps decided primarily by the expert testimony offered by each side. Extensive ex parte testing is often less successful in this regard than a simple courtroom demonstration.

Swelling the normal attendance list were members of the Boston College Law School, a physicist from RCA in Burlington and patent counsel from Sanders Associates, Inc. in New Hampshire.

Research Aides Sought For Summer Project

Professors Louis B. Sohn and R. R. Baxter, joint reporters of the Responsibility of States Project, have announced that they will employ three student research assistants for the coming summer. The students will prepare annotations of various articles of the "Convention of the International Responsibility of States for Injuries to Aliens" which Messrs. Sohn and Baxter have prepared.

Application forms may be obtained from the Financial Aids Office and must be returned by March 6. A meeting will be held at 2 p. m. on Tuesday, March 7, in Seminar Room 3, International Legal Studies Building, at which Professors Sohn and Baxter will explain the nature of the work and answer questions.

To qualify for one of the positions a student must be in his second year, rank in the upper half of his class, have a reading knowledge of at least one foreign language, be available for work throughout the summer and have had or currently be taking at least one course in international law or international organizations.

Mrs. Soss Speaks To Bull & Bear

By Keith A. Libbey

Mrs. Wilma Soss, president of the Federation of Women Shareholders in American Business, Inc., addressed an assemblage of Bulls and Bears in the Wheeler Room on Monday.

Mrs. Soss has dedicated her efforts to the enlightened enfranchisement of the nation's majority stockholders, women. Fifty-two percent of corporate stock is held by women.

FOWSAB and Mrs. Soss have fulfilled the role of "gadfly" to corporate management for



some 14 years. In that time they have fought for numerous proposals: cumulative voting, peripatetic annual meetings and televised annual meetings. All of these have now been adopted by a few corporations.

Currently, Mrs. Soss is concentrating on gaining the adoption of secret voting for shareholders. She emphasized that her experience has proved how long the arm of corporate retribution can be. An employee stockholder feels compelled to vote for incumbent management out of fear of repercussions from the fact that his name is clearly printed on his ballot, if for no other reason. FOWSAB sees this type of open voting as an anti-democratic tradition which must be eliminated to further the end of shareholder democracy.

Mrs. Soss gains entrance to shareholder meetings either as the individual owner of a few shares or as the holder of proxies given to her by FOWSAB members. She serves without compensation from the organization.

Chancery To Hold Election

Chancery Club members will hold their annual election meeting Saturday, March 4, at 2:30 p. m. in the Harkness Commons Meeting Room to select a new Board of Governors. The Board of Governors consists of a Chancellor, Vice Chancellor, Treasurer, Secretary, Alumni Secretary and two Members-at-Large. All members of the club are eligible to run for office.

Bureau Elects Officers

Members of the Legislative Research Bureau elected Paul N. Crane, 2L, Los Angeles, California, president of the organization at their annual election meeting. Mr. Crane received his B.S. degree from U. C. L. A. in 1959.

David M. Borden, 2L, Hartford, Connecticut, and Joe B. Hudgens, 2L, Pecos, Texas, were elected Vice-Presidents for Research. Herbert H. Moorin, 2L, Stamford, Connecticut, will serve as Vice-President for Clients for the coming year.

Applications Accepted For UN Program

Secretary of International Legal Studies John A. King, Jr., has announced that although final plans have not yet been made, the United Nations will probably sponsor a one month internship program this summer beginning early in July. Students interested in applying should see Mr. King before March 10.

The Law School will nominate two candidates to the UN selection committee for participation in the program. One nomination will be an American LL.B. candidate who will have completed his second year this summer. The other nomination will be from among the group of graduate students from foreign countries. In past years students selected from the Law School's nominations have usually worked in the Legal Division of the United Nations.

Thomson Discusses Trademark Law

By Neal L. Rosenberg

In a doublet of lectures and a thirty page memorandum Arthur D. Thomson, Esq., partner in the Boston trademark and patent law firm of the same name, presented the Patent Law Club with an outline of the fundamental aspects of trademark acquisition and ownership.

Mr. Thomson expounded the basic definition of a trademark as a "mark of a trade," a notification which is affixed to or goes to market with the goods and distinguishes the goods as having a particular trade-source or producer. Trademark law is a branch of the law of unfair competition, designed to protect from usurpation the good will which is attached to a manufacturer's or merchant's goods and which is built up, symbolized, and cashed-in on through the use of a trademark.

Several recent state statutes have gone beyond the scope of trademark common law — which concerned primarily the "passing off" by one manufacturer or merchant of his goods as those of another more well-known — and deal with the dilution of a trademark, the loss of uniqueness and impact of the trademark due to its frequent public use by other than its rightful owner, even though there is no possibility of a confusion or "passing off" of goods.

For common law infringement of a trademark, it is necessary to prove not only the similarity of the trademarks, but also the similarity of the trademarked goods. The test of infringement is, for the most part, the likelihood of public confusion as to whether the item in question was produced by one manufacturer or another. Despite the accidental bona fide adoption of similar trademarks, if two manufacturers produce goods which are so different in nature (*e.g.*, automobiles and perfume) that the public is not likely to think that either manufacturer has entered the field of the other, there is no infringement. Naturally a contrary result is possible under the anti-dilution statutes and the Lanham Act.

Throughout the lectures, Mr. Thomson emphasized that the accent in trademark practice is on the facts: Are the two trademarks in question so similar as to be likely to cause

confusion in the public's mind? Are the goods in question similar? Is the trademark that exclusive and unusual?

Certain trademarks are not subject to exclusive use by any one manufacturer according to the common law. These include trademarks which are geographical names (Columbia), surnames (Brown's), grade or quality marks (Primary), names of patented articles after the patent has expired (Singer) and generic or descriptive names or marks which "others may employ with equal truth" (Shredded Wheat).

Of particular interest to the members of the club was the rule that, where a patented item is known only by its trademark and this trademark has therefore become the generic name for the item, when the patent expires, so also expires the right to the exclusive use of the trademark with respect to the patented item. In a sense the patentee would be unlawfully extending his patent monopoly beyond the prescribed number of years if he could still be the sole seller of the item after his patent had expired, simply because the public knew how to designate the item only by its trademark name, and other manufacturers of the item were still prohibited from using that name.

Student Appears At Committee Hearing

David A. Whynott, 3L, Gloucester, Massachusetts, appeared recently at a committee hearing at the State House on Beacon Hill to speak in support of a petition to lower the minimum voting age to 18 in this state.

Appearing with him were three high school students from Gloucester who are members of a high school Young Republican Club in that city. Mr. Whynott was instrumental in the organization of the club, of which he is now the leader. During the past fall the group was active in the political campaign. Recently it has worked upon developing arguments in support of the current bill.

At the hearing Mr. Whynott emphasized the fact that youth are today capable and eager to participate in the government through voting. He stated that these young people do not remain children until reaching the age of 21 and that they have capably borne the burdens of war and the problems of peace.

Democratic Club

Lists Activities

By Steven R. Rivkin

Current programs for the Law-Graduate Democratic Club include a speech by Massachusetts Attorney General Edward J. McCormack, Jr., followed by the annual club election to be held on March 23, a Franklin D. Roosevelt memorial meeting to be held on April 12 and a Legislative Research Project oriented to the needs of Massachusetts Democratic state legislators.

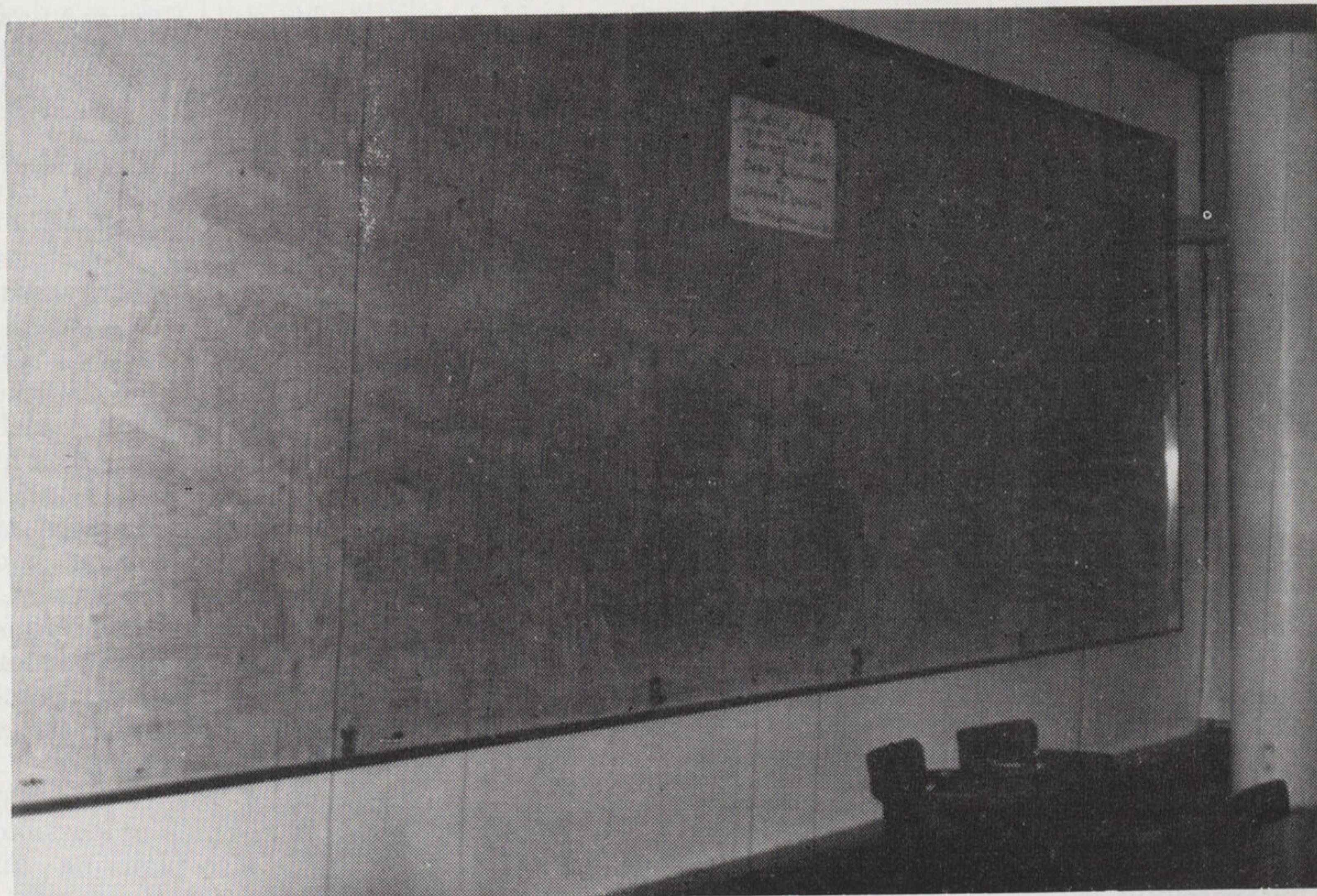
These programs follow three overflow meetings held since the beginning of the year. In January Harvard Professor Arthur Smithies spoke on the current problem of the gold outflow. In subsequent meetings M. I. T. Professor Robert Wood discussed Democratic urban programs, and Harvard Professor V. O. Key spoke on "Bloc Voting in the 1960 Elections."

The Legislative Research Project, under the direction of Thomas J. Hargadon, 2L, Waltham, Massachusetts, represents a return to a successful club program of previous years as well as a response to the current needs of several Massachusetts legislators for assistance in the law-making process. The project, formulated in the last weeks, will have three functions when fully established:

(1) In its first term this spring, the project will be utilized to aid particular Democratic members of the General Court in drafting legislation using techniques familiar to the Legislative Research Bureau, without the Bureau's limitation of non-partisanship. The laws which the project will consider may well be both partisan and controversial.

(2) In its second term next fall, participants in drafting will have opportunities to testify before legislative committees as advocates of their proposed measures. The proj-

Commentaries



Miro' Mural on the Wall?

ect may also undertake comparative analyses of proposed bills within Massachusetts and between this and other states. These analyses may be distributed as a basis for judgments of members on proposed bills.

(3) As a third function, the project may be utilized as a nucleus for long-range studies of major areas of state activity, with a view to rationalizing the State's concepts of its responsibility where appropriate. This phase of the project, which could last for one or two years, would be dependent on the degree of response forthcoming from members as well as the availability of proper substantive areas for study.

Project Will Study Nominating Procedures

Since the over-all aims of this project are fairly ambitious, officers do not expect that

full group activities will be undertaken immediately. The first project for this term will be an analysis of nominating procedures in state elections, tracing the relations between primaries and pre-primary conventions as followed in Massachusetts. This project will involve comparisons of statutes in several states as well as a Massachusetts study.

Further proposals include plans for a study of judicial reform (including the desirability of abolishing the bar examination), urban renewal and administrative reorganization. These projects are open to anyone with a minimum amount of time to spare. Further information may be obtained from Tom Hargadon, who may be contacted by mail at 63 Wendell Street, Cambridge, or by phone at KI 7-0073.

Profiles of Leaders

John R. Quarles, Jr., is the newly-elected secretary of the Class of '61 at the Law School. John was born in Wellesley Hills, Massachusetts. He graduated from the Noble and Greenough School in Dedham and from Yale in 1957, where he was an editor of the *Yale Daily News* and a member of Phi Beta Kappa.

After serving with the Army from June to December of 1957, John worked as a bond analyst with Scudder, Stevens and Clark in Boston until August 1958. He came to the Law School in September of that year.

While at the Law School, John has served as the Chancellor of Chancery Club, a member of the Board of Student Advisers and a member of the *Law Review*. He claims to be an "informal member of the Hemenway gym group," since he plays squash there quite often.

John will clerk next year in New Orleans for Judge John Minor Wisdom of the Fifth Circuit. Eventually he hopes to practice in Cleveland (with New York or Boston still being possibilities).

Single, John would like to remain a confirmed bachelor.



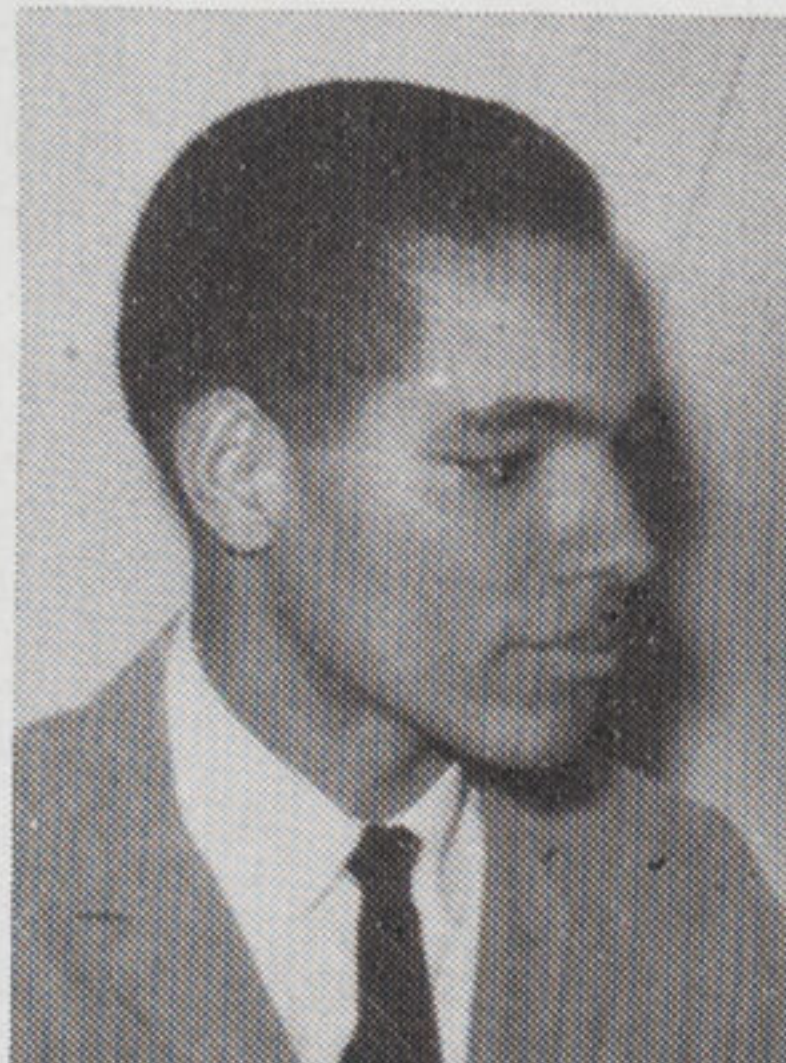
Herman "Tex" Wilson is the newly-elected marshal of the third year class. Born in Tyler, Texas in 1935, Tex attended primary and secondary schools there. At one point he dropped out of school for over 2½ years but then decided he wanted to go to Harvard Law School, so he returned to school in 1952 and graduated from Emmett Scott High School in 1954. Tex graduated from Lincoln University of Pennsylvania with the class of 1958, receiving his degree *magna cum laude*. He

was the president of his class as well as of many other organizations.

At the Law School Tex is a member of the Magruder Club, which is one of the Ames finalists. He was a member of the Student Bar Association and the Texas Club.

Tex is an avid golfer with "no time or weather in which to play." He plans to practice law in Chicago and has some interest in entering politics sometime in the future.

His plans for the class of '61 are "to keep it active and to get as many men as possible back to reunions." He is also planning an employment clearing house for those members who go into the service before seeking employment.



FEATURES SECTION

Plans For Judicial Reform

By W. St. John Garwood

In Texas and the many other states in which the judiciary is chosen by popular vote, the judge may well be called to account on election day for not only his strictly judicial conduct, but also his views as expressed in speeches, articles or what have you about most any subject a given individual voter or group of voters might consider important. For example, one of my speeches, delivered while still a member of the judiciary and critical of the Texas system of judicial selection, embroiled me in a long and cantankerous correspondence with the Texas empire of the Ku Klux Klan. (The Klan's idea, incidentally, was that the more independent the judge, the more likely his leaning toward Negroes, Communists, and federal authority.) And once when I wrote an article suggesting that our jury system was subject to considerable improvement, one of my judge friends told me he was sorry to learn that I was contemplating retirement.

Americans Spend Much Time and Effort on Legal Matters

My first observation is that, in the legal sphere, if our American institutions are not perfect (and

Justice Garwood received his A.B. from Georgetown University, in Texas, in 1917. He studied at the University of Texas briefly before attending Harvard Law School, from which he was graduated in 1922. He has practiced law in New York City, Houston, and in South America as resident counsel for a major oil company. In 1948, Justice Garwood was temporarily appointed to the Texas Supreme Court. He was subsequently elected for a full term and served on that court until 1958. He is presently Chairman of the ABA Standing Committee on World Peace and Law through the UN and president of the Harvard Club of Austin, Texas.



Justice Garwood

we will doubtless all agree that they are not) there is probably less excuse for their imperfections than in the case of most other nations. It is no vast exaggeration to say that we Americans, when all is said and done, probably spend more time, effort and money in respect of legal affairs than do most of the other nations of the earth put together.

For example, Texas is just one of 50 states and with less than five per cent of the national population; but the judges of Texas alone apparently outnumber the judges of all England, with its 40 to 50 million people, while, at the same time, Texas by itself has more law schools than all England and almost as many lawyers.

The United States has, indeed, somewhat over three times the population of England (and without doubt many more times the amount of criminal and divorce litigation), but we probably also have at least 15 to 20 times more separate law reviews and other legal periodicals, law libraries, law lists, law "serv-

ices" and law associations of one kind or another than England has. In some of the categories the percentage is probably still higher in our favor.

So far as court organization and operation is concerned, I daresay that, although our scale of judicial salaries and benefits is far from excessive, the total expense of administering justice in the United States is well out of proportion to the differences in population, volume of litigation and cost of the corresponding manpower and other charges. If we include in this the cost to the lawyers themselves and to the government of all the legal periodicals, books, services, association dues and expenses, office equipment and so on, the disproportion will probably be much greater still. (I suppose that by the time California is finished, one way or another, with Dr. Finch and his girl friend, that one case will have cost all concerned at least a few hundred thousand dollars.)

Granted that some, perhaps much, of this — shall we say, "legal openhandedness" — is, so to speak, "built into" our federated system of government, with its 50 smaller nations and one over-all nation, each having a separate, if generally similar set of laws, courts, commissions, procedures, schools, publications, associations and so on. Naturally there are limits to what even the combined intelligence and efforts of our numerous experts and expert groups could be expected to accomplish in that field — at least within the next several decades.

At the same time, our system, for all its undoubted virtues, is no less undoubtedly one of the most complicated on earth and correspondingly one of the most expensive. So it does seem that with all the great amount of legal scholarship we have churning about, a lot more of our legal thinkers would be tak-

ing a harder look at the whole picture and daring to suggest some fundamental improvements, as contrasted with producing, as we do, more and more shiploads of specialized studies of particular law questions, of which, assuming they remain of current interest for as much as a few years, only a small part will be read by any substantial portion of the profession.

True, some probably do take that hard look, and from time to time we have evidences of it, such as our early fusion of the courts of law and equity, the recent action of the federal Congress in further limiting the "diversity" jurisdiction of the federal courts, or the adoption of new federal and state rules of procedure (although the latter are so numerous and detailed and have provoked so many procedural court decisions, with all the consequent new legal literature of one kind and another, that the improvement they have made can hardly be called one of much greater simplicity).

We also make worthwhile experiments from time to time with things like domestic relations courts, pre-trial procedure and commissions of one kind or another. But, considering how life has changed in the many generations since 1787, would it, for example, be altogether treasonable or even daydreamy to review our whole system of federal and state courts and try to come up with some means for its drastic simplification?

A Single System of Courts

Doubtless we always will have to have the federal Supreme Court (although the necessity seems tragic enough to judge by what some lawyers say about the court), but should we not now be getting within at least thinking distance of the time when we might have, for example, not separate federal and state courts, but a single system of courts for both state and federal law with, if you prefer, the judiciary selected and paid by both the states and the nation jointly?

Such an arrangement will at first blush look suspicious to both the "states' righters" and those rela-

tively few who think directly opposite to the latter. But the fact is that state court judges already decide numerous questions of federal law on all levels, while probably the vast majority of them now acknowledge a duty to follow the decrees and precedents of the federal Supreme Court even in cases in which the latter may appear to have stretched a point in order to maintain federal jurisdiction. On the other hand, the federal courts have for years been applying state law (when they could find it) in "diversity" cases. So, to a not inconsiderable degree, both sets of courts are already doing the same job.

And does it not seem to approach the absurd, although the item in itself is not very important, that a lawyer, duly licensed and in good standing in his own state, cannot normally appear in the Supreme Court of the United States or even in the federal courts of his own state without going through a rigmarole as if he were being licensed all over again, when he really isn't, and repeating in open court the same oath he already took long ago to behave himself and be faithful to the Constitution of the United States? Why can't he just walk in with his current state bar card, be recognized and do his business? For all the red tape, probably not one out of 10,000 lawyers in regular standing in their own state is denied "admission" to a federal court.

My thought about all this federal-state judicial complication is basically this: that, whatever the "founding fathers" had in mind back there when both the present and the future of what is now the great United States was shrouded in a fog of hostile disunity, there is now no reason to fear that any American lawyer who might come to be a judge will want to undermine national unity on the one hand or seek to destroy the proper independence of the states on the other hand.

To be sure, the Conference of Chief Justices (of the states) a short while ago did let loose what was in my opinion an ill-considered

blast at the federal Supreme Court for its alleged arbitrariness in this behalf, but for all the notoriety it achieved then, it has since been largely forgotten; and the particular judges who were most responsible for it would in all probability be the last to defy the decisions of the federal Supreme Court, however much they might disagree with the latter.

As to what the federal Supreme Court itself has done or may do, I cannot find myself as yet alarmed over it, however wrong I might believe this or that particular decision to be. The judges of the Court are just as much citizens of particular states as are you and I; and I, for one, greatly doubt if any of them is or ever was any more prejudiced against states *qua* states than is the average citizen of any state.

I get into this matter of state versus federal sovereignty not only because of a sort of congenital (perhaps lazy-minded) resentment of the complexity of the dual court system, but perhaps primarily because there seems to be a more general idea in or behind the objections to greater unity that has important bearing on the improvement of justice as a whole to meet evolving conditions.

To judge by what one reads or hears, the philosophy of our many outspoken "anti-centralist" or "anti-Supreme Court" lawyers goes rather like this: an arrangement of divided or multiple sovereignty for a given land and its people is less likely or more unlikely to end up in tyranny than is one of single sovereignty (such as Great Britain or France).

So the real reason is tyranny. By tyranny they doubtless mean an unpleasantly excessive government control over the details of individual life. Apparently they have prominently in mind King George III, as well as the Stuart kings and some of their judges of Star Chamber fame.

Now I suppose nobody at all wants tyranny (although whether a given measure is tyranny or its contrary will usually be a matter

of dispute), and the anti-tyranny thesis has some support in both logic and experience, as well as in the "check and balance" idea of the federal Constitution.

The other side of the coin, no doubt, is this: that the preservation of liberty is far more a matter of personal character of a people than of forms of government; that, particularly in dealing with complicated times or dangerous external emergencies, governmental efficiency may well be the test of survival or loss of liberty; that single sovereignty is more likely or less unlikely to be efficient than divided sovereignty; and that if our own mother country of Great Britain has so well managed to preserve freedom without divided sovereignty, we too could conceivably get by without the latter and therefore shouldn't be so sensitive about it.

Efficiency of Our Courts Should Be a Primary Concern

Now far be it from me to urge rewriting the federal Constitution, although actually we do amend it or try to amend it piecemeal with considerable regularity. But I do suggest that, as regards the administration of justice, we should worry a good deal more about the efficiency of our system and somewhat less about this matter of tyranny, including the ghosts of George III, the Stuart Kings and Lord Jefferies. The English themselves evidently haven't let these memories inhibit their quest for greater efficiency, and my best judgment about the result is that their system is more efficient than our own. At least they appear to operate with an extraordinarily smaller amount of high court judicial personnel than we do with probably more speed and certitude, particularly in the criminal sphere.

Some of their practices and/or innovations, such as the relative

abolition of the jury system in civil cases and the elimination on both civil and criminal cases of these extremely elaborate, and I think to a substantial degree useless, proceedings we ourselves go through in selecting a jury, will, of course, appear highly uncongenial to very many of our lawyers. But they evidently do save a vast amount of time both in the trial court and on appeal.

It is no mere quip to say that the English will generally have finished the trial by the time we have finished picking the jury. The, to us, unusual dignity of their proceedings, including the great authority of the judge, whatever one may say about its effects on the outcome of the case or on public respect for law, certainly cannot be said to interfere with either dispatch or thoroughness in getting at the justice of the cause. My own first-hand impression of it is that it is an extraordinarily useful combination of external dignity and intellectual forthrightness and informality.

While I certainly don't pretend to have kept up with every English "cause celebre" of recent years, and conceivably there have been some of the California variety, it's hard to imagine British courts going through anything like the Chessman case, with almost a decade of legalistic delays following an obviously honest verdict of guilty and a perfectly villainous defendant thereby becoming such a martyr as to excite an acting Secretary of State to intervene in the interest of foreign relations.

Now if this rather efficient system, which so emphasizes the judge and permits him to intervene rather freely with his comments

even in a criminal case before a jury — if this be really a step down the road to tyranny, it would be rather surprising when we consider that the British are certainly no less "democratic" a people than we are and that most of our own ideas of legal institutions are nothing more nor less than English. It would also seem that someone in the English legal profession would have raised a rather violent protest.

But the fact evidently is that, far from being regarded as tyranny, it meets with little or no objection from anyone concerned. Indeed, a goodly number of criminal defendants elect to be tried by a judge, and the plaintiffs in personal injury suits do not lament the absence of a jury. I don't mean to urge that we adopt the English system, at least for the present, although personally I think it would be well worth trying. I do mean to argue that some changes in our own system, if adopted, are hardly subject to the charge of inviting tyranny or rule by privileged classes.

And I do mean to urge, and particularly so, one further point that has relation to this seeming fear of tyranny as well as to the British experience and, indeed, that of many others, including ourselves.

Standards of the English Judiciary Are High

One reason why there is no concern in England about the power of her judges is that they are very

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good judges, and the public accordingly has great confidence in them. Here or anywhere, it will probably be admitted that, on the whole, the English judges of today are about the best currently produced by the Anglo-Saxon race or, for that matter, any race.

They represent the leadership of the English bar, which itself probably has the overall highest standards of all bars of the world. The barrister regards a judgeship as the final reward of an outstanding bar career. And the public knows the process of judicial selection to be such that only by way of accident can a mediocre or otherwise undesirable judge obtain the office. You have all heard from Lord Chief Justice Goddard, Sir George Coldstream or others what that process is. It is not a process of popular election for a limited term, but rather a scrupulously studied selection by experts and for a term of service limited only by continued good behavior.

In practically every other nation on earth, including the federal government of the United States, judges are selected by some method of appointment and usually for life. Only in Texas and a majority of the other states of the United States does the elective system for limited term prevail. Indeed, virtually every foreign lawyer, judge or law student with whom I have come into contact regards this elective system rather with amazement. I suspect, although I can't prove it, that most educated people in the United States feel somewhat the same way; and some of our oldest states with the most outstandingly intellectual traditions have long since in effect abandoned the elective system.

Even the bar of Texas, for all the Jacksonian political traditions of the state, has by written ballot endorsed a change to a slightly modified version of what might be called the Missouri Compromise system, which has been in undoubtedly successful operation in Missouri for two decades. A similar system has been quite recently adopted by Kansas. It has the endorsement of

the American Bar Association.

The Missouri Plan

Its novel features are two or perhaps three. It places the judge initially on the bench by executive appointment but with the governor's choice restricted to persons screened by a commission which has a broad, nonpolitical base and is not under the thumb of the governor or any other official or group. The appointee serves for what might be called a trial period of one or two years, at the end of which he is submitted to the voters for their acceptance or rejection — but with no other alternative, such as a choice between him and some opposing candidate. He has no opponent unless it be his own defects.

If he is approved, he then serves for a fairly long term — say 10 years, after which he is again submitted to popular referendum as before and with the same consequences. If he is disapproved at the first or a later referendum, he drops out and a successor comes in under the same system. The advantages of the system are the virtual elimination of politics and uninformed voting or choice in the selection of judges and greater security of tenure on the part of judges, while still leaving the ordinary voter with a substantial voice in the matter. The differences between such a system and the more conventional appointive systems of England and the federal government of the United States are obvious.

I strongly favor a substantial change in the existing system of popular election such as is prac-

ticed in most of the states. My reasoning runs this way:

It is a highly desirable ideal, as well as a quite practical one, that the judges of our principal state courts should be the best legal minds in each state.

An altogether superior judiciary is probably an essential prerequisite for, and certainly one of the best means for obtaining, the best, including the most efficient, administration of justice, civil and criminal, substantive and adjective. It is also the best, or close to the best, method of promoting respect for law at all levels. Once it exists in the states, it will inevitably exert by its own weight a properly strong and salutary influence on the national judiciary and on the relationship between the nation and the states.

That such a judiciary is, at least with effort, obtainable will hardly be denied. The example of England alone demonstrates as much.

In doubtless every state in the Union there is a fairly abundant supply of outstanding legal talent; but with all respect to our judges

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KENMORE — Ballad of a Soldier — 1:40, 3:40, 5:40, 7:40, 9:30.

TELEPIX — Fanny — 11:00, 1:08, 3:16, 5:24, 7:32, 9:40.

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(including myself as one) and admitting the usual exceptions to every rule, not enough of this talent finds its way to the bench, and this notwithstanding progressively better judicial pay and working conditions. One is led to the conclusion that the matter of selection and tenure is, presently at least, the crucial one in procuring a superior judiciary.

The system of selection and maintenance through periodical popular elections, even for long terms, is not calculated to produce an outstanding judiciary. People of superior ability who can readily make their way in the practice, the law schools or other nonjudicial fields are rarely people disposed to accept the ordeal and expense of even an initial election, with the consequent possibility of public humiliation through defeat.

Still less are such people likely to relish foregoing a sure career off the bench for a career on the bench that may from one term to another be placed in vital jeopardy simply because someone else who happens to be a more skillful politician, a more publicized personality or endowed with a better political name happens to want the job. And obviously security and pride are not the only considerations. Few great students or great spirits will welcome the inevitably unhappy reflection of an elective judge that this or that possible decision of some difficult and perhaps doubtful question will either sadly disappoint a generous political friend or be ascribed to rank partiality by a late political foe.

Scarcely more will a great judicial mind relish the prospect of all those well-known petty but taxing and time-consuming activities traditionally corollary to all elective public office.

Lengthening Judicial Terms Is Not Enough

Admittedly some excellent judges can take all this and, to a degree, even like it, but I suggest that they are more likely than not the rather exceptional case of the gifted politician who is also a gifted judge. I know one of this type whose opinion is entitled to no little respect. Even he believes the prevailing system should be changed, but only to the extent of lengthening the term to, say, 10 or 12 years. Possibly that would improve the existing situation, and the change would be a relatively simple one.

But it still leaves the political risk in the picture, and the greater length of the tenure, like a higher salary scale, might well invite so many politically-minded candidates as to discourage the more desirable candidate altogether. And if we are to make any important change, why not go the whole way as Missouri and Kansas have done? The great risk to tenure is having an opponent at the polls. Any judicial incumbent who does not happen to be also an able politician will subscribe to the proposition that, especially in a big state like Texas, in which a reasonably vigorous campaign costs at least \$50,000, any opponent any time is a dangerous opponent.

On the part of the abler lawyers,

there is evidently a much greater interest in obtaining a federal judgeship than a state judgeship. It is reasonable to assume that this is due to the security of tenure of the former.

Such antagonism as exists against departing from the popular election system is evidently the same apprehension of tyranny that confronts so many other changes that might be made in the interest of efficiency, although in this case it is more likely to be described in words like "undemocratic." To the extent that "democracy" may be taken to mean choice by direct popular vote obviously the change would be "undemocratic." So would be the existing method of selecting federal judges, federal cabinet members, generals, admirals, ambassadors and even a substantial number of state officers, although, at least in Texas, the executive department is so split up into separate elective offices that a governor is necessarily rather a "stuffed shirt." Clearly "democracy" in any reasonable sense does not mean that every decision of the government,

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whether about men or measures, has to be made by popular vote, and certainly every government on earth proceeds on that basis. "Democracy" no more requires the popular election of judges than it does that of other technicians and officers such as insurance, banking or highway commissioners, state university presidents, health officers and many another one might name.

If there is any modern experience to support the tyranny argument against changing the popular election system of judicial selection, it must be found in the conduct of the Supreme Court of the United States. And yet, for all the recent criticism levelled at that court, I doubt if one lawyer out of 10 in any state would urge popular election of the judges of that court or, for that matter, any sort of popular election of federal district or appellate court judges. If there has ever been a serious move for popular election of judges in England, I have never heard of it.

The Adherents of Popular Election

My own experience indicates that, among lawyers, the main, or at least the most articulate, adherents of popular election are those who habitually represent personal injury claimants. The fear here is, I think, less that of tyranny than of conservatism, or shall we say a

court atmosphere less congenial to the plaintiff than what presently prevails.

But if the thesis is correct that a different system of selection will produce a better judiciary, it certainly includes the proposition that such a judiciary will be no less fair than at present — and nobody has the right to ask more than fairness. And, after all, the personal injury lawyers are far from being that portion of the bar which is most influential in judicial elections. The biggest political contributions in those races probably do not come from personal injury lawyers.

The Missouri or American Bar plan of judicial selection is evidently the one which has received widest acceptance among lawyers and for this and other reasons has the best chance of general adoption. It is, of course, designed to replace the system of popular election now prevailing in most states and in my opinion will accomplish that laudable purpose to the benefit of all concerned. Indeed, its idea of a screening process for appointees might well be applied also to minimize the political considerations that sometimes control appointments to the federal bench.

Admittedly the big argument made for the plan in the "two-party" states, to wit, that it avoids

the often disastrous effects of purely party politics, is not altogether applicable in states like Texas, where, except for presidential races, the Democratic primary is the election. It is, however, applicable to this important extent, that there are in states like Texas some able jurists of definitely Republican affiliation who, under the existing system, would find it difficult, or at least quite complicated, to get on the bench without sacrifice of their regular party affiliation.

Otherwise, in a one-party state, there is no great reason for abandoning the usual elective system, unless the very nature of the latter discourages the best legal talent from entering the judicial field. But the elective process, in my opinion, is just as discouraging in a one-party state as in any other. Certainly the danger of party politics in the two-party states is no more discouraging than a situation in which any lawyer who can pay the Democratic filing fee (or have it paid for him by some disgruntled colleague or litigant who has lost a case) and is willing to do a little campaigning poses a threat to the tenure of even the best incumbent and will, in any case, cause the latter serious inconvenience and expense.

Elections

(Continued from Page 1)

ber of the Lincoln's Inn Society. Mr. Skornia graduated from Grinnell College and is an oralist in the finals of the Ames Competition.

The following students were appointed to the remaining four positions on the Class Committee by the elected members: R. Lanier Anderson, III, Macon, Georgia; David M. Foster, Jacksonville, Florida; Wilmot R. Hastings, Swampscott, Massachusetts; and Bevis Longstreth, Jr., Princeton, New Jersey.

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Letters to the Editor

To The Editor:

I am mighty glad I marked up for the RECORD; there is much of interest in it and much, like speeches by politicians, with which I disagree and thereby am inspired to a little action. I just annotated and clipped, for example, the speech by Walter Judd in the Feb. 9 issue then mailed it to him with what I am afraid is a salty letter. I think the apparent release of it by him (?), contains some of the flimsiest reasons ever given for nonrecognition of Red China. You really ought to print sometime a rejoinder by some scholar not saturated by John Foster Dulles' spirit. I sent him, and send you herewith, a statement I'd prepared prior to the electrical contractors' conviction to show that the U.S.A. has no reason to be so selfrighteous these days; I have viewed studiously our changing economy from home and abroad for the past 50 years, almost.

J. R. Keister,
LL.B. 1912

Do the Trees Prevent Washington from Seeing the Woods?
(Question by an attorney-Harvard 1912-student of economics)

From near-infancy, we've been told that our country is always right, and others always wrong.

As a matter of fact, the U.S.A. today is the most childish of all nations. And, consistently with such immaturity, also the most self-indulgent, wasteful, hate-stuffed and war-dependent.

We castigate materialism, yet sanctify its worst form, private greed. Our experts and analysts bypass the fact that our forefathers' prolific tree of supply-and-demand has been grafted onto by gigantic monopolies so often that

it "ain't what it used to be" by far. Such graftings have brought forth rich fruits, but Americans have been charged increasingly upped prices. Obviously, such prices are not determined by the law of supply and demand, but manipulated via unwritten agreements instigated by monopolist-producers. These dictators also cut or even stop producing goods so as to limit supply whenever profiteers' "national prosperity" is threatened.

Furthermore, also with government knowledge, American consumers indirectly but actually pay even the huge corporation taxes. Together with so-called defense billions and advertising billions annually. Free enterprise? Today it is mainly "free-to-cheat"-enterprise. Compared with more small-time and publicized racketeering, this "respectable" type of crime by monopolists is much worse.

Not only to cheat, but daily to deceive — via the ad-controlled press, networks, U.S.I.A., CD, politicians and Pentagon — is at the basis of our economy.

The supreme lie of our golden age has been of course, that war-torn Russia will spring a genocidal, suicidal, surprise nuclear attack on the U.S.A. By that hoax are we brainwashed into a nation of suckers.

As to internal security, which the F.B.I. and the Un-American Committees rave so much about, if force and violence is really ever used in the U.S.A., it will not be by the Reds and so-called fellow-travelers, but by our over-priced and oversold and over-taxed fellow Americans, when they are finally driven to the wall by Organized Greed, Inc.

For we have verily become a

regimented Plutocracy that just pretends still to be a Democracy. And a Plutocracy that talks peace, but (so as to retain its other source of exploitation) craftily avoids disarmament like the plague.

(Editor's Note: The "marking-up" mentioned in the first sentence of Mr. Keister's letter is, as all alumni know, a method by which members of the Law School Alumni Association can mark on their membership applications whether or not they would like to receive the RECORD. The remainder of Mr. Keister's letter and statement are, we feel, self-explanatory.)

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